

A | T | A Finance

DOING BUSINESS IN POLAND



Why Poland?

Poland is recognized as a low risk and high opportunity country;

High domestic market and demand;

Strategic location – EU member being a bridge to East European markets;

Highly skilled and educated labour force;

Competitive cost base;

Poland's economic growth rate is one of the highest in Europe.

I. Economic environment

Poland's business and investment opportunities have been attracting investors since the collapse of the communist system in 1989. There are some obvious advantages of investing in Poland: the convenient central location in Europe, a large domestic market, political stability and market based economy. Investors value Poland for high quality human capital.

Poland belongs to the 25 biggest economies of the world and ranks 6th in the European Union. The Polish economy has so far coped well with the economic downturn which started in 2008. After the slowdown of 2009, in which Poland kept a positive GDP growth, the GDP increased up to 3.5% in 2010 and 4.1% in 2011. This was partly due to significant public investments in Poland's infrastructure connected with hosting of the EURO 2012 football championships. Poland's public debt, computed according to the EU methodology, does not exceed 60% of GDP, while the average public debt in the EUR zone reached almost 90% of GDP in 2011.

57% of Poland's employed population works in the sector of services; the numbers for industry and agriculture are, respectively, 30% and 13%. Investors have located in Poland numerous service centres operating in BPO, ITO, SSC and R&D. The areas of importance in the sector

of services are trade, transport, warehouse management and communications, services for real estate and companies. Significant industrial branches include fuel and energy, metallurgical, machine, chemical and mineral industry. Poland has seen especially dynamic development of the automotive, pharmaceutical and electronic industry.

The basic raw material resources in Poland are hard coal, brown coal, copper and sulphur ores. However, Poland starts to place on the market more and more intensively energy from alternative sources, i.e. wind, solar, water energy.

Polish labour market is characterized by its high elasticity compared to most West European countries. The Polish labour law is one of the less restrictive ones with respect to the employment protection and is in this area closer to the Anglo-Saxon model. The minimum monthly salary amounts to around EUR 360 monthly and the average salary in the private sector amounts to ca. EUR 900 (figures from 2012).

Poland is a member of the European Union, World Trade Organization, Organization for Economic Co-operation and Development.



II. Forms of business operations

Entrepreneurs can conduct their business in the form of capital companies or partnerships. Many natural persons in Poland operate under their own name.

The main constitutional principle is the freedom of business operations for everyone based on equal rights. For most firms the entry in the court register or the records of business operations together with the registration for tax and social security purposes is sufficient to start business. However, for some kind of businesses a license or permit must be previously obtained. A license is needed only for a few areas of activity, e.g. production and sale of weapons, air transport, casinos. A permit should be applied for around 30 kinds of businesses, e.g. production and distribution of alcohol, pharmaceuticals, banking and insurance services. A permit must be granted to an entrepreneur, if he fulfills all legal requirements for conducting a particular business. Some kind of operations are regulated by the state, which means that the entrepreneur must fulfill the minimum legal requirements and register the business in the records of regulated operations.

1. Capital companies

Capital companies in Poland are:

- *limited liability company,*
- *joint stock company.*

Capital companies acquire legal personality as of the date of their entry into the National Court Register. They may be established by natural or legal persons. Shareholders in capital companies are not liable personally for the obligations of the companies.

Governing bodies of capital companies are:

- *Meeting of Shareholders;*
- *Management Board;*
- *Supervisory Board.*

1.1 Limited liability company

The entity most often established by entrepreneurs is a limited liability company (sp. z o.o.). The minimum capital of a limited liability company amounts to PLN 5,000. The articles of association must be made in the form of a notarial deed. The shareholders in a limited liability company may be natural persons or companies/partnerships. However, a single shareholder limited liability company cannot be established by another single shareholder limited liability company.

