

Doing Business in Poland

This document describes some of the key commercial and taxation factors that are relevant on setting up a business in Poland.



Background

Country overview

With population of 38.2 million, Poland is the sixth largest state in the European Union. Most Poles live in towns and cities. Polish is the official language, the most popular second languages spoken are English, German, and Russian.

Economic overview

Poland's GDP (PKB) increased by 3,2% y/y in FY 2017 (estimates by Polish Statistical Office).

Within the framework of EU subsidies programs for 2014-2020, Poland will have been granted about EUR 82.5 billion from the new EU budget. This amount will be allocated to various undertakings, including enhancing economic innovation and competitiveness, enhancing social and territorial cohesion, and increasing state efficiency. Polish economic development has surpassed the expectations of the European Commission.

Transport infrastructure

Poland is an important transit country with still insufficient but steadily expanding network of roads. In the north Poland has harbours, including those in Gdańsk and Gdynia, and the Government invests in airports, railway, and road networks. This year (2017) the government plans to hold tenders for the construction of 900km of roads.

Choice of Legal Form



Limited liability company (Spółka z ograniczoną odpowiedzialnością)

Foreign capital participation is allowed up to 100%, except for certain types of activity. The minimum initial capital is 5 000 PLN.

Limited liability companies may be founded by one or more persons for any legal purpose. They may have only one shareholder, though they cannot be formed solely by another limited liability company with one shareholder.

The shareholders who are also management board members have civil, tax, and criminal liability imposed on them by law.

Changes from 4/1/2016 introduced the possibility of making some resolutions, including amendments to the articles of association and submitting financial

reports on the Internet, and the appointment of a proxy via the Internet (for new companies since 1/15/2015).

Joint-stock company / Public limited company (Spółka Akcyjna)

Foreign capital participation is allowed up to 100%, except for certain types of activity.

In many ways, it is similar to a limited liability company, although a few differences exist:

- the minimum aggregate issued share capital is PLN 100.000,00 and the minimum nominal value per share is PLN 0.01,
- a supervisory board, in addition to a management board, must be appointed,

- management is more formal,
- this form is required by law for some businesses (e.g. banks, insurance companies), and is common where the company is planning a floatation on capital markets,
- it must audit its financial statement annually.

A joint-stock company is founded by at least one individual or legal entity. A joint-stock company may not be established solely by a single limited liability company. There are no requirements concerning residence status or nationality.

Unlimited partnership (Spółka cywilna)

Partners of an unlimited partnership are obliged to strive to achieve a common economic goal. Partners are jointly and severally liable for the liabilities of the company.

Each partner is entitled and obliged to manage the affairs of the company and authorized to represent the company in the extent that they are authorized to conduct its affairs.

It is possible to release certain partners from the participation in the losses but not in profits. The division and payment of profits may be claimed by a partner only after the dissolution of the company.

General partnership (Spółka jawna)

A General Partnership has no legal personality. A General Partnership can acquire, on its own behalf, various rights, including property rights and other rights in rem, and can incur liabilities. The partners in a general partnership are jointly and severally responsible for the company's liabilities, to the extent of all their assets without limitation.

Limited partnership (spółka komandytowa) and limited joint stock partnership (spółka komandytowo - akcyjna)

This type of partnership does not have legal personality. The name of the limited partnership should contain the name of one or more general partners (natural persons or legal entities) and the designation "limited partnership", or the abbreviation "LLP" (Sp. k.). In terms of liability, there are two types of partners. The personal liability of one type of partner is limited to a determined amount, which is specified in the articles of incorporation. These partners are not liable above the amount contributed to the partnership. A partner whose liability is limited may represent the company within the limited scope of their power of attorney that is granted to them by the company. The other type of partners are liable jointly and severally for all the partnership's obligations and their liability is unlimited.

The Limited Joint Stock Partnership is a combination of a joint-stock company and a limited partnership but it does not have legal personality. Like the limited partnership, there are two types of partners in terms of liability for the firm's obligations: one who is liable in an unlimited way (partner) and the other who enjoys limited liability and is obliged to purchase shares, the legal status of the latter being the same to the one in a joint-stock company (shareholder). For corporate income tax, a Limited Joint Stock Partnership is considered a full legal entity and pays Companies Income Tax.

