The Legal 500 Country Comparative Guides

Poland: Tax

This country-specific Q&A provides an overview of tax laws and regulations applicable in Poland.

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1. **How often is tax law amended and what are the processes for such amendments?**

   An important weakness of the Polish tax system is its high variability. Almost 1/3 of all tax regulations are changed during the calendar year. The PIT, CIT and VAT Acts since its introduction in the 1990s have been amended over 140 times. According to the Constitutional principles, new tax legislation may be introduced to the Polish tax system only by Law which shall be adopted by Parliament and the Senate and then shall be approved and signed by the President.

   The Act comes into force after 14 days from its publication, unless an another date for its entry into force is specified. According to the guidelines of the Constitutional Tribunal stipulated in the judgement dated February 15, 2005 (K 48/04), minimal *vacatio legis* for unfavorable for taxpayers changes in tax regulations should be at least a month. In practice, such changes are introduced with the beginning with the fiscal year.

2. **What are the principal procedural obligations of a taxpayer, that is, the maintenance of records over what period and how regularly must it file a return or accounts?**

   Each CIT taxpayer has to file an annual corporate income tax return in an electronic form within three months after the financial year end. Individuals are required to file a tax return disclosing the aggregate annual income at the end of the tax year. The deadline for filing the tax return and paying the tax liability is 30 April of the year following the tax year for which the return is filed.

   Registered VAT taxpayers are required to keep registers of purchases and sales subject to VAT and to submit monthly VAT returns by the 25th of the following month or quarterly VAT returns by the 25th of the following month. Nevertheless, quarterly VAT returns may be filed only by “small taxpayers” (annual sales of less than EUR 1,200,000).

   Additionally, registered VAT EU taxpayers performing Intra-Community acquisitions of goods into Poland and Intra-Community supplies of goods and services from Poland are also required to submit EC Listings returns on a monthly basis.

   Some taxpayers are also required to file statistical information (INTRASTAT) on intra-Community commodity transactions.

   From 1st October 2020 all taxpayers will be obliged to file electronically monthly SAF_T by the 25 of the following month. It would include two parts: (i) the declaration part and (ii) the registration part. If the taxpayers file quarterly returns they are also obliged to submit SAF_T. However they will be obliged to complete only the registration part and only for the first two months of each quarter. After the end of the quarter, they should complete the registration part for the third month of the quarter and the SAF_T declaration part for the

entire quarter.

A taxable person is obliged to retain all tax documents (bills, invoices, tax ledgers, documents related to levying or collection of taxes, etc.) until the relevant tax liabilities become time-barred. The limitation period is 5 years from the end of the calendar year in which the tax was due and payable. This general statute of limitations period can be interrupted or suspended under certain circumstances.

3. **Who are the key regulatory authorities? How easy is it to deal with them and how long does it take to resolve standard issues?**

The National Revenue Administration (NRA) is a merger of tax administration, fiscal control and customs service. At the governmental level NRA consists of:

1. Minister of Finance – responsible for issuing general advance tax rulings; issues guidelines for the interpretation of tax provisions,
2. The Head of National Revenue Administration whose competences relates to tax avoidance, the conclusion of advance pricing agreements,
3. Director of the National Revenue Information System – responsible for issuing individual tax rulings.

Under NRA, direct taxpayers' service takes place at local tax offices which are the key reference point for the day-to-day tax matters of taxpayers. In turn, the customs and tax offices are specialized for serious matters than tax audits conducted by tax offices and acts more like a 'tax policy'.

The director of the tax administration chamber is the appeal body in cases which belong in the first instance to the head of the tax office or the head of the customs and tax office. The exceptions are tax decisions issued by the head of the customs and tax office as a result of irregularities in compliance with tax law, as part of customs and tax control. In this case, the appeal body is the same head of the customs and tax office.

This means that the Polish tax administration consists of two instances, i.e. decision made by the authority of the first instance may be challenged to the second instance authority.

In general, the Polish tax authorities demonstrate a very pro-tax approach which means that resolving taxpayer's issue in a cooperative way may be difficult for the taxpayer. However, timing and the possibility to solve tax issues with the local tax authorities depends on two important factors: (i) the scope and the complexity of the issue at hand and (ii) which tax office taxpayer is dealing with.

A drawback of the Polish tax system is also the excessive length of administrative and court proceedings. A taxpayer whose tax office wrongly accused of irregularities in paying taxes

fights in front of offices and courts on average about 5 years.

On the other hand, the NRA sets up the National Revenue Information System (NRIS) which provides uniform, individual interpretations of tax law and tax and customs information by telephone. This solution allows taxpayers to address a specific tax query via telephone to the consultant of the NRIS and obtain a direct answer. Moreover, taxpayers may also apply for a binding tax ruling on whether any planned or actual taxpayer actions, arrangements or transactions comply with the Polish tax law.

From 1st November 2019 the taxpayer could check the correctness of the classification of goods and services for VAT purposes. The taxpayer may apply to the Director of the National Revenue Information System for issuing Binding Rate Information, in which the appropriate VAT rate is specified. Binding Rate Information has been applicable since 1st July 2020, when the VAT matrix regulations entered into force.

4. **Are tax disputes capable of adjudication by a court, tribunal or body independent of the tax authority, and how long should a taxpayer expect such proceedings to take?**

Tax disputes can be brought before the administrative courts in Poland. The structure of administrative courts consists of two levels: voivodship administrative courts as courts of lower instance and the Supreme Administrative Court as the court of upper instance.

