



THE LEGAL PERSPECTIVE

Real estate investment in Poland

Some peculiarities of the country

- Right of perpetual usufruct (please see section 1.2 below);
- Sale agreement of the real property must be concluded in a form of notarial deed (please see section 2.3 below);
- Transfer of the ownership of land or the right of perpetual usufruct cannot be conditional (please see section 2.3 below);
- Several restriction concerning acquisition of the ownership of agricultural real properties (please see section 2.6 below);
- Numerous statutory pre-emption rights in favour of State Treasury/local government units/public entities (please see section 3.3 below);
- Necessity to obtain various decisions (zoning decisions, water permits, environmental permits, trees removal permits, building permits) before commencement of the construction works;
- Well-digitised public registers (land and mortgage registers, local geoportals).

Main documents to be drawn up in the context of a transaction

Asset deal

- LOI (Letter of intent) – optional;
- Power of attorney (in a form of a notarial deed);
- Corporate consents;
- Escrow agreement concluded between the parties and the bank being the escrow agent – optional;
- Sale agreement/conditional sale agreement/transfer agreement – Generally, sale agreement is prepared and signed in front of a notary. It must be drafted in Polish. Presence of a sworn translator is required if a party to the contract does not speak Polish. If parties concluded conditional sale agreement, after fulfilment of the conditions precedent, they must conclude another agreement (in a form of notarial deed) transferring ownership right (right of perpetual usufruct) to the real estate. Negotiations can take place either in Polish or in English. English version of the agreement may be attached to the notarial deed;

- Easement agreements (optional, must be concluded in a form of a notarial deed);
- Statement on establishment of mortgage (optional, must be concluded in a form of a notarial deed).
- Pay-off letter (if required).

Share deal

- LOI (Letter of intent) – optional;
- Power of attorney (in a written form with signatures certified by a notary);
- Corporate consents;
- Sale agreement/conditional sale agreement – generally, sale agreement is negotiated and prepared by the parties. It must be signed in front of a notary. It may be drafted in English;
- Corporate documentation (protocols and documents on appointment of new management board, list of shareholders, book of shares).

Contents

Some peculiarities of the country	2		
Main documents to be drawn up in the context of a transaction	2		
1. Ownership of real estate	4		
1.1 Full ownership	4		
1.2 Perpetual usufruct	4		
1.3 Leasehold ownership	4		
1.4 Restrictions on ownership by foreigners	4		
2. Acquisition of ownership	5		
2.1 Formal requirements	5		
2.2 Registration	5		
2.3 Asset deals	5		
2.4 Share deals	6		
2.5 Public auctions	7		
2.6 Restrictions on the acquisition of the ownership of agricultural real properties	7		
3. Other rights to property	8		
3.1 Mortgages and charges	8		
3.2 Easements	8		
3.3 Pre-emption rights	8		
4. Zoning and planning law permits	10		
5. Environmental liability	11		
6. Leases	12		
6.1 Duration	12	6.3 Rent review	12
6.2 Rent	12	6.4 Operating expenses	12
		6.5 Maintenance, repair, and renovation at end of lease	12
		6.6 Assignments/transfers	13
		6.7 Subleases	13
		6.8 Termination	13
		6.9 Sale of leased property	13
		7. Tax	14
		7.1 Transfer taxes	14
		7.2 Value added tax	14
		7.3 Other real estate taxes	14
		7.4 Taxation of rental income from real estate	15
		7.5 Taxation of dividends from a company owning real estate	15
		7.6 Taxation of capital gains on real estate	16
		7.7 Taxation of capital gains from the disposal of shares in a company owning real estate	16
		7.8 Taxation of gains on the disposal of a partnership interest in a partnership owning real estate	16
		8. Real estate finance	18
		8.1 Interest rate risks	18
		8.2 Assets held as security	18
		8.3 Further collateral agreements	19
		8.4 Taxation on the creation of security	19
		Glossary	20
		Contacts	21
		About DLA Piper	21

1. Ownership of real estate

1.1 Full ownership

Ownership is the broadest real estate right in Poland and should be understood as being the equivalent of freehold. As a rule, ownership conveys the right to possess and use real estate for an unlimited period of time (with the exception of the ownership of any buildings connected with the perpetual usufruct right (see below)) and to transfer, charge or otherwise encumber real estate. The ownership of real estate is registered in the land and mortgage register.

The ownership right may only be limited by statutory law, local planning principles, and the social and economic purpose of this right. The most common limitations result from construction law and zoning master plans adopted by local authorities (municipalities).

1.2 Perpetual usufruct

Polish law also recognizes perpetual usufruct rights (the right to the use and enjoyment of another's property), which are similar to full ownership rights. These are transferable, alienable, and mortgageable rights to use property.

The rights granted to the owner of these usufruct rights (a usufructuary) result in the rights of the owner (the State Treasury or a local government entity) being limited. As such, the property subject to these rights may not be encumbered or sold to a third party other than the usufructuary.

Perpetual usufruct can be granted in relation to state-owned or local government-owned real estate for a specified period of between 40 and 99 years, after which it expires unless extended for another period of between 40 and 99 years. The property may be situated within the administrative boundaries of a city or within a wider area included in the city's development plan.

Buildings and other infrastructure situated on land that is subject to a right of perpetual usufruct are owned by the perpetual usufructuary.

The usufructuary is required to pay an annual fee to the body granting these rights.

As of 1 January 2019, perpetual usufruct of land developed for residential purposes has been transformed into ownership of such land by virtue of law. The current owner of the land is required to pay a transformation fee equal to the annual fee for perpetual usufruct for a period of 20 years from the date of transformation. However, if a one-time fee for land transformation is paid, city mayors may grant owners a rebate on such fee.

1.3 Leasehold ownership

Polish law also provides for the following real estate interests:

- Lease (*najem*) – the right to use property for a definite or indefinite period of time, subject to payment.
- Tenancy (*dzierżawa*) – the right to use and collect profits from real estate for a definite or indefinite period of time, subject to payment.
- Easements (real and personal) – Polish law recognizes three types of easement:
 - Real easements can be established for the benefit of the owner (or perpetual usufructuary) of a (dominant) property, usually in relation to neighboring land, for the benefit of that dominant property.
 - Personal easements can be established for the benefit of an individual for their personal use (for example, an easement of habitation).
 - A transmission line easement can be established in favor of a business which intends to provide transmission equipment (for the transmission of liquid, gas, electricity etc.).

1.4 Restrictions on ownership by foreigners

The Acquisition of Real Property by Foreigners Act states that the purchase of real estate by an entity considered to be foreign is conditional upon receiving prior approval from the Minister of Administration and Internal Affairs. Receipt of approval is subject to there being no objection by the Minister of Defence or – for agricultural land – by the Minister of Agriculture and Rural Development. Purchase without approval renders a transaction null and void.

These rules also apply to acquisition of rights of perpetual usufruct.

However, since Poland's accession to the EU, foreigners from the EEA or Switzerland are not obliged to obtain permission to acquire real estate, except for purchase of agricultural or forestry land, where permission was required until 1 May 2016 (currently, the rules described in paragraph 2.6 apply accordingly).

The Act also requires permission to be sought for selling real estate to all foreigners regardless of their nationality or place of establishment (with some exceptions).

A real estate owner can also give non-exclusive rights, known as easements, to third parties to use the land, such as granting a right of way. Recorded easements are binding on any successors in title to the property. State laws regarding easements vary.

2. Acquisition of ownership

2.1 Formal requirements

The basic rules for sale and purchase of real estate can be found in the Polish Civil Code. However, there are many other laws which may apply to specific transactions such as the Real Estate Management Act and the Zoning and Development Act, which apply to sales and purchases by municipalities.

Under Polish law, the lawful and proper transfer to a buyer of the title to a property (ownership as well as perpetual usufruct) requires completion of a notarial deed and registration in the land and mortgage register (*księga wieczysta*).

