Building a better working world

The Polish Real Estate Guide 2023

The real state of real estate

Preface

This guide to the Polish real estate market was prepared by EY, a global leader in assurance, tax, transaction, advisory and legal services. It aims to provide its readers with a broad view of the market and the current investment climate, as well as legal and tax information in a practical format to help you make informed investment decisions. Our combined expertise in this market has enabled us to produce what we hope will become an indispensable reference tool on the state of the Polish real estate market.

In conjunction with the views contained in this guide, it is recommended to seek up-to-date and detailed information on the commercial climate at the time of considering your investment, as this can change at any time. Unless stated otherwise, this guide reflects information valid as at January 2023.

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Polish Real Estate Market

1.1

Poland in a nutshell

€661.9bn
GDP

€17,577
GDP per capita, compared to approx. €51,000 of EU average

4.6%
GDP growth in 2022

14.4%
Average inflation in 2022

€1,469
Average salary in 2022

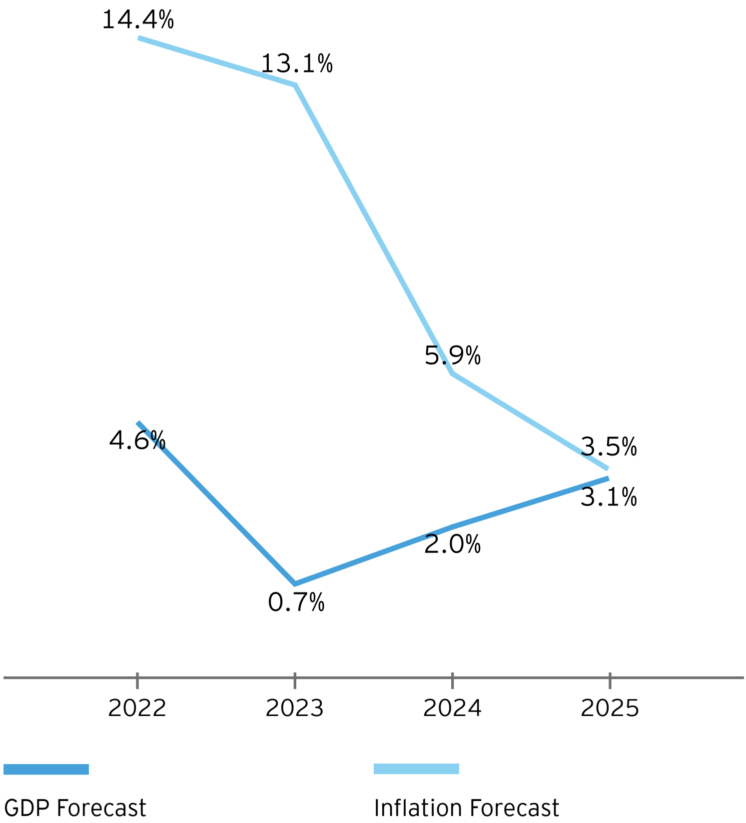
37.8m
The largest population across the CEE markets

€76.0bn
EU funds
The largest beneficiary of EU funding (2021-2027)

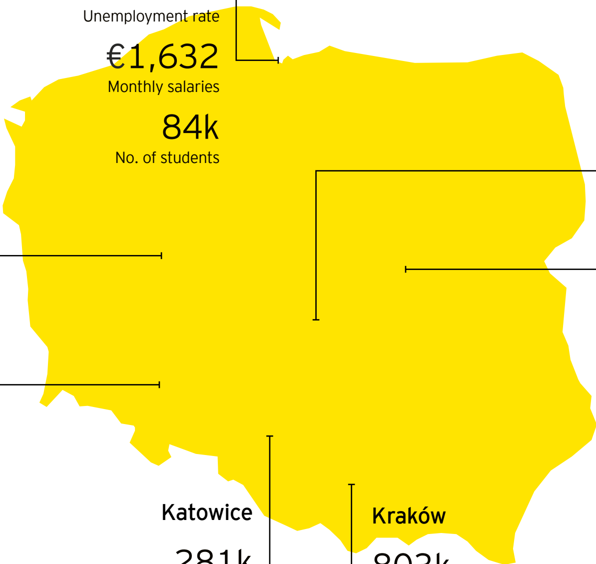
€21.9bn
Inflow of FDI
Poland belongs to the group of the top 20 FDI receivers in the world

1,600+ centres
Top BPO/SSC/R&D location employing 400,000 people as of 2022

Economic growth in Poland is forecast to slow down in the near future. The inflation forecast for the coming year remains at the similar level.



Key business centres



Poznań

542k
Population

1.0%
Unemployment rate

€1,570
Monthly salaries

124k
No. of students

Tri-City

762k
Population

1.9%
Unemployment rate

€1,632
Monthly salaries

84k
No. of students

Łódź

661k
Population

4.5%
Unemployment rate

€1,352
Monthly salaries

77k
No. of students

Warsaw

1,862k
Population

1.5%
Unemployment rate

€1,741
Monthly salaries

264k
No. of students

Wrocław

674k
Population

1.6%
Unemployment rate

€1,575
Monthly salaries

116k
No. of students

Katowice

281k
Population

1.5%
Unemployment rate

€2,051
Monthly salaries

107k
No. of students

Kraków

803k
Population

2.3%
Unemployment rate

€1,808
Monthly salaries

144k
No. of students

(1) Population as of June 2022
(2) Unemployment rate and Monthly salaries as of November 2022
(3) No. of students as of 2021 for voivodship

Poland ranks high in terms of investment attractiveness among manufacturing companies as well as business service providers, which has been confirmed by a number of rankings as well as investment placements.

Investor confidence has been confirmed by the following facts:

Poland holds the **9th position in EY's European Attractiveness Survey 2022** in terms of the number of FDI projects.

Warsaw was ranked **2nd in Business friendliness** category and **6th in Economic potential** category in European Cities and Regions of the Future 2022/23 ranking created by fDi Intelligence.

The status of Poland has been at the level **Developed from Advanced Emerging for several years (FTSE Russell Index).** Thanks to this position, Poland joined the most developed economies. Moreover, credit ratings reported by major credit rating agencies maintained at the same level with stable outlook.

Poland's student population exceeding 1.2 million attracted companies such as Samsung Electronics, Delphi Automotive, BSH, Sanofi, GE Engineering Design Center, ABB, Intel, Google, Unilever to open their R&D centres in the country.

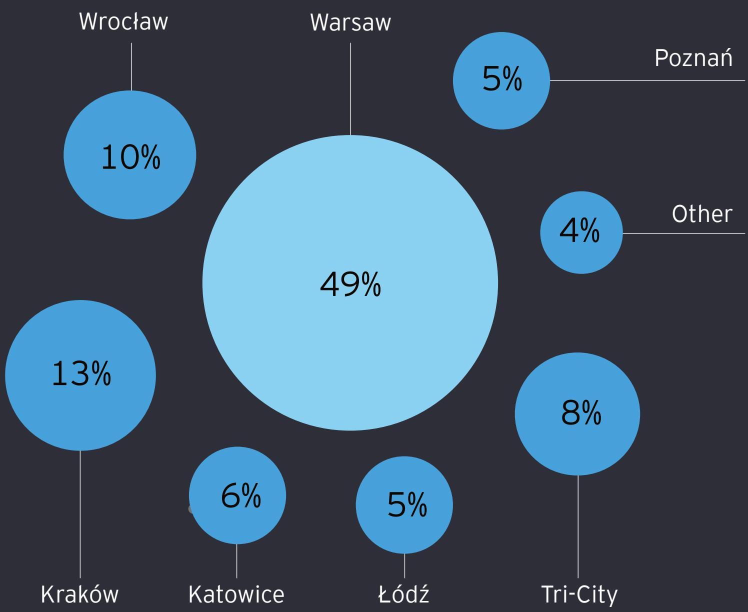
PropTech solutions are gaining popularity. Smart solutions are becoming popular especially in the office sector. Following the office sector, such innovations can be implemented in the industrial market (automation in logistics) and retail sector (omnichannel).

ESG is gaining more and more adherents among investors, analysts, investment advisers and fund managers. Over 63% of the largest companies in Poland prepare a separate, dedicated ESG report. PKO BP received a rating of 20.8/100 from Sustainalytics, placing the Polish bank in 209th place out of 1,056 global banks.

1.2 Office Market

At the end of 2022 the total stock of modern office space in Warsaw and regional cities reached 12.7m m^2. Warsaw dominates the office market with the most development, letting and investment activity. Yet, regional cities also play an important role, serving primarily as Business Process Outsourcing (BPO)/Shared Services Centre (SSC)/ Research&Development (R&D) centres. For the first time the total supply of modern office space in 8 major regional markets exceeded Warsaw.

Office Market Segmentation 2022



Despite the impact of the pandemic, Polish market has rapidly adjusted to the changes and the country continues to be very attractive for investment, therefore it will continue to attract many foreign companies that will expand or open new branches here and generate additional demand.

	Stock (m²)	**Pipeline supply** (m²)	**Vacancy rate**	**Prime rental range** (€/m²/month)
Warsaw	6,268,800	181,000	11.6%	20-26
Kraków	1,707,950	120,000	16.0%	14-16
Wrocław	1,327,900	150,000	15.6%	14-15.5
Tri-City	1,012,000	85,000	13.3%	13.5-15.5
Poznań	623,100	75,000	10.5%	13.5-15
Katowice	726,500	110,000	17.1%	13.5-15.25
Łódź	631,250	45,000	21.0%	11.5-14

Focus on Warsaw

6.3m m²
Total supply of office space

236,000 m²
New supply

Varso Tower
Completion of highest office building in the EU

180,000 m²
Under construction

860,000 m²
Gross take-up increase by 33% YOY

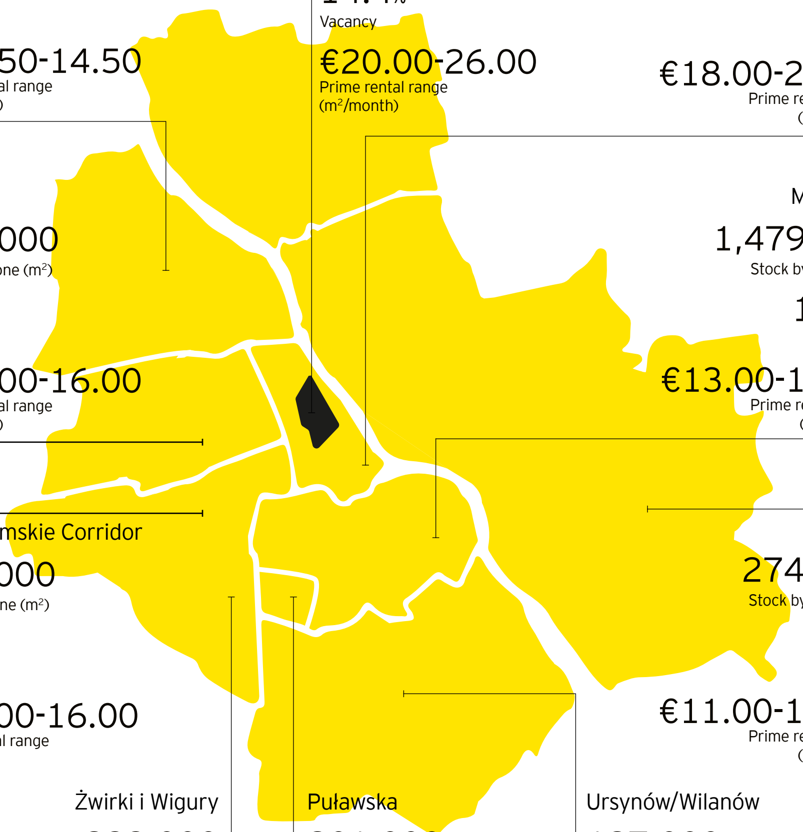
52% of total take-up
New lease transactions

11.6%
Vacancy rate 1.1 pp lower compared to 2021

18.1%
The highest vacancy rate in Mokotów

3.3%
The lowest vacancy rate in Ursynów

Focus on Warsaw



North
120,000
Stock by zone (m²)
7.3%
Vacancy
€13.50-14.50
Prime rental range
(m²/month)

Central Business District
992,000
Stock by zone (m²)
14.4%
Vacancy
€20.00-26.00
Prime rental range
(m²/month)

City Centre
1,793,000
Stock by zone (m²)
8.4%
Vacancy
€18.00-23.00
Prime rental range
(m²/month)

West
232,000
Stock by zone (m²)
9.8%
Vacancy
€13.00-16.00
Prime rental range
(m²/month)

Mokotów
1,479,000
Stock by zone (m²)
18.1%
Vacancy
€13.00-16.00
Prime rental range
(m²/month)

Jerozolimskie Corridor
752,000
Stock by zone (m²)
9.3%
Vacancy
€13.00-16.00
Prime rental range
(m²/month)

East
274,000
Stock by zone (m²)
8.1%
Vacancy
€11.00-14.00
Prime rental range
(m²/month)

Żwirki i Wigury
299,000
Stock by zone (m²)
7.1%
Vacancy
€12.00-14.50
Prime rental range
(m²/month)

Puławska
201,000
Stock by zone (m²)
7.9%
Vacancy
€11.00-13.00
Prime rental range
(m²/month)

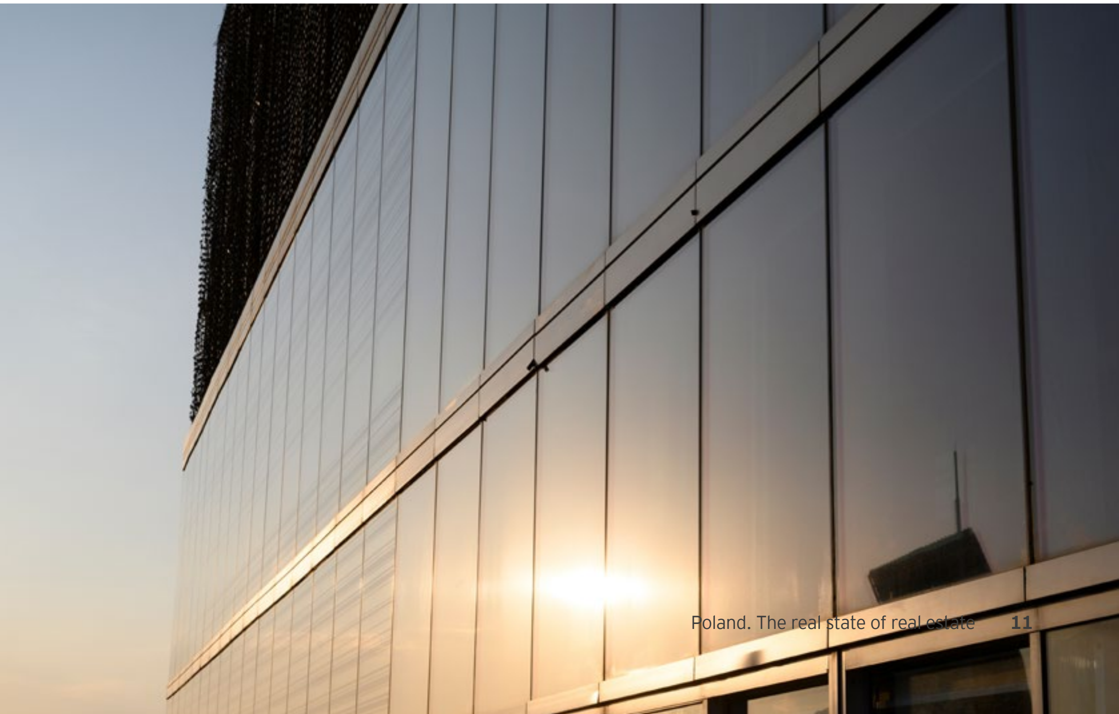
Ursynów/Wilanów
127,000
Stock by zone (m²)
3.3%
Vacancy
€13.50-14.00
Prime rental range
(m²/month)

Due to the high costs and limited availability of debt financing, a further decline in development activity in the office market across Poland is forecasted. This trend will be particularly visible in Warsaw, where new supply will reach only about 66,000 m^2 in 2023.

The Wola district will continue to attract the majority of occupiers to the detriment of Służewiec which is facing structural vacancy with possible conversion of function in the mid-term horizon.

In the following quarters of 2023, base rents are expected to increase due to rising operating costs, which will be intensified by the reduction of available space in the most attractive locations.

A drop in the vacancy rate is possible if the demand for offices in the following quarters remains at a comparable level.



1.3

Retail Market

$20.0m\ m^2$

Modern retail stock

€9,250/€14,900

Average purchasing power per inhabitant Poland / Warsaw

$277\ m^2$

Average density per 1,000 inhabitants

4.7%

Average vacancy rate in 8 major cities

$400{,}000\ m^2$

New supply

$300{,}000\ m^2$

Under construction

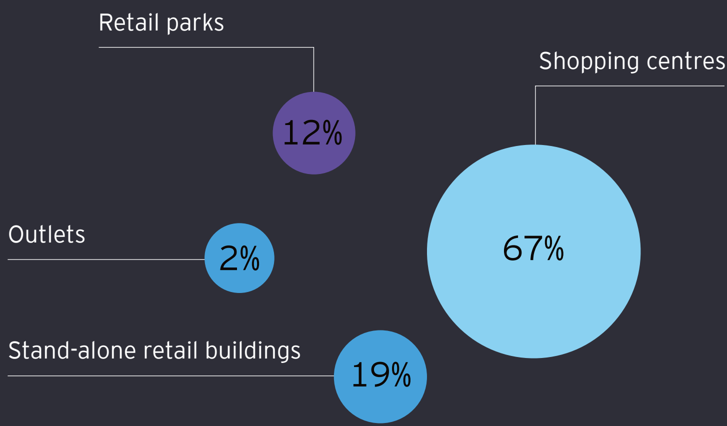
€100-130 m^2/month

Prime rent in Warsaw

€40-60 m^2/month

Prime rent in major agglomerations

Modern retail stock by type



The bulk of new supply comes from mixed-use projects such as retail parks and smaller convenience stores located on key markets. Further development of the modern retail sector will continue in medium and small-size cities driven by the convenience and leisure element.

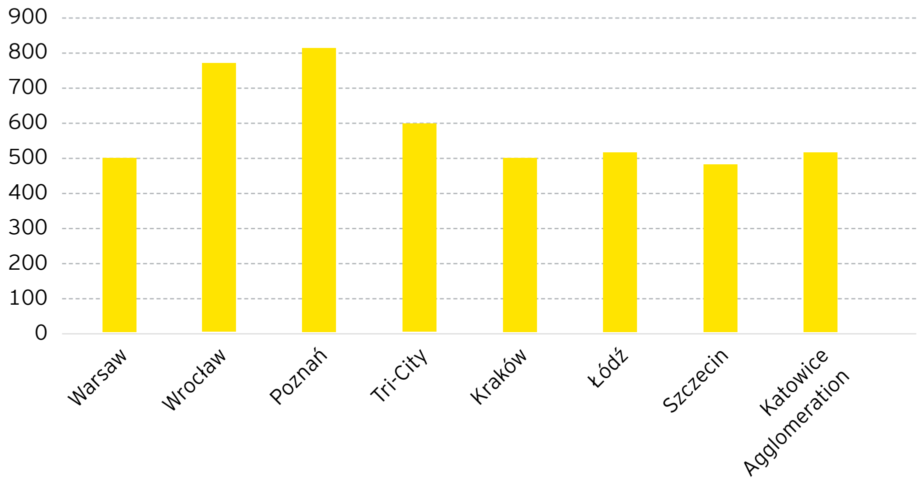
In 2022 small retail parks dominated the retail market with about 70% share in annual new supply, which amounted to approx. 400 thousand m² at the end of 2022. This is the result of the saturation of large cities with modern retail space, which means that there is no potential for the construction of new shopping centers or galleries. Hence the large development of retail parks and convenience centers.

The largest commercial schemes opened in 2022 were: Leroy Merlin in Kołobrzeg, Gemini Park shopping centre in Tychy and OBI's standalone retail warehouse in Mysiadło near Warsaw. A lot of new retail parks opened in smaller cities in Poland such as Warka, Sierpc, Busko-Zdrój, Giżycko and Łany near Wrocław.

The extensions of existing retail facilities happened in Knurów, Radomsko, Prudnik and Zamość. Adequately, numerous former Tesco retail formats have undergone a redevelopment, including space in Stalowa Wola, redeveloped into a new Castorama Store, together with hypermarkets in Częstochowa, replaced by Aniołów Park retail park, Lubin, redeveloped into Cuprum Park retail park and in Głogów, replaced by DIY Store of Leroy Merlin.

While the average density rate for Poland stood at 277 m² / 1,000 inhabitants at the end of the year, there are major differences among particular cities. Some of them are clearly reaching a saturation point with density rates over 700 m² / 1,000 inhabitants.

Retail density



Shopping centers recorded an increase in turnover. In October 2022, it turned out to be 16% higher than in the same period of 2019. People were still willing to use the gastronomic offer in shopping centers. The increase in this category by over 34% shows how important the social aspect of shopping malls and the need to associate with people remain for customers. This is a trend that has continued since the lifting of sanitary restrictions in March 2022.

In October 2022, the footfall of shopping centers (PRCH Footfall Density Index), measured by the number of customers per 1 m^2 of leasable space was 0.3% higher than in October 2019. In comparison, in November 2022 it decreased and was 3.1% lower than in November 2019.

During the year, the situation of polish households changed significantly. Galloping inflation and rising interest rates influenced human shopping habits.

The categories of tenants that are currently developing the most dynamically are non-food discounters (known as value retailers such as Action, Dealz, Pepco, Tedi) and grocery chains for example stores that create the basic shopping offer and are part of the trend of convenient shopping close to home.

The following international brands opened their stores in Poland: Philipp Plein, Snipes, DM, Sunset Suits, Haribo, Lantre, Lovisa, and Less.store. Another world wide known brand - Uniqlo entered Poland. It is the largest brand owned by the Japanese Fast Retailing holding and is the 10th most valuable clothing brand in the world. Uniqlo pop-up store opened in Wars Sawa Junior in Warsaw.

The vacancy rate has decreased to about 4.7% in the 8 major agglomerations. After exiting Poland, Tesco left behind various sizes of spaces. The smaller ones were taken over by Netto, while the larger ones were purchased by investors. Some of them were taken over by operators of other retail formats (Leroy Merlin or Kaufland), and some of them were acquired by investors with an intention of transforming them into retail parks.

1.4 Warehouse Market

$28.8m\ m^2$
Total modern warehouse stock

$6.9m\ m^2$
Take-up

5.0%
Overall vacancy rate in 2022

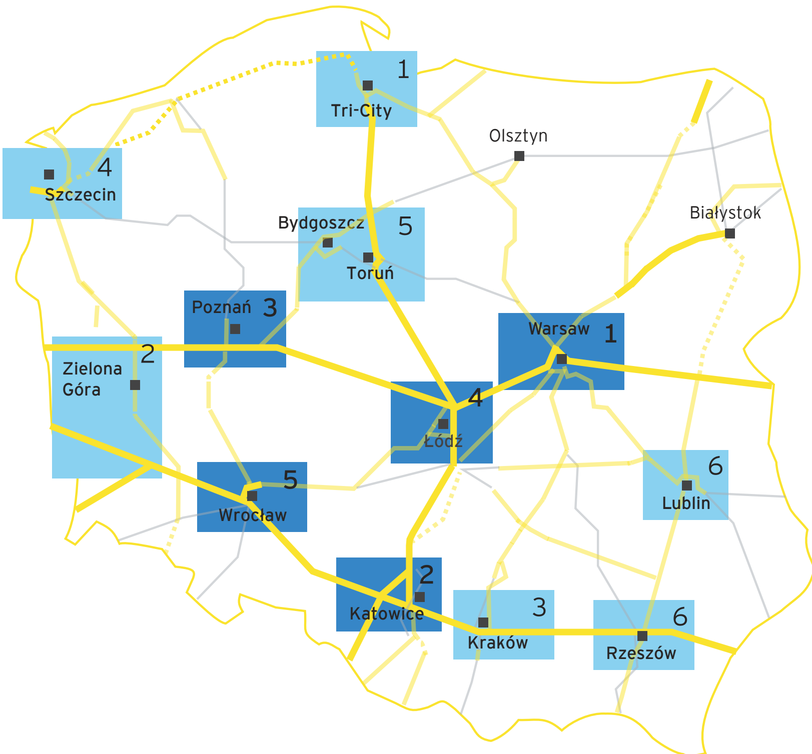
$3.6m\ m^2$
Pipeline supply

€4.0-5.5 m^2/month
Prime warehouse rent

€4.0-7.2 m^2/month
Prime warehouse rent in Warsaw

€3.0-5.0 m^2/month
Average warehouse rent

Map of logistic hubs with road infrastructure



Primary hubs:
1. Warsaw I & Warsaw II
2. Upper Silesia
3. Poznań
4. Central Poland
5. Lower Silesia

Secondary hubs:
1. Tri-City
2. Western region
3. Kraków
4. Szczecin
5. Bydgoszcz/Toruń
6. Eastern region

Major national roads

Highways

Existing
Under construction
Planned

Expressways

Existing
Under construction
Planned

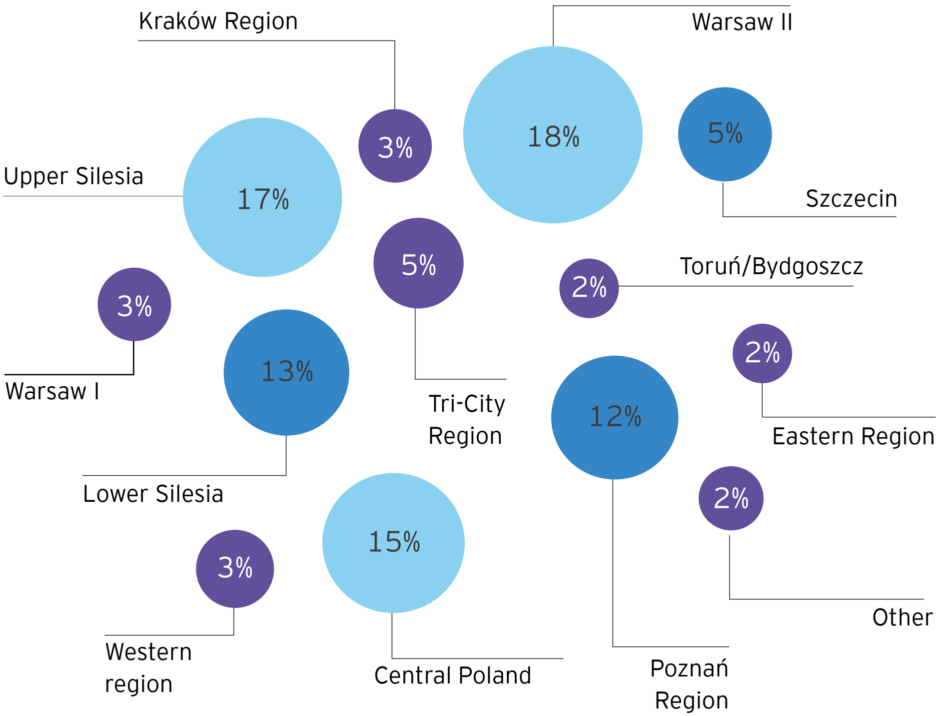
The warehouse market is the fastest growing part of Polish commercial real estate sector. It has been fueled by the e-commerce and multi-channel sales models implemented by conventional retailers further accelerated by pandemic.

As the speed of delivery is of growing importance, the demand for last-mile logistics, Small Business Units (SBUs) and automation solutions is rising.

In 2022, the increased activity of developers was visible through the record supply of new warehouse space. The trend of building space on a speculative basis is expected to stop due to high financing costs and the banks requirements to pre-lease 50% of available space. Therefore, construction in BTS or BTO model is more and more popular.

There are five key warehouse hubs, as well as 6 emerging ones. Most of warehouse space is located within the Warsaw region (within a 50 km radius from the capital city). Another big warehouse zones are located within Upper Silesia and Central Poland.

Warehouse stock by region



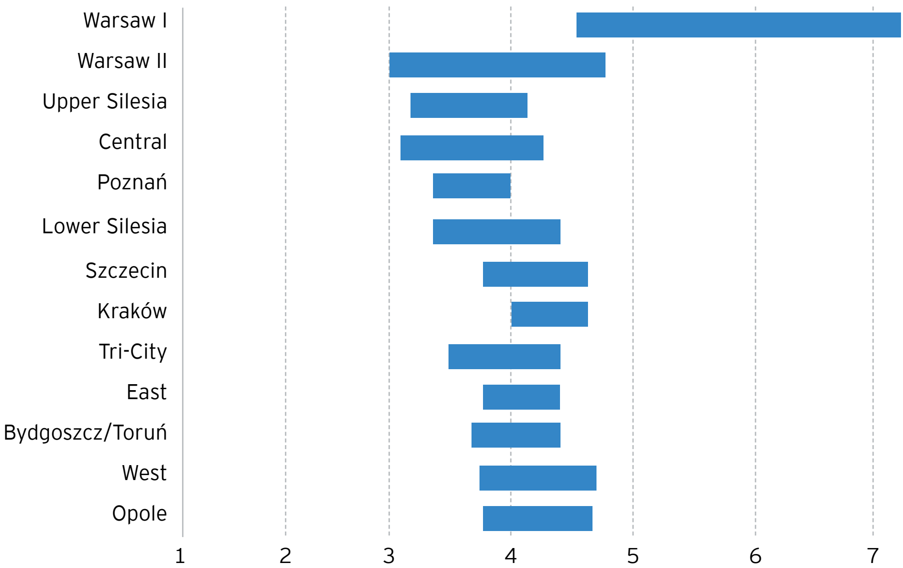
The most important events that had an impact on the warehouse market in 2022 were:

- The outbreak of war in Ukraine, which caused a slight slowdown in the warehouse market as a result of the interruption of supply chains
- Increasing rents by approx. 20% as a result of increasing prices of fuel and construction materials
- Increasing capitalization rates as a result of i.a. inflationary pressure and increasing investors caution

It is estimated that next year the warehouse space will exceed 30m m², and thus the vacancy rate will increase. A further increase of rents is also expected, but it will not be as significant as in 2022. The importance of friendshoring, i.e. creating logistic networks in countries that cooperate economically, politically and militarily, will also rise.

The highest rents are still recorded for prime assets located in Warsaw I region.

Rental levels by region (€/m²/month)



1.5

Hotel Market

Over

26.0m

of tourists

4.37m

foreign tourists in 2022

Almost

45.4m

nights spent

9.8m

nights spent by foreign visitors

Over

2,569

hotels

31.6%

Average hotel occupancy in Poland 2022

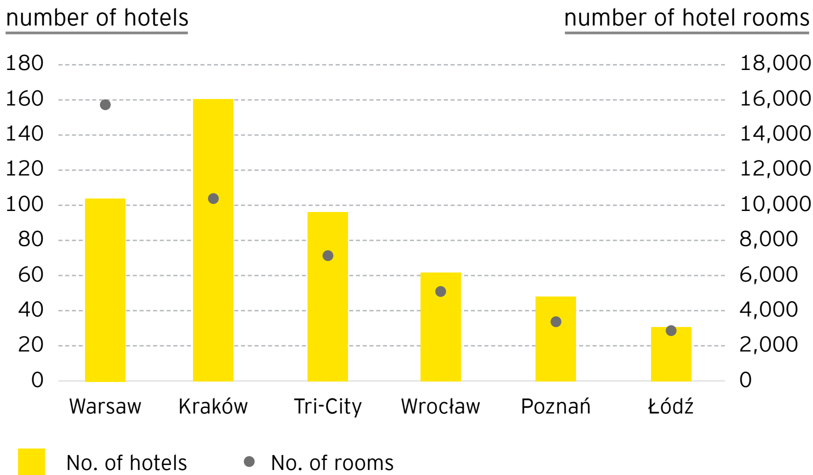
Increasing occupancy rate of hotel rooms in Poland by

47.5% YOY

Increasing number of tourists staying at hotels by

81.4% YOY

Number of hotels and hotel rooms in main cities in Poland in 2022



The most important events of 2022 on the Polish hotel market:

- Increase in hotel occupancy compared to 2021
- Rising number of new hotels, despite the outbreak of war and uncertain economy - delivery of 40 new facilities, mainly in large cities
- The most new hotels opened in Kraków (5 hotels)

In 2023 the only new hotel, which is planned to be opened outside Kraków and Warsaw, is B&B Hotel in Kielce.

The number of categorized hotels in Poland exceeds 2,569. The largest number of hotel facilities are located in Kraków. However, when considering the number of hotel rooms, Warsaw takes the lead with 45% more hotel rooms than Kraków.

The number of tourists staying at hotels in Poland was around 26.05m in 2022, which is an increase of approx. 73% compared to the preceding year. The easing of government restrictions and the increasing share of people fully vaccinated (who are exempt from occupancy restrictions) is the main cause of rising number of travellers. In 2022 foreign tourists accounted for approx. 16.7% of the total number of tourists staying in hotels, which translated into approx. 3% increase in comparison to 2021. The average hotel room occupancy in Poland in 2022 equaled to approx. 47.5% and was approx. 10pp higher than in 2021 (Central Statistical Office data).

As far as operating models are concerned, international hotel chains entering the Polish market are mainly interested in management or franchise agreements. Pure lease agreements are accepted only in the case of prime locations in major cities.

Focus on Warsaw

Facts about Warsaw hotel market:

- The largest hotel market in Poland
- The first location choice for the international brands entering the Polish market
- Demand driven by business trips and events
- 98 categorized hotels offering 16,422 rooms
- 15 five star hotels accounted 21% of total number of rooms in the city
- 21% of total number of hotels is in the four star standard, which constitutes 31% of the whole room supply in Warsaw
- Three star hotels constitute 39% of all hotels in Warsaw and provide 31% of hotel room supply
- Royal Tulip Apartments and Focus Hotel Premium opened in 2022, dedicated for business sector, offering conference, event and working spaces

In 2022, the pandemic-initiated trend of limiting the number of business trips to a minimum was still visible. January 2022 marked the lowest occupancy of rooms which stood at 28%. The occupancy hovered around 28.40% until June when it increased to 49%. The maximum occupancy after the pandemic outbreak was noticed in August when it was almost 57%. The occupancy on the level of 50% continued toward the end of the year.

1.6

Residential Market

Largest

residential market in Central and Eastern Europe

Around

36k

apartments completed in 2022

A significant decrease in sales volume in top six primary markets

40k

units in 2022 compared to 70k units in 2021

Major trends:

- Significant increase in rental prices
- People are postponing their decisions to purchase flats due to a significant decrease in creditworthiness
- New construction starts are postponed by developers due to large drops in sales

The Polish residential market is the largest in Central and Eastern Europe, however it still lags behind Western EU in terms of ownership structure (with a predominant share of owner occupied housing stock), age of housing stock and level of market saturation. However, last few years showed that Poland is on track for catching up with more developed western markets. Rental market including institutional investment rental market, is growing rapidly and the number of upscale apartments offered in Warsaw, Kraków, Tri- City, Wrocław, Poznań and Łódź increases every year.

