The Polish Real Estate Guide 2025

The real state of real estate

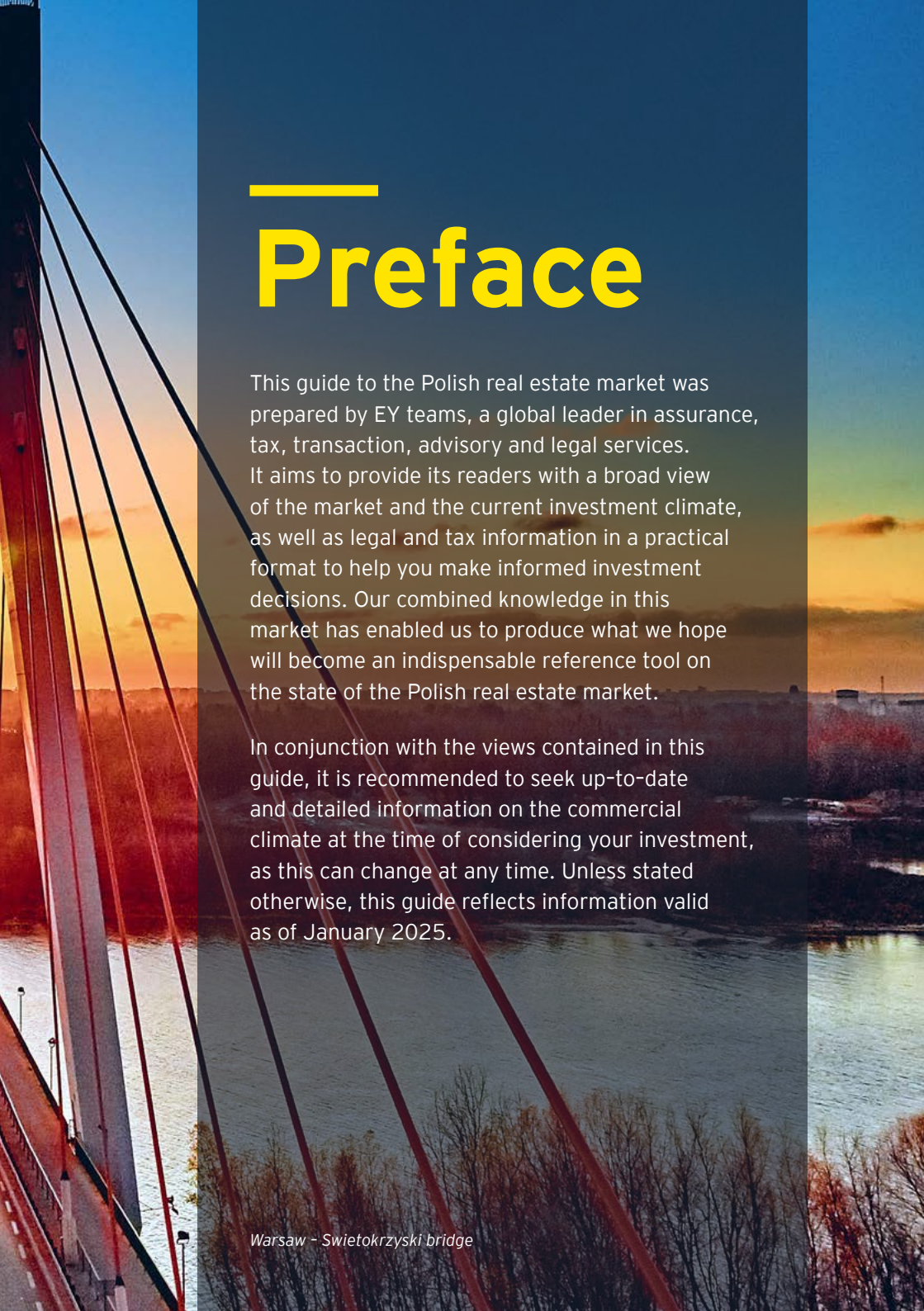
The better the question. The better the answer.
The better the world works.

Shape the future with confidence

Preface

This guide to the Polish real estate market was prepared by EY teams, a global leader in assurance, tax, transaction, advisory and legal services. It aims to provide its readers with a broad view of the market and the current investment climate, as well as legal and tax information in a practical format to help you make informed investment decisions. Our combined knowledge in this market has enabled us to produce what we hope will become an indispensable reference tool on the state of the Polish real estate market.

In conjunction with the views contained in this guide, it is recommended to seek up-to-date and detailed information on the commercial climate at the time of considering your investment, as this can change at any time. Unless stated otherwise, this guide reflects information valid as of January 2025.



Warsaw – Swietokrzyski bridge

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Polish real estate market

Gorzów Wielkopolski – city skyline overlooking St. Mary's church tower at dusk

1.1 Poland in a nutshell

€813b
GDP prediction

37.6m
The largest population across the CEE markets

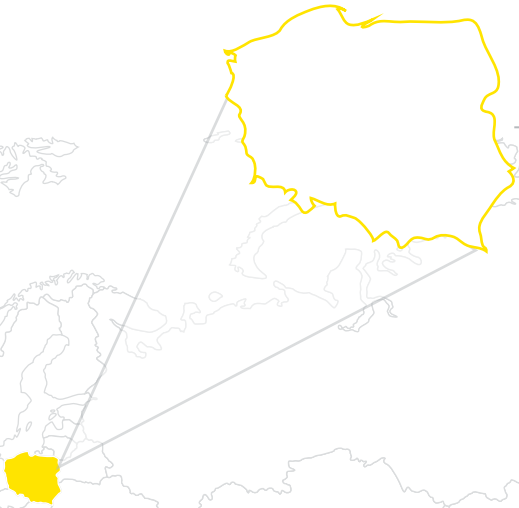
€23,160
GDP per capita, compared to approx. €42,600 of EU average

€76.0b
EU funds
The largest beneficiary of EU funding (2021–2027)

€1,924
Average salary in 2024

ca. €26.5b
Inflow of FDI (2023)
Poland belongs to the group of the top 10 FDI receivers in the world – sixth position in EY's European Attractiveness Survey 2024

Source: NBP, GUS, IMF, gov.pl.



1,900+
centers
Top BPO/SSC/R&D location
employing 465,000 people
as of 2024

2.7%
GDP growth in 2024

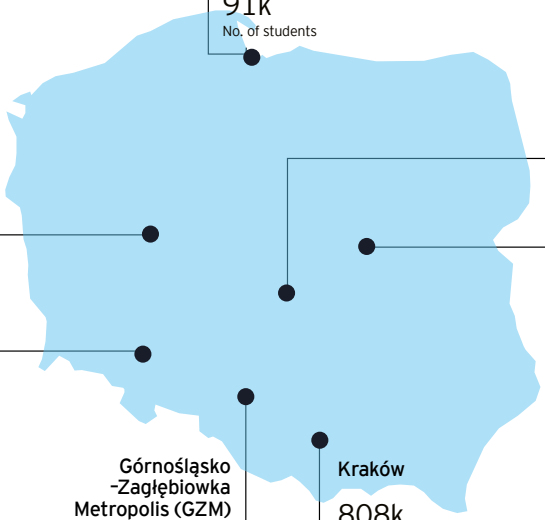
3.4% — **GDP growth forecast** in 2025/2026 — **2.8%**

3.7%
Average inflation in 2024

5.6% — **Inflation forecast** in 2025/2026 — **2.7%**

Source: NBP.

Key business centers



Tri-City

760k
Population

2.5/2.2%/2.1%
Gdańsk/Gdynia/Sopot
Unemployment rate

€2,311
Monthly salary

(data for Gdańsk only)

91k
No. of students

Łódź

649k
Population

4.4%
Unemployment rate

€1,858
Monthly salaries

70k
No. of students

Poznań

537k
Population

1.0%
Unemployment rate

€2,184
Monthly salaries

112k
No. of students

Warsaw

1,862k
Population

1.4%
Unemployment rate

€2,326
Monthly salaries

283k
No. of students

Wrocław

674k
Population

1.6%
Unemployment rate

€2,129
Monthly salaries

116k
No. of students

Górnośląsko -Zagłębiowka Metropolis (GZM)

2,279k
Population

1.0%
Unemployment rate

€2,944
Monthly salaries
(data for Katowice only

116k
No. of students

Kraków

808k
Population

2.0%
Unemployment rate

€2,417
Monthly salaries

152k
No. of students

(1) Population as of June 2024

(2) Unemployment rates and Monthly salaries as of November 2024

(3) No. of students as of 2023 for voivodship

(4) Górnośląsko-Zagłębiowska Metropolis consists of 41 communes, including 13 cities: Bytom, Chorzów, Dąbrowa Górnicza, Gliwice, Katowice, Mysłowice, Piekary Śląskie, Ruda Śląska, Siemianowice Śląskie, Sosnowiec, Świętochłowice, Tychy, Zabrze (as of 1 January 2024)

Source: GUS.

Wrocław – the oldest part of the city, Ostrów Tumski, view of the cathedral island

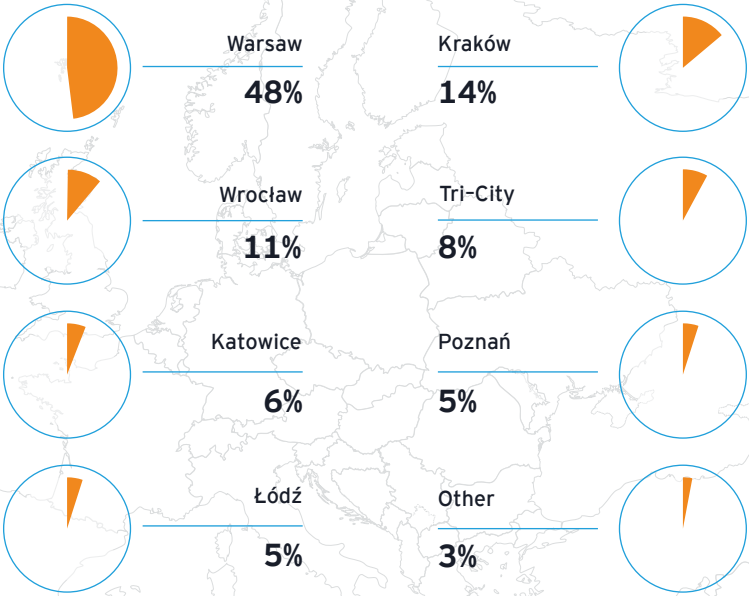
1.2 Sectors of real estate market

Office market

13.1m m²
Total supply of office space in Poland

6.3m m²
Total supply of office space in Warsaw

6.8m m²
Total supply of office space in eight major regional markets



Office market data

	Stock (m^2)	New supply (m^2)	Pipeline supply (m^2)	Vacancy rate	Prime rental range (€/m^2/ month)
Warsaw*	6,290k	103k	254k	10.6%	18-27
Kraków	1,832k	26k	50k	18.9%	15-17
Wrocław	1,386k	49k	25k	19.7%	14.5-16
Tri-City	1,067k	20k	39k	12.7%	14-16
Katowice	773k	22k	26k	20.5%	13-15.5
Poznań	674k	0k	55k	12.5%	14-17
Łódź	645k	8k	13k	21.1%	12-14.5

*Data for the City Center: Stock (m^2) – 2,852k, New supply (m^2) – 85k, Pipeline supply (m^2) – 233k, Vacancy rate – 8.8%, Prime rental range (€/m^2/month) – 18-27. Data for the non-central regions: Stock (m^2) – 3,438k, New supply (m^2) – 18k, Pipeline supply (m^2) – 21k, Vacancy rate – 12.0%, Prime rental range (€/m^2/ month) – 11-17.
** Data in the table may have been rounded.
*** Abbreviation "k" – thousands.

Retail market

16.8m m²
Modern retail stock

530,000 m²
New supply (mainly mixed-use projects)

930,000 m²
Supply under construction (completion by 2025–2026)

3.0%
Average vacancy rate in eight major cities

345 m²
Average density per 1,000 inhabitants

273 m²
Average shopping centers density per 1,000 inhabitants

€19,880
Average purchasing power per inhabitant per annum in Warsaw

€12,560
Average purchasing power per inhabitant per annum in Poland

€40–€60
per m²/month
Prime rents in major agglomerations

€100–€130
per m²/month
Prime rents in Warsaw

€9–€12
per m²/month
Rents in retail parks

New brands in 2024

Andre Tan, Arket, Atac Hiper Discount by Auchan, Bvlgari, Carpatree, Dior Fashion, Dreame, GAP, Greek House, Isei, Jack & Jones, Kamalion, Luca, Made by Society, MR.DIY, PHOme, Rebernia, Santoni, TAG Heuer, Tissot, Uniqlo.

Shopping centers
57%

Retail parks
17%

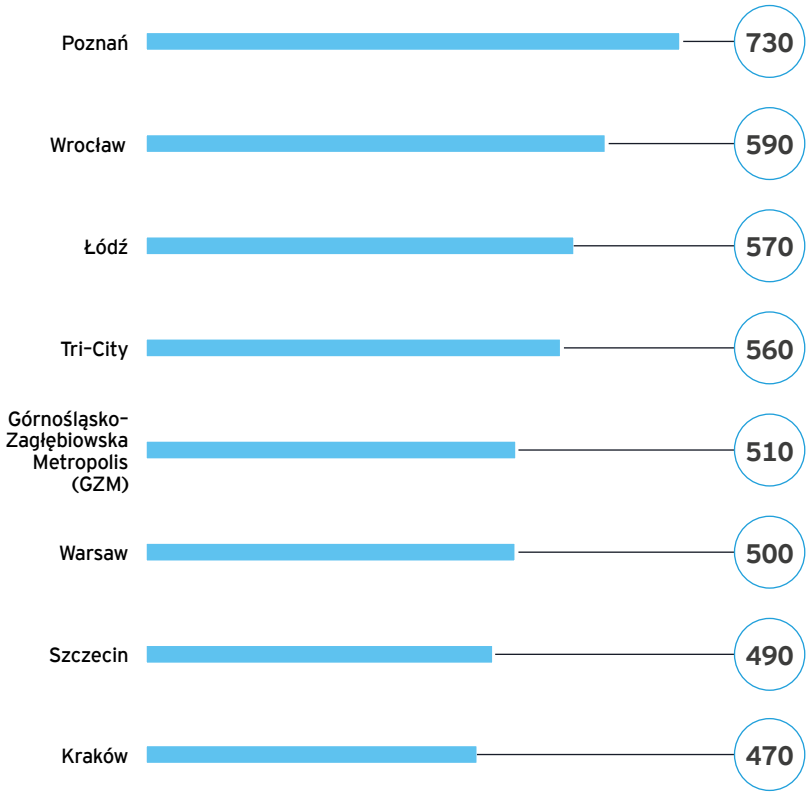
Stand-alone retail buildings
16%

Convenience centers
9%

Outlets
1%

Toruń – Vistula river

Retail density (m^2/1,000 residents)



Gorzów Wielkopolski – city skyline overlooking St. Mary's church tower at sunset

Warehouse market

34.5m m²
Total modern warehouse stock

1.8m m²
Pipeline supply

5.9m m²
Take-up

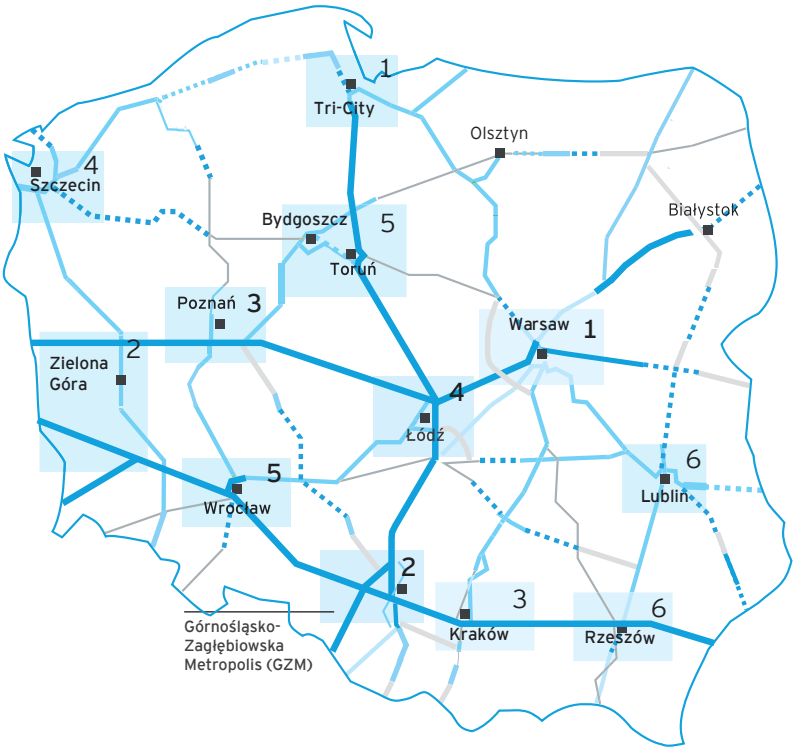
7.4%
Overall vacancy rate

€5.0–€7.5
per m²/month
Prime warehouse rent in Warsaw Region I

€4.0–€5.5
per m²/month
Prime warehouse rent in Poland

€2.8–€5.0
per m²/month
Average warehouse rent in Poland

Map of logistic hubs with road infrastructure



Major national roads

Highways

- Existing
- Under construction
- Planned

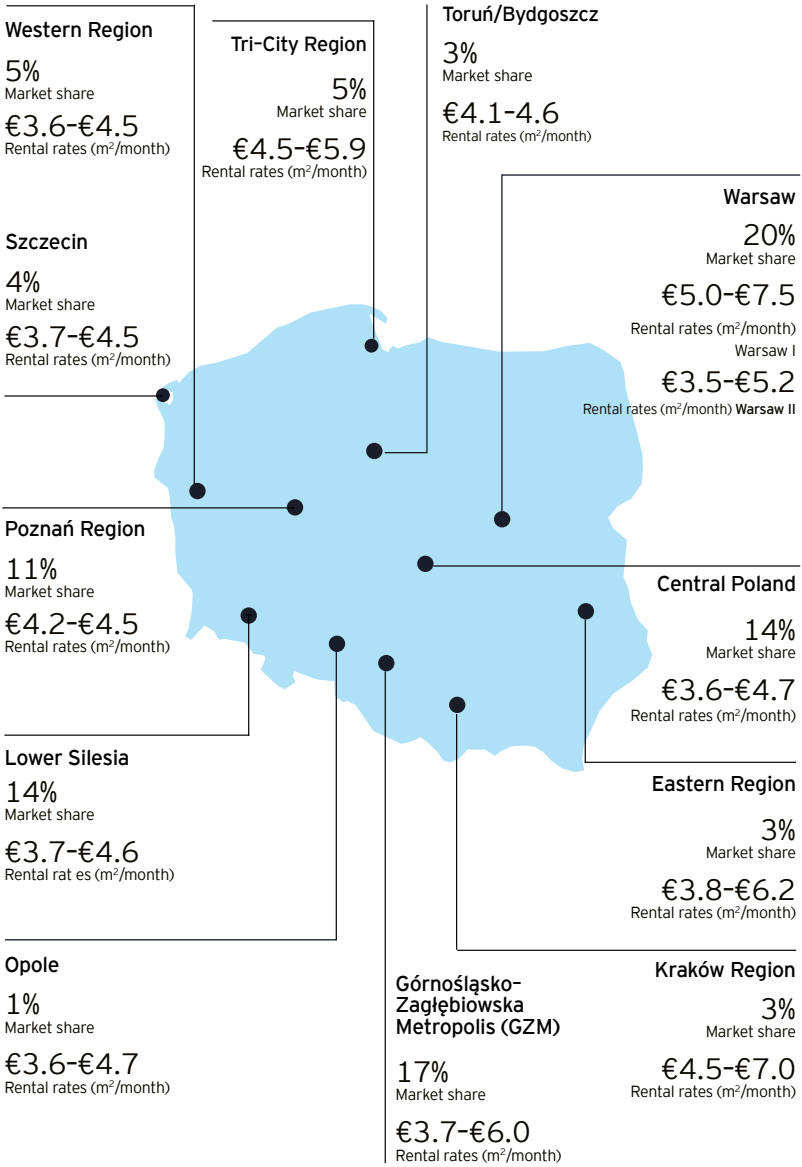
Expressways

- Existing
- Under construction
- Planned

Secondary hubs:
1. Tri-City
2. Western region
3. Kraków
4. Szczecin
5. Bydgoszcz/Toruń
6. Eastern region

Source: General Directorate for National Roads and Motorways.

Warehouse stock by region



Gdynia – Sunset at Baltic sea

Hotel market

24.2m
of tourists

Almost
46.6m
nights spent

5.7m
foreign tourists in January–November 2024 period

12.1m
nights spent by foreign visitors

Over
2,583
Hotels

33
Hotels opened in 2024

37
Hotels in pipeline

Increasing occupancy rate of hotel rooms by

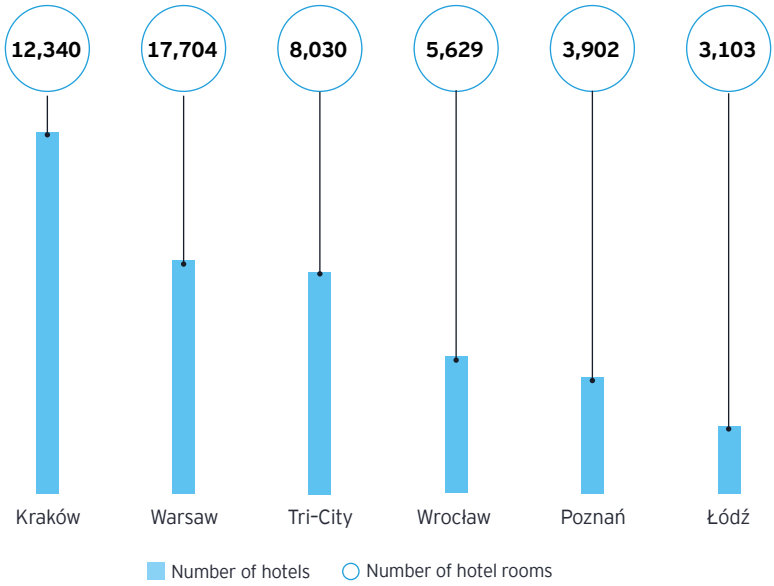
Increasing number of foreign tourists staying at hotels by

€90
Average ADR
in five main cities

€63
Average RevPAR
in five main cities

70%
Average occupancy rate
in five main cities

Number of hotels and hotel rooms in the main cities



* Data as of July 2024 (no. of hotels and hotel rooms)

Residential market

Largest
residential market
in Central
and Eastern Europe

15.7m
of total stock

0.42
Flats per person

1.1
The average number of rooms
per person (0.5 less than
in the EU average)

Around
57k
apartments
completed in 2024

A significant decrease in sales
volume in top six primary markets

37k
units in 2024 compared
to 58k units in 2023

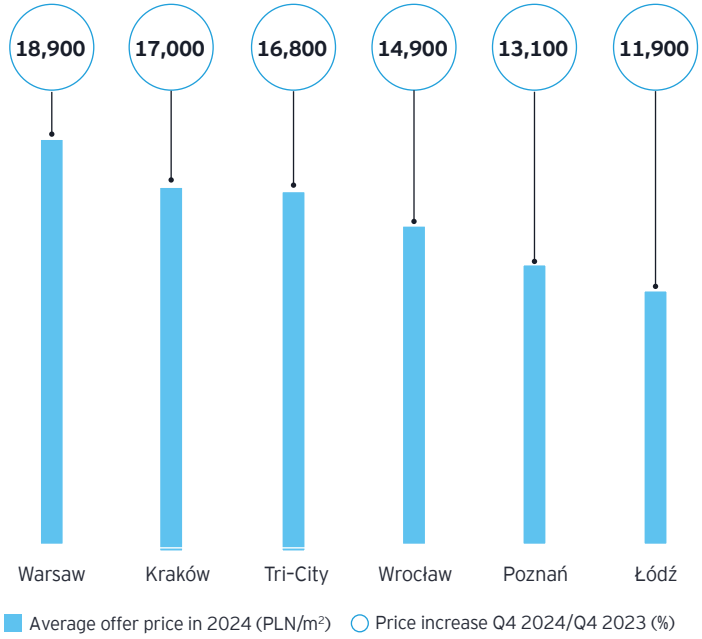
PLN 15,000

Average price per m^2
on six major primary markets

9.25%YOY

Average price increase

Offer prices on six major primary markets



Private Rented Sector (PRS)

20,117
total stock in six main cities (Warsaw, Kraków, Tri-City, Wrocław, Poznań and Łódź). Still below 1% of all apartments available for rent in Poland.

increase of supply in the main six cities

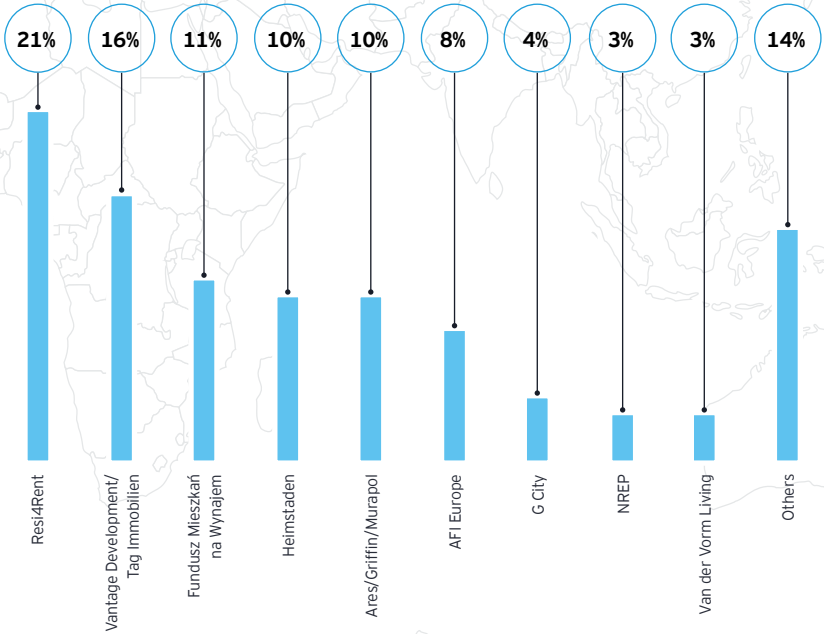
12k
of new supply till 2026

€527-€941
per month
Average rental price in regional markets

€792-€1,225
per month
Average rental price in Warsaw

2%YOY
increase of rental prices
in the main six cities

PRS investors in Poland (by share in the total supply)



Investment market

€4.8b
Volume of investment transactions in 2024

→ **~130%YOY**
increase

€2.3b
Volume of investment transactions in Q4 2024

→ **48%**
share of total volume of 2024

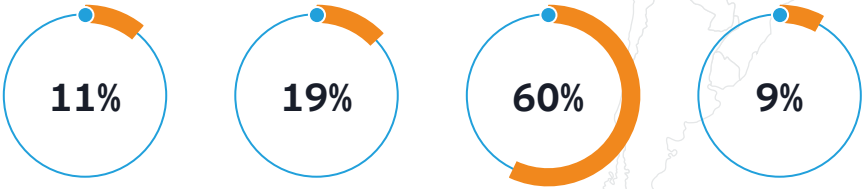
120
Number of transactions

→ **46%YOY**
increase

€495m
Volume of the largest transaction in 2024

Origin of capital in the investment volume in 2024

Investors



from USA | from South Africa | from Europe | Domestic capital

Prime yields

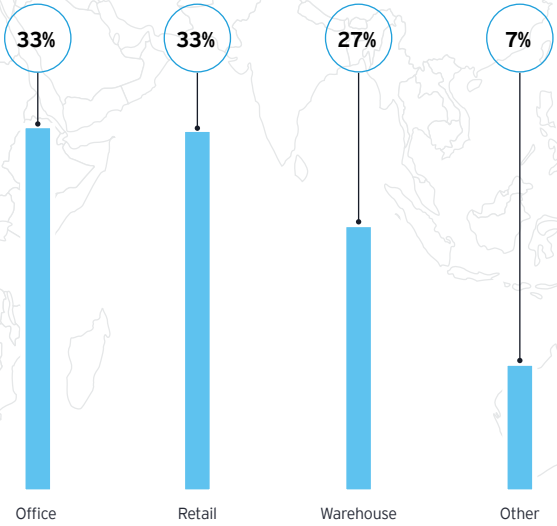
6.25%
offices

7.00%
retail

6.75%
warehouses

6.00%
PRS

Annual investment volume by sector



1.3

Trends and forecasts

General trends

Growing importance of ESG

ESG (Environmental, Social and Governance) standards are becoming increasingly critical for companies, significantly influencing their decision-making processes with a focus on achieving both environmental benefits and financial profitability. This change is driven by the ongoing tightening of regulations related to ESG reporting, which compels both landlords and tenants to adhere to more robust standards. In addition to new developments that are required to meet higher ESG criteria, the number of renovations and redevelopments of existing buildings to adapt then to green building standards has increased noticeably. Certifications such as BREEAM, LEED, Smartwire, and Smartscore are becoming prominent indicators of sustainability in real estate industry.

The biggest challenge in the real estate market is zero carbon. Unfortunately, in many cases measures toward zero carbon will not be cost-effective. High costs and potentially lower revenue growth will call into question whether bringing space up to ESG standards is cost-effective. In the long term, where it is not viable, buildings will become vacant or be demolished.

Retail space has the highest primary energy demand (approximately 48% more on average than office space). In view of the figures presented, in the long term, increasing energy efficiency will be the biggest challenge for the retail space market.

One of the most significant challenges faced by the commercial real estate industry is high energy cost, prompting landlords to invest in improving the energy efficiency of their properties. This includes the adoption of modern technologies and energy-efficient equipment, which are expected to result in substantial cost savings.

The ESG trend is poised to shape the real estate sector in the years to come, impacting values and liquidity of assets. Therefore, the determination to meet both environmental and financial targets will be the engine propelling the direction of the real estate industry.

Chapter 4: ESG in Real Estate of this Report discusses these trends in detail.

Estimating the carbon footprint – new legislation

From 2028 it will be mandatory to estimate the carbon footprint for new buildings with a floor area of more than 1,000 sqm. Developers and investors will have to take into account the CO_2 emissions associated with building materials, construction processes and the operation of buildings. In practice, this could lead to the choice of greener materials such as low-emission concrete or wood from certified sources, and the implementation of technologies that reduce energy consumption.

From 2030, this obligation will be extended to all new buildings, regardless of size. This requirement aims to promote more sustainable building and operating practices across the property sector. In addition, property owners and managers will have to regularly monitor and report on the emissions associated with building use, which may prompt them to invest in retrofits and technologies to improve energy efficiency.

The introduction of these regulations also aims to increase environmental awareness among all real estate market participants, from developers to end-users. In the long term, this approach

is expected to significantly reduce greenhouse gas emissions, improve air quality and protect natural resources, which is key to achieving sustainability goals and combating climate change.

AI – PropTech

Property Technology (PropTech) is the future of real estate market. Forecasts indicate that AI-based PropTech solutions will revolutionize the commercial market, making the processes related to owning, leasing and managing properties more effective and efficient.

PropTech encompasses the use of IT throughout the real estate lifecycle, changing traditional business models and streamlining existing processes. The global PropTech market was valued at USD 30.16 billion in 2022, with a projected annual growth rate of 16% for 2023–2032.

AI will find applications in all sectors and types of real estate activities, from market analysis/forecasting, through design, construction and ending with management, transactions and valuations. Companies will invest in technologies to streamline process, e.g., optimal management of rental space or ASRS systems in warehouse market. New developments will use technology to attract potential tenants, and older assets are likely to be refurbished and altered with smart technology to remain competitive.

Geopolitical situation

Poland, as a neighbor of Ukraine, is directly affected by the conflict, both economically and politically. At the same time, Poland may benefit from the reconstruction of Ukraine, which may attract investment in the construction and infrastructure sectors.

Poland, which is located in Central and Eastern Europe (CEE), is highly susceptible to changes in the international arena due to the region's economic openness. Factors such as the conflict in Ukraine, the conflict in the Middle East, tensions between China and Taiwan, the return of Donald Trump as US President – all of these can be a source of uncertainty for the CEE region.

Inflation and interest rates

Inflation in Poland is forecast to be above 5%, which may affect investment decisions, especially in the real estate and bond sectors. The NBP's monetary policy, including possible interest rate cuts, may stabilize the market, but relief for borrowers will be slow.

Poland remains attractive to investors

In 2024, there was an increase in the value of transactions in the Polish commercial real estate market compared to the previous year. Poland remains an attractive market for investors perceived as mature, stable and developed.

Changes in spatial planning

The changes in spatial planning planned for 2026 will significantly affect the construction market. Municipalities will be obliged to adopt new general plans, with the aim of making investment processes more transparent and efficient. Development conditions will only be possible in infill areas, as a result of which some lands properties may lose the possibility of development.

Maximize the potential of the property

Property owners will increasingly confront the challenge of either adapting their assets to the evolving landscape or repurposing them to ensure optimal utilization and maximize return on investment. Consequently, analyses focused on the best use of real estate may lead to a rise in mixed-use developments, last-mile logistics facilities, and residential projects replacing older office and retail buildings.

Both in Warsaw and on the regional markets, there is an increase in multifunctional projects aimed at diversifying functions, more consciously shaping the urban fabric, but also minimizing risks for investors.

Element of society

An important element of the development of cities is ensuring the comfort of people staying in a given space.

In the future, investors and developers will increasingly look to the opinions of the local community, which will lead to greater acceptance of new projects and better adaptation of new developments to the market.

15-minute city

The concept of the 15-minute city, where all essential needs such as work, shopping, education, and entertainment are accessible within one neighborhood, is gaining popularity each year. Urban planners are increasingly incorporating this idea into their development strategies. The primary benefits of 15-minute cities include enhancing residents' quality of life, reducing air pollution, encouraging healthy lifestyles, and fostering more cohesive communities.

Office

Development inactivity endures

Due to the high construction costs, limited availability of debt financing, as well as relatively high vacancy rates on the market, development activity in the office market across Poland is forecasted to remain limited. New supply in 2025 is expected to reach similar levels as in 2024, while a potential increase in the number and the scale of delivered projects is predicted to come in 2026–2027.

Yields stagnate, while base rents and vacancy rate change

Further stabilization of profitability is expected in the following year. After the stabilization in 2024, values are predicted to remain relatively unchanged due to reduced development activity, availability of leasable space and adaptation of investors to new market conditions. At the same time, a further increase in headline rents and a decrease in vacancy rate are likely to occur, but at a slower pace than in the previous year.

City center is a magnet for tenants

Tenants are more likely to be attracted to office spaces in central districts. B and C class projects located away from the city center are getting less and less popular, as the hybrid work model persists and ESG promotes new spaces in the CBD. Tenants turn away from bigger spaces on the outskirts and move to smaller spaces in central areas, that stand out when it comes to quality and technologies used. As a result, the rent gap between the CBD and non-central regions is becoming increasingly visible.

ESG remains a key driver

The broad influence of ESG has already been stressed in the general trends section. However, it is important to underline two crucial issues related to the sustainable changes on the office market. Firstly, municipalities are slowly adopting laws regarding ESG of new projects. Warsaw has already set standards for new public developments, while other cities are working on such agendas. Secondly, building certification remains vital and tenants are increasingly taking them into account. In 2024, the share of green lease agreements in Warsaw reached nearly 70%, which is expected to increase in the coming years.

Growing share of renegotiations

We expect that in the nearest future there will be an increase in the share of renegotiations of concluded contracts. This will be primarily caused by the contraction of new supply, due to which tenants will have limited possibilities to move to a suitable space. Other factors that will have a significant impact on the increase in renegotiations are high fit-out costs and rent indexation.

Fly to quality

A noticeable trend, in addition to lease renegotiations, is the shift toward relocating offices to new buildings in prime locations, often at the cost of reducing the leased space. This "fly to quality" movement reflects a preference for modern, high-quality office environments that offer better amenities and working conditions, even if this means reducing office space. It also reflects companies' preparations for the incoming ESG requirements.

