Limited Joint Stock Partnership
Optimisation Opportunities in Poland

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Terminology

- Limited Joint Stock Partnership, or
Limited Partnership with Shares (?)
- Kommanditgesellschaft auf Aktien (KGaA), oder
GmbH & Co. KGaA, oder
AG & Co. KGaA (?)
- Sociétés en commandite par actions
- Spółka komandytowo-akcyjna (SKA)

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Basic Legal Issues

- No legal status.
- Hybrid of a joint stock company and a limited partnership.
- Can sue and can be sued.
- Two partners needed, at least: a general partner and a stockholder.
- General partner (Partner) – unlimited liability for obligations of the Partnership.
- Stockholder – no liability, whatsoever, for obligations of the Partnership.
- The Partner and the Stockholder can be either legal entity or individual.
- Foreign entity can be direct Stockholder of the Partnership.
- Partnership is represented by the Partner(s) (by law) and can be represented by the Stockholder(s) (by PoA granted).

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Basic Legal Issues

- Minimum share capital – PLN 50,000 (approx. € 11,900.)
- Can be contributed in cash or in kind.
- Contribution in kind can include:
- shares/stocks, bonds or other securities,
- tangible or intangible assets,
- going-concern or its organised part (unit).
- Can issue stocks, certificates, debentures, bonds and other securities.
- Stocks issued can be listed on NewConnect (alternative market of the Warsaw Stock Exchange); similar concept to AIM at the London Stock Exchange.

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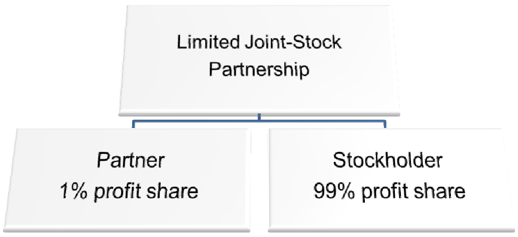
Basic Legal Issues

- Profit share participation can be structured irrespectively of contributions made by Partner(s) and by Stockholder(s):



Income Tax Position – General Comments

- No specific regulations as to the income tax position of Partnership, Partner(s) and Stockholder(s) – general rules apply.
- Partnership is <u>transparent</u> for income tax purposes.
- Partner(s) and Stockholder(s) subject to taxation on particular profit share respectively to their status – CIT (legal entity) or PIT (individual).
- Polish CIT rate – 19%
- Polish PIT rates – 18%, 32% or 19% (depending on source of income).
- At the end of the day it is possible for the Stockholder to <u>reduce</u> income tax burden substantially or to <u>avoid</u> taxation at all (e.g. by distribution of dividend to Polish CIF or Cyprus, or Luxembourgian SIF/SICAR, or by redemption of stocks/investment certificates in given circumstances).

Income Tax Position – Milestone Sentence (Introduction)

- In previous years, due to the hybrid nature of such Partnership, there was a continuous dispute between taxpayers and fiscal authorities as to correct qualification (from income taxes perspective) of proceeds received by the Stockholder(s). Polish tax authorities regarded such proceeds as business originated, tax payers as dividends. i.e. should such proceeds be recognised as business proceeds or as dividends.
- Depending on the classification proceeds would be taxable on either accrual basis (business proceeds) or cash basis (dividends).
- Generally, there was no controversy as to position (for income tax purposes) of the Partner – business source of income, taxable on accrual basis.
- Over last 5-6 years of the dispute both Polish tax authorities and local administrative courts issued several different rulings and verdicts. In most cases unfavourable for the Stockholders – business proceeds, taxable on accrual basis; although lack of common sense and reasonable legal justification for such qualification (e.g. transfer of stocks to a new Stockholder before the dividend day).

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Income Tax Position – Milestone Sentence

- Over last 2-3 years number of favourable verdicts issued by the local administrative courts increased.
- Lack of consistency and an appeal against verdict issued by the local administrative court in Warsaw submitted by a tax payer to the Supreme Administrative Court forced the latter to issue a sentence by 7 professional judges (binds courts in similar cases).

According to the sentence of 16 January 2012 (II FPS 1/11) issued by the Supreme Administrative Court, tax point for a Stockholder on proceeds received arises at the moment of distribution (factual paying out) of dividends, i.e. on cash basis.

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Income Tax Position – Milestone Sentence

•The background the sentence relates to covered a legal entity (Ltd.) being the Stockholder. This would mean that the sentence should not be directly applicable to individuals being Stockholders.

•Currently new sentence applicable to the individuals is expected. There are considerable similarities between CIT and PIT regulations. Thus the sentence expected should be favourable as well.

•Although the sentence issued is positive for the tax payers, Polish tax authorities continuously issue negative rulings, regardless of applicant's form/nature (legal person or individuals).

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Income Tax Position

- Partnership – transparent.

- Partner – taxable on its profit share (e.g. 1%).
- Partner – taxable on accrual basis.
- Partner – taxable at 19% CIT (legal entity) or 19% PIT (flat rate for individuals applicable to income from business sources).

- Stockholder – taxable on its profit share (e.g. 99%).
- Stockholder – taxable on cash basis.
- Stockholder – taxable at 19% CIT (legal entity) or PIT at 18% or 32% (general scale applicable to individuals).