In order to establish a limited liability company, its founders must conclude the articles of association, sign an agreement regarding its registered office, open a bank account and pay in the entire share capital. The shares may be taken up in exchange for cash or non-cash contributions.



1.2 Joint stock company

The principles of operation for a joint stock company (SA) are more complex and formalised than in the case of a limited liability company. The form of a joint stock company is required for special types of operations e.g. for banks, insurance companies.

The minimum capital of a joint stock company amounts to PLN 100,000. At least one-fourth of the nominal value of shares taken up in exchange for cash contributions should be paid up before the company is registered.

2. Partnerships

2.1 Types of partnerships

Entrepreneurs may establish in Poland commercial partnerships the operations of which are regulated in the Code of Commercial Partnerships and Companies and civil partnerships governed by the provisions of the Civil Code.

A civil partnership is intended for conducting operations on small scale. It does not have a status of entrepreneur.

Commercial partnerships are as follows:

Registered partnership (sp. j.): In this partnership all partners are liable for the obligations of the partnership jointly and severally. The articles of association must be made in writing, otherwise they are null and void.

Limited partnership (sp. k.): In a limited partnership at least one partner, i.e. a general partner, is liable for the obligations of the partnership jointly and severally and without limitation, whereas limited partners are liable only up to the amount of the commendam sum.

The form of a notarial deed is required in order to establish the limited partnership.

Limited joint stock partnership (S.K.A.):

In a limited joint stock partnership only a general partner is liable for the obligations of the partnership jointly and severally and without limitation. Shareholders do not bear such liability.

The minimum amount of the share capital in the limited joint stock partnership amounts to PLN 50,000. The articles of association must be made in the form of a notarial deed.

Professional partnership (sp.p). is created by partners in order to pursue professions defined in Article 88 of the Code of Commercial Partnerships and Companies, e.g. attorney at law, architect, certified auditor, tax advisor, physician, patent attorney. Individual partners are not liable for obligations of the partnership arising from the activities of other partners. The articles of association must be made in writing.

2.2 Conduct of operations in the form of a partnership

In principle, each partner in a commercial partnership has a right to manage the affairs of the partnership but is also liable for its obligations, including tax arrears. Except for limited partners in a limited partnership and shareholders in a limited joint stock partnership who, in principle, do not represent the partnership.

Partners in partnerships share in profits on the terms provided for in the Code of Commercial Partnerships and Companies, e.g. in a limited joint stock partnership a general partner and a shareholder share in the profit of the partnership in proportion to their contributions made to the partnership. However, the issue of profit sharing may be regulated differently in the articles of association of the partnership. From that perspective, partnerships are more flexible than capital companies.

The problem of unlimited liability of a partner (general partner) may be minimised if such partner operated in the form of a capital company. Most often the general partner is a limited liability company with the minimum capital of PLN 5,000.

3. Branches and representative offices of foreign entities

Foreign entrepreneurs may operate in Poland through a branch. However, entrepreneurs from outside the European Economic Area may establish branches in Poland on a reciprocity basis.

A foreign entrepreneur establishing a branch may perform business operations only within the scope of operations of such foreign entrepreneur. Branches of foreign entities are entered into the register of entrepreneurs. The law requires the foreign entrepreneur to appoint his representative in Poland.

Foreign entrepreneurs may establish representative offices having seats in the territory of the Republic of Poland. The scope of operation of the representative office may cover only advertising and promotion of the foreign entrepreneur.

Except for certain financial institutions, representative offices of foreign entities are entered into the register of representative offices of foreign entrepreneurs, kept by the minister competent for economy.

4. Business operations of natural persons

Natural persons (individuals) register their business operations in the Central Records and Information of Business Operations. Entry may be made by electronic way or on a hardcopy application submitted in the office of local administration authority (gmina). The entry of a natural person in the above register covers also the registration for the purpose of taxes as well social and health insurance. The minimum monthly social and health insurance contributions amount to ca. EUR 220.

