POLAND

1. INTRODUCTION

a. Forms of Legal Entity

Corporations in Poland can be formed as either a limited liability company, a joint-stock company, or a simple joint stock company.

- Limited liability company : The most common type of corporation is a limited liability corporation. It can have one or more shareholders. The minimum share capital is PLN5,000. The company is a Corporate Income Tax ("CIT") and value added tax ("VAT") payer.
- Joint stock company : A joint stock company can be founded by one or more entities (natural or legal persons). The minimum share capital is PLN100,000. The company is a CIT and VAT payer.
- Simple joint stock company : From 1 July 2021, entrepreneurs in Poland are able to operate in a new legal form, a simple joint stock company. A simple joint stock company can be founded by one or more entities (natural or legal persons). The minimum share capital is PLN1. The company is a CIT and VAT payer.

In general, there are no substantial tax differences between a limited liability company and a joint stock company. The general legal differences are presented below.

	Limited liability company	Joint-stock company	Simple joint stock company
Share capital	PLN5,000	PLN100,000	PLN1
Governing bodies	Management Board (one or more board members / daily management of the company). Shareholders Meeting (usually key decisions such as acquisition of real estate etc., appointment of board members / ordinary written form).	Management Board (one or more board members / daily management of the company). Supervisory Board (usually have the power to appoint board members). Stockholders Meeting (usually key decisions such as acquisition of real estate, etc. / form of notarial deed required).	Management Board (one or more board members / daily management of the company). Board of Directors (alternatively to Management board / one director or more / daily management of the company and supervision of company's activities). Stockholders Meeting (usually key decisions such as acquisition of real estate, etc. / ordinary written form / e-meetings possible).
Supervisory board	Optional (in principle).	Obligatory.	Optional (in principle).
Reserve capital do cover potential loss	Optional.	Obligatory (up to a third of the registered stock capital).	Optional.
Liability of the board members for liabilities of the company	Members of the management board can be held liable for the company's liabilities.	Not regulated.	Members of the governing bodies can be held liable for the company's liabilities.
Possible to register via website	Yes	No	Yes

Partnerships : The most common partnerships for business purposes are a general partnership, a limited partnership, or a limited joint-stock partnership.

- General partnership : A general partnership can be founded by at least two entities (individual or legal). It does not have legal personality but has legal and judicial capacity. There is no minimum capital requirement. The general partnership is deemed a CIT payer if its partners are not exclusively natural persons and the partnership does not disclose its taxpaying partners to the tax authorities within the statutory deadlines. Otherwise, the general partnership is a tax transparent entity for CIT purposes. The general partnership is a VAT payer.
- Limited partnership : A limited partnership can be founded by at least two entities (individual or legal). It does not have legal personality but has legal and judicial capacity. There are no minimum capital requirements. The limited partnership has a general partner with unlimited liability and a limited partner that is liable only for a specified amount indicated in the articles of association, which however can differ from the amount of capital investment made. Since 2021 limited partnerships are CIT payers. Previously the limited partnership itself was a VAT payer but the partnership itself was tax transparent for income tax purposes.
- Limited joint-stock partnership : A limited joint-stock company can be founded by at least two entities (individual or legal). It does not have legal personality but has legal and judicial capacity. The minimum share capital is PLN50,000. A limited joint-stock partnership has an active partner and a shareholder (provider of capital) that is a passive partner. The general partner has unlimited liability for the partnership's obligations while the shareholder is not liable for its obligations. A limited joint-stock partnership is subject to CIT and VAT.

b. Taxes, Tax Rates

Corporate Income Tax

The standard CIT rate in Poland is a 19% flat rate. The CIT rate for taxpayers whose revenues do not exceed EUR2 million and have the status of small taxpayers and for taxpayers starting their activity (in the first tax year) is 9% CIT (with some exceptions, e.g. if the taxpayer was created as a result of a restructuring). The 19% rate applies both to operating and passive income, however with respect to passive income withholding tax ("WHT") provision should be considered.

Polish tax residents are subject to CIT on their worldwide income and non-Polish tax residents are subject to CIT solely with respect to income obtained in the territory of Poland.

Personal Income Tax ("PIT")

PIT is calculated on a progressive scale as follows:

- Taxable base up to PLN120,000, tax is 17% minus tax reducing amount of PLN5,100
- Taxable base higher than PLN120,000, tax is PLN15,300 plus 32% of the surplus over PLN120,000
- As of 2022, the so-called "middle class tax credit" was introduced for some taxpayers to offset the negative effects of non-deductible healthcare contributions (also as of 2022). The allowance for the middle class reduces the tax base for employees and individual entrepreneurs (applying the tax scale) earning monthly from PLN5,701 to PLN11,141.
- 19%, for example, for capital gains, dividends, controlled foreign corporation ("CFC") income and derivatives.
- With respect to income exceeding PLN1 million per annum, an additional solidarity duty at the rate of 4% is calculated.

VAT

The VAT rates are as follows:

- 23%, standard VAT rate.
- 8%, reduced VAT rate applicable for example, to supplies of certain foodstuffs, medical products, restaurant and hotel services.
- 5%, reduced VAT rate applicable for example, to supplies of certain foodstuffs (e.g. bread, dairy products, meats) and certain kinds of printed books.
- 0%, applicable to the export of goods, EU intra-community supplies of goods and for example, international transport (under certain conditions).

Since 1 July 2020 all VAT rates are indicated in the new VAT rates matrix. In general, the VAT matrix unifies VAT rates within particular groups of products. The amendments in the area of VAT rates are associated with the introduction of new tax ruling like instrument called a Binding Rate Information ("BIR") (in force with 1 November 2019). Under the BIR, the Polish tax authorities establish the VAT rate for goods or services being subject of the upon the VAT taxpayer's request application of the VAT taxpayer. The BIR grants formal tax protection and tax certainty in case of the tax trying to challenge the correctness of the used VAT rate applied by the VAT taxpayer (formerly established in the information).

Real Estate Tax ("RET")

The RET imposed on buildings and plots of land is generally based on the area of the building / plot. The rates of RET are determined by the appropriate local authority. The maximum allowable rates are specified in the RET Act. RET for structures is 2% of the initial value of the structure paid annually.

Civil Law Activity Tax ("CLAT")

The CLAT rates are as follows:

- 0.5%, applicable to for example, an increase of share capital and loans.
- 1%, applicable to for example, the purchase of property rights including the purchase of shares.
- 2%, applicable to for example, the purchase of real estate and movable assets.
- In general, CLAT should be collected and paid by the acquiror, however, if the civil law transaction is being made in the form of notarial deed, CLAT should be collected by the notary (still, charged to the acquiror).

c. Common divergences between income shown on tax returns and local financial statements

Common permanent differences between financial and tax results include accounting provisions, donations exempt from income tax and non-tax-deductible costs envisaged by the CIT Law (e.g. representation costs).

Common temporary differences between financial and tax results include accrued interest, non-realised foreign exchange differences, differences between financial and tax depreciation and amortisation rates.

2. RECENT DEVELOPMENTS

The most important recent tax developments are:

a. Minimum Tax

Since 2022, minimum tax applies for Corporate Income Tax ("CIT") payers. It is levied when the proportion of taxable income to taxable revenues (both excluding capital gains) falls below 1% or a tax loss is incurred. For purposes of calculating the tax loss and profitability level, certain revenues and costs shall be disregarded, (e.g. costs, including depreciation write-offs, resulting from the acquisitions / creation / improvement of fixed assets).

The Minimum Tax rate is 10% of the sum of:

- 4% revenues (excluding capital gains);
- Financing costs from related parties exceeding 30% tax EBITDA;
- Value of deferred tax after disclosure of previously not amortised value of intangible assets to the extent it increases gross profit or decreases a loss; and
- Costs for purchased intangible services incurred towards related parties exceeding the sum of PLN3 million and 5% tax EBITDA.

The tax base can be reduced by certain deductions and special economic zone income.

Certain taxpayers are excluded from the scope of minimum tax, for example:

- Financial enterprises;
- Taxpayers in the first three years of business activity;
- Taxpayers that reported 30% decrease in revenues in comparison to the previous year;
- Taxpayers with shareholders being only natural persons and which do not hold shares, stocks or participations in partnerships that are not legal persons, rights in foundations or fund participation units; and
- Taxpayers participating in groups of at least two companies where one company holds 75% shares of other companies and the group achieved at least a proportion of 1% taxable income in taxable revenues.

b. Changes in the Principles of Collecting Withholding Tax ("WHT")

In general, certain payments (e.g. dividends, interest, royalties, payments for intangible services such as consulting, accounting, market research, legal services, advertising, management, control, data processing) made for the benefit of a foreign entity are subject to 19% / 20% WHT. The obligation to withhold tax at source is imposed for tax remitters whether they are a corporation, an individual or organisational units without legal personality (therefore it could also apply to a Polish permanent establishment).

However, if certain conditions are met the payment could benefit from the WHT exemption, a preferential rate or could be out of scope of WHT on the basis of the EU Directives or Double Taxation Treaties ("DTTs"). Amongst others, the Polish tax remitter must perform a due diligence process aimed at verification of whether all the conditions for applying WHT preference have been met.

