



The Legal 500 Country Comparative Guides

Poland

TAX DISPUTES

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This country-specific Q&A provides an overview of tax disputes laws and regulations applicable in Poland.

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POLAND

TAX DISPUTES



1. Is it necessary for a taxpayer to register with the tax authority? Are separate registrations required for corporate income tax and value added tax/sales tax?

Poland has separate income tax and value-added tax ("VAT") registrations with the tax authorities.

A corporate income tax ("CIT") taxpayer is obliged to file an identification notification to the tax authority to obtain a tax identification number ("TIN"). The notification is made automatically, along with the registration to the National Court Register. Also, personal income taxpayers ("PIT"), if they conduct business activities, are required to register with the tax authorities to obtain a TIN number. The notification is made on the next working day after the day on which the correct identification notification is received from the Central Register and Information on Business Activities.

Also, each CIT taxpayer has to file an annual corporate income tax return in an electronic form within three months after the end of the financial year.

A PIT taxpayer is obliged to submit an annual tax return by 30 April of the year following the tax year.

In Poland, taxpayers, e.g. natural persons, legal entities, and unincorporated entities, independently conducting an economic activity as producers, traders, or service providers – including entities acquiring natural resources, are required to register as VAT payers when:

- the value of sales in the previous tax year exceeded the amount of PLN 200,000, and
- the subject of sale are goods or services directly specified in the VAT Act.

It is worth noting that, when starting a business during a calendar year, the sales value limit is calculated in proportion to the number of months remaining until the end of a given calendar year.

However, that exemption (to the amount of PLN 200,000) does not always apply e.g. foreign taxpayers

are obliged to register as VAT taxpayers, regardless of the value of sales made, even if they do not have a place of business in the territory of Poland.

On the other hand, when the value of the sale of goods or services exceeds the statutory amount of PLN 200,000, the exemption ceases to apply, starting from the activity in which the aforementioned amount was exceeded.

Additionally, registered VAT taxpayers are required to keep registers of purchases and sales subject to VAT and to electronically submit monthly SAF_T reports by the 25th of the following month. That register includes two parts: (i) the declaration part, and (ii) the registration part.

2. In general terms, when a taxpayer files a tax return, does the tax authority check it and issue a tax assessment - or there a system of self-assessment where the taxpayer makes their own assessment which stands unless checked?

In general, the taxpayer is required to self-assess their tax, pay tax, and file tax returns. The tax authority may undertake a tax audit to verify the correctness of the amount a taxpayer declared and paid. The tax authority may also initiate a tax audit or tax proceedings and issue a decision determining the tax assessment if it disagrees with the taxpayer's findings.

3. Can a taxpayer amend the taxpayer's return after it has been filed? Are there any time limits to do this?

Polish tax regulations allow a previously submitted tax return (CIT, PIT, and VAT tax returns) to be corrected by submitting a correction of the declaration. As a rule, the correction of the tax return should be submitted until the end of the limitation period which, in Poland, is 5 years from the end of the year in which the declaration is

submitted.

It is worth noting that the right to correct a tax return may be suspended in a number of situations provided for by law, e.g. the commencement of tax proceedings or a tax audit.

4. Please summarise the main methods for a tax authority to challenge the amount of tax a taxpayer has paid by way of an initial assessment/self-assessment.

The main method for a tax authority to challenge the amount of the tax a taxpayer has paid is by issuing a decision determining the tax assessment. However, the issuance of the assessment decision may be preceded by initiating a tax audit, tax proceedings, or a customs and fiscal audit.

5. What is the procedure where a taxpayer has not registered so is unknown to the tax authority (for example a newly incorporated company or a foreign company operating through a permanent establishment?)

In Poland, failing to register a business activity may cause many negative consequences under tax laws.

Tax authorities have the right to audit unregistered activities.

Under general rules, on the grounds of income tax laws and as a result of a tax audit, a taxpayer may be required to pay tax with interest for income derived from undisclosed sources.

If the tax audit reveals that the taxpayer was obliged to register for VAT purposes. The taxpayer will be required to pay the outstanding VAT with interest.