Complaints against decisions and rulings (and other administrative acts) should be lodged within 30 days from the receipt of the decision to the voivodship administrative court via the tax authority that issued the decision or ruling in the last instance.

As a rule, a case before the administrative court should be completed as soon as possible. However, the reality is slightly different. Obtaining a hearing date largely depends on the court's location. In small cities, a date for an oral hearing is set within two or three months, but in larger cities the date may be set significantly later than this. A taxpayer lodging a complaint at the voivodship administrative court in Warsaw or Krakow will likely wait for approximately one year before the case is considered. A backlog of hundreds of thousands of cases in the Supreme Administrative Court (as it is the only upper administrative court in Poland) causes long delays of up to 36 months in obtaining a hearing date.

5. **Are there set dates for payment of tax, provisionally or in arrears, and what happens with amounts of tax in dispute with the regulatory authority?**

CIT taxpayers are required to make monthly advance payments of corporate income tax by the 20th day of the following month, and advance payment based on the cumulative taxable income or tax loss for the tax year. Individuals are required to pay all their tax liabilities by 30 April after the end of the tax year.

In accordance with the Polish tax law, the tax assessment shall not be enforced before the deadline for filing an appeal to the second instance authority – within 14 days from the date of delivery or the announcement of the decision. Appeal suspends the execution of the decision of the tax office.

This means that in principle, the taxpayer is obliged to immediately pay the tax amount + interest on late payment resulting from the final decision. On the other hand, the tax authority is entitled to immediately enforce the amount of tax or initiate enforcement after the lapse of the fourteen day period from the issuance of the final decision.

The final decision is enforceable, unless it has been suspended. According to the applicable law, the taxpayer may submit an application to suspend the execution of the decision either to the tax authority of the first instance or directly to the voivodship administrative court.

The tax authority of the first instance stops the execution of the final decision at the request of the taxpayer in the event of lodging a complaint to the voivodship administrative court until the decision of the court becomes final.

In such a case, the tax authority takes the pertinent security (such as a bank guarantee) ensuring performance of tax obligation resulting from the final decision. If the taxpayer provides the tax authority with the security, the tax authorities would be automatically obliged to suspend the execution of the decision. In this case the interest is not calculated.

An alternative solution for taxpayers who do not have sufficient fund to be able to establish security on its assets is to request to suspend the decision by the administrative court. The court may suspend the execution of the decision at the request of the taxpayer upon receipt of a complaint lodged by him. The condition for applying this solution is that the taxpayer demonstrates that the execution of the decision creates the risk of causing significant damage or causing irreversible consequences. In this case interest on tax arrears is accrued.

6. **Is taxpayer data recognised as highly confidential and adequately safeguarded against disclosure to third parties, including other parts of the Government? Is it a signatory (or does it propose to become a signatory) to the Common Reporting Standard? And/or does it maintain (or intend to maintain) a public Register of beneficial ownership?**

The taxpayer data relating to tax matters are subject to the fiscal secrecy which prevents the tax authorities from disclosing taxpayer information and data to third parties. However, there are many exceptions to the tax secrecy rule which allow the tax authorities to disclose such information and data to other public authorities and judiciary bodies.

Poland is a signatory to the Common Reporting Standard. Being one of the early adopters, the provisions of the CRS entered into force on January 1, 2017. The first automatic

exchanges of tax relevant information with other countries, such as information about banking accounts or realized capital gains, have started as of September 2017.

From 13th October 2019 Polish legislator introduced a Central Register of Ultimate Beneficial Owners. This system collects and processes information about natural persons exercising control or indirect control over the company, known as a ultimate beneficial owners. All general partnerships, limited partnerships, limited liability companies, joint-stock companies and limited joint-stock partnerships are required to report the ultimate beneficial owners.

7. **What are the tests for residence of the main business structures (including transparent entities)?**

There are two types of tax obligation in Poland: unlimited and limited.

Unlimited tax obligation is constituted when:

a) individuals (PIT taxpayers) with their place of residence in Poland are taxed on their worldwide income, regardless of where the income is earned.

b) entities (CIT taxpayers) with their head office or place of effective management is the territory of Poland are taxed on their worldwide income, regardless of where the income is earned. Thus, Polish subsidiaries of foreign companies are treated as residents of Poland for CIT purposes.

The test for residence for:

a) entities is **the place of effective management**. To determine the place of effective management the place is decisive, where the important decisions for the management of the company are taken and prepared. Most double tax treaties concluded by Poland determines residence using the effective place of management as a tie-breaker rule.

b) individuals is **the place of residence**. An individual with a place of residence in the Republic of Poland is a person who:

- is physically present in the Republic of Poland for more than 183 days during a tax year, or
- has a centre of personal or economic interests in the Republic of Poland (centre of vital interests). The above rules are applied taking into account the provisions of relevant double tax treaties. Therefore, even if, in the light of Poland's national legislation, a person passes the residence test for Poland, the appropriate criteria contained in a double tax treaty must be applied to determine what country is that person's actual place of residence for tax purposes.

The limited tax obligation arises when individuals do not have a place of residence in Poland or entities do not have head office or place of effective management in Poland, and they are taxed solely on their income derived from Polish sources.

