



Accountants &  
business advisers

# Doing business in Poland



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# Foreword



This booklet is produced as a service to the clients of the member firms of PKF International, and as an introduction to the fiscal and commercial rules for conducting business activities in Poland.

Since 1 May 2004 due to the EU enlargement Poland has become the interesting country when considering doing business.

Our intention is to provide main aspects of the legal and business environment in Poland. For Readers planning to set up and run a new company in Poland we recommend further professional assistance. For interested parties we suggest to contact our specialists and advisers in PKF Poland branches. Contact information can be found in Appendix 2 (A-2).

The information presented below has been prepared by PKF Consult Capital Group companies, the only PKF member firm in Poland. More information can be found on [www.pkfpoland.pl](http://www.pkfpoland.pl) .

# I Introduction



## Geography and population

The Republic of Poland (Rzeczpospolita Polska) is one of the largest countries in Central Europe, bordering Russia, Lithuania, Belarus, Ukraine, Slovakia, the Czech Republic and Germany. Its northern frontier on the Baltic Sea gives it easy access to Scandinavian and North Sea ports. Poland's shape is roughly square, measuring 400-440 miles across.

Poland's surface area of 120,727 sq. miles ranks eighth in Europe. The country lies almost entirely on the North European Plain and is a land of gentle relief, rarely rising above 350 feet except along the southern border with the Sudety and Carpathian mountain ranges. Rysy is the highest mountain peak, 8200 feet above sea level.

Poland is divided into:

- urbanized areas, together with agricultural built- up areas,
- arable land, meadows and pastures,
- forest land.

The longest rivers which cross the country northward are the Vistula (667 miles in length) in the center, and the Odra (530 miles), which flows along Poland's western border. The people of Poland use the Polish language. The population is over 38.5 million strong. Its capital and the largest city is Warsaw, which has a population of over 1,700,000. New administrative division of Poland was introduced in January 1999. The capital cities of the new sixteen voivodships are Bialystok, Gdansk, Katowice, Kielce, Krakow, Lublin, Lodz, Olsztyn, Opole, Poznan, Rzeszów, Szczecin, Torun, Warsaw, Wroclaw and Zielona Góra.

## Political environment

In keeping with the Constitution, there is a legislative parliament (Sejm and Senate). The President exercises executive authority and the Council of Ministers and judiciary authority oversees to the conformity of the legislation with the Constitution.

The Sejm (Lower House) is composed of 460 deputies and the Senate (Upper House) of 100 senators, elected simultaneously for four-year terms by direct, universal and secret vote.

## Economy

Poland has been considered to have one of the fastest growing Economies in Central Europe. An annual growth rate: over 6%. It is important to notice, that in the recent years, Poland resulted growth of Gross Domestic Product of more, than 7%, and in the year of 2009, despite of the prevailing economic recession, there is still a positive growth rate of Gross Domestic Product.

Everything changed in the year of 1990, because of Balcerowicz Plan. This programme removed price controls, eliminated most subsidies to industry, opened markets to international competition.

Since the year of 1992, polish economy has enjoyed an accelerated recovery, although growth has recently slowed.

Country has received over \$ 50 billion in direct foreign investments, which is the result of Poland's growth and investment- friendly climate. Even though, the government is still playing strong role in the economy, which is visible in excessive red tape and the high level of pollicisation in many business decisions. In the year of 2002, polish government announced new set of economic reforms which were designed to suit the process from the beginning of the 90's. The climate for investment activities in the coming years, should be at least good, due to the fact, that Poland has implemented a number of investments, related to the preparation of the organization of Euro 2012, Football Championships. Because of that, Poland is seen as much better competitor on the EU arena.

Year of 2015 will bring many changes, as Poland has been prepared to get Euro instead of Polish Zloty as a currency.

## Regulatory environment

Economic activity is subject for many regulatory laws, but most important of these is the law of 2 July 2004 on freedom of economic activities (hereinafter: "USDG"). This Act establishes the basic rules for making, implementation and termination of business. In addition, the Act from the 23<sup>rd</sup> of April 1964 - Civil Code and Law of 14 September 2000 - the Commercial Companies Code govern the establishment, operation and termination of partnerships and capital. We should also mention the Law from the 25<sup>th</sup> of September 1981 for the state-owned enterprises, the Law from the 30<sup>th</sup> of August 1996 about the commercialization and privatization and the enterprises, the Law from the 30<sup>th</sup> of August 1996 about the commercialization and privatization and the Act on Co-operative Law from the 16<sup>th</sup> of September, 1982.

An entrepreneur may take business after gaining entry into the Register of Entrepreneurs in the National Court Register (this applies to most businesses) or an entry in the records of business done by the municipal authorities (this applies to single entrepreneurs, shareholders of companies civilian). Limited liability company in the organization can also take up an activity before entry. The legal forms of business models include: one entrepreneur (self-employment), a partnership, a commercial partnership - with no legal personality, but having the legal capacity (public company, partner company, limited partnership, Limited joint-stock partnership), limited liability company - having legal personality (a limited liability company, joint stock company). In addition, economic activities can lead enterprises, cooperatives and other legal entities (eg foundations, associations).

## Communications

Both of them: external and internal communications and transportations are very good. From mobile phones and fixed-lines phones, we put the direct number for chosen country, and than, the number to foreign country, which we want to contact to.

## Major Export & Import

Poland is one of the top exporters of such items as: leather, furs, juice, fruits, frozen fruits, electrical distribution equipment, furniture and wooden products, charcoal and coal, coke scrap, internal combustion engines, iron railway materials, equipment, rail vehicles, ceramics, steel, ships, boilers, turbines, sulfur, used clothing.

Poland imports machinery, equipment and transport equipment, industrial goods (raw materials), chemicals, mineral fuels, lubricants and related materials.

## Government policy on foreign investment in the country

### Foreign Investment Policy

The Ministry of Industry has expanded the list of industries eligible for automatic approval of foreign investment and, in certain cases, raised the upper level of foreign ownership from 51% to 74% and further in certain cases to 100%.

### Facilitating Foreign Investment

In the recent budget, the finance minister announced the government's commitment to a 90-day period for approving all foreign investments. Government officers will be assigned to larger foreign investments proposals and will facilitate Central and State clearances in a time-bound manner.

## Financial services

Financial services refer to services provided by the finance industry. The finance industry encompasses a broad range of organizations that deal with the management of money. Among these organizations are banks, credit card companies, insurance companies, consumer

finance companies, stock brokerages, investment funds and some government sponsored enterprises.

Polish banks largely operate on the basis of international standards. The biggest direct impact on the process of adapting the Polish banking system to the EU regulations are adjustments resulting from the chapters on free movement of services, free movement of capital, and economic and monetary union.

Ends the process of harmonization of law, based on the Polish banking sector will work in the enlarged European Union. The legal framework governing the activities of banks are mainly: Act as amended by the Banking Law, adopted by the statutory regulation of the electronic signature, consumer credit, settlement finality in payment systems and securities settlement systems and the rules for supervision of these systems, Law change rates, with effect from 1.10.2002 introducing the free movement of capital / in the short-term and / payments in turnover with the countries of the European Union and European Economic Area, Act on electronic payment instruments, including regulating marketing cards and introducing an electronic money institution.

Practical implementation of changes in the law of banking, such as new standards of prudential supervision on a consolidated basis, entered into force in early 2002.

Law is a subject of dynamic changes. It is expected, that changes are being constantly adopted in the Polish law. An example can be consulted in the current draft of the Basel Committee standards for banking supervision and rules of action (New Capital), which provides solutions which extend beyond the current EU directive. Similarly, the right created under the Financial Services Action Plan (FSAP called) to the full integration of EU financial markets by the year 2005 in particular, the draft directives on financial conglomerates, the International Accounting Standards, Collateral, Single prospectus, manipulating the markets.

## Exchange controls

Poland is one of the 179 member countries of the International Monetary Fund (IMF) that does not have exchange controls governing exchange rate arrangements applying to Pegged arrangement within horizontal bands.

## Currency and common financial instruments

According to Polish law, financial instruments are as follows:

- 1) securities;
- 2) non-securities:
  - a) titles of participation in collective investment institutions (Investment Certificates, the units),
  - b) money market instruments,
  - c) financial contracts and other financial instruments accounted for the money equivalent, forward contracts on interest rates, stock swaps, interest rate swaps, currency swaps,
  - d) options to purchase or sell financial instruments, options on interest rates, currency options, and other financial instruments,
  - e) the right to property, the price of which depends directly or indirectly from the values marked on the species of things, certain types of energy meters and limits the volume of production or emission of pollutants (derivatives Marks),
  - f) other, where they were admitted to trading on a regulated market in the territory of a State, or are the subject of applying for such admission.

## The financial instruments according to the law on accounting

For a financial instrument is meant by that contract, which gives rise to a financial asset of one party and a financial liability or equity instrument of another party, provided that the contract concluded between two or more parties to clearly derive the economic, without regard to whether the execution of the rights or obligations under the contract is unconditional or conditional.

According to the law on accounting for financial instruments do not include in particular:

- the assets and reserves for deferred income tax,
- contracts for financial guarantees, which determine the performance of obligations under guarantees granted in the form of payment of the amounts corresponding to losses incurred by the beneficiary as a result of defaults on debts by the debtor in that period,
- contracts for the transfer of securities during the period between the date of conclusion and settlement of transactions, where the implementation of these agreements requires the issue of securities at a specified date, even if the transfer of these rights is in the form of an entry in the account of securities held by an entity authorized on the basis of separate provisions,
- assets and liabilities in respect of the programs, which result in the shares of workers and others associated with the unit's equity,
- contracts of a merger, giving rise to the responsibilities set out in article Paragraph 44b. 9 of the Accounting Act.

## Import controls

Generally, most goods can be transported freely within the European Union, as Poland is a member of European Union together with following countries: Spain, Germany, Denmark, Greece, United Kingdom, France, Italy, Netherlands, Portugal, Finland, Sweden, Luxembourg, Belgium, Ireland, Austria, Czech Republic, Slovakia, Hungary, Malta, Cyprus, Latvia, Lithuania, Estonia, Slovenia, Romania, Bulgaria. Some countries restrict the export of products such as crafts and antiques, which are treated as national heritage. Many countries have restrictions apply in the case of tobacco, alcohol, and hazardous materials.

## The financial instruments according to the Directive on insider dealing and market manipulation (market abuse)

According to Directive, the term "financial instruments" means:

- Transferable securities as defined in Council Directive 93/22/EEC of 10 May 1993 on investment services in securities,
- Units in collective investment undertakings,
- Money market instruments,
- Financial-futures contracts, including equivalent cash-settled instruments,
- Forward interest rates,
- Swap contracts on interest rates, currencies or shares
- Options to acquire or dispose of any instrument falling into these categories, including equivalent cash-settled instruments. This category includes in particular options on currency and interest rate options,
- Derivatives,
- Any other instrument admitted to trading on a regulated market in a Member State or for which a request for admission to trading on that market.

# II Business structure



Foreign citizens of the EU and the European Free Trade Agreement zones belonging to the European Economic Area may undertake and run business on the basis of the same rules applicable to Polish entrepreneurs.

The same rules also apply to foreigners living outside the EEA who:

- received a permit to settle on the Polish territory,
- have a consent for tolerated stay or a status of refugee granted in the Republic of Poland,
- enjoy temporary protection within this territory.

Other foreign persons have the right, unless international agreements state otherwise, to undertake and run business activity only in the following forms:

- limited partnership,
- limited joint-stock partnership,
- limited liability company,
- joint-stock company.

