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Poland

Tax Disputes

Contributor



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

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Poland: Tax Disputes

1. Is it necessary for a taxpayer to register with the tax authority? Are separate registrations required for corporate income tax and value added tax/sales tax?

Poland has separate income tax and value-added tax ("VAT") registrations with the tax authorities.

A corporate income tax ("CIT") taxpayer is obliged to file an identification notification to the tax authority to obtain a tax identification number ("TIN"). The notification is made automatically, along with the registration to the National Court Register. Moreover, personal income taxpayers ("PIT"), if they conduct business activities, are required to register with the tax authorities to obtain a TIN number. The notification is made on the next working day after the day on which the correct identification notification is received from the Central Register and Information on Business Activities.

VAT taxpayers, i.a. natural persons, legal entities, and unincorporated entities, independently conducting an economic activity as producers, traders, or service providers, including entities acquiring natural resources, are required to register for VAT purposes prior to the day on which the first VAT-able activity is performed. As a rule, VAT registration is required when:

- the value of sales in the previous tax year exceeded PLN 200,000, or
- the taxpayer sells goods or services explicitly specified in the VAT Act (regardless of sales volume).

The VAT exempt sales value limit of PLN 200,000 in cases of taxpayers starting their business during a calendar year is calculated in proportion to the number of months remaining until the end of that calendar year. However, this exemption does not always apply, e.g. foreign taxpayers are obliged to register as VAT taxpayers regardless of the value of sales made, even if they do not have a place of business in the territory of Poland.

2. In general terms, when a taxpayer files a tax return, does the tax authority check it and issue a tax assessment – or there a system of self-

assessment where the taxpayer makes their own assessment which stands unless checked?

In the case of most taxes (income taxes, VAT, excise, tax on civil law transactions, property tax), the taxpayer is required to self-assess their tax, pay tax, and file tax returns. The tax authority may undertake a tax audit to verify the correctness of the taxes a taxpayer declared and paid. The tax authority may also initiate tax proceedings and issue a decision determining the amount of tax if it disagrees with the taxpayer's self-assessment.

An exception to self-assessment is the tax liability of individuals for inheritance and gift tax and property tax. In such cases, the tax authority issues a tax decision with the tax assessment, which creates a tax liability.

3. Can a taxpayer amend the taxpayer's return after it has been filed? Are there any time limits to do this?

Polish tax regulations allow a previously-submitted tax return (e.g. CIT, PIT, transfer tax, property tax, excise and VAT tax returns) to be corrected by submitting a tax return correction. As a rule, the correction of the tax return can be submitted up until the end of the statute of limitation period which, in Poland, is 5 years from the end of the year in which the deadline for the tax payment expired.

However, the right to correct the tax return may be suspended in a number of situations provided for by law, e.g. the commencement of tax proceedings or a tax audit.

4. Please summarise the main methods for a tax authority to challenge the amount of tax a taxpayer has paid by way of an initial assessment/self-assessment.

The main method for a tax authority to challenge the amount of tax a taxpayer has paid is by issuing a decision determining the tax assessment. However, the issuance of the assessment decision can only be performed in a tax proceeding, which is usually preceded by a tax audit, and a customs and fiscal audit.

5. What are the time limits that apply to such challenges (disregarding any override of these limits to comply with obligations to relief from double taxation under a tax treaty)?

Tax authorities may challenge a tax return completed by a taxpayer within the statute of limitations deadline for that particular tax liability. According to the general rule, tax liability is barred by the statute of limitation of 5 years, starting from the end of the calendar year in which the deadline for payment of tax expired.

It should be mentioned that Polish tax law provides a series of circumstances in which the running of the statute of limitations may be suspended, such as initiation of criminal and fiscal proceedings or filing a complaint with a Provincial Administrative Court.

6. How is tax fraud defined in your law?

There is no legal definition of tax fraud in Polish tax law provisions. However, the Penal Fiscal Code criminalizes acts related to unlawful tax settlements. In most cases, those tax crimes or offences refer to an intentional act that leads to the avoidance of payment of all or part of the tax.