As for transparent entities – such as partnerships, they are not regarded as taxpayers in Poland. Therefore the income is allocated proportionately to the partners being individuals or corporations.

8. **Have you found the policing of cross border transactions within an international group to be a target of the tax authorities' attention and in what ways?**

Cross border transactions within an international group are one of the targets of the tax authorities, which focuses on: transfer pricing issues, assessment of tax residence of foreign holding companies, existence of a Polish permanent establishment, withholding tax (dividends, interest, royalties), etc.

9. **Is there a CFC or Thin Cap regime? Is there a transfer pricing regime and is it possible to obtain an advance pricing agreement?**

CFC

As regards CFC rules, it should be stressed out is the introduction of CFC rules to the Polish tax system revolutionized international tax planning. The Polish legislator's aim was to tax income derived by Polish tax residents from foreign companies when such income is not taxed in the company's country of residence or the tax is too low (lower than 14.25 per cent).

From 2018, the Polish legislator introduced the effective tax rate instead of a nominal rate. This means that a subsidiary company will be considered as CFC, when the income tax actually paid by the company is lower than the tax that it would pay in Poland. Under new provisions, an additional income tax (19 per cent) is imposed on shareholders holding at least a 50 per cent direct or indirect holding in entities deriving their revenues mainly (more than 33 per cent) from passive income (i.e., dividends, interests, royalties, share disposals).

CFC rules also affect taxpayers who are shareholders of entities that have a seat or place of management in a tax haven. Polish taxpayers who own CFCs will also need to keep a register of qualifying foreign entities and a record of transactions occurring in the foreign entities, and file a special annual return in Poland.

Starting from 2019 the list of entities recognized as CFC are extended. Namely, trusts, family foundations and other entities with a trust character are treated as CFC.

Thin Cap regime

As of January 1, 2018, thin cap rules according to the ATAD Directive – interest limitation to 30 percent of EBITDA (deductibility of debt financing cost surplus over interest income – i.e. net value of debt financing up to 30 percent of “EBITDA”).

Net debt value limit up to which no interest deductibility rules restrictions apply amounts to 3 mln zlotys.

Transfer pricing regime

The Polish transfer pricing rules generally follow the OECD guidelines. From 1 January 2019 transfer pricing documentation are generally not applicable to domestic transactions (with certain exceptions). Transfer pricing documentation must be prepared for related party transactions exceeding the following thresholds in a tax year:

1. 10 million zlotys in case of transactions on goods and financial transactions;
2. 2 million zlotys in case of service and other transactions;
3. 100,000 zlotys in case of transactions with entities located in a country that engages in harmful tax practices.

Master File documentation that contains additional information about the whole related party group should be prepared by the taxpayers subject to full or proportional consolidation whose consolidated revenues exceed 20 mln zlotys.

Additionally, the biggest Polish capital group whose consolidated revenues exceeded the equivalent of PLN 3,25 mln (if the capital group prepares a financial statement in PLN) or EUR 750 mln or the equivalent of this amount, calculated according to the principles set out in the regulations (if the capital group prepares financial statements in a currency other than PLN) are obliged to provide to the Head of the National Revenue Administration country-by-country reporting._

Advance pricing agreement

_Advance pricing agreement (APA) was introduced into the Polish tax system from 1 January 2006 and is not applied to be fully in line with OECD guidelines. From the Polish taxpayer’s perspective, APA is rather a tool to reduce the risk that tax authorities would challenge pricing or cost distribution rather than an instrument to jointly develop terms of pricing or cost split between related parties.

The Polish tax law foresees the possibility of entering into unilateral, bilateral or multilateral APA.

The APA decision may concern:

1. the comparability of material conditions determined between related parties with the conditions that would have been determined by independent entities;
2. the correctness of the used pricing method choice;
3. the comparability of material conditions determined in a cost distribution agreement concluded between related parties with the conditions that would have been determined by independent entities.

The APA decision may be issued for no longer than five years, which may be renewed for subsequent periods, albeit no longer than five years, upon the request of a domestic entity filed no later than six months after the lapse of the previous period of validity. The deadline for submitting an APA renewal has been extended due to changes in regulations in 2019.

Additionally, as a result of new regulations introduced in 2019, it is possible to apply for the APA decision by a foreign investor, who is interested in establishing an entity in Poland

APA is deemed to be an expensive tool for the taxpayers. The statutory fee for receiving APA is rather high and amounts up to 200,000 zlotys.

10. **Is there a general anti-avoidance rule (GAAR) and, if so, in your experience, how would you describe its application by the tax authority? Eg is the enforcement of the GAAR commonly litigated, is it raised by tax authorities in negotiations only etc?**

The fate of the GAAR in Poland seemed to be tortuous, but eventually the Polish government enacted a GAAR, which came into force on 15 July 2016.

GAAR was created as a new tool that the tax authorities may apply to reclassify business operations where a taxpayer was demonstrated to have obtained substantial tax profits through tax-avoidance strategies. It should be noted that from 2019 one of the significant changes to the GAAR is the removal of the negative premise of the GAAR clause when the tax benefit is less than 100,000 zlotys. It means that from 1 January 2019 tax authorities may verify and challenge any activity regardless of the expected value of the tax benefit. The clause will allow the tax authorities to ignore artificial legal arrangements, which means taxpayers may be obliged to pay the avoided tax with default interest and become exposed to criminal fiscal liability.