The partnership is represented by the partners, while shareholders have no power of representation, unless by power of attorney. Partners are authorized to manage the partnership. The minimum share capital is PLN 50.000,00 and it may be paid up in cash or in kind.

Professional partnership (spółka partnerska)

This structure is designed for entrepreneurs who intend to run a business as a freelancer such as a lawyer, dentist, architect, accountant, tax adviser or others as listed in the Commercial Companies Code. This partnership is not equipped with legal personality. Partners who wish to establish such a partnership must obtain a license in their discipline.

Partners are liable for the partnership's liabilities with all personal assets. However, they are not liable for obligations arising from the performance of a freelance profession by the other partners or by persons who execute their commands in the provision of services.



Subsidiary (spółka zależna)

Subsidiaries may be formed by local or foreign entities from EU countries, member countries of the EFTA – parties to the Agreement on the European Economic Area as well as foreign persons from countries which are not parties to the Agreement on the European Economic Area, but which may, based on agreements between these countries and the European Community, take up business activity in Poland.

The citizens from other countries than mentioned above may take up business activity in Poland if they have, inter alia, a settlement permit, a long-term resident of the European Communities permit, a residence permit for a specified period of time, a residence permit for a specified period and remain married to a Polish citizen residing in Poland, have been granted a temporary protection, or possess a valid Card of the Pole. Other foreign entities may take up business activity only in the form of a limited partnership, a limited joint stock partnership, a limited liability company or a public limited company. Also, they are eligible to join companies, or acquire shares in them.

Sole proprietorship (działalność gospodarcza)

This is a common form of business activity, popular especially among physical persons and small entrepreneurs. It is regulated by the Act on Freedom of Economic Activity. A person carrying on a business

activity in such a form uses their name or a special name of the enterprise. The sole proprietor's liability for their business obligations is unlimited. To set-up the business, they must apply to the Business Activity Central Register and Information Record (CEIDG).

Branch office/Representative office (oddział/przedstawicielstwo)

Foreign investors may establish branches in Poland to conduct the same business as the foreign investor. From a legal point of view, the branch is part of the foreign enterprise and does not have its own legal identity. Consequently, the liability for the branch offices obligations lies with the establishing company. A branch office is registered in the National Court Register under the name of the foreign investor together with the words "Branch in Poland" (Oddział w Polsce).

A representative office may be established only for advertising and promotion of foreign business. It requires registration in the Register of Representative Offices of Foreign Entrepreneurs kept by the Minister of the Economy.

Foundation (fundacja)

A foundation may be established to achieve the objectives which are socially or economically useful, in particular: healthcare, development of economic and science, education, culture and arts, social welfare, protection of the environment and preservation of historical monuments.

Foundations may be established by individuals regardless of their nationality and place of residence and by legal persons which have their registered offices in Poland or abroad. However, the registered office of a foundation must be located in Poland.

Foreign foundations with registered offices abroad may establish a representative office in Poland. Establishment of a representative office requires permission, which indicates a consent to take up the business activity.

In practice, foreign investors usually choose to operate as Limited Liability Companies or Branch Offices. It is important to bear in mind that similar requirements concerning bookkeeping and tax obligations apply to both forms of business with foreign capital involved.



Audit Requirements



According to the Polish Accounting Act, the annual consolidated financial statements of capital groups, as well as the annual financial statements of the entities which carry on their own business activity, must be audited if the entity is:

- a bank, an insurance agency and a reinsurance agency,
- a savings and loans co-operative society,
- an entity which operates in accordance with regulations regarding trading in securities and operations of trust funds,
- an entity which operates in accordance with regulations regarding organization and operation of pension funds,
- a joint-stock company (except for companies in organization on the balance sheet day),
- any other entity in which, during the previous financial year, at least two of the three following conditions are met:
 - a) an average of 50 full-time employees,
 - b) total assets of the balance sheet at the end of the financial year equivalent to EURO 2 500 000 (in Polish zloty),
 - c) net revenues from sales of goods and products and financial operations for the financial year equivalent to EURO 5 000 000 (in Polish zloty) or more.