III. Taxation of income from business operations

1. Taxation of income of capital companies

Capital companies pay corporate income tax (CIT) in the amount of 19% of income. It is an annual tax. In principle, the tax year is the same as the calendar year, unless another tax year was agreed upon in the articles of association and notified to the tax office. During the tax year companies pay advances towards CIT, and annual settlement of the tax must be made by the end of the third month after the tax year ended. A loss may be accounted for with income over 5 years following the year in which such loss was incurred. Only maximum 50% of the loss from the year concerned may be deducted in one tax year.

In many cases within the European Union double taxation of profits of capital companies, consisting in charging CIT on income of the company and then on dividends, has been eliminated. Dividends paid out by a Polish capital company to other legal persons from Poland or another EU member state will not be subject to a withholding tax in Poland and additionally in many cases will be exempt from taxation in the shareholder's country of residence. Exemption from a withholding tax on dividend is conditional, among others, on holding directly at least 10% of shares in the company paying out the dividend for at least 2 years.

Capital companies pay income tax (CIT) of 19% on generated income. When dividends are paid out to shareholders, in principle tax on dividends of 19% is collected. However, pursuant to international double tax treaties and European directives, often a lower tax rate or exemption is applied.

2. Taxation of income of partnerships

Income of partnerships is taxed only once at partner level. Partnerships themselves are not taxpayers liable to income tax. Income from a share in a partnership is treated as income from business operations of individual partners.

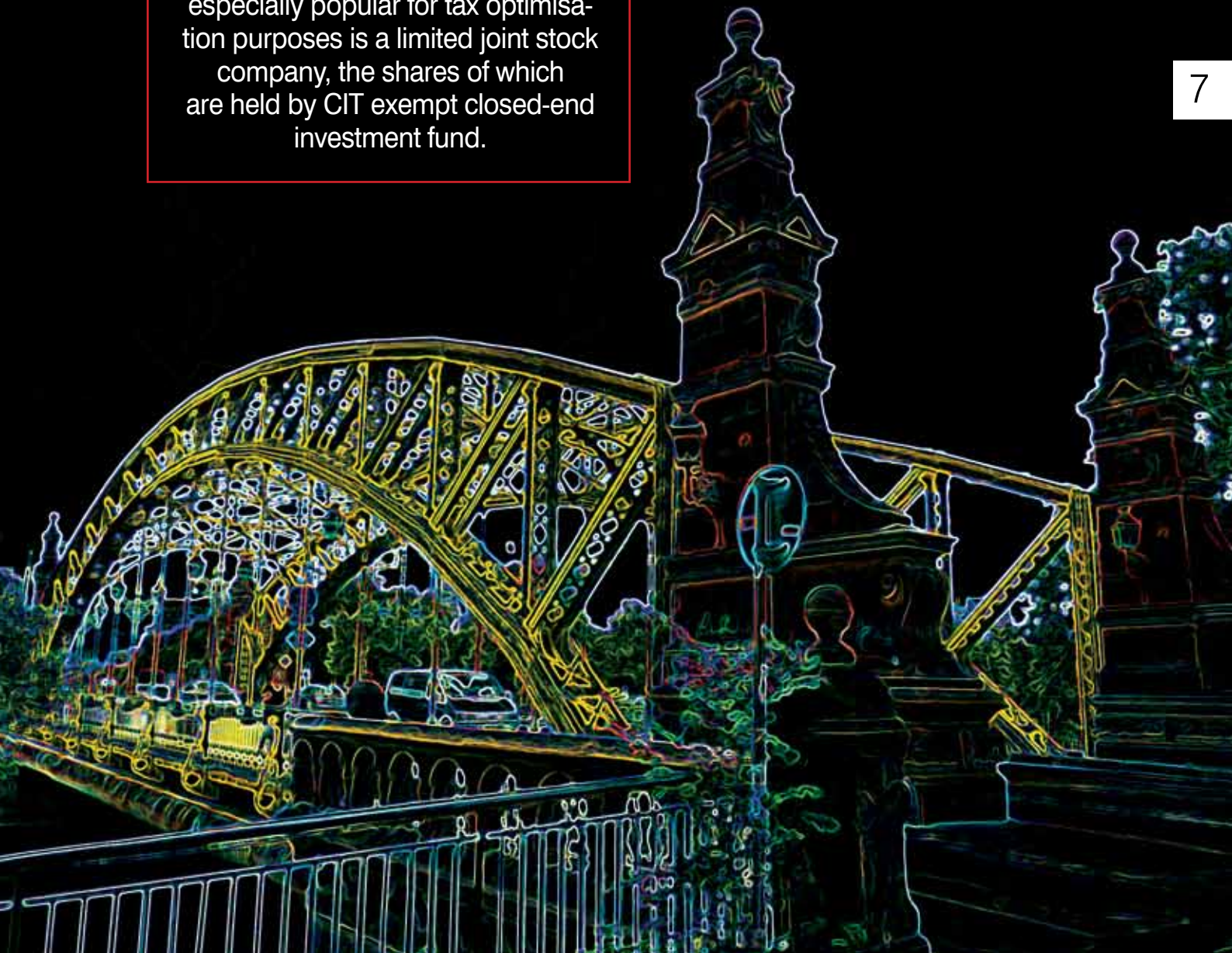
The type of tax depends on a shareholder's status. A shareholder who is a legal person pays a 19% corporate income tax. A shareholder who is a natural person pays a tax in accordance with