From 2019 any action aimed at obtaining a tax benefit is subject to GAAR unless the tax benefit is non-significant in comparison to other economic benefits resulting from the action. In addition to the above, any action undertaken for non-genuine economic reasons, other than obtaining a tax advantage that in given circumstances defeats the object or purpose of the applicable provision of the tax law, will be deemed artificial. GAAR will be no longer applicable only as a last resort when other measures (i.e., SAARs) fail.

It is noteworthy that the tax authorities will not issue rulings in cases where a potential

transaction, action or arrangement raises a justified suspicion that it may be subject to the Polish GAAR. Polish tax authorities willingly make use of the above argument and refuse to issue a tax ruling relying on potential abuse of tax law.

However, the taxpayer has a right to apply for a protective opinion regarding such planned transaction, action or arrangement. A protective opinion will be issued in cases where there is no danger of the GAAR's application. The fee for obtaining such opinion is far more costly than for obtaining an individual tax ruling (a tax ruling costs 40 zlotys, a protective opinion 20,000 zlotys).The issuance of such opinion also takes much longer than the issuance of the tax ruling (approximately six months; a tax ruling is issued within three months).

Moreover, from 2019 the tax authorities may revoke individual tax rulings obtained in the past if they were aimed at circumventing the law or they allowed optimization measures to be taken in an artificial way or without economic justification and in consequence allowed the taxpayer to obtain a tax advantage. This means that in many cases the obtained individual tax rulings will no longer grant protection for taxpayers. Moreover, the subject of the request for interpretation cannot be the provisions to prevent tax avoidance, which relate, inter alia, to: GAAR, abuse of law in VAT, conduct of actual activity (CFC), measures limiting contractual benefits, specific anti-abuse rules (SAARs), etc.

Since May 2017, the Polish Ministry of Finance has been publishing a series of documents, including a warning about the possibility of applying GAAR to certain aggressive tax-optimization schemes. The Ministry warns in its statements against application of the tax optimization using closed-end investment funds and bonds purchased as part of a group of affiliates; tax capital groups and the structures with use of foreign companies.

GAAR has been rather used for dissuasive purposes by Polish tax authorities. Namely the Ministry of Finance issued several warning letters in which it was stated that GAAR may be used for certain transactions and structures or denied a taxpayer a tax ruling or an opinion that prevents the application of the GAAR.

So far, the number of proceedings regarding the use of GAAR initiated by the Polish tax authorities towards the taxpayers does not exceed 40.

11. **Have any of the OECD BEPs recommendations been implemented or are any planned to be implemented and if so, which ones?**

Poland had already implemented various of the OECD BEPS recommendations such as: (i) CFC rules, (ii) CbCR rules, (iii) new TP documentation rules, (iv) limitation on deductibility of interest, (v) IP / Innovation box.

On 7 June 2017 Poland has signed the Multilateral Instrument to Modify Bilateral Tax Treaties (MLI Convention), as stipulated in BEPS Action 15, which entered into force in

Poland on 1 July 2018.

From 1 January 2019, the MLI Convention is applicable to withholding taxes in respect of double tax treaties with Austria, Australia, France, Israel, Japan, Lithuania, New Zealand, Serbia, Slovakia, Slovenia and the United Kingdom.

As for other taxes (including taxes on income from employment), since 1 January 2019 MLI Convention is only applicable for double tax treaty with Austria and Slovenia.

Given the fact that the MLI has been recently signed, it may take some time to conclude the final scope of double tax treaties and the scope of their amendments. At this moment, it is too early to see or to predict the effectiveness of the above-mentioned measures.

It should be also stressed that BEPS project has had a huge impact on Polish tax treaty law even before implementation MLI.

During the period from 2012 to 2015, Poland concluded seven new double tax treaties, eight protocols amending double tax conventions and 15 agreements on the exchange of information on tax matters. According to the Polish Ministry of Finance, the main objectives of the above-mentioned are to limit the use of double tax treaties; to reduce opportunities for aggressive tax planning; to strengthen control mechanisms through an effective exchange of tax information; and to extend the list of types of income generated in a state where it will be covered by a credit method and it will be taxable in that state.

The OECD places emphasis not only on the BEPS project, but also on the automatic exchange of tax information between Member States. Poland, as a member of the Early Adopters Group, has started exchanging information about the bank accounts of individuals since 2017.

It should be noted that from 2019 Poland introduced the obligation to report tax schemes, which is the result of the implementation in the Polish tax law BEPS Action 12 and the Council Directive (EU) 2018/822 regarding the mandatory disclosure rules for cross-border transactions. Polish Mandatory Disclosure Rules (MDR) are applicable to those who develop tax planning schemes, make them available to or support enterprises in their implementation (e.g. tax advisers, attorneys-at-law, employees of financial institutions). The MDR apply to both cross-border and domestic transactions. The main reason to introduce MDR is to discourage taxpayers and their advisors from using tax planning schemes.

Other BEPS implementation measures have progressed at an EU level through the first and second EU Anti-Tax Avoidance Directive (ATAD). On 1 January 2019 Poland has introduced a new Exit Tax and modified GAAR provisions.

