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PERFORMING WORKS

IN POLAND

FLANDERS INVESTMENT & TRADE MARKET SURVEY

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PERFORMING WORKS IN POLAND

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in association with:

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CONTENTS

1.	Introduction.....	4
2.	Professional competence and ec declaration.....	4
3.	Work and residence permit.....	5
3.1	Residence permit	5
3.2	Work permit	5
4.	Social insurance.....	7
4.1	Social security contributions in Poland	7
4.2	3.2. Social security for posted workers	8
5.	Employment law.....	9
5.1	4.1. Polish Labour Code	9
5.2	4.2. State LaboUr Inspectorate	9
5.3	4.3. Safety and health at work	10
6.	Employment law.....	11
7.	Taxation.....	12
7.1	Personal income tax (PIT)	12
7.2	Corporate income tax (CIT)	14
7.3	VAT	19
7.4	Tax administration	21
8.	Peterka&Partners company profile.....	22

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1. INTRODUCTION

This paper brings you an overview of the most important administrative formalities, which a Flemish company must take into account, when performing works in Poland.

It attempts to provide answers to several major questions such as:

Do I have to prove my professional competence? What must be done so that the residence of my employees is legally in order? Will my employees or I remain subject to Belgian social security? Do the works and my employees need to be reported in advance to the local authorities? What rules of labour law must I take into account? Liability? Applicable VAT system? What taxes must be paid? Is there a certain uniformity in the EU countries?

The information in this note is provided to you without guarantee as to its absolute validity or completeness.

2. PROFESSIONAL COMPETENCE AND EC DECLARATION

Poland has a very extensive list of regulated professions. EU and EEA (European Economic Area) nationals wishing to practice one of these professions in Poland must be able to demonstrate the same or equivalent professional competence.

The list of regulated professions in Poland can be consulted on following website:
<https://nawa.gov.pl/en/recognition/recognition-for-professional-purposes/practicing-regulated-professions>

Since May 1st 2004, there has been mutual recognition of professional skills, diplomas, etc. (on the basis of an EC declaration) and, conversely, since May 1st 2004, Belgium has also recognized professional skills acquired in Poland for the purpose of access to professions regulated in Belgium.

On the website <https://nawa.gov.pl/en/recognition/how-to-obtain-a-recognition-statement> you can download the application form for recognition of foreign professional competences (and thus exemption from application of the Polish rules). This form must be submitted to the competent authority.

The information will be issued within 30 days from the date of receipt of the complete set of required documents and sent by registered letter to the person and correspondence address in Poland, indicated in the application form. The information is issued in Polish. There is no fee for issuing the information on foreign diplomas.

For further details, please contact:

Polish National Agency for Academic Exchange

Polna 40

00-635 Warsaw

<https://nawa.gov.pl/en/>

3. WORK AND RESIDENCE PERMIT

3.1 RESIDENCE PERMIT

Citizenship is of key importance when considering employment of a foreign national in Poland. Citizens of EU Member States and European Economic Area (EEA) Member States (Norway, Iceland and Liechtenstein) and Swiss citizens, as well as their family members (subject to additional criteria) are free to perform works in Poland. In this case, there are no additional requirements such as obtaining a residence or work permit.

As a general rule, foreign nationals from countries other than these are allowed to work in Poland provided that:

- they have the relevant residence permit; or
- they have a joint temporary residence and work permit; or
- the employer obtained a work permit for a foreign national legally staying in Poland (e.g., based on a work visa). On the other hand, please note that there are multiple exemptions allowing foreign nationals to perform work without a work permit (*please see point 2.2*).

The types of relevant residence permits allowing foreign nationals to perform works include: (i) a permanent residence permit in the Republic of Poland, (ii) a residence permit for an EU long-term resident in the Republic of Poland, (iii) a residence permit for humanitarian reasons and (iv) a permit for a tolerated stay in the Republic of Poland. Residence permits as referred to in points (i) and (ii) above are the most common.

The decision on the (i) permanent residence permit and on (ii) the permit for an EU long-term resident is issued by the voivode (*wojewoda*) competent for the place of residence of the foreign national. Both permits are granted for an indefinite period. However, a residence card issued based on a permanent residence permit is valid for 10 years, whereas a permit for an EU long-term resident residence card is valid for 5 years. Apart from performing works in Poland, both permits entitle a foreign national to travel to other countries of the Schengen Area (for a period not exceeding 90 days within a period of 180 days).

