

# Doing Business in Poland

Poland – developing business opportunities



## POLAND – DEVELOPING BUSINESS OPPORTUNITIES



A handwritten signature in blue ink, appearing to read 'A. Dmowski'.

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Managing Partner  
CEO

Since joining the European Union in 2004 Poland has become increasingly attractive as a place to do business. Lower taxes, a skilled workforce, and Poland's central European location all mean Poland can now compete with the rest of Europe. It is perhaps easy to think of Poland as part of Eastern Europe. In fact, Poland, with a population exceeding 38 million, is the largest country in what is defined as Central Europe. Poland has a well-developed infrastructure with plans for more roads and airports in the near future.

Poland is one of Europe's fastest growing economies, an economy that managed to grow during the financial crisis in which most other developed economies shrank. Much of its economic development has resulted from its status since 2007 as the largest recipient of EU funding. In 2014 Poland is forecasting GDP growth of 2.2%. Looking ahead until 2020, Poland will continue to benefit from EU funding to the tune of €73 billion. And the Polish government has earmarked €10 billion to encourage the private sector, foreign as well as domestic, to work together with universities to develop innovative products. While the public sector is responsible for setting the research and innovation agenda, the private sector has become a driving force in taking these initiatives forward.

Foreign direct investment

In June 2013 the United Nations Conference on Trade and

Development (UNCTAD) published its World Investment Report 2013. The report revealed that global FDI levels dropped in 2012. However, in the first quarter of 2013, FDI into Poland had already exceeded investment for the whole of 2012.

The report also forecast that in the next two years Poland is set to become Europe's fourth, and the World's fourteenth, most attractive FDI destination.

### **Taxation**

The Polish tax system structures itself around the following taxes:

- income tax – both corporate and personal
- value added tax – payable on goods and services
- excise duties – payable on such goods as fuel,
- tobacco and alcohol
- local taxes – typically charged on real estate and
- vehicles
- stamp duties – charged on legal documents.

Tax incentives for foreign investors exist in Poland's special economic zones (SEZ) – separately identified areas allowing preferential business activity. Foreign investors can receive exemption from income tax and real estate taxes. To operate in an SEZ you need to apply for a permit from the SEZ authorities.

### **Doing business in Poland**

There was a time when Poland had a reputation for being over-bureaucratic and consequently not an easy place in which to do business. However, this appears to be changing, helped by legislation designed to reduce the bureaucratic burden. The World Bank recognised these efforts in its Doing Business report when saying: 'Poland improved the most in the ease of doing business, through four reforms – making it easier to register property, pay taxes, enforce contracts and resolve insolvency as measured by Doing Business'. The World Bank also describes Poland as '...a high-income economy, a remarkable achievement over two decades'.

While there are few barriers to setting up a business in Poland, there are several ways to you can do it.

### **Legal business entities**

- Sole proprietorship – the simplest model where an individual wishes to run a small business
- Registered partnership – two or more partners who jointly carry unlimited liability for the company's obligations
- Limited partnership – two or more partners where at least one partner carries unlimited liability, and at least one partner has limited liability
- Limited joint-stock partnership – two or more partners where at least one partner has unlimited liability and at least one partner carries a liability limited by

shareholding. The partnership requires a minimum share capital of PLN 50,000

- Limited liability company – a legal entity set up by one or more shareholders with a share capital of at least PLN 5,000. Shareholders' liability is limited to the value of their shareholding
- Limited joint-stock company – a legal entity set up by one or more shareholders with a share capital of at least PLN 100,000. Shareholders' liability is limited to the value of their shareholding.

### **Branch office or representative office**

If you are not yet ready to establish a business in Poland you have the option of creating a branch office or a representative office. A branch office enables foreign entrepreneurs with existing businesses to conduct those same business activities in Poland. This could be production related or service related. The branch office must appoint someone in Poland to represent it. A representative office only allows a foreign business to promote its products or services in Poland. Anyone setting up a representative office must register with the Register of Representative Offices of Foreign Business Entities.

### **Get the right advice**

If you are considering doing business in Poland it is important you seek professional advice in the areas of business structure and taxation.

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# ABOUT POLAND

## Present-Day

A shock therapy programme, initiated by Leszek Balcerowicz in the early 1990s enabled the country to transform its socialist-style planned economy into a market economy. As with all other post-communist countries, Poland suffered temporary slumps in social and economic standards, but it became the first post-communist country to reach its pre-1989 GDP levels, which it achieved by 1995 largely thanks to its booming economy.

on 1 May 2004. Poland joined the Schengen Area in 2007, as a result of which, the country's borders with other member states of the European Union have been dismantled, allowing for full freedom of movement within most of the EU. In contrast to this, the section of Poland's eastern border now comprising the external EU border with Belarus, Russia and Ukraine, has become increasingly well protected, and has led in part to the coining of the phrase 'Fortress

to negotiate such a deal, in hope of drastically reducing dependence on NATO and increasing readiness. Poland has already built several commands of a common battle group with Hungary, Czech Republic and Slovakia, with a total of 12,000 troops ready for deployment. Poland today is seeking to build more battle groups with Lithuania and Ukraine. These battle groups have vowed to serve under the European Union, and not NATO. Eurosceptics criticize such moves as further unnecessary integration and a new major step towards a federalized European Union under one government. Military integration is judged to be the most significant step after a monetary union.

On 10 April 2010, the President of the Republic of Poland, Lech Kaczyński, along with 89 other high-ranking Polish officials died in a plane crash near Smolensk, Russia. The president's party were on their way to attend an annual service of commemoration for the victims of the Katyń massacre when the tragedy took place.

In 2011, national census elections took place. Polish presidency in the EU started that year and the elections took place (they were won by the ruling party). Poland joined European Space Agency in 2012, as well as organised the Euro 2012 (along with Ukraine) and the process of digitisation started.

In 2013, Poland also became a member of the Development Assistance Committee.



Most visibly, there were numerous improvements in human rights, such as the freedom of speech, internet freedom (no censorship), civil liberties (1st class) and political rights (1st class), according to Freedom House. In 1991, Poland became a member of the Visegrád Group and joined the North Atlantic Treaty Organization (NATO) alliance in 1999 along with the Czech Republic and Hungary. Poles then voted to join the European Union in a referendum in June 2003, with Poland becoming a full member

Europe', in reference to the seeming 'impossibility' of gaining entry to the EU for citizens of the former Soviet Union. Today Poland is one of the main countries pushing the European Union towards further economic, political and even military integration. Poland has been one of the most prominent voices of establishing a common European Armed Forces, with Poland's Premier along with Chancellor Angela Merkel and President Francois Hollande (collectively also part of Weimar Triangle taking steps

## Administrative divisions

Poland's current voivodeships (provinces) are largely based on the country's historic regions, whereas those of the past two decades (to 1998) had been centred on and named for individual cities. The new units range in area from less than 10,000 square kilometres (3,900 sq mi) for Opole Voivodeship to more than 35,000 square kilometres (14,000 sq mi) for Masovian Voivodeship. Administrative authority at voivodeship level is shared between a government-appointed voivode (governor), an elected regional assembly (sejmik) and an executive elected by that assembly.

The voivodeships are subdivided into powiats (often referred to in English as counties), and these are further divided into gminas (also known as communes or municipalities). Major cities normally have the status of both gmina and powiat. Poland has 16 voivodeships, 379 powiats (including 65 cities with powiat status), and 2,478 gminas.



Voivodeship		Capital city or cities
in English	in Polish	
Greater Poland	Wielkopolskie	Poznań
Kuyavian-Pomeranian	Kujawsko-Pomorskie	Bydgoszcz / Toruń
Lesser Poland	Małopolskie	Kraków
Łódź	Łódzkie	Łódź
Lower Silesian	Dolnośląskie	Wrocław
Lublin	Lubelskie	Lublin
Lubusz	Lubuskie	Zielona Góra / Gorzów Wielkopolski
Masovian	Mazowieckie	Warsaw
Opole	Opolskie	Opole
Podlaskie	Podlaskie	Białystok
Pomeranian	Pomorskie	Gdańsk
Silesian	Śląskie	Katowice
Subcarpathian	Podkarpackie	Rzeszów
Świętokrzyskie	Świętokrzyskie	Kielce
Warmian-Masurian	Warmińsko-Mazurskie	Olsztyn
West Pomeranian	Zachodniopomorskie	Szczecin

## Economy

The Economy of Poland is the 6th largest in the EU, the largest in eastern Europe, and one of the fastest growing economies in the world, with a yearly growth rate of over 3.0% before the late-2000s recession. It is the only member country of the European Union to have avoided a decline in GDP, meaning that in 2009 Poland has created the most GDP growth in the EU. As of December 2009 the Polish economy had not entered recession nor contracted. According to the Central Statistical Office of Poland, in 2010 the Polish economic growth rate was 3.9%, which was one of the best results in Europe.

The Polish state has steadfastly pursued a policy of economic

liberalization throughout the 1990s, with positive results for economic growth but negative results for some sectors of the population. The privatization of small and medium state-owned companies and a liberal law on establishing new firms has encouraged the development of the private business sector, which has been the main drive for Poland's economic growth. The agricultural sector remains handicapped by structural problems, surplus labor, inefficient small farms, and a lack of investment. Restructuring and privatization of „sensitive sectors” (e.g. coal), has also been slow, but recent foreign investments in energy and steel have begun to turn the tide. Recent reforms in health care, education, the pension system, and

state administration have resulted in larger than expected fiscal pressures. Improving this account deficit and tightening monetary policy, with focus on inflation, are priorities for the Polish government. Further progress in public finance depends mainly on the reduction of public sector employment, and an overhaul of the tax code to incorporate farmers, who currently pay significantly lower taxes than other people with similar income levels. Despite some continued systemic problems, Poland has made great economic progress over the last decade, and now is ranked 20th worldwide in terms of GDP. The largest component of its economy is the service sector.

## International business in Poland

Polish law is rather favourable to foreign entrepreneurs. The government offers investors various forms of state aid, such as: CIT tax at the level of 19% and investment incentives in 14 Special Economic Zones (among others: income tax exemption, real estate tax exemption, competitive land prices), several industrial and technology parks, the possibility to benefit from the EU structural funds, brownfield and greenfield locations. According to the National Bank of Poland (NBP) the level of FDI inflow into Poland in 2006 amounted to 13.9 billion Euros.

According to an Ernst & Young report, Poland ranks 7th in the World

in terms of investment attractiveness. However, Ernst & Young's 2010 European attractiveness survey reported that Poland saw a 52% decrease in FDI job creation and a 42% decrease in number of FDI projects since 2008. According to the OECD ([www.oecd.org](http://www.oecd.org)) report, in 2004 Poles were one of the hardest working nations in Europe. Yet, the ability to establish and conduct business easily has been cause for economic hardship; the 2010 the World Economic Forum ranked Poland near the bottom of OECD countries in terms of the clarity, efficiency and neutrality of the legal framework used by firms to settle disputes

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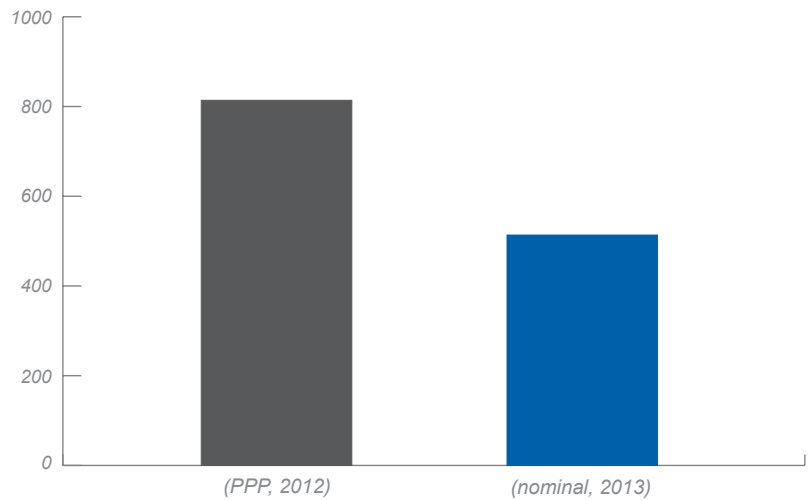
**According to the National Bank of Poland (NBP) the level of FDI inflow into Poland in 2006 amounted to 13.9 billion Euros.**



## Poland in numbers

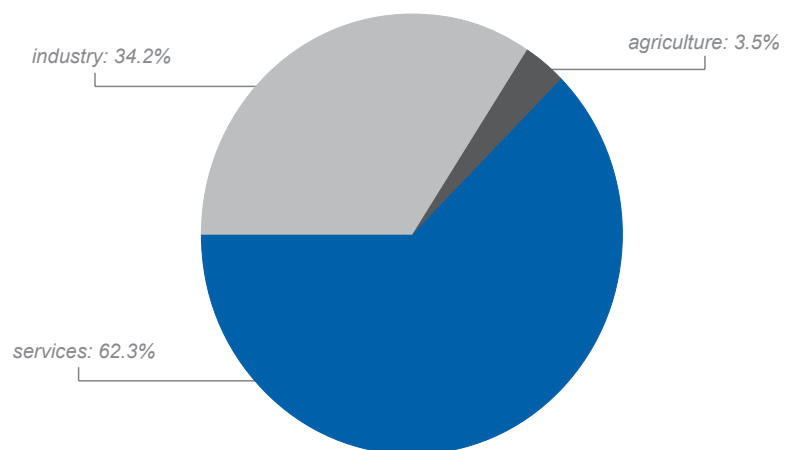
### Gross domestic product

Year to year in Poland was recorded gross domestic product. In 2012 gdp ratio amounted to \$813.8 billion (PPP, 2012) and in 2013 was \$513.7 billion (nominal, 2013)