Under the regulations binding as of 2022, for dividend / dividend like / interest / royalty payments (not intangible service fees) over PLN2 million to a non-Polish related party (in a given year to a given taxpayer), the Polish tax remitter will be obliged to collect WHT on the surplus of over PLN2 million under the domestic 19% / 20% rate ("Pay and Refund Mechanism"). The taxpayer / tax remitter (in certain cases) will be then allowed to claim for WHT overpayment. The refund procedure can take up to six months and would require the taxpayer to provide substantial documentation.

There are two exceptions in order not to apply the Pay and Refund Mechanism: either the tax remitter's board member gives representations on meeting all conditions to apply DTT/EU Directives preferences (under the fiscal penal code) or the taxpayer obtains an opinion from the tax authority on the application of the WHT exemption / lowered WHT rate resulting from DTT / EU Directives (it is valid for 36 months).

New anti-abuse regulations have been also introduced which provide for a rule that if a taxpayer without justified business reason did not qualify payments as subject to Pay and Refund Mechanism, tax authorities may include the payments into the threshold of PLN2 million anyway.

Under the new regulations, use of certificate of tax residence copies has been also allowed.

c. Tax on Shifted Profits

Tax is imposed on "shifted profits", i.e. certain costs incurred (directly or indirectly) towards related entities such as intangible service fees, (for example, advisory, marketing, management), royalties, debt financing costs, costs related to the transfer of functions, assets or risks (exit fee).

The tax on shifted profits applies if:

- The payment is made directly or indirectly to a related party whose tax actually paid is 25% lower than the hypothetical tax which would be due in the case of the application of the Polish standard CIT rate 19%; and
- The received payments constitute at least 50% of the taxable revenues of the recipient (calculated according to Polish provisions); and
- the payments are tax-deductible, deducted from the taxable income, tax base or tax in any manner or further paid by the recipient, in particular in the form of dividend; and
- The total of the above mentioned kinds of costs payable to both related and non-related entities exceeds 3% of the sum of tax-deductible costs (of the Polish taxpayer making the payment) in a given year.

The tax rate applicable to the shifted profits is 19% and the tax burden lays on the Polish company making the payment.

The tax is not applicable to payments made to EU/EEA based related company if it conducts a "significant genuine business activity".

d. Changes to Tax Deductibility of Debt Financing Costs

Since 2022, the new regulations state that the excess of debt financing costs over interest-like revenues may be deductible up to an amount of 30% of the taxpayer's tax EBITDA or safe haven of PLN3 million (whichever is higher, previously it was uncertain whether one of these thresholds should be used or the sum of both).

Additionally, starting from 2022, debt financing costs shall be excluded from the tax-deductible costs when financing was received from related entities for direct or indirect investments, in particular: acquisition or subscription of shares (stocks), acquisition of all rights and obligations in a partnership, payment of additional contributions, increase of the share capital or redemption of shares.

e. Removal of the limitations on Tax Deductibility of Intangible Services and Licence Costs

Article 15e of the CIT Act, limiting the tax deductibility of intangible service fees and royalties incurred towards related parties and tax haven residents, has been repealed. The rationale behind it has however been, included in new, stricter instruments like a minimum tax (section 2.a. above) and tax on shifted profits (section 2.c. above).

f. Changes to Taxation of Reorganisations of Taxpayers

The taxation of share for share swaps, mergers and demergers have been modified in 2022, including new definitions of revenues and stricter conditions for achieving tax neutrality. According to the new provision; generally speaking, only the first reorganisation is tax neutral, meaning that if the shares in a merged or demerged company or shares involved in a share-for-share swap have been acquired by the shareholder as a result of a previous merger, demerger or share for share swap then the revenue resulting from this subsequent action is subject to taxation.

g. Loosening Rules Regarding Tax Capital Group ("TCG") Regime

The minimum average share capital requirement of the companies forming a TCG has been lowered from PLN500,000 to PLN250,000. Also, the requirement to maintain a certain profitability ratio for the functioning of a TCG has been repealed. Certain reorganisations of TCG participants and the establishment of new companies within the TCG are now permitted to some extent. The rules regarding the utilisation of tax losses of the TCG and its participants have been loosened.

h. Polish Holding Company

A new quasi participation exemption regime has been introduced. Under some conditions, a Polish Holding Company ("PHC") can benefit from a tax exemption of 95% of the received dividends and 100% exemption of the revenues from the sale of shares in subsidiaries to unrelated entities.

A PHC is a limited liability company or joint stock company which owns at least 10% of shares of another limited liability company or joint stock company or foreign subsidiary for an uninterrupted period of at least one year. Additionally, the PHC must conduct actual business activity.

The PHC's shareholder (direct or indirect) cannot be managed from / registered / seated at a "tax haven" or a country with which Poland has not signed a DTT / agreement on the exchange of tax information.

In order to qualify for PHC regime, the PHC's subsidiary cannot be a real estate rich entity and cannot hold more than 5% of shares in other companies. Neither the PHC nor its Polish subsidiaries can participate in the TCG regime and are excluded from some tax exemptions (special economic zones and Polish investment zone schemes, EU Directive based dividend exemptions).

i. Changes in Depreciation Rules of Buildings and Premises

The tax depreciation performed by real estate companies cannot exceed the depreciation made for financial accounting purposes. This applies to non-residential buildings and premises and other assets from the first group of fixed asset classification.

j. Tax Reliefs

In 2022 new tax reliefs have been introduced:

- Consolidation relief : additional tax relief of enumerated costs connected to the acquisition of the majority rights in a subsidiary being company for the purchasing taxpayer (i.e. taxes, legal fees, valuations). Relief is capped at PLN250,000.
- IPO relief : additional tax relief of enumerated costs incurred directly on making an initial public offering of shares with the intention of applying for admission to trading on a regulated market, e.g. preparation of prospectus, notarial and fiscal fees, necessary announcements, legal, tax and financial service fees. The amount of the relief depends on the type of the cost, but it generally amounts to either 50% or 150% of its value.
- Expansion relief : additional tax relief of enumerated costs incurred by taxpayers to enter new markets (in order to increase their sale revenues); the deduction is capped at PLN1 million provided that the taxpayer increases sale revenues in the next year or generates revenues from the sale of the new products which were not offered so far or were not offered in a given country.
- Other : robotisation and prototype tax reliefs, add-ons to the research and development relief.

k. Hybrid Mismatches

Since 2021, ATAD2 based provisions concerning hybrid mismatches measures also apply in Poland. The provisions are aimed at counteracting discrepancies in the qualifications of hybrid structures used by entities acting in an international context to apply tax optimisation. The divergence in the qualifications of hybrid structures occurs when the tax law of countries differently classify types of income (financial instruments, e.g. being the basis for making profits from debt or equity financing taxed as income from debts, share in profits or financial derivates) or entities, (e.g. issue of tax residence or permanent establishments). This, in effect, may lead to one of the two hybrid mismatch outcomes:

- a double deduction, (i.e. a situation in which payments are double counted as tax costs in more than one jurisdiction); or
- a deduction without inclusion, (i.e. a situation in which tax costs are settled in one jurisdiction with no revenue recognised by the other party to the transaction in another jurisdiction).

In general, the provisions indicate which payments cannot be included in the tax-deductible costs or require the assessment of income from certain payments instead of tax-deductible costs.

l. Effective Place of Management

A definition of the place of management for purposes of determining the tax residence has been introduced. It states that the taxpayer has effective management in Poland if its business is conducted in Poland in an organised and ongoing manner, based in particular on agreement, court judgement, decision, document regulating the establishment or functioning of that entity, proxies and relations between related parties in light of transfer pricing regulations.

m. COVID-19 Measures: Introduction of the "Anti-crisis Shield"

Due to the COVID-19 crisis, on 31 March 2020 an act referred to as the "Anti-crisis Shield" was published in the official Journal of Poland. Most of the provisions provided by the act already entered into force as of 31 March 2020.

The "Anti-crisis Shield" was then updated numerous times, currently reaching its ninth iteration. The whole aid package ("Anti-crisis shield" Act, as well related acts and resolutions) addresses five main pillars including different areas of the economy. The value of the package is estimated at PLN312 billion (EUR65 billion), i.e. almost 15% of the Polish GDP (c.a. PLN67 billion covered from the state budget, remaining amount covers providing additional liquidity to the market in the form of, for example, state backed guarantees for medium and large business and support funds provided by Polish Development Fund).