Operation in the form of a partnership is advantageous because income is taxed only once (no tax on profit distribution) and a 19% flat rate may be applied by natural persons. A form of company especially popular for tax optimisation purposes is a limited joint stock company, the shares of which are held by CIT exempt closed-end investment fund.

a tax scale (18% and 32%); he may also choose a 19% flat rate tax. The choice of that form of taxation must be notified to the tax office before commencement of the operations, at the latest by the date of obtaining the first revenue.

Revenues and allowable expenses on account of a share in a partnership are determined based on accounting books and records of the company and attributed to shareholders in proportion to their right to share in profits. A loss attributable to a shareholder may be accounted for with income over 5 years following the year in which such loss was incurred. Only maximum 50% of the loss from the year concerned may be deducted in one tax year.

When profits of partnerships are distributed among shareholders, no tax on dividends is collected.



3. Taxation of individual entrepreneurs

Individual entrepreneurs tax their income from business operations in accordance with a tax scale. The lowest rate is 18%, and 32% is paid on income above ca. EUR 20,000. Entrepreneurs running small businesses (revenues up to EUR 150,000) may in addition choose lump sum and simplified forms of taxation. A lump sum tax is paid on revenues from certain types of operations set forth in the law. The lump sum amount is collected on revenues. Depending on the type of operations, it ranges between 3% and 20%.

Attractive form of taxation is a flat rate tax in the amount of 19% of income. Income taxed with the flat rate is disclosed in separate tax returns and is not accounted for on an annual basis using the tax scale. It is, however, not possible to apply the flat rate to managing activities. There are also restrictions for entrepreneurs

providing services to their employers. The possibility to apply the flat rate depends on timely notification of the tax office about choosing this form of taxation.

Entrepreneurs pay a lump sum tax or advances towards personal income tax on a monthly or quarterly basis. The tax year for natural persons is always the calendar year. PIT tax return must be filed by the end of April of the following calendar year.

Natural persons conducting business operations may apply a flat rate of 19% of income, which is very advantageous in the case of higher income. In addition, simplified forms of tax books and records are envisaged for turnover up to EUR 1,200,000.



4. Taxation of foreign branches and representative offices

Operations of a foreign representative office is by law limited to advertising and promotion. Therefore, representative offices do not constitute the so called permanent establishment within the meaning of the international tax law and in principle do not pay income tax in Poland.