One of the most common tax crimes related to tax fraud is penalised under Article 54 of the Penal Fiscal Code. According to this, a taxpayer who, while evading tax, fails to disclose the object or basis of taxation to the competent authority or fails to file a tax return, thereby exposing the tax to depletion, is subject to a fine, imprisonment, or both.

The most typical crimes may additionally fall within the act stipulated in Article 56 of the Penal Fiscal Code, according to which a taxpayer who, while submitting a declaration or statement to a tax authority, other authorized body or tax remitter, gives untruths or conceals the truth or fails to fulfil the obligation to notify of a change in the data covered by them, thereby exposing the tax to loss, is subject to a fine or imprisonment, or both.

7. How is tax fraud treated? Does the tax authority conduct a criminal investigation with a view to seeking a prosecution and custodial sentence?

As indicated above, tax fraud is treated as a crime under specific provisions of the Penal Fiscal Code. In case of tax fraud, tax authorities or other law enforcement

authorities (e.g. the police or prosecutor) may initiate criminal fiscal proceedings.

In the Penal Fiscal Code, fiscal offences and fiscal crimes are different. As a rule, a fiscal offence is a prohibited act under the penalty of a fine specified by amount, if the amount of the public liability depleted or exposed to depletion or the value of the effect of the act does not exceed five times the amount of the minimum wage at the time of its commission. On the other hand, a fiscal crime is a prohibited act under penalty of a daily fine, a penalty of restriction of liberty, or a penalty of imprisonment.

In the case of a fiscal offence and the perspective of a sufficiently low sanction for the committed act, it is possible for the tax authority to impose a criminal fine. However, this can be done only when the identity of the offender and the circumstances of the act are not in doubt.

As a rule, in the case of a fiscal offence and a fiscal crime, an investigation is initiated, and then an indictment is prepared. These types of cases are decided in criminal procedure by criminal courts.

According to the Penal Fiscal Code, potential penalties and punitive measures for committing a fiscal crime are: a daily fine, restriction of liberty or imprisonment. However, restrictions of a more lenient type are also provided for, such as forfeiture of possessions, forfeiture of financial gain, prohibition from engaging in certain business activities or professions, and announcement of the sentence to the public.

Penalties and punitive measures for a fiscal offence are: a daily fine, forfeiture of possessions or recovery of the monetary equivalent of forfeiture.

8. In practice, how often is a taxpayer audited after a return is filed? Does a tax authority need to have any justification to commence an audit?

The initiation of a tax audit depends on the discretion of the tax authority and the type of tax, issues most commonly typified for an audit, the authority's suspicion of irregularities on the basis of information reported by taxpayers that the tax authority already possesses.

According to Ministry of Finance data made available in 2023¹:

- 13,023 tax audits were completed of which: 7,053 concerned VAT, 5,503 concerned PIT,

1,184 concerned CIT, 57 concerned excise duty and 457 concerned other taxes. Usually, tax audits concern current taxpayer settlements and irregularities of a lesser nature.

- 7,186 custom and tax inspections were completed, of which: 4,082 concerned VAT, 1,745 concerned CIT, 1,263 concerned PIT, 89 concerned excise duty and 35 concerned other taxes. Custom and tax inspections are less frequent than tax audits because they are directed at identifying significant irregularities.

No specific justification should be indicated by the tax authority to commence the audit, as the tax authority is only obliged to notify a taxpayer that the audit has been planned. However, under the Tax Ordinance Act, tax audits cannot be initiated in matters that were already resolved by a final decision of the tax authority, and cannot cover a tax that is already time-barred.

Footnote(s):

1

<https://www.prawo.pl/podatki/kontrole-podatkowe-w-2023-roku-dane-mf,526917.html>

9. Does the tax authority have to abide by any standards or a code of conduct when carrying out audits? Does the tax authority publish any details of how it in practice conducts audits?

