

BWHS Law Firm

Doing Business in Poland



Why to invest in Poland?

- Polish sound economy
- good traditions of trade relations
- PL - EU member for 8 years now
 - friendly legal environment
 - EU funds

Poland - Economic Data

- GDP-gross domestic product increase
 - +4.3 % (2011)**
 - +2.0% (2012)**
 - +2.9% (2013 forecast)**
- inflation rate – 3.7 % (2012)
- unemployment rate - 14,2 % (January 2013)

source: www.stat.gov.pl

Poland – foreign trade

- Export 2012: 141,9 bln EUR (+3,8%)
- Import 2012: 151,7 mld (0,6%)

Italy:

- *3rd biggest Polish foreign trade partner in 2005 (imp/exp), 2009 (exp)*
- *3rd biggest EU exporter to PL in 2011*

source: GUS

Investment Incentives – the EU 2014-2020 budget

- 2007-2013 funds total allocation - EUR 101.5 bln
- **2014-2020 funds prognostic total – EUR 105.8 bln**
 - more than in the previous budget, despite EU tightening belt!
 - next 7 years - Poland will be the biggest EU funds beneficiary among all the member states
 - biggest beneficiary of the Cohesion funds alone as it has been in EU history!

Investment Incentives – the EU budget for 2014-2020

- **Cohesion Policy** framework **EUR 72.9 bln**
 - *programms start to run propably 2014/2015*
- **Common Agricultural Policy** **EUR 28.5 bln**

Investment incentives – SEZ zones

14 Special Economic Zones in Poland

- a plot prepared for investments at a competitive price;
- free assistance in formal issues connected with the investment;
- tax relief (CIT or PIT)
 - granted in relation to the investment costs, or two-year costs of the work of the newly-employed persons
 - up to 30% (*Warsaw*), 40% (*western part of Poland*) or 50% (*eastern/south part of PL*)
 - *e.g.: in Podkarpackie province, the maximum allowed level of public assistance is 50% for large enterprises, 60% for medium enterprises and 70% for small and micro enterprises.*

Setting Up a Business in Poland

Types of business entities:

– **Corporations:**

- Limited liability company (most popular form)
- Joint stock company

– **Partnerships:**

- Registered partnership
- Limited partnership
- Limited joint stock partnership

Types of Business - Entities I

Limited Liability Company - LLC

- very popular corporate form to structure business activity in Poland
- generally convenient for the wholly owned subsidiary of foreign companies (e.g. Italian subsidiary)
- required share capital is around EUR 1,150

Types of Business Entities II

Joint-Stock Company

- formalized and more complex form of business
- required form for certain business (for instance banks, insurance companies)
- required for investors wishing to engage in Initial Public Offering in Poland
- required share capital - around EUR 23,000

Types of Business Entities III

Limited Partnership (or joint – stock partnerships)

- usually preferred when investors intends to vary their engagement and consequently their liability for transactions performed by the partnership
- two types of partners:
 - a limited partner - liable only for the amount agreed in the partnership agreement and cannot represent the partnership
 - a general partner - unlimitedly liable for the partnership's obligations with the right to represent the partnership

Types of Business Entities VI

foreign entrepreneurs may also run business activities in the form of **registered branch offices**

Taxation of Corporations I

- income generated by capital companies (LLC and joint stock company) is subject to a corporate income tax (CIT)
- it is a flat-rate tax which, as a rule, is applied to whole income regardless of source
- **the corporate tax rate in Poland is 19%**

Taxation of Corporations II

- CIT reported and paid on an annual basis although **the taxpayers are required to make monthly advance payments** on account of the annual tax
- **losses may be carried forward for five consecutive years** (but the deduction in a given year cannot exceed 50% of the loss incurred)

Taxation of Corporations III

- **dividends** paid out by a Polish subsidiary to its Italian shareholder (capital company) are **exempted from taxation in Poland**
- interest and royalties paid out by a Polish subsidiary to its Italian shareholders (capital company) **will also be exempt from tax in Poland starting from July 1st, 2013**
(currently are subject to withholding tax of 5%)

Taxation of Regional Branch

- the branch is normally considered as a 'permanent establishment' of the foreign entrepreneur in Poland
- income related to the activities of the foreign company's branch on the Polish territory is subject to income taxation in Poland at 19% rate
- not recommended form of business due to lack of precise tax and accounting regulations

Personal Income Tax

- progressive tax scale with **18% and 32%** personal income tax (PIT) rates
- income from business activity run by individual entrepreneur may be taxed with **19% flat rate**
- certain foreign individuals' incomes may be taxed in Poland with 20% PIT rate (ad-hoc agreements - „*umowy zlecenia*”)

Other Taxes

- standard Polish VAT rate is **23%**
- **'stamp duty'** at **0,5%** of the nominal value of share capital (capital companies) or the value of contributions to the partnership
- **transfer tax at a rate of 1% - 2%** on certain types of transactions (e.g. sales of receivables)
- real property tax - tax rates are determined by local authorities within the limits set annually by the Ministry of Finance

Acquisition of land

Possibility of acquisition of a real estate by EU entities – no permission required

Exception:

- agricultural land (after formal permission), but:
- after 2 May 2016 no permission required
- it is possible to acquire a LLC which is already an owner of an agricultural land

Distribution

- Agency, franchising, distribution agreements
- Agency agreements in the Civil Code – implementation of an EU Directive concerning self-employed commercial agents
 - notice periods to be observed by termination of the agency contract concluded for an indefinite period
 - the principal has to pay to the agent a goodwill indemnity after termination of the agency contract
- Polish Competition law is a mirror image of EU regulations (numerous contractual clauses have to be assessed from a competition law aspect):
 - exclusive purchase obligation
 - territorial limitations
 - limitations on competitive activity
 - price setting

Yingke Varnai BWHS Law Firm

- built on the experience of the highly regarded BWHS law firm
- 20 lawyers
- 3 offices (Warsaw, Poznan, Danzica)
- co-operating law offices in other cities

Thank you for your attention.

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