For details on a permanent residence permit in Poland, please see: [Basic information | Urząd do Spraw Cudzoziemców \(udsc.gov.pl\)](#)

For details on a residence permit for an EU long-term resident in Poland, please see: [Residence permit for EU long-term resident | Urząd do Spraw Cudzoziemców \(udsc.gov.pl\)](#)

3.2 WORK PERMIT

A foreign national from outside of the EU, EEA and Switzerland, who does not have a relevant residence permit as referred to in point 2.1 is generally required to obtain a work permit in order to perform works in Poland. In the context of the employment of foreigners, the performance of works is deemed to take place both under a labour contract or civil law contracts, such as an order contract (*'umowa zlecenie'*),

specific work contract ('umowa o dzieło'), service contract ('umowa o świadczenie usług'), contract of agency ('umowa agencji'), etc.

At the same time, there are multiple exemptions allowing a foreign national to perform work without a work permit. A foreign national is deemed exempted from the work permit requirement, *among others*, in the following situations:

- he or she is a citizen of Armenia, Belarus, Russia, Ukraine, Georgia or Moldova provided that he or she works in Poland for up to 6 months within the next 12 months on the basis of a duly registered declaration of entrusting work to a foreign national (simplified procedure for employing a foreign national from the countries listed);
- he or she has a valid visa with the annotation 'Poland. Business Harbour' (i.e., a visa issued as part of the government project supporting Belarusian citizens in taking up work and relocating to Poland);
- he or she is a graduate of a Polish upper-secondary school, or is in full-time studies or taking full-time doctoral courses at Polish universities and colleges;
- he or she is a full-time student in Poland, studying on the basis of a visa or a temporary residence permit for studying purposes;
- he or she has a valid Pole Card ('Karta Polaka');
- he or she stays in Poland in connection with the short-term mobility of a managerial employee, specialist or intern as part of an intra-company transfer.

For a full list of exemptions, please see: [Categories | Urząd do Spraw Cudzoziemców \(udsc.gov.pl\)](https://udsc.gov.pl/en/categories)

As a general rule, the decision on a work permit is issued by the competent voivode ('wojewoda') based on a motion filed by an employer. A work permit is valid for a specified period not longer than 3 years. However, in the case of a member of a board of managers of a legal entity employing more than 25 persons, a work permit may be granted for up to 5 years. A work permit may be subsequently extended. Following receipt of the work permit, the foreigner is obliged to apply for an employment visa or relevant residence permit.

Save for specific exceptions, it is possible for a foreign national to apply at once for a joint temporary residence and work permit. In this case, all formalities legalizing his/her employment and stay in Poland take place in one administrative procedure initiated by the foreign national himself/herself. A joint temporary residence and work permit is granted for a specified period, which is not shorter than 3 months and not longer than 3 years. Joint temporary residence and work permit cannot be extended. In this case, the foreign national shall apply for a new joint permit or leave the territory of Poland before the term of validity expires.

For details on a joint temporary residence and work permit, please see: [Temporary residence and work permit | Urząd do Spraw Cudzoziemców \(udsc.gov.pl\)](https://udsc.gov.pl/en/temporary-residence-and-work-permit)

4. SOCIAL INSURANCE

4.1 SOCIAL SECURITY CONTRIBUTIONS IN POLAND

Social security contributions in Poland consist of:

- pension insurance;
- disability insurance;
- accident insurance;
- labour fund;
- sickness insurance;
- health insurance.

Social insurance is generally mandatory and covers both employees and self-employed people.

Social security contributions for employers and employees

Both the employer and the employee are obliged to pay social security premiums. The basis for the calculation of contributions is the gross amount of salary. Details of the social security contributions are shown in the following table:

Contributions for	Employee	Employer
Retirement pension contribution	9.76%	9.76%
Disability pension contribution	1.5%	6.5%
Sickness contribution	2.45%	N/A
Accident insurance	N/A	1.67% for up to 9 employees; from at least 10 employees the rate varies according to the number of employees insured and the business sector
Health insurance	9%	N/A
Employment Fund	N/A	2.45%
Fund for Guaranteed Employment Benefits	N/A	0.1%

- When the employee's annual salary exceeds PLN 157,770 (this cap changes every year) the rate of contributions is reduced and ranges from 3.22% to 6.41% payable by the employer and 2.45% payable by the employee.
- Apart from paying its own share of social security contributions, the employer is obliged to withhold the employee's share of the social security contributions and remit them to the Social Security Authorities (ZUS). The relevant payments shall be made monthly.
- The social security shares payable by the employer and the employee are tax-deductible items in their respective PIT settlements.

[illegible]

Secondment of employees to Poland

Under EU rules, employees moving within the EU, the EEA and Switzerland, are subject to a single legislation concerning social security. As a rule, employees seconded from the territories specified above in order to work in Poland are subject to Polish social security legislation. There are some exceptions to this rule detailed in Regulation (EC) No 883/2004 on the co-ordination of social security systems in EU member states (e.g., if the period of secondment does not exceed 24 months and the employee has not been seconded to replace another person).