2.2 Registration

There are two types of publicly available land register in Poland:

- the land and mortgage register (*księgi wieczyste*), which registers titles to land and encumbrances thereon; and
- the land and buildings register (*ewidencja gruntów i budynków*), which contains information on the physical features of the land, the class of the land, and its use.

Generally, real estate in Poland is registered and the legal title can be identified from entries in the land and mortgage registers maintained by the relevant district courts. Each land and mortgage register is accessible to the public. Excerpts are available on application, subject to payment of a nominal fee, and can also be viewed online.

The Polish land and mortgage register system protects those who acquire real estate in good faith, relying on the entries in the register. A person who buys real estate from a party registered as the property owner in the register generally becomes the new owner, even if the register contains errors.

In general, encumbrances are only binding on a buyer in good faith if they were disclosed in the register. This is subject to various exceptions, for example, there is no protection against certain mandatory easements or encumbrances created by law, such as rights of way. The buyer of shares in a company holding title to land is not protected in the same way.

Land and mortgage registers are freely accessible, but the files containing the documents are open only to and can only be viewed by parties who can prove a legal interest. This usually means that only those whose rights are already noted in the register can access the entries. Since December 2014, all Polish land and mortgage courts maintain their registers in electronic form.

Under Polish law, legal title to real estate can generally be identified from the entries in the land and mortgage registers maintained by the relevant district court. Again, this is subject to various exceptions, for example in relation to certain mandatory easements or encumbrances such as rights of way.

Registration of transfer of title is compulsory. However, it should be noted that, under Polish law, the transfer of ownership rights occurs upon the execution of the sale and purchase deed.

The acquisition of a perpetual usufruct right becomes effective when it is registered, and mortgages must also be registered. The content of land and mortgage registers is conclusive on matters of legal title.

The legal interests of third parties, such as lease hold interests, easements, and pre-emption rights, can also be registered in the land and mortgage register, although this is not mandatory. When registered, these interests become binding on any party acquiring the property. Registration is therefore recommended to prevent the buyer from claiming that he was unaware of the existence of such interests.

2.3 Asset deals

A buyer can acquire a property directly from the owner in an asset deal. The normal steps involved in this type of real estate transaction are as follows:

- conducting a due diligence review of the property (normally covering a review of the entries in the land and mortgage register for the property, entries in the land and building register, and the local zoning and development plans);
- completing the transaction by a notarized deed; and
- registering the acquired interest in the land and mortgage register (*księgi wieczyste*).

The extent of the due diligence review depends on the structure of the deal. A legal due diligence review concerning the property itself normally covers:

- title;
- encumbrances;
- easements;
- planning and zoning permits;
- construction and environmental matters;
- leases;
- taxes (including stamp duty);
- insurance;
- service agreements; and
- potential restitution claims.

The due diligence review is normally conducted prior to entering into an agreement, and the findings are normally reflected in the agreement. However, where an asset is acquired indirectly through the acquisition of shares in the company owning the asset, both pre- and post-completion due diligence reviews are conducted.

To minimize potential risks, the parties often decide to execute a preliminary sale and purchase agreement before transferring the real estate. This gives the buyer an opportunity to review the current legal and physical condition of the property and provides a secure right to purchase once this is completed satisfactorily.

If the property is not as the seller has represented, then the agreement will normally allow the buyer to terminate the initial agreement. In some situations, the parties also agree an exclusivity period for the buyer, but this is normally dealt with in a separate letter of intent.

A real estate purchase agreement should be completed by a notarized deed. An agreement transferring the ownership of land, or the right of perpetual usufruct cannot be conditional or limited in time. Breach of these requirements renders the transaction null and void.

Under the Polish Civil Code, a real estate purchase agreement must contain two mandatory elements:

- a precise description of the property concerned; and
- the purchase price.

Other elements of the agreement, such as warranties given by the seller, are optional and can be agreed between the parties.

A typical contract will be in the form of a notarized deed and will include the following:

- the parties to the agreement;
- a description of the property, based on the current entries in the land and mortgage register;
- representations and warranties from the parties;
- the purchase price; and
- other relevant terms.

In the case of an asset deal (the direct purchase of an interest in real estate by a corporate vehicle or individual) there will be the following costs to pay on a purchase of real estate:

- the cost of preparing a purchase agreement in the form of a notarized deed (costs of the notary – the amount will depend on the value of the real estate, but cannot exceed PLN10,000 (EUR2,124). It is usually paid by the buyer, although the parties may agree otherwise);
- the cost of an excerpt from the land and mortgage register – either PLN30 (EUR6.36) or PLN60 (EUR12.74) (or if the excerpt is obtained online: PLN20 (EUR4.22) or PLN50 (EUR10.61) and
- the fee for changes to the registration in the land and mortgage register – PLN200 (EUR42.46) – usually paid by the buyer.

Depending on the particular circumstances and the type of property, other costs may also be incurred (such as the cost of obtaining other documents required by the notary and the commission charged by the real estate agent).

2.4 Share deals

Another way to acquire real estate is to acquire the asset indirectly by the acquisition of shares in the company owning the asset. In Poland such legal entities are often organized as a limited liability company (sp. z o.o.). To transfer the shares from the seller to the buyer, the parties have to execute a share purchase and transfer agreement. If the shares in a limited liability company are to be transferred, statutory law requires that the transfer agreement is executed with signatures certified by a notary public.

The due diligence review prior to a share deal should, in addition to the points mentioned in paragraph 2.3 above for due diligence of the property itself, cover the following issues:

- matters of corporate structure, including matters affecting the shares in the company owning the property, such as pre-emption rights, encumbrances, whether the authorized share capital is fully funded and whether those funds are still held by the company, a review of the annual accounts of the company, the debt and risks;
- employment issues, for example whether the company owning the property has employees and any ongoing liabilities in relation those employees.

In addition, it is not uncommon for the company's articles of association to contain certain restrictions on the transfer of shares. This commonly includes the obligation for any transfer of shares to require the prior approval of a certain majority of the existing shareholders, or the granting of pre-emption rights to existing shareholders.

Further to these mandatory aspects, the parties frequently agree other matters such as calculation methods for the purchase price, conditions subsequent, warranties, and remedies in the event of breach of warranty. Unless otherwise stated in the agreement, the transfer of shares becomes effective immediately upon the execution of the agreement but is effective towards the company upon the receipt by the company of the notification of the transfer of shares and the certificate of such action submitted by one of the interested parties.

In the case of a share deal (the purchase of shares in a corporate vehicle holding the real estate), the costs include:

- the notary's fee for certifying the signature on the share purchase agreement (SPA) – up to PLN300 (EUR63.70) per signature;
- the court fee for registering the new shareholders in the National Court Register – PLN250 (EUR53.07); and
- the fee for the advertisement of the registration of the new shareholders in the Court and Business Gazette – PLN100 (EUR21.23).

2.5 Public auctions

Polish law provides that real estate may also be acquired and disposed of by a tender or auction.

Tenders or auctions can be in the form of:

- open public auction;
- limited public auction;
- open written tender; or
- limited written tender.

A public auction is held to obtain the highest price. A written tender aims to obtain the most favorable offer.

A limited tender would be organized if the tender's conditions can be met only by a limited number of bidders. Terms and condition of disposal of the property in an open tender are advertised by public notice. Tenders are organized mainly for properties which belong to the State Treasury or other public entities, such as local authority, and are based on the provisions of statute and relevant public procedures.

Real estate can also be acquired from a court auction where land has been seized in enforcement proceedings. The auction takes place in public with oral bids taken under the supervision of the judge.

Under the Management of the State Treasury Agricultural Property Act, the National Agriculture Support Institution (*Krajowy Ośrodek Wsparcia Rolnictwa*) (previously until 31 August 2017 the Agricultural Property Agency (*Agencja Nieruchomości Rolnych*)) is entitled to organize a written tender in order to sell the agricultural property. The written tender is opened solely to entities that meet certain legal requirements.