It should be noted that certain measures may be discussed from the perspective of state aid and as such may be subject to certain limitations. Tax and legal measures resulting from all Anti-Crisis Shields cover in particular:

- Unconditional exemption of all taxable revenues being subject to building-related revenue tax (special tax on owned and rented/leased out non-residential buildings) due since 1 January 2021 until the end of the month in which the pandemic state caused by COVID-19 is revoked.
- Potential tax exemptions from the real estate tax for entrepreneurs whose financial liquidity has worsened due to COVID-19, if introduced by certain local government bodies .
- No prolongation fee for applications for postponement / splitting into instalments of tax payments or tax arrears or postponement / splitting into instalments of liabilities resulting from social security contributions due for the period starting 01 January 2020 until 30 days after the revocation of the epidemic state caused by COVID-19 or a state of epidemic risk.
- If certain conditions are met possibility to make a one off deduction of 2020 tax loss, up to PLN5,000,000 through adjustment of 2019.
- Certain tax benefits such as one off depreciation of fixed / intangible assets or amended rules of R&D relief for taxpayers incurring expenses aimed at countering COVID-19 effects.
- Possibility to treat contractual penalties as tax deductible if they result from the obstacles caused by COVID-19.
- Suspension of the deadlines for domestic DAC6 reporting running 31 March 2020 up to 30 days after cancellation of the epidemic state.
- Extension for three months of the deadline for issuing an individual tax ruling for applications submitted but not resolved before the entry into force of the law and also for the applications submitted after the entry into force of the law.
- Changes in regulations of the Commercial Companies Code enabling the possibility of decisions making by the board of directors and supervisory board in remote mode.

- During the state of epidemic and two months after, for WHT purposes: (i) the possibility to use the copy of the certificate of residency of the foreign taxpayer, if the data provided in the certificate does not raise doubts (ii) the possibility to use the certificate of residency of the foreign tax payer for 2019 and 2020 (statement of the tax payer that the data provided in the certificate remain unchanged is required) (iii) the extension of validity of certain certificates of residency.
- Introduction of temporary protection for a specific group of the Polish entrepreneurs including public companies, against takeovers by entities not being a member of the EU, EEA or OECD. The protection covers entities whose revenue from sale of goods and service provision exceeded the equivalent of EUR10 million in any of the two financial years preceding the notification (as of 30 April 2022, the provisions will be no longer in force) .

n. Non-Deduction of Healthcare Contributions From Personal Income Tax ("PIT")

From the beginning of 2022, it is not possible to deduct healthcare contributions from the PIT (previously possible to deduct 7.75% out of the due 9%).

Moreover, the healthcare contributions began to be due from many additional legal titles that were previously not subject to it or that were was payable in a fixed amount, regardless of the amount of income (in particular board members and individual entrepreneurs).

These changes have contributed to a reduction in the cost effectiveness of many remuneration structures.

o. R&D Deduction Increase in Personal Income Tax ("PIT")

Starting from 2022, the possibility of deducting research and development relief was increased from 150% or 100% of employee costs to 200% of employee costs.

p. National System of Electronic Invoices

With effect from 1 January 2022 the National System of Electronic Invoices (Polish – "Krajowy System e-Faktur", hereinafter: "KSeF") has been introduced. During the first stage of the implementation, taxpayers may use KSeF on a voluntary basis parallel with traditional paper and electronic invoices (from 2023 KSeF most likely will become obligatory for all VAT taxpayers).

KSeF is a system that enables the taxpayers to issue, receive, keep and share so-called structured invoices via a special environment prepared by the Ministry of Finance. In other words: it is an advanced digital environment which assigns a unique identification number to the uploaded document and verifies whether the data contained therein is in line with the structured invoice template. After that, the invoice is ready for download from the system by a certified purchaser.

3. SHARE ACQUISITION

a. General Comments

Share deals are a common acquisition structure in Poland. The acquisition may be also conducted via merger of the companies.

The latter may be more beneficial from the tax point of view (under relevant circumstances it can be conducted as tax neutral) but is used mainly in intra group transactions.

For clarity, please note that the tax consequences of a deal may be different for the sale of the shares in a company and the sale of a partnership interest (depending on the tax regime applied to the partnership).

b. Tax Attributes

In general, a tax loss may be fully carried forward for five years. A tax loss resulting from one source of income may only be deducted from income from the same source. In general, the amount deducted in one year cannot exceed 50% of the total loss. However, if the tax loss does not exceed PLN5 million it could be deducted once in a given year.

Change of control does not affect the right to utilise tax losses of the acquired company under a share deal. Certain restrictions on utilisation of losses exist in respect to other forms of acquisitions. In particular losses of entities disappearing under merger, spin-off, liquidation or division are lost for tax purposes. In some cases, also the acquiring company is not allowed to harvest its own tax losses after certain types of acquisitions (i.e. mergers, acquisitions of going concerns by way of in-kind contribution and cash contributions used to acquire going concerns). The limitation applies in cases where the profile of business activity of the acquiring company changes after the acquisition or some changes in its ownership structure occur.

c. Tax Grouping

Polish Corporate Income Tax ("CIT") Law allows a group consisting of at least two capital companies with capital relationships to be viewed as a single CIT payer, a so called ("TCG"). The CIT provisions include a number of requirements that have to be fulfilled to establish the TCG (and during its functioning), e.g. it should consist solely of the Polish corporations, the parent entity should hold directly at least 75% of the shares in subsidiaries and the entities do not have any outstanding tax liabilities. In general, the main reason behind the establishment of the TCG is a consolidation of tax results of its members.

The consolidation of the tax result can be also achieved in a structure involving a holding company having profits (shares) in a partnership running a business activity (in practice only general partnership assuming its tax transparency).

d. Tax Free Reorganisations

Under the Polish CIT law, in kind contributions of a going concern, mergers, divisions, spin-offs and exchanges of shares may be performed free of tax based on the domestic provisions implementing Merger Directive (90/434/EEC). The possibility for tax neutral reorganisation covers also cross border mergers of capital companies.

The domestic provisions provide for specific conditions for neutrality of mergers (the operation is CIT neutral provided that the surviving company holds at least 10% of the shares of the company disappearing through the merger or does not hold any shares in the latter). Spin-offs and divisions are neutral provided that both the assets carved out and staying in the divided company constitute organised parts of an enterprise. In both cases it is necessary that the acquiring company continues the valuation of the acquired assets for tax purposes. In the case of the shareholder of the acquired / divided company, in most cases only the first reorganisation of the shares can be tax neutral.

Due to specific anti-abuse regulations, tax neutrality of mergers, spin-offs or exchange of shares only apply provided that business justifications for these operations are assured. Moreover, please note that Polish transfer pricing regulations allow the tax authorities to examine the arm's length conditions of remunerations in relation to restructuring between related entities (including an exit charge or a lack of it thereof). It should be highlighted, that there is no specific form to be submitted in order to benefit from the tax neutrality of reorganisation, however a defence file indicating the business justification of the reorganisation should be prepared and archived in case on potential future tax audit.

e. Purchase Agreement

Poland follows EU and international standards. Shares in Polish target companies are often purchased through a Polish or foreign SPV. From a tax perspective no debt pushdown of the acquisition debt is possible (i.e. related interest would treated as non-deductible).

Share purchase agreements typically include warranties and indemnities to cover tax liabilities and expenses related to events or periods that occurred before the closing of the transaction, as tax history and potential tax liabilities of the purchased company "survive" the transaction. No special tax rules regarding warranties for share purchase agreements exist.

It is a standard practice for the buyer to perform a tax due diligence of the target company and potentially obtain coverage from an insurer on W&I and/or tax indemnities. In case of real estate deals specific additional clauses should be considered e.g. related to capital gain tax of the seller where the obligation to remit tax lies on the target.

f. Transfer Taxes on Share Transfers (Including Mechanisms for Disclosure and Collection)

Acquisition of shares in a Polish company is subject to Civil Law Activities Tax ("CLAT") at 1% (on FMV of the shares) on the side of the buyer. Acquisition of shares in a foreign company by a Polish entity will be also subject to 1% CLAT if the sale and purchase agreement ("SPA") is concluded in Poland.

CLAT should be paid by the purchaser and the CLAT return should be submitted to the tax office within 14 days from the transaction.

g. Applicability of "Purchase Accounting" to a Direct or Indirect Acquisition of Shares

Purchase accounting is a default approach under Polish Accounting Regulations. Pooling of interest accounting is an allowed alternative for business combinations under common control.

In general, the acquired company should close its books. However, if the merger is performed according to the pooling of interest method and under the merger no new company is established, the books may not be closed. In case of mergers as a result of which there is no loss of control over them by their current shareholders, the pooling of interest method may be applied.

As a result, in the acquired company the tax year does not end, books are not closed, and the annual CIT return is not filed at the moment of the merger. It also means that revenues and tax-deductible costs of the given year of both companies can be settled jointly.

h. Share Purchase Advantages

Under purchase accounting, assets and liabilities of the acquired company are valued at fair value as of the merger date in the accounting records of the merged entity. As a result of merger, general succession rules apply, which mean full continuation of tax settlements, including initial value of tax assets and liabilities.

In case of share deals, it is recommended that the target company obtains a certificate issued by the tax authorities confirming that the target company has no outstanding tax liabilities. Such certificate, however, does not provide any formal protection but is an indication that all taxes declared by the target company have been paid. There is no legal possibility to separate the liability of the target company from its tax liabilities arising prior to acquisition.