Social security contributions for self-employed

Self-employed persons pay social security contributions in a lump sum, regardless of their actual income. The base for social security contributions amounts to 60% of the predicted average monthly wage for a given year. Details of the social security contribution for self-employed persons based on average monthly wage are shown below:

4.2 SOCIAL SECURITY FOR POSTED WORKERS

If you post temporary workers to another EU country, they are covered by the social security of the country where they worked before the posting. This also applies if you are going to work temporarily in another EU country as a self-employed person.

As an employer, you must notify the host country in advance and request an A1 document from the social security institution in your country where your staff is insured. The A1 document confirms that the posted worker is registered with the social security of your home country and is not paying contributions in the host country.

When applying for the A1 document, you must indicate the start and end date of the secondment in the other EU country. The maximum posting period on the form is 24 months.

If the secondment exceeds 24 months or has to be extended, you as an employer can:

- request the issuance of the A1 document (this is not automatic and is only possible if there is a mutual agreement between your country and the host country)
- transfer your employee to the social security system of the host country

You can request an A1 document online.

https://www.socialsecurity.be/site_nl/employer/applics/gotot/index.htm

online service Working abroad - Employers.

For self-employed persons search for the 'Aanvraag A1-attest voor zelfstandige' button in the menu.

Application can also be made by e-mail (contactrszmigr@rsz.fgov.be) or on paper at the following address:

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RSZ / Directie Internationale Betrekkingen
Victor Hortaplein 11
1060 Brussel

For self-employed persons:

Rijksinstituut voor de sociale verzekeringen der zelfstandigen (RSVZ)

Willebroekkaai 35

1000 Brussel

T: +32 2546 42 11

F: +32 2 511 21 53

More information? Send an e-mail to: int@rsvz-inasti.fgov.be

5. EMPLOYMENT LAW

5.1 POLISH LABOUR CODE

The Labour Code is the primary piece of legislation of Polish employment law. This act stipulates the relations between employers and employees, as well as sets forth the conditions under which work may be performed in the territory of the Republic of Poland. The Polish Labour Code covers all key aspects of employment including, *among others*, rights and duties of both employers and employees, types of labour contracts, their conclusion and termination, working time and time free from work, remuneration for work, health and safety regulations, as well as settlement of disputes over claims under the employment relationship and the statute of limitations of such claims.

Provisions of other sources of employment law and in particular, internal acts of the particular employer, as well as particular labour contracts may not be less favourable to the employee than the provisions of the Labour Code.

5.2 STATE LABOUR INSPECTORATE

The State Labour Inspectorate (*Państwowa Inspekcja Pracy*) is the competent authority for the supervision and control of compliance with the employment law, in particular with respect to health and safety regulations and legality of employment and performance of work by foreigners. In connection with this, the State Labour Inspectorate prosecutes infringements of employees' rights and other infringements in the sphere of employment law, as well as brings legal actions (based on the consent of the persons concerned) and participates in court proceedings on the establishment of the labour relationship.

The State Labour Inspectorate also provides free of charge labour law advice to employees and carries out scheduled and unannounced inspections of the employers and entrepreneurs, who are not employers, but who contract natural persons to perform work, irrespective of the grounds of performing such work (e.g., based on civil law contracts). Inspections are most often initiated based on employees' complaints. Most of

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the complaints concern remuneration, breach of rules with respect to termination of labour contracts, as well as employment certificates.

For information on the State Labour Inspectorate please see: [Główny Inspektorat Pracy \(pip.gov.pl\)](http://GłównyInspektoratPracy.pip.gov.pl)

3 SAFETY AND HEALTH AT WORK

employer is liable for protecting the health and life of its employees by ensuring safe and healthy working conditions using scientific and technological means. The employer is, *among others*, obliged to:

- organize work in a manner that ensures healthy and safe working conditions;
- ensure compliance with the provisions on and principles of occupational health and safety in the workplace, give instructions to eliminate any breach of duty in this area, and monitor the follow-up measures;
- ensure the development of a consistent policy to prevent accidents at work and occupational diseases;
- ensure that the preventive measures adopted consider protection of the health of adolescent, pregnant, breastfeeding or disabled employees;
- ensure that orders, positions, decisions and regulations issued by the authorities responsible for the supervision of working conditions, as well as recommendations of the social labour inspector (one of the employees, who as a rule is a member of a union (and does not hold a managerial position)) are implemented;
- ensure the resources necessary to provide first aid in a state of emergency, fire-fighting and evacuation of employees, as well as designate employees responsible for first aid and measures connected with fire-fighting and evacuation of employees;
- inform all employees of a danger to life or health (if it occurs) and take measures to ensure adequate protection and, as soon as possible, give instructions to enable employees in the event of imminent danger to stop work and leave the hazardous area and proceed to a place of safety;
- stop work and give instructions to employees to proceed to a place of safety in the event of imminent danger to life or health, and not resume work until that danger is removed.