Hybrid work and space optimization

The hybrid work model has become a permanent feature of the office market. Employees demand the right to choose from where they work and are against commuting to the office every day.

Flexibility has evolved into a must for many job applicants, necessitating its incorporation into the heart of HR strategies. Because of that, optimization of office spaces as well as utilization of flexible spaces will be an important trend in the foreseeable future. However, it is expected that companies will slowly bring their employees back to offices.

Popularity of coworking spaces grows

Due to the high popularity of hybrid work model and the expansion of the portfolio of professions performed entirely online, demand for coworking spaces with flexible lease terms is growing.

Gorzów Wielkopolski – the boulevard seen across Warta river

Retail

Discount shops and outlets are still becoming more popular

In 2024, following the period of significant price increases in 2022 and 2023, consumers in Poland continue to focus on purchasing essential goods. The popularity of discount and outlet shopping remains high, as a response to the rising cost of living. However, it is worth noting that a slight increase in consumption has been observed in the second half of 2024. Nevertheless, the market has not yet shown any significant positive changes that would indicate an upcoming lasting recovery. Low consumption is also a result of new trends promoting less consumerism and second-hand goods. These trends are expected to continue in the coming years.

Trend toward hybrid shopping experiences

In recent months, the share of online sales in retail sales has decreased slightly, reaching 10.2% in December 2024. This may be due to a growing trend toward hybrid shopping experiences. This includes practices such as buy online and pick up in-store (BOPIS) and using online platforms to research products before buying them in physical stores. The share of the e-commerce sector in retail sales will remain comparable in the coming months.

New e-commerce track

The dominance of artificial intelligence in customer service, the adaptation of experiences to consumer needs as well as the growing 'social commerce' – selling via social media platforms – these are a few of trends that will dominate e-commerce in 2025.

New technologies in stationary shops

The introduction of new technologies such as augmented reality (AR), self-service checkouts, digital shopfronts and personalization through data are becoming increasingly prominent. The innovations being introduced are aimed at both improving customer satisfaction and increasing operational efficiency.

New ideas

For some time now, newer and more automated ideas for running retail facilities have been visible on the market. Temporary shops (pop-up shops), smaller flagship shops as well as more interactive and seasonally changing concepts are emerging.

Huge supply of retail parks among the newly delivered stock

Developers continue the trend of building retail spaces, delivering an increasing number of retail parks and convenience centers. A notable aspect of this trend is that the new retail park developments are primarily located in smaller towns and communities. Small retail formats are maintaining their momentum. Interest in retail park and convenience center formats has certainly not decreased over the past few years.

The deposit system is set to start in 2025

The deposit system is set to launch on 1 October 2025. The new regulations require large stores with an area above 200 sqm to participate in the packaging return system, while for smaller stores, participation will be voluntary. This situation will translate into higher demand for space and additional fit-out costs.

Adaptation of the offering

Shopping centers are increasingly adapting their offerings to meet the evolving needs of consumers, with a particular focus on the modernization of older properties. This transformation often includes the addition of entertainment options, dining experiences, and social spaces that enhance foot traffic and create a more engaging shopping environment.

Opole – aerial view of old town and Odra river

Warehouse

Hard times for new city logistics projects

Although the demand for city logistics and last-mile projects remains high and the city logistics will continue to play a significant role in the coming years, developers now face growing challenges. Limited availability of suitable land, further shrunken by the boom in the residential sector, as well as prolonged procedures for obtaining building permits, are limiting growth in this category.

Limiting the upward trend in vacancy rates

The upward trend in the vacancy rate continued throughout 2024. Due to high levels of demand and the fact that fewer projects are currently being developed speculatively, vacancy rates are expected to decline in the foreseeable future.

Rental stabilization

In 2025, rents are expected to further stabilize, but the process will be uneven across the country. Tenants are likely to be offered attractive discounts in many regions, yet in other regions rents may rise. No other significant changes are expected.

The market is dependent on the condition of the West

The situation on the warehouse and industrial market, especially in the western parts of Poland, is strongly dependent on the economic situation in the country, as well as in the Western Europe, including Germany. Should it worsen, companies that have planned to nearshore in Poland might abandon their endeavors.

"Nearshoring" – closer to the sales market

The stimulus driving the warehouse market will be moving production closer to sales markets. Poland will remain one of the main beneficiaries of this trend.

A higher technical standard

Due to the limited supply of land for warehouse investments, developers are increasingly deciding to build taller buildings with increased load-bearing capacity, which will increase the storage capacity of goods. Moreover, the share of speculative investments is decreasing in favor of built-to-suit (BTS) projects, which often represent high and specific technical standard.

A slow down in new constructions

The industrial and logistics market is expected to experience single-digit growth rates when it comes to the total supply. This will be caused by three main factors. Firstly, the market has become intensely saturated in recent years. Secondly, the number of speculative projects started by developers is predicted to decrease. Thirdly, the market will see prolongations of decision-making processes regarding the construction of new industrial and logistics projects.

Hotels

Trend of opening new hotels continues

The year 2024 brought the opening of many hotels across the country. 2025 will be no different, as Poland is becoming increasingly popular among international brands. More than 37 new investments, by companies such as Marriott, Puro, Accor, IHG and Arche, are planned to open in the near future. We will also see new brands entering the market. Accor plans to introduce the Tribe brand in Kraków, the Swiss Mövenpick chain will open its first hotels in Wrocław and Karpacz, Voco by InterContinental Hotels Group (IHG) is planning an opening in Katowice, and Leonardo Hotels plans to open a property in Warsaw under its new brand: Leonardo Limited Edition.

Entering the phase of stabilization

Following a period of robust expansion, the hotel market in Poland is now stabilizing. This is evidenced by slight changes in the operational results in 2024 compared to 2023. In the five main cities, the average occupancy rate increased by 3 percentage points to 70%, the ADR indicator rose by 4 EUR to 90 EUR, and the RevPAR metric increased by 5 EUR to reach the level of 63 EUR at the end of 2024.

The conference industry is still down

We are observing an improvement in the conference industry, although it has not yet returned to pre-pandemic levels. The frequency of conferences and corporate events has increased, and in-person meetings are becoming more popular. However, hybrid events remain popular due to their flexibility and cost-effectiveness.

High hotel maintenance costs

A sharp increase in energy prices and the costs of running hotels has a negative impact on the industry and significantly hampers its functioning. Along with inflation, a strong wage pressure further exacerbated by the shortage of staff, which has not had time to recover from job cuts as a result of the pandemic and the Ukraine – Russia conflict. Limited possibilities of obtaining financing and high construction costs are also negatively affecting the market.

Vacations away from the city

People are increasingly seeking to escape the hustle and bustle of city life and the rush of everyday routines. As a result, the popularity of trips to peaceful, remote locations is growing. Tourists are looking for unique experiences and less obvious destinations, a trend that has already been recognized by companies in the industry.

Growing role of technology

An important aspect will be the growing role of technology in the hospitality industry, particularly in the context of process automation, service personalization, and enhancing guest experiences. Technologies such as mobile apps, online check-in, and smart rooms will become standard, with customers expecting even better integration with digital tools.

Residential

Price stabilization with a slower growth rate

After dynamic price increases in previous years, prices on the Polish residential market are expected to stabilize in 2025. This means a slower pace of price growth.

2025 housing market prospects

In 2024, residential developers initiated construction on nearly 155,000 housing units, making it the second-best year in history, behind the record-breaking 2021. New-home sales in 2025 are forecasted to be about 10%–15% higher than the previous year, surpassing the 40,000 mark in the six largest markets. At the same time, however, a new government program called "Key to apartment" has been announced to support housing in Poland. It is intended to primarily improve access to cheaper properties for people with average and below average incomes. This program may impact the secondary real estate market, especially in smaller cities due to property price restrictions.

Given the new EU directives and greater customer awareness of sustainable construction, buildings made of natural materials and with modular technology will gain importance, following the example of the Scandinavian countries.

Price differences between new and old buildings

New EU regulations, including the EPBD Directive, impose zero-emission standards on new buildings from 2030 and a 16% reduction in primary energy consumption in existing buildings by 2030. These requirements could significantly impact property prices, increasing the disparity between new, energy-efficient buildings and older properties.

Smaller towns are a better option

Investors are increasingly buying properties outside the main Polish cities. Smaller cities are gaining popularity due to lower prices and improved infrastructure. They are becoming attractive investment opportunities, particularly in the long-term rental sector.

Challenges of the PRS

Despite its development, the PRS faces challenges such as limited land supply, high construction costs, and the cultural attachment of Poles to property ownership. However, improving financial conditions and increased investor interest may support the growth of this market. Forecasts indicate a continued dynamic growth in the number of PRS apartments and a gradual increase in their share in the real estate market, which still fluctuates around 2%–3%.

PRS players might take entire buildings

Should no government program boosting sales of apartments' be introduced, the number of transactions on the PRS market may experience a significant growth. That is because limited sales on the primary residential market will leave spare supply for the PRS players, who are on the lookout for new investments.

On the other hand, the market may be witnessing situations where separate apartments within PRS developments are being sold to individual private investors. In such cases, the investor would act as the manager and operator of the complex.

Conversion of commercial buildings into PRS and PBSA

Investors are increasingly interested in transforming office and retail functions into rental apartments and student housing. This trend could certainly deepen in the near future, especially in the face of the decreasing supply of land in attractive locations.

Private student housing

Rising living costs and rents are forcing students to seek more affordable housing options, making public and private dormitories increasingly popular. Currently, in the eight largest academic centers, dormitories provide places for only about 11% of students. While the number of domestic students will remain stable, a significant increase in international students is expected, who prefer private student housing, which will affect the higher demand for accommodation in the private sector.

Investment

Revival of the investment market

The market is showing strong signs of recovery in investment activity after a slowdown from the second half of 2023. The average transaction value is on an upward trend. This reflects an improvement in investors' sentiment thanks to lower financing costs, reduced interest rates and increased capital inflows into the commercial real estate market.

Prime assets and PRS projects on investors' radar

In 2025, we anticipate increased investor interest in prime assets and PRS projects. Dynamic investors are planning purchases in the core segment, expecting a market recovery. Growing interest and willingness to compete for high-quality properties indicate increased activity in this segment, attracting investors seeking stable and long-term investments. High interest rates currently limit the development of the PRS in Poland, but the expected rate cuts will boost investor interest.

Sustainable real estate investments

Investments in sustainable real estate are increasingly attractive, offering asset value growth, improved reputation, and enhanced market resilience. As a result, investors are demanding higher ESG standards. Due diligence processes are now more detailed, focusing on energy efficiency, decarbonization, regulatory compliance, and social and environmental factors. This trend is driven by pressure from tenants and banks, as well as the potential for significant operational cost savings.

Decline in capitalization rates

Following the market rebound, downward pressure on capitalization rates is expected in the coming quarters. Industrial yields are already decreasing due to strong demand for high-quality projects. Capitalization rates for retail properties have stabilized in 2024 after two large core deals, but yield compression may take longer than in the industrial sector. Yields for office space are lagging, and the market consensus on the best yields has yet to be reached.

Gdańsk – Old town over Motlava river

2

Legal and tax aspects of investing in real estate

Opole – aerial city view

This Chapter considers the most important legal and tax issues arising during each of the following five stages of a real estate investment:

- Financing
- Acquisition
- Development and construction
- Operation and exploitation
- Sale

The Chapter is arranged so that each of the above aspects is dealt with in a separate section (2.3.–2.8), considering legal implications first, followed by an assessment of related important tax consequences.

The section 2.1 on the legal background (below) will introduce the reader to certain concepts and terms that may not be commonplace in transactions elsewhere in Europe. This should be read as a general introduction to the legal environment in Poland. The chapter also contains section 2.2 on investment vehicles and structures presenting information on the most common structures used in real estate investments in Poland. Taken together, they form the basis for understanding the most relevant legal and tax implications of investing in real estate in Poland.

Legal, financial and tax due diligence are also fundamental to any investment cycle and given the importance of due diligence to any transaction, we discuss the relevant procedures and key considerations in detail in section 2.9.

The year 2024 has brought changes in the Polish legal system described below. They include amendments related to the investment process decisions and the new regulations limiting certain development practices.

Changes of the real estate law in 2024

End of the transition period under the "New Developer Act"

The Act of 20 May 2021, on the Protection of the Rights of Buyers of Residential Units or Single-Family Houses and the Developer Guarantee Fund (so-called the "**New Developer Act**") provided the two-year transition period.

This transition period ended with the lapse of 1 July 2024. This means that from 2 July 2024, new obligations are imposed on developers and they are required, among others, to provide new buyers with updated information prospectuses at the start of the sales process. The new regulations apply to developer agreements entered into from 2 July 2024.

The scope of information that developers should include in the new prospectus, in accordance with the New Developer Act, is significantly broader than it was required during the above mentioned transition period. Among others, such a document should include information about the usable area, the deadline by which the transfer of property ownership will occur, the date of issuance of the certificate of self-contained residential unit, and the date of establishment of separate ownership of the unit.

The New Developer Act stipulates that preliminary agreements for apartments, completed houses, and commercial units sold with residential property must be concluded in notarial form and regulates also the rules for reservation agreements (the reservation fee cannot exceed 1% of premises' price).

The New Developer Act has introduced amendments related to handover of the premises and changed the method of buyer payments. Now, such a payment is required after the completion of the respective stage and notification from the developer, unlike the previous developer act, where payments were made according to the schedule in the developer agreement regardless of the progress of the work.

When it comes to handover of the premises, one of the most important changes is the introduction of a detailed regulation, which provides for the presence of the purchaser during the technical acceptance of the premises being purchased and the obligation to complete handover protocol.

Another important regulation is the introduction of comprehensive and mandatory protection for purchasers of premises. Premises purchasers who have entered into their agreements from 2 July 2024 onwards are, by law, covered by the protection of the Developer Guarantee Fund, to which the developer must make contributions from each premises purchaser's payment. As a result, in the event of the developer's bankruptcy, the fund will reimburse the purchaser for the payments made. Previously, the protection of the Developer Guarantee Fund could only be used by those who entered into their contracts from 1 July 2022.

Regulation of the Minister of Development and Technology dated 15 July 2024, on the Method of Determining Requirements for New Development and Land Use in the Absence of a Local Spatial Development Plan

On 26 July 2024, the abovementioned Regulation came into force. It includes introduction of the new elements of the decisions on building conditions (Polish: *decyzje o warunkach zabudowy*) and the method of their determination. These include, among others: the building line and height, maximum building intensity, width of the front elevation, roof geometry, minimum number of parking spaces.

New provisions apply only to procedures initiated after the effective date of the Regulation. The cases initiated and not ended with a final decision before this date should be considered under the existing rules.

Regulation of the Minister of Development and Technology Amending the Regulation on Technical Conditions to be Met by Buildings and Their Location

On 1 August 2024 the Regulation of 27 October 2023 of the Minister of Development and Technology Amending the Regulation on Technical Conditions to be Met by Buildings and Their Location entered into force. This Regulation was adopted to limit the so-called "patodevelopment" practices. This is a common name for development and design practices that are in contradiction with practices universally deemed as good.

The Regulation includes the following main changes:

- The rule that the minimum usable area for commercial premises should be not less than 25 m². However, this does not apply, among others, to the commercial units located on the first or second above-ground floor which has direct access from outside of the building. Such provision aims to eliminate the possibility of circumvention of the regulations on the minimum area of residential units by arranging apartments in smaller commercial premises.

- Introduction of the minimum distance from the plot boundary for another category of buildings. As, a rule, a multi-family residential building with a height of more than 4 above-ground floors on a building plot needs to be situated at a distance of no less than 5 meters from the boundary of that plot. The distance from the boundary of the building plot to the balcony in such a building should not be less than 3 meters, subject to some exemptions.
- Requirement related to multi-family residential buildings, to provide a premises for storing bicycles and children's strollers near the entrance or on the underground floor, if there is an elevator, or in the form of service building, gazebo, or shelter with an area of at least 15 m².
- Requirement of arrangement at least (i) 25% of the plot as biologically active area in regard to building plots designated for the construction of multi-family residential buildings, healthcare buildings (except for clinics), and educational buildings, unless a different percentage is specified in the local spatial development plan; (ii) 20% of the plot as biologically active area in regard to plots designated for a publicly accessible square with an area of over 1,000 m², unless a higher percentage is specified in the local spatial development plan.

Below please see the most important amendments of 2025 and 2026, such as regulations related to zoning reform in Poland, REITs, solutions aimed at increasing the availability of land for residential construction, as well as other matters.

Changes and potential changes of the real estate law in 2025 and 2026

Amendment to the Act on Electromobility and Alternative Fuels and certain other Acts

According to the Act of 2 December 2021, amending the Act on Electromobility and Alternative Fuels and certain other acts (Journal of Laws, item 2269, as amended), buildings that are classified as non-residential and have more than 20 parking spaces, either inside the building or adjacent to it (directly or indirectly), must have at least one charging point for electric vehicles by 1 January 2025 in order to enable installment of charging points on at least one per each 5 parking spaces.

This means that from the beginning of 2025, all new such buildings also need to be equipped with a charging point. This requirement does not apply to properties owned by small and medium-sized enterprises.

Law on Spatial Planning and Development

Amendment on Law on Spatial Planning and Development entered into force on 23 September 2023. However this amendment includes certain changes which will be binding, according to current legal acts, from 1 January 2026.

At the beginning of 2025, the government published the assumptions of another draft of amendments which include postponement of entry of previously adopted changes into force until 30 June 2026. Since this postponement has not yet come into effect, below we refer to currently binding dates, which may be postponed later in 2025.

It introduced a new, mandatory planning instrument with a municipality-wide scope – the general plan. It is an act of local law and will replace the study of conditions and directions of spatial development of the municipality. The general plan is intended to be a spatial development scheme, guiding detailed design activities. Its provisions will be taken into account in the preparation of the local zoning plan and will form the legal basis for the zoning decisions.

Existing studies of conditions and directions of spatial development of municipalities remain valid until the date of entry into force of the general plan in a given municipality, no longer than until 31 December 2025. The entry into force of the general plan does not result in the loss of validity of local zoning plans.

Another new vehicle introduced by the Amendment is an **Integrated Investment Plan (IIP)** – a special form of local zoning plan, which may be adopted by municipality council as a result of an application submitted by an investor. It covers the area of the main investment and complementary investment. Complementary investment means, for example, investment in the construction of buildings for commercial or service activities – as long as it serves the main investment. The investor attaches project of IIP to the application for the adoption of such an IIP, which must meet the requirements for draft local zoning plans. IIP supplements, and from 1 January 2026, will replace the resolution on determining the location of a housing investment, adopted on the basis of the so-called "**special housing act**".

The amendments also cover issues related to the issuance of zoning decisions. Currently, they are issued for an indefinite period. However, from 1 January 2026, zoning decisions will be issued for five years only.

In order to obtain a decision for an indefinite period of time, it is necessary to complete all formalities before the end of 2025. According to the law, such a decision should be issued within two months, but given that this involves the possibility of appeals and the need to supplement documents, a considerably longer waiting period for such a deed to become legally valid must be expected. Only obtaining a finality clause before 1 January 2026 will make such a decision "indefinite."

The Amendment also introduces an **Urban Register**, kept in an electronic system, which is to be operational from 1 January 2026. The Urban Register will collect information on spatial development planning, including: from resolutions on the preparation of spatial planning acts and municipal revitalization programs or judgments of administrative courts regarding zoning decisions. The data in the **Urban Register** will be public (excluding personal data) and available free of charge.

Amendment to the Aviation Law

On 25 January 2025 the amendment to the Aviation Law entered into force. The amendment provides the removal of the requirement to adopt local spatial development plan for areas covered by the airport master plan. The introduced amendment results in the possibility of issuing building conditions decisions for areas covered by the airport master plan.

Amendment to the Population Protection and Civil Defense Act

The amendment to the Population Protection and Civil Defense Act was adopted on 8 November 2024 and entered into force on 1 January 2025.

The amendment provides, among others, that the underground floors in multi-family residential buildings and underground garages, if no protective structures are provided, should be designed and constructed in a way that allows for the organization of temporary shelter spaces (art. 94 of the Population Protection and Civil Defense Act).

This legal change needs to be taken into consideration particularly by developers with regard to construction projects for which, after 31 December 2025: (i) an application for a building permit, an application for a separate decision approving the plot or land development design, or an architectural and construction design has been submitted, and; (ii) a notification of construction or performance of other construction works has been made in cases where obtaining a building permit decision is not required.

New regulations amending the Environmental Protection Law

Adaptation of cities to climate change

On 19 December 2024, the act was signed by the President. Most of the changes came into force on 11 January 2025. The most important change according to the act is a new obligation for the cities with more than 20,000 inhabitants. Such cities will be required to develop urban adaptation plans to climate change (MPA – Polish: *Miejskie Plany Adaptacji*).

Key issues related to real estate are:

- New law aims to accelerate the green transformation of cities.
- As part of evaluating the environmental impact of an enterprise, it will be essential to assess the enterprises' effect on the climate and its susceptibility to climate change, considering exposure and resilience.
- Furthermore, mechanisms will be established to facilitate the execution of eco-friendly enterprises in cities and other regions of the country where air quality standards, monitored by the air quality monitoring system, have been surpassed.

Draft Regulation of the Minister of Development and Technology dated June 10, 2024, on the Methodology for Determining the Energy Performance of a Building or Part of a Building and Energy Performance Certificates

The draft includes proposition of the establishment of the methodology for determining energy performance and establishment of the methods for preparing and establishing templates for energy performance certificates of a building or part of a building, which should be provided during real estate transactions.

The draft implements Directive (EU) 2024/1275 of the European Parliament and of the Council of 24 April 2024, on the energy performance of buildings.

The planned entry into force of the regulation is 1 January 2026.

The assumptions of the draft of act on solutions aimed at increasing the availability of land for residential construction

On 7 February 2025 the Ministers Council disclosed the draft of the act on solutions aimed at increasing the availability of land for residential construction. The proposed changes aim to facilitate the residential investments in Poland.

The assumptions of the draft include, among others:

- The removal of restrictions on the transactions on the agricultural properties located within the administrative boundaries of cities and the waiver of the right of repurchase of the National Support Centre for Agriculture.
- The removal of the general prohibition on establishing perpetual usufruct for residential purposes.

- A procedure for changing building parameters (in the simplified procedure for preparing a local plan, it will be possible to include a change to allow the construction of an additional full floor in buildings lower than 30 meters).
- A procedure for preparing an integrated investment plan (the draft proposes enabling the municipal council to establish, by resolution constituting a local law act, guidelines for urban planning agreements concluded in connection with the preparation of integrated investment plans).
- A suspension on collecting planning fees for a period of 2 years from the date of entry into force of the proposed regulation.
- Improving the functioning of the Act of 5 July 2018, on facilitating the preparation and implementation of residential investments and accompanying investments (including, among others, the removal of the requirement to maintain a minimum share of retail and service areas in each investment, supplementing the provisions related to the implementation of investments in urban areas, and abandoning the determination at the national level of the minimum ratio of parking spaces to be provided within the framework of residential investments, returning to the rules in force before 2023).
- The division of properties based on the resolution determining the location of residential investments.
- The introduction of an additional period for perpetual usufructuaries to exercise their claim for the sale of land (i.e., 24 months from the date of entry into force of the law).
- The utilization of the residential potential of lands owned by State Treasury companies and lands from the Agricultural Property Stock of the State Treasury.
- Accelerating the investment process (amendment to the Act of 7 July 1994 – Construction Law) (regarding the appeal procedure);
- The obligation for the investor of a non-road investment to carry out road investments caused by the non-road investment.

Assumptions to the potential regulation of Polish real estate investment trusts (REITs)

The subject related to the Polish real estate investment trusts (so-called **"REITs"**) has already been raised many times in previous years.

In 2024, the Ministry of Technology and Development announced preliminary assumptions to the potential regulation in this regard.

However, there is no further information related to the final draft of the regulation or certain date of its implementation. Perhaps we will see a draft of new regulations later in 2025.

Preliminary assumptions announced by the Ministry of Technology and Development are in particular as follows:

- The companies involved in the real estate investments (**SINN**; Polish: *Spółka Inwestująca w Najem Nieruchomości*) should invest exclusively in income-generating assets.
- SINN will be a joint-stock company listed on the Warsaw Stock Exchange.
- SINN should be created for an indefinite period with its registered office and management in Poland.
- The minimum share capital of SINN should constitute PLN 100 million.
- SINN should demonstrate a minimum of 90% share of revenues from property leasing or sales (at least after one year of leasing) or from the disposal of shares (stocks) of subsidiaries.
- Establishment on particular rules of taxation for SINN.
- The dividend should be calculated on a consolidated basis from the cash held by the SINN at a level of 90%. To calculate the financial result, which is the basis for determining the dividend, the company's revenues will be taken into account, reduced by all costs related to conducting business activities, excluding depreciation.

On a consolidated basis, indicators confirming the fulfillment of the conditions for special taxation will also be calculated.

- SINN will be required to register in the register maintained by the Polish Financial Supervision Authority (KNF) and comply with relevant information obligations.

Draft act amending the Act on the Protection of the Rights of Buyers of Residential Units or Single–Family Houses and the Developer Guarantee Fund

In September 2024, the legislative process for the draft act amending the Act on the Protection of the Rights of Buyers of Residential Units or Single–Family Houses and the Developer Guarantee Fund, as well as certain other acts, began. The project is currently at the stage of public consultations and review. There is no information yet on the exact date when it will come into effect.

The most important issues:

- The abovementioned draft of the legal acts suggests establishment of a portal including data on apartments turnover (**DOM**, Polish: *portal Danych o Obrocie Mieszkaniami*), which would be primarily designed to facilitate the purchase of apartments for individuals. It will also be accessible to professional entities, both private and public. Companies involved in the housing investment market and public entities engaged in the development and support of housing will have access to it.
- It is planned that the DOM portal will be managed by the Insurance Guarantee Fund (Polish: *Ubezpieczeniowy Fundusz Gwarancyjny* – UFG).
- The main goal of introducing the portal is to popularize access to data on average prices of apartments and houses, both in the primary and secondary markets, categorized by various data such as the location of the property, the usable area of the property, and the age of the property.
- The portal will enable reliable determination of the value of a given property.

Changes in the Real Estate Management Act regarding the betterment fee

On 16 May 2024, a draft regulation amending the Real Estate Management Act was submitted. The draft concerns the betterment fee (Polish: *opłata adiacencka*), specifically shortening the statutory period for initiating proceedings to determine the fee in cases specified in the act.

As of now, the latest update on the government website dedicated to legislative processes indicates that on 7 October 2024, the government's position on the proposed amendment was submitted. It is difficult to determine when the provisions would come into effect.

According to the currently applicable regulations, such a fee can be imposed by the municipality. The initiation of proceedings to determine the betterment fee by the municipality may take place within three years from the date on which the decision approving the division of real property became definite or the court's ruling on the division became final or within three years from the date on which conditions were created for the real property to be connected to individual technical infrastructure facilities or from the date on which conditions were created for the constructed road to be used.

The fee is related to the increase in the value of the property due to the general development of the municipality (e.g., significant increase in technical infrastructure) and due to the division or consolidation of properties.

The three-year period in which the municipality can impose the fee is respectively long and leads to financial confusion for property owners, as they may be surprised by the imposition of such a fee at any time during abovementioned period. The draft regulation proposes an 18-month period during which the municipality can impose the fee, counting from the occurrence of circumstances indicated above.

Changes of tax law:

Every year the taxpayers in Poland face changes in tax law which in most cases (but not always) become effective as of beginning of a tax year. The amendments continue to be in line with global and European trends aimed at introducing measures against tax evasion and tax avoidance, i.e. actions undertaken within the Base Erosion Profit Shifting (BEPS) initiative by OECD, Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI), as well as works within the European Union, which resulted in developing the Anti-Tax Avoidance Directive (ATAD).

There are also tax changes which originate from the local developments and in many cases they stretch beyond measures recommended by international bodies.

We highlight below selected key changes which impact the real estate market in 2025.

CIT Standard Audit File (JPK CIT)

Large taxpayers (whose revenue for the previous financial year exceeded the equivalent of EUR 50m) and tax consolidated groups will be required to submit JPK_CIT files for tax years beginning after 31 December 2024. Other groups of taxpayers will fall under this regulation in subsequent years.

The first JPK_CIT file for the tax year 2025 will be due in 2026 (not later than 31 March 2026 if a taxpayer's tax year is aligned with the calendar year), which requires that accounting entries already during 2025 follow an obligatory scheme to avoid difficulties after year-end filings.

Tax depreciation in real estate rich companies

For real estate rich companies tax depreciation of certain types of real estate (mainly buildings) cannot exceed the write-offs for accounting purposes. Therefore, as a rule, if a property for accounting purposes is classified as an investment not subject to accounting depreciation but revalued periodically (as opposed to fixed asset that is usually depreciated), this could effectively decrease the tax depreciation to nil. Each individual case should be analyzed separately to determine tax deductibility of depreciation write offs.

Additional tax requirements for cross-border reorganizations

Cross-border reorganizations such as merger, demerger or conversion (change of legal form) will require an additional clearance provided by the tax authorities, as a prerequisite for the court registration of the reorganization. The clearance will be issued if it is determined that the reorganization does not fall under the tax anti-abuse regulations.

Minimum tax (not related to BEPS Pillar II)

Minimum taxation which was suspended (immediately after enacting) by the end of 2023 has been in force as of the beginning of 2024, and the first payment will occur in 2025 (together with annual CIT payment – end of March 2025 for those with tax year matching the calendar year).

Tax will apply to taxpayers in a tax loss position or with a tax profitability ratio below 2%.

The new law sets out special rules for calculating losses/profitability for the purpose of the minimum tax along with a different method of determining the tax base compared with what the general rules require.

The minimum income tax rate is 10%.

The tax base is to be the sum of the following:

- 1.5% of operational revenues (other than from capital gains).
- A related parties debt financing cost exceeding 30% of tax EBITDA.
- Costs of intangible services or royalties paid to related entities (or unrelated entities with management or headquarters in countries considered as tax havens) exceeding PLN 3 million plus 5% of the so-called 'tax EBITDA'.

It is possible to choose an alternative method of determining the tax base amounting to 3% of the value of revenues other than from capital gains in the tax year.

A list of reductions from the tax base is provided (including, i.e., the value of expenses included in the tax year as deductible costs resulting from the acquisition, production, or improvement of fixed assets, including depreciation, year-to-year increase in costs of electric energy purchased for business purposes and 20% of certain employment costs).

The minimum CIT will not apply, among others, to:

I. Entities from the financial sector.

II. Companies with a simple ownership structure, in which partners are exclusively natural persons and where the CIT payer does not have shares in other entities.

III. Start-up companies (the first three years of operation).

IV. Entities experiencing a sudden drop in revenues of 30% or more.

It will be possible to deduct the amount of the minimum CIT paid for a given year from the CIT calculated based on general rules.

Holding regime

Holding regime offers preferential rules of taxation for dividend distributions as well as transfer of shares in subsidiaries to unrelated acquirers.

The key benefits of the holding regime are:

- Full CIT exemption for profits from the transfer of shares in subsidiaries to unrelated entities (however, not applicable to disposal of shares in real estate rich entities), as well as.
- Full exemption for dividends received from subsidiaries (including entities from outside of the European Union (EU)).

In order to benefit from holding regime, specifically the below conditions need to be met:

- Polish holding company shall operate in a legal form of limited liability company, simple stock company or joint-stock company.
- Polish holding company shall not be a part of Polish tax capital group for CIT purposes, shall conduct genuine business activity and shall not be held by entity located in one of jurisdictions applying harmful tax competition/without double tax treaty or treaty on exchange of information with Poland.
- Polish holding company shall hold 10% of shares in subsidiary for at least of 2 years

Real estate tax – significant amendment

Importantly, as of 1 January 2025, the significant amended regulations regarding real estate tax have come into force. The new regulations include an autonomous definition of buildings and structures, independent of construction law. It may lead to increased tax burdens, including the taxation of objects that were previously not subject to real estate tax.

2.1

Legal background

2.1.1. General remarks

In general, Polish real estate law provides quite clear and stable rules which allow potential investors to make well-founded decisions about entering into real estate transactions. Additionally, there are measures and institutions which enable investors to safely conclude transactions adapted to their needs and expectations.

Below we present key information on real estate law in Poland which constitute the base for other comments in this chapter.

2.1.2. Legal titles to real estate

The most common legal titles to real estate in Poland are the freehold rights, i.e., the ownership right and the perpetual usufruct right, obligation rights, such as lease, lease with the right to collect profits or leasing. Polish law also provides several limited property rights such as easements or usufruct.

Ownership right

Ownership (*prawo własności*) is the broadest right to real estate in Poland. As a rule, ownership comprises the right to possess and use real estate for an unlimited period of time and transfer or encumber the real estate. The ownership right may be limited by statutory law, principles of community life and the socioeconomic purpose of the right. The most common limitations result from construction law and local spatial development plans adopted by local authorities (municipalities).

Right of perpetual usufruct

Perpetual usufruct (*użytkowanie wieczyste*) is a right to use the real estate which may be granted by the State in relation to the land owned by the State or a local authority. In either case the respective entity (the State or the local authority) remains the owner of the land.

The perpetual usufruct right is similar to the ownership, however, there are several key differences:

- The perpetual usufruct right is created for a defined purpose (developing a project or conducting a specific activity) set out in the contract. If the perpetual usufructuary is in breach of these provisions, this may lead to an increase in the annual fees or even termination of the contract by the common court.
- The perpetual usufruct right is created for a specific term, in principle for a period of 99 years (not less than 40 years).

The holder of the right may apply for extending the term of the perpetual usufruct for a further period of 40 to 99 years following the lapse of the initial period (to be refused only in case of important social interest).

- The perpetual usufructuary is obliged to pay to the owner a one-off initial fee which amounts from 15% to 25% of the total market value of the land and then an annual fee of up to 3% of the total market value of the land.

The rate of 3% is the basic rate provided by the law; however, there can be other rates (0.3%, 1%, 2%) applied to the real estate assigned for specific purposes, strictly listed in the legal provisions (e.g., 2% for tourists purpose).

Once created, the perpetual usufruct right can be inherited, transferred to third parties or encumbered (i.e., mortgage, easements). The holder of the perpetual usufruct right enjoys the right to use the real property and to draw benefits from it, e.g., rental income.

If the real estate transferred for perpetual usufruct is a piece of developed land, the buildings and other constructions erected thereon are sold to the perpetual usufructuary in addition to the establishment of the perpetual usufruct right. If the buildings are erected after the perpetual usufruct right is established, they also become the perpetual usufructuary's property. Separate ownership of the buildings due to the perpetual usufructuary is a right strictly connected with the right of perpetual usufruct and, in consequence, the buildings share the legal „lot" of the land. In particular, the ownership of buildings may be transferred only with the right of perpetual usufruct. Once the perpetual usufruct right expires, the holder of the right is entitled to a reimbursement corresponding to the current market value of the buildings and other improvements legally implemented on the land that is the subject of the perpetual usufruct right.

The Act on Real Estate Management provides the possibility of the sale of real estate to a perpetual usufructee. However, such sale is not allowed before the expiration of 10 years from the date of the conclusion of the agreement on giving the real estate for perpetual usufruct. The sale of the real estate owned by the State Treasury, as the rule, requires consent of the voivode.

The rules for allocating real estate for sale to its perpetual usufructees are set by the governor (*wojewoda*) (for land owned by the State Treasury) or the relevant council (*rada*) or assembly (*sejmik*) (for land owned by local government units). The authorities should be guided by, among other things, the needs of the local community, the public interest or spatial order. The provisions also regulate rules of buyout price calculation, which differ between the land used for business purposes and land used for other purposes.

However, selected perpetual usufructuaries (in particular natural persons), subject to certain conditions, may demand perpetual usufruct be converted into ownership in a simplified administrative procedure.