### Gross domestic product by sectors

In 2012, the largest part of GDP is attributable to the service sector (over 62%), the second largest sector divide among themselves, the GDP was industry (over 34%), the smallest part attributable to the agricultural sector (slightly more than 3%)



### Unemployment

Unemployment:

2013 - 10.0%

2012 - 10.4%

Male unemployment

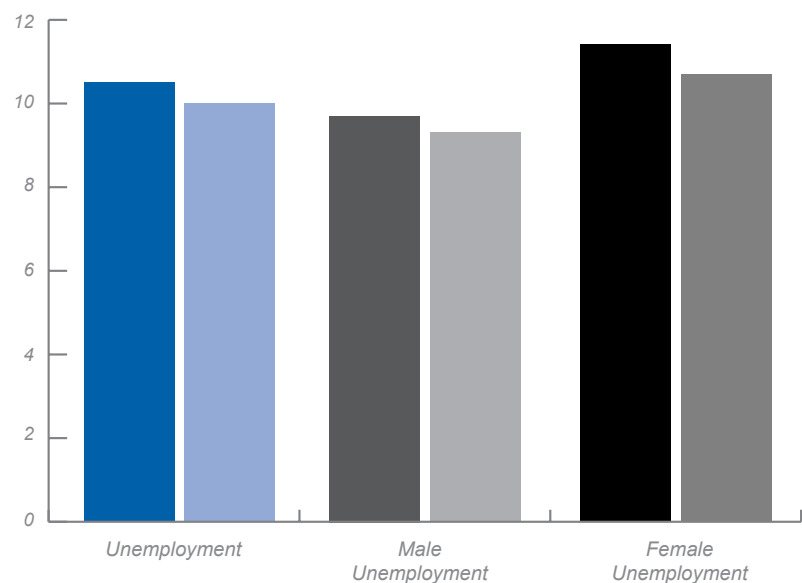
2013 - 9.3%

2012 - 9.7%

Female unemployment

2013 - 10.7%

2012 - 11.4%

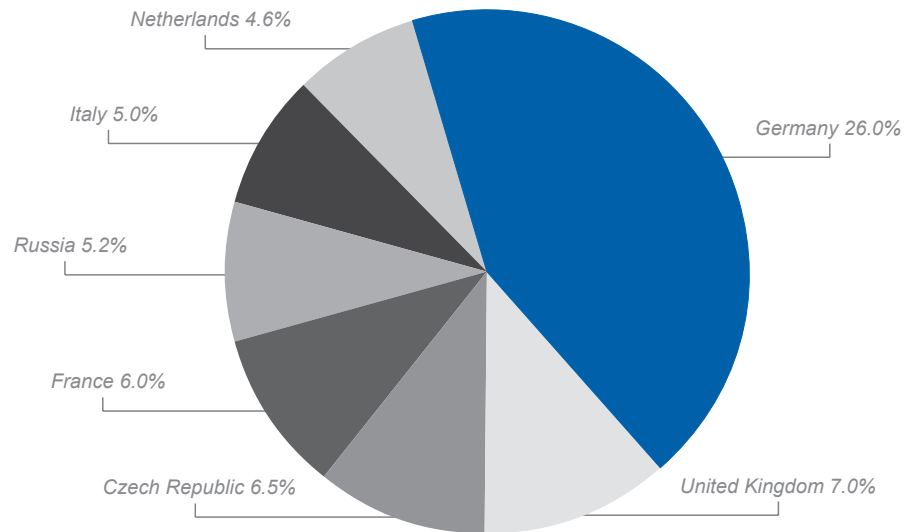




## Poland in numbers

### Export

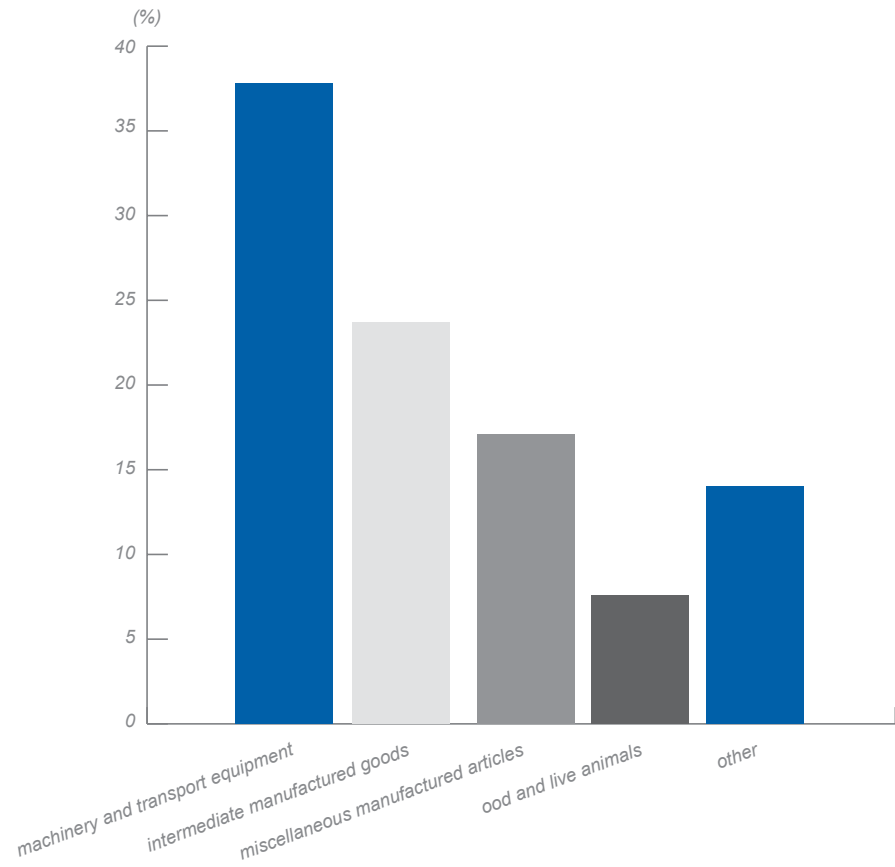
Export in 2012 amounted to over \$192 billion.



### Export goods

Breakdown of exports of individual goods stood in 2011 as follows:

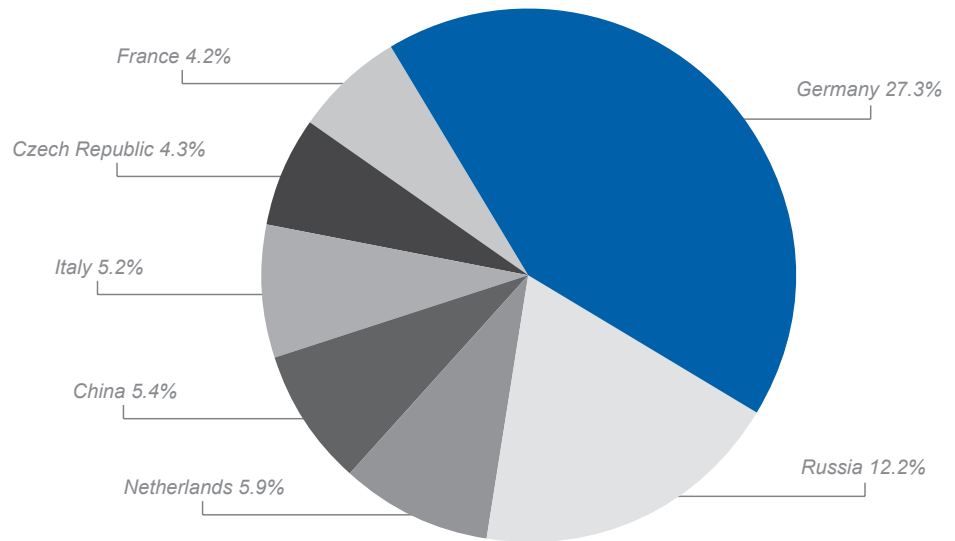
- machinery and transport equipment 37.8%
- intermediate manufactured goods 23.7%
- miscellaneous manufactured articles 17.1%
- food and live animals 7.6%
- other 14%



## Poland in numbers

### Import

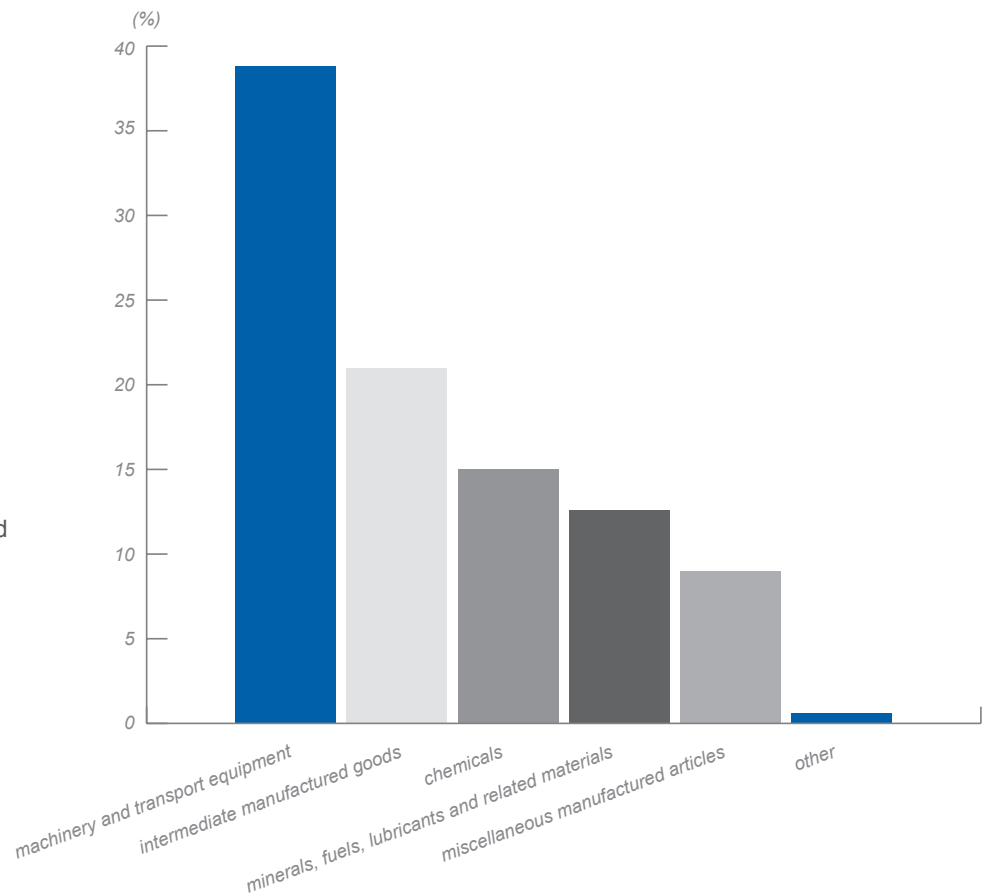
Import in 2012 amounted to over \$206.5 billion



### Import goods

Breakdown of import of individual goods stood in 2011 as follows:

- machinery and transport equipment 38.8%
- intermediate manufactured goods 21.0%
- chemicals 15.0%
- minerals, fuels, lubricants and related materials 12.6%
- miscellaneous manufactured articles 9.0%
- other 0.6%



# ESTABLISHING A COMPANY AND INTRODUCTION OF TAX SYSTEM IN POLAND

## General rules for conducting business activities in Poland



conduct economic activity on the same terms as Polish citizens only if they hold permits legalizing their stay in Poland and allowing them to conduct commercial activity.

Investors from other countries who do not hold such permits may conduct economic activity through:

- establishing limited partnerships, limited joint-stock partnerships, limited liability companies and joint-stock companies;
- purchasing and acquiring shares in such companies.

The general legal act defying and governing business activities in Poland is the Act on Freedom of Economic Activity of 2nd July, 2004. It divides foreigners and foreign entrepreneur's division into two groups:

- those, who can run business activity in Poland on the same rules as the Polish subjects,
- those, for whom running business activity in Poland is limited to some extent.

Investors from countries that are EU and European Free Trade Association zones (belonging to European Economic Area) members may conduct economic activities on the same terms as Polish citizens.

Investors from countries that are not EU and EFTA members may

The main legal forms of conducting business activities in Poland that are available to Polish and foreign investors who are based in the EU and EFTA state members are following:

- joint-stock company (spółka akcyjna - S.A.);
- European Company (Societas Europea) (Spółka Europejska - SE);
- limited liability company (spółka z ograniczoną odpowiedzialnością – Sp. z o.o.);
- limited joint-stock partnership (spółka komandytowo-akcyjna - S.K.A.);
- registered partnership (spółka jawna - sp.j.);
- limited partnership (spółka komandytowa - sp.k.);

- professional partnership (spółka partnerska - sp.p.);
- sole proprietorship (indywidualna działalność gospodarcza);
- European Economic Interest Grouping (Europejskie Zgrupowanie Interesów Gospodarczych - EZIG);
- civil law partnership (spółka cywilna).

Foreign persons other than those indicated above have the right to establish and conduct business activities only in the form of:

- a limited partnership;
- a limited joint-stock partnership;

- a limited liability company;
- a joint-stock company.

The following study treats of running two forms of running business activity by the foreigners:

- limited liability company (sp. z o.o.) - which is the basic type of company in Poland. A sp. z o. o. has a separate legal personality from its shareholders, which means that when acting through its governing bodies (mainly the management board), it can acquire rights and incur liabilities on its own behalf. A sp. z o. o. has capital which is created from shareholder contributions.

Shareholders of a sp. z o.o. are not liable for liabilities of the company. Management of a sp. z o.o. is less formal than that of a joint-stock company. It is, therefore, a significantly more popular form of conducting business than a joint-stock company

- branch of foreign company – which is a part of a foreign company that does not have its own legal personality, but conducts business in Poland. The branch may conduct business activities from the moment it is entered into the National Court Register.

## Establishing of limited liability company/branch of foreign company

The following part treats of the rules which have to be fulfilled in order to establish a limited liability company or a branch of foreign company in Poland.

### Limited liability company (sp. z o.o.)

A limited liability company may have a single shareholder. However, a limited liability company cannot be formed solely by another limited liability company with one shareholder.

In accordance with art. 163 of the Code of Commercial Partnerships and Companies (KSH) the following actions are required in order to establish a limited liability company:

- signing of the Articles of Association
- payment of the share capital by the shareholder(s)
- appointment of the company's Management Board and

appointment of the Supervisory Board (if any)

- registration of the company with the National Court Register.

### Articles of Association

The Articles of Association is the founding act of a limited liability company. In order to be valid, it must be drafted in Polish and executed in the form of a notarial deed before a Polish notary.

A person executing a Articles of Association on behalf of a foreign shareholder must provide a Polish notary with documentation proving that he/she has the authority to act on behalf of the foreign shareholder i.e.:

- an extract from the commercial register or the certificate of incorporation of a foreign company, and
- a power of attorney authorizing that person to execute the Articles of Association of the company.

The power of attorney must be executed in the form of a notarial deed, otherwise it will be null and void. According to the KSH, the Articles of Association must provide at least the following:

- business name and seat of the company
- the scope of business of the company
- the duration of the company, if limited
- the amount of share capital
- a provision as to whether a shareholder is entitled to only one share or more
- the number and value of shares held by individual shareholders
- any in-kind contributions, including the details of any shareholder contributing in-kind and the number and value of shares given in exchange.

## Share capital

The share capital of a limited liability company must not be less than PLN 5.000 (about EURO 1.250) and the lowest permitted value of a single share is PLN 50 (about EURO 12,5). The shareholder's contributions to the share capital of the company may take the form of either a cash contribution or an in-kind contribution. Shares in a limited liability company are rights, not securities, which means that share certificates are not issued. As a general rule, shares are transferable, subject to any transferability restrictions imposed by the Deed of Association or provisions of law.

## Management and Supervisory boards

The company must have a Management Board, which may consist of one or several members. Under Polish law, only individuals and not entities can be members of the Management Board. There are no restrictions applying to the composition of the Management Board as far as the nationality or domicile of its members are concerned.

For practical reasons, it is advisable to have at least one person authorized to represent the company available in Poland for signatures and tax returns. As a general rule, if the Management Board consists of more than one person, the company is represented by two members of the Management Board acting jointly or by one member acting jointly with a commercial proxy. The Articles of Association may, however, provide for representation by one member of the Management Board.

A Supervisory Board is not a compulsory body in a limited liability company unless the company's share capital exceeds PLN 500.000 (about EURO 125.000) and there are more than 25 shareholders. Members of the Management Board, commercial proxies, liquidators, branch managers, and chief accountants or legal counsels employed by the company cannot simultaneously be members of the Supervisory Board.

## Partner's contribution in order to cover the share capital

If the share capital is taken for some money investment it has to be covered by payment in the form of money transfer into company's bank account. If a contribution in a company to cover the share is in whole or in part non-pecuniary, company's contract should describe in details the object of this contribution and contributing associate, as well as the quantity and nominal value of shares obtained in return.

## Branch

In accordance with Article 85 clause 1 of the Act on Freedom of Economic Activity, in order to conduct a business activity in Poland, foreign entrepreneurs may, on reciprocity basis, establish branches with registered office in Poland, unless ratified international treaties provide otherwise.

It should be borne in mind that a foreign entrepreneur setting up a branch in Poland:

- may conduct business activity exclusively within the scope of business of the foreign entrepreneur;

- is obliged to appoint a person in the branch authorized to represent the foreign entrepreneur.

In order to establish a branch, a foreign entrepreneur is obliged to:

- register the branch in the register of entrepreneurs in the National Court Register;
- announce the existence of the branch in the official journal („Monitor Sądowy i Gospodarczy”);
- register the branch in the relevant Statistical Office (and obtain a statistical number - REGON);
- open a bank account;
- notify commencement of the business activities to the correct Tax Office (obtain a tax identification number NIP) before the first VAT-able transaction is made or first CIT return should be made;
- register for VAT purposes;
- notify commencement of the business activities to the relevant Labor and Sanitary Inspectors - in 30 days from the date of commencement of the branch's activity.

A foreign entrepreneur who sets up a branch is obliged to:

- use, for marking the branch, the original name of the foreign entrepreneur together with the legal form of the entrepreneur translated into Polish and with additional words „oddział w Polsce” (branch in Poland);
- maintain a separate accountancy for the branch, in Polish and in accordance with accounting regulations.

## Company's activity registration

### Registration in the National Court Register

The company needs to be entered into the register of entrepreneurs of the National Court Register (the „Register”) which is kept by the commercial division of the appropriate District Court. Once registered, a company becomes a legal person.

The application for the registration in the National Court Register should be filed by the management board. The application must be signed by all members of the management board.

The application for registration should be filed on the form KRS- W3.

The application should contain:

- the business name, registered office and address of the company; the company's business name may be freely chosen, however, it must include the wording „spółka z ograniczoną odpowiedzialnością”;
- the shareholders are free to choose any name for the company as long as it is sufficiently distinct from the names of other enterprises operating on the same territory as the company intends to operate on;
- the object of the company's business activity (e.g. metal goods trade) placed in Appendix in form KRS - WM; it must come within the Polish Classification of Activities (PKD), as the relevant PKD code must be provided in that appendix;
- the amount of share capital (minimum PLN 5,000);

Since 1 January 2012 in the Polish legislator introduced the possibility of registration the Limited Liability Company via Internet. It allows to register the company within one day.

- information as to the capacity (or lack thereof) of a shareholder to hold more than one share;
  - the first names and surnames of the management board members and the manner of representation of the company (KRS- WK form);
  - the particulars of the shareholders of the company that follow into registration in the Register (KRS- WE form);
  - the first names and surnames of the members of the supervisory board or the audit commission if such are to be appointed pursuant to the law or Company Deed (KRS -WK form);
  - information on non - cash (in-kind) contributions made by shareholders, in case that such are made;
  - the life of the company, whenever established for a definite period;
  - the name of a specific paper in which company announcements are to be made, if designated by the Company deed, other than “Monitor Sądowy i Gospodarczy”;
  - additional information on management board members' addresses;
  - information on the address of the sole-shareholder.
- The application should be filed jointly with:
- the Articles of Association or Company Charter;
  - a representation of all members of the management board that the all shareholders made full contributions of towards the share capital;
  - where members of the company's bodies are appointed otherwise then under the notarial deed wherein the company deed is contained, proof of their appointment and specification of their members must be provided;
  - specimen of signatures of members of the management board placed before the Court or certified by a public notary;
  - a list of all shareholders signed by all members of the management board, including the surnames and forenames or the business names and number and nominal value of shares held by each shareholder;
  - evidence of payment of fees for



court registration and publication in "Monitor Sądowy i Gospodarczy".

The registration costs of Limited Liability Company which should be paid while making motion are:

- PLN 500 – court fee;
- PLN 100 – announcement in "Monitor Sądowy i Gospodarczy".

The registration of Limited Liability Company via Internet

Since 1 January 2012 in the Polish legislator introduced the possibility of registration the Limited Liability Company via Internet. It allows to register the company within one day.

The procedure of registration:

- Opening an account in special system provided by Ministry of Finance (<https://ems.ms.gov.pl>), website tab – my account. Account must be open by all subscribers, not only the person who submitted the motion. Subscribers are obliged to indicate the basic information like in motion submitted in normal application of registration.
- Filling the application indicate the basic information about the company, register court and the others details mentioned in the normal application.
- Signing and submitting the application by the shareholders (in any form, electronic signature and pay fee the eCard. This application will be sent to the competent court.

### Registration within the Central Statistics Office (GUS), the Tax Office and the Social Security Office (ZUS)

With the application for the registration in the National Court Register should be submitted:

- Application for registration within the Central Statistics Office (Główny Urząd Statystyczny – GUS). The registration is based on the application filled by the entrepreneur on the form RG-1 (unified form applicable within the whole country). Entrepreneurs are required to have a REGON statistical number.
- Application for registration within the Tax Office. The registration is based on the application filled by entrepreneur on the form NIP-2 (unified form applicable within the whole country). Then, entrepreneurs receive tax identification number (NIP)
- Application for registration with the Social Security Office (ZUS). The registration is basen on application filled by entrepreneur on the form ZUS-ZPA (unified form applicable within the whole country).

The company must register for VAT by the date when the company carries out VAT-covered business activities for the first time.

The company must provide information on:

- its business name and legal form,
- the REGON (statistical number),
- start date for its business activities,
- the address of its registered office.

If the Company is planning to conduct future foreign trade activities within the European Union, the company must register as an EU VAT taxpayer. The company must submit that application before commencing foreign trade activity within the European Union. However, before registering as an EU VAT taxpayer, the company must be registered as a regular VAT taxpayer.

### Opening of a bank account

It is obligatory for the entrepreneurs to open the bank account. Under the Act on freedom of the business activity, they are also obliged to non-cash settlements. The entrepreneurs are required to make or accept payments through the bank account whenever:

- the other party to a transaction is another entrepreneur.
- once-off value of receivables or payables, notwithstanding of the number of payments it is constituted of, exceeds the equivalent of about EURO 15.000 converted into the PLN at the average exchange rate announced by the National Bank of Poland on the last day of the month preceding the month of transaction.

In order to open a bank account, the entrepreneur must enter into an agreement with the bank. The banks usually require to submit originals and exemplify all documents obtained in the course of company registration.

Entrepreneurs may choose among the offers of domestic and an international banks.

### Registration with the National Sanitary Inspection

The founders must register with the National Sanitary Inspection (Państwowa Inspekcja Sanitarna) within 30 days of starting business.

### Registration with the National Work Inspection

Within 30 days of commencing business, the company must register with the National Labour Inspectorate (Państwowa Inspekcja Pracy) and, in writing, inform the relevant labor inspector about the location, type, and scope of business.



## Tax system in Poland



### General information

Taxes are an area of particular risk in conducting business activity. Bearing this in mind, one has to be especially careful while keeping accounting books and other registers being the basis for tax settlements. In order to maintain safety and tax optimization business operations should take into account issues of tax risk.

In Poland companies are subjected to pay following taxes and fees:

- Corporate income tax
- Value Added Tax
- Personal Income Tax
- PFRON contributions
- Social insurance contributions
- Property tax
- Vehicle tax
- Environmental fees
- Local taxes

On the basis of obtained information we were able to examine only the corporate income tax.

### Expiration of tax liabilities

A tax liability expires after 5 years, counting from the end of the calendar year in which the date for payment of the tax elapsed as the same as for social insurance contributions, with the difference that claims relating to social insurance contributions expires after 5 years counting from day when they become due. It means that in the case of income tax liabilities, such liabilities actually expires after a period longer than 5 years. For instance, a liability on account of the income tax for 2007 will not expire until December 31, 2013.

It has to be taken into account, that in the cases specified in the Tax Ordinance Act the course of these expiry dates may be suspended or interrupted. After interruption of the course of the expiry date, it starts running again.

### Fiscal administration in Poland

Fiscal administration in Poland consist of two primary parts:

- bodies of local government units,
- local bodies of governmental administration that are subordinate to the Minister of Finance.

Within governmental tax administration the following bodies exist with the power to issue decisions:

- Tax bodies i.e. the Minister of Finance, the Directors of the Tax Chambers, the Heads of Tax Offices, as well as the Directors of Custom Chamber and the Head of Custom Offices (at scope of excise duty and VAT at imported goods and services),
- Fiscal audit bodies i.e. the Minister of Finance, the General Fiscal Audit Inspector and the Directors of the Fiscal Audit offices.

Minister of finance – is responsible for budgetary policy and supervises the tax matters.

Tax Chamber – supervise the Tax Offices and are empowered to adjudication in cases of appeal in which the Tax Offices have issued decisions in the first instance and consideration of appeals against the decisions issued by the Directors of the Fiscal Audit Offices.

Tax Offices – the task of the Heads of the Tax Offices:

- identification or assessment and collection of taxes and non-tax dues,
- granting Tax Identification Numbers (NIP), registration of taxpayer and updating of data on taxpayers,
- performance of the tax audit,

- administrative enforcement of pecuniary dues, as well as pecuniary penalties, in the scope specified in the provisions of the Executive Penal Code and Penal Fiscal Code.

Taxpayers may appeal to the Tax Chamber against the decisions of the local Tax Office or Fiscal Audit Office. An appeal against a decision of the Tax Chamber may be directed to the District Administrative Court, and then to the Supreme Administrative Court.

### Corporate income tax (CIT)

The most important regulations regarding company's income tax obligations are included in the act from the 15th of February 1992 – Corporate Income Tax Act. Companies and the organizational units are subject to CIT. Taxpayers that have their registered office or their Management Board in Poland, are liable for CIT on their global income. If a corporate taxpayer does not have its registered office or Management Board in Poland, tax is only levied on income derived in Poland, unless double taxation treaties state otherwise.

In compliance with Article 7 clause 1 of the CIT Act, the object of taxation with the income tax is the income, despite the type of the sources of revenues based on which this income has been achieved. Income (tax base) that is calculated in accordance with the tax provisions is subject to CIT at rate of 19 %, which ranks among the lowest in Europe. However in some cases the CIT Act provides for other tax rates. That would concern for example taxpayers with their limited tax liability in Poland, who earned

inter alia the following revenues within the territory of Poland: from interest, copyrights or similar rights, rights to invention designs, trade marks and design patterns, know-how, or from other immaterial services (eg. advisory services, market research services, management and control services, guarantee and assurance services). In those cases revenues are subjected to 20% tax rate (withholding tax) unless an appropriate double taxation treaty provides otherwise.

On the other hand, the income is a surplus of the total revenues over the tax deductible costs in the tax year (article 7 clause 2 of the CIT Act); if the tax deductible costs exceed the total revenues, the difference is a loss.

In order to be recognised as tax deductible cost, an expenditure incurred by a taxpayer should jointly meet the following conditions:

- the expenditure had or could have had influence on earning the revenue, retain or protect the source of revenue,
- it cannot be included in the catalogue of expenditures being tax non-deductible costs.

Starting from 1st January 2007 the cost incurred for the purpose of generating income, retaining or protecting sources of revenue are divided into direct and other costs.

Direct cost are deductible:

- in the tax year which the related income was earned (including those incurred after the end of the tax year but before the date of financial statements/ filing deadline for the annual tax return),

- in the tax year following the year for which the financial statements are prepared/the annual tax return files costs were incurred after the financial statements are prepared/the annual tax return is filed for the tax year in which the related income was earned.

Indirect cost are deductible on the date were incurred. If they relate to a period longer than the tax year and it is impossible to determine which part should be attributed to a given tax year they should be allocated on a pro rata basis according to the period to which they relate.

### Carrying losses forward

According to the binding regulations of the CIT Act, the amount of the loss incurred in the tax year may be deducted from income in the subsequent five tax years, however, the amount of deduction in any of those years cannot exceed 50% of the amount of the loss. The right to carry losses forward is always linked to the entity that incurred the losses, rather than to the entity's specific assets. This means that the tax losses are not transferable with assets or the business. Furthermore, only in the case of mergers can the tax losses of the surviving companies still be utilized, whereas the tax losses of the acquired companies are forfeited. If the merger results in the establishment of a new company, the tax losses of the merging companies cannot be utilized.

### Thin capitalization

If interest on loans granted to the company by its shareholder or shareholders holding not less than 25% of shares, and the value of

the Company's liabilities towards shareholders or entities that hold at least 25% of such shareholders' shares exceeds three times the company's share capital set on the date of interest payment, it is not tax deductible in the amount of which loans exceed that company's liabilities towards shareholders. The same regulation concerns loans granted to the company by another entity if the same shareholder holds at least 25% of shares in both.

#### Taxation of dividends

Income from dividends and other revenues from shares in the profits of legal persons are subjected to the 19% flat rate tax. However the exemption from income tax is possible if the dividends or other amounts are paid by a company whose seat or head office is located in Poland and the party deriving income is a company taxable with income tax on the entirety of its income, regardless of where it has been derived, in the territory of an European Union. The exemption shall apply when the company deriving income from dividends has held the shares of the company paying out those dues uninterruptedly for period of two years. However that exemption shall also apply when the period of uninterrupted holding of shares expires after the date of receipt of revenues from a share in the profits of a legal person. It means that even intension of holding of shares for two years is enough to profit from that exemption. According to Polish CIT Act it is required to have a direct holding shares in the equity of the company paying out dividends of not less than 10%.

#### Taxation of interest, royalties

Interest and royalty payments are subject to standard tax rates at payee level. Payments of interest and royalties to foreign entities are subject to 20% withholding tax unless a double taxation treaty provides otherwise and an appropriate tax residence certificate will be provided.

In accordance with CIT Act the 20% withholding rate also applies to payments for:

- advisory,
- accounting,
- market research,
- legal assistance,
- advertising,
- management and control,
- data processing,
- search and selection services,
- guarantees and pledges and other similar services (unless the relevant double taxation treaty states otherwise).

#### Group company regulations

The CIT Act allows for creation of a "tax capital group", under which companies in group are treated as a single taxpayer of CIT.

A tax capital group shall be a taxpayer only when all of the following requirements have been met:

- a tax capital group may be formed exclusively by limited liability or joint-stock companies whose seats are located in the territory of Poland, providing:

- the average initial capital determined in the manner referred to in CIT Act, of each of those companies is not lower than PLN 1 000 000;
- one of the companies, hereinafter called the "dominant company", has direct 95 % interest in the initial capital or in the part of the initial capital of the other companies, hereinafter called "subordinated companies", which pursuant to commercialization and privatization regulation has not been free-of-charge or on preferential terms acquired by employees, farmers or fisherman, or which is not of the State Treasury;
- the subordinated companies do not have interest in the initial capital of the other companies in the group;
- those companies have no arrears with respect to payment of taxes constituting revenues of the state budget;
- the dominant company and the subordinated companies have concluded, in the form of notarial deed, an agreement for establishment for a period of at least 3 tax years, of a tax capital group and that agreement has been registered by the head of tax office;
- following the establishment of a tax capital group the companies of that group meet the requirements laid down and moreover:
- do not utilize income tax exemptions under separate of law;

- do not have relationship with companies from outside the group resulting in breach of the transfer pricing restrictions;
- the annual level of the group's profitability cannot be less than 3%.

The fiscal union formed and registered with the relevant tax authorities is treated as a separate entity for CIT purposes, which results in particular in the following advantages:

- the losses of some of the members of the tax consolidated group can be offset against the taxable income of its other members;
- the regulations on transfer pricing do not apply to transactions between companies within the group;
- donations between companies within the group are deemed to be a tax-deductible expense for the donor;
- the simplification of tax formalities, as only one company in the group prepares a tax return;
- dividends paid to the holding company are exempt from withholding tax.

### Transfer pricing

Regulations regarding documentation requirements relating to transactions concluded between related parties were introduced to the Polish legal system effective 1 January 2001. The provisions of the Corporate Income Tax Act disallowing the transfer of income between related parties – transfer pricing regulations – have been, to a large extent, based on the guidelines provided

by the Organization for Economic Cooperation and Development (OECD). In consequence, the transfer pricing regulations pertain to transactions concluded/realized since 1 January 2001 with related domestic or international parties.

The purpose of the said provisions is to adapt Polish tax legislation to the regulations binding in European Union Member States. The changes made in the CIT Act were clearly aimed at enabling the tax organs to check whether the economic relationships between related parties are not formed in order to transfer income to obtain immediate tax benefits.

Considered to constitute transfer prices are the prices of goods for resale, services, intangible services and fees used in transactions between related parties and different than prices negotiated on the open market, concluded in comparable conditions by unrelated parties.

### Definition of related parties in the light of the Corporate Income Tax

Related parties and international trade

In accordance with article 11 of the CIT Act, parties are related if linked through capital (when one holds at least 5% of the shares of the other or holds at least 5% of all voting rights) or personal relationships (both family and other – e.g. the same persons in the management of both entities).

In the case of transactions concluded with related parties, the parties may, in accordance with the freedom of contracts principle, freely agree their terms. When, however, the terms of such transactions differ from the terms that would have been agreed by unrelated parties, the Company

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Considered to constitute transfer prices are the prices of goods for resale, services, intangible services and fees used in transactions between related parties and different than prices negotiated on the open market, concluded in comparable conditions by unrelated parties.



might, in effect, fail to disclose its income or disclose an income lower than could be expected in the absence of the links. In this situation there is a risk that the tax organs will estimate the Company's income and assess income tax without taking into account the terms that arise out of the links (in accordance with article 11 par. 1 of the CIT Act).

In considering the issue of transferring income in international transactions there must analyze article 11 par. 1-3 of the CIT Act. The transfer of income between different countries may occur when:

- a “domestic entity” participates directly/indirectly in the management of an enterprise located abroad, or in its control, or holds its shares;
- a “foreign entity” participates directly/indirectly in the management of a domestic entity, or in its control, or holds its shares;
- the same individuals/legal entities simultaneously, directly or indirectly, participate in the management of a domestic and foreign entity, or in their control, or holds their shares, and as a result of such links terms will be agreed/imposed that differ from the terms that would be agreed by unrelated entities,
- as a result of this, the entity discloses no income or discloses an income that is lower than should be expected.

The term “domestic entity” refers to any income tax payer, as long as their residence or registered office is located in Poland. A “foreign entity” is a person/organizational unit

whose residence or registered office is located abroad.

In the case of international transactions situations may occur where:

- a domestic entity has a business relationship with a person whose registered office is located abroad;
- shapes its business in such a manner, as not to disclose income or disclose income that is lower than could be expected in the absence of the said link.

This taxpayer's income is determined without taking into account the special charges arising out of the above link. If it is not possible to determine such income based on the books of account, the income is estimated.

The adaptation of the arm's length principle in determining transaction prices leads to comparisons of the terms of transactions between related parties with the terms of transactions negotiated between unrelated parties in similar circumstances (on the assumption that entities belonging to a group operate as separate units, and not as inseparable parts of a single entity).

#### Related parties and domestic trade

In accordance with the amendments to the CIT Act effective 1 January 2004, domestic transactions between related parties occur when:

- a domestic entity participates indirectly/directly in the management/control of another domestic entity;
- a domestic entity holds shares indirectly/directly in the capital of another domestic entity;

- the same individuals or legal entities participate indirectly/directly in the management/control of other domestic entities;
- the same individuals or legal entities simultaneously hold shares indirectly/directly in the capital of those entities.

However, in order to confirm the existence of links between domestic parties, the percentage of the indirectly/directly held shares cannot be lower than 5%.

In accordance with article 11 par. 5b of the CIT Act, to calculate the value of an indirect share in the capital of another entity a method was adopted whereby if one entity holds a specific share in the capital of the other, and the other holds the same share in the capital of another, then the first entity holds an indirect share in the capital of that another entity, the value of which is the same; if the values are different, the lower is used as the value of the indirect share. The above do not pertain to entities forming a group for tax purposes.

The following links are also covered by article 11 par. 5 of the CIT Act (related parties):

- family – marriage, blood, affinity to the second degree,
- links arising out of employment,
- capital, existing between domestic entities or persons who hold management/control/supervisory functions at those entities, or
- if any of the persons listed above combines management/control/supervisory functions at those entities.

The CIT Act's regulations have been based on the assumption that irrespective of the nature of the transfer – between domestic parties or between domestic and foreign entities – the links existing between the entities should be analyzed in the same manner.

### Transactions subject to the tax documentation

The taxpayer has an obligation to prepare tax documentation of a transaction concluded with a related party if:

- the total amount of due in a tax year (its equivalent) or the total amount actually paid in connection with the concluded contract exceeds the equivalent of:
- 100,000 EURO – if the value of the transaction is no higher than 20% of the taxpayer's share capital (calculated in accordance with article 16 par. 7 of the CIT Act),
- 30,000 EURO – if the subject of the transaction involves intangible services (sale, provision, delivery),
- 50,000 EURO – in other situations,

the payment arising out of the transaction is made directly/indirectly to entities with residence in countries that apply harmful tax competition – if:

the total amount/its equivalent arising out of the terms of the concluded contract or the amount actually paid in a single tax year is higher than the equivalent of 20,000 EURO.

The provisions of article 9a of the CIT Act indicate that the value of the benefits paid relates to individualized transactions concluded with one

specific entity in a tax year. It is, therefore, fair to assume that the amounts of the fees paid out to various entities with registered offices in different countries (including in so-called tax havens) are not to be totalled up.

In accordance with article 9a par. 5 of the CIT Act, amounts expressed in euro should be translated into Polish zloty using the average exchange rate announced by the National Bank of Poland for the last day of the tax year preceding the tax year in which the given transaction was concluded.

### Tax documentation of transactions between related parties

In accordance with article 9a, par. 1 points 1 -6 and article 11 par. 1 of the CIT Act, whenever realizing a transaction with a related party (the value of which exceeds the indicate thresholds), the taxpayers are required to prepare tax documentation. In accordance with article 9a, par. 4 of the CIT Act, the taxpayer is required to present full tax documentation to the tax organs within 7 days of being asked to do so.

The taxpayer's fulfilment of the obligations arising out of article 9a of the CIT Act – the preparation of tax documentation, constitutes a form of security for the taxpayer against the possible application of the rate of 50% to estimated income. On the other hand, the entity is required to keep accounting records in accordance with separate regulations, such as the Accounting Act, in a manner that ensures the determination of income (loss), tax base and tax due for the tax year, as well as to include in tangible and intangible fixed asset

records the information necessary to calculate the amount of depreciation / amortization write downs.

Properly prepared tax documentation should include:

- a description of the roles played by the entities taking part in the transaction, detailing the resources engaged by the entities in the said project and the risks associated with the transaction,
- a calculation of all the costs associated with the transaction, presenting, among others, the due date and form of financing,
- the method used to calculate the value of the transaction and a detailed calculation of the taxpayer's anticipated income,
- an illustration of the business strategy of the entity/entities belonging to the group, if the prices adopted with regard to the said transaction between related parties depended on that strategy,
- definition of other factors taken into consideration when determining the value of the transaction and the method for the settlement of the transaction between the entities,
- a presentation of the taxpayer's benefits from transactions the subject of which involves intangibles.

The tax documentation prepared by the taxpayer should confirm the market value of the transaction and enable the tax authorities to verify the purpose and nature of the business relationships between the related parties.

The taxpayer should present all

evidence (documents) showing the method used to set the price in the transactions. To document transactions concluded with a related party (irrespective of whether it is a purchase/sale of goods or provision of services), a Polish taxpayer should have, among others:

- a written agreement confirming the terms of the concluded transaction,
- documents confirming that payment has been received/made.

The following should also be added to these documents:

- a description of the manner in which payment was made for services rendered,
- a list of indirect costs associated with the transaction, and
- documents showing that the expenses incurred relate to the period in which payment was made.

The purpose of the functional analysis, which should be included in the tax documentation is to define the role played by the entities taking part in the transaction, and should outline the separate business activities performed by the entities – in accordance with article 9a, par. 1 point 1 of the CIT Act.

The portion of the documentation illustrating the costs of the transaction should list the indirect/direct costs incurred by the different contractors. No costs that cannot be connected with a specific transaction should be included in the tax documentation, as they should be settled when they are actually incurred. The documentation should contain information about the form

of payment, the moment at which each invoice associated with the transaction was issued and paid, as well as any decisions spreading the payment into instalments, advances, prepayments, rebates.

The tax documentation prepared by the taxpayer should illustrate that:

- the taxpayer's expenses associated with the realization of the agreement with the related party are lower than the anticipated income,
- unrelated entities would conclude the transaction on terms similar to those agreed in the agreement concluded between the related parties.

The Minister's of Finance Decree of 10 September 2009 on the method and procedure of determining corporate income by estimating and method of eliminating double taxation of corporate profits in connection with the adjustment related parties.

Comparability analysis should take include:

- differences in the characteristics of goods, services or other benefits which are the subject of the transaction, provided that these features may affect the market value of the items of the transaction and method used, in particular physical characteristics of the goods, their quality, durability, availability, possible load their rights of third parties, the availability of goods and related services, as well as the size of the delivery (material goods) or form or type of transaction, duration and level of protection of these goods and the expected benefits related to

the use of such assets (intangible goods);

- the course of the transaction, including the functions they carry out entities in comparable transactions, in particular kind of functions performed by the parties of the transaction, the type and value of the assets involved and material or intangible goods, the degree of involvement of human capital, types and division of economic risk and responsibility of transaction parties;
- conditions of comparable transactions, in particular terms, conditions and payment, time of transaction, timeliness and security of the transaction;
- conditions existing at markets compared, in particular size, location and nature of the market, the ratio of supply to demand, level of competition, the level and structure of costs related to the transaction in a particular market.
- using economy strategy, which included in particular using special prices in entering into the market, temporary reduction of profits for higher long-term profits, incurring for a certain period higher costs, marketing of innovative products or services.

#### **Advance pricing agreements (APA)**

The provisions related to the APA procedure came into force on 1st January 2006. APA allows taxpayers to verify the correctness of the pricing methodology applied in the domestic /foreign related party transactions and ascertain the up-front acceptance of the transfer pricing methodology by the tax



administration. Polish law defines three kinds of APAs:

- unilateral;
- bilateral;
- multilateral agreements.

The main benefit for the taxpayer in obtaining APA is the confirmation by the tax authorities of the methodology used to calculate transfer price and its application in the transaction. If the APA is concluded for a particular transaction, the tax authorities will be obliged to accept the methodology selected by the taxpayer and approved by the APA.

The application should be submitted by the Polish entity. The application fee should be paid within seven days of the date of the submission of the application. In the event of any doubts regarding the transaction pricing method chosen by the taxpayer or doubts regarding the content of the documents attached to the application, the Ministry of Finance may request an explanation of such doubts or additional documents. The result of the proceedings is a decision with a validity of no longer than three years. The validity of the decision can be extended on the taxpayer's request. The extended period of the decision's validity cannot exceed a further three years.

The Polish APA regulations do not limit the value of the transaction to be covered by the APA. However, in order to submit an application for the APA, the taxpayer will have to pay a fee generally amounting to 1% of the transaction value. However, fee limits have been set forth in the Polish APA regulations and they are as follows:

- for a unilateral APA involving only

domestic entities the fee cannot be lower than 5 000 PLN (about 1 250 EURO) and cannot exceed 50 000 PLN (about 12 500 EURO);

- for a unilateral APA involving a foreign entity the fee cannot be lower than 20 000 PLN (about 5 000 EURO) and cannot exceed 100 000 PLN (about 25 000 EURO);
- for a bilateral and multilateral APA the fee cannot be lower than 50 000 PLN (about 12 500 EURO) and cannot exceed 200 000 PLN (about 50 000 EURO).

#### Leasing contract

Leasing contract shall mean the contract defined in the Civil Code or any other contract under which one of the parties (the financing party) lets the fixed assets or intangible assets and legal values, as well as lands being subject to depreciation to the other party (the user) for use or for use and collection benefits, for consideration, under conditions provided for in this Act.

Although the CIT Act does not directly specify types of leasing on the basis of legal analysis financial and operating leasing may be distinguished.

Operating leasing:

- has been concluded for a definite time equal to at least 40 percent of the normative depreciation period and its object includes a movable property or intangible assets being subject to depreciation or the contract has been concluded for the period of at least 5 years and it refers to an immovable property being subject to depreciation write-offs,
- the total amount of fees specified

therein and decreased by the output VAT tax is equal to the initial value of the fixed assets and intangible assets at least.

Considering the operating leasing leased assets belong to the financing party and only that party is entitled to make depreciation write-offs.

Financial leasing:

- the leasing contract has been concluded for a definite time,
- the total amount of fees agreed upon in the leasing contract decreased by the output VAT tax is equal to the initial value of fixed assets or intangible assets and legal values at least,
- the contract includes a statement that, during the basic validity period of said contract, the depreciation write-offs shall be made by the user.

#### VAT rates and regulations

In compliance with the VAT Act, the sale of goods and provision of services are subject to this tax. The taxpayer is entitled to reduce the value of the output tax on the sale by the amounts of the tax calculated on the purchases of goods and services for the needs of the carried out business activity.

Polish tax law provides for 4 VAT rates. The basic rate is 23%, which is applied to majority of goods and services. Other rates:

8% - applies to a few groups of goods and services, e.g. goods related to health protection, some groceries, services of hotels, folk art articles;

5% - applies to supply of some farm produce.

The rate of special significance is a 0% rate. It is applicable, in

**Leasing contract shall mean the contract defined in the Civil Code or any other contract under which one of the parties (the financing party) lets the fixed assets or intangible assets and legal values, as well as lands being subject to depreciation to the other party (the user) for use or for use and collection benefits, for consideration, under conditions provided for in this Act.**

particular, to exports and intra-Community supply of goods, international transport services. Taxpayers enjoying 0% rate are not deprived of the right to deduct input VAT suffered upon purchases related to the activities subject to this rate.

Polish tax provisions provide also for some exemptions from VAT. Among the activities subject to such exemptions are financial, educational, health and cultural services. The exemption prevent however from enjoying deduction of input VAT related to the exempt transactions.

A taxable amount is all amounts forming the payment which a supplier of goods services has received or will receive in respect of sale from a customer or a third party, including grants, subsidies or similar subsidies received which directly affect the price of goods or services supplied by a taxable person.

A taxable amount involves: taxes, customs, levies and other similar amounts due, excluding the tax amount, incidental expenses, including commissions, costs of packaging, transport, and insurance, charged by a supplier on a customer.

A taxable amount is reduced by price discounts and reductions given after sale has been made, the value of goods and packaging returned, the part or whole of the payment refunded to a customer that is received before sale is accomplished if said sale has not been made, the value of grants, subsidies, and similar subsidies returned.

#### **Return of VAT**

Input tax is generally recovered by being deducted from output tax, i.e. the VAT charged on the supplies made.

In accordance with art. 86 item 2 of the VAT Act, the amount of input tax shall be:

- the aggregate of tax amounts resulting from invoices received by a taxable person in respect of the acquisition of goods and services or a whole or partial payment prior to the acquisition of a good or performance of a service;
- in the case of the import of goods, an amount of the tax resulting from a customs document received or the output tax in the case or the tax resulting from the import declaration;
- the flat-rate tax refund;
- an amount of the output tax on
  - the supply of services with regard to which their customer is a taxable person;
  - the supply of goods with regard to which their customer is a taxable person;
  - the intra - Community acquisition of goods;
  - the intra - Community acquisition of goods;
- the tax difference;
- in the case of legal persons, organisational units without legal personality, and natural persons who are not the taxable persons who occasionally effect the intra-Community supply of new means of transport, an amount constituting the equivalent of 22 percent of an amount due in respect of the supply of a new means of transport; however, not higher than an amount of the tax included in the invoice indicating the acquisition of said means of transport or in a customs

document, or the tax paid by said taxable person on the intra-Community acquisition of said means of transport.

In the case of the acquisition of cars or automotive vehicles other than cars of the gross vehicle weight not exceeding 3,5 tons, the amount of the input tax is 60 percent of the amount of the tax shown in the invoice or the amount of the output tax on the intra-Community acquisition of goods or the amount of the output tax on the supply of goods for which a taxable person is their customer - however, not more than PLN 6.000.

Ministry of Finance is preparing an amendment to the provisions relating to deduction of input tax on the acquisition of cars. Draft of Act on VAT provides two types of deductions:

- 100 % percent of the amount of the tax for cars used solely for business activity,
- 50 % percent of the amount of the tax for cars used also for personal purposes.

If the amount of the input tax exceeds in the tax period the amount of the output tax, a taxable person is entitled to reduce said difference in the amount of the output tax for the subsequent tax periods or to the refund of the difference into a bank account. A tax difference is refunded, subject to paragraph 6, within 60 days from the day of a taxable person paying into a taxable person's bank account. Under certain conditions the above deadlines can be shortened up to 25 days.

### Excise duty

Polish excise duty rules have been harmonised with EU legislation. During the harmonization process the new Excise Duty Act which entered into force On 1 March 2009 has been adopted. As a result of adopting this Act the Polish legislations has been brought in line with EU provisions.

According to the new Excise Duty Act subjected to excise duty are::

- excise duty goods
- energy products and electricity;
- alcohol and alcoholic beverages;
- manufactured tobacco;
- passenger cars;

Excise duty is levied on:

- production of excise duty goods;
- entry of excise duty goods to the excise duty warehouse;
- import of excise goods;
- intra-Community acquisition of excise duty goods;
- shortages and losses of excise duty goods;
- other activities.

### Personal income tax (PIT)

Natural persons, if resident in the territory of the Republic of Poland, are liable for tax on their total income (revenue) irrespective of the location of the sources of revenue (unlimited obligation to pay tax). A resident of the Republic of Poland is a natural person who has the centre of personal or economic interest (centre of interest) in territory of the Republic of Poland or in the territory

of the Republic of Poland for over 183 days in a given tax year. Natural persons, if they do not reside in the territory of the Republic of Poland, are liable to pay tax only on income (revenue) earned in the territory of the Republic of Poland (limited obligation to pay tax).

Sources of revenue shall include a service relationship, employment relationship, activity performed in person, non-agricultural economic activity, special branches of agricultural production, letting, sub-letting, lease, sub-lease and other contracts of similar type, money capital and property rights, the gainful disposal of immovable property or similiar rights to properties if he gainful disposal does not result from conducting economic activity and other sources.

In compliance with the regulations of the Act on Personal Income Tax, the Employer is a personal income tax payer. He is obliged to calculate, collect, and pay to a relevant tax office the tax withholding on account of remunerations and other fringe benefits connected with the employment relationship paid (made available) to the employees, and remuneration for the transfer of copyright.

The following shall be considered revenues resulting from employment relationship: all kinds of money payments and the pecuniary value of performance in kind or its equivalent, irrespective of the source from which the payments and performance were financed, and in particular: basic remuneration, payment for overtime work, allowances of different types, awards, cash equivalents for leave

not used and any other amounts of money irrespective of whether their level was established in advance, and pecuniary performance made on behalf of the employee and the value of other gratuitous or partly paid performance.

The pecuniary value of performance in kind shall be assessed on the basis of market prices applied when trading in things of the same kind and sort and in particular taking into account their condition and wear and tear degree, and the time and place of obtaining them.

The pecuniary value of other gratuitous performances shall be assessed:

- where the object of performance is services being part of the economic activity of the person making the performance – according to the prices used in relation to other recipients;
- where the object of performance is purchased services – according to the purchase prices;
- where the object of performance is making available business

premises or a building – according to the equivalent of rent applicable in the case of concluding a contract of lease of such business premises or a building;

- in the remaining cases – on the basis of market prices used when providing services or making available things or rights of the same kind and sort and in particular taking into account their condition and wear and tear degree, and the time and place of making them available.

Table - Personal income tax rate for 2014

Taxable Income	Personal Income Tax
Up to PLN 85.528	18% minus PLN 556,02
Above PLN 85.528	14.839,02 + 32% of taxable income over PLN 85.528

## Property tax

Subject to property tax are land, buildings or their parts, as well as constructions and their parts, associated with business operations.

The tax is calculated based on:

- for land – the area,
- for buildings and their parts – useable area,
- for constructions or their parts associated with business operations – the value referred to in income tax regulations, determined as at 1 January of the tax year, constituting the basis for the calculation of depreciation charges for that year, not reduced

by depreciation write downs, and in the case of fully depreciated constructions – their value as at 1 January of the year in which the final depreciation charge was made.

Property tax rates are specified by the communal council in the form of a resolution, where the rates cannot exceed the maximum rates specified in the Local Taxes and Charges Act of 12 January 1991.

Legal persons, unincorporated organisational units are under obligation to:

- submit, by 31 January, the immovable property tax returns for the fiscal year to the competent tax authority in the

place where the taxable items are located, using a pre-defined standard form, and if the tax obligation arises after that date - within 14 days from the date of the taxable event;

- adjust the tax return if the event referred to in par. 3 occurs, within 14 days from the date of that event;
- pay the immovable property tax calculated in the tax return, without payment notice, to the account of the gmina, in instalments in proportion to the tax obligation period, by the 15th day in each month; and for the month of January - by 31 January.

# EUROPEAN UNION FUNDS

## National Strategy Reference Framework for years 2014-2020.

The European Council decided on the EU budget for 2014-2020. After approval by the European Parliament, Poland was granted 72.9 billion euro for implement Cohesion Policy. As a result of the conversion price for the current negotiated amount has increased by about 13 percent. and amounts to 82.3 billion euros. In addition, we get more than 252 million to support unemployed youth.