Polish tax regulations provide for general principles that must be followed by the tax authority conducting a tax audit:

- its scope may not exceed the one indicated in the authorisation to conduct the audit;
- it should be completed without undue delay and within the date indicated in the audit authorisation (which may be prolonged);
- the duration of all audits of a business entity conducted during a single calendar year may not exceed: 12 business days in cases of micro-enterprises, 18 business days in cases of small enterprises, 24 business days in cases of medium-sized enterprises, and 48 business days in cases of large enterprises.

Moreover, tax audits may occur in the tax authority's headquarters or on the taxpayer's premises. A tax audit is most often conducted at the audited taxpayer's registered office or another location where the business activity is performed, or at locations where documents are stored. Therefore, the audited taxpayer should be

present while a tax audit is conducted.

Tax audits are mainly based on printed documents, but may alternatively be based on electronic data.

The audited taxpayer has the right to actively take part in the tax audit. Particularly, the taxpayer may submit clarifications, present evidence, or demand that certain documents be considered or witnesses heard. All inspection activities should be carried out in the presence of the taxpayer, its representative or proxy unless they waive their right to participate. Thus, the tax authority is also obliged to notify the taxpayer of the place and date of hearing witnesses' evidence or expert opinions at least 3 days before the date the hearing occurs, and the evidence of inspection no later than immediately before taking these actions.

The audited taxpayer should cooperate with the tax authority to allow it to perform its task effectively (e.g. provide access to documentation and necessary clarifications). After completing the tax audit, the tax authority issues a tax inspection report to the taxpayer that includes details of the tax audit carried out, plus a legal evaluation of the inspected case.

10. Does the tax authority have the power to compulsorily request information? Does this extend to emails? Is there a right of appeal against the use of such a power?

Under the Tax Ordinance Act, the tax authority may request the taxpayer to provide specific information, explanations or documents during a tax audit. The taxpayer is obliged to provide all the requested information, including email correspondence, if it concerns the subject of the tax audit. The information should be provided within the prescribed period. Moreover, the inspectors are entitled to enter the premises of the audited entity and move freely around the premises, on provision of official identification.

If a taxpayer believes that certain information does not fall within the scope of the tax audit, it can refuse to provide this information. Although the tax authorities do not have the right to forcibly demand information, they can notify the law enforcement agencies to initiate criminal proceedings for obstruction of the tax audit. The tax authorities themselves do not have coercive means to obtain information (including emails) from the taxpayer.

11. Can the tax authority have the power to

compulsorily request information from third parties? Is there a right of appeal against the use of such a power?

In Poland, within the framework of cross-checks, the tax authority, in connection with tax proceedings or tax audit, may request the taxpayer's contractors performing business activities to submit documents, to the extent covered by the taxpayer's audit, to verify the accuracy and reliability of the documents. The scope of the tax authority's request is limited only to documents related to the supply of goods or services audited by the tax authority.

After tax checking the taxpayer's contractors, the tax authority prepares a tax inspection report. The taxpayer's contractor may file objections to the tax inspection report.

The tax authority may also summon third parties as a witness if they can contribute to determining the facts of the case.

Additionally, tax authorities during tax proceedings can request information from banks of taxpayers to verify the information provided by the taxpayer, if it's deemed necessary. This information includes:

- bank or savings accounts held, the numbers of such accounts, as well as the turnover and balances of such accounts,
- cash or securities accounts held, the numbers of these accounts, as well as the turnover and balances of these accounts,
- concluded credit agreements or lending agreements, as well as deposit agreements,
- Treasury shares or Treasury bonds acquired through banks, as well as the turnover of these securities,
- trading in certificates of deposit or other securities issued by banks.

12. Is it possible to settle an audit by way of a binding agreement, i.e. without litigation?

The tax audit ends with a report. If irregularities are found by the tax authority in such a report, then the taxpayer can effectively correct the tax return and pay outstanding tax with interest, as requested by the report. Alternative dispute resolution is not possible under Polish tax law, i.e. there is no way the taxpayer may negotiate the amount of tax due. If the taxpayer refuses to pay the tax due under the report, the taxpayer should, within 14 days from the date the report is delivered, file objections to the

report. Then, the authority has 6 months after the report's issuance to initiate tax proceedings in which it investigates the case one more time. Such tax proceeding ends with the issuance of a tax decision. If the taxpayer does not dispute the authority's findings from the decision, it can pay the tax arrears with interest resulting from the decision. Otherwise, it may appeal to the second instance authority. If the second-instance tax authority upholds the decision, the taxpayer may file a complaint against the tax authority's decision to the Provincial Administrative Court, and then, ultimately, file a cassation appeal to the Supreme Administrative Court.