12. **In your view, how has BEPS impacted on the government's tax policies?**

Since 2016 the Polish government's tax policy conforms with current global trends and it is definitely focused on closing remaining loophole in Polish tax system by changing the existing provisions and the introduction of various regulations such as exit tax or other as more stringent controlled foreign corporation (CFC) rules, new transfer pricing documentation requirements or reporting tax schemes (MDR). This measures are taken to prevent base erosion and profit shifting, aggressive tax optimization, indirect tax fraud and tax leakage caused by all the above.

It worth stressing that the Polish tax administration is more focused on TP issues than in the past by challenging the arm's length character of the transaction. Also large multinational corporations are under scrutiny of the Polish tax authorities who identify harmful tax schemes with their participation. The BEPS project does have a substantial impact on the Polish government's tax policies.

13. **Does the tax system broadly follow the recognised OECD Model? Does it have taxation of; a) business profits, b) employment income and pensions, c) VAT (or other indirect tax), d) savings income and royalties, e) income from land, f) capital gains, g) stamp and/or capital duties. If so, what are the current rates and are they flat or graduated?**

The Polish tax system follows the recognized OECD Model and provides for the taxation of the following:

a) Business profits

Companies with their registered office or management board in Poland are obliged to pay CIT on all their income. Companies without their registered office or management board in Poland are obliged to pay CIT on income they earn in Poland. The flat CIT rate is 19 per cent.

The reduced 9 per cent CIT tax rate is applicable to incomes other than from capital gains (if the revenues earned by the taxpayers in a tax year did not exceed an amount denominated in zlotys being the equivalent of EUR 1,200,000 and:

- taxpayers have a status of a small taxpayer (i.e. taxpayer whose value of sales revenue –

including the amount of VAT due – did not exceed in the previous fiscal year, the amount

corresponding to the equivalent of EUR 1.2 million, expressed in zlotys); or

- taxpayers start their business activity, however, the foundation of the company cannot result from the transformation or merger.

It should be noted that 9 per cent tax rate does not apply to tax capital groups and companies under division. Additionally, the 9 per cent CIT tax rate cannot be applied also to taxpayers contributing in the form of an enterprise, its organized part or its assets, if their value exceeds the equivalent of EUR 10,000, as well as in a situation where the contribution concerns assets acquired by a taxpayer in connection with the liquidation of entities in which it held shares.

The Polish legislator presents new draft tax act that offers taxpayers a new tax measure – so called "Estonian tax". Small and medium-sized entrepreneurs could apply new 0 per cent CIT tax rate, if the company profit's is not pay out. This means that CIT collection is shifted to the moment when the shareholders take profit. The additional conditions of entry into that system are:

1. annual turnover of the company is not higher than PLN 50 mln (approx. EUR 11 mln);
2. shareholders of the company are only natural persons;

- shareholders do not possess shares in other companies;

1. the company hires at least three employees;
2. the company incurs investment expenditures;
3. passive income of the company does not exceed operating one.

The new form of CIT settlement will be available for four years with an option of further extension.

New regulations are expected to enter into force on 1 January 2021.

b) Employment income and pensions

- Polish tax residents

When the residents work under an employment contract for the Polish company and perform the work in the territory of Poland, the employer as a tax remitter withholds PIT at progressive tax rates of 17 per cent (the tax rate has been reduced in 2020 from 18 per cent to 17 per cent) or 32 per cent of the taxable base. These tax rates are applicable when the employee's remuneration exceeds the respective PIT threshold. The employer should paid the PIT advances to the tax office by the 20th of the month following the month in which the tax was withheld. Residents are obliged to tax their worldwide income in the annual tax return. It should be noted that there are specific detailed provisions concerning the joint taxation of married taxpayers.

In case when the employee renders work for foreign employer (non-Polish company) in the territory of Poland, such employer does not act as tax remitter and does not have a withholding tax obligation and the employee himself should pay the tax advances to the tax

office.

- Non tax residents

Non-residents may be subject to Polish tax on income for work performed in Poland. However, the pertinent double tax treaty may decide otherwise.

c) VAT (or other indirect tax)

_Polish regulation on Value Added Tax (VAT) are based on the EU legislation. It means that principles of VAT taxation in Poland are in many cases the same as in other EU member states.

The basic VAT rate applicable to most goods and services is 23 per cent.

The rate of 8 per cent applies to pharmaceuticals and medical products, most foodstuffs, restaurants and hotel services, magazines and newspapers as well as transportation services and residential housing.

The rate of 5 per cent applies to supplies of certain foodstuffs (e.g. bread, dairy products, meats), certain kinds of printed books.

A zero VAT rate applies to the intra-Community supply of goods, exports of goods, some international transportation services and related services.

d) Savings income and royalties

Interest and royalties are subject to standard 19 per cent CIT rate at payee level and are generally deductible for the payer. Payments of interest and royalties – as indicated in answer to question 20 are generally subject to 20 per cent withholding tax unless a double tax treaty provides otherwise. Interest and royalties paid by a Polish company to companies established in Poland, EEA countries or Switzerland may be exempt from withholding tax when the conditions set out in the Interest and Royalties Directive are met (described in details in answer to question 20).

e) Income from land

Earnings from the sale of real estate are subject to 19-per cent CIT in accordance with general principles (income from other sources of revenues).

- Real estate clause

Income from the sale of shares, all rights and obligations in partnerships, shares in investment funds as well as receivables being a consequence of holding shares in these entities if at least 50% of the value of assets of these entities comes from real properties located in Poland is taxable in Poland at 19%.