2.6 Restrictions on the acquisition of the ownership of agricultural real properties

Since 30 April 2016, a law suspending the sale of the real properties of the National Agriculture Support Institution and changing, among other things, the regulations of the Act dated 11 April 2003, on Shaping the Agricultural System has been in force, fundamentally changing the rules of trade in private and public agricultural properties, applying also to foreign investors.

The new law introduces, subject to a few exceptions, a prohibition on selling the real properties of the National Agriculture Support Institution for five years following the entrance into force of said law. After this deadline the sale of such real properties will be permitted, as an exception, to the limited group of persons and in a form of limited tender.

Moreover, the changes of the regulations of the Act dated 11 April 2003, on Shaping the Agricultural System introduced based on the above-mentioned new law limit also the trade in the private agricultural properties being subject of an

ownership right or right of perpetual usufruct. The law introduces a number of criteria that must be met by a buyer of agricultural property (among others individual farmers, congregations and religious associations). Entities that do not meet these criteria are obliged to obtain consent from the Head of National Agriculture Support Institution. The area of the purchased agricultural land may not exceed 300 ha. Such properties should be used as an agricultural holding and may not be disposed of for the next five years.

The changes of the regulations of the Act dated April 11, 2003, on Shaping the Agricultural System introduced based on the above mentioned new law extend the pre-emption right of the National Agriculture Support Institution to any agricultural property (this pre-emption right applies to the agricultural real properties being subject of the ownership right or right of perpetual usufruct) and introduce a pre-emption right of the National Agriculture Support Institution in relation to the purchase of shares in a commercial company, which owns agricultural property/properties with an area of at least 5 ha or is a perpetual usufructuary of the agricultural property/properties with an area of at least 5 ha. The above-mentioned pre-emption right was extended in relation to the purchase of shares or stocks in a commercial company which is a mother company of a company owning or being a perpetual usufructuary of agricultural property with a surface area of at least 5 hectares or agricultural properties with a total surface area of at least 5 hectares. The pre-emption right the National Agriculture Support Institution in relation to the purchase of shares in a commercial company which owns agricultural property (or is the perpetual usufructuary of the agricultural property) is not applied to the sale of the stocks on the stock exchange and to the sale of the shares or stocks for the benefit of the close relatives. Also, in the case of the changes of the partners in a partnership (i.e. change of the partner or entering of a new partners to the partnership) which owns agricultural property (or is the perpetual usufructuary of the agricultural property) the National Agriculture Support Institution is entitled to submit a statement on the acquisition of the agricultural real property owned by this partnership (or being a subject of the right of perpetual usufruct of this partnership) for the pecuniary equivalent corresponding with the market value of this real property. The entitlement referred to in the previous sentence does not apply if the current partner is replaced by its close relative as well as if the new partner entering into the partnership is a close relative of the current partners.

Failure to comply with the rules mentioned above will render a transaction null and void. However, the above-mentioned limitations do not apply to the agricultural real properties with an arable area smaller than 0.3 ha. These limitations do not apply also to real properties located on areas designated in the local zoning plans for non agricultural purposes as well as to agricultural real properties with respect to which according to the status as on 30 April 2016, there were in force final zoning decisions providing for the designation of these real properties for non-agricultural purposes.

3. Other rights to property

3.1 Mortgages and charges

A mortgage is a security of a monetary debt over real estate which entitles a creditor to enforce its debt against the real estate asset. The debt may be enforced regardless of who the owner of the property is and with priority over other creditors.

A mortgage usually arises out of an agreement made between the lender and the debtor (the owner of the real estate). The owner's agreement must take the form of a notarized deed. The mortgage must be registered in the land and mortgage register of the property in order to be effective.

Before February 2011, it was possible to create the following mortgages under Polish law:

- the *hipoteka zwykła*, which secured liability for a specific amount; and
- the *hipoteka kaucyjna*, which secured all monetary claims, both existing and past (including conditional claims) for a specified or an unspecified value.

In February 2011, the distinction between these two types of mortgage ceased and only mortgages based on the *hipoteka kaucyjna* model can now be created.

The creation of a mortgage requires at least the owner's agreement in the form of a notarized deed and the registration of the mortgage in the land and mortgage register.

Notary fees depend on the value of the transaction. Maximum tariffs are provided by the Minister of Justice's Regulation (Regulation) and vary from PLN100 (EUR21) to PLN10,000 (EUR2,147).

The court fee for registering a mortgage in the land and mortgage register is PLN200 (EUR47). The notary public charges the parties for creating the mortgage and forwards the registration fees to the relevant court, together with the application for the registration in the land and mortgage register.

The debtor must also pay a tax on civil law transactions such as mortgages. The value secured by the mortgage is the base amount to be taxed. The rate is 0.1% in the case of sums secured with a specified value and PLN19 (EUR4.08) in the case of a claim of an undefined value.

The costs of collateral transfers of ownership (see 8.2 and 8.3 below) include notary fees for the notarized agreement transferring the property, calculated as above. Registration of the new owner in the land and mortgage register is also required. Collateral transfers of ownership are not subject to the tax on civil law transactions.

If there are several mortgages encumbering the same property, the earlier security has priority over the later charge. The priority of mortgages may be changed through an agreement reached between the parties. Any such change of priority should also be registered in the land and mortgage register.

3.2 Easements

Polish law recognizes three types of easements.

Land easements can be established for the benefit of the owner (or perpetual usufructuary) of a (dominant) property, usually in relation to neighboring land, to benefit that dominant property. Personal easements can be established for the benefit of an individual for his personal use (for example, an easement of habitation). A transmission line easement can be established in favor of a business which intends to build transmission equipment (for the transmission of liquid, gas, electricity etc.).

3.3 Pre-emption rights

Under Polish law, a number of pre-emption rights exist, such as:

- Municipal authorities have nine re-emption rights (*ustawowe prawo pierwokupu gminy*) in relation to property appearing in the register of historical monuments or that is designated for public amenity purposes (although these pre-emption rights must be disclosed in the relevant land and mortgage register to be binding). Pre-emption rights also exist in relation to undeveloped land that was acquired by the seller directly from the State Treasury or the local authority and the right of perpetual usufruct to an undeveloped real property, irrespective of the form of its acquisition.
- National Park Authorities, which act on behalf of the State Treasury, have pre-emption rights in relation to property located within the borders of parks.
- A tenant has pre-emption rights in relation to agricultural land which they occupy. If the tenant does not exercise the pre-emption right, the National Agriculture Support Institution is entitled to exercise the pre-emption right to the agricultural property of at least 0.3 ha instead.
- The National Agriculture Support Institution (*Krajowy Ośrodek Wsparcia Rolnictwa*) has pre-emption rights in relation to agricultural land (described in detail in section 2.6).

- Co-owners of agricultural land have pre-emption rights, if they run an agricultural holding on jointly owned land, although these do not apply if one of the owners wants to transfer their share of the property to relatives.
- The administrator of a special economic zone has pre-emption rights in relation to land located in the zone.
- Under the Revitalization Act, a municipality has the pre-emption right to the real properties situated within the revitalization area i.e. the area for which municipality's resolution of the establishment of special revitalization zone has been adopted.
- Under the Sea Ports and Harbours Act the port administrator has statutory pre-emption right to the real properties situated within the boundaries of sea ports.
- Under the Forestry Act dated 28 September 1991, the State Treasury (represented by the State Forests) has a pre-emption right with respect to the forestry properties (fulfilling criteria of the forestry property determined in the Forestry Act dated 28 September 1991);
- Under the Property Management Act of 21 August 1997, the State Treasury and the City of Warsaw have a pre-emption right to the rights and claims arising from the decree from 26 October 1945, on ownership and perpetual usufruct of land on the area of Warsaw as well as the right of the perpetual usufruct established pursuant to the claims arising therefrom.
- The State Treasury has pre-emption right in relation to land located under inland standing water (e.g. lakes and other natural water bodies not naturally connected to flowing waters);



4. Zoning and planning law permits

Strategic planning and zoning in Poland is regulated by statutory law under a number of Acts.