13. If a taxpayer is concerned about how they are being treated, or the speed at which an audit is being conducted, do they have any remedies?

In Poland, tax audits and tax proceedings following those audits are, in general, not carried out quickly, and frequently disputes with the tax authorities take several years. A taxpayer may file a letter of complaint about the protracted length of a tax audit / proceeding performed by the tax authority. Such a complaint is filed to the tax authority and later a complaint may be filed to the Provincial Administrative Court for inaction or the protracted tax audit / proceeding. If the Court agrees with the taxpayer, it obliges the tax authority to issue a relevant act, to ascertain or recognize a taxpayer's entitlement or obligation and states that the tax authority has committed protraction of a tax audit / proceeding.

Furthermore, the taxpayer has the right to file an objection to tax authorities' actions only after the completion of a tax audit and the issuance of a tax audit report. In the objection, the taxpayer indicates what findings of the tax authority the taxpayer disagrees with and presents their own arguments, as well as providing evidence to support their arguments. The taxpayer may additionally complain about the way the tax audit was performed or whether their rights were breached. Subsequently, if the authority has initiated tax proceedings that end with the issuance of a decision, then the taxpayer may appeal the decision to the authority of second instance. If a number of irregularities are found, including in the way the tax procedure was conducted or evidence gathered, the decision may be revoked, and the case referred for reconsideration. If the second-instance authority upholds the decision, the taxpayer still has the right to file a complaint to the Provincial Administrative Court, and then a cassation complaint to the Supreme Administrative Court.

The taxpayer also has remedies in the form of not charging default interest on tax arrears for periods in

which the tax audit / proceeding was prolonged through the authority's fault.

14. If a taxpayer disagrees with a tax assessment, does the taxpayer have a right of appeal?

As indicated above, if the taxpayer disagrees with a tax assessment in the tax audit report, the taxpayer can file objections in writing. In addition, if the tax authority has initiated tax proceedings that end with the issuance of a decision, the taxpayer may appeal the decision to the authority of second instance. If the second-instance authority upholds the decision, the taxpayer still has the right to file a complaint to the Provincial Administrative Court, and then a cassation complaint to the Supreme Administrative Court.

15. Is the right of appeal to an administrative body (independent or otherwise) or judicial in nature (i.e. to a tribunal or court)?

The taxpayer has the right to appeal to both an administrative or judicial body, depending on the stage of the tax dispute.

The appeal from the decision is filed to the tax authority of second instance, that is the administrative body.

On top of that, after the second-instance authority issues its decision, the taxpayer still has the right to file a complaint on that decision to the judicial body, a Provincial Administrative Court that analyses the case and issues its verdict.

Afterwards, if the taxpayer does not agree with the court's verdict, the taxpayer can file a cassation complaint to the Supreme Administrative Court, which is the higher instance judicial body. The judgment of the Supreme Administrative Court is final.

However, if the taxpayer feels that their constitutional freedoms or rights have been violated, it may file a complaint to the Constitutional Court. A complaint may only concern the compliance with the Constitution of a law or other normative act, on the basis of which a court or public administration body has finally ruled on the taxpayer's freedoms or rights or obligations specified in the Constitution.

16. Is the hearing in public? Is the decision

published? What other information about the appeal can be accessed by a third party/the public?

Court hearings are mostly open to the public and the administrative court should give its ruling at a hearing.

A full version of a judgment is published on the Supreme Administrative Court's website as soon as the judges have signed the written justification of the judgment. However, confidential data relating to a taxpayer is anonymised, leaving no possibility of identifying the taxpayer.

