

Poland

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1. Types of tax

1.1 Inheritance tax

Inheritance and gift tax is levied on the acquisition of goods located in Poland and property rights executed in Poland via donation or inheritance. Tax is also levied when goods are located outside Poland and property rights are executed outside Poland when the decedent dies, or the gift agreement concludes that the beneficiary has Polish nationality or has a place of residence in Poland.

Inheritance and gift tax also applies to the acquisition of property through adverse possession (usucaption) and on the acquisition of a right to savings deposits and the acquisition of units in an investment fund according to the depositor's/investor's instructions in the event of his or her death. These two tax events are not further described.

Individuals who receive inheritances or gifts are liable to pay tax on the value of the goods or property rights received. If a notary is involved in the transaction, he or she is obliged to withhold the tax due.

Individuals who receive inheritances or gifts from spouses, dependents (also adopted children, stepchildren and grandchildren), ascendants (i.e., parents, stepparents and grandparents), brothers and sisters are exempt from tax, if declared with the respective tax office within six months. In the case of monetary donations, receipt of money has to be additionally documented via bank transfer confirmation or postal order. Donations of money do not have to be declared if made via notarial act.

Taxpayers are classified into the following three categories, according to the proximity of the relationship between the deceased/donor and the beneficiary/donee:

- ▶ Category 1: Spouses, dependent (also adopted children, stepchildren and grandchildren), sons- and daughters-in-law, ascendants (i.e., parents, stepparents, parents-in-law and grandparents), brothers and sisters
- ▶ Category 2: Nieces and nephews, uncles and aunts, spouses of brothers and sisters, siblings of the spouse and spouses of other dependent
- ▶ Category 3: Others



Taxable base

Inheritance and gift tax is levied on the net market value of the property received, after deduction of debts and other burdens. The valuation is made on the date when the tax liability arises, e.g., the conclusion of a gift agreement or the acceptance of inheritance. If the declared value of the property does not correspond to its market value, the tax authorities may assess the value.

The value of taxable property received from the same person over a five-year period is aggregated and treated as a single acquisition. In the case of periodic payments such as annuities and pensions, the value of the payments is established during the course of the payment if the value cannot be established at the moment when the tax liability arises. Payments made during a definite period of time or in installments are attained by multiplying the annual value of the payment by the number of years or installments.

Other payments, including payments made during an indefinite period of time, are valued by multiplying the annual value of the payment by 10.

If a usufruct is inherited or donated, the annual value of the usufruct is deemed to be 4% of the value of goods subject to usufruct.

The catalog of items exempt from inheritance and gift taxes includes:

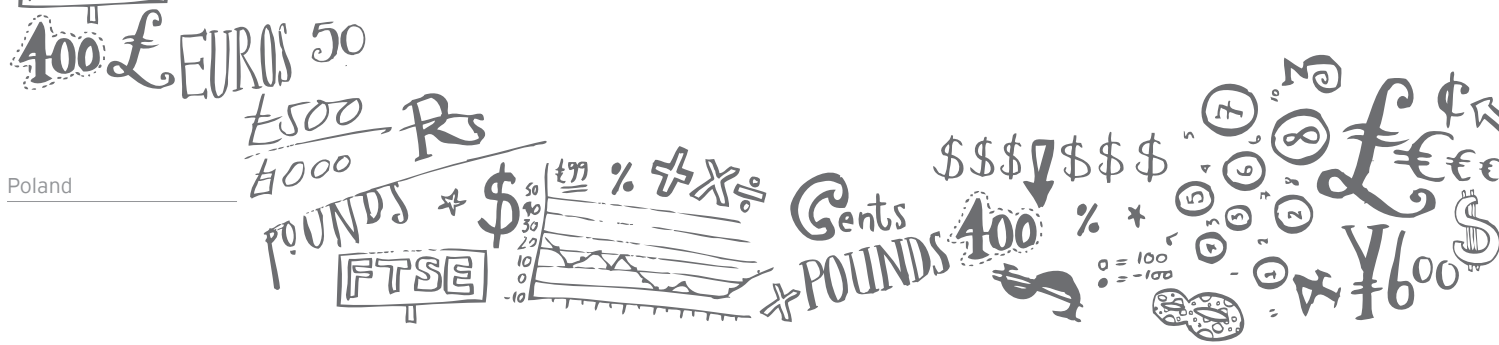
- ▶ Inherited furniture, clothing, etc., under some conditions
- ▶ Inherited collections of ancient art, monuments, etc., under some conditions
- ▶ Property inherited or received from spouses, dependents (also adopted children, stepchildren and grandchildren), ascendants (i.e., parents, stepparents and grandparents), brothers and sisters if reported to the tax authorities and in case of cash payments if documented by the bank transfer

Gifts and inheritances of property located in Poland are exempt if neither party is a Polish national nor a person domiciled in Poland.

