



# Poland Open for business

 **OZOG**  
Tax Finance Law

  
**Invest**  
in Poland  
POLISH INFORMATION AND  
FOREIGN INVESTMENT AGENCY

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# 01 INTRODUCTION

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## POLAND: BASIC NUMBERS

<b>Area</b>	120,726 sq. miles
<b>Population</b>	38 million
<b>Capital</b>	Warsaw, population 1.7 million
<b>Legislature</b>	Two-chamber Parliament: Lower Chamber – 460 seats, Higher Chamber – 100 seats
<b>Government</b>	President (term of office: 5 years), Council of Ministers (term of office: 4 years)
<b>Courts</b>	Supreme Court, common courts, administrative courts
<b>Timezone</b>	GMT +1
<b>Currency</b>	Zloty (PLN) = 100 groszy (gr)
<b>Average lifespan</b>	79.7 women 71.0 men

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## WHY POLAND?

Poland is one of the newest, most dynamic and exciting of the European Union states. As a full EU, OECD, WTO and NATO member, Poland offers political stability and a rapidly expanding market in the heart of Europe.

As a party to 89 Double Taxation Treaties throughout the world, Poland is indeed open for international business. As is universally agreed, Poland wasted no time finding itself during the tough global economic conditions. This is certainly true of Polish finance and banking sectors which have been largely unaffected by the credit crisis. Indeed, Poland was the only European Union member state to report economic growth

during the darkest months of 2009 and is recognized as the sole “green island” within the EU that survived the storm without falling into recession. In fact, at the end of 2011, Moody’s, Standard & Poor’s and Fitch were unanimous in confirming Poland’s credit rating as a stable A-, unchanged since 2007. Combining stable growth, the 2011 presidency of the European Union and an additional boost for the economy with the UEFA Euro 2012, Poland finds itself among the leading nations reinforcing European Union restructuring in the introduction of a new fiscal policy to consolidate the rising federation.

## CLIMATE FOR INVESTMENT

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Offering a large domestic market coupled with political and economic stability and various government incentives for investors, Poland is placed by the United Nations Conference on Trade and Development among the top countries to attract FDI flows in the years 2011-2013 and the 6th most attractive investment location in the world<sup>1</sup>. The OECD annual report for 2011 places Poland closer to such countries as Germany, Austria and Sweden in respect of the health of public finance than those against which

the Polish economy was previously measured<sup>2</sup>. Poland has proven highly attractive to international investors wishing to capitalize upon competitive employment costs, increasing industrial output and a highly qualified labor force. With 30% of the population aged between 20 and 29 undertaking university-level studies according to the last OECD Program for International Student Assessment study, Poland is way above the average for OECD countries<sup>3</sup>.

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<sup>1</sup> Source: United Nations Conference on Trade and Development World Investment Report 2011.

<sup>2</sup> Source: Restoring Public Finances, OECD 2011.

<sup>3</sup> Source: Organisation for Economic Co-operation and Development PISA 2009.

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# POLAND IN THE EYES OF FOREIGN INVESTORS

In a recent poll conducted by the Polish Information and Foreign Investment Agency on how Poland is perceived by foreign investors<sup>4</sup>, Poland with its 38 million population rated the highest in respect of the size of the market, consistently high and stable internal demand, political stability and availability of qualified staff. While 79% of those polled claimed that the world economic crisis did not go unnoticed in their operations, more than half declared noticeable improvement in their turnover for 2011. Overall per-

ception among investors is optimistic with every tenth respondent planning to increase their labor requirement by greater than 30% in the near future.

Six out of ten respondents polled rated the overall climate for investment as good or very good. This is the best result for such polls conducted over the last five years and, apart from a brief drop in confidence in 2010, demonstrates a steady increase of optimism since the first study in 2007.

## *DID YOU KNOW THAT...?*

- *The floatation of the Warsaw Stock Exchange was ranked 1st in Europe by value of IPOs in 2010*
- *Poland is in the top five business center locations in the world according to the Everest Group rating in 2011<sup>5</sup>*
- *Due to its geographic location and EU membership, Poland may easily export goods to all European countries with a potential to reach half a billion consumers*
- *The main trade partners of Poland are Germany, Russia, China, France, the United Kingdom, Italy, Hungary, Ukraine and Spain*
- *The debt-to-GDP ratio for Poland remains below 55%, being one of the most favorable situations within the European Community*
- *The above, coupled with a 38-million population and a wide range of exported goods, results in the Polish economy often being viewed as one of the most crisis-proof in Europe*
- *According to the US Energy Information Administration, Poland may have as much as 187 tcm of technically recoverable untapped resources of shale gas<sup>6</sup> – the largest reserves in Europe. Exploration has already commenced.*

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<sup>4</sup> Source: Climate for investment report in Poland, TNS Pentor 2011.

<sup>5</sup> Source: Global Location Insights: October 2011 - Perspectives on Global Services Market in Poland, Everest Group 2011.

<sup>6</sup> World Shale Gas Resources: An Initial Assessment of 14 Regions Outside the United States, EIA 2011.

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# 02 INCENTIVES

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## Special Economic Zones

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### STATE AID

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As is the case with other EU member states, Poland is included in the EU-wide ban on supporting enterprises by state institutions. This applies to direct aid through grants, individual reliefs and exemptions. However, there are exceptions. Businesses

investing in less developed regions or engaging in investments of significant importance to the economy may count on state support.

The map of Poland comprises 14 of these areas referred to as Special Economic Zones (SEZs).

### TAX CREDITS

When investing within an SEZ, eligible businesses are exempt from income tax up to a predetermined amount, dependent upon the scale of the investment and reaching a maximum 70% of the value of investment.

The value of investment calculated for this purpose is deemed to include:

- direct investment expenditure (e.g. on acquisition of real property, plant, equipment and licenses)
- employment costs for two years.

### TAX EXEMPTIONS

Within a number of SEZs, real estate tax exemptions are available as an additional incentive.

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## TAX RELIEF CONDITIONS

A permit allowing a business entity to take advantage of tax reliefs outlines the minimum size of the investment and levels of employment that need to be achieved and maintained within a specified period of 3-5 years, dependent upon certain factors.

## OTHER DIRECT SUPPORT

Entities investing within an SEZ also receive area-specific specialized aid directly from the SEZ management, e.g. preparing ground works for re-development.

## FLEXIBILITY

SEZs include both rural areas and those located within the largest conurbations. In the case of large-scale investments, new areas may be added to an existing SEZ on request.

## LIMITATIONS

There are a few limitations regarding the nature of business that can be operated within an SEZ. Exceptions include financial services, manufacture of tobacco products as well as gambling and other licensed activities.