Leases

Polish law distinguishes between two types of leases: lease (*najem*) and lease with the right to collect profits (*dzierżawa*). Leases are used mainly for commercial and residential premises. Leases with the right to collect profits are used especially for industrial and agricultural property. Under a lease agreement, the lessor undertakes to hand over the real property for the lessee's use for a fixed or non-fixed term, and the lessee undertakes to pay the lessor an agreed rent. The contract for lease with the right to collect profits, however, provides for the lessee's additional right to collect profits from the real estate.

Currently, so-called green leases are rapidly gaining popularity in the Polish real estate market. These are a type of commercial space lease agreement combining the interests of the contracting parties in energy efficiency, water management and the use of environmentally friendly measures. In European Union member states, green lease regulations are part of a broader ESG strategy. The wider input on this topic is presented in the chapter *ESG in Real Estate*.

Easements

Easements (*służebności*) over land are limited property rights which may be granted over a piece of real estate (encumbered property) for the benefit of another piece of real estate (master property). Depending on the content of an easement deed, the holder of the master property may be entitled to a limited use of the encumbered property (active easement), or the holder of the encumbered property may be restricted in the exercise of his own rights for the benefit of the master property (passive easement).

Polish law distinguishes between two types of easements:

- Ground easements, which are established for the benefit of the owner or perpetual usufructuary of the land and are transferred together with the property (whether that encumbered or the master property).
- Personal easements, which are established for the benefit of a natural person and are non- transferrable (nor can the right to exercise them be transferred).

The Civil Code also lists a separate category of easement, i.e., utility easement which may be established for the benefit of entrepreneurs being utility providers. A utility provider may ask the land owner to establish an easement over his land in order to install (and then operate and maintain), e.g., electricity cables, installations serving to supply and to channel liquids, gas, steam or other facilities. If the real estate owner refuses, the utility provider may demand that an easement be established in return for an appropriate remuneration.

It should be noted, however, that easements are not always disclosed in the land and mortgage register.

In consequence, the potential investor should verify whether such rights are not being executed by carrying out an on-site inspection, i.e., during a due diligence review.

Usufruct

Usufruct (*użytkowanie*) of real estate is a limited property right which allows its holder to use the real estate and collect benefits similar to those to which the ownership holder is entitled. The scope of the usufruct may be limited by specified profits being excluded, or to a designated part of the real estate. Usufruct is created by a contract. Usufruct is non-transferable, strictly connected with the usufructuary, so the right expires on the usufructuary's death (or liquidation, in the case of legal entities). Moreover, a usufruct expires if not exercised for ten years.

Usufruct is similar to lease with the right to collect profits, yet its legal nature is different. Usufruct, as a limited property right, is effective *erga omnes* (it is effective in respect of third parties) and lease with the right to collect profits is effective only between the parties to an agreement.

2.1.3. Real property registers

There are two types of land registers in Poland: the land and mortgage register (*księga wieczysta*), the main purpose of which is to register titles and encumbrances over real estate and the land and buildings register (*ewidencja gruntów i budynków*), the main purpose of which is to describe the physical features and the use of the land and buildings.

Land and Mortgage Register

Land and Mortgage Registers are kept by district courts and provide information on the legal status of real estate, e.g., the location of parcels of land, the ownership status of land, encumbrances on the land, mortgages.

Land and Mortgage Registers are publicly available for review by anybody (even those with no legal interest) and may be also reviewed on-line, *via* IT system.

Entry of a right in the land and mortgage register is presumed to reflect the actual legal status of the real estate. Should there be any inconsistency between the legal status of real estate, the content of the register prevails in favor of the person who acted in good faith (*rękojmia wiary publicznej ksiąg wieczystych*). In consequence, if a purchaser acquires a property in good faith from a non-owner registered as owner, the acquisition is valid, and the true owner cannot argue to the contrary. His/her only recourse is an indemnity claim against the vendor. In consequence, an excerpt from the land and mortgage register is the key document that should be obtained and analyzed before a decision to acquire real estate is made.

The public credibility warranty does not confer protection on gratuitous dispositions or those made in favor of the acquirer in bad faith. It is also excluded by a mention in the land and mortgage register concerning, e.g., filled, yet unexamined application to the register.

Land and Buildings Register

The land and buildings register is kept by local authorities and is a uniform collection for the whole country of systematized, updated data on land, buildings and premises, their owners and other natural persons and entities holding the land, buildings and premises.

Opole – old town over Odra river

2.2 Investment vehicles and structures

2.2.1. General remarks

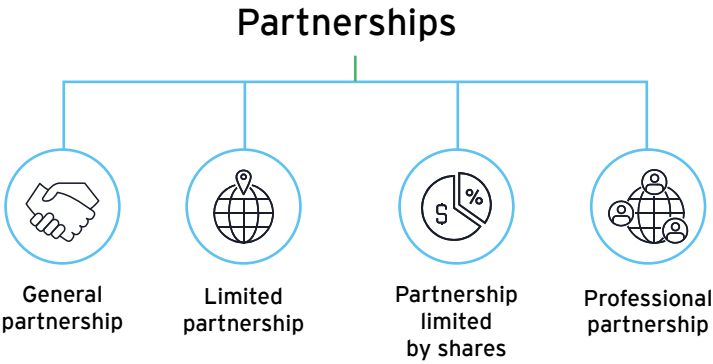
According to the Polish Commercial Companies Code of 15 September 2000 (hereinafter referred to as the **Commercial Companies Code**) the legal entities can be divided into two groups: partnerships and companies. There are two main differences between them: (i) generally, partners in a partnership take full responsibility for the partnership's liabilities (subsidiary responsibility) and (ii) partnerships are not legal persons, however, they may acquire rights and incur obligations.

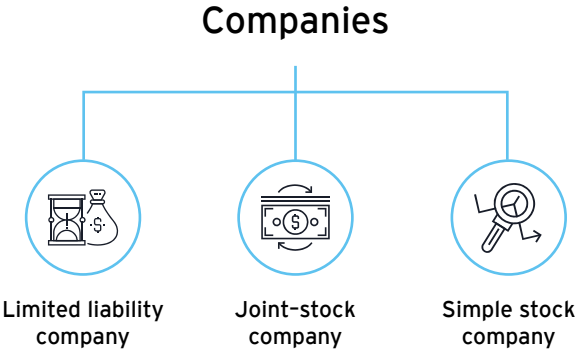
Investing in real property is generally carried through separate entities – so-called special purpose vehicles (SPV). Polish legal regulations do not impose any specific legal form for such an entity. Consequently, an entity organized in any form legally accepted in Poland may serve as an SPV, however in practice these most frequently operate as limited liability companies and limited partnerships, which will be presented below as constituting legal forms most commonly used by the investors.

There are two ways for an investor to introduce the SPV into its capital structure: the SPV may be bought or established by the foreign investor. There are numerous service providers offering the sale of established companies or partnerships (so-called „shelf companies"), that can be used straight away. However, this is always more expensive than setting up a new entity.

Apart from the legal forms mentioned above, a foreign investor may also operate in Poland and invest in real property:

- Directly through its branch.
- By entering into a joint-venture.





2.2.2. Limited liability company

A limited liability company (*spółka z ograniczoną odpowiedzialnością*) is commonly used as the SPV for real estate investments or development projects. The features of the limited liability company are set out in the Commercial Companies Code, the most important of them being:

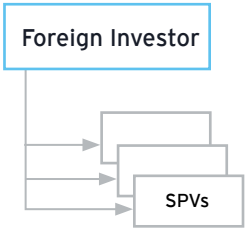
It may be created by one or more persons for any purpose allowed by law (it may not be formed solely by another single-shareholder limited liability company).
Liability of the shareholders is limited to their contribution to the share capital of the company.
The share capital of the company shall amount to the minimum of PLN 5,000 (ca. €1,173) and is divided into shares of equal or non-equal nominal value.
Limited liability company is a legal person and as such, it is a party to specific rights and obligations.
It acts through its body, i.e., the management board; the members of the management board, in general, are not liable for the company's liabilities.

The Commercial Companies Code provides for an institution of a "company in organization". This means, that a limited liability company set up by signing the articles of association may acquire rights on its own behalf, including the right of ownership of real estate and other rights, incur obligations, sue and be sued even before its registration with the registry court (which takes approximately 4 weeks since application to relevant court was filed).

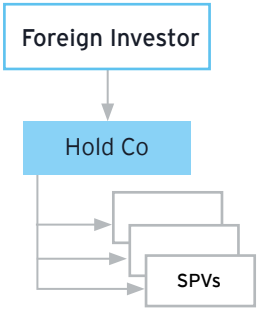
It is also possible to register a limited liability company with the registry court via the Internet, however this includes certain restrictions – limited possibility to form the contents of articles of association and exclusion of in-kind contribution.

The SPVs may be set up directly by the foreign investor, being the only shareholder. It is possible to establish several SPVs by the same shareholder in order to divide the investment risk between them. However, depending on the preferences of the investor and bearing in mind possible overall effectiveness, a simple one step structure may be enlarged and involve, for example, a holding company, abroad or in Poland, which manages the investment holds the shares of the SPVs.

One step structure with several SPVs, allowing diversification



A structure with a holding company, gathering several SPVs



2.2.3. Simple stock company

A simple stock company (SSC) is easier to set up than a classic joint stock company, and it is also easier to exit from such form of investment. From the point of view of investors, the most important differences are:

- Low share capital required to establish the SSC – 1 PLN.
- A flexible approach to SSC bodies, including the possibility of establishing a board of directors that combines the features of management and supervisory boards.
- Simpler procedures and greater freedom to adopt SSC resolutions remotely by e-mail or instant messaging.
- Possibility to establish the SSC via the Internet, in the governmental "S24" system.
- SSC shareholder register in digital form, maintained by a notary public or brokerage firm.
- Easier disposal of SSC's funds – no "frozen" share capital.
- Simple rules for liquidating the company and shorter time required for liquidation.

A SSC can be set up by a sole person or by more than one person. It will not matter if any of the persons setting up the SSC are already entrepreneurs. A simple joint stock company will also be able to be formed by legal entities, such as other companies. The only restriction is that a SSC cannot be formed by a single-member limited liability company.

It is possible to liquidate a SSC by transferring all the assets of the company to one of its shareholders. Such a resolution must be adopted by the general meeting of shareholders by a 3/4 majority vote. The shareholder who takes over the company's assets is obliged to satisfy the claims of other shareholders and the company's creditors, if any. The final decision on the admissibility of such a takeover of the assets by one of the shareholders is made by the registry court.

2.2.4. Partnerships

The main features of partnerships are the following:

- Partners act in the name of the partnership.
- Partners are responsible for the liabilities of the partnership
- The assets of the partnership include any property contributed to the partnership.
- There are no minimum capital requirements (excluding the partnership limited by shares in case of which the minimum share capital amounts to PLN 50,000, i.e., ca. €11,733).
- Although it is not classified as a legal person, a partnership may acquire rights on its own behalf, including the right of ownership of real estate and other rights, incur obligations, sue and be sued.
- In recent years the number of partnerships used for the purposes of investment structures significantly grew.

Limited partnership

A limited partnership (*spółka komandytowa*) is a partnership of which at least one partner is liable to the creditors for the obligations of the partnership without limitation (the general partner – *komplementariusz*) and the liability of at least one partner (the limited partner– *komandytariusz*) is limited to the value defined in the partnership agreement.

As a consequence, rights and obligations in the partnership should be split between two entities (limited partner and general partner). It is a common practice that the investor takes the role of the limited partner in order to avoid the full liability, whereas an additional limited liability company is established to serve as a general partner in the SPV. In case of limited partnerships also various structures may be involved, depending on the specific needs of the investor. Most commonly however, the limited liability company will possess a minority position in the SPV and will be a 100% subsidiary of the investor, nevertheless it may take specific functions in the SPV, e.g., management duties.

Partnership limited by shares

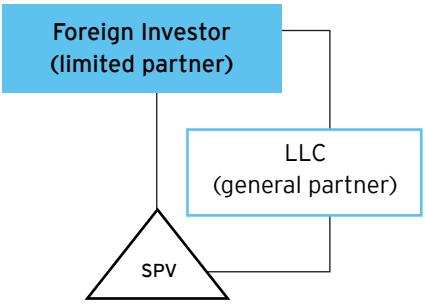
A partnership limited by shares (*spółka komandytowo-akcyjna*) conducts a business enterprise under its own business name, where at least one partner (general partner – *komplementariusz*) bears unlimited liability toward the creditors for obligations of the partnership and at least one partner is a shareholder (*akcjonariusz*).

Partnership limited by shares is the only partnership in case of which there are minimum share capital requirements, i.e., the share capital of at least PLN 50,000 (ca. €11,733).

The specific feature of this entity results in two kinds of involvement in the partnership, the general partner represents the partnership and takes subsidiary responsibility for the partnership's obligations, while involvement of the shareholder is purely of a financial nature.

The partnership limited by shares is subject to some additional restrictions provided for by the Commercial Companies Code:

Structure with limited partnership



- In case of in-kind contributions the auditor's opinion is required.
- Profit-sharing occurs in groups (separately shareholders and general partners).

	Limited liability company	Limited partnership
Legal personality	YES	NO
Can be established by a single shareholder/ partner	YES (NO if to be established by a LLC, which has only one shareholder itself)	NO
Can acquire real property	YES	YES
The shareholders/ partners are personally liable for the company's debt	NO	general partner – YES limited partner – NO
Minimal share capital	5.000 PLN (ca. €1,173)	NO
Management board	obligatory	NO
Supervisory board	voluntary*	NO
Taxation of income (from exploitation or sale of assets)	19%/9% at the company level	19%/9% at the partnership level
Taxation of the distribution of income to shareholders/ partners	19% under certain conditions there can be relief for shareholders who are legal persons (based in Poland or in the EU/ EEA). Reduced rates for foreign shareholders on the basis of double taxation treaties (depending on the treaty).	19% – expected that under certain conditions there can be relief for partners who are legal persons (based in Poland or in the EU/ EEA). Reduced rates for foreign partners on the basis of double taxation treaties (depending on the treaty). Practice to be observed.
Civil law transaction tax on shareholder/ partner loans	NO	0.5% on the value of the loan payable by the partnership

	Limited liability company	Limited partnership
Applicability of interest deduction limitation rules	YES	YES
Ability to offset profits and losses from various projects (carried out in separate companies/ partnerships)	NO only in the case of establishing a tax capital group	NO
Taxation in Poland of the sale of shares in the company/ partnership	19% possible relief for foreign shareholders on the basis of double taxation treaties (depending on the treaty), but rather rare for real estate rich companies under most of modern tax treaties	19% possible relief for foreign shareholders on the basis of double taxation treaties (depending on the treaty), but rather rare for real estate richcompanies under most of modern tax treaties

Tax features

Limited partnerships and partnerships limited by shares are treated as CIT taxpayers in Poland. In a similar manner, general partnerships shall be subject to CIT in Poland where partners (who are not exclusively individuals) in such a partnership are not disclosed to the tax authorities.

Partnerships pay other taxes, such as VAT, real estate tax, and civil law transaction tax, and they may pay withholding taxes (e.g., withholding tax on interest and royalties as well as withholding tax on remuneration paid to individuals, as a tax remitter).

The table above compares the business and taxation aspects of the limited partnerships and limited liability companies:

Due to changes to regulations, tax attributes of limited liability company and limited partnership in an investment structure become similar with some minor differences such as:

- The general partner is entitled to reduce the amount of tax by an amount corresponding to the tax paid by the company attributable to his share in the company's profits.
- Exemption of up to 50% of the limited partner's income from taxation but not more than 60k PLN.

Cross-border structure

Typically, foreign investments are structured in such a way that the overall level of taxation of the financing, exploitation, and potential capital gain is appropriately managed, seeking to avoid double taxation.

The tax treaties concluded by Poland should prevent double taxation. Investigating the tax treaties and the applicable rules in the different relevant jurisdictions will help to determine what structure, given the specific circumstances, should be arranged.

Additionally, bearing in mind the general anti avoidance regulation introduced to the Polish tax regulations, the cross border investments should be each time carefully examined and properly structured also from the business perspective to ensure their effectiveness from the tax point of view.

2.2.5. Joint venture

Polish legal regulations do not provide any definition of a joint venture, nevertheless, it is a useful solution to combine entrepreneurs' efforts in achieving the common goal.

The joint venture constitutes cooperation of two entities resulting in setting up a new company (the investment on such basis is carried through the given company, as described before) or it may be only a very close cooperation between the two entities, which allocate capital for activities implemented jointly by sharing costs and revenues under a joint venture contract, without creating a separate business entity.

The objectives for the creation of joint ventures are:

- Gaining access to new markets
- Synergies
- Risk diversification
- Achieving economies of scale
- Gaining access to cheaper sources of supply and cheaper financing
- Joint development and sharing of technology
- Overcoming barriers and administrative duties created by the country of one of the partners

2.2.6. Investment Fund – closed-end fund

The sole object of the investment fund's activity is to invest the monies acquired from the participants in shares, securities, money market instruments and other property rights – including real property.

The Act of 27 May 2004 on the Investment Funds and Management of Alternative Investment Funds differentiates in general between Open-End Investment Fund and Closed-End Investment Fund (hereinafter referred to as FIZ).

FIZ is a legal person. The primary principle of the FIZ is the fixed number of participation titles (investment certificates) issued in exchange for contributions made by its participants (investment certificate-holder). FIZ does not issue participation titles on every demand of an investor as is the case with the open-end investment funds, but rather in discretionary periods of time. In order to subscribe for investment certificates, the participant has to make a contribution to the FIZ. Generally, the participants may contribute to the FIZ cash, shares or real estate.

The FIZ's bodies are the Management Company, the Board of Investors (controlling body) and General Investor's Meeting.

The Management Company (*Towarzystwo Funduszy Inwestycyjnych*) is a legal entity separate from the Investment Fund. According to the legal provisions only a joint-stock company with its registered office in Poland holding authorization to conduct the activities related to creating investment funds and managing them issued by the Polish Financial Supervision Authority (*Komisja Nadzoru Finansowego*), may be an investment fund management company. This means that the Management Company carries out its activities on the basis of the permit issued by the Polish Financial Supervision Authority and under its supervision.

A Management Company may be formed by an investor, however, it is common practice that already existing Management Companies are engaged to take this role. In such a case an investor makes an agreement with a Management Company.

Consequently, the investor only holds investment certificates in the FIZ and through this structure invests in particular property.

The Management Company fulfils two primary functions: (i) at the beginning – it acts as a founder of the FIZ, (ii) when the FIZ is established and registered – it becomes its governing body (represents FIZ in transactions with third parties).

In accordance with the Act on Investment Funds, the Management Company shall be liable to the participants in the FIZ for all the damage caused by the failure to perform or improper performance of its duties as regards the management of the FIZ and its representation.

The above shows that the structure needed to implement FIZ is complex and requires:

a) Engaging a Management Company.

b) Establishing an FIZ.

c) Establishing the operating companies, which may acquire the real property.

Establishing a FIZ structure has important advantages. First of all, it allows for additional financing for the investments to be raised by selling investment certificates. This may be very useful in entering in larger, long-term real property investments.

Similarly, a foreign investment fund established in the EU or EEA country could be used.

Income of FIZ or a foreign investment fund resulting from:

- A share in profit generated by tax transparent entities
- Interest on loans issued to tax transparent entities and interest on those entities' other liabilities toward the fund
- Interest on a share in tax transparent entities
- Donations/ gifts or other free or partially free benefits from taxtransparent entities
- Interest (discount) on securities issued by tax transparent entities
- Transfer of securities issued by tax transparent entities or shares in such entities

is not CIT exempt. Conversely, other income (not mentioned above) could benefit from the CIT exemption.

2.2.7. Real estate investment trusts

General remarks

Real estate investment trust (REIT) is a fund investing in commercial real estate, guaranteeing a regular dividend for investors.

According to data from June 2021 of the European Public Real Estate Association, the average dividend funds in Europe constitute almost 5 percent for the period of previous 5 years.

Worldwide, REITs offer investors many advantages: high liquidity and rate of return, exemption from corporate income tax and, finally, a regular dividend of up to 90–100 percent of profit.

Despite the extensive legislative work carried out in the previous years, this form of investment has not yet been regulated by the Polish law.

However, in 2024 the Ministry of Technology and Development announced preliminary assumptions to the potential regulation in this regard. As the date hereof, there is no further information related to the final draft of the regulation or certain date of its implementation. Perhaps we will see a draft of a new regulation in 2025 (for more information, please refer to the section: *Assumptions to the potential regulation of Polish real estate investment trusts (REITs)* presented in the chapter 2).

2.2.8. Public–private partnership

General remarks

Public–private partnership (hereinafter referred to as PPP) is one of the rising forms of cooperation between public authorities and the private sector. It allows for an increase in the efficiency of public services through the use of private sector experience and for the sharing of risk between public and private entities.

PPP enables a mutual advantage for the public and private sector – for public entities it guarantees an additional source of capital and as a consequence provides the public sector – with funds to allocate for other purposes. On the other hand, the public sector may provide to private investors the long-term certainty of cash flows from public sources.

In Polish law the legal framework for PPP is established by two acts that regulate the cooperation between public entities and private partners:

- The Act of 19 December 2008 on Public–Private Partnership, hereinafter referred to as the Act on Public–Private Partnership.

- The Act of 21 October 2016 on Concession for Works and Services, hereinafter referred to as the Act on Concessions, which has replaced the previous Act of 9 January 2009 on Concession for Works and Services.

The main similarities between the Act on Public–Private Partnership and the Act on Concessions are as follows:

- Cooperation between a public and private partner.
- Private partners receive payments for the service rendered.
- Constitute a special form of tender agreements.

A competent authority in the matter of public–private partnership to the extend regulated in the Act is the Minister competent for regional development. Moreover, issues related to the preparation or implementation of projects under public–private partnership may be entrusted to Polish Development Fund S.A.

Selection of the private partner

The Act on Public–Private Partnership basically distinguishes two ways of selecting the private partner. The ways of selection depend on the type of the private partner's remuneration and are as follows:

- If the remuneration of the private partner is represented by the right to exploit the work or services that are the subject of the contract or in that right together with payment selection of the private partner shall be done applying the Act on Concessions subject to provisions of the Act on Public–Private Partnership.
- In other cases, the selection of the private partner shall be done applying the provisions of the Act of 29 January 2004 on Public Procurement Law (hereinafter referred to as Public Procurement Law) subject to provisions of the Act on Public–Private Partnership.

In cases where the Act on Concessions and Public Procurement Law do not apply, the selection of the private partner is made in a way that ensures the maintenance of fair and free competition, as well as

the principles of equal treatment, transparency and proportionality. If the public partner brings in real estate as its own contribution, the provisions of the Act of 21 August 1997 on the Property Management (hereinafter referred to as the Act on Property Management) must be taken into account.

Implementation of PPP

Pursuant to the Act on Public–Private Partnership public and private entities conclude an agreement under which the private partner commits itself to implement the project at an agreed remuneration and to cover in whole or in part the expenditures for project implementation, or cover them through a third party, while the public entity commits itself to collaborate for the purpose of achievement of the project goal, in particular by making its own contribution. The PPP contract can also provide that for the purpose of its performance, the public entity and the private partner shall establish a company, or the private partner can join the company established by the public entity.

Financial restrictions

The total joint amount up to which bodies of government administration can contract financial liabilities on the basis of contracts of PPP in a given year is specified in the Budget Act.

However, as a rule, the financing of a project from the State budget to the amount exceeding PLN 100 million requires a consent issued by the minister responsible for public finance. When issuing the consent the minister responsible for public finance shall consider the influence of the planned budget expenditures on the safety of public finance.

The concession contract – legal basics

The Act on Concessions specifies the rules and procedures for contracting concessions for works or services and the legal protection measures.

The duration of a concession contract should take into account the recovery of the concessionaire's expenditure incurred with reference to the performance of the concession. A concession contract is concluded for a limited period.

The concessionaire under the concession signed with the concession-granting authority is obliged to perform the subject of concession for remuneration, which constitutes in case of:

- The concession for works – exclusively the right to exploit the works that are the subject of the contract or in that right together with payment by concession-granting authority.
- The concession for services – exclusively the right to exploit the services that are the subject of the contract or in that right together with payment by concession-granting authority.

Toruń – the bridge over Vistula river

2.3

Real estate financing

2.3.1. Modes of financing the SPVs/investments

The most important thing in starting investments, is to provide financing for the SPVs, so they can operate and develop real property.

There are several methods of financing the company, some funds can be received from outside, but some may come from the capital group, e.g. from the parent company. In many cases both solutions are possible.

Loan and credit agreement

By loan agreement a lender undertakes to transfer the ownership of a certain amount of money to a borrower, while a borrower undertakes to return the same amount of money. Loans can be granted by any entity/person and may be relatively freely regulated by the parties.

A credit agreement is a specific kind of external financing, which is regulated by the Banking Law of 29 August 1997 and can be granted among others by banks. By a credit agreement a bank agrees to provide a specific amount of money for a specific purpose and time, and the borrower agrees to use the credit for its intended purpose, and pay back the amount of credit along with due reward in the form of bank interest.

On the financial market there is a wide choice of bank credits and their price depends on various factors as: duration, available collaterals, financial condition of the borrower. Additionally, banks may charge the borrower with a different fees such as, for instance, a preparation (origination) fee for all work connected with the preparation of the

credit, or a commitment fee for and undrawn portion of the credit. Banks also generally require certain collaterals for the credits. Among others, the most popular are:

- Mortgages
- Share pledges
- Asset and bank account pledges
- Powers of attorney to bank accounts
- Security assignments of receivables of the borrower
- Notarial submissions to execution
- Subordination agreements

A mortgage is the common form of security required by Polish banks – especially required in real estate financing transactions.

Mortgage shall be defined as a right, under which the lender (creditor) may satisfy his claims from the property, regardless who is the current owner of the property, and with priority over other personal creditors of the borrower, whose credits are not secured with mortgage.

A mortgage becomes effective after entering in the Land and Mortgage Register. The entry takes effect at the date of filing, so even though the registration may take several months, market practice is such that banks pay out the amount of the credit before the entry takes effect but upon receipt of confirmation of filing of the application for registration of a mortgage in the Land and Mortgage Register.

A mortgage is a very secure solution for the bank, as in the case of the debtor not being able to pay off his debt, the real property may be sold in a public auction and thus, the bank may retrieve the whole amount of debt.

Shareholder's loan

A loan from shareholders has two important advantages over the bank loan. First, it is in general a cheaper solution and what is more, it does not bare the risk of enforcement in case of difficult financial situation of the borrower.

Bonds

Bonds can be issued by a legal entities, including legal entities from outside the territory of Poland if they conduct business activity or has been established in order to issue bonds, a partnership limited by shares, credit unions, local government units and financial institutions. Bonds can be defined as securities that are issued in series and certifies that the issuer is a debtor of the bondholder and assumes an obligation toward the bondholder to provide specified benefits. Bonds may be either registered or bearer bonds.

The advantage of this form of financing is the ability to fairly freely determine the benefits that are associated with bonds.

The construction of the bonds does not have to be limited to a simple financial benefit in the form of repayment of the bonds plus interest representing an income of the bondholder. While issuing bonds, the company is free to formulate the gratification to be provided to bondholders, such as the possibility of participating in profits of the company, or the conversion of bonds into shares.

The bonds may be distributed on an open market (by way of a public offering), in search for an outside financing, or serve as a mode to transfer funds from another related company. It should be noted that there are several companies in the real estate sector listed on the Polish bonds' open market.

In the case of SPVs which aim to obtain financing from the shareholders, the gratification (a mutual benefit) to the parent company as a bondholder will be of secondary importance. A practical solution is that if the SPV generate future earnings from real property, bonds could entitle bondholders to participate in the profit.

Due to the high degree of freedom in the framework of this instrument, it is very recommended as an optimal way to bring the funds downwards.

We would like to note, however, that the issuing of bonds creates additional obligations for the bond issuer, related to providing data to assess the financial condition of that entity. Additionally, if the issuer operates for more than a year, it is required to provide financial statements prepared as at the balance sheet date, no earlier than 15 months before the date of the publication of the terms of issuing the bonds, along with the auditor's opinion.

Promissory notes

In order to obtain financing SPVs may issue promissory notes.

A promissory note may include a deferred payment date. It should have a clearly defined due date, in the form of a calendar date. There are exemptions from this rule, e.g. an 'a vista' promissory note – which provides that the payment is made on demand from the payee or within a certain period after the demand. Additionally, an 'in blanco' promissory note allows a payee to fill in (at its own discretion) – the conditions of such promissory note (e.g., date of payment) within the scope foreseen by a mutual agreement.

The obligation from the promissory note does not have to be accompanied by any other legal relationship that it secures. It means that the holder has an unquestionable claim from promissory note, even if, for example, promissory note liability was not based on any other particular obligations – such as loans.

Similarly as in the case of the loan agreement, the issuer of a promissory note becomes a debtor. With the use of a promissory note, SPVs can easily obtain funds from the parent company in a less formal, quicker way and easily settle the debt in any suitable timeframes.

Increase of share capital

Raising capital is a common way of financing companies. It can be carried by increasing the nominal value of the shares existing or creating new ones; both ways lead to an increase of the share capital.

This process is associated with either changes in articles of association (a formal mode that requires filing the changes in the articles of association with the National Court Register) or an increase based on the current provisions of the articles of association (informal mode). The aim is to change the capital structure of the company by defining the share capital at a higher than current level. To cover the increase of the share capital, the funds may be paid in cash or in-kind contributions can be made.

The capital increase is a more formal process in comparison to the additional contributions (referred to below) and loans, but the advantage of this form of financing is the ability to contribute in various forms, such as cash or in-kind.

A significant drawback of this method of financing SPVs is relatively difficult process of withdrawing the invested capital.

This is carried through the reduction of share capital (Articles 263-265 of the Commercial Companies Code), which involves again additional costs (notification, registration) and is time-consuming (e.g., includes three months for objection to the reduction that can be brought by creditors).

Additional contributions

This method of financing is provided by the Commercial Companies Code, but it is applicable only to the limited liability company. According to the provisions, the articles of association of the company may require the payments (additional contributions) from the shareholders in a specific amount paid by the shareholders in proportion to their shares. In fact, it is worth noting that partnership agreements can also oblige the partners to additional payments – such a solution is possible based on the freedom of contract principle.

Payments of additional contributions in a limited liability company do not affect the value of shares in the share capital of the company, and therefore the share capital of the company remains unchanged after the additional contributions. The payments increase the company's own funds, which are thus quite freely allocated for the specific need, and this is certainly beneficial for the SPV.

Tczew – view by the Vistula river

2.3.2. Tax implications

Equity financing versus debt financing

Below we present the main differentiating factors when considering the two forms of financing the investments.

	Equity financing	Debt financing
Forms of financing	Capital injection In-kind contribution Additional payments to share capital	Shareholder loans Bonds Other debt instruments
Receipt and repayment subject to income taxation?	NO Equity financing is generally subject to a 0.5% civil law transaction tax on share capital increase. Contributions to a reserve capital (share premium) should not be subject to civil law transaction tax. The tax must be paid within 14 days of the date of the agreement. The tax liability rests with the company.	NO Loans are generally subject to civil law transaction tax at the level of 0.5% of the loan principal. The tax must be paid within 14 days of the date of the loan agreement, and the tax liability rests with the borrower; several exemptions apply: ■ Loans granted by shareholders to a limited liability company or joint stock company. ■ Loans granted by foreign entities which are engaged in credit and financing activities (such as group treasury companies). ■ Loans recognized as an activity subject to Polish or foreign VAT (e.g., bank loans). ■ Bonds issuance is generally not subject to civil law transaction tax.

	Equity financing	Debt financing
Rights	Shares in the company give shareholders the right to control the company and the right to financial benefits from the company.	Creditors have the right to interest, as a rule no control nor participation in profits.
Forms of repatriation of funds	Dividend Redemption of shares Liquidation proceeds	Interest
Deductibility of payments for tax purposes?	Generally NO Exception: there is a possibility to deduct from the taxable base the hypothetical costs of obtaining external funds in case the company receives funding in the form of additional payments to equity or retained profits are used. Capital financing costs cannot exceed PLN 250k in the tax year.	YES Subject to interest limitation rules (see below)
Withholding tax (see also additional remarks below)	19% This rate may be reduced or eliminated based on relevant tax treaty concluded by Poland.	20% This rate may be reduced or eliminated based on relevant tax treaty concluded by Poland.

	Equity financing	Debt financing
Applicability of exemptions under EU directives? (see also additional remarks below)	YES EU Parent–Subsidiary Directive (EU PSD), subject to conditions: ■ The entity receiving the dividend is taxed in another EU/EEA country (or in Switzerland) on its worldwide income (and is not subject to tax exemption on its total income). ■ Has held or will hold directly at least 10% (in the case of a company resident for tax purposes in Switzerland, a least 25%) of the shares in the Polish company paying the dividend for at least two years; this condition can be met prospectively. If the condition to hold the amount of shares for an uninterrupted period of two years is not satisfied, withholding tax (as a rule at 19%) together with the penalty interest for late payment will be due. ■ The legal title for the holding must be ownership rather than any other legal title.	YES EU Interest Royalties Directive (EU IRD), subject to conditions ■ Interest is paid to a related EU/EEA company which holds directly at least 25% of shares of the paying company for an uninterrupted period of 2 years (or the lender and the borrower have a common parent company which directly holds 25% of shares in each of them). The preferential rate should be also applicable in the case where the period of two years of continuous holding of shares lapses after the day of interest payment. ■ Interest recipient is not subject to income tax exemption, applicable to all revenues regardless of the place where they were acquired ■ The relevant DTT or another international agreement (concluded between countries of the payer and the recipient tax residency) stipulates rights on Poland to demand tax information from the tax authorities of the country of residence of the interest recipient.

	Equity financing	Debt financing
Applicability of exemptions under EU directives? (see also additional remarks below)	■ The double tax treaty or another international agreement vests rights on Poland to demand tax information from the tax authorities of the country of residence of the dividends' owner or the country in which the dividend income is received. ■ In practice, the tax authorities often expect that the recipient should be a beneficial owner of the payment. Irrespective of the EU PSD "pay-and-refund" mechanism is applicable to dividend payments subject to WHT in Poland (unless additional measures are taken).	■ The recipient is a beneficial owner of the payment. The EU Interest-Royalty Directive rules only apply as long as the interest is set at a market level. Consequently, any off-market portion of interest can be subject to withholding tax at the standard 20% rate (instead of the treaty-reduced rate/WHT exemption) in Poland. Irrespective of the EU IRD "pay-and- refund" mechanism is applicable to certain – including interest and royalties – payments subject to WHT in Poland (unless additional measures are taken).

Additional remarks

WHT pay and refund mechanism

Dividend, interest and royalty payments made to foreign related parties are subject to a "pay and refund" regime instead of a relief at source, meaning that a Polish entity remitting a dividend, interest or royalty payment to a related party is obliged to withhold tax at a standard rate (19% on dividends, 20% on other payments), and the recipient may apply for WHT refund.

WHT exemption or application of a lower WHT rate will be possible in a limited number of cases where a Polish remitter will submit to the tax authorities statement confirming that all conditions for the relief are met (such statement may, however, trigger personal criminal penalties and additional tax liability) or tax authorities will issue a clearing in a form of a special tax opinion. The pay and refund system is triggered

when the total amount of qualified payments made to a foreign taxpayer exceeds PLN 2m (ca. EUR 470k) annually.

The relief at source regime should be still available for qualified payments below this threshold and i.a. for payments made to third parties.

The Polish company distributing the dividend or paying out interest to non-residents can be held liable for mistakes, e.g., if it applies an incorrect tax rate.

A certificate issued by a foreign local tax office confirming the tax residence of the foreign dividend/interest beneficiary must be obtained by the Polish company in order to allow application of the lower withholding tax rate or exemption. An additional requirement is that the Polish entity paying dividends/interest should also hold a written confirmation from the recipient that the latter does not benefit from tax exemption on its worldwide income, if the exemption is to apply.

In addition, Polish tax remitter is obliged to assure due diligence when making payments subject to WHT and must follow definition of a beneficial owner (which entails, among others, that a recipient carries out genuine business activity).