Since 2022, a quasi-participation exemption regime has been launched in Poland. For more information please see point 2.h. above.

i. Share Purchase Disadvantages

In case of the mergers settled with the purchase accounting method, disadvantages include the additional costs of an asset valuation and identification of undisclosed assets. The mergers also result in an obligatory audit of the financial statements for the period when the merger occurred without any exemptions for small entities.

4. ASSET ACQUISITION

a. General Comments

Despite the possibility of structuring as a share deal, transactions may be structured as: (i) a going concern deal or (ii) an asset deal. Such transactions are conducted in particular in the real estate industry.

Going concern (the organised part of an enterprise) is a combination of both tangible and intangible items (including liabilities) which, in organisational and financial terms, are separated within an existing enterprise, are aimed to carry out specific business activities and which could form an independent enterprise carrying out these activities.

b. Purchase Price Allocation

The purchase price should be allocated to the assets being the subject of the transaction (in particular to fixed and intangible assets) for the proper allocation of the values of the assets to the fixed and intangible asset register for Corporate Income Tax ("CIT") purposes and for Real Estate Tax ("RET") purposes.

c. Tax Attributes

In going concern transactions, there is a possibility to cut-off the responsibility of the purchaser (with respect to potential tax arrears of the seller), provided that special certificates are issued by the tax authorities shortly prior to the acquisition. The certificate could be issued on the request of seller or on the request of purchaser (with a consent of the seller). In general, tax authorities have a seven day deadline to issue such a certificate, however in practice the above period could be extended. If the purchaser holds such certificates, it would be responsible for the tax arrears only up to the amounts revealed in the certificates.

In asset deal transactions, the purchaser is not responsible for historical tax risks of the seller.

d. Tax Free Reorganisations

See point 3.d. above.

e. Purchase Agreement

A purchase agreement should specify the form of the acquisition, i.e whether it is an asset deal or a going concern deal.

Price for particular assets (category of assets) should be presented in the purchase agreement for proper application of CLAT rates (in the case of a going concern deal).

f. Depreciation and Amortisation

Goodwill is amortised only if it has arisen as a result of an acquisition of the going concern through purchase, leasing enterprise under financial lease agreement (under additional conditions) or contribution in kind of an enterprise under the specific provisions on commercialisation and privatisation. Goodwill revealed upon acquisition of shares in the company or contribution in kind of company's enterprise is not depreciable.

If goodwill were to be crystalised, the total value of fixed and intangible assets is the market price. If goodwill does not crystalise, as a result of the purchase of the going concern, the total value of fixed and intangible assets to be depreciated will be a difference between the going concern's purchase price and value of assets other than fixed and intangible assets.

In the case of an asset deal, assets should be introduced into the book of the purchaser at the acquisition value. The taxpayer should recognise initial tax value of the assets for depreciation purposes and Real Estate Tax ("RET") purposes equal to the acquisition price of the given asset.

g. Transfer Taxes, VAT

Transactions involving a going concern are not subject to VAT, but they are subject to CLAT (1% or 2% depending on the kind of transferred assets).

Transactions involving assets, which are not forming a going concern, are generally subject to VAT (standard rate, 23%). As long as the buyer runs a VATable activity, VAT charged upon acquisition should be effectively neutral, however it could cause some cash flow concerns. Input VAT incurred upon acquisition may be utilised via deduction from output VAT or direct refund (the standard refund period is 60 days). Under certain circumstances VAT exemption may be applied, where also VAT taxation option is possible.

In general, if the transaction is VAT exempt it could be subject to 1% or 2% CLAT, which could cause a material tax leakage (CLAT paid cannot be recovered, however it could constitute tax deductible costs for CIT purposes).

h. Asset Purchase Advantages

In the case of a going concern there is a possibility to cut off the responsibility of the purchaser with respect to potential tax arrears of the seller, provided that special certificates are issued by the tax authorities shortly (within 30 days) prior to the acquisition. If the purchaser holds such certificates, it would be responsible for the tax arrears only up to the amounts revealed in the certificates.

In case of purchase of the assets, the purchaser is not responsible for historical tax liabilities.

i. Asset Purchase Disadvantages

No tax losses are transferable under asset transactions. Additionally, it is recommended that the tax treatment (VAT and CLAT) of an asset transaction is secured via tax ruling and purchase documentation from the context of the potential reclassification asset deal vs. going concern deal.

5. ACQUISITION VEHICLES

a. General Comments

The common structure for acquisitions in Poland was the purchase of the companies by SPVs where subsequently the debt pushdown was conducted. Due to the changes in the Polish CIT Law in 2018 denying interest on the debt pushdown to be a tax cost, such structures are not currently recommended from a tax perspective.

b. Domestic Acquisition Vehicle

See above.

c. Foreign Acquisition Vehicle

The most common jurisdictions in Poland for foreign holding are currently the Netherlands and Luxembourg.

If a foreign acquisition vehicle is utilised, it is very important from a tax perspective that the foreign company has an appropriate business substance and the structure is not artificial. Otherwise, adverse tax consequences may arise, for example with respect to WHT treatment.

d. Partnerships and Joint Ventures

Only general partnerships, if certain conditions are met, are tax transparent in Poland, where income tax is taxed at the level of the partners of the partnership. The purchase or creation of the partnership in Poland results in a Polish permanent establishment for its foreign partners.

In Poland, JVs may be corporate (establishing the company) and contractual (concluding the civil law agreement). For corporate JVs both corporate entities and partnerships may be used.

Contractual JVs can be affected through conclusion of civil law agreements, (e.g. co-operation agreements). Contractual JVs are often used where a single project (and not an ongoing business activity) is concerned, (e.g. single investments in the construction sector). Please note that Polish law does not recognise the concept of a deemed partnership.

e. Strategic vs Private Equity Buyers

There are no particular differences between strategic and private equity buyers in terms of their taxation.

Irrespective of the classification into strategic and private equity buyers, there are special taxation regimes for so called Alternative Investment Companies (in Polish: “Alternatywne Spółki Inwestycyjne”) and closed ended investment funds as well as a CIT exemption for certain open ended investment funds, specialised open ended investment funds and EU-/EEC-based mutual investment institutions, however, all of them have very limited practical relevance.

6. ACQUISITION FINANCING

a. General Comments

For intragroup loans generally there should be no administrative burden to flag. For the tax treatment please refer to point 6.c. below.

b. Equity

The most common jurisdictions for holding equity in Polish entities are the Netherlands (especially in case of purchase of real estate companies due to the lack of real estate clause in the double tax treaty between Poland and the Netherlands, this may however change soon due to very advanced works aimed at the introduction of a real estate clause) and Luxembourg (in particular due to the flexibility of Luxembourg regulations).

Purely from tax perspective, there are no specific guidelines on the amount/proportion of equity that corporate taxpayers should have. However, the Polish tax administration examines (and sometimes in case of excessive debt financing challenges) the financing structure of the taxpayers (i.e. based on the anti-abuse regulations if the financing structure is deemed to be set up to obtain unjustified tax benefits).

Equity injections are generally not tax-deductible. In some cases, "interest" on profits allocated to share premium / reserve capital and so called additional payments (which from a legal point of view differ from increases of the share capital) can be deducted for tax purposes. This is so called Notional Interest Deduction mechanism described in more details in the section 6.e. below.

c. Debt

i Limitations on Use of Debt

Generally, the amount of the financing should be at the market level, in another words the value of the loan should not be higher than the credit facility that the company would be able to receive from the bank. The other issue is the ratio of the group loan vs equity, there should not be high discrepancies between their values, however the Polish Tax Law does not indicate any allowed threshold of debt to equity ratio (which was used in the past for thin capitalisation restrictions).

ii Limitations on Interest Deductions

As of 2022, interest is tax deductible up to PLN3 million or 30% tax EBITDA whichever is higher. Restrictions also apply to third-party loans and bank financing.

Interest on debt pushdown is not tax deductible.

The costs of debt financing are also excluded from the tax costs when financing has been received from related entities and directly or indirectly financed equity transactions, in particular: acquisition or subscription of shares (stocks), acquisition of all rights and obligations in partnership that is not legal person, payment of additional contributions, increase of the share capital acquisition of own shares in order to redeem them.

Corporate Income Tax ("CIT") law provides that interest on own capital invested by the taxpayer in a source of his revenue does not constitute a tax-deductible cost. This limitation covers loans granted to partnerships by their direct partners, proportionally to their participation (interest could constitute tax deductible costs for other direct partners of the subsidiary proportionally to their participation). However, it should be highlighted that such limitation only applies to borrowers being a partnership, thus the limitation does not apply to corporations.

iii Related Party Debt

From the perspective of thin capitalisation rules, currently there are no distinctions between tax treatment of related party debt and unrelated party debt.

As mentioned in point (ii) above, the costs of debt financing are excluded from the tax costs when financing has been received from related entities and directly or indirectly financed equity transactions.

iv Debt Pushdown

Interest on debt pushdown is not tax deductible. Therefore, such structuring is ineffective from a tax point of view.

d. Hybrid Instruments

In Poland, there are no typical hybrid instruments which may be used for tax purposes.

