



GLOBAL EXPANSION GUIDEBOOK

TAX

Poland



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INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Tax*.

GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics companies need to know.

The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, global equity and tax laws in key jurisdictions around the world.

TAX

Multinational companies continue to expand globally at an ever faster pace. Successful expansion depends, in part, on strategic and effective tax planning and compliance. This guide, brought to you by DLA Piper's Tax group summarizes the key features of tax laws in 41 popular jurisdictions.

This guide addresses common tax questions, by jurisdiction, including:

- Taxation of resident companies and non-resident companies
- Availability of tax holidays, rulings, and favorable tax regimes
- Ability to use losses to offset income
- Anti-deferral (ie CFC) rules
- Withholding taxes
- Employment tax issues

With more than 300 tax lawyers and economists in offices throughout the Americas, Europe and Asia Pacific, DLA Piper's global tax advisory services help multinational companies address the complex challenges of international commerce and business operations as well as manage and resolve tax audits. Our global tax group also assists clients in structuring a wide range of transactions, from private equity deals to corporate acquisitions and disposals. We provide these tax services across our global platform, while at the same time offering clients the benefits of the attorney-client and work-product privileges.

The information in this guide is an accessible, high-level summary of the tax laws in each jurisdiction. This is not a substitute for legal or tax advice. If you have specific questions or require detailed advice, we encourage you to contact one of the attorneys listed in the contributors section of this guide.

We hope that you find this guide valuable and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

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POLAND



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RESIDENCE AND BASIS FOR TAXATION

Subject to the application of a relevant tax treaty, companies that have their legal seat or place of management in Poland are treated as domestic corporations (ie, tax resident in Poland).

Domestic

A domestic corporation is subject to Polish tax on its worldwide income. A domestic corporation generally is not subject to Polish tax on the income of its foreign subsidiaries unless controlled foreign corporation (CFC) rules apply.

Foreign

Foreign corporations are taxable on their Polish-source income only. Tax treaties can reduce or eliminate these taxes.

TAXABLE INCOME

Taxable income of a domestic corporation is equal to a sum of gross income from 2 separate sources of income: capital gains and other sources. Income from a given source is equal to the excess of the sum of revenues from that source over costs incurred to generate revenues during the fiscal year. A tax year is generally same as the financial year and can be a calendar year or any other 12 consecutive months.

TAX RATES

The corporate income tax (CIT) rate is 19 percent or 9 percent for taxpayers with sales revenue, excluding output VAT and not exceeding EUR2 million (with certain restrictions).

TAX COMPLIANCE

CIT is paid in monthly installments by the 20th day of each month for the preceding month (quarterly payments are possible for small taxpayers). An annual CIT return should be submitted within 3 months of the tax year end.

ALTERNATIVE MINIMUM TAX

In Poland, legislation establishing a minimum corporate tax went into effect in 2022. This tax, however, will apply to tax years beginning after December 31, 2023.

Minimum corporate tax will be levied on any entity subject to CIT (including tax capital groups) that:

- suffered a loss for a given tax year or
- whose share of income in revenues (other than capital gains) calculated for tax purposes is less than 2 percent.

The provision will not apply, *inter alia*, to startups or taxpayers who recorded over a 30-percent decrease in revenues.

TAX HOLIDAYS, RULINGS AND INCENTIVES

Tax holidays

Not applicable for this jurisdiction.

Tax rulings

Tax rulings are of a general or individual nature. Individual rulings are issued upon request within 3 months from filing of a request (the deadline for issuing individual tax ruling is extended to 6 months during the COVID-19 pandemic). Individual tax rulings may be requested by anyone who wants to confirm interpretation of tax provisions – not only by taxpayers, but also by potential shareholders, foreign investors or foreign entities considering starting business activity in Poland.

Tax incentives

There are tax incentives for specific activities or types of income, including relief for R&D activities, income from intellectual property (IP Box), relief for innovative employees, relief for robotization, relief for prototypes, relief for expansion, relief for corporate social responsibility, relief for initial public offerings (IPOs), relief for consolidation, notional interest deduction for retained profits and additional equity contributions, as well as investment incentives related to business activity carried out in special economic zone.

CONSOLIDATION

It is possible to consolidate for tax purposes within a tax capital group. Several requirements must be fulfilled (eg, an average capital of PLN250,000 for each group company, a minimum share of 75 in subsidiaries by the parent).

PARTICIPATION EXEMPTION

There is a participation exemption from withholding tax for dividends based on the EU Parent-Subsidiary Directive. The exemption applies to dividends paid by the Polish company to the EU company provided that the latter company holds at least 10 percent shares of the Polish company for a continuous period of at least 2 years. The exemption is not available if the dividend distribution is aimed at tax avoidance. From 2019, the requirements to apply the withholding tax exemptions have been extended and more formalized.

CAPITAL GAIN

Capital gain constitutes a separate source of income starting from 2018 and is taxed at the same rate as ordinary income (19 percent). Exemption is available only in specific circumstances (eg, share-for-share swaps, in-kind contribution of an enterprise or part thereof, or profit distributions that are exempt based on the EU Parent Subsidiary Directive). There is no general participation exemption applicable to capital gains. A participation exemption applies to qualifying dividends (see above).

DISTRIBUTIONS

A participation exemption applies to qualifying dividends.

LOSS UTILIZATION

Losses may be carried forward for 5 years. The deduction may not exceed 50 percent of loss incurred in a given year but, in addition to the 50-percent limit, a PLN5 million loss may be settled in 1 of 5 years. Losses cannot be carried back. Losses incurred from a given source (capital gain or other sources) may be settled only with income from that source.

Starting from January 1, 2021, losses of a taxpayer who acquired an enterprise/organized part of enterprise or took over another entity (via a merger) cannot be deducted:

- *if the scope of the core business activity carried out by the taxpayer differs from the scope of the core business activity which had been conducted by the taxpayer before the acquisition (merger), or*
- *when at least 25 percent of shares of the taxpayers are held by entity or entities which did not have these rights at the end of the tax year in which the taxpayer incurred loss.*

TAX-FREE REORGANIZATIONS

Based on the EU Mergers and Acquisitions Directive, mergers, divisions and share-for-share swaps may be tax-neutral provided that certain conditions are met and they are conducted for economic reasons. Otherwise, they result in taxation. However, from January 1, 2022, under the amended provisions of the CIT Act, the tax neutrality of mergers and divisions for partners is limited to activities in which:

- the shares in the acquired or divided company were not acquired as a result of an exchange of shares, mergers or divisions and
- the tax value of the shares at the acquiring party resulting from the merger or division will not exceed the tax value of the shares in the acquired or divided company.

Similar conditions also apply to share-for-share exchange transactions.

ANTI-DEFERRAL RULES

Under the CFC rules, a domestic corporation may be subject to tax at the rate of 19 percent on the income of a foreign-controlled entity if certain criteria apply. This includes where the ownership of the foreign entity is at least 50 percent, the so-called passive income of the foreign entity is 33 percent or more, and the effective rate of taxation of income of the foreign entity is below a certain level.

FOREIGN TAX CREDITS

Foreign tax credits are available under domestic law and under relevant tax treaties.

SPECIAL RULES APPLICABLE TO REAL PROPERTY

In 2018, an income tax that is payable on certain commercial properties (fixed assets) was introduced. The tax applies to office buildings, shopping centers, department stores and other retail and service buildings with an initial value of more than PLN10 million. The tax is payable on a monthly basis; the rate is 0.035 percent of property value if it exceeds the sum of PLN10 million, determined at the first day of each month. The tax so calculated will reduce the "standard" corporate income tax, and any surplus over the standard corporate income tax may be refunded to the taxpayer upon its application and after tax authorities verify the correctness of the taxpayer's tax calculation.

Real estate companies and its partners reporting obligations

This regulation imposes an additional obligation for real estate companies and taxpayers holding, directly or indirectly, at least 5 percent of the voting rights in a real estate company or at least 5 percent of the total number of participation units or rights of a similar nature thereto.

Real estate companies must disclose information on entities owning, directly or indirectly, shares, participation units or rights of a similar nature in the real estate company, along with the number of such participation rights held by each of them, while partners of real estate companies are obligated to disclose information on the number of shares, participation units or similar rights held, directly or indirectly, in the real estate company.

TRANSFER PRICING

Arm's-length principles are generally applied to transactions between related entities. The Polish rules generally follow the OECD guidelines.

WITHHOLDING TAX

From 2019, the requirements to apply the withholding tax exemptions and reduced withholding tax rates based on EU law or the applicable double tax treaties have been extended and more formalized. In order to benefit from a reduced rate or full tax exemption in accordance with the new regulations, regardless of the value of payments made, payers are required to exercise “due diligence.”

On 1 January 2022 the new withholding tax collection mechanism (*pay and refund*) entered into force. If the total amount of payments to the same recipient in a given tax year exceeds PLN2 million, the payer will be obliged to calculate, collect and pay the withholding tax using the standard rates set out in the CIT Act (19 to 20 percent), with a right to apply for a tax refund to the tax authority if the payment qualifies for an exemption or a reduced WHT treaty rate. However, the *pay and refund* mechanism is narrowed to intra-company passive payments of interests, royalties, dividends.

A motion can be filed with the relevant tax authority to apply the WHT exemption and avoid paying WHT on these payments within 36 months from date of receiving the tax authorities’ opinion.

An alternative procedure that could lead to relief from an obligation to collect WHT is a submission of statement by the management board of the tax remitter (i.e. Polish entity paying interest) confirming that all conditions have been met to use an exemption/diminished WHT rate. However, filing of the aforementioned statement carries the risk of criminal liability of the member of the management board in case it will appear that such conditions in fact were not met.

Dividends

The general withholding tax (WHT) for dividends is 19 percent. The WHT rate may be reduced by specific provisions of the applicable income tax treaty or an exemption based on the EU Parent Subsidiary Directive may be available. WHT is payable monthly by the 7th day of each month for preceding month. The exemption is not available if the dividend distribution is aimed at tax avoidance.

Royalties and interest

A 20-percent withholding tax applies to royalties, interest and other passive income paid by a domestic corporation to a foreign person, subject to reduction or elimination by an applicable income tax treaty or regulations based on the EU Interest Royalties Directive. WHT is payable monthly by the 7th day of each month for the preceding month. The exemption is not available if the royalty or interest distribution is aimed tax avoidance.

Intangible services

A 20-percent withholding tax applies to fees for intangible services paid to foreign recipients, like management fees or fees for advisory, legal, marketing, accounting, recruitment services or guarantees, the tax may be reduced based on the relevant tax treaty. The payments for intangible services are excluded from the *pay and refund* mechanism and therefore such payments will not be included in the limit of payments of PLN2 million, above which this mechanism applies.

CAPITAL DUTY, STAMP DUTY AND TRANSFER TAX

There is no capital duty. Stamp duties and transfer taxes are imposed for certain types of sales and transactions. In particular, 1 percent transfer tax is payable on direct sales of shares in Polish companies.

EMPLOYMENT TAXES

Employers must withhold personal income tax from the employees' gross remuneration. Employers also must pay social security contributions in respect of compensation paid to employees. These taxes are deductible by an employer for corporate income tax purposes.

OTHER TAX CONSIDERATIONS

Certain legislative measures have been introduced in the recent year to ensure more effective tax collection and to combat tax fraud, eg:

- introduction of the provision of a minimum corporate tax;
- introduction of a mandatory pay and refund mechanism regarding withholding tax;
- introduction of the provision of a tax on shifted profits;
- introduction of the provisions on deemed income to an employer in connection with illegal engagement of an employee or the failure to disclose a correct amount of income from engagement as well as an exclusion from tax deductible costs of the remuneration paid by virtue of illegal engagement

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