In addition, in Polish law, failing to register for tax purposes is a criminal and fiscal crime punishable by a fine or even restriction of liberty. The tax authority may impose a fine on an unregistered VAT payer who does not submit tax returns or pay VAT.

Moreover, criminal or fiscal crime penalties may be imposed on a taxpayer for the offense of failing to issue invoices despite such an obligation.

Fines can also be imposed for failing to keep accounts, pay social security contributions, have a cash register, and others.

In addition, the permanent establishment ("PE") should register with the Polish tax authority and file an identification declaration to obtain a TIN number in Poland, but only if it is the employer.

But, foreign entrepreneur running a PE in Poland should register with the Polish tax authority and file an identification declaration to obtain a TIN number in Poland. Moreover, foreign entrepreneur running a PE in Poland should file tax returns (PIT, CIT, and VAT) in Poland for the activities of the PE conducted in Poland. Foreign entrepreneur is also required to keep accounting records in a way that makes it possible to determine the tax base and correctly calculate the tax. In this regard, a foreign company may also suffer the above-mentioned negative consequences for failing to register its activities in Poland.

6. What are the time limits that apply to such challenges (disregarding any override of these limits to comply with obligations to relief from double taxation under a tax treaty)?

CIT taxpayers and PIT taxpayers conducting business activities should register with the National Court Register/Central Register and Information on Business Activities and apply for a Taxpayer Identification Number (TIN) before starting business.

The taxpayer must register for VAT purposes before the first taxable activity, i.e. before the first taxable delivery of goods to their contractors or the performance of a service.

7. How is tax fraud defined in your law?

There is no legal definition of tax fraud in Polish tax law provisions but, under Articles 54 and 56 of the Fiscal Penal Code, tax fraud and tax evasion are crimes.

According to Article 54 of the Fiscal Penal Code a taxpayer who, while evading tax, fails to disclose the object or basis of taxation to the competent authority or fails to file a tax return, thereby exposing the tax to depletion, is subject to a fine of up to 720 daily rates or imprisonment, or both.

In a situation where the amount of tax exposed to depletion is low, then the perpetrator of the criminal act is subject to a fine of up to 720 daily rates.

However, if the amount of reduced tax does not exceed the statutory threshold, the offender is subject to a fine for a tax offense.

In turn, according to Article 56 of the Fiscal Penal Code a taxpayer who, while submitting a declaration or statement to a tax authority, other authorized body or payer, gives untruth or conceals the truth or fails to fulfill the obligation to notify of a change in the data covered by them, thereby exposing the tax to loss, is subject to a fine of up to 720 daily rates or imprisonment, or both.

In a situation where the amount of tax exposed to depletion is low, then the perpetrator of the criminal act is subject to a fine of up to 720 daily rates.

If the amount of tax exposed to depletion does not exceed the statutory threshold, the perpetrator of the criminal is subject to a fine for a tax offense.

Under tax law, tax fraud is understood as an intentional act that leads to the avoidance of payment of all or part of the tax. Importantly, for a given act to constitute tax fraud, it must be a deliberate act of the taxpayer.

Tax fraud is treated as a crime as it is contrary to generally applicable tax law standards.

8. How is tax fraud treated? Does the tax authority conduct a criminal investigation with a view to seeking a prosecution and custodial sentence?

As already indicated above, tax fraud is treated as a crime under Articles 56 and 54 of the Fiscal Penal Code.

The sanctions for tax evasion under Article 54 of the Fiscal Penal Code, according to which, a taxpayer who, while evading tax, fails to disclose the object or basis of taxation to the competent authority or fails to file a tax return, thereby exposing the tax to depletion, is subject to a fine of up to 720 daily rates or imprisonment, or both.

In a situation where the amount of tax exposed to depletion is low, then the perpetrator of the criminal act is subject to a fine of up to 720 daily rates.

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In a situation where the amount of tax exposed to depletion is low, then the perpetrator of the criminal act is subject to a fine of up to 720 daily rates.

If the amount of tax exposed to depletion does not exceed the statutory threshold, the perpetrator of the criminal is subject to a fine for a tax offense.