Poland has transposed the amendments provided by the EU Parent Subsidiary Directive into its domestic legislation. This refers in particular to the anti-hybrid rule with respect to dividends obtained by a Polish company if it was deducted for tax purposes by its EU subsidiary as well as the anti-abuse rule with respect to dividend distributions.

As of 2021, there is also a general anti-hybrid mismatch regulation in place. For more information please see point 2.k. above.

e. Other Instruments

The Notional Interest Deduction mechanism allows for a deduction for tax purposes of "virtual interest" on profits allocated to share premium / reserve capital and additional payments (cash injections) provided to the company up to PLN250,000 per year (up to three years).

The Polish tax authorities currently tend to verify the substance requirements in case of foreign entities and target the artificial tax avoidance schemes. Based on the General Anti-Abuse Rule ("GAAR"), the Polish tax authorities are entitled to recharacterise the transaction based on the "substance over form" principle.

f. Earn-outs

These are contractual provisions stating that the seller of a business is to obtain additional compensation in the future if the business achieves certain financial goals, usually a percentage of sales or earnings is often used in transactions.

Earn-outs should be verified from tax perspective (moment of tax recognition, CLAT treatment). In particular, it should be considered whether the earn- outs are subject to CLAT. There are some arguments to claim, that if the initial price has been determined with respect to arm's length rules, the payment of earn-out should not be subject to CLAT (such approach seems to be also confirmed by tax authorities in the latest tax rulings).

7. DIVESTITURES

a. Tax Free

Please refer to point 3.d.

b. Taxable

If the conditions for tax neutrality of the transactions (point 3.d.) are not met (including lack of business justification), the transactions will be subject to tax.

c. Cross Border

Please refer to point 3.d.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Polish tax residents are subject to income tax in Poland on their worldwide income. Income derived by the Polish tax residents abroad is generally subject to tax in Poland generally based on a foreign tax credit method unless relevant double tax treaty provides otherwise.

Polish non-residents are subject to income tax in Poland on the Polish sourced income which is in particular income from activities conducted in Poland, e.g. through branch or partnership, income from real estate located in Poland and its disposal, securities / derivatives publicly listed in Poland and their disposal, sale (direct or indirect) of shares in a company with at least 50% of assets being real estates located in Poland or sale of shares in the company meeting a special definition of a real estate company.

Also, withholding tax is levied also on the passive income, (i.e. dividends, interest and royalties of non-residents as well as the fees for intangible services including advising, accounting, market research, legal services, advertising, management and control, data processing, employees recruitment and personnel obtaining services, guarantees and suretyships, and performances of similar nature).

b. CFC Regime

Effective from 1 January 2015, certain income or gains derived by foreign subsidiaries of Polish taxpayers that fit the definition of a CFC are subject to tax in Poland. A CFC's income is subject to tax in Poland at 19% at the level of the Polish shareholder.

From 2019, the definition of foreign entities which could be affected by the CFC provisions has been extended and also include: trusts, foundations, capital groups or particular companies forming capital groups which conduct CFC qualified business activity. Additionally, the new regulations have extended the CFC list of qualified links between a taxpayer and foreign entity to include expected and future rights to profits and exercising actual control.

Since 2022, the catalogue of entities constituting a CFC has been further extended as well as the list of passive income sources taken into account when assessing whether an entity has CFC status.

c. Foreign Branches and Partnerships

A foreign company may set up a branch in Poland. A branch is a part of foreign company, but it does not have its own legal personality. A branch may only conduct activities that are within the scope of the business activities of the foreign company (head office).

A foreign entity may also set up a partnership in Poland.

Both a branch and a partnership will constitute Polish permanent establishments for foreign entities (unless the partnership is already a Polish CIT taxpayer by its legal form), they will be subject to Polish income tax and if it applies, the Polish fixed establishment for VAT purposes. The foreign taxpayer having a branch or a partnership in Poland is subject to standard CIT rate on the income obtained in the territory of Poland.

d. Cash Repatriation

Cash repatriation may be conducted through payment of a dividend, payment of remuneration for redemption proceeds or granting of loans.

Dividends may be subject to WHT in Poland unless WHT exemption applies (the Pay and Refund Mechanism and the related newly introduced anti-avoidance provision should be considered here as well for more please see section 2.b.). There is no WHT exemption applicable to the payment of redemption proceeds. In the case of loans, tax deductibility of interest should be verified as well as WHT treatment.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

A number of Polish Double Tax Treaties ("DTTs") provide for a rule leading to taxation of income realised on alienation of shares in real estate companies in Poland (the so called "real-estate clause", e.g. the DTT with Luxembourg).

Under these provisions, real estate companies should be generally referred to as entities the value of which (or the value of their shares being alienated) is directly or indirectly derived mainly (some treaties provide for 50% ratio) from immovable property.

Also, the Polish CIT Law provides for a domestic real estate clause which refers to two types of vehicles:

- Entities whose value of assets consist of at least 50% of (directly or indirectly held) real estate located in Poland; and
- "Real estate companies" – these are generally entities whose: (i) balance sheet value of real estate located in Poland (or rights to such real estate) directly or indirectly constitutes at least 50% of the balance sheet value of entity's assets; (ii) the balance sheet value of such real estate exceeds an equivalent of PLN10 million and (iii) tax revenues, i.e. resulting from the lease of Polish real estate (or other contracts of a similar nature) and from the disposal of real estate constitute at least 60% of total tax revenues in a tax year (in case of newly established entities fair market values instead of book values shall be used when assessing conditions (i) and (ii) and condition (iii) does not apply).

In the case of disposal of interests in "real estate companies", the company itself acts as a remitter of tax on behalf of the transferor. Some additional reporting obligations are also imposed on the company.

In general on the basis of Polish tax law there are no look back rules once the real estate is disposed (the tax cost value of disposed assets should be determined as at the last day of the month preceding the month in which the revenue was obtained), however the GAAR and mandatory disclosure rules ("MDR") provisions should be taken into account. On the other hand, it should be highlighted, that rules may differ based on particular DTTs. What is more, according to the multilateral instrument ("MLI") convention the real estate clause should apply if the 50% value threshold is met at any time during the 365 days preceding the alienation.

b. CbC and Other Reporting Regimes

The obligation to file a CbC report generally applies to entities operating in groups which:

- Prepare consolidated financial statements;
- Conduct cross border operations; and
- Which earned consolidated net turnover for the previous financial year exceeding PLN3.25 million or EUR750 million.

As a rule, the CbC report is provided by the ultimate parent company in the group (in Poland – if it has its registered office or seat of management here).

The CbC report must be filed within 12 months after group's accounting year end (for which annual consolidated financial statement has been prepared). A notification for CbC reporting must be made to the tax authorities within three months after the group's accounting year end (for which annual consolidated financial statement has been prepared).

Exit Tax

Exit tax is imposed on both corporate entities and individuals on the transfer of assets abroad within the same taxpayer / change of residency of taxpayers being Polish tax residents. The CIT rate is 19%, PIT rates are 19% or 3% (in special cases) levied on so called unrealised profits calculated as the difference between the fair market value of the transferred assets and their tax value.

Transfer of certain assets such as: (i) assets intended for professional use by employees, related directly to the work performed, not being fixed or current assets within the meaning of accounting provisions, or (ii) assets donated in benefit of public benefit organisation (some additional conditions have to be met), could be exit tax exempt. In general, real estate should not be a subject to exit tax, due to the fact, that the Polish tax authorities do not lose the right to tax income from the disposal of such asset.

10. TRANSFER PRICING

a. Documentation Requirements

Local file - thresholds

The current transfer pricing regulations oblige entities to prepare a local file including benchmarking analysis if the value of a controlled transaction exceeds the thresholds amounting to PLN10 million (in respect of tangible assets, financial transactions) or PLN2 million (in respect of intangible assets, services, use/ provision of tangible and intangible assets, attribution of income to a foreign permanent establishment ("PE") and other transactions).

In the case of transactions carried out by the taxpayer with entities (related and unrelated) based in a so called tax haven the documentation threshold obliging the taxpayer to prepare a local file is PLN100,000 ("direct tax haven transactions").

Furthermore, Polish companies conducting purchase transactions exceeding annually PLN500,000 (also with unrelated suppliers based in Poland) are required to prepare a transfer pricing local file describing these transactions if the beneficial owner of the receivables is based in a country or territory applying harmful tax competition ("indirect tax haven transactions"). It is presumed that the beneficial owner is from a tax haven, if the supplier / counterparty makes settlements with an entity having its registered office or management in a tax haven and the value of these settlements exceeds PLN500,000 in the tax / fiscal year. The Polish company is obliged to exercise due diligence while determining the above mentioned circumstances.

Domestic controlled transactions made between entities that (i) do not incur tax losses, (ii) do not have CIT exempt status and (iii) do not benefit from the Special Economic Zone regime are generally exempted from documentation requirements. Moreover, a safe harbour regime may be applied with regard to low value-added services and certain loans (including possible exemptions from the obligation to prepare a local file if certain conditions are met).