Double-taxation relief

Poland has concluded treaties for the avoidance of double taxation on inheritance tax with a number of countries. The table below shows a few examples.

Country	Date of signature	Date of entry into force
Austria	24 November 1926	22 May 1928
Czech Republic	23 April 1925	14 December 1925
Hungary	12 May 1928	21 August 1931
Slovak Republic	23 April 1925	14 December 1925



1.2 Gift tax

See Section 4 on donations tax.

1.3 Real estate transfer tax

In general, a supply of immovable property, including land made within the scope of economic activity, is subject to value-added tax (VAT). However, if neither party is subject to VAT on that transaction, the supply falls within the scope of Tax on Civil Law Transactions (TCLT). Additionally, TCLT liability also arises on sales and exchanges of immovable property that are exempt from VAT.

TCLT applies to immovable property located in Poland. Transactions involving immovable property located abroad are subject to tax only if the following conditions are jointly met: the transaction is performed in Poland and the acquirer has a place of abode in Poland or its seat is in Poland. The sale of agricultural farms is exempt from TCLT.

The taxable base is the market value of the property. TCLT on the transfer of immovable property is levied at the rate of 2%.

1.4 Endowment tax

There is no endowment tax in Poland.

1.5 Transfer duty

The transfer duty in Poland is governed by TCLT.

TCLT is levied, *inter alia*, on the following transactions: the sale of immovable property; the sale of certain movable property; and the sale of property rights, loan agreements and mortgage agreements. If at least one party to the transaction is liable to pay VAT or is exempt from VAT on that particular transaction (with the exception of, *inter alia*, immovable property transfers where a special regulation applies), such transaction is excluded from the scope of TCLT.

The taxable base and tax rate depend on the type of the transaction (see below).

TCLT is imposed on the establishment of a company or a partnership. The establishment of capital of partnerships is subject to taxation if a partnership has a registered office in Poland. In the case of companies, such operation is taxable if a company has a registered office or an effective place of management in Poland. The concept of the effective place of management is prevailing, i.e., if the registered office is located in Poland, TCLT is levied only if the company's effective place of management is outside the European Union (EU).

The scope of TCLT also covers the transfer of an effective place of management or the registered office of companies that had their former effective place of management or the registered office in a non-EU country. The rate of TCLT on the establishment of a company is 0.5%. The taxable base is the share capital value. The taxable base is reduced by the sum of the loans granted to a company by its shareholder (stockholder) and any additional payments to a company which were subject to TCLT and which were subsequently converted to increase the company's share capital.

Exempt from the scope of TCLT are:

- ▶ A merger of companies
- ▶ A change of legal form of a company
- ▶ A contribution of a branch or majority of shares in a company (or additional shares when the company receiving the shares is already a majority shareholder) to another company in exchange for its shares
- ▶ Increase of the capital of a company, which was previously decreased due to losses incurred by the company, provided that the increase of the capital takes place within four years since its decrease



A share premium is not subject to the TCLT. However, if the share premium is subsequently converted into the share capital, the TCLT is due. If, for example, 10 of 100 is paid for a share capital of a company and 90 is treated as a share premium, the TCLT is levied on 10 only. If the remaining 90 is later incorporated in the share capital, the 90 will be subject to TCLT.

A partnership agreement/articles of association and any amendments thereto are also subject to TCLT if they are exempt from VAT.

1.6 Net wealth tax

There is no net wealth tax in Poland.

2. Who is liable?

2.1 Residency

Under domestic law measures, individuals who have their center of personal or economic interests (a center of vital interests) in Poland or stay in Poland for a period exceeding 183 days in a given tax year are generally considered Polish tax residents. Individuals who do not have their center of personal or economic interests in Poland and stay in Poland for a period shorter than 183 days in a given tax year are taxed in Poland only on Polish source income. These rules relate to personal income tax. There are separate rules for donations and inheritance tax – citizenship and place of permanent abode criteria determine the tax obligation in that area.