In addition, the general anti-avoidance rules (GAAR) may be applicable if a taxpayer has obtained substantial tax profits through tax avoidance strategies. Achieving a 'tax benefit' through artificial arrangements enables the application of the anti-abuse rules. The term 'tax benefit' should be understood as 'reducing, avoiding or postponing the taxpayer's tax liability, creating a tax payment surplus or an entitlement to a tax refund, or increasing the amount of tax payments surplus or tax refund'.

This means that tax authorities may verify and challenge any activity regardless of the expected value of the tax benefit. This clause allows the tax authorities to ignore artificial legal arrangements meaning that taxpayers may be obliged to pay the avoided tax with default interest and become exposed to criminal fiscal liability.

9. In practice, how often is a taxpayer audited after a return is filed? Does a tax authority need to have any justification to commence an audit?

It is difficult to say how often the tax authorities audit a taxpayer after filing a tax return. In practice, it depends on the discretion of the tax authority concerned that an audit should be initiated.

The tax authorities are obliged to notify a taxpayer that a tax audit has been planned. The tax audit is initiated no earlier than after the lapse of 7 days and no later than after the lapse of 30 days from the date of the delivery of the notice on the intention to initiate the tax audit. If the tax audit is not initiated within 30 days of the date of the notice, a new notice is required to initiate the tax audit. In certain circumstances, a tax audit may be conducted without prior notification (e.g. a fiscal or commercial offence has been committed).

The notice on the intention to initiate the tax audit should include an indication of the subject scope of the tax audit, the designation of the inspection authority and the audited taxpayer, the date and place of issuance, and the signature of the person issuing the notice.

The purpose of a tax audit is to verify that taxpayers are complying with their obligations under tax law. Thus, during a tax audit, the tax authority verifies the

taxpayer's compliance with applicable regulations.

However, under the Tax Ordinance Act, in the scope of matters resolved by a final decision of the tax authority, a tax audit may not be re-initiated. However, there are certain exceptions to this rule.

In addition, a tax audit cannot cover a period that is already time-barred.

10. Does the tax authority have to abide by any standards or a code of conduct when carrying out audits? Does the tax authority publish any details of how it in practice conducts audits?

Polish tax regulations provide for general principles in the Tax Ordinance Act that must be followed by the tax authority conducting a tax audit.

The scope of a tax audit may not exceed that which is indicated in the authorisation to conduct the audit.

As the Tax Ordinance Act stipulates, a tax audit should be completed without undue delay, but no later than the date indicated in the audit authorisation.

Under the Business Act, the duration of all audits of a business entity conducted during a single calendar year may not exceed the following:

- a) micro-enterprises, 12 business days,
- b) small enterprises, 18 business days,
- c) medium-sized enterprises, 24 business days, and
- d) large enterprises, 48 business days.

Tax audits may occur in the tax authority's headquarters or on the taxpayer's premises. Most often, a tax audit is conducted at the audited taxpayer's registered office or another location where the business activity is performed, or at locations where documents are stored. Therefore, the audited taxpayer should be present while a tax audit is conducted.

Tax audits are based mainly on printed documents but they may also be based on data made available electronically.

The audited taxpayer has the right to actively take part in the tax audit. Particularly, the taxpayer may submit clarifications, present evidence, or demand that certain documents be considered or witnesses heard. The audited taxpayer should cooperate with the tax authority

to allow it to perform its task effectively (e.g. provide access to documentation and necessary clarifications).

Under the Tax Ordinance Act, inspection activities are carried out in the presence of the inspected person, or the inspected person's representative or proxy unless the inspected person waives the right to participate in the inspection activities.

The tax authority is obliged to notify the inspected person of the place and date of hearing witnesses' evidence or expert opinions at least 3 days before the date the hearing occurs, and the evidence of inspection no later than immediately before taking these actions.

After completing the tax audit, the tax authority issues a tax inspection report to the taxpayer that includes details on the scope of the tax audit carried out.

11. Does the tax authority have the power to compulsorily request information? Does this extend to emails? Is there a right of appeal against the use of such a power?

Under the Tax Ordinance Act, during a tax audit, the tax authority may request the taxpayer to provide information.

The taxpayer is obliged to provide all explanations regarding the subject of the tax audit within the prescribed period, provide the tax authority with the requested documents, and provide the tax authority with conditions for work, including, if possible, providing an independent room and a place to store documents.

