

# Poland

EWRA



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The primary objective of EWRA Sp. z o.o. is to provide top-level services to the B2B sector, while respecting business relations.

What sets us apart is our longterm experience and expert knowledge. We do not rely on risky innovations because what we value most is the safety of our clients. We offer individual approach and tailored solutions, and our offer includes only what we are truly knowledgeable about and what we have been doing for years.

# Poland Tax Law

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## 12 types of taxes

Polish tax system distinguishes between **12 types of taxes**, including:

### 9 kinds of direct taxes:

- ∴ corporate income tax (CIT)
- ∴ personal income tax (PIT)
- ∴ civil law transaction tax
- ∴ property tax
- ∴ tax on means of transportation
- ∴ Tax on inheritance and charitable donations
- ∴ Agricultural tax
- ∴ forestry tax
- ∴ the tax on owning dogs

### 3 indirect taxes:

- ∴ Value-added tax (VAT)
- ∴ excise tax
- ∴ gambling tax

## CIT

19% CIT is the primary tax on income of legal persons. Taxation with income tax on income of legal persons is governed by the law of 15 February 1992, on income tax of legal persons.

CIT taxpayers are:

- ∴ limited liability companies, joint stock companies and other legal persons
- ∴ capital partnerships in organization
- ∴ limited joint-stock partnerships located or having the Management Board on the territory of the Republic of Poland
- ∴ partnerships without legal personality located or having the Board in another country, if in accordance with the provisions of the tax law of that other Member State are treated as legal persons and shall be subjected to the State tax from the total of their income regardless of the place of their achievement
- ∴ organizational units without legal personality, except for civil partnerships, express, partnerships and limited partnerships
- ∴ tax capital group

The taxable amount is the sum of income derived from capital gains and income from other sources of revenue. In special cases the taxable amount can be revenue.

Income sources on CIT:

- ∴ capital gains - dividends, other income actually derived from the participation in the profits of legal persons and limited joint-stock partnership (SKA), the value of the property received in connection with the liquidation of a legal person or SKA, income from disposal of shares of the companies, income from transfer of claims previously acquired by a taxable person, income from property rights such as copyright or related proprietary rights, licenses, trademarks and know-how, income from securities, derivative financial instruments
- ∴ other income, including from operating activities - other income including the sale of goods and the provision of services, etc

The income from the sources of income is the excess of the sum of revenue from this source of revenue over costs to obtain them, achieved in the fiscal year. If costs exceed total revenue, the difference is the loss of revenue.

Tax deductible expenses are costs incurred in order to achieve or maintain or secure a source of revenue that are not excluded by statute from the tax-deductible cost category. Taxpayers are required to document the costs. The cost of the tax are also expenditures for abandoned investments. The rules contain a list of more than 60 items that are not considered costs for tax purposes.

Expenditures for the acquisition or creation of certain assets are not recognised directly to the cost of obtaining revenue. With respect to these components to the deductible costs include depreciation and amortization. The basis for depreciation is, in principle, the acquisition cost or production cost of amortised component. The regulations provide the following depreciation methods:

- ∴ linear method (as a rule)
- ∴ degressive method - means higher costs in the initial depreciation period (possible for some components: boilers and power machines, basic and specialized machines, devices and apparatus, technical devices, movable and equipment as well as means of transport with the exception of passenger cars)
- ∴ one-time depreciation (for up to 10 thousand PLN)
- ∴ individual rate (for used or improved tangible assets, for example: non-residential building used more than 5 years can be depreciated over 40 years less the full number of years that have elapsed since the date of their putting for the first time to use of entry into the register of fixed assets and intangible assets carried on by the taxpayer, except that the depreciation period shall not be less than 10 years)

Depreciation is not subjected to:

- ∴ land and right of perpetual usufruct
- ∴ expenditures incurred in their acquisition are the cost of the tax at the time of consideration of disposal

Rates and periods of depreciation for tax purposes may differ from accounting depreciation.