- CIT on commercial real estate

This tax relates to commercial real estate which is classified (according to the Classification of Fixed Assets) as office facilities, shopping centres, department stores, independent stores and boutiques, and other commercial and service facilities with the initial value exceeding 10 million zlotys.

The taxable base is the revenues corresponding to the initial value of the fixed asset determined on the first day of each month resulting from the records maintained less the amount of 10 million zlotys.

The tax amount to 0.0035% of the taxable base for each month. It is calculated and paid for each month by the 20th day of the following month. It is deducted from CIT advance payments and annual CIT.

f) Capital gains

Capital gains generally are treated as regular income and are subject to the standard 19% CIT. Exemptions may apply under double tax treaties.

g) Stamp duties

Stamp duty is imposed on certain activities undertaken by public administration such as: the issuance of certificates, submission of power of attorneys, permissions and other documents issued by the central and local authorities. The amount of stamp duty and the fixed fee vary for each activity and there are stipulated in the pertinent regulation.

14. **Is the charge to business tax levied on, broadly, the revenue profits of a business as computed according to the principles of commercial accountancy?**

The business profits calculated on the basis of the Polish Accounting Act are the basis for the calculation of the taxable income for corporate, partnership or individual entrepreneurs.

This means that activities (including business transactions) must be entered into the accounting ledgers and disclosed in the financial statements.

Any adjustments should comply with specific fiscal tax provisions (e.g. different depreciation

periods, tax reliefs etc.).

15. **Are different vehicles for carrying on business, such as companies, partnerships, trusts, etc, recognised as taxable entities? What entities are transparent for tax purposes and why are they used?**

Polish law foresees different vehicles for carrying on business, being limited liability companies (*spółka z ograniczoną odpowiedzialnością – "sp. z o.o."*) the most commonly used. Other types of entity operating in Poland include the following:

1. joint stock company (*spółka akcyjna –" s.a."*),
2. joint stock partnership (*spółka komandytowo-akcyjna – "s.k.a"*),
3. registered partnership (*spółka jawna – "sp. j."*),
4. limited partnership (*spółka komandytowa – "sp.k."*),
5. professional partnership (*spółka partnerska – "sp. p."*),
6. branch of foreign corporation.

An individual may also conduct business as a sole proprietor.

So far, trusts and private foundations are unknown to the Polish legal system, and therefore they are not widely exercised in Poland. However, it is increasingly being argued that it is necessary to introduce the institution of the family foundation into the Polish legal system.

Partnerships (excluding limited joint-stock partnerships) are not subject to CIT. Income earned by partnerships is allocated to the partners and subject to CIT / PIT at their level, together with other earnings.

Corporations – i.e. limited liability companies, joint-stock companies and joint-stock partnerships are treated as separate and distinct from their shareholders, so that the taxable income is taxed at the level of the corporation itself.

A limited partnership ("**LP**") is a very popular form of conducting business as it enables the partners' liability to be limited and is not subject to CIT. However, the Polish legislator intends to impose CIT on limited partnerships and to some extend on registered partnerships from 2021.

It should be clarified that at the moment LPs are entities without a legal personality and they are created by two types of partner: a partner whose liability for the company's obligations is unlimited and who conducts the company's affairs and represents it in all issues before third parties; and a partner with limited liability who is obliged to a fixed amount, which does not need to reflect the partner's contribution to the LP.

To connect benefits from limited liability (not only for tax arrears purposes) with the tax

advantages resulting from the tax transparency of partnership, many decides to establish a hybrid company – such as "limited liability company limited partnership" (*spółka z ograniczoną odpowiedzialnością spółka komandytowa*)

The general partner in this entity is a limited liability company that conducts the company's affairs and represents it, and, therefore, its liability is unlimited (in practice, it will be limited exclusively to the company's assets because of its legal nature). A limited partner is a natural person who can also be a shareholder of a general partner.

Tax burden optimisation for income tax is carried out through an appropriate profit distribution between general and limited partners. To achieve a measurable benefit in the tax law area, profit distribution should be done in a way that the profit of the general partner is considerably lower than the profit of the limited liability partner (e.g., unlimited liability partner: 1 per cent; and limited liability partner: 99 per cent).

This interesting hybrid is a type of partnership that is neither a taxpayer of CIT nor personal income tax. This means the partners in a limited partnership (natural persons) should pay personal income tax. The taxpayer's income from participating in a partnership is determined proportionally to the right to a share in the partnership's profit. This income is cumulated with general income subject to the progressive tax rate. The taxable person may tax its income from non-agricultural activity according to the linear rate of personal income tax at 19 per cent.

As for a limited liability company, it is a capital company and, therefore, it is double taxed, which means that taxes are paid both by the company (19 per cent on income earned) and the shareholders (19 per cent from dividends). This the reason why a general partner's profit should be reduced to the minimum.

16. **Is liability to business taxation based upon a concepts of fiscal residence or registration? Is so what are the tests?**

Liability to income tax depends on the tax residence of the company. For the relevant test please see above answer to question 7.

Polish tax law distinguishes between unlimited resident taxation and limited non-resident taxation. In the first case, the taxpayer is subject to tax with his world-wide income, in the second case only with certain income from Polish sources. A corporation is subject to unlimited taxation of its world-wide income if its statutory seat or place of effective management is in Poland. Accordingly, business individuals are liable to unlimited resident taxation if they have their place of residence or their place of habitual abode in Poland.

