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# The Legal 500 Country Comparative Guides

## Poland

# PRIVATE CLIENT

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

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## POLAND PRIVATE CLIENT



### 1. Which factors bring an individual within the scope of tax on income and capital gains?

As a general rule a natural person in Poland is taxed based on their tax residency. The criteria for determining tax residence in Poland are set out in Article 3(1a) of the PIT (Personal Income Tax) Act.

Having tax residency in Poland is connected with the obligation to settle income in Poland on the basis of unlimited tax liability referred to in Article 3(1) of the PIT Act.

Natural persons, if they have their place of residence in the territory of Poland, are subject to taxation on their total income (revenues) regardless of the location of the sources of revenue (unlimited tax liability).

On the other hand, lack of tax residency in Poland means being subject to a limited tax obligation referred to in Article 3(2a) of the PIT Act. Natural persons, if they do not have their place of residence in the territory of Poland, are subject to tax liability only on income (revenues) earned in the territory of Poland (limited tax liability)

Having a place of residence in the territory of Poland includes two criteria: staying in the territory of Poland for more than 183 days in a tax year or having a centre of vital interests, understood as a centre of personal interests or a centre of economic interests, in the territory of Poland. The conjunction “or” means that the fulfilment of at least one of these criteria allows a taxpayer to be deemed to be a resident of Poland. At the same time, each of these criteria should be considered independently and independently.

The criterion of the length of stay should be considered to be met after exceeding 183 days of stay on the territory of Poland in a given calendar year (the calendar year is the basic tax period taken into account when making tax settlements of natural persons). Failure to exceed this number of days of residence in the territory of Poland in a given calendar year results in failure to

meet this criterion. In such a case, the assessment of the taxpayer’s residence in the territory of Poland is based on the second criterion, related to the location of the centre of vital interests in Poland.

Personal interests centre, or ‘concentration’ of personal interests, is to be understood as the place with which the taxpayer has close personal ties. Personal ties are the presence of family ties, social ties, involvement in social, cultural, sporting, political, etc. activities. In practice, the factor most often taken into account is the presence in Poland of a spouse, partner or minor children.

### 2. What are the taxes and rates of tax to which an individual is subject in respect of income and capital gains and, in relation to those taxes, when does the tax year start and end, and when must tax returns be submitted and tax paid?

In Poland an individual can be subject to income tax and capital gains tax on the basis of the PIT act.

As a general rule, tax rates on both of these types of income are different and can be summarised as follows.

Income tax is usually settled on a tax scale with the following rules:

In terms of income tax: income up to PLN 120,000 is subject to a 12% rate; income in excess of PLN 120,000 is subject to a 32% rate. The deadline for filing a tax return and paying tax is April 30 each year.

In terms of capital gains tax: such income is subject to a 19% rate. The deadline for filing a tax return and paying tax is April 30 each year.

### 3. Are withholding taxes relevant to individuals and, if so, how, in what circumstances and at what rates do they

**apply?**

In Poland, withholding tax also applies to individuals. As a rule, taxpayers are non-residents.

Taxable income includes in particular income from:

- a) interest;
- b) dividends;
- c) consulting, accounting, market research, legal services and services of a similar nature;
- d) copyrights or related rights.

Withholding tax rates in Poland vary depending on the type of income and whether a double tax treaty exists between Poland and the taxpayer's country of residence. In many cases it is possible to benefit from a reduced tax rate or even complete exemption thanks to such agreements.

#### **4. How does the jurisdiction approach the elimination of double taxation for individuals who would otherwise be taxed in the jurisdiction and in another jurisdiction?**

Poland is a member of the OECD/G20 Inclusive Framework on BEPS.

Poland assumes a fairly broad adoption of the MLI Convention. As of 2023, 78 double tax treaties have been submitted for MLI coverage. The final number of Polish Double Tax Treaties to which the MLI will be applied depends on the number of signatories to the MLI, which is steadily increasing, but it is currently anticipated that the MLI will cover more than 50 Polish DTTs.

#### **5. Is there a wealth tax and, if so, which factors bring an individual within the scope of that tax, at what rate or rates is it charged, and when must tax returns be submitted and tax paid?**

In Poland there is currently no wealth tax implemented.

#### **6. Is tax charged on death or on gifts by individuals and, if so, which factors cause the tax to apply, when must a tax return**

#### **be submitted, and at what rate, by whom and when must the tax be paid?**

In Poland there is an inheritance and gift tax act that applies to individuals who meet certain criteria.

Individuals who have received an inheritance or donation must pay tax if the value of the inheritance exceeds the tax-exempt amount.