## Joint-stock company

May be established by one or more person, with one exception: it may not be established solely by a single-member limited liability company.

The formation of a joint-stock company involves the following:

- execution of the Articles of Association by the founding members,
- making payments for shares (minimum capital is 5,000 PLN),
- establishment of the Management Board and Supervisory Board,
- entry of the company into the Register of Entrepreneurs.

The Articles of Association or the Founding Deed (for a single-member company) must be concluded in the form of a notarial deed in the presence of a notary in Poland.

The Articles of Association or the Founding Deed should stipulate:

- the business name and registered address of the company,
- the objects of the company, as specified in Polish Classification of Activities (PKD),
- the life of the company, if established for a definite time period,
- the amount of the share capital,
- the capacity (or lack thereof) for a partner to hold more than one share,
- the number and nominal value of shares subscribed for by individual partners.

The registration of the company is conducted by the district court. The application for entry in the Court Register should be filed by the management board. The application must be signed by all members of the management board.

The requirement for the minimum share capital is PLN 5,000. It has changed on the 8.01.2009, before that, the minimum was PLN 50,000. The formal bodies of a joint-stock company are the Shareholders' Meeting, the Management Board and the Supervisory Board.

Joint-stock company is liable for its debts and obligations with its whole property. Shareholders are not liable for the company's debts and obligations.

Setting up a business in Poland has never been so easy. From 31<sup>st</sup> March 2009, to do this, we just double paged, completed application and submit it in one office, instead of the current four - the economy, said Deputy Minister Adam SZEJNFELD, during press conference which was held on 1<sup>st</sup> April in the Ministry of Economy.

Adam SZEJNFELD, Deputy Minister explained that the proposal to start a business can be made in person at the office or send a letter, attaching a certification of authenticity of notarial signatures. - An individual may also submit the form electronically using an electronic signature, or without signature, but you will have to arrange with the office for himself at a convenient date for signing the proposal - said.

Deputy Minister SZEJNFELD reminded that the submission of an application already in office, resulting in the possibility of an immediate launch of the new company. - An entrepreneur does not have to wait for example, to NIP (tax identification number). In addition to a tax identification number, officials are now only 3 days, and not as it was now up to 30 - said the minister SZEJNFELD.

## Limited liability company

A limited liability company may be established by one or more individuals or legal persons. However, it may not be established solely by another single-member limited liability company.

Incorporation of a limited liability company is mostly the same as incorporation of a joint-stock company.

The formal bodies of a limited liability company are the Shareholders' Meeting and the Management Board. A Supervisory Board or Audit Commission is optional, unless the limited liability company has a share capital exceeding PLN 5,000 and there are more than 25 shareholders.

The shareholders of a limited liability company are not personally responsible for the obligations of the company.

A limited liability company does not necessarily require an audit every year.

## Branch of foreign company

Foreign entrepreneurs may set up a branch office in Poland to carry out business activity here. The rights of foreign entrepreneurs depend on whether Polish entrepreneurs abroad enjoy equivalent rights under international agreements (the principle of reciprocity), and whether any international agreements ratified by Poland do not provide otherwise.

A branch is registered in the Register of Entrepreneurs, a part of the National Court Register, under the name of the foreign investor with a supplement "branch in Poland". Such a branch may only conduct activities within the scope of business of the foreign investor who established the entity concerned.

## Representative Office

A foreign entrepreneur may set up representative offices in the territory of Poland. A representative office operates for and on behalf of the business of the foreign entrepreneur within the territory of Poland and is a part of the organizational and functional structure of his or her business.

A representative office may conduct activity in the area of promotion and advertising of the foreign investor establishing the entity. No other economic activity may be conducted in this form. Such an office is registered in a special register of representative offices kept by the minister responsible for the economy.

Registration may be refused in certain situations provided by law.

## Board

Board in a limited liability company may consist of one or more members who are appointed by resolution of shareholders. Board members can be partners or third parties. The mandate of the member of the Board expires on general meeting approving the financial statements for the first full year performance as a member of the board. If a board member was appointed more than a year his term of office expires on hold the general meeting approving the financial statements for the last full year performance as a member of the board. The mandate also expires as a result of death, resignation or cancellation with the composition of the board.

## Running a business

The Company is the name of the company (industrial, commercial, services or otherwise) which is led by a legal person, and which shall consist of the name of that legal person. The name is often closer to determine the form and the object pursued by the business and is to be recorded, and the adoption and use by other person, protected by the law.

Polish legislation provides for the possibility of the existence of:

- Company law (the company settled a contract in the Civil Code, in which each of the partners is responsible for the obligations of all his property).
- Commercial companies, such as:
  - a) public company (the simplest form of business differs from the partnership, that is registered in the commercial register and has the right to appear on the market as a separate, although not having legal personality organization),
  - b) public limited company (this is the form of a corporation with legal personality and its characteristic features are shares and documents with the characteristics specified by the law of limited liability).

The right to raise capital through public announcements, in the subscription:

- a limited liability company (this is a simplified version of a joint stock company, intended in principle for the creation of small and medium-sized enterprises (companies) with a relatively small number of participants, it is different from the limited-liability company that:
  - a) not allowed to leave the documents for participation – bearer,
  - b) you can not distribute its shares in the subscription form,
- limited partnership (the company is a form of overt, in which one or more shareholders meet in person with all your property, and the other shareholders are divided into shares in the capital, for not replying personally commitments company).

Breakdown of enterprises by size, is recognized in the global economic literature on mixed. In Poland, more recently (in accordance with a resolution of the Council of Ministers No. 167 dated 13.10.1979) for a small company which has a unit of employment to 200 persons. The distinction is differentiated by size of company, according to the number of employees, size of market and industry reached in which the company operates. In a market economy to the economic importance of small firms is very high. These companies, strengthening the construction market while strengthening the market economy.

## Partnerships

Polish Commercial Companies Code provides the following types of partnerships:

- 1) registered partnership,
- 2) professional partnership,
- 3) limited partnership,
- 4) limited joint-stock partnership.

A partnership may acquire rights in its own name, including the right of the ownership of real estate and other rights in rem, also incur obligations sue and be sued.

### Registered partnership

A registered partnership is a partnership which operates a business under its own business name and is not another commercial company. Each partner shall be liable for the obligations of the partnership without limitation with all his assets jointly and severally with the remaining partners and the partnership.

### Professional partnership

A professional partnership is a partnership created by partners for the purpose of pursuing a profession in a partnership which operates a business under its own business name. The partnership may be formed for the purpose of pursuing more than one profession, unless different law provides otherwise.

Persons qualified to pursue the following professions may become partners in the partnership: advocate, pharmacist, architect, auditor, insurance broker, tax advisor, accountant, physician, dentist, veterinary doctor, notary, nurse, midwife, legal advisor, patent attorney, property valuer and sworn translator.

### Limited partnership

A limited partnership is a partnership which purpose is to operate a business under its own business name, at least one partner of which is liable to the creditors for the obligations of the partnership without limitation (the general partner) and the liability of at least one partner (the limited partner) is limited.

## Limited Joint-Stock Partnership

A limited joint stock partnership is a partnership which purpose is to operate a business under its own name, at least one partner of which is liable to the creditors for the obligations of the partnership without limitation (the general partner) and at least one partner is a shareholder.

## Joint Ventures

In accordance to the Polish legal provisions, there is no legal definition of the Joint-Venture. Moreover the term of Joint-Venture in general is not use to define for such kind cooperation in agreements concluded between Polish entities. The most common name for such contract is *“umowa konsorcjum”* – the consortium agreement – however, this is only the language difference.

The existence of the Joint-Venture (hereinafter J-V) agreement is based on the general rule which is arising from the principle of the freedom of the contract stipulated in article 353(1) Polish Civil Code which states that: *“The parties to a contract may arrange the legal relationship as they deem proper on the condition that the contents or the purpose of that contract are not contrary to the nature of the relationship, with statutory law, and with the principles of community life”*.

The idea of the J-V is build on the basis of the partners cooperation to achieve the joint objectives. As a result of that, the mutual obligations that partners stated in the J-V agreement and performance of them do not constitute the performance of the services between the J-V partners, the result of that cooperation is one service/product which is delivered/provided by the J-V partners to the final costumer.

According to the above indicated civil code provisions, the parties of the J-V agreement can individually conclude and establish rules of the representation, costs calculation, the division of the works, the participations in profit and losses of the project. The J-V agreement is concluded for the fixed term necessary for the achievement of the J-V. The entities who are creating the J-V are remaining independent and usually do not create the commercial partnership.

## Trusts

Polish law does not provide the institution of the Trust. The most similar institution to the trusts is investment fund. The business activity of the investment fund is governed by the Act of Securities 2004.

The investment fund is a legal person. Its business activity is focused on the investment of funds collected public as well as private, in (the defined in the Act of securities) market financial instruments and other property rights.

There are three types of investment funds:

- open investment fund,
- specialized investment fund,
- closed investment fund.

The closed investment funds because of the favorable taxation provisions - are exempt from the corporate income tax.

## Polish Law

The Polish Law, or legal system in Poland, has been developing since the first centuries of Polish history - over 1000 year ago. The private laws and public laws are codified. The supreme law in Poland is the Constitution of Poland. Poland is a civil legal jurisdiction and has a civil code, the Civil Code of Poland.

Polish public and private laws are divided into various areas, including as follow:

- Civil Law,
- Commercial Law,

- Administrative Law,
- Constitutional Law,
- Private International Law,
- Tax Laws,
- Criminal Law,
- Family Law,
- Labor Law,
- Water Law,
- Copyright Law,
- Media Law.

New Polish Law is published in “Dziennik Ustaw” and “Monitor Polski”.

# III Business finance



Selection of appropriate source of financing is often a problem for businessmen. Polish financial market gives many possibilities of financing businesses. Variety of business financing mechanisms demands professional guidance. Professional consultancy guarantees the most effective usage of possibilities for obtaining external financing with the lowest cost at the same time. The sources of funding depend on the size of the business and purpose of investment.

## Equity finance

Polish market of investment funds was established in 1992 so it is quite new and still developing sector with huge potential. Significant influence on functioning and structure of Polish funds had the access of Poland to EU and changes of law regulations related to it. Currently the functioning of investment funds in Poland is defined by “Investment Funds Act” from the 24th of May 2004. The investment funds are entities of public trading operating under supervision of Polish Financial Supervision Authority (PFSA). In Poland investment fund can be established after consent of PFSA as:

- open investment fund,
- specialized investment fund,
- closed investment fund.

In Poland only entities authorized to managing funds are Investment Funds Societies. Latest changes in Act introduced among others possibility of selling polish funds units abroad. Furthermore Investment Funds Societies are now authorized to assets management and consultancy.

## Business Angels

Private persons with business experience, possessing a big capital support investments in various lines of business in early phase of growth are often connected with big risk. Business Angels invest in people who have innovative ideas for doing business and who are looking for capital to initiate them. These kinds of investments usually are medium- and long-term (from 3 up to 7 years). Business Angels give funds, experience, know-how and contacts in branch. In return they expect ownership participation in venture (up to 50%) and high return rates from invested capital. Development of that market contributes to establishing Business Angels Network in Poland, a organization which acts as a mediator between businessmen's and individual investors – Business Angles.

## Private equity

Investing in companies in early stages of their growth to start or expand them is called Venture Capital (VC). That kind of capital invests in undertakings with big risk and with chance for above average return rates from invested capital at the same time.