Dividends, interest and royalties would not benefit from the EU Parent-Subsidiary Directive or the EU Interest-Royalties Directive based tax exemption if such payments are connected with an agreement, a transaction, or a legal action or a series of related legal actions,where the main or one of the main purposes was benefiting from these tax exemptions and such transactions or legal actions do not reflect the economic reality. For the purpose of the above rule, it is considered that a transaction or a legal action does not reflect the economic reality if it is not performed for justified economic reasons, but results, in particular, in transferring the ownership of shares of a dividend paying entity or in earning revenue by that entity which is then paid as a dividend. As there is no well-grounded practice regarding actual application of similar provisions, details of each structure should be analyzed carefully to determine and address potential issues with taxation of dividends.

Dividends paid between companies which are resident in Poland for tax purposes may be exempt from withholding tax provided that the dividend recipient has held or will hold (on or after the day when the dividend is received) at least 10% of shares in the dividend paying company for at least two years.

If the conditions for exemption are not met, non-creditable withholding tax is levied on dividends at the rate of 19%.

Tax on shifted profits (SPT)

Tax on shifted profits (SPT) is levied on Polish entities; SPT amounts to 19% of costs incurred, with respect to (direct or indirect) payments to a related entity if the following conditions are jointly fulfilled:

- The effective CIT paid by this related entity in the country of its tax residence is lower by at least 25% than the hypothetical CIT that would be due on such payments at the standard Polish rate of 19% (i.e., 14.25% CIT or lower); condition regarding a low effective tax rate should be verified with respect to income earned from the qualified categories of costs and not with respect to the entire income of the foreign recipient.
- 50% of revenues earned by the receiving entity are comprised of all qualified payments made by related Polish entities.
- Costs forming a tax base for the purpose of the tax on shifted profits would include certain types of payments, among others: payments for advisory services, marketing, market research, control and management, guarantees, financing costs (including interest, commissions), royalties, licenses, payments for the transfer of functions, assets, risks and only if the sum of these costs incurred as tax deductible by a Polish CIT payer for the benefit of related parties amounts to at least 3% of all tax deductible costs of the taxpayer for a given tax year.

The SPT shall not be levied on costs connected with payments to a related entity tax resident in a European Union country if this entity undertakes a significant, real economic activity in this country.

Redemption of shares and liquidation distributions

The redemption of shares and the return of equity to shareholders are permitted under Polish law. The formal procedure is time-consuming and usually takes several months.

Standard, voluntary redemption of shares is subject to the same tax treatment as disposal of shares. It means that as a rule such redemption will be subject to tax in Poland, unless relevant double tax treaty provides for tax exemption.

Other than voluntary redemption of shares (compulsory redemption of shares) is taxed in the same way as dividends and is subject to the applicable withholding tax (taking into consideration the appropriate tax treaty).

Liquidation proceeds are subject to the same tax treatment as dividend, but any withholding tax relief can only be sought under a relevant tax treaty.

The Polish CIT provisions explicitly state that in case of in kind remuneration for settling the liability (e.g., upon shares redemption or in kind dividend payment) the value of liability settled in such a way constitutes a taxable revenue of the paying entity. This applies respectively also to look through entities.

The distribution in-kind of liquidation proceeds would be also seen as a taxable event in Poland for the entity that is liquidated (deemed sale of distributed assets).

Tax deductibility of interest paid on loans

Generally, interest on loans is deductible for tax purposes when actually paid or compounded (added to the principal so that it constitutes a basis for new interest calculation), i.e., accrued interest may not be treated as a tax deductible cost until it is actually paid or compounded.

Interest on loans drawn from a related lender to acquire shares (and several other capital transactions) in a Polish company should be treated as tax non-deductible. Please note that interest deductible against operating profit to acquire related entity's shares (as a result of any "debt push down" strategies) is not deductible.

It is important to note that interest accrued during the development of real estate on the part of the loan used to finance that development is not directly deductible.

The cost of such interest should be added to the initial value of the newly developed real estate (i.e., the new building) in order to increase the basis of its future depreciation for tax purposes (to the extent such depreciation write offs are deductible in light of new limitations discussed above). However, this rule applies only to real estate which is the company's own fixed asset. It does not apply to projects constructed for resale (e.g., residential projects). In such cases, based on the practice of the Polish tax authorities interest may not be capitalized but be treated as tax deductible under the general rules and limitations (although the practice was changing in this respect over the years).

Level of interest

The Polish tax authorities are usually interested in the conditions of loan agreements concluded between related parties. These conditions should be the same as, or comparable to, the sort of financing conditions which non-related parties would agree upon, in accordance with "the arm's length principle". Too high an interest rate could lead to an adjustment of the Polish borrower's taxable income.

In addition, other conditions in the loan agreement which are unjustifiable or unfavorable to the borrower could result in further tax adjustments. According to regulations governing the documentation of transactions between related parties, taxpayers are required to prepare specific transfer pricing documentation.

Additionally, any interest on debt which exceeds maximum amount of a taxpayer's credit capacity acceptable by a third party creditor is disallowed (so-called "arm's length credit capacity").

Restrictions on the tax deductibility of interest paid on loans

Net financing costs (i.e. financing costs offset with interest revenue) are limited to 30% of tax adjusted EBITDA.

The limitation covers all financing (including historic debts that used to benefit from earlier thin capitalization regimes). The limitation also applies to third-party (e.g., bank) financing. Limitations apply if the net financing costs exceed PLN 3m (ca. €704k) annually. Non-deductible costs can be carried forward for 5 years.

Foreign currency financing

As the foreign currency liabilities are reported for accounting purposes in PLN, foreign exchange differences (gains or losses) accrue in the accounting books of the Polish company. Foreign exchange differences accrue also on loan liabilities in PLN denominated in foreign currencies. These gains or losses are recognized for tax purposes only when realized, i.e., when the related liability is paid or set off (or when the due interest is compounded) and should be allocated to appropriate revenue basket. However, audited companies can report foreign exchange gains or losses in accordance with accounting standards upon notifying the tax authorities, provided that such reporting in accordance with accounting standards will continue for a period of at least three tax years.

Wrocław – aerial view of Sand Island (Wyspa Piasek) in the Odra river

2.4 Acquisition of real estate – asset deal and share deal

2.4.1. General remarks

As many other jurisdictions, Polish law provides different methods of acquiring real estate by an investor, among which an asset deal and a share deal are the two most commonly used

Both methods bear various legal and tax consequences which have to be considered in any given case and therefore there is no generally accepted rule when a share deal or an asset deal shall be applicable. The interests of the seller and the buyer, the particulars of the case and the power of each party to negotiate have to be considered while choosing one of these two forms.

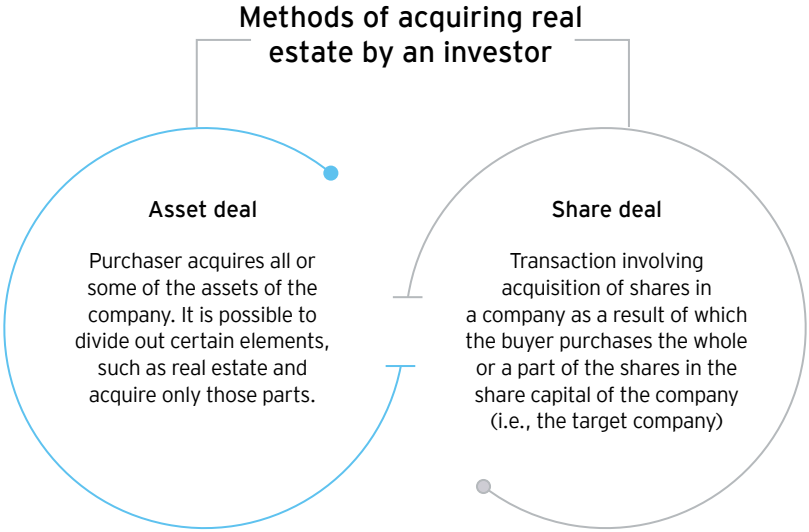
In practice, if a share transaction is properly structured, this can be the most tax efficient disposal method to use. In some corporate structures, taxes on capital gains may not apply or in some cases may be deferred.

From the buyer's perspective, it is usually more tax efficient to buy the property directly than to buy shares in a company holding the property. The buyer can then depreciate as much as the real market value of the building for tax purposes (subject to general limitations regarding tax depreciation). On the other hand, if the shares are bought at a higher price than the book value of the company's assets, goodwill paid in return for the shares can be recognized for accounting purposes. Unfortunately, such goodwill cannot be amortized for tax purposes.

Furthermore, a company owning real estate with a low book value has a deferred tax exposure with respect to any future capital gains made on the disposal of that real estate. Thus, the buyer of shares will most likely try to negotiate a discount on the transaction price to eliminate this negative tax aspect.

The purpose of this chapter is to outline the main features of these two types of real estate transaction from both the legal and tax perspectives, and to examine the consequences of each structure.

2.4.2. Legal aspects



Definition of a share deal and asset deal

Despite the fact that the share deal and asset deal are equally popular, their object and manner of conducting are different.

The key differences between these two methods of acquisition concern the extension and nature of purchased items and are presented below.

- A share deal is defined as a transaction involving acquisition of shares in a company as a result of which the buyer purchases the whole or a part of the shares in the share capital of the company (i.e., the target company).

- An asset deal is where the purchaser acquires all or some of the assets of the company. Unlike a share deal, in an asset deal it is possible to divide out certain elements, such as real estate and acquire only those parts.

Representations and warranties

In order to secure the purchaser's interest extensive representations, warranties and related indemnities should be included in the sale agreement. The scope of warranties and representations as well as detailed legal consequences of their breach have to be regulated in details as Polish law does not provide for a specific legal regulation of this issue.

- In an asset deal, the seller's representations and warranties concern, in particular, the validity of the seller's title to the real estate, the information regarding encumbrances (if any), the statement confirming that the development has been carried out in accordance with the binding provisions of law and technical plans and that relevant permits are valid.
- The seller's representations and warranties in a share deal usually include the representations and warranties typical for an asset deal regarding real estate, but also extensive representations and warranties relating to all aspects of the company's activity: in particular tax, employment, accounting, corporate and contractual matters.

It is recommended that the sale agreement provides for specific instruments supporting the enforceability of the indemnities securing the representations and warranties. In market practice, part of the purchase price is retained in an escrow account or a bank guarantee is obtained from the seller.

Types of agreements

There are a number of documents related to both transactions. Usually, in order to clearly state the intentions, goals to achieve during negotiations and the key principles of the transaction, the parties sign a letter of intent prior to signing the real estate purchase agreement.

Transfer of the property–related rights

In many transactions, it is necessary to obtain various types of consents or permits regarding the transfer of the rights related to the property, the lack of which may affect the legal effect of the entire transaction.

In the share deal the purchaser does not obtain any direct rights to the assets as these remain the property of the target company. Consequently, the property- related rights and obligations (such as leases, property management agreements, warranty claims under construction contracts and contracts of insurance, permits) remain with the corporate entity holding the real estate and no formal assignment is required.

In the asset deal, except for the lease agreements, the property–related rights and obligations are not automatically transferred as a result of the sale agreement. The lease agreements are transferred automatically with the acquired asset. As regards the remaining agreements, as for the formal assignment, it is, in general, necessary to obtain the consent of the other party of each contract. In case of licenses, decisions etc. it should be analyzed case by case what actions have to be undertaken in order to transfer them to the purchaser. This means that the ability to assign the property–related rights or assuming the obligations is examined individually, in light of specific regulations or contractual provisions, which may prevent or restrict transferability.

Therefore, a share deal is a type of transaction usually considered by investors when the target company conducts regulated activity as all permits required for its operation stay in the company.

Potential restrictions related to the sale of a property

In case of transactions involving real estate, several restrictions resulting from applicable legislation may apply. As a general rule, transactions structured as assets deals are more likely to be subject to a greater number of such restrictions. These include as follows below.

A. Merger clearance

Due diligence review preceding any asset or share deal should answer the question whether the legislation governing merger control will be applicable, in particular, whether a notification of the transaction to the Office of Competition and Consumer Protection is required. Should such notification be required, the closing of the transaction must be suspended until the clearance of the President of the Office of Competition and Consumer Protection is granted.

A notification on the planned transaction to the Office of Competition and Consumer Protection is required if any of the following conditions is met:

- The combined worldwide turnover of undertakings participating in the concentration in the financial year preceding the year of the notification exceeds the equivalent of €1 billion.
- The combined turnover of undertakings participating in the concentration in the territory of Poland in the financial year preceding the year of the notification exceeds the equivalent of €50 million.

However, the Polish antitrust law provides for certain exceptions from the obligation of notification even if the above conditions are met, in particular, when the turnover of the undertaking over which the control is to be taken did not exceed in the territory of Poland in any of the two financial years preceding the notification, the equivalent of €10 million; the concentration arises as an effect of insolvency proceedings, excluding the cases where the control is to be taken over by a competitor or a participant of the capital group to which the competitors of the to-be-taken undertaking belong; the concentration applies to undertakings participating in the same capital group.

B. The pre-emption rights

It may happen that the public authorities have a statutory preemptive right to real estate which is about to be sold. The right of pre-emption is a right to acquire the property before it can be purchased by any other person or entity. Where the real estate is subject to a right of pre-emption held by State Treasury or local authority, it may only be sold to a third party under the condition that the beneficiary of that right does not exercise it. If such a property is sold without observing this right, the sale is considered to be null and void.

The notary executing the conditional agreement will send a copy of it to the State Treasury or local authority, which may then exercise its preemptive right within one month of receiving the conditional agreement. If the public authority does not exercise its preemptive right within that period, the parties can conclude the final agreement, which effects the unconditional transfer of the title to the real estate.

C. Restrictions for foreigners

As regards foreigners residing or having their registered seat within the territory of the European Union or European Economic Area, no special restrictions regarding acquisition of real estate by foreigners apply. The conditions differ with respect to the investors from remaining countries to which the following restrictions apply, As a general rule, such foreigners (or Polish entities controlled by such foreigner) are required to obtain a special permit of the Minister of Internal Affairs to acquire a real estate in Poland. The permit is necessary when acquiring ownership of real estate or perpetual usufruct on the basis of any legal event (e.g. purchase, in-kind contribution, merger with a Polish entity, taking up shares in Polish entities).

The permit is issued upon a written request of a foreigner, provided that:

- A foreigner's acquisition of real estate does not pose a threat to the State's defense, national security, public order and is not contrary to the social policy and public health considerations.

- The foreigner proves that there are circumstances confirming his bonds with Poland (i.e., for example the buyer has Polish origins or is conducting business or agricultural activities in the territory of Poland under the Polish law).

The Minister's decision concerning real estate acquisition should be issued within one month (two months in particularly difficult cases). The permit is valid for two years from the day of issuance.

The acquisition of real estate without a permit is invalid. A foreigner intending to acquire real estate in Poland may apply for a promise of the permit. The promise of the permit is valid for one year. During this period a permit cannot be refused unless the actual circumstances pertinent to the decision have changed.

D. Restriction in acquiring agricultural land

Provisions restricting trade of agricultural land are regulated in the Act of 11 April 2003 on Shaping of the Agricultural System (hereinafter referred to as the "**Act on the Agricultural System**"). This regulation restricts trade of agricultural land for both Polish and foreign (EU and non-EU) entities.

Under the Act on the Agricultural System, agricultural land is defined as the land used for agricultural purposes or land that may be used for such purposes, excluding land intended for other purposes in applicable local spatial development plans.

The Act on the Agricultural System provides following restrictions related to the transactions on agricultural lands, in particular:

- Agricultural land may be acquired only by individual farmers having agricultural education and residing in the same municipality where the land is located for at least 5 years. The above will not be applicable to the transfer of agricultural land of an area smaller than 1 ha.
- An obligation to obtain a permit (in a form of an administrative decision) of the General Director of the National Agricultural Support Center for sale/acquisition of an agricultural land to/by persons other

than individual farmers, including companies, under pain of invalidity. The above will not be applicable to the transfer of agricultural lands of an area smaller than 1 ha.

- General prohibition on sale or transferring possession (e.g., under lease agreement) of an agricultural land within 5 years from its purchase.
- National Agricultural Support Center possess a pre-emption right to agricultural land regardless of the area unless acquired among others under the permit of the Chairman of the Agricultural Property Agency.
- National Agricultural Support Center is also authorized to exercise its buyout right (*prawo nabycia*) in case other acquisitions that acquisitions under sale agreement, e.g., merger, division or transformation of a current owner (perpetual usufructuary) of the land.
- National Agricultural Support Center is entitled to buy of an agricultural land in case of partners change in partnerships.
- National Agricultural Support Center has been also equipped with a pre-emption and buyout right to purchase shares in companies owning an agricultural land, e.g., in case of share purchase agreements or share swap (excluding shares in public listed companies). This right of National Agricultural Support Center also applies to the sale of shares in a parent company that owns shares in a company that owns agricultural real estate or holds such real estate in perpetual usufruct.

The above corporate rights attributed to the National Agricultural Support Center may be exercised only if the total area of agricultural land owned or held in perpetual usufructuary by the company constitute at least 5 ha.

Which is important, the Act on the Agricultural System does not apply to agricultural properties with less than 0.3 hectares.

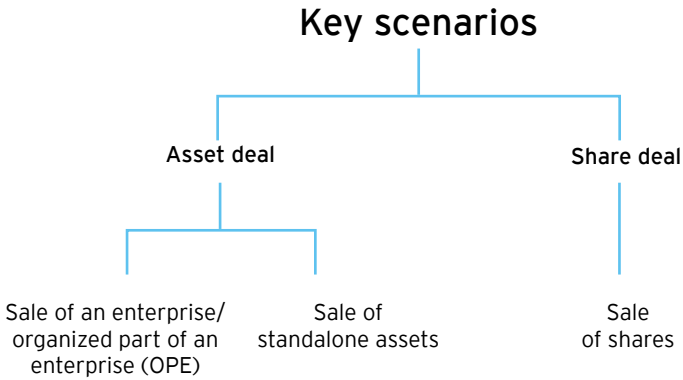
E. Acquisition of real estate from public entities

In Poland, real estate is often acquired from the State or local authorities. Such type of acquisition is considered to be safe and an attractive alternative to acquisition of real estate from private owners. Nevertheless, in practice, acquisition of real estate from public entities is subject to additional specific requirements such as an obligation to dispose the land via public tenders.

An investor interested in acquiring real estate from the State or local authorities should ask the authorities for information on the contemplated property to be acquired. Unfortunately, it is not possible to purchase such real estate on the spot, as there is a special procedure of selling real estate held in public entities' possession. With only a few exceptions provided by law (e.g., real estate being sold to its perpetual usufructuary), real estate held by the State or local authorities may be disposed by way of public tender, after a lengthy procedure is completed.

2.4.3. Tax implications

As mentioned above, real estate can be sold either through a direct sale of the property (an asset deal) or indirectly through a sale of the shares in the company owning the property (a share deal). These two types of transactions are afforded different treatment by the Polish tax regulations.



	Asset deal		Share deal
	Enterprise/OPE	**Standalone asset**	
Corporate income tax	Step-up allowed Goodwill may arise for tax purposes	Step-up allowed	No step-up allowed No goodwill for tax purposes
Transaction taxes	Out of scope of VAT 1%/2%/6% civil law activities tax (CLAT) (pol. PCC) on gross value of enterprise/OPE payable by the buyer (non-recoverable)	23% VAT (for commercial property), subject to VAT recovery under general rules VAT exemption may apply (exemption may be either obligatory or optional) If VAT exempt – 2% CLAT (Polish PCC) on the FMV of asset payable by the buyer (non-recoverable) In case of 6th or (further) residential units constituting separate properties in one or several buildings constructed on a single plot of land – 6% CLAT (Polish PCC) on the FMV of asset payable by the buyer (non-recoverable) For further comments on VAT see next pages	Out of scope of VAT 1% CLAT (Polish PCC) on the FMV of shares payable by the buyer (non-recoverable)
Contingent tax liability	In general joint and several tax liability (up to the value of the purchased enterprise/ OPE's assets) Possibility to limit the contingent tax liability via pre-transaction tax clearance certificates	No contingent tax liability for the events occurring prior to the transaction	Unlimited tax liability (up to the value of the investment)

	Asset deal		Share deal
	Enterprise/OPE	Standalone asset	
Reclassification risk	Reclassification into a transfer of standalone assets may trigger VAT liability arrears for the seller (additional penalties may apply) and CLAT overpayment for the buyer	Reclassification into a transfer of an enterprise/OPE may lead to challenging the buyer's right to recover input VAT charged by the seller and may result in CLAT arrears (additional penalties may apply) For further comments on the risk see next pages	
Other advantages	Tax assets of the seller (e.g., tax losses) remain with the seller and can be used to offset sale proceeds	Tax assets of the seller (e.g., tax losses) remain with the seller and can be used to offset sale proceeds	Less time-consuming and more straightforward legal wise Possibility to deduct historical tax losses of the acquired company (no forfeiture rules)
Other disadvantages	Timing and legal complexity Buyer cannot use historical tax losses of the seller Interest on any acquisition debt should generally be tax deductible and offset against revenue from general business activities	Timing and legal complexity (less complex than enterprise/OPE, but more than the share deal) Buyer cannot use historical tax losses of the seller Interest on any acquisition debt should generally be tax deductible and offset against revenue from general business activities	Interest on any acquisition debt may not be tax effective (no debt push down possible)

Asset deal

The revenues generated on the sale of real estate are subject to the standard taxation rules of Polish corporate income tax.

Taxable revenues are reduced by the net book value of the property. Effectively, only the gain is taxed at the rate of 19% (possibly 9% if the yearly revenue of the company does not exceed €2m). The revenue from the sale of real estate must be valued at the price set in the sale contract. However, if the price differs substantially and without a justified reason from the market value of the real estate, the revenue may be assessed by the tax authorities according to the market value. This transaction price adjustment may be applied to transactions between related and unrelated entities. Adjustments trigger not only a higher tax burden but also penalty interest.

Costs incurred by the buyer for the acquisition of real estate: purchase price, transaction costs including advisory, civil law transaction tax – if applicable, financial costs accrued till the purchase, etc., form the initial value of the real estate and are recognized as tax deductible costs through depreciation write–offs (unless the asset is not depreciated for tax purposes due to limitations described above) or upon sale.

As the value of the land is not subject to depreciation, it is then important to determine the value of the land and the value of any buildings or structure separately.

VAT on the acquisition of real estate

The supply of buildings, infrastructure, or parts of buildings or infrastructure is generally VAT exempt, except for:

- The supply of a building, infrastructure or part of a building or infrastructure in the course of its first occupation or prior to it.
- The supply of a building, infrastructure or part of a building or infrastructure made within two years of the first occupation.

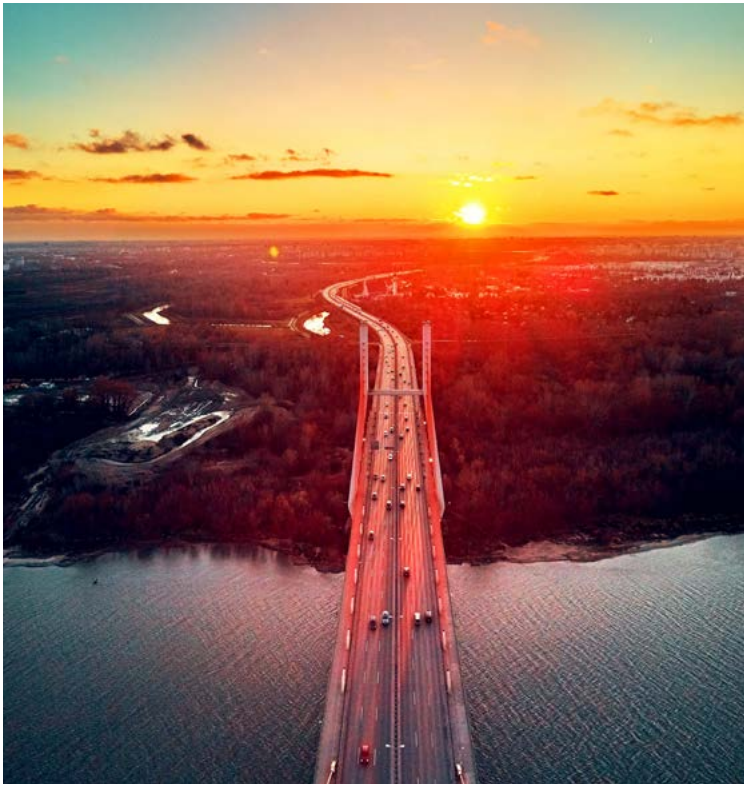
In which cases the supply of buildings, infrastructure or parts of buildings or infrastructure are generally subject to VAT (at prescribed tax rates).

Based on the VAT regulations, "the first occupation" means release for use to the first acquirer or first user or commencing use for the own purposes of buildings, infrastructure or their parts, after their:

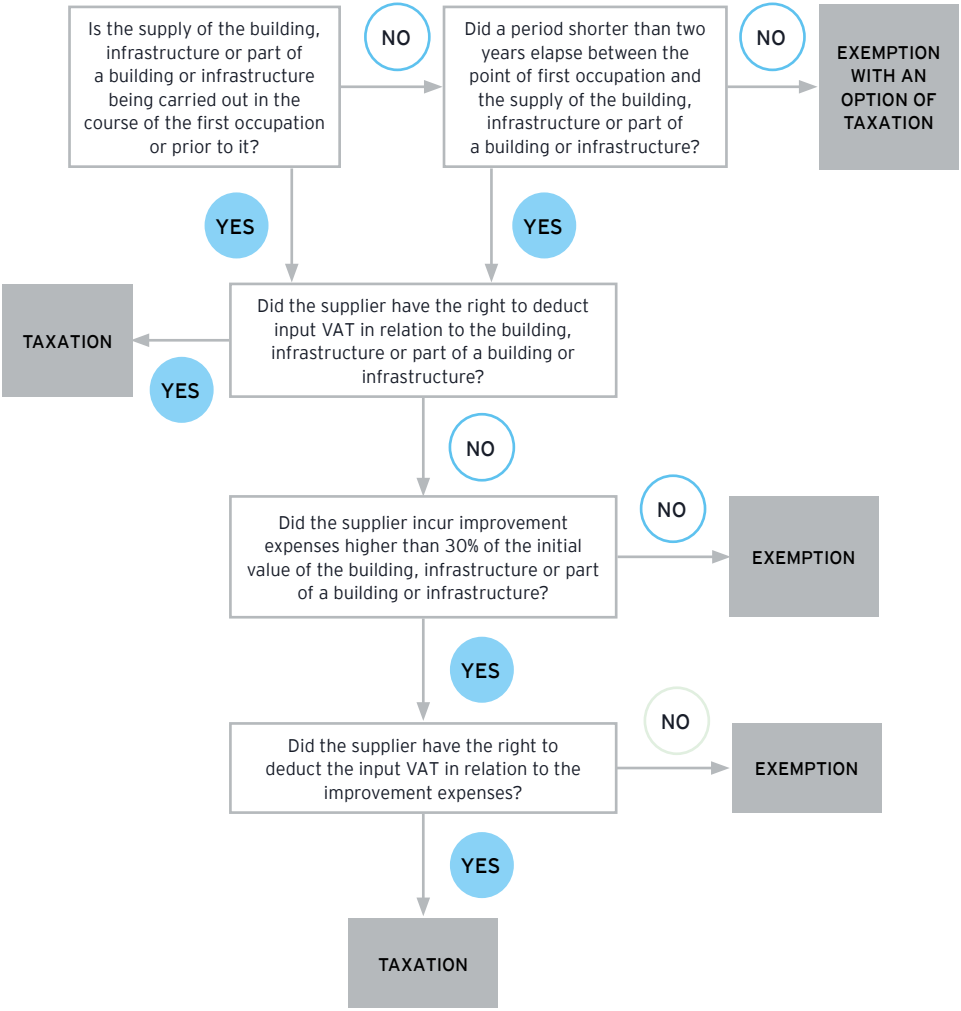
- Initial completion

or

- Improvement (if the expenses incurred for the improvement constituted at least 30% of the initial value) of that building, infrastructure or part of a building or infrastructure.



Warsaw – Siekierkowski bride over the Vistula river


Is the supply of the building, infrastructure or part of a building or infrastructure being carried out in the course of the first occupation or prior to it?
NO
Did a period shorter than two years elapse between the point of first occupation and the supply of the building, infrastructure or part of a building or infrastructure?
NO
EXEMPTION WITH AN OPTION OF TAXATION
YES
YES
TAXATION
YES
Did the supplier have the right to deduct input VAT in relation to the building, infrastructure or part of a building or infrastructure?
NO
Did the supplier incur improvement expenses higher than 30% of the initial value of the building, infrastructure or part of a building or infrastructure?
NO
EXEMPTION
YES
Did the supplier have the right to deduct the input VAT in relation to the improvement expenses?
NO
EXEMPTION
YES
TAXATION

According to the adopted definition, use of a building, infrastructure or part of a building or infrastructure for the own business purpose of the owner should be considered as first occupation (provided that the owner performed VAT-able activities).

Taxpayers may choose not to apply the exemption and charge VAT if:

- Both buyer and seller are VAT registered.
- Before the day of supply they submit the appropriate joint statement to the tax office of the purchaser or include such statement in the notarial act covering this supply.

The supply of buildings, infrastructure or parts of buildings or infrastructure which could not be subject to the above exemption (i.e., supply in the course of first occupation or within two years of the first occupation) must be VAT exempt (no option to tax allowed) if:

- The seller was not entitled to deduct input VAT.
- The seller did not incur improvement expenses on which he had right to deduct VAT, or such expenses did not exceed 30% of the initial value of the building, infrastructure or part of a building or infrastructure.

The diagram outlines VAT rules on the taxation of the supply of buildings, infrastructure or parts of buildings or infrastructure.

Generally, the VAT treatment of ownership title to land or a perpetual usufruct (RPU) over land follows the VAT treatment of the buildings and infrastructure developed on the land.

The supply of ownership title/RPU to undeveloped land qualified as land for development purposes under a local spatial development plan or in a zoning decision is subject to 23% VAT (supply of other types of undeveloped land is as a rule exempt from VAT).

If subject to VAT, the supply of real estate is mostly taxed with 23% VAT. However, the supply of residential buildings and separate apartments is subject to a reduced 8% VAT, except for part of residential buildings

whose usable floor space exceeds 300 m2 and apartments whose usable floor space exceeds 150 m^2. In such a case only the part of residential building and/ or apartment which fits within the above limits benefits from the 8% VAT rate, whereas the part exceeding the thresholds is subject to a standard 23% VAT rate. Depending on the legal case underlying the transaction, sale of a parking space sold jointly with the apartment but constituting a separate legal property, can be subject to a standard 23% VAT.

As a rule, VAT tax point arises at the moment of delivery of goods, usually on the day of signing of the sale agreement. The invoice should be issued by the seller no later than until the 15th day of the month following the month in which the VAT point arose.

If the supply of real estate is VAT exempt, it is subject to civil law transaction tax payable by the buyer. The applicable rate is 2% of the market value of the real estate.

If the business of the Polish company or part of its business is sold as a going concern, the transaction falls outside the scope of VAT. The assets of the business or part thereof will be subject to civil law transaction tax payable by the buyer at the rate appropriate for a particular item (2% for land, buildings and other tangible property, 1% for intangibles, potentially including also any goodwill that would crystallize on such a transfer).

As of 1 January 2024 there is a civil law transaction tax regulation pertaining to the purchase of multiple residential units constituting separate properties in one or several buildings constructed on a single plot of land, even if such are taxed with value-added tax. Namely, if the buyer has already acquired at least five such units or shares in them, the CLAT rate for the contract of sale concluded with the same buyer for the sixth and each subsequent such unit in this building or buildings, or share in such a unit is 6%. Consequently, those transactions may be subject to both VAT and CLAT.

Civil law transaction tax constitutes an additional cost of the transaction and is non-recoverable.

Although the Polish Ministry of Finance has issued a set of guidelines with respect to VAT/CLAT treatment of real estate asset deal transactions, a detailed analysis of each particular transaction is still recommended with this respect, as the guidelines are of rather general nature. Application for a tax ruling is still advisable.

Recoverability of input VAT

Input VAT is recoverable if the company uses or intends to use the purchased real estate for the purpose of activities which are subject to VAT and do not benefit from VAT exemption (e.g., lease of the commercial real estate). Otherwise, the input VAT will increase the initial tax basis of the real estate

If the buyer uses the real estate partly for the purpose of exempt activities, the recovery of any input VAT should be effected in line with the proportion of the net value of the taxed supplies to the total value of all supplies (a so-called pro rata recovery). During a calendar year, the proportion is calculated based on the volume of supplies made in the previous year. At the year end, the amount of deductions is adjusted to the actual percentage calculated for the whole year.

In the case of tangible or intangible assets subject to depreciation for tax calculation purposes, the percentage of input VAT which may be deducted is subject to adjustments over the period of 5 or even 10 years (in the case of real estate).

Calculation of the percentage of input VAT to be deducted is necessary only if it is not possible to match input VAT with taxed activities or exempt activities directly.

Taxpayers also need to take into account so-called preliminary pro-rata that limits input VAT recovery on purchases, if linked both with the economic activity of the taxpayer and other activities not related with business operations.

The recovered input VAT also has to be adjusted if the liability resulting from the invoice documenting the expense incurred is not settled within the specified deadlines (at this time 90 days counting from the payment

due date). As true in case of improper declaring of VAT, sanctions may apply also if no adjustment is made (i.e. additional tax liability of up to 30% of tax resulting from the not settled invoices, which has not been accordingly adjusted).

Date of input VAT recovery

The right to recover input VAT arises in the period when – with respect to the acquired goods or services – the tax point arose (i.e., in the period in which the services were rendered to, or the goods were acquired by the purchaser). It cannot be, however, recovered earlier than in the period in which the taxpayer receives the respective invoice. In case of prepayment invoices, they must be paid in order for input VAT to be reclaimable.

Direct refund of input VAT

A direct refund of any surplus input VAT should be made within 60 days of the submission of the application for the refund (the VAT return) on condition that the taxpayer performed VAT-able supply in the period for which the refund is claimed.

It is possible to get a refund of input VAT even if VAT-able supplies are not made in the period for which the refund is claimed. However, in such a case the period for the refund is extended to 180 days, unless a form of security, e.g., a bank guarantee is provided (in which case the refund should be made within 60 days).

An accelerated (40- or 25-day) VAT refund is also available under certain conditions.

Mandatory split payment

Mandatory split payment mechanism is applicable to B2B transactions. Buyers are obliged to pay the VAT amount into a dedicated bank account.

It is mandatory for certain goods and services (150 groups of goods and services classified according to the Polish Classification on Goods

and Services (PKWiU) codes listed in the appendix 15 to the Polish VAT Act), among others, payment for broadly understood construction services – regardless of the supplier's status, e.g., construction work on residential buildings (works on the construction of new buildings, reconstruction or renovation of existing buildings).

Mandatory split payment applies to invoices, documenting selected transactions, which gross value exceeds the equivalent of PLN 15,000. Referring to other transactions split payment still can be applied on a voluntary basis.

The invoices documenting transactions subjected to mandatory split payment should include the annotation "*mechanizm podzielonej płatności*" (i.e., split payment mechanism) and the seller and purchaser need to hold bank account with a Polish bank.

Additional sanctions for not being compliant with the split payment provisions for seller and purchaser have been introduced, e.g., penalty equal to 30% of the VAT resulting from the invoice, no right to treat the expense as tax deductible cost for CIT and PIT purposes, penal fiscal sanctions.

The white list of taxpayers

The white list of VAT taxpayers is a record of entities for VAT purposes that is held by the head of the National Revenue Administration and includes information on entities:

- Registered as VAT payers.
- That have been refused VAT registration or were deregistered by the tax authorities.
- Whose VAT registration has been restored.

The white list is available online free of charge and is meant to allow taxable persons to verify data related to VAT registration of other taxable persons (up to 5 years back).

The register discloses (Polish) bank accounts reported by the taxpayers.

Generally all payments regarding transactions above PLN 15,000 should be made only to the taxpayer's bank account indicated in the white list. Otherwise, the taxpayer:

- Will not be entitled to include the expenses incurred as tax deductible costs.
- Will be jointly and severally liable for the supplier's tax arrears – in the part of VAT attributable to a given transaction.

