

Wojciech Marszałkowski
Wardyński & Partners, Warsaw
wojciech.marszalkowski@wardynski.com.pl

Katarzyna Juralewicz
Wardyński & Partners, Warsaw
katarzyna.juralewicz@wardynski.com.pl

Poland: tax implications of talent mobility - cross-border movement of employees

This paper examines the Polish tax implications of cross-border employee mobility, covering individual income tax residency and income source rules, the taxation of employment income (including equity compensation), permanent establishment (PE) risks for foreign employers and exit tax obligations. It also addresses recent legislative developments, relevant case law and key planning considerations for both employers and mobile employees.

1. Overview of the tax system

1.1 Individual income tax framework

Poland has a binary approach to the application of personal income tax (PIT) to individuals: residents are taxed on their worldwide income, while non-residents are taxed solely on their Polish-sourced income.

Employment income is subject to progressive taxation, with no alternative option. The same applies to income derived from civil law contracts (contracts of mandate, contracts for specific work, management contracts and remuneration paid to board members). Exemptions and relief may apply, depending on the individual's specific circumstances.

Sole proprietors may choose between progressive taxation and the available alternatives, such as a 19 per cent flat-rate income tax, a lump-sum tax rate of up to 17 per cent on revenue or the application of a tax card (a simplified form of taxation for small businesses that is currently being phased out).

Individuals are subject to PIT on all categories of income, unless a specific statutory provision provides otherwise. Inheritance and gifts are not subject to PIT if the tax events are covered by the Inheritance and Gift Tax Act.

Social security and health insurance costs differ, depending on the form of taxation applied.

1.2 Basis of taxation: residence versus source

A person is treated as having a place of residence in Poland (thus, deemed to be taxable on their worldwide income) if they satisfy at least one of two alternative criteria: (1) their centre of personal or economic interests is in Poland or (2) they stay in Poland for more than 183 days in a tax year.

The test related to the centre of vital interests is factual and holistic, examining the location of the individual's family, property, employment, social ties and economic activities.

Non-residents are taxed on their Polish-sourced income, including income from work performed in Poland; personal activities performed in Poland; self-employment in Poland; Polish real property, whether held directly or indirectly; certain investments tied to Poland; and other items.

Tax residency and income source rules apply subject to applicable tax treaties that prevail over domestic law. The Organisation for Economic Co-operation and Development's (OECD) Model Tax Convention Commentary is widely used as an interpretive guide.

2. Taxation of employment income

Non-resident employees working in Poland are taxed on their income from work physically performed in Poland, regardless of where the payment for the work is made. If the employer is a Polish entity, it must act as a withholding agent. If the employer is a foreign entity, the employees usually self-assess and remit monthly advance payments for PIT purposes and file an annual tax return, although this is fact sensitive and frequently subject to disputes.

Most taxation treaties entered into by Poland follow the OECD's Model Tax Convention. Therefore, employment income that a non-resident derives from work performed in Poland may be taxable in Poland, but may also be exempt from Polish tax, provided that the relevant conditions have been met.

2.1 Scope of taxable income

Salary, bonuses and other cash payments

Employment income includes all cash payments and in-kind benefits, including base salary, bonuses, allowances and employer-borne payments. Key statutory exemptions relevant to cross-border mobility include:

- business travel per diems: exempt up to country-specific daily limits with any excess being taxable;
- relocation allowances: exempt up to 200 per cent of the monthly remuneration in the month of the transfer;
- employer-provided accommodation: exempt up to PLN500 per month, provided the employee's registered residence is outside the locality of the workplace;
- separation allowance: exempt up to the domestic per diem rate; and
- mileage reimbursements: exempt up to certain statutory rates provide that trips are recorded in a vehicle mileage logbook.

Payments that exceed the statutory cap are subject to full withholding by the employer.

Benefits in kind

Benefits in kind provided by the employer constitute taxable employment income, valued at the market price.

Exemptions or simplifications may apply. For instance, the private use of a company car is subject to a simplified valuation rule: a fixed monthly lump-sum amount is added to the taxable income for each month of the vehicle's availability for private use.

Equity compensation

Polish law has special rules for taxing incentive schemes offered to employees, contractors (excluding sole proprietors) and board members, enabling tax to be deferred until the shares acquired under the plan have been sold.

To qualify, the plan must be adopted by a resolution at a general meeting of shareholders of the joint-stock company employing the plan's participant or of its parent company. The entities may be based in a European Union/European Economic Area or other tax treaty country. The scheme must lead to the acquisition of shares, whether directly or through derivative instruments (restricted stock units (RSUs) and options are common), rights to securities or other property rights.