Dividends paid by a capital companies located in Poland are subject to 19% tax at source (tax gets the company paying the dividend); dividends paid between Polish companies - are not subjected to the CIT again at the level of the shareholder.

Agreement for the avoidance of double taxation provide for a lower rate of withholding tax for dividends (5%, 10%, 15%), after the fulfilment of the relevant conditions (inter alia the company paying the dividend should have recipient residence certificate).

There is a possibility of exemption of dividends from tax, if the payment of dividends is made to a company subjected in Poland or in another Member State of the European Union, the European Economic Area or the Swiss Confederation, taxation by income tax on its total income, regardless of where the income is earned. The condition for applying the exemption is the uninterrupted two-year holding period of the company receiving the dividend of the required 10% (in the case of a Swiss company - 25%) of shares in the capital of the company paying the amount due.

Legislation provides for a number of CIT exemptions, both subjective and objective.

For example, exempt from tax are investment funds, pension funds, non-profit organizations, church organizations, companies operating in special economic zones after the fulfilment of the relevant conditions. Moreover, CIT is not subject to the agricultural activity, with the exception of income from special departments of agricultural production.

## PIT

Taxation by income tax of natural persons' income shall be governed by the law of 26 July 1991 on income tax from natural persons (Journal of laws of 2018 r. pos. 1509, as amended) and the Act of 20 November 1998 on a flat-rate income tax of some revenues by individuals, which deals with the taxation of among others, leading non-agricultural economic activities, income from lease, sublease, tenancy, subtenancy or other similar agreements, if such agreements are not concluded in the non-agricultural activities .

The tax shall be subject to the natural persons who are residents on the territory of Poland. Natural persons who do not have place of residence in Poland, are subjected to tax only on income on the territory of the Republic of Poland.

Source of revenue subjected to PIT:

- ∴ service relationship and employment relationship, including co-operative employment relationship), retirement or disability pensions
- ∴ activity carried out in person
- ∴ non-agricultural business activity
- ∴ Special departments of agricultural production;
- ∴ the lease, sublease, tenancy, subtenancy and other contracts of a similar
- ∴ character
- ∴ monetary capital and property rights
- ∴ paid disposal of, among other things, real property or parts thereof and real property interests, movables
- ∴ the activities carried out by a foreign controlled company
- ∴ other sources

Natural persons in Poland are subjected to personal income tax calculated, as a rule, according to a progressive tax scale. Tax rates are differentiated by the income earned, understood as the total revenue less the tax deductible costs obtained in the tax year.

In 2018, the personal income tax is calculated using the following tax scale:

| Basis for calculating tax in PLN |        | Tax is   |                                 |
|----------------------------------|--------|--|---------------------------------|
| Over                             | Up to  |  |                                 |
| -                                | 85.528 | 18%  | Minus the amount decreasing tax |
| 85.528                           | -      | PLN 15395,04 gr + 32% of the excess over PLN 85528 |                                 |

Natural persons running business activity shall be taxable according to the scale.

At their request, these persons can tax their income with a 19% flat tax, taking into account the limitations of services for the existing / former employer and management service benefits.

Depending on the size of the business, after fulfilling certain conditions, the taxpayer may submit an application of simplified forms of taxation, i.e.:

- ∴ tax on registered income (tax is calculated without deducting tax)
- ∴ tax card (tax is determined by the tax office depending on, among others, the nature of the business)

The taxpayers of income tax from natural persons can benefit from a range of tax breaks, including among others, from:

- ∴ the deductible contributions to compulsory social security paid in the country and, under certain conditions, paid abroad
- ∴ Internet concessions (with significant limitations for taxpayers who settle online tax relief in previous tax years)
- ∴ Deductibles
- ∴ relieves for individual retirement protection account
- ∴ the deductible contributions to compulsory social security paid in the country and, under certain conditions, paid abroad
- ∴ child tax credit

## VAT

VAT is a tax on goods and services, which is main source of State's income. The taxpayer calculates and pays to the competent tax office. VAT is, as a rule, the difference between the VAT obtained from the sale of goods to customers (output tax) and VAT paid at purchasing goods (input tax).