Local authorities are responsible for creating and maintaining zoning and development policies, including drafting resolutions on zoning studies setting out the terms and requirements for local development and local zoning and development plans. These plans are a framework of policies for community authorities to guide the planning of future local development.

Under Polish law, a zoning study cannot be relied upon by developers on its own, which means that it does not constitute grounds for issuing a decision on a planning permit or a building permit.

If there is no local zoning and development plan in place, an individual consent to the proposed development must be obtained. The local zoning and development plan is a generally binding regulation, while a zoning study is not. However, the zoning study is binding upon the public authority when implementing the zoning and development plan.

The recent changes of the Polish Zoning Law introduced new types of plans that may be adopted within an area of the communes – general plans and integrated investment plans.

General plans will replace the zoning studies and will be adopted for a municipal area. The general plans will be the basis for issuance of zoning decisions and preparation of local zoning and development plans. The general plans shall be prepared by the city councils by the end of 2025.

An integrated investment plan is a special form of a local zoning and development plan adopted by a relevant local government body at the request of an investor. Most importantly, the entry into force of an integrated investment plan causes the loss of binding force of local zoning and development plans of their parts relating to the area covered by the integrated investment plan.

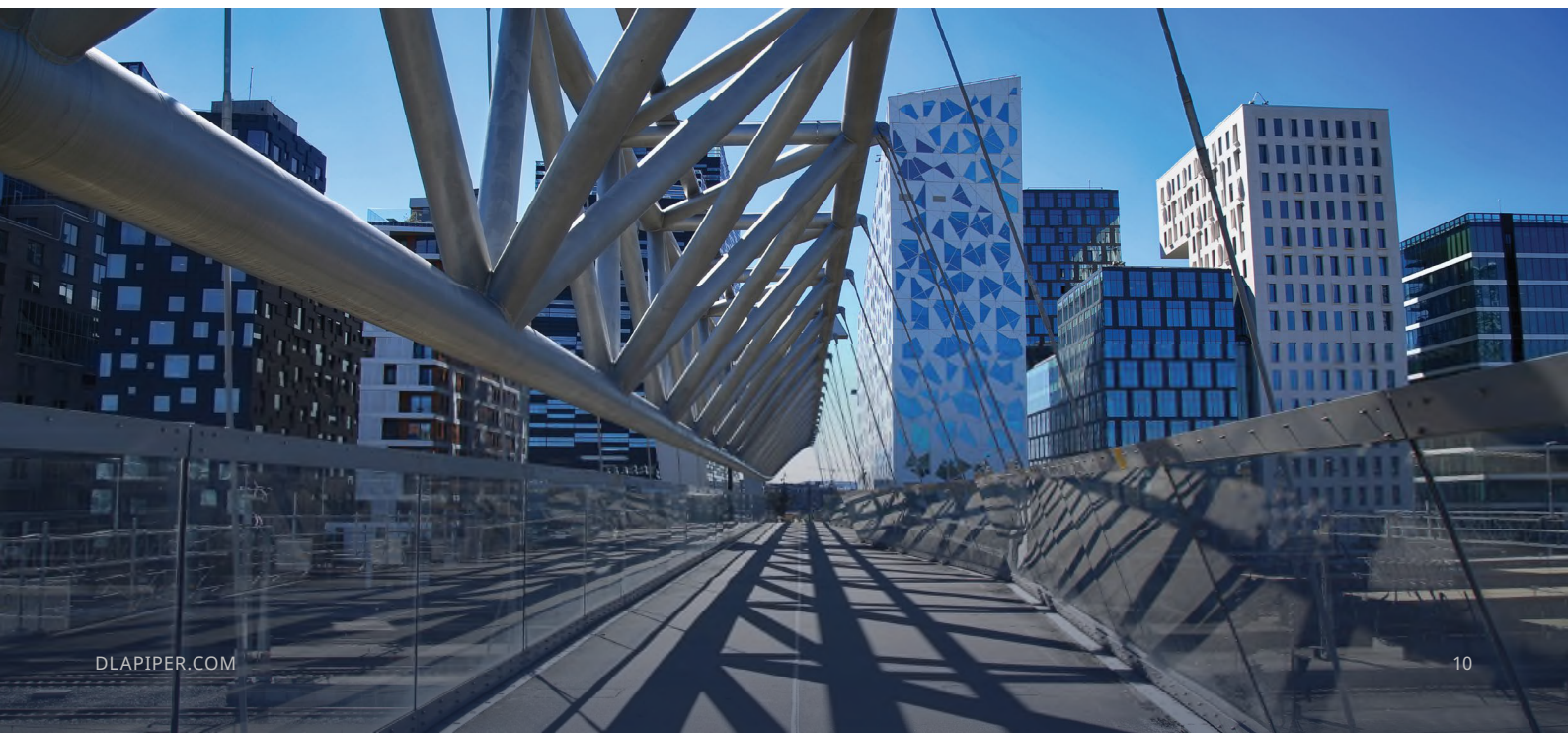
Except for a few types of development listed in the Building Law Act, planning permission is required before any development takes place. Development means building, as well as rebuilding, increasing the height of a building, renovation, or demolition.

Apart from a number of exceptions provided for in Polish law, construction work may only be commenced once a final decision granting a building permit has been issued. Development must conform to the local zoning and development plan for the area where the property is situated.

The designation of property and its use appears in the local zoning and development plans. These plans are available to the public in the local authority's real estate department or through various public websites. Anyone can view the plans and obtain confirmation of the designation of a particular site.

The permitted use of a site may be changed within the scope of the relevant zoning and development plan. Local zoning and development plans can be amended by the local authority within the scope admissible under provision of the zoning study. These documents set out the main features of local development policies. A property owner may submit an application to amend the zoning plan but the municipality is not obliged to make the change.

Since a number of authorities in Poland have no valid zoning plans, developers may apply to the relevant authority for a zoning decision (WZ). This decision defines the permitted development and use of a property.



5. Environmental liability

In Poland, the following major acts deal with environmental issues affecting building work:

- Environment Protection Law;
- Water Law; and
- Waste Law.