The representative of the inspected, the employee, and the person cooperating with the inspected, are obliged to provide explanations regarding the subject of the inspection to the extent resulting from the activities or tasks performed.

The inspectors are entitled to enter the premises of the audited entity and move around the premises based on an official identification.

However, the tax authorities do not have the right to forcibly demand information, i.e. the tax authorities do not have coercive means to obtain information (including emails) from the taxpayer.

12. Can the tax authority have the power to compulsorily request information from third parties? Is there a right of appeal

against the use of such a power?

In Poland, within the framework of cross-checks, the tax authority, in connection with a tax proceedings or tax audit, may request the taxpayer's contractors performing business activities to submit documents, to the extent covered by the taxpayer's audit, to verify the accuracy and reliability of the documents. The scope of the tax authority's request is limited only to documents related to the supply of goods or services audited by the tax authority.

After tax checking the taxpayer's contractors, the tax authority prepare a tax inspection report. The taxpayer's contractor may file objections to the tax inspection report.

The tax authority may also summon third parties as a witness if they can contribute to determining the facts of the case.

Additionally, tax authorities during tax proceedings are able to request information from banks of taxpayers in order to verify the information provided by the taxpayer, if it's deemed necessary. This information includes:

- a) bank or savings accounts held, the numbers of such accounts, as well as the turnover and balances of such accounts,
- b) cash or securities accounts held, the numbers of these accounts, as well as the turnover and balances of these accounts,
- c) concluded credit agreements or lending agreements, as well as deposit agreements,
- d) Treasury shares or Treasury bonds acquired through banks, as well as the turnover of these securities,
- e) trading in certificates of deposit or other securities issued by banks.

13. Is it possible to settle an audit by way of a binding agreement, i.e. without litigation?

Alternative dispute resolution is not possible under Polish tax law.

The tax audit ends with a tax inspection report. Upon completion of the tax audit, the taxpayer can effectively correct the tax return and pay outstanding tax with interest. However, in a situation where the taxpayer does not agree with the findings of the tax inspection report, the taxpayer should, within 14 days from the

date the report is delivered, file objections to the tax inspection report. In addition, after the completion of the tax audit, the authority has 6 months to initiate tax proceedings which ends with the issuance of a tax decision. If the taxpayer does not dispute the authority's findings, the taxpayer can pay the tax arrears with interest resulting from the decision. Otherwise, the taxpayer may appeal the decision to the second instance authority. If the second-instance tax authority upholds the decision, the taxpayer may file a complaint against the tax authority's decision to the Provincial Administrative Court, and then, ultimately, file a cassation appeal to the Supreme Administrative Court.

14. If a taxpayer is concerned about how they are being treated, or the speed at which an audit is being conducted, do they have any remedies?

In Poland, as a rule, tax audits and tax proceedings are not carried out quickly; on the contrary, they frequently take several years and are repeatedly extended. A taxpayer may file a letter of complaint about the protracted length of a tax audit /proceeding performed by the tax authority.

Then, after filing a letter of complaint about a protracted tax audit /proceeding, a taxpayer may file a complaint to the provincial administrative court for inaction or the protracted tax audit / proceeding.

However, a taxpayer can file an objection only after the completion of a tax audit and the issuance of a tax audit report. In the objection, the taxpayer indicates what findings of the tax authority the taxpayer disagrees with and presents their own arguments. The taxpayer may also provide evidence to support their arguments. Subsequently, if the authority has initiated tax proceedings that end with the issuance of a decision, then the taxpayer may appeal the decision to the authority of second instance. If the second-instance authority upholds the decision, the taxpayer still has the right to file a complaint to the Provincial Administrative Court, and then a cassation complaint to the Supreme Administrative Court.

The taxpayer also has remedies in the form of not charging default interest on tax arrears for periods in which the tax audit/proceeding was prolonged due to the authority's fault.

15. If a taxpayer disagrees with a tax assessment, does the taxpayer have a

right of appeal?

As already indicated above, if the taxpayer disagrees with a tax assessment in the tax audit report, the taxpayer can file objections in writing. Then, if the tax authority has initiated tax proceedings that end with the issuance of a decision, the taxpayer may appeal the decision to the authority of second instance. If the second-instance authority upholds the decision, the taxpayer still has the right to file a complaint to the Provincial Administrative Court, and then a cassation complaint to the Supreme Administrative Court.