The costs of measures introduced by an employer in relation to health and safety at work shall not be covered by employees in any manner.

the working conditions do not meet the health and safety regulations, and in addition may pose a direct threat to the life or health of the employee, the employee has the right to refrain from performing work. If he or she has the same right in a situation where, although he or she is not in direct danger, the activities he or she will perform may pose danger to other people. In both situations, the employee informs the employer immediately about the refusal to perform the activity. The employee may even leave the workplace completely, if he or she stopped the work but the danger is not yet eliminated. In both cases, the employee retains the right to remuneration.

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6. EMPLOYMENT LAW

Under the Polish Labour Code, a contract of employment may be concluded:

- **for a probationary period**– in order to verify qualifications of an employee, for a period not exceeding 3 months;
- **for a fixed term** – may be terminated without any reason; preferred by employers. The overall period of employment under a fixed term agreement (or agreements) between the same parties is limited to 33 months and in any case, no more than three consecutive agreements (with some exceptions);
- **for an indefinite term** – may be terminated by the employer only with a reason (must be true, real, specific and important enough to discontinue the employment relationship); preferred by employees.

The employment contract is concluded in writing. The employment contract should be signed no later than on the day of start of work by the employee. If it has not been signed, then no later than before the employee is allowed to work, the employee should receive a written confirmation of the terms of the employment contract. Amendments of the terms of the employment contract also require a written form. The employer should attach additional written information about certain employment conditions to the employment contract in accordance with the Labour Code.

A terminated employee may bring legal action to the labour court. If the labour court finds the claim well-grounded it may, in principle, reinstate the employee in the job (under the previous terms and conditions) or award the employee compensation in an amount basically not exceeding 3 months' remuneration for the given employee.

In certain cases, work can be carried out on the basis of civil law contracts (e.g., service contract, contract of agency). Based on a civil law contract, a contractor (i.e., quasi-employee) (i) is free to decide how the work should be performed, however, (ii) he or she also bears full liability for damage incurred by an employer. A civil law contract is easier to terminate than a contract of employment and under such contract there is no statutory guaranteed vacation, paid sick leaves, leaves related to pregnancy and motherhood or other employee benefits (but a statutory minimum hourly rate applies in the case of a service contract).

Moreover, in principle, it is also possible for the individual to carry out work in the form of ‘self-employment’ (*samozatrudnienie*), which is popular in certain industries (e.g., IT services). In this scenario, an individual firstly registers sole proprietorship (*jednoosobowa działalność gospodarcza*), and subsequently concludes a civil law agreement acting in the capacity of an independent entrepreneur (contractor). A sole proprietor is liable for the obligations related to his or her business activity with all his or her assets and property. Moreover, he or she pays personal income tax for himself or herself, obligatory social security and health insurance contributions, as well as VAT (if applicable).

At the same time, in accordance with the Labour Code, a civil law contract cannot replace an employment contract, should the conditions of performance of work meet the criteria of an employment relationship. Otherwise, a civil law contract may be reclassified (by the labour courts and State Labour Inspectorate) as an employment relationship.

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Basic employment conditions in Poland:

- Statutory minimum wage in 2021 – PLN 2,800 gross (approx. EUR 600).
- Statutory minimum hourly rate for persons employed based on civil law contracts in 2021: PLN 18.30 gross (approx. EUR 4) per hour.
- Working time: 8 hours per day; an average of 40 hours in a five-day working week in the adopted settlement period up to 4 months.
- The length of paid holiday leave:
 - 20 working days – if the employee's length of service is less than 10 years;
 - 26 working days – if the employee's length of service is at least 10 years.

Length of service, based on which the length of holiday leave is determined, includes the period of study depending on the type of school (e.g., higher education accounts for 8 years of length of service).

7. TAXATION

The system of taxes and duties in Poland consists of direct and indirect taxes; the major ones are:

- Personal income tax (PIT);
- Corporate income tax (CIT);
- VAT;
- Excise duty;
- Customs duties;
- Real estate tax;
- Tax on banks and other financial institutions;
- Civil law transactions tax;
- Retail sales tax;
- Sugar tax.

Below is basic information on PIT, CIT, VAT and the organizational structure of the Polish tax administration.