Subjects wishing to engage in taxed activities by VAT in Poland are required to submit the registration before the implementation of the first taxable steps. If taxpayers wish to make intra-Community transactions, they should be registered as VAT taxpayers in the EU.

The following transactions shall be subject to VAT, among others, the supply of goods and the provision of services, which place of supply is established in Poland. In some cases, free of charge delivery and services are also taxed.

In 2018, the VAT rate applicable to domestic transactions are as follows:

| Category  | VAT rate |
|---|----------|
| <b>Standard VAT rate</b>  | 23%      |
| <b>Reduced VAT rate</b><br>used for deliveries of selected food products, medical devices, catering and hotel services as well as social housing  | 8%       |
| <b>Reduced VAT rate</b><br>used to deliver some food items (including bread, dairy products, meat) and selected types of printed books  | 5%       |
| <b>Tax free</b><br>for example for the supply of certain ships and aircraft, services connected with maritime and air transport, international transport services, services related to exports and imports of goods | 0%       |

Polish regulations regarding the place of supply of services coincide with the solutions adopted in other EU countries.

Taxpayers selling goods to customers in EU countries may apply the 0% rate of VAT on intra-Community supply of goods (ICS).

The zero-per cent VAT rate also applies to exports of goods defined as exports of goods out of Poland outside of the European Union in performance of taxable activities. The export can be both export by the seller (direct export) and by the buyer (indirect export).

In case of acquisition of goods from another EU Member State to Poland, Polish taxpayer is obliged to settle the transaction as an intra-Community acquisition of goods (WNT) on the basis of the so-called VAT reverse charge. This means that taxpayer should show this transaction both on sales (output tax) and has the right to demonstrate it on purchases side (input tax), in the same amount. As a result, the transaction is usually financially neutral.

There is certain group of activities that can qualify for the exemption from VAT. The result of their execution is that the VAT related to their provision cannot be deducted at all or partially. To the specific transactions that are exempt from VAT you can include:

- ∴ financial services (credit, bank accounts, currency exchange) with the exception of leasing, factoring or advice
- ∴ insurance services and reinsurance
- ∴ health services
- ∴ educational services
- ∴ social services
- ∴ services in the field of social security
- ∴ some services in the field of culture or sport

The taxpayer has the right to reduce the amount of VAT due by the amount of input VAT when purchasing goods and services, provided that the purchases are related to VAT-taxable sales.

# Poland Labor law

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In Poland it is possible to employ on employment contract or civil law contract. The provisions of the Polish labor code relate only to persons who are employed on an employment contract. Persons employed under a contract of civil law contract (e.g. contract of mandate, task-specific contract) are not considered as employees and do not apply to the provisions of the labor code.

Work on the basis of an employment contract means that the work is done under the supervision of the employer, at the place and time specified by the employer, that the employer is obliged to pay the remuneration. The name of the contract does not matter, but its content. Which is important, because replacing of civil law contract by employment contract, even though the above conditions are fulfilled, may result in negative consequences for the party employing such persons in accordance with the provisions of the law.

## Employment contract types

All foreigners, EU and non-EU residents, may be employed under the same type of contracts as Polish citizens.

There are three types of employment contracts in Poland:

- ∴ Employment contract for a trial period
- ∴ Employment contract for definite period
- ∴ Employment contract for indefinite period

Employment contract for a trial period can be concluded on up to 3 months. This type of contract may be preceded by employment contract for a definite or indefinite period. Employment contract for definite period may be concluded for a maximum of 33 months. You can conclude up to three such contracts in a row. It should be remembered that a contract that exceeds 33 months or is the fourth contract in a row will be treated as a contract concluded for an indefinite period.

## Employment of foreigners

It is possible to employ foreigners in Poland who holds work permit. This document is issued at the request of employer by the competent local authority (Voivode).