Taxation



Corporate income tax

Corporate Income Tax is imposed on the following entities:

- legal persons,
- organizational units other than companies without legal personality, but including capital companies in formation, and limited joint-stock partnerships having their registered office or management located in the Republic of Poland,
- tax capital groups

According to the general principles, the subject of the income tax is the income, regardless the type of revenue sources from which it has been earned.

The tax rates are the following:

- 19% of the tax base
- 15% of the tax base in the case of small taxpayers and start-up taxpayers in the tax year in which they commence their activities.

A foreign entrepreneur who runs a branch or a representative office is subject to Corporate Income Tax in Poland in respect of the income earned in Poland, unless otherwise specified in an international treaty on avoidance of double taxation.

The taxable base is the difference between the revenues and the tax-deductible costs incurred in the tax year. When the difference is negative, it constitutes a tax loss.

Personal income tax

A taxpayer of the Personal Income Tax is a natural person generating taxable income in Poland.

Polish law allows the possibility of a joint settlement for spouses, provided that the appropriate application is filed.

Individuals whose place of residence is Poland are subject to unlimited tax liability. They are liable to tax on their entire income regardless of where it is generated.

Individuals are regarded as Polish residents if:

- 1) they have, in Poland, their centre of personal or economic interests (centre of vital interests)
- 2) they are present in Poland for a period exceeding in the aggregate 183 days in the fiscal year;

Individuals who do not have a place of residence in Poland are liable to tax only on the income earned in Poland (limited tax liability).

In principle, all the income of the taxpayer established in Poland is taxed.

If the taxpayer earns income from more than one source, the total amount of income derived from all the sources is subject to taxation in the fiscal year.

Income is defined as an excess of revenues derived from a source over tax deductible costs generated in a tax year. If the costs exceed the revenues, a loss is generated from a given source.

Value added tax

The Value Added Tax on goods and services was introduced into the Polish legal system in 1993. The following transactions are subject to VAT taxation:

- 1) a supply of goods or services for consideration within Poland;
- 2) export of goods;
- 3) import of goods within Poland;
- 4) intra-Community acquisition of goods for remuneration in Poland;
- 5) intra-Community supply of goods.

The basic VAT tax rate in Poland is 23%. The legislature provided also for the reduced tax rates of 8%, 5% and 0%.

The tax base of VAT is the amount which constitutes consideration paid or owed in return for the supply of goods or services, including the obtained grants, subsidies and other payments of a similar nature which affect the price of goods.

Tax on civil law transactions

TCLT is imposed on transactions where ownership of things and property rights is transferred but neither party is a VAT payer. Increases of share capital are also taxable.

TCLT applies to all major transactions, such as: sale contracts (including those pertaining to shares in Polish companies), exchange contracts, loan agreements, mortgages, partnership deeds, and companies' articles of association.

The tax rate depends 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.

In terms of the articles of incorporation, the TLC tax can be refundable in two cases. Firstly, if the company has not been registered in the register of entrepreneurs; secondly, if the increase of the share capital is entered in the Register of Entrepreneurs in the amount lower than the amount specified in the relevant resolution - in such case the tax will be refunded in the part in which the actual increase of the capital differs from the amount previously set in the resolution.

Real estate tax

This tax is imposed on natural persons, legal entities and organizational units, including partnerships without legal personality, who own or possess real property or perpetually use land. Taxable real estate includes land, buildings and parts thereof, as well as fixed installations used for business activities and parts thereof.

The tax base varies depending on the category of real property. Rates are fixed amounts per area unit or percentages in case of fixed business installations.

They are prescribed in resolutions of community councils within statutory limits. The qualification of the property and its use influence the rates (higher rates apply to business property and lower rates to dwelling).

Vehicle tax

Vehicle tax is determined by a commune council, but it cannot be higher than limits given by the legislator. Within the scope of taxation are lorries over 3.5 tons, trailers, and buses. The tax base is the admissible total weight of a vehicle for lorries and trailers, and number of seats for buses.