In such a case sanctions could be avoided only by:

- Sending notification to the head of the tax office about transfer to the off-list bank account within 7 days of the transfer being made.
- Making payment using the split payment mechanism (but then only VAT sanction will be avoided).

In practice white list of taxpayers may consequently oblige taxpayers to verify each time whether a bank account provided by a contractor for the purpose of making a payment appears on the white list.

The SAF-T

The SAF-T is an electronic document containing the VAT register (information on purchases and supplies) and the VAT declaration for a given period. In this format it is obligatory for entrepreneurs as of October 2020 VAT settlements.

Moreover, some additional information needs to be included in SAF-T (i.a. a code system of goods and service groups, indication of selected sales and purchase documents).

The law provides also for penalties for errors in SAF-T (a potential fine of PLN 500 for each error which makes electronic cross-check more difficult or impossible for tax office).

Share deal

A capital gain on the sale of shares is subject to Polish corporate income tax at the standard rate of 19%. Any capital gain from the sale of shares should be allocated to the capital gain basket and hence could not be offset against costs allocated to revenue from general business activities basket (see diagram listing the items allocated to capital gains).

Income from capital gains shall include, among others:

- Income from sharing in profits of legal persons or other companies, including, e.g., dividends, income from investment funds, income from redemption of shares, payments received as a result of a merger or demerger, interest on participation loans, etc.
- Income arising from in-kind contributions.
- Other income from participation in legal persons or other companies, including income from the sale of shares, redemption or gains from a share-for-share exchange.
- Income from the sale of certain receivables.
- Income earned from property rights (e.g., royalties, know- how, copyrights), securities and financial derivative instruments, etc.

Requirement to keep accounting records specifying revenues and costs for tax purposes, broken down by two types of sources (capital gains and other sources).

If the selling party is a foreign shareholder, the applicable tax treaty influences the tax implications of such a transaction. Significant part of Polish tax treaties (e.g., with Spain, France, Denmark, Sweden, Germany, Luxembourg etc.) provide that a sale of shares in a company holding mainly real estate assets should be regarded as a sale of real estate. Consequently, income earned on the sale of shares in the Polish company will be taxed in Poland (the so-called Real Estate Clause).

Poland has implemented Multilateral Instrument Convention (MLI) on the basis of which most of tax treaties concluded by Poland may be equipped with Real Estate Clause and Principal Purpose Test. Verification of the current status of implementation of each such amendment under MLI is highly recommended.

The status of implementation of MLI may be monitored using OECD tool (currently beta version) on OECD website (link: https://www.oecd.org/tax/treaties/mli-matching-database.htm).

The sale of shares in the Polish company is subject to a 1% civil law transaction tax (on the fair market value of shares) payable by the buyer. This is irrespective of where the transaction takes place or where the parties to the transaction are resident for tax purposes. A share transaction is generally not subject to Polish VAT.

Costs which must be incurred in order to acquire shares (e.g., purchase price and notary public fees) may be recognized as tax deductible costs upon the sale of shares.

So far, other costs indirectly connected with acquisition of shares such as financing costs were in practice recognized as tax deductible costs when incurred. Due to the introduction of income baskets, the financing costs related to the acquisition of shares should in principle be allocated to capital gain basket (unless the acquisitions of shares has been, partially, carried out in order to generate revenue from sources other than capital gains) and as a result, would not provide a tax shield against the taxation of operating profits.

CFC Rules

CFC is defined as:

1. A foreign entity (including i.a. company, partnership, tax capital group, trust, foundation, branch) seated in a tax heaven (as officially blacklisted by the Polish Ministry of Finance) or
2. A foreign company (including i.a. company, partnership, tax capital group, trust, foundation, branch) having its seat or place of management in the country other than mentioned in point 1), with which:
   a) Poland has not concluded and ratified an international agreement, in particular double tax treaty, or
   b) EU has not concluded and ratified an international agreement being a basis for requesting tax information from tax authorities of that country, or
3. A foreign company which jointly fulfills the following conditions:
   a) The Polish taxpayer has on its own or together with other related entities or other Polish entities directly or indirectly over 50% of shareholding or over 50% of votes in managerial, governing or supervising bodies of the CFC or over 50% stake in profits of CFC.
   b) At least 33% of annual revenues of the CFC consist of the following income:
      - Dividends and other income from sharing profits of legal persons.
      - Disposal of shares, receivables.
      - Providing the following services: advisory, accounting, market research, legal, marketing, management, control, data processing, personnel recruitment and other services of a similar nature to any of these.
      - Lease, sub-lease and other contracts of a similar nature.

- Interest or benefits from all types of loans, securities or guarantees.
- Interest part of leasing rates.
- Copyrights or intellectual property rights – including disposal of such rights.
- Disposal or exercise of rights from derivatives.
- Transactions with related parties if the company does not create value added in economic terms or such value is marginal.

c) Tax actually paid by the CFC is lower by at least 25% of the tax that would be due if the company was a Polish resident and the tax actually paid by the company in its country of residence; whereas tax actually paid means tax that should not be refunded or credited in any way, or

4. Foreign company which jointly fulfills the following conditions:

a) The Polish taxpayer has on its own or together with other related entities or other Polish entities directly or indirectly over 50% of shareholding or over 50% of votes in managerial, governing or supervising bodies of the CFC or over 50% stake in profits of CFC,

b) Tax actually paid by the CFC is lower by at least 25% of the tax that would be due if the company was a Polish resident and the tax actually paid by the company in its country of residence; whereas tax actually paid means tax that should not be refunded or credited in any way,

c) Revenues of the CFC enlisted in point 3 letter b) above are lower than 30% of the sum of the following assets:

- Shares and other rights in profits of legal persons.
- Real estate or movable property owned or jointly owned by the taxpayer or used by him under a leasing contract.

- Intangible assets.
- Receivables from the titles referred to in point 3 (a). b, to related entities.

d) The above assets constitute at least 50% of the assets of the CFC (excluding shares in other companies with no seat or management in Poland which do not own, directly or indirectly, shares in a company with its sear or management in Poland), or

5. A foreign company which jointly fulfills the following conditions:

a) The Polish taxpayer has on its own or together with other related entities or other Polish entities directly or indirectly over 50% of shareholding or over 50% of votes in managerial, governing or supervising bodies of the CFC or over 50% stake in profits of CFC.

b) The income of the CFC exceeds the income calculated according to the formula: (b + c + d) × 20% where letters stand for:

b – The book value of assets.

c – Annual employment costs of the CFC.

d – Accumulated (summed up) current value of depreciation within the meaning of the accounting regulations.

c) Less than 75% of the revenue of the CFC comes from transactions with unrelated entities having their place of residence, seat, management, registration or location in the same country as this CFC.

d) Tax actually paid by the CFC is lower by at least 25% of the tax that would be due if the company was a Polish resident and the tax actually paid by the company in its country of residence; whereas tax actually paid means tax that should not be refunded or credited in any way.

CFC provisions should not apply in the case where the CFC, which is subject to taxation on its total income in one of the EU/EEA Member States, carries out actual significant business operations in this state. The Polish companies are obliged to hold registers of the CFC companies.

MDR (DAC-6)

Tax arrangements are reportable within 30 days (in some cases 5 days) after the day when the scheme is: (i) available for the client, (ii) ready for implementation, or (iii) started, whichever is sooner. Based on the clarifications passed by the Polish Ministry of Finance, as transactions subject to reporting obligation would be counted especially transactions related to transfer of enterprise or share deals in case the taxpayers exceeds certain thresholds.

The Polish legislation extends the scope of the reporting required under the Directive to include:

- An extended definition of reportable tax arrangements to comprise not only cross-border but also domestic tax arrangements. The Polish regulations also contain an extended catalogue of hallmarks in comparison to required by the Directive.
- A wider definition of covered taxes including VAT (with respect to the domestic tax arrangements).

Additionally, each individual/company/entity implementing/using reportable tax arrangement or obtaining a tax benefit resulting from this arrangement might be potentially required to report this fact to the tax authorities.

MDR–3 reporting

Taxpayers who during the tax period (in case of VAT it will usually be a month) performed any action, being a part of a tax arrangement, or obtained a tax benefit as a result of such tax arrangement, must fulfil the reporting obligation by providing information on the utilization of a tax arrangements – MDR–3 form – to the tax authorities.

MDR information regarding implemented/used reportable tax arrangement or obtained tax benefit resulting from this arrangement must be signed by each member of the Management Board of the reporting entity.

MDR penalties

Intermediary entities or those employing intermediaries or actually paying them remuneration, whose revenues or costs exceeded in the year preceding the financial year the equivalent of PLN 8m (approx. €1.88m) are obliged to introduce and use an "internal procedure" for MDR. In the event of failure to meet the above obligation, the tax authorities may impose a financial penalty in the amount not exceeding PLN 2m (approx. €470k).

Monetary penalties in specific situations (for not complying with MDR obligations) can amount up to approx. PLN 45m (approx. €10.6m), based on the Polish Fiscal Code.

In the case of conviction of fiscal offenses related to not complying with the reporting obligations, the court may additionally prohibit the conducting of specific business.

Gdańsk - view of the Motlava river

2.5 Development and construction

2.5.1 Legal aspects

Land development issues

Land development issues are important for real estate investors, as they determine the possible method of investing in a given area. Regulations on land development may influence the shape of the planned building, but sometimes they also prevent the investor from the investment.

Legal background

Currently only a part of the territory of Poland is covered with local spatial development plans, mostly within the boundaries of bigger cities.

The two main spatial planning and development acts determining land development within a given municipality (commune) are the spatial development conditions and directions study and the local spatial development plan. However, from investors' perspective, the local spatial development plan is of higher importance, as it determines their rights and obligations, while the spatial development conditions and directions study binds the local authorities only. In the case where no local spatial development plan has been adopted for a given area, the investor may apply for a decision on land development and management conditions (hereinafter referred to as the zoning decision). Where a building permit is required for an investment, either a local spatial development plan or a zoning decision are required to start the development of the real property, since, as a rule, no building permit may be issued without them.

The procedure for adopting a local spatial development plan is rather complex and time consuming as the draft local spatial development plan is subject to „public consultation" with the parties concerned, as well as opinions issued by the relevant administrative bodies.

The provisions of the local spatial development plan are crucial for investors, as the planned development of the plots covered by such a plan must comply with its provisions, in particular, regarding the distance of a building from the plot's border or the height of a building. Sometimes the provisions of a local spatial development plan may render the development of the given plot impossible.

Moreover, in certain cases the legal provisions provide that selected investments are implemented solely based on local spatial development plans. This relates to i.a. large-format retail units or windfarms.

Therefore, to be able to implement their investment plans, sometimes investors start a procedure of amending the local spatial development plan, which may prove to be rather time consuming.

As a result of so called Spatial Reform, described in details in Section about recent changes to Law on Spatial Planning and Development above, new spatial planning tools such as general plans, Integrated Investment Plans or urban planning agreements, will be applied.

Zoning decision

In the case where no local spatial development plan has been adopted for the given area, an investor may apply for a zoning decision, which sets out all the required conditions for the development of that area. Before the building process is started on the given plot under a building permit, the plot must be covered either by a local spatial development plan or by a zoning decision (therefore, it can be said that a zoning decision substitutes a local spatial development plan for an investor).

A zoning decision is issued by the governing authority of the commune. The procedure for issuing zoning decisions includes performance of a zoning analysis by the local authority's architecture department and it may, therefore, take even up to several months.

If a local spatial development plan is being adopted for a real property, zoning decisions related to this area expire if the provisions of the local spatial development plan differ from those of the zoning decision. However, this shall not happen if a final building permit has already been issued for the real property in question. Therefore, in the case where there is no local spatial development plan for a given real property, prior to investment planning the investor should monitor the stage of works related to the local spatial development plan and should learn if it is possible to acquire a final building permit before the local spatial development plan is adopted.

An application for a zoning decision may be filed with the relevant authority even when the applicant does not hold any title to the land in question. A zoning decision may be transferred to third parties.

This means that investors may use a decision issued for the seller of a real property, as they do not have to apply for the decision once again after acquiring the real property (the investor only applies for the transfer of such a decision to himself). Investors may also apply themselves for such a decision before deciding on the investment.

As a result of so-called Spatial Reform, described in details in Section about recent changes to Law on Spatial Planning and Development above, currently issued for an indefinite period, zoning decision will be issued for five years only starting from 1 January, 2026.

Building permit

A building permit is an administrative decision issued by a local authority (starosta or mayor in bigger cities) which allows an investor to start the development process on the site.

The documents attached by the investor to the application for a building permit should include, in particular, a declaration of having legal title to use the real property for construction purposes. Moreover, the application must also enclose approvals of the local authorities responsible for local infrastructure, in particular utilities, roads, environmental protection and sewage treatment. The building permit

will only be granted if the construction design is consistent with the assumptions of the local spatial development plan or zoning decision as well as with the regulations governing technical conditions for the development.

As a general rule, a building permit expires either if construction works have not been started within three years of the date on which the permit became final or if construction works have been discontinued for more than three years.

Not all construction works require a building permit. Construction of certain structures which are listed in the Building Law of 7 July 1994 (hereinafter referred to as the Building Law) may be commenced upon a notification sent to the relevant authorities if no objections have been raised by them within 21 days of the notification date.

The notification procedure pertains however generally to minor construction works or developing some of residential (single family) buildings.

Usage of the building

Depending on the individual case, the use of a building or structure after its completion requires either notifying the construction supervisory authorities that construction works have been completed or acquiring a permit for use.

In the case where only a notification is required, under the general rule the investor may occupy and use the building or structure if no objection has been raised by the authorities within 14 days of the date of notification.

In cases where a permit for use is required, the building may be occupied only after the decision granting the permit for use is granted. The granting of a permit for use is preceded by a technical inspection of the building or structure to confirm that all construction works have been performed in compliance with the terms and conditions of the building permit as well as technical requirements.

Occupying a building in breach of the above mentioned regulations may result in a fine.

Environmental issues

The building process has many environmental aspects that must be taken into account. The Polish law provides that an environmental decision must be obtained prior to obtaining a zoning decision and a building permit for the given project. Pursuant to the Polish law, from the environmental law point of view, the investments are divided into two groups:

- Projects that always have significant impact on the environment.
- Projects that may have significant impact on the environment.

Environmental decision must be preceded by the environmental impact assessment proceeding (which includes preparation of environmental impact assessment report) in case of projects that always have significant impact on the environment (i.a. parking lots, buildings of a particular size etc.). However, the environmental impact assessment proceeding may be also ordered by the authority issuing the environmental decision in relation to projects that may have significant impact on the environment.

Despite of the fact that environmental impact assessment is carried out at the stage of issuing the environmental decision, it may also be repeated (in certain circumstances) at the stage of issuing a building permit.

Environmental impact assessment is a legal instrument that allows to determine the effect of the planned investment on the environment (i.e., water, land and air quality as well as impact on flora and fauna). Environmental impact assessment proceeding, beyond the identification of specific impacts that the proposed project may have on the environment, concentrates on the ways to prevent and minimize the effects of the planned project.

Pursuant to the Polish law, authorities must inform the general public about the environmental impact assessment proceeding and allow the general public to submit comments and recommendations to the proceeding.

Moreover, Polish law in certain circumstances allows a broad access to the environmental impact assessment proceeding to non-governmental environmental protection organizations.

Environmental decision may be transferred (as well as the building permit issued on the basis of a zoning decision).

Energy efficiency

The EU regulations within energy efficiency of buildings, are ambitious, so is the polish legislation keeping up with the newest directions.

Starting January 2017, the real estate market is challenged with a new values of EP energy ratio for newly built buildings and some of the coefficient U factors for thermal transmittance of external walls of buildings. The new law, incorporated back in 2014 is entering into force gradually in order to make polish legal system compliant with the European Directive on the energy performance of buildings, according to which, until 31 December 2020 each and every newly built building shall be nearly zero-energy. Starting from 1 January 2019, nearly zero-energy performance requirement applies to all buildings owned or occupied by the public authorities.

Starting from 1 January 2026, it is planned to introduce a methodology for determining the energy performance of buildings and a method for preparing and establishing templates for energy performance certificates for buildings or their parts, which should be provided during real estate transactions (please refer to the section "*Changes and potential changes of the real estate law in 2025 and 2026*").

2.5.2. Construction issues

Legal framework for construction works contracts

The Civil Code includes provisions which establish the legal framework for construction works contracts. Most of those provisions are general in nature and enable contracting parties to structure the construction works contracts in a way that addresses their particular business needs. Such a flexible legal framework allows the parties very often to use international standards for construction works contracts, including the popular FIDIC forms. However, not all the provisions of international standards for construction works contracts comply with the requirements of the Civil Code and the Building Law.

In particular, a more detailed analysis should be performed with respect to contractual clauses regarding statutory warranty periods, contracts with and liability toward subcontractors as well as contractor's payment guarantees. Below we present the key legal regulations in these areas.

Statutory warranty periods

Under the Polish law, the statutory warranty period for acquired real estates, including buildings is five years from the property's hand-over date. The above mentioned statutory warranty period of five years applies also in the construction works contracts.

Liability toward subcontractors

Based on Civil Code provisions, the investor is severally liable with the general contractor for the payment of remuneration due to the subcontractor for the construction works performed by the latter, the detailed description of which was notified to the investor prior to the commencement of such works. The liability of the investor does not occur if, within 30 days from the date of such notification, the investor objects to such works.

Such notification will not be required in case the investor and the contractor determine the scope of works to be performed by the designated subcontractor in the written agreement.

Thus, the investor is liable for payment for only such works, which were duly notified to him prior to their commencement.

Additional security for the investor constitutes the fact that the said notification must be made in writing (accordingly, such form is also required for the investor's objection).

Moreover, the said liability of the investor toward the subcontractor will be limited to the amount due to the subcontractor under his agreement with the general contractor, unless such amount exceeds the remuneration due to the general contractor for the works included in the notification.

Contractor's payment guarantee

One of the inconveniences for investors signing construction works contracts is the obligation to grant a payment guarantee to the general contractor.

Under this obligation a general contractor is entitled to a statutory claim against the investor for a payment guarantee up to the maximum amount of the contract value, and the obligation to provide guarantee will not be fulfilled even if the guarantee is admittedly established, but is not issued to the contractor, or is admittedly issued, but its content does not comply with the claim, i.e., for example, it limits the contractor's claim in some way. The investor may satisfy the general contractor's claim by issuing a payment guarantee in the form of a bank guarantee, an insurance guarantee, a letter of credit or a bank's suretyship. The statutory claim for a payment guarantee may be raised at any time and can be extended to include the value of any additional works agreed in writing during the term of the construction works contract.

Construction design contracts

One of the key elements of the building process is drawing up a construction design. A construction design is a formal requirement for obtaining a building permit for most of building investments. Under the Polish law a construction design must be drawn up and signed by a certified architect, who takes responsibility for the technical aspects of the construction. The architect should prepare a design under a contract for architectural services which, depending on its scope, may either transfer the copyright to the construction design to the investor or provide the investor with the right to use the construction design for the purposes of the relevant investment.

It is worth mentioning that a contract for architectural services may include various restrictions with regard to the copyright or the use of the design. Such restrictions may be crucial for the investment development process, in particular when they regard the possibility of entering modifications to the construction design or transferring the copyright to other entities.

Public procurement contracts

General overview

Thanks to several EU funding programs every year Polish authorities have billions of euros at their disposal to be spent on development. A considerable part of this funding will be designated for infrastructural projects, in particular road and railway infrastructure. For this reason, many of the infrastructural investments developed on the Polish market will be carried out under public contracts.

Poland, as one of the EU Member States, was obliged to implement regulations governing public procurement proceedings. The provisions of EU directives on public procurement were implemented to the Public Procurement Law, which constitutes the legal framework for this matter in Poland. The Public Procurement Law is supplemented by additional legal acts which relate in particular to public–private partnership and licenses for construction works and services.

The main goal of public procurement regulations is to establish clear and competitive rules and procedures for awarding public contracts to the suppliers of works and services as well as to provide measures for supervision over the public authorities awarding public contracts. The key objective of the Public Procurement Act is to ensure that public contracts are awarded while applying equal treatment to all entities taking part in tender proceedings as well as to ensure impartiality and objectivity of the final decision.

Procedure

Under the Polish public procurement regulations there are numerous different procedures for awarding public contracts. The ones that are most commonly applied are open tendering and limited tendering. Both procedures must be followed by a public notice. Notice on contract performs the aim of providing proper implementation of the rule of equal treatment in the very beginning of the procedure. The obligation of publishing a notice also provides non-confidentiality and transparency of the applied public contract systems.

In general, open tendering is a simple procedure, meaning that entities familiarize themselves with the information in the notice and in the terms and conditions of the contract and, if they are interested in submitting tenders in such procedure, they submit a tender which shall then be evaluated by ranking.

Under limited tendering procedure, entities interested in being awarded a public contract submit requests for participating in the tender and the awarding party decides which bidders may submit their proposals. Other public procurement procedures such as competitive dialogue, negotiated procedure with publication, negotiated procedure without publication, single source procurement, request for quotations, innovative partnership or electronic auction can only be applied under specific circumstances stipulated in the binding law.

A similar course of action should be applied to the above main types of the public procurement procedure. Each of them is comprised of pre-qualification, submission of proposals and selection of the

winning tenderer phases. In the pre-qualification phase the awarding party sets out the requirements/criteria to be met by the tenderers. Based on the specific requirements/criteria, tenderers draft their proposals and submit them to the awarding party. In the proposal each tenderer demonstrates its compliance with tender requirements by referring to its competencies, such as experience, knowledge and financial capacity to perform the contracted work. After reviewing all submitted proposals the awarding party selects the best tenderer with whom the public contract is to be signed.

However, this is not necessarily the end of the public procurement process as there is a possibility of appealing against the decision of the awarding party. In practice, the appeal procedure is quite commonly used by the tenderers who lost a public contract, which often results in delays in the completion of the investment project concerned.

2.5.3. Tax implications

Tax treatment of the construction costs

Costs related to construction process and accrued prior to putting the assets into use form the initial value of the real estate and are recognized as tax deductible cost through depreciation write-offs or upon sale.

Costs related to future operation/exploitation of the assets should be recognized for tax purposes based on general rules.

VAT and the construction process

During the construction process, the most important tax to be considered is VAT. The standard rate of VAT in Poland is 23%. A reduced VAT rate of 8% applies to the construction of residential houses/ apartments except for part of residential buildings where the usable floor space exceeds 300 m^2 and apartments where the usable

floor space exceeds 150 m^2. In such cases only construction of the part of the residential building and/or apartment, which falls within the above limits, benefits from 8% VAT rate, whereas construction of the part exceeding the thresholds is subject to standard 23% VAT rate.

Purchases the investor needs to make during construction will typically include Polish VAT. This input VAT could be deducted from the output VAT that the investor has to pay to the tax authorities as a result of his business activities. As the construction process usually takes a considerable period of time and requires the availability of substantial financial resources, it is essential that the input VAT paid is recovered during this process. Rules of VAT recovery and refunds are presented in section 2.4.3. However, during the construction process the typical situation is that the company has to cover high input VAT (resulting from purchase invoices), but no output VAT is recorded. Therefore, specific rules need to be observed to ensure the recoverability of input VAT paid during the construction process.

As a rule certain construction services (listed in the Appendix 15 to the VAT Act) are now subject to mandatory split payment mechanism (see the part "Mandatory split payment").

Services of foreign contractors

The place of the supply of services (i.e., the place in which services are deemed to be rendered and should be taxed accordingly) depends on the nature of a particular service. Under the general rule, services rendered to a VAT taxpayer (or a legal person not being a VAT taxpayer) occur where the service recipient is located. However, services connected with real estate are generally taxed where the real estate is located, i.e., in Poland. Services connected with real estate include construction works, services of architects and firms providing on– site supervision and the services of real estate agents and property appraisers.

If the place of supply of a particular service is Poland, it is possible (or in some cases even mandatory) for a foreign construction company to register in Poland as a VAT-payer. This implies that the foreign company generally will itself be liable for Polish VAT. The recipient

of the services can recover the VAT paid to the service provider as input VAT under the general rules.

If services are deemed to be rendered in Poland and the foreign service supplier does not register and account for Polish VAT on his invoice, the Polish based recipient (in this case the real estate company having its registered address of fixed establishment in Poland) must self- assess the VAT due under the reverse charge mechanism. This VAT can then be declared by the recipient as input VAT (general input VAT deduction rules apply) and be – as a rule – deducted from the output VAT. Such a deduction may be made in the same period in which the output VAT on importation of services was recognized provided that the acquirer includes the amount of output VAT in a VAT return, in which he is obliged to settle the tax (which means that the company should as a rule not suffer adverse cash flow effect).

Taxes due on imported goods

Imported goods are always subject to import VAT when they cross the EU border (or in the EU destination country when the goods are transported under a special customs procedure). This VAT is calculated based on the customs value of the goods increased by the custom duties. It is possible to offset this input VAT against output VAT in accordance with the general VAT rules. Typically, the VAT rate is 23%.

Import VAT can be settled without the need for an upfront cash payment (i.e., through the VAT return rather than being paid directly to the customs office) and thereafter reclaimed – this mechanism is sometimes referred to as „postponed accounting for VAT".

The regulations concerning imports do not apply if goods are transported from another EU Member State. Such a transaction is as a rule classified as an intra-Community acquisition and is subject to VAT accordingly. In such case the company is obliged to self- assess VAT on the acquired goods at the rate appropriate for them (usually 23%). At the same time self- assessed tax is treated as input VAT and deducted (under general input VAT deduction rules) from output VAT in the same month in which it has been incurred, provided that the acquirer is in

possession of a purchase invoice and includes the amount of output VAT in a VAT return, in which he is obliged to settle the tax, within the specified deadline.

No excise tax is due on typical construction equipment and materials.

Taxation of a foreign construction company

In some cases it is not necessary for a foreign construction company to do business through a Polish company. The construction work can be performed in Poland directly by the foreign entity. In this case the question arises as to whether the foreign company is subject to Polish income tax on the revenues generated from the construction work. Poland is indeed allowed to tax this income at a rate of 19% (or 9% if the company's yearly income is less than €2m) if the activities of the foreign company constitute a permanent establishment in Poland.

Whether or not the given foreign construction company has a permanent establishment is determined by the relevant tax treaty which Poland has concluded with the country in which the foreign company is based. In general, a construction site becomes a permanent establishment once the duration of the construction works exceeds a certain period of time. Usually this period is 12 months (unless provided otherwise under a relevant tax treaty). If the work is finished within 12 months, then no permanent establishment has been created. If the construction period takes longer, then a permanent establishment is recognized and the income derived from the work is subject to Polish income tax. It should be remembered that in such cases the permanent establishment is deemed to exist from the start of the construction activities in Poland. Standard rates and tax rules are applicable to determine the tax due.

If the activities of a foreign company in Poland extend significantly beyond a single contract, the company may be required to set up a branch. Setting up a branch will most likely lead to the creation of a permanent establishment in Poland.

Under the Multilateral Instrument Convention (MLI) which was signed by Poland, Poland excluded the changes to the articles related to permanent establishment though, including, e.g., provisions directly addressing cases where the construction works are artificially split into various stages to avoid permanent establishment status. Further developments in this respect should be closely monitored.

The status of implementation of MLI may be monitored using OECD tool (currently beta version) on OECD website (link: https://www.oecd.org/tax/treaties/mli-matching-database.htm).

Gdynia – the harbour with modern architecture

2.6 Operation and exploitation

2.6.1. Legal aspects

2.6.1.1. Introduction

According to the Civil Code, parties of the contract may benefit from the principle of freedom of contracts, which gives them an opportunity to modify the statutory types and provisions of the civil contract. However, there are some mandatory provisions and limitations, which have to be considered by the parties. Among all types of property exploitation agreements, the below are the most common for the Polish real estate sector.

2.6.1.2. Lease agreement (najem)

Under the lease agreement the lessor grants to the lessee the right to occupy premises (office, residential etc.) in exchange for the payment of rent. In general, everything that can be subject to the ownership right, may be also subject to this agreement, nevertheless in case of real estate, the more strict provisions may apply.

Duration

The duration of a lease agreement may be definite or indefinite. As a general rule, commercial agreements are concluded for definite terms of 5 to 10 years, with the prolongation option.

The duration of a lease agreement may be freely fixed by the parties, however, there are certain restrictions. The lease agreement concluded for a period longer than ten years, is, after this period, deemed to have been concluded for an indefinite period of time. The rule above

is different for the lease agreements concluded between entrepreneurs. In this case the lease agreement concluded for a period longer than thirty years is deemed to have been concluded for an indefinite period of time after the 30 years' period has passed.

Rent

Paying rent is the principal obligation of the lessee. The lessee is obliged to pay rent within the agreed time.

Special clauses in the lease agreements:

Security

Money deposit

Promissory note

Bank guarantee

Maintenance and expenditures settlement

The lessor should hand over the property to the lessee in a condition fit for the agreed use. It should be maintained by the lessor in this condition throughout the lease term. Minor repairs connected with the normal use of the property should be fixed by the lessee, unless the lease agreement provides for otherwise. If the subject of lease is destroyed due to circumstances for which the lessor is not responsible, he is not obliged to restore it. If, during the lease period, the property requires repairs which encumber the lessor, the lessee may set the lessor an appropriate time for repair.

Subletting and disposal of the leased property

The general rule is that the lessee may hand over the property or part of it to a third party for free of charge use or sublet it, if the lease agreement does not forbid it. However, when the subject of lease constitutes premises or retail areas, hand over the property or part of it to a third party for free of charge use or sublet it requires the lessor's consent.

The leased property can be disposed of during the lease period. In this case the acquirer becomes a party to the lease agreement as a lessor in place of the seller. The approval of the lessee is not required. The new owner may terminate the lease agreement retaining statutory notice periods. However, the new owner does not have a right to terminate the lease agreement if it is concluded for a definite period, in written form with an authenticated date (Polish: *data pewna*) and the subject of lease has been delivered to the lessee. If, because of the lease agreement being terminated by the acquirer of the leased property, the lessee is forced to return the leased property earlier than he would have been obliged to under the lease agreement, he may demand compensation from the seller.

Security

Lessors often use the special clauses in the lease agreements to secure their potential claims to lessees such as money deposit, promissory note, surety and bank guarantee.

- Money deposit – it is a sum of money submitted by the lessee in order to secure the lessor's potential claims in case of non-fulfillment of the lease agreement or damages caused by the lessee.
- Promissory note – promissory note issued by the lessee is an effective way to protect the lessor's potential claims.
- Surety – in the contract of surety, the guarantor undertakes to perform certain obligation of the lessee toward the lessor if the lessee does not perform them, mostly this refers to the payment of due amounts. The liability of the guarantor is equivalent, not subsidiary.

This means that the lessor may request a payment from both the lessee and the guarantor.

- Bank guarantee – it is a unilateral obligation of the guarantor's bank, according to which the bank will provide funds to the beneficiary of the guarantee – the lessor, if the lessee does not fulfill its obligation. The parties of the lease agreement typically determine a period that has to elapse from the payment due date and after which the lessor has the right to execute a bank guarantee.

Termination

A lease agreement concluded for an indefinite period of time may be terminated by any party with a prior notice of termination (its length is in practice defined in the lease agreement). The statutory period of notice of termination for the lease agreement concluded for an indefinite period of time is as follows:

- If the rent is due for a period longer than a month – three-month notice applies.
- If the rent is due every month – one- month notice applies.
- If the rent is due for a period shorter than a month – three-day notice is sufficient.
- If the rent is due for one day – the contract can be terminated one day in advance.

The lease agreement concluded for a definite period of time may be terminated only in cases specified in the contract.

However, the Civil Code stipulates that the parties can terminate the lease agreement immediately if certain conditions defined by the above mentioned Code occur. This applies to contracts concluded for both definite and indefinite period of time:

- If the subject of lease has defects that make it impossible to use it in the way defined in the lease agreement at the time of handover of premises, or if the defects occur later and the lessor does not,

despite receiving a notice, remove them in an appropriate time, or if the defects cannot be removed. In such case the lessee may terminate the lease agreement without notice.

- If the lessee does not pay rent for longer than two full payment periods. In such case the lessor may terminate the lease agreement without notice (in case of lease of premises or retail areas, before termination, the lessor is obliged to warn the lessee in writing by giving him an additional one-month period to pay the overdue rent).
- If the lessee uses the leased premises contrary to the terms of the agreement or their purpose and, despite a warning, does not cease to do so, or if a lessee neglects it to such an extent that the leased premises are likely to be damaged – the lessor may terminate the lease contract without notice.

Agreement for the lease with the right to collect profits (dzierżawa)

By a lease agreement with the right to collect profits, the lessor commits to hand over a subject of lease to the lessee's use and collection of profits for a fixed or a non-fixed term. In exchange, the lessee commits to pay the agreed rent. Such agreement gives not only the right to use the property but also to collect benefits from it, which is why the lease with the right to collect profits agreement usually concerns land.

The duration of an agreement may be definite or indefinite. However, the agreement for a period longer than one year should be concluded in writing, otherwise it is considered to be concluded for an indefinite term. Agreement executed for a longer period than thirty years is deemed to be concluded for a non-fixed term, after this period passes.

Under the Civil Code, if the rent payment period is not specified in the contract, rent is payable in arrears on the date customarily accepted, and in the absence of such custom, semiannually in arrears. If the lessee defaults in payment of rent for at least two full payment periods and,

in the case of rent paid annually, he defaults in payment for over three months, the lessor may terminate the lease with the right to collect profits without notice. However, the lessor should warn the lessee by giving the lessee an additional three– month period to pay the overdue rent.

The lessee is responsible for the costs of all repairs to the extent necessary to keep the subject of lease with the right to collect profits in the same condition. However, the parties are able to modify this rule in the lease with the right to collect profits agreement. There are also some differences between a lease agreement and a lease with the right to collect profits agreement in the field of subletting a property. The lessee cannot sublet the property without the lessor's consent. If the above obligation is violated, the lessor may terminate the lease with the right to collect profits agreement without notice.

This type of agreement is particularly popular for renewable energy investments, such as for the construction of photovoltaic or wind farms.

2.6.2. Tax implications

Income subject to tax

Taxable income comprises the entire income generated from business activities (trade or services). Taxable income is calculated on the basis of accounting records prepared in accordance with Polish accounting standards after significant adjustments relating to the tax base. Taxable income is as a rule recognized for tax purposes on an accrual basis. The applicable tax rate is 19% (or 9% for "small taxpayers" whose annual revenue does not exceed €2m). The reduced rate is not available for entities created as a result of restructuring.

Calculation of taxable income

Taxable revenues minus tax deductible costs constitute the tax assessment base. Polish tax law provides for separate income basket for capital gains and disallowing the offsetting of capital gains or losses against other sources of income. This mean that any qualifying capital gain could be offset only against costs allocated to capital gain basket. It will be required to keep accounting records specifying revenues and costs for tax purposes, broken down by two types of sources (capital gains and other sources). If it is not possible to assign expenses to a particular source of income, expenses are divided proportionately.

The costs are deductible if they were incurred for the purpose of revenue earning or maintaining/securing the source of revenue. For the exploitation of real estate, the most important costs, such as interest payments, the costs of exploitation and maintenance and depreciation write-offs are considered tax deductible. In relation to interest it is tax-deductible within the statutory limits, i.e., up to whichever is higher: PLN 3 million or 30% of tax adjusted EBITDA. Polish tax rules specifically exclude certain expenses from tax deductible costs. For example, doubtful receivables can only be deducted under very strict conditions. Also business entertainment expenses (e.g., the costs of representation) are non- deductible.

Minimum income tax

If the taxpayer rents a building (part of a building) a minimum levy may apply which is calculated based on the initial value of all rented real properties (including residential properties) reduced by the tax allowance of PLN 10m per taxpayer. The tax rate amounts to 0.035% per month (approx. 0.42% annually). In a situation, where only part of a building is rented, the minimum levy will be calculated with respect to the rented part proportionally. The tax is creditable against CIT. The taxpayers may apply for a refund of the excess of minimum levy over CIT after a year end. Before the refund is granted, the tax authorities could start tax inspection. The tax authorities may question solutions used by the taxpayer aimed at avoiding payment of the tax and applied without a legitimate economic reason based on specific anti-avoidance rule.