Branches of foreign persons operating in Poland constitute a permanent establishment of a foreign entrepreneur within the meaning of tax regulations. Profits attributable to the operations of a permanent establishment are taxed in Poland.

A permanent establishment of a legal person will pay a 19% corporate income tax on income taxable in Poland. A natural person establishing a branch in Poland will pay income tax in accordance with the tax scale (18% and 32%) or a flat rate tax in the amount of 19% of income if he/she notifies the intention to use this form of taxation to the tax office in a timely manner.

In most cases, branches are obligated to pay the Polish goods and services tax (VAT) and collect as withholding agents personal income tax and social security contributions if they employ personnel in Poland.

5. Other taxes and charges paid by entrepreneurs

Contrary to what is commonly heard, the Polish tax system is not very complicated, especially when we compare it with systems existing in certain West European countries.

The most common taxes, apart from income taxes, are goods and services tax (VAT), excise tax, tax on civil law transactions. In addition, local taxes and charges are paid, e.g. real estate tax, vehicle tax, stamp duty on certain activities in governmental offices, tonnage tax, tax on extraction of certain minerals, agricultural and forest tax.

5.1 VAT and excise tax

VAT is called in Poland goods and services tax. The basic rate is 23%. The reduced rate is 8% and is applied e.g. in construction covered by social housing programmes, in transport of passengers, in supply of pharmaceuticals and certain food products. Also special tax rates are used, e.g. 0% in the case of export, international transport, 5% for certain food products.

The input tax is returned within 60 days from filing a tax declaration or within 180 days if the taxable person did not disclose any taxable turnover in a settlement period concerned. In some cases the time limit for VAT return may be shortened to 25 days from filing a tax declaration, which is connected with a necessity to pay, by the date of filing the declaration, all VAT invoices included therein and VAT under customs documents.

VAT declarations are filed on a monthly basis. Taxable persons may account for VAT on a quarterly basis, however, bigger companies have to pay advances for the first two months of a quarter.

VAT on imports is accounted for by customs authorities. In the case of certain simplified customs procedures, VAT may be accounted for in a tax declaration and therefore it does not have to be paid to customs authorities in order to apply later for its return.

Excise tax is collected by customs authorities. The tax is harmonised with Community regulations and is paid on manufacture of or trade in excise goods such as: energy products, energy, alcoholic beverages, tobacco, cars.

5.2 Tax on civil law transactions

In principle, the tax is collected on transactions (agreements) on which no VAT is charged. So entrepreneurs have to pay that tax for example in the following situations:

- execution of articles of association of a capital company, capital increase or additional contributions: 0.5% on the amount of the share capital, its increase or additional contribution;

- execution of articles of association of a partnership and amendments thereto, including contribution increase, shareholder loan: 0.5% on the market value of the contribution;
- loan agreement: 2%, however, no tax is due on loans from financial institutions and loans concluded abroad;
- mortgage: 0.1% of the secured receivable or PLN 19 in the case of a capped mortgage (when its amount is not determined);
- agreement for the sale of property rights, e.g. transfer of shares in a company: 1% of their market value;
- agreement for the sale of real estate, if its delivery is not charged with VAT or is exempt from VAT: 2% of its market value.

Tax on civil law transactions is paid on agreements not covered by VAT. The legislator envisaged many exemptions and exceptions from that tax. E.g. no tax on civil law transactions is paid on a shareholder loan granted to a capital company.

5.3 Local taxes and charges

Taxes paid by entrepreneurs to budgets of local administration authorities (gminy) are first of all:

- real estate tax,
- vehicle tax.

Real estate tax is paid by owners of real estate, owner-like possessors of real estate, perpetual usufructors of land, possessors of certain real estate owned by the State Treasury.

Real estate tax is an annual tax. Entrepreneurs pay the tax in monthly instalments during the tax year.