Venture Capital funds are investing in companies working in various lines of business and regions, and being in different stages of development. However the main condition is always the perspective of dynamic growth. That's why VC is in great measure investing in technological companies with significant innovative potential, it refers to companies from branches like: IT, medicine, biotechnology, finance or building materials.

Private Equity (PE) invests in growing up companies, which are planning to float shares on the stock exchange, need restructure or which changes the owners.

Both VC and PE mechanisms are the same. They buy shares of companies and then strive to increase the company value. The reason of this is profit from future resale of shares. PE/VC investors, similarly to Business Angles are active investors. To achieve their aims they support managing board in firms, develop programs and actively participate in supervisory board.

Institution associating private equity/ venture capital investors active in Poland is Polish Private Equity Association (PPEA).

## **Warsaw Stock Exchange**

For a few years Warsaw Stock Exchange (WSE) is one of the most active IPO markets in Europe. In 2008 WSE was the second market in Europe in respect of number of debuts and value of offers. Therein functions the main public market dedicated to medium and big investing projects and alternative market – NewConnect started by WSE on 30th August 2007 which gives small businesses an opportunity of growth and promotion to the WSE main market. In 2008 94 firms debuted on WSE (in comparison London had 99 debuts). Including only EU markets in 2008 WSE was placed second in Europe, just behind London Stock Exchange. On main WSE market 33 debuts were recorded (London had 38). In 2009 13 new firms debuted on WSE main market. The worth of this years offers there reached nearly 70 billion zlotys from which 6,9 billion zlotys came from new emissions of shares.

In 2008 the NewConnect market had a big achievement, 61 firms debuted on its floor the same number as on a alternative market of London Stock Exchange (AIM and PSM market). Thanks to starting NewConnect WSE became a source of capital not only for big, grown firms but also for young ones, which have very often only a small idea for their development. It is shown by big number of debuts on alternative market. Starting the NewConnect market reduced barriers for young, small businesses in gaining the capital, moreover it provided fast and effective way of gaining the capital.

The bond market Catalyst was launched on 30 September 2009. It operates on transaction platforms of the Warsaw Stock Exchange and BondSpot. Catalyst comprises four trading platforms. Two platforms operated by the WSE (a regulated market and an alternative trading system) are dedicated to retail investors; two BondSpot markets (regulated market and ATS) are dedicated to wholesale investors.

## Loan funding

Loans and credits are one of the most popular ways of financing firms. Polish financial system hasn't felt the effects of the recession as much as other countries in the region. There is a possibility of getting an commercial credit for business.

## Leasing

Leasing as a way of financing business which emerged in Poland in early nineties, as a result of needs of dynamic economy. Nowadays it is an important part of financial system for small and medium business and it is offered by many institutions. The matter of a leasing agreement can be anything used in a commercial way, or an investing character subject. The most common matters of leasing agreements are means of road transport like cars, machines and equipment or office equipment. Many firms are starting to think about leasing of commercial real estates.

## Grants

Businessmen in Poland, who want to reduce weight of investments or developments have opportunity to gain grants from many sources. The most important in light of macro economy come from European Structural Funds, Norwegian Financial Mechanism and EEA (European Economic Area) Financial Mechanism. Poland has a number of specialized consultants who have knowledge about realities of using that kind of support. Consultancy firms in Poland can easily mach individual needs of their clients to proper donors to maximize chances for grant gaining. Their professionalism in grants gaining is showed by a high degree of usage of that kind of financing mechanism: maximal usage of grant from Norwegian Financial Mechanism and EEA and high level of usage of European Structural Funds.

Selecting an adequate source of financing is often a problem for businessmen's. Polish financial market gives you many different

sources of business financing. Variety of gaining fund mechanisms demands professional guidance. Professional consultancy guarantees the most effective use of opportunities to gain external capital with the lowest cost of obtaining it at the same time. Selecting proper source of capital depends on the size of the business concerned and the purpose of funding.

# IV Accounting



## Accounting Requirements

According to the Accounting law the management board is responsible for the correctness and clarity of accounting books and for the preparation of financial statements covering all important issues regarding all information essential for evaluating the financial position of the Company.

The annual financial statements must:

- consist of balance sheet, profit and loss statement, statement of changes in equity, cash flow statement and notes to the financial statements, including an introduction to the financial statements, as well as additional information and commentaries,
- be prepared no later than 3 months after the end of the financial year,
- be approved by the shareholders at the company's general meeting no later than 6 months after the end of the financial year,
- be sent to the Tax office and filed with Krajowy Rejestr Sądowy (National Court Register) no later than 2 weeks after the approval at the general meeting,
- be published in the commercial bulletin (Monitor Polski B).

The requirements, the form of financial statement and the evaluation methods are set out in the Accounting Law (from 7<sup>th</sup> May 2009 on accounting Jour. No. 77 from 2009, entry 649 as amended), which follow the IAS and IFRS standards.

For the listed companies the annual report must comply with the Stock Exchange Regulations and its deadlines, which are different to the

mentioned above (see next chapter). Small and medium companies may be exempt from some of the disclosures.

Particularly the SMC can outsource accounting to the numerous small bookkeeping offices.

## Audit Requirements

Statutory audit is required for all joint stock companies (S.A.) and entities whose figures in the previous financial year exceed 2 of the following 3 minimal thresholds:

- annual average employment, per full-time posts, of 50 (persons),
- the value of assets at the end of the financial year of minimally the PLN equivalent of 2.5 million EUR,
- net sale of goods and products and financial income in the previous financial year of minimally the PLN equivalent of 5 million EUR.

An independent auditor has to be appointed by shareholders at the general meeting, or by supervisory board, when the competence to choose the auditor has been given them by the general meeting.

From the 2009, Jan. 1 the statutory audit is also required for all subordinated companies preparing financial statement according to IFRS, despite of the figures mentioned above and its legal form.

Deadline for issuing auditor's report and annual report of company listed on Warsaw Stock Exchange has been lately shortened to the April, 30.

## Protection of intellectual & industrial property

### Copyright

Copyright is protected in Poland by the Law of Copyright and Related Rights 1994. Subject to the Copyright Law is "composition" which is defined as a each sign of the author activity with the individual character, settled in the any kind of form, regardless of the value, purpose or the way of the expression. In particular but not limited to, the subject to the Copyright Law are the "compositions":

- 1) expressed in words,, mathematical symbols, graphical signs (literary, journalistic, since, cartographical and computer programs),
- 2) art,
- 3) photographic,
- 4) violin/guitar,
- 5) industrial design,
- 6) architectural, architecturally – urbanistical and urbanistic,
- 7) musical and word-musical,
- 8) scenic, theatrical-musical, choreographic and pantomime,
- 9) audiovisual (including film).

The subject of the protection is limited only to the way of the expression; from the protection are excluded the discoveries, ideas, procedures, methods and the principles of operation and mathematical concepts. The composition is subject to protection from the moment of establishment, even though if he had unfinished form. The protection applies independently from the fulfillment of any formal requirements.

The copyrights can be transferred on the another person in the base of heredity or the base of contract. The acquirer of the copyright can transfer the right on the another person.

The Law of Copyright and Related Rights provides the special regulations with the reference to:

- protection of the personal author's copyright;
- protection of the authors property rights,
- protection of audiovisual rights;
- computer programs;
- protection of the authors image,
- protection of the correspondence and the confidential information.

The Law of Copyright and Related Rights provides also the provisions regarding the organization of collective management copyrights.

## **Industrial property rights**

The industrial property rights are subject of protection of the Law of Industrial Property Rights 2000. This Law regulates:

1. the relationships in the field of inventions, utility models, industrial designs, trademarks, geographical indications and topographies of integrated circuits,
2. the principles on which entities may accept rationalisation proposals and remunerate creators thereof,
3. the responsibilities and organisation of the Patent Office of the Republic of Poland, hereinafter referred to as the “Patent Office”.

## **Patents**

Patents shall be granted – regardless of the field of technology – for any inventions which are new, which involve an inventive step and which are susceptible of industrial application (article 24).

A patent shall confer the exclusive right to exploit the invention, for profit or for professional purposes, throughout the territory of the Republic of Poland. The scope of the protection sought shall be determined by the claims contained in the patent specification. The patent specification and drawings may be used to interpret the claims. The term of a patent shall be 20 years counted from the date of filing of the patent application with the Patent Office (article 63).

A patent holder may indicate, in particular by means of marking products with an appropriate sign, that his invention enjoys patent protection.

## **Utility Models**

Any new and useful solutions of a technical nature affecting shape, construction or durable assembly of an object shall constitute a utility model. A utility model shall be considered a useful solution if by means of that solution a practical effect is attainable, expedient in the process of manufacturing or exploitation of the product.

## **Industrial Design**

Any new and having individual character appearance of the whole or a part of a product resulting from the features of, in particular, the lines,

colors, shape, texture or materials of the product and its ornamentation, shall constitute an industrial design.

Any industrial or handicraft item, including, in particular, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs, shall be considered to be a product.

The following shall also be considered to be a product:

1. a product which is composed of multiple components, which can be replaced permitting disassembly and reassembly of the product (complex product),
2. a component part, if, once incorporated into the complex product, it remains visible during normal use of the latter, the use being understood as excluding maintenance, servicing or repair work,
3. a component part, if it itself may be subject of commercialization.

In case of a design applied to or incorporated in a product which constitutes a component part of a complex product, assessment of novelty and individual character shall only be made in consideration of its visible features.

## **Trademarks**

Any sign capable of being represented graphically may be considered as trademark, provided that such signs are capable of distinguishing the goods of one undertaking from those of other undertakings.

The following, in particular, may be considered as trademarks: words, designs, ornaments, combinations of colours, the three-dimensional shape of goods or of their packaging, as well as melodies or other acoustic signals.

Any references in this Law to:

1. trademarks shall also mean service marks,
2. goods shall mean, in particular, industrial or handicraft goods, agriculture products or natural products, such as, in particular, waters, minerals, raw materials, as well as, subject to Article 174(3), services,
3. counterfeit trademarks shall mean identical trademarks illegally used or trademarks which in the course of trade can not be distinguished from the trademarks registered for the goods covered by the right of protection,

4. earlier trademarks shall mean the trademarks applied for registration or registered basing on the earlier priority.

## **Geographical Indications**

For the purpose of the Act this Law, geographical indications shall be word indications which in an explicit or implicit manner designate the name of a place, locality, region or country (territory), which identify a good as originating in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to the geographical origin of that good.

A foreign geographical indication may only be granted protection in Poland, if it enjoys protection in the country of its origin.

Any reference in this Part to goods shall not mean services.

## **Topographies of Integrated Circuits**

Any solution consisting of a three-dimensional arrangement of the elements, however expressed, at least one of which is an active element, and of all or some interconnections in an integrated circuit, shall be considered as a topography of an integrated circuit, hereinafter referred to as a “topography”.

An integrated circuit shall mean any three-dimensional product having one or more layers, composed of elements of semiconducting material forming a continuous layer and of conducting interconnections and insulating spaces, inseparably interconnected, intended to perform electronic functions.

## **Immigration**

### **Migration to the country, Visitors**

The provisions related with the immigration are regulated in the Foreigners Law 2003. According to this Act the foreigner may cross the border and stay on the territory of the Republic of Poland if he has:

- 1) valid travel document,

- 2) valid visa or other document granting the entitlement to enter and stay on the territory (if are required).