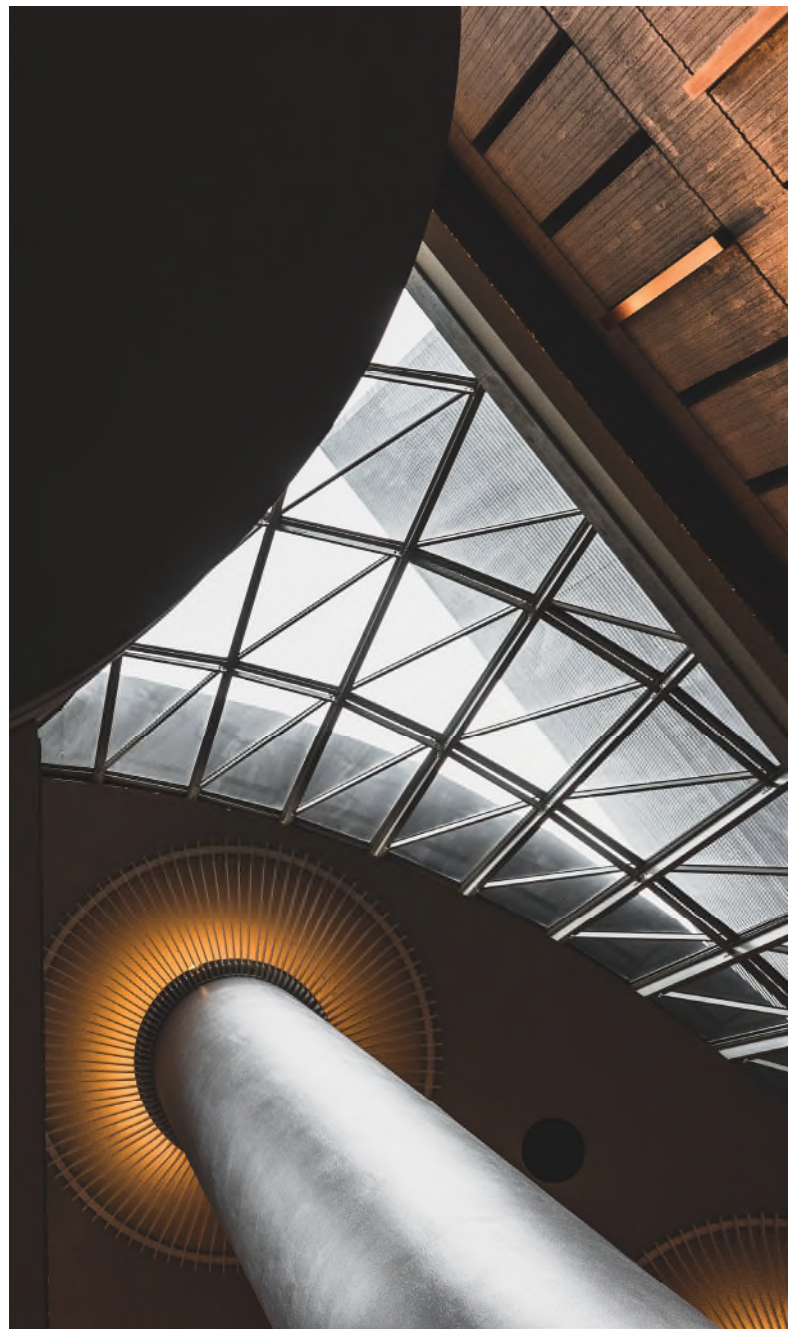
Under Polish environmental law, the basic rule is that liability for pollution or contamination can only be imposed on the buyer (the owner of the property) if it was caused by the buyer (whether intentional or due to negligence).

The Polish legal system provides that the user of land is liable for environmental damage caused to that land. Pursuant to Polish law, in the event of a threat of direct environmental damage the user of the land is obliged to promptly take precautionary measures. When any damage actually occurs, action should be taken to limit any fresh damage and start recovery proceedings.

Therefore, the Polish legal system limits the liability for environmental damage to the person or entity using the land (with the exception of the owner of the land who was aware that the user of the land was causing damage and consented to it, in which case the owner is jointly liable for the damage). This means that provided the lender holding or enforcing security over real estate is not using the property estate in a way that causes damage, it will not be liable under the environmental law.

In some cases, an environmental decision should be obtained prior to a building permit. These cases are specified in the ordinance of the Council of Ministers dated 10 September 2019, on investments that may significantly affect the environment and relates, for example to power plants, refineries, major roads, airports etc.

A building must be used in a manner consistent with its designation and environmental protection requirements, and its condition and external appearance must be maintained to protect it against excessive disrepair and inefficiency.



6. Leases

6.1 Duration

The Polish Civil Code distinguishes between:

- a lease (*najem*) which grants the right to use property for a definite or indefinite period of time, subject to payment; and
- a tenancy (*dzierżawa*), which governs the right to use and collect profits from real estate for a definite or indefinite period of time, subject to payment.

The term of a tenancy can be definite or indefinite. A tenancy is regarded as having an indefinite term if the parties agreed a period of over 30 years and the initial term of the tenancy has come to an end. The tenancy then continues indefinitely with either party having the right to terminate subject to a relatively short statutory notice period of up to one year.

The term of a lease can be indefinite or definite with a maximum term of 10 years, or in the case of a lease concluded between entrepreneurs (who, under Polish law, are defined as natural or legal persons, or non-corporate organizational units, conducting economic activity on their own behalf), 30 years. A lease is regarded as having an indefinite term if the parties agreed on a period of over 10 years (or 30 years for a lease between entrepreneurs) and the initial term of the lease has come to an end. The lease then continues indefinitely with either party having the right to terminate subject to a relatively short statutory notice period of up to three months.

6.2 Rent

Rent is usually calculated on the basis of an amount per m² of usable space. Usually rent payments are due on a monthly basis and are paid in advance.

As a rule, VAT is charged on rent at the rate of 23% for leases of commercial property (including agricultural land). Rental of residential dwellings is exempt from VAT.

6.3 Rent review

It is standard practice to link rent reviews to an appropriate price index. Adjustment is often on an annual basis for commercial leases. Adjustment of rent in residential leases is very limited and can only be done in accordance with the provisions of the Act on the Protection of Tenants and Municipal Housing Resources.

To increase the rent, the landlord under a commercial lease must notify the tenant of the increase by giving at least one full calendar month notice starting from the end of the month before it is to be implemented. This does not apply to leases of business premises completed before 1 January 2005.

The most common indexation method is a link to the Polish Consumer Price Index (CPI), published by the Central Statistical Office (GUS). However, in some cases, the international Harmonised Consumer Price Index or other international indices are used. In addition, it is standard practice to link rents to the fair market value of the rent for comparable properties.

6.4 Operating expenses

The landlord must repair and maintain the common areas and the structure of the building. Each tenant is usually required to pay a proportion of the costs incurred by the landlord for the maintenance and repair of common areas (the service charge). The proportion payable is based on the size of the unit leased by the tenant. Certain expenses are normally excluded from the service charge. These include the initial development of the building or repairs to the structure itself, although in leases of commercial property there are fewer exclusions from the service charge. Each tenant is also usually required to pay a proportion of the costs incurred by the landlord for the maintenance of common utilities, based on the size of the tenant's unit. These charges usually include utilities such as electricity, water, power, and telecommunications.

The landlord generally insures the property. However, a proportion of the premium payable by the landlord is usually included in the service charge paid by the tenant. The tenant will insure its own fittings and chattels and insures itself against third party claims.

6.5 Maintenance, repair, and renovation at end of lease

Leases normally restrict the use of the leased property to a particular use (restaurant, office etc.) and the tenant cannot change the use of the property without the landlord's consent.

Where improvements are made by the tenant, the landlord may either leave the improvements in place upon termination of the lease and pay the tenant appropriate compensation or alternatively may require that the property be restored to its former state. Most lease agreements will state that alterations and improvements require the landlord's prior consent. The agreement may state that this consent is not to be unreasonably withheld or delayed.

The landlord must maintain the leased property so that it is fit for its purpose throughout the period of the lease. This obligation cannot be waived by agreement and the landlord is liable for defects in the leased property which, wholly or partially, prevent it from being used for its intended purpose according to the lease. In such cases, the tenant

may request a rent reduction or, if the defects are irreparable or the landlord refuses to repair the property, may even withdraw from the agreement.

The tenant is responsible for minor repairs. The term minor repairs is not defined by Polish law and so what this means in practice will depend on the specific circumstances. Each party pays for the repairs for which it is responsible. The parties may, however, agree for a larger proportion of the costs to be passed on to the tenant.

6.6 Assignments/transfers

Generally, if the landlord's consent to assignment/transfer is not specifically provided for in the agreement, the tenant may transfer its rights to occupy the property to a third party upon notification, however, to transfer its obligations, the express consent of the landlord is required.

6.7 Subleases

According to Polish law, unless the parties agree otherwise, the tenant may not allow the premises or a part thereof to be used or subleased without the consent of the landlord.

However, most commercial leases contain clauses which entitle the tenant to sublease the rental premises within the tenant's group or to any third party using the space as stipulated in the lease agreement.

6.8 Termination

If the lease is concluded for an indefinite period, the landlord and the tenant may terminate the lease agreement by observing the stated notice periods, and, if no period is stipulated, by observing the statutory notice periods. If rent is payable on a monthly basis, the statutory notice period for the termination of the lease is three months with the effect on the end of a calendar month. This period cannot be shortened to the detriment of the tenant.

If the lease is concluded for a definite period, the landlord and the tenant may terminate the lease by serving notice and observing the notice periods and conditions stipulated in the lease. Any conditions on terminating the lease must be clearly defined.