2022 was a year filled with a lot of challenges:

- Growth of the prices of building materials
- Supply delays
- High costs of contractor services
- An outflow of construction workers due to Russia's invasion of Ukraine
- The economic slowdown

Other significant barriers include constrained land supply and frequent changes to legal regulations. All the above factors, coupled with a weaker demand for dwellings, have caused the primary housing market to slow down, with sales falling and price growth grinding to a halt.

However, Poland continues to face a shortage of dwellings. Polish people live in overcrowded flats. According to Eurostat data, Poland's overcrowding rate is 19.4 pp above the EU average. The average number of rooms per person in Poland is 1.2 (0.4 less than in the EU average).

Many people are postponing to buy a property and redirecting their attention to the rental market due to high inflation, market uncertainty, rising borrowing costs and declining creditworthiness.

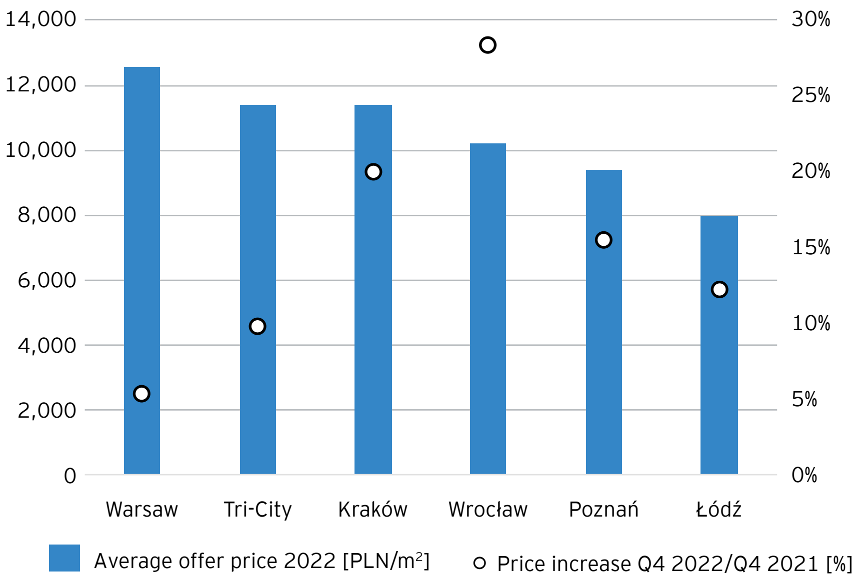
The galloping increases in housing prices in the last two years have been halted. This is the effect of a series of interest rate increases and the introduction of The Polish Financial Supervision Authority recommendations. The value of loans that customers applied for in banks in December 2022 was lower than in the previous year by approximately 50%.

The number of cash buyers remained high (even at over 70%) but couldn't replace leveraged buyers, which in large number disappeared from the market. Due to that, there was a record drop in sales numbers of major developers (-46% year to year in Q3 2022). It caused developers to limit the supply and delay the commencement of new projects.

In 2022, the prices of large-area flats fell. In voivodeship cities, the most often prices of largest flats fell. Selling a four-room flat in the era of expensive loans is very difficult, which is why owners are increasingly agreeing to discounts.

There are significant price fluctuations on the studio apartment market. Half of the voivodship cities recorded an increase and half a decrease in the average offer price of one-room apartments.

Offer prices on six major primary markets at the end of 2022

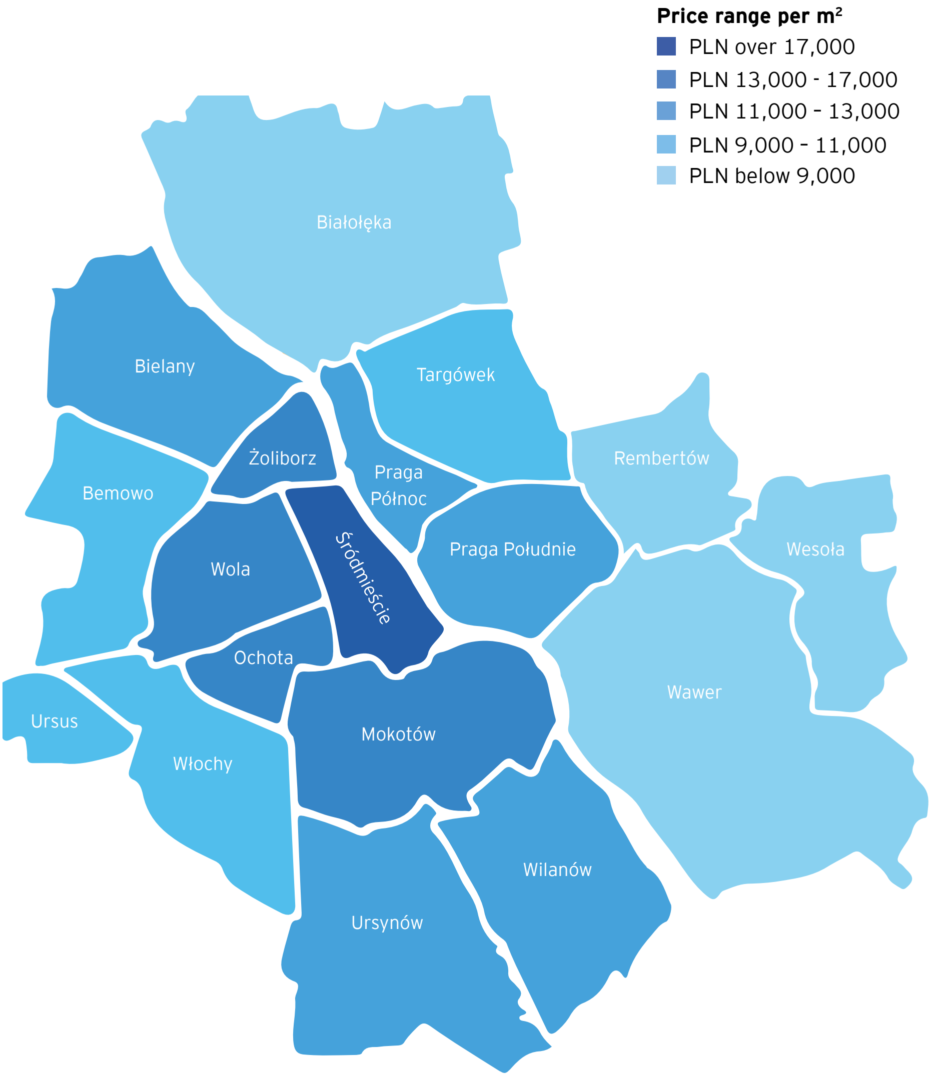


Focus on Warsaw

Warsaw residential market remains the most developed in Poland. The demand is driven mainly by in-migration, the highest income level in Poland and well developed labor market. Warsaw is a popular location for shared service centers and office investments. Employment perspectives as well as major universities located in the city are a magnet for young people from other regions of the country and large numbers of foreigners. All these factors result in increased demand for residential developments.

In recent quarters, a further decline in housing demand has been observed. This is mainly due to the situation on the credit market and high inflation.

Nevertheless, housing prices remain high. Although more and more often buyers can obtain discounts, the average offer price of a new apartment offered in Warsaw at the end of the third quarter of 2022 remained almost unchanged compared to the previous quarter and amounted to approximately PLN 13,600. The most expensive flats are located within seven districts: Śródmieście, Mokotów, Wola, Żoliborz.



source: EY market research

In 2022, there was a surge in demand for apartments for rent in Warsaw. This resulted in a very rapid increase in rents.

Average apartment rental offer prices:

0-38 m^2 - PLN 2,790

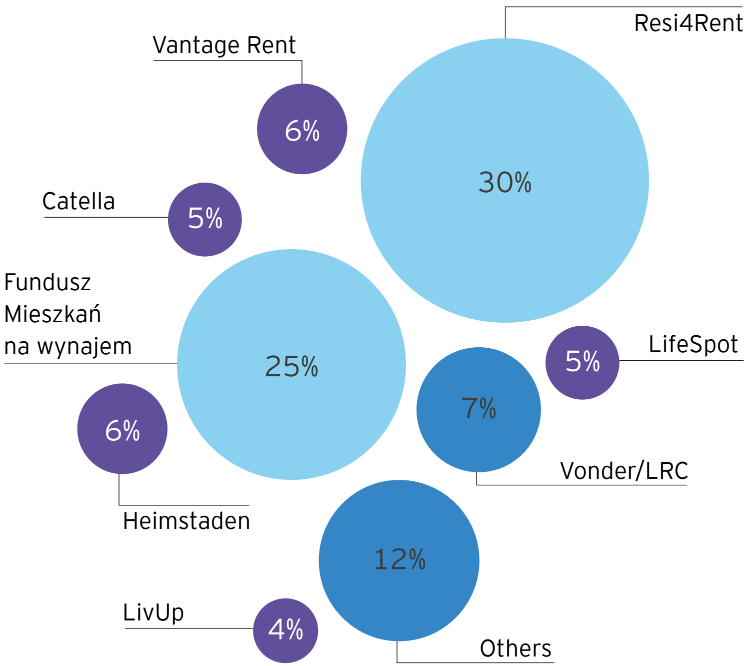
38-60 m^2 - PLN 3,700

60-90 m^2 - PLN 5,470

The influx of refugees caused by the war in Ukraine boosted the number of immigrants from Ukraine and Belarus and created housing shortages in all major cities. Official border control statistics estimate net immigration from Ukraine after March 2022 at around 1.8 million. The highest number of Ukrainian citizens were registered in Warsaw (over 120,000). Refugees created additional demand for rental properties.

In 2022, there were significant slowdown of the mortgage market. After eleven consecutive increases of the main rate by the Polish central bank since October 2021, the mortgage market in Poland recorded a historically deepest dive. The volume of new housing loans dropped by over 50% year to year. Many people had to postpone their decision of purchasing a property and instead rent a place to live.

PRS Investors in Poland (by % of units)



The PRS market in still developing. There are currently 8,500 rental units available. The projected pipeline of projects is around 55,000 flats in the coming five to seven years. The current number of PRS units remains below 1% of all apartments available for rent in Poland. Even when all planned projects are built, the institutional rented market will remain marginal. The situation could change if major built-to-sell developers decided to deliver more PRS projects instead of apartments for sale.

1.7

Investment Market

€5.8bn
Volume of investment transactions in 2022

€410m
Volume of the largest transaction in 2022

€2.1bn
Invested capital allocated in office

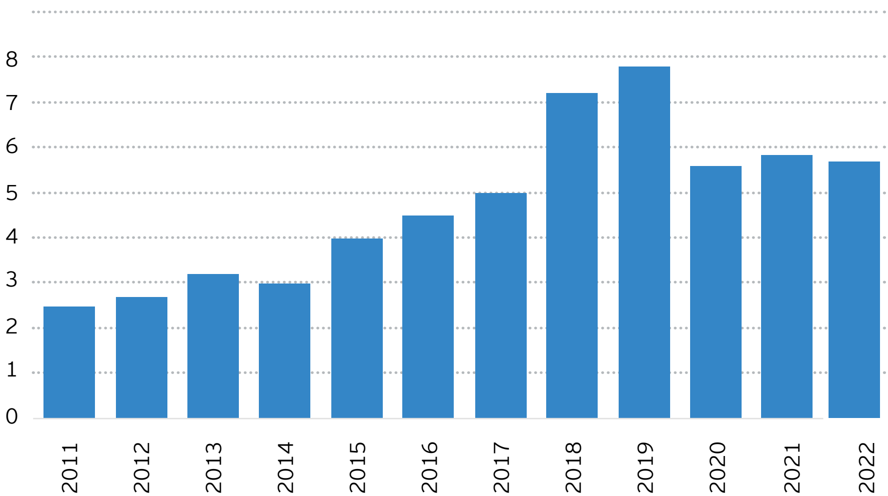
4.50%
Prime office yields

5.25%
Prime retail yields

5.00%
Prime warehouse yields

Despite the economic slowdown, resulting from the outbreak of war in Ukraine, the investment volume in Poland remained on a high level. The total investment volume settled at the level of €5.8bn. This result comprised around 122 transactions.

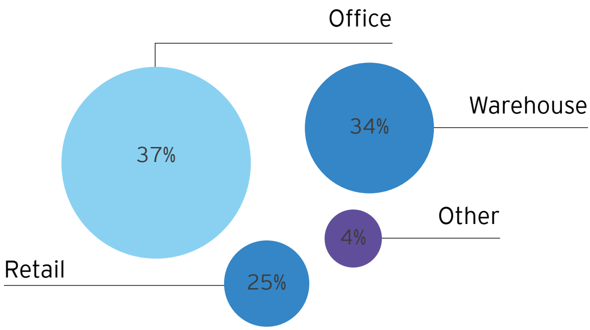
Annual Investment Value (€bn)



The most transactions have been concluded in Warsaw, however, the volume of transactions from the capital did not clearly dominate regional markets

In 2022, there were many foreign investors active in the Polish market. About 33% of them were from the USA. 22% share in total investment volume had investors from western Europe, and 12% - from RSA.

Annual investment volume by sector, 2022



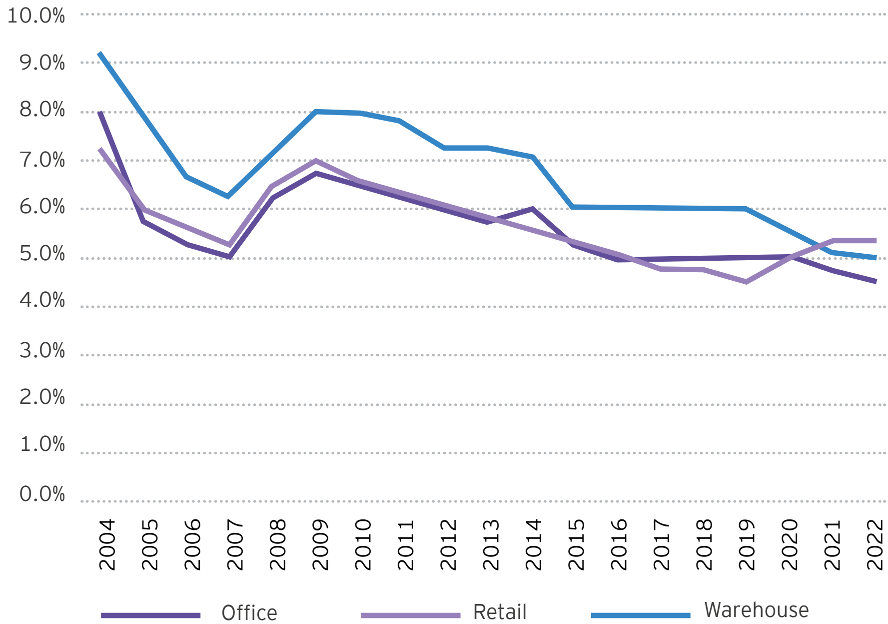
Among the largest transactions observed on the Polish market were transactions of office buildings such as Warsaw HUB, sold for €583m by Ghelamco to Google or Generation Park Y, sold for €285m by Skanska to Hansainvest. They were among the largest investment transactions recorded in Poland in 2022.

Warehouses and industrial properties are still one of the most sought-after products on the market. In 2022, a new trend of increasing importance of smaller regional markets, such as Szczecin or Zielona Góra region, was observed. Transaction volume of secondary industrial hubs constituted almost 50% of total industrial investment volume.

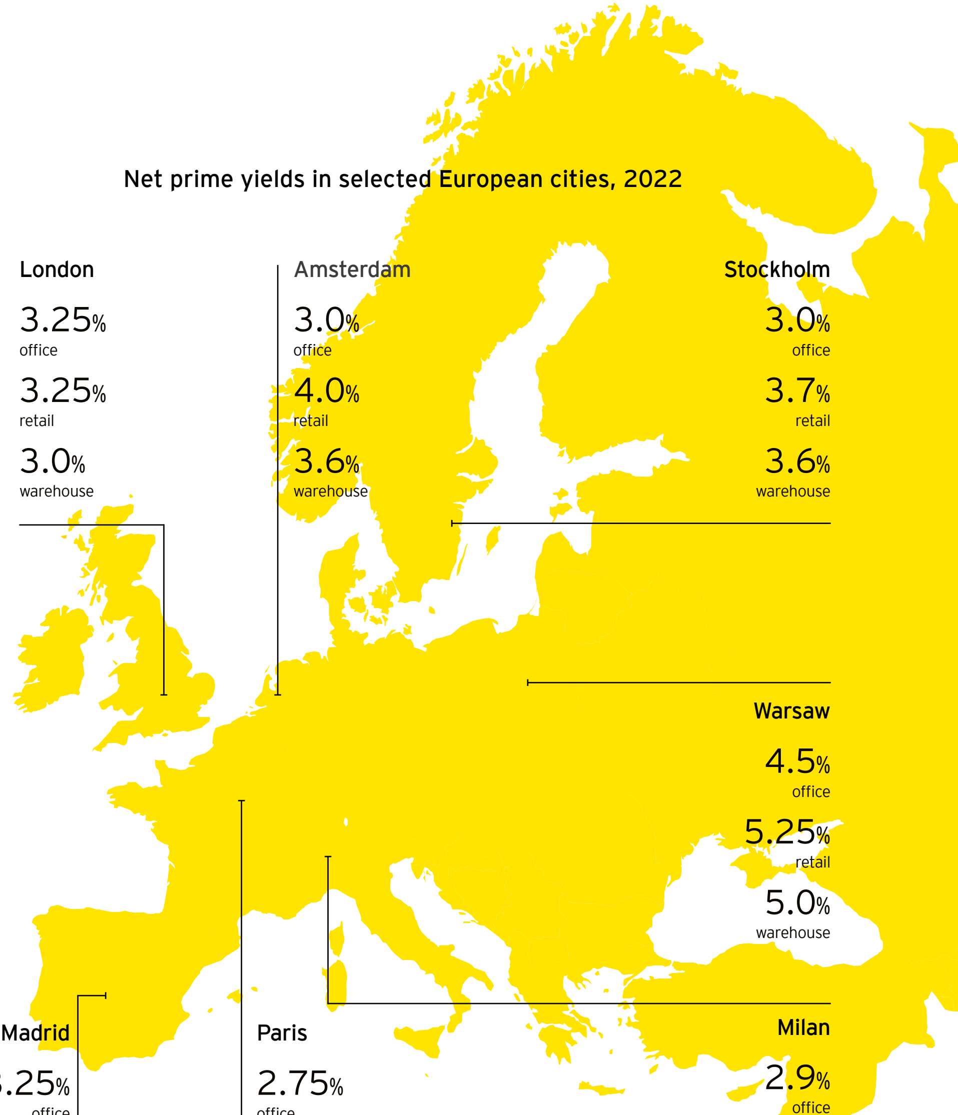
The retail market has recorded a clear rebound since the times of the outbreak of global pandemic. Small retail schemes such as convenience centers still dominate the retail investment market. However, transactions of large shopping centers were also recorded. In March there was a portfolio transaction between EPP and its joint venture company covering 9 properties - M1 shopping centers. At the end of the year, the sale of Forum Gdańsk for €250m was announced, which was the biggest retail transaction in 2022 on polish market.

Private Rented Sector (PRS) constituted ca. 4% of investment market in 2022. Due to the growing cost of mortgage loans, the demand for this type of property increased significantly. However, because of rising costs of energy and construction, majority of planned investments have been suspended.

Prime yields curve



Net prime yields in selected European cities, 2022



1.8

Trends & forecasts

General trends

Growing influence of ESG

There is noticeable increase in the renovation of existing buildings and higher supply of certified green buildings. Sustainable development and ESG standards are more and more important to companies. Decisions are becoming based on implementation of environmental profit as well as financial profit.

Rising energy prices will be one of the biggest challenges of commercial real estate in 2023. It is expected that property owners will be more willing to invest in the energy efficiency of buildings which means installing more modern and efficient equipment and implementing ESG-related policies. This actions should contribute to a significant reduction of energy consumption.

Higher costs and slowdown of developers activity

All markets are experiencing a continuous increase in costs such as: utilities, wages and construction materials. There is also a shortage and long shipment times of some of the materials needed to construct and furnish spaces. Large development companies refrain from starting new construction projects.

The economic problems were deepened by the outbreak of the war in Ukraine, which resulted primarily in increases in energy prices and a reduced number of employees on construction sites.

Geopolitical situation and inflation

The war in Ukraine resulted in limitations in the supply of material and reduced availability of workers on construction sites, which deepened the existing challenges related to progressing inflation and growth of energy prices.

Some funds have adopted a wait-and-see attitude with high probability it will translate into investment volume at a level similar to last year, but lower than forecast beginning of the year.

Optimal real estate development

Property owners will increasingly face the dilemma of adapting their assets to the new reality or changing their function in order to be able to optimally use their real estate and ensure the best return on investment. As a result of the analyzes of the optimal use of real estate, the number of planned mixed-use projects, last-mile logistics and residential investments in place of older office and retail buildings may increase.

Optimal development analyzes are increasingly used not only as a basis for strategic decisions regarding a given property, but also as a catalyst for asset transactions that were losing their competitive position due to the emerging new space on the market. The analyzes performed by the owners allow to increase the interest of potential investors by shortening the time necessary to carry out the initial due diligence.

Mix-use projects and function change

Both in Warsaw and on the regional markets, we can observe an increase in mix-use projects aimed at diversifying functions, more conscious shaping of the urban fabric, but also minimizing risks on investors' side (e.g. Browary Warszawskie developed by Echo Investment).

Another form of diversifying functions is changing the function of previously mainly office areas and supplementing them with other functions, e.g. residential. The best example of this trend is the Mokotów and Wola districts in Warsaw.

Mixed-use investments are very popular among tenants. They respond to the changing needs of employees. The concept of a "15-minute city" is becoming more and more popular, offering all human needs in one district - work, shopping, learning and entertainment.

Office

A different look at office space

The pandemic completely changed our habits affecting the organization of office space in the long term. Adaptation to new anti-epidemic standards has already been implemented in offices.

The most significant changes in workplace:

- Implementation of a shift system, project work, employee rotation in the office space
- The use of easy-to-clean finishing materials
- Implementation of remote solutions to limit activities by direct touch on common areas
- Taking care of air quality - greater air exchange, filtration, higher level of humidity
- Technological solutions for managing the space and oneself in it
- New technologies, e.g. monitoring with thermal imaging cameras controlling body temperature
- Changes to the layout of work stations (greater spacing, higher partitions, smaller open spaces)
- Reduction of the space of conference rooms (greater share of online meetings)
- Functional separation of the zone dedicated for employees from the zone for guests and visitors

New generations of employees shape a workspaces

Given the low unemployment rate, employers are still struggling to attract young talent. Friendly designed and equipped with modern technologies office is one of the motivational elements to change or start a new job. The trend of changing the workspace will be intensifying, which will positively influence the demand for office space combined with flexible space) are becoming more and more popular. Following tenants' needs for more flexible office space, especially in these turbulent times, many co-working operators open their offices, especially in Warsaw. They usually choose A-class office buildings in attractive locations. Such spaces are rented not only by freelancers and start-ups, but also multinational companies. This trend shows changing habits of occupiers focusing on workspaces that enables cooperation on a bigger scale and stimulates creativity and effectiveness.

PropTech and WaaS

PropTech and WaaS (workplace as a service) have been gaining popularity. Smart solutions in the office space and flexible workspaces will be introduced on a larger scale in the upcoming years. Due to such changes, more impact will be put on targeting needs of potential individual clients.

Rising supply gap

The reduced availability of workers on construction sites, together with the suspension of new office projects by developers, created a supply gap on the market. A significant reduction in new supply may make it difficult for tenants to find new locations for their

Growing costs related to the lease of office space

The economic situation also has a clear impact on the costs incurred by tenants. Higher inflation results in high rent indexation and rising energy costs have an impact on service charges. It is expected that tenants will look for ways to save their money. Some of them may decide to reduce the space on the occasion of relocation or sublease in the case of existing agreements.

Flexible working model

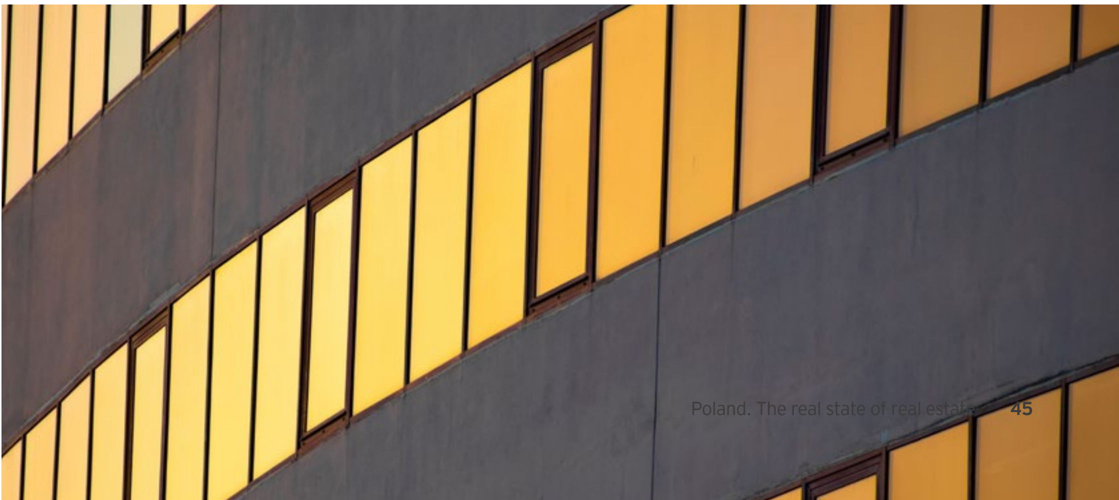
Even after pandemic, the hybrid work model become a permanent feature on the Polish office market. Not only employees demand a right to choose a place of everyday work but also tenants increasingly expect flexibility and a quick response to changing needs from the landlord. More and more popular becomes the hybrid model of renting office space, which means combining traditional rental with flexible space (e.g. coworking spaces).

Directive CSRD

In 2023, preparations for reporting in accordance with the CSRD Directive will begin, which will impose new obligations on companies related to reporting non-financial data. It can be expected that this year we will witness the creation of a new lease formula. In addition to the basic provisions regulating the rental of space, the new agreements will contain provisions on the so-called green principles and solutions. The main objectives of green lease agreements include: optimization of operating costs, reduction of the negative impact on the environment, as well as support for the implementation of the ESG strategy.

Growing share of renegotiations

We expect that in the nearest future there will be an increase in the share of renegotiations of concluded contracts. This will be primarily due to the supply gap, where tenants will have limited possibilities to move to a suitable space. Another factor that will have a significant impact on the increase in renegotiations are high costs of fit-out and the reduction of incentives by property owners, whereas by staying in the same office, tenants could be granted additional budget for refreshing the space.



Transformation of older assets

In the coming years, we expect to see an increasing number of modernization or redevelopment of office buildings to bring them up to new standards and improve their competitiveness. This trend is already visible especially for buildings that were built in the '90s and are struggling with high vacancy rates and rising repair and maintenance costs.

Public sector on the rise

The public sector is facing the challenge of incurring high expenditures to adapt their current premises to the new regulations of sustainable development. The past year has seen the first signs of an emerging trend of leasing office space in modern office stock by public entities. We expect to see further occupancy of modern office buildings by units of public administration in flowing years.

Retail

Discount shops and outlets are becoming more popular

As a result of a significant increase in prices in recent months, consumers' attention has been focused primarily on basic necessities, which has contributed to the increase in the popularity of shopping at discounters and outlets. It is worth emphasizing, however, that due to high inflation, a weakening of consumption is observed. Such a trend will persist in the coming months and affect the deterioration of GDP growth in the coming quarters.

People are used to e-commerce

In recent months, the share of online sales in retail sales has remained relatively stable - it equaled 9.5% in October 2022. It is expected that in the coming months the share of the e-commerce sector in retail sales will remain at a comparable or higher level due to the high degree of the society's habituation to online shopping during the pandemic.

Huge supply of retail parks among the newly delivered stock

Developers put their attention to smaller cities where they deliver more and more retail parks and convenience centers. Small retail formats are maintaining their momentum. Interest in the retail park and convenience centre formats has not decreased in the past few years. More investors are looking for smaller, out-of-town retail formats as shifting shopping habits bring those into favour.

Warehouse

A record breaking year for the warehouse market

In 2022 the growth of both demand and supply exceeded expectations powered by international e-commerce players and developer activity in emerging markets. In the following years, due to the economic slowdown and weaker economic conditions in the industry, the demand for warehouse space will decrease.

Emerging locations became an alternative to mature hubs

Limited availability of labour force, low vacancy rates and rising costs in established warehouse hubs drive the growth of emerging markets. Tri-City, eastern Poland and Szczecin are booming while built-to-suit options in regions such as Bydgoszcz-Toruń, Lublin, Rzeszów, Zielona Góra are more cost-effective.

Further growth in e-commerce, “last mile delivery” and SBU

Due to customer pressure for fast delivery, “last mile delivery” properties located in cities have been gaining popularity, also in the form of Small Business Units (SBUs). This trend will continue in 2023 as the e-commerce sector’s demand will remain high.

Growing importance of nearshoring

Additional development in the industrial and logistics warehouse market comes from the trend of positioning the production of goods closer to the designated market - nearshoring. Many companies choose to optimize their supply chain because of the global logistical issues outlined during the COVID pandemic and the war in Ukraine.

The outlook for the warehouse and industrial markets is becoming unclear

Poland's central location, size, improving transport infrastructure, good performance during the COVID-19 pandemic and, the development of e-commerce are the foundations of positive forecasts for the warehouse sector in Poland foreseeable future. The importance of friendshoring, i.e. creating a logistic network in countries cooperating economically, politically and militarily, will also increase. On the other hand, difficult macroeconomic conditions and high supply of space may slow down the development of the warehouse market.

Closer to sales markets

In the near future, the stimulus driving the warehouse market will be moving productions closer to the sales markets. Poland will become one of the main beneficiaries of these activities.

Asking rents up

Due to the growing costs of construction, financing new investments and operating costs, a further increase in asking rents for warehouse space is forecasted. Rising operating costs will encourage both developers and tenants to install green energy sources, such as photovoltaic panels.

A higher technical standard

Due to the limited supply of land for warehouse investments, developers are increasingly deciding to build taller buildings with increased floor load capacity, which will rise the storage capacity of goods.

Hotel

Return to the pre-pandemic state - recovery

The hotel market was one of the most affected sectors by the COVID-19 pandemic. Evaluating the increase in domestic and foreign tourist traffic and rising hotel occupancy as well as ADR rates the hotel industry is returning to pre-pandemic state.

High hotel maintenance costs

High inflation, rising energy and labour costs will continue in 2023, which will force hotel owners to look for savings or increase rates per hotel day.

Growing popularity of domestic tourism - discovering Poland

Due to high inflation, most Poles were looking for holiday destinations in the homeland in order to save money. Holidays in Poland were also more expensive than the previous year, and tourists paid several percent more for a few-day stay. Accomodation prices grew the fastest in seaside and mountain towns. In Masuria, the increase in prices were smaller. Despite high prices abroad, it happens that a stay in Poland was more expensive or comparable to trips to the Balkan countries.

Helm for resort hotels

As a result of the COVID-19 pandemic guest expectations have changed. Many corporations have given up on business travel, and this trend continues to this day. To meet the expectations of tourists, many investors, instead of business facilities, will build resort hotels with access to spas or swimming pools of a five-star standard in towns that favor tourism, such as Wisła, Międzyzdroje and Krynica Zdrój.

Attention to health and wellbeing

Smaller, more personalized concepts like boutique and lifestyle hotels as well as destinations connected to nature and the outdoors are emerging. Another important area experiencing growth is the spa and medical spa sector – the pandemic has increased attention to health and wellbeing.

Short-term rental apartments as a consequence of changing market

Over the recent years, the hotel market's stock noticeably changed due to increasing share of short-term rental apartments offered by platforms such as Airbnb. They are usually more affordable than traditional hotel rooms, but often equally attractive and conveniently located which makes them an interesting alternative for some tourists. Additionally, there is growing emphasis on the personalization of the stay experience and the uniqueness of the hotel. As assets that guarantee higher rates of return they are also attractive for developers and investors who aim to maximize profits. Since short-term rental apartments seem to meet guests' expectations and may provide a safer endeavor for investors during the pandemic, it is probable that in the following years their share in supply will continue to grow.

New investments?

Negative events that had happened in 2022, such as war in Ukraine and the prospect of recession, did not stop the opening of new facilities, but it definitely slowed down the new investments. Many of them will be postponed or will not be built at all in the planned shape. In 2023, new hotels are planned to be opened, but mainly in Warsaw and Kraków.

Residential

Popularity of the rental market

The increase in the cost of mortgage loans and high inflation significantly limited the financial possibilities of people planning to buy a flat. It shifted a part of this demand to the rental market. The increased demand for apartments from refugees from Ukraine resulted in an unprecedented increase in rents on the market in Poland.

The retreat from the ownership model, combined with rising rents, is an incentive for further funds from the PRS sector to enter Poland. The most important challenges facing the institutional rental market are high costs of financing in PLN and limited possibilities of using cheaper financing in EUR, rising energy costs, as well as potential legislative changes, in particular in the field of taxes.

Co-living as an emerging trend on major markets

Co-living is a new type of housing based on shared economy model. The intention of this concept is to provide its residents with convenient accommodation and simultaneously empower them to actively participate in life of the surrounding community. On western markets this trend is known for decades, while in Poland the era of co-living is just beginning.

The purchasing power will recover

The purchasing power in the housing market could be gradually recovering in the next quarters. This recovery will be the result of a decrease in interest rates and an improvement in the ratio of income to housing prices. There is a strong increase in bank term deposits, especially among wealthier households. These savings, in the event of an improvement in the housing market, may partly support residential market. In 2022, the government announced 2% Safe Credit Program which supports buyers of first flats. It could be helpful to increase the demand on the market.

Increased popularity of PRS housing

If the polish government withdraws from the idea of further taxes for the sector, in the coming years the share of PRS in the investment market in Central and Eastern Europe will increase from 5% to 10%, which will significantly improve the availability of apartments for rent and help reduce the housing gap in Poland. It will also be an alternative to buying a flat and taking out a mortgage. The share of Poles renting apartments will increase. At the same time, in the longer term, there could be a slowdown in rental growth. It is expected that new players will enter the market who see great potential in the Polish PRS market.

Conversion of commercial buildings into PRS and PBSA

There can be observed an increasing interest from investors in the conversion of existing buildings (office and retail buildings) into apartments for rent and dormitories. The trend could certainly deepen in the near future.

Investment

Poland will continue to be on the radar of investors

Despite the ongoing war across the eastern border, the volume of investment in Poland has not changed. Given its size, market fundamentals, steady occupier demand as well as yields higher by 2-3pp as compared with developed Western Europe markets, Poland will still attract investors' interest over the course of the coming quarters.