A benchmarking or compliance analysis (which from a formal point of view are part of the local file) does not have to be prepared for:

- Controlled transactions concluded by related entities that are micro or small entrepreneurs;
- Transactions conducted with an unrelated party (direct and indirect tax haven transactions).

The local file documentation for the tax year should be prepared by the end of the tenth month after the end of the tax year.

Master file

Entities required to prepare local file and belonging to the groups (i) which consolidated revenues exceeded PLN200 million in the previous year and (ii) for which consolidated financial statement is prepared, should also prepare a master file documentation. There is a possibility to use the master file prepared by another group entity and an English version is allowed. Related entities (i) whose financial statements are consolidated using the full or proportionate method and (ii) which are required to prepare local file documentation, attach a master file to this documentation if they belong to a group of related entities:

- For which the consolidated financial statements are prepared,
- Whose consolidated revenues in the previous financial year exceeded the amount of PLN200 million or its equivalent.

Group master file documentation should be prepared by the end of the twelfth month after the end of the tax year.

b. Reporting Requirements

Entities obliged to prepare local transfer pricing documentation or which are engaged in domestic controlled transactions exempted from documentation requirements, are required to file in an electronic form to the tax authorities, including detailed information on transactions with related entities (TPR-C form). The scope of required information is quite extensive and includes, the results of benchmarking analyses and of controlled transactions. The tax authorities use the transfer pricing reporting to more efficiently select taxpayers for tax audits/review.

Moreover, entities obliged to prepare a local file have to submit a statement that the local file was prepared and the transfer prices in the controlled transactions included in the local file have been set in line with the arm's length principle. The information on the transfer pricing (TPR-C form) / TP statement should be submitted by the end of the eleventh month after the end of the tax year.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

In Poland generally there are no hybrid entities.

b. Use of Hybrid Instruments

In Poland generally there are no hybrid instruments.

c. Principal/Limited Risk Distribution or Similar Structures

In general, Polish tax authorities acknowledge typical functional profiles presented in OECD Guidelines such as principal, limited risk distributors or similar structures, (e.g. tollers).

d. Intellectual property (licensing, transfers etc.)

The existing IP Box regime provides for a 5% preferential (CIT/PIT) rate for qualified income obtained from certain intellectual property rights (mainly registered ones, e.g. patent rights) and rights to computer programs, which do not require registration.

Payments made in connection with the licencing of intellectual property should be verified from a WHT perspective. Tax on shifted profits (section 2.c. above) and minimum tax (section 2.a. above) considerations should be also taken into account.

Currently there is not any special adverse tax regime in case of a transfer of intangibles outside of Poland, although generally the subsequent cost of use of intangibles will be limited, based on the CIT regulations, tax deductibility of payments / amortisation write-offs for intangibles previously owned, is limited to the value of income generated from its sale. Additionally, transfer pricing / GAAR rules should be verified.

e. Special tax regimes

Generally, there is no special tax regime in Poland.

12. OECD BEPS CONSIDERATIONS

Generally, Poland supports OECD BEPS actions. In respect of OECD BEPS Action 6 the Polish Ministry of Finance is renegotiating some Double Tax Treaties ("DTTs"). In particular, Poland's efforts are targeted at eliminating from DTTs tax sparing credit clauses and introducing artificial arrangement clauses, real estate clauses as well as beneficial ownership clauses. Among the DTTs which are subject to negotiation / renegotiation or are planned to be renegotiated are the DTTs with Brazil, Philippines, France, Kuwait, Morocco, Russia, Spain, the Netherlands and Thailand. It is assumed that further adjustments of Polish DTTs with other countries could be made as part of the implementation of a multilateral instrument (Action 15) described below.

As regards OECD BEPS Action 15, Poland is an active member of the OECD Group Developing a Multilateral Instrument to Modify Bilateral Tax Treaties. Poland signed the convention on the ceremony which took place in June 2017.

Poland implemented a number of changes to the Polish tax scheme based on the Anti-Tax Avoidance Directive ("ATAD") regarding, for example, the introduction of tax baskets, thin capitalisation, CFC regulations and exit tax and ATAD2 regarding legislature on hybrid mismatches; as well as the DAC6 Directive regarding mandatory disclosure rules.

13. ACCOUNTING CONSIDERATIONS

a. Combinations

There are few differences between Polish Accounting Regulations and IFRS. Most common ones relate to:

- Amortisation of goodwill, which is obligatory under Polish Accounting Regulations, in contrary to the obligatory goodwill impairment test under IFRS; and
- Combinations under common control defined in Polish Accounting Standards and excluded from the scope of IFRS3.

Time consuming reporting obligations apply for business combinations, for example an audit of the merger plan and an obligatory audit of the merged entity annual financial statements.

b. Divestitures

Divestitures are not regulated in detail in Polish Accounting Regulations, merger accounting rules have to be applied as appropriate.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Cash can be distributed as remuneration for redemption proceeds (as a repayment of capital previously invested) or as a loan. Additionally, the cash can be distributed also as remuneration for services.

b. Substance Requirements for Recipients

Under the general rule, the company will be regarded as a tax resident in Poland if it has its seat or place of management in Poland. Since 2022, a definition of the effective place of management has been introduced into Polish tax law. It states that taxpayer has effective management in Poland if its business is conducted in Poland in an organised and ongoing manner, based in particular on an agreement, court judgement, decision, document regulating establishment or functioning of that entity, proxies and relations between related parties in light of transfer pricing regulations. The introduction of this new definition coincides also with a growing tendency among the tax authorities to examine the substance of international structures of which Polish entities are a part. To some extent, CFC provisions regarding genuine business activity requirements can serve as a point of reference. Additionally, in June 2017 the Ministry of Finance published a document describing when a foreign holding structure may be treated as an aggressive optimisation and where it listed a circumstances proving that the foreign holding ("SPV") does not have a place of management in its jurisdiction which are among others: (i) directors of the SPV are at the same time management board members of the Polish company, (ii) directors of the SPV reside and perform their duties in Poland and their visits to the country of the SPV is limited only to sign documents or take resolutions, (iii) there are no specific tasks assigned to these directors, (iv) directors of the SPV do not have a special competence and knowledge to perform their duties, (v) there is no documentation proving performance of their duties, (vi) there is no office of the SPV, emails, telephone numbers, (vii) the SPV does not have any employees (besides administration). It may be expected that the tax authorities, when analysing the residency of the holding companies, will also take into account the above conditions.

c. Application of Regional Rules

Poland has implemented EU directives including the Parent Subsidiary Directive, the Interest and Royalties Directive and the Merger Directive. Poland has also implemented the savings directive relating to exchange of information between tax administrations. Recently Poland has implemented a number of tax changes based on the ATAD Directive (thin capitalisation restrictions, exit tax, etc.), the ATAD2 Directive, regarding legislature on hybrid mismatches; as well as the DAC6 Directive, regarding mandatory disclosure rules.

d. Tax Rulings and Clearances

The taxpayers may apply to the tax authority for a binding tax ruling. The tax ruling should be issued by the tax authorities within three months.

If the tax ruling is properly applied (in particular, it properly reflects reality), the taxpayer should be protected from the obligation to pay a tax liability if the tax treatment which is the subject of the tax ruling is challenged (if the tax effects of the given event / transaction covered by the tax ruling took place after the ruling was obtained). The taxpayer should also be protected from an obligation to pay penalty interest and from initiation of penal fiscal proceedings. There is no other more informal procedure to secure the tax position of taxpayer.

As of 1 January 2019, there is an automatic cancellation of certain individual tax rulings if the tax administration can reasonably assume that the events / activities described in the motion could fall under GAAR rules. Moreover, also from 1 January 2019 taxpayers are not allowed to apply for the ruling with regard to the GAAR provisions, provisions on running actual business activities and economic reasons of (a chain of) transactions.

Moreover, a taxpayer may obtain an opinion from the tax authority on the application of the WHT exemption / lowered WHT rate resulting from DTT / EU Directives (it is valid for 36 months). The opinion is to be issued within six months, however, the tax authorities may in individual cases extend this deadline.

e. Mandatory Disclosure Rules ("MDR")

Since 1 January 2019 Mandatory Disclosure Rules ("MDR") are in force in the Polish tax system. MDR impose an obligation to report domestic and cross border tax arrangements to the Polish tax authorities. The obligation to report tax arrangements falls on the intermediaries / relevant taxpayers / assisting entities. The reporting responsibilities cover not only aggressive tax structures, but also ordinary activities leading to obtaining lawful tax benefits.

The tax arrangement is to be considered an activity or set of activities that meet the following conditions:

- There is a general hallmark, for example, carrying out actions based on the standardised documentation, arrangements resulting in change in the income classification or taxation rules, circular flow of money because of entities not fulfilling material functions or activities cancelling each other, and it meets the main benefit test;
- There is a specific hallmark, for example: (i) the same income / asset benefits from the methods of avoiding double taxation in more than one country, (ii) transfer of hard to value intangibles, (iii) a non-transparent ownership structure or a beneficial owner hard/impossible to be identified, (iv) an intragroup transfer of functions/risks/assets, while the projected EBIT of the transferor during a three-year period would be less than 50% of the annual EBIT if the transfer had not been made;
- There is another specific hallmark, a Polish income tax remitter would be obliged to collect WHT exceeding PLN5 million if the lower tax rate / WHT exemption does not apply.