17. **Are there any special taxation regimes, such as enterprise zones or favourable tax**

regimes for financial services or co-ordination centres, etc?

State aid is provided to investors in form of the exemption in the income taxes for the implementation of a new investment.

Since 30 June 2018 income tax exemptions are available for investments located anywhere in Poland and the investment does not have to be located in the area covered by the special economic zones status. Tax exemptions will be granted upon a decision for the period of 10-15 years.

To be eligible for State aid each new investment will have to satisfy quantitative and qualitative criteria:

- **Quantitative criteria** – minimum value of investment expenditures necessary for the investor to incur. This value depends on the unemployment rate in the area in which the investment will be located and the size of the enterprise. The preferences are envisaged for micro, small and medium enterprises as well as investments in the field of modern business services or research and development (R&D) activities and investments located in particular areas (preferred towns);
- **Qualitative criteria** – every single investment will also be reviewed from the perspective of qualitative criteria and, to be granted support, it will principally have to score at least 60% points under these criteria – in higher aid intensity areas the threshold will be lower.

18. **Are there any particular tax regimes applicable to intellectual property, such as patent box?**

The Innovation (Patent) Box

On January 1, 2019 the Innovation (Patent) Box, a new tax incentive scheme came in force in Poland.

Innovation Box incentive includes a preferential tax rate of 5 % (applicable to both corporate and personal income tax) on qualified intellectual property (IP) income, where the taxpayer is deemed to be an owner, co-owner, or user of IP rights under a license agreement. The 5% rate is used only to qualified intellectual property rights that have been created, developed, or improved by the taxpayer. The intellectual property rights which qualify for Innovation Box tax incentive cover:

- Patent rights;
- Protection rights for utility models;
- Rights from the registration of Industrial designs;
- Rights from the registration of integrated circuit topography;
- Rights from the registration of medicinal and veterinary products (authorized for

market);
- Rights from the registration of new varieties of plant or new animal breeds;
- Protection rights for medicinal product patents;
- Rights to computer software.

A Polish taxpayer may qualify for tax relief under the Innovation Box under conditions that intellectual property rights are already subject to certain legal protections, such as ratified international agreements concluded by Poland or EU.

The income eligible for the innovation box will be derived from royalties or other charges related to the use of qualified IP rights, as well as income from the sale of qualified IP rights.

The income which is subject to the preferential tax rate of 5% offered under the Innovation Box regime is calculated using a formula recommended by the BEPS Action 5 – knows as the "nexus" approach.

Under the Innovation Box incentive, taxpayers must keep detailed accounting records which should be separated from the other types of income.

R&D tax relief

As from 2016 both CIT and PIT taxpayers may make additional deduction of eligible costs incurred for research and development activities (R&D) from the tax base. Starting from 2018 the attractiveness of the R&D tax relief increased since the deduction level has been raised to 100% of eligible costs incurred (and even 150% of costs incurred for certain type of taxpayers that possess the status of research and development centres).

19. **Is fiscal consolidation employed or a recognition of groups of corporates for tax purposes and are there any jurisdictional limitations on what can constitute a group for tax purposes? Is a group contribution system employed or how can losses be relieved across group companies otherwise?**

Poland provides for a tax consolidation regime, known as a 'tax capital group'. Taxable income for the group is calculated by combining the incomes and losses of all the companies forming the group.

A tax capital group under Polish CIT Act may be formed only by limited liability companies and joint-companies based in Poland and under certain conditions. Some of the requirements for establishing a capital group are as follows:

1. having a registered office (for companies that belong to a group in Poland);
2. average capital of each group company of no less than PLN 500,000 (approx. EUR 125,000);

3. minimum share in subsidiaries by the parent company – 75 per cent;
4. not taking advantage by group companies of income tax exemptions under other acts (the use of an exemption due to activity conducted within a SEZ – does not preclude from establishing tax capital group);
5. minimum share of income in the revenue of the tax group – 2 per cent;
6. specific requirements regarding the form and wording of the agreement;
7. minimum term of the agreement – 3 years;
8. no option to expand the agreement to include other companies (and other restrictions).

These requirements have to be met continuously throughout the period of the group's existence. Breach of any requirement will lead to termination of the group's capacity of taxpayer and in potential tax arrears at the level of group members.

A tax capital group cannot utilize tax losses generated by group members prior to formation of the group. Any tax loss generated by the group cannot be offset by its members against their tax profits after the group ceases to exist.

20. **Are there any withholding taxes?**

Withholding tax applies to income disbursed in Poland resulting from share in the profits of legal entities – dividends, interest, license fees and remuneration for some intangible services.

- **dividends**

As a rule, the rate of withholding tax on dividends is 19 per cent, but double tax treaties may stipulate a lower rate (5, 10 or 15 per cent). A WHT exemption may be obtained where the Parent Subsidiary Directive applies (more details provided in answer to question 22).