In their search for opportunities, investors are eyeing up not only primary, but also secondary markets

In view of the insufficient supply of prime products in Warsaw, regional cities are much sought after by investors as a destination for capital allocation. Tier-2 and tier-3 cities have slightly higher risk profiles and a lower depth of the market, however yields are 2-3pp higher. This trend has already been observed on industrial market, where smaller regional cities constituted a half of all investment volume in 2022.

Legal and tax aspects of investing in real estate

This Chapter considers the most important legal and tax issues arising during each of the following five stages of a real estate investment:

- Financing
- Acquisition
- Development and construction
- Operation and exploitation
- Sale

The Chapter is arranged so that each of the above aspects is dealt with in a separate section (2.3.-2.8.), considering legal implications first, followed by an assessment of related important tax consequences.

The section 2.1. on the legal background (below) will introduce the reader to certain concepts and terms that may not be commonplace in transactions elsewhere in Europe. This should be read as a general introduction to the legal environment in Poland. The chapter also contains section 2.2. on investment vehicles and structures presenting information on the most common structures used in real estate investments in Poland. Taken together, they form the basis for understanding the most relevant legal and tax implications of investing in real estate in Poland.

Legal, financial and tax due diligence are also fundamental to any investment cycle and given the importance of due diligence to any transaction, we discuss the relevant procedures and key considerations in detail in section 2.9.

The year 2022 has brought some important changes in the Polish legal system. The beginning of the new year brought numerous amendments and legal changes introducing, first of all, digitization of administrative processes in the field of construction. Some are addressed directly to companies operating in the real estate market while many others which may also directly or indirectly affect such companies.

Changes of the real estate law (adopted):

Construction law

2022 brought a continuation of the amendments to the Construction Law introduced by the law passed on July 7, 2022 (the changes will be implemented successively until the end of April 2023).

The implemented amendments include, among others, the enlargement of the catalog of construction objects and works exempt from the obligation to obtain a building permit and make a notification, the introduction of penalties for untimely issuance of a demolition permit decision, improvement the procedure for putting construction objects into use, and creating a Construction Project Database. The new legislation has introduced the Electronic Construction Log. It is expected to enable recording the progress of construction work and all accompanying activities with the execution of the work in an online form. A paper-based, traditional form of construction log keeping will be available to investors until 2030. After that time, there will be a transition to a purely electronic form.

Ultimately, the amendments are expected to lead to the improvement and optimization of the investment and construction process.

Development Act

As of July 1, 2022, the regulations contained in the Development Act (i.e. the Act on Protecting the Purchaser of a Dwelling Unit or Single-Family House and on Developer's Guarantee Fund) began to apply to developers and other market-related entities, including banks. The most significant change in these regulations was the establishment of a Developer Guarantee Fund. The purpose of the Developer Guarantee Fund is to protect funds paid in by purchasers, particularly in the event of bankruptcy of the developer or the bank operating the housing trust account. Contributions to the Fund is to be paid by developers on each of the purchasers' payments, and the bill specifies their maximum amount, respectively: 2% for open residential trust accounts and 0.2% for closed residential trust accounts.

Other changes brought by the Act include, e.g., formal regulation of the contract of reservation of premises, extending the application of the regulations to any premises built as part of a development project and sold with residential units, such as garages or storage units and specifying the obligations of the developer related to removal of defects in the premises following the handover thereof. The obligation to apply the new law has also been extended to units created as a result of conversions, and not, as was currently the case, only those built from scratch. As a result, any adaptation of existing buildings, e.g., hotels, post-factory buildings, which will result in the creation of residential units will entail the application of the new Development Law. In accordance with the Act, developers will be required to maintain an escrow account agreement until the date of execution of an agreement for the transfer of ownership or sale of the last unit or garage/storage unit (if these are commercial units developed as part of a single development project).

Additional obligations have also been imposed on financial institutions. Thus, banks will be required to verify, among other things, that the developer is not in arrears with taxes and Social Security contributions, has paid due and undisputed monetary obligations to contractors and subcontractors, etc., before making payments from housing trust accounts to the developer. The purpose of the regulation is primarily to increase protection for home buyers.

Potential changes of the real estate law in 2023:

Construction Law

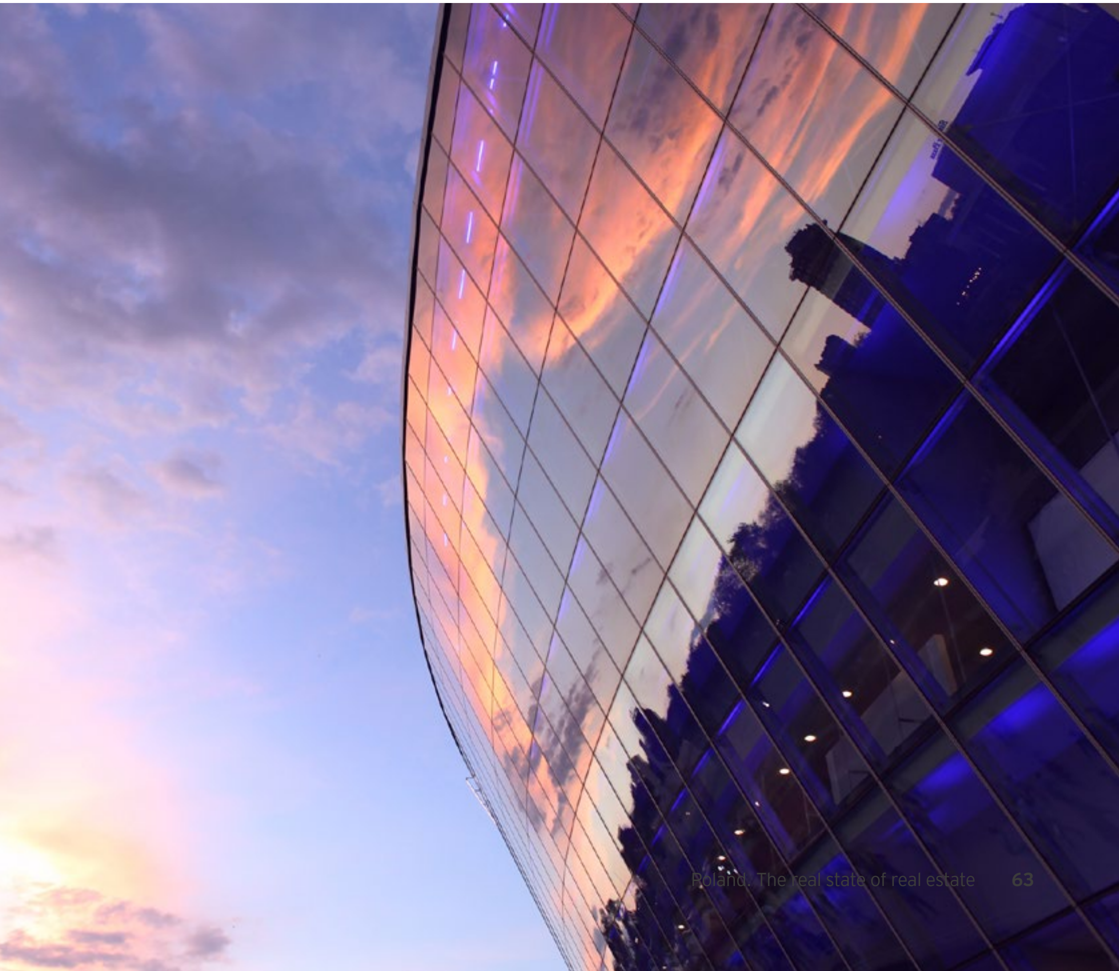
27 January 2023 further amendments to the Construction Law regarding the digitization of administrative processes in the field of construction will come into force. With the entry into force of the Electronic Construction Log (ECL), builders will have the choice of keeping it in paper form or online. A construction log in paper form will be able to continue in electronic form, while a construction log maintained in the ECL system can only continue in electronic form. In simpler terms, if a developer opts for an electronic version of the logbook, he can no longer abandon it and keep the logbook in paper form. The amendment to the Construction Law does not foresee any changes when it comes to the scope of entries in the construction log compared to the current regulations.

Act on housing cooperatives

The housing cooperative formula is included in the law related to real estate management and the investment process. This solution will make it easier to apply for loan financing from banks or to access landed property. This will apply in particular to real estate that belongs to the municipal real estate resource. Individuals (not companies) will be allowed to operate in the cooperative formula, as a rule, in a minimum number of three. They will be parties to either a housing cooperative contract or a partnership agreement. Operation under the cooperative formula is intended to lead to the satisfaction of one's own housing needs. Therefore, these ventures, as a rule, will not be allowed to be profit-oriented. It is scheduled to go into effect on March 1, 2023.

Act on Energy Performance of Buildings

On April 28, 2023, the amendments to the Law on the Energy Performance of Buildings and the Law on the Construction Law will come into force, which introduces an expansion of obligations to inspect heating systems and air conditioning systems. According to the adopted regulations, the owner or manager of a building is to subject buildings during their use to a periodic inspection of the heating system or air-conditioning system, consisting of checking the technical condition of the heating system, taking into account the energy efficiency of the heat sources and the adjustment of their output to the utility needs.



Work on draft laws will also continue on:

- Law on Spatial Planning and Development

  The draft law on amendments to the Law on Spatial Planning and Development and certain other laws primarily provides for the introduction of a new, mandatory planning instrument with a municipality-wide scope - the general plan. This will be an act of local law, which will replace the study of conditions and directions for spatial development of the municipality. Local plans will not have to be consistent with the general plan, thus there will be a possibility to simultaneously proceed with the amendment of the general plan and the local plan, which will significantly speed up planning procedure.

- Draft law on changing the use of certain non-residential buildings to residential buildings

  The draft law on changing the use of certain non-residential buildings into residential buildings envisages easing regulations on the possibility of converting office and commercial buildings into residential buildings. The validity of these regulations would be temporary - for 24 months after the law takes effect; so as to respond to the challenges caused by the pandemic and the situation in Ukraine. It also assumes amendments to the Law of July 5, 2018 on Facilitation of Preparation and Execution of Housing and Associated Investments (the so-called "housing speculative law"), according to which two new exceptions would be allowed. It would be possible to implement a housing investment carried out on the basis of a resolution of the municipal council on determining the location of the investment - regardless of the provisions of the study. This would apply to areas where commercial facilities with a sales area of more than 2,000 sqm are or can be located, and areas where office buildings are located.

- Act on providing information on the environment and its protection

  The draft law on amending the Act on providing information on the environment and its protection, public participation in environmental protection and environmental impact assessments, as well as some others, is the object of work at the Ministry of Climate and Environment. It assumes improvement of investment procedures for issuing decisions on environmental conditions. It is intended to speed up the process of implementing investments, especially road, rail, water and flood control investments.

- Act on Real Estate Management

  The draft law on amending the Act on Real Estate Management envisages the possibility of transforming (disposing of) a landed property to a perpetual usufructuary who is a legal entity. Currently, the landowner (municipality or Treasury) cannot convert the perpetual usufruct because there were no designated rules for payment. This was due to the need to agree on the rules of public aid with the European Commission. Under the new regulations, public authorities will no longer be able to refuse to sell land to an entrepreneur who submits an application to this effect.

- Draft law on restrictions on the acquisition of housing units

  The Ministry of Development and Technology is working on the introduction of a tribute tax on the wholesale purchase of apartments by investment funds. This is aimed at limiting the purchase of apartments by funds, which has a negative impact on the availability and prices of apartments on the market directly for individuals.
  The final shape of the legislation could have a major impact on the further development of the institutional market for rental housing in Poland.

Changes of tax law:

Taxpayers in Poland face significant changes in tax law introduced every year. The amendments continue to be in line with global and European trends aimed at introducing measures against tax evasion and tax avoidance, i.e. actions undertaken within the Base Erosion Profit Shifting (BEPS) initiative by OECD, Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI), as well as works within the European Union, which resulted in developing the Anti-Tax Avoidance Directive (ATAD).

There are also tax changes which originate from the local developments and in many cases they stretch even beyond measures recommended by international bodies.

We highlight below selected key changes which impact the real estate market in 2023.

Tax depreciation in real estate rich companies

From 1 January 2023 in the case of real estate rich companies tax depreciation of real estate cannot exceed the write-offs for accounting purposes. Therefore, as a rule, if a property for accounting purposes is classified as an investment not subject to accounting depreciation but revalued periodically (as opposed to fixed asset that is usually depreciated), this would effectively decrease the tax depreciation to nil.

Tax on shifted profits

Since 2022 a new tax on shifted profits is levied on Polish entities and amount to 19% of costs incurred, directly or indirectly, with respect to payments to a related entity if the following conditions are jointly fulfilled:

- the effective CIT paid by this related entity in the country of its tax residence is lower by at least 25% than the hypothetical CIT that would be due on such payments at the standard Polish rate of 19% (i.e. 14.25% CIT or lower);

- these costs amounted to at least 50% of the revenues earned by this related entity and are deductible from revenues, income, a tax base or a tax of this related entity, or were paid by this related entity in the form of a dividend or other form of participation in profits for a tax year in which the payment was received.
- costs forming a tax base for the purpose of the tax on shifted profits would include certain types of payments, among others: payments for advisory services, marketing, market research, control and management, guarantees, financing costs (including interest, commissions), royalties, licenses, payments for the transfer of functions, assets, risks and only if the sum of these costs incurred in a tax year by a Polish CIT payer for the benefit of all recipients amounts to at least 3% of the total sum of tax deductible costs of a given tax year. Certain deductions and exceptions could apply.

Modifications that become effective as of 1 January 2023 include i.a. the following areas:

- clarification that the condition regarding a low effective tax rate (lower than 14.25% or exemption from taxation) should be verified with respect to income earned from the qualified categories of costs and not with respect to the entire income of the foreign recipient;
- 50% of revenues earned by the receiving entity are comprised of all qualified payments made by related Polish entities;
- introduction of an additional condition that at least 10% of shifted profits paid by the Polish entity must be, subsequently, transferred by a foreign recipient to another entity; and
- narrowing down the condition regarding threshold of qualified costs at the level of Polish payee (at least 3% or more) of all tax costs only to transactions with related parties.

The new tax shall not be levied on costs connected with payments to a related entity tax resident in a European Union country if this entity undertakes a significant, real economic activity in this country.

Investment structures

For many years the Polish real estate market has developed investment structures that were widely used by investors. However, the abolishment of well-grounded investment fund structures for real estate investments marked a radical watershed. While legislation that led to the significant limitations of the investment fund structure was being drafted, at the same time the Polish government promised an attractive alternative for the real estate market, the REIT (Real Estate Investment Trust) regime. Real estate investors familiar with REIT regimes of other countries were in the past not too often asking for a similar vehicle to expand into Poland. That was because investment funds offered a comparable – if not more efficient – vehicle for Polish real estate investments. These days are over now, the global real estate funds community is still awaiting the new Polish REIT to become an option. Unfortunately, the works on REIT legislation is still in progress and there is no certainty about the final shape and timing of REIT tax incentives to come into force in Poland.

Holding regime

Starting from 1 January 2022 Poland introduced "holding regime" with preferential rules of taxation for dividend distributions as well as transfer of shares in subsidiaries.

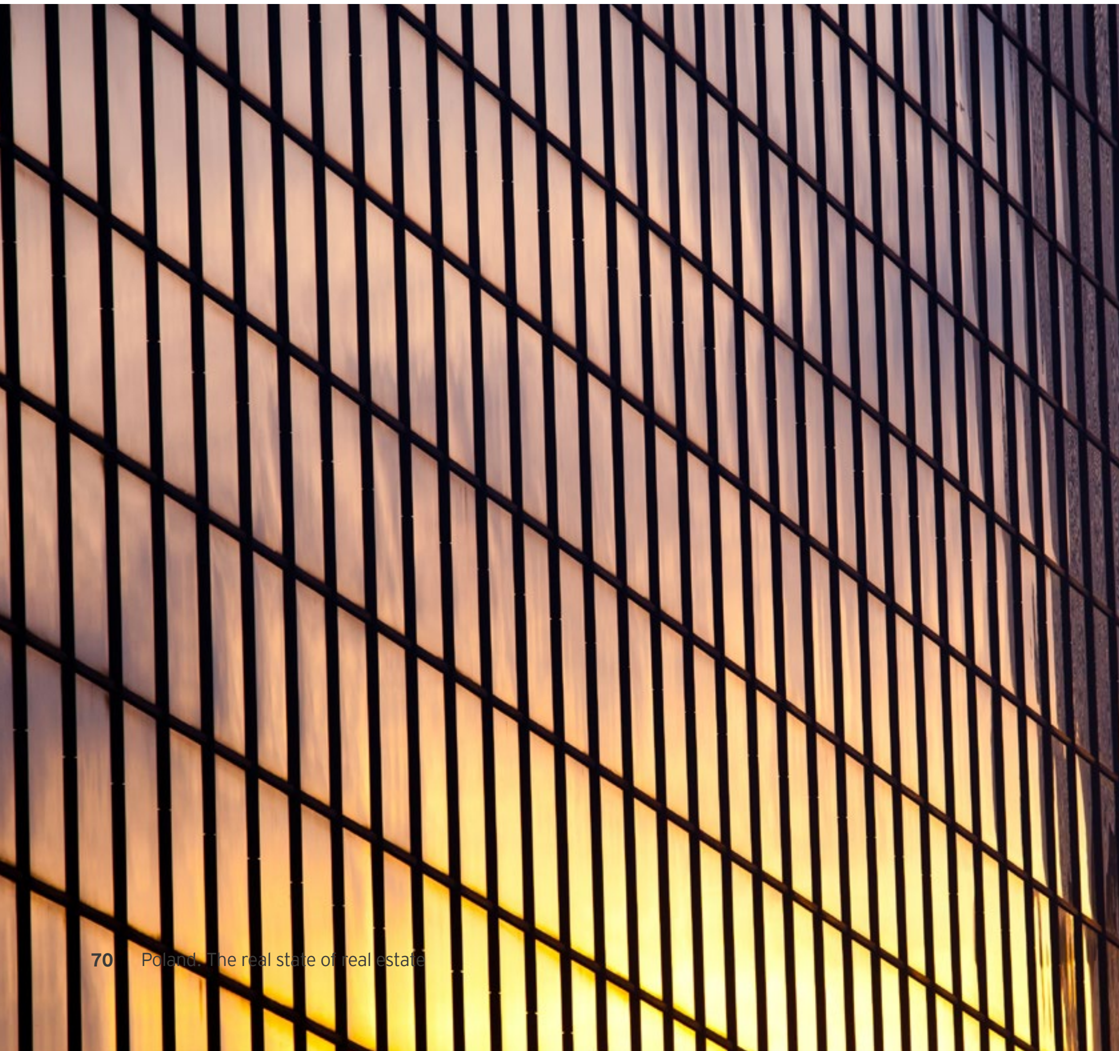
These rules will be modified as of 1 January 2023 to provide:

- full CIT exemption for profits from the transfer of shares in subsidiaries to unrelated entities as well as
- full exemption for dividends received from subsidiaries (including entities from outside of the European Union (EU)).

In order to benefit from holding regime, specifically the below conditions need to be met:

- Polish holding company shall operate in a legal form of limited liability company, simple stock company or joint-stock company

- Polish holding company shall not be a part of Polish tax capital group for CIT purposes, shall conduct genuine business activity and shall not be held by entity located in one of jurisdictions applying harmful tax competition / without double tax treaty or treaty on exchange of information with Poland
- Polish holding company shall hold 10% of shares in subsidiary for at least of 2 years.



2.1

Legal background

2.1.1. General remarks

In general, Polish real estate law provides quite clear and stable rules which allow potential investors to make well-founded decisions about entering into real estate transactions. Additionally, there are measures and institutions which enable investors to safely conclude transactions adapted to their needs and expectations.

Below we present key information on real estate law in Poland which constitute the base for other comments in this chapter.

2.1.2. Legal titles to real estate

The most common legal titles to real estate in Poland are the freehold rights, i.e. the ownership right and the perpetual usufruct right, obligation rights, such as lease, lease with the right to collect profits or leasing. Polish law also provides several limited property rights such as easements or usufruct.

Ownership right

Ownership (prawo własności) is the broadest right to real estate in Poland. As a rule, ownership comprises the right to possess and use real estate for an unlimited period of time and transfer or encumber the real estate. The ownership right may be limited by statutory law, principles of community life and the socioeconomic purpose of the right. The most common limitations result from construction law and local spatial development plans adopted by local authorities (municipalities).

Right of perpetual usufruct

Perpetual usufruct (użytkowanie wieczyste) is a right to use the real estate which may be granted by the State in relation to the land owned by the State or a local authority. In either case the respective entity (the State or the local authority) remains the owner of the land.

The perpetual usufruct right is similar to the ownership, however, there are several key differences:

- The perpetual usufruct right is created for a defined purpose (developing a project or conducting a specific activity) set out in the contract. If the perpetual usufructuary is in breach of these provisions, this may lead to an increase in the annual fees or even termination of the contract by the common court
- The perpetual usufruct right is created for a specific term, in principle for a period of 99 years (not less than 40 years).

The holder of the right may apply for extending the term of the perpetual usufruct for a further period of 40 to 99 years following the lapse of the initial period (to be refused only in case of important social interest).

- The perpetual usufructuary is obliged to pay to the owner a one-off initial fee which amounts from 15% to 25% of the total market value of the land and then an annual fee of up to 3% of the total market value of the land.

The rate of 3% is the basic rate provided by the law; however, there can be other rates (0.3%, 1%, 2%) applied to the real estate assigned for specific purposes, strictly listed in the legal provisions (e.g., 2% for tourists purpose).

Once created, the perpetual usufruct right can be inherited, transferred to third parties or encumbered (i.e. mortgage, easements). The holder of the perpetual usufruct right enjoys the right to use the real property and to draw benefits from it, e.g., rental income.

If the real estate transferred for perpetual usufruct is a piece of developed land, the buildings and other constructions erected thereon are sold to the perpetual usufructuary in addition to the establishment of the perpetual usufruct right. If the buildings are erected after the perpetual usufruct right is established, they also become the perpetual usufructuary's property. Separate ownership of the buildings due to the perpetual usufructuary is a right strictly connected with the right of perpetual usufruct and, in consequence, the buildings share the legal „lot" of the land. In particular, the ownership of buildings may be transferred only with the right of perpetual usufruct. Once the perpetual usufruct right expires, the holder of the right is entitled to a reimbursement corresponding to the current market value of the buildings and other improvements legally implemented on the land that is the subject of the perpetual usufruct right.

Conversion of the perpetual usufruct into ownership in general requires consent of an owner of a real estate (the State or a local authority) and is executed in a civil law sale agreement (buyout). However, selected perpetual usufructuaries (in particular natural persons), subject to certain conditions, may demand perpetual usufruct be converted into ownership in a simplified administrative procedure.

The conversion is subject to a fee which is equal to the difference between the value of ownership and the value of the perpetual usufruct right. On 1 January 2019 the perpetual usufruct of lands developed for residential purposes was converted into ownership right by virtue of law.

A new market-based model of payment for land sold to perpetual users - businesses, social organizations and citizens - is currently under development. The new legislation is expected to increase investor activity. Under the new regulations, public authorities will no longer be able to refuse to sell land to an entrepreneur who submits an application to do so. The draft introduces a model of payment for land sold to investors who were previously perpetual users. It will be based on a mechanism for determining the price based on the value of the property. The payment will be able to be reduced in accordance with EU state aid rules.

Leases

Polish law distinguishes between two types of leases: lease (najem) and lease with the right to collect profits (dzierżawa). Leases are used mainly for commercial and residential premises. Leases with the right to collect profits are used especially for industrial and agricultural property.
Under a lease agreement, the lessor undertakes to hand over the real property for the lessee's use for a fixed or non-fixed term, and the lessee undertakes to pay the lessor an agreed rent. The contract for lease with the right to collect profits, however, provides for the lessee's additional right to collect profits from the real estate.

Easements

Easements (służebności) over land are limited property rights which may be granted over a piece of real estate (encumbered property) for the benefit of another piece of real estate (master property). Depending on the content of an easement deed, the holder of the master property may be entitled to a limited use of the encumbered property (active easement), or the holder of the encumbered property may be restricted in the exercise of his own rights for the benefit of the master property (passive easement).

Polish law distinguishes between two types of easements:

- Ground easements, which are established for the benefit of the owner or perpetual usufructuary of the land and are transferred together with the property (whether that encumbered or the master property)
- Personal easements, which are established for the benefit of a natural person and are non- transferrable (nor can the right to exercise them be transferred).

The Civil Code also lists a separate category of easement, i.e. utility easement which may be established for the benefit of entrepreneurs being utility providers. A utility provider may ask the land owner to establish an easement over his land in order to install (and then operate and maintain) e.g. electricity cables, installations serving to supply and to channel liquids, gas, steam or other facilities. If the real estate owner refuses, the utility provider may demand that an easement be established in return for an appropriate remuneration.

It should be noted, however, that easements are not always disclosed in the land and mortgage register.

In consequence, the potential investor should verify whether such rights are not being executed by carrying out an on-site inspection, i.e. during a due diligence review.

Usufruct

Usufruct (użytkowanie) of real estate is a limited property right which allows its holder to use the real estate and collect benefits similar to those to which the ownership holder is entitled. The scope of the usufruct may be limited by specified profits being excluded, or to a designated part of the real estate. Usufruct is created by a contract. Usufruct is non-transferable, strictly connected with the usufructuary, so the right expires on the usufructuary's death (or liquidation, in the case of legal entities). Moreover, a usufruct expires if not exercised for ten years.

Usufruct is similar to lease with the right to collect profits, yet its legal nature is different. Usufruct, as a limited property right, is effective erga omnes (it is effective in respect of third parties) and lease with the right to collect profits is effective only between the parties to an agreement.

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2.1.3. Real property registers

There are two types of land registers in Poland: the land and mortgage register (księga wieczysta), the main purpose of which is to register titles and encumbrances over real estate and the land and buildings register (ewidencja gruntów i budynków), the main purpose of which is to describe the physical features and the use of the land and buildings.

Land and Mortgage Register

Land and mortgage registers are kept by district courts and provide information on the legal status of real estate, e.g., the location of parcels of land, the ownership status of land, encumbrances on the land, mortgages.

Land and mortgage registers are publicly available for review by anybody (even those with no legal interest) and may be also reviewed on-line, via IT system.

Entry of a right in the land and mortgage register is presumed to reflect the actual legal status of the real estate. Should there be any inconsistency between the legal status of real estate, the content of the register prevails in favor of the person who acted in good faith (rękojmia wiary publicznej ksiąg wieczystych). In consequence, if a purchaser acquires a property in good faith from a non-owner registered as owner, the acquisition is valid and the true owner cannot argue to the contrary. His only recourse is an indemnity claim against the vendor. In consequence, an excerpt from the land and mortgage register is the key document that should be obtained and analyzed before a decision to acquire real estate is made.

The public credibility warranty does not confer protection on gratuitous dispositions or those made in favor of the acquirer in bad faith. It is also excluded by a mention in the land and mortgage register concerning e.g., filled, but yet unexamined application to the register.

Land and Buildings Register

The land and buildings register is kept by local authorities and is a uniform collection for the whole country of systematized, updated data on land, buildings and premises, their owners and other natural persons and entities holding the land, buildings and premises.

2.2

Investment vehicles and structures

2.2.1. General remarks

Further to the Polish Commercial Companies Code of 15 September 2000 (hereinafter referred to as the Commercial Companies Code) the legal entities can be divided into two groups: partnerships and companies. There are two main differences between them: (i) generally, partners in a partnership take full responsibility for the partnership's liabilities (subsidiary responsibility) and (ii) partnerships are not legal persons, however, they may acquire rights and incur obligations.

Investing in real property is generally carried through separate entities - so called special purpose vehicles (SPV). Polish legal regulations do not impose any specific legal form for such an entity. Consequently, an entity organized in any form legally accepted in Poland may serve as an SPV, however in practice these most frequently operate as limited liability companies and limited partnerships, which will be presented below as constituting legal forms most commonly used by the investors.

There are two ways for an investor to introduce the SPV into its capital structure: the SPV may be bought or established by the foreign investor. There are numerous service providers offering the sale of established companies or partnerships (so-called „shelf companies"), that can be used straight away. However, this is always more expensive than setting up a new entity.

Apart from the legal forms mentioned above, a foreign investor may also operate in Poland and invest in real property:

- Directly through its branch.
- By entering into a joint-venture.

Partnerships

- General partnership
- Limited partnership
- Partnership limited by shares
- Professional partnership

Companies

- Limited liability company
- Joint-stock company
- Simple stock company

2.2.2. Limited liability company

A limited liability company (spółka z ograniczoną odpowiedzialnością) is commonly used as the SPV for real estate investments or development projects. The features of the limited liability company are set out in the Commercial Companies Code, the most important of them being:

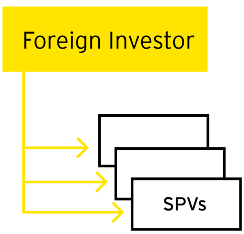
- it may be created by one or more persons for any purpose allowed by law (it may not be formed solely by another single-shareholder limited liability company)
- liability of the shareholders is limited to their contribution to the share capital of the company
- the share capital of the company shall amount to the minimum of PLN 5,000 (ca. €1,060) and is divided into shares of equal or non-equal nominal value
- the share capital can be covered by a contribution in-kind
- limited liability company is a legal person and as such, it is a party to specific rights and obligations
- it acts through its body, i.e. the management board; the members of the management board, in general, are not liable for the company’s liabilities.

The Commercial Companies Code provides for an institution of a „company in organization". This means, that a limited liability company set up by signing the articles of association may acquire rights on its own behalf, including the right of ownership of real estate and other rights, incur obligations, sue and be sued even before its registration with the registry court (which takes approximately 4 weeks since application to relevant court was filed).

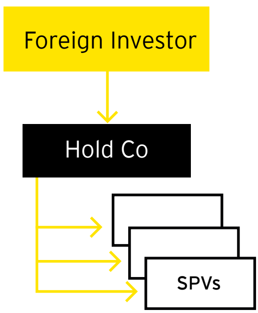
It is also possible to register a limited liability company with the registry court via the Internet, however this includes certain restrictions – limited possibility to form the contents of articles of association and exclusion of in-kind contribution.

The SPVs may be set up directly by the foreign investor, being the only shareholder. It is possible to establish several SPVs by the same shareholder in order to divide the investment risk between them. However, depending on the preferences of the investor and bearing in mind possible overall effectiveness, a simple one step structure may be enlarged and involve, for example, a holding company, abroad or in Poland, which manages the investment holds the shares of the SPVs.

One step structure with several SPVs, allowing diversification



A structure with a holding company, gathering several SPVs



2.2.3. Simple stock company

A simple stock company ("SSC") is easier to set up than a classic joint stock company, and it is also easier to exit from such form of investment. From the point of view of investors, the most important changes are:

- low share capital required to establish the SSC - 1 PLN;
- a flexible approach to SSC bodies, including the possibility of establishing a board of directors that combines the features of management and supervisory boards;
- simpler procedures and greater freedom to adopt SSC resolutions remotely by e-mail or instant messaging;
- possibility to establish the SSC via the Internet, in the governmental "S24: system;
- SSC shareholder register in digital form, maintained by a notary public or brokerage firm;
- easier disposal of SSC's funds - no "frozen" share capital;
- simple rules for liquidating the company and shorter time required for liquidation.

A SSC can be set up by a sole person or by more than one person. It will not matter if any of the persons setting up the SSC are already entrepreneurs. A simple joint stock company will also be able to be formed by legal entities, such as other companies. The only restriction is that a SSC cannot be formed by a single-member limited liability company.

An important novelty is the possibility to liquidate a SSC by transferring all the assets of the company to one of its shareholders. Such a resolution must be adopted by the general meeting of shareholders by a ¾ majority vote. The shareholder who takes over the company's assets is obliged to satisfy the claims of other shareholders and the company's creditors, if any. The final decision on the admissibility of such a takeover of the assets by one of the shareholders is made by the registry court.

2.2.4. Partnerships

The main features of partnerships are the following:

- Partners act in the name of the partnership
- Partners are responsible for the liabilities of the partnership
- The assets of the partnership include any property contributed to the partnership
- There are no minimum capital requirements (excluding the partnership limited by shares in case of which the minimum share capital amounts to PLN 50,000, i.e. ca. €10,600)
- Although it is not classified as a legal person, a partnership may acquire rights on its own behalf, including the right of ownership of real estate and other rights, incur obligations, sue and be sued
- In recent years the number of partnerships used for the purposes of investment structures significantly grew.

Limited partnership

A limited partnership (spółka komandytowa) is a partnership of which at least one partner is liable to the creditors for the obligations of the partnership without limitation (the general partner - komplementariusz) and the liability of at least one partner (the limited partner- komandytariusz) is limited to the value defined in the partnership agreement.

As a consequence, rights and obligations in the partnership should be split between two entities (limited partner and general partner). It is a common practice that the investor takes the role of the limited partner in order to avoid the full liability, whereas an additional limited liability company is established to serve as a general partner in the SPV. In case of limited partnerships also various structures may be involved, depending on the specific needs of the investor. Most commonly however, the limited liability company will possess a minority position in the SPV and will be a 100% subsidiary of the investor, nevertheless it may take specific functions in the SPV - e.g., management duties.

Partnership limited by shares

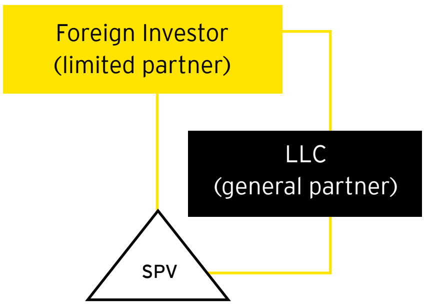
A partnership limited by shares (spółka komandytowo-akcyjna) conducts a business enterprise under its own business name, where at least one partner (general partner - komplementariusz) bears unlimited liability towards the creditors for obligations of the partnership and at least one partner is a shareholder (akcjonariusz).

Partnership limited by shares is the only partnership in case of which there are minimum share capital requirements, i.e. the share capital of at least PLN 50,000 (ca. €10,600).

The specific features of this entity results in two kinds of involvement in the partnership, the general partner represents the partnership and takes subsidiary responsibility for the partnership's obligations, while involvement of the shareholder is purely of a financial nature.

The partnership limited by shares is subject to some additional restrictions provided for by the Commercial Companies Code:

Structure with limited partnership



- In case of in-kind contributions the auditor's opinion is required
- Profit-sharing occurs in groups (separately shareholders and general partners).