16. Is the right of appeal to an administrative body (independent or otherwise) or judicial in nature (i.e. to a tribunal or court)?

The taxpayer has the right to appeal to both an administrative or judicial body.

As indicated above, the taxpayer may appeal the decision to the tax authority of second instance within 14 days from the date the decision is delivered to the taxpayer.

Then, if the second-instance authority upholds the decision, the taxpayer still has the right to file a complaint to the Provincial Administrative Court. The complaint should be submitted to the Provincial Administrative Court within 30 days from the date the decision was delivered to the taxpayer.

Then if the taxpayer does not agree with the court ruling, the taxpayer can file a cassation complaint to the Supreme Administrative Court.

17. Is the hearing in public? Is the decision published? What other information about the appeal can be accessed by a third party/the public?

As a rule, court hearings are open to the public and the administrative court should give its ruling at a hearing.

A full version of a judgement is published on the Supreme Administrative Court's website as soon as the judges have signed the justification. However, confidential data relating to a taxpayer is anonymised, leaving no possibility of identifying the taxpayer.

18. Is the procedure mainly written or a

combination of written and oral?

The administrative court resolves a case based on the case files (documents) the tax authorities present. Witnesses are not heard before the administrative court nor are court experts consulted (such evidence, if necessary to resolve the case, should be carried out during the administrative proceedings by competent authorities; if not carried out, such decision will probably be revoked by the court). On the other hand, the court may accept additional documentary evidence if it is necessary to clarify significant doubts and doing so will not extend the proceedings excessively. Thus, the proceedings before the court are mainly in writing; however, the parties' representatives may appear at a hearing and raise additional arguments during the hearing.

As a rule, the relationship between the taxpayer and the tax authorities is of a written form. All the correspondence is delivered (both to the taxpayer and to the tax authorities) either personally or via the Polish Post Office. Evidence in tax proceedings may include tax books, tax returns, expert opinions, witnesses' testimonies, evidence collected in other procedures, and information gathered from foreign tax administrations. Thus, the proceedings before the tax authorities are a combination of written and oral forms.

19. Is there a document discovery process?

The proceedings before the tax authorities are conducted mainly in writing, based on documentary evidence, i.e. tax returns, tax books, and other documents collected during the proceedings. However, there is no specially provided trial or stage of the proceedings at which this evidence is disclosed.

The tax authorities may ask the taxpayers to submit requested documents or to provide evidence. An unjustified refusal to provide the requested documents or attempt to complicate or delay the proceedings may constitute a violation of that obligation.

20. Are witnesses called to give evidence?

Judicial Litigation

Witnesses are not heard before the administrative court and neither are expert witnesses consulted (such evidence, if necessary to resolve the case, should have been provided during the administrative proceedings by the tax authorities; if not provided, the decision of the court is likely to be overturned).

Administrative Litigation

Under Polish tax regulations, witnesses may be cross-examined before the tax authorities. The tax authorities summon persons to appear in the Tax Office and testify. Calling a person to be a witness does not require the witness' consent. A person who has been summoned must attend the hearing. If a person fails to appear without justification, they could be fined by the tax authorities.

The taxpayer, as a party of the proceedings, should be notified of the place and date of taking evidence from witnesses or expert opinions at least 7 days before the date of the hearing. Moreover, the taxpayer, as a party, has a right to participate in the taking of evidence, may ask witnesses and experts questions, and provide explanations.

21. Is the burden on the taxpayer to disprove the assessment the subject of the appeal?

As Polish tax proceedings follow the principles of an official investigation, there are no statutory provisions regarding the burden of proof. This obligation results from the principle of objective truth adopted in administrative proceedings which obliges the authority to exhaustively collect and consider all the evidence, whereby it undertakes, ex officio or at a party's request, all actions necessary to clarify the exact state of the facts and to resolve the case. That means that the tax authorities have to prove all facts and circumstances necessary to justify a tax claim against the taxpayer. The taxpayer, on the other hand, is required to present their position and provide substantiated evidence against the facts the tax authorities present.