### How many funds for cohesion policy?

From the cohesion policy budget for 2014-2020 Poland will receive 82.5 billion euro. These funds will be invested in research and its commercialization, the key road connections (motorways, expressways), entrepreneurship, environmentally friendly transport (rail, public transport), digitization of the country (broadband Internet access, e-government services) and social inclusion and professional activity.

They were also taken other important decisions regarding the prospects for 2014-2020:

- VAT in projects co-financed from the European Funds will be eligible cost, which means maintaining the possibility of its refund
- The level of EU co-financing of 85 percent. (for the less developed regions) and 80 percent for Mazovia.

### Regional programs

According to the Project Partnership Agreement, for the implementation of 15 regional programs will be allocated approximately 60 percent Structural Funds (European Regional Development Fund and European Social Fund) for that category regions.

### Less developed regions

The amount resulting from the allocation based on the methodology used by the European Commission. Their components are also additional funds from sharing reserve program, which means on Integrated Territorial Investments and other areas of Strategic Intervention.

### Mazovia

Funding for Mazovia the regional operational program represent about 60 per cent allocation to this region and are 2 087.9 million euro. The remaining 40 percent of structural funds przynanych Mazovia, so 1.7 billion will be available to the beneficiaries of this region in the national programs. In addition, they will be able to benefit from the Cohesion Fund available in the „successor” of Infrastructure and Environment Program, whose resources are not allocated to the various categories of regions.

### National programs

Within the framework of Cohesion Policy funds will be carried out 6 national programs, including one cross-regional for Eastern Polish provinces.





## Infrastructure and environment program 2014-2020

Project Partnership Agreement provides for the implementation of national operational program for low-carbon economy, environmental protection, prevention and adaptation to climate change, transport and energy security. Moreover, EU funding of the program will be allocated to a limited extent for investments in the areas of health and cultural heritage. Infrastructure and environment program 2014-2020 is primarily to support the development of the technical infrastructure of the country, resulting in sustainable economic development and increase its competitiveness.

### The main objective of the program

The main goal of infrastructure and environment program 2014-2020 will be support resource efficient and environmentally friendly economy which promotes social and territorial cohesion. The proposed main objective is based on one of the priorities of the Europe 2020 strategy which is sustainable development, that means building a strong, stable and competitive economy, efficiently and effectively uses available resources, while taking into account environmental and economic dimension of the investments. Within the framework of 2014-2020 OPI is a greater emphasis on supporting the economy efficiently uses available resources, thereby favoring the environment and at the same time more competitive economically. Preserves the consistency and balance between the activities of of investments in infrastructure and the support objectives addressing the specific

areas of the economy, the program will be successfully implemented an EU strategy assumptions.

Who will benefit from the support?

The main beneficiaries of the infrastructure and environment program 2014-2020 will be public entities (including local government) and private entities (mainly large companies).

How many EU funds will be available and for which investments?

The main source of funding for 2014-2020 will be Cohesion Fund whose the primary objective is to support the development of European transport networks and environmental protection in the EU. In addition, support will be also provided by the European Regional Development Fund.

### PRIORITY I – 1 263 mln euro

Promotion of renewable energy sources and energy efficiency:

- production, distribution and using renewable energy sources;
- improving energy efficiency in the public and residential sector;
- development and implementation of smart distribution systems.

Intermediary Institution – Ministry of Economy

### PRIORITY II (FS) 3 458 mln euro

Environmental protection, including adaptation to climate change:

- development of environmental infrastructure
- protecting and restoring

biodiversity, improving the quality of urban environment;

- adaptation to climate change.

Intermediary Institution – Ministry of the Environment

### PRIORITY III (FS) 14 688 mln euro

Development of environmentally friendly transport infrastructure which is important to Europe:

- development of road and rail infrastructure in the TEN-T network, rail network beyond this network and in agglomerations;
- low-carbon urban transport, inland waterway transport, maritime and intermodal transport;
- improve the safety of air traffic.

Intermediary Institution – Ministry of Infrastructure and Development

PRIORITY IV (EFRR) 2 905 mln euro

Increasing the accessibility to European transport network:

- improve the capacity of the road infrastructure (including ring roads, roads directing you towards).

Intermediary Institution – Ministry of Infrastructure and Development

### PRIORITY V (EFRR) 642 mln euro

Infrastructure development of energy security:

development of smart distribution systems, storage and transportation of natural gas and electricity.

Intermediary Institution – Ministry of Economy

**PRIORITY VI (EFRR) 400 mln euro**

The protection and enhancement of cultural heritage:

investments in the protection and development of cultural heritage and cultural resources.

Intermediary Institution – Ministry of Culture and National Heritage

**PRIORITY VII (EFRR) 500 mln euro**

Strengthening strategic healthcare infrastructure:

- infrastructure support cross-regional hospitals and associated diagnostic units,
- in terms of „professional activity” disease and care for mother and child;

- support for the infrastructure of the state system medical rescue.

Intermediary Institution – Ministry of Health

**PRIORITY VIII (FS) 300 mln euro**

Technical support:

support for institutions implementing the program, and the major beneficiaries.

## Intelligent Development Operational Program 2014-2020

Intelligent Development Operational Program will support scientific research, development of new, innovative technologies and activities to improve competitiveness of small and medium-sized enterprises

Its main purpose is to stimulate innovation in the Polish economy, by increasing private expenditure on research and development and creating demand for innovation and research and development

The program provides the following support areas:

- building new and strengthening existing links between science and business,
- development of innovative enterprises,
- increasing the quality of research and the position of national scientific units within the European Research Area.

Funding will be directed in particular to support the whole process of creating innovation from idea incubation phase, through research and development, prototyping to the implementation of research results.

Special emphasis is put on cooperation within scientific consortia and scientific units and enterprises. It will be important to support areas identified as smart specialization (national and regional).

Due to the high risks associated with the implementation of innovative projects, funding scientific research and innovation within the Intelligent Development Operational Program will be based largely on the support grant financing.

Support will be addressed to:

- enterprises,
- scientific units,
- cluster,
- business institutions, including:
  - science and technology parks,
  - technology transfer centers,
  - business angel networks,
  - capital funds.

Support will be implemented within 11 Thematic Objectives identified in the draft of regulations

of the European Commission. Decentralization will increase - 60 percent Structural Funds will be managed regionally. Thematic concentration will be focused on supporting objectives identified in the Europe Strategy 2020, for smart and sustainable growth conducive to social inclusion. Greater emphasis will be put on results and taking into account the territorial dimension.

Operational Program Knowledge Education Development was created in response to the need for reform in the areas of employment, social inclusion, education, higher education, health and good governance. It will also support social innovations and transnational cooperation in these areas, and implementation in Poland Initiative for youth employment. q

Operational Program Knowledge Education Development will support the following areas:

- employment and mobility of employees,
- social inclusion and combating poverty,



- investing in education, skills and learning throughout life,
- strengthening the efficiency and effectiveness of state.

Operational Program Knowledge Education Development will be financed from the European Social Fund.

## Digital Poland Program 2014-2020

Digital Poland Program 2014-2020 is a new national program. Within the framework of program will support the following projects:

- expanding access to broadband networks,
- develop products and services based on information and communication technologies,
- increase the use information and communication technologies in services, such as e-government, e-inclusion, e-culture, e-health.

The main objective of Digital Poland Program is to strengthen the foundations for digital social and economic development of the country. In accordance with the

Partnership Agreement, as these foundations was adopted: broad access to high speed Internet, efficient and user-friendly e-public services and continuously increasing level of digital competence of society.

Priorities of Digital Poland Program 2014-2020:

- General access to high speed internet;
- E-government and open government;
  - Improvement of quality and availability of public e-services,
- Improvement of efficiency of the digital government,

- Improvement of availability of public sector information and public resources,
- E-integration of digitally excluded groups and dissemination of information and communication technologies.

Beneficiaries of Digital Poland Program 2014-2020:

- government entities and entities their dependent,
- scientific units,
- state cultural organizations,
- non-governmental organizations,
- enterprises.

## Eastern Poland Program 2014-2020

Eastern Poland Program 2014-2020 is an additional instrument for financial support 5 voivodships in Eastern Poland: Lubelskie Voivodeship, Podlaskie Voivodeship, Podkarpackie Voivodeship, Świętokrzyskie Voivodeship and Warmińsko-Mazurskiego Voivodeship, which will be complementary and strengthening of activities carried out in the framework of regional and national programs of European cohesion policy, which will finance major development projects.

The main objective of the Program is increase competitiveness and innovativeness of Polish macro-region Eastern Europe.

This will be achieved by focusing on the program activities:

- support in the area of innovation, research and development,
- support the competitiveness of enterprises, in particular in the area of internationalization,
- support for improving the efficiency of transport systems and voivodeship cities and their functional areas,
- support to improve the internal consistency of macro region.

The basis for selection of supported areas is updated strategy for social and economic development of

Eastern Poland to 2020, which is part of the most important national and European determinants. Objectives and scope of the Program are the answer to the selected developmental challenges outlined in the Partnership Agreement in relation to five voivodships of macro region.

Main beneficiaries of the program are: entrepreneurs, cluster initiatives, centers of innovation, local government units and polish railways.

## Technical Support Program 2014-2020

Technical Support Program will be one of the national programs co-financed by the European Fund for the period 2014-2020. Technical Support Program will guarantee funds to support the implementation of EU cohesion policy in 2014-2020 in Poland.

### Areas of support

The program will provide funds for the construction of the potential of the institutions involved in the management of European Funds and to support the institutions responsible for the implementation of projects. Under the Program will also be taken appropriate activities aimed at promote and inform about the European Funds possible to obtain by Poland in the years 2014-2020.

### Objective of program

The main objective of the Program

is to provide efficient and effective implementation of cohesion policy for the period 2014-2020.

### Beneficiaries

Activities of Technical Support Program will be directed in particular to the public finance sector, local government units, social and economic partners and non-governmental organizations.

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### Areas of support

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management of European Funds and to support the institutions responsible for the implementation of projects. Under the Program will also be taken appropriate activities aimed at promote and inform about the European Funds possible to obtain by Poland in the years 2014-2020.

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## Operational Program Knowledge Education Decelopment 2014-2020

Operational Program Knowledge Education Development was created in response to the need for reform in the areas of employment, social inclusion, education, higher education, health and good governance. It will also support social innovations and transnational cooperation in these areas, and implementation in Poland Initiative for youth employment.

Operational Program Knowledge Education Development will support the following areas:

- employment and mobility of employees,
- social inclusion and combating poverty,
- investing in education, skills and learning throughout life,
- strengthening the efficiency and effectiveness of state.
- Operational Program Knowledge Education Development will be financed from the European Social Fund.

The main objective of the Program is to provide efficient and effective implementation of cohesion policy for the period 2014-2020.

# CONDUCTING BUSINESS ACTIVITY IN SPECIAL ECONOMIC ZONE

## General information about Special Economic Zone

A Special Economic Zone (SEZ) is an administratively separate and uninhabited part of the territory of Poland where business activities can be conducted on special, preferential terms defined in the Act of 20th October 1994 on special economic zones, Journal of Laws 2007 No. 42, item 274 (hereinafter SEZ Act).

However, the zones are neither extraterritorial, nor fenced, nor isolated in any physical way.

A SEZ offers preferential tax conditions, as well as special premises on which entrepreneurs

may conduct business activities without being subject to the payment of income taxes.

Currently, there are 14 Special Economic Zones in Poland, each of them consisting of several sub-zones. The zone's management issues permits for the conducting of business activities in SEZ, as well as provides assistance to investors by, among others, facilitating their contacts with local authorities or State administrative authorities in matters such as the purchase of land for investment.



## Conducting business activity in Special Economic Zone

The entrepreneur conducting business operations within the zone may apply for the use of public aid, mostly in the form of exemption from corporate income tax or from personal income tax in virtue of the conducted business activity on the area of the zone.

### General principles concerning granting public aid

- The basis for using public aid (i.e. regional assistance related to a new investment or creation of new workplaces) is the permit for conducting business operations

within the Zone granted after conducting by the Zone Manager public negotiations or tender procedure (in the case of simultaneous applying for acquisition of the right to the real estate located within the area Of the Zone).

- The permit has the form of the administrative decision and determines, among others, the object of business activity of the entrepreneur, employment by an entrepreneur in the conduct of economic activity in the area for a certain time a certain number

of employees, made investments in the area by the entrepreneur with a value in excess of a certain amount, deadline for completion of the investment, the maximum amount of eligible investment costs and two years of eligible labor costs and other requirements.