The citizens of the following countries are released from the “visa obligation” (if the duration of the visit does not exceed three months):

Andorra	Mauritius
Antigua and Barbuda	Mexico
Argentina	Monaco
Australia	Nicaragua
Bahamas	New Zealand
Barbados	Panama
Brazil	Paraguay
Brunei	El Salvador
Chile	San Marino
Croatia	Saint Kitts and Nevis
Guatemala	Seychelles
Honduras	Singapore
Israel	United States of America
Japan	Uruguay
Canada	Vatican City
South Korea	Venezuela
Costa Rica	
Malaysia	

The visa motion (application) have to be submitted to the Polish Consul. There are two types of the visa:

1. A uniform visa (so-called Schengen visa) marked "C" entitles to one or more entries, under the condition that the length of the continuous visit and the total length of successive visits on the territory of Schengen does not exceed three months in each of six months following the date of first entry into the territory of Republic of Poland.
2. A visa national symbol 'D' entitles to entry and continuous residence in the territory of Poland or more consecutive stays, lasting a total no mote then three months and those visits do not exceed more then one year during the period of validity of visa.

## Permanent residence

After the laps of five years of the uninterrupted stay on the territory of Poland a foreigner can apply for the permanent residence card. The motion shall be submitted to the voivode, and have to be submitted personally.

## Temporary residence

The foreigner may apply for the residence permit for a specified period of time. Circumstances justifying residence in Poland for a period longer than 3 months are for example:

- 1) the work permit granted by the further employer,
- 2) providing the business activity beneficial for the national economy,
- 3) marriage to Polish citizen.

With addition to above, the residence permit may be granted to the foreigner which:

- 1) intends to begin or continue studies or vocational training (on the territory of Poland),
- 2) because of the family ties is intending to join to the Polish citizen or the citizen of the EU member which is residing in Poland.

## Work Permits

The citizens of the EU member states, members of families of EU members who have business and EEA member countries are authorized to perform work or business activity in the territory of Poland without the prior work permit.

The citizens from other countries intending to work in Poland has to first find an employer in Poland who will agree to apply for a work permit. A foreigner can obtain such an agreement if there are no counter-candidates among Polish citizens for the position he/she is applying for. The negative result gives the right to employ the foreigner. The motion has to be submitted by the employer to the voivode. The work permit has to be immediately delivered to the foreigner, which on the base of this work permit shall receive the appropriate visa as well as the permit to live in the place in which the work is being performed. The work permit is granted for the defined

period of time, maximum 3 years (5 years for the foreigner who is performing the obligations of member of the management bodies of the company). The motion of extension of the work permit has to be submitted no later than 30 days from the moment of expiry of the work permit.

# V Taxation



Since the early 1990s, the Polish tax system has been gradually reformed, with the intention of encouraging investment in Poland and so creating of jobs. Tax system reforms have been supported by process of the adapting and harmonizing Polish law with the EU law.

## Overview of taxes

### Personal Income Tax

#### Taxpayers

As a rule, natural persons in Poland are subject to income tax calculated in compliance with a progressive tax scale, differentiating following income thresholds 18% and 32%.

However, there are exceptions. Under certain conditions natural persons conducting business tax their income with a flat 19% tax rate.

As provided for in the Polish legislation, tax obligations in the area of personal income tax may be of unlimited or limited character.

#### Taxation of Partnerships

In regard to the provisions of the Personal Income Tax Act (PIT Act) and Corporate Income Tax Act the partnerships (registered partnership, a professional partnership, a limited partnership, a limited joint-stock partnership) are not subject to the income taxation. With reference to CIT Act, the gains derived from the participation in the

partnership are combined to the income derived by each partner with the respect of his share in the partnership capital. The above rule shall also apply to the calculation of the costs of incurred by the partnership. Regarding above in the view of the polish provisions the partnerships are fiscally transparent entities.

## Residence and source

### Residence of individuals

Unlimited tax obligation, from total income, regardless of the location of the source of income, is imposed on natural persons who have their place of residence within the territory of Poland i.e. stay on the territory of Poland longer than 183 days during a tax year or have a centre of personal or economic interests on the territory of Poland (centre of vital interests).

Persons who are not permanently settled in Poland are subject to a limited tax obligation, i.e. imposed only on the income derived from work performed within the territory of Poland.

The income of natural persons subject to unlimited tax obligation from the source of income situated outside Poland's territory is exempted from the income tax, if so stipulated in an appropriate double tax treaty, to which Poland is a party.

### Source of income

According to the Polish PIT law all kinds of income, except from the income enumerated in the PIT law and exempted from the tax on the basis of separate regulations (double tax treaties), are taxed in Poland at progressive tax rates.

The new standard tax brackets for 2009 are as follows:

Taxable base in PLN		Tax amount in PLN
over	up to	
	85 528	18% of assessment basis minus 556,02
85 528		14 839,02 + 32% of amount exceeding 85 528

When calculating the income, the so-called tax-free amount is taken into account (in 2009 - PLN 3.091,00).

Tax deduction in PLN	Monthly	46,33
	Annual	556,02
The annual income of non-payment of tax in PLN		3091

The personal income tax is reduced if, in the financial year, the taxpayer incurred expenditure as specified in the law, within the proper limits.

Payers of the income tax referred to in the PIT law are obliged to calculate and collect tax payments in advance, within the year, and transfer them to the bank account of the relevant tax office by the 20th of a month following the month where the tax advance payment was collected.

Taxpayers are obliged to file to the tax offices tax returns indicating the amount of the income earned (or a loss incurred in the financial year), according to the established tax declaration template by 30 April of the following year. This obligation does not refer to taxpayers for whom the annual tax return is made by the tax collector.

The submission of the tax return has to be accompanied by payment of a difference between the income tax due, as calculated in the tax return, and the sum of tax advances due for a given financial year, including also advances collected by taxpayers.

The income tax arising from the tax return is the tax due for a given year, unless the tax office issues a decision establishing a different amount of due tax.

Individuals who receive inheritances or gifts are liable to tax for the portion they receive. Polish citizens and persons who are domiciled in

Poland are also liable to this tax if the property received by them is located abroad. Gifts and inheritances of property located in Poland are exempt if both parties are neither Polish citizens nor persons domiciled in Poland. The rates are progressive depending on the group of taxpayer and value of property received and will vary from 3% to 20%.

## **Pay-roll taxes**

With respect to the provisions of PIT Act as the employee shall be considered a person under the employment contract, employment under contract or cooperation relationship.

As the revenues from the employment contract as the income from revenue service relationship, employment relationship, and work under a cooperative working relationship shall be considered any kind of payment in cash and monetary value of benefits in kind or cash equivalents, regardless of source of funding for these payments and benefits, in particular, salaries, remuneration for hours overtime, various allowances, rewards, cash equivalents are not used for holidays and any other amounts, regardless of whether the amount was fixed in advance, and cash benefits paid by the employee, as well as the value of other benefits or gratuitous benefits partially remunerated.

## **Corporate Taxation**

### **Taxpayers, Taxation of commercial companies**

According to the corporate income tax Act (CIT) the legal entities are commercial companies (limited liability company, joint stock company). The provisions of the CIT Act shall apply also to the entities which do not have the legal personality with the exception of the companies without the legal personality (registered partnership, a professional partnership, a limited partnership, a limited joint-stock partnership – to the taxation of which the provisions of the Personal Income Tax Act provisions shall apply).

## **Residence and source**

Polish resident companies are subject to corporate income tax (CIT) on all sources of their worldwide income, while non-residents are subject to corporate income tax only on income derived from the territory of Poland. A company is deemed resident in Poland if it has their seat or management board in Poland. The term “deemed resident” for example a place where the Management Board or equivalent meets and takes decisions.

## **Branch of foreign company**

A foreign entity which runs its business in Poland by a branch is a taxpayer in Poland and is obliged to make a tax registration and receive tax identification number (NIP). The books of the branch should be kept according to Polish Accounting Act.

A foreign entity is taxable in Poland only on income generated by branch (limited tax liability). Concerning countries, which concluded a double tax treaty with Poland, special rules contained in them should be applied.

## **Representation offices**

Due to the scope of activities, the representation office is not an object of corporate income tax in Poland.

## **Tax rate**

The standard corporate tax rate is 19%.

## **Tax payment**

In general, the tax year for corporate taxpayers consists of twelve consecutive months and usually refers to the calendar year.

Taxpayers are obliged to submit their tax return, to the fiscal office within three months from the end of their tax year. Taxpayers are obliged to pay tax monthly in advance, based on the current year’s income, there is no monthly tax returns filing obligation. Such

payments and tax return must be made no later than 20<sup>th</sup> of each month.

Taxpayers can also make monthly advance payments based on other specific rules if they meet certain conditions.

## **Determination of taxable income**

Corporate entities are subject to corporate income tax on the net profit shown on the yearly balance sheet, computed in accordance with the statutory accounting and bookkeeping rules, after adjustment for deductions and additions provided under the tax law. Generally, expenses incurred for the production of income are allowed as deductions.

## **Depreciation**

Current rates range from 1.5% to 30% depending on the type of asset. As a general rule, the straight line method must be applied, although reducing method, under some conditions, is possible.

The value of assets may be revalued at the beginning of the tax year with the agreement of the Minister of Finance. Land is not depreciated.

Intangible assets subject to amortization:

- statutorily defined rights to use real estates,
- statutorily defined research and development costs,
- intellectual property rights and licenses,
- industrial property rights,
- know-how (to a certain limit),
- goodwill, if it was created as a result of the acquisition of the enterprise or its organized part.

## **Inventory**

Stock in trade, or inventory, is valued at its historic cost price or market value. The cost of inventory may be calculated at a standard cost, at a weighted average cost, or on the LIFO or FIFO basis, as long as the method selected is used consistently.

## **Dividends**

Dividends received from resident companies are taxed separately at a rate of 19%. The tax is withheld by the distributing company and can be credited against the corporate income tax due from the resident recipient company.

Dividends may be distributed only from net profits of the company. Sums allocated for distribution among shareholders cannot be deducted from the taxable base.

## **Interest deductions**

Interest is deductible on an accrual basis. For interest from credits and loans from related parties, thin capitalization applies (3:1 equity ratio).

## **Costs**

Costs incurred for the purpose of earning revenue are generally tax deductible at the time the revenue is earned provided that appropriate apportionment is possible; otherwise, costs are deductible in the tax year in which they are incurred.

Most costs are tax deductible unless they are of a capital nature or benefit from special treatment in law.

## **Losses**

Losses from a given tax year can be offset against the income in the five subsequent tax years, but the amount deducted in any one year cannot exceed 50% of the loss. Therefore, the whole process of the loss carry-forward takes at least 2 years.

## **Foreign sourced income**

Foreign sourced income derived by residents which is exempt under Double Tax Agreements, will be exempt from Polish corporate income tax (about 80% of treaties provide for this exemption). Otherwise, all worldwide income is subject to CIT tax in Poland at standard 19% tax rate in 2007.

## Incentives

Polish law provides for corporate income tax incentives, such as special economic zones (SEZs).

In principle, companies operating within special economic zones may enjoy tax holidays, which involve tax exemption from corporate income tax within certain time limits. Investments in SEZs may be conducted pursuant to a permit issued by the authorities. There are now 14 such zones in Poland: Mielecka, Katowicka, Suwalska, Legnicka, Wałbrzyska, Łódzka, Kostrzyńsko-Słubicka, Słupska, Tarnobrzaska, Warmińsko-Mazurska, Starachowicka, Kamiennogórska, Pomorska and Krakowska (Krakow Technology Park).