Meeting the main benefit test is a situation where the entity or person acting reasonably and pursuing legitimate goals other than obtaining a tax advantage could reasonably choose a different course of action and the planned benefit is the main, or one of the main benefits, that the entity expects to achieve from certain actions.

Each structure should be analysed from an MDR perspective.

15. MAJOR NON-TAX CONSIDERATIONS

This section is left intentionally blank.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	5 / 10	10	5	[1]
Armenia	10	5	10	
Australia	15	10	10	
Austria	5 / 15	5	5	[2]
Azerbaijan	10	10	10	
Bangladesh	10 / 15	10	10	[2]
Belarus	10 / 15	10	0	[4]
Belgium	0 / 10	5	5	[5]
Bosnia and Herzegovina	5 / 15	10	10	[3]
Bulgaria	10	10	5	
Canada	5 / 15	0 / 10	5 / 10	[2] [6] [7]
Chile	5 / 15	5 / 15	5 / 10	[8] [9] [10]
China	10	10	7 / 10	[11]
Croatia	5 / 15	10	10	[3] [39]
Cyprus	0 / 5	5	5	[12]
Czech Republic	5	5	10	
Denmark	0 / 5 / 15	5	5	[13]
Egypt	12	12	12	
Estonia	5 / 15	10	10	[3]
Ethiopia	10	10	10	
Finland	5 / 15	5	5	[3]
France	5 / 15	0	0 / 10	[14] [15]
Georgia	5/10	5/8	5/8	[38]
Germany	5 / 15	5	5	[2]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Greece	-	10	10	[16]
Hungary	10	10	10	
Iceland	5 / 15	10	10	[3]
India	10	10	15	
Indonesia	10 / 15	10	15	[17]
Iran	7	10	10	
Ireland	0 / 15	10	0 / 10	[18] [19]
Israel	5 / 10	5	5 / 10	[20] [11]
Italy	10	10	10	
Japan	10	10	0 / 10	[21]
Jordan	10	10	10	
Kazakhstan	10 / 15	10	10	[22]
Korea (ROK)	5 / 10	10	5	[2]
Kuwait	0 / 5	0 / 5	15	[23] [24]
Kyrgyzstan	10	10	10	
Latvia	5 / 15	10	10	[3]
Lebanon	5	5	5	
Lithuania	5 / 15	10	10	[3]
Luxembourg	0 / 15	5	5	[12]
Malaysia	0	15	15	[25]
Malta	0 / 10	4 / 5	5	[12] [40]
Mexico	5 / 15	0 / 10 / 15	10	[18] [26]
Moldova	5 / 15	10	10	[3]
Mongolia	10	10	5	
Montenegro	5 / 15	10	10	[3]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Morocco	7 / 15	10	10	[3]
Netherlands	5 / 15	5	5	[2]
New Zealand	15	10	10	
North Macedonia	5 / 15	10	10	[3]
Norway	0 / 15	5	5	[12]
Pakistan	15	-	15 / 20	[27] [28]
Philippines	10 / 15	10	15	[3]
Portugal	10 / 15	10	10	[29]
Qatar	5	5	5	
Romania	5 / 15	10	10	[18]
Russia	10	10	10	
Saudi Arabia	5	0 / 5	10	[30]
Serbia	5 / 15	10	10	[18]
Singapore	5 / 10	5	2 / 5	[12] [11]
Slovakia	0 / 5	5	5	[12]
Slovenia	5 / 15	10	10	[18]
South Africa	5 / 15	10	10	[18]
Spain	5 / 15	0	0 / 10	[18] [31]
Sri Lanka	10	10	10	
Sweden	5 / 15	0	5	[3]
Switzerland	0 / 15	0 / 5	0 / 5	[32] [33] [34]
Syria	10	10	18	
Taiwan	10	10	3 / 10	[11]
Tajikistan	5 / 15	10	10	[3]
Thailand	20	10	0 / 5 / 15	[35] [36]
Tunisia	5 / 10	12	12	[3]
Turkey	10 / 15	10	10	[3]
Ukraine	5 / 15	10	10	[3]
United Arab Emirates	5	5	5	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
United Kingdom	0 / 10	5	5	[12]
United States	5 / 15	0	10	[2]
Uzbekistan	5 / 15	10	10	[8]
Vietnam	10 / 15	10	10 / 15	[3] [37]
Zimbabwe	10 / 15	10	10	[3]

Footnotes:	
1	Dividends - In order to benefit from the lower tax rate a minimum share of 25% is required. After the ratification of the MLI by the parties to the DTT, the condition of holding shares in a subsidiary for a period of at least 365 days has been added (effective from 1 January 2021).
2	Dividends - In order to benefit from the lower tax rate a minimum share of 10% is required.
3	Dividends - In order to benefit from the lower tax rate a minimum share of 25% is required.
4	Dividends - In order to benefit from the lower tax rate a minimum share of more than 30% is required.
5	Dividends - Dividend payments are tax exempt if the person entitled to dividend is - (I) a company established in the other contracting country, which holds directly, for an uninterrupted 24-month period, at least 10% of the shares (stock) in the capital of the company paying the dividends, (II) a pension fund established in the other contracting country, provided that such shares or other rights on which dividends are paid, held for the purpose of - (A) administering pension systems or providing pension benefits; or (B) generating income on behalf of one or more persons whose activity consists in administering or providing pension benefits; and provided that it is also - (A) in case of Belgium, an entity regulated by the Office of Financial Services and Markets or the National Bank of Belgium or has been registered with the Belgian Tax Administration; or (B) in case of Poland, an entity established under Polish law that is supervised or registered by the Polish Financial Supervision Authority.
6	Interest - The lower rate applies to interest paid with respect to debt arising from the sale of any equipment, goods or services, except, i.e. situations in which sales or debt occurred between related parties.
7	Royalties - The lower rate applies to royalties arising from copyright (excluding films) as well as the right to use a patent or from work experience in an industrial, commercial or scientific field (excluding rental or franchise fees).
8	Dividends - In order to benefit from the lower tax rate a minimum share of 20% is required.
9	Interest - Tax Treaty indicates 15% rate for all types of interest. However, under the most favoured nation clause, the rate is reduced to 5% for interest (a) paid to a banking or insurance company or (b) derived from bonds or securities that are traded on the securities market (the rate of such interest is currently 5% under the Chile-Spain Treaty).
10	Royalties - The lower rate applies to royalties for the use or right to use an industrial, commercial or scientific device. The general rate resulting from the Treaty is 15%. However, under the most favoured nation clause, the rate may be reduced to 10% (currently 10% under the Chile-Spain Treaty).
11	Royalties - The lower rate applies to royalties for the use or right to use an industrial, commercial and scientific device.
12	Dividends - In order to benefit from the lower tax rate a minimum share of 10% is required and held uninterruptedly for a period of 24 months.

Footnotes:	
13	Dividends - In order to benefit from the 0% tax rate a minimum share of 25% is required and held for one year. The 5% rate applies to payments to pension funds.
14	Dividends - In order to benefit from the lower tax rate a minimum share of 10% for a period of at least 365 days is required.
15	Royalties - The 0% rate applies to receivables from copyrights arising from literary, scientific or artistic works.
16	Dividends - The national rate applies; there is no preferential rate under the Treaty.
17	Dividends - In order to benefit from the lower tax rate a minimum share of 20% is required. After the ratification of the MLI by the parties to the DTT, the condition of holding shares in a subsidiary for a period of at least 365 days has been added (entry into effect depending on completion of internal procedures in Indonesia).
18	Dividends - In order to benefit from the lower tax rate a minimum share of 25% for a period of at least 365 days is required.
19	Royalties - The lower rate applies to fees for technical services.
20	Dividends - In order to benefit from the lower tax rate a minimum share of 15% for a period of at least 365 days is required.
21	Royalties - The 10% rate applies to royalties for industrial technologies. A rate of 0% applies to copyright royalties.
22	Dividends - In order to benefit from the lower tax rate a minimum share of 20% is required. After the ratification of the MLI by the parties to the DTT, the condition of holding shares in a subsidiary for a period of at least 365 days has been added (effective from 1 January 2021).
23	Dividends - The lower rate applies if the beneficiary is a government of another country or a company in which at least 25% of the capital is owned by the government.
24	Interest - The 0% rate applies to interest paid to companies that are at least 25% state-owned.
25	Royalties - Royalties related to the use or right to use films for cinemas, works for television, radio are taxed in accordance with the legislation of the country in which they are produced.
26	Interest - The 10% rate applies to interest that is owned by a bank or insurance company or that is derived from bonds or debentures. The 0% rate applies, among others if the beneficiary of the interest is the pension fund.
27	Dividends - Ownership of at least 1/3 of the capital is required to benefit from the 15% tax rate.
28	Royalties - The lower rate applies to receivables for know-how agreements and information on industrial, commercial and scientific experience.
29	Dividends - In order to benefit from the lower tax rate a minimum share of 25% for a period of at least two years is required.
30	Interest - The 0% rate applies to interest paid to a legal person that is controlled or owned by the State.
31	Royalties - A rate of 0% applies to the copyright royalties in the field of films for cinemas and television (condition - transfer of this film under cultural arrangements between countries). It applies to copyright and similar rights related to the creation or reproduction of a literary, musical or artistic work (excluding films).
32	Dividends - 0% rate for (I) a company (not being a partnership) with at least 10% of shares for an uninterrupted period of 24 months, (II) a pension fund.
33	Interest - The lower rate applies if the recipient is a related company (not being a partnership).