Transfer pricing rules

Transactions between related parties should be conducted in accordance with the arm's-length principle. The tax authorities can increase the taxable base if the pricing used between related parties differs from that which would have been used between unrelated parties in a similar business transaction, and if the difference results in income being shifted from a Polish taxpayer to another entity (whether a Polish resident or not). The Polish Corporate Income Tax Law also contains detailed and restrictive requirements for transfer pricing documentation. The documents must be presented within seven days from the notice of inspection and a penalty tax of 50% is imposed for incomplete or improper documentation.

Allowances

Depreciation

The popular method of depreciation in Poland is the straight-line method. Depreciation maximum rate for buildings is 2.5% per annum, computers 30%, vehicles 20%, and for machinery and equipment is 7-25%.

Small entrepreneurs (legal and natural persons) with a turnover of less than 1,2 million Euros may fully depreciate the value of the fixed assets less than 50 000 EURO in one year.

Investment allowance - special economic zones

The Special Economic Zones are areas of the country where investors may carry out their economic activities by obtaining income tax relief (CIT or PIT) on the income earned from activities conducted in the zone and defined in the SEZ permit. The aim of the SEZ is to enable regions to develop more rapidly.

The benefits of operating within the SEZ are as follows:

- Tax exemption (CIT or PIT, depending on the form of business activity of the entrepreneur) on income derived from activity exercised in the territory of the SEZ and indicated in the permit in the amount from 15 up to 50%;
- Availability of attractive and already developed land plots with all necessary infrastructure;

- Possibility of real estate tax exemption;
- Administrative support granted by the management companies of the SEZ regarding legal issues.

On the other hand, the disadvantages of operating within the SEZ are as follows:

- Obligation to make investments and operate for at least 3 or 5 years;
- Obligation to pay a zonal (administrative) fee to cover the administrative costs of the management company of the SEZ;
- Additional reporting obligations;
- Additional verifications and inspections related to compliance with the conditions set out in the permit and aimed at assessment of the correct use of the public aid;
- Requirement of keeping separate accounting books.

Employment



Social security system

Under the Polish social insurance system, the following types of insurance can be distinguished:

- Old-age pension insurance
- Disability insurance
- Medical (sickness) insurance
- Work accident insurance

The employer is required to calculate, deduct and pay the correct amounts of insurance contributions. The employee is covered by the following compulsory insurance: old-age pension, disability, sickness and work accident until the date of termination of employment.

Employment of foreign personnel

Foreigners who are citizens of the EU or EEA member states, citizens of countries entitled to freedom of movement based upon an agreement between their home country and the EU, or who hold a long-term EU-resident permit of the Republic of Poland, hold refugee status in Poland, have been granted supplementary protection in Poland, and other persons meeting certain criteria may be employed in Poland. In some cases, a work and residence permit must be issued, although representatives of some professions are exempt from work permits.

Employers wishing to hire foreign personnel must comply with certain minimum wage regulations, and the value of the remuneration must be stipulated in relation to the wages of Polish employees holding equivalent positions and/or wage levels in the given province.

Withholding Taxes



Certain types of services, although provided by a foreign entity, are subject to taxation in Poland. This includes, for example, interest, copyright or other related rights, consultancy, accounting, marketing research, legal services and advertising services.

It is possible to apply the tax rate resulting from the applicable agreement on avoidance of double taxation, or not to pay any tax on condition that a relevant certificate of fiscal residence has been obtained. The general tax rate is 20%. The certificate of fiscal residence gives the opportunity to lower the withholding tax to the amount of the reduced tax rate provided for in the relevant international double taxation treaty, or even to enjoy a full tax exemption.

Miscellaneous



Double taxation avoidance treaties (DTT)

Poland has concluded double taxation treaties with 89 countries providing for both individual and corporate operations.

The transfer of a Polish asset (e.g. real estate, shares of companies owning real estate, shares listed on the stock exchange) by a non-resident investor to another non-resident investor appears to be subject to Polish taxation, even though there is no mechanism for assessment and collection of the tax. Therefore, particular attention must be paid to the capital gains provisions of the treaty.