Loss carry forward rules

Polish legislation provides for carrying forward tax losses over five consecutive tax years following the year when the loss was incurred.

Taxpayers are allowed to utilize up to PLN 5m of a tax loss incurred in a given tax year based on a one-off basis (in the five year period).

Excess amount over PLN 5m can be utilized in any of these five years, however it cannot exceed 50% of the total loss.

Tax losses cannot be carried forward following certain legal transactions involving the company (e.g. mergers where the losses pertain to entities which no longer exist after the merger). There is no tax loss carry back.

Additionally, there is a limitation in utilization of tax losses in cases where the taxpayer has taken over another entity or acquired an enterprise or an organized part of an enterprise or has received a cash contribution for which it acquired an enterprise or an organized part of an enterprise. In abovementioned cases, utilization of tax losses by the taxpayer should be prohibited if:

- The subject of the primary business activity carried out by the taxpayer after the takeover or acquisition will be wholly or partially different from the subject of its primary business activity actually carried out before the takeover or acquisition.
- At least 25% of shares or similar rights in the taxpayer are held by an entity or entities which did not own such rights as at the last day of the tax year in which the taxpayer incurred the loss.

In practice, such regulations may prohibit the utilization of the past tax losses in case of mergers, demergers, carve-outs and other restructuring activities.

Depreciation rules for real estate

(i) Limitation of depreciation write-offs of buildings for tax purposes

Real estate companies (within the meaning of Polish CIT regulations) are obliged to make depreciation write-offs from real estate in the amount not higher than the amount made in accordance with the accounting regulations.

In practice, entities relying on the fair value model for the purpose of their investment properties may not be any longer in a position to recognize depreciation write offs for tax purposes.

In this respect, if a given entity does not depreciate the building for accounting purposes (but rather revaluates this property to its fair market value) tax depreciation of such a building may not be recognized for income tax. However, the case law regarding these regulations indicate that in certain cases depreciation could be allowed. Development of the tax authorities' and the courts' practice in this area should be monitored.

(ii) Depreciation rate for real estate

The standard depreciation rate for most new buildings for tax purposes is 2.5% per year. Hence, the costs of real estate investment are generally deducted over a period of 40 years. Newly acquired buildings, used previously by a former owner, can be depreciated for tax purposes during the period equal to the difference between 40 years and the number of years that have passed since the building was put into use for the first time (that period cannot be shorter than 10 years). Land is not subject to tax depreciation.

Residential real estates should not be subject to tax depreciation. The taxpayer is entitled to recognize costs incurred for acquisition of such real estate upon disposal.

Under certain circumstances it may be worth carrying out a cost split analysis of investment expenditures prior to putting a building into use. This is because some machinery may – under specific regulations – be excluded from the value of the building and be treated as separate fixed assets depreciated at higher rates (4.5% – 20% per year). This could lead to significant tax savings as the costs incurred could be deducted over a shorter period of time. A cost split analysis should be also possible in case of the purchase of an already developed building.

(iii) Calculation of the depreciation base

The depreciation base consists of all costs incurred in making the investment: construction costs, building materials, designs, interest and foreign exchange differences accrued during the construction period, commission and potentially non-recoverable input VAT related to the building incurred before it was put into use. As the value of the land is not subject to depreciation, it is then important to determine the value of the land and the value of the building separately.

VAT implications of renting out real estate

Rental income is generally subject to 23% VAT. This VAT is added to the net rent due and is payable by the lessee to the lessor. If the lessee is a regular VAT payer and is using the rented property to perform taxable activities he should be able to recover that input VAT paid on the rent.

If the lessee performs VAT exempt business activities only, the input VAT on the rent becomes irrecoverable. It may be a typical case for banks, financial institutions and insurance companies, most of which activities are – as a rule – exempt from VAT.

However, if the lessee performs VAT exempt activities, as well as taxable activities, then the input VAT on the rent (if such lease serves both types of activities) can be deducted proportionately on the pro rata basis.

Preliminary pro rata must also be taken into account, which might result in limited recovery of input VAT related both to economic activity and non-business activities.

Rental of residential units for housing (but not the rental of residential units for the purposes other than housing) is generally VAT exempt.

Notional interest deduction

Taxpayers are allowed to deduct deemed interest on certain parts of equity, amounting to the reference interest rate of the Polish National Bank as of the last banking day of the preceding tax year, increased by 1 basis points; however, no more than PLN 250k of interest (€58k) in a tax year.

Real estate tax – significant amendment

Real estate tax is charged to the owner (or in some cases the holder) of the land or buildings and infrastructure which are used for business activities. The local authorities set the real estate tax rates and collect the taxes. However, in 2025 local authorities are bound by the following maximum PLN annual tax rates:

- For land, PLN 1.38 per m2 of land.
- For buildings, PLN 34, per m2 of the usable surface of a building.
- For infrastructure (e.g., roads, pipelines), 2% of the value of the infrastructure calculated according to specific regulations (initial value determined for the purposes of tax depreciation).

Local authorities may differentiate between tax rates for different types of activities or locations and grant exemptions for certain types of real estate.

Importantly, as of 1 January 2025, the significant amended regulations regarding real estate tax have come into force. As a result of the Constitutional Tribunal's ruling on 4 July 2023, the scope of taxation for structures and buildings will be changed. The new regulations include an autonomous definition of buildings and structures, independent of construction law.

Although the legislator declares that the amendment is intended to be clarifying and reflective of existing jurisprudence, thereby maintaining the status quo in terms of taxation, in fact, the new regulations may lead to increased tax burdens, including the taxation of objects that were previously not subject to real estate tax.

Particularly significant regulations concern structures, which are usually associated with higher taxation, i.e., 2% of the gross book value. Although the new regulation includes a closed list of structures in the form of an annex to the amended Act covering 28 categories of construction objects, the adopted categories of some structures are general and may lead to an expansive interpretation. For example,

a structure includes technical devices directly related to a building or structure, necessary for their use according to their intended purpose.

Examples of categories of objects that require special attention include tanks, silos, container objects, tent halls, canopies, roads, yards, fences, vehicle scales, ramps, external lighting, advertising boards, transformer stations, and others. The new regulations may also lead to the taxation of various types of installations and devices, including those located inside buildings.

In connection with the new regulations, the legislator has provided the possibility of extending the deadline for submitting property tax declarations for the year 2025 to 31 March 2025, provided that a special statement is submitted by 31 January 2025 and appropriate tax advances are paid for the period from January to March.

Due to the adopted amendment, it is necessary to thoroughly analyze the owned assets and properly classify them in accordance with the new regulations.

Tax penalties

The tax authorities may impose sanctions in the form of an additional liability ranging from 10% to 40% of the tax liability assessed, based on the General Anti Avoidance Regulations (GAAR) or other anti-abuse clauses, transfer pricing settlements and withholding tax cases.

Publication of tax policies

Entities that generate revenue in excess of €50m during the tax year or tax capital groups (tax consolidation regime in Poland) are required to publish annual information on the execution of their tax policy.

The information needs to be published on their website by the end of the 12th month following the end of the tax year.

The scope of the information to be published is broad and may concern business sensitive areas.

Reporting obligations of entities owning Polish real estate rich entities

Real estate rich companies and taxpayers holding directly or indirectly shares or similar rights giving at least 5% of voting rights/rights to participate in the company's profit or similar rights in real estate rich company should be required to provide tax authorities with the information on:

- The entities holding directly or indirectly shares or similar rights in the real estate rich company – in the case of information provided by real estate rich companies.
- The number of shares or similar rights, held directly or indirectly in the real estate rich company – in the case of information provided by taxpayers owning Polish real estate rich companies.

The information should be provided by the end of the third month after the tax/financial year end of the real estate rich entity. The information should be provided electronically and should be valid as at the last day of the tax/financial year of the real estate rich company.

Whistleblower – tax risk management

Effective on 25 September 2024, the Whistleblower Protection Act lays down various duties applicable to entities with a headcount of at least 50 people.

One of the areas covered by the act is corporation tax irregularities and wrongdoing impacting the fiscal interests of the state and local government units. Importantly, whistleblowers are to be able to make disclosures internally, but they can also report wrongdoing directly to tax authorities, which may, naturally, increase the risk of an inspection.

In addition to implementing internal procedures for raising a concern and taking follow-up steps (required by the Whistleblower Protection Act), the companies should revisit the tax procedures in place and align them wherever necessary.

Tax rulings

Under the regulations it is forbidden to apply for tax rulings regarding any provisions related to tax avoidance matters (i.e., both General Anti Avoidance Regulations (GAAR) as well as other existing abuse clauses).

Any tax rulings regarding these areas obtained by the taxpayers in the past expired on 1 January 2019.

Binding rate information (BRI)

BRI is a document allowing to confirm the VAT rate for goods or services subject of the proper application to the Polish tax authorities.

The BRI grants taxpayers tax and penal-fiscal protection in the event of challenging the correctness of the applied VAT rate.

E-invoicing (structured electronic invoices)

As of 2022, the new system of structured invoices has been introduced and the National System of e-Invoices (KSeF) has been set up. KSeF enables the issuing and sharing of structured invoices (in xml format, compliant with the logical structure published).

In the initial period, including half of 2024, the structured invoices function in business transactions as one of the accepted forms of documenting sales, in addition to paper invoices and electronic invoices currently used. The issuing of structure invoice in that period requires a consent of the invoice recipient.

The structured invoicing is said to become obligatory as of 1 February 2026. Non-complying with that system should come with significant penalties (including the sanction in the amount of total VAT due from the transaction).

2.7 Exiting the investment

The investor's choice of exit strategy will be predominantly tax driven, and it is important at the outset of the investment process to have a clear idea of the possible exit mechanics.

The due diligence findings made during the acquisition phase are likely to bear relevance to the question of which exit strategy to choose, and should be given proper consideration, so that the investor's position on exit will be as strong as possible.

Generally, the exit may be structured as an asset or share deal. The legal and tax consequences of both are presented in section 2.4.

Exit tax

Provisions regarding exit tax constitute implementation of the EU Anti-Tax Avoidance Directive (ATAD) in Poland.

The so-called **tax on unrealized profits (hidden reserves)** is levied on profits that are embedded in a taxpayer's property and that are potentially transferred together with such property outside of Poland within transfers of the property within the same taxpayer (e.g., transfer by a Polish resident to its permanent establishment located abroad or transfer by a nonresident operating via Polish permanent establishment to its home country or to another country in which it operates) or upon change of the taxpayer's residence.

Exit tax on unrealized profits is calculated as the difference between the fair market value (FMV) of the property transferred (established based on separate rules) and its tax book value (that would have applied had the given property been disposed of) as of the date of the transfer.

Upon transfers into Poland, taxpayers may be allowed to credit the foreign equivalent tax (i.e., the tax due in a foreign country and which is equivalent to the tax on unrealized profits) up to certain limits.

Wrocław - the Redzinski bridge over Odra river

2.8

Sale and lease back

Legal aspects

A sale and lease back transaction consists of two stages. The first stage assumes selling the target real property by the seller to the purchaser. In the next stage the seller concludes the agreement on the lease of the real property from the purchaser. As a result of the sale, the owner (or perpetual usufructuary) of the real estate changes. However, due to leasing the real property back, the real estate remains under the operational control of the original party (the seller).

From the legal perspective it is important to secure the sellers' interest already in the first stage of the transaction, i.e., to establish the obligation of the purchaser to lease the real property back in the agreement on the sale of the real property.

It is also important for both parties to agree details of the lease (duration, price, etc.) as soon as possible, especially if the seller and the purchaser do not belong to the same capital group.

The main advantage of such a sale and lease back operation is the release of the seller's capital as a consequence of the sale of the real property. This capital may be thereafter used, e.g., for investment purposes. However, the decision on choosing such a solution shall be made on detailed calculation of all the costs related, including the lease costs.

Tax implications

If a sale and lease-back transaction is structured as an operational lease, the buyer/lessor is in most cases the owner, and should generally (subject to general rules) be able to depreciate the value of the investment at the standard depreciation rate of 2.5%.

Accelerated depreciation for used buildings can be considered in some cases. Other costs related to the maintenance and exploitation of the building are tax- deductible for the lessor.

If, under a sale and lease-back contract, the real estate asset which is the subject of the contract is sold at a higher price than its net book value, a taxable gain will occur. Under Polish legislation, it is not possible to defer the taxation of such a gain in order to use it for reinvestment (unless the taxpayer benefit from the "Estonian CIT" regime).

A sale and lease-back arrangement structured as an operational lease has an advantage for the seller/lessee that the lease payments are fully tax deductible as costs incurred for the purpose of earning revenue.

By contrast, for the borrower party to a normal direct financing arrangement, only the interest payments made on the loan are tax-deductible.

The repayment of capital is not a tax- triggering event. Under a direct financing arrangement secured by a mortgage, the debtor would still be the owner of the real estate. As such, the debtor would be unable to depreciate the value of the land. Under a lease contract, the lease payments are partly a compensation for the use of the land. Therefore, payments for the use of the land are tax-deductible for the benefit of the lessee.

2.9 Due diligence as part of the acquisition process

2.9.1. Legal due diligence

The due diligence process is all about managing investment risks. In practice, the legal due diligence review consists in gathering information and should provide the potential investor with a comprehensive view of the legal issues regarding the real property he considers acquiring.

The main purpose of the due diligence process is to provide investors with a complex overview of the situation of the real estate being the subject of the acquisition from the legal, financial and tax perspective. Taking into account the specific status and features of a given real estate, a broader due diligence review, conducted by technical and environmental experts, may be recommended.

By the end of the due diligence process, the investor should have a fair idea of whether the real estate is worth investing time and money. In this regard, a due diligence should be as comprehensive as possible.

The scope of the legal due diligence will depend on the structure of the deal. In a share deal, the scope of the due diligence will generally be wider than that required for an asset deal, as it needs to cover all the aspects related to the activity of the company. In case of an asset deal mostly the legal status of the real estate should be taken into consideration and examined carefully.

Within the legal due diligence, the review bases mainly on data and information provided by the seller and on inquiries and discussions with the seller and/or the management of the target. Additionally, publicly available sources (such as data in court registers) are explored.

In practice, within the due diligence regarding the real estate the investor should:

Verify basic information on the real estate (location, area, construction, legal title etc.).
Examine compliance with laws and effectiveness of acquiring a legal title to the real estate.
Examine restrictions with the disposal of real estate.
Examine the necessity of acquiring third parties'/administrative bodies' corporate approvals for acquiring a real estate.
Examine the collaterals established on the real estate.
Examine the third-party rights to the real estate.
Verify the permissible use of the real estate.
Verify the construction of the real estate in order to obtain required permits and approvals.
Verify the access of the real estate to the public road.
Analyze the responsibility of the buyer for the pollution of the real state.
Verify the amount of public burdens related to the real estate and lack of arrears with this regards.
Examine the potential claims to the real estate.

Review of other aspects is usually agreed with the seller and strictly depends on the type of transaction (share or asset deal).

The aim of the legal due diligence review of the real estate is to identify areas of investment risks but also other specific legal aspects regarding performing of business activity on the real estate and its sale. Below we present certain issues that need to be analyzed during the due diligence process and which may influence the structure of the transaction, or even a decision on entering into the transaction.

Local Spatial Development Plan and other regulations regarding spatial planning

Development of an investment on the real estate is possible provided that buildings, plants and other industrial facilities comply with the relevant local spatial development plan for a given area. Therefore, it is essential to establish during the due diligence process whether there is a local spatial development plan covering the area where the targeted real estate is located and if so, what are the conditions of this local spatial development plan in order to confirm whether it will be possible to perform the planned investment. Please refer to the section 2.5.1. for more detailed information regarding the local spatial development plan.

Taking into account recent Spatial Planning Reform (described in details in Section about recent changes to Law on Spatial Planning and Development above) analysis of spatial conditions should include also verification of the general plan. In addition, it should be established whether integrated investment plan, a new kind of local spatial development plan has been adopted for given real estate.

Within the review of the local spatial development plan and other regulations regarding spatial planning, in particular, the issues of the conservation and historic preservation zones and agricultural land should be verified.

Conservations and historic preservation zone

The local spatial development plan may provide that the area where the real estate subject to the potential investor's interest is located falls within a conservation and historic preservation zone where some specific rules apply in order to protect the historical monuments located in the zone. Depending on the type of the real estate and its historical status there may be additional requirements and limitations established by the provisions of law.

Revitalization

The Revitalization Act entered into force at the end of 2015. Under the act, revitalization is the comprehensive process of rescuing degraded areas from crisis through integrated actions for the benefit of the local community, space and economy. A degraded area is a terrain in which there is a concentration of negative social phenomena as well as, for example, degradation of the technical condition of buildings, a low level of transit service, and poorly adapted urban planning solutions.

Under the Act, it is necessary for the commune authorities to pass local government law in the form of a resolution in establishing a revitalization zone or a special revitalization zone.

It should be noted that the Revitalization Act provides for cases, when a commune may exercise the right to pre-emption of real estate, i.e., in case of transactions the subject of which is a real estate located within a revitalization area or special revitalization zone. In case of considered acquisition of real estate located in one of those plans, an investor should bear in mind the pre-emption right of a commune.

Agricultural land

The local spatial development plan may provide that the real estate is assigned for agricultural activity. As a rule, the development of real estate designated for agricultural use requires a special procedure involving the modification of the local spatial development plan. Such a procedure may be time-consuming and is connected with the risk of third parties challenging the proposed changes to the plan. Additionally, real estate classified as agricultural land in the Land and Building Register, but not covered by the master plan, should be also excluded from agricultural production by obtaining an administrative decision from the relevant authority.

It should be noted that after exclusion of the area from agricultural activity an annual fee has to be paid for ten years (see comments below).

An investor considering acquisition of agricultural real estate should also bear in mind existing restrictions relating to purchase of an agricultural land. Regulations in force provide for many specific legal restrictions and limitations and recent legislation restrains entities other than individual farmers from purchasing an agricultural real estate (please see comments in section 2.4.2).

Due to 2023 Amendments to the Act on the Formation of the Agricultural System, during due diligence process it is also crucial to verify whether daughter companies of a target company have agricultural real estates of at least 5ha or several agricultural real estates with such a total area.

If such situation exists under the planned transaction, the shares may be subject to pre-emption right vested in National Agricultural Support Center.

Restitutions claims

Under the nationalization laws passed in Poland after the Second World War, many real properties and functioning enterprises (including their real estate assets) were "nationalized" (or "communalized"). However, currently, there are no specific reprivatization laws in force in Poland to deal with the restitution matters and claims. As a result, the legal status of nationalized properties is quite often subject to uncertainty.

Under specific conditions, former owners or their successors may apply to civil courts and initiate proceedings aimed at the restitution of such real estate. As the current owner benefits from the land and mortgage register's public credibility warranty, the outcome of such claim will primarily depend on the apparent good faith of the current and previous owner at the time they acquired the property. Nevertheless, this issue needs to be subject to analysis during the due diligence.

In Warsaw, based on the special "Warsaw decree" on land ownership of 1945, the City of Warsaw gained ownership rights to the major part of real estate in the city. However, subject to specific conditions, former owners of the real estate were granted the right to apply for obtaining usufruct rights to real estate or compensation. Currently, such applications which were not resolved or were resolved in contravention of the law may be the base for successful claims for reestablishing the rights of the previous owners or their successors. Nevertheless, provisions of law provide also for certain limitations of restitution of ownership of real estate nationalized under the Warsaw decree or transferring claims for reestablishing the rights for such.

Moreover, the Treasury and the Capital City of Warsaw have been equipped with a right of pre-emption in the event of the sale of rights and claims arising from the Warsaw decree and claims for the establishment of perpetual usufruct to the previous owner of real estate located in Warsaw. The pre-emption right also applies in case of sale of perpetual usufruct right established by satisfying rights and claims arising from the Warsaw decree.

In consequence, it is essential during the due diligence to investigate carefully and thoroughly the restitution claims issue to avoid any title or investment risk upon completion of the acquisition of the real estate.

Fees - holding the real estate

Betterment levy

Betterment levy (*Opłata Adiacencka*) is a charge which may occur with regard to the increase of the value of the real property resulting from:

- Consolidation and division of the property.
- Division of the property.
- The construction of infrastructure with the use of public funds (placing water pipes, sewage pipes, heating systems, electricity gas and telecommunications facilities) or public road.

The amount of the fee depends on the amount of the increase in the property's value and is usually established based on an opinion of an independent expert determining how much the value of property has increased by.

The amount of fee shall not be higher than 50% (with respect to the division following a merger and the construction of infrastructure with the use of public funds) and not higher than 30% (with respect to a division) of the increase in value of the property.

Zoning fee

Additionally, adoption of the local spatial development plan may also lead to an increase in real estate market value, e.g., when a forestry land or an agricultural land is reclassified in the local spatial development plan into residential or commercial land, its value increases.
In such cases the zoning fee (*Renta Planistyczna*) may be established as a percentage (not higher than 30%) of the increase in value of the land calculated as at the date of the transfer of the given real estate.

The percentage for calculation of the zoning fee should be provided for in the local spatial development plan, otherwise the fee will not be due. The zoning fee is payable by the vendor in the case of a transfer of the property within 5 years from the day when the local spatial development plan came into force.

Please note that the Council of Ministers in the list of legislative and programmatic works have presented the assumptions of the draft Law on Solutions aimed at increasing the availability of land for residential construction. This draft includes, among others suspension on collecting planning fees for a period of 2 years from the date of entry into force of the proposed regulation. However, the Council of Ministers have not indicated yet the estimated date of implementation of the draft.

Exclusion from agricultural production fee

Entrepreneurs are often interested in changing the purpose of use of the agricultural and forest land in order to develop the land and realize an investment. Exclusion from agricultural production is subject to an initial fee and subsequent annual payments. The value of such payments depends on the:

- Area of the land subject to exclusion
- Quality of the land (class of soil)
- Market value of the land subject to exclusion

It should be noted that if the land excluded from agricultural production is sold, the obligation to pay the annual fees passes to the purchaser.

Environmental issues

Introduction

Polish environmental law affects the conduct of economic activity for most business entities. One of the most important requirements imposed by the environmental law is the requirement to obtain permits related to the rules of having an impact upon the environment. It is usually examined during the due diligence whether the seller (or the target company) fulfills the environmental law requirements.

Permit requirements

Environmental permits can be basically divided into two groups. The first one includes permission obtained in the course of the investment process and the second group includes permission related to the use of the property.

In certain circumstances Polish environmental law imposes an obligation to obtain an integrated permit, which includes a number of permits governing the use of the environment. The obligation to obtain integrated permit relates to, *inter alia*, the following branches of industry: metallurgy and steel industry, the mineral industry and the chemical industry.

Besides, it is important to take into account the permissible level of noise. Permission is required only if the noise level exceeds the noise limits, which should be evaluated taking into account the provisions of the local plan.

Liability for contaminated land

Under the Polish law there are two regimes of liability for land (soil) contamination, depending on the period from which the contamination originates (with the border line being 30 April 2007). A current holder (in particular owner or perpetual usufructuary), revealed in the Land Register, is liable for soil contamination which occurred prior to 30 April 2007 or may be attributed to activity completed prior to that date, even if such holder did not actually cause the contamination.

Parties to the sale agreement cannot contractually exclude the above mentioned administrative liability of the purchaser for clean-up of contaminated land so when a potential investor intends to buy a property (especially one that was used for industrial purposes) a detailed study on pollution of the land is required.

To secure purchaser's interest, the seller of contaminated land may agree to reimburse the purchaser with expenditures born for the clean-up.

The situation is different for "new" land contamination, i.e., any soil damage, which occurred after 30 April 2007 or could be attributed to an activity completed after that date. An entity using the environment (i.e., an entity who has relevant permits to operate and use the environment) is liable for any such damage.

Environmental impact assessment

According to the section 2.5.1 where the environmental decision and environmental impact assessment where described, in some cases - especially for large investments an environmental impact assessment proceeding may be required.

2.9.2. Financial due diligence

Not many investors perform due diligence when completing a real estate transaction. Often the investor's own internal procedures require due diligence to determine whether or not the transaction is in the best interest of the investor.

Although for transactions of a smaller scale this may not be a good way to evaluate a deal, most investors understand the value of expert outsourced financial due diligence services. This rings especially true when taking into account larger time-sensitive transactions (auction processes for example).

Although some investors choose to forego due diligence when acquiring new assets, they should understand that financial due diligence can indicate how the acquired assets will affect metrics such as revenue and net operating income. In addition, due diligence is able to discover unforeseen problems such as discrepancies between the amount paid for rent as described in lease agreements vs. the actual amount being paid per the accounting books.

A buyer usually makes use of financial due diligence to assist in identifying major issues concerning a transaction:

- The value of the property's NOI taking into account the existing lease portfolio.
- Any provisions in the lease that affect the NOI adversely (for example, discounts on rent for any given period of time or for improvements made by lessee).
- Bookkeeping in use being adequate for the business, and how does it looks next to the investor's bookkeeping procedures.
- Lessee ever being late with the rent, or it taking longer to collect rent.
- Charges made by the lessee being enough to cover the costs of maintaining the building; and any service charges not settled for any reason.

Analyzing financial issues

The items listed below should be considered when seeking to resolve the previously mentioned issues concerning financial due diligence:

- The financial figures being viable: can the figures be traced back to its origin reliably.
- Critical bookkeeping procedures being applied consistently and appropriately; the influence of the bookkeeping procedures on the financial figures.
- Assuring that the creation and level of management information is accurate and adequate for the business being considered.

- Evaluating the contractual obligations the business has and their influence on profitability and cash flow.
- Evaluating critical problems influencing earnings position.
- Recognition of the need for cost recharges incurred and focus on areas for improvement; recognizing the "normal" working capital and cash flow tides of the business and probable funding needs down the line.
- Making sure constructions costs are properly reflected in the bookkeeping records.
- Recognizing the net asset base for acquisition; addressing possible balance sheet valuation discrepancies; making sure everything has been adequately addressed in evaluating the underlying earnings.
- Comparing the rent roll against the rental agreements and bookkeeping records.
- Comparing the service charges incurred against the bookkeeping records.
- Going over rental agreements to identify balance sheet liabilities.

2.9.3. Tax due diligence

Tax due diligence, in general, focuses on assessing material tax risks pertaining to assets or shares by reviewing the tax position of the target company. By identifying tax risks during due diligence conducted before the transaction, the investor may seek protection or indemnification from the seller.

From a tax perspective, it is also important to ensure that the appropriate tax structure is used, which usually involves a pre-transaction study and the preparation of the transaction structure in accordance with the Polish and international tax regulations. In addition, it can also include an assessment of the tax implications of a future exit scenario.

Acquisition of assets

In the case of an asset deal deemed to be the acquisition of business as a going concern or a viable part of that business (organized part of an enterprise), the acquirer may be held liable for the outstanding tax liabilities of the seller. This liability should be excluded if the acquirer could not have become aware of the seller's tax arrears despite acting with due diligence in attempting to identify such tax arrears. Performing a tax due diligence review is thus a way to limit or exclude such liability.

This liability is in practice of a "subordinated" nature, as even if a formal decision declaring that the acquirer is liable for the seller's tax arrears is issued, the claim against the acquirer may crystallize only if the enforcement procedure against the seller is ineffective (and tax claims against the seller are not satisfied).

According to the tax regulations the acquirer (with the seller's consent) or the seller may submit to the tax authorities a formal request for a certificate which lists all the tax liabilities which are transferable to the acquirer. The acquirer is then liable only up to the value of the tax liabilities presented in the certificate.

In the case of a sale of single assets (not constituting a going concern or an organized part thereof), the acquirer should not be liable for the outstanding tax arrears of the seller. However, if the transaction is reclassified into a sale of a going concern, the buyer might then be held liable for the seller's undisclosed tax liabilities.

Acquisition of shares

In the case of a share deal, all the potential outstanding liabilities that are not statue barred remain with the acquired company. As a consequence, the acquirer faces the possibility of incurring an economic loss on the transaction if undisclosed tax liabilities become apparent afterwards. Tax due diligence is therefore conducted to allow the acquirer to assess and minimize this risk.

Generally, the period of limitation for tax liabilities is 5 tax years following the year in which the tax is payable. In practice this means that from the perspective of 2025 there is still a tax risk in relation specifically to a target's corporate income tax payments for 2019-YTD2025, and to other tax liabilities, in general, for 2020-2025.

Tax issues analyzed

The scope of a tax due diligence review depends on the structure of the planned transaction.

In the case of an asset deal, the scope of due diligence depends on the subject of the transaction and the extent to which the acquirer may be liable for the seller's tax liabilities.

In the case of a share deal, as the acquirer faces the full impact of any tax liabilities assumed, full due diligence is usually conducted.

The tax due diligence in case of a share deal usually covers the following areas:

- Review of tax returns for periods previously filed and review of tax calculations for periods that are not yet filed with the tax authorities.
- Review of the results of past tax audits to detect tax risks for periods that are still open for tax audits by the tax authorities.
- Review of any obtained tax rulings.
- Review of any losses carried forward, tax credits and special tax privileges to identify related tax risks for unaudited periods and to assess whether such tax benefits will be available post transaction.
- Review of withholding tax procedures and exemptions available.
- Review of significant historical reorganizations and one-off transactions and their impact on the tax accounts.

Review of intercompany transactions and present transfer pricing policy in the company is also a part of a standard tax due diligence in the case of a share deal. The process would also likely include an examination of areas typical for a real estate company, such as:

- The existing debt financing structure (e.g., debt push down schemes), thin capitalization and other pending restrictions on the tax deductibility of interest payments on the debt.
- Any large differences between book and tax basis of assets, analysis of the deferred tax calculations, in particular identification of any deferred tax liability, e.g., from accrued foreign exchange gains.
- Rules for capital expenditure recognition and the impact of foreign exchange differences on the initial value of fixed assets for tax depreciation purposes.
- Policies for the tax depreciation of assets, including a review of cost segregation schemes.
- Cash incentives offered to lessees such as a rent free period or step-up rent and their impact on the tax accounts.
- Treatment of the investment costs incurred by lessees (leasehold improvements) when the lease expires.
- Tax recognition of management charges payable by special purpose vehicles to servicing companies within the group.
- Any step-up in the value of the real estate performed; review of input VAT refunds in the investment phase.
- Policies for real estate tax.

A review of the sale and purchase agreement (SPA) for the acquisition of a real estate target usually covers the following tax points:

- Review of the tax definitions in the SPA, and of the tax representations and warranties.
- Review of the tax indemnity clauses in the SPA.
- Analysis of the SPA from the perspective of other protection available against tax exposures.

- Review of clauses aiming to reduce or mitigate potential tax exposures resulted from the reclassification of an asset deal transaction.

2.9.4. The use of due diligence results when negotiating

After the whole process of due diligence, the investor gets a general financial and tax risk overview, which makes up the origin of the information for negotiations with the seller and assists in adjusting the financial model for valuation.

This can be used to get a decrease in price in order to alleviate possible tax liabilities and can be used when writing warranties and damages in the SPA.

The results may directly affect the structure of the transaction, for example, transforming an asset deal into a share deal or the other way round; they may also be used for post-acquisition tax planning.

Along with the tax and financial due diligence results, the legal due diligence review should assist the buyer in determining whether or not to complete the transaction, and if so, in what form. Due diligence investigations let the buyer's legal team construct the conditions of the deal so that the buyer is afforded with an adequate amount of comfort and protection. The legal team will then be in a position to address specific problems by asking for further explanations and/or promises or warranties from the seller. The legal team can also evaluate whether or not such promises or warranties need to be covered by an indemnity clause or other legal language allowed under the Polish law.

When taken together, the financial, tax and legal due diligence results are a very strong tool which can very easily have an influence on the final result of negotiations, and, in particular, how much the buyer will ultimately pay.

3 Accounting and auditing

Gorzów - old town bridge and the tower of St. Mary's cathedral

3.1 Introduction to the accounting framework in Poland

Polish accounting is regulated by the Accounting Act as of 29 September 1994 with subsequent amendments (the Accounting Act). The Minister of Finance has also issued several regulations which cover specific accounting areas, such as: financial instruments, consolidation, accounting principles for banks, insurance companies, investment funds and pension funds. Since 1994, the Accounting Act has undergone significant changes to bring Polish accounting regulations closer to the International Financial Reporting Standards (IFRS). However, the differences between the Accounting Act and IFRS, mainly following IFRS developments in recent years, continue to exist.

There is currently a project ongoing to revisit the Accounting Act. The following information applies to financial statements prepared for the periods beginning on or after 1st of January 2025.

In order to help to implement the Accounting Act, the Polish Accounting Standards Committee ('the Committee') prepares and issues National Accounting Standards (KSR). As of 1 January 2025, fifteen National Accounting Standards were issued on different topics such as:

- Cash flow statement
- Income tax
- Construction works
- Impairment of assets
- Leasing

- Provisions, accruals, contingent liabilities
- Changes in accounting policies, changes in estimates, correction of errors and subsequent events
- Developers' activity
- Directors' report
- Agreements on public-private partnership and concession contracts for construction works or services
- Property, plant and equipment
- Agricultural activity
- Cost of inventories
- Going concern assessment and non-going concern basis of accounting
- Revenue from the sale of products, semi-finished products, goods and materials

The Committee has also issued several position papers and recommendations (not referred to as standards) with respect to, e.g., stocktaking, green certificates, selected aspects of bookkeeping, true and fair view, settlements with contractors, discontinued operations and business combinations.

National Accounting Standards and the Committee's position papers are available on the website of the Ministry of Finance.

In the areas not regulated by the Accounting Act or National Accounting Standards, guidance can be sought in IFRSs.

The Accounting Act permits or requires some Polish entities to apply IFRS, as adopted by the EU, as their primary basis of accounting, rather than applying the accounting principles of the Accounting Act. Those regulations are summarized in the following table:

	Standalone financial statements	Consolidated financial statements
1. Entities listed on a regulated market in Poland or other European Economic Area (EEA) country.	Choice	Required
2. Banks (other than those included in points 1, 3, 4 and 5).	Not permitted	Required
3. Entities planning to apply or applying for a permission to list on regulated market in Poland or other European Economic Area (EEA) country.	Choice	Choice
4. Entities that are part of a group where the parent prepares consolidated financial statements for statutory purposes in accordance with IFRS as adopted by EU.	Choice	Choice
5. Branches of foreign entrepreneurs that prepare separate financial statements for statutory purposes in accordance with IFRS as adopted by EU.	Choice	n/a
6. Entities that are tax payers of the domestic top-up tax	Choice	
7. Other entities	Not permitted	Not permitted

The Accounting Act imposes a requirement to prepare the financial statements in an electronic format. Financial statements need to be signed with a qualified electronic signature, trusted signature or a personal signature by members of the management board and the person responsible for bookkeeping.

The electronic financial statements must be filed electronically to the National Court Register.

3.2 Accounting records

The provisions of the Accounting Act and related regulations are applicable to, among others, companies and partnerships that have their registered office or place of management in Poland. For those entities that apply IFRS as the primary basis of accounting instead of Polish principles, the following sections of the Accounting Act still apply:

- Chapter 2 on bookkeeping
- Chapter 3 on stocktaking
- Chapter 6A on report on payments to the public administration
- Chapter 6B on report on income tax
- Chapter 6C on sustainability reporting
- Chapter 7 on auditing, filing with the appropriate court register, providing access to and publication of financial statements
- Chapter 8 on data protection
- Chapter 9 on criminal liability
- Chapter 10 on special and interim provisions, and
- Article 49 in regard to directors' report

Each entity is obliged to maintain its accounting books and other documentation which, in particular, comprises:

- A description of the entity's accounting principles.
- Rules for keeping sub-ledgers accounts and their link to general ledger accounts.

It should be noted that the violation of the Accounting Act requirements by a person responsible for preparation of the financial statements (usually the Management Board) may be recognized as a criminal

offence, which is punishable by imprisonment for a term not exceeding two years, by a fine, or both.