7.1 PERSONAL INCOME TAX (PIT)

Taxpayers

- Individuals residing in Poland are subject to unlimited tax liability in Poland, which means that they are taxed in Poland on their total income earned worldwide (i.e., regardless of where the source of their income is located). The following individuals are considered to be Polish tax residents:
 - 1) those who have the centre of their personal or economic interests (centre of vital interests) in Poland, or

2) those who stay in Poland for longer than 183 days during the fiscal year.

- Individuals not residing in Poland have limited tax liability and are subject to taxation in Poland only with respect to the income earned in Poland. The above regulations are applied taking into account the double taxation treaties concluded by Poland.

Tax scale

Individuals in Poland are subject to PIT calculated, as a rule, according to a progressive tax scale. Tax rates vary depending on the income earned, defined as the total revenue minus tax deductible costs, earned in a given taxable year. In 2021, PIT is calculated according to the following tax scale:

Taxable base in PLN		Tax	
more than	up to		
	85,528 (EUR 18,797)	17%	Minus tax-reducing amount
85,528 (EUR 18,797)		PLN 14,539.76 + 32% of the surplus over PLN 85,528 (EUR 3,195 + 32% over EUR 18,797)	

The tax-reducing amount mentioned in the table varies between PLN 1,440 (EUR 316) for a taxable base not exceeding PLN 8,000 (EUR 1,758) and PLN 0 for a taxable basis exceeding PLN 127,000 (EUR 27,912).

Taxation of self-employed

- Individuals conducting business activity are taxed according to the tax scale. However, these individuals, at their request, may tax their income with the 19% flat-rate tax.
- Depending on the scale of business conducted, upon meeting specific criteria, the taxpayer may request the application of simplified taxation forms, i.e.:
 - tax on registered income (tax calculated without deducting tax-deductible costs);
 - fixed tax rate (tax determined by the tax office depending on the type of business).

Tax rates – special types of revenue

Certain income (revenue) categories are taxed in accordance with separate rules. The special tax regimes are applicable to i.a.:

- dividends (19% flat tax);
- interest on savings (19% flat tax);
- gains from capital funds (19% income tax);
- gains from the sale of securities (19% income tax);
- selling private property (19% income tax);

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- awards in competitions, gambling, premium sale (10% flat tax);
- income of Controlled Foreign Companies (19% income tax);
- private lease (at the taxpayer's request – 8.5% tax on registered income up to PLN 100,000 (EUR 21,978); for the excess over that amount, the lump sum tax rate amounts to 12.5% of revenues).

Withholding tax

Some revenue categories disbursed by Polish withholding agents to non-residents are subject to a flat-rate tax of 20% of the revenue. These include proceeds from:

- serving on management or supervisory boards;
- civil law contracts;
- entertainment or sports activity;
- accounting benefits;
- legal and advisory services;
- advertising services;
- licence fees, know-how, or copyrights.

In the case of non-residents, tax rates resulting from a double tax treaty may be applied and withholding tax may be exempted if the non-resident furnishes a certificate confirming its place of residence for tax purposes.

Tax returns

- The deadline for filing an annual tax return is 30 April of the year following the reference tax year. This rule does not apply to revenue subject to tax on registered income or a fixed tax rate.
- As a rule, taxpayers file tax returns separately. Spouses who are tax residents in Poland may, upon meeting certain requirements, file a joint tax return on taxable income according to the tax scale. The following individuals are also permitted to file jointly:
 - spouses with a place of residence in an EU Member State or EEA Member State or Switzerland;
 - spouses of whom one is subject to an unlimited tax obligation in Poland and the other has a place of residence outside Poland, but in another EU or EEA Member State or in Switzerland,
 - if (in both cases) they have reached the revenue threshold taxable in Poland in a total amount of at least 75% of the total revenue earned by both spouses in a given taxable year and have documented, with a certificate of residence, their place of residence for tax purposes.

7.2 CORPORATE INCOME TAX (CIT)

Taxpayers

- Subject to CIT are legal entities, organizational units without a legal personality, joint-stock limited partnerships, registered and limited partnerships, as well as foreign entities with no legal personality, provided that they are treated as companies and are subject to unlimited tax liability in their home

countries. CIT applies also to companies in the process of being established and to tax capital groups (i.e., a group made up of at least two commercial companies that meet the strict conditions set out in the CIT law, e.g., a parent company must have at least a direct 75% share in the share capital of other companies).

- CIT in Poland must be calculated on:
 - revenues gained anywhere in the world – for taxpayers who have their registered office or place of management in Poland (unlimited tax liability for Polish tax residents);
 - revenues gained in the territory of Poland – for all other taxpayers (limited tax liability for non-residents in Poland).
- A branch of a non-resident company does not constitute a separate entity or a taxpayer for CIT purposes in Poland. The rules regarding taxable income, tax-deductible costs, depreciation and other factors applicable to a non-resident company having a branch in Poland are the same as those applying to Polish companies.