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# Technology Investment Tax Credit

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As a special incentive, entities operating outside Special Economic Zones may reduce their tax base by half of the amount of their expenditure on new technological intellectual property (IP). Such credits may be carried forward for three years and

do not affect the entity's right to make the usual depreciation write-downs on the value of the newly acquired IP or technology. Eligible acquisitions include know-how, patent rights and even computer software and IT systems.

## CONDITIONS

The newly acquired IP must allow one to render new services or deliver new goods or improve the business carried on to-date. In addi-

tion, it must not have been in worldwide use for more than five years and may not be shared with other parties for a further three years.

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# 03 LEGAL BASICS

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Business activity in Poland may be undertaken freely by any investor. Investors from EU and EFTA countries do not require any special permits to start activities within the territory of Poland. In the case of investors from other countries, some kind of permit may be required. The procedures may vary depending on whether the investor is an individual or a corporate entity.

Foreign companies, regardless of their country of origin, may invest in equities of Polish companies or establish new companies. **Polish law allows a number of forms of business entity, including:**

- limited liability companies
- joint stock companies
- registered partnerships
- limited partnerships
- professional partnerships
- limited joint stock partnerships
- sole traders.

## LIMITED LIABILITY COMPANIES

Limited Liability Companies are a highly popular form of structuring business activity in Poland. The LLC registration process is quick requiring few formalities.

A limited liability company becomes operational directly after the articles of association have been signed. Until it is registered, however, such a company is required to add to its name the term “in formation”. Furthermore, if the investor does not have enough time for

the registration formalities, there is an option to buy an off-the-shelf company.

Required minimum share capital is 5,000 PLN (around 1,150 EUR<sup>7</sup>) and must be paid in full before the registration. The nominal value of one share may not be lower than 50 PLN. Polish law permits a sole shareholder. A combination of ordinary and preference shares is also an option.

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<sup>7</sup> All currency references based on the exchange rate 1 PLN = 0.23 EUR.



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A limited liability company is managed by a management board required to comprise at least one individual and with no upper limit of members.

The company needs to decide whether the members of the management board are to act individually or jointly in terms of binding the company. Optionally, a limited liability company may also have a supervisory board to oversee the operations of the management board.

The shareholders' general meeting represents the supreme authority in a limited liability company. In some cases, the articles

of association may also extend the authority of the shareholders by setting a requirement for shareholders' consent to validate certain management board decisions.

LLCs may also be registered electronically within a single day, provided that all subscribers have electronic signatures issued by an authorized certification authority. The articles of association are then based on a standard form available on the Ministry of Justice website whereas the share capital must be paid in full in cash no later than seven days after the registration.

## JOINT STOCK COMPANIES

Joint stock companies are similar to limited liability companies. However, they are more formalized and complex in terms of statutory governance. A joint stock company is the required structure for investors wishing to engage in an IPO.

Operations of a joint stock company may not commence until registration has been completed with the National Court Register. The minimum share capital is 100,000 PLN (around 23,000 EUR).

The nominal value of one share may not be less than 1 gr. The main governing bodies of a joint stock company comprise its management board, the shareholders' general assembly meeting and supervisory board. The supervisory board is appointed by the shareholders and in turn appoints the management board.

A management board comprises one or more members. The articles of association should prescribe the rules for the company's

representation. Any member of the management board may be dismissed or suspended.

A supervisory board must comprise at least three members or, if the company is listed on the Warsaw Stock Exchange, at least five. The articles of association may provide that the management board requires consent of the supervisory board in the case of certain decisions.

A shareholders' meeting must be convened annually to decide on major issues affecting the company. The company's articles of association may provide that the shareholders are authorized not only to appoint and dismiss members of the supervisory board but also members of the management board. In some cases, consent of shareholders may be required to sanction proposals of the management board.

A joint stock company can have a single shareholder. Both ordinary shares and preference shares may be issued.

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## REGISTERED PARTNERSHIPS

A registered partnership requires cooperation between at least two individuals or business entities. It is established by means of a partnership agreement registered with the National Court Register.

Although a registered partnership has no legal personality, it may still act on its own behalf, have its own assets and debts.

All partners are jointly and severally liable for the partnership's obligations but creditors are initially obliged to seek satisfaction from the partnership assets.

Partners' personal liability may not be waived. All partners are obliged and entitled to manage and represent the partnership.

## LIMITED PARTNERSHIPS

Limited partnerships are generally regarded as tax-transparent vehicles which contributes to their popularity for numerous types of business activity.

Such a partnership distinguishes between two types of partner who differ in terms of liability. The limited partner's liability extends up to the amount agreed in the

partnership agreement. The general partner is subject to unlimited liability and may be an individual or a corporation.

The partnership is represented only by the general partner. The limited partners may only represent the partnership if granted proper power of attorney.

## PROFESSIONAL PARTNERSHIPS

This structure is restricted to self-employed professionals, such as lawyers, dentists, architects, accountants, etc. Partners in this partnership must be licensed in their discipline, usually requiring registration with an appropriate governing body. The partnership can be represented by any partner.

The partners are personally liable, however, liability is limited to the obligations arising from errors and omissions of the partner or co-workers working under the supervision of the said partner. The partnership agreement may also provide that partners are jointly and severally liable for all partnership obligations.

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## LIMITED JOINT STOCK PARTNERSHIPS

This structure is similar to limited partnerships. The partnership also has a general partner, but with shareholders who are not personally liable for partnership obligations, in the same manner as shareholders in a joint stock company.

The minimum share capital of such partnerships is 50,000 PLN (around 11,500 EUR).

The share capital may be paid up in cash or in kind.

The partnership is represented only by the general partner. Shareholders have no powers of representation unless granted proper power of attorney.

## SOLE TRADER

Sole proprietorship is typically used for small businesses. It is simple to establish and may be undertaken by any qualifying individual. A person conducting business ac-

tivity in this manner is personally liable for all obligations arising from such activity. A register of sole traders is held by regional authorities.

## NATIONAL COURT REGISTER

The National Court Register is a nationwide database of all companies. This database is public domain with some information available online for free at [krs.ms.gov.pl](http://krs.ms.gov.pl).

Any company or individual may, for a small fee, obtain a full or current extract (limited to the most current information) from the register for any entity registered in

Poland. Furthermore, courts maintain files for all companies which include financial statements, establishment deeds etc. These files are also available to the public.

This system allows an investor to perform basic due diligence of potential business partners.

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# 04 CAPITAL MARKETS

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## THE WARSAW STOCK EXCHANGE

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The Warsaw Stock Exchange is the largest national stock exchange in Central and Eastern Europe and the fastest growing exchange in Europe. The WSE is also one of the most recognizable Polish financial institutions worldwide.

The WSE leads CEE in terms of market capitalization, trading value, number and type of traded instruments as well as number of IPOs and SPOs. Its growth is facilitated by well-developed infrastructure – typical of

a mature market – as well as a sound regulatory environment fully compliant with EU standards. Today, the WSE is far more than a local market. Medium-sized and small enterprises as well as large companies representing all sectors of the economy are present on the Warsaw bourse. At the beginning of January 2012, shares of more than 400 companies, including 36 foreign ones, were traded on the WSE Main List.