Accounting records should be kept, and financial statements prepared, in Polish language and presented in the Polish currency. Entity may outsource bookkeeping provided that:

Entrepreneur providing outsourcing is in EEA country

Tax office was informed

When accounting records are outsourced, the accounting records must still be kept in Polish language and Polish currency and entity should ensure access to books of account to authorized external control or supervisory authorities.

The regulations, summarized in Chapters 3.3 - 3.5 below apply to all entities in general. Certain types of entities such as banks, insurers, or investments funds might be governed by additional specific regulations.

3.3

Financial statements

All statutory financial statements must be prepared in electronic format and in the Polish language and expressed in the Polish currency. Financial statements consist of:

- A balance sheet
- An income statement
- Notes to the financial statements (split into an introduction and additional notes)
- A cash flow statement and a statement of changes in equity[1]

For some specialized types of entities additional exceptions or requirements might apply in relation to primary financial statements such as, for example, a summary of investments for the investment funds and alternative investment companies.

The format of the balance sheet, income statement, statement of cash flows, statement of changes in equity, and the contents of notes to the financial statements for entities preparing their standalone financial statements in accordance with Polish GAAP are determined by the Accounting Act. Companies listed on the Warsaw Stock Exchange, if preparing the financial statements in accordance with Polish GAAP, are guided by specific regulations for public issuers. This includes reconciliation between the results reported in accordance with Polish accounting principles and those that would have been met if IFRS, as adopted by the EU, had been applied.

1 Not required by companies meeting micro or small entity criteria.

Moreover, the Accounting Act provides some exemptions for entities meeting the definition of a small or micro company. They relate, among others, to the layout and content of financial statements, application of prudence principle, depreciation and amortization.

Bydgoszcz - boats along the Brda river

3.4 Financial reporting, publication and audit requirements

Financial reporting

All entities governed by the Accounting Act are obliged to prepare their standalone and consolidated financial statements (the latter ones only if certain criteria are met) for each financial year. The financial year does not have to be unified with the calendar year. Listed companies are additionally obliged to publish semi-annual and quarterly reports.

An entity must also, e.g., prepare financial statements as of the date of the closure of accounting records, and as a result of other events leading to the termination of the activities of an entity, for example, the closure of business (liquidation date).

The standalone and consolidated financial statements should be prepared within three months after the balance sheet date and approved within six months after the balance sheet date.

Directors' report

Specific entities such as, for example, joint-stock companies, limited liability companies, selected partnerships, mutual insurance companies, co- operatives, state-owned companies, investment funds and investment companies prepare, in addition to the financial statements, a financial review by entity's management - the management report on the entity's operations (the directors' report). The scope of the report is defined in legal regulations and includes topics such as:

- Description of events that significantly impact upon the entity's performance and that occurred during the reported period and after its closing date, till the date the financial statements are approved.
- Expected development of the entity.
- Major achievements in the research and development area.
- Actual and planned financial situation, including financial ratios.
- Details about transactions in own shares.
- Information on branches (business units).
- Financial risk management objectives and methods.
- Key financial and non-financial efficiency metrics in relations to operations, as well as information on employment and natural environment.
- Information on the application of corporate governance rules (only public companies).
- Where there is a link between the values disclosed in the annual financial statement and the information included in the directors' report of the given entity, the management report should include references to the amounts disclosed in the financial statement, as well as additional explanations concerning those amounts.

A micro and small entities which are obliged (based on general rules of the Accounting Act) to prepare a management report on the activities of the entity may not draw up such a report provided that in the additional information, the information relating to the acquisition of own shares will be disclosed.

Sustainability reporting, if required under the Accounting Act, is presented as a separate part of the directors' report.

Sustainability reporting

Specific entities, including joint-stock companies, limited joint-stock partnerships, certain partnerships, insurance companies, reinsurance companies, and national banks are required to report under European Sustainability Reporting Standards ('ESRS') in line with the CSRD. This reporting is a part of the management report and shall include the following information:

- A brief description of the business model and strategy.
- A description of the time-bound targets related to sustainability matters, including greenhouse gas emission reduction targets for 2030 and 2050, and progress toward achieving them.
- A description of the role of the administrative, management and supervisory bodies with regard to sustainability matters, and of their expertise and skills in relation to fulfilling that role or the access such bodies have to such expertise and skills.
- A description of the entity's policies with regard to sustainability matters.
- Information about the existence of incentive schemes linked to sustainability matters which are offered to members of the administrative, management and supervisory bodies.
- A description of the sustainability matters due diligence process, including compliance with EU regulations, actual or potential negative impacts from the entity's operations, products, services, and supply chain, and actions taken to identify and monitor them, and steps taken to prevent, mitigate, or remedy negative impacts and their outcomes.
- A description of the entity's most significant risks in relation to sustainability matters, including a description of the entity's main dependencies on these matters and how the entity manages these risks.
- Indicators relevant to the disclosures referred to in the above-mentioned points.

As highlighted - the sustainability reporting shall be prepared in line with the European Sustainability Reporting Standards (ESRS). Those standards also additionally require that the entities shall include in their sustainability statement the so-called Taxonomy disclosures.

Certain entities such as, among others, small and medium-sized undertakings that are issuers of securities admitted to trading on one of the regulated markets of the EEA or small and non-complex institutions are allowed to report in accordance with the sustainability reporting standards for small and medium-sized undertakings.

Sustainability reporting obligations apply from the financial years beginning on:

- 2024 – for the largest public interest entities fulfilling the thresholds criteria.
- 2025 – for other large entities and parent undertakings of a large group.
- 2026 – for small and medium-sized enterprises - regulated market issuers excluding micro enterprises.
- 2028 – specified Polish subsidiaries and Polish branches whose standalone entity or ultimate parent undertaking is governed by the law of a third country (outside of EEA).

Further details are presented in chapter *ESG in Real Estate*, section "Sustainability Reporting".

Report on income tax

Parent entities and standalone entities such as joint-stock companies, limited liability companies, partnerships limited by shares, certain general partnerships, and limited partnerships are required, with some exceptions, to prepare, publish, and make available a report on income tax if the revenue recognized in their annual financial statements (consolidated in the case of a parent entity) exceeds PLN 3.5 b for each of the last two financial years. The deadline for submitting the report to the appropriate court register and posting it on the entity's website

is 12 months since the balance sheet date. The first period for which the income tax report must be prepared and published is the financial year starting after 21 June 2024.

Compensation report

The Supervisory Board members in listed entities are obliged to prepare an annual report on the remuneration of the management board and the supervisory board and then to pass it to the auditor's assessment.

Publication of financial statements

Management is required to file the annual financial statements with the registration court together with the following documents:

- Auditor's report, if the financial statements were subject to an audit.
- Shareholders' resolution on the approval of the financial statements and distribution of profit or coverage of loss.
- Directors' report (if applicable).
- The assurance report on sustainability reporting (if applicable).
- The report on payments to the public administration (if applicable).

Abovementioned documents should be filed with National Court Register (KRS) within 15 days after the approval.

If the financial statements have not been approved within 6 months after balance sheet date, they should be filled with National Court Register within 15 days after its approval.

Listed companies are also required to file their financial statements with the Polish Financial Supervision Authority including interim (quarterly and semi-annual) reporting.

Electronic format of financial statements

The Accounting Act imposed a requirement to prepare the financial statements in an electronic format. The electronic financial statements should also be filed electronically to the National Court Register.

Financial statements need to be signed with a qualified electronic signature, trusted signature or a personal signature, by all members of the Management Board and the person responsible for bookkeeping.

Where the management board is composed of a number of members, financial statements may be signed by at least one member, if the remaining management board members confirmed compliance of those financial statements with the Accounting Act (or refused to confirm) in writing.

Financial statements (as of today - other than those prepared under IFRS) should conform to the logical structure published by the Ministry of Finance.

As for IFRS financial statements, issuers whose securities are admitted to trading on the regulated market in the European Union are obliged to prepare annual financial reports in the ESEF format (i.e., XHTML).

Additionally, IFRS consolidated financial statements that are part of those annual financial reports shall be marked up using the XBRL markup language.

Other entities that prepare financial statements in accordance with IFRS can choose the format applicable to issuers of securities admitted to trading on the regulated market or other searchable format (i.e., allowing for search and copying of alphanumeric characters in an electronic document).

Audit requirements

Polish statutory audit requirements apply to all annual consolidated financial statements and to the annual standalone financial statements of the following entities that operate as a going concern:

- Banks, insurance companies, reinsurance companies, pension funds, investment funds (including alternative, closed, open and specialized funds), investment fund management companies, joint-stock companies and public companies, payment institutions, brokerage houses and firms.
- Other entities that meet at least two of the following three thresholds in the financial year preceding the financial year for which the financial statements were drawn up:
  - Annual average employment (equivalent of 50 individuals employed full-time).
  - Total assets at the end of the financial year (the PLN equivalent of €3.125 million or greater).
  - Net sales including financial income for the financial year (the PLN equivalent of €6.25 million or greater).

Above threshold apply to financial statements for the periods beginning after 31 December 2024.

The statutory audit requirements also apply to the financial statements of the acquiring companies and newly formed companies, prepared for the financial year in which the business combination took place.

Also, all statutory IFRS financial statements are subject to audit requirements.

There are also additional requirements in relation to audit or review of interim financial statements of public companies and investment funds.

Sustainability reporting is subject to an assurance engagement by statutory auditors.

Audits are governed by the relevant legal requirements in force which include:

- Chapter 7 of the Accounting Act.
- The Auditors Act.
- International Standards on Auditing in the version adopted as the National Auditing Standards by the National Council of Statutory Auditors.
- Regulation (EU) No 537/2014 of the European Parliament and the Council on specific requirements regarding statutory audit of public-interest entities.

3.5 Consolidation

Consolidation requirements

A capital group is a group which comprises of a holding company and its subsidiaries.

According to the Accounting Act, a holding company is a company that controls another entity.

A capital group prepares its consolidated financial statements on the basis of standalone financial statements of entities that belong to the group. From 1 January 2025, changes to Article 56 of the Accounting Act increase the thresholds for exemptions from consolidation requirements. Groups which, in the preceding and current financial years, did not exceed at least two out of three of the following thresholds before intragroup eliminations:

- Annual average employment - equivalent of 250 individuals employed in full time.
- Total assets of all group entities - PLN 48m.
- Net sales revenues from goods and services of all group entities - PLN 96m

or after intragroup eliminations:

- Annual average employment - equivalent of 250 individuals employed in full time.
- Total assets of all group entities - PLN 40m.
- Net sales revenues from goods and services of all group entities – PLN 80m

are exempt from preparing the consolidated financial statements.

Additionally, a parent that is itself a subsidiary of another entity whose registered office or place of effective management is established in the European Economic Area ('higher level parent') does not need to prepare consolidated financial statements if:

- A higher level parent holds 100% of the shares in this parent (or a higher level parent holds at least 90% of shares in this parent, and the remaining shareholders of this parent have approved a decision not to prepare consolidated financial statements) and
- A higher level parent consolidates this parent as well as all subsidiaries of this parent.

The above provision shall not apply if a parent is an issuer of securities admitted to trading on one of the European Economic Area regulated markets.

Additionally, from January 2025 a parent using the exemption from preparing consolidated financial statements is also exempt from preparing a group management report, provided that the group management report of the higher level parent is prepared in accordance with European Economic Area local regulations. For a parent entity of a large group, the exemption applies if the exemption from the obligation to prepare sustainability reporting of a group (a parent company that is a subsidiary of an EEA entity) is applied.

In accordance with the Accounting Act, a subsidiary is excluded from consolidation if:

- The shares in such entity were acquired, purchased or otherwise obtained for the sole purpose of subsequent resale within one year from the date of acquisition.
- There are severe long term restrictions on the exercise of control over the entity which prevent free disposal of its assets, including net profit generated by this entity or which prevent exercise of control over the bodies managing the entity.

- It is impossible to get the information necessary for preparation of a consolidated financial statement without delay incurring unreasonably high cost (applies in exceptional cases only).

Moreover, a subsidiary does not have to be included in the consolidated financial statements if the amounts stated in that entity's financial statements are immaterial in relation to the holding company's financial statements.

Consolidated financial statements

Consolidated financial statements comprise:

- A consolidated balance sheet.
- A consolidated income statement.
- A consolidated statement of cash flows.
- A consolidated statement of changes in equity.
- Notes to the consolidated financial statements (split into an introduction and additional notes).

Consolidated financial statements should be accompanied by a Group 'directors' report prepared by the Management Board of the holding company. Group 'directors' report can be prepared together with a directors' report of the holding entity as a single report.

Consolidated financial statements should be prepared at the same balance sheet date and for the same financial year as the financial statements of the holding company. If this date is not the same for all entities within the group, then consolidation may cover financial statements prepared for a twelve-month period different to the financial year, if the balance sheet date of those financial statements is earlier by no more than three months of the balance sheet date adopted by the group. Companies included in the consolidation should adopt consistent accounting policies and consistent methods of preparation of financial statements. If the accounting policies of consolidated entities differ from those applied for consolidation, then appropriate adjustments must be

carried out at the consolidation level. According to the Accounting Act, separate financial statements may be published before consolidated financial statements.

Methods to include entities in consolidated financial statements

A subsidiary is consolidated using the full consolidation method. Joint ventures are consolidated using a proportional consolidation method or accounted for using an equity method. Associates are accounted for using the equity method. When the associate prepares its consolidated financial statements, the equity method applies to the net consolidated assets of the associate.

Toruń - old town reflected in Vistula river

3.6 Hot topics in accounting with potential implications for the real estate industry

Amendment to the Accounting Act

In 2025, changes were introduced to the Accounting Act, some of them applicable already to financial statements for the year ended 31 December 2024. The amendments resulted from implementation of EU directives, including CSRD.

Financial reporting

Higher thresholds were introduced for bookkeeping, mandatory audits of financial statements and consolidation. Also thresholds that determine classification of the entity as a micro, small, medium or large entity were increased and hence impacted eligibility for certain simplifications in accounting etc.

These amendments also require certain entities, including joint-stock companies and partnerships, to prepare and publish an income tax report if their revenue exceeds PLN 3.5 billion in each of the last two financial years. Exceptions apply to entities operating solely within Poland or those that disclose the necessary information in their management report. Reports for financial years starting after 21 June 2024, must be published within 12 months from the reporting date.

Sustainability reporting

In 2024, the EU's Corporate Sustainability Reporting Directive (CSRD) was transposed into Polish law, mandating sustainability disclosures in accordance with the European Sustainability Reporting Standards (ESRS). The reporting requirements will be phased-in, however certain entities will be required to comply as early as in year 2025 (concerning the reporting for the financial year 2024). Furthermore, these reports

will be subject to audits, initially requiring limited assurance. These changes aim to increase corporate transparency and accountability, driving progress toward sustainable development. Further details are presented in chapter "ESG in real estate", section "Sustainability reporting".

Connectivity

The importance of consistent and coherent information between the financial statements and the sustainability reporting will only increase. Entities shall use consistent data and assumptions in preparing the sustainability related financial disclosures with the related financial statements to the extent possible considering the requirements of accounting standards.

Current macroeconomic outlook

The current macroeconomic environment influenced by a combination of inflation, relatively high interest rates, geopolitical risks (including the ongoing effects of the war in Ukraine), and a moderate economic recovery, presents significant challenges for businesses. Although the economy in Poland grows, the increased inflation (above inflationary goal of National Polish Bank) will continue to impact companies and their operations in 2025.

Assessing the potential effects for companies and how these should be reflected in financial statements will be critical for financial reporting, e.g., an increased level of uncertainty may exist with respect to the determination of fair values.

Climate-related matters

Action to mitigate impact of climate changes has never been of greater importance, and the risks associated with it are, or may soon be, a source of significant uncertainty. At the same time, there is a growing interest of investors and other stakeholders in this issue and the interrelations between climate change and the activities of business entities.

Climate-related matters require to be adequately addressed in financial statements – both in the context of the valuation of assets and liabilities, e.g., fair value measurement of investment properties and in the context of transparency of disclosures. This is also a priority for capital market regulators, which impacts the directions of supervisory activities.

Consistent treatment of climate-related matters across the annual financial report is also highlighted as a key element in mitigating the risk of greenwashing. Those aspects are further discussed in Section "ESG in real estate".

Current geopolitical and macroeconomic situation as well as climate-related matters may impact many areas of financial reporting.

For entities from real estate industry this could encompass among others:

- → Going concern assessment
- → Impairment of assets
- → Fair value measurement of investment property
- → Granting rent concessions and recognition of rental income
- → Loan covenants and classification of liabilities as current or non-current
- → Renegotiation of debt agreements (e.g., repayments deferral, etc.)
- → Government grants/government assistance
- → Expected credit losses on trade receivables

Also, higher degree of uncertainty regarding estimates and assumptions used by the management leads to higher sensitivity of reported figures.

As a result, companies should take into consideration the importance of providing sufficiently detailed disclosures in the financial statements. Disclosures should be clear, relevant and they have to depict the impact of the current macroeconomic environment on the financial statements.

The significance of disclosures is emphasized both by regulators and standard setters (including the Polish Financial Supervision Authority (UKNF), the European Securities and Markets Authority (ESMA) and the Polish Ministry of Finance).

The Polish Accounting Standards Committee issued recommendations which provide guidance for entities reporting under Polish Accounting Regulations. Among others these included:

- "Financial statements and management reports during Russian aggression on Ukraine", issued in April 2022.
- "Financial statements and management report for 2022 in times of macroeconomic uncertainty", issued in January 2023.

Szczecin - city panorama

4

ESG in real estate

Warsaw – the Siekierkowski bridge over the Vistula river

4.1 Introduction to ESG in real estate

Climate changes are happening faster than we thought, which is why governments and organizations globally have agreed ambitious targets to cut and eventually end dependency on coal for energy production.

Buildings in the EU are responsible for nearly 40% of energy consumption and 36% of GHG emissions. As urbanization is set to continue with 70% of world's population living in the cities by 2050, this trend will continue[1].

There is a great chance to improve environmental performance of buildings through their entire live cycle and real estate players are taking steps to minimize negative effects of the sector on the environment by complying with ESG (Environmental, Social and Governance) regulations and implementing more stringent ESG tools and solutions. It is not only beneficial for the climate but also improves the standard and quality of life by creating friendly, livable and healthy urban places.

1 https://energy.ec.europa.eu/topics/energy-efficiency/energy-efficient-buildings/energy-performance-buildings-directive_en [08.01.2025].

The fast implementation of ESG standards is proceeding in the areas, which bring the real efficiencies. It is related to both newly constructed buildings as well as existing ones, which require rebuilding, refurbishing or retrofitting. Measures implemented in order to enhance the environmental performance include i.a.:

- Applying eco-friendly and energy efficient construction materials and furnishing materials.
- Designing interiors in a way enabling soft and hard refurbishment.
- Applying renewables (photovoltaics, geothermal heat pumps).
- Introducing efficient waste and water management systems.
- Installing smart A/C systems adjusting to the level of occupancy.
- Demand-response integration– coordinating building energy usage with the power grid to shift consumption to off-peak times.
- Smart metering and monitoring – using IoT devices to track and optimize energy and water consumption in real time.

Another aspect of ESG, which contributes to cutting emissions, is supporting transformation in transport and mobility. Modern buildings are designed with the idea to promote public, shared and low-emission transport. Landlords limit number of parking lots, equip their projects with bike racks and EV charging stations.

Real estate can also play an important role in strengthening social ties. One of the key elements of good design is the idea of place making – creating a place for social interaction. Offices, retail centers and hotels should merge into a liveable city, creating an inclusive space for inhabitants, whose environmental awareness is also increasing. Their demands, whether as a tenant, a customer or a resident, are growing in terms of eco solutions applied and social values represented.

According to the newest annual 2024 report published by the Polish Green Building Council[2] the last year has seen a clear increase in the number of certified buildings in the residential sector, which stands at 61% compared to the previous year. Increased environmental awareness among investors and the introduction of the ESG reporting requirement have increased the demand for properties that meet the certification criteria. There has been a noticeable increase in interest in of properties certified in several systems simultaneously (e.g., LEED and WELL). Obtaining Environmental certification of a property provides concrete evidence of compliance with certain sustainable building sustainable building standards.

Currently, there are 2035 certified buildings in Poland buildings. In contrast to the area, there has been a significant increase – by 24% – in the number of buildings per year in this list, which translates into almost 400 new buildings. This is the largest observed increase in four years.

ESG solutions not only contribute to tackling climate and social challenges but also can form a resilient and lucrative business model. Seemingly non-financial aspects of real estate impact the commercial conditions of investment. Compliant properties attract a broader pool of potential tenants, increasing the demand and limiting vacancies. Energy efficiency, reduced resource use and longevity decrease operational and maintenance expenses.

The buildings are more resilient to energy and utilities costs fluctuations, which is crucial in the current global energy crisis. Lower occupancy costs and higher demand for premises mean that ESG complainant buildings obtain higher rents on the market. Furthermore, upholding high standards ensure compliance with environmental regulations, minimizing the potential risks of future necessary improvements. The various upsides of seemingly non-financial environmental solutions can therefore effectively offset additional initial acquisition or construction costs. Investors perceive ESG compliant real estate as desired and highly sought- after product, with some funds specializing in green investment.

2 https://plgbc.org.pl/dokumenty/zrownowazone-certyfikowane-budynki-2024 [8.01.2025].

4.2 ESG-related legislation in real estate

Sustainable properties are associated with reduced risks and stable returns and are therefore expected to achieve higher transactional prices.

Beyond horizontal regulations, which pertain particularly to non-financial reporting (CSRD and EU Taxonomy), the real estate sector is subject to significant ESG regulatory dynamics in terms of sector-specific legislation, notably on the EU law dimension. Legal changes related to ESG in real estate strictly have a purposive dimension and are intended to contribute to achieving the European Union's climate objectives, with paramount aim of climate neutrality by 2050. Nevertheless, ensuring compliance with new EU regulations will be crucial for alignment with taxonomy criteria and will constitute a significant metric within non-financial reporting.

Crucial regulations related to sustainability in the real estate sector:

- Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU with regard to corporate sustainability reporting (hereinafter: **CSRD**)[3].
- Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (hereinafter: **EU Taxonomy**)[4].

3 Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU with regard to corporate sustainability reporting (OJ EU. L 2022, No. 322, p. 15).

4 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ EU L 2020, No. 198, p. 13–43).

The pivotal elements of legislative dynamics in the ESG sector-specific legislation in relation to the real estate sector and increasing its energy efficiency:

- Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system (hereinafter: **ETS 2**)[5].
- Directive (EU) 2024/1275 of the European Parliament and of the Council of 24 April 2024 on the energy performance of buildings (hereinafter: **EPBD**)[6].
- Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652 (hereinafter: **RED III**)[7].

Legal changes relating to major ESG-related regulations affecting primarily the real estate sector will have significant implications for valuation, increased property maintenance costs, market positioning, as well as construction costs for new buildings. The evaluated legislation will force increased investment activity in the field of building renovation and the integration of construction and renewable energy sources, aligning with the EU's decarbonization goals.

5 Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system (OJ EU L 2022, No. 130).

6 Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system (OJ EU L 2022, No. 130).

7 Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652 (OJ EU L 2023, No. 231).

Moreover, the introduction of frameworks such as ETS 2, EPBD and RED III will impose stricter energy performance standards and encourage the use of low-emission technologies. Real estate stakeholders must also consider potential carbon pricing impacts, which may result in higher operational expenses for buildings with low energy efficiency, driving a shift in tenant and investor preferences toward green-certified properties.

These regulations emphasize the importance of sustainability reporting, particularly under the CSRD and ESRS. Real estate entities will need to incorporate compliance measures into their long-term strategies, enhance transparency in emissions reporting, and prioritize life-cycle sustainability assessments during construction and renovation processes.

Adapting to these changes not only ensures regulatory compliance but also positions companies to capture the growing demand for sustainable properties, improve asset resilience, and maintain market competitiveness. It is crucial for participants in the sector to proactively leverage available subsidies and incentives, such as those under the Social Climate Fund, to mitigate costs and finance the transition toward a greener real estate market.

4.3 Sustainability reporting

With the Corporate Sustainability Reporting Directive (CSRD) coming into force and its transposition to local regulations, sustainability reporting is becoming an essential part of corporate reporting in the EU. Companies must conduct a Double Materiality Assessment (DMA) to identify impacts, risks, and opportunities (IROs) related to sustainability. Reporting shall describe policies, actions, and targets addressing these IROs, covering environmental issues, human rights, working conditions, and health and safety. The reports will follow the European Sustainability Reporting Standards (ESRS) and be part of the management report.

On top of that, sustainability reporting encompasses disclosures pursuant to Article 8 of the EU Taxonomy (Taxonomy Regulation). Taxonomy Regulation aims to increase transparency in the market and help prevent greenwashing by providing information to investors about the environmental performance of assets and economic activities of companies.

The CSRD was transposed to local law through novelization of the Accounting Act in December 2024 and it requires the following entities to report:

- From 1 January 2024 for large public interest companies (with more than 500 employees) already covered in the Non-Financial Reporting Directive, with reports in 2025.
- From 1 January 2025 for large companies not currently subject in the Non-Financial Reporting Directive (with more than 250 employees and/or PLN 220m in turnover and/or PLN 110m in total assets), with reports in 2026.

- Starting 1 January 2026 for listed SMEs with reports in 2027. Listed SMEs can opt-out from reporting for a transition period of two years (i.e., till 2028), provided they briefly state in the management report why the sustainability information has not been provided.

European Sustainability Reporting Standards (ESRS)

First set of ESRS has been published and is mandatory for reporting for 2024 and onwards. The standards comprise of the following cross cutting standards (ESRS 1 and ESRS 2) and topical environmental, social and governance standards:

Published standards	
ESRS 1	General Requirements
ESRS 2	General disclosures
ESRS E1	Climate change
ESRS E2	Pollution
ESRS E3	Water and marine resources
ESRS E4	Biodiversity and ecosystems
ESRS E5	Resource use and circular economy
ESRS G1	Business conduct
ESRS S1	Own workforce
ESRS S2	Workers in the value chain ESRS S3
ESRS S3	Affected communities ESRS S4
ESRS S4	Consumers and end-users

Under ESRS, sustainability statements will be part of the management report and will be organized into four sections:

- General Information
- Environmental Information

- Social Information
- Governance Information

Each organization will have to carry out a double materiality assessment (DMA) in order to identify which of the above standards (sustainability topics) will need to be reported. Double materiality has two dimensions:

- Impact materiality (how the entity's business including its value chain impacts the people and environment)
- Financial materiality (how sustainability matters impact the entity's business)

Both perspectives should be analyzed, as they are interrelated and the interdependencies between these two dimensions need to be considered. The DMA process needs to be described in the sustainability statement in–line with ESRS.

The Disclosure Requirements in topical ESRS should cover the following reporting areas:

a. **Governance:** the governance processes, controls and procedures used to monitor, manage and oversee impacts, risks and opportunities.

b. **Strategy:** how the undertaking's strategy and business model interact with its material impacts, risks and opportunities, including the strategy for addressing them.

c. **Impact, risk and opportunity management:** the process(es) by which the undertaking identifies impacts, risks and opportunities and assesses their materiality, as well as how it manages material sustainability matters through policies and actions.

d. **Metrics and targets:** how the undertaking measures its performance, including targets it has set and progress toward meeting them.

When preparing the sustainability statements, an entity should apply qualitative characteristics of information such as relevance, faithful representation, comparability, verifiability, and understandability.

The reports under CSRD are subject to external assurance – initially at the level of the so-called limited assurance, and ultimately at the level of reasonable assurance, i.e., similarly to the audit of financial statements. Assurance requirement applies from the first year of reporting requirement, as detailed above.

EU Taxonomy

Companies covered by the CSRD reporting obligation will be required to disclose financial ratios in terms of alignment with the environmental objectives of the EU Taxonomy. EU Taxonomy reporting was already required for companies subject to Non-Financial Reporting Directive (NFRD).

Each entity subject to the CSRD will disclose what percentage of turnover, capital expenditure (CapEx) and operating expenditure (OpEx) relate to activities that are eligible and aligned with EU Taxonomy. In addition to the above-mentioned KPIs, Taxonomy Regulations require the disclosure of accompanying narrative disclosures, which should provide transparency on:

1. Contextual information and eligibility identification process.
2. How an issuer assessed the compliance with the technical screening criteria with respect to multiple environmental objectives.
3. The turnover, CapEx and OpEx that arise from the activities that contribute to multiple environmental objectives.
4. Explain how an issuer has addressed the occurrence of double counting, including the rationale for selecting one specific objective over the multiple available objectives.

The EU Taxonomy focuses on climate change mitigation and adaptation and thus puts emphasis on sectors with high GHG emissions, such as real estate and construction. Therefore, it will be important part of real estate ESG reporting for all stakeholders, including banks and investors.

Szczecin –riverfront along the Odra river

4.4 ETS 2

Within the review of the ETS Directive adopted in 2023, a new emissions trading system called ETS 2 was established, separate from the existing EU ETS system. This new framework directly impacts CO_2 emissions from fuel combustion in buildings, road transport, and additional sectors, particularly smaller industries not covered by the existing EU ETS system. For the real estate sector, this marks a pivotal shift, emphasizing decarbonization and increasing accountability for energy-related emissions.

ETS 2 will become operational in 2027. **It's the fuel suppliers, not end-users such as households, who will be obligated to purchase and retire allowances to cover their emissions.** The ETS 2 cap will be set to reduce emissions by 42% by 2030 compared to 2005 levels.

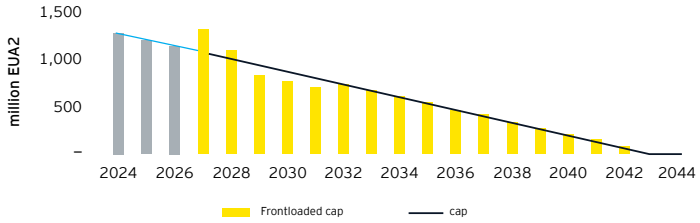
Timeline of the implementation:

- Monitoring and reporting will begin in 2025. Full functionality from 2027 (may be deferred up until 2028 in case of high energy prices).
- The number of allowances will be reducing up to 2030. From 2027, the allowance numbers will be linearly diminishing, starting from 2024.
- If the allowances' price surpasses €45 over a certain timeframe, additional allowances will be released to increase market supply.

All emissions allowances within ETS 2 will be sold at auctions, and a portion of the revenues will be used to support vulnerable households and micro-enterprises through a special Social Climate Fund. Member States will be obliged to use the remaining ETS 2 revenues for climate action and social measures and will also be reporting on how these funds are being spent.

According to the legislation, allowances (to be termed as 'regulated entity allowances') created in relation to the EU ETS 2 will not be interchangeable with allowances launched in relation to the EU ETS. Additionally, regulated entity allowances cannot be held in accounts opened in connection with the EU ETS, though transaction accounts will be able to hold both types of allowances. Instead, each entity covered by the EU ETS 2 will need to open a 'regulated entity holding account'.

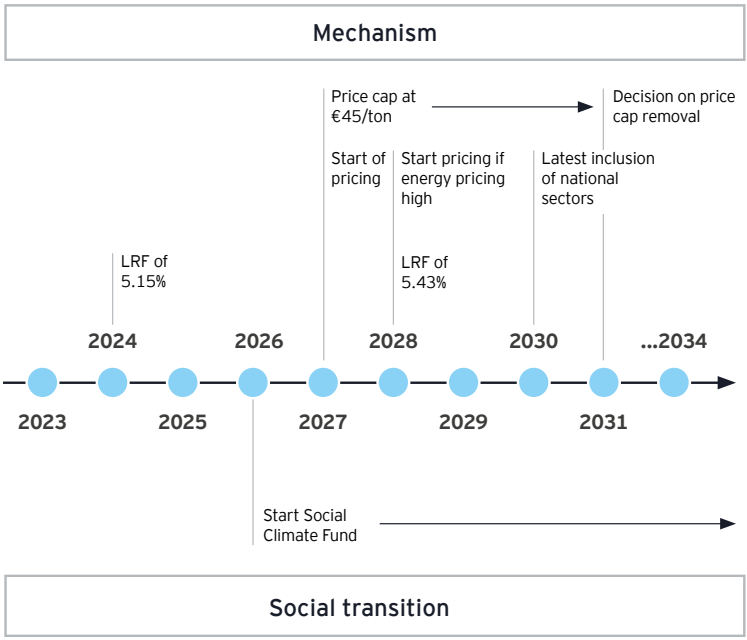
EU ETS2 CAP



Forecasting ETS 2 cap vs actual supply (source: Vertis Environmental Finance)

The compliance scheme for the EU ETS 2 will also differ from the EU ETS in the following ways:

- There will be no free allocation of allowances for regulated entities under the EU ETS 2.
- The annual deadline for regulated entities to cancel allowances is 31 May compared to 30 September for compliant entities under the EU ETS.



Implementation scheme of the ETS 2 (source: energypost.eu)

Key provisions of ETS 2 relevant to real estate sector:

The crucial provisions of ETS 2 for the real estate sector focus on incentivizing energy efficiency, reducing carbon emissions, and ensuring compliance with EU climate goals. These provisions aim to transform the sector by targeting building emissions and encouraging sustainable practices.

1. Scope of coverage

- ETS 2 applies to buildings used for residential, commercial, and industrial purposes.
- Focuses on fuel suppliers for heating and cooling in the building sector, indirectly impacting real estate owners and occupants.

- Targets emissions from natural gas, heating oil, and coal, commonly used in building operations.

2. Mandatory allowances for fuel suppliers

- Fuel suppliers must purchase allowances for their emissions under ETS 2, creating a carbon cost associated with fossil fuel use.
- This cost is likely to be passed on to end-users, including building owners, managers, and tenants.

3. Carbon Pricing Mechanism

- Establishes a cap-and-trade system where the total number of allowances is capped to ensure emission reductions.
- Gradual reduction of the cap over time to align with the EU's climate neutrality goals by 2050.

4. Energy performance requirements

- Aligns with and supports the Energy Performance of Buildings Directive (discussed below) which mandates minimum energy performance standards for buildings.
- Encourages the phase-out of fossil fuel-based heating systems, such as gas boilers.

5. Renovation incentives

- Provides incentives for building owners to undertake deep energy renovations, including:
  - Upgrading insulation.
  - Installing renewable energy systems (e.g., solar panels, heat pumps).
  - Improving overall energy efficiency of heating, ventilation, and air conditioning (HVAC) systems.
- Encourages retrofitting older buildings to meet higher energy efficiency standards.

6. Social Climate Fund (SCF)

- Aims to mitigate the impact of ETS 2 on vulnerable households and building owners.
- Provides financial assistance for energy efficiency improvements, such as replacing inefficient heating systems.
- Helps reduce energy poverty and ensure a fair transition.

7. Minimum Energy Performance Standards (MEPS)

- ETS 2 reinforces compliance with MEPS, which require:
  - Stricter energy efficiency ratings for new and existing buildings.
  - Implementation of nearly zero-energy building (NZEB) standards.

8. Renewable energy integration

- Promotes the adoption of renewable energy technologies in buildings, such as:
  - On-site solar power generation.
  - Connection to district heating and cooling systems powered by renewables.
- Supports alignment with the Renewable Energy Directive targets.

9. Monitoring, Reporting, and Verification (MRV)

- Obligates stakeholders to track and report building-related emissions to ensure compliance with ETS 2.
- Real estate entities may need to integrate emissions data into sustainability reporting frameworks like CSRD or ESRS.

10. Market dynamics and economic impact

- Increased operational costs for carbon-intensive buildings, motivating:
  - Upgrades to improve energy efficiency.
  - Demand for green-certified buildings.
- Risk of asset value depreciation for non-compliant properties.