17. Is the procedure mainly written or a combination of written and oral?

In general, the tax procedure before tax authorities is of a written form. All the correspondence, motions, requests, evidence are delivered (both to the taxpayer and to the tax authorities) in a written form. Evidence may include tax books, tax returns, expert opinions, documents, witnesses' testimonies, evidence collected in other procedures, and information gathered from foreign tax administrations. Thus, the proceedings before the tax authorities are a combination of written and oral forms.

The administrative court resolves a case based on the case files (documents). Witnesses are not heard before the administrative court, nor are court experts consulted. As a rule, such evidence, if it's necessary to resolve the case, should be carried out during the tax proceedings by the tax authorities and if not carried out, the tax authorities' decision will probably be revoked by the court. On the other hand, the court may accept additional documentary evidence if it is necessary to clarify significant doubts and doing so will not extend the proceedings excessively. In practice, the courts are rather reluctant to include additional documentary evidence in the case at the court stage. Thus, the proceedings before the court are mainly in writing; however, the parties' representatives may appear at a hearing and raise additional oral arguments during the hearing.

18. Is there a document discovery process?

The proceedings before the tax authorities are conducted mainly in writing, based on documentary evidence, i.e. tax returns, tax books, and other documents collected during the proceedings. However, there is no specially provided trial or stage of the proceedings at which this evidence is disclosed. The evidence may be collected or presented for the whole period the proceedings last, until the

delivery of the tax authority's decision.

The tax authorities may ask the taxpayers to submit requested documents or to provide evidence. An unjustified refusal to provide the requested documents or attempt to complicate or delay the proceedings may constitute a violation of that obligation.

19. Are witnesses called to give evidence?

Judicial Litigation

Witnesses are not heard before administrative courts (both Provincial or Supreme) and neither are expert witnesses consulted. The court only examines whether the tax authority correctly applied the rules of procedure or substantive law, and does not conduct additional evidentiary proceedings.

Administrative Litigation

Under Polish tax regulations, witnesses may be called to give evidence before the tax authorities. The tax authorities summon persons to appear in the Tax Office and testify. Calling a person to be a witness does not require the witness's consent. A person who has been summoned must attend the hearing. If a person fails to appear without due justification, they could be fined by the tax authorities. The taxpayer, as a party to the proceedings, should be notified of the place and date of taking evidence from witnesses or expert opinions at least 7 days before the date of the hearing and has a right to participate in the examination. Namely, the taxpayer has the right to ask witnesses and experts questions, and provide explanations.

20. Is the burden on the taxpayer to disprove the assessment the subject of the appeal?

As Polish tax proceedings follow the principles of an official investigation, there are no statutory provisions regarding the burden of proof. This obligation results from the principle of objective truth adopted in administrative proceedings which obliges the authority to exhaustively collect and consider all the evidence, whereby it undertakes, *ex officio* or at a party's request, all actions necessary to clarify the exact state of the facts and to resolve the case. That means that the tax authorities must prove all facts and circumstances necessary to justify a tax claim against the taxpayer. The taxpayer, on the other hand, is required to present their position and provide substantiated evidence against the facts the tax authorities present.

21. How long does an appeal usually take to conclude?

Settlement of the case in the appeal proceedings should take place no later than two months from the date the appeal body (the second-instance tax authority) receives the appeal. In practice, the two-month period is almost never kept and it can be prolonged; however, the Polish tax authorities are obliged by law to notify the party of any failure to settle the matter in due time, stating the reasons for failing to meet the deadline and indicating a new deadline for settling the matter.

In cases of appeals from the second-instance tax authorities' decisions to the courts, the case before the administrative court should be completed as soon as possible. However, obtaining a hearing date may well take months and depends on the court's location. In small cities, a date for a hearing is set within two or three months but, in larger cities, the date may be set significantly later than this, i.e. approximately from one to three years later. 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 three years in obtaining a hearing date.

22. Does the taxpayer have to pay the assessment pending the outcome of the appeal?

Every tax decision made at the first instance of proceedings may be appealed and heard at the upper, second, instance (mostly by the director of the tax chamber). Such a decision is not final and enforceable, and therefore the taxpayer does not have to pay for the assessment.