When these conditions are met, no income arises on granting or vesting. Income is recognised only upon sale and is taxed as capital gains at a rate of 19 per cent (plus a four per cent solidarity levy if the taxpayer's total income in a given year from relevant sources exceeds PLN 1m).

If a plan does not qualify for preferential treatment, then the general rules apply. Some recent tax rulings suggest that income may arise at vesting, with the vesting value treated as the cost base during a subsequent sale. Recent court judgments, however, hold that the taxation point occurs only upon the sale of shares.

Preferential treatment does not extend to sole proprietors. In that case, taxation depends on the form they have elected for the taxation of their business income, with the authorities and courts taking an inconsistent approach to this issue.

2.2 Source rules

For non-residents, income sourced in Poland includes income from work performed in Poland pursuant to employment or a similar relationship, regardless of where the remuneration is paid.

Under most tax treaties, the '183-day rule' provides a safe harbour. The remuneration from employment in Poland will be taxable only in the home state if the employee's stay in Poland does not exceed 183 days during the relevant period, the remuneration is paid by a non-resident employer and the cost is not borne by the employer's permanent establishment (PE) in Poland. If any of these conditions fails to be met, then Polish taxation will apply.

2.3 Tax rates

Poland applies progressive income tax, with a 12 per cent rate applied to taxable income up to PLN 120,000 a year (with a tax-reducing allowance of PLN 3,600) and a 32 per cent rate applied to any excess above PLN 120,000.

In addition, a solidarity levy of four per cent applies to the excess above PLN1m in a given tax year of the taxpayer's aggregate income from specified sources (including employment).

Individuals transferring their tax residency to Poland, who have not been Polish tax residents in at least five of the preceding six tax years, may elect for the application of the lump-sum taxation regime. A taxpayer settling a fixed annual amount of PLN200,000 will not pay any other taxes on their personal foreign-sourced income for up to ten years. Nonetheless, Polish-sourced income will remain subject to general PIT rules. The individual must incur at least PLN 100,000 of qualifying expenditure in Poland per year.

2.4 Miscellaneous issues

Employer withholding obligations

Polish employers must calculate and deduct monthly advance payments of PIT from employment income. Advances are not withheld on income from work performed abroad if that income is or will be taxed in the foreign jurisdiction unless requested by the employee. At the year end, the employer issues an income statement to the employee and also submits it to the tax office.

Foreign employers paying employment income for work performed in Poland should assess their potential status as a withholding agent. Although the prevailing view is that a foreign employer without a Polish presence does not qualify as a withholding agent, some courts have taken a position to the contrary.

Social security

Poland's social security system applies to all persons working in Poland. Employee contributions cover retirement, disability and sickness insurance, while employer contributions cover retirement, disability, accident insurance and the labour fund.

EU coordination rules apply to EU/EEA/Switzerland and UK postings. For non-EU postings, bilateral totalisation agreements apply where available, otherwise a risk of parallel contributions may arise.

When a social security obligation arises in Poland, the foreign employer must register as a contribution payer and calculate, withhold and remit the relevant contributions, even if they have no other presence in Poland. However, with EU/EEA/Switzerland and UK postings, the employee may take over the employer's contribution obligations through the conclusion of an agreement between the parties.

3. PE risks

3.1 Dependent agent PE

According to domestic rules, a dependent agent PE arises if a person acts for and on behalf of an entity residing in the territory of another state and the person is authorised to enter into agreements and contracts on its behalf and exercises the granted rights, unless an applicable tax treaty provides otherwise. According to the OECD Model Tax Convention (on which most tax treaties are based), only persons who are authorised to engage the enterprise in substantive business activities will create a PE.

However, some rulings issued by the Polish tax authorities find that a dependent agent PE arises if the employees are authorised solely to negotiate contracts on the employer's behalf.

3.2 Fixed-place PE

A fixed-place PE requires: (1) a place through which business is conducted, (2) a degree of permanence and (3) that the enterprise's business is conducted through that place, while the activities are not merely preparatory or auxiliary.

Working from home: the Polish tax authorities have traditionally taken a restrictive approach to whether an office at home used by an employee gives rise to a fixed-place PE. In a number of tax rulings, the tax authorities have focused on whether the employer exercises any direction

or control over the employee's use of the location and whether the premises are made permanently available to the employee by or through the employer.

