

Permanent establishment in Poland – tax consequences

The issue of having permanent establishments by foreign entities (also referred to as PE) in Poland is of considerable interest to tax authorities. The main reason for this is that the existence of PEs in Poland determines the place of taxation of the income they generate and creates additional recording and reporting obligations.

Consequences for a foreign entity of having a PE in Poland

Taxation of income generated by a PE in Poland

- Non-residents are subject to tax liability in Poland only on **income they earn on the Polish territory**. It includes, among others, the income obtained through a permanent establishment located in Poland (see below for more information on the definition of a permanent establishment).
- In Poland, only income effectively allocated to the establishment (related to its business activities) can be taxed, the correct calculation of which requires appropriate analysis and calculations.

Additional tax on shifted income and minimum tax

- Having a PE in Poland also involves an analysis of the **additional taxation with the shifted profit tax** (which can occur when the taxpayer incurs expenses for the benefit of a related party, taking into account transactions between the permanent establishment and the parent company, and additional conditions indicated in the CIT Law are met).
- A permanent establishment may also be subject to a so-called **minimum tax** (regulations in this regard will take full effect from 2024). This tax may be due if the plant makes a loss or its profitability ratio (calculated in accordance with the Tax Law) falls below a certain level.

Reporting and documentation obligations

- In addition to the obligation to pay tax, a permanent establishment operations also involve **administrative obligations** – such as submitting annual returns, keeping appropriate tax records and **preparing transfer pricing documentation**.

If a taxpayer fails to comply with the requirements of the tax law, they risk having to pay the outstanding tax with interest, as well as facing penal and fiscal liability.

Definition of a PE in the tax regulations

For a PE to establish, it is sufficient that the activities of a foreign entity in Poland are characterized by features indicated in the tax legislation. No formal procedure is required.

The definition of a PE is broad. According to the Polish CIT Law, it includes:

- **a fixed base** through which the business activities of the enterprise are carried out in whole or in part (branch, representative office, office, factory, workshop, place of extraction of natural resources);

- **a construction site** (construction, assembly, installation);
- **a dependent agent**, i.e. person who, in the name and on behalf of an entity having its registered office or central management in one country, acts in the territory of another country, provided that such person has a power of attorney to conclude contracts on the entity's behalf.

The above definition is **modified by the provisions of the double taxation treaties concluded by Poland with individual countries**. They contain detailed guidelines as to the various forms of the permanent establishment (both in the physical form or the dependent agent) and other circumstances conditioning its forming (such as the duration of construction or assembly work).

When is it worth checking whether a PE will form?

Based on our observations of the practice of tax authorities in Poland, it is worthwhile to carry out an analysis of the risk of having a PE in Poland i.a. in the following situations:

- **owning real estate in Poland and deriving income from rental** (factual elements such as employees employed, entities managing the property, the scope of their power, etc., are important here);
- performance by an employee employed by a foreign company of his or her duties as part of **remote work in Poland**;
- **activity of employees seconded to Poland**;
- acquisition by a foreign company of **logistics and warehousing services in Poland**;
- **performance of servicing and repair as well as trade intermediary services by a Polish company** for a foreign company, especially when the remuneration is determined on the basis of the cost-plus method;
- performance of **construction and installation** work in Poland.

What to do in order to minimize tax risks?

The issue of forming of PEs of foreign entities and the allocation of income to be taxed in Poland is already of great interest to tax authorities. One can expect that they will intensify tax audits to identify PEs in the future.

Therefore, each time a foreign entity operates in Poland, it is recommended to conduct an analysis of the possible forming of a PE.

Depending on the facts, in order to secure one's tax position, one may consider requesting a tax interpretation to confirm the non-existence of a PE in Poland.

OUR ASSISTANCE

We are at your disposal to support you in analyzing the above issue and discussing the implications that it may have on the taxation of your activities in Poland.

We will be happy to support you at subsequent stages of the process –including the preparation of the application for an individual interpretation, drafting the allocation of income to PE, TP documentation or analysis of other tax issues related to this topic.

This document has been prepared for information purposes only and covers general nature. Before taking any action based on the above information, we recommend that you obtain a valid opinion of TPA experts.



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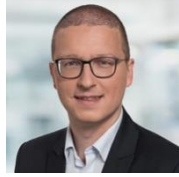
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