For interests, royalties and dividend payments, the withholding tax in Poland of basic rates 20 and 19% respectively may be lowered by a DTT (in most cases to 5%, 10% and 15%), if the recipient holds a certificate of tax residency. In some cases, exemptions are also provided.

This document is provided by Audyt i Doradztwo Pawlik, Modzelewski i Wspólnicy sp. z o.o. and IC & Partners Poland S.A. as a general overview of matters to be considered when setting up an overseas business in Poland. It is essential to take advice on specific issues. No liability can be accepted for any action taken or not taken arising from the information provided in this publication.

If you are setting up a business in Poland, the members of DFK International can help you to achieve this efficiently. You will receive practical advice on business issues, tailored to meet your objectives, from experienced business advisers.

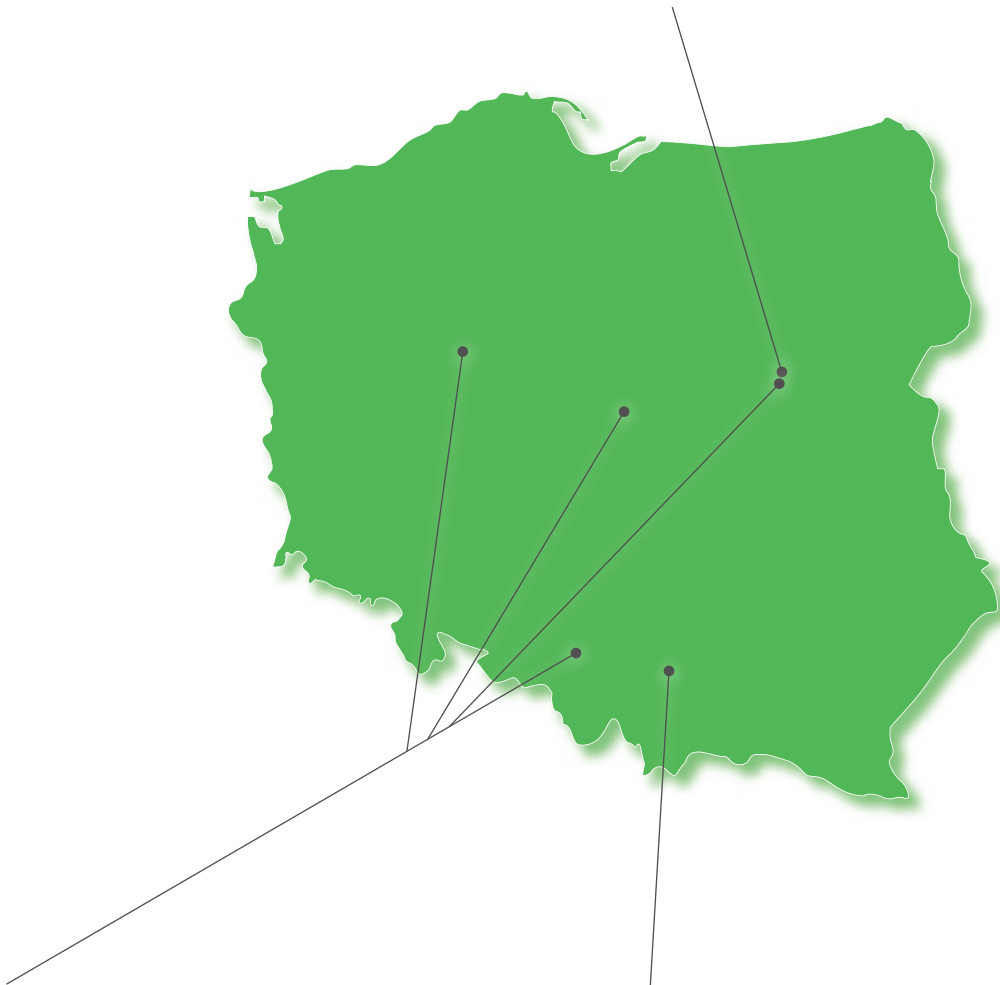
For further information on the services available from the DFK member firms in Poland please see overleaf:



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