## WSE MARKETS

The Warsaw Stock Exchange conducts trading in financial instruments in three markets:

**The Main List** has been in operation since 16 April 1991. This market is supervised by the Polish Financial Supervision Authority and notified to the European Commission as

a regulated market. The following securities and financial instruments are traded here: equities, bonds, pre-emptive rights, rights to shares, investment certificates, structured instruments, ETFs and derivatives, i.e. futures contracts, options and index participation units.

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**NewConnect** is a market organized and maintained by the WSE as an alternative trading system. It was designed for startups and developing companies, especially from the new technologies sector. Instruments which may be traded under this alternative trading system include equities, rights to shares, pre-emptive rights, depository receipts as well as other equity based instruments.

**Catalyst** is a debt instruments market for municipal, corporate and mortgage bonds comprising two trading platforms organized by the WSE as a regulated market and as an alternative trading system (ATS) for retail customers and two analogous markets operated by BondSpot and designed for wholesale clients.

## POLISH FINANCIAL SUPERVISION AUTHORITY

The Polish Financial Supervision Authority (PFSA) is a public body exercising supervision over all financial markets in Poland.

The PFSA supervises capital markets, the insurance market, pension schemes and electronic money.

The aim of financial market supervision is to ensure regular operation of this market, its stability, security and transparency, as well as to ensure that the interests of market players are protected.

PFSA activities are overseen by the President of the Council of Ministers.

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# 05 REAL ESTATE

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## PERPETUAL USUFRUCT AND OWNERSHIP

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Perpetual usufruct requires payment of an annual fee to the State being similar in nature to real estate tax but usually at a higher rate. All buildings or structures

erected on land subject to perpetual usufruct are the property of the usufructuary. As the State remains the actual owner of the land, the above is an exception to the general Polish rule that “all buildings or structures always constitute the property of the owner of the land on which they stand”.

After the perpetual usufruct expires, the term may be extended otherwise the land reverts back to the owner who is then obliged to pay the usufructuary compensation equal to the value of the buildings or structures erected on this land.

## ACQUISITION OF REAL ESTATE BY FOREIGNERS AND TAX OPTIMISATION OPPORTUNITIES

Foreign investors wishing to purchase real estate in Poland are obliged to obtain a permit from the Ministry of Internal Affairs.

A permit is also required in the case of acquisition of shares in a Polish company that is the owner or perpetual usufructuary of

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real estate. However, the above requirement does not apply to EU and European Economic Area investors or those domiciled in Switzerland. A permit is not required when foreigners acquire:

- a self-contained apartment
- any real estate – after 5 years of permanent residence in the territory of Poland (from the date of the first permanent residence permit)
- undeveloped land for business purposes not bigger than 0.4 hectares – located within city limits – for partnerships and companies controlled by foreigners

- real estate where the acquirer is a bank controlled directly or indirectly by foreign investors if the acquisition is connected with debt enforcement proceedings.

Most importantly, the above restrictions do not apply to closed-ended investment funds operating under the Investment Funds Act 2004, which allows easy entry into the real estate market, also providing an opportunity for tax optimization as such funds are by law exempt from income tax.

## LEASES

Polish law allows foreign investors to lease real estate without limitations and without the necessity to obtain a permit from the Ministry of Internal Affairs.

The lease may be for an indefinite period of time or for a fixed term. However, if the

lease is for a period of more than one year it has to be executed in writing.

Fixed-term leases should be prudently negotiated as they are not always easy to terminate before expiry of the term.

## LAND AND MORTGAGE REGISTER

Information about real estate, the history of ownership, transfers and charges on property etc. is recorded in a special court register. Apart from such general information, each real estate record includes a file containing all source documentation.

The land and mortgage register is public domain and any inquirer may obtain an extract from the register for any given

real estate. However, access to the files is limited and the inquirer is required to state the nature of their interest in order to obtain it. Accessing the files of real estate owned by a business entity is relatively straightforward, however, due to personal data protection laws, access to files of real estate owned by individuals is limited.

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# 06 TAXATION

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## DID YOU KNOW THAT...?

*At any time, in the case of ambiguity in certain tax regulations, the taxpayer may apply to the Polish Minister of Finance for an individual tax ruling. Such rulings are issued within 3 months and grant the taxpayer formal protection (i.e. tax authorities are bound by the interpretation of law provided by the Minister of Finance in this ruling).*

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### 1. Direct taxes

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## PERSONAL INCOME TAX-PIT

### BASIC INFORMATION & TAX RESIDENCE

Personal income tax is levied on all natural persons earning income in Poland. Whether their foreign income is also taxable in Poland is decided by the nature of their tax liability which, in turn, derives from their tax residence: for persons with so-called unlimited tax liability (in other words, Polish tax residents), all their income, both domestic and foreign<sup>8</sup>, is taxable

in Poland; this term applies to persons who:

- spend more than 183 days in Poland in the course of the tax year, or
- have their center of vital or economic interests located in Poland.

For persons with so-called limited tax liability (i.e. non-residents), only income derived from Polish sources is taxable in Poland<sup>9</sup>.

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<sup>8</sup> In respect of taxation of foreign income, relevant Double Taxation Treaties apply and are deemed superior to domestic tax legislation.

<sup>9</sup> See above.



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# TAXABLE INCOME

As a general rule, all income is taxable. Income is assigned to specific sources of revenue (i.e. employment, self-employment or capital gains). Taxation rules and rates may differ depending on the particular source.

**Taxable income** is defined as the excess of revenue over the tax-deductible cost within a tax year. In some cases (e.g. dividends) tax is levied directly on the revenue itself, disregarding the costs.

**Tax-deductible costs** for each source of revenue are defined as all expenses incurred for the purpose of earning revenue and maintaining or securing the source of revenue with exceptions listed in the PIT Act. In some cases, the allowed tax-deductible costs are provided as a fixed amount (e.g. for employees) or as a fixed percentage of revenue (e.g. for contracts for the provision of specific work).

# TAX BASE

In general, PIT is calculated as a percentage of taxable income which, in turn, is the excess of revenue over the tax-deductible costs. This may be further reduced by such costs as:

- the amount of obligatory social insurance premiums paid in Poland or other member states of the EU, EEA or

Switzerland within the tax year (for the taxpayer or his associates)

- own expenditure on acquisition of new technologies.

Taxable income of taxpayers conducting business activity is always determined on the basis of their books of account.

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# TAX SCALE

Tax is calculated based on the scale below, comprising two rates: 18% and 32%. The annual tax-free allowance is 3,091 PLN in 2012.