Real estate tax is paid on the area of land and usable area of buildings. Rates per 1 square metre are determined in a resolution adopted by the council of the local administration authority. In the case of structures, the annual tax is computed as 2% of the structure initial value.

The law specifies the maximum rates of real estate tax, e.g. in 2012 entrepreneur will pay maximum

PLN 17.31 (ca. EUR 4) per 1 square metre of the usable area of a building used for the purpose of business operations.

Vehicle tax is paid on trucks, semitrailers, buses. The rates are determined by the council of the local administration authority and the law sets forth the maximum rates.

6. Tax administration and limitation of tax risk

Taxes are assessed by tax authorities. In the first instance these are heads of tax offices, village heads, town mayors, city presidents, region or province head. A decision in tax matters issued by those authorities may be appealed against to the tax authority of second instance (appellate authority).

A decision issued by the appellate authority is final. However, it may be appealed against to the Provincial Administrative Court. Court proceedings in tax matters are conducted in two instances. The Supreme Administrative Court is the highest instance in tax matters.

The Minister of Finances supervises the operation of the tax administration and the application of tax law. In the case of discrepancies in the application of law, the Minister may issue its interpretation in the form of a binding ruling.

Also every taxpayer or tax withholding agent may apply to the Minister of Finance, represented in this case by heads of Fiscal Chambers, to issue interpretation of tax law provisions in the applicant's individual matter, called a binding tax ruling. Such interpretation cannot harm the taxpayer who has acted in compliance therewith.

Binding tax rulings are very popular among taxpayers for protecting themselves against tax risk connected with gaps in law, differences between interpretations and case law.

IV. Tax credits for entrepreneurs

Entrepreneurs operating in Special Economic Zones enjoy exemptions from corporate and personal income taxes. State aid depends on the amount of investment, employment, region where operations are conducted, and the size of the entrepreneur. The maximum level of state aid for large entrepreneurs equals 50% of eligible investment expenditure.

Apart from tax credits entrepreneurs may receive state aid in the form of Community and governmental subsidies, and exemption from real estate tax.

Entrepreneurs may also use a credit for new technologies. It allows to deduct from the taxable

income, on a one-off basis, maximum 50% of expenditure for new technologies defined in the law, and at the same time to make depreciation charges on that amount.

Also research and development centres are eligible for income tax and real estate tax credits. Such aid is limited to EUR 200,000 within three years.

There are 14 Special Economic Zones in Poland. At the end of 2010, the investment in these zones amounted to ca. EUR 18 billion.



V. Employment and employees costs

The basic form of employment is an employment contract. An employment contract is concluded for indefinite time, for definite time or for the time for performing specified work. Such contracts may be preceded with a trial period contract, with trial period of maximum three months. The employer's statement on terminating the employment contract concluded for indefinite time or terminating the employment contract without notice must indicate a reason justifying the termination. The employee may appeal against the termination to the labour court.

In the case of employment contract concluded for indefinite time, the labour code envisages the following notice periods:

- 2 weeks if the employee has been employed less than 6 months,
- 1 month if the employee has been employed at least 6 months,
- 3 months if the employee has been employed at least 3 years.

The employer hiring at least 20 employees must have in place work regulations and remunerations regulations. In Poland every year the minimum pay is determined, which e.g. in 2013 amounts to PLN 1,600 monthly.



In principle, working time cannot exceed 8 hours per day and average 40 hours in an average 5-day week of work within the adopted calculation period not exceeding 4 months.

The maximum holidays are 26 days per year. The employee is eligible for it after at least 10 years of service. The service includes periods of employment with previous employers and education in school or studies.

Employees may be represented against the employer by trade unions or a council of employees. In some sectors, e.g. in mining, education and science, health service, trade unions are an important power, in other, e.g. in trade and services, the number of members does not exceed 5% of the employed. Generally, the Polish trade unions are weaker and less active than organisations of employees in Western Europe. The number of trade union members constantly goes down.

