

# Setting up your Business in Poland

## Issues to consider



Poland is situated in the heart of Central Europe and is the 9<sup>th</sup> largest country on the continent and the 70<sup>th</sup> in the World. Highly qualified labour force, membership in the EU, entrepreneurial spirit and openness make Poland a perfect choice for business opportunities from around the globe.

However there are a number of issues which you must consider when you are looking to set up your business in Poland. This document takes you through some of the common questions we come across and gives you practical information about the issues you need to consider.

### What type of Business Structure should we use?

There are advantages and disadvantages to all of them, and there is no one correct answer, it's all dependent on your specific business circumstances and needs. A brief overview of the main structures is below:

#### Establishment (a branch of your overseas business)

- ✓ Not a separate legal entity but an extension of the overseas parent company
- ✓ No limited liability or ring-fencing of the Polish operations
- ✓ If you have a permanent establishment (PE) in Poland then profits from this PE are liable to Polish Corporation tax
- ✓ The branch must file:
  - income tax returns (separate accounting books)
  - branch company accounts, prepared under Polish Law and approved by the parent company

#### Limited Liability Company (sp. z o.o.):

- ✓ May be established for any purpose allowed by law and by one or more individuals, legal persons or organisational units
- ✓ The initial capital must not be less than PLN 5 000
- ✓ The shareholders are not liable for the company's obligations, they bear a risk up to the value of shares contributed
- ✓ The Company is liable for its debts and obligations with its whole property
- ✓ Corporation tax to be paid on company profits

#### Joint-Stock Company (S.A.):

- ✓ Established for the purpose of operating business on a large scale
- ✓ Capital (minimum PLN 100 000) may be obtained through issuance of shares
- ✓ Corporation tax to be paid on company profits

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### How much Corporation Tax will the business pay?

Current Corporation Tax rates in Poland are:

Tax rate (%)		Taxable profit (PLN)
Reduced rate	9%	New companies (during first year)
		Small companies (less than EUR 1 200 000 income + tax in previous year)
Full rate	19%	Other companies

(NB: rates are for the tax year 2019)

Certain categories of income are taxed with a fixed rate, e.g. 19% on dividends. However, in light of the Parent-Subsidiary Directive this income is exempted assuming formal requirements are met.

### What if we use Poland to set up our holding company?

The taxpayer may be also treated as a group of at least two commercial companies having legal personality (sp. z o.o. or S.A. registered in Poland). The groups must be linked by capital relationships – "tax capital group".

The most important advantage of being a tax capital group is a special method available to calculate taxes. The group's taxable income is a surplus of the sum of profits of all companies over the sum of their losses. The members of the group can establish their own pricing policies without the risk of negative transfer-pricing consequences, which is a real risk for companies that are not members of a tax capital group.

The average initial (share) capital for each of these companies must not be lower than PLN 500 000. The "dominant company" (parent company) should have direct shareholdings of at least 75% in the initial capital of the remaining companies, called "dependent companies" (subsidiaries).

### What if we make cross-border transactions between group companies?

Poland follows internationally recognized **Transfer Pricing** (TP) rules where cross-border trading and financial transactions between affiliated entities have to be conducted on an arm's length basis. The price and terms should be the same as if the transactions had been between completely independent parties.

As of 1<sup>st</sup> January 2019, the obligation to prepare the transfer pricing documentation applies only to transactions exceeding:

PL 10 000 000 – in case of tangible assets or financing

PL 2 000 000 – in case of intangible assets, services, fixed assets and other transactions

The documentation must contain:

- ✓ Local file
- ✓ Benchmarking study
- ✓ Master file (group documentation in case of revenue exceeding PLN 200 000 000)

### What Employment Taxes and Social Security will need to be paid?

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If an individual is resident in Poland then they are subject to Polish tax laws. Generally, a noncitizen is a resident if he is physically present in Poland for more than 183 days in a calendar year or has a center of vital interests in Poland. A resident is subject to tax on worldwide income.

We would advise any new entrant to Poland or person who spends time working in Poland to take professional advice to determine whether they are Polish tax resident.

### Current Personal Income Tax rates in Poland are:

Band of income (PLN)	Tax rate (%)	
0 – 85 528	18%	minus the amount decreasing the tax
Over 85 528	15 395,04 + 32% over 85 528 PLN	

(NB: rates are for the tax year 2019)

Employers and employees also may also be required to pay Polish social security contributions.

### Current Social Security rates are:

Contribution type	Employer share	Employee share	Total
Pension Fund	9.76 %	9.76 %	19.52 %
Disability Fund	6.50 %	1.50 %	8 %
Illness Fund	-	2.45 %	2.45 %
Accident Fund	0.67-3.86%	-	0.67-3.86%
Employees' Guaranteed Benefits Fund	0.10 %	-	0.10 %
Health Fund		9%	9 %
Labour Fund	2.45 %	-	2.45 %

NB: (rates are for the tax year 2019)

It is the employers' legal responsibility to pay over employee's tax and social security deductions to the Polish tax authorities.

Contributions to the pension and disability funds are computed on and deducted from the amount limited to thirty times the average monthly wage in the national economy for a given calendar year.

Foreign nationals working in Poland under an employment contract or a personal services contract concluded with a Polish entity are subject to mandatory health insurance contributions. The health insurance contribution amounts to 9% (7,75% are tax deductible though).

### What is Value Added Tax (VAT) and should the business be registered?

VAT is a "goods and services tax" on supplies made, the standard rate of which is 23%. If a business makes taxable supplies in excess of PLN 200 000 in calendar year then it must be registered for VAT.

There are three types of supplies:

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- ✓ Taxable – must charge VAT on supplies, can reclaim input VAT
- ✓ Exempt – cannot charge VAT nor reclaim input VAT
- ✓ Outside the scope – not in the Polish VAT system

The supply of most types of goods and services in Poland would be classed as Taxable supplies. However, when these supplies are made to companies which are outside of Poland, advice needs to be sought as to what rate of VAT, if any, to use.

### SAF-T

According to the amendments to Polish Tax Ordinance, as of 1st January 2017 enterprises are obligated to generate and provide a Standard Audit File for Tax (SAF-T), covering VAT registers. The file has to be submitted monthly, even for companies reporting VAT returns quarterly.

The obligation to transmit data in the SAF-T format applies also to companies which are only registered for VAT purposes. Moreover, foreign enterprises that carry out its business in Poland through a local branch are required to disclose data in the SAF-T format as well. The taxpayers are obligated to provide SAFT-T to the tax authorities electronically in a standardized format.

### Can we provide Share option plans to our staff?

Many companies see Share Option plans as being an important way of attracting, motivating and retaining key staff.

However this is a very technical complex area and careful planning needs to be undertaken as soon as share option plans are being considered for implementation in Poland.

### How else can we compensate our employees?

Poland has a very comprehensive range of compensation and benefit options available for companies to offer their employees.

Pensions, private medical insurance, life and disability cover are now commonplace benefits provided by many Polish businesses to their workforce.

Flexible benefit packages are also gaining in popularity, giving employees options on how they wish to “spend” their benefit allowance; which can range from “purchasing” additional holiday entitlement to obtaining full family medical cover.

***The information in this document was prepared as of December 2019***

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If you have further queries or wish for more detailed information, get in touch with your contact person:



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