2.2 Domicile

Except for the residency rules listed above, no specific domestic rules under Polish tax law are applicable for tax purposes.

3. Rates

The rates of the inheritance and gift tax are progressive and depend on which category the taxpayer falls under and the value of the property received, as follows:

Category 1

Taxable income (PLN)	Tax on lower amount (PLN)	Rate on excess (%)
Up to 9,637	0	0
9,638-10,278	0	3
10,279-20,556	308.3	5
20,557 and over	822.2	7

Category 2

Taxable income (PLN)	Tax on lower amount (PLN)	Rate on excess (%)
Up to 7,276	0	0
7,277-10,278	0	7
10,279-20,556	719.5	9
20,557 and over	1,644.5	12





In the case of some gifts, income tax rules may be applicable. The tax year in Poland is the calendar year. By 30 April following the close of the tax year, taxpayers must file tax returns and pay any difference between total tax payable and advance payments. Married persons who are Polish tax residents may be taxed jointly, if certain conditions are met. Under additional conditions, joint filing may be available to Polish tax nonresidents who are tax resident elsewhere in the EU, the European Economic Area or Switzerland.

Income tax may generally be withheld directly by employers on behalf of employees and remitted to the tax office within 20 days after the end of the month in which the income is paid or made available to the employee. Self-employed individuals and expatriates on temporary assignments to Poland who are paid from abroad must generally make advance tax payments each month, and must file annual tax reconciliations stating their income received and the advance tax paid by 30 April of the following year.

The annual tax return must be filed with the regional tax office with jurisdiction over the taxpayer's place of residence. The tax return must state all sources of income and must show income tax due. If a taxpayer keeps accounting records, financial statements must be attached to the annual tax return. If a taxpayer does not submit the annual tax return, the tax office establishes the amount of tax due by the assessment.

Failure to file a return and late payment of tax may result in penalty interest and fines.

Tax returns may be filed electronically, either by the taxpayer or his or her proxy. In the latter case, the taxpayer has to provide the tax office with the power of attorney for a proxy to file electronically on behalf of the taxpayer.

6. Assessments and valuations

Assessment

As a rule, self-assessment is the default system in Poland. The tax authorities may question the taxpayer's assessment during the formal proceeding.

Appeals against assessment

Appeals against assessment are generally not applicable in the case of individual income tax. The deadline for appealing against the decision of the tax authorities issued during the formal proceedings against the taxpayer's assessment is usually 14 days from the receipt of the decision.

7. Trusts, foundations and private purpose funds

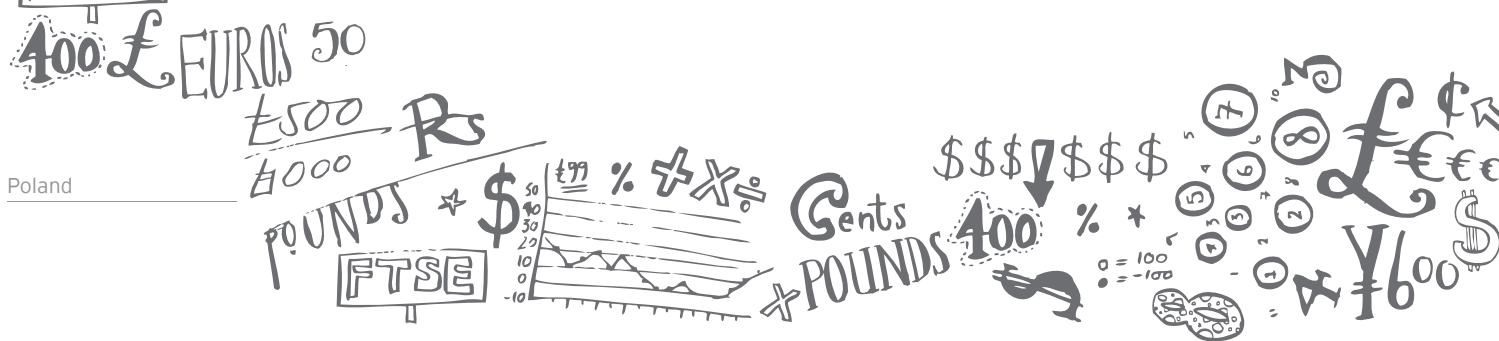
Income from investment funds is calculated as the difference between income obtained and cost incurred to acquire the investment fund units. The income from investment funds is not aggregated with income from other sources and thus is not subject to tax at the progressive rates.