- Permit can be given for conducting business operations within production and service operations, with excluding of operations within:

- manufacturing of explosives, tobacco products, producing, bottling and processing of spirit and alcoholic beverages as well as processing motor fuels;
  - conducting game centres mentioned in the Act of 29th July 1992 on games and mutual bets (Journal of Laws of 2004 No. 4, item 27 and No. 273, item 2703 and from 2005 No. 132, item 1111 and No. 178, item 1479);
  - installing services, repairs, maintenance and refurbishment of machines and equipment used for running business operations on the area of the zone and objects of personal use;
  - services related to the collection, treatment and disposal activities; recovery of of recyclable materials
  - services related to reclamation and other services related to waste management
  - construction works
  - wholesale and retail trade, repair of motor vehicles, including motorcycles, and services related to accommodation and food services
  - towing services in road transport
  - license services in the field of information and communication related to aquisition of rights to books, brochures, flyers, maps, using of lists, magazines and other periodicals, other printed materials, using of computer games and programs,
  - services in the field of information and communication related to production of films, video and television program production, sound recording and music, programming and broadcasting and other services in these group
  - financial and insurance services, and services related to real estate
  - professional, scientific and technical services, except audit and accounting services, research and technical analysis, research and development.
  - services, administration and support services, except call center services,
  - public administration services, national defense services, services for the statutory social security and education, services in health care and social assistance, cultural services, entertainment, sports and leisure
  - household services, services provided by extraterritorial organizations and bodies
  - economic activity, which is required for the to have a license accordance with the Act, the Energy Law.
  - Maximum intensity of help in the area of SEZ depends on its placement. The maximum aid intensity is fixed for each voivodship individually. Actually the rates of maximum aid are as follows:
    - Lubelskie, Podkarpackie, Warmińsko-Mazurskie, Podlaskie, Świętokrzyskie, Opolskie, Małopolskie, Lubuskie, Łódzkie, Kujawsko-Pomorskie - 50%
    - Pomorskie, Zachodniopomorskie, Dolnośląskie, Wielkopolskie, Śląskie - 40%
    - Mazowieckie and capital city Warsaw: 30 %
  - Entrepreneurs from SME sector (i.e. small and medium enterprises as defined in Article 2 of Appendix I to the regulation of the Commission (EC) No. 70/2001 dated 12th January 2001 with regard to the application of Article 87 and 88 of the EC Treaty as regards the assistance of the state for small and medium companies (Official Journal WE L 10 of 13.01.2001, page 33; Official Journal of EU Polish special edition chapter 8.vol. 2, page 141), as set forth in the regulation of the Commission (EC) No. 364/2004 dated 25th February 2004 changing the regulation of the Commission (EC) No. 70/2001 and expanding its scope in order to incorporate assistance for research and development (Official Journal of EU L 63 of 28.02.2004, page 22, Official Journal of EU Polish special edition chapter 8, vol. 3, page 64)) can increase maximum levels of assistance intensity accordingly:
    - for 20% in the case of small entrepreneurs or
    - for 10% in the case of medium entrepreneurs.
- Medium-sized enterprises are defined as enterprises which:

- have fewer than 250 employees, and
- have either,
- an annual turnover not exceeding EUR 40 million, or
- an annual balance-sheet total not exceeding EUR 27 million
- conform to the criterion of independence.

As small enterprises are treated enterprises which:

- have fewer than 50 employees and
- have either,
- an annual turnover not exceeding EUR 7 million, or
- an annual balance-sheet total not exceeding EUR 5 million

conform to the criterion of independence.

Above mentioned entitlement shall not be provided for entrepreneurs conducting business operations within transport sector.

In the case of regional assistance granted to the entrepreneur for implementation of a large investment project, maximum size of aid is hereby fixed according to the formula:

$$I = R \times (\text{EUR } 50\text{mln} + 0.5 \times B + 0.34 \times C)$$

where particular symbols mean:

I – the maximum value of assistance for large investment project,

R – the intensity of assistance for the area of investment location,

B - cost values qualified for being taken up by the aid above the equivalent of € 50mln not exceeding the equivalent of 100 million Euro,

C - cost values qualified for being

taken up by the aid exceeding the equivalent of 100 million Euro.

A large investment project shall be deemed a new investment, adopted within three years by one or more entrepreneurs, in the case of another fixed assets are connected to one another in the economically indivisible manner and whose costs qualified for being taken up by the aid exceed the equivalent of € 50m and have been calculated on the basis of prices and exchange rates from the date of granting the permit.

- In the event when the total value of assistance would exceed 75% of the value of maximum assistance, which can be given for the implementation of investment related to costs qualified for being taken up by the aid constituting the equivalent of 100 million Euro, the individual assistance project requires notification of the European Commission.
- Costs qualified for being taken up by the regional aid shall include:
  - costs of a new investment,
  - costs of new workplaces.
- Costs of a new investment should be understood as the investment in fixed assets and intangible and legal assets, consisting in creation of new or expansion of the existing company, diversification of company production and introduction of new additional products, or in a fundamental change concerning the whole production process of the existing company. A new investment shall be also deemed to be the company purchase that is under liquidation or would be liquidated if it had

not been purchased, then the company is purchased by an independent investor.

It is worth taking into consideration that assistance for restoration investments is not acceptable.

- Expenses qualified for being taken up by the aid shall be also deemed to be the costs related to the implementation of investment, decreased by value added tax from goods and services as well as by excise tax, incurred on the area of the zone in the course of the permit validity (i.e. no earlier than from the date of obtaining the permit) for:
  - the grounds purchase or the right for their perpetual use;
  - purchase or manufacturing in-house fixed assets provided that they are classified in accordance with separate regulations – as components of the taxpayer property;
  - expansion or modernization of the existing fixed assets;
  - purchase of intangible assets (WNIIP) related to technology transfer through the purchase of patent rights, license, know-how or unpatented technical knowledge,
  - cost associated with lease of grounds, buildings and constructions, provided that the lease period is at least 5 years, and in the case of small and medium entrepreneurs - at least 3 years from the expected date of completion of new investment;
  - the purchase price of assets other than ground and buildings let out on hire or



lease, if the lease has the form of financial leasing and contains an obligation to purchase assets at the expiry of lease period.

Any costs associated with the purchase of assets covered by rent or lease, other than grounds, buildings and constructions, are taken into account only when the rent or lease have the form of financial leasing and include purchase commitment of assets after the expiry period of rent or lease. With regard to rent or lease of grounds, buildings and constructions, the rent or lease has to last for the period of at least 5 years from the expected date investment project completion or 3 years in the case of small and medium enterprises.

In the case of „large” entrepreneurs, costs of an investment for the purchase of WNiP are included in the costs qualified for being taken up by the aid in the amount of not exceeding 50% of general value of qualified costs.

Intangible and legal assets (WNiP) should conform to the following conditions:

- shall be used by the entrepreneur receiving regional assistance only in the company, for the benefit of which the entrepreneur shall receive support and shall be included in the assets of this company and shall remain in it for the period of at least 5 years, and in the case of the small or medium entrepreneur for the period of at least 3 years;
- shall be purchased from the third party on the terms not deviating from normal investment practices;

- shall be subject to depreciation in accordance with the regulations on income tax.

The purchase price and manufacture costs of fixed assets and intangible and legal values are established in accordance with the regulations of the Act of 29th September 1994 on accounting (Journal of Laws from 2002 No. 76, item 694, with later amendments).

In the case of the entrepreneur running business activities in transport sector expenses on the purchase of means of transport are not qualified to be taken up by the aid. In the event when before the purchase of company, in relation to its components public aid has been already given, purchase price of these constituents shall not be included in the costs qualified for being taken up by the aid.

Fixed assets mentioned in item 11 sub item b), purchased by a „large” entrepreneur should be new. The minimum height of the investment costs is 100 000 Euro.

- Release from the income tax in virtue of new investment costs shall be entitled to the entrepreneur, starting from the month in which he bore investment expenses in the period from the date of obtaining the permit until using up the acceptable regional assistance, provided that:
  - not transferring in any form property of estate components with which investment expenses were associated – for the period of 5 years from the date of an introduction to the record of fixed assets and intangible

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The basis for taking advantage of the public assistance is the permit which is issued by the manager of Special Economic Zone after conducting public negotiations or tender procedure. The permit determines, among others, the amount of investment expenses and schedule of their expenditure, size of employment and terms of creating workplaces and the subject scope of business activity of the company within the zone on the basis of the permit (consistent with PKWiU - Polish Classification of Goods and Services).

and legal values, as defined by the income tax regulations, and in the case of small and medium entrepreneurs for the period of 3 years;

- shall conduct business activity for the period not shorter than 5 years from the time when the whole investment shall be completed, and in the case of small and medium entrepreneurs for the period no shorter than 3 years.
- Costs of new workplaces shall be deemed two-year labour costs of newly employed employees, covering costs of gross salary of these employees, plus mandatory payments concerning their employment, borne by the entrepreneur from the date of employment of these employees.

Establishment of new workplaces means net growth of workplaces in the given company in connection with the execution of a new investment in relation to the average employment during the period of 12 months before the date of obtaining the permit.

Newly employed employees shall be deemed the number of employees employed after the date of obtaining the permit in connection with the execution a new investment, but no later than in the period of 3 years from the investment completion, and site workplace is maintained by the period of at least 5 years or 3 years in the case of small and medium entrepreneurs.

- Number of employees means full-time employees in the period of one year along with part-time

employees and seasonal full-time employees.

- Exemption from income tax in return for creating new workplaces shall be granted starting from the month in which the entrepreneur started covering the costs of employment, until the acceptable regional assistance has been used up, provided that each workplace is maintained for the period of at least 5 years or 3 years in the case of small and medium entrepreneurs.
- Exemptions in the income tax by virtue of new investment costs or new workplaces costs shall be entitled to only in virtue of operations run within the zone. In the case of running by the entrepreneur business activity also out of the zone, the business activity conducted within the zone must be separated organizationally (in particular taking into consideration accounting and personnel), and size of exemption is defined on the basis of data of the organizational unit running business activity only on the area of the zone.
- The entrepreneur cannot commence the works on the project (i.e. e.g. start the construction of a factory, purchase machines and equipment) before the date of submitting the application for granting assistance (i.e. offer to negotiations or tender procedure organized by the Zone Manager)
- The provision of assistance may occur only in accordance with Guidelines with regard to the

National Regional Assistance for the period from 2007-2013 (Journal of Laws EC from 2006 C No. 54/08)

### Obtaining permit

The basis for taking advantage of the public assistance is the permit which is issued by the manager of Special Economic Zone after conducting public negotiations or tender procedure. The permit determines, among others, the amount of investment expenses and schedule of their expenditure, size of employment and terms of creating workplaces and the subject scope of business activity of the company within the zone on the basis of the permit (consistent with PKWiU - Polish Classification of Goods and Services).

Zone Manager of each SEZ publishes the criteria on which the evaluation of the business project is based. Usually projects to be carried out in the zone are assessed by the Tendering Committee.

Obtaining the permit gives the entrepreneur the right to use tax benefits in the income tax only on the basis of the aforementioned permit, namely within the manufactured products and provision of services covered by the scope of given permit.

The permit is usually valid until the SEZ activity is kept.



## Tax and Non-tax relief (incentives) in the SEZs



Investors permitted to operate in the SEZ can benefit from the following incentives:

- Income tax exemption,
- Relief in real estate tax (depending on a decision of the local authorities)
- Relief in tax on means of transport (depending on a decision of the local authorities)
- Customs duty relief
- Non-tax incentives relating to employment of new employees
- Non-tax incentives related to investments procedures in the SEZs.

### Special Economic Zone – State aid

There is no legal definition of State aid. The Treaty establishing The European Community indicates evaluation criterion of State aid qualified as supports granted entrepreneurs. There are following criterions:

- aid granted by a Member State or through State resources in any form;

- obtaining by the entrepreneur increment on more favourable conditions from offering on the common market;
- selective character (privileging determines or determining entrepreneurs or production of goods);
- threat of disruption or disruption of competition and influence on commercial exchange between Member States of EU.

State aid may be granted individually or within the framework of aid schemes.

On the base of above mentioned Treaty, European Commission passed Regulation No 1998/2006

of 15th December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid, in which precisely determined: amounts and conditions of obtaining de minimis aid.

De minimis aid shall be granted to undertakings in all sector, excluding cases mentioned in Article 1 letter a-h of this Regulation.

The total de minimis aid granted to any one undertaking shall not exceed EUR 200 000 over any period of three fiscal years. The total de minimis aid granted to any one undertaking active in the road transport sector shall not exceed EUR 100 000 over any period of three fiscal years. These ceilings shall apply irrespective of the form of the de minimis aid or the objective pursued and regardless of whether the aid granted by the Member State is financed entirely or partly by resources of Community origin. The period shall be determined by reference to the fiscal years used by the undertaking in the Member State concerned.

The ceiling of de minimis aid shall be expressed as a cash grant. All figures used shall be gross, that is, before any deduction of tax or other charge. Where aid is awarded in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid.

Aid payable in several instalments shall be discounted to its value at the moment of its being granted. The interest rate to be used for discounting purposes and to calculate the gross grant equivalent shall be the reference rate applicable at the time of grant.

Aid measures exceeding de minimis ceiling should not be broken down into a number of smaller parts in order to bring such parts within the scope of Regulation.

In accordance with the principles governing aid falling within Article 87 item 1 of the Treaty, de minimis aid should be considered to be granted at the moment the legal right to receive the aid is conferred on the undertaking under the applicable national legal regime.

De minimis aid should not be cumulated with State aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding that fixed in the specific circumstances of each case by a block exemption Regulation or Decision adopted by the Commission.

De minimis aid is applicable to situation when it is transparent. As transparent aid is treated an aid for which it is possible to calculate precisely the gross grant equivalent ex ante without a need to undertake a risk assessment. Such precise calculation can, for instance, be realized as regards grants, interest rate subsidies and capped tax exemptions.

The provision of this Regulation shall apply from 1st January of 2007 until 31st December of 2013.

#### Conclusion

The entrepreneur conducting business activity in SEZ may grant the State aid. The basis for granted State aid is permit provided in accordance with SEZ Act on conducting business activity.

The maximum amount of de minimis aid is 200 000 EUR and will be in force until the end of 2013.

This maximum amount refers to any three fiscal year period.

#### Income tax exemption

The SEZ Act defines financial incentives which were meant to provide a powerful stimulus to establish new businesses in the zones, among others income tax exemption.

According to Article 12 of SEZ Act income earned by legal and natural persons from economic activity within a zone under a permit referred to in article 16 item 1 may be exempted entirely from income tax of legal and natural persons, respectively to rules determine in Corporate and Personal Income Tax.

Above mentioned rules are contained in Article 17 item 1 point 34 of CIT Act, on the basis which incomes, obtained from economic activity conducted in the territory of a special economic zone pursuant to a permit referred to in Article 16 item 1 of SEZ Act are exempted from taxation.