The procedure for issuing such permit takes about 3-4 weeks. Different rules apply to citizens of the Republic of Armenia, Republic of Belarus, the Republic of Georgia, Republic of Moldova, the Russian Federation and the Ukraine. Citizens of these countries can perform work in Poland for a period of not more than 6 months during the 12 consecutive months without a work permit. In this case the employer must only submit the employment Declaration of the intention to employ a foreigner in relevant employment office. In addition, the foreigner must have a document confirming his right to stay in Poland.

A work permit is not required for the citizens of the European Union, the countries of the European Economic Area and Switzerland. The inhabitants of these countries can perform work under the same conditions as Polish citizens. However, if a foreign national (EU citizen) is planning to stay in Poland for more than 3 months, he or she should register at the regional office.

## Employment contract

The employment contract should specify the parties to the contract, type of contract, date of its conclusion, as well as working conditions and remuneration, including in particular:

- ∴ type of work
- ∴ the place where the work is performed
- ∴ remuneration corresponding to the type of work, detailing the components of remuneration
- ∴ time of work
- ∴ the date of commencement of employment

In addition, the employer has to inform the employee in writing, no later than within 7 days from the date of conclusion of employment contract about:

- ∴ the standard daily and weekly working time binding the employee
- ∴ the frequency of wage payments
- ∴ the length of the annual leave to which the employee is entitled
- ∴ the length of the period of notice binding after termination of employee's work
- ∴ each collective agreement covering employee

If the employer is not obliged to set work regulations, he or she should additionally inform the employee about night hours, place, date and frequency of payment of wages and the procedure of confirming the arrival and presence of employees in the workplace, as well as the procedure of justifying their absence from work.

## Wages

Wages in Poland must not be lower than the minimum wage fixed every year by the Council of Ministers. In 2018. Minimum wage is PLN 2100 gross.

The employer is obliged to establish which insurance type is the person employed by him or her subjected to, and also employer has the obligation to report to the insurance and contributions for these people in the term specified by a law. The employer is obliged to pay monthly social security and health insurance premiums as well as income tax advances. The tax advance must be paid by the 20th day of the next calendar month. The social security contribution should be paid by the 15th day of the next calendar month.

The amount of income tax from individuals and contributions due in Poland, depends on the income level. If this income does not exceed PLN 85528.00 income tax is 18%, and if the income is higher than PLN 85528.00 tax is PLN 15395.04 and 32% of the excess over income of PLN 85528.00.



## Termination of contract

There are 3 methods of termination of employment contract in Poland:

- ∴ termination by mutual consent
- ∴ termination with notice
- ∴ termination without notice

The employer may terminate the employment contract without notice:

- ∴ In the event of a serious breach of the employee's basic duties by the employee
- ∴ If an employee commits an offense, which prevents further employment at the given job position - if the crime is obvious or has been declared final by valid court decision
- ∴ If the employee, due to his fault, loses license required to perform work on the given post
- ∴ If the employee is unable to work as a result of the disease:
  - for a period longer than 3 months - if the worker has been employed at given employer for less than 6 months
  - longer than the total period of collecting wages and social and sickness benefits from this account, as well as receiving a rehabilitation allowance for the first
  - 3 months - if the employee has been employed by a given employer for at least 6 months or if the incapacity to work was caused by an accident at work or occupational disease
- ∴ If an employee has justified absence from work with other than the above reasons, lasting longer than 1 month

The employer may terminate the employment contract without notice:

- ∴ if he or she received a medical certificate stating the detrimental effect of the work performed on the health of the employee, and the employer, within the period specified in the medical certificate, did not transfer the employee to another position appropriate to his state of health and the corresponding professional qualifications
- ∴ in case of a serious violation of the basic obligations of the employer, in this case, the employee is entitled to compensation in the amount of salary for the notice period

An employee with whom a contract of employment has been terminated without notice in violation of the provisions on termination of employment contracts is entitled to claim:

- ∴ Restoration to work on previous conditions,
- ∴ Compensation

Upon the return to work or compensation, **the labor court decides**. A labor court may fail to take into account the employee's request for dismissal as ineffective or reinstatement if he determines that it is impossible or pointless to take such a request into account; in this case, the labor court shall decide on compensation.