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Footnotes:	
34	Royalties - The lower rate applies if the recipient is a related company (not being a partnership).
35	Dividends - In order to benefit from the 20% tax rate a minimum share of 25% is required.
36	Royalties - The 0% rate applies to film and tape royalties paid to the state or a state-owned company, the 5% rate applies to royalties for the transfer of ownership, use or the right to use a literary, artistic or scientific work excluding films for cinemas and tapes for television or radio.
37	Royalties - The lower rate applies to royalties for the use or right to use a patent, design or model, plan, secret, or information on acquired industrial or scientific experience.
38	5% rate introduced to the DTT signed on 7 July 2021 (new DTT has not come into force yet).
39	Changes as a result of the announcement of Ministry of Foreign Affairs from 21 July 2021 on the correction of the mistakes (act on 22 October 2021). The following changes were introduced: the conditions for applying the 5% rate on dividends (beneficial ownership condition was added) and conditions for applying 10% rate to interest (beneficial ownership condition was added).
40	5% rate on interest was changed as a result of the signing of the act from 14 October 2021 on the ratification of the protocol between Poland and Malta on changing double tax treaty from 7 January 1994 amended by the protocol signed in Warsaw on 6 April 2011 (the act came into force 14 days after its signing).

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Tax due diligence should generally speaking refer to the periods open for a tax review (notwithstanding in practise shorter periods such as two or three years often occur). In Poland, a statutory limitation period lapses in five years starting from the end of the calendar year in which a given tax should have been paid. Effectively, the periods which are reviewed under full due diligence are as follows:

- CIT : the last six years;
- VAT : the last five years plus one last reporting period from the sixth year (this can be either a month or a quarter depending on the chosen settlement method of the taxpayer);
- PIT : in the case of the corporate entities hiring employees, the last five years plus one last reporting period from the sixth year (usually December);
- Tax on Civil Law Transactions : the last five years;
- Real estate tax : the last five years.

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Financial statements of Target.
2	Tax Due Diligence	General	Trial balances of Target.
3	Tax Due Diligence	General	Tax registration documentation.
4	Tax Due Diligence	General	Tax audit book and full documentation (protocols, decisions) regarding tax audits, as well as any other correspondence with the tax authorities. Information on ongoing proceedings with tax authorities.
5	Tax Due Diligence	General	Current certificates from the appropriate tax authorities confirming that Target has no outstanding tax and social security liabilities.
6	Tax Due Diligence	General	Correspondence with the tax authorities including individual tax rulings received with respective applications.
7	Tax Due Diligence	General	Tax reports, opinions, etc. received by Target from tax advisers, if any.
8	Tax Due Diligence	General	Information if Target conducts any operations outside Poland (e.g. through branch, representation office, delegated employees).
9	Tax Due Diligence	General	Information on tax exemptions, donations, subsidies granted for Target, their purpose and tax treatment.
10	Tax Due Diligence	General	Information about non-standard / restructuring transactions performed (i.e. merger, transformations, transfer of assets / functions, in-kind contribution, etc.), their tax treatment and copies of the associated legal documentation.

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Nº.	Category	Sub-Category	Description of Request
11	Tax Due Diligence	General	Information on optimisation schemes applied by Target and the amount of savings, if any.
12	Tax Due Diligence	Corporate Income Tax ("CIT")	Annual Corporate Income Tax ("CIT") returns with relevant attachments.
13	Tax Due Diligence	Corporate Income Tax ("CIT")	Detailed CIT calculation (presenting in particular additional tax deductible costs and non-taxable revenues and division of revenues on capital gains and other sources).
14	Tax Due Diligence	Corporate Income Tax ("CIT")	Information on tax losses carried forward.
15	Tax Due Diligence	Corporate Income Tax ("CIT")	Information on the moment of recognition of taxable revenues and tax deductible costs (in particular with respect to long-term projects) and any changes in approach in this regard. Differences between tax and accounting treatment - main positions.
16	Tax Due Diligence	Corporate Income Tax ("CIT")	Information on the moment of recognition of corrections.
17	Tax Due Diligence	Corporate Income Tax ("CIT")	Information on the transactions with related parties (together with respective agreements and values of transactions).
18	Tax Due Diligence	Corporate Income Tax ("CIT")	Transfer pricing documentation (if any).
19	Tax Due Diligence	Corporate Income Tax ("CIT")	Information on any cross border payments made by Target (royalties, interest, intangible services, etc).
20	Tax Due Diligence	Corporate Income Tax ("CIT")	IFT-2R and CIT-10Z declarations submitted.
21	Tax Due Diligence	Corporate Income Tax ("CIT")	Certificates of tax residency of the cross border payments recipients.
22	Tax Due Diligence	Corporate Income Tax ("CIT")	Information on the procedure of documenting the performance of due diligence in case of payments subject to WHT made by the Target, especially in case of application of WHT exemption for dividends.
23	Tax Due Diligence	Corporate Income Tax ("CIT")	Information on material penalties paid by Target and their tax treatment.
24	Tax Due Diligence	Corporate Income Tax ("CIT")	Calculation for the purposes of limitation of intangible services costs (article 15e of the CIT Act).

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Nº.	Category	Sub-Category	Description of Request
25	Tax Due Diligence	Corporate Income Tax ("CIT")	Application of thin capitalisation / EBITDA based interest deduction restrictions. Calculation for the purposes of limitation of costs of debt financing (article 15c of the CIT Act).
26	Tax Due Diligence	Corporate Income Tax ("CIT")	Information on interest paid / capitalised and its tax treatment.
27	Tax Due Diligence	Corporate Income Tax ("CIT")	Tax treatment of intangible services (management, advisory, marketing, legal, market research, etc.) and their source documentation.
28	Tax Due Diligence	Corporate Income Tax ("CIT")	Proof documentation of rendering intangible services, especially reports and indication of particular people who performed the services.
29	Tax Due Diligence	Corporate Income Tax ("CIT")	Information on the benefits received or granted free of charge (e.g. guarantees, free of charge services, free of charge use of trademark or received from the group companies with relation to a bank loan collateral, management services).
30	Tax Due Diligence	Corporate Income Tax ("CIT")	Fixed and intangible asset register for tax purposes.
31	Tax Due Diligence	Corporate Income Tax ("CIT")	Tax treatment methodology regarding fit-outs, renovations, modernisations, investments (including capitalisation of expenses to the initial value), liquidation.
32	Tax Due Diligence	Corporate Income Tax ("CIT")	Information whether the Target's management board members receive remuneration (along with relevant documentation).
33	Tax Due Diligence	Corporate Income Tax ("CIT")	Tax treatment methodology regarding company cars, especially regarding the recognition of tax costs.
34	Tax Due Diligence	Value Added Tax ("VAT")	VAT declarations.
35	Tax Due Diligence	Value Added Tax ("VAT")	VAT registers for chosen three months of each year.
36	Tax Due Diligence	Value Added Tax ("VAT")	Information on: 1) standard and non-standard VAT transactions along with moment of tax point recognition, 2) VAT rates applied 3) documentation for the application of 0% 4) transaction outside of VAT 5) VAT exempt transactions.

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Nº.	Category	Sub-Category	Description of Request
37	Tax Due Diligence	Value Added Tax (“VAT”)	Information on granted/denied VAT refunds.
38	Tax Due Diligence	Value Added Tax (“VAT”)	Policy protecting Target from VAT frauds.
39	Tax Due Diligence	Personal Income Tax (“PIT”)	PIT declarations.
40	Tax Due Diligence	Personal Income Tax (“PIT”)	Information on the remuneration model applied (i.e employment, civil law contracts, self-employment) and tax treatment (including PIT, CIT and VAT).
41	Tax Due Diligence	Personal Income Tax (“PIT”)	Additional benefits for the employees (including motivation plans) and their tax treatment (including PIT, CIT and VAT).
42	Tax Due Diligence	Tax on Civil Law Transactions (“TCLT”)	List of transaction subject to TCLT with respective declarations and transactions exempt from TCLT.
43	Tax Due Diligence	Real Estate Tax (“RET”)	RET declarations
44	Tax Due Diligence	Real Estate Tax (“RET”)	RET calculations.

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