Lease agreements invariably contain a provision allowing the landlord to terminate due to a breach of the lease (after the tenant has been warned) or due to non-payment of rent. Termination for non-payment of rent is possible after two consecutive rental periods and the landlord must warn the tenant in writing, allowing one additional month to pay the rent arrears. A three month notice period is required in relation to a tenancy.

Tenants enjoy security of possession as long as they have the benefit of a binding lease agreement for the property. The landlord cannot force the tenant to leave without a court enforcement order. The tenant can, by way of a notarized deed, agree to accept enforcement proceedings for eviction. This reduces the amount of time it takes to obtain a court order since the court's role is then limited to verifying the validity of the notarized deed.

A tenant has no right to continue to occupy a property when the lease has expired. However, if the tenant continues to use the leased property after the expiry of the initial term with the landlord's consent, the agreement is regarded as having been extended for an indefinite period of time.

6.9 Sale of leased property

In the event of the transfer of ownership of a leased property, the buyer automatically steps into the shoes of the landlord for the lease and may terminate the agreement by observing the statutory notice period. Where the lease is for a fixed term with a certified end date (i.e. a date confirmed by an official authority, such as a tax office or notary public), the tenant has a degree of legal protection against termination by subsequent owners. In such cases, the agreement may not be terminated early if the tenant was given possession of the leased property before the transfer of title to the new owner.

However, new regulations for civil proceedings which came into force on 3 May 2012, provide that this protection for tenants does not apply if the property was sold as part of enforcement or bankruptcy proceedings initiated after 3 May 2012. A buyer that acquires property which is subject to a lease or tenancy agreement concluded for a period of more than two years as part of enforcement or bankruptcy proceedings initiated after 3 May 2012, may terminate the relevant agreement with one year's notice (unless the lease or tenancy agreement provides for a shorter termination period). This applies even if the lease or tenancy agreement was concluded for a definite period with a certified date (or the lease or tenancy agreement were registered in the relevant land and mortgage register) and the tenant has possession of the leased property.

7. Tax

7.1 Transfer taxes

Income from the sale of real estate is subject to personal income tax or corporate income tax. Income from the sale of property is calculated as the difference between the sale price and the net value on purchasing price of the real estate. Income can be reduced by any costs related to the sale; however, there are complex rules on allowable deductions.

Corporate income tax is payable at a flat rate of 19% on net income. Companies based in Poland generally pay corporate income tax in Poland on their worldwide income. For foreign entities (including companies), all income generated in Poland, including the pay income from the sale of Polish real estate will be taxed in Poland. However, double taxation treaties may modify this general principle.

Where the shares of a company for which the assets consist mainly of real estate located in Poland are disposed of, the seller may be liable to income tax in Poland (but again double taxation treaties may apply).

Depending on the status of the real estate, it may be subject to VAT (please refer to point 7.2 below) or to pay tax on civil law transactions (TCLT) at the rate of 2%.

The costs of an asset deal and a share deal described in clauses 2.3 and 2.4 are, generally, deductible for tax purposes, if met by the seller. However, if the costs are met by the buyer, they are treated as part of the value of the property and may be deducted for tax purposes in the form of depreciation write-offs (in the case of buildings or civil engineering works) or deducted from a subsequent sale of the property. The new law (binding from 2022) envisages an exclusion of depreciation write-offs on residential buildings and premises from taxable costs.

7.2 Value added tax

In the case of an asset deal value added tax (VAT) is payable if the seller is company or other entity carrying on a business and it sells the interest in the real estate in the course of its business activities. VAT is payable by the seller at the rate of 23% (residential estates up to 150 m² (flats) and 300 m² (buildings) are taxed at the rate of 8%). Generally, the basis for calculating VAT is the net purchase price.

The sale of agricultural land is exempt from VAT.

Any sale of undeveloped land other than building land is exempt from VAT.

Sale of real estate other than land (buildings, civil engineering works or parts thereof) may usually be exempt from VAT if two years have passed since that property's first occupation. However, in some circumstances, the seller may opt for the transaction to be subject to VAT.

The sale of property other than land which is not subject to this exemption is not liable for VAT if a supplier of the property was not entitled to deduct input VAT and did not incur expenses on the renovation of the property and for which they are entitled to deduct input tax, or if they incurred such expenses, they were lower than 30% of an initial value of such real estate.

The buyer has the right to recover VAT charged by the seller as input tax if the buyer is a VAT taxpayer carrying out transactions which are subject to VAT. In that case input VAT can be deducted by the buyer against its output VAT. Any surplus input VAT can be carried forward to subsequent months or the buyer may ask for a direct refund of the input VAT from the tax office (generally, the refund is made within 60 days).

VAT is not payable on share deals. Similarly, if an interest in a partnership holding a property is disposed of VAT is not payable.

As a rule, if the sale of real estate under an asset deal is exempted from VAT, the tax on civil law transactions is due (the rate is 2%). At the same time, as a rule, the share deal is subject to tax on civil law transaction (the rate is 1%).

7.3 Other real estate taxes

Land, buildings, and other structures associated with a business (e.g. roads, antenna towers, foundations for machinery), as well as their component parts, are – as a rule – subject to real estate tax. The basis for calculating the real estate tax is the surface area of the land or building. For structures used for business purposes real estate tax is charged on the initial value determined for tax depreciation purposes. Generally speaking, expenditure incurred in relation to the construction or acquisition of a building is its initial value.

Real estate tax is a local tax and its exact amount is set by a resolution of the relevant local authority. However, the rates of real estate tax may not exceed in 2025 the following:

- for land connected with business activities – PLN1.38 (EUR0.33) per m²;
- for buildings and parts of buildings (where they are used for business purposes) – PLN34.00 (EUR8.16) per m²; and
- for structures – 2% of their market value.

The rates may be changed on annual basis. Some types of real estate are exempt from this tax (for example, certain property connected with railways or airport infrastructure).

In some circumstances, real estate located in special economic zones may benefit from real estate tax exemption. Real estate tax is declared annually by companies and paid to the relevant municipality on a monthly basis.

Individuals not carrying on a business pay real estate tax on the basis of the assessment of the competent authority four times a year if the value of the real estate tax does exceed PLN100 (EUR24).

Special rules apply to agricultural and forestry land.

In the case of a perpetual usufruct, a fee must be paid to the State Treasury or to the relevant local authority. When a perpetual usufruct right is established, an initial fee of between 15% and 25% of the value of the property is payable. This fee is paid only once and should not be paid again by the new owner of the perpetual usufructuary if the right is transferred. An annual fee is payable for each year of perpetual usufruct. This is between 0.3% and 3% of the value of the property (the exact amount depending on the purpose of the usufruct).

Where real estate is owned outright, additional costs or charges may arise in connection with the development of the land, rebuilding, or changes in the use of the buildings (e.g. stamp duty for a building permit or occupancy permit – the amounts depend on the type and area of the building).

7.4 Taxation of rental income from real estate

In general, rental income generated from real estate is subject to general income tax rules in Poland:

- corporate income tax (CIT) in the case of companies,
- personal income tax (PIT) in the case of individuals, and
- top-up tax in the case of multinational enterprise (MNE) groups and large-scale domestic groups.

CIT is payable at a flat rate of 19% on net income. Companies and other entities resident in Poland normally pay CIT in Poland on their worldwide income. For foreign entities (including companies), all income generated in Poland is taxed in Poland. However, double taxation treaties may modify this general position.

Tax rates are progressive for individuals (12% and 32%) or a flat rate of 19% may apply (if income is generated as an individual's business activity).

The amendments of the CIT Act which have been in force since 1 January 2018, introduced an additional income tax (an income tax on commercial properties) that is to be payable on certain commercial properties (fixed assets). The tax is applied in respect of office buildings, shopping centers, department stores, and other retail and service buildings with an initial value of more than PLN10 million.