The employer collects income tax as well social insurance and health insurance from remunerations paid to employees. A portion of social insurance contributions is financed by the employer. Employers hiring in a given month at least 25 employees in average (FTE) have to pay the contributions to the National Disabled Rehabilitation Fund. The amount of the contribution depends on the number of employees and disabled persons hired by the employer. If employees perform their work under extreme conditions (e.g. under the earth, in very high or low temperatures) the employer has additionally to pay contributions to the Bridge Pensions Fund.

When an average domestic monthly salary (about EUR 900) is paid out, the employer will pay from his funds additionally ca. 19.5%, and the employee ca. 13.7%. Moreover, advance for PIT of 7.1% will be deducted from the employee's salary.

VI. Bookkeeping of entrepreneurs and audit

The provisions of the Polish Accounting Act are close to the International Accounting Standards and the International Financial Reporting Standards. Entrepreneurs may also apply the above standards directly when drawing up financial statements.

In principle, commercial companies/partnerships and civil partnerships must keep full accounting books. Exempt from this obligation are natural persons, civil partnerships of natural persons, general partnerships of natural person, professional partnerships, if their net revenues on sales of goods, products and financial operations for the previous financial year did not exceed EUR 1,200,000. Also branches and representative offices of foreign persons are obligated to keep the accounting books.

Financial statements that must be audited and published are annual consolidated financial statements of capital groups and annual financial statements of joint stock companies, financial institutions indicated in the law (e.g. banks, insurance companies, pension funds), entities participating in mergers, and financial statements drawn up in accordance with IFRS.

Financial statements of other entities must be audited if such entities satisfied, in the financial year preceding the one for which the statements are drawn up, at least two of the following conditions:

- average annual employment (FTE) was at least 50 persons;
- the total of balance sheet assets at the end of the financial year was equivalent in PLN to at least EUR 2,500,000;
- net revenues on sales of goods and products and financial operations for the financial year was equivalent in PLN to at least EUR 5,000,000.

About us

ATA Finance provides comprehensive services for entrepreneurs and investors.

We offer:

- audit of financial statements;
- tax advice;
- bookkeeping;
- payroll services;
- business consulting.

In Poland we operate through our offices in Warsaw and in Katowice. We employ around 40 experts. Our team made up of auditors, tax advisors and certified accountants executes also interdisciplinary projects, such as financial and tax reviews, company valuations, financial and tax opti-

mization, implementation of international accounting standards. Furthermore we offer domiciliation services comprising subleasing an office address, handling incoming mail and the use of conference rooms/ facilities.

ATA Finance works also on international projects along with our partners from IGAF Polaris. Among our clients there are national and foreign companies and organizations from various sectors, including finance, energy, construction, production, commerce and real estate.

Our strength lies in good communication with clients enhanced by English and German language skills of our team. The mission of ATA Finance is to ensure client's financial efficiency, security and ultimate success.

