

# Poland has become a tax haven

**By Artur Plutowski**

The latest issue of Der Spiegel (German weekly magazine) awarded Poland the European Champion due to the excellent performance of the Polish economy which has achieved GDP growth over last 6-8 years. In that period Poland became a very attractive investment location. Just prior to the ITPG meeting in Marbella (February 2012) Poland became even more attractive; it became a tax haven. Savings can be achieved by the implementation of structures including a vehicle in the form

of a Limited Joint Stock Partnership (the 'Partnership').

In previous years, due to (i) lack of specific regulations concerning the income tax position of the Partnership, the Partner(s) and the Stockholder(s) and (ii) the hybrid nature of such Partnerships, continuous disputes took place between taxpayers and the fiscal authorities as to the correct qualification (from income taxes perspective) of the source of income relevant to proceeds received by the Stockholder(s) of the Partnership. Polish tax authorities claimed that such proceeds should be re-

garded as business profits, but tax payers claimed it should be qualified as dividends' like the source. Depending on the given classification, proceeds would be taxable on either an accrual basis (business proceeds) or a cash basis (dividends). There was no controversy as to the tax position (for income tax purposes) of the General Partner of a Partnership – business source of income, taxable on accrual basis.

Originally, in first years of this dispute both Polish tax authorities and local administrative courts issued several different rulings and verdicts. In most cases they were unfavourable for the Stockholders, qualifying proceeds received as business originated and taxable on an accrual basis. Recently (in the last 2 to 3 years), a number of favourable verdicts issued by the local administrative courts have started to increase.

Lack of consistency between verdicts issued by local administrative courts and an appeal against an unfavourable 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 given by 7 professional judges. Please note that such a sentence binds administrative courts in similar cases. According to the sentence of 16 January 2012 (II FPS 1/11), the tax point for a Stockholder being a corporate entity on proceeds received from the Partnership arises on cash basis, i.e. at the moment of distribution of dividends.

Last week the Minister of Finance issued the general ruling according to which



**Artur Plutowski**

individuals being the Stockholders of the Partnership can also recognise their tax point on a cash basis.

The Partnership is transparent for income tax purposes. The General Partner(s) and the Stockholder(s) are subject to taxation on the profit share allocated and respective to their status. Legal entities pay CIT at 19% and individuals pay PIT at 19% (according to the latest general ruling issued by the Minister of Finance). The General Partner is taxable on accrual basis. The Stockholder is taxable on a cash basis.

The Partnership has no legal status, but it can sue and can be sued. It is a hybrid of a joint stock company and a limited partnership. Two partners are needed,

*...next page*

at least: (i) General Partner and (ii) Stockholder. The General Partner has unlimited liability for the obligations of the Partnership and the Stockholder has no liability whatsoever for the obligations of the Partnership. The General Partner and the Stockholder can be either a legal entity (also registered in other jurisdiction) or an individual (also a foreigner).

The minimum share capital of the Partnership amounts to PLN 50,000 (approx. € 11,900.). It can be contributed in cash or in kind. Contribution in kind can include: (i) shares/stocks, bonds or other securities, (ii) tangible or intangible assets, (iii) going-concern or its organised part (business unit). Please note that the profit share participation can be structured irrespective

of contributions made by the General Partner(s) and by Stockholder(s), e.g. the General Partner having unlimited responsibility and contributing 80% of the share capital may be entitled to 5% or even to only 1% of the profit earned by the Partnership. Usually, the profit share participation is structured as 95% to 99% to the Stockholders and 5% to 1% to the General Partner.

The Partnership can issue stocks, certificates, debentures, bonds and other securities. Its stocks can be listed on New-Connect (alternative market of the Warsaw Stock Exchange); it is a similar concept to AIM at the London Stock Exchange.

The Partnership is a perfect tool for running business activity, for setting up new operations or for the restructuring of

a current business. Appropriate structuring provides savings of income tax that would normally be due on operational profits and subsequently reinvest almost the entire earnings due to the postponed distribution of proceeds (dividend) to the Stockholder. The distribution can be postponed for several years.

The Partnership is also an excellent vehicle for optimisation of disposal of tangible assets (e.g. real estate), disposal of stocks, shares, bonds and/or other securities – especially in the circumstances where significant profit on the disposal is expected. The Partnership can also be an ideal tool for the creation of a tax shield by a ‘step up’ on depreciable assets (both intangible and tangible); from its book value to the market value.

Please note that at the end of the day it is possible for the Stockholder to reduce the income tax burden substantially or to avoid taxation at all (e.g. by distribution of a dividend to Polish Closed Investment Fund, