Taxation

Competition in the age of globalisation means not only competition between businesses but between countries - and their tax systems. These have become crucial determinants of business decisions concerning the location of new investments.

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

The Polish tax system distinguishes 12 types of taxes, including:

- Eight direct taxes:
    - corporate income tax (CIT),
    - personal income tax (PIT),
    - tax on civil legal transactions,
    - real estate tax,
    - tax on means of transport,
    - inheritance and donations tax,
    - agricultural tax,
    - forestry tax,
- Three indirect taxes:
    - tax on goods and services (VAT),
    - excise duty,
    - game tax.

Set out below are the key features of the main taxes in Poland:

Corporate income tax '09

Personal income tax '09

Tax on goods and services (VAT) '09

Corporate Income Tax (CIT)

Introduction

The corporate income tax (CIT) is, aside from VAT, the most crucial tax for the State Treasury levied on the activities of legal persons in Poland. This is a flat-rate tax, generally imposed on income.

Tax rates

As of January 1, 2004, the corporate income tax rate is **19%** of the tax base. In some cases the CIT Act provides for other tax rates.

As of January 1, 2004 income from **dividends** and other income (revenues) from participation in profits of legal persons having their seat in Poland is subject to a **19% flat-rate tax**.

In the case of taxpayers with unlimited tax liability in Poland or in other EU Member State there is **total exemption from withholding tax on dividends paid out by Polish companies (participation exemption).** The application of the above-mentioned exemption is possible if the shareholder holds or will hold a minimum 10% of shares in a Polish company for a period of at least 2 years.

In the case of dividends gained from abroad, Polish tax provisions provide for two exemption methods: *participation exemption* (relating to income generated in an EU Member State, another EEA Member State, and Switzerland) and *underlying tax credit* (regarding the states with which Poland has a valid double tax treaty other than EEA Members and Switzerland).

The participation exemption is applied if the Polish company has held at least 10% capital participation in the foreign subsidiary for an uninterrupted period of at least 2 years. However, the required minimum participation of a Polish parent company in a Swiss company is 25%.

The tax actually paid by a foreign company on the part of its profits from which a dividend was paid can be credited against – up to a limit - tax payable by the Polish parent company (*underlying tax credit*). To apply the underlying tax credit, the Polish recipient must have held for a minimum period of 2 years at least 75% of the capital in the company paying dividends. Notwithstanding the above, a Polish recipient of dividends from abroad can also – up to a limit – credit withholding tax paid abroad against tax he must pay in Poland.

As of July 1, 2013 **the total exemption concerning withholding tax will also refer to interest and royalties** transferred from Poland to the related companies from the EU. In the period from July 1, 2005 to June 30, 2009 the withholding tax on interest and royalties accounted for 10% of the total, and in the period from July 1, 2009 until 30 June 2013 it accountes for 5%.

Subject of taxation

The following entities are subject to corporate income tax:

- legal persons (in particular: limited liability companies, joint-stock companies), capital companies in organisation);
- partners who are legal persons;
- tax capital groups

Object of taxation

The corporate income tax is imposed on income **irrespective of the source of revenue** from which the income has been earned.

Entities having their seat or management in Poland are subject to taxation with respect to their global income irrespectively of where it was generated (unlimited tax liability). Other entities are subject to taxation in Poland only with regard to income sourced in Poland (limited tax liability).

I**ncome** is considered to be the surplus of total revenues over tax deductible costs gained during a tax year. If tax deductible costs exceed the amount of revenue, the difference constitutes a **loss**.

T**ax losses which** were incurred in previous tax years may reduce the taxable income of a taxpayer. A loss may be carried forward for 5 years following the year in which it was incurred, however the amount deducted in a given year shall not exceed 50% of the loss value (i.e. the shortest period of a one year loss settlement is 2 years)

A **tax year** is defined as a calendar year. However, after meeting certain criteria specified in the CIT Act, a taxpayer may decide that the tax year is a period of other than 12 consecutive calendar months.

Revenues

The following items (among others) are considered to be revenue:

- money and monetary instruments received, also including foreign exchange differences,
- value of non-monetary benefits and revenues in-kind received,
- value of debts which were redeemed or prescribed,
- value of paid-off debts which were previously written off as irretrievable or redeemed and recognised as tax deductible costs,
- in a case of reduction or refund of VAT – input VAT in its part corresponding to the amount previously recognised as tax deductible cost.

In the case of business activity the revenue due, even if it has not yet actually been received, constitutes taxable revenue excluding the value of the returned goods, granted rebates and discounts.

The date the revenue arises shall be deemed to be the date of:

- the release of a thing, transfer of a property right or provision of a service or a partial provision of a service, but not later than the date of
- issuance of an invoice or
- payment of the amount due.

The list below presents examples of items which are **not considered revenues for tax purposes:**

- advance payments received or amounts accounted for the future provisions of goods and services which are to be performed in the next reporting periods,
- revenue received for establishment or increase of share capital,
- additional payments contributed to a limited liability company,

- loans (credits) received or returned,
- output VAT,
- returned, redeemed, or desisted taxes and charges, which constitute revenues of the State Treasury or budgets of territorial self-governments units, which had not earlier been treated as tax deductible costs,
- refunded differences in VAT,
- other returned expenses not being recognised as tax deductible costs.

Tax exemptions regarding objects of taxation

A catalogue of tax exemptions regarding objects of taxation includes *inter alia* the following items:

- income received by taxpayers from governments of foreign states, international organisations, or international financial institutions deriving from non-returnable aid, including funds from framework programmes regarding research, development, and introduction of the European Union and from NATO programmes,
- income earned from economic activity inside a Special Economic Zone on the basis of an appropriate permit.

Tax deductible costs

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

- the expenditure was incurred for the purpose of generating income or retaining and protecting sources of income,
- it is not listed in the catalogue of expenditures which are tax non-deductible costs.

The costs are divided into direct costs and other costs.

As a rule, direct costs are deductible in the tax year in which the related revenue was earned. Other costs are deductible on the date they were incurred.

If tax deductible costs were incurred in **foreign currencies**, these should be converted into PLN at the average exchange rate announced by the National Bank of Poland valid for the last working day preceding the day the costs were incurred.

Since 1st January 2007 the new rules for settlement of exchange rate differences are in force. According to the new law the exchange rate differences shall respectively increase the revenues as foreign exchange gains or increase the tax deductible costs as foreign exchange losses.

Tax base

Generally, the tax base is considered to be income (defined as any excess of revenues over the tax deductible costs), reduced by certain deductions made by the taxpayer during the tax year.

The tax base may be reduced by donations for public utility purposes and for religious purposes. The deduction may not exceed 10% of the income.

Additionally it is possible to deduct from the tax base 50% of expenditures for purchase of **new technologies** from scientific entities. A new technology is defined as a technology which has been in use for less than 5 years. The deduction does not impact the right to amortise the acquired technologies.

In order to recognise given income as a tax base, the taxpayer is obliged to keep proper accounting records. If it is not possible to determine income (or loss) on the basis of those records kept by a taxpayer, the income (or loss) shall be assessed by the authorities.

Collection of tax

Throughout the tax year taxpayers are obliged to pay to the bank account of a tax office a monthly tax advance payment in the amount of the difference between the tax due on the income earned from the beginning of the tax year and total advance payments due within the preceding months. Monthly tax advance payments shall be remitted by taxpayers by the 20th day of each month for the preceding month. Since 1st January 2007 the obligation of submitting of monthly tax returns has been abolished.

A final settlement of tax is deemed to have been made on the date the yearly tax returns are submitted by the taxpayers to the tax office and tax is paid. This should be done at the end of the third month of the following year at the latest

The CIT Act provides for a simplified form of calculation and payment of the advance tax payments. Taxpayers are entitled to make monthly advance payments in the amount of 1/12 of the tax due, as calculated in the yearly tax statement for the year preceding the given tax year. If there was no tax due shown in said statement, taxpayers are entitled to make monthly advance payments in the amount of 1/12 of the tax due, as shown in the yearly tax statement for the year preceding by two years a given tax year.

So-called “small entrepreneurs” who launch their business activities may benefit from the **tax credit**. This is relief consisting of deferral of payment regarding tax on income generated **in the first tax year**. The taxpayer is also relieved from filing tax returns for that year. The tax due with reference to such income should be paid by taxpayers in installments within the next 5 consecutive years.

Personal Income Tax

Introduction

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

However, there are exceptions to this rule. Under certain conditions natural persons conducting **business activity** can tax their income at a flat 19% tax rate or according to provisions regulating lump-sum taxation included in a separate tax act.

Flat tax rates are also envisaged in the case of certain incomes in the form of capital gains, **and lump-sum taxation is applicable to** certain incomes **obtained by non-residents and other privileged groups of taxpayers.**

Subject of taxation

Natural persons subject to personal income tax (PIT) are considered to be taxpayers with reference to their income, including income from participation in partnerships, i.e.:

- a partnership in the meaning of the Polish Civil Code,
- a registered partnership,
- a professional partnership,
- a limited partnership,
- a limited joint-stock partnership.

Income from participation in the above-mentioned partnerships, as well as income from joint ownership, joint enterprise, joint possession or joint use of things or property rights are taxed separately by each taxpayer, in proportion to his share in the partnership. The PIT Act is also applicable to natural persons who are shareholders in companies having legal personality, i.e., limited liability companies or joint stock companies, with reference to income from the participation in the companies' profit.

Object of taxation

Personal income tax is levied on all kinds of **income**, except for income which is exempt from taxation under the provisions of the PIT Act and income on which collection of taxes has been abandoned under provisions of the Tax Ordinance Act.

According to the PIT Act's provisions, income can be derived from several specific sources. This assignment of an income to a source results in the application of a specific method for its taxation.

An **income from a given source of revenue** is defined as the excess of total revenue from that source over its tax deductible costs, generated in a given tax year. If a taxpayer receives income from more than one source, subject to certain exceptions, the sum of all income from all sources is subject to taxation. The exceptions refer to the following:

- revenue (income), which is subject to lump-sum taxation,
- income which is subject to flat-rate tax.

The aforementioned kinds of income are not accumulated with income earned by taxpayers from other sources (taxed pursuant to the tax scale). Furthermore, the income subject to the flat-rate tax is disclosed in separate tax returns: on income from capital gains and income from business activity, respectively.

The provisions of the PIT Act do not apply to the following:

- revenues from agricultural activities (except for revenue from so-called „special branches of agricultural production") and from forestry,
- revenues falling under the provisions of the Act on Inheritance and Donation Tax,
- revenues resulting from activities which cannot be subject to legally effective contract (e.g. theft or drug dealing); it should be stressed that it does not refer to actions made without observing of legal standards provided by law (e.g. the sale of real estate through a form other than a notarial deed),

revenues resulting from division of a property co-owned by spouses due to the cessation or limitation of their co-owned property.

Scope of tax liability (unlimited and limited tax liability)

The "global" nature of personal income tax means *inter alia* that this tax is imposed on the income of all natural persons provided that they gain income from the sources located in Poland. The scope of tax liability of these persons decides whether income from sources located abroad is subject to taxation in Poland as well.

Taxpayers are subject to unlimited tax liability in Poland if they have place of residence in Poland i.e.

- they remain in Poland longer than 183 days during a tax year or
- have a centre of personal or economic interests here (centre of vital interests).

If a person has a residence in another country, the clash between the tax jurisdictions shall be settled and consequently determination of the country where the person is a tax resident shall be done according to the regulations of an appropriate double tax treaty. Only then it is possible to determine the tax status of such a person in Poland.

Taxpayers with unlimited tax liability in Poland (Polish tax residents) are subject to taxation on their world-wide income. Natural persons without place of residence for tax purposes in Poland are subject to taxation in Poland only with respect to Polish-sourced income.

Sources of revenue

There are the following sources of revenue:

1. service relationship and employment relationship (including cooperative employment relationship),
2. activity carried on personally,
3. non-agricultural business activity,

4. special branches of agricultural production,
5. lease, sublease, tenancy, sub-tenancy, and other contracts of a similar character,
6. capital gains and property rights,
7. transfer against payment of e.g. immovable property, parts thereof, and shares in immovable property,
8. other sources.

Tax exemptions regarding objects of taxation

There are certain exemptions envisaged regarding objects of taxation. These exemptions may be of a permanent or temporary nature and in particular refer to the following:

- revenue from indemnities and revenue resulting from the insurance of property and persons,
- the value of benefits resulting from the employment relationship, provided by employers to employees (e.g. the value of non-alcoholic beverages and meals provided for employees during working hours in accordance with the provisions on work safety and hygiene, including the value of vouchers and coupons etc. which entitle their holder to obtain meals and beverages),
- revenue from daily allowances (e.g. for the period of domestic and foreign business trips, received by both employees and non-employees and by persons who perform acts connected with their social and civic duties),
- revenue of a donated nature, received from the State budget or territorial self-government units, from governmental agencies or from governments of foreign states, international organisations or international financial institutions, under governmental programmes,
- prizes (up to the specified limit), in particular in: gambling casinos, games on machines and contests organised and broadcast by mass media.

Tax deductible costs

The tax deductible costs are all costs incurred with the purpose of generating revenue, retaining or protecting sources of revenue, except for the costs which are explicitly listed in the PIT Act as not deductible.

The costs are divided into direct and other costs.

As a rule, direct costs are deductible in the tax year in which the related revenue was earned. Other costs are deductible on the date they were incurred.

If tax deductible costs were incurred in **foreign currencies**, these should be converted into PLN at the average exchange rates announced by the National Bank of Poland valid for the last working day preceding the date the costs were incurred.

Since 1st January 2007 new rules of settlement of exchange rate differences have been in force. According to these rules exchange rate differences shall respectively increase the revenues as foreign exchange gains or increase the tax deductible costs as foreign exchange losses.

Tax base and calculation of tax pursuant to the scale

Generally, income calculated as the excess of revenue over tax deductible costs constitutes the tax base for PIT purposes.

The income may be then **reduced by** the taxpayer by:

- the amount of social security premiums paid during the tax year,
- expenses incurred for the use of the Internet,
- expenses incurred for the purpose of public works, for religious purposes and those expenses incurred for the purpose of rehabilitation of disabled persons,
- expenses borne by the taxpayer with regard to the purchase of new technologies.

As a rule, those taxpayers who carry out business activity are obliged to calculate their income on the basis of **accounting books**. If it is not possible to calculate income on the basis of accounting books kept by the taxpayer, the income should be assessed.

9. Tax computed pursuant to the scale

The income is subject, as a rule, to income tax calculated in compliance with the following scale, using tax rates amounting to, i.e., **19% and 32% ,** depending on income thresholds. When calculating the income, the so-called **tax-free amount** is taken into account (in 2007 - PLN 3.013,00, in 2008 - PLN 3.089,00).

Tax base in PLN

Tax

over

up to

PLN 85.528

18 % minus amount decreasing the tax PLN 556,02

PLN 85.528

PLN 14.839 + 32 % of surplus over PLN 85.528

The tax calculated in compliance with the tax scale may be **reduced** by the amount of the national health insurance premiums. Since 2004 taxpayers may reduce their tax by payments made to **the account of public works organisations.** The reduction of the tax can not exceed the amount of 1% of the tax as shown in the annual tax return. In the case of the tax settlements made for 2007 and following years, the head of the tax office shall transfer an amount not exceeding 1 % of the tax due resulting from the tax return for the benefit of a charitable organisation indicated by a taxpayer in the tax return.

Lump-sum taxation of certain kinds of revenue (income)

In certain cases, some **revenue** (not income) is subject to taxation; in such cases, **no tax deductible costs** may be taken into account. The tax is then imposed in a lump-sum form. As a rule, those revenues which are subject to the lump-sum tax are not revealed in the annual tax statements submitted to the tax office by taxpayers.

Flat-rate tax

Taxpayers conducting business activity may tax their income at a **19% flat tax .**

Income is considered to be the tax base for calculating the 19% tax from business activity. This means that the institution of a flat-rate tax does not deprive taxpayers of the right to deduct tax deductible costs from earned revenue.

A decision on a flat-rate taxation method **deprives the taxpayer of the possibility to take advantage of the majority of the tax allowances and deductions**. However, the taxpayer who has chosen this method of taxation is entitled to deduct the following:

- from the income – any loss incurred in the previous tax years (incurred as a result of conducting business activity),
- from the income – the amount of retirement, disability, sickness and accident insurance premiums paid by the taxpayer,
- from the tax – the amount of national health insurance premiums paid in the tax year.

Since 2004 the **19%** flat-rate tax also applies to income from monetary capital

The settlement of certain incomes in the form of capital gains taxed with a flat rate tax **is not subject to advance payments during the year**. A taxpayer who earns income from the above-mentioned sources is obliged to make a settlement once a year before April 30 of the following year – in the tax settlements submitted independently of the annual tax settlement regarding income subject to taxation according to the general rules (e.g. income from employment relationship).

Collection of tax

During a tax year taxpayers are obliged to make advance tax payments (by the 20th day of the following month for the preceding month) and, after the end of a given tax year, pay any tax due in a final amount (i.e., not later than April 30 of the following year). This rule does not apply to the lump-sum tax, calculated and collected with reference to certain categories of revenue earned during the tax year and not accumulated with income earned from other sources after the end of the given year.

As a rule, a PIT taxpayer is obliged to calculate and transfer on his own both tax advance payments and the tax. There are some exceptions to this rule, according to which, with respect to certain categories of revenue, the advance payments and the tax are collected by tax remitters. First and foremost, the remitters calculate and collect the tax advance payments with reference to income from service relationships, employment relationships and similar relationships, retirement and disability pensions, and social security allowances. Furthermore, tax remitters calculate and collect the lump-sum taxes in most cases.

Those taxpayers who receive income from business activity, lease and tenancy, employment relationships received from abroad, retirement and disability pensions received from abroad and other income with respect to which the remitters are not obliged to calculate advance payments for income tax, are obliged to calculate and pay tax advances without summons during the year.

The self-calculation of tax also applies in the case of establishing the income tax due for the entire tax year, provided that a remitter of tax has not been designated to calculate the tax. When submitting annual tax statements, taxpayers who keep accounting books are obliged to attach financial statements which should include at least the balance sheet and the profit and loss account.

Those taxpayers who decided to apply the flat-rate tax (19%) to their income from business activity are subject to the general rules concerning submission of annual tax statements. However, for the purposes of calculating the tax, these taxpayers are not entitled to aggregate their income subject to the flat-rate tax with the income subject to taxation according to the general rules.

Furthermore, the PIT Act provides for a simplified form of calculation and payment of tax advances, i.e. in the amount of 1/12 of the tax amount shown in the tax return submitted to the tax office in the tax year preceding a given tax year or in the tax year preceding a given tax year by two years.

The so-called "small entrepreneurs" who launch business activities may benefit from a so-called **tax credit**. This is relief consisting of deferral of payment regarding tax on income generated **in the first tax year**. The taxpayer is also relieved from filing tax returns for that year. The tax due with reference to such income should be paid by the taxpayers in instalments within following five years.

Small entrepreneurs and those taxpayers who launch their business activity may pay tax advances quarterly.