Tax base in PLN		Tax rate
From	To	
0	3,091	0%
3,092	85,528	18%
85,529	∞	32%

The amount of tax calculated in this manner may be reduced by a part of obligatory social insurance premiums paid in Poland or another EU member state. The progressive scale applies to the majority of income earned by natural persons, e.g. from employ-

ment contracts or contracts of mandate. However, persons conducting business activity may opt for flat-rate taxation. In the case of certain income earned by natural persons who are not resident for tax purposes, 20% flat rate tax is applicable.

## FLAT RATE TAX FOR SOLE TRADERS

Sole traders may opt for their income derived from business activity to be taxed at the flat rate of 19%. As taxable income still equals revenue minus tax-deductible costs, the flat rate option does not exclude the opportunity to consider tax-deductible costs in the tax settlements.

Available deductions include:

- the right to carry losses forward (deduction from taxable income)

- deduction of premiums on obligatory pension and disability insurance, illness and accident insurance (from taxable income)
- deduction of premiums on obligatory health insurance (from tax).

Flat rate tax is also available to partners in commercial partnerships, whose income derived in this manner is also deemed as earned in the course of business activity.

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## PAYMENT OF TAX

In the course of the tax year ending 31st December, the taxpayer remits monthly advances and settles the tax in its final amount no later than the end of April of the following year. Exceptions from this rule include lump-sum tax on specific categories of rev-

enues, settled separately from other sources of revenue.

So-called "small entrepreneurs"<sup>10</sup> and taxpayers commencing their business activity may also choose to pay quarterly advances.

## REMITTANCE AND PAYMENT OF TAX

As a general rule, taxpayers are responsible for the calculation and payment of advances and settlement of tax. Exceptions include a few categories of revenue where monthly advances or the tax itself are calculated and remitted by third parties (known as remitters). This applies to income derived from a service relationship, a relationship of employment and its equivalents, disabil-

ity allowances, pensions and benefits from social insurance and most taxes defined as lump-sum payments.

Taxpayers opting for the 19% flat rate on income from their business activity are also responsible for the calculation and payment of their tax. Such income may not be combined with income derived from other sources and taxed according to general principles.

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## SIMPLIFIED ADVANCES

Taxpayers may adopt a simplified manner of calculating and payment of their PIT advances, adopting in respect of each month an amount of 1/12 of due tax reported in the preceding tax year or the tax year before.

## DEFERRED TAX FOR THE FIRST YEAR

The so-called "small entrepreneurs", when commencing their business activity, may take advantage of delayed payment of the tax due for the first tax year. The tax is then settled in five consecutive annual payments.

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<sup>10</sup> Ones who, in the course of at least one of the two last financial years:

- employed on average fewer than 50 staff, and
- reached a net annual turnover from sale of goods, products and services and financial operations of no more than the PLN equivalent of 10 million EUR, or
- the sum of assets on their balance sheet as at the end of such year did not exceed the PLN equivalent of 10 million EUR.

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# CORPORATE INCOME TAX - CIT

## TAX BASE

The tax base is the taxable income, calculated as the excess of revenue above tax-deductible costs. Losses may be carried for-

ward for a period of five years, with no more than 50% of the loss being deductible within a single year.

## DEDUCTIONS

Taxable income may be reduced:

- by up to 10% through deduction of the amount of donations to activities for public benefit or for the purposes of religious worship
- through deduction of 50% of expenditure on acquisition of new technologies

from research and development entities used worldwide for no more than 5 years. This deduction does not affect the right to deduct depreciation write-downs on the value of acquired technologies.

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## TAXABLE ENTITIES

The CIT Act lists a number of entities subject to CIT. This includes:

- legal persons (e.g. limited liability companies, joint stock companies)
- legal persons acting as partners in commercial partnerships
- foreign commercial partnerships, if they are deemed as legal persons in their country of registration and are subject to unlimited tax liability in that country
- tax capital groups.

## LIMITED VS. UNLIMITED TAX LIABILITY

Entities having their management or registered office in Poland are subject to taxation on the entirety of their income irrespective of where it is earned (unlimited tax liability).

Other entities are subject to taxation on the income earned in Poland (limited tax liability).

## TAX YEAR

Corporate income tax is settled for each 12 month period and by default equals the calendar year.

Nevertheless, taxpayers may choose a different period of 12 consecutive months as their tax year.

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## TAXABLE INCOME INCLUDES:

- received money, deemed income, foreign exchange gains
  - the value of things or rights received gratuitously and performances in kind
  - the value of expired or extinguished debt
  - the value of repaid receivables which have previously been written off as uncollectable or extinguished and treated as tax-deductible costs
  - under certain circumstances – input VAT if was previously included in tax-deductible costs.
- As a general rule, business entities are required to report revenues that are due, irrespective of actual receipt. The value of returned goods, granted rebates and discounts is not treated as revenue.

## NOT DEEMED AS REVENUES:

- payments collected or receivables entered into books of account of supplies of goods or services that will be performed in following reporting periods
- payments received to create or increase share capital
- additional capital payments by shareholders to limited liability companies
- repaid or returned loans
- accrued interest on receivables, including loans
- output VAT
- repaid, extinguished or abandoned taxes and charges, if not earlier being treated as tax-deductible costs
- other refunded expenses not treated as tax-deductible costs.

## TAX-DEDUCTIBLE COSTS: CRITERIA

- expenses incurred for the purpose of earning or maintaining or securing a source of revenue and, simultaneously
- expenses not expressly listed as not constituting revenue tax-deductible costs.

## DEPRECIATION AND AMORTIZATION AS TAX-DEDUCTIBLE COSTS

- applies to assets whose price of purchase or manufacture exceeds 3,500 PLN
  - depreciation periods range between 24 months (for intangibles) to 40 years (buildings)
  - land is not depreciated. The cost of its acquisition becomes deductible upon sale.
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# ONE-OFF DEPRECIATION CHARGE

In certain cases, taxpayers are entitled to make a one-off depreciation charge on the initial value of eligible smaller assets, up to a maximum amount set each year (50,000 EUR for 2012).

There is no requirement for the given asset to be depreciated fully; the limit only caps the aggregate amount of depreciation write-downs in the course of the year.

## Eligible entities

One-off depreciation is only available to:

- “small taxpayers” (whose gross annual sales income does not exceed 1,200,000 EUR) and
- those who commence their activity in a given tax year.

## Eligible assets

The assets eligible for one-off depreciation are largely those listed in Groupings 3-8 of the Classification of Tangible Assets.

Exceptions include:

- passenger cars
- buildings and structures
- intangible assets.

## Status as state aid

One-off depreciation qualifies as “de minimis” state aid under EU regulations.

# PAYMENT OF TAX

Corporate income tax is settled annually but advances are paid monthly. Each advance is calculated as the difference between tax due since the beginning of the tax year and the aggregate amount of advances paid to-date. No monthly returns are required.