Performing business activity within a SEZ requires a special permit issued by the Minister of Economy or the SEZ authorities. Regulations applicable to a particular SEZ may specify the minimum investment value required and/or the number of employees that must be hired to benefit from the tax exemption.

## Foreign tax relief

Foreign sourced income received by a resident company is included in its taxable base unless otherwise provided by the double tax treaty. Taxes paid abroad may be credited against the tax due. However, the amount of tax credit may not exceed the amount of domestic tax that would have been due on the income derived abroad, had it been derived in Poland.

## Corporate groups

In accordance with the Corporate Income Tax Act, it is allowed to establish a “tax capital group”. The subject of the corporate tax is an income of the group as the whole, calculated as the combining of revenues and costs of all the companies included in the “tax capital group”. Such a group can be established only by joint stock companies and limited liabilities companies. The parent company must own at least 95% of the equity of each of the dependent companies. There are also other conditions which must be met to establish the “tax capital group”, such as (in particular):

- an average capital of all companies not lower than PLN 1 million,
- capital group agreement's period - minimum 3 years,
- registration of the agreement in tax office,
- those subsidiaries (subsidiary) do not hold shares in the capital of other companies forming a group,
- the companies forming a group do not enjoy any CIT exemptions based on laws other than the CIT Law,
- no outstanding tax liabilities to state budget,
- profitability ratio of the group not lower than 3% for each year,
- all of the companies founding the group must be registered in Poland.

### **Repatriation of Profits and Transfer Pricing (Related party transactions)**

In the cases specified by the corporate tax bill, related party transactions can be adjusted by the tax office on the market value of goods and services provided.

According to Polish CIT Act the taxpayers making transactions with entities affiliated with them (as understood by article 11 sec. 1 and 4 of the Act) are obliged to prepare tax documentation for these transactions. This obligation includes transaction between foreign entity and its branch in Poland. In the view of the CIT Act provisions the transfer pricing documentation has to be prepared if the transaction or transactions between related subjects in which the total amount (or its equivalent) resulting from the contract or the total amount, paid in tax year, of performances enforceable in the tax year is higher than the equivalent of:

- 1) EUR 100,000 if the value of transaction does not exceed 20 per cent of the initial capital, or
- 2) EUR 30,000 in the case of performance of services, sale or making available intangible assets and legal values, or
- 3) EUR 50,000 in the remaining cases.

The obligation to prepare the transfer pricing documentation also apply to a transaction in relation to which the payment of sums due as a result of such transaction is made directly or indirectly for the benefit of a subject having the place of residence, seat or board of management within a territory of or in a country admitting detrimental tax

competition if the total amount (or its equivalent) resulting from the contract or the total amount, actually paid in a tax year, of performances enforceable in the tax year is higher than the equivalent of EUR 20,000. The transfer pricing documentation have to be submitted upon request of fiscal authorities or fiscal control authorities within 7 days from the request for such documentation by such authorities.

## **Withholding taxes**

Withholding tax is to be deducted from interest, royalties and dividends. Withholding tax is normally deducted at 19% on dividends and at 20% on royalties and interest payments to non-residents unless an appropriate double tax treaty provides otherwise.

However, in the case of taxpayers with limited tax liability in Poland, a total exemption from the corporate income tax on dividends and other revenues from sharing in profits of legal persons having their seat in Poland has been introduced. In order to benefit from this regulation, following conditions must be met:

1. The shareholders who receive the above-mentioned income must be subject to corporate income tax in the EU member country, imposed on their total worldwide income, and
2. The revenues received derive from participation in profits of legal person, in whose capital the company being recipient of the income possess directly at least 10% (from 1 January 2009) of shares continuously in the period no shorter than two years.

The receiver of income from dividends and other revenues from sharing in profits of legal persons is:

- company stated in point 1,
- branch of company stated in point 2 located outside of Poland, if such income is taxable in EU country, where the branch is located.

Since 1 June 2013 the total exempt concerning withholding tax will also refer to the interest and royalties transferred to the related companies from the EU (in the transition period the interest and royalties will be taxed as follows: from 1 July 2005 - 10%; from 1 July 2009 – till 30 June 2013 - 5%).

## Capital Gains Tax

Capital gains from the disposal of fixed business assets are aggregated with income from other sources and are subject to corporate income tax at the standard CIT rate (19% in 2009). Gains derived from the sale of shares also are subject to the 19% rate – taxed separately.

## Interaction with International Tax Regime

Poland is the party of a dozen agreements regarding the avoidance of the double taxation. The double taxation agreements are modeled on the base of the OECD Model Convention with Respect To taxes on Income and on Capital.

The double taxation agreements were signed with the following countries: Albania, Algeria, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Bosnia and Herzegovina (the agreement with Yugoslavia), Bulgaria, Chile, China, Croatia, Cyprus, Montenegro (the agreement with Yugoslavia), Czech Republic, Denmark, Egypt, Estonia, Philippines, Finland, France, Greece, Georgia, Spain, Holland, India, Indonesia, Iran, Ireland, Iceland, Israel, Japan, Jordan, Canada, Qatar, Kazakhstan, Kyrgyzstan, South Korea., Kuwait, Lebanon, Lithuania, Latvia, Luxembourg, Macedonia, Malaysia, Malta, Morocco, Mexico, Moldova, Mongolia, Netherlands, Nigeria, Norway, New Zealand, Pakistan, Portugal, Republic of South Africa, Russia, Romania, Serbia (contract with Yugoslavia), Singapore, Slovak Republic, Slovenia, Sri Lanka, United States, Syria, Sweden, Switzerland, Tajikistan, Thailand, Tunisia, Turkey, Ukraine, Uruguay, Uzbekistan, Hungary, United Kingdom, Vietnam, Italy, Zambia, U.S. Pat. Arab Emirates, Zimbabwe.

## Value Added Tax (Vat) And Customs Duties

As a result of Poland's accession to the European Union, the Polish VAT Act has changed in line with the regulations of VI Directive and other EU Directives related to VAT.

Under the Polish VAT regulations, VAT applies to the following transactions:

- supply of goods and services made in Poland for consideration,
- exportation of goods outside the EU,
- importation of goods from outside the EU,
- intra-Community acquisition of goods effected for consideration in Poland, inclusive of the movement of goods between different Member States within the same business,
- intra-Community supply of goods inclusive of the movement of goods between different Member States within the same business.

Operation involving the sale of the business or organized parts are beyond the scope of VAT.

The supply of most goods and services performed by the above subjects are exempted from the VAT if, in the preceding tax year, the turnover did not exceed EURO 10,000 or if they pay the income tax in the form of lump sum taxation.

VAT payers that have no registered seat in Poland nor fixed place of business or place of residence are obliged to appoint a fiscal representative.

The fiscal representative is jointly liable with the business it represents for all Polish VAT liabilities.

In general, tax obligation arises at the moment of giving, handing over, exchanging a commodity, making a gift or rendering a service. However, there are many exceptions from this rule.

VAT is charged at the standard tax rate of 22% on the supply of most goods and services performed in Polish territory by legal persons, organizational entities with no legal status and natural persons and the reduced rates of 7% and of 0% (exemption with credit according to the European VAT nomenclature):

- 7% VAT rate is applicable to health care related goods and hotel services.
- 0% supplies include exports of goods outside the European Union and intra-Community supplies of goods. Exempt are, e.g. supplies of financial or health care services.

In addition, on the basis of the EU Accession Treaty, exclusively within the transitional period until 30 December 2010, the super – reduced VAT rate of 3% may be applied to foodstuffs.

In addition, there are a number of exemptions from VAT e.g. education services (with exceptions), health care services, supplies of financial (with exceptions).

In general, VAT taxpayers are obliged to settle VAT tax on a monthly basis up to the 25th of the month following the month where the tax obligation arose.

Taxpayers are entitled to deduct input VAT from output VAT to the extent to which the goods and services are used for activities which are subject to VAT. As a rule, the input VAT is the total amount of tax specified in invoices obtained by the taxpayer and certifying the acquisition of goods and services. In case of imports of goods the input VAT is the sum of the amounts of tax resulting from the customs document; in case of imports of services - the amount of output VAT on imports of services; and in case of intra-Community acquisition of goods - the amount of output VAT.

### **Branch of foreign company**

The taxpayer of VAT in Poland is foreign company, which provides business in Poland by branch and should be register for VAT purpose. Transaction between foreign company and its branch in Poland is not taxable in VAT.

### **Representation office**

The foreign entity which posses the representation office in Poland is not obliged to register for VAT purposes. The activity of representation office is not taxable in VAT.

### **Customs duty**

Upon accession to the European Union (1.05.2004) Poland became part of Customs Union. From this date all applicable rules have been replaced by the relevant Community regulations. Have been implemented:

- Community Customs Code,
- Community Customs Tariff,
- implementing provisions.

Only technical and procedural aspects are regulated by Polish law.

Following the accession to the Common Customs Tariff, the overall level of rates has been significantly reduced. Information on tariff rates, quotas or other preferences you need to be checked in the Common Customs Tariff, published in the Official Journal of the European Union. Current duty rates can be found in the Internet tariffs browser:

- TARIC,
- ISZTAR.

## Stamp Duty

Also known as the stamp duty fee stamp - is a form of equivalent activities for government officials taken in individual cases. These activities include a review of official action, the issue of certificates, permits and of certain documents.

In Poland stamp duty shall be payable on:

- a) in individual cases of public administration:
  - review official acts on the basis of an application or at the request of the interested parties,
  - issue of the certificate at the request of the interested parties,
  - authorization (licenses, concessions),
  - submission of proof of the granting of a mandate or proxy or its copy, extract or copy - in the administration of public or legal proceedings,
- b) in matters of official:
  - for carrying out official acts, the issue of certificates and permits (licenses) by an entity other than the authority of

- government, in connection with the performance of the tasks of public administration,
- for filing such undertaking in the document certifying the authorization of his or proxy, or copy, extract or copy.

## Taxation on property/land

Property owners are liable to pay this annual tax. There are taxes on three general types of properties in Poland: real estate, agriculture and forestry. Maximum rates are established in the Polish regulations, but it is the local authority who sets the binding rates. The maximum rates for 2009 are presented below:

Property qualification	Tax per sq. m (PLN)
Land used in business	0,74
Other land	0,37
Dwellings	0,62
Buildings used in business	19,81
Other buildings	6,62
Constructions	2% of value

Property tax returns should be filed each year and tax due should be settled in 12 equal monthly installments.