	Limited liability company	Limited partnership
Legal personality	YES	NO
Can be established by a single shareholder/ partner	YES (NO if to be established by a LLC, which has only one shareholder itself)	NO
Can acquire real property	YES	YES
The shareholders/ partners are personally liable for the company's debt	NO	general partner – YES limited partner – NO
Minimal share capital	5.000 PLN (ca. €1,060)	NO
Management board	obligatory	NO
Supervisory board	voluntary*	NO
Taxation of income (from exploitation or sale of assets)	19%/9% at the company level	19%/9% at the partnership level
Taxation of the distribution of income to shareholders / partners	19% under certain conditions there can be relief for shareholders who are legal persons (based in Poland or in the EU/ EEA). Reduced rates for foreign shareholders on the basis of double taxation treaties (depending on the treaty).	19% - expected that under certain conditions there can be relief for partners who are legal persons (based in Poland or in the EU/ EEA). Reduced rates for foreign partners on the basis of double taxation treaties (depending on the treaty). Practice to be observed.

	Limited liability company	Limited partnership
Civil law transaction tax on shareholder / partner loans	NO	0.5% on the value of the loan payable by the partnership
Applicability of interest deduction limitation rules	YES	YES
Ability to offset profits and losses from various projects (carried out in separate companies/ partnerships)	NO only in the case of establishing a tax capital group	NO
Taxation in Poland of the sale of shares in the company / partnership	19% possible relief for foreign shareholders on the basis of double taxation treaties (depending on the treaty), but rather rare for real estate rich companies under most of modern tax treaties	19% possible relief for foreign shareholders on the basis of double taxation treaties (depending on the treaty), but rather rare for real estate rich companies under most of modern tax treaties

Tax features

Due to CIT law changes, from 1 January 2021 limited partnerships shall be treated as CIT taxpayers in Poland. In a similar manner, general partnerships shall be subject to CIT in Poland where partners (who are not exclusively individuals) in such a partnership are not disclosed to the tax authorities. Partnerships limited by shares are CIT taxpayers already since 1 January 2014.

Partnerships pay other taxes, such as VAT, real estate tax, and civil law transaction tax, and they may pay withholding taxes (e.g. withholding tax on interest and royalties as well as withholding tax on remuneration paid to individuals, as a tax remitter).

The table above compares the business and taxation aspects of the limited partnerships and limited liability companies:

Due to changes to regulations, tax attributes of limited liability company and limited partnership in an investment structure become similar with some minor differences such as:

- The general partner is entitled to reduce the amount of tax by an amount corresponding to the tax paid by the company attributable to his share in the company's profits
- Exemption of up to 50% of the limited partner's income from taxation but not more than 60k PLN.

Cross-border structure

Typically, foreign investments are structured in such a way that the overall level of taxation of the financing, exploitation, and potential capital gain is appropriately managed, seeking to avoid double taxation.

The tax treaties concluded by Poland should prevent double taxation. Investigating the tax treaties and the applicable rules in the different relevant jurisdictions will help to determine what structure, given the specific circumstances, should be arranged.

Additionally, bearing in mind the general anti avoidance regulation introduced to the Polish tax regulations and CFC („Controlled Foreign

Company”) rules, the cross border investments should be each time carefully examined and properly structured also from the business perspective to ensure their effectiveness from the tax point of view.

2.2.5. Joint venture

Polish legal regulations do not provide any definition of a joint venture, nevertheless, it is a useful solution to combine entrepreneurs’ efforts in achieving the common goal.

The joint venture constitutes cooperation of two entities resulting in setting up a new company (the investment on such basis is carried through the given company, as described before) or it may be only a very close cooperation between the two entities, which allocate capital for activities implemented jointly by sharing costs and revenues under a joint venture contract, without creating a separate business entity.

The objectives for the creation of joint ventures are:

- Gaining access to new markets
- Synergies
- Risk diversification
- Achieving economies of scale
- Gaining access to cheaper sources of supply and cheaper financing
- Joint development and sharing of technology
- Overcoming barriers and administrative duties created by the country of one of the partners.

2.2.6. Investment Fund - closed-end fund

The sole object of the investment fund's activity is to invest the monies acquired from the participants in shares, securities, money market instruments and other property rights - including real property.

The Act of 27 May 2004 on the Investment Funds differentiates in general between Open-End Investment Fund and Closed-End Investment Fund (hereinafter referred to as FIZ).

FIZ is a legal person. The primary principle of the FIZ is the fixed number of participation titles (investment certificates) issued in exchange for contributions made by its participants (investment certificate-holder). FIZ does not issue participation titles on every demand of an investor as is the case with the open-end investment funds, but rather in discretionary periods of time. In order to subscribe for investment certificates, the participant has to make a contribution to the FIZ. Generally, the participants may contribute to the FIZ cash, shares or real estate.

The FIZ's bodies are the Management Company, the Board of Investors (controlling body) and General Investor's Meeting.

The Management Company (Towarzystwo Funduszy Inwestycyjnych) is a legal entity separate from the Investment Fund. According to the legal provisions only a joint-stock company with its registered office in Poland holding authorization to conduct the activities related to creating investment funds and managing them issued by the Polish Financial Supervision Authority (Komisja Nadzoru Finansowego), may be an investment fund management company. This means that the Management Company carries out its activities on the basis of the permit issued by the Polish Financial Supervision Authority and under its supervision.

A Management Company may be formed by an investor, however, it is common practice that already existing Management Companies are engaged to take this role. In such a case an investor makes an agreement with a Management Company.

Consequently, the investor only holds investment certificates in the FIZ and through this structure invests in particular property.

The Management Company fulfils two primary functions: (i) at the beginning - it acts as a founder of the FIZ, (ii) when the FIZ is established and registered - it becomes its governing body (represents FIZ in transactions with third parties).

In accordance with the Act on Investment Funds, the Management Company shall be liable to the participants in the FIZ for all the damage caused by the failure to perform or improper performance of its duties as regards the management of the FIZ and its representation.

The above shows that the structure needed to implement FIZ is complex and requires:

a) engaging a Management Company,

b) establishing an FIZ,

c) establishing the operating companies, which may acquire the real property.

Establishing a FIZ structure has important advantages. First of all, it allows for additional financing for the investments to be raised by selling investment certificates. This may be very useful in entering in larger, long-term real property investments.

Until the end of 2016 the use of this structure, if properly implemented, could have led to deferral, or even exemption from taxation, of the operating and capital gains generated from real estate, as FIZ was generally exempt from CIT in Poland.

Similarly, a foreign investment fund established in the EU or EEA country could be used (the Polish CIT law in force from 1 January 2011 provides for such a possibility explicitly).

Due to changes that came into force as of 1 January 2017, income of FIZ or a foreign investment fund resulting from:

- A share in profit generated by tax transparent entities
- Interest on loans issued to tax transparent entities and interest on those entities' other liabilities towards the fund
- Interest on a share in tax transparent entities
- Donations/ gifts or other free or partially free benefits from tax transparent entities
- Interest (discount) on securities issued by tax transparent entities
- Transfer of securities issued by tax transparent entities or shares in such entities.

is no longer CIT exempt. Set-up of the structure designed for real estate holding which could benefit from the CIT exemption is, therefore, even a more complex exercise than before.

2.2.7. Real estate investment trusts

General remarks

Real estate investment trust (hereinafter referred to as REIT) is a fund investing in commercial real estate, guaranteeing a regular dividend for investors. According to the European Public Real Estate Association, the average dividend funds in Europe for the period 2010- 2015 amounted almost 5 percent. Worldwide, REITs offer investors many advantages: high liquidity and rate of return, exemption from corporate income tax and, finally, a regular dividend of up to 90-100 percent of profit.

However, despite the extensive legislative work carried out in the previous years, this form of investment has not yet been regulated by the Polish law.

2.2.8. Public-private partnership

General remarks

Public-private partnership (hereinafter referred to as PPP) is one of the rising forms of cooperation between public authorities and the private sector. It allows for an increase in the efficiency of public services through the use of private sector experience and for the sharing of risk between public and private entities.

PPP enables a mutual advantage for the public and private sector - for public entities it guarantees an additional source of capital and as a consequence provides the public sector - with funds to allocate for other purposes. On the other hand, the public sector may provide to private investors the long-term certainty of cash flows from public sources.

In Polish law the legal framework for PPP is established by two acts that regulate the cooperation between public entities and private partners:

- The Act of 19 December 2008 on Public-Private Partnership, hereinafter referred to as the Act on Public-Private Partnership
- The Act of 21 October 2016 on Concession for Works and Services, hereinafter referred to as the Act on Concessions, which has replaced the previous Act of 9 January 2009 on Concession for Works and Services.

The main similarities between the Act on Public-Private Partnership and the Act on Concessions are as follows:

- Cooperation between a public and private partner
- Private partners receive payments for the service rendered
- Constitute a special form of tender agreements.

A competent authority in the matter of public-private partnership to the extend regulated in the Act is the Minister competent for regional development. However, according to the recent amendments, issues related to the preparation or implementation of projects under public-private partnership may be entrusted to Polish Development Fund S.A.

Selection of the private partner

The Act on Public-Private Partnership basically distinguishes two ways of selecting the private partner. The ways of selection depend on the type of the private partner’s remuneration and are as follows:

- If the remuneration of the private partner is represented by the right to exploit the work or services that are the subject of the contract or in that right together with payment selection of the private partner shall be done applying the Act on Concessions subject to provisions of the Act on Public-Private Partnership
- In other cases, the selection of the private partner shall be done applying the provisions of the Act of January 29, 2004 on Public Procurement Law (hereinafter referred to as Public Procurement Law) subject to provisions of the Act on Public-Private Partnership.

In cases where the Act on Concessions and Public Procurement Law do not apply, the selection of the private partner is made in a way that ensures the maintenance of fair and free competition, as well as the principles of equal treatment, transparency and proportionality. If the public partner brings in real estate as its own contribution, the provisions of the Act of August 21, 1997 on the Property Management (hereinafter referred to as the Act on Property Management) must be taken into account.

Implementation of PPP

Pursuant to the Act on Public-Private Partnership public and private entities conclude an agreement under which the private partner commits itself to implement the project at an agreed remuneration and to cover in whole or in part the expenditures for project implementation, or cover them through a third party, while the public entity commits itself to collaborate for the purpose of achievement of the project goal, in particular by making its own contribution. The PPP contract can also provide that for the purpose of its performance, the public entity and the private partner shall establish a company, or the private partner can join the company established by the public entity.

Financial restrictions

The total joint amount up to which bodies of government administration can contract financial liabilities on the basis of contracts of PPP in a given year is specified in the Budget Act.

However, as a rule, the financing of a project from the State budget to the amount exceeding PLN 500 million requires a consent issued by the minister responsible for public finance. When issuing the consent the minister responsible for public finance shall consider the influence of the planned budget expenditures on the safety of public finance.

The concession contract - legal basics

The Act on Concessions specifies the rules and procedures for contracting concessions for works or services and the legal protection measures.

The duration of a concession contract should take into account the recovery of the concessionaire's expenditure incurred with reference to the performance of the concession. A concession contract is concluded for a limited period.

The concessionaire under the concession signed with the concession-granting authority is obliged to perform the subject of concession for remuneration, which constitutes in case of:

- The concession for works - exclusively the right to exploit the works that are the subject of the contract or in that right together with payment by concession-granting authority
- The concession for services - exclusively the right to exploit the services that are the subject of the contract or in that right together with payment by concession-granting authority.

2.3

Real estate financing

2.3.1. Modes of financing the SPVs / investments

The most important thing in starting investments, is to provide financing for the SPVs, so they can operate and develop real property.

There are several methods of financing the company, some funds can be received from outside, but some may come from the capital group - e.g. from the parent company. In many cases both solutions are possible.

Loan and credit agreement

By loan agreement a lender undertakes to transfer the ownership of a certain amount of money to a borrower, while a borrower undertakes to return the same amount of money . Loans can be granted by any entity / person and may be relatively freely regulated by the parties.

A credit agreement is a specific kind of external financing, which is regulated by the Banking Law of 29 August 1997 and can be granted only by banks. By a credit agreement a bank agrees to provide a specific amount of money for a specific purpose and time, and the borrower agrees to use the credit for its intended purpose, and pay back the amount of credit along with due reward in the form of bank interest.

On the financial market there is a wide choice of bank credits and their price depends on various factors as: duration, available collaterals, financial condition of the borrower. Additionally, banks may charge the borrower with a different fees such as, for instance, a preparation (origination) fee for all work connected with the preparation of the credit, or a commitment fee for and undrawn portion of the credit. Banks also generally require certain collaterals for the credits. Among others, the most popular are:

- Mortgages
- Share pledges
- Asset and bank account pledges
- Powers of attorney to bank accounts
- Security assignments of receivables of the borrower
- Notarial submissions to execution
- Subordination agreements.

A mortgage is the common form of security required by Polish banks - especially required in real estate financing transactions.

Mortgage shall be defined as a right, under which the lender (creditor) may satisfy his claims from the property, regardless who is the current owner of the property, and with priority over other personal creditors of the borrower, whose credits are not secured with mortgage.

A mortgage becomes effective after entering in the Land and Mortgage Register. The entry takes effect at the date of filing, so even though the registration may take several months, market practice is such that banks pay out the amount of the credit before the entry takes effect but upon receipt of confirmation of filing of the application for registration of a mortgage in the Land and Mortgage Register.

A mortgage is a very secure solution for the bank, as in the case of the debtor not being able to pay off his debt, the real property may be sold in a public auction and thus, the bank may retrieve the whole amount of debt.

Shareholder's loan

A loan from shareholders has two important advantages over the bank loan. First, it is in general a cheaper solution and what is more, it does not bare the risk of enforcement in case of difficult financial situation of the borrower.

Bonds

Bonds can be issued by a legal entities, including legal entities from outside the territory of Poland if they conduct business activity or has been established in order to issue bonds, a partnership limited by shares, credit unions, local government units and financial institutions. Bonds can be defined as securities that are issued in series and certifies that the issuer is a debtor of the bondholder and assumes an obligation towards the bondholder to provide specified benefits. Bonds may be either registered or bearer bonds.

The advantage of this form of financing is the ability to fairly freely determine the benefits that are associated with bonds.

The construction of the bonds does not have to be limited to a simple financial benefit in the form of repayment of the bonds plus interest representing an income of the bondholder. While issuing bonds, the company is free to formulate the gratification to be provided to bondholders, such as the possibility of participating in profits of the company, or the conversion of bonds into shares.

The bonds may be distributed on an open market (by way of a public offering), in search for an outside financing, or serve as a mode to transfer funds from another related company. It should be noted that there are several companies in the real estate sector listed on the Polish bonds' open market.

In the case of SPVs which aim to obtain financing from the shareholders, the gratification (a mutual benefit) to the parent company as a bondholder will be of secondary importance. A practical solution is that if the SPV generate future earnings from real property, bonds could entitle bondholders to participate in the profit.

Due to the high degree of freedom in the framework of this instrument, it is very recommended as an optimal way to bring the funds downwards.

We would like to note, however, that the issuing of bonds creates additional obligations for the bond issuer, related to providing data to assess the financial condition of that entity. Additionally, if the issuer operates for more than a year, it is required to provide financial statements prepared as at the balance sheet date, no earlier than 15 months before the date of the publication of the terms of issuing the bonds, along with the auditor's opinion.

Promissory notes

In order to obtain financing SPVs may issue promissory notes.

A promissory note may include a deferred payment date. It should have a clearly defined due date, in the form of a calendar date. There are exemptions from this rule - e.g. an 'a vista' promissory note - which provides that the payment is made on demand from the payee or within a certain period after the demand. Additionally, an 'in blanco' promissory note allows a payee to fill in (at its own discretion) - the conditions of such promissory note (e.g. date of payment) within the scope foreseen by a mutual agreement.

The obligation from the promissory note does not have to be accompanied by any other legal relationship that it secures. It means that the holder has an unquestionable claim from promissory note, even if, for example, promissory note liability was not based on any other particular obligations - such as loans.

Similarly as in the case of the loan agreement, the issuer of a promissory note becomes a debtor. With the use of a promissory note, SPVs can easily obtain funds from the parent company in a less formal, quicker way and easily settle the debt in any suitable timeframes.

Increase of share capital

Raising capital is a common way of financing companies. It can be carried by increasing the nominal value of the shares existing or creating new ones; both ways lead to an increase of the share capital.

This process is associated with either changes in articles of association (a formal mode that requires filing the changes in the articles of association with the National Court Register) or an increase based on the current provisions of the articles of association (informal mode).

The aim is to change the capital structure of the company by defining the share capital at a higher than current level. To cover the increase of the share capital, the funds may be paid in cash or in-kind contributions can be made.

The capital increase is a more formal process in comparison to the additional contributions (referred to below) and loans, but the advantage of this form of financing is the ability to contribute in various forms, such as cash or in-kind.

A significant drawback of this method of financing SPVs is relatively difficult process of withdrawing the invested capital.

This is carried through the reduction of share capital (Articles 263 - 265 of the Commercial Companies Code), which involves again additional costs (notification, registration) and is time-consuming (e.g. includes three months for objection to the reduction that can be brought by creditors).

Additional contributions

This method of financing is provided by the Commercial Companies Code, but it is applicable only to the limited liability company. According to the provisions, the articles of association of the company may require the payments (additional contributions) from the shareholders in a specific amount paid by the shareholders in proportion to their shares. In fact, it is worth noting that partnership agreements can also oblige the partners to additional payments - such a solution is possible based on the freedom of contract principle.

Payments of additional contributions in a limited liability company do not affect the value of shares in the share capital of the company, and therefore the share capital of the company remains unchanged after the additional contributions. The payments increase the company's own funds, which are thus quite freely allocated for the specific need, and this is certainly beneficial for the SPV.

2.3.2. Tax implications

Equity financing versus debt financing

Below we present the main differentiating factors when considering the two form of financing the investments.

	Equity financing	Debt financing
Forms of financing	Capital injection In-kind contribution Additional payments to share capital	Shareholder loans Bonds Other debt instruments
Receipt and repayment subject to income taxation?	NO Equity financing is generally subject to a 0.5% civil law transaction tax on share capital increase. Contributions to a reserve capital (share premium) should not be subject to civil law transaction tax. The tax must be paid within 14 days of the date of the agreement. The tax liability rests with the company.	NO Loans are generally subject to civil law transaction tax at the level of 0.5% of the loan principal. The tax must be paid within 14 days of the date of the loan agreement, and the tax liability rests with the borrower; several exemptions apply: • Loans granted by shareholders to a limited liability company or joint stock company • Loans granted by foreign entities which are engaged in credit and financing activities (such as group treasury companies) • Loans recognized as an activity subject to Polish or foreign VAT (e.g. bank loans) • Bonds issuance is generally not subject to civil law transaction tax.

	Equity financing	Debt financing
Rights	Shares in the company give shareholders the right to control the company and the right to financial benefits from the company.	Creditors have the right to interest, as a rule no control nor participation in profits.
Forms of repatriation of funds	Dividend Redemption of shares Liquidation proceeds	Interest
Deductibility of payments for tax purposes?	Generally NO Exception: there is a possibility to deduct from the taxable base of the hypothetical costs of obtaining external funds in case the company receives funding in the form of additional payments to equity or retained profits are used. Capital financing costs cannot exceed PLN 250k in the tax year. This notional interest deduction applies from 2020 (including also retained earnings from 2019).	YES Subject to interest limitation rules (see below)
Withholding tax (see also additional remarks below)	19% This rate may be reduced or eliminated based on relevant tax treaty concluded by Poland.	20% This rate may be reduced or eliminated based on relevant tax treaty concluded by Poland.

	Equity financing	Debt financing
Applicability of exemptions under EU directives? (see also additional remarks below)	YES EU Parent-Subsidiary Directive (EU PSD), subject to conditions: ‣ The entity receiving the dividend is taxed in another EU / EEA country (or in Switzerland) on its worldwide income (and is not subject to tax exemption on its total income) and ‣ Has held or will hold at least 10% (in the case of a company resident for tax purposes in Switzerland, at least 25%) of the shares in the Polish company paying the dividend for at least two years; this condition can be met prospectively. If the condition to hold the amount of shares for an uninterrupted period of two years is not satisfied, withholding tax (as a rule at 19%) together with the penalty interest for late payment will be due ‣ The legal title for the holding must be ownership rather than any other legal title	YES EU Interest Royalties Directive (EU IRD), subject to conditions ‣ Interest is paid to a related EU / EEA company which holds directly at least 25% of shares of the paying company for an uninterrupted period of 2 years (or the lender and the borrower have a common parent company which directly holds 25% of shares in each of them). The preferential rate should be also applicable in the case where the period of two years of continuous holding of shares lapses after the day of interest payment ‣ Interest recipient is not subject to income tax exemption, applicable to all revenues regardless of the place where they were acquired ‣ The relevant DTT or another international agreement (concluded between countries of the payer and the recipient tax residency) stipulates rights on Poland to demand tax information from the tax authorities of the country of residence of the interest recipient

	Equity financing	Debt financing
Applicability of exemptions under EU directives? (see also additional remarks below)	▸ The double tax treaty or another international agreement vests rights on Poland to demand tax information from the tax authorities of the country of residence of the dividends' owner or the country in which the dividend income is received ▸ The recipient is a beneficial owner of the payment. Irrespective of the EU PSD "pay-and-refund" mechanism is applicable to dividend payments subject to WHT in Poland (unless additional measures are taken).	▸ The recipient is a beneficial owner of the payment. The EU Interest-Royalty Directive rules only applies as long as the interest is set at a market level. Consequently, any off-market portion of interest can be subject to withholding tax at the standard 20% rate (instead of the treaty-reduced rate / WHT exemption) in Poland. Irrespective of the EU IRD "pay-and- refund" mechanism is applicable to certain – including interest and royalties – payments subject to WHT in Poland (unless additional measures are taken).

Additional remarks

As of 1 January 2022 dividend, interest and royalty payments made to foreign related parties are subject to a "pay and refund" regime instead of a relief at source, meaning that a Polish entity remitting a dividend, interest or royalty payment to a related party is obliged to withhold tax at a standard rate (19% on dividends, 20% on other payments), and the recipient may apply for WHT refund.

WHT exemption or application of a lower WHT rate will be possible in a limited number of cases where a Polish remitter will submit to the tax authorities statement confirming that all conditions for the relief are met (such statement may, however, trigger personal criminal penalties and additional tax liability) or tax authorities will issue a clearing in a form of a special tax opinion. The pay and refund system is triggered when the total amount of qualified payments made to a foreign taxpayer exceeds PLN 2m (ca. EUR 430k) annually.

The relief at source regime should be still available for qualified payments below this threshold and i.a. for payments made to third parties.

The Polish company distributing the dividend or paying out interest to non-residents can be held liable for mistakes, e.g. if it applies an incorrect tax rate.

A certificate issued by a foreign local tax office confirming the tax residence of the foreign dividend / interest beneficiary must be obtained by the Polish company in order to allow application of the lower withholding tax rate or exemption. An additional requirement is that the Polish entity paying dividends / interest should also hold a written confirmation from the recipient that the latter does not benefit from tax exemption on its worldwide income, if the exemption is to apply.

In addition, Polish tax remitter is obliged to assure due diligence when making payments subject to WHT and must follow definition of a beneficial owner (which entails, among others, that a recipient carries out genuine business activity).

Dividends, interest and royalties would not benefit from the EU Parent-Subsidiary Directive or the EU Interest-Royalties Directive based tax exemption if such payments are connected with an agreement, a transaction, or a legal action or a series of related legal actions, where the main or one of the main purposes was benefitting from these tax exemptions and such transactions or legal actions do not reflect the economic reality. For the purpose of the above rule, it is considered that a transaction or a legal action does not reflect the economic reality if it is not performed for justified economic reasons, but results, in particular, in transferring the ownership of shares of a dividend paying entity or in earning revenue by that entity which is then paid as a dividend. As there is no well-grounded practice regarding actual application of similar provisions, details of each structure should be analyzed carefully to determine and address potential issues with taxation of dividends.

Dividends paid between companies which are resident in Poland for tax purposes may be exempt from withholding tax provided that the dividend recipient has held or will hold (on or after the day when the dividend is received) at least 10% of shares in the dividend paying company for at least two years.

If the conditions for exemption are not met, non-creditable withholding tax is levied on dividends at the rate of 19%.

Redemption of shares and liquidation distributions

The redemption of shares and the return of equity to shareholders are permitted under Polish law. The formal procedure is time-consuming and usually takes several months.

Standard, voluntary redemption of shares is subject to the same tax treatment as disposal of shares. It means that as a rule such redemption will be subject to tax in Poland, unless relevant double tax treaty provides for tax exemption.

Other than voluntary redemption of shares (compulsory redemption of shares) is taxed in the same way as dividends and is subject to the applicable withholding tax (taking into consideration the appropriate tax treaty).

Liquidation proceeds are subject to the same tax treatment as dividend, but any withholding tax relief can only be sought under a relevant tax treaty.

The Polish CIT provisions explicitly state that in case of in kind remuneration for settling the liability (e.g. upon shares redemption or in kind dividend payment) the value of liability settled in such a way constitutes a taxable revenue of the paying entity. This applies respectively also to look through entities.

The distribution in-kind of liquidation proceeds would be also seen as a taxable event in Poland for the entity that is liquidated (deemed sale of distributed assets).

Tax deductibility of interest paid on loans

Generally, interest on loans is deductible for tax purposes when actually paid or compounded (added to the principal so that it constitutes a basis for new interest calculation), i.e. accrued interest may not be treated as a tax deductible cost until it is actually paid or compounded.

As of 1 January 2022, interest on loans drawn from a related lender to acquire shares (and several other capital transactions) in a Polish company should be treated as tax non-deductible. Please note that already since 1 January 2018 interest deductible against operating profit of an acquired entity (as a result of any „debt push down" strategies) is not deductible. In lack of grandfathering rules, also interest resulting from "debt push down" reorganizations performed before 1 January 2018 are disallowed as of that date.

It is important to note that interest accrued during the development of real estate on the part of the loan used to finance that development is not directly deductible.

The cost of such interest should be added to the initial value of the newly developed real estate (i.e. the new building) in order to increase the basis of its future depreciation for tax purposes (to the extent such depreciation write offs are deductible in light of new limitations discussed above). However, this rule applies only to real estate which is the company's own fixed asset. It does not apply to projects constructed for resale (e.g. residential projects). In such cases, based on the practice of the Polish tax authorities interest may be treated as tax deductible under the general rules (although the practice was changing in this respect over the years).

Level of interest

The Polish tax authorities are usually interested in the conditions of loan agreements concluded between related parties. These conditions should be the same as, or comparable to, the sort of financing conditions which non-related parties would agree upon, in accordance with „the arm's length principle". Too high an interest rate could lead to an adjustment of the Polish borrower's taxable income.

In addition, other conditions in the loan agreement which are unjustifiable or unfavorable to the borrower could result in further tax adjustments. According to regulations governing the documentation of transactions between related parties, taxpayers are required to prepare specific transfer pricing documentation.

Additionally, any interest on debt which exceeds maximum amount of a taxpayer's credit capacity acceptable by a third party creditor is disallowed (so called "arm's length credit capacity").

Restrictions on the tax deductibility of interest paid on loans

Net financing costs (i.e. financing costs offset with interest revenue) are limited to 30% of tax adjusted EBITDA.

The limitation covers all financing (including historic debts that used to benefit from earlier thin capitalization regimes). The limitation also applies to third-party (e.g. bank) financing. Limitations apply if the net financing costs exceed PLN 3m (ca. €660k) annually. Non-deductible costs can be carried forward for 5 years.

Until 2021, the court judgements took an approach positive for the tax payers claiming that the limit should amount to 30% EBITDA plus PLN 3m per annum. As of 1 January 2022, the tax law clearly stipulates that the limit should be calculated as an alternative (the higher of 30% of tax adjusted EBITDA or a safe harbor of PLN 3m per annum).

Foreign currency financing

As the foreign currency liabilities are reported for accounting purposes in PLN, foreign exchange differences (gains or losses) accrue in the accounting books of the Polish company. Foreign exchange differences accrue also on loan liabilities in PLN denominated in foreign currencies. These gains or losses are recognized for tax purposes only when realized, i.e. when the related liability is paid or set off (or when the due interest is compounded) and should be allocated to appropriate revenue basket. However, audited companies can report foreign exchange gains or losses in accordance with accounting standards upon notifying the tax authorities, provided that such reporting in accordance with accounting standards will continue for a period of at least three tax years.

2.4

Acquisition of real estate - asset deal and share deal

2.4.1. General remarks

As many other jurisdictions, Polish law provides different methods of acquiring real estate by an investor, among which an asset deal and a share deal are the two most commonly used

Both methods bear various legal and tax consequences which have to be considered in any given case and therefore there is no generally accepted rule when a share deal or an asset deal shall be applicable. The interests of the seller and the buyer, the particulars of the case and the power of each party to negotiate have to be considered while choosing one of these two forms.

In practice, if a share transaction is properly structured, this can be the most tax efficient disposal method to use. In some corporate structures, taxes on capital gains may not apply or in some cases may be deferred.

From the buyer's perspective, it is usually more tax efficient to buy the property directly than to buy shares in a company holding the property. The buyer can then depreciate as much as the real market value of the building for tax purposes (subject to general limitations regarding tax depreciation). On the other hand, if the shares are bought at a higher price than the book value of the company's assets, goodwill paid in return for the shares can be recognized for accounting purposes. Unfortunately, such goodwill cannot be amortized for tax purposes. Furthermore, a company owning real estate with a low book value has a deferred tax exposure with respect to any future capital gains made on the disposal of that real estate. Thus, the buyer of shares will most likely try to negotiate a discount on the transaction price to eliminate this negative tax aspect.

The purpose of this chapter is to outline the main features of these two types of real estate transaction from both the legal and tax perspectives, and to examine the consequences of each structure.

2.4.2. Legal aspects

Methods of acquiring real estate by an investor

Asset deal

Purchaser acquires all or some of the assets of the company. It is possible to divide out certain elements, such as real estate and acquire only those parts.

Share deal

Transaction involving acquisition of shares in a company as a result of which the buyer purchases the whole or a part of the shares in the share capital of the company (i.e. the target company)

Definition of a share deal and asset deal

Despite the fact that the share deal and asset deal are equally popular, their object and manner of conducting are different.

The key differences between these two methods of acquisition concern the extension and nature of purchased items and are presented below.

- A share deal is defined as a transaction involving acquisition of shares in a company as a result of which the buyer purchases the whole or a part of the shares in the share capital of the company (i.e. the target company)

- An asset deal is where the purchaser acquires all or some of the assets of the company. Unlike a share deal, in an asset deal it is possible to divide out certain elements, such as real estate and acquire only those parts.

Representations and warranties

In order to secure the purchaser's interest extensive representations, warranties and related indemnities should be included in the share purchase agreement. The scope of warranties and representations as well as detailed legal consequences of their breach have to be regulated in the sale agreement in details as Polish law does not provide for a specific legal regulation of this issue.

- In an asset deal, the seller's representations and warranties concern, in particular, the validity of the seller's title to the real estate, the information regarding encumbrances (if any), the statement confirming that the development has been carried out in accordance with the binding provisions of law and technical plans and that relevant permits are valid
- The seller's representations and warranties in a share deal usually include the representations and warranties typical for an asset deal regarding real estate, but also extensive representations and warranties relating to all aspects of the company's activity: in particular tax, employment, accounting, corporate and contractual matters.

It is recommended that the sale agreement provides for specific instruments supporting the enforceability of the indemnities securing the representations and warranties. In market practice, part of the purchase price is retained in an escrow account or a bank guarantee is obtained from the seller.

Types of agreements

There is a number of documents related to both transactions. Usually, in order to clearly state the intentions, goals to achieve during negotiations and the key principles of the transaction, the parties sign a letter of intent prior to signing the real estate purchase agreement.

Transfer of the property-related rights

In many transactions, it is necessary to obtain various types of consents or permits regarding the transfer of the rights related to the property, the lack of which may affect the legal effect of the entire transaction.

In the share deal the purchaser does not obtain any direct rights to the assets as these remain the property of the target company. Consequently, the property- related rights and obligations (such as leases, property management agreements, warranty claims under construction contracts and contracts of insurance, permits) remain with the corporate entity holding the real estate and no formal assignment is required.

In the asset deal, except for the lease agreements, the property-related rights and obligations are not automatically transferred as a result of the sale agreement. The lease agreements are transferred automatically with the acquired asset. As regards the remaining agreements, as for the formal assignment, it is, in general, necessary to obtain the consent of the other party of each contract. In case of licenses, decisions etc. it should be analyzed case by case what actions have to be undertaken in order to transfer them to the purchaser. This means that the ability to assign the property-related rights or assuming the obligations is examined individually, in light of specific regulations or contractual provisions, which may prevent or restrict transferability.

Therefore, a share deal is a type of transaction usually considered by investors when the target company conducts regulated activity as all permits required for its operation stay in the company.

Potential restrictions related to the sale of a property

In case of transactions involving real estate, several restrictions resulting from applicable legislation may apply. As a general rule, transactions structured as assets deals are more likely to be subject to a greater number of such restrictions. These include as follows below.

A. Merger clearance

Due diligence review preceding any asset or share deal should answer the question whether the legislation governing merger control will be applicable, in particular, whether a notification of the transaction to the Office of Competition and Consumer Protection is required. Should such notification be required, the closing of the transaction must be suspended until the clearance of the President of the Office of Competition and Consumer Protection is granted.

A notification on the planned transaction to the Office of Competition and Consumer Protection is required if any of the following conditions is met:

- The combined worldwide turnover of undertakings participating in the concentration in the financial year preceding the year of the notification exceeds the equivalent of €1 billion or
- The combined turnover of undertakings participating in the concentration in the territory of Poland in the financial year preceding the year of the notification exceeds the equivalent of €50 million.

However, the Polish antitrust law provides for certain exceptions from the obligation of notification even if the above conditions are met, in particular, when the turnover of the undertaking over which the control is to be taken did not exceed in the territory of Poland in any of the two financial years preceding the notification, the equivalent of €10 million; the concentration arises as an effect of insolvency proceedings, excluding the cases where the control is to be taken over by a competitor or a participant of the capital group to which the competitors of the to-be-taken undertaking belong; the concentration applies to undertakings participating in the same capital group.

B. The pre-emption rights

It may happen that the public authorities have a statutory preemptive right to real estate which is about to be sold. The right of pre-emption is a right to acquire the property before it can be purchased by any other person or entity. Where the real estate is subject to a right of pre-emption held by State Treasury or local authority, it may only be sold to a third party under the condition that the beneficiary of that right does not exercise it. If such a property is sold without observing this right, the sale is considered to be null and void.

The notary executing the conditional agreement will send a copy of it to the State Treasury or local authority, which may then exercise its preemptive right within one month of receiving the conditional agreement. If the public authority does not exercise its preemptive right within that period, the parties can conclude the final agreement, which effects the unconditional transfer of the title to the real estate.

C. Restrictions for foreigners

As regards foreigners residing or having their registered seat within the territory of the European Union or European Economic Area, no special restrictions regarding acquisition of real estate by foreigners apply. The conditions differ with respect to the investors from remaining countries to which the following restrictions apply, As a general rule, such foreigners (or Polish entities controlled by such foreigner) are required to obtain a special permit of the Minister of Internal Affairs for acquiring a real estate in Poland. The permit is necessary when acquiring ownership of real estate or perpetual usufruct on the basis of any legal event (e.g. purchase, in-kind contribution, merger with a Polish entity, taking up shares in Polish entities).