Optionally, simplified advances may be used in the amount of 1/12 of the total amount of tax due for the last tax year or the year before.

Final settlement of CIT occurs after an annual return is filed before the end of March of the following year.

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## TAXATION OF DIVIDENDS

Dividends and other income derived from participation in profits of legal persons with their registered office in Poland are subject to 19% tax.

In the case of taxpayers with unlimited tax liability in a EU, EEA member state or Switzerland, a "participation exemption" applies to withholding tax on income from div-

idends paid by Polish companies, provided that a shareholder has held, indirectly or directly, at least 10% of the shares in a Polish company for at least two years and is not tax exempt on the entirety of its income.

In other cases, the rate of 19% or the rate provided in the Double Taxation Treaties will be applied.

## TAXATION OF INTEREST AND ROYALTIES

Interest and royalties paid by Polish taxpayers to non-residents are subject to 20% withholding tax. A preferential withholding tax rate of 5% applies to incorporated entities who fulfill the following criteria:

- unlimited tax liability in a EU or EEA member state
- directly holds or will hold for at least two years a minimum of 25% of the share capital of the Polish company or the Polish company holds or will hold for at least two years at least a minimum of 25% of the share capi-

tal of the company receiving the interest and royalties

- a company resident in a EU or EEA member state has not benefited from exemption from income tax on all their income.

From 1 July 2013, when the above conditions are fulfilled, interest and royalties will be exempt from withholding tax. In other cases, the rate of 20% or the rate provided in the Double Taxation Treaties will be applied.

## TAXPAYERS WITH LIMITED TAX LIABILITY

Tax due from investors with limited tax liability in Poland in relation to income earned in Poland is, in most cases, withheld at source and remitted to the Tax Office by entities from whom this income is earned (e.g. in the case of dividends, royalties or interest).

In the case of foreign entities with a permanent establishment in Poland, as defined in Double Taxation Treaties, in respect of income of such an establishment, settlement of tax to be conducted on general terms, as described above.

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## 2. Indirect taxes

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### TAX ON GOODS AND SERVICES - VAT

General information regarding the Polish VAT system

#### LEVYING TAX AND DEDUCTIONS (INPUT / OUTPUT)

Value Added Tax (VAT) is a turnover tax that is generally levied on the supply of goods and services made by an entity conducting business activity. Also subject to VAT is the importation of goods (from outside the EU) and export of goods (outside the EU).

VAT is designed to be paid by the end consumer. The system aims for VAT registered trading entities to be tax-neutral by

offsetting VAT paid on purchases (input VAT) against VAT charged on turnover (output VAT), with the balance being paid to the Tax Office.

All sales conducted by VAT-registered entities must be duly documented with VAT invoices and reported to the Tax Office on a prescribed basis.

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#### VAT RATES

Currently, the standard VAT rate is 23%. However, there are also reduced rates of 8% and 5% applied to certain classes of goods and services. Some goods and services are

tax exempt; these include a range of financial and insurance services. There are also some types of activities which are not subject to VAT.

#### VAT ACCOUNTING AND REPORTING

A VAT payer is obliged to account for, pay and report VAT on a monthly or quarterly basis. Each taxpayer is obliged to account for and pay VAT no later than the 25th day of the following VAT period. VAT is declared on returns (VAT-7) that are filed with the Tax

Office. Taxpayers are also obliged to record their transactions in VAT registers for each accounting period. The compliance process can be outsourced by the taxpayer to an entity specializing in tax accounting services.

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## VAT REFUNDS

Where VAT inputs (paid in the course of purchases) exceed VAT outputs (resulting from sales) in a particular accounting period, taxpayers are entitled to apply for a VAT refund which should be received within 60 days (in some cases, in 25 days provided that additional requirements are met).

In the case that the taxpayer did not carry out any sales transactions within the given period, but made a number of purchases, it is also possible to apply for a VAT refund. However, in such cases, the refund procedure may take up to 180 days.

## VAT SIMPLIFICATIONS, RELIEFS AND OPTIMIZATION

### Electronic invoicing

Polish VAT regulations allow taxpayers to issue and store invoices in an electronic form to save administrative costs and time.

### Electronic tax reporting (e-returns)

Polish VAT regulations allow taxpayers to file VAT returns with the Tax Office in an electronic form.

### Call-off stock simplifications

Polish VAT law enables taxpayers to simplify their VAT accounting in the course of a call-off stock procedure. This procedure allows a foreign entity supplying goods to a call-off stock to avoid VAT registration in Poland (VAT is accounted for by the call-off stock keeper).

### Import VAT simplifications

In some cases of importing goods, Polish VAT law allows full neutrality of transaction (no VAT is required to be paid to the Customs Office but still has to be reported on a VAT return). Application of this procedure requires additional prerequisites to be met.

## Bad debt relief

Where a purchaser fails to pay an invoice, it is possible to apply bad debt relief. The procedure enables the seller to adjust his VAT accounts and receive a refund of output VAT regarding the invoice that has not been paid by the purchaser.

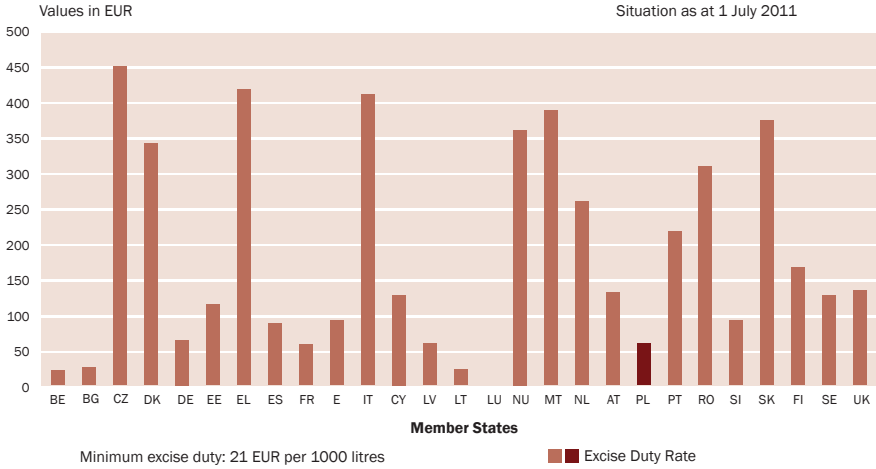
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# EXCISE DUTY