Taxable base and tax rates

- The taxable base is the sum of the income earned from capital gains and income derived from other (ordinary) sources of revenues. This means, in particular, that if a taxpayer generates ordinary income, as well as a capital gains loss, tax will need to be paid on the income, while the loss may be deducted in future tax years from capital gains incomes. In certain cases, revenue may be the taxable base.
- Capital gains include i.a. dividends, dividend-like incomes, incomes from sale of shares, revenues from property rights such as copyrights or related property rights, licences, trademarks and know-how and a number of other, generally non-operating incomes.
- Income from capital gains is taxed with a 19% CIT rate and it is not aggregated with other sources of income. Double taxation treaty relief may be available to a non-resident. The majority of the double tax treaties concluded by Poland provide that gains earned on the disposal of securities and other financial instruments may be taxed only in the country in which the company receiving the income has its registered office or place of management (unless a real estate clause is provided for in a relevant double taxation treaty – the treaty with the Kingdom of Belgium provides a real estate clause introduced by the MLI Convention).
- There are two different CIT rates applicable to ordinary income (other than capital gains): the basic rate is 19% and a reduced 9% (the latter applies to small taxpayers earning revenues equivalent to EUR 2 million or less and for taxpayers starting a new business, however some limitations may apply for taxpayers arising from restructuring processes, e.g., mergers).

Use of tax losses

Tax losses may be carried forward for up to 5 tax years. Loss from one source (capital gains/ordinary income) must be utilized within the same source. During each year the taxpayer cannot utilize more than 50% of the loss, although it is also allowed to deduct in one year, at once, up to PLN 5 million of a tax loss.

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Withholding tax (WHT)

- Polish tax regulations require companies to deduct WHT from payments made in respect of:
 - dividends and other revenues from participating in the profits of legal entities;
 - royalties;
 - interest payments;
 - certain intangible services.
- Payments of dividends and other revenues from participation in the profits of legal entities having their registered office in Poland are subject to a 19% WHT. This rate may be reduced on the basis of double tax treaties between Poland and the country the taxpayer is resident in. Dividends paid by Polish subsidiaries to their parents in the EU, the EEU or Switzerland are exempt from Polish withholding tax on the basis of the EU Parent Subsidiary Directive (certain conditions apply, i.a. at least 10% of participation for an interrupted period of not less than 2 years is required).
- Payments of royalties and interest to foreign companies are subject to a 20% WHT unless a relevant double tax treaty provides otherwise. Poland also implemented EU Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different member states (the Interest and Royalties Directive). Therefore, payments between an EU parent and subsidiary, or between direct sister companies are free from WHT (a minimum 25% of participation and a two-year holding period are required).
- Payments for intangible services, such as advisory services, advertising, data processing, etc. are subject to 20% WHT unless otherwise stated by tax treaties (treaties concluded between Poland as a **rule do not provide for withholding tax on payments for intangible services**).

Double taxation treaty relief

- Poland has concluded double tax treaties with approximately 90 countries, including a treaty with the Kingdom of Belgium. This treaty provides for the following WHT rules with respect to dividends, interest and royalties:
 - 0% on dividends paid to companies, with at least 10% of participation for an interrupted period of 24 months;
 - 10% on dividends paid to other entities;
 - 5% on interest;
 - 5% on royalties.
- As a rule, the reduced rate provided in the double taxation treaty may be applied only if the taxpayer supplies a certificate of tax residence, issued by the relevant tax authority in the country the taxpayer is resident in.

Given the complexity and scope of the treaty issue, it is not possible to greatly simplify the explanation.

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Double tax treaties allocate taxing rights on certain income to a certain country. They do not determine whether someone must actually pay tax in the country to which the taxing right is allocated. For the Belgian administration, it is impossible to say that someone has a permanent establishment in another country. Depending on the facts, it is the tax administration of the other country that will determine whether someone has a permanent establishment in that country.

This depends on the internal laws of the country. To find out whether someone is effectively subject to tax in the country that has tax jurisdiction over certain income, it is best to contact that country's tax administration.

If someone has a permanent establishment in another country, then on the basis of Article 7 of the applicable double tax treaty, the profit attributable to this permanent establishment should be examined.

As far as employees are concerned, we can refer you to the circular on article 15 of the treaties of 25.05.2005 (AFZ nr 08/2005). In this circular, article 15 is fully explained with the necessary examples. You can find this circular on www.fisconet.be.

Finally, it should be pointed out that the Belgian tax administration can only say what the treaty consequences are of certain facts.