The permit is issued upon a written request of a foreigner, provided that:

- A foreigner's acquisition of real estate does not pose a threat to the State's defense, national security, public order and is not contrary to the social policy and public health considerations

- The foreigner proves that there are circumstances confirming his bonds with Poland (i.e. for example the buyer has Polish origins or is conducting business or agricultural activities in the territory of Poland under the Polish law).

The Minister's decision concerning real estate acquisition should be issued within one month (two months in particularly difficult cases). The permit is valid for two years from the day of issuance.

The acquisition of real estate without a permit is invalid. A foreigner intending to acquire real estate in Poland may apply for a promise of the permit. The promise of the permit is valid for one year. During this period a permit cannot be refused unless the actual circumstances pertinent to the decision have changed.

D. Restriction in acquiring agricultural land

New legislation restricting trade of agricultural land was passed and came into force as of 30 April 2016. The regulation restricted trade of agricultural land for both Polish and foreign (EU and non-EU) entities.

Under the new law on shaping the agricultural system, agricultural land is the land used for agricultural purposes or land that may be used for such purposes, excluding land intended for other purposes in applicable local spatial development plans.

On the basis of the amendment to the Act (which came into force in June 2019) some restrictions have been limited to allow broader trade of agricultural land.

In consequence, in case of the sale of agricultural land, in particular the following restriction will apply:

- Agricultural land may be acquired only by individual farmers having agricultural education and residing in the same municipality where the land is located for at least 5 years. The above will not be applicable to the transfer of agricultural land of an area smaller than 1 ha

- An obligation to obtain a permit (in a form of an administrative decision) of the General Director of the National Agricultural Support Center for sale/acquisition of an agricultural land to/by persons other than individual farmers, including companies, under pain of invalidity. The above will not be applicable to the transfer of agricultural lands of an area smaller than 1 ha
- General prohibition on sale or transferring possession (e.g. under lease agreement) of an agricultural land within 5 years from its purchase
- National Agricultural Support Center possess a pre-emption right to agricultural land regardless of the area unless acquired under the permit of the Chairman of the Agricultural Property Agency
- National Agricultural Support Center is also authorized to exercise its buyout right in case other acquisitions that acquisitions under sale agreement e.g. merger, division or transformation of a current owner (perpetual usufructuary) of the land
- National Agricultural Support Center is entitled to buy of an agricultural land in case of partners change in partnerships
- National Agricultural Support Center has been also equipped with a pre-emption and buyout right to purchase shares in companies owning an agricultural land, e.g. in case of share purchase agreements or share swap (excluding shares in public listed companies).

The above corporate rights attributed to the National Agricultural Support Center may be exercised only if the total area of agricultural land owned by the company constitute at least 5 ha.

E. Acquisition of real estate from public entities

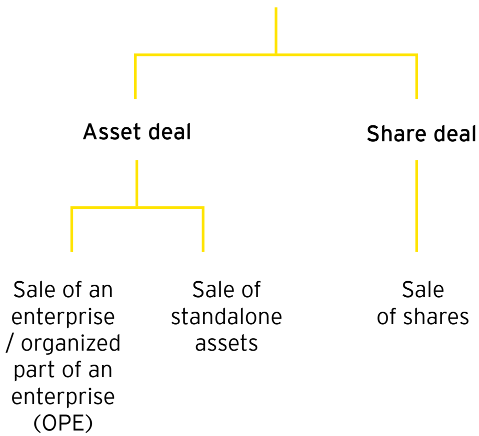
In Poland, real estate is often acquired from the State or local authorities. Such type of acquisition is considered to be safe and an attractive alternative to acquisition of real estate from private owners. Nevertheless, in practice, acquisition of real estate from public entities is subject to additional specific requirements such as an obligation to dispose the land via public tenders.

An investor interested in acquiring real estate from the State or local authorities should ask the authorities for information on the contemplated property to be acquired. Unfortunately, it is not possible to purchase such real estate on the spot, as there is a special procedure of selling real estate held in public entities' possession. With only a few exceptions provided by law (e.g. real estate being sold to its perpetual usufructuary), real estate held by the State or local authorities may be disposed by way of public tender, after a lengthy procedure is completed.

2.4.3. Tax implications

As mentioned above, real estate can be sold either through a direct sale of the property (an asset deal) or indirectly through a sale of the shares in the company owning the property (a share deal). These two types of transactions are afforded different treatment by the Polish tax regulations.

Key scenarios



	Asset deal		
	Enterprise / OPE	Standalone asset	Share deal
Corporate income tax	Step-up allowed Goodwill may arise for tax purposes	Step-up allowed	No step-up allowed No goodwill for tax purposes
Transaction taxes	Out of scope of VAT 1%/2% civil law activities tax ("CLAT") (pol. PCC) on gross value of enterprise / OPE payable by the buyer (non-recoverable)	23% VAT (for commercial property), subject to VAT recovery under general rules VAT exemption may apply (exemption may be either obligatory or optional) If VAT exempt – 2% CLAT (Polish PCC) on the FMV of asset payable by the buyer (non-recoverable) For further comments on VAT see next pages	Out of scope of VAT 1% CLAT (Polish PCC) on the FMV of shares payable by the buyer (non-recoverable)
Contingent tax liability	In general joint and several tax liability (up to the value of the purchased enterprise/ OPE's assets) Possibility to limit the contingent tax liability via pre-transaction tax clearance certificates	No contingent tax liability for the events occurring prior to the transaction	Unlimited tax liability (up to the value of the investment)

	Asset deal		Share deal
	Enterprise / OPE	Standalone asset	
Reclassification risk	Reclassification into a transfer of standalone assets may trigger VAT liability arrears for the seller (additional penalties may apply) and CLAT overpayment for the buyer	Reclassification into a transfer of an enterprise / OPE may lead to challenging the buyer's right to recover input VAT charged by the seller and may result in CLAT arrears (additional penalties may apply) For further comments on the risk see next pages	
Other advantages	Tax assets of the seller (e.g. tax losses) remain with the seller and can be used to offset sale proceeds	Tax assets of the seller (e.g. tax losses) remain with the seller and can be used to offset sale proceeds	Less time-consuming and more straightforward legal wise Possibility to deduct historical tax losses of the acquired company (no forfeiture rules)
Other disadvantages	Timing and legal complexity Buyer cannot use historical tax losses of the seller Interest on any acquisition debt should generally be tax deductible and offset against revenue from general business activities	Timing and legal complexity (less complex than enterprise / OPE, but more than the share deal) Buyer cannot use historical tax losses of the seller Interest on any acquisition debt should generally be tax deductible and offset against revenue from general business activities	Interest on any acquisition debt may not be tax effective (no debt push down possible)

Asset deal

The revenues generated on the sale of real estate are subject to the standard taxation rules of Polish corporate income tax. Taxable revenues are reduced by the net book value of the property. Effectively, only the gain is taxed at the rate of 19% (possibly 9% if the yearly revenue of the company does not exceed €2m). The revenue from the sale of real estate must be valued at the price set in the sale contract. However, if the price differs substantially and without a justified reason from the market value of the real estate, the revenue may be assessed by the tax authorities according to the market value. This transaction price adjustment may be applied to transactions between related and unrelated entities. Adjustments trigger not only a higher tax burden but also penalty interest.

Costs incurred by the buyer for the acquisition of real estate: purchase price, transaction costs including advisory, civil law transaction tax - if applicable, financial costs accrued till the purchase, etc., form the initial value of the real estate and are recognized as tax deductible costs through depreciation write-offs or upon sale. As the value of the land is not subject to depreciation, it is then important to determine the value of the land and the value of any buildings or structure separately.

VAT on the acquisition of real estate

The supply of buildings, infrastructure, or parts of buildings or infrastructure is generally VAT exempt, except for:

- The supply of a building, infrastructure or part of a building or infrastructure in the course of its first occupation or prior to it and
- The supply of a building, infrastructure or part of a building or infrastructure made within two years of the first occupation

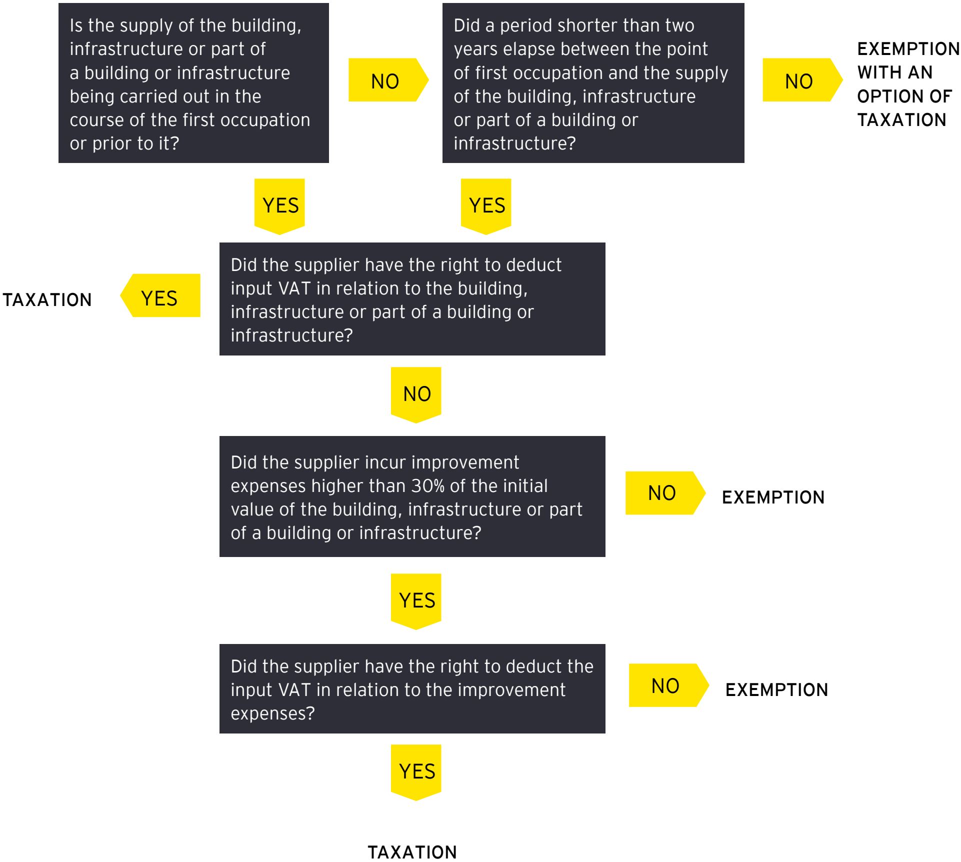
In which cases the supply of buildings, infrastructure or parts of buildings or infrastructure are generally subject to VAT.

Based on the VAT regulations, "the first occupation" means release for use to the first acquirer or first user or commencing use for the own purposes of buildings, infrastructure or their parts, after their:

- Initial completion

or

- Improvement (if the expenses incurred for the improvement constituted at least 30% of the initial value) of that building, infrastructure or part of a building or infrastructure.


Is the supply of the building, infrastructure or part of a building or infrastructure being carried out in the course of the first occupation or prior to it?
NO
Did a period shorter than two years elapse between the point of first occupation and the supply of the building, infrastructure or part of a building or infrastructure?
NO
EXEMPTION WITH AN OPTION OF TAXATION
YES
YES
TAXATION
YES
Did the supplier have the right to deduct input VAT in relation to the building, infrastructure or part of a building or infrastructure?
NO
Did the supplier incur improvement expenses higher than 30% of the initial value of the building, infrastructure or part of a building or infrastructure?
NO
EXEMPTION
YES
Did the supplier have the right to deduct the input VAT in relation to the improvement expenses?
NO
EXEMPTION
YES
TAXATION

According to the adopted definition, use of a building, infrastructure or part of a building or infrastructure for the own business purpose of the owner should be considered as first occupation (provided that the owner performed VAT-able activities).

Taxpayers may choose not to apply the exemption and charge VAT if:

- Both buyer and seller are VAT registered and
- Before the day of supply they submit the appropriate joint statement to the tax office of the purchaser or include such statement in the notarial act covering this supply.

The supply of buildings, infrastructure or parts of buildings or infrastructure which could not be subject to the above exemption (i.e. supply in the course of first occupation or within two years of the first occupation) must be VAT exempt (no option to tax allowed) if:

- The seller was not entitled to deduct input VAT and
- The seller did not incur improvement expenses on which he had right to deduct VAT, or such expenses did not exceed 30% of the initial value of the building, infrastructure or part of a building or infrastructure.

The diagram outlines VAT rules on the taxation of the supply of buildings, infrastructure or parts of buildings or infrastructure.

Generally, the VAT treatment of ownership title to land or a perpetual usufruct (RPU) over land follows the VAT treatment of the buildings and infrastructure developed on the land.

The supply of ownership title / RPU to undeveloped land qualified as land for development purposes under a local spatial development plan or in a zoning decision is subject to 23% VAT (supply of other types of undeveloped land is as a rule exempt from VAT).

If subject to VAT, the supply of real estate is mostly taxed with 23% VAT. However, the supply of residential buildings and separate apartments is subject to a reduced 8% VAT, except for part of residential buildings whose usable floor space exceeds 300 m^2 and apartments whose usable floor space exceeds 150 m2. In such a case only the part of residential building and/ or apartment which fits within the above limits benefits from the 8% VAT rate, whereas the part exceeding the thresholds is subject to a standard 23% VAT rate. Depending on the legal case underlying the transaction, sale of a parking space sold jointly with the apartment but constituting a separate legal property, can be subject to a standard 23% VAT.

As a rule, VAT tax point arises at the moment of delivery of goods, usually on the day of signing of the sale agreement. The invoice should be issued by the seller no later than until the 15th day of the month following the month in which the VAT point arose.

If the supply of real estate is VAT exempt, it is subject to civil law transaction tax payable by the buyer. The applicable rate is 2% of the market value of the real estate.

If the business of the Polish company or part of its business is sold as a going concern, the transaction falls outside the scope of VAT. The assets of the business or part thereof will be subject to civil law transaction tax payable by the buyer at the rate appropriate for a particular item (2% for land, buildings and other tangible property, 1% for intangibles, potentially including also any goodwill that would crystallize on such a transfer). Civil law transaction tax constitutes an additional cost of the transaction and is non-recoverable.

Although the Polish Ministry of Finance has issued a set of guidelines with respect to VAT / CLAT treatment of real estate asset deal transactions, a detailed analysis of each particular transaction is still recommended with this respect, as the guidelines are of rather general nature. Application for a tax ruling is still advisable.

Recoverability of input VAT

Input VAT is recoverable if the company uses or intends to use the purchased real estate for the purpose of activities which are subject to VAT and do not benefit from VAT exemption (e.g. lease of the commercial real estate). Otherwise, the input VAT will increase the initial tax basis of the real estate.

If the buyer uses the real estate partly for the purpose of exempt activities, the recovery of any input VAT should be effected in line with the proportion of the net value of the taxed supplies to the total value of all supplies (a so called pro rata recovery). During a calendar year, the proportion is calculated based on the volume of supplies made in the previous year. At the year end, the amount of deductions is adjusted to the actual percentage calculated for the whole year. In the case of tangible or intangible assets subject to depreciation for tax calculation purposes, the percentage of input VAT which may be deducted is subject to adjustments over the period of 5 or even 10 years (in the case of real estate).

Calculation of the percentage of input VAT to be deducted is necessary only if it is not possible to match input VAT with taxed activities or exempt activities directly.

Taxpayers also need to take into account so called preliminary pro-rata that limits input VAT recovery on purchases, if linked both with the economic activity of the taxpayer and other activities not related with business operations.

The recovered input VAT also has to be adjusted if the liability resulting from the invoice documenting the expense incurred is not settled within the specified deadlines (at this time 90 days counting from the payment due date). Additional sanctions may apply if no adjustment is made (i.e. additional tax liability up to 30% of tax resulting from the not settled invoices, which has not been accordingly adjusted).

Date of input VAT recovery

The right to recover input VAT arises in the period when - with respect to the acquired goods or services - the tax point arose (i.e. in the period in which the services were rendered to, or the goods were acquired by the purchaser). It cannot be, however, recovered earlier than in the period in which the taxpayer receives the respective invoice. In case of prepayment invoices, they must be paid in order for input VAT to be reclaimable.

Direct refund of input VAT

A direct refund of any surplus input VAT should be made within 60 days of the submission of the application for the refund (the VAT return) on condition that the taxpayer performed VAT-able supply in the period for which the refund is claimed.

It is possible to get a refund of input VAT even if VAT-able supplies are not made in the period for which the refund is claimed. However, in such a case the period for the refund is extended to 180 days, unless a form of security, e.g. a bank guarantee is provided (in which case the refund should be made within 60 days).

An accelerated (25-day) VAT refund is also available under certain conditions.

Mandatory split payment

As of 1 November 2019 mandatory split payment mechanism has been introduced to the Polish VAT law.

At this stage VAT split payment is applicable to B2B transactions. Buyers are obliged to pay the VAT amount into a dedicated bank account.

It is mandatory for certain goods and services (150 groups of goods and services classified according to the Polish Classification on Goods and Services (PKWiU) codes listed in the appendix 15 to the Polish VAT Act), among others, payment for broadly understood construction services – regardless of the supplier's status e.g. construction work on residential buildings (works on the construction of new buildings, reconstruction or renovation of existing buildings).

Mandatory split payment applies to invoices, documenting selected transactions, which gross value exceeds the equivalent of PLN 15,000. Referring to other transactions split payment still can be applied on a voluntary basis.

The invoices documenting transactions subjected to mandatory split payment should include the annotation "mechanizm podzielonej płatności" (i.e. split payment mechanism) and the seller and purchaser need to hold bank account with a Polish bank.

From the 1st of 2020 additional sanctions for not being compliant with the split payment provisions for seller and purchaser has been introduced e.g. penalty equal to 30% of the VAT resulting from the invoice, no right to treat the expense as tax deductible cost for CIT and PIT purposes, penal fiscal sanctions.

The white list of taxpayers

The provisions introducing the so called "white list of VAT taxpayers" entered into force on 1 September 2019. However, the sanctions for not compliance therewith are applicable only as of 1 January 2020.

The white list of VAT taxpayers is a record of entities for VAT purposes that is held by the head of the National Revenue Administration and includes information on entities:

- registered as VAT payers;
- that have been refused VAT registration or were deregistered by the tax authorities; and
- whose VAT registration has been restored.

The white list is available online free of charge and is meant to allow taxable persons to verify data related to VAT registration of other taxable persons (up to 5 years back).

The register discloses (Polish) bank accounts reported by the taxpayers.

Generally all payments regarding transactions above PLN 15,000 should be made only to the taxpayer's bank account indicated in the white list. Otherwise, the taxpayer:

- Will not be entitled to include the expenses incurred as tax deductible costs;
- Will be jointly and severally liable for the supplier's tax arrears - in the part of VAT attributable to a given transaction.

In such a case sanctions could be avoided only by:

- Sending notification to the head of the tax office about transfer to the off-list bank account within 7 days (temporarily extended to 14 days due to COVID-19 pandemic) of the transfer being made;
- Making payment using the split payment mechanism (but then only VAT sanction will be avoided).

In practice white list of taxpayers may consequently oblige taxpayers to verify each time whether a bank account provided by a contractor for the purpose of making a payment appears on the white list.

The SAF-T

The SAF-T is an electronic document containing the VAT register (information on purchases and supplies) and the VAT declaration for a given period. In this format it is obligatory for entrepreneurs as of October 2020 VAT settlements.

Moreover, some additional information needs to be included in SAF-T (i.a. a code system of goods and service groups, indication of selected sales and purchase documents).

The new law provides also for new penalties for errors in SAF-T (a fine of PLN 500 for each error which makes electronic cross-check more difficult or impossible for tax office).

Share deal

A capital gain on the sale of shares is subject to Polish corporate income tax at the standard rate of 19%. Any capital gain from the sale of shares should be allocated to the capital gain basket and hence could not be offset against costs allocated to revenue from general business activities basket (see diagram listing the items allocated to capital gains).

Income from capital gains shall include, among others:

- Income from sharing in profits of legal persons or other companies, including e.g. dividends, income from investment funds, income from redemption of shares, payments received as a result of a merger or demerger, interest on participation loans, etc.
- Income arising from in-kind contributions
- Other income from participation in legal persons or other companies, including income from the sale of shares, redemption or gains from a share-for-share exchange
- Income from the sale of certain receivables
- Income earned from property rights (e.g. royalties, know- how, copyrights), securities and financial derivative instruments, etc.

Requirement to keep accounting records specifying revenues and costs for tax purposes, broken down by two types of sources (capital gains and other sources).

If the selling party is a foreign shareholder, the applicable tax treaty influences the tax implications of such a transaction. Significant part of Polish tax treaties (e.g. with Spain, France, Denmark, Sweden, Germany, Luxembourg etc. provide that a sale of shares in a company holding mainly real estate assets should be regarded as a sale of real estate. Consequently, income earned on the sale of shares in the Polish company will be taxed in Poland (the so called Real Estate Clause).

Poland has implemented Multilateral Instrument Convention (MLI) on the basis of which most of tax treaties concluded by Poland may be equipped with Real Estate Clause and Principal Purpose Test. Verification of the current status of implementation of each such amendment under MLI is highly recommended.

The status of implementation of MLI may be monitored using OECD tool (currently beta version) on OECD website (link: https://www.oecd.org/tax/treaties/mli-matching-database.htm).

The sale of shares in the Polish company is subject to a 1% civil law transaction tax (on the fair market value of shares) payable by the buyer. This is irrespective of where the transaction takes place or where the parties to the transaction are resident for tax purposes. A share transaction is generally not subject to Polish VAT.

Costs which must be incurred in order to acquire shares (e.g. purchase price and notary public fees) may be recognized as tax deductible costs upon the sale of shares.

So far, other costs indirectly connected with acquisition of shares such as financing costs were in practice recognized as tax deductible costs when incurred. Due to the introduction of income baskets, the financing costs related to the acquisition of shares should in principle be allocated to capital gain basket and as a result, would not provide a tax shield against the taxation of operating profits.

CFC Rules

CFC is defined as:

1. A foreign entity (including i.a. company, partnership, tax capital group, trust, foundation, branch) seated in a tax heaven (as officially blacklisted by the Polish Ministry of Finance) or
2. A foreign company (including i.a. company, partnership, tax capital group, trust, foundation, branch) having its seat or place of management in the country other than mentioned in point 1), with which:

a) Poland has not concluded and ratified an international agreement, in particular double tax treaty, or

b) EU has not concluded and ratified an international agreement being a basis for requesting tax information from tax authorities of that country, or

3. A foreign company which jointly fulfills the following conditions:

a) the Polish taxpayer has on its own or together with other related entities or other Polish entities directly or indirectly over 50% of shareholding or over 50% of votes in managerial, governing or supervising bodies of the CFC or over 50% stake in profits of CFC.

b) at least 33% of annual revenues of the CFC consist of the following income:

- Dividends and other income from sharing profits of legal persons,
- Disposal of shares, receivables,
- Providing the following services: advisory, accounting, market research, legal, marketing, management, control, data processing, personnel recruitment and other services of a similar nature to any of these,
- Lease, sub-lease and other contracts of a similar nature,
- Interest or benefits from all types of loans, securities or guarantees,
- Interest part of leasing rates,
- Copyrights or intellectual property rights - including disposal of such rights,
- Disposal or exercise of rights from derivatives,
- Transactions with related parties if the company does not create value added in economic terms or such value is marginal,

c) tax actually paid by the CFC is lower by at least 25% of the tax that would be due if the company was a Polish resident and the tax actually paid by the company in its country of residence; whereas tax actually paid means tax that should not be refunded or credited in any way, or

4. foreign company which jointly fulfills the following conditions:

a) the Polish taxpayer has on its own or together with other related entities or other Polish entities directly or indirectly over 50% of shareholding or over 50% of votes in managerial, governing or supervising bodies of the CFC or over 50% stake in profits of CFC,

b) tax actually paid by the CFC is lower by at least 25% of the tax that would be due if the company was a Polish resident and the tax actually paid by the company in its country of residence; whereas tax actually paid means tax that should not be refunded or credited in any way,

c) revenues of the CFC enlisted in point 3 letter b) above are lower than 30% of the sum of the following assets:

- shares and other rights in profits of legal persons,
- real estate or movable property owned or jointly owned by the taxpayer or used by him under a leasing contract,
- intangible assets,
- receivables from the titles referred to in point 3 (a). b, to related entities,

d) the above assets constitute at least 50% of the assets of the CFC (excluding shares in other companies with no seat or management in Poland which do not own, directly or indirectly, shares in a company with its sear or management in Poland), or

5. A foreign company which jointly fulfills the following conditions:

a) the Polish taxpayer has on its own or together with other related entities or other Polish entities directly or indirectly over 50% of shareholding or over 50% of votes in managerial, governing or supervising bodies of the CFC or over 50% stake in profits of CFC,

b) the income of the CFC exceeds the income calculated according to the formula: (b + c + d) × 20% where letters stand for:

- b - the book value of assets,
- c - annual employment costs of the CFC,
- d - accumulated (summed up) current value of depreciation within the meaning of the accounting regulations,

c) less than 75% of the revenue of the CFC comes from transactions with unrelated entities having their place of residence, seat, management, registration or location in the same country as this CFC,

d) tax actually paid by the CFC is lower by at least 25% of the tax that would be due if the company was a Polish resident and the tax actually paid by the company in its country of residence; whereas tax actually paid means tax that should not be refunded or credited in any way.

CFC provisions should not apply in the case where the CFC, which is subject to taxation on its total income in one of the EU / EEA Member States, carries out actual significant business operations in this state. The Polish companies are obliged to hold registers of the CFC companies.

MDR

Since 1 January 2019 Poland has adopted mandatory disclosure regime (MDR) rules based on which taxpayers are obliged to report certain types of transactions to the Polish tax authorities.

Tax arrangements commencing after 1 January 2019 are reportable within 30 days (in some cases 5 days) after the day when the scheme is: (i) available for the client, (ii) ready for implementation, or (iii) started, whichever is sooner. Based on the clarifications passed by the Polish Ministry of Finance, as transactions subject to reporting obligation would be counted especially transactions related to transfer of enterprise or share deals in case the taxpayers exceeds certain thresholds. Certain COVID-19 measures may impact reporting deadlines.

The Polish legislation extends the scope of the reporting required under the Directive to include:

- An extended definition of reportable tax arrangements to comprise not only cross-border but also domestic tax arrangements. The Polish regulations also contain an extended catalogue of hallmarks in comparison to required by the Directive
- A wider definition of covered taxes including VAT (with respect to the domestic tax arrangements).

Like the Directive, reporting applies to cross-border arrangements where the first step of implementation takes place after 25 June 2018. Additionally, reporting applies to the domestic tax arrangements where the first step of implementation occurs after 1 November 2018

Additionally, each individual/company/entity implementing/using reportable tax arrangement or obtaining a tax benefit resulting from this arrangement might be potentially required to report this fact to the tax authorities.

MDR-3 reporting

Taxpayers who during the tax period (in case of VAT it will usually be a month) performed any action, being a part of a tax arrangement, or obtained a tax benefit as a result of such tax arrangement, must fulfil the reporting obligation by providing information on the utilization of a tax arrangements – MDR-3 form – to the tax authorities. MDR information regarding implemented/used reportable tax arrangement or obtained tax benefit resulting from this arrangement must be signed by each member of the Management Board of the reporting entity.

MDR penalties

Intermediary entities or those employing intermediaries or actually paying them remuneration, whose revenues or costs exceeded in the year preceding the financial year the equivalent of PLN8m [approx. €1.7m] are obliged to introduce and use an "internal procedure" for MDR. In the event of failure to meet the above obligation, the tax authorities may impose a financial penalty in the amount not exceeding PLN2m [approx. €434k].

Monetary penalties in specific situations (for not complying with MDR obligations) can amount up to approx. PLN29m [approx. €6.24m], based on the Polish Fiscal Code.

In the case of conviction of fiscal offenses related to not complying with the reporting obligations, the court may additionally prohibit the conducting of specific business.

2.5

Development and construction

2.5.1 Legal aspects

2.5.1.1 Land development issues

Land development issues are important for real estate investors, as they determine the possible method of investing in a given area. Regulations on land development may influence the shape of the planned building, but sometimes they also prevent the investor from the investment.

Legal background

Currently only a part of the territory of Poland is covered with local spatial development plans, mostly within the boundaries of bigger cities.

The two main spatial planning and development acts determining land development within a given municipality (commune) are the spatial development conditions and directions study and the local spatial development plan. However, from investors' perspective, the local spatial development plan is of higher importance, as it determines their rights and obligations, while the spatial development conditions and directions study binds the local authorities only. In the case where no local spatial development plan has been adopted for a given area, the investor may apply for a decision on land development and management conditions (hereinafter referred to as the zoning decision). Where a building permit is required for an investment, either a local spatial development plan or a zoning decision are required to start the development of the real property, since, as a rule, no building permit may be issued without them.

The procedure for adopting a local spatial development plan is rather complex and time consuming as the draft local spatial development plan is subject to „public consultation" with the parties concerned, as well as opinions issued by the relevant administrative bodies.

The provisions of the local spatial development plan are crucial for investors, as the planned development of the plots covered by such a plan must comply with its provisions, in particular, regarding the distance of a building from the plot's border or the height of a building. Sometimes the provisions of a local spatial development plan may render the development of the given plot impossible. Moreover, in certain cases the legal provisions provide that selected investments are implemented solely based on local spatial development plans. This relates to i.a. large retail units or windfarms. It is currently planned by the government to extend the catalogue by introducing all investments substantially affecting the environment as requiring local spatial development plan in order to be proceeded with.

Therefore, to be able to implement their investment plans, sometimes investors start a procedure of amending the local spatial development plan, which may prove to be rather time consuming.

Zoning decision

In the case where no local spatial development plan has been adopted for the given area, an investor may apply for a zoning decision, which sets out all the required conditions for the development of that area. Before the building process is started on the given plot under a building permit, the plot must be covered either by a local spatial development plan or by a zoning decision (therefore, it can be said that a zoning decision substitutes a local spatial development plan for an investor).

A zoning decision is issued by the governing authority of the commune. The procedure for issuing zoning decisions includes performance of a zoning analysis by the local authority's architecture department and it may, therefore, take even up to several months.

If a local spatial development plan is being adopted for a real property, zoning decisions related to this area expire if the provisions of the local spatial development plan differ from those of the zoning decision. However, this shall not happen if a final building permit has already been issued for the real property in question. Therefore, in the case where there is no local spatial development plan for a given real property, prior to investment planning the investor should monitor the stage of works related to the local spatial development plan and should learn if it is possible to acquire a final building permit before the local spatial development plan is adopted.

An application for a zoning decision may be filed with the relevant authority even when the applicant does not hold any title to the land in question. A zoning decision may be transferred to third parties.

This means that investors may use a decision issued for the seller of a real property, as they do not have to apply for the decision once again after acquiring the real property (the investor only applies for the transfer of such a decision to himself). Investors may also apply themselves for such a decision before deciding on the investment.

The draft law currently being processed to amend the Law on Spatial Planning and Development and Certain Other Laws provides primarily for the introduction of a new, mandatory planning instrument of municipal scope - the general plan. This will be an act of local law, which will replace the study of conditions and directions for spatial development of the municipality. Local plans will not have to be compatible with the general plan, so there will be the possibility of simultaneously proceeding to amend the general plan and the local plan, which will significantly speed up planning procedures.

Building permit

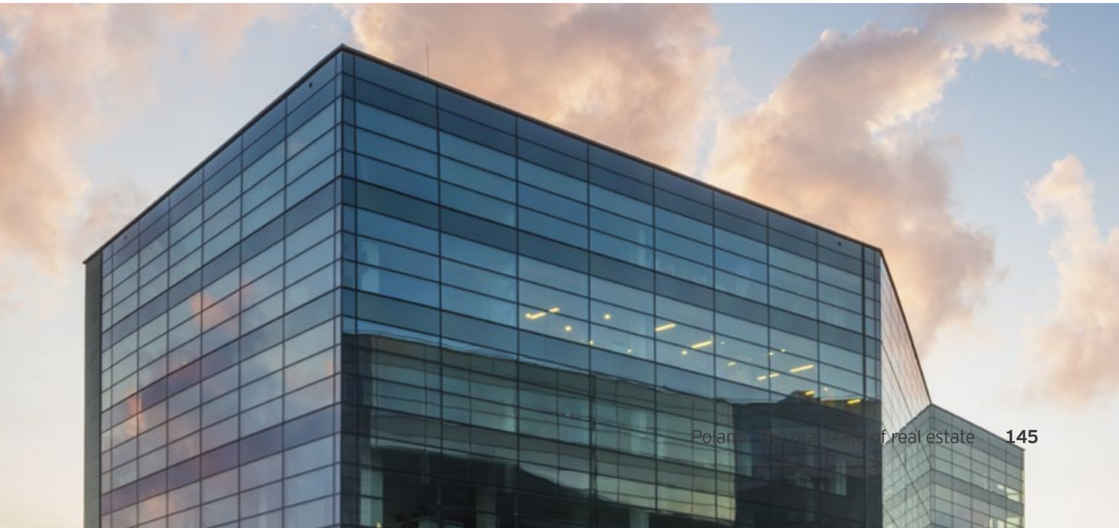
A building permit is an administrative decision issued by a local authority (starosta or mayor in bigger cities) which allows an investor to start the development process on the site.

The documents attached by the investor to the application for a building permit should include, in particular, a declaration of having legal title to use the real property for construction purposes. Moreover, the application must also enclose approvals of the local authorities responsible for local infrastructure, in particular utilities, roads, environmental protection and sewage treatment. The building permit will only be granted if the construction design is consistent with the assumptions of the local spatial development plan or zoning decision as well as with the regulations governing technical conditions for the development.

As a general rule, a building permit expires either if construction works have not been started within three years of the date on which the permit became final or if construction works have been discontinued for more than three years.

Not all construction works require a building permit. Construction of certain structures which are listed in the Building Law of 7 July 1994 (hereinafter referred to as the Building Law) may be commenced upon a notification sent to the relevant authorities if no objections have been raised by them within 21 days of the notification date.

The notification procedure pertains however generally to minor construction works or developing some of residential (single family) buildings.



Usage of the building

Depending on the individual case, the use of a building or structure after its completion requires either notifying the construction supervisory authorities that construction works have been completed or acquiring a permit for use.

In the case where only a notification is required, under the general rule the investor may occupy and use the building or structure if no objection has been raised by the authorities within 14 days of the date of notification.

In cases where a permit for use is required, the building may be occupied only after the decision granting the permit for use is granted. The granting of a permit for use is preceded by a technical inspection of the building or structure to confirm that all construction works have been performed in compliance with the terms and conditions of the building permit as well as technical requirements.

Occupying a building in breach of the above¬mentioned regulations may result in a fine.