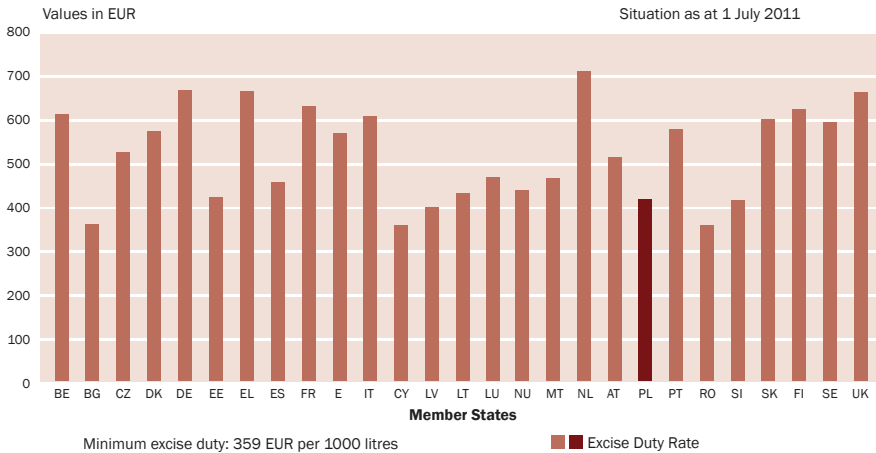
Polish excise duty regulations closely follow EU laws in this respect. Excisable goods include certain fuels (e.g. gasoline, diesel, heating oil, coal), electric energy,

alcoholic beverages, tobacco products and passenger cars. Polish excise duty rates are among the lowest in Europe as illustrated by the graph<sup>11</sup> below:

## Gas Oil (heating "business use")



## Unleaded Petrol



<sup>11</sup> Source: Report of the European Commission of July 2011.

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## EXEMPTIONS

Numerous exemptions apply, including:

- electric energy from renewable sources
- aircraft fuels
- ethyl alcohol (appropriately denatured)
- alcoholic beverages for manufacture of edible goods.

Taking advantage of an exemption is conditional upon fulfillment of registration and documentation requirements.

## SUSPENSION OF EXCISE DUTY

In many cases, payment of excise duty may be postponed under the procedure for suspension of duty, for as long as goods are being moved between tax warehouses prior

to their release for consumption. Application of this procedure is closely monitored by the tax authorities.

## EXCISE MOVEMENT AND CONTROL SYSTEM (EMCS)

Poland monitors movement of excisable goods using EMCS – an electronic system which significantly simplifies the rules for movement of such goods and exercising control of this movement by customs offices. Thanks to the EMCS, the need for tradition-

al paper documentation is now significantly reduced, which speeds up the exchange between businesses. Covering the entire area of the European Union, it allows easy movement of goods between all member states and swift exportation beyond the EU.

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## WHO BENEFITS FROM THE EMCS?

EMCS is used for movement of excisable goods under the procedure for suspension of excise duty, applied when moving such goods (e.g. fuels, alcoholic beverages, tobacco products) between tax warehouses. Such warehouses need not be sited within the territory of Poland. The suspension procedure is also used for moving goods to Poland from tax warehouses located in oth-

er EU member states. It also applies to moving goods both into and out of a tax warehouse in connection with their importation or exportation. Participation in such movement (and access to the system) is also granted to institutions of the European Communities and a number of international organizations.

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## SECURITY FOR EXCISE DUTY

Most entities engaging in excisable activity need to provide security for excise duty. A standard security comprises an average monthly amount of anticipated excise duty. Eligible entities may also request to pay lump-sum security (30% of the standard amount or less) or even be relieved of the requirement entirely.

A major upside to EMCS is that it allows automatic application of security for excise duty to specific batches of goods, while ensuring that the security is released immediately after the goods are collected by the purchaser to be later reused with further batches of goods.

## E-RETURNS

Businesses may opt to file their returns electronically in respect of a wide range of goods - (including a number of engine fu-

els, tobacco, beer, wine, ethylic alcohol or passenger cars). Such e-returns must carry a certified digital signature.

## TAX ON CIVIL LAW TRANSACTIONS TCLT

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### GENERAL INFORMATION

Similarly to stamp duty in many countries, TCLT is levied on transactions where ownership of things and property rights is transferred, including non-commercial loan

agreements, non-commercial sale of goods and services, where neither party is subject to VAT. Increases of share capital are also taxable.

### TAXABLE TRANSACTIONS

TCLT applies to all major acts in law and civil law transactions as listed in the relevant Act, such as:

- sale contracts (including those pertaining to shares in Polish companies)
- exchange contracts
- loan agreements

- mortgages
- partnership deeds
- companies' articles of association.

Changes to the above agreements and court orders having the same effect as taxable transactions are also subject to TCLT.

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## EXEMPTIONS

Exemptions from TCLT include acts in law pertaining to:

- most transactions where at least one of the parties is subject to VAT or VAT exempt
- sale of securities on the stock market
- sale of foreign currencies
- sale of moveable property up to 1,000 PLN
- sale of treasury bonds
- sale in the course of debt enforcement or liquidation proceedings
- changes to articles of association of companies in connection with the merger and restructuring of capital groups.

## TAX LIABILITY

TCLT becomes payable when the taxable event occurs. In some cases, the liability may also arise:

- upon resolution to increase the share capital of a company
- upon making a statement on establishment of a mortgage
- when a court order becomes final and effective
- upon amicable settlement of a dispute.

Should the taxpayer fail to submit a TCLT return within five years after a taxable event occurred, tax will become payable upon making a reference of the event to tax authorities.

## TAXABLE BASE AND TAX RATE

The tax rate differs depending on the type of taxable transaction. Examples include:

- sale of real estate: 2% of the market value of the real estate
- sale of other property rights: 1% of the market value of such rights (this includes shares in Polish companies and other securities)
- loans: 2% of the loan amount
- increase of share capital: 0.5% of the amount of the increase
- contribution to a partnership: 0.5% of the value of the contribution.

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## 3. Social Insurance - ZUS

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### TYPES OF SOCIAL INSURANCE

Most natural persons are, by law, covered by mandatory pension and disability insurance and pay monthly premiums to ZUS – the Social Insurance Institution.

Other types of insurance include:

- illness insurance – granting illness and maternity benefits
- accident insurance – granting benefits

for those injured at, on the way to or from work and those becoming unable to work on account of an occupational disease.

As a general rule, social insurance does not apply to persons appointed to perform functions in management boards or supervisory boards or working on the basis of a contract for provision of specific work.

### MANDATORY SOCIAL INSURANCE

- persons working under an employment contract, contract of mandate or managerial contract (premiums paid by employer)
- sole traders (premiums paid by the insured).

### AMOUNTS OF PREMIUMS

For all the insured, premiums are calculated as follows:

Disability Insurance	19.52% of the base amount
Pension Contribution	8% of the base amount
Illness Insurance	2.45% of the base amount
Accident Insurance	between 0.67% and 3.33% of the base amount, depending on type of activity
Health Insurance	9% of the base amount
Labor Fund Contribution	2.45% of the base amount for pension and disability insurance
Guaranteed Employee Benefits Fund contribution	0.1% of the base amount

The annual base amount for calculating pension and disability insurance premiums is capped at 105,780 PLN for 2012; beyond this threshold premiums cease to increase.