## Notice period

Employment contracts can be terminated by notifying each party. Notice period depends on the period of employment. Periods of termination of contracts for a definite and for an indefinite period are:

- ∴ 2 weeks if the employee has been employed for less than 6 months,
- ∴ 1 month, if the employee has been employed for at least 6 months
- ∴ 3 months, if the employee has been employed for at least 3 years

In the case of a contract for an indefinite period, termination by the employer should include justification for termination. Polish law does not provide a directory of acceptable reasons for termination of employment, however, indicates that the reason for this must be real, specific and understandable to the employee. This is very important, because many court disputes between the employee and the employer result precisely in this area due to the insufficiently specified reason for terminating the employment contract to the employee.

In the case of contracts for a trial period, notice periods are:

- ∴ 3 business days if the trial period does not exceed 2 weeks
- ∴ 1 week if the trial period is longer than 2 weeks
- ∴ 2 weeks, if the trial period is 3 months

## Time of work

In Poland the working time should not exceed 8 hours per day and an average of 40 hours on average five-day work week. **For work performed beyond normal working time employee is entitled to additional compensation.** Other systems, which allow to extend daily working time, can be entered, but this depends on the fulfilment of specific conditions which are mentioned in the Polish labor code.

## Holiday

The employee is entitled to annual paid leave of 20 days-if the employee has been employed for less than 10 years or 26 days if the employee has been employed for at least 10 years. The periods of employment include, for example the time spent at university.

During the employee's inability to work, the employee retains the right to remuneration. The salary is due in the amount of 100% or 80% of the normal salary depending on the cause of the incapacity to work. The employer is obliged to pay remuneration for the first 33 days of inability to work in a given calendar year. If the incapacity to work lasts longer, the employee is entitled to sickness benefit paid by the social security institution (Social Insurance Institution - ZUS) for a period of up to 182 days.

In Poland employee can be given so called unpaid leave . A period of unpaid leave is not counted into the period of employment.

## Health and Safety

The employer is obliged to protect the health and life of employees by ensuring safe and hygienic working conditions. In particular, the employer is obliged to organize work in a way that ensures a safe and hygienic working conditions, provide employee training regarding occupational safety and health before allowing it to work and conducting periodic training in this regard, training in the field of safety and health at work to the extent necessary to perform the obligations incumbent on it duties, familiarize employees with the principles of safety and health at work concerning the activities performed by them.

Violation of workers' rights under provisions or rules of occupational health and safety may give rise to criminal or non-pecuniary liability.

## Temporary employees

The employment of temporary employees is regulated by a separate act - of July 9, 2003 on the Employment of Temporary Agency Workers. In accordance with the Polish law of the employment, temporary contract shall be understood as:

- ∴ seasonal, periodical or occasional work; or
- ∴ work that the employees of the user's enterprise would not be able to do on time; or
- ∴ work that falls under the responsibility of the employee of the user's enterprise who is absent

The Act adopted the characteristic for temporary employment of three entities: employee, temporary employment agency and employer:

- I. the temporary employment agency runs a contract with the employer's enterprise, specifying the employment rules for the temporary employee
- II. the temporary employment agency employs a temporary employee
- III. temporary employment agency appoints a temporary employee to perform temporary work for the employer's enterprise

It should be noted that the temporary worker remains an employee of the temporary employment agency. But, it is the employer's enterprise that instructs the temporary worker, and then oversee its operation.

It should be noted that unless the legislation provides otherwise, the provisions of the labor law concerning the employer and employee shall apply by analogy to temporary employment agencies, temporary agency worker and the employer's enterprise (with some exceptions).