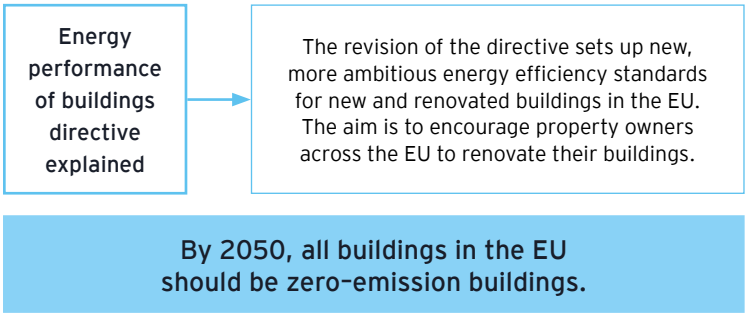
While this transition brings challenges such as increased operational costs and compliance demands, it also presents opportunities to enhance property value, reduce energy expenses, and align with growing ESG expectations. Strategic planning, leveraging available subsidies, and prioritizing green investments will be critical for navigating ETS 2's requirements and ensuring long-term resilience and competitiveness in the real estate market.

Toruń – view over the Vistula river

4.5 Energy Performance of Buildings Directive

Pursuant to the data presented by the European Commission, ca. 40% of EU's energy usage can be attributed to buildings, which also account for over half of the EU's gas utilization mainly via heating, air conditioning, and domestic hot water usage, as well as 36% of the emissions related to energy. Currently, roughly 35% of EU's buildings have been standing for more than 50 years, and near about 75% of the total buildings lack energy efficiency. However, the annual rate of energy renovation is staggeringly low at around 1%.

EPBD directly impacts the real estate sector by shaping the future of building energy efficiency and decarbonization. First introduced in 2002 and subsequently revised multiple times, the EPBD aims to reduce energy consumption in buildings. The latest revised Directive (EU/2024/1275) entered into force in all EU countries on 28 May 2024 and helps increase the rate of renovation in the EU, particularly for the worst-performing buildings in each country. It introduces stricter standards and accelerates the transition to a sustainable built environment.



EPBD Infographic (source Council of the European Union)

The revised EPBD presents a set of strategies assisting EU nations to structurally improve the energy efficiency of buildings, focusing especially on the poorest performing buildings:

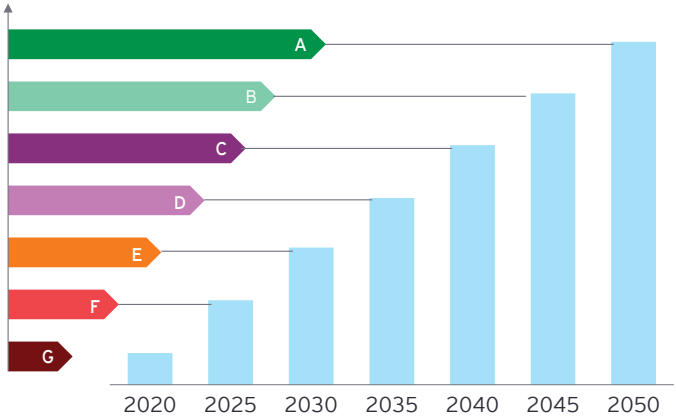
- National measures must ensure that a minimum of 55% reduction in average primary energy use is achieved by renovating the worst-performing buildings.
- Each Member State will outline its national trajectory to lower the average primary energy consumption of residential buildings by 16% by 2030 and 20%-22% by 2035, considering its unique circumstances and by 2040, and every 5 years thereafter, is equivalent to, or lower than the nationally determined value derived from a progressive decrease in the average primary energy use from 2030 to 2050, in line with the transformation of the residential building stock into a zero-emission building stock.
- For non-residential properties, revised regulations necessitate progressive improvements through minimum energy performance standards. This will result in renovating 16% of the worst-performing buildings by 2030 and 26% by 2033.
- Special categories of residential and non-residential properties, including historical buildings and vacation homes, may be exempted from these obligations by Member States.
- Enhanced Energy Performance Certificates will be developed from a standard EU template with unified criteria to facilitate financing decisions and better inform European citizens. These certificates shall include the energy performance of a building expressed by a numeric indicator of primary energy use in kWh/(m2.y), and reference values such as minimum energy performance requirements, minimum energy performance standards, nearly zero-energy building requirements and zero-emission building requirements, in order to make it possible for owners or tenants of the building or building unit to compare and assess its energy performance.

- Financing measures targeting especially vulnerable customers and poorly performing buildings should accompany and encourage renovations to combat energy poverty and lower energy bills.
- Member States must also introduce safeguards for renters in order to prevent their eviction due to excessive rent hikes following a renovation.
- Target the key role of the solar energy – increased deployment of solar technologies on all new buildings and certain existing non-residential buildings where technically and economically feasible, ensuring that new buildings are solar-ready (fit to host solar installations).
- The revised EPBD includes measures to enhance renovation strategic planning and ensure its execution. Member States will, according to the agreed provisions:
    - According to Article 3 develop National Building Renovation Plans outlining their strategy to decarbonize their building stock and overcome existing obstacles, like financing and skilled worker shortage.
    - Initiate national building renovation passport programs to guide owners toward zero-emission buildings. Building renovation passport means a tailored roadmap for the deep renovation of a specific building in a maximum number of steps that will significantly improve its energy performance.
    - Set up one-stop-shops providing independent support and advice for homeowners, SMEs, and other participants in the renovation sector.

Moreover, the EU in gradually eliminating fossil fuel-powered boilers. Subsidies for standalone fossil fuel-powered boilers are forbidden from 1 January 2025 (according to Article 17 paragraph 15). The revised Directive provides a clear legal foundation for Member States to introduce requirements for heat generators based

on greenhouse gas emissions, fuel type, or minimum renewable energy use for heating. Member States will also have to lay out specific measures to phase out fossil fuels in heating and cooling with the aim to fully eliminate fossil fuel-powered boilers by 2040.

Illustration of an incrementally increasing minimum energy performance standard by energy performance certificate class



Source: Regulatory Assistance Project

Key provisions of EPBD relevant to real estate sector:

1. **Zero-emission buildings:** The existing standard for new constructions is the nearly zero-emission building (nZEB). The newest EPBD puts forward a zero-emission (ZEB) criterion for new buildings (Article 7):
    - From 1 January 2028, new buildings owned by public bodies.
    - From 1 January 2030, all new buildings.

ZEB is a building with a very high energy performance, requiring zero or a very low amount of energy, producing zero on-site carbon emissions from fossil fuels and producing zero or a very low amount of operational greenhouse gas emissions.

2. **Energy performance classes:** The revised EPBD aims to standardize the requirements for energy performance classes on a scale from A to G throughout the EU. The A classification will be synonymous with zero-emission buildings (ZEB), whereas G will denote the 15% worst-performing buildings in a nation's building stock at the time of the scale's implementation. Member States must oversee and ensure that the intermediate classes (B to F) distribute energy performance indicators evenly among the relevant classes. By 2026, all energy performance certificates need to be standardized on a scale of energy performance classes and align with the template defined in Annex V of EPBD.

3. **Renovation passports:** The revised EPBD introduces renovation passports to aid building owners planning to renovate their building in stages. Renovation passport is a document, which offers a customized plan for the renovation of a particular building in several phases that considerably enhance its energy performance. According to the EPBD, a renovation passport must be issued by a skilled and certified professional after an on-site inspection. The passport should present a renovation plan showing a series of renovation actions that complement each other, with the aim of turning the building into a zero-emission building (ZEB) by no later than 2050. It should also indicate the anticipated benefits in terms of energy savings, reductions in energy bill costs, and operational greenhouse gas emissions savings, as well as additional benefits related to health, comfort, and the building's increased ability to adapt to climate change. Moreover, it should provide details about potential financial and technical support. By 29 May 2026, Member States shall introduce a scheme for renovation passports based on the common framework set out in Annex VIII of EPBD.

4. **Deep renovation:** The revised EPBD provides a definition for and seeks to promote deep renovation: which is in line with the 'energy efficiency first' principle, which focuses on essential building elements and which transforms a building or building unit:

- Before 1 January 2030, into a nearly zero-energy building.
- From 1 January 2030, into a zero-emission building.

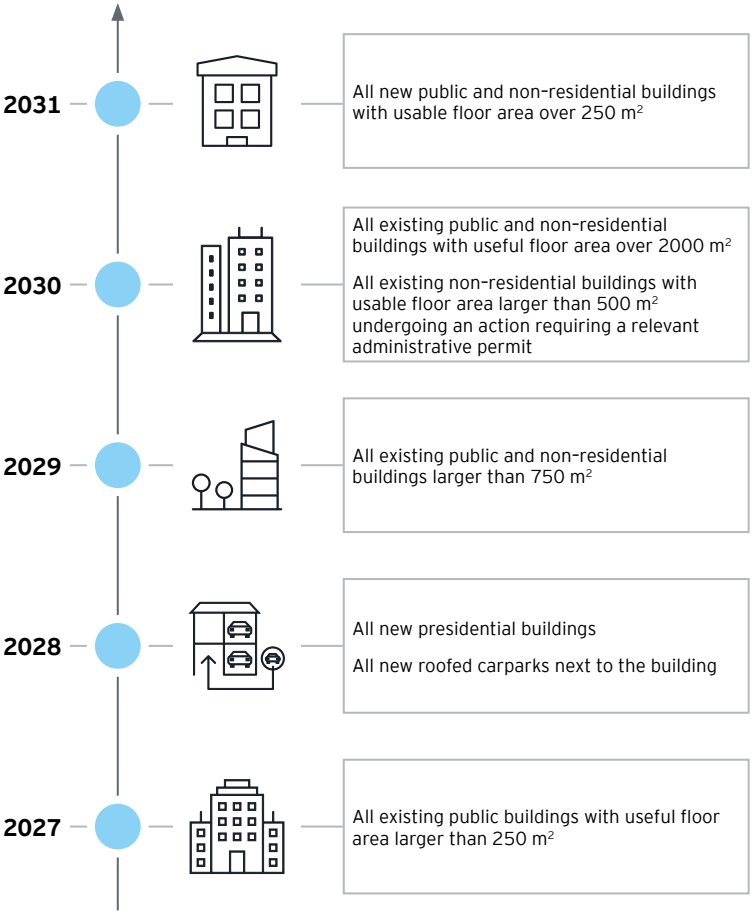
Staged deep renovation refers to a comprehensive renovation conducted in multiple stages, adhering to the steps outlined in a renovation passport in accordance with the stipulations of the EPBD.

5. **Infrastructure for sustainable mobility:** Alongside reducing the precondition for the installation of recharging stations – for instance, in non-residential buildings that are new or undergoing significant renovations, when there are five parking spaces, the revised EPBD mandates the installation of at least one recharging point (whereas the current version requires it when there are ten parking spaces). Additionally, it imposes a requirement to install pre-cabling (for electric vehicles) and brings in necessities to establish bicycle parking spaces:
    - Pre-cabling and ducting: Pre-cabling for at least 50% of car parking spaces and conduits for the remaining spaces to enable future installation of recharging points for electric vehicles and similar.
    - Bicycle parking: Bicycle parking spaces must represent at least 15% of the average or 10% of the total user capacity, accommodating larger bicycles.
6. **Solar energy:** New buildings must be designed to optimize solar energy generation based on site solar irradiance, allowing cost-effective installation of solar technologies. Solar equipment installations follow the permit-granting and grid-connection notification processes under Directive (EU) 2018/2001. Mandatory solar installation deployment:
    - New Buildings:
        - By 31 December 2026, all new public and non-residential buildings larger than 250 m².
        - By 31 December 2029, all new residential buildings and roofed car parks adjacent to buildings.

- Existing Public Buildings:
  - Larger than 2,000 m² by 31 December 2027.
  - Larger than 750 m² by 31 December 2028.
  - Larger than 250 m² by 31 December 2030.
- Existing Non-Residential Buildings:
  - Larger than 500 m² undergoing major renovations or requiring permits for roof works or building system installations by 31 December 2027.
  - Member States must include policies in their building renovation plans to ensure widespread deployment of solar energy installations.

Łódź – aerial city view in sunset

Solar energy installations must be installed, if technically suitable and economically and functionally feasible, by:



Source: Regulatory Assistance Project

7. **National building renovation plans:** the revised EPBD introduces modifications to make national building renovation plans (currently referred to as "long-term renovation strategies") more practical, including a uniform template (as Annex II to the EPBD). The aim is to align with target setting in accordance with upcoming EU laws, including the annual energy renovation rate, primary and final energy consumption of the national building stock, and its operative GHG emissions. Member States are required to deliver their (preliminary) national building renovation plans as a part of their (draft) integrated national energy and climate plan (NECP) every five years (with progress reports being a component of the biannual NECP reporting); the first draft must be submitted to the Commission by 30 June 2024, with the final plan due by 31 December 2025. The Commission will then review the draft and potentially issue recommendations specific to each country In addition to this, as a facet of their national building renovation plans, Member States are obliged to set specific timelines to reach higher energy performance categories. They also have the potential opportunity to include national minimum energy performance standards in their national renovation strategies
8. **Reducing fossil fuels:** the revised EPBD incorporates a legal framework for national prohibitions on fossil fuel-based boilers, thereby permitting Member States to establish requirements for heat generators based on greenhouse gas emissions or the type of fuel utilized. Furthermore, to prevent new generations of fossil fuel- based boilers from becoming stranded assets, the updated EPBD mandates that a zero-emission building (ZEB) does not generate any on-site carbon emissions from fossil fuels.
9. **Smart readiness of buildings:** in line with the rest of the EPBD, there is a heightened emphasis on guaranteeing that new constructions and renovation projects implement appropriate smart meters and building management systems to collect data on energy performance. These requirements will have implications for property management.

10. **Databases for the energy performance of buildings:** Member States will be required to establish national databases to collect information on the energy performance of buildings as well as the overall energy efficiency of the national building stock (related to EPCs, inspections, the building renovation passport, the smart readiness indicator, and the calculated or metered energy consumption of the covered buildings). Access to this data must be ensured, subject to data protection regulations – for example, EPCs should be accessible to owners, tenants, managers, financial institutions for their investment portfolio, prospective tenants, or purchasers; anonymized aggregated data should be available to the public; and data should be provided to the (EU) Building Stock Observatory once per year. Additionally, these databases should be capable of interoperating with other administrative databases containing building information, such as the national building cadaster and digital building logbooks.

Opportunities for the real estate sector:

- Increased property value: energy-efficient and zero-emission buildings are increasingly attractive to tenants, buyers, and investors, commanding higher prices and rents.
- Access to green financing: compliance with EPBD opens doors to green loans, subsidies, and grants designed to support sustainable real estate projects.
- Enhanced ESG metrics: meeting EPBD standards improves a company's ESG profile, crucial for attracting investment in the current market.
- Market differentiation: early adoption of EPBD-compliant technologies and designs can position real estate companies as industry leaders in sustainability.

4.6 RED III

The Renewable Energy Directive (RED III) is a pivotal legislative initiative in the European Union's energy transition strategy. As part of the broader Fit for 55 package, RED III aims to accelerate the adoption of renewable energy across sectors, including real estate. The directive sets binding targets and obligations that significantly impact the real estate industry's design, construction, and operational strategies. According to RED III buildings hold significant potential to reduce greenhouse gas emissions in the EU, essential for meeting the climate neutrality goal under Regulation (EU) 2021/1119[8]. Transitioning heating and cooling systems in buildings to renewable energy is vital, yet progress has stagnated over the past decade, heavily relying on biomass. To address this, indicative renewable energy targets for buildings are proposed. These targets aim to:

- Track progress and identify barriers in renewable energy adoption.
- Signal long-term investment opportunities, including post-2030.
- Encourage renewable energy production and use on-site, nearby, or from the grid.

Member States will calculate renewable energy shares based on the average grid-supplied renewable electricity from the previous two years. Promoting smart and innovative technologies will further enhance energy system efficiency and provide certainty for investors while fostering local engagement.

8 Regulation EU 2021/ 1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), OJ EU 2021 L 243/1.

Key provisions of RED III relevant to real estate sector:

1. **Higher renewable energy targets:** RED III raises the EU's **overall renewable energy target to 42.5%** by 2030 but aiming for 45% (in comparison RED II set a target of 32% by 2030). This includes a specific focus on increasing the share of renewable energy in heating and cooling systems, a critical component for the real estate sector. According to Article 15a of a Directive all Member States shall set an indicative 2030 target for renewable energy use in buildings, aiming for at least **49% of the Union's final energy consumption in the sector**.

   - Implications for buildings: new and existing buildings will need to integrate renewable energy systems such as solar panels, geothermal heating, and district heating networks powered by renewable sources. Real estate developers and property managers will need to prioritize renewable energy solutions to meet regulatory requirements.

2. **Mandatory annual increase in renewable heating and cooling:** RED III mandates an annual increase of:

   - 0.8 percentage points between 2021 and 2025.
   - 1.1 percentage points between 2026 and 2030 in the share of renewable energy in heating and cooling at the national level (Article 23).

   For real estate owners: owners of large portfolios, particularly in commercial real estate, will be encouraged or required to upgrade heating systems to renewable alternatives. This includes replacing fossil-fuel-based systems with heat pumps or biomass boilers.

3. **Enhanced energy community:** Provisions of RED III promotes the establishment and expansion of renewable energy communities, enabling collective investments in renewable energy installations such as:

- **Solar installations:** Shared solar photovoltaic (PV) systems for electricity generation.
- **Wind energy:** Community-owned wind farms or individual wind turbines.
- **Energy storage:** Shared battery systems to store renewable energy for later use.
- **District heating and cooling:** Community-driven renewable heating and cooling networks using biomass, geothermal, or solar thermal energy.
- **Electric vehicle (EV) infrastructure:** Smart and bi-directional charging stations for shared electric vehicle fleets.
- **Hydropower:** Small-scale hydropower plants for local electricity needs.
- **Energy efficiency upgrades:** Integration of renewable technologies into nearly zero-energy buildings.

Opportunities for developers: Real estate developers can facilitate or partner in renewable energy communities, offering tenants shared access to renewable energy installations, such as rooftop solar panels or community wind turbines.

4. **Integration of renewable energy in urban planning:** The Directive encourages the inclusion of renewable energy considerations in urban planning and building design. Local and regional administrations are urged to prioritize heat integration in their planning efforts, promoting sustainability in urban development. This includes utilizing unavoidable waste heat and cold in the design and renovation of industrial, commercial, residential, and energy systems like electricity grids, district heating, and alternative fuel networks

5. **Simplification and Shortening of Permit-Granting Procedures:** The directive mandates a further simplification and shortening of the administrative permit-granting procedures for renewable energy plants, including those that combine different renewable energy sources, heat pumps, co-located energy storage, and the necessary assets for the connection of such plants.
    - **Implications for urban real estate:** Municipalities and urban developers must integrate renewable energy infrastructure into city planning, which could include designing energy-efficient building clusters or implementing renewable-powered microgrids.

Opportunities for the real estate sector:

1. **Increased property value:** Buildings equipped with renewable energy systems and high energy efficiency ratings are increasingly in demand, commanding higher market values and rental yields.
2. **Access to incentives:** EU and national governments offer subsidies, grants, and tax incentives for renewable energy projects. Real estate stakeholders can leverage these programs to offset the costs of compliance.
3. **Enhanced ESG performance:** Compliance with RED III contributes to improved ESG scores (the explanation of the importance of ESG reporting in the real estate sector above) which are crucial for attracting investors and tenants in the modern real estate market.
4. **Innovation in building design:** The directive encourages innovation in sustainable building design, fostering new business models and opportunities for developers who embrace renewable energy integration.

Steps for real estate stakeholders:

To align with RED III, stakeholders in the real estate sector should:

- **Conduct energy audits:** Assess the current energy performance of properties to identify opportunities for integrating renewable energy.
- **Invest in renewable energy systems:** Prioritize technologies such as solar panels, heat pumps, and geothermal systems in new developments and retrofits.
- **Collaborate with energy experts:** Engage with renewable energy consultants and technology providers to ensure effective and compliant implementation.
- **Monitor policy developments:** Stay informed about national and regional implementations of RED III to anticipate changes and opportunities. In Poland, the time for implementation (18 months from adoption) will pass on 21 May 2025. It will certainly require amendments to the following legislation: Act of 20 February 2015 on renewable energy sources, Act of 10 April 1997. – Energy law and Act of 27 April 2001. – Environmental Protection Law. Act of 20 May 2016, on Investmentsin Wind Power Plants, Act of 14 June 1960 – Administrative Procedure Code, Act of 7 July 1994 – Construction Law, Act of 20 July 2017 – Water Law, Act of 27 March 2003 on Spatial Planning and Development.

4.6 Green leases

A green lease is a type of commercial space lease that aligns the interests of the contracting parties in energy efficiency, water management and the use of environmentally friendly measures. This is to ensure that the development of the project – from the construction phase to occupancy – is done in a sustainable manner in terms of environmental solutions, urban design or the potential impact of the building on the local community.

In Poland, as in other European Union countries, green leases are a part of a broader ESG strategy. They play a significant role in advancing environmental, social, and governance objectives by promoting sustainable development within the real estate sector. This alignment with ESG principles reflects both regulatory pressures and market expectations, as stakeholders increasingly prioritize transparency and responsibility in business practices. Green leases help address environmental concerns, reduce carbon footprints, and contribute to the EU's ambitious climate goals, including those outlined in the Green Deal and Fit for 55 packages.

Both Polish and EU legislation has not yet developed a strict definition of a green lease agreement. However, in the context of environmental requirements, such a solution is already quite standardized in Western markets, where the so-called green annexes or green provisions are popular, comprehensively describing the principles of cooperation of the parties to the lease agreement in terms of environmentally friendly use of real estate.

Although the green lease is not yet mandatory on the Polish real estate market, already its conclusion is becoming at least a kind of gentleman agreement between the tenant and the landlord. This, however, does not constitute a lack of enforceability of such an agreement. Depending on the type of clauses used, the parties

can sanction compliance with the balanced aspects of the lease agreement. In terms of binding force, two types of green clauses are distinguished – light green clauses and dark green clauses. Light green clauses, as a rule, are merely a declaration of the parties' willingness to comply with green provisions, and their non-compliance does not carry contractual sanctions. Dark green clauses, on the other hand, are treated as an obligation on the part of the parties to fulfill specific obligations and carry, for example, the risk of contractual penalties in the event of non-fulfillment.

In practice, it is possible to introduce green clauses to ensure sustainable solutions both at the construction or site development stage, such as by ensuring that the building is properly certified in accordance with the tenant's requirements or that the equipment in the building is based on only sustainable materials, as well as at the maintenance and management stage of the property, for example, by being obliged to ensure the use of sustainable energy sources to the maximum extent possible or selecting suppliers that care about ESG aspects.

Each lease agreement should be individually "tailored" for the parties to the agreement to implement their sustainability strategies, taking into account the type of property and the expectations of the landlord, tenant or other users of the building. As a rule, green clauses are developed and incorporated into the lease at the initiative of the landlord. Nevertheless, it happens that some tenants, especially corporations with international reach, have developed a number of provisions that, in accordance with the guidelines and assumptions of the corporate group, must be included in the content of the lease. This is mainly caused by the need for non-financial reporting, introduced by the CSRD as part of the implementation of the EU Green Deal. On the other hand, the desire to introduce green provisions into contracts is not only due to reporting reasons, but also due to the increased competitiveness and attractiveness of investments and the possibility for the landlord to obtain so-called green financing on preferential terms.

Green leases are beneficial from both an environmental and business perspective. They make an unquestionable contribution to creating a more sustainable and friendly place to live and work. Buildings using sustainable solutions, as a rule, allow for higher returns on investment and can significantly reduce the cost of using the property, including operating costs. An entrepreneur deciding to lease office space in a green building, through the provisions of a green lease agreement, can be obliged, among other things, to optimize electricity consumption, use air conditioning sensibly and regulate room temperature appropriately, limit water consumption or use environmentally friendly cleaning products. In turn, the developer or property manager may be obliged to implement sustainability principles by, for example, providing charging stations for electric cars, bicycle parking spaces, locker rooms or showers at the office building, with the aim of providing comfortable conditions for people coming to work by bicycle.

Sorting out such a multitude of criteria that a building must meet to be considered "green" is not easy, which is why multi-criteria certification systems have been developed. These are universal, standardized sets of indicators that make it easier for designers, building owners and managers to implement practical and measurable solutions for environmentally friendly design, construction and use of real estate.

However, despite the ever-growing popularity of green leases, economic and financial issues are sometimes a source of contention between the parties. Sometimes tenants cite the issue of setting aside the additional funds necessary to fulfill their obligations under green clauses. This is also the case the other way around – landlords need to budget funds for adapting buildings to the evolving real estate market. After all, today's tenants are not only increasingly aware of environmental aspects, but they are also increasingly willing to choose properties whose owners are undertaking sustainability initiatives. That's why it's so important to have a dialogue between the parties and work out an agreement acceptable to the parties.

Also crucial is the commitment of the parties (mainly the landlord) to conduct educational programs and campaigns for employees and tenants to promote sustainable real estate practices. It should be remembered that even the best-worded clauses will not produce the expected results if they are not put into practice.

The dynamics of the development of green building clearly shows that parties to lease agreements are no longer dealing with a fad or trend, but a clearly defined direction, the adoption of which is associated with certain benefits, both for the environment and for building users.

Wrocław – the Grunwaldzki bride over the Odra river

4.7 ESG trends in real estate

The above-presented dynamics on ESG-related and sector-specific regulations at EU level amplify the following trends:

- **Enhanced energy efficiency:** property owners will face growing pressure to invest in technologies and solutions that improve building energy efficiency due to higher costs associated with CO emissions under ETS 2 and requirements stemming from the EPBD
- **Increased operational costs:** operational and property maintenance costs are likely to rise due to:
  - Higher energy prices influenced by ETS 2 obligations.
  - Investments required to upgrade building energy efficiency and meet stricter standards (EPBD).
  - Compliance with RED III which mandates an increased share of renewable energy in property-related systems.
- **Impact on property valuation:** properties with higher energy efficiency and lower CO emissions will likely experience increased market value and demand.
  - Non-compliant or inefficient properties risk devaluation, becoming less attractive to both buyers and tenants.
  - ESG criteria will play an increasingly pivotal role in shaping property valuations, leading to greater differentiation between assets from the perspective of investors and financial institutions.

- **The need for renovation and retrofitting:**
  - A significant proportion of existing buildings will require substantial renovation to align with stricter emission and energy efficiency requirements.
  - Measures may include upgrading insulation, implementing smart energy systems, and incorporating renewable energy sources.
- **Greater emphasis on sustainable construction practices**
  - Property developers and owners must prioritize sustainable construction methods, materials, and designs to reduce lifecycle CO emissions.
  - The Ecodesign Regulation will further drive innovation in energy-efficient construction materials and products, promoting circular economy principles.
- **New financing opportunities:**
  - Financing opportunities such as green bonds, sustainability-linked loans, and funds targeting energy-efficient projects will gain prominence.
  - Taxonomy-aligned projects, particularly those addressing energy efficiency and renewable energy integration, will attract favorable financing terms.
- **Increased accountability and transparency**
  - Under the CSRD companies, including those in the real estate sector, will face stricter reporting requirements.
  - Enhanced disclosure of energy performance, emissions, and ESG metrics will be critical for compliance and to secure investor trust.

- **Circular economy in real estate:** the main focus in the EU real estate sector is on incorporating circular economy principles into design strategies, but the real challenge lies in reshaping the business models to fully embrace these principles on a larger scale.

  To make this happen, investors and construction clients need to take the lead on implementing circular principles in major projects. Real estate professionals should be at the forefront of these discussions, and policymakers must be involved from the very beginning. We also need to develop tools to measure and capture any lost value.

The European Commission's report "Realising the Value of the Circular Economy in Real Estate"[9] outlines five new creative business models that can offer better returns than traditional methods:

1. **Flexible spaces** – capitalize on the co-working trend to make better use of underutilized areas in buildings, while managing the risks of short-term leases.
2. **Adaptable assets** – focus on creating buildings that can easily adjust to changing market conditions and social needs.
3. **Relocatable buildings** – offer high returns by moving structures across different sites.
4. **Residual value** – introduces tradable futures contracts for building materials at the end of their life cycle.
5. **Performance procurement** – shifts the focus to paying for performance rather than for products, aligning with the product-as-a-service approach.

9 https://circular-cities-and-regions.ec.europa.eu/support-materials/papers-and-reports/realising-value-circular-economy-real-estate [9.01.2025].

5 Contacts

Warsaw – the Siekierkowski bridge over the Vistula river

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Tomasz was responsible for fund and asset management of the office and mixed-use portfolio of 9 properties of total investment volume of about €500 million.

Graduate of the Warsaw School of Economics, Tomasz obtained a master's degree in economics (specialization: Banking and Finance).

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Anna Andrzejewska is a Director in the Real Estate Advisory Group. Anna Has over 20 years of experience. She specializes in strategic consultancy, especially in corporate strategic advisory including portfolio and processes management, consolidations and relocations, optimal business locations. Anna also support Clients with highest and best use as well as feasibility studies. She conducts valuations for transaction, accounting and debt financing purposes. She graduated from the University of Łódź with master's degree in Finance and Banking and specialization in Investments and Real Estate. She completed a post-graduate real estate valuation studies at Warsaw School of Technology. She is a certified Polish property manager and a member of The Royal Institution of Chartered Surveyors (MRICS).

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He graduated from Faculty of Geography and Regional Studies at University of Warsaw. He completed a post-graduate property management studies at Warsaw University of Technology and became a certified property manager. Dominik is Certified Commercial Investment Member (CCIM) and member of the Royal Institution of Chartered Surveyors (RICS).

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Ewelina Świderska is a Manager in the Real Estate Advisory Group. Ewelina has over 10 years of experience in providing real estate advisory services including valuation of single assets and portfolios, both commercial and residential, for transaction, accounting and loan security purposes, market analysis and strategic advisory including highest and best use, feasibility studies and commercial due diligence. Her expertise encompasses the valuation of complex and atypical real estate assets, including industrial facilities, waterfront developments, shipyards, airports and historical properties. She graduated from the Warsaw University of Technology with master's degree in Geodesy and Cartography, spatiality Cadaster and Property Management. She is a certified Polish appraiser.

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Hubert is a Partner in EY CFO Consulting and has over fourteen years of professional experience gained in CFO Advisory, Audit and also real estate strategic consulting.

Hubert is experienced in addressing key challenges from the CFO agenda including financial and management reporting, real estate transactions, capital market transactions (IPO, SPO), finance process management, internal controls testing, application of the IFRS, Polish and US GAAP and implementation of the new accounting standards. He was also responsible for establishing global real estate consulting hub (SSC) , IFRS adoptions and IFRS reporting projects.

Hubert graduated from Warsaw School of Economics with a Masters' Degree in Finance and Accounting,
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Łukasz is a Partner in Warsaw Office and Head of Real Estate Audit and Assurance Services. Łukasz holds a Polish Statutory Auditor (Biegły Rewident) license number 11959. He gained extensive experience in auditing and advising both large and multinational groups, as well as smaller private companies.

That included auditing local GAAP, IFRS and US GAAP financial statements, as well as performing other attestation services for various companies, including SEC registrants. Łukasz has led number of listed companies' audits, IPO/SPO transactions, comfort letters issuance and other audit work in connection with debt or equity financing transactions (bond issuances, capital increases, private placements).

Since July 2023 he serves as Assurance Quality Leader for Central, Eastern and Southeastern Europe and Central Asia.

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Rafał was the co-author of and led the team who worked on the Carbon Disclosure Project Central Eastern Europe Report for 2015 and 2016 as well other articles related to non-financial reporting and non-financial data verification since 2015. He leads engagements related to CSRD readiness and Double Materiality Analysis and sustainability assurance under CSRD.

Rafał, living in the region of San Francisco led US GAAP financial audit (including IPO) projects for EY public clients from the biotechnology sector listed on NASDAQ and based in California. Given his experience on the US market, since his return to Poland in 2015, Rafał is a Vice-Leader of the US Desk at EY Poland.

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Tomasz is Partner in EY Assurance, Climate Change and Sustainability Services. He has over 14 years of experience in assurance and advisory services.

Tomasz is a member of ACCA and a Polish Statutory Auditor (Biegły Rewident 13765). He coordinated projects related to sustainability reporting including support in preparing to CSRD and EU Taxonomy, as well as, sustainability assurance. He is co-author of sustainability reporting analyses such as EU Taxonomy Barometer, Climate Disclosure Barometer and Carbon Disclosure Project Central Eastern Europe Reports, as well as other articles related to ESG reporting and assurance. Tomasz has been working with real estate and construction companies both in the area of sustainability and financial reporting advisory and assurance.

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Paulina is a Senior in EY Assurance, Member of EY Poland Real Estate Group at EY Warsaw, currently pursuing ACCA qualification.

She gained over five years of experience in audit of financial statements of Real Estate companies in accordance with Polish Accounting Act as well as International Financial Reporting Standards. She participated in the successful IFRS conversion process for one of the leading companies in Real Estate sector.

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Paulina is a Senior Consultant in Assurance Services and a Member of the EY Poland Real Estate Group at EY Warsaw. She has 5 years of experience in audit, primarily working with large, listed companies in the real estate, development, and construction sectors.

Paulina is experienced in standalone and consolidated financial statements prepared in accordance with International Financial Reporting Standards and the Polish Accounting Act.

She is currently pursuing ACCA and Polish Chartered Accountant qualifications and is completing her PhD at the University of Warsaw, focusing on the impact of IFRS on foreign investments.

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Anna is EY IFRS Desk Leader in Poland. She has over 20 years of professional experience as an auditor and accounting expert. She is Polish Chartered Accountant, Certified Internal Auditor, member of ACCA and member of Accounting Standards Committee in Poland (appointed by the Minister of Finance). She is involved as IFRS subject matter expert during audits of multinational groups, listed companies as well as smaller private clients operating

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Małgorzata is a Partner in the EY global Corporate Reporting Services and member of the Technical Experts Group at EFRAG. She is Polish Chartered Accountant and member of ACCA. Małgorzata is responsible for assisting clients and EY teams by providing consultations on complex accounting issues and promoting consistent interpretation and application of IFRS and sustainability reporting standards. Małgorzata has also many years of experience in accounting advisory – accounting opinions, IFRS conversions and reorganization of reporting processes.

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Mikołaj Bokowy is Partner who is leading Real Estate Tax Group in Poland. He is also head of Polish Transaction Tax advisory practice.

Mikołaj has worked for many large real estate investors including both PE houses as well as strategic investors. He has supported clients on all stages of the investment, including acquisition, on-going support, restructuring or divestment.

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Michal Sawicki is Partner in Tax Real Estate Group at EY Warsaw office. He has been with EY since 2007. He is a certified tax advisor. His skills include advising on global restructurings, transaction support and structuring, tax accounting. He was involved in projects concerning tax issues in relation to the process of setting up, operating and restructuring of companies, tax assistance in establishing tax effective exit scenarios, international tax structuring.

Michal is an author of various articles relating to tax aspects of investing on the real estate market and co-author of the book "Taxation of the Real Estate Market".

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Her professional skills include advising on tax planning for international investments in Poland, different types of restructuring, but also with qualifying of the transferred set of assets for the tax purposes.

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She has been with EY since 2016 and prior to joining EY she has gained valuable experience working in other Big Four law firm and independent law firm. She has extensive experience in tax advisory on international projects involving numerous jurisdictions. She has worked on a number of deals involving mergers and acquisitions, demerger, transformations, sales and part disposals, including multidisciplinary projects.

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His professional skills include performing tax reviews, due diligence projects, contract negotiations, tax structuring projects, and post-merger integrations for real estate clients operating in Poland.

He also has extensive experience in managing tax compliance projects for portfolio companies in the areas of CIT, VAT, and Real Estate Tax (RET) reporting, as well as securing preferential WHT treatment for cross-border cash distributions.

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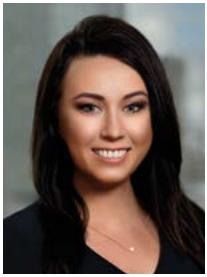

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Anna is an advocate and Senior Manager in EY Law with broad experience in legal advisory for businesses in the real estate and development sectors. Anna provides legal advice to Polish and foreign real estate developers and investment funds in the field of acquiring and disposing of commercial real estate. She was involved in a significant number of due diligence projects, asset deals and share deals for real estate, as well as projects concerning asset management issues and the preparation and completion of investment processes.

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