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Social insurance premiums, Labor Fund and Guaranteed Employee Benefits Fund contributions for sole traders are calculated as follows:

Contribution/premium	With voluntary illness insurance (PLN)	Without voluntary illness insurance (PLN)
<b>Social insurance*</b>	<b>678.88</b>	<b>623.05</b>
<b>Health insurance</b>	<b>254.55**</b>	<b>254.55**</b>
<b>Labor Fund</b>	<b>51.83</b>	<b>51.83</b>

\* Accident insurance premium is calculated at the 1.67% rate; may differ depending on nature of activity.

\*\* Amounts for 2012.

## LOWER PREMIUMS FOR SOLE TRADERS COMMENCING THEIR ECONOMIC ACTIVITY

For the first two years of being registered as a sole trader, an incentive is offered in the form of significantly reduced

social insurance premiums. Throughout this period, the base amount becomes fixed at no less than 450 PLN in 2012.

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For 2012, the social insurance premium for such persons may not be lower than (PLN):

**87.84** (i.e. 19.52%) – social insurance

**36.00** (i.e. 8%) – disability insurance

**11.03** (i.e. 2.45%) – illness insurance

Such incentive social insurance premiums apply only to traders commencing business activity, who:

- are not already conducting other business activities as at the day of such commencement and have not been over the past 60 months, or
- do not conduct business activities in favor of a previous employer of the current or previous calendar year, the scope of work for whom would include activities now covered by the business activity.

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## 4. Tax planning

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Investors interested in entering the Polish market may take advantage of a number of solutions allowing them to optimize their overall tax burdens. Through implementation of tailored business structuring solutions to take advantage of relevant provisions of Double Taxation Treaties, one may benefit from:

- exemption from income tax for businesses

- exemption from tax on dividends
- significant reduction of tax burdens on interest.

Moreover, when properly utilizing the exemptions granted to closed-ended investment funds, a business may effectively carry out all of its operational activities in Poland with no corporate income tax whatsoever.

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## 5. Transfer pricing Overview

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Polish transfer pricing regulations for the most part follow the OECD principles and guidelines and are applicable to transaction conditions adopted between domestic or domestic and foreign parties, which are considered related at the level of capital sharing, control and supervision, family or assets.

Documentation requirements apply to transactions between such related parties and allocation of profits to a permanent establishment (since 2007). The documentation is country-specific and must be prepared in Polish.

Related party transactions are examined in the course of tax audits and inspections, which are becoming progressively more sophisticated, as may be generally observed throughout Europe.

Taxpayers may apply for an individual tax ruling in cases of uncertainty in interpreting transfer pricing rules in a particular matter.

It is also possible to obtain official approval in respect of a particular pricing method for related party transactions by means of an Advance Pricing Agreement (APA) with the Polish Minister of Finance. Since their introduction in 2006, APAs have proved a valuable option for multinationals as they provide for the highest level of safety and certainty in respect of the tax status of intragroup transactions in Poland.

With respect to residents of countries being party to a Double Taxation Treaty signed with Poland, general provisions related to permanent establishments and market-driven transaction standards apply. Better cooperation between tax authorities of DTT parties in eliminating double taxation and resolving cross-border tax disputes is ensured under the Mutual Agreement Procedure (MAP), introduced in Poland in 2009.



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## Main themes related to transfer pricing in Poland

### INCOME ASSESSMENT

Income assessment may be applied only when tax authorities are able to prove that a taxpayer, by taking advantage of its connection to its business partner and as a result of such connection, under-reports its taxable revenue on a tax return. Tax authorities, in such circumstances, are entitled to assess the taxable income from a controlled transaction in such amount as would be earned un-

der similar circumstances between unrelated parties (i.e. at arm's length). For this purpose, methods recommended by the OECD are used. Initially, traditional methods (the comparable uncontrolled price, the resale price method, the cost plus method) should be applied. Transactional profit methods (profit split, transactional net margin method) are deemed as methods of last resort.

### WRITTEN AGREEMENTS

With a few exceptions, there are no regulations in law imposing a requirement to state in writing all provisions of intra-group transaction agreements. On the other hand, however, the benefits of possessing such agreements in writing are invaluable. A written agreement constitutes tangible evidence of the transaction and of the man-

ner in which it was carried out. A properly worded agreement may in itself constitute an argument in support of the company's standpoint that the intra-group transaction in question was conducted at market prices. Therefore, possessing agreements in writing for the main transactions conducted between related parties is always advisable.

### DOCUMENTATION REQUIREMENTS

In the case of high value transactions exceeding amounts specified in the relevant act (30,000 to 100,000 EUR depending on the type of the related party transaction), tax auditors may demand the taxpayer to produce particular tax documentation to include all details of the transaction includ-

ing a functional analysis, specification of the applied method of calculating revenue and the adopted economic strategy etc. Professionally prepared tax documentation may, in many cases, significantly reduce the risk of the details of the transaction being questioned by tax authorities.

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Transfer pricing documentation shall include the following particulars:

- specification of the function of each entity participating in the transaction (taking into account the assets and risks involved)
- a specification of all costs anticipated in connection with the transaction and the manner of and deadline for payment
- the method and manner of calculating gains and price specification of the transaction
- a specification of the economic strategy as well as other activities within the framework of this strategy – provided

that the value of the transaction was influenced by such a strategy adopted by the entity

- an indication of other factors – where such factors were taken into account by the entities
- in the case of agreements comprising supplies (including services) of an intangible nature, a specification of the benefits anticipated in connection with receiving such supplies.

The documentation should be produced at the request of tax authorities within 7 days. No other deadline applies.

## ADVANCE PRICING AGREEMENTS

An APA is issued on request by a taxpayer in the form of a ruling by the Polish Ministry of Finance. The taxpayer, in its request, suggests the pricing method for the transaction in question. The taxpayer should also provide a description of circumstances which may affect such a valuation.

There are three kinds of APAs in Poland: unilateral, bilateral and multilateral. APAs are finalized within 6, 12 and 18 months respectively. APAs are valid for up to 5 years (with a possible extension by another 5 years).

The fee for an APA is equal to 1% of the value of the transaction but not more than:

- 50,000 PLN – in case of a domestic APA
- 100,000 PLN – in case of a foreign unilateral APA
- 200,000 PLN – in case of a foreign bilateral/ multilateral APA

The fee for extending the APA is equal to half of the initial payment.

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# 07 ACCOUNTING AND AUDITING

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## BOOKS OF ACCOUNT

Under the Polish Accounting Act (PAA), business entities operating or registered in Poland are required to keep books of account:

- either in the simplified form, or
- comprehensive book-keeping in full compliance with the PAA.