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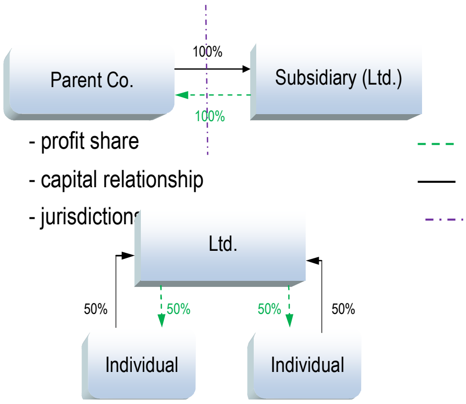
Advantages – Operational Profits

The Partnership is feasible for restructuring of business operations in Poland. Typical structures look as follows:



OR

Advantages – Operational Profits

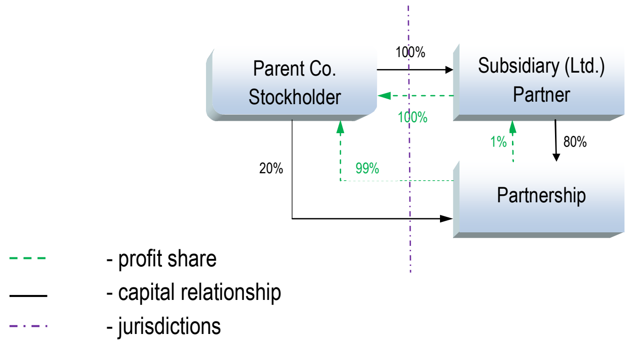
Income tax consequences for typical structures are as follows:

•Parent/Subsidiary (Ltd.) structure:
•PL CIT at 19% paid by Subsidiary on its entire income
•PL CIT exemption on distribution of dividends to the Parent Co. located in EU member country

•Polish Individuals/Ltd. structure:
•PL CIT at 19% paid by the Ltd. on its entire income
•PIT at 19% on dividends distribution by Ltd. to its shareholders (individuals).

Advantages – Operational Profits

Business operations in Poland restructured by using the Partnership might look as follows:



Advantages – Operational Profits

Income tax advantages available after restructuring of the operational entity from Ltd. to Partnership are as follows:

•Partnership – no income tax; can postpone tax point for several years reinvesting its earnings.

•Partner – PL CIT at 19% on its profit share (1%).

•Stockholder – no tax due until distribution of dividends.

•Dividends paid out by Partnership to Stockholder would not be exempt in PL, due to transparency of Partnership. Relevant WHT rate would apply (if proceeds distributed classified as dividends for DTT purposes). WHT would not apply (if proceeds distributed classified as „other income" for DTT purposes). Local taxation depending on Stockholder jurisdiction.

•Dividends paid by Partner to its shareholder would be exempt in PL based on the Parent-Subsidiary Directive.

Advantages – Operational Profits

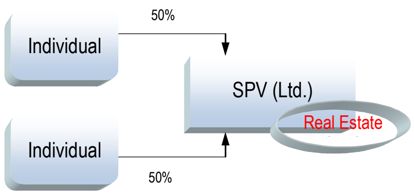
Benefits available for business operations run through Partnership can be achieved by restructuring done e.g. in one of the following manner:

•transformation of Ltd. into Partnership, or
•contribution of going-concern or organised part of business (business unit) to Partnership, or
•exchange of shares/stocks.

Restructuring project should be proceeded by careful examination and choosing of right approach for (especially when retained profits are concerned).

Advantages – Real Estate

Typical structures involving real estates look as follows:



In case (i) acquisition value of Real Estate (in SPV books) is lower or significantly lower than its current market value and (ii) Real Estate (not shares of SPV) is to be sold, then SPV would pay income tax at 19% (CIT).
Many Real Estates were acquired before real estate bauble in Poland. Therefore, income earned on sale is substantial. Moreover, dividends distributed to individuals would be subject to taxation at 19% (PIT).

Advantages – Real Estate

Sale of Real Estate could be executed by implementation of the following scheme:

•Transformation of SPV (Ltd.) into Partnership.

•Sale of Real Estate by Partnership.

•Further transformation of Partnership into a general partnership (Kommanditgesellschaft).

•Liquidation of general partnership (Kommanditgesellschaft).

This scheme allows to sale Real Estate and pay no income tax, even by Individuals*.

*Each deal should be investigated on case-by-case basis, especially when retained profits (SPV) are involved. Interim actions may be required in order to utilise retained profits in tax efficient manner.

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Advantages – Other Opportunities

Structures involving Partnership can be also used for:

- Sale transactions involving shares/stocks, e.g. investment exit by shares deal.
- Management of IP portfolio* and creation of tax shield through depreciation (IP owner and licensor) and licence fees (licensee).
- Step up of going-concern and creation of tax shield through higher depreciation value or new depreciation value for assets already depreciated.
- Step up of organised part of business (business unit) and its assets.
- Step up of particular assets.

*In Poland number of well known and highly valued trade marks, trade names, patents, recipes were created over business life of given entity and cannot be used (depreciated) for reduction of income tax burden.

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