When a second-instance tax authority issues the final decision, it becomes an enforceable decision, and the taxpayer is obliged to pay the tax liability resulting from the decision, together with late interest.

To suspend the enforceability of the decision and avoid having to pay the assessment that will be examined in the court proceedings, a taxpayer should file a complaint against the decision with a request to the court to suspend the enforcement of the decision. A taxpayer may also apply for a request to the tax authorities to defer the payment of a tax liability and interest (until the case is finally resolved), or they may apply for a request for the tax liability and interest to be paid in instalments. To obtain a deferment of payment or to be permitted to pay in instalments, the taxpayer's interest or the public interest must be proven. This relief is granted as *de minimis aid*.

23. Are there any restrictions on who can conduct or appear in the appeal on behalf of the taxpayer?

Taxpayers may represent themselves in administrative courts in Poland, both in the Provincial Administrative Courts and the Supreme Administrative Court. Alternatively, they may be represented by a professional representative, e.g. an attorney-at-law, an attorney, or a tax adviser. In addition, a taxpayer's proxy may be any other participant in the proceedings, as well as a spouse, siblings, ascendants or descendants of the party, or persons in an adoption relationship with the party, or other persons, if specific provisions so provide.

An employee of a legal entity or an entrepreneur, including a legal entity or an entrepreneur without legal personality, may also be a proxy of this entity or its superior body. This applies to state and local government organisational units without legal personality too.

It should be noted that a complaint to the Supreme Administrative Court must be prepared and signed by a professional representative.

24. Is there a system where the "loser pays" the winner's legal/professional costs of an appeal?

Yes, in Poland this rule is applicable. Namely, the costs of the proceedings (fees, expenses, and attorney's fees) are borne by the party that loses the proceedings before court. There is an obligation which is stated in the judgment that the losing party reimburses the costs previously advanced by the winning party at the end of the proceedings.

25. Is it possible to use alternative forms of dispute resolution – such as voluntary mediation or binding arbitration? Are there any restrictions on when this alternative form of dispute resolution can be pursued?

An alternative dispute resolution is not used in disputes between taxpayers and the tax authorities. Polish law on proceedings before administrative courts provides for only one particular procedure in proceedings before the administrative courts, i.e. mediation. However, mediation is not a commonly-used mechanism in the tax judiciary.

26. Is there a right of onward appeal? If so, what

are all the levels of onward appeal before the case reaches the highest appellate court.

Administrative Litigation

The decision of the tax authority issued in the first instance may be appealed and heard at the higher, second instance (mostly by the director of the tax chamber). To appeal a tax decision, the appeal must be submitted within 14 days of the date the decision was delivered and the appeal must be lodged through the tax authority that issued the decision.

Judicial Litigation

That final decision may be challenged by lodging a complaint to the provincial administrative court. Complaints against decisions and rulings (and other administrative acts) should be lodged within 30 days of the decision to the provincial administrative court through the tax authority that issued the decision or ruling in the last instance.

A judgment of the provincial administrative court may be challenged to the Supreme Administrative Court. A cassation appeal is lodged via the provincial administrative court that issued the judgment within 30 days of serving the judgment, together with a justification.

27. What are the main penalties that can be applied when additional tax is charged? What are the minimum and maximum penalties?

The main penalty a taxpayer may be subject to in cases of additional tax being charged is the obligation to pay the tax arrears plus penalty interest. The penalty interest changes from time to time, as it depends on the current interest rates announced by the National Polish Bank. Currently, in August 2024, the penalty interest rate is 8% on an annual basis.

In some cases concerning VAT, an aggravated interest rate could be applied. In such situations, the tax authority may impose an additional penalty tax liability of 30% or 20% of the amount of understated tax liability, the overstated refund or the amount of tax difference to reduce the tax due for subsequent accounting periods.

Furthermore, pursuant to the VAT Act, in enumerated situations related to VAT invoices, there is the possibility of the imposition of additional tax liability. If the irregularities were the result of a deliberate act of the taxpayer or its counterparty and the taxpayer knew about

it, the amount of additional tax liability for the part relating to input tax resulting from defective invoices is 100%.