Books of account must be kept in the Polish language and in Polish currency of all business entities. No uniform chart of accounts is defined. With the exception of banks, each entity may freely define its own chart of accounts as long as it fulfills all statutory and reporting requirements.

## MANDATORY COMPREHENSIVE BOOK-KEEPING

Comprehensive book-keeping is required for:

- corporations
  - individuals, civil law partnerships, registered partnerships or professional partnerships, provided that net revenues from sale of goods, products and financial operations for the preceding accounting year amounted to at least the PLN equivalent of 1,200,000 EUR
  - business units operating under the banking laws of Poland, regulations on trading in securities, regulations on investment funds and/or regulations on the organization and operation of pension funds, irrespective of their revenues
  - foreign persons, branches and representative offices of foreign businesses, as defined in regulations on freedom of business activity.
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## INTERNATIONAL FINANCIAL REPORTING STANDARDS (IFRS)

The PAA has been considerably harmonized with IFRS. In Poland, in some cases, it is allowed or even required to use IFRS as the reporting framework.

Banks and entities allowed to trade in the regulated markets of countries of the

EEA are required to prepare consolidated financial statements in compliance with IFRS. Subsidiaries of a foreign entity may also apply IFRS if this entity itself follows these standards.

## FINANCIAL STATEMENTS/AUDITING

Under the PAA, financial statements are prepared as at the date of closing the books of account, in the Polish language and in the Polish currency.

The financial statements consist of:

- the balance sheet
- the profit and loss account
- additional information in accordance with the PAA.

The financial statements of the following entities are to be audited and published:

- banks and insurance undertakings
- entities operating under the regulations on trading in securities and on investment funds
- entities operating under the regulations on the organization and functioning of pension funds
- joint-stock companies, except for companies being in formation as at the balance sheet date
- other entities which, in the financial year prior to the year for which finan-

cial statements are prepared, meet at least two of the following conditions: the average annual number of employees, by full-time equivalents, reached or exceeded 50 people; total assets as at the end of the financial year reached or exceeded the PLN equivalent of 2,500,000 EUR; net sales of products and goods for resale, plus income on financial transactions for the financial year reached or exceeded the PLN equivalent of 5,000,000 EUR.

Financial statements prepared in accordance with IFRS are subject to mandatory audit. Audited financial statements, together with the auditor's report, the resolution on approval of the annual financial statements and distribution of profit or coverage of loss, are submitted to the appropriate court register and to the head of the audited entity for the purpose of publication.

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# 08 OZOG & PARTNERS

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## THE FIRM

For almost a decade, we have provided bespoke tax services to demanding clients. Ozog & Partners was established by Irena Ozog, Ph.D., a former government vice-Minister of Finance responsible for tax matters, to develop a modern and dynamic law firm offering tailored tax solutions. Our reputation for a high level of professionalism coupled with our client-orientated approach, soon established us as a successful and highly regarded tax advisory company which now employs some 40 professionals and specialists. We have a proven track record of successful cases establishing us as a highly credi-

ble authority on tax matters recognized by the Polish tax authorities. We work with both Polish-owned companies and high-net worth individuals, as well as branches of large international corporations seeking a solid partner when entering the Polish market or defending their stance in court disputes with tax authorities.

Ozog & Partners is consistently ranked in the top three tax law firms by the Polish business press, with its partners being recognized as the foremost authorities in their areas of expertise.

## AREAS OF PRACTICE

Ozog & Partners employs tax advisors and litigators whose tax background is coupled with expertise in other branches of the law and economics. The divisional teams at Ozog & Partners are highly experienced with regard to the specifics of conducting business in various market sectors, in particular energy, construction, pharmaceutical, petrochemical, telecoms and government-regulated activities.

In response to a growing demand for bespoke services and a closer client-attorney relationship that is less likely to be found in large international firms, Ozog & Partners has always endeavored to develop long-term relationships, working closely with clients to ensure they achieve their aims and objectives.

Ozog & Partners most significant fields of competence are:

- **legal:** advisory services with regard to various legal aspects, comprehensive legal services including civil, labor, corporate and commercial law as well as litigation and M&A transactions. Our legal department provides clients with extensive support in all aspects of law
- **litigation:** complete representation of our clients during tax, fiscal and customs inspections at all stages as well as throughout court proceedings (including regional administrative courts, the Supreme Administrative Court and the Constitutional Tribunal)

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- **investment:** comprehensive services to entities seeking to take advantage of investment opportunities in Poland, from designing tax optimized structures (utilizing e.g. tax-exempt investment funds for the purposes of their day-to-day operational activities, or benefits granted by Special Economic Zones) to preparation of investment and exit scenarios
  - **tax optimization:** advisory services with regard to tax planning and optimization, including planning, assistance during implementation, tax implications of business restructuring, organizational and capital changes as well as M&A and IPO transactions
  - **risk management:** conducting tax audits aimed at identifying and eliminating errors in financial settlement documentation, optimizing clients' tax policies and business practices in addition to identifying remedies that may be applied to reduce tax burdens and mitigate tax assessments
  - **transfer pricing:** consultancy in the field of transfer pricing for related entities, including preparation of transfer pricing documentation, conducting benchmarking studies, drafting and evaluating agreements within capital groups (including cost sharing agreements) in addition to running training sessions and workshops on the subject of transfer pricing.



## Contact us.

We will be happy to answer any questions you may have.

**Pawel Tomczykowski**  
**Partner**

pawel.tomczykowski@ozog.pl

**Ireneusz Krawczyk**  
**Partner**

ireneusz.krawczyk@ozog.pl

Tax planning and optimization  
Marek Szczepanik  
marek.szczepanik@ozog.pl

Corporate Income Tax  
Piotr Chmielinski  
piotr.chmielinski@ozog.pl

Corporate and labor law  
Agata Pastuchow-Brzezinska  
agata.pastuchow-brzezinska@ozog.pl

Risk management: tax audits and due diligence  
Michal Borowski  
michal.borowski@ozog.pl

IPO and capital restructuring  
Piotr Majewski  
piotr.majewski@ozog.pl

Excise tax  
Pawel Bebenek  
pawel.bebenek@ozog.pl

M&A and organizational restructuring  
Jaroslaw Zemantowski  
jaroslaw.zemantowski@ozog.pl

Special Economic Zones  
Piotr Baraniak  
piotr.baraniak@ozog.pl

VAT  
Joanna Rudzka  
joanna.rudzka@ozog.pl

**Ozog & Partners**

**Warsaw Towers, 39 Sienna St.**

**00-121 Warsaw, Poland**

**tel.: (+48) 22 480 81 00; 480 81 81**

**fax: (+48) 22 480 81 18**

**e-mail: [info@ozog.pl](mailto:info@ozog.pl)**

**[www.ozog.pl](http://www.ozog.pl)**