The relevant OECD Commentary was updated in 2025 to introduce a more structured approach to the matter. The updated Commentary states that a home or other location used by an employee would generally not constitute a PE when the individual works from that location for less than 50 per cent of their total working time for the enterprise over any 12-month period. The updated Commentary also requires that consideration be given to whether there is any genuine commercial reason for the activity to be carried out in the employee's state of residence. It is not clear how the Polish tax authorities will respond to this update.

Long-term project offices: a rented office or project site in Poland used for more than a temporary period is likely to constitute a fixed-place PE, unless its activities are limited to purely preparatory or auxiliary functions, or are subject to any other exclusion provided for by an applicable tax treaty.

3.3 Service PE

Some of Poland's tax treaties (eg, the one with Czechia) contain a service PE provision under which a PE may arise if the enterprise provides services, including consultancy or management services, through employees or other personnel for periods exceeding six months in total in any 12-month period.

4. Exit tax/departure rules

4.1 Exit tax

Exit tax applies to the transfer of an asset outside Poland if Poland then loses the right to tax gains on its disposal and to a change of tax residency if Poland loses the right to tax gains on assets owned by the departing individual.

Upon a change of residency, exit tax will apply to personal assets, such as shares, partnership interests, securities, derivative financial instruments and participation rights in investment funds, only if the individual has been resident in Poland for at least five of the preceding ten years.

The exit tax rate is 19 per cent if the asset's tax cost has been established, or three per cent if not. Exit tax is not triggered unless the total value of the assets involved exceeds PLN4m.

Taxable income is treated as the excess in terms of the market value over the tax cost. In May 2025, the Province Administrative Court in Warsaw requested a preliminary ruling from the Court of Justice of the European Union (CJEU). The national Court asked whether the Polish exit tax for individuals is compatible with EU law. The issues raised concerned the taxation of gains accrued before an individual's Polish residency, the exclusion of unrealised losses from the tax base and the requirement to pay the tax immediately. The case is still pending.

The current deadline for paying exit tax is deferred until after an asset has been sold or, in the absence of a sale, until 31 December 2027, and is expected to be extended further until the resolution of the proceedings before the CJEU.

4.2 Reporting requirements on departure

Individuals leaving Poland should submit an annual PIT return for the period of their Polish residency. Exit tax is reported separately. Each individual should also submit a form confirming their foreign address.

5. Recent developments and case law

5.1 Recent changes affecting international employees

Return relief exempts qualifying employment and business income up to PLN85,528 per year for four consecutive years starting from the year of the individual's return. It is available to individuals who were not Polish tax residents for at least three years preceding their return and who satisfy certain nationality or prior-residency conditions.

The lump-sum taxation regime for foreign income has already been covered above.

Both measures entered into force in 2022.

5.2 Ministerial guidance on tax residency

In April 2021, the Ministry of Finance issued guidance clarifying that the two residency criteria are assessed independently, that any part of a day counts towards the 183-day threshold and that changes to residency may occur mid-year.

6. Key takeaways

The major risks for employers include:

- an employee working in Poland, including remotely from home, may trigger a Polish PE for the foreign employer, resulting in Polish corporate income tax (CIT) obligations on profits attributable to that PE;
- a dependent agent PE arises if an employee in Poland has substantive authority to negotiate or conclude contracts on the employer's behalf. Sales roles and client-facing positions should be reviewed carefully; and
- foreign employers paying employment income for work performed in Poland should assess their potential status as a withholding agent. Although the prevailing view is that a foreign employer without a Polish establishment does not qualify as a withholding agent for personal income tax purposes, some courts have taken a contrary position, so an individual assessment is advisable. Nevertheless, a withholding obligation for social security may arise, regardless of any obligation regarding PIT.

The major risks for employees include:

- employees who establish a centre of vital interests in Poland or spend more than 183 days in Poland during a tax year may become subject to unlimited Polish PIT on their worldwide income; and
- employees leaving Poland who have been Polish residents for five or more years in the preceding decade and who hold assets, including investments, exceeding PLN4m in value, may be subject to Polish exit tax on the date of their departure.

Key planning considerations include:

- a tax residency certificate for the home country should be obtained at the outset of any assignment and should be updated annually;
- the employer should investigate the relevant coordination rules before an employee's departure to protect them from double social security contributions;
- if a new resident is not subject to the Inheritance and Gift Tax Act (which usually depends on the individual's immigration status), any inheritance or gifts received by the Polish tax resident may be subject to income tax in Poland; and
- exit planning for high-net-worth employees leaving Poland should include an early valuation of their assets and an assessment of their exit tax exposure.