### TREATY AND NON TREATY WITHHOLDING TAX RATES

	Dividends (%)	Interest (%)	Royalties (%)
<i>Non-Treaty Countries</i>	19	20	20
<i>Treaty Countries:</i>			
Albania	5/10	10	5
Australia	15	10	10
Austria	5/15	0/5	5
Belgium	5/15	0/5	5
Belarus	10/15	10	0
Bulgaria	10	0/10	5
Canada	15	0/15	0/10

China	10	0/10	7/10
Croatia	5/15	0/10	10
Cyprus	10	0/10	5
Czech Republic	5/10	0/10	5
Denmark	0/5/15	0/5	5
Egypt	12	0/12	12
Estonia	5/15	0/10	10
Finland	5/15	0	0/10
France	5/15	0	0/10
Germany	5/15	0/5	5
Greece	19	10	10
Hungary	10	0/10	10
India	15	0/15	20
Indonesia	10/15	0/10	15
Ireland	0/15	0/10	0/10
Israel	5/10	5	5/10
Italy	10	0/10	10
Japan	10	0/10	0/10
Jordan	10	0/10	10
Kazakhstan	10/15	0/10	10
Korea	5/10	0/10	10
Latvia	5/15	0/10	10
Lithuania	5/15	0/10	10
Luxembourg	5/15	0/10	10
Macedonia	5/15	0/10	10
Malaysia	0	15	15
Malta	5/15	0/10	10
Mexico	5/15	0/5/15	10
Moldova	5/15	0/10	10
Morocco	7/15	10	10
Netherlands	5/15	0/5	5
Norway	5/15	0	0/10
Pakistan	15	0/20	15/20
Philippines	10/15	0/10	15
Portugal	10/15	0/10	10
Romania	5/15	0/10	10
Russia	10	0/10	10
Singapore	0/10	0/10	10

Slovak Rep.	5/10	0/10	5
Slovenia	5/15	0/10	10
South Africa	5/15	0/10	10
Spain	5/15	0	0/10
Sri Lanka	15	0/10	0/10
Sweden	5/15	0	5
Switzerland	5/15	10	0
Thailand	19	0/10/20	5/15
Tunisia	5/10	12	12
Turkey	10/15	0/10	10
Ukraine	5/15	0/10	10
United Arab Emirates	0/5	0/5	5
United Kingdom	0/10	5	5
United States	5/15	0	10
Uruguay	15	0/15	15
Uzbekistan	5/15	0/10	10
Vietnam	10/15	10	10/15
Yugoslavia	5/15	10	10/15
Zimbabwe	10/15	10	10

## Legal and tax implications of a place of business, branch or Polish company

### Place of business in Poland

#### Operating a branch or agent in Poland

According to Polish Corporate Income Tax Act (CIT) payers, if they don't have place of residence or board in the territory of Poland, are subject of tax obligation only from incomes earned on the territory of Poland. It means that firm with residence abroad and pursuit economic activity in Poland, in general are under tax obligation of country of residence, excluding income earned in Poland via company. Via Company should be interpreted residence of the board, branch, office, industrial plant, workshop, mine, source of oil or gas, quarry or any other extraction place. In case of construction site, building or

installation works they have status of company if they last longer than 12 months.

Moreover status of the company has a natural person activity carry out for a foreign company, consisted in concluding a contracts for that company excluding the activity carried out by foreign representative.

Agencies aren't consider as companies if they serve only for purchasing, storing, handing over goods belonged to the foreign company. Also agencies aren't consider as companies if they are maintain for giving or collecting information's, carry out scientific studies or agencies maintaining for marketing objectives. Company doesn't have agency in the territory of Poland in case activities carry out with a stockbroker, general consignees or any other independent representative.

In case of economy activity carry out in the territory of Poland with a company, incomes achieved by company are going to be taxed with rate obtaining polish businessmen which is 19%, excluding cases when contracts concluded to avoid double taxation between Poland and country of company origin assume income taxation according to higher rate.

## Economy Activity through a Polish company

### CIT

Carry out an economy activity in the territory of Poland through company in general causes tax obligation from whole income achieved by this subject regardless of location of achieving income. It refers to the companies which has headquarter or management board in the territory of Poland. In case of lack of the headquarter or the management board in the territory of Poland tax obligation refers only to income achieved in the territory of Poland (a deciding criteria is location of company residence).

Carrying out an economy activity with a form of the company also demands right form of documentation and registry for tax needs. In scope of income tax you need so-called "the books" carried on in accordance with Accounting Act (optionally tax register of revenues

and expenses) in respect of which registered are incomes and expenses generated by the subject.

Settled of income tax is annually (generally till the end of March of next year) however during the year Company is obligated to pay income tax withholding (monthly).

Tax base is positive difference between incomes and tax deductible cost. In case of loss, you can settle it for next 5 tax years, but in one year level of deduction can't be bigger than 50% of loss.

Positive tax base settled this way liable to taxation with Corporate Income Tax of 19%.

Incurred by the Company expenses generally can be included to tax costs on date of incur, however in case of acquisition of fixed assets and intangible assets or legal, settlement is possible only through tax amortization (according to proper rates for each components).

In case of partnership, in contrast to capital companies, income tax isn't settled by the company but by each partners (according to their shares in profits).

## **VAT**

Generally carrying out of economic activity in Poland in the Company form is generating Valued Added Tax (VAT) obligation. Excluded are only entities carrying out activities released from a tax obligation: education services, connected with preventive health care, connected with culture etc. and entities which an annual turnover doesn't exceed PLN 50 000.

This tax generally is settled monthly, certain instances quarterly.

VAT rate is: 22% (base rate) and 7%,3%,0% and release.

Vat payers are obligated to register in the tax office appropriate for location of headquarter or carrying out economic activity as well as carry on individual register for VAT needs (register VAT sales and VAT purchase).

## **Transfer pricing**

Transfer prices regulations being in force in Poland concerns all kind of transactions: carried out between domestic entities and as well transactions between entities with residence in Poland and with residence abroad (including UE and outside of UE).

In case when transaction are carried out between entities having capital or partner links and with value exceeding:

- 100 000 € - if value of transaction doesn't exceed 20% of share capital or
- 30 000 € - in case of providing services, sales or providing values intangibles and legal, or
- 50 000 € - in all other cases.

Then entities are obligated to have documentation confirming market form of that kind of transactions. That obligation refers also entities carrying out the transactions with subjects having residence in the territory of countries applying unfair tax competition (tax haven), under condition making the transactions with year value exceeding 20 000 €. In case of questioning market form of transaction by tax office, shown difference is taxed with 50% CIT rate (sanction rate) an fiscal sanctions.

Simultaneously from 1<sup>st</sup> of January 2006 there is a possibility of gaining from the Ministry of Finance so-called APA – Advanced Pricing Agreements. Objective of APA is official confirming the methodology in the scope of transfer prices being in use. Agreement refers both domestic and international transactions.

# Selling into Poland

## Direct selling from abroad

### Legal and contractual issues

Sales agreement is a named agreement regulated by the provisions of the Civil Code Act (from Article 535 to Article 602). Determination of the parties to the agreement, price and sales subject are obligatory elements of a sales agreement.

In case of a sale of subjects other than real estate, Polish regulations do not specify detailed requirements with respect to the form of an agreement. However from practical point of view, agreements concluded between entrepreneurs should be concluded in a written form, because it facilitates evidential situation in case of doubts concerning terms and conditions of delivery, price or the transition of responsibility for goods.

In case of concluding sales agreements with consumers, which involve instalment plans, advance payments as well as sales agreements against orders, sales agreements according to a pattern or sales agreements for trial, and in case of a sale at a price of more than two thousand zlotys, the seller is obliged to confirm in writing all relevant provisions of the concluded agreement.

In relations between entrepreneurs the agreement is concluded as a result of a unanimous declaration of will of both parties. In practice the conclusion of an agreement is usually preceded by an exchange of offers, letters of intent, or often even by a tender. It is important that in general an offer is an initial element of negotiations and it does not lead to a situation where the parties are bound by an agreement but they are only bound by the content of an offer. In particular, an offer may be cancelled before the conclusion of an agreement, if the statement on cancellation has been submitted to the other party before this party sent their statement on offer acceptance.

The exceptions include cases of permanent cooperation between entrepreneurs where if one entrepreneur received an offer to conclude an agreement within their business activity from the other entrepreneur

with whom he remains in permanent business relations, lack of immediate answer is understood as acceptance of the offer.

## **Tax issues**

The sale directly from abroad into the territory of the country will take place in case of sale from the territory of another EU member state as well as from outside the EU.

If the transaction is made between entities which are registered as VAT taxpayers on the territory of two different EU member states, then this act is treated as an intra-Community delivery / purchase of goods. From the point of view of an entity which sells directly into the territory of Poland in the framework of intra-Community transaction, there will not be any obligation to pay taxes in Poland, thus no obligation to register for tax purposes, since this tax (that is value added tax) will be paid by the purchaser in the framework of reverse charge mechanism rule.

Similar results exist in case of direct sale to Poland from a country from outside the EU. In such a case, a purchaser of goods is obliged to pay customs and tax amounts due connected with the import of goods, thus the seller has no other registration or settlement obligations in Poland.

The above rules, however, do not apply to cases where the seller himself imports goods onto the territory of the country and only then sells them in this country. In such a case he will remain responsible for the payment of customs amount due on the import of goods or for the payment of taxes on the transfer of goods from another EU member country to this country.

At the same time the fact of sale in the country (as an action following the import of goods to Poland), in general will create an obligation of paying in Poland a revenue tax as well as value-added tax.

A direct sale on the territory of the country from the territory of another country may also involve service transactions.

In such a case there is the so-called import of services into the country and those services are in general taxed in Poland (in the country of consumption).

In case when services are rendered for the benefit of entities registered in Poland as VAT-taxpayers, then the entity rendering services (seller) has no obligation to register for VAT purposes, and this tax in the framework of reverse charge mechanism is paid by the purchaser. However if the receiver of the service is an entity which is not registered for VAT purposes, then in general the seller will be obligated to registration and to the payment of value-added tax in Poland (this obligation will be abolished starting from 2010).

At the same time, selling services directly on the territory of the country, depending on the type of services, creates an obligation of the so-called withholding tax. In the framework of this obligation an entity paying for the service bought from abroad (for example intangible services, such as consultancy, accountancy, marketing etc) is obligated to deduct a withholding tax. In general the amount of this tax is established on the basis of a relevant agreement on avoidance of double taxation.

## Selling into Poland through a Poland based agent

### Legal issues

A foreign entrepreneur may sell into Poland through a branch or an agent – independent representative.

### Foreign company branch

In order to carry out economic activity on the territory of the Republic of Poland, foreign entrepreneurs may, on the basis of mutuality, establish branches with their registered offices in the Republic of Poland, unless ratified international agreements state otherwise. A foreign entrepreneur who establishes a branch may carry out his business activity only within the scope of activity of the foreign company, which means that the scope of activity of a foreign entrepreneur in Poland is limited to the scope of his activity in the country of its registered office. The start of activities by the branch requires an entry to the National Court Register. The sale of goods performed through a branch will be performed based on the same

rules as the sale by an entrepreneur with the registered office in Poland, and revenue obtained on running the activity through a branch will be in general taxed based on the rules relevant for a unit.

## **Agent**

According to the Polish law, an agency agreement is an agreement on the provision of services which obliges the agent, within the activity of his company, to continuously act as an agent during the conclusion of agreements with clients for the benefit of the mandator, for a consideration, or to conclude these agreements on the mandator's behalf. Thus the activity of an agent may either be in the form of a dependent agent, that is an agent who concludes agreements on the mandator's behalf or an independent agent, that is an agent who is an intermediary during the conclusion of agreements for the mandator's benefit.

## **Representation office**

According to the Polish law, foreign entrepreneurs may establish commercial branches in Poland. The scope of activity of a branch may include only the activity concerning advertisement and promotion of the foreign entrepreneur. Thus a branch does not deal with sale in Poland, because the branch does not run a business activity in Poland.

## **Distributor**

It is an entity which purchases goods from an entrepreneur and then sells them on his own behalf within his economic activity. In such a case, from the legal point of view there are transactions concluded between two independent entities performing independent commercial transactions.

## **Tax issues**

### **Sale through an agent**

Tax consequences of direct sale to Poland from another country through an agent will depend on the nature of the agent, and in particular on whether the agent carries out only services consisting in looking for clients, the organisation and accepting of orders etc. or whether he will buy and sell goods to the end-user and whether the agent will be an independent entity or a singled out organisational unit of the seller (branch etc.).