The value of PLN10 million regards all buildings of a given taxpayer or, under certain circumstances, all buildings owned by a certain taxpayer and its related parties. The tax is payable on a monthly basis and the rate is 0.035% of excess of the building's initial value over the amount of PLN10 million. The tax so calculated will reduce the standard corporate income tax. There is also an option to apply for refund of the tax on commercial properties if it exceeds amount of standard corporate income tax.

On 1 January 2025, a top-up tax was introduced to ensure that the income of the constituent units of international and national groups is at least minimally taxed. The top-up tax is an additional tax burden on entrepreneurs on top of the existing CIT. It aims to ensure that all companies, especially those operating within international groups, pay a minimum level of tax on profits generated in Poland. In a situation where a company's effective tax rate in Poland is lower than 15%, the top-up tax is intended to compensate for the difference and ensure that the minimum level of taxation is achieved.

7.5 Taxation of dividends from a company owning real estate

Income generated by a company owning real estate may be transferred to shareholders as dividends. Generally, withholding tax (WHT) on dividends is payable at 19% of the gross dividend payment.

After 1 January 2022 Polish tax remitters are in general obliged to apply 19% WHT to payment of dividends to foreign entities exceeding in total two million per year per one entity even though these payments can benefit from WHT rate reduced based on a double tax treaty or WHT exemption based Polish regulations implementing the Directives. When a WHT exemption or a WHT reduction is applicable, such collected WHT may be on request reimbursed by the tax authorities (the reimbursement procedure should take up to six months).

Dividends payable to Polish residents will be excluded from pay and refund mechanism.

With regard to dividend payments to a direct shareholder tax authorities' opinion may be applied for. Obtaining a positive opinion would allow to apply WHT exemption and not collect WHT from these payments in a period of 36 months as from date of the opinion. Another procedure allowing to not collect 19% WHT on dividends is submission of statements of the board (signed electronically by all board members). It is crucial that the statement not only correctly confirm status of the payment recipient but also that the statement is preceded by proper verification of the status of the payment recipient. It should be underlined that

the Tax Ordinance provides for a sanction applicable if a statement submitted was not true, no verification was made or the verification made was inadequate. Also, submitting an untrue statement is a penalized act – fines may be imposed on the signatories. Exemptions to withholding tax on dividends may apply under Polish law if the EU Parent-Subsidiary Directive applies. Generally, the tax exemption on dividends paid by a Polish resident company applies if all the following conditions are met:

- the shareholder in the Polish entity is resident in Poland, another EU country, the European Economic Area, or Switzerland;
- the shareholder holds at least 10% of the shares in the Polish company (25% in the case of Switzerland); and
- the shareholding is maintained for a continuous period of two years (this holding period may be fulfilled after the dividend is paid out); and
- the shareholder does not enjoy exemption from income tax on its entire income, irrespective of the sources from which the income is earned.

In the case of non-tax residents (both corporate and individual), the rules on the taxation of dividends may be modified by the provisions of a relevant double taxation treaty.

There is no additional taxation if the profits of a partnership are transferred to the partners, since the income of the partnership is treated as the income of the individual partners.

7.6 Taxation of capital gains on real estate

Among other things, income generated from rent if the real estate is leased, from advertisements located on the property or on an elevation of buildings located on it, or from parking places on the property is subject to taxation.

Any income generated from real estate is subject to general income tax rules in Poland:

- corporate income tax (CIT) in the case of companies, and
- personal income tax (PIT) in the case of individuals.

Taxable income is defined as the taxable revenue after the deduction of costs. Tax deductible costs are any costs aimed at generating or securing taxable revenues. Tax law specifies over 60 categories of cost that cannot be deducted for tax purposes, but the rules are complex and specialist advice should be sought on this matter.

The costs of acquiring real estate may be deducted for tax purposes only by way of depreciation write-offs. Depending on the type of real estate, the annual depreciation rate

ranges from 1.5% to 10%. Land cannot be depreciated and the cost of land acquisition can only be deducted for tax purposes when it is sold. Residential buildings cannot be depreciated too.

CIT is payable at a flat rate of 19% on net income. Companies or other entities based in Poland normally pay CIT in Poland on their worldwide income. In the case of foreign entities (including companies), all income generated in Poland is taxed in Poland. However, double taxation treaties may modify this general rule.

In the case of an asset deal where the seller is not an entity carrying on a business, a 2% tax on civil law transactions (TCLT) is due, based on the market value. This is normally the purchase price but can sometimes be assessed at a higher level by the tax authorities using an authorized expert's opinion. The obligation to pay TCLT rests with the buyer. If the seller is an entity carrying on a business, value added tax (VAT) is usually payable. Generally, the standard rate of 23% applies; however, a rate of 8% applies to subsidised housing.

In practice, a taxpayer must pay their own tax. If a third party pays the tax for the taxpayer, the payment is ineffective and the tax liability remains.

7.7 Taxation of capital gains from the disposal of shares in a company owning real estate

In the case of a share deal TCLT at 1%, calculated on the basis of the fair market value of the shares, is payable by the buyer. Similarly, if an interest in a partnership is purchased (i.e. a partnership holding the interest in the real estate), TCLT is payable at 1%, calculated on the basis of the market value of the interest.

Taxation on the income generated from the sale of shares in real estate company is, as a rule, subject to corporate income tax in Poland at 19% rate. If the income is recognized by a foreign shareholder, the provision of relevant double taxation treaty will determine whether such income is subject to CIT in Poland or in the shareholder's tax residence country.

7.8 Taxation of gains on the disposal of a partnership interest in a partnership owning real estate

Partnerships (excluding limited joint-stock partnerships as well as limited partnership and general partnership in case the specific conditions are met) are not treated as taxpayers so the partnership itself does not pay tax. Income is allocated directly to the partners who are taxed individually in accordance with the applicable rate of CIT (for legal entities) or PIT (for individuals).

For income tax purposes, partners are treated as if they held the real estate themselves. There are complex rules on the tax rates applicable to partners selling real estate in the course of their business activities. For partners that are legal entities, a 19% corporate income tax rule is applicable. For individuals, tax rates are progressive (12% and 32%) or a flat rate of 19% may apply. As a rule, non-tax residents pay PIT on net income from real estate located in Poland. Double taxation treaties may apply.

However, please note that as of 1 January 2014, limited joint-stock partnerships are liable to pay CIT in a similar way to limited liability companies and joint stock companies. Please note also that as of 1 January 2014, limited partnership and general partnership may also be obliged to pay CIT provided some specific conditions are met.



8. Real estate finance

8.1 Interest rate risks

The risk of interest rate fluctuations is a key issue in real estate financing in Poland. Particularly important factors are:

- the independence and policy of the Central Bank of Poland (*Narodowy Bank Polski*) and the decisions of the Monetary Policy Council (*Rada Polityki Pieniężnej*);
- macroeconomic data of the Polish economy, in particular the inflation rate, public deficit, and public debt to GDP ratio;
- the policies of the Polish government, including the drawing up of the budget; and
- market expectations.

Among other things, the Monetary Policy Council sets the Central Bank of Poland's interest rates. It also draws up annual monetary policy guidelines, determines the procedures governing the reserve requirement and sets the reserve ratio. Decisions on interest rates are crucial for the interest rate risk in Poland. The Central Bank of Poland strives to maintain statutory interest rates (applicable in case where parties did not regulate the interest rate otherwise by an agreement) that maximize the probability of achieving the inflation target – whereby the current amount of statutory interest rates constitutes an aggregate of reference rate published by Central Bank of Poland and 3.5 percentage points. Decisions are made several times each year.

There are four base rates of the Central Bank of Poland:

- the reference rate (minimum money market intervention rate);
- the lombard rate;
- the deposit in the Central Bank rate; and
- the rediscount rate.

Current interest rates can be checked on the website of the Central Bank of Poland.

8.2 Assets held as security

When lending money, financial institutions are most likely to demand security *in rem*. The most common securities related to the real estate finance are:

- a mortgage; and
- a collateral transfer of ownership.