# Poland

# Foreign Investments

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The main basis for doing business in Poland is the Act of 2 July 2004 on Freedom of Economic Activity In Poland, business activity can be carried out in forms similar to those existing in other European countries. Among the available activities can be distinguished:

## **1.1 trading companies, divided into:**

### **1.1.1 capital company**

(company with limited liability and joint-stock)

### **1.1.2 A partnership**

(general partnership, partnership, limited partnership, joint stock partnership limited by shares)

## **1.2 branch of a foreign entrepreneur**

## **1.3 delegation of foreign entrepreneurs**

## **1.4 individual business activity**

(including within a civil partnership)

In Poland there is a principle on freedom of establishment. Means that everyone has the right to take the business activities of their choice. This rule is not of absolute character, because the rules sometimes allow only some of the parties to carry out certain activities, or indicate additional restrictions as to the subject matter of your business.

## **Subject limitations**

On the same basis as Polish citizens (and therefore for example in terms of the form of business), the business activity may be taken and performed by physical persons, legal, and other organizational units having legal capacity of the Member States of the European Union, Norway, Iceland and Liechtenstein;

from States not party to the agreement on the European Economic Area, on the basis of the agreements concluded by those States with the European Union and its Member States, as well as other citizens of countries other than the afore mentioned, if you hold in Poland a permanent residence permit, residence permit a long-term resident of the European Union, a temporary residence permit (in certain circumstances, provided for in the law on aliens), refugee status, subsidiary protection, permission to stay humanitarian or consent for tolerated stay, a temporary residence permit and are unmarried, with Polish citizen residing in Poland, a temporary residence permit in order to carry out business activity, use temporary protection in Poland, in possession of a valid Card of the Pole.

### Object limitations

In terms of object limitations, the most important are those imposing an obligation on the entrepreneur to obtain a prior administrative decision authorizing him to undertake a given activity. Licences are issued in the areas of business activity that have special importance due to the safety of the State or citizens or other important public interest. The requirement to obtain a license concerns among others the activity of:

- I. Exploration, pre-production development stage of hydrocarbon and permanent minerals under mining ownership, mining exploration or recognition of the underground storage complex of carbon dioxide, the extraction of minerals from deposits, underground tank-less storage of the substance, the underground storage of waste and underground storage of carbon dioxide
  - II. Producing and trading of explosives, weapons and ammunition as well as products and technology for military or police purposes
  - III. Manufacturing, processing, storage or handling, transmission, distribution and marketing of fuels and energy
  - IV. Protecting people and property
  - V. Running a casino.
- Another manifestation of the subject limitation of economic freedom is the requirement for the entrepreneur to obtain an approval, license or consent (hereinafter collectively “permits”)

The permit allows to take and execute a specified business activity if the entrepreneur commits to the law requirements (eg. activities in the field of collective water supply or collective wastewater volume). The permit is granted to the entrepreneur after it had been determined that he or she meets the conditions set out in the Act. These conditions may include, inter alia, the protection of human life and health, safety and public order, a State secret and the specification of the business activities covered by the permit.

### Acquisition of real estate by foreigners

The acquisition of property right by a foreigner or the right of perpetual usufruct of real estate and the acquisition or placing of shares or stocks by a foreigner in commercial companies established in the territory of Poland which is the owner or user of perpetual real estate located in Poland requires the authorisation of the Minister of Internal Affairs.

The obligation to obtain permit exists, if by the acquisition of shares in a company, the owner or perpetual user property, the foreigner takes control of it. The necessity also exists when the company is already controlled, and shares or stocks are acquired or included by the foreigner who is not a partner or a shareholder of the company. In the case of a commercial company, such a company is considered to be controlled, in which the foreigner or foreigners have directly or indirectly more than 50% of votes at the meeting of shareholders or at a general meeting or have a dominant position according to provisions of The Commercial Companies Code.

Minister of Internal Affairs may grant a permit to foreigner in order to acquire real estate or the acquisition of shares, if there is no probability of threat of national security or public order, as well as when it shows, that the circumstances confirming his ties with the Republic of Poland.

### Antitrust

When running a business activity in Poland, it is necessary to take into account the applicable antitrust regulations, which may constitute some restrictions for foreign investments.