If the agent is an entity independent from the seller, then in principle the seller will not have any tax obligations in the country. In such a case, agent will have the obligation to pay taxes on the purchase of goods in the country (if he buys and resells them to end-users) or to pay taxes on account of agency services.

However, if the agent provides only services, as it was described in earlier paragraph, it is important who will import the goods into the country, thus who will be responsible for the payment of import amounts due or tax on account of intra-Community transactions (see direct sale to Poland).

Other tax consequences will follow when agency activity will be performed in Poland through a singled-out organizational unit of the seller, for example through a branch.

In such a case the activity may be treated as a unit in the meaning of the agreement on avoidance of double taxation and in consequence profits made by this agent would be taxed in Poland, which means that there would be an obligation to register for the purposes of income tax as well as value-added tax.

According to the Model Convention on income and property tax, if an entity acts on behalf of a company as well as possesses and customarily uses an authorisation to conclude agreements on the company's behalf, then it is presumed that the company has its unit in the country where this agent is active (see Article 5 of the Convention).

## **Sale through a distributor**

Tax consequences described above will concern in majority also a sale through a distributor, with a provision that a distributor usually is an entity independent from the seller, thus the distributor's activity will not be considered as a unit in the meaning of the Convention.

Thus in principle a sale to a distributor will not create any obligation for the seller to pay taxes in Poland.

However it should be remembered that in a situation where an entity functioning as an agent or a distributor is a party related to the seller, then these transactions are governed by strict regulations of transfer prices (described earlier).

## Selling to Poland through e-commerce

### Legal issues

In case of e-commerce sale in principle the same rules are applicable for regular sale, taking into account the following differences in particular. An offer made in an electronic form is binding for the offering party, if the other party immediately confirms its reception. An entrepreneur who is making an electronic offer is obliged to inform the other party before concluding the agreement explicitly and clearly about:

- 1) technical activities involved connected with the procedure of concluding an agreement,
- 2) legal consequences of confirming by the other party the reception of the offer,
- 3) rules and methods of recording, protecting and making the content of the concluded agreement available by an entrepreneur to the other party,
- 4) methods and technical measures used to detect and correct errors in data entered, which he is obligated to make available to the other party,
- 5) languages in which an agreement may be concluded;
- 6) codes of ethics which he applies as well as their availability in an electronic form.

In case of a sale conducted for consumers, a consumer who concluded an agreement via the Internet, may withdraw from it without giving any reasons but only by giving an appropriate written statement within ten days from the date of concluding the agreement. In order to meet this deadline, it is sufficient to send the statement before the

deadline. A reservation that the consumer may withdraw from the agreement after payment of a fixed amount (compensation) is not allowable. In case of withdrawal from an agreement, the agreement is considered not concluded, and the consumer is released from all obligations. What has been provided by the parties should be returned unchanged. The return should be done immediately, not later than within fourteen days. If the consumer made any advance payments, statutory interest is due on them from the date of making the payment.

## **Tax issues**

E-commerce sale is in principle taxed according to the rules applied to other activities, thus the regulations do not provide for specific tax regulations or preferences for e-business activity.

In practice, the sale made by an entrepreneur who has a server or an internet website in Poland, will be subject to a revenue tax in Poland.

For the purposes of value-added tax, e-commerce sale constitutes the so-called mail-order sale (mail-order sale into the country or from the country, respectively), due to the fact that this sale is usually offered to people who do not run their own business activities (natural persons).

In the case of mail-order sale in the country this sale remains taxed outside Poland on the condition that its total value does not exceed PLN 160,000. Upon exceeding this amount, an entity carrying out a mail-order sale in the country is obliged to pay value-added tax in the country and at the same time to register for the purposes of value-added tax in Poland.

## **Ceasing to have a presence in Poland**

### **Disposal of a business or subsidiary**

#### **Legal and commercial considerations**

The most effective method of closing the business activity by partners is the sale of their shares in the company.

In the case of partnerships (registered partnership, limited partnership, partnership limited by shares) the Polish law does not provide for a possibility of selling a company as such. The only form of closing the company's activity is its winding up. The exception is a situation where a shareholder withdraws from the company (on the condition that at least two shareholders will remain in the company after the withdrawal of the shareholder) and the sale of share in the company (if such possibility is provided for by the company's Articles of Association).

In the first case the shareholder withdrawing from the company receives the return of the capital share, the value of which is established on the basis of a separate balance sheet, taking into account the realisable value of the company's property. A capital share should be paid in cash. Contribution in kind made by the shareholder is returned also in kind. A withdrawing shareholder participates in the profit and loss on businesses which are not finished yet; however he has no influence on the way they are handled.

A sale of the share in a partnership is possible only if the shareholders provided for such a possibility in the company's articles of association. Then the condition of selling a share is the consent of other shareholders for the sale of a share.

### **Limited liability company**

According to the Polish law, the agreement on the sale of shares in a limited liability company must be done in writing with signatures certified by a notary. If a shareholder does not have all the shares (he is not the only shareholder) it must be checked before concluding the agreement whether the company's articles of association does not contain provisions according to which the sale of shares requires a prior consent of the Company (consent is given by the company's management board in writing). In case of refusal of the consent for the sale of shares, a shareholder may go to a court. If the court finds that there are important reasons, it may give consent for the sale of shares instead of the Company. In such a case the company will have the right to indicate another purchaser.

## Join-stock company

According to the Polish law, bearer shares are fully disposable. The company's articles of association may include only restrictions regarding the disposal of registered shares. In such a case it is necessary to obtain the company's consent (articles of association may also restrict the possibility of share disposal in a different way). In a case where articles of association make the transfer of shares conditional on the company's consent, the consent is given by the management board in writing under the pain of nullity, (unless articles of association state otherwise). If the company refuses its consent on the transfer of shares, it should indicate another buyer. The time of indicating the buyer, the price or the method of its determination as well as payment date is stipulated by articles of association. In case of lack of those provisions a bearer share may be sold without restrictions. The time for indicating the buyer may not be longer than two months from the day of communicating to the company the intention to transfer shares.

## Tax issues

### Sale of activity or subsidiary

Ceasing activity in the country may follow as a result of, e.g. sale of such activity, and more precisely the sale of a company, within which such activity is carried out.

Tax consequences of the share selling by non-residents will mainly result from respective agreements on avoidance of double taxation.

If the owner of a company registered in Poland is a non-resident, then, in principle, the sale of the company (understood as the sale of shares) will be taxed in the country of residence of a non-resident, so outside Poland.

This rule does not refer to cases when the property of the Company being sold consists of real estate in at least 50 percent or the Company being sold is listed on the Stock Exchange. In such a case the sale of shares is subject in Poland to 19 percent income tax.

# Winding-up a company or deleting a company from the register of companies

## Legal issues

The Polish law does not provide for a „strike off procedure” (deletion procedure) in relation to companies. A company may be deleted from the register after the winding-up procedure or after the end of a bankruptcy suit.

## Partnership

The beginning of winding-up requires a resolution of shareholders and several actions taken by them, such as notification about the opening of liquidation to the register court, appointment of a liquidator etc. In case of partnerships, liquidation proceedings consists in taking actual and legal actions aiming at liquidation of the company's property. However, before the company's property is liquidated, liquidators should finish current businesses of the company, collect all receivables and fulfil all obligations. The company's property is mainly used to pay all the company's liabilities and appropriate amounts are left to cover non-due or disputable liabilities. The rest of the property is divided between shareholders, according to the provisions of the company's articles of association. In case of lack of appropriate provisions of the articles, the shareholders are repaid for their shares. The surplus is divided between shareholders in such a relation, in which they participate in profit. Contribution in kind made by a shareholder to the company only for use is returned to the shareholder also in kind. The liquidation of the company is finished at the moment of its deletion from the register.

## Limited liability company

The process of winding-up a limited liability company is a complicated and time-consuming process. The liquidation of limited liability company shall take minimum 7-8 months. Below you can find main steps of the Limited Liability Company liquidation procedure.

First of all the Extraordinary Shareholders General Meeting have to undertake the resolution on dissolution of the company. The resolution have to be undertake in the presence of the Notary Public. With those day the procedure of liquidation is being opened. Liquidation shall be carried out under the name of the company with the additional words „XYZ Spółka z o.o. w likwidacji” („XYZ Limited Liability Company in liquidation”). The members of the management board shall act as the Liquidators. The opening of the liquidation have to be filled to the National Court Register.

The following particulars shall be reported to the registry: the names of the liquidators and their address, the manner of the representation of the company by the liquidators and any changes in this respect. The each liquidator shall have the right and the obligation to file.

Sample of the liquidators certified by the notary shall be attached to the filling. The liquidators shall announce the dissolution of the company and the opening of the liquidation by summoning the creditors to report their claims within three months of the date of the announcement. The liquidators shall draw up a balance sheet as at the opening of the liquidation. Such balance sheet shall be submitted by the liquidators to the general meeting for approval. All assets shall be included in the liquidation balance sheet at their sale value. Liquidators shall close the current business of the company, collect receivables, pay debts and liquidate the assets of the company (liquidation actions). After the completion of the liquidation and the approval by the general meeting of the financial report drawn up as at the date of the end of the liquidation (the liquidation report), the liquidators shall announce the report to the registry court, together with the application that the company be deleted from the register. During liquidation, no payment, even partial, of the profits may be made to the shareholders, nor may the company assets be distributed before satisfaction of all debts.

Assets remaining after satisfying or securing the creditors shall not be distributed among the shareholders before end of six months of the date of announcement of the opening of the liquidation and summoning the creditors. Dissolution of the company shall take place after liquidation, upon the deletion of the company from the register. The books and documents of the dissolved company shall be deposited with the person identified in the articles of association or in

the resolution of the shareholders. If no such person is identified, the depositary shall be appointed by the registry court. The appropriate tax office shall be notified of the liquidation of receiver of the company; a copy of the liquidation shall be submitted.

## **Joint-stock company**

The procedure of winding-up a joint-stock company is analogous to the above described liquidation procedure of a limited liability company.

## **Bankruptcy suit**

In case of a bankruptcy of a company, its winding-up follows after the end of a bankruptcy proceedings, at the moment of its deleting from the register. The basis of initiating bankruptcy proceedings is insolvency of a company. The bankruptcy of a company may in particular follow the "change" of liquidation proceedings into bankruptcy proceedings, if during liquidation it turns out that the company is insolvent. The initiation of bankruptcy proceedings does not always need to lead to the liquidation of a bankrupt company. In case of a ruling on a declaration of bankruptcy with a possibility of an arrangement, there is a possibility that the company will be able to make an arrangement with creditors, which will protect it from the loss of legal existence. The declaration of bankruptcy is made by the economic division of a district court.

## **Tax issues**

The liquidation of a company in Poland will cause certain tax consequences with respect to income tax as well as value added tax.

In case of companies with legal status, the liquidation proceedings, above other things, aims at the sale of property items (in order to satisfy creditors, pay back liabilities etc.), which in turn leads to a tax obligation with relation to income tax as well as VAT tax – tax on the sale of property items.

Property which remains in the company upon satisfying creditors may be cashed or transferred to the owner/owners (shareholders etc.).

For the purposes of income tax the property received in connection with the Company's liquidation constitutes the so-called liquidation dividend, which in principle is taxed with 19 percent rate. However if a shareholder has his residence in another EU country or in a country which belongs to the European Economic Area and he has been in possession of these shares constantly for at least 2 years, then the revenue from dividend is free from tax.