Environmental issues

The building process has many environmental aspects that must be taken into account. The Polish law provides that an environmental decision must be obtained prior to obtaining a zoning decision and a building permit for the given project. Pursuant to the Polish law, from the environmental law point of view, the investments are divided into two groups:

- Projects that always have significant impact on the environment
- Projects that may have significant impact on the environment.

Environmental decision must be preceded by the environmental impact assessment proceeding (which includes preparation of environmental impact assessment report) in case of projects that always have significant impact on the environment (i.a. parking lots, buildings of a particular size etc.). However, the environmental impact assessment proceeding may be also ordered by the authority issuing the environmental decision in relation to projects that may have significant impact on the environment.

Despite of the fact that environmental impact assessment is carried out at the stage of issuing the environmental decision, it may also be repeated (in certain circumstances) at the stage of issuing a building permit.

Environmental impact assessment is a legal instrument that allows to determine the effect of the planned investment on the environment (i.e. water, land and air quality as well as impact on flora and fauna). Environmental impact assessment proceeding, beyond the identification of specific impacts that the proposed project may have on the environment, concentrates on the ways to prevent and minimize the effects of the planned project.

Pursuant to the Polish law, authorities must inform the general public about the environmental impact assessment proceeding and allow the general public to submit comments and recommendations to the proceeding.

Moreover, Polish law in certain circumstances allows a broad access to the environmental impact assessment proceeding to non-governmental environmental protection organizations.

Environmental decision may be transferred (as well as the building permit issued on the basis of a zoning decision).

Energy efficiency

The EU regulations within energy efficiency of buildings, are ambitious, so is the polish legislation keeping up with the newest directions.

Starting January 2017, the real estate market is challenged with a new values of EP energy ratio for newly built buildings and some of the coefficient U factors for thermal transmittance of external walls of buildings. The new law, incorporated back in 2014 is entering into force gradually in order to make polish legal system compliant with the European Directive on the energy performance of buildings, according to which, until 31 December 2020 each and every newly built building shall be nearly zero-energy. Starting from 1 January 2019, nearly zero-energy performance requirement applies to all buildings owned or occupied by the public authorities.

2.5.1.2 Construction issues

Legal framework for construction works contracts

The Civil Code includes provisions which establish the legal framework for construction works contracts. Most of those provisions are general in nature and enable contracting parties to structure the construction works contracts in a way that addresses their particular business needs. Such a flexible legal framework allows the parties very often to use international standards for construction works contracts, including the popular FIDIC forms. However, not all the provisions of international standards for construction works contracts comply with the requirements of the Civil Code and the Building Law.

In particular, a more detailed analysis should be performed with respect to contractual clauses regarding statutory warranty periods, contracts with and liability towards subcontractors as well as contractor’s payment guarantees. Below we present the key legal regulations in this areas.

Statutory warranty periods

Under the Polish law, the statutory warranty period for acquired real estates, including buildings is five years from the property‘s hand-over date. The above mentioned statutory warranty period of five years applies also in the construction works contracts.

Liability towards subcontractors

Based on Civil Code provisions, the investor is severally liable with the general contractor for the payment of remuneration due to the subcontractor for the construction works performed by the latter, the detailed description of which was notified to the investor prior to the commencement of such works. The liability of the investor does not occur if, within 30 days from the date of such notification, the investor objects to such works.

Such notification will not be required in case the investor and the contractor determine the scope of works to be performed by the designated subcontractor in the written agreement.

Thus, the investor is liable for payment for only such works, which were duly notified to him prior to their commencement.

Additional security for the investor constitutes the fact that the said notification must be made in writing (accordingly, such form is also required for the investor's objection).

Moreover, the said liability of the investor towards the subcontractor will be limited to the amount due to the subcontractor under his agreement with the general contractor, unless such amount exceeds the remuneration due to the general contractor for the works included in the notification.

Contractor's payment guarantee

One of the inconveniences for investors signing construction works contracts is the obligation to grant a payment guarantee to the general contractor.

Under this obligation a general contractor is entitled to a statutory claim against the investor for a payment guarantee up to the maximum amount of the contract value. The investor may satisfy the general contractor's claim by issuing a payment guarantee in the form of a bank guarantee, an insurance guarantee, a letter of credit or a bank's suretyship. The statutory claim for a payment guarantee may be raised at any time and can be extended to include the value of any additional works agreed in writing during the term of the construction works contract.

Construction design contracts

One of the key elements of the building process is drawing up a construction design. A construction design is a formal requirement for obtaining a building permit for most of building investments. Under the Polish law a construction design must be drawn up and signed by a certified architect, who takes responsibility for the technical aspects of the construction. The architect should prepare a design under a contract for architectural services which, depending on its scope, may either transfer the copyright to the construction design to the investor or provide the investor with the right to use the construction design for the purposes of the relevant investment.

It is worth mentioning that a contract for architectural services may include various restrictions with regard to the copyright or the use of the design. Such restrictions may be crucial for the investment development process, in particular when they regard the possibility of entering modifications to the construction design or transferring the copyright to other entities.

Public procurement contracts

General overview

Thanks to a number of EU funding programs every year Polish authorities have billions of euros at their disposal to be spent on development. A considerable part of this funding will be designated for infrastructural projects, in particular road and railway infrastructure, which is still not very well developed in Poland. For this reason, many of the infrastructural investments developed on the Polish market will be carried out under public contracts.

Poland, as one of the EU Member States, was obliged to implement regulations governing public procurement proceedings. The provisions of EU directives on public procurement were implemented to the Public Procurement Law, which constitutes the legal framework for this matter in Poland. The Public Procurement Law is supplemented by additional legal acts which relate in particular to public-private partnership and licenses for construction works and services.

The main goal of public procurement regulations is to establish clear and competitive rules and procedures for awarding public contracts to the suppliers of works and services as well as to provide measures for supervision over the public authorities awarding public contracts. The key objective of the Public Procurement Act is to ensure that public contracts are awarded while applying equal treatment to all entities taking part in tender proceedings as well as to ensure impartiality and objectivity of the final decision.

Procedure

Under the Polish public procurement regulations there are numerous different procedures for awarding public contracts. The ones that are most commonly applied are open tendering and limited tendering. Both procedures must be followed by a public notice. Notice on contract performs the aim of providing proper implementation of the rule of equal treatment in the very beginning of the procedure. The obligation of publishing a notice also provides non-confidentiality and transparency of the applied public contract systems.

In general, open tendering is a simple procedure, meaning that entities familiarize themselves with the information in the notice and in SETC and, if they are interested in submitting tenders in such procedure, they submit a tender which shall then be evaluated by ranking.

Under limited tendering procedure, entities interested in being awarded a public contract submit requests for participating in the tender and the awarding party decides which bidders may submit their proposals. Other public procurement procedures such as competitive dialogue, negotiated procedure with publication, negotiated procedure without publication, single source procurement, request for quotations, innovative partnership or electronic auction can only be applied under specific circumstances stipulated in the binding law.

A similar course of action should be applied to the above main types of the public procurement procedure. Each of them is comprised of pre-qualification, submission of proposals and selection of the winning tenderer phases. In the pre-qualification phase the awarding party sets out the requirements / criteria to be met by the tenderers. Based on the specific requirements / criteria, tenderers draft their proposals and submit them to the awarding party. In the proposal each tenderer demonstrates its compliance with tender requirements by referring to its competencies, such as experience, knowledge and financial capacity to perform the contracted work. After reviewing all submitted proposals the awarding party selects the best tenderer with whom the public contract is to be signed.

However, this is not necessarily the end of the public procurement process as there is a possibility of appealing against the decision of the awarding party. In practice, the appeal procedure is quite commonly used by the tenderers who lost a public contract, which often results in delays in the completion of the investment project concerned.

2.5.2. Tax implications

Tax treatment of the construction costs

Costs related to construction process and accrued prior to putting the assets into use form the initial value of the real estate and are recognized as tax deductible cost through depreciation write-offs or upon sale.

Costs related to future operation / exploitation of the assets should be recognized for tax purposes based on general rules.

VAT and the construction process

During the construction process, the most important tax to be considered is VAT. The standard rate of VAT in Poland is 23%. A reduced VAT rate of 8% applies to the construction of residential houses/ apartments except for part of residential buildings where the usable floor space exceeds 300 m^2 and apartments where the usable floor space exceeds 150 m^2. In such cases only construction of the part of the residential building and/or apartment, which falls within the above limits, benefits from 8% VAT rate, whereas construction of the part exceeding the thresholds is subject to standard 23% VAT rate.

Purchases the investor needs to make during construction will typically include Polish VAT. This input VAT could be deducted from the output VAT that the investor has to pay to the tax authorities as a result of his business activities. As the construction process usually takes a considerable period of time and requires the availability of substantial financial resources, it is essential that the input VAT paid is recovered during this process. Rules of VAT recovery and refunds are presented in section 2.4.3. However, during the construction process the typical situation is that the company has to cover high input VAT (resulting from purchase invoices), but no output VAT is recorded. Therefore, specific rules need to be observed to ensure the recoverability of input VAT paid during the construction process.

As a rule certain construction services (listed in the Appendix 15 to the VAT Act) are now subject to mandatory split payment mechanism (see the part "Mandatory split payment").

Services of foreign contractors

The place of the supply of services (i.e. the place in which services are deemed to be rendered and should be taxed accordingly) depends on the nature of a particular service. Under the general rule, services rendered to a VAT taxpayer (or a legal person not being a VAT taxpayer) occur where the service recipient is located. However, services connected with real estate are generally taxed where the real estate is located, i.e. in Poland. Services connected with real estate include construction works, services of architects and firms providing on-site supervision and the services of real estate agents and property appraisers.

If the place of supply of a particular service is Poland, it is possible (or in some cases even mandatory) for a foreign construction company to register in Poland as a VAT-payer. This implies that the foreign company generally will itself be liable for Polish VAT. The recipient of the services can recover the VAT paid to the service provider as input VAT under the general rules.

If services are deemed to be rendered in Poland and the foreign service supplier does not register and account for Polish VAT on his invoice, the Polish based recipient (in this case the real estate company having its registered address of fixed establishment in Poland) must self-assess the VAT due under the reverse charge mechanism. This VAT can then be declared by the recipient as input VAT (general input VAT deduction rules apply) and be - as a rule - deducted from the output VAT. Such a deduction may be made in the same period in which the output VAT on importation of services was recognized provided that the acquirer includes the amount of output VAT in a VAT return, in which he is obliged to settle the tax (which means that the company should as a rule not suffer adverse cash flow effect).

Taxes due on imported goods

Imported goods are always subject to import VAT when they cross the EU border (or in the EU destination country when the goods are transported under a special customs procedure). This VAT is calculated based on the customs value of the goods increased by the custom duties. It is possible to offset this input VAT against output VAT in accordance with the general VAT rules. Typically, the VAT rate is 23%.

Import VAT can be settled without the need for an upfront cash payment (i.e. through the VAT return rather than being paid directly to the customs office) and thereafter reclaimed - this mechanism is sometimes referred to as „postponed accounting for VAT".

The regulations concerning imports do not apply if goods are transported from another EU Member State. Such a transaction is as a rule classified as an intra-Community acquisition and is subject to VAT accordingly. In such case the company is obliged to self-assess VAT on the acquired goods at the rate appropriate for them (usually 23%). At the same time self- assessed tax is treated as input VAT and deducted (under general input VAT deduction rules) from output VAT in the same month in which it has been incurred, provided that the acquirer is in possession of a purchase invoice and includes the amount of output

VAT in a VAT return, in which he is obliged to settle the tax, within the specified deadline.

No excise tax is due on typical construction equipment and materials.

Taxation of a foreign construction company

In some cases it is not necessary for a foreign construction company to do business through a Polish company. The construction work can be performed in Poland directly by the foreign entity. In this case the question arises as to whether the foreign company is subject to Polish income tax on the revenues generated from the construction work.

Poland is indeed allowed to tax this income at a rate of 19% (or 9% if the company's yearly income is less than €2m) if the activities of the foreign company constitute a permanent establishment in Poland.

Whether or not the given foreign construction company has a permanent establishment is determined by the relevant tax treaty which Poland has concluded with the country in which the foreign company is based. In general, a construction site becomes a permanent establishment once the duration of the construction works exceeds a certain period of time. Usually this period is 12 months (unless provided otherwise under a relevant tax treaty). If the work is finished within 12 months, then no permanent establishment has been created. If the construction period takes longer, then a permanent establishment is recognized and the income derived from the work is subject to Polish income tax. It should be remembered that in such cases the permanent establishment is deemed to exist from the start of the construction activities in Poland. Standard rates and tax rules are applicable to determine the tax due.

If the activities of a foreign company in Poland extend significantly beyond a single contract, the company may be required to set up a branch. Setting up a branch will most likely lead to the creation of a permanent establishment in Poland.

Under the Multilateral Instrument Convention (MLI) which was signed by Poland, Poland excluded the changes to the articles related to permanent establishment though, including e.g. provisions directly addressing cases where the construction works are artificially split into various stages to avoid permanent establishment status. Further developments in this respect should be closely monitored.

The status of implementation of MLI may be monitored using OECD tool (currently beta version) on OECD website (link: https://www.oecd.org/tax/treaties/mli-matching-database.htm).

2.6

Operation and exploitation

2.6.1. Legal aspects

2.6.1.1. Introduction

According to the Civil Code, parties of the contract may benefit from the principle of freedom of contracts, which gives them an opportunity to modify the statutory types and provisions of the civil contract. However, there are some mandatory provisions and limitations, which have to be considered by the parties. Among all types of property exploitation agreements, the below are the most common for the Polish real estate sector.

2.6.1.2. Lease agreement (najem)

Under the lease agreement the lessor grants to the lessee the right to occupy premises (office, residential etc.) in exchange for the payment of rent. In general, everything that can be subject to the ownership right, may be also subject to this agreement, nevertheless in case of real estate, the more strict provisions may apply.

Duration

The duration of a lease agreement may be definite or indefinite. As a general rule, commercial agreements are concluded for definite terms of 5 to 10 years, with the prolongation option.

The duration of a lease agreement may be freely fixed by the parties, however, there are certain restrictions. The lease agreement concluded for a period longer than ten years, is, after this period, deemed to have been concluded for an indefinite period of time. The rule above is different for the lease agreements concluded between entrepreneurs. In this case the lease agreement concluded for a period longer than thirty years is deemed to have been concluded for an indefinite period of time after the thirty years' period has passed.

Rent

Paying rent is the principal obligation of the lessee. The lessee is obliged to pay rent within the agreed time.

Special clauses in the lease agreements:

Security	Money deposit	Promissory note	Bank guarantee

Maintenance and expenditures settlement

The lessor should hand over the property to the lessee in a condition fit for the agreed use. It should be maintained by the lessor in this condition throughout the lease term. Minor repairs connected with the normal use of the property should be fixed by the lessee, unless the lease agreement provides for otherwise. If the subject of lease is destroyed due to circumstances for which the lessor is not responsible, he is not obliged to restore it. If, during the lease period, the property requires repairs which encumber the lessor, the lessee may set the lessor an appropriate time for repair.

Subletting and disposal of the leased property

The general rule is that the lessee may hand over the property or part of it to a third party for free of charge use or sublet it, if the lease agreement does not forbid it. However, when the subject of lease constitutes premises or retail areas, hand over the property or part of it to a third party for free of charge use or sublet it requires the lessor's consent.

The leased property can be disposed of during the lease period. In this case the acquirer becomes a party to the lease agreement as a lessor in place of the seller. The approval of the lessee is not required. The new owner may terminate the lease agreement retaining statutory notice periods. However, the new owner does not have a right to terminate the lease agreement if it is concluded for a definite period of time, in written form with an authenticated date (data pewna) and the subject of lease has been delivered to the lessee. If, as a result of the lease agreement being terminated by the acquirer of the leased property, the lessee is forced to return the leased property earlier than he would have been obliged to under the lease agreement, he may demand compensation from the seller.

Security

Lessors often use the special clauses in the lease agreements to secure their potential claims to lessees such as money deposit, promissory note, surety and bank guarantee.

- Money deposit - it is a sum of money submitted by the lessee in order to secure the lessor's potential claims in case of non-fulfillment of the lease agreement or damages caused by the lessee

- Promissory note - promissory note issued by the lessee is an effective way to protect the lessor's potential claims

- Surety - in the contract of surety, the guarantor undertakes to perform certain obligation of the lessee towards the lessor if the lessee does not perform them, mostly this refers to the payment of due amounts. The liability of the guarantor is equivalent, not subsidiary.

  This means that the lessor may request a payment from both the lessee and the guarantor.

- Bank guarantee - it is a unilateral obligation of the guarantor's bank, according to which the bank will provide funds to the beneficiary of the guarantee - the lessor, if the lessee does not fulfill its obligation. The parties of the lease agreement typically determine a period that has to elapse from the payment due date and after which the lessor has the right to execute a bank guarantee.

Termination

A lease agreement concluded for an indefinite period of time may be terminated by any party with a prior notice of termination (its length is in practice defined in the lease agreement). The statutory period of notice of termination for the lease agreement concluded for an indefinite period of time is as follows:

- If the rent is due for a period longer than a month - three-month notice applies
- If the rent is due every month - one- month notice applies
- If the rent is due for a period shorter than a month - three-day notice is sufficient
- If the rent is due for one day - the contract can be terminated one day in advance.

The lease agreement concluded for a definite period of time may be terminated only in cases specified in the contract.

However, the Civil Code stipulates that the parties can terminate the lease agreement immediately if certain conditions defined by the above Code occur. This applies to contracts concluded for both definite and indefinite period of time:

- If the subject of lease has defects that make it impossible to use it in the way defined in the lease agreement at the time of handover of premises, or if the defects occur later and the lessor does not, despite receiving a notice, remove them in an appropriate time, or if the defects cannot be removed. In such case the lessee may terminate the lease agreement without notice
- If the lessee does not pay rent for longer than two full payment periods. In such case the lessor may terminate the lease agreement without notice (in case of lease of premises or retail areas, before termination, the lessor is obliged to warn the lessee in writing by giving him an additional one-month period to pay the overdue rent)
- If the lessee uses the leased premises contrary to the terms of the agreement or their purpose and, despite a warning, does not cease to do so, or if a lessee neglects it to such an extent that the leased premises are likely to be damaged - the lessor may terminate the lease contract without notice.

2.6.1.3. Agreement for the lease with the right to collect profits (dzierżawa)

By a lease with the right to collect profits agreement, the lessor commits to hand over a subject of lease to the lessee's use and collection of profits for a fixed or a non-fixed term. In exchange, the lessee commits to pay the agreed rent. Such agreement gives not only the right to use the property but also to collect benefits from it, which is why the lease with the right to collect profits agreement usually concerns land.

The duration of an agreement may be definite or indefinite. However, the agreement for a period longer than one year should be concluded in writing, otherwise it is considered to be concluded for an indefinite term. Agreement executed for a longer period than thirty years is deemed to be concluded for a non-fixed term, after this period passes.

Under the Civil Code, if the rent payment period is not specified in the contract, rent is payable in arrears on the date customarily accepted, and in the absence of such custom, semiannually in arrears. If the lessee defaults in payment of rent for at least two full payment periods and, in the case of rent paid annually, he defaults in payment for over three months, the lessor may terminate the lease with the right to collect profits without notice. However, the lessor should warn the lessee by giving the lessee an additional three- month period to pay the overdue rent.

The lessee is responsible for the costs of all repairs to the extent necessary to keep the subject of lease with the right to collect profits in the same condition. However, the parties are able to modify this rule in the lease with the right to collect profits agreement. There are also some differences between a lease agreement and a lease with the right to collect profits agreement in the field of subletting a property. The lessee cannot sublet the property without the lessor's consent. If the above obligation is violated, the lessor may terminate the lease with the right to collect profits agreement without notice.

2.6.2. Tax implications

Income subject to tax

Taxable income comprises the entire income generated from business activities (trade or services). Taxable income is calculated on the basis of accounting records prepared in accordance with Polish accounting standards after significant adjustments relating to the tax base. Taxable income is as a rule recognized for tax purposes on an accrual basis. The applicable tax rate is 19% (or 9% for "small taxpayers" whose annual revenue does not exceed €2m).

Calculation of taxable income

Taxable revenues minus tax deductible costs constitute the tax assessment base. Polish tax law provides for separate income basket for capital gains and disallowing the offsetting of capital gains or losses against other sources of income. This mean that any qualifying capital gain could be offset only against costs allocated to capital gain basket. It will be required to keep accounting records specifying revenues and costs for tax purposes, broken down by two types of sources (capital gains and other sources). If it is not possible to assign expenses to a particular source of income, expenses are divided proportionately.

The costs are deductible if they were incurred for the purpose of revenue earning or maintaining/securing the source of revenue. For the exploitation of real estate, the most important costs, such as interest payments, the costs of exploitation and maintenance and depreciation write-offs are considered tax deductible. Polish tax rules specifically exclude certain expenses from tax deductible costs. For example, doubtful receivables can only be deducted under very strict conditions. Also business entertainment expenses (e.g. the costs of representation) are non- deductible.

Minimum income tax

If the taxpayer rents a building (part of a building) a minimum levy may apply which is calculated based on the initial value of all rented real properties (including residential properties) reduced by the tax allowance of PLN 10m per taxpayer. The tax rate amounts to 0.035% per month (approx. 0.42% annually). In a situation, where only part of a building is rented, the minimum levy will be calculated with respect to the rented part proportionally. The tax is creditable against CIT. The taxpayers may apply for a refund of the excess of minimum levy over CIT after a year end. Before the refund is granted, the tax authorities could start tax inspection. The tax authorities may question solutions used by the taxpayer aimed at avoiding payment of the tax and applied without a legitimate economic reason based on specific anti-avoidance rule.

Loss carry forward rules

Polish legislation provides for carrying forward tax losses over five consecutive tax years following the year when the loss was incurred.

Taxpayers are allowed to utilize up to PLN 5m of a tax loss incurred in a given tax year based on a one-off basis (in the five year period).

Excess amount over PLN 5m can be utilized in any of these five years, however it cannot exceed 50% of the total loss.

Tax losses cannot be carried forward following certain legal transactions involving the company (e.g. mergers where the losses pertain to entities which no longer exist after the merger). There is no tax loss carry back.

Except for carry back of losses for 2020 that could be available to certain taxpayers under specific conditions as provided by the anti-Covid regulations.

Additionally, there is a limitation in utilization of tax losses in cases where the taxpayer has taken over another entity or acquired an enterprise or an organized part of an enterprise or has received a cash contribution for which it acquired an enterprise or an organized part of an enterprise. In abovementioned cases, utilization of tax losses by the taxpayer should be prohibited if:

- The subject of the primary business activity carried out by the taxpayer after the takeover or acquisition will be wholly or partially different from the subject of its primary business activity actually carried out before the takeover or acquisition, or
- At least 25% of shares or similar rights in the taxpayer are held by an entity or entities which did not own such rights as at the last day of the tax year in which the taxpayer incurred the loss. In practice, such regulations may prohibit the utilization of the past

tax losses in case of mergers, demergers, carve-outs and other restructuring activities.

Depreciation rules for real estate

(i) Limitation of depreciation write-offs of buildings for tax purposes

Real estate companies (within the meaning of Polish CIT regulations) are obliged to make depreciation write-offs from real estate in the amount not higher than the amount made in accordance with the accounting regulations.

In practice, entities relying on the fair value model for the purpose of their investment properties may not be any longer in a position to recognize depreciation write offs for tax purposes.

In this respect in the worst-case scenario, if a given entity does not depreciate the building for accounting purposes (but rather revaluates this property to its fair market value) tax depreciation of such a building may not be recognized for income tax.

(ii) Depreciation rate for real estate

The standard depreciation rate for most new buildings for tax purposes is 2.5% per year. Hence, the costs of real estate investment are generally deducted over a period of 40 years. Newly acquired buildings, used previously by a former owner, can be depreciated for tax purposes during the period equal to the difference between 40 years and the number of years that have passed since the building was put into use for the first time (that period cannot be shorter than 10 years). Land is not subject to tax depreciation.

Residential real estates should not be subject to tax depreciation. The taxpayer is entitled to recognize costs incurred for acquisition of such real estate upon disposal.

Under certain circumstances it may be worth carrying out a cost split analysis of investment expenditures prior to putting a building into use. This is because some machinery may - under specific regulations - be excluded from the value of the building and be treated as separate fixed assets depreciated at higher rates (4.5% - 20% per year). This could lead to significant tax savings as the costs incurred could be deducted over a shorter period of time. A cost split analysis should be also possible in case of the purchase of an already developed building.

(iii) Calculation of the depreciation base

The depreciation base consists of all costs incurred in making the investment: construction costs, building materials, designs, interest and foreign exchange differences accrued during the construction period, commission and potentially non-recoverable input VAT related to the building incurred before it was put into use. As the value of the land is not subject to depreciation, it is then important to determine the value of the land and the value of the building separately.

VAT implications of renting out real estate

Rental income is generally subject to 23% VAT. This VAT is added to the net rent due and is payable by the lessee to the lessor. If the lessee is a regular VAT payer and is using the rented property to perfom taxable activities he should be able to recover that input VAT paid on the rent.

If the lessee performs VAT exempt business activities only, the input VAT on the rent becomes irrecoverable. It may be a typical case for banks, financial institutions and insurance companies, most of which activities are - as a rule - exempt from VAT.

However, if the lessee performs VAT exempt activities, as well as taxable activities, then the input VAT on the rent (if such lease serves both types of activities) can be deducted proportionately on the pro rata basis.

As of 1 January 2016 preliminary pro rata must also be taken into account, which might result in limited recovery of input VAT related both to economic activity and non-business activities.

Rental of residential units for housing (but not the rental of residential units for the purposes other than housing) is generally VAT exempt.

9% CIT rate for small taxpayers

A reduced 9% CIT rate on income other than income from capital gains was introduced in 2019.

Broadly, the reduced rate may apply on the condition that an entity is a small taxpayer (its revenues in a proceeding year do not exceed the equivalent of €2m and current tax).

The reduced rate is not available for entities created as a result of restructuring.

Notional interest deduction

Taxpayers are allowed to deduct deemed interest on certain parts of equity, amounting to the reference interest rate of the Polish National Bank as of the last banking day of the preceding tax year, increased by 1 basis points; however, no more than PLN 250k of interest ($70k) in a tax year.

Real estate tax

Real estate tax is charged to the owner (or in some cases the holder) of the land or buildings and infrastructure which are used for business activities. The local authorities set the real estate tax rates and collect the taxes. However, in 2023 local authorities are bound by the following maximum PLN annual tax rates:

- For land, PLN 1.16 per m^2 of land
- For buildings, PLN 28.78, per m^2 of the usable surface of a building
- For infrastructure (e.g. roads, pipelines), 2% of the value of the infrastructure calculated according to specific regulations (initial value determined for the purposes of tax depreciation).

Local authorities may differentiate between tax rates for different types of activities or locations and grant exemptions for certain types of real estate.

Tax penalties

Another change is introduction of sanctions in the form of an additional liability of 10%-30% of the tax liability assessed by the tax authorities based on the General Anti Avoidance Regulations (GAAR) or other anti-abuse clauses, transfer pricing settlements and withholding tax cases.

Reporting obligations of entities owning Polish real estate rich entities

Real estate rich companies and taxpayers holding directly or indirectly shares or similar rights giving at least 5% of voting rights / rights to participate in the company's profit or similar rights in real estate rich company should be required to provide tax authorities with the information on:

- the entities holding directly or indirectly shares or similar rights in the real estate rich company – in the case of information provided by real estate rich companies;
- the number of shares or similar rights, held directly or indirectly in the real estate rich company – in the case of information provided by taxpayers owning Polish real estate rich companies.

The information should be provided by the end of the third month after the tax / financial year end of the real estate rich entity. The information should be provided electronically and should be valid as at the last day of the tax / financial year of the real estate rich company.

Publication of tax policies

Entities that generate revenue in excess of €50m during the tax year or tax capital groups (tax consolidation regime in Poland) are required to publish annual information on the execution of their tax policy.

The information needs to be published on their website by the end of the 12th month following the end of the tax year.

The scope of the information to be published is broad and may concern business sensitive areas.

Tax rulings

Under the regulations it is forbidden to apply for tax rulings regarding any provisions related to tax avoidance matters (i.e. both General Anti Avoidance Regulations (GAAR) as well as other existing abuse clauses). Any tax rulings regarding these areas obtained by the taxpayers in the past expired on 1 January 2019.

Binding rate information (BRI)

BRI is a document allowing to confirm the VAT rate for goods or services subject of the proper application to the Polish tax authorities.

The BRI grants taxpayers tax and penal-fiscal protection in the event of challenging the correctness of the applied VAT rate.

E-invoicing (structured electronic invoices)

As of 2022, the new system of structured invoices has been introduced and the National System of e-Invoices (KSeF) has been set up. KSeF enables the issuing and sharing of structured invoices (in xml format, compliant with the logical structure published).

In the initial period, including this year of 2023, the structured invoices function in business transactions as one of the accepted forms of documenting sales, in addition to paper invoices and electronic invoices currently used. The issuing of structure invoice in that period requires a consent of the invoice recipient.

It is planned that the structured invoicing will become obligatory as of 1 July 2024. Non-complying with that system should come with significant penalties (including the sanction in the amount of total VAT due from the transaction).

2.7

Exiting the investment

The investor's choice of exit strategy will be predominantly tax driven, and it is important at The outset of the investment process to have a clear idea of the possible exit mechanics.

The due diligence findings made during the acquisition phase are likely to bear relevance to the question of which exit strategy to choose, and should be given proper consideration, so that the investor's position on exit will be as strong as possible.

Generally, the exit may be structured as an asset or share deal. The legal and tax consequences of both are presented in section 2.4.

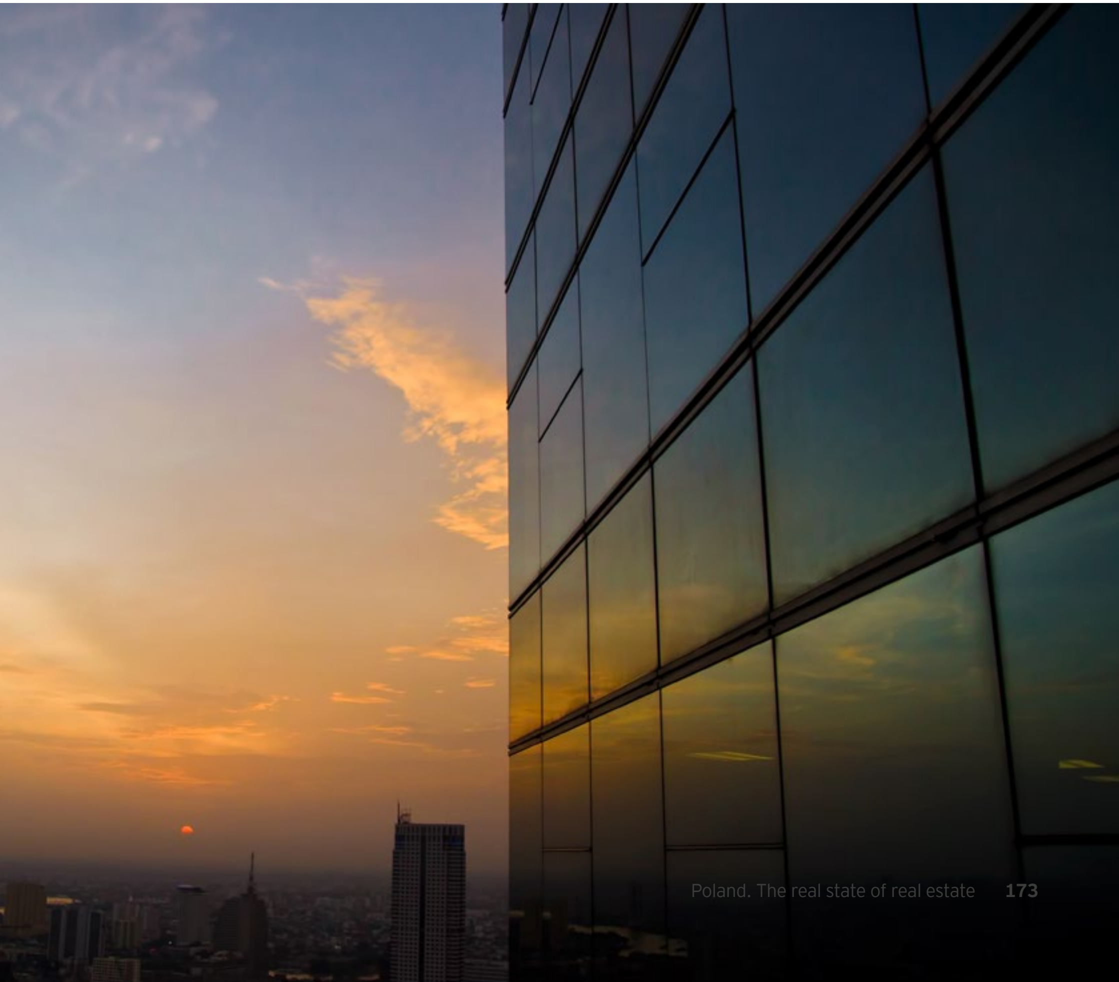
Exit tax

Provisions regarding exit tax constitute implementation of the EU Anti-Tax Avoidance Directive (ATAD) in Poland.

The so-called **tax on unrealized profits (hidden reserves)** is levied on profits that are embedded in a taxpayer's property and that are potentially transferred together with such property outside of Poland within transfers of the property within the same taxpayer (e.g. transfer by a Polish resident to its permanent establishment located abroad or transfer by a nonresident operating via Polish permanent establishment to its home country or to another country in which it operates) or upon change of the taxpayer's residence.

Exit tax on unrealized profits is calculated as the difference between the fair market value (FMV) of the property transferred (established based on separate rules) and its tax book value (that would have applied had the given property been disposed of) as of the date of the transfer.

Upon transfers into Poland, taxpayers may be allowed to credit the foreign equivalent tax (i.e., the tax due in a foreign country and which is equivalent to the tax on unrealized profits) up to certain limits.



2.8

Sale and lease back

Legal aspects

A sale and lease back transaction consists of two stages. The first stage assumes selling the target real property by the seller to the purchaser. In the next stage the seller concludes the agreement on the lease of the real property from the purchaser. As a result of the sale, the owner (or perpetual usufructuary) of the real estate changes. However, due to leasing the real property back, the real estate remains under the operational control of the original party (the seller).

From the legal perspective it is important to secure the sellers' interest already in the first stage of the transaction, i.e. to establish the obligation of the purchaser to lease the real property back in the agreement on the sale of the real property.

It is also important for both parties to agree details of the lease (duration, price, etc.) as soon as possible, especially if the seller and the purchaser do not belong to the same capital group.

The main advantage of such a sale and lease back operation is the release of the seller's capital as a consequence of the sale of the real property. This capital may be thereafter used e.g. for investment purposes. However, the decision on choosing such a solution shall be made on detailed calculation of all the costs related, including the lease costs.