They do not give any advice on how a Belgian taxpayer can make an optimal tax planning. For that, they must turn to a tax consultant.

Ministry of Finance

For additional general information, please visit the website of the FPS Finance (<https://financien.belgium.be>) or call the FPS Finance Contact Centre at 0257/257 57 (normal rate, every working day from 8 a.m. to 5 p.m.).

North Galaxy Tower A-17

Avenue du Roi Albert II 33 bus 22 1030 Brussels 17

T: +32 257 642 59

F: +32 257 992 22

E-mail: info.tax@minfin.fed.be

Contact: Liesbeth Moreels, First Attaché of Finance Directorate III/International agreements
(liesbeth.moreels@minfin.fed.be)

The limit of expenses on intangible services from related entities

- It is not possible to include in tax deductible costs expenses related to certain categories of purchases from related parties or entities from tax havens. This applies to i.a.:
 - consulting services, market research, advertising services, management and audits, data processing, insurance, guarantees and sureties, and performances of a similar nature;
 - all kinds of fees and charges for the use or right to use the rights or values such as: copyright or related property rights, licences, trademarks and know-how.

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- There is no requirement to file monthly returns. CIT withholdings must be paid by the 20th of every month.
- An annual tax return is filed in an electronic form by the end of the third month after the end of each tax year. The CIT set forth in the annual return must also be paid by the above deadline.

7.3 VAT

Scope of taxation

The Polish VAT regulations are harmonized with EU legislation. Under these regulations, VAT applies to the following transactions:

- supply of goods and services for consideration in the territory of Poland;
- exportation of goods outside of the EU;
- importation of goods from outside of the EU;
- intra-Community acquisition of goods for consideration in the territory of Poland;
- intra-Community supply of goods.

VAT registration

Businesses that conduct activities subject to VAT in Poland are obliged to register as VAT taxpayers before they undertake their first taxable activity. Taxpayers must notify the Polish tax authorities in advance if they intend to carry out intra-Community transactions. Taxable persons with a registered office, place of business or fixed establishment in Poland, whose net amount of taxable sales did not exceed PLN 200,000 in the period of 12 previous consecutive months are exempt from VAT (with the exception for some types of activity). Likewise, those who start to make taxable sales during the tax year are exempt from VAT if the expected net amount of their taxable sales in a corresponding period does not exceed PLN 200,000. However, taxpayers may voluntarily waive their exemption and register as active VAT payers.

Taxpayers that have neither a registered seat nor a fixed place of business in Poland or in another EU member state are obliged to appoint a fiscal representative. The fiscal representative is jointly liable with the taxpayer for all Polish VAT liabilities settled by the fiscal representative on behalf of and on account of the taxpayer.

VAT rates

The basic VAT rate is 23% and applies to all supplies of goods or services, unless a specific provision allows a reduced rate or exemption. The reduced rates are 8%, 5% and 0%. The 0% rate refers mainly to intra-Community supply of goods and export of goods (it allows for a reduction or refund of an input tax).

Recovery of input VAT

- Taxpayers may recover input tax, i.e., they have the right to reduce the amount of output VAT by the amount of input VAT when purchasing goods and services in connection with taxable business purposes. Only some exceptions apply, e.g., input tax on accommodation and restaurant services and

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partly on purchase of fuel, diesel or gas used for passenger cars cannot be recovered. Also input tax directly related to exempt supplies is generally not recoverable, but subject to some exceptions it can be deducted as a cost for income tax purposes.

- If a taxpayer makes both taxable and exempt supplies, then it will not be able to recover input VAT in full (only a portion of the VAT can be recovered). To determine the amount of VAT that may be recovered in this situation, the taxpayer calculates the VAT ratio, which is the ratio of turnover made on taxable supplies to the total turnover. The ratio is subject to correction at the end of the tax year.
- The excess of input VAT over output VAT can be either carried forward and deducted from future VAT liabilities or refunded. Refunds are generally made within 60 days. In certain circumstances, at the taxpayer's request, this period can be shortened to 25 days. Where a taxpayer does not perform taxable activities in a given period, the refund period is extended to 180 days.

Invoicing

- An invoice must contain at least the following basic information:
 - date of issuance;
 - a unique, sequential number;
 - VAT number of the supplier;
 - full address of the supplier and customer;
 - full description of the goods or services provided;
 - details of quantities of goods supplied and extent of services provided;
 - unit net price of goods or services (excluding VAT);
 - details of any discounts or rebates if not included in the unit price;
 - the net, taxable value of the supply;
 - the VAT rate(s) applied, and the amount of VAT at each rate;
 - details to support 0% VAT – export, reverse charge or intra-Community supply;
 - the total, gross value of the invoice.
- The invoice can be issued in any currency, although the amount of VAT must be shown in PLN.
- Polish VAT regulations allow taxpayers to issue and store invoices not only in paper form, but also in an electronic form. The standard deadline for issuing an invoice is the 15th day of a month following the month when goods were delivered or a service provided.
- Only for selected goods and services (e.g., electricity, telecommunications and leasing), is the taxable event linked to the issuing of the invoice. The basic principle is that tax liability arises when the goods are released or the services completed.