With respect to value-added tax, the transfer of the rest of the property to a shareholder is in principle also treated as a tax-free activity (not taxable), however this issue is not clear in the assessment of the Polish tax authorities.

## Company migration

### Legal issues

The company's registered office may be only in Poland. The change of the registered office by transferring it outside Poland in view of Polish regulations causes dissolution of a company (the company will be dissolved after the liquidation proceedings).

There is a similar result in case of a merger of a Polish company with a company from another country of the European Union (cross-border merger), if the Polish company will be the acquiree and the company from another EU country will be the acquirer. As a result of the acquisition, the Polish company will be deleted from the register of companies, and it will be replaced by a branch of a foreign company.

# VI Foreign personnel in Poland



## Entry into Poland

Since 1 May 2004 the citizens of the countries of the European Union may, according to the rule of free movement of people, work in Poland and run economic activity in Poland.

## Employee rights

With relation to persons employed on the basis of an employment contract, Labour Code Act and the administrative regulation issued on its basis are the legal acts which comprehensively regulate relations between employees and employers. In issues not regulated by the Labour Code, the parties may freely arrange the conditions in a contract, provided that if a given clause of an agreement regulates the employee's rights less favourably than the provision of the Labour Code, by law this provision is replaced with the provision of the Code. According to the Polish regulations, an employment contract should be concluded in writing. The employment contract should include the following:

- type of work,
- place of work,
- salary with indication of salary components,
- time of work (full-time, part-time),
- the beginning date of work.

Additionally the employer should inform the employee in writing not later than within 7 days from the conclusion of the employment contract about:

- daily and weekly time of work obligatory for the employee,
- frequency of payment of salary,
- annual leave to which the employee is entitled,
- notice period obligatory for the employee,
- night hours,
- place, time and period of the payment of the salary,
- the system which employees use to confirm their arrival and presence at work, which is accepted by the employer, as well as excuse for absence at work.

An employee is entitled to the following paid leave:

- 20 working days – if an employee has been employed for less than 10 years,
- 26 working days – if an employee has been employed for at least 10 years,

whereas the length of service from which the length of leave is dependent is cumulated with the length of service for other employers.

The basic responsibilities of an employer include:

- informing employees who start work about their responsibilities, the way of performing work on determined positions and their basic authorizations,
- organizing work in a way which ensures full use of the time of work as well as obtaining by employees, with the use of their skills and qualifications, high efficiency and due quality of work,
- organizing work in a way which ensures the reduction of the tiresomeness of work, especially monotonous work and work in an established upper pace,
- counteracting discrimination in employment, in particular due to gender, age, disability, race, religion, nationality, political convictions, union membership, ethnic origin, denomination, sexual orientation, as well as due to fixed-time vs. indefinite-time employment, or full-time vs. part-time employment,
- ensuring safe and hygienic conditions of work and offer systematic training for employees on health and safety at work,
- paying salary in a timely and correct way,
- facilitating the improvement of employees' professional qualifications,

- giving employees who start work after graduation from technical school or university conditions favourable for adaptation to a due execution of work,
- meeting, according to available means, the social needs of employees,
- applying objective and fair assessment criteria of employees and the results of their work,
- maintaining documentation in issues related to the employment relationship and personal files of employees,
- keeping documentation in issues related to the employment relationship and personal files of employees in conditions which do not threaten with damage,
- maintaining good social relations in the place of work.

An employee's responsibilities include in particular:

- keeping to the working hours established in the place of work,
- observing work regulations and order established in the place of work,
- observing regulations and safety rules as well as fire regulations,
- caring for the interests of the place of work, protect its property and keep confidential information the revealing of which might cause damage to the employer,
- keeping secrets determined by other provisions,
- observing the rules of social intercourse in the place of work.

## **Social insurance**

The provisions of regulation 1408/71 apply to the scope which is subject to social insurance. According to the above-mentioned regulation a person who is employed in one country is subject to its legislation, even if this person resides in another country or if the company or his employer has a registered office or place of activity in another member state. A person who runs business activity at own risk in one member state is subject to the legislation of this state, even if this person resides in another member state.

According to regulation 1408/71 an employee is every person who carries out work for a certain amount of time for the benefit of and under the management of another person, with pay. Thus the group of persons subject to social insurance includes, except for persons

employed on the basis of an employment contract, also persons employed on the basis of a fee-for-task agreement.

The basis to calculate social insurance contributions is income in the meaning of personal income tax act obtained by the employee on account of work relationship.

Rates of social security contributions are as follows (%):

Type of insurance	Premium	Partition of premium	
		Employer	Employee
<b>Retirement</b>	19.52	9.76	9.76
<b>Disability</b>	6	4.5	1.5
<b>Industrial</b>	0.67-3.60	0.67-3.60	
<b>Sickness</b>	2.45		2.45
<b><u>Sum:</u></b>	28.64-31.57	14.93-17.86	13.71

The employer is also obliged to pay a premium to the State Fund for Disabled (PFRON). The duty to pay the premium to the Fund and the amount of premium depends on the number of people employed, their average remuneration and the total number of disabled employees.

The above contributions are settled on a monthly basis and transferred to the Social Security Institution (ZUS) in the full amount by payers of social security contributions.

According to regulation 1408/71 persons running a business activity at own risk include: persons running non-agricultural business activity, partners of professional, registered and limited partnerships, partners of one-man limited liability companies, representatives of freelance occupations, authors, artists and farmers. Persons running a business activity pay social insurance contributions on the basis the declare which may not be less than a minimal salary.

## Health insurance

Employees who are subject to a mandatory social insurance are also subject to a mandatory health insurance.

The basis for the calculation of health insurance contribution is income in the meaning of personal income tax regulations, obtained from the employment relationship. The basis for the calculation of the contribution is reduced by pension insurance, sickness insurance and disability insurance contributions, deducted by the employer from the employee's resources. Sickness insurance contributions amount to 9% of the basis for the calculation of the contribution.

## Personal taxation - determination of tax residence

Being subject to a tax obligation in Poland is determined by tax residence. According to Polish personal tax regulations a person may be subject to an unrestricted tax obligation only in one country and may be subject to a limited tax obligation in many countries.

A criterion which decides about whether a natural person is subject to an unlimited tax obligation in Poland is this person's residence in Poland. According to personal income tax provisions natural persons, if their place of residence is in Poland, are subject to a tax obligation on all their income irrespective of the place of the sources of income. A person with a place of residence in Poland is a natural person who: has in Poland the centre of personal interests or business (centre of life interests) or has been staying in Poland for more than 183 days in a tax year. Natural persons who do not meet one of the above-mentioned criteria, do not have a place of residence in Poland, thus are subject to a tax obligation only on income obtained in Poland (they are subject to a limited tax obligation). Income obtained in Poland means in particular income from: work performed in Poland on the basis of employment relationship regardless of the place of payment of the salary, activity performed personally (e.g. on the basis of a fee-for-task agreement, a contract for a specific task) regardless of the place of payment of salary, business activity run in Poland, real estate located in Poland (including from the sale of such real estate).

The above rules of determining the place of tax residence are applied taking into consideration agreements on avoidance of double taxation,

to which Poland is a party. If according to the agreement, a natural person has a place of residence in both states (parties to the agreement), then this person:

- shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both states, he shall be deemed to be a resident only of the state with which his persona and economic relations are closer (centre of vital interests),
- if the state in which he has his centre of vital interests can not be determined, or if he has not a permanent home available to him either state he shall be deemed to be a resident only of the state of which he is a national,
- if he has an habitual abode in both states or in neither of them, he shall be deemed to be a resident only of the state of which he is a national,
- if he is a national of both states or neither of them, the competent authorities of the states shall settle the question by mutual agreement.

A certificate of residence is a document certifying tax residence in a given state. This document confirms that a person named in it is subject to an unlimited tax obligation on all income in the country which issued this document.

## **Employee benefits**

All additional benefits received by an employee in connection with his employment relationship with the employer, such as private medical insurance, possibility of using a company car for private purposes, health spa passes or fitness course passes are treated, according to personal income tax, as income on the employment relationship and added to the employee's total income.

# Appendix

## Reference Web Sites



The Polish Agency for Enterprise Development (PARP)	<a href="http://en.parp.gov.pl">http://en.parp.gov.pl</a>
Ministry of Economy	<a href="http://www.mg.gov.pl/English">http://www.mg.gov.pl/English</a>
Warsaw Stock Exchange (also NewConnect and Catalyst)	<a href="http://www.gpw.pl">http://www.gpw.pl</a>
The National Chamber of Statutory Auditors	<a href="http://kibr.org.pl/en/home">http://kibr.org.pl/en/home</a>
National Bank of Poland	<a href="http://www.nbp.pl/homen.aspx?f=/srodeken.htm">http://www.nbp.pl/homen.aspx?f=/srodeken.htm</a>
The Polish Information and Foreign Investment Agency (PALIZ)	<a href="http://www.paiz.gov.pl/index/?lang_id=12">http://www.paiz.gov.pl/index/?lang_id=12</a>
Polish Chamber of Commerce (PCC)	<a href="http://www.kig.pl/index.php">http://www.kig.pl/index.php</a>
The Office of the Committee for European Integration (UKIE)	<a href="http://www.ukie.gov.pl/www/en.nsf/Open">http://www.ukie.gov.pl/www/en.nsf/Open</a>
Polish Confederation of Employers Lewiatan	<a href="http://www.pkpplewiatan.pl/en/">http://www.pkpplewiatan.pl/en/</a>
Ministry of Finance	<a href="http://www.mf.gov.pl/?const=0&amp;lang=en">http://www.mf.gov.pl/?const=0&amp;lang=en</a>
Polish Court Registry (KRS)	<a href="http://www.krs-online.com.pl/">http://www.krs-online.com.pl/</a>
Social Insurance Institution (ZUS)	<a href="http://www.zus.pl/default.asp?p=1&amp;id=1442">http://www.zus.pl/default.asp?p=1&amp;id=1442</a>
Polish Financial Supervision Authority	<a href="http://www.knf.gov.pl/en/index.html">http://www.knf.gov.pl/en/index.html</a>
Central Statistic Office (ZUS)	<a href="http://www.stat.gov.pl/gus/index_ENG_HTML.htm">http://www.stat.gov.pl/gus/index_ENG_HTML.htm</a>

# PKF in Poland

## Offices in Poland



### **Warszawa**

ul. Orzycka 6 lok. 1B  
02-695 Warszawa  
tel.: (+48 22) 560 76 50  
fax: (+48 22) 560 76 63

### **Łódź**

ul. Żeromskiego 68  
90-502 Łódź  
tel. (+48 42) 637 10 11  
fax. (+48 42) 637 31 72

### **Gdańsk**

ul. Heweliusza 11  
80-890 Gdańsk  
tel.: (+48 58) 321 73 31  
tel./fax: (+48 58) 741 54 02

### **Katowice**

ul. Kościuszki 43  
40-048 Katowice  
tel./fax (+48 32) 253 66 69  
tel. (+48 32) 253 84 98

### **Opole**

ul. Kołłątaja 11  
45-064 Opole  
tel./ fax: (+48 77) 454 73 08

### **Wrocław**

Al. Armii Krajowej 12/5  
50-541 Wrocław  
tel/fax: (+48 71) 367 00 04

### **Poznań**

ul. 28 Czerwca 1956 Roku nr 398  
61-441 Poznań  
tel. (+48 61) 668 68 60 – 62  
fax: (+48 61) 668 68 60