Tax implications

If a sale and lease-back transaction is structured as an operational lease, the buyer / lessor is in most cases the owner, and should generally (subject to general rules) be able to depreciate the value of the investment at the standard depreciation rate of 2.5%. Accelerated depreciation for used buildings can be considered in some cases. Other costs related to the maintenance and exploitation of the building are tax-deductible for the lessor.

If, under a sale and lease-back contract, the real estate asset which is the subject of the contract is sold at a higher price than its net book value, a taxable gain will occur. Under Polish legislation, it is not possible to defer the taxation of such a gain in order to use it for reinvestment (unless the taxpayer benefit from the "Estonian CIT" regime).

A sale and lease-back arrangement structured as an operational lease has an advantage for the seller / lessee that the lease payments are fully tax deductible as costs incurred for the purpose of earning revenue. By contrast, for the borrower party to a normal direct financing arrangement, only the interest payments made on the loan are tax-deductible.

The repayment of capital is not a tax- triggering event. Under a direct financing arrangement secured by a mortgage, the debtor would still be the owner of the real estate. As such, the debtor would be unable to depreciate the value of the land. Under a lease contract, the lease payments are partly a compensation for the use of the land. Therefore, payments for the use of the land are tax-deductible for the benefit of the lessee.

2.9

Due diligence as part of the acquisition process

2.9.1. Legal due diligence

The due diligence process is all about mitigating investment risks. In practice, the legal due diligence review consists in gathering information and should provide the potential investor with a comprehensive view of the legal issues regarding the real property he considers acquiring.

The main purpose of the due diligence process is to provide investors with a complex overview of the situation of the real estate being the subject of the acquisition from the legal, financial and tax perspective. Taking into account the specific status and features of a given real estate, a broader due diligence review, conducted by technical and environmental experts, may be recommended.

By the end of the due diligence process, the investor should have a fair idea of whether the real estate is worth investing time and money. In this regard, a due diligence should be as comprehensive as possible.

The scope of the legal due diligence will depend on the structure of the deal. In a share deal, the scope of the due diligence will generally be wider than that required for an asset deal, as it needs to cover all the aspects related to the activity of the company. In case of an asset deal mostly the legal status of the real estate should be taken into consideration and examined carefully.

Within the legal due diligence, the review bases mainly on data and information provided by the seller and on enquiries and discussions with the seller and/or the management of the target. Additionally, publicly available sources (such as data in court registers) are explored.

In practice, within the due diligence regarding the real estate the investor should:

Verify basic information on the real estate (location, area, construction, legal title etc.).
Examine compliance with laws and effectiveness of acquiring a legal title to the real estate.
Examine restrictions with the disposal of real estate.
Examine the necessity of acquiring third parties' / administrative bodies' corporate approvals for acquiring a real estate.
Examine the collaterals established on the real estate.
Examine the third-party rights to the real estate.
Verify the permissible use of the real estate.
Verify the construction of the real estate in order to obtain required permits and approvals.
Verify the access of the real estate to the public road.
Analyze the responsibility of the buyer for the pollution of the real state.
Verify the amount of public burdens related to the real estate and lack of arrears with this regards.
Examine the potential claims to the real estate.

Review of other aspects is usually agreed with the seller and strictly depends on the type of transaction (share or asset deal).

The aim of the legal due diligence review of the real estate is to identify areas of investment risks but also other specific legal aspects regarding performing of business activity on the real estate and its sale. Below we present certain issues that need to be analyzed during the due diligence process and which may influence the structure of the transaction, or even a decision on entering into the transaction.

Local Spatial Development Plan

Development of an investment on the real estate is possible provided that buildings, plants and other industrial facilities comply with the relevant local spatial development plan for a given area. Therefore, it is essential to establish during the due diligence process whether there is a local spatial development plan covering the area where the targeted real estate is located and if so, what are the conditions of this local spatial development plan in order to confirm whether it will be possible to perform the planned investment. Please refer to the section 2.5.1. for more detailed information regarding the local spatial development plan.

Within the review of the local spatial development plan, in particular, the issues of the conservation and historic preservation zones and agricultural land should be verified.

Conservations and historic preservation zone

The local spatial development plan may provide that the area where the real estate subject to the potential investor’s interest is located falls within a conservation and historic preservation zone where some specific rules apply in order to protect the historical monuments located in the zone. Depending on the type of the real estate and its historical status there may be additional requirements and limitations established by the provisions of law.

Revitalization

The Revitalization Act entered into force at the end of 2015. Under the act, revitalization is the comprehensive process of rescuing degraded areas from crisis through integrated actions for the benefit of the local community, space and economy. A degraded area is a terrain in which there is a concentration of negative social phenomena as well as, for example, degradation of the technical condition of buildings, a low level of transit service, and poorly adapted urban planning solutions.

Under the Act, it is necessary for the commune authorities to pass local government law in the form of a resolution in establishing a revitalization zone or a special revitalization zone.

It should be noted that the Revitalization Act provides for cases, when a commune may exercise the right to pre-emption of real estate, i.e. in case of transactions the subject of which is a real estate located within a revitalization area or special revitalization zone. In case of considered acquisition of real estate located in one of those plans, an investor should bear in mind the pre-emption right of a commune.

Agricultural land

The local spatial development plan may provide that the real estate is assigned for agricultural activity. As a rule, the development of real estate designated for agricultural use requires a special procedure involving the modification of the local spatial development plan. Such a procedure may be time-consuming and is connected with the risk of third parties challenging the proposed changes to the plan. Additionally, real estate classified as agricultural land in the Land and Building Register, but not covered by the master plan, should be also excluded from agricultural production by obtaining an administrative decision from the relevant authority.

It should be noted that after exclusion of the area from agricultural activity an annual fee has to be paid for ten years (see comments below).

An investor considering acquisition of agricultural real estate should also bear in mind existing restrictions relating to purchase of an agricultural land. Regulations in force provide for many specific legal restrictions and limitations and recent legislation restrains entities other than individual farmers from purchasing an agricultural real estate (please see comments in section 2.4.2).

Restitutions claims

Under the nationalization laws passed in Poland after the Second World War, many real properties and functioning enterprises (including their real estate assets) were "nationalized" (or "communalized"). However, currently, there are no specific reprivatisation laws in force in Poland to deal with the restitution matters and claims. As a result, the legal status of nationalized properties is quite often subject to uncertainty. Under specific conditions, former owners or their successors may apply to civil courts and initiate proceedings aimed at the restitution of such real estate. As the current owner benefits from the land and mortgage register's public credibility warranty, the outcome of such claim will primarily depend on the apparent good faith of the current and previous owner at the time they acquired the property. Nevertheless, this issue needs to be subject to analysis during the due diligence.

In Warsaw, on the basis of the special "Warsaw decree" on land ownership of 1945, the City of Warsaw gained ownership rights to the major part of real estate in the city. However, subject to specific conditions, former owners of the real estate were granted the right to apply for obtaining usufruct rights to real estate or compensation. Currently, such applications which were not resolved or were resolved in contravention of the law may be the base for successful claims for reestablishing the rights of the previous owners or their successors. Nevertheless, provisions of law provide also for certain limitations of restitution of ownership of real estate nationalized under the Warsaw decree or transferring claims for reestablishing the rights for such.

Moreover, the Treasury and the Capital City of Warsaw have been equipped with a right of pre-emption in the event of the sale of rights and claims arising from the Warsaw decree and claims for the establishment of perpetual usufruct to the previous owner of real estate located in Warsaw. The pre-emption right also applies in case of sale of perpetual usufruct right established by the way of satisfying rights and claims arising from the Warsaw decree.

In consequence, it is essential during the due diligence to investigate carefully and thoroughly the restitution claims issue in order to avoid any title or investment risk upon completion of the acquisition of the real estate.

Fees - holding the real estate

Betterment levy

Betterment levy ("Opłata Adiacencka") is a charge which may occur with regard to the increase of the value of the real property resulting from:

- Projects
- Division of the property
- The construction of infrastructure with the use of public funds (placing water pipes, sewage pipes, heating systems, electricity gas and telecommunications facilities).

The amount of the fee depends on the amount of the increase in the property's value and is usually established based on an opinion of an independent expert determining how much the value of property has increased by.

The amount of fee shall not be higher than 50% (with respect to the division following a merger and the construction of infrastructure with the use of public funds) and not higher than 30% (with respect to a division) of the increase in value of the property.

Zoning fee

Additionally, adoption of the local spatial development plan may also lead to an increase in real estate market value, e.g. when a forestry land or an agricultural land is reclassified in the local spatial development plan into residential or commercial land, its value increases. In such cases the zoning fee ("Renta Planistyczna") may be established as a percentage (not higher than 30%) of the increase in value of the land calculated as at the date of the transfer of the given real estate.

The percentage for calculation of the zoning fee should be provided for in the local spatial development plan. The zoning fee is payable by the vendor in the case of a transfer of the property within 5 years from the day when the local spatial development plan came into force.

Exclusion from agricultural production fee

Entrepreneurs are often interested in changing the purpose of use of the agricultural and forest land in order to develop the land and realize an investment. Exclusion from agricultural production is subject to an initial fee and subsequent annual payments. The value of such payments depends on the:

- Area of the land subject to exclusion
- Quality of the land (class of soil)
- Market value of the land subject to exclusion.

It should be noted that if the land excluded from agricultural production is sold, the obligation to pay the annual fees passes to the purchaser.

Environmental issues

Introduction

Polish environmental law affects the conduct of economic activity for most business entities. One of the most important requirements imposed by the environmental law is the requirement to obtain permits related to the rules of having an impact upon the environment. It is usually examined during the due diligence whether the seller (or the target company) fulfills the environmental law requirements.

Permit requirements

Environmental permits can be basically divided into two groups. The first one includes permission obtained in the course of the investment process and the second group includes permission related to the use of the property.

In certain circumstances Polish environmental law imposes an obligation to obtain an integrated permit, which includes a number of permits governing the use of the environment. The obligation to obtain integrated permit relates to, inter alia, the following branches of industry: metallurgy and steel industry, the mineral industry and the chemical industry.

Besides, it is important to take into account the permissible level of noise. Permission is required only if the noise level exceeds the noise limits, which should be evaluated taking into account the provisions of the local plan.

Liability for contaminated land

Under the Polish law there are two regimes of liability for land (soil) contamination, depending on the period from which the contamination originates (with the border line being 30 April 2007). A current holder

(in particular owner or perpetual usufructuary), revealed in the Land Register, is liable for soil contamination which occurred prior to 30 April 2007 or may be attributed to activity completed prior to that date, even if such holder did not actually cause the contamination.

Parties to the sale agreement cannot contractually exclude the above mentioned administrative liability of the purchaser for clean-up of contaminated land so when a potential investor intends to buy a property (especially one that was used for industrial purposes) a detailed study on pollution of the land is required.

To secure purchaser's interest, the seller of contaminated land may agree to reimburse the purchaser with expenditures borne for the clean-up.

The situation is different for "new" land contamination, i.e. any soil damage, which occurred after 30 April 2007 or could be attributed to an activity completed after that date. An entity using the environment (i.e. an entity who has relevant permits to operate and use the environment) is liable for any such damage.

Environmental impact assessment

According to the section 2.5.1 where the environmental decision and environmental impact assessment where described, in some cases - especially for large investments an environmental impact assessment proceeding may be required.

2.9.2. Financial due diligence

Not many investors perform due diligence when completing a real estate transaction. Often the investor's own internal procedures require due diligence to determine whether or not the transaction is in the best interest of the investor.

Although for transactions of a smaller scale this may not be a good way to evaluate a deal, most investors understand the value of expert outsourced financial due diligence services. This rings especially true when taking into account larger time¬sensitive transactions (auction processes for example).

Although some investors choose to forego due diligence when acquiring new assets, they should understand that financial due diligence can indicate how the acquired assets will affect metrics such as revenue and net operating income. In addition, due diligence is able to discover unforeseen problems such as discrepancies between the amount paid for rent as described in lease agreements vs. the actual amount being paid per the accounting books.

A buyer usually makes use of financial due diligence to assist in identifying major issues concerning a transaction:

- The value of the property's NOI taking into account the existing lease portfolio
- Any provisions in the lease that affect the NOI adversely (for example, discounts on rent for any given period of time or for improvements made by lessee)?
- Bookkeeping in use being adequate for the business, and how does it looks next to the investor's bookkeeping procedures
- Lessee ever being late with the rent, or it taking longer to collect rent
- Charges made by the lessee being enough to cover the costs of maintaining the building; and any service charges not settled for any reason.

Analyzing financial issues

The items listed below should be considered when seeking to resolve the previously mentioned issues concerning financial due diligence:

- The financial figures being viable: can the figures be traced back to its origin reliably
- Critical bookkeeping procedures being applied consistently and appropriately; the influence of the bookkeeping procedures on the financial figures
- Assuring that the creation and level of management information is accurate and adequate for the business being considered
- Evaluating the contractual obligations the business has and their influence on profitability and cash flow
- Evaluating critical problems influencing earnings position
- Recognition of the need for cost recharges incurred and focus on areas for improvement; recognizing the "normal" working capital and cash flow tides of the business and probable funding needs down the line
- Making sure constructions costs are properly reflected in the bookkeeping records
- Recognizing the net asset base for acquisition; addressing possible balance sheet valuation discrepancies; making sure everything has been adequately addressed in evaluating the underlying earnings
- Comparing the rent roll against the rental agreements and bookkeeping records
- Comparing the service charges incurred against the bookkeeping records and
- Going over rental agreements to identify balance sheet liabilities.

2.9.3. Tax due diligence

Tax due diligence, in general, focuses on assessing material tax risks pertaining to assets or shares by reviewing the tax position of the target company. By identifying tax risks during due diligence conducted before the transaction, the investor may seek protection or indemnification from the seller.

From a tax perspective, it is also important to ensure that the appropriate tax structure is used, which usually involves a pre-transaction study and the preparation of the transaction structure in accordance with the Polish and international tax regulations. In addition, it can also include an assessment of the tax implications of a future exit scenario.

Acquisition of assets

In the case of an asset deal deemed to be the acquisition of business as a going concern or a viable part of that business (organized part of an enterprise), the acquirer may be held liable for the outstanding tax liabilities of the seller. This liability should be excluded if the acquirer could not have become aware of the seller's tax arrears despite acting with due diligence in attempting to identify such tax arrears. Performing a tax due diligence review is thus a way to limit or exclude such liability.

This liability is in practice of a ‚subordinated' nature, as even if a formal decision declaring that the acquirer is liable for the seller's tax arrears is issued, the claim against the acquirer may crystallize only if the enforcement procedure against the seller is ineffective (and tax claims against the seller are not satisfied).

According to the tax regulations the acquirer (with the seller's consent) or the seller may submit to the tax authorities a formal request for a certificate which lists all the tax liabilities which are transferable to the acquirer. The acquirer is then liable only up to the value of the tax liabilities presented in the certificate.

In the case of a sale of single assets (not constituting a going concern or an organized part thereof), the acquirer should not be liable for the outstanding tax arrears of the seller. However, if the transaction is reclassified into a sale of a going concern, the buyer might then be held liable for the seller's undisclosed tax liabilities.

Acquisition of shares

In the case of a share deal, all the potential outstanding liabilities that are not statue barred remain with the acquired company. As a consequence, the acquirer faces the possibility of incurring an economic loss on the transaction if undisclosed tax liabilities become apparent afterwards. Tax due diligence is therefore conducted to allow the acquirer to assess and minimize this risk.

Generally, the period of limitation for tax liabilities is 5 tax years following the year in which the tax is payable. In practice this means that from the perspective of 2023 there is still a tax risk in relation specifically to a target's corporate income tax payments for 2017-2023, and to other tax liabilities, in general, for 2018-2023.

Tax issues analyzed

The scope of a tax due diligence review depends on the structure of the planned transaction.

In the case of an asset deal, the scope of due diligence depends on the subject of the transaction and the extent to which the acquirer may be liable for the seller's tax liabilities.

In the case of a share deal, as the acquirer faces the full impact of any tax liabilities assumed, full due diligence is usually conducted.

The tax due diligence in case of a share deal usually covers the following areas:

- Review of tax returns for periods previously filed and review of tax calculations for periods that are not yet filed with the tax authorities
- Review of the results of past tax audits to detect tax risks for periods that are still open for tax audits by the tax authorities
- Review of any obtained tax rulings
- Review of any losses carried forward, tax credits and special tax privileges to identify related tax risks for unaudited periods and to assess whether such tax benefits will be available post transaction
- Review of withholding tax procedures and exemptions available
- Review of significant historical reorganizations and one-off transactions and their impact on the tax accounts.

Review of intercompany transactions and present transfer pricing policy in the company is also a part of a standard tax due diligence in the case of a share deal. The process would also likely include an examination of areas typical for a real estate company, such as:

- The existing debt financing structure (e.g. debt push down schemes), thin capitalization and other pending restrictions on the tax deductibility of interest payments on the debt
- Any large differences between book and tax basis of assets, analysis of the deferred tax calculations, in particular identification of any deferred tax liability, e.g. from accrued foreign exchange gains
- Rules for capital expenditure recognition and the impact of foreign exchange differences on the initial value of fixed assets for tax depreciation purposes
- Policies for the tax depreciation of assets, including a review of cost segregation schemes

- Cash incentives offered to lessees such as a rent free period or step-up rent and their impact on the tax accounts
- Treatment of the investment costs incurred by lessees (leasehold improvements) when the lease expires
- Tax recognition of management charges payable by special purpose vehicles to servicing companies within the group
- Any step-up in the value of the real estate performed; review of input VAT refunds in the investment phase
- Policies for real estate tax.

A review of the sale and purchase agreement (SPA) for the acquisition of a real estate target usually covers the following tax points:

- Review of the tax definitions in the SPA, and of the tax representations and warranties
- Review of the tax indemnity clauses in the SPA and
- Analysis of the SPA from the perspective of other protection available against tax exposures
- Review of clauses aiming to reduce or mitigate potential tax exposures resulted from the reclassification of an asset deal transaction.

2.9.4. The use of due diligence results when negotiating

After the whole process of due diligence, the investor gets a general financial and tax risk overview, which makes up the origin of the information for negotiations with the seller and assists in adjusting the financial model for valuation.

This can be used to get a decrease in price in order to alleviate possible tax liabilities and can be used when writing warranties and damages in the SPA.

The results may directly affect the structure of the transaction, for example, transforming an asset deal into a share deal or the other way round; they may also be used for post-acquisition tax planning.

Along with the tax and financial due diligence results, the legal due diligence review should assist the buyer in determining whether or not to complete the transaction, and if so, in what form. Due diligence investigations let the buyer's legal team construct the conditions of the deal so that the buyer is afforded with an adequate amount of comfort and protection. The legal team will then be in a position to address specific problems by asking for further explanations and/or promises or warranties from the seller. The legal team can also evaluate whether or not such promises or warranties need to be covered by an indemnity clause or other legal language allowed under the Polish law.

When taken together, the financial, tax and legal due diligence results are a very strong tool which can very easily have an influence on the final result of negotiations, and, in particular, how much the buyer will ultimately pay.

Accounting and auditing

3.1 Introduction to the accounting framework in Poland

Polish accounting is regulated by the Accounting Act as of 29 September 1994 with subsequent amendments (the Accounting Act). The Minister of Finance has also issued several regulations which cover specific accounting areas, such as: financial instruments, consolidation, accounting principles for banks, insurance companies, investment funds and pension funds. Since 1994, the Accounting Act has undergone significant changes to bring Polish accounting regulations closer to the International Financial Reporting Standards (IFRS). However, the differences between the Accounting Act and IFRS, mainly following IFRS developments in recent years, continue to exist. The following information applies to financial statements prepared for the periods beginning on or after 1st of January 2023.

In order to help to implement the Accounting Act, the Polish Accounting Standards Committee (‘the Committee’) prepares and issues National Accounting Standards (KSR). As of 1 January 2023, fifteen National Accounting Standards were issued on different topics such as:

- Cash flow statement
- Income tax
- Construction works
- Developers’ activity
- Impairment of assets
- Property, plant and equipment
- Leasing
- Revenue from the sale of products, semi-finished products, goods and materials
- Directors’ report
- Agreements on public-private partnership and concession contracts for construction works or services
- Changes in accounting policies, changes in estimates, correction of errors and subsequent events.
- Going concern assessment and non-going concern basis of accounting.

The Committee has also issued several position papers and recommendations (not referred to as standards) with respect to e.g. stocktaking, green certificates, selected aspects of bookkeeping, true and fair view, preparation of financial statements and directors’ report in the context of the war in Ukraine as well as on reflecting current macro-economic uncertainties in reporting for 2022 year-end.

National Accounting Standards and the Committee’s position papers are available on the website of the Ministry of Finance.

In the areas not regulated by the Accounting Act or National Accounting Standards, guidance can be sought in IFRSs.

The Accounting Act permits or requires some Polish entities to apply IFRS, as adopted by the EU, as their primary basis of accounting, rather than applying the accounting principles of the Accounting Act. Those regulations are summarized in the following table:

	Standalone financial statements	Consolidated financial statements
1. Entities listed on a regulated market in Poland or other European Economic Area (EEA) country.	Choice	Required
2. Banks (other than those included in points 1, 3, 4 and 5).	Not permitted	Required
3. Entities planning to apply or applying for a permission to list on regulated market in Poland or other European Economic Area (EEA) country.	Choice	Choice
4. Entities that are part of a group where the parent prepares consolidated financial statements for statutory purposes in accordance with IFRS as adopted by EU.	Choice	Choice
5. Branches of a foreign entrepreneurs that prepare separate financial statements for statutory purposes in accordance with IFRS as adopted by EU.	Choice	n/a
6. Other entities	Not permitted	Not permitted

The Accounting Act imposes a requirement to prepare the financial statements in an electronic format. Financial statements need to be signed with a qualified electronic signature, trusted signature or a personal signature by members of management board and the person responsible for bookkeeping. The electronic financial statements also must be filed electronically to the National Court Register.

3.2

Accounting records

The provisions of the Accounting Act and related regulations are applicable to, among others, companies and partnerships that have their registered office or place of management in Poland. For those entities that apply IFRS as the primary basis of accounting instead of Polish principles, the following sections of the Accounting Act still apply:

- Chapter 2 on bookkeeping
- Chapter 3 on stocktaking
- Chapter 6A on report on payments to administration
- Chapter 7 on auditing, filing with the appropriate court register, providing access to and publication of financial statements
- Chapter 8 on data protection
- Chapter 9 on criminal liability
- Chapter 10 on special and interim provisions, and
- Article 49 in regard to directors' report.

Each entity is obliged to maintain its accounting books and other documentation which, in particular, comprises:

- A description of the entity's accounting principles
- Rules for keeping sub-ledgers accounts and their link to general ledger accounts.

It should be noted that the violation of the Accounting Act requirements by a person responsible for drawing up the financial statements (usually the Management Board) may be recognized as a criminal offence, which is punishable by imprisonment for a term not exceeding two years, by a fine, or both.

Accounting records should be kept, and financial statements drawn up, in Polish language and presented in the Polish currency. Entity may outsource bookkeeping provided that:

01

Entrepreneur providing outsourcing is in EEA country

02

Tax office was informed

When accounting records are outsourced, they still must accounting records must be kept in Polish language and Polish currency and entity should ensure access to books of account to authorized external control or supervisory authorities.

The regulations, summarized in Chapters 3.3.- 3.5 below, apply to all entities in general. Certain types of entities such as banks, insurers, or investments funds might be governed by additional specific regulations.

3.3

Financial statements

All statutory financial statements must be prepared in electronic format and in the Polish language and expressed in the Polish currency. Financial statements consist of:

- A balance sheet
- An income statement
- A statement of cash flows
- A statement of changes in equity
- Notes to the financial statements (split into an introduction and additional notes).
- A cash flow statement and a statement of changes in equity are only required by entities whose financial statements are subject to a statutory audit.

For some specialised types of entities additional exceptions or requirements might apply in relation to primary financial statements such as, for example, a summary of investments for the investment funds and alternative investment companies.

The format of the balance sheet, income statement, statement of cash flows, statement of changes in equity, and the contents of notes to the financial statements for entities preparing their financial statements in accordance with Polish GAAP are determined by the Accounting Act. Companies listed on the Warsaw Stock Exchange, when preparing the financial statements in accordance with Polish GAAP, are guided by specific regulations for public issuers. This includes reconciliation between the results reported in accordance with Polish accounting principles and those that would have been met if IFRS, as adopted by the EU, had been applied.

Moreover, the Accounting Act provides some exemptions for entities meeting the definition of a small or micro company. They relate, among others, to the layout and content of financial statements, application of prudence principle, depreciation and amortization.

3.4 Financial reporting, publication and audit requirements

Financial reporting

All entities governed by the Accounting Act are obliged to prepare their standalone and consolidated financial statements (the latter ones only if certain criteria are met) for each financial year. The financial year does not have to be unified with calendar year. Listed companies are additionally obliged to publish semi-annual and quarterly reports. An entity must also e.g. prepare financial statements as of the date of the closure of accounting records, and as a result of other events leading to the termination of the activities of an entity, for example, the closure of business (liquidation date).

The standalone and consolidated financial statements should be prepared within three months after the balance sheet date and approved within six months after the balance sheet date.

Directors' report

Specific entities such as, for example, joint-stock companies, limited liability companies, selected partnerships, mutual insurance companies, co- operatives, state-owned companies, investment funds and investment companies prepare, in addition to the financial statements, a financial review by entity's management - the management report on the entity's operations (the 'directors' report). The scope of the report is defined in legal regulations and includes topics such as:

- Description of events that significantly impact upon the entity's performance and that occurred during the reported period and after its closing date, till the date the financial statements are approved
- Expected development of the entity
- Major achievements in the research and development area
- Actual and planned financial situation, including financial ratios
- Details about transactions in own shares
- Information on branches (business units)
- Financial risk management objectives and methods
- Key financial and nonfinancial efficiency metrics in relations to operations, as well as information on employment and natural environment
- Information on the application of corporate governance rules (only public companies)
- Where there is a link between the values disclosed in the annual financial statement and the information included in the directors' report of the given entity, the management report should include references to the amounts disclosed in the financial statement, as well as additional explanations concerning those amounts.

A micro and small entities which are obliged (based on general rules of the Accounting Act) to draw up a management report on the activities of the entity may not draw up such a report provided that in the additional information, the information relating to the acquisition of own shares will be disclosed.

Compensation report

From 2020, the Supervisory Board members in listed entities are obliged to prepare an annual report on the remuneration of the management board and the supervisory board and then to pass it to the auditor's assessment.

Statement of non-financial information

Listed entities that exceed the given thresholds are also required to present a statement and a consolidated statement of non-financial information. This statement shall include:

- Description of the business model
- Key non-financial performance ratios
- Description of social, employee, environment, human rights and anti-corruption policies and the effects of application of these policies
- Description of due diligence procedures (if applied by the entity as part of the policies mentioned above)
- Description of significant risks related to the entity's business that could negatively impact matters mentioned above, including risks related to the entity's products, its relations with counterparties and description of those risks

That statement may be published on the entity's web pages.

Publication of financial statements

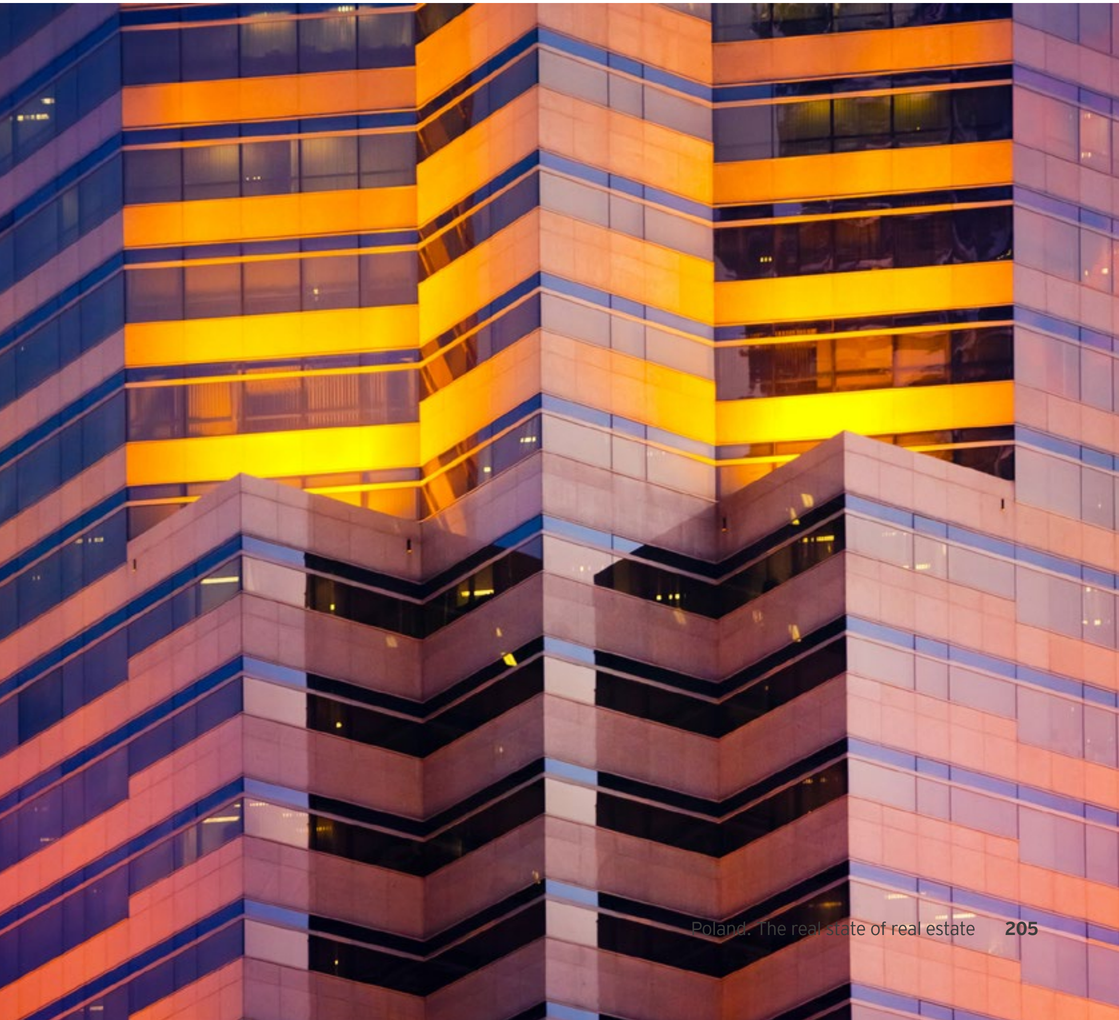
Management is required to file the annual financial statements with the registration court together with the following documents:

- Auditor's report, if the statements were subject to an audit
- Shareholders' resolution on the approval of the financial statements and distribution of profit or coverage of loss
- Directors' report (if applicable)
- The report on payments to the public administration (if applicable).

Abovementioned documents should be filed with National Court Register (KRS) within 15 days after the approval.

If the financial statements have not been approved within 6 months after balance sheet date, they should be filled with National Court Register within 15 days after its approval.

Listed companies are also required to file their financial statements with the Polish Financial Supervision Authority including interim (quarterly and semi-annual) reporting.



Electronic format of financial statements

In 2018, the Accounting Act imposed a requirement to prepare the financial statements in an electronic format. The electronic financial statements should also be filed electronically to the National Court Register.

Financial statements need to be signed with a qualified electronic signature, trusted signature or a personal signature, by all members of the Management Board and the person responsible for bookkeeping.

Where the management board is composed of a number of members, financial statements may be signed by at least one member, if the remaining management board members confirmed compliance of those financial statements with the Accounting Act (or refused to confirm) in writing.

Financial statements (as of today - other than those prepared under IFRS) should conform to the logical structure published by the Ministry of Finance.

As for IFRS financial statements, issuers whose securities are admitted to trading on the regulated market shall in the European Union are obliged to prepare annual financial reports in the ESEF format (i.e. XHTML). Additionally, IFRS consolidated financial statements that are part of those annual financial reports shall be marked up using the XBRL markup language.

Other entities that prepare financial statements in accordance with IFRS can choose the format applicable to issuers of securities admitted to trading on the regulated market or other searchable format (i.e. allowing for search and copying of alphanumeric characters in an electronic document).

Audit requirements

Polish statutory audit requirements apply to all annual consolidated financial statements and to the annual standalone financial statements of the following entities that operate as a going concern:

- Banks, insurance companies, reinsurance companies, pension funds, investment funds (including alternative, closed, open and specialized funds), investment fund management companies, joint-stock companies and public companies, payment institutions, brokerage houses and firms
- Other entities that meet at least two of the following three thresholds in the financial year preceding the financial year for which the financial statements were drawn up:
  - Annual average employment (equivalent of 50 individuals employed full-time)
  - Total assets at the end of the financial year (the PLN equivalent of €2.5 million or greater)
  - Net sales including financial income for the financial year (the PLN equivalent of €5 million or greater).

The statutory audit requirements also apply to the financial statements of the acquiring companies and newly formed companies, prepared for the financial year in which the business combination took place.

Also, all statutory IFRS financial statements are subject to audit requirements.

There are also additional requirements in relation to audit or review of interim financial statements of public companies and investment funds.