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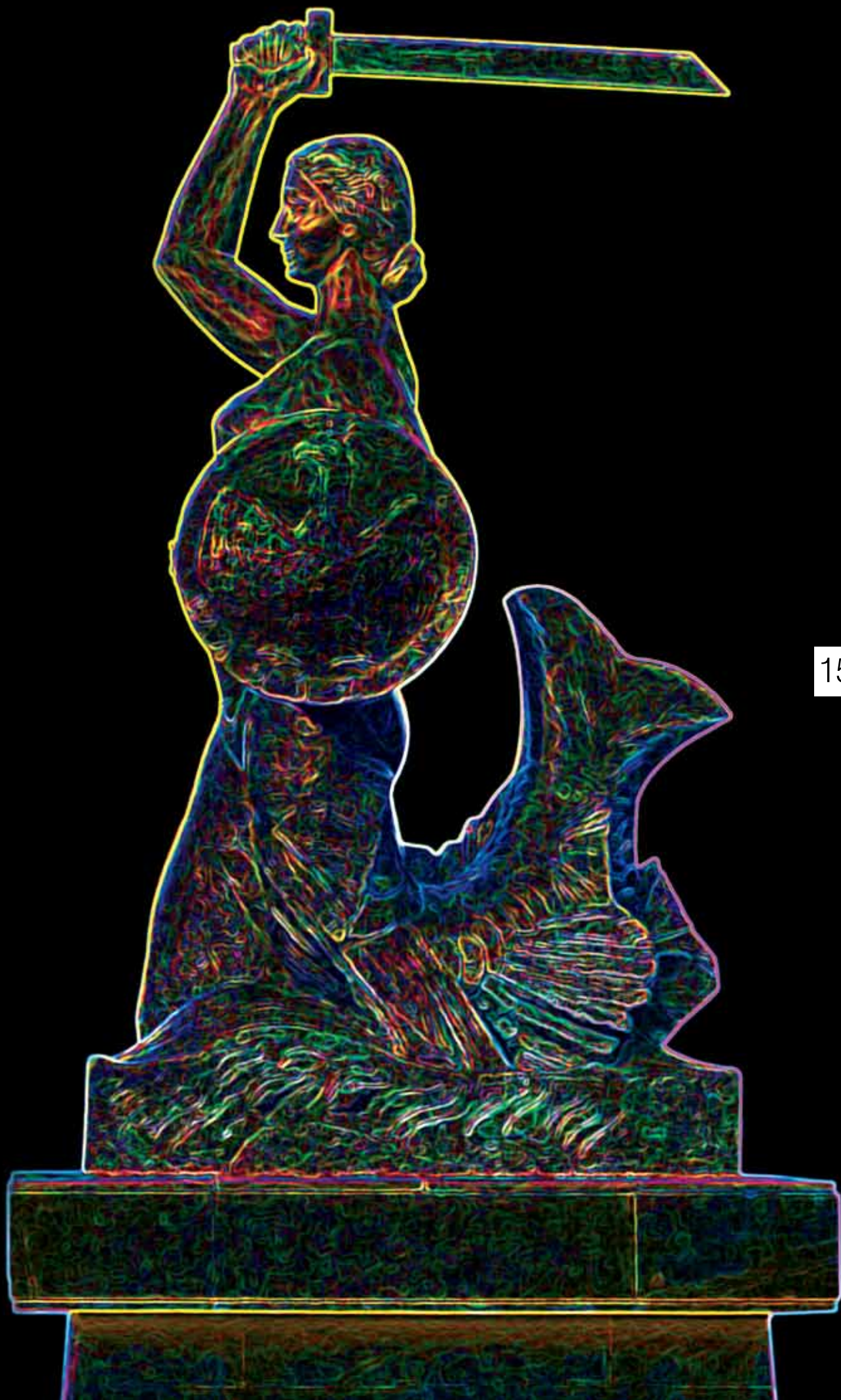
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P O L A N D I N B R I E F

Country area **312,679 square kilometres** / Population **38,501,000** / Capital **Warsaw, 1.8 million inhabitants** / Administrative division **16 provinces** / Legislative power **Sejm, Senate** / Executive power **Council of Ministers, President** / Time zone **GMT +1** / Currency **złoty (PLN)** = **100 groszy (gr.)** / Population in working age **63%** / Occupational activity rate **56%** / Average life expectancy **men: 72 years, women: 81 years** / Percentage of individuals with higher education **17%** / Number of private business entities registered in the REGON register **3.9 million** / Percentage of households equipped with a computer **71%** / Divorce rate **1.7%** / Percentage of country area with unique environmental value (e.g. national parks, nature reserves) **32%** / Tourists accommodated in collective tourist establishments **21, 477, 000**

/ Source: **Central Office of Statistics (GUS) 2011**