- **interest**

As a rule, the rate of withholding tax on interest is 20 per cent, but double tax treaties may stipulate a lower rate (5, 10 or 15 per cent). Some double tax treaties also stipulate a 0 cent rate on interest (e.g. those with Sweden, the United States or France). A WHT exemption may be obtained where The Interest and Royalties Directive ("**IRD**") applies. The following requirements must be met:

1. the company disbursing the interest holds a minimum of 25 per cent of the shares in the capital of the company collecting the interest; or
2. the company collecting the interest holds a minimum of 25 per cent of the shares in the capital of the company disbursing the interest/license fees; or
3. the company subject to taxation on its total income in an EU/EEA state holds at least 25 per cent of the shares in the capital of the disbursing company and in the capital of the company collecting the interest; and

4. a minimum 25 per cent share has been held directly and continuously for at least two years – this requirement does not need to be met at the time of the disbursement of the above interest.

The application of exemption is depends on whether the Polish company has the recipient's tax residency certificate and a statement that the recipient or the company referred to in c) is subject to CIT on its total income in its country of residence, regardless of where the income is earned, and is not taking advantage of an exemption from CIT on its total income regardless of source.

- **royalties**

As a rule, the rate of withholding tax on interest is 20 per cent, but double tax treaties may stipulate a lower rate (5, 10 or 15 per cent). No tax is withheld if the abovementioned conditions for the application of the IRD are met.

- **intangible services** (such as advisory services, advertising, data processing, etc.)

Payments for intangible services, such as advisory services, advertising, data processing, etc. are subject to 20 per cent withholding tax unless otherwise stated by double tax treaties (treaties concluded between Poland as a rule do not provide for WHT on payments for intangible services).

The 20 per cent withholding tax exemption in Poland is conditional upon the disbursing entity holding the recipient's tax residency certificate.

With the beginning of January 2021 the new WHT regime introduced in 2018 will effectively enter into force. Under the previous regime the exemptions or reduced WHT rates could be automatically applied basing on double tax treaties or EU Directives. According to the new rules, the tax remitter is obliged to withhold the tax unless:

1. the payments do not exceed threshold of PLN 2M per taxpayer per year, or
2. the tax remitter has submitted a statement under penal fiscal liability, or
3. an opinion has been obtained from the Minister of Finance.

The tax remitter submits a statement that it has conducted a verification procedure and it confirmed that the conditions for the preferential tax rates are met (e.g. beneficial owner status, conducting actual economic activity by the payment receiver etc.).

In the verification process the tax remitter must take due diligence and collect documents confirming the right to use preferential tax rates. The tax remitter's statement is submitted under the threat of penal fiscal liability and potential tax sanction amounting to 10% – 20% of the WHT.

In case the PLN 2M threshold is exceeded and neither the statement or the opinion are provided the withheld tax may be refunded in refund proceedings: the application should be accompanied by a statement submitted under penal fiscal liability confirming beneficial ownership status, performance of genuine business activity and satisfaction of remaining eligibility criteria for CIT exemption / reduced rate the tax authorities may conduct a tax audit or request information from the tax jurisdiction of the beneficial owner the refund should be made within 6 months but this term may be extended.

21. **Are there any recognised environmental taxes payable by businesses?**

The environment fee is payable for following activities:

1. Emitting gases and dust into the air
2. Injecting sewage into the water or soil;
3. Water collection;
4. Waste storage;
5. Rights granted to emit greenhouse gases.

The rates of the environment fee depend on many conditions and the fee is charged by the local government units.

22. **Is dividend income received from resident and/or non-resident companies exempt from tax? If not how is it taxed?**

As a general rule, dividends received by resident and non-resident companies are subject to a 19% CIT rate unless double tax treaty provides a lower rate or the EU Parent-Subsidiary Directive ("**PSD**") applies.

Tax treaties stipulate a lower withholding rate for dividends (5%, 10% and 15%) if certain conditions are met – i.e. the company disbursing the dividend should hold all required documents to apply such lower rate:

1. the tax residency certificate of the recipient of the dividend;
2. the statement that the recipient of the dividend is subjected to income tax in the country of its tax residence;
3. the statement that the recipient of the dividend is the beneficial owner of the received dividend.

Under the PSD, dividends are exempt whenever the dividends are distributed to a qualifying EU/EEA or in Swiss shareholder holds a minimum of 10% (or 25 per cent for companies with their registered office in Switzerland) of the capital or voting rights of its subsidiary, for a continuous period of 2 year.

23. **If you were advising an international group seeking to re-locate activities from the UK in anticipation of Brexit, what are the advantages and disadvantages offered by your jurisdiction?**

The main advantages for re-locating a company to Poland can be summarized as follows:

- Poland has dynamically developing market with highly-skilled human resources and with much lower employee costs than most EU countries.
- Poland has an extensive double tax treaty network with in total more than 80 countries reducing or eliminating withholding taxes.
- Poland has participation exemption for dividends and qualified shareholdings in foreign corporations.
- There is no wealth tax in Poland.
- Poland has relatively low tax rates (9% CIT – for the smallest taxpayers and for others 19% CIT and 17% or 32% PIT).
- Poland provides for the IP-box and R&D tax credits.
- As indicated above, Poland creates new Special Economic Zones which means that the foreign capital does not have to be located in specific economic zones.

A disadvantage of relocating to Poland is that there is a certain degree of bureaucracy and lack of transparency in Polish tax administration linked to an aggressive approach of the Polish tax authorities in case of tax audits and tax proceedings. A second huge disadvantage is the extensive anti-avoidance doctrine (substance over form) applicable by the Polish tax authorities to control tax-planning by the entrepreneurs.