The amount of public assistance granted in the form of this exemption may not exceed the amount of public assistance to the entrepreneur permissible for areas qualified for obtaining the highest possible amount of assistance, in accordance with separate provisions. Simultaneously in accordance with Article 17 item 4 of CIT Act the exemption referred to in item 1, point 34, to which a taxpayer shall be entitled, shall apply exclusively to incomes from the economic activity carried on within the said zone.

The intensity of aid which may obtain an entrepreneur was described widely in point 2.1.4

On the base of these regulation results that if a specific kind of business activity is not mentioned in a permit or business activity is no auxiliary activity necessary to accomplishment the subject scope of business activity determined in the permit then income from such activity is not exempted from taxation.

Corporate income tax exemption, related to income from activities conducted in SEZs under the permit, is considered to be regional aid granted under the Act on SEZs.

#### Forms of regional aid

SEZ-based enterprises can take advantage of two forms of regional aid:

- Regional aid to support new investment projects
- Regional aid for creating new workplaces

These forms of regional aid were described widely in point 2.1.9-17)

Below we present short summary.

#### Regional aid for investment projects

The amount of regional aid for new investment projects depends on the amount, nature and structure of the investment outlay of a given business. To determine the amount of regional aid for investment projects, it is necessary to establish qualifying costs on the basis of the investment expenditure.

The qualifying costs include the following types of expenditure:

- Purchase of land
- Expenditure on buildings and structures
- Expenditure related to equipment for facilities with tangible assets (machinery and related devices, tools and instruments, equipment for office work, technical infrastructure)

The qualifying costs may also include outlays on the purchase of intangible assets within the limits stipulated in respective regulations.

**Example:**

An entrepreneur plans to set up a business in a SEZ with a 50% aid intensity index and obtains the permit in 2007. The total cost of the investment project will be 500,000 EUR comprising the outlays on:

Purchase of land: 40,000 EUR

Building and related structures: 200,000 EUR

Fixtures and fittings for new facilities: 260,000 EUR

The total amount of investment outlay of 500,000 EUR will be included in the qualifying costs and will constitute the basis for assessing the available state aid (tax exemption). Taking into consideration that the entrepreneur will locate the investment project in an area with 50% aid intensity, he will be eligible for regional aid up to the amount of 250,000 EUR (50% x 500,000 EUR) in the form

of tax exemption. The amount of tax-exempted income is calculated as the amount of aid divided by the CIT rate. In this case the amount of tax-exempted income will be about 1.315,789 EUR (250,000 EUR/19%).

**Regional aid for employment**

The amount of regional aid allocated to creation new workplaces is calculated on the basis of two years' labour costs of newly-employed staff borne by the entrepreneur, consisting of gross payroll costs and all mandatory charges related to their employment.

**Example:**

An entrepreneur plans to set up a business employing 100 people in a SEZ with a 50% aid intensity index. He obtains a permit to conduct business activities in the SEZ in 2007.

The labour costs of the newly-employed people amount to 500.000 EUR (100 x 5.000 EUR) over the following two years. In this case, the entrepreneur benefits from regional aid of up to 250.000 EUR (50% x 500.000 EUR), while income up to 1.315,789 EUR

(250,000 EUR/19%) is exempt from corporation tax.

The amount of income exempt from taxation is calculated as the amount of the aid divided by the respective income tax rate applicable on the permit issuance date.

Summarizing, not only incomes and related to them deductible costs

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The amount of income exempt from taxation is calculated as the amount of the aid divided by the respective income tax rate applicable on the permit issuance date.

which are direct result of conducting business activity on the area of the SEZ but also incomes and deductible costs from each other auxiliary activity necessary to its conducting are exempted from taxation (e.g. costs of administration which are imposed by Zone Manager on the Company in virtue of conducting business activity in SEZ).

According to binding provisions, the aid in form of exemption from income tax is granted on the date when expire term to submitting annual return.

It is worth taking into consideration that exceeding permissible amount of public assistance implicates serious consequences. For example, tax exemption in CIT when the amount of income was overstated may conduct to determine a taxpayer tax arrears and cause necessity of overdue tax refund with interest for delay from tax arrears.

#### **Costs of financial leasing as a expenses qualified for being taken up by the aid.**

The Company intends purchasing a fixed assets through concluding contract of financial leasing.

In financial leasing only interest part from the leasing rate is included to deductible costs however all expenses incurred on purchase fixed assets i.e. the sum of rates consisting on financial leasing will be recognized as regional aid. It means that into calculation of expenses

qualified for being taken up by the aid shall be also deemed cost of purchase of assets by rent or lease when rent or lease have the form of financial leasing.

Any costs associated with the purchase of assets covered by rent or lease, other than grounds, buildings and constructions, are taken into account only when the rent or lease have the form of financial leasing and include purchase commitment of assets after the expiry period of rent or lease. With regard to rent or lease of grounds, buildings and constructions, the rent or lease has to last for the period of at least 5 years from the expected date investment project completion or 3 years in the case of small and medium enterprises.

Summarizing, amount from contract of financial leasing i.e. the total sum of rates is qualified to costs of new investment in case when an entrepreneur intends to undertake a business activity in SEZ and the leasing contract was concluded in order to purchase fixed assets.

#### **Relief in tax on means of transport**

The relief is of general nature (for a group of entrepreneurs meeting certain preconditions). Relief are granted by the local authorities, at the commune level, by the Commune Council.

#### **Customs duty relief**

The Polish customs law offers numerous incentives for entrepreneurs, such as:

- customs duty exemptions,
- economic customs procedure,
- operations in duty free areas,
- facilitated payments,
- exemption from the obligation to place security for customs duty and tax liabilities.

#### **Non-tax incentives relating to employment of new employees**

There are various types of instruments, such as reimbursement of expenditures borne or the form of a loan aimed at supporting the hire of new employees.

#### **Non-tax incentives related to investments procedures in the SEZs.**

These include in particular:

- full preparation of the plot of land for a given investment project,
- preferential price for the plot of land,
- the accelerated procedure for issuing a permit to purchase real estate (within 1 month),
- free-of-charge assistance in handling various formalities, actions and obligations.

## Tax declarations and information submitting by the Company conducting business activity in SEZ

Each Company conducting business activity in Poland is obliged on the base of provisions of law to submitting tax declaration and appropriate information. Additional duties were imposed on companies conducting business activity in SEZ which are:

- Information submitting to the Head of Tax Office within the time limit set for filing the statement on the amount of income earned (loss incurred) for each period involving period, for which incomes from corporate income or their part should be remitted on the account of Zone Fund, in form of enclosure to this settlement:
  - Part A – SSE-M: Tax settlement from incomes obtained from conducting business activity in SEZ based on permit and concerning State aid granted on investments
  - Part B – SSE/A: List of shares in companies
  - Part C – SSE-R: Tax settlement from incomes obtained from conducting business activity in SEZ based on permit
  - Part D – SSE-R/A: Tax settlement concerning discounted value of granted State aid and costs qualified for being taken up by the aid.

Taxpayers submitting monthly tax settlements on the amount of income earned (loss incurred) enclose information filling its part A and B. Information is a part of monthly tax settlement as a attachment.

Taxpayers submitting annual tax settlement on the amount of income earned (loss incurred) in tax year enclose information filling its part B,C and D. Information is an attachment to annual tax settlement.

- Enclosure to tax settlement CIT-8 ----> CIT-S is an information on the amount of income obtained from conducting business activity in SEZ.
- Entrepreneurs purchasing lands on the area of the district where SEZ is situated and exempted from real tax estate are obliged to submitting next to declaration DN-1 and information DN-N also information concerning exemptions in real tax estate DOZ-N (position 62,63,64).

Tax settlements and information submitting by each Company conducting business activity in Poland:

- Income tax return: CIT-8 with enclosures.
- Value added tax: VAT-7 or VAT-UE for entrepreneurs performing Intra-community Purchase of Goods (I-CPG) and Intra-community Delivery of Goods (I-CDG).
- Declarations concerning real estate tax: DN-1.
- Declarations concerning tax on means of transport: DT-1.
- In connection with employment workers – information PIT-11/8B about incomes and collected payments for income tax.

- Declaration concerning payment on the State Fund for Rehabilitation of Disabled Persons (PFRON) – DEK-I-0.
- Insurance forms submitting to Social Insurance Institution. There are many kind of insurance forms, which entrepreneur is obliged to submission. Insurance forms have the character of registration documents (submitting in the moment of starting paying contribution) and settlement documents (submitting monthly to Social Insurance Institution).

The main insurance forms are:

- ZUS ZUA – registration for insurance/ notification of a change of data of the insured person,
- ZUS ZPA – registration/change of data of the contribution payer – legal person or an organizational unit not invested with legal personality,
- ZUS ZFA – registration/change of data of the contribution payer – natural person,
- ZUS DRA – settlement declaration submitted monthly,
- ZUS RCA – constitutes an appendix to the ZUS DRA form – settlement declaration. This form is used to draw up:
  - a monthly report
  - a correction report

in which the contribution payer accounts for social insurance contributions and/or health insurance premiums for each employee.



## Acquisition of real estate

Real estate, as defined under the Polish law, comprises land, buildings on plots of land and premises (apartments, office space, etc.). Real estate can be used under the following legal forms:

- ownership right;
- perpetual usufruct, where ownership of the land rests with the State Treasury or a municipality. The perpetual usufruct gains ownership rights over the buildings on a given plot of land and the right to use the land for a period of 40-99 years in return for an annual charge of 1% (land under residential buildings) or 3% (other land) of the value of the land. The period of the perpetual usufruct must be prolonged unless it is in conflict with the purpose of the plot of land determined in a local master plan. The leaseholder may sell the right or use it to secure his loans;
- usufruct;
- lease or rental.



**Real estate, as defined under the Polish law, comprises land, buildings on plots of land and premises (apartments, office space, etc.).**

The main difference between lease and rental is that a leaseholder acquires the right to use the land and takes full financial advantage of the land's properties over the duration of the lease contract. The leaseholder pays a fee to the landlord for those rights. In the case of rental, only the right to use the rented item is acquired in exchange for the rental charges paid to the person letting the object, who is usually the owner or holder of a long-term lease. The handover of property ownership requires a contract in the form of a notarial deed. The transfer takes place at the moment of conclusion of the handover contract.

A perpetual usufruct contract must be concluded in the form of a notarial deed. An additional condition for the right of perpetual usufruct to come into existence, other than the above contract, is the entry of this right into the land and mortgage register (see below). The transfer of the right of perpetual usufruct to another entity takes place in accordance with the regulations governing the establishment of this right, as mentioned above.



## About Russell Bedford in Poland

Russell Bedford Poland is the member of International network of Russell Bedford independent consulting firms, whose members are lawyers, accountants, tax consultants, accountants, financiers and business consultants.

We operate across Poland, with our offices in Warsaw, Katowice, Poznan and Gdynia.

## Managers Team



**Andrzej Dmowski**

Managing Partner  
responsible for the Legal Department  
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**Grażyna Zaremba**

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**Jacek Kalinowski**

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**Piotr Chmielewski**

Corporate Finance Director

## Our services in Poland

In Poland, we have established law firm, tax advisory firm, auditing firm, the accounting department and the department of financial and economic analysis.

### Tax Advisory

Our firm provides comprehensive tax advisory services. The team of advisors offers support to customers throughout the country, in terms of:

- income tax righteous
- VAT
- income tax from individuals,
- international tax law and local taxes and charges,

as well as foreign exchange and customs laws.

### Law Advisory

The mission and purpose of the law firm Russell Bedford is to provide professional legal services by our team of lawyers.

Widely ruzmiane law is a field to which each operator whether the person meets in their business on a daily basis. However, the law, despite its universality, is characterized by a high degree of complexity, and its full understanding requires a lot of knowledge and experience.

Offer legal services directed to individual customers and operators. Depending on your needs we provide legal advice, prepare pleadings or represent him before the courts and administrative bodies. Russell

Bedford Law Firm also provides services in the field of debt collection. Our experts specialize in addressing the recovery of outstanding debts from debtors.

### Audit

Auditors services in the area:

- audit of financial statements,
- reviewing financial reports,
- diagnose the financial health of companies,
- expert economic - financial,
- economic advisory - Financial
- consultancy in the process of privatization and restructuring,

We investigate both the separate financial statements of different entities and the consolidated financial statements of entities belonging to the group.

### Practical Training Courses

Russell Bedford offers a range of specialized training enabling acquire and expand their knowledge in an accessible way. Workshop form of classes offered by us is a guarantee of obtaining practical skills that participants will be able to take full advantage. As a firm advocate or tax, we offer practical solutions that our specialists on a daily basis working in our office in an accessible way to present you our training.

### Accounting and payroll

Accounting Office provides the

following services:

- accounting services and consulting balance sheet,
- outsourcingu accounting of foreign companies,
- programs, financial accounting and ERP systems.

We invite you to get acquainted with the accounting office Russell Bedford.

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- valuations and financial forecasts,
- fraud,
- risk management
- obtaining EU funds
- insurance consultancy,

### International Services

We provide services to companies from the European Union and for those outside it. In particular, we are focused on solving current problems associated with the eastern market, especially from Russia, Ukraine, Belarus and Kazakhstan. Support this group of clients involved in the experience advisers and consultants, speaking fluent Polish, Russian and Ukrainian teams focused on Russian and Ukrainian Desk. However, this does not limit our operations only to those markets, and enriches the experience to operate also in the whole world.

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## Russell Bedford

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Russell Bedford advises clients in more than 100 countries worldwide. The Group has over 230 offices and employs approximately 6,000 professionals.

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For over 30 years Russell Bedford has been providing an assistance to its customers around the world by building relationships based on stable and secure foundations.

Helping to make a difference

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