Audits are governed by the relevant legal requirements in force which include:

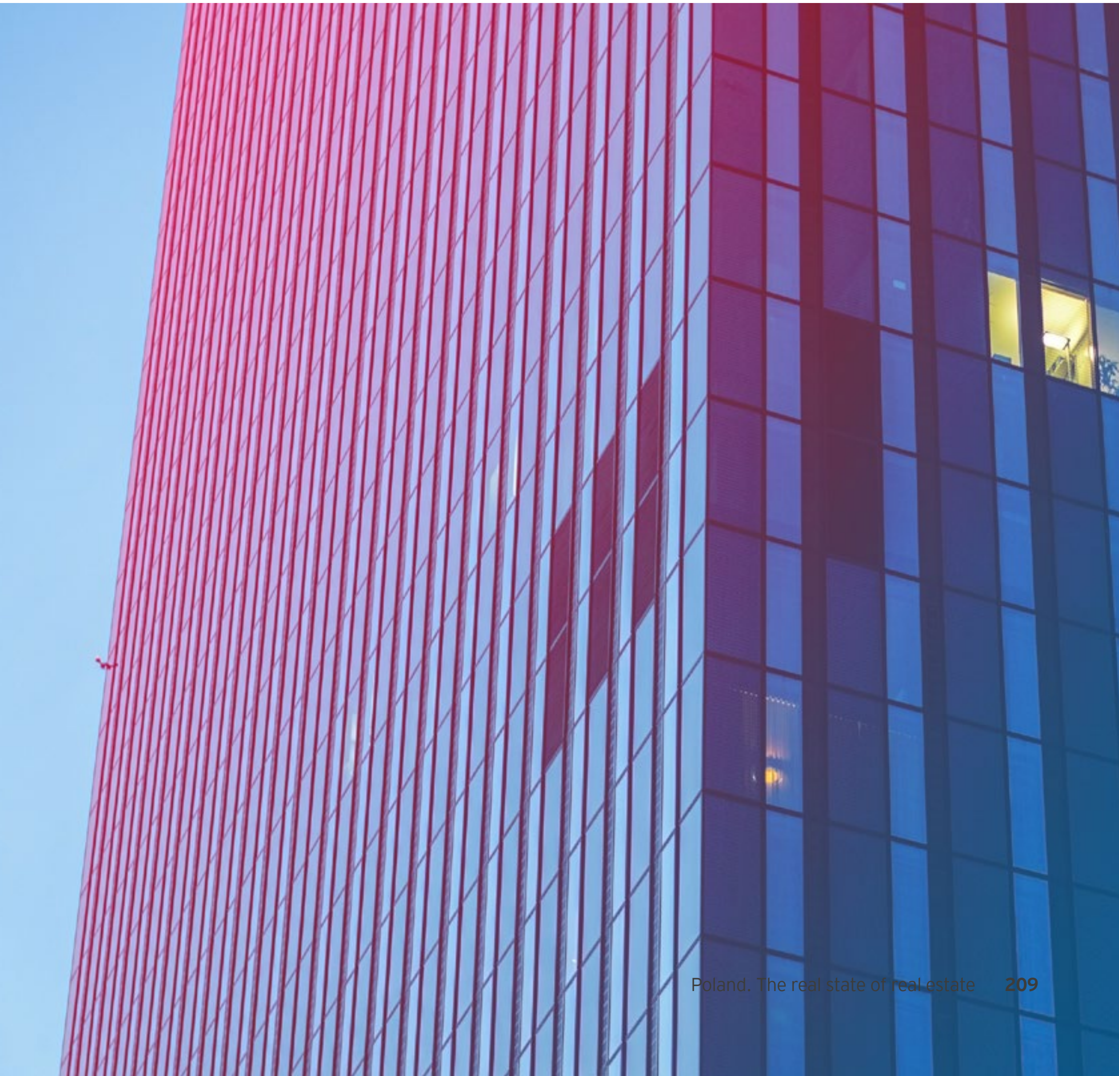
- Chapter 7 of the Accounting Act
- The Auditors Act
- International Standards on Auditing in the version adopted as the National Auditing Standards by the National Council of Statutory Auditors
- Regulation (EU) No 537/2014 of the European Parliament and the Council on specific requirements regarding statutory audit of public-interest entities.

Changes in Code of Commercial Companies (KSH) related to the audit process

In October 2022, amendments to the Code of Commercial Companies entered into force. They are related to or may affect the audit process of limited liabilities companies, simple joint-stock companies and joint -stock companies that have supervisory board or its equivalent ("Supervisory Board"). The changes include, among others:

- the requirement for the supervisory board to inform the key statutory auditor in advance of the date of the supervisory board meeting at which the annual financial statements and 'directors' report will be discussed and evaluated
- the legal requirement for the key statutory auditor or other representatives of the audit firm to to present the independent auditor's report, including the assessment of use of the going concern basis of accounting as well as to answer questions of the members of the supervisory board
- new reporting requirements for the supervisory board to prepare introduction of annual report on its activities and to be then presented to the general meeting or shareholders' meeting respectively

- clarification of the competencies of the supervisory board to obtain information and data from the entity and its employees, associates and subsidiaries
- introduction of an advisor to the supervisory board for the implementation of specific tasks



3.5

Consolidation

Consolidation requirements

A capital group is a group which comprises of a holding company and its subsidiaries.

According to the Accounting Act, a holding company is a company that controls another entity.

A capital group prepares its consolidated financial statements on the basis of standalone financial statements of entities that belong to the group. Groups which, in the preceding and current financial years, did not exceed at least two out of three of the following thresholds before intragroup eliminations:

- Annual average employment - equivalent of 250 individuals employed in full time
- Total assets of all group entities - PLN 38.4 million
- Net sales revenues from goods and services of all group entities - PLN 76.8 million

or after intragroup eliminations:

- Annual average employment - equivalent of 250 individuals employed in full time
- Total assets of all group entities - PLN 32 million
- Net sales revenues from goods and services of all group entities - PLN 64 million

are exempt from preparing the consolidated financial statements.

Additionally, a parent that is itself a subsidiary of another entity whose registered office or place of effective management is established in the European Economic Area ('higher level parent') does not need to prepare consolidated financial statements if:

- A higher level parent holds 100% of the shares in this parent (or a higher level parent holds at least 90% of shares in this parent, and the remaining shareholders of this parent have approved a decision not to prepare consolidated financial statements) and
- A higher level parent consolidates this parent as well as all subsidiaries of this parent

The above provision shall not apply if a parent is an issuer of securities admitted to trading on one of the European Economic Area regulated markets.

A subsidiary is excluded from consolidation if:

- The shares in such entity were acquired, purchased or otherwise obtained for the sole purpose of subsequent resale within one year from the date of acquisition
- There are severe long term restrictions on the exercise of control over the entity which prevent free disposal of its assets, including net profit generated by this entity or which prevent exercise of control over the bodies managing the entity
- It is impossible to get the information necessary for preparation of a consolidated financial statement without delay incurring unreasonably high cost (applies in exceptional cases only).

Moreover, a subsidiary does not have to be included in the consolidated financial statements if the amounts stated in that entity's financial statements are immaterial in relation to the holding company's financial statements.

Consolidated financial statements

Consolidated financial statements comprise:

- A consolidated balance sheet
- A consolidated income statement
- A consolidated statement of cash flows
- A consolidated statement of changes in equity
- Notes to the consolidated financial statements (split into an introduction and additional notes).

Consolidated financial statements should be accompanied by a Group 'directors' report prepared by the Management Board of the holding company. Group 'directors' report can be prepared together with a directors' report of the holding entity as a single report.

Consolidated financial statements should be prepared at the same balance sheet date and for the same financial year as the financial statements of the holding company. If this date is not the same for all entities within the group, then consolidation may cover financial statements prepared for a twelvemonth period different to the financial year, if the balance sheet date of those financial statements is earlier by no more than three months of the balance sheet date adopted by the group. Companies included in the consolidation should adopt consistent accounting policies and consistent methods of preparation of financial statements. If the accounting policies of consolidated entities differ from those applied for consolidation, then appropriate adjustments must be carried out at the consolidation level. According to the Accounting Act, separate financial statements may be published before consolidated financial statements.

Methods to include entities in consolidated financial statements

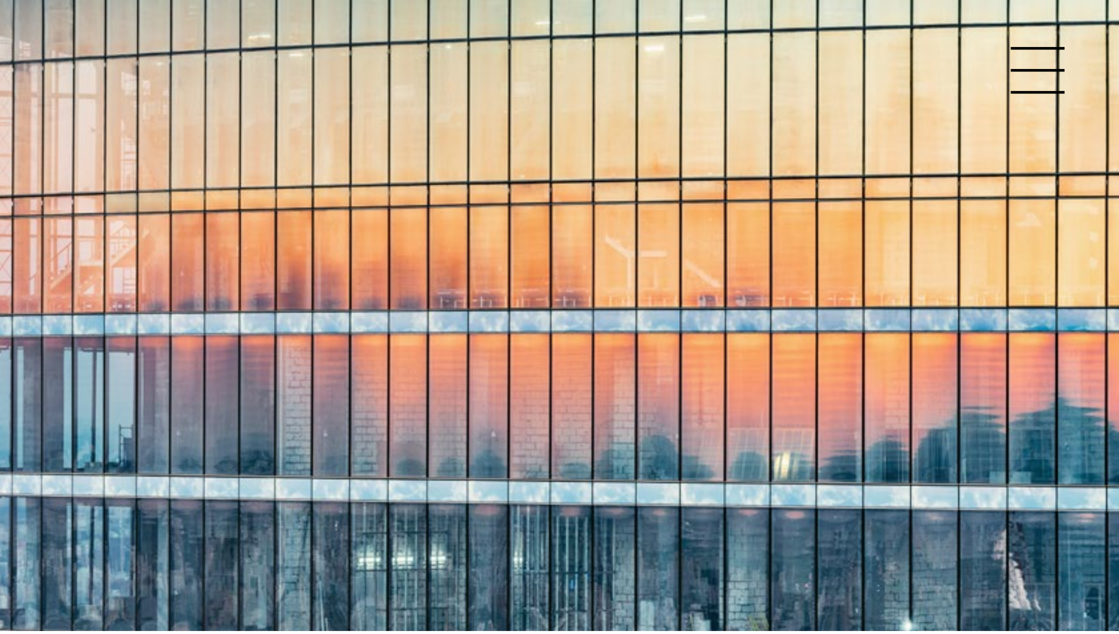
A subsidiary is consolidated using the full consolidation method. Joint ventures are consolidated using a proportional consolidation method or accounted for using an equity method. Associates are accounted for using the equity method. When the associate prepares its consolidated financial statements, the equity method applies to the net consolidated assets of the associate.

3.6 Hot topics in accounting with potential implications for the real estate industry

War in Ukraine, and current macroeconomic outlook

The coronavirus pandemic significantly impacted the global economy and while it is still visible in e.g. disrupted supply chains, the start of war in Ukraine caused significant additional degree of uncertainty in the economy. Number of countries have imposed sanctions on Russia and Belarus.

Companies are facing a storm of extraordinary events from the cost-of-living crisis and inflation, increasing interest rate, the war in Ukraine and the lingering COVID-19 pandemic. Assessing the potential effects for companies and how these should be reflected in IFRS financial statements will be critical for financial reporting.



Current geopolitical and macro-economic situation may impact many areas of financial reporting. For entities from real estate industry followingthese could encompass among others:

- → Going concern assessment
- → Impairment of assets
- → Fair value measurement of investment property
- → Granting rent concessions and recognition of rental income
- → Loan covenants and classification of liabilities as current or non-current
- → Renegotiation of debt agreements (e.g. repayments deferral, etc.)
- → Government grants / government assistance
- → Expected credit losses on trade receivables

Also, higher degree of uncertainty regarding estimates and assumptions used by the management leads to higher sensitivity of reported figures.

As a result, companies should take into consideration the importance of providing sufficiently detailed disclosures in the financial statements. Disclosures should be clear, relevant and they have to depict the impact of the current macroeconomic environment on the financial statements. This is in particular relevant for entities reporting under IFRS. The significance of disclosures is emphasized both by regulators and standard setters (including the Polish Financial Supervision Authority (UKNF), the European Securities and Markets Authority (ESMA) and the Polish Ministry of Finance).

The Polish Accounting Standards Committee has recently issued two recommendations which include guidance for entities reporting currently under Polish Accounting Regulations. These are:

- "Financial statements and management reports during Russian aggression on Ukraine", issued in April 2022, and
- "Financial statements and management report for 2022 in times of macroeconomic uncertainty", issued in January 2023.

Introduction of the Polish Deal – limitations of tax depreciation of owned properties and possible impact on the financial statements

The Polish Deal, an extensive and new set of tax regulations, became effective from 1 January 2022.

As described in section (2.6.2), the Polish Deal introduced limitations of tax depreciation of properties. According to the new law, depreciation charges for fixed assets included in group 1 of the Classification of Fixed Assets (i.e. buildings and premises as well as cooperative right to commercial premises and cooperative ownership right to residential premises) cannot exceed respective depreciation charges calculated in accordance with the accounting regulations and charged to the entity's profit and loss statement in the corresponding tax year.

Real estate companies applying fair value model for investment properties in certain cases might therefore no longer classify tax depreciation of the mentioned fixed assets as tax deductible expenses.

Consequently, many real estate companies considered application of cost model in relation to held properties. Such change of accounting policy within a given framework or changes of framework applied, if available, requires thorough accounting and tax analysis.

IV

ESG in Real Estate

Climate-driven changes are happening faster than we thought, which is why governments and organizations globally have agreed ambitious targets to cut and eventually end dependency on coal for energy production.

Buildings in the EU are responsible for nearly 40% of energy consumption and 36% of GHG emissions. As urbanization is set to continue with 70% of world's population living in the cities by 2050, this trend will continue.

There is a great chance to improve environmental performance of buildings through their entire live cycle and real estate players are taking steps to minimize negative effects of the sector on the environment by complying with ESG (Environmental, Social and Governance) regulations and implementing more stringent ESG tools and solutions. It is not only beneficial for the climate but also improves the standard and quality of life by creating friendly, livable and healthy urban places.

The fastest implementation of ESG standards is proceeding in the areas, which bring the real efficiencies. It is related to both newly constructed buildings as well as existing ones, which require rebuilding, refurbishing or retrofitting. Measures implemented in order to enhance the environmental performance include i.a.:

- applying eco-friendly and energy efficient construction materials and furnishing materials,
- designing interiors in a way enabling soft & hard refurbishment,
- applying renewables (photovoltaics, geothermal heat pumps),
- introducing efficient waste and water management systems,
- installing smart A/C systems adjusting to the level of occupancy.

Another aspect of ESG, which contributes to cutting emissions is supporting transformation in transport and mobility. Modern buildings are designed with the idea to promote public, shared and low-emission transport. Landlords limit number of parking lots, equip their projects with bike racks and EV charging stations.

Real estate can also play an important role in strengthening social ties. One of the key elements of good design is the idea of place making – creating a place for social interaction. Offices, retail centers and hotels should merge into a liveable city, creating an inclusive space for inhabitants, whose environmental awareness is also increasing. Their demands, whether as a tenant, a customer or a resident, are growing in terms of eco solutions applied and social values represented.

When analysing the annual 2022 report published by the Polish Green Building Council it is clear that the sector is going green at the fast pace.

Over the last year, the usable space of certified buildings (BREEAM, LEED, DGNB, WELL, HQE, GBS) increased by around 24%, totaling 28.6m m^2 (1,359 buildings)[1].

ESG solutions not only contribute to tackling climate and social challenges but also can form a resilient and lucrative business model. Seemingly non-financial aspects of real estate impact the commercial conditions of investment. Compliant properties attract a broader pool of potential tenants, increasing the demand and limiting vacancies. Energy efficiency, reduced resource use and longevity decrease operational and maintenance expenses. The buildings are more resilient to energy and utilities costs fluctuations, which is crucial in the current global energy crisis. Lower occupancy costs and higher demand for premises mean that ESG complainant buildings obtain higher rents on the market. Furthermore, upholding high standards ensure compliance with environmental regulations, minimizing the potential risks of future necessary improvements. The various upsides of seemingly non-financial environmental solutions can therefore effectively offset additional initial acquisition or construction costs. Investors perceive ESG compliant real estate as desired and highly sought-after product, with some funds specializing in green investment. Sustainable properties are associated with reduced risks and stable returns and are therefore expected to achieve higher transactional prices.

ESG has become not only a good market practice, but also a legal requirement to many companies and therefore it can no longer be simply regarded as a part of publicity campaign - it now has a potential to alter the business environment as a whole. ESG factors in the real estate sector are often understood as different environmental certificates (such as ones listed above), however, social and governance criteria deserve some recognition as well. They are derived form a complex network of binding legal regulations, soft law, rankings, ratings and standards deriving not only from European but also local legislation.

[1] *Sustainable Certified Buildings. 2022 Analysis*, Polish Green Building Council, 2022.

As a result of the EU Directive 2014/95/EU of 2014 and the amendment of the Polish Accounting Act, starting from 2018, large Polish listed companies are required to publish ESG data in their non-financial reports.

The obligation to report ESG data has been expanded by an EU directive, the so-called CSRD (Corporate Sustainability Reporting Directive), which was adopted by the European Parliament in December 2022.

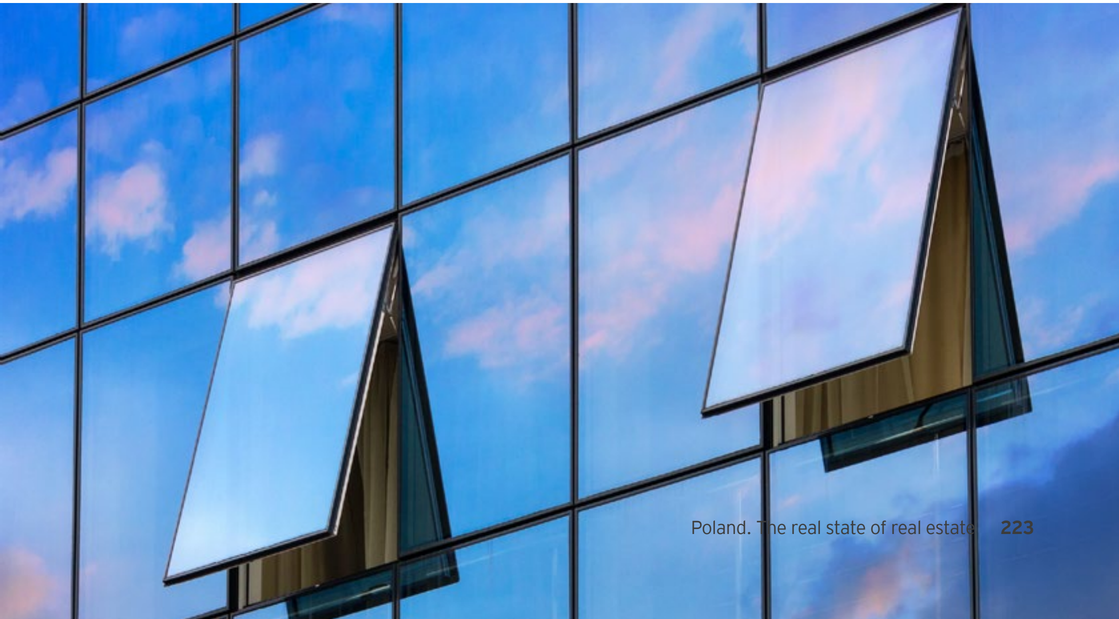
The reporting rules will take effect between 2024 and 2028:

- from January 1, 2024 for large public interest companies (with more than 500 employees) already covered in the Non-Financial Reporting Directive, with reports in 2025,
- from January 1, 2025 for large companies not currently subject in the Non-Financial Reporting Directive (with more than 250 employees and/or €40m in turnover and/or €20m in total assets), with reports in 2026,
- starting January 1, 2026 for SMEs and other listed companies, with reports in 2027. SMEs can opt out in 2028.

The main categories of information that will be affected by the new reporting requirements are primarily environmental issues, but also human rights in the broadest sense, especially working conditions, work-life balance and health and safety.

All disclosures should include a forward-looking perspective, but at the same time take into account the past, and should be qualitative and quantitative in nature. They should address the short-, medium- and long-term horizon and the company's entire value chain, including its operations, products and services, business relationships and supply chain.

Since there is no turning back from ESG in real estate, it should become a priority to any company active in the real estate sector. In recent years, environmental and social issues have become a public and political priority, and ESG factors have begun to represent a key value for investors. In last year's edition of the Polish Stock Exchange's survey on the impact of ESG factors on investment decisions, as many as 81 percent of professional stock market investors in Poland rated companies with an implemented ESG strategy as lower risk. A systematic and conscious approach to identifying and managing ESG issues can not only increase the resilience of investment portfolios and protect them from potential declines in value, but also provide better financing terms for a larger pool of new "green" capital that is sure to have a positive impact in ESG-related areas. Simply put, this is an area that cannot be neglected and all companies should make it a priority.



V

Contacts

Real Estate Advisory Group

Anna Kicińska

Anna.Kicinska@pl.ey.com

+48 505 107 010

Anna Kicińska is a Partner in Strategy and Transactions Department and Leader of the Real Estate Advisory Group. She has over twenty years of experience in strategic real estate advisory, transaction support, valuations and asset management. She was leading major real estate asset and M&A transactions in the CEE region. Since 1997 she is a certified Polish appraiser and since 2001 a member of The Royal Institution of Chartered Surveyors (MRICS). She is also Certified Commercial Investment Member (CCIM) and Urban Land Institute Member (ULI).

Anna Andrzejewska

Anna.Andrzejewska@pl.ey.com

+ 48 660 440 137

Anna Andrzejewska is a Director in the Real Estate Advisory Group. She specializes in strategic advisory consultancy, especially in corporate strategic advisory including portfolio & processes management, consolidations & relocations, optimal business locations. Anna also conduct valuations for transaction, accounting and debt financing purposes. She graduated from the University of Łódź with Master's degree in Finance and Banking and specialization in Investments and Real Estate. She completed a post-graduate School of Real Estate Valuation at Warsaw School of Technology. She is a certified Polish real estate manager and a member of The Royal Institution of Chartered Surveyors (MRICS).

Dominik Wojdat

Dominik.Wojdat@pl.ey.com

+ 48 519 511 412

Dominik Wojdat is a Director in the Real Estate Advisory Group. He has broad experience in providing both developers and investors with market, highest & best use and feasibility studies for commercial as well as residential properties. Dominik also managed large scale urban redevelopment projects for the benefit of local authorities and European institutions. He graduated from Faculty of Geography and Regional Studies at University of Warsaw. He completed a post-graduate property management studies at Warsaw University of Technology and became a certified property manager. Dominik is Certified Commercial Investment Member (CCIM) and member of the Royal Institution of Chartered Surveyors (RICS).

Ewelina Świderska

Ewelina.Świderska@pl.ey.com

+ 48 573 339 089

Ewelina Świderska is a Manager in the Real Estate Advisory Group. Ewelina has over 8 years of real estate experience in providing real estate advisory services including valuation for accounting, investment and loan security purposes, market analysis, highest & best use and feasibility studies, strategic advisory and transaction support. She graduated from the Warsaw University of Technology with Master's Degree in Geodesy and Cartography, spatiality Cadaster and Property Management. She is a certified Polish appraiser.

Assurance Services

Łukasz Jarzynka

Lukasz.Jarzynka@pl.ey.com

+ 48 510 201 290

Łukasz is a Partner in Warsaw Office and Head of Real Estate Assurance Services. Łukasz has over 17 years of experience in audit and is Polish Chartered Accountant. He gained extensive experience in auditing and advising both large and multinational groups, as well as smaller private clients, IPO/SPO transactions and audit of listed companies, with focus on the real estate market.

Rafał Hummel

Rafal.Hummel@pl.ey.com

+48 504 112 778

Rafał is a Partner in the Warsaw practice of EY and a Leader of Climate Change and Sustainability Services. This team specializes in ESG and supports clients in building ESG strategies, ESG reporting preparation and external verification. Rafał holds a Polish Statutory Auditor (Biegły Rewident) license number 12455. Rafal was the co-author of and led the team who worked on the Carbon Disclosure Project Central Eastern Europe Report for 2015 and 2016 as well other articles related to non-financial reporting and non-financial data verification since 2015. He regularly attends trainings in the area of non-financial reporting in accordance with Global Reporting Initiative – GRI. In 2013 – 2015, Rafał, living in the region of San Francisco led US GAAP financial audit (including IPO) projects for EY public clients from the biotechnology sector listed on NASDAQ and based in California. Given his experience on the US market, since his return to Poland in 2015, Rafal is a Vice-Leader of the US Desk at EY Poland.

Mariusz Kędzierski

Mariusz.Kedzierski@pl.ey.com

+ 48 501 487 796

Mariusz is an Associate Partner in EY Assurance and member of the Real Estate Group at EY's Warsaw office. Mariusz is Polish Chartered Accountant and has over 15 years of experience in audit, including real estate companies. He specializes in audits of entities from real estate market (real estate groups / funds, listed residentials and real estate developers). He has also experience in IPO audits of reals estate groups.

Maksymilian Fizek

Maksymilian.Fizek@pl.ey.com

+48 573 339 121

Maksymilian is Senior Manager in Assurance Services, Member of EY Poland Real Estate Group at EY Warsaw, with over 10 years of experience in audit majorly responsible for audits of listed entities. He gained extensive experience in EY working in Poland for private and public companies from various sectors, i.e. real estate, construction and development, TMT, retail, rental and leasing, energy. Maksymilian has a strong track record in auditing standalone and consolidated financial statements prepared in accordance with the Polish Accounting Regulations and International Financial Reporting Standards („IFRS"). He has been directly responsible for auditing financial statements prepared in accordance with IFRS of the largest public companies listed on the Warsaw Stock Exchange ("WSE").

Aleksandra Lichocka

Aleksandra.Lichocka@pl.ey.com

+ 48 797 974 298

Aleksandra is a Manager in Assurance Services, Member of EY Poland Real Estate Group at EY Warsaw, with over 7 years of experience in audit. She gained wide experience in audits of standalone financial statements and consolidated financial statements of private and public companies, in accordance with Polish Accounting Act as well as International Financial Reporting Standards.

Tomasz Michalak

Tomasz.Michalak@pl.ey.com

+48 510 201 331

Tomasz is a Senior Manager in EY Assurance, Climate Change and Sustainability Services. He has over 11 years of experience in assurance and advisory services. Tomasz is a member of ACCA and a Polish Statutory Auditor (Biegły Rewident 13765). He coordinated projects related to ESG reporting including advisory on ESG reporting, assurance on reporting, EU Taxonomy. He is co-author of the Carbon Disclosure Project Central Eastern Europe Report for 2015 and 2016 and other articles related to non-financial reporting and non-financial data verification. He has certificate of the completion of training in the area of non-financial reporting in accordance with Global Reporting Initiative – GRI. He coordinated the project that involved the design of key business and financial processes in a newly-established construction entity in a well-known real estate developer group.

IFRS Desk

Anna Sirocka

Anna.Sirocka@pl.ey.com

+ 48 602 509 848

Anna is EY IFRS Desk Leader in Poland. She has over 20 years of professional experience as an auditor and accounting expert. She is Polish Chartered Accountant, Certified Internal Auditor, member of ACCA and member of Accounting Standards Committee in Poland (appointed by the Minister of Finance). She is involved as IFRS subject matter expert during audits of multinational groups, listed companies as well as smaller private clients operating on real estate market. She participated in numerous IPOs, mergers and acquisitions with accounting advisory services.

Małgorzata Matusewicz

Małgorzata.Matusewicz@pl.ey.com

+ 48 510 201 220

Małgorzata is an Associate Partner in the EY global IFRS Desk. She is Polish Chartered Accountant and member of ACCA. Małgorzata is responsible for assisting clients and EY teams by providing consultations on complex accounting issues and promoting consistent interpretation and application of IFRS. Malgorzata has also many years of experience in accounting advisory - accounting opinions, IFRS conversions and reorganisation of reporting processes.

Katarzyna Żołnowska

Katarzyna.Zolnowska@pl.ey.com

+ 48 505 171 632

Katarzyna is a Manager in the EY IFRS Desk in Poland. She is Polish Chartered Accountant and member of ACCA. Katarzyna is a part of a team assisting clients and EY teams by providing consultations on complex accounting issues and promoting consistent interpretation and application of IFRS. Katarzyna has participated in accounting advisory projects relating to IFRS conversions, implementation of new standards, etc.

Marek Błaszczak

Marek.Blaszczak@pl.ey.com

+ 48 513 135 601

Marek is a Senior Manager in the EY IFRS Desk in Poland. He is Polish Chartered Accountant and member of ACCA. Marek is a part of a team assisting clients and EY teams by providing consultations on complex accounting issues and promoting consistent interpretation and application of IFRS. Marek has participated in accounting advisory projects relating to IFRS conversions, implementation of new standards, etc.

TAX Services

Tomasz Ożdziński

Tomasz.Ozdzinski@pl.ey.com

+ 48 573 339 341

Tomasz Ożdziński is the head of the Tax Real Estate Group of EY in Poland and a member of EY's Transaction Tax (M&A) Team. He is a graduate of the Faculty of Law and Administration of the University of Adam Mickiewicz in Poznań and an Executive Programme in Real Estate at the Solvay Brussels School of Economics & Management at Université Libre de Bruxelles. Tomasz is a certified tax advisor and has over two decades of experience in managing large, complex projects, including in particular transaction services and restructurings, undertaken both locally and internationally.

Michał Sawicki

Michal.Sawicki@pl.ey.com

+ 48 510 201 301

Michal Sawicki is Partner in Tax Real Estate Group at EY's Warsaw office. He has been with EY since 2007. He is a certified tax advisor. His skills include advising on global restructurings, transaction support and structuring, tax accounting. He was involved in projects concerning tax issues in relation to the process of setting up, operating and restructuring of companies, tax assistance in establishing tax effective exit scenarios, international tax structuring. Michal is an author of various articles relating to tax aspects of investing on the real estate market and co-author of the book "Taxation of the Real Estate Market".

Michał Koper

Michal.Koper@pl.ey.com

+48 519 511 485

Michał Koper is Partner within International Taxation and Transaction Services and Real Estate Group of EY in Warsaw. He has been with EY since 2006. From 2013 to 2015 he held a position at Ernst & Young LLP's International Tax Services group based in New York where he led the Polish tax desk. He is a certified Polish tax advisor. His professional skills include advising on tax planning for international investments in Poland, tax effective ownership structures and financing schemes, global restructurings, providing tax advisory services on domestic tax law. He was involved in projects concerning tax aspects of setting up, operating and restructuring of companies, tax assistance in establishing tax effective exit scenarios. Michał is a co-author of the book "Taxation of the Real Estate Market" and author of various articles relating to tax issues.

Agnieszka Owsiak

Agnieszka.Owsiak@pl.ey.com

+48 512 147 446

Agnieszka Owsiak is a Senior Manager within Indirect Taxation and Real Estate Group of EY in Warsaw. Agnieszka has 18 years of experience in advising companies and people running business. She is specialized in ongoing consultancy for national and foreign companies, mainly in the area of indirect taxation. Her professional skills include advising on tax planning for international investments in Poland, different types of restructuring, but also with qualifying of the transferred set of assets for the tax purposes.

Edyta Winnicka

Edyta.Winnicka @pl.ey.com

+ 48 573 339 215

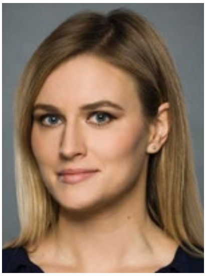
Edyta Winnicka is a Senior Manager within International Taxation and Transaction Services of EY in Warsaw. She has been with EY since 2016 and prior to joining EY she has gained valuable experience working in other Big Four law firm and independent law firm. She has extensive experience in tax advisory on international projects involving numerous jurisdictions. She has worked on a number of deals involving mergers & acquisitions, demerger, transformations, sales and part disposals, including multidisciplinary projects.

Michał Pacyga

Michal.Pacyga@pl.ey.com

+48 789 07 496

Michał Pacyga is a Senior Manager within International Taxation and Transaction Services and Real Estate Group of EY in Warsaw. Michał is legal advisor and a member of The Regional Chamber of Legal Advisers in Warsaw.
He is also a certified Polish tax advisor. Michał has comprehensive theoretical and practical M&A knowledge. He participated in numerous due diligence projects, tax structuring's, contract negotiations and post- merger integrations. He has extensive transaction support experience, as he advised in various complex restructuring operations, both as a tax and legal advisor. He is co-author of the book entitled "Real estate tax in practice" (2016) and an author of a number of tax related publications in professional press.



Marta Czerwińska-Szczygieł

Marta.Czerwinska-Szczygiel@pl.ey.com

+ 48 517 882 444

Marta is a Manager in International Tax and Transaction Services at EY Warsaw. Before joining EY, she has gained valuable experience working in other Big Four law firms, and in a real estate Group, as an internal tax advisor. Marta is a certified tax advisor (license no. 13450) and an advocate. She was involved in a due diligence projects, tax reviews, tax structuring support and reorganization projects.

Arkadiusz Kołłątaj

Arkadiusz.Kollataj@pl.ey.com

+ 48 573 339 010

Arkadiusz Kołłątaj is a Manager within International Taxation and Transaction Services of EY in Warsaw. He has been with EY since 2014.

He has broad experience in providing tax advisory services for domestic and international Clients including in particular the following areas: effective investment structures, reorganizations and structuring of financing flows, withholding tax as well as providing support related to the obligations connected with Mandatory Disclosure Rules (MDR).

Marcel Zenowicz

Marcel.Zenowicz@pl.ey.com

+48 573 339 003

Marcel is a Manager in International Tax and Transaction Services at EY Warsaw office and has been with EY since 2014. He is a licensed tax advisor (no. 13176) and passed the Polish advocate exam. He was involved in due diligence projects, tax structuring of transactions including post-closing advisory, SPA modeling and post-acquisition integration.

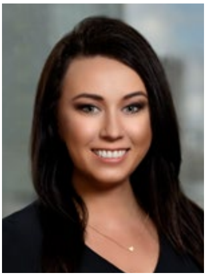
Legal Services

Magdalena Kasiarz

Magdalena.Kasiarz@pl.ey.com

+48 519 404 979

Magdalena Kasiarz is an advocate and Associate Partner in EY Law with 15 years of experience in advising on the sale, reorganization and liquidation of companies with international capital (conducting M&A transactions and legal audits), advising on the restructuring of capital groups, including mergers, divisions and transformations of companies, as well as cross-border mergers. She advised in numerous transactions on shares and assets related to real estate both on the buyers and sellers side. She also specializes in providing the ongoing legal assistance in the scope of civil law and company law, including preparation and negotiation of lease and service agreements.



Anna Palczewska

Anna.Palczewska@pl.ey.com

+ 48 797 971 828

Anna is a Manager and attorney-at-law with experience in legal advisory for businesses in the real estate and development sectors. Anna provides legal advice to Polish and foreign real estate developers and investment funds in the field of acquiring and disposing of commercial real estate, as well as preparing and completing real estate investment projects. She was involved in many due diligence projects, asset deals and share deals for real estate, as well as projects concerning the preparation and completion of investment processes. Anna graduated from the Jagiellonian University. She is a CCIM candidate.

Katarzyna Kłaczyńska

Katarzyna.Klaczynska@pl.ey.com

+ 48 519 511 521

Katarzyna Kłaczyńska, LL.M., is an attorney specializing in energy and environmental matters. Each year since 2013 she has been recognized by Chambers & Partners ranking as one of leading environmental law attorneys in Poland. She has also been recommended by Who's Who Legal for her climate change law expertise. She has worked with clients representing variety of sectors, assisting them in pursuing their environmental, sustainability and resources efficiency objectives. Katarzyna is a member of the New York Bar. She graduated from Jagiellonian University in Poland, and Harvard Law School, where she was granted Gammon Fellowship for Academic Excellence.

EY | Assurance | Tax | Strategy and Transactions | Consulting

EY, Rondo ONZ 1, 00-124 Warsaw

SCORE No. 00379-162

ey.com/pl

Real Estate
Strategy and Transactions Services

Anna Kicińska
e-mail: Anna.Kicinska@pl.ey.com
Phone +48 505 107 010

Tax Services

Tomasz Ożdziński
e-mail: Tomasz.Ozdzinski@pl.ey.com
Phone + 48 573 339 341

Assurance Services

Łukasz Jarzynka
e-mail: Lukasz.Jarzynka@pl.ey.com
Phone + 48 510 201 290

Legal Services

Magdalena Kasiarz
e-mail: Magdalena.Kasiarz@pl.ey.com
Phone +48 519 404 979