Intention of concentration should be notified to the President of the Antimonopoly Office (the “UOKiK”), if the aggregate global turnover of the participating entrepreneurs in the fiscal year preceding the year of notification filing year exceeds the equivalent of 1 billion euros, or total turnover on the territory of Poland of entrepreneurs participating in the concentration in the fiscal year preceding the year of the declaration exceeds the equivalent of 50 million euro. The Act of February 16, 2007, on Competition and Consumer Protection predicts situations in which the requirement of notification is off, namely when the entrepreneur’s turnover, over which control is acquired has not exceeded, on the territory of Poland, in any of the the two financial years preceding the declaration the equivalent of 10 million euro or the linking applies to entities belonging to the same group.

### Exchange controls

Foreign exchange transactions with foreign entities are allowed in principle. Polish law imposes specific obligations on entities that make settlements in foreign currency. Restrictions on the freedom of making settlements in foreign currency is subject to among others exports, sending and forwarding by residents to third countries national or foreign means of payment for access to or extension of business activity in these countries, the acquisition by residents, both directly or through other entities shares and shares in companies established in the third countries, as well as the placement of shares and shares in such companies, the disposal by residents, both directly and through other entities in the third countries securities, opening by residents, both directly and through other entities, accounts in banks and branch offices of banks established in the third countries.

There are certain limitations to performing activities related to settlements in foreign currency with abroad. Namely, residents and non-residents exceeding the State border are obliged to report in writing to the Customs authorities or the border guard authorities, imports into the country and exports abroad among others, national or foreign means of payment, if their value exceeds the total of the equivalent of 10.000 euro. Residents and non-residents are required also to make money transfers abroad and in the country related to the foreign exchange trading through the authorized banks or national payment institutions or branches of EU institutions. If the amount of the payment or the settlement exceeds the equivalent of 15.000 euro.

### Withholding tax

Income disbursed in Poland on shares in the profits of legal entities, interest, licence fees and remuneration for the services of intangible assets are subject to withholding.

As a rule, the withholding tax rate on dividends is 19%, with double taxation treaties may provide for a lower rate (5%, 10%, 15%).

Interests and licence fees are subjected to 20% withholding tax in Poland, the agreement for the avoidance of double taxation may provide for a lower rate (5%, 10%, 15%). Interest and licence fees may be in some cases exempt from withholding tax in Poland, if you are paid by a capital company located in Poland for the companies established in the territory of another than Poland EU/EEA country or Switzerland. However, it is necessary to hold a current certificate of tax residence of the recipient.

Payments for intangible services, such as consulting services, advertising, data processing, are subject to 20% withholding tax, subject to the provisions of agreements to avoid double taxation. It is possible not to charge 20% withholding tax, if the paying agent has a current certificate of fiscal residence.

# Poland Real Estate

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The transparency of the law on real estate in Poland ensures the functioning of the land registers on the basis of the judicial register run also in electronic form.

The main law regulating the ownership and other rights in rem in immovable property is the civil code and the law on land registers and mortgage. Polish system of law in addition to ownership provides, so called, lease, use of the perpetual usufruct, tenancy and rental as legal titles to utilization of property.

The right to property, servitudes and perpetual usufruct are disclosed in land register, for real estate. The registry is the legal guarantee for the buyer of real estate, that the rights registered exist.

## Ownership right

Ownership right is the most complete ownership title. The owner may own and use, profit and revenue, encumber, transfer, and disposal of property, subjected only to the statutory restrictions.

Ownership of the land in the space above and under the ground, however, specific provisions authorise exceptions in this respect. The property may be subjected to co-ownership.

In addition to the traditional forms of real estate's transfer (e.g., sale, donation, inheritance), property can be purchased by the passage of time, by acquisitive prescription. Depending on whether the possession of real estate is in good or bad faith, ownership can be obtained after twenty or thirty years.