It is possible to be completely exempt from paying tax. This applies to taxpayers belonging to the so-called zero tax group, i.e. members of the immediate family.

Tax liability arises at different times depending on the type of property acquired and the method of acquisition. In general, however, the main determining factor is the moment of acquisition of the property. A tax return should be filed by the beneficiary within one month after the tax liability arises.

#### **7. Are tax reliefs available on gifts (either during the donor's lifetime or on death) to a spouse, civil partner, or to any other relation, or of particular kinds of assets (eg business or agricultural assets), and how do any such reliefs apply?**

Inheritance and gift tax is strongly connected to particular tax groups which determine the appropriate taxation rate.

Acquisition, from a single transferor, of property and property rights of a total value which do not exceed indicated below is not taxed.

PLN 36,120.2 - if the acquirer is a person included in tax group I;

PLN 27,090.2 - if the acquirer is a person classified in tax group II;

PLN 5733.2 - if the acquirer is a person classified in tax group III.

Additionally, there is a special provision for the acquisition of ownership of property or property rights by a spouse, descendants, ascendants, stepchildren, siblings, stepfather, and stepmother. These persons are exempt from tax if they report the acquisition of the ownership of property or property rights to the tax office within 6 months from the date on which the tax obligation arose.

## 8. Do the tax laws encourage gifts (either during the donor's lifetime or on death) to a charity, public foundation or similar entity, and how do the relevant tax rules apply?

The donation tax relief is available to individuals who, in the tax year for which they are accounting, have made donations to:

- religious purposes,
- charitable and welfare activities of the church,
- blood donation purposes,
- donations made between 01 January 2023 and 31 December 2023 for purposes related to counteracting the effects of warfare on the territory of Ukraine,
- or public benefit activities.

In all these cases, the rules under which the relief can be used are similar.

Donations for public benefit activities (and the other aforementioned purposes) are deducted from the tax base. The amount deducted cannot exceed 6% of total income.

The only exception is donations made to church charitable and welfare activities, where the 6% limit does not apply. After meeting several conditions the full value of the donation made can be deducted.

In addition, the 6% income limit is a total value applied to all donations which are entitled to a deduction.

## 9. How is real property situated in the jurisdiction taxed, in particular where it is owned by an individual who has no connection with the jurisdiction other than ownership of property there?

The subject of real estate tax is real estate or constructions, i.e. land, buildings or parts thereof, structures or parts thereof related to the conduct of business activities.

There is no obligation to pay real estate tax on agricultural land or forests, unless they are intended for the purpose of carrying out business activities – in which case there is a tax obligation.

If a foreigner owns real estate in Poland, they are obliged to pay real estate tax.

Real estate tax is applied to an individual if they own,

are in possession of, or use real estates indicated by the provisions.

Tax liability arises on the first day of the month following the month in which the event giving rise to the possession of the property or its components occurred (whether arising from ownership, sole possession, perpetual usufruct or dependent possession).

The amount of the real estate tax is set by the municipal council by way of a resolution, however, the rates set by the municipal council may not be higher than those set by the Minister of Finance. On the other hand, if the municipal council does not adopt a resolution on new rates, then the rates in force in the year preceding the tax year apply. Property tax rates are specific, with the exception of the rate on structures (i.e. objects that are not buildings), which is a percentage and amounts to 2% of the value of such structures.

## 10. Does your jurisdiction have any specific rules in relation to the taxation of digital assets?

No.

## 11. Are taxes other than those described above imposed on individuals and, if so, how do they apply?

In addition to the taxes indicated above, other taxes may be imposed on individuals, in particular: tax on civil law transactions, agricultural tax, forestry tax or tax on means of transportation.

## 12. Is there an advantageous tax regime for individuals who have recently arrived in or are only partially connected with the jurisdiction?

Once tax residency is established in Poland, an individual is considered fully taxable. In certain cases, taxpayers may only be subject to limited tax liability. This may occur when an individual does not have a permanent residence or usual place of abode in Poland, but receives income from a Polish source.

## 13. What steps might an individual be advised to consider before establishing residence in (or becoming otherwise connected for tax purposes with) the

## jurisdiction?

In order to avoid Polish inheritance and gift tax, any gifts should be made before any of the individuals involved establish residency in Poland. Due to the fact that an individual becomes subject to Polish income tax with his or her worldwide income, any income (in particular capital gains) should be realised before entering Poland in cases where the individual finds himself or herself in a more advantageous tax situation before his relocation.

However, with regard to real estate, gains from the sale of these assets will, in many cases, may not become taxable in Poland where a tax treaty with the state in which such property is situated is applicable.