A mortgage is a security of a monetary debt over property which entitles a creditor to enforce its debt against the real estate asset, regardless of who the owner of the real estate is and with priority over other creditors in favor of whom a mortgage with lower priority ranking has been established. A mortgage usually arises out of an agreement made between the lender and a debtor (owner of real estate). The owner's agreement must take the form of a notarized deed. A mortgage must be registered in the land and mortgage register of the relevant property.

As it was mentioned in point 3.1, prior to February 2011, under Polish law, the following mortgages were available:

- the *hipoteka zwykła*, which secured liability for a specific amount; and
- the *hipoteka kaucyjna*, which secured all monetary claims, both existing and past (including conditional claims) for a specified or an unspecified value.

In February 2011 the distinction between such mortgages fell away and only mortgages based on the *hipoteka kaucyjna* model can now be created.

It is possible to create one joint mortgage *hipoteka łączna umowna* on several properties that secures the same debt. It is also possible to replace a secured charge with another charge for the same creditor.

If there are several debts to different creditors, but these debts are used to finance the same project, creditors should appoint a mortgage administrator. The administrator may be one of the creditors or a third party.

It should be noted that a mortgage on a real estate also encumbers the appurtenances. The appurtenances are all the movable things necessary to use the property. The components of a property, building or engineering works are also covered by a mortgage after they are detached, provided that they remain within the boundaries of the property.

A collateral transfer of ownership is another tool for securing a monetary debt. This is where, upon agreement between the creditor and the debtor (the owner of the property), the debtor's property is transferred to the creditor to secure the debt. At the same time, the creditor undertakes to transfer the property back upon the payment of the debt. It should be noted that despite the latest decisions of the Supreme Court of Poland supporting the view that it is possible to transfer ownership of the real estate in order to secure the debt, there is also a line of cases of the Supreme Court of Poland that do not support this practice.

8.3 Further collateral agreements

The mortgage and the collateral transfer of ownership are the only possible means of taking security on real estate. Other forms of security, such as a registered pledge or assignment of rights, are designed for assets other than real estate. Polish law does not contain a land charge system. In contrast to a mortgage, a land charge is a non-accessory right that remains valid even if the secured debt ceases to exist.

8.4 Taxation on the creation of security

The taking out of a mortgage is a chargeable event under the Polish tax on civil law transactions. The rate of the tax is either 0.1% of the existing secured debt or a fixed amount of PLN19 (EUR4.56) if the secured debt amount is not specified. As a mortgage usually secures not only a specified amount but also additional costs of the debt, it is common to pay the fixed rate. However, before making a final decision on the tax rate, a motion for an individual ruling should be submitted to the tax authorities. It is possible that some agreements on the creation of security may trigger tax consequences, such as tax on civil law transactions when transferring ownership of real estate, or income tax if the transfer involves the earning of income (see point 7 above for more details).



Glossary

TERM	EQUIVALENT
Krajowy Ośrodek Wsparcia Rolnictwa	The National Agriculture Support Institution
Dzierżawa	Tenancy
Ewidencja gruntów i budynków	The land and buildings register
Główny Urząd Statystyczny (GUS)	Central Statistical Office
Hipoteka kaucyjna	Mortgage which secures all monetary claims, both existing and past, of a specified or unspecified value
Hipoteka zwykła	Mortgage which secures liability for a specific amount
Księgi wieczyste	The land and mortgage register
Najem	Lease
Podatek od nieruchomości	Real estate tax
Prawo budowlane	Building Law Act
Służebność gruntowa	Real easement
Służebność osobista	Personal easement
Służebność przesyłu	Transmission line easement
Spółka z ograniczoną odpowiedzialnością (sp. z o.o.)	Limited liability company
Ustawa o planowaniu i zagospodarowaniu przestrzennym	Zoning and Development Act
Ustawowe prawo pierwokupu gminy	The local authority's pre-emption right
Użytkowanie wieczyste	Perpetual usufruct

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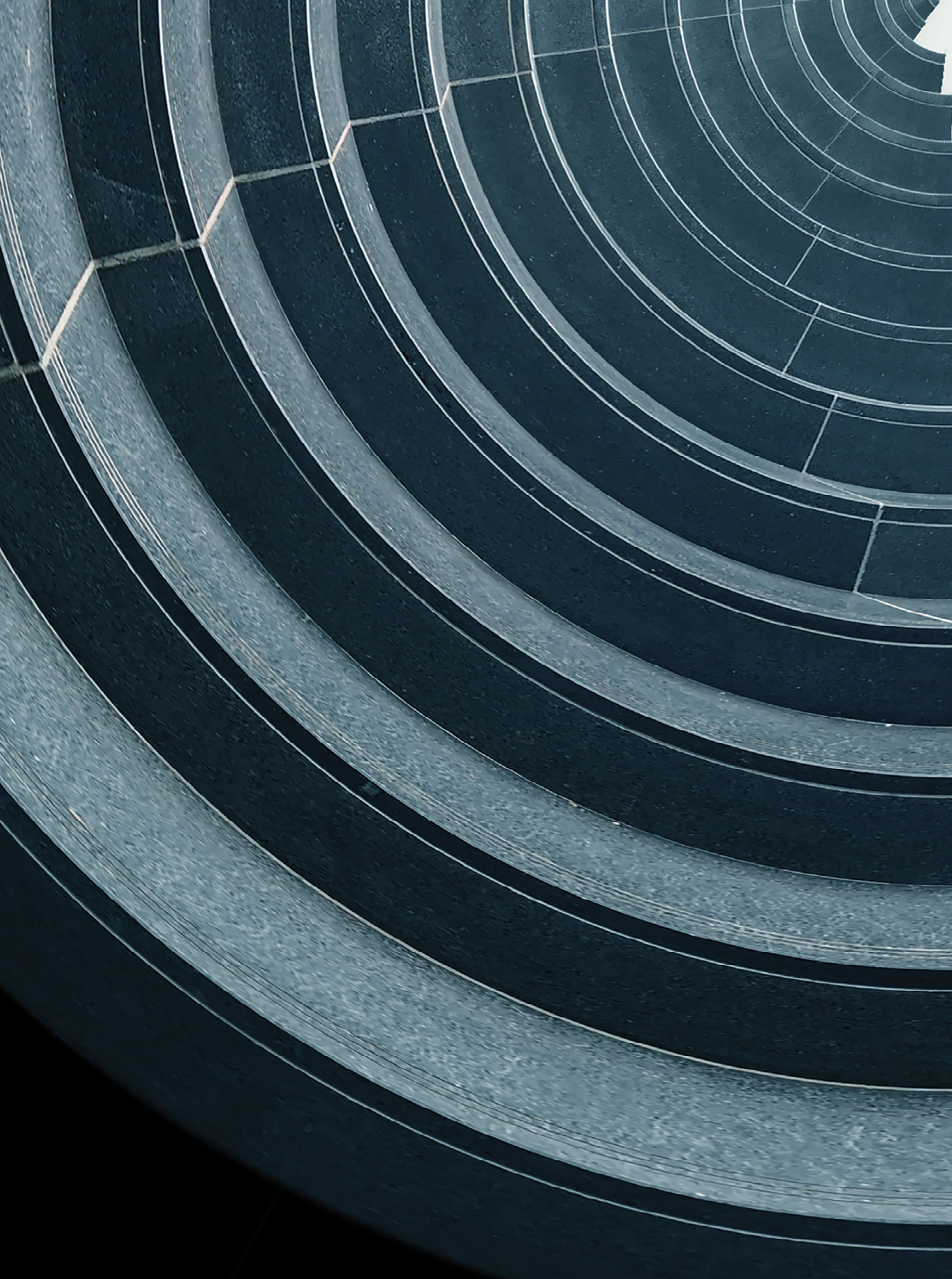
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This guide was written predominantly by our Real Estate practice group.

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