VAT reporting

- VAT is calculated by the taxpayer and should be paid on a monthly or quarterly basis by the 25th day of the month following the month/quarter for which it is payable.
- VAT returns must be filed on a monthly or quarterly basis in a corresponding period. They are reported in the form of a Standard Audit File for Tax (SAF-T file), which is an IT solution introduced

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in order to improve the work of the tax authorities and fiscal control authorities. The SAF-T file is a set of information about economic operations of the taxpayer for a given period, having a fixed form and generated by accounting software of the taxpayer. It is transmitted only in an electronic form directly from the IT system.

Bad debt relief

- If payment is not made within 90 days of the due date specified in the contract or invoice, the creditors may take advantage of bad debt relief and reduce the amount of input VAT.
- On the other hand, those debtors who did not settle their liabilities towards creditors (i.e., other VAT-payers) within 90 days of the payment deadline, are obliged to correct the deducted input VAT.

Split payment

- Under this procedure, payment for invoices instead of transferring in full to the seller's or provider's regular bank account is divided into two parts: one paid directly to the contractor, and the other part, equal to VAT charged on the invoice, paid to a separate bank account. Amounts deposited in the VAT accounts can only be used by taxpayers for specific purposes, including payment of VAT to the tax authorities or payment of VAT part of the price to their own supplier's or provider's VAT account. Only when certain conditions are met, can taxpayers also request the tax authorities to release the amounts available in their VAT accounts and transfer them into the taxpayers' regular bank accounts. The tax authorities are required to decide on such requests within 60 days.
- A purchaser of goods or services can choose, at its sole discretion, to make a payment in a voluntary split payment mechanism. Various tax benefits are available to taxpayers using the split payment mechanism in their transactions.
- As of November 1, 2019, the mandatory split payment was introduced to transactions between taxpayers, which are subject to VAT in Poland. The obligation to apply the split payment mechanism covers only selected businesses, such as trading in electronics, steel, motor vehicles, coal or construction services. The obligatory mechanism applies to transactions exceeding a threshold of PLN 15,000 gross.

7.4 TAX ADMINISTRATION

- The Ministry of Finance is the head of the Polish tax administration (is responsible for the issuing of APAs). Starting from 1 January 2021, the tax administration has been reorganized, and as a result, specialized tax offices were selected to serve large taxpayers.
- I Mazowiecki Tax Office in Warsaw is responsible for the following taxpayers:
 - legal entities or organizational entities without a legal personality whose net income from the sale of goods, products and services in the tax year exceed EUR 50 million (excluding civil law partnerships);
 - a tax capital group and companies forming part of the group;
 - public companies with their headquarters in Poland.
- Additionally, 19 specialized tax offices are responsible for the following taxpayers:

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- legal entities or organizational entities without a legal personality whose net income from the sale of goods, products and services in the tax year amounts to EUR 3-50 million (excluding civil law partnerships);
- foreign entrepreneurs whose net income from the sale of goods, products and services in the tax year amounts to at least EUR 3 million;
- a branch or representative office of foreign entrepreneurs.
- II Mazowiecki Tax Office in Warsaw is the dedicated tax office for investment and pension funds and also for foreign entrepreneurs (whose net income exceeds EUR 3 million) who have a fixed establishment in more than one territorial jurisdiction of the specialized tax offices.
- The Tax Office in Lublin is responsible for withholding tax proceedings.

8. PETERKA&PARTNERS COMPANY PROFILE

The Polish office of PETERKA&PARTNERS – content partner of Flanders Investment & Trade - managed by Dorota Płoskowicz and Agnieszka Siwińska, provides comprehensive tax and legal advisory services to local as well as international entrepreneurs from numerous market sectors. The office was opened in 2010 and has grown significantly since then. Its team of well-motivated and highly-experienced lawyers consists of experts in various practice areas.

The office advises entrepreneurs on their day-to-day activities, as well as with regard to complex transactions, such as acquisitions, reorganizations, demergers, and financing, on both local and international levels, very often involving several jurisdictions.

The Polish office of PETERKA&PARTNERS is a member of the Belgian Business Chamber and the Scandinavian-Polish Chamber of Commerce. In addition to Polish and English, the office renders services also in French, Russian and German.

More information can be obtained at PETERKA&PARTNERS.

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