8. Grants

There are no specific rules in Poland with regard to grants.

9. Life insurance

Pension income comprises old-age pensions and disability pensions, including their increases and supplementary payments, except for family and nursing supplementary payments and certain supplementary payments for orphans.



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Pensions are treated as income from dependent services and are taxable at the moment of payment or when they are put at the taxpayer's disposal. The general progressive rates apply.

Pensions derived from certain voluntary private pension plans, however, are exempt (contributions to these plans are not deductible for income tax purposes).

10. Civil law on succession

10.1 Estate planning

In general, real estate income may be taxed at a flat rate of 19%. Real estate income is the difference between the sales price and respective expenses, which includes the purchase price.

If the sale of real estate occurs more than five years after the end of the calendar year in which the real estate was acquired or built (six months for other property, counted from the end of the month in which the property was acquired), the proceeds of the sale are not subject to tax.

In general, rental income from immovable property is taxable at the progressive rates. If immovable property is made available free of charge, taxable income is deemed to be the amount of rent that would have been due had the property been rented for consideration.

Generally, individuals deriving rental income may opt for flat-rate taxation instead of regular individual income taxation. The taxable base is the gross income. The flat-rate tax is levied at the rate of 8.5%.

Real estate rental income may be taxable as self-employment income or may be treated as a separate source of income.

10.2 Succession

Succession may be handled via the rules for donations and inheritance tax or, in cases involving the sale of a business, capital gains tax may be levied. In the latter case, as a rule, 19% of income tax would be due although certain tax savings are available.

10.3 Forced heirship

Under Polish inheritance law, specified legal heirs, including dependent, surviving spouse and parents, are entitled to a legal portion of an estate if certain conditions are met.

10.4 Matrimonial regulations and civil partnerships

A community property regulation applies in Poland to married couples. Under the regulation, property acquired before the marriage or during the marriage for proceeds received as an equivalent for the property acquired before the marriage remains separate. Couples may amend or opt out of the regulation via a notarized agreement.

10.5 Intestacy

General inheritance tax law is applicable.

10.6 Probate

General inheritance tax law is applicable.



11. Estate tax treaties

11.1 Unilateral rules

Unilaterally, Poland grants ordinary foreign tax credits. The domestic tax law provides that if income derived from sources located outside Poland is subject to income tax abroad, such income is aggregated with the income derived from sources located in Poland. In such a case, the amount corresponding to the income tax paid in the foreign country is deducted from the tax assessed on the total income. The tax credit is granted on a per-country limitation basis, i.e., the deduction may not exceed that part of the tax as assessed prior to the deduction, which is proportional to the income derived in the foreign country.

Under Poland's signed tax treaties, double taxation may be avoided through tax credit or exemption with progression. For a list of tax treaties in force, see below.

11.2 Double-taxation treaties

Poland has entered into general double-taxation treaties for avoidance of double taxation (mainly income tax) with a number of countries and territories. Some of them are listed below. Most of the treaties follow the Organisation for Economic Co-operation and Development Model Convention.

Albania	Germany	Malta	Sri Lanka
Algeria	Greece	Mexico	Sweden
Armenia	Hungary	Moldova	Switzerland
Australia	Iceland	Mongolia	Syria
Austria	India	Morocco	Tajikistan
Azerbaijan	Indonesia	Netherlands	Thailand
Bangladesh	Iran	New Zealand	Tunisia
Belarus	Ireland	Nigeria	Turkey
Belgium	Isle of Man	Norway	Ukraine
Bulgaria	Israel	Pakistan	Former USSR
Canada	Italy	Philippines	United Arab Emirates
Chile	Japan	Portugal	United Kingdom
China	Jordan	Qatar	United States
Croatia	Kazakhstan	Romania	Uruguay
Cyprus	Kuwait	Russian Federation	Uzbekistan
Czech Republic	Kyrgyzstan	Saudi Arabia	Vietnam
Denmark	Latvia	Singapore	Former Yugoslavia
Egypt	Lebanon	Slovak Republic	Zambia
Estonia	Lithuania	Slovenia	Zimbabwe
Finland	Luxembourg	South Africa	
France	Macedonia	South Korea	
Georgia	Malaysia	Spain	