22. How long does an appeal usually take to conclude?

Settlement of the case in appeal proceedings should take place no later than two months from the date the appeal body receives the appeal.

The Polish tax authorities are obliged by law to notify the party of any failure to settle the matter in due time, stating the reasons for failing to meet the deadline and indicating a new deadline for settling the matter.

As a rule, a case before the administrative court should be completed as soon as possible; however, the reality is slightly different. Obtaining a hearing date largely depends on the court's location. In small cities, a date for an oral hearing is set within two or three months but,

in larger cities, the date may be set significantly later than this, i.e. approximately from one to three years. A backlog of hundreds of thousands of cases in the Supreme Administrative Court (as it is the only upper administrative court in Poland) causes long delays of up to three years in obtaining a hearing date.

23. Does the taxpayer have to pay the assessment pending the outcome of the appeal?

Every tax decision made at the first instance of proceedings may be appealed and heard at the upper instance (mostly by the director of the tax chamber). Such a decision is not final and enforceable and therefore, the taxpayer does not have the assessment.

When a second-instance tax authority issues the final decision, it becomes an enforceable decision. Then, the taxpayer is obliged to pay the tax liability resulting from the decision, together with late interest.

To suspend the enforceability of the decision and avoid having to pay the assessment, a taxpayer should file an application to the court to suspend the enforcement of a decision. A taxpayer may also apply for a request to the tax authorities to defer the payment of a tax liability and interest (until the case is finally resolved) or they may apply for a request for the tax liability and interest to be paid in instalments. To obtain a deferment of payment or to be permitted to pay in instalments, the taxpayer's interest or the public interest must be proved. This relief is granted as *de minimis aid*.

24. Are there any restrictions on who can conduct or appear in the appeal on behalf of the taxpayer?

Taxpayers may represent themselves in administrative courts in Poland (both in the Provincial Administrative Courts and the Supreme Administrative Court). Alternatively, they may be represented by a professional representative, e.g. an attorney-at-law, an attorney, or a tax adviser. A taxpayer's proxy may also be any other participant in the proceedings, as well as a spouse, siblings, ascendants, or descendants of the party, and persons in an adoption relationship with the party, and other persons, if specific provisions so provide.

An employee of a legal entity or an entrepreneur, including a legal entity or an entrepreneur without legal personality, may also be a proxy of this entity or its superior body. This also applies to state and local government organisational units without legal

personality.

It should be noted that a complaint to the Supreme Administrative Court must be prepared and signed by a professional representative.

25. Is there a system where the “loser pays” the winner’s legal/professional costs of an appeal?

Yes, in Poland this rule is applicable. Namely, the costs of the proceedings (fees, expenses, and attorney’s fees) are borne by the party that loses the proceedings. There is an obligation which is stated in the judgement that the losing party reimburses the costs previously advanced by the winning party at the end of the proceedings.

26. Is it possible to use alternative forms of dispute resolution - such as voluntary mediation or binding arbitration? Are there any restrictions on when this alternative form of dispute resolution can be pursued?

Alternative dispute resolution is not commonly used in disputes between taxpayers and the tax authorities. There are no general provisions pertaining to the mutual agreement procedure (MAP) in the Polish Tax Ordinance Act. The MAP is used only within bilateral tax treaties between countries.

Polish law on proceedings before administrative courts provides for only one particular procedure in proceedings before the administrative courts, i.e. mediation. Mediation is allowed only when an appeal has been filed with the administrative court and may be conducted at a complainant’s or authority’s request. It is also possible that mediation is initiated ex officio. The deadline for filing a request for mediation is the date of the hearing. As a rule, mediation should be conducted during a single court session. If the mediation ends in failure and the parties fail to agree on a common position, the case will be resolved through the standard procedure (i.e. it will be referred to a hearing).

However, mediation is not a commonly used mechanism in administrative judiciary.

27. Is there a right of onward appeal? If so, what are all the levels of onward appeal before the case reaches the highest appellate court.

Administrative Litigation

The decision of the tax authority issued in the first instance may be appealed and heard at the higher instance (mostly by the director of the tax chamber). To appeal a tax decision, the appeal must be submitted within 14 days of the date the decision was delivered and the appeal must be lodged through the tax authority that issued the decision.

Judicial Litigation

That final decision may be challenged by lodging a complaint to the provincial administrative court. Complaints against decisions and rulings (and other administrative acts) should be lodged within 30 days of the decision to the provincial administrative court through the tax authority that issued the decision or ruling in the last instance.

A judgment of the provincial administrative court may be challenged by a complaint to the Supreme Administrative Court (signed by an attorney, an attorney-in-law, or a tax adviser). A cassation appeal is lodged via the provincial administrative court that issued the judgment within 30 days of serving the judgment together with a justification. Leave to appeal does not depend on the value of the case or the nature of the controversy.

28. What are the main penalties that can be applied when additional tax is charged? What are the minimum and maximum penalties?

Under the Polish tax law system, a taxpayer may be subject to both criminal and administrative liabilities at the same time. Criminal penalties are imposed solely by criminal authorities whereas administrative tax penalties are imposed by tax authorities.

Most criminal tax acts are punished by a fine and, in more serious cases, by imprisonment – usually accompanied by a fine. Forfeiture is an accessorial measure. The fine for tax offences is imposed in daily units. The number of day units is between 10 and 720, and the day unit may vary between approximately €26 and €11,000. The authorities should take into account the personal and financial situation of the defendant (the taxpayer) when determining the punishment.

Administrative penalties in Polish tax law are not legally defined in any legal act. A characteristic feature of administrative penalties is that their function is only prevention. Administrative penalties do not play the role of repression or punishment that criminal penalties do. Polish tax law recognises many examples of

administrative penalties, e.g. higher (sanction) tax rates or an additional tax obligation and late payment interest.

Late payments result in interest charges at the annual rate is a sum of 200% of the Lombard rate (Polish: stopa lombardowa, announced by the National Bank of Poland) plus 2% (the rate calculated in this way cannot be lower than 8%) on the amount of any tax arrears. In August 2023, the penalty interest is 16,5%.

In some cases, concerning VAT and excise arrears, an aggravated interest rate (150% of the usual rate) could be applied.

Besides the payment of outstanding tax with penalty interest, the application of GAAR and other tax anti-avoidance measures may also cause an additional tax liability of 10% or 40% or even be doubled in certain cases.

29. If penalties can be mitigated, what factors are taken into account?

A taxpayer may be eligible for a preferential penalty interest rate (50% of the standard penalty interest rate) if they adjust their tax settlements no later than 6 months after the tax return filing deadline and pay the outstanding tax liability in full within seven days of the adjustment date. The reduced default interest rate does not apply to a tax return correction:

- a) filed after serving a notification of the intention to initiate a tax audit, and in the cases where the notification does not apply, after the completion of the tax audit,
- b) after the initiation of customs-fiscal audit, or
- c) made as a result of informal audit acts of the tax

authorities.

Penalties may be mitigated through a voluntary disclosure letter (self-disclosure) under the Penal and Fiscal Code which is a declaration of committing a prohibited act. The voluntary disclosure letter allows a taxpayer to possibly avoid the negative consequences of negligence if the tax authority has no knowledge of the committed offence. One of the conditions for using the voluntary disclosure letter is the payment in full of the amount due within the time limit set by the competent tax authority.

As mentioned in answer 28, the authorities should take into account the personal and financial situation of the defendant (the taxpayer) when determining tax and criminal penalties.

30. Within your jurisdiction, are you finding that tax authorities are more inclined to bring challenges in particular areas? If so, what are these?

The main area of the tax authorities' focus in tax proceedings is on VAT fraud, tax restructuring, and the transactions between related parties (transfer pricing). The Polish Ministry of Finance mainly concentrates on closing the remaining loopholes in the Polish tax system and combating tax evasion and tax avoidance; therefore, due to a large number of changes in legislation, tax controversies arise mostly on the grounds of value-added tax (VAT), corporate income tax (CIT), and personal income tax (PIT). Additionally, the Ministry of Finance recently shared data according to which there has been an increase in tax avoidance proceedings. Also, data shared by the Supreme Administrative Court indicated that most tax disputes with tax authorities before administrative courts in 2022 involved VAT, followed by real estate tax and then other local taxes.

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