Besides the payment of outstanding tax with penalty interest, the application of GAAR and other tax anti-avoidance measures may cause an additional tax liability of 10% or 40% as well. In certain situations, these rates may be doubled or even tripled.

Apart from financial penalties, the taxpayer may also face the criminal liability for committing tax offence or crime. Penal liability is assigned only to persons on the grounds of the Polish Penal Fiscal Code. In cases of taxpayers being legal persons, the one liable for the tax crimes or offences is the one who under the rule of law, the decision of the competent authority, the agreement or the actual execution, deals with economic issues of legal persons.

Most criminal tax acts are punished by a fine or, in more serious cases, by imprisonment – usually accompanied by a fine. Forfeiture is an accessory measure. The fine for tax crimes may currently amount up to PLN 41 million.

28. If penalties can be mitigated, what factors are taken into account?

A taxpayer may be eligible for a preferential penalty interest rate (50% of the standard penalty interest rate) if they adjust their tax settlements no later than 6 months after the tax return filing deadline, and pay the outstanding tax liability in full within seven days of the adjustment date. The reduced default interest rate does not apply to a tax return correction:

- i. filed after serving a notification of the intention to initiate a tax audit, and in cases where the notification does not apply, after the completion of the tax audit,
- ii. after the initiation of customs-fiscal audit, or
- iii. made as a result of informal audit acts of the tax authorities.

Penalties may be mitigated through a voluntary disclosure letter (self-disclosure) under the Penal Fiscal Code, which is a declaration of committing a prohibited act. The voluntary disclosure letter allows a taxpayer to possibly avoid the negative consequences of negligence if the tax authority has no knowledge of the committed offence or crime. One of the conditions for using the voluntary disclosure letter is the payment of due tax plus penalty interest.

While assessing the criminal liability of the taxpayer

(persons liable for tax settlements of a legal person) the court should take into account the personal and financial situation of the defendant (the taxpayer).

29. Within your jurisdiction, are you finding that tax authorities are more inclined to bring challenges in particular areas? If so, what are these?

The main areas of the tax authorities' focus in tax proceedings are VAT fraud, tax restructuring, the transactions between related parties (transfer pricing) and withholding tax preferences. The Polish Ministry of Finance mainly concentrates on closing the remaining loopholes in the Polish tax system and combating tax evasion and tax avoidance; therefore, due to many changes in legislation, tax controversies arise mostly on the grounds of value-added tax (VAT), corporate income tax (CIT), and personal income tax (PIT).

In general, Polish tax authorities focus in most cases on VAT. Undoubtedly, this phenomenon is related to tools that allow tax authorities to investigate taxpayers more efficiently, i.e. the SAF-T reporting and online cash registers.

30. In your opinion, are there any areas which taxpayers are currently finding particularly difficult to deal with when faced with a challenge by the tax authorities?

The Polish tax system is affected by a high level of variability. Almost 1/3 of all tax regulations were changed during the 2022 calendar year, and all through 2023 taxpayers were dealing with the outcome of those changes. In 2024 the situation has stabilised somewhat, but taxpayers still face many regulatory ambiguities.

Currently, withholding tax settlements are proving to be particularly problematic as the tax authorities tend to challenge most withholding tax preferences applicable under EU laws or double tax treaties due to "artificial tax schemes" allegations. The tax authorities are particularly interested in VAT matters (re: the issue of carousel frauds) too.

31. Which areas do you think will be most likely to be the subject of challenges and disputes in the next twelve months?

In the coming months, the most likely subject of disputes with tax authorities will be cases relating to the

application of withholding tax preferences. This is due to the increase of tax audits dedicated to withholding taxation and refusals of issuance of tax rulings confirming the right of withholding tax preferences.

New challenges may also arise because of plans to implement a substantial change of definitions of a

building and a structure under property tax. As the previously binding definitions were challenged by the Constitutional Court, new regulations are scheduled to come into force in 2025. However, the proposals of new laws presented by the Polish Ministry of Finance are widely criticised and still raise serious doubts over what may impact the amount of disputes in this area.

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