## 14. What are the main rules of succession, and what are the scope and effect of any rules of forced heirship?

In Polish law, as a rule, there is freedom of testing. Thus, the testator is free to choose his heirs and the manner in which his estate is to be distributed. However, he is not obliged to draw up a will.

In the case of statutory inheritance, the testator's children and his spouse are the first to be appointed to the inheritance. They inherit in equal shares, but the spouse is additionally protected – the share that falls to him cannot be less than 25% of the total inheritance.

If the testator had no children or further descendants, his spouse and parents are called to inherit. In such a situation, the share falling to the parents is 25% of the total inheritance.

When the testator had no children, no further descendants and no spouse, the entire inheritance goes to his parents equally.

In the absence of a spouse, descendants, parents, siblings and children of the testator's siblings, the grandparents will inherit.

If the testator left no spouse or relatives as indicated above, his stepchildren may inherit from him.

Relatives within a category inherit in equal shares (succession *per stirpes*).

There is a system of forced inheritance. Descendants, spouses and parents are entitled to claim a monetary compulsory share of the inheritance if they were not included in the will were excluded from the testator's will or if the share awarded to them is less than their compulsory share.

## 15. Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?

There are two main spousal property regimes in Poland – statutory community and contractual property regimes.

On entering into a marriage, by law, matrimonial community of property is created, which manifests itself in the fact that husband and wife have joint property and are jointly and severally liable for their obligations. However, they can at any stage of the relationship, as well as before it, enter into a notarized marriage contract, known as a prenup, in which they establish a separation of property. The death of one of the spouses in the case of a marital community of property between them will cause the joint property to cease by operation of law. Shared ownership comes into existence. This results in the previously joint property not falling entirely to the surviving spouse, but is such that half will go to him and the other will be subject to inheritance.

In the case of a contractual property regime, which usually includes property separation, the spouses will have personal assets, so they will keep their property separate from each other. This will mean that not only the property obtained before the marriage, but also that already obtained during the marriage, will remain the property of the husband or wife only – depending on who contributed to its acquisition. The spouse, together with the testator's children, inherit first, in equal shares. The spouse's share of the inheritance cannot be less than 25 percent of the total.

## 16. What factors cause the succession law of the jurisdiction to apply on the death of an individual?

As of 17<sup>th</sup> August 2015, the conflict of laws rules of the EU Succession Regulation (Regulation (EU) No 650/2012) apply. They are valid in all EU member states except Denmark, Ireland and the United Kingdom. According to the Regulation, the deceased's habitual residence at the time of his or her death is relevant for the question of which succession law is applicable, instead of his or her nationality.

## 17. How does the jurisdiction deal with conflict between its succession laws and those of another jurisdiction with which the deceased was connected or in which

## the deceased owned property?

According to the EU succession regulation (Regulation (EU) No 650/2012), if it is obvious that the deceased had a closer relationship to another state, that state's law will apply under certain circumstances. There is, however, the opportunity to opt for the succession law of an individual's nationality by a Will, a joint Will or by an agreement as to succession. In addition, provisions on legal jurisdiction, recognition and enforcement of decisions and authentic instruments and on the European certificate of succession are part of the Regulation. As a general rule, the legal jurisdiction shall be determined by the habitual residence at the time the individual dies. The EU Succession Regulation is not applicable to trusts, hence the respective national conflict of law regime applies.

## 18. In what circumstances should an individual make a Will, what are the consequences of dying without having made a Will, and what are the formal requirements for making a Will?

Should there be no Will or should a Will not meet the formal requirements, the statutory rule of inheritance applies. An individual should make a Will, if he or she in any way does not wish to have the statutory rules of inheritance to be applied to his or her estate.

## 19. How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?

The deceased's estate is generally administered by the heirs. A testator can appoint an executor, who shall be responsible for executing the testator's testamentary dispositions. In case of such appointment, the executor has the power of disposal and the duty to effect a partitioning of the estate among the heirs.

## 20. Do the laws of your jurisdiction allow individuals to create trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession to private family wealth and, if so, which structures are most commonly or advantageously used?

As a rule, trusts do not function in the Polish legal

system. This creates a number Structures commonly used in Poland to hold assets are corporations, partnerships and operating from 2023 family foundations.

## 21. How are these structures constituted and what are the main rules that govern them?

Corporations provide limited liability, as shareholders are not liable for the corporation's debts. A corporation must be registered in the Polish trade register. The register also contains information about the share capital and the board.

There are various kind of partnership. Most kinds of partnerships need to show their partners in the register as well.