## Right of perpetual usufruct

The right to usufruct provides substantially similar rights as the right of ownership. Usufruct can pass a perpetual or impose their law, as well as protect his or her title to the property through legal action on the same conditions as the owner. Perpetual usufruct can freely build on the property, and each built design becomes usufruct-owned perpetual. Perpetual usufruct pays annual fees for the usufruct to the State Treasury. The right to perpetual usufruct may be granted for a maximum of 99 years and not less than 40 years, with the law to extend for an additional period of from 40 to 99 years.

## Use

The property can be ordered to use, which gives the holder the right to use and collect the profits, but does not affect the ownership title in other way.

## Servitudes

There are land servitudes and personal servitudes. Servitude encumber the real estate on which it was established. Establishment of servitude is recorded in the land register.

## Rental

By the rental agreement, the lessor agrees to give the lessee thing to use for specified or not specified period of time, and the lessee agrees to pay the lessor the agreed rent (art. 659 § 1 of the Civil Code). The lease of real estate or premises for more than a year should be concluded in writing. In case of not using this form the agreement is considered to be concluded for an indefinite term. During the duration of the contract the lessee shall be obliged to use things in the way provided in the contract, and in the absence of such provisions in the contract itself how to use should correspond to the characteristics and purpose of things. Lease of real estate provides a contractual right to use it for a definite or indefinite period of time in return for rent. In contrast to the ownership, lease does not provide full legal title to the property.

The Civil Code contains specific rules on renting. Those policies apply to the rental of all types of premises; However, they are further modified by the law on the protection of the rights of tenants, which apply to privately-owned dwellings.

## Lease

This agreement, in which the lessor agrees to give the ground to a legal or natural person to use and beneficial use for definite or indefinite period, and the lessee is obliged to pay to the lessor the agreed rent (article 693 of the Civil Code). A lease concluded for more than thirty years after that time is considered to be concluded for indefinite term.

The lessee should execute their right in accordance with the requirements of the normal economy and cannot change the destination of the subject of lease without the consent of the lessor. Without the consent of the lessor lessee may not give the subject of the lease to a third party to use it or sub-lease it.

## Property register. Land register

Land register is the main source of information regarding legal status of the real estate entered in it. In accordance with Polish law, it is assumed that entries made in the register are correct and consistent with reality. Since the register is publicly accessible, no one can claim that he or she did not know the legal status of the property. Currently, as a rule, all properties already have electronic access to the land register. The content of the land register is also available in the district court, where person can obtain extracts from the documents (upon request), and also view the documents relating to the property.

It is obligatory to enter every transfer transaction of legal title to the property in the land register. However, there may be some gaps in the content of some land registers to this day. Land register is divided into four sections:

- I. **Section one** - Regarding property identification (i.e. parcel numbers, area), as well as rights related to this property,
- II. **Section two** - Legal title to the real property (ownership or perpetual usufruct)
- III. **Section three** - Restricted ownership (charges other than mortgages) and personal rights and claims regarding real estate, e.g. lease agreements, pre-emption rights
- IV. **Section four** - Mortgages

## Land and property register

Land and property register is carried out by the municipalities for the purposes of spatial, planning, determination of real estate in the land register, and for statistical and tax purposes. From the point of view of investors, records in land and property register are especially important when the property is not covered by the spatial development plan. In this case, records regarding land and property register concern decision whether the property was classified as an agricultural area with certain restrictions on the transfer of ownership.

## Real estate transfer

The transfer of real estate rights can take place in various ways, However, the most common is the sale of real estate. The choice of how to transfer the rights to the property depends on the business or legal factors.

In the case of transfer of the property, it is necessary for the conclusion of the agreement in front of notary in the form of a notarial deed. The conclusion of the contract may be preceded by a contract conditioning the transfer of rights to real estate in the future, so-called preliminary agreement.

After fulfilment of the conditions precedent, the parties must then conclude final transfer agreement.

## Property tax

Property tax shall be subjected to:

- ∴ land,
- ∴ buildings or parts of them and
- ∴ buildings or their parts related to running a business activity (held by entrepreneurs).

The height of the real estate tax rates shall be determined by the Council of the individual municipalities. However, maximum rates of property tax is limited by law.