Family foundations do not have shareholders, but have endowment property. They are represented by a board. Foundations are registered in the register of family foundations. The beneficiary of a family foundation is listed as a beneficiary.

## 22. What are the registration requirements for these structures and what information needs to be made available to the relevant authorities? To what extent is that information publicly available?

In the case of companies, the following information, in particular, should be disclosed to the authorities: the identity of the founders, the persons who sit on the bodies, information about the share capital.

In the case of a family foundation, the following information in particular should be disclosed to the authorities: name, headquarters and purpose of the foundation, name of the beneficiary, value of the founding fund, duration of the family foundation.

## 23. How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

Corporations are subject to corporate income tax, which is generally 9% or 19%

Partnerships (except limited joint-stock partnerships) and civil partnerships are not income taxpayers (in this regard, they are neutral entities). Instead, income taxpayers are directly their partners



As a rule, a family foundation as a legal entity is a CIT taxpayer, but it enjoys a subjective exemption from corporate income tax.

As a rule, the benefits received by the foundation's beneficiaries will be subject to personal income tax at 15% of the tax base. However, in view of the need to ensure the realization of statutory objectives, a mechanism has been introduced to exempt the benefits received from PIT taxation in certain cases. Beneficiaries included in the so-called zero tax group vis-à-vis the founder will be exempt from PIT on either the benefits received or the property left at their disposal after the dissolution of the family foundation.

#### **24. Are foreign trusts, private foundations, etc recognised?**

Trusts are generally not recognised in Poland. Income received by a foreign trust may be attributed to the settlor or the beneficiaries if they are residents of Poland.

#### **25. How are such foreign structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?**

At the stage of disbursement of funds by a foreign foundation to a Polish tax resident, the income may be considered to be derived from a CFC (controlled foreign company) and taxed at a rate of 19%.

#### **26. To what extent can trusts, private foundations, etc be used to shelter assets from the creditors of a settlor or beneficiary of the structure?**

The family foundation is jointly and severally liable with the founder for its obligations incurred before its establishment. This is an important convenience for creditors, who can simply sue the family foundation. And this is done without having to first enforce the debtor-founder.

The situation changes when the founder transfers property rights to a family foundation already established by him, or one of which he is not even the founder. Then the aforementioned provisions will not apply

#### **27. What provision can be made to hold**

#### **and manage assets for minor children and grandchildren?**

Minors can own assets directly.

The person entitled to use such assets is the child, however, as a rule, the child cannot dispose of them independently.

Parents are obliged to exercise due diligence in the management of the assets of a child under their parental authority.

Parents may not, without the permission of the guardianship court, perform acts that exceed the scope of ordinary management, or consent to the child performing such acts.

Testators may appoint an executor of a will with respect to property inherited by minors.

#### **28. Are individuals advised to create documents or take other steps in view of their possible mental incapacity and, if so, what are the main features of the advisable arrangements?**

Before a person reaches the point of becoming unable to take care of his/her personal affairs due to a mental incapacity, they are advised to draft a power of attorney before a public notary, authorising the persons to act on their behalf regarding their legal, tax or other affairs.

At the point where a person is unable to take care of his personal affairs due to a mental disorder, court will rule that for this person another person needs to be appointed in order to act as his/her legal representative.

#### **29. What forms of charitable trust, charitable company, or philanthropic foundation are commonly established by individuals, and how is this done?**

In Poland, family foundations, which were introduced into the Polish legal system in 2023, have currently become popular. The most important steps of the procedure necessary to establish a family foundation are as follows:

(a) Submission by the founder of a declaration on the establishment of a family foundation;

(b) Preparation of the statute,

- (c) Establishment of the bodies of the family foundation,
- d) Transfer of assets to the founding fund
- e) Registration of the family foundation in the register of family foundations,
- (f) Preparation of an inventory of assets.

### 30. What is the jurisdiction's approach to information sharing with other jurisdictions?

Systems for the exchange of tax and financial information are constantly evolving. They are based in large part on concluded bilateral or multilateral agreements. Bilateral legal bases derive primarily from

double taxation treaties and tax information exchange agreements.

### 31. What important legislative changes do you anticipate so far as they affect your advice to private clients?

The new Act on Family Foundation has proven to be successful as the number of family foundations awaiting court registration is substantial. We anticipate that this Law will be amended in 2024 to reflect more complex corporate governance of family foundations and to provide for flexibility as to contribution of assets to foundations. It appears that the family foundations position will get strengthened to enhance succession planning and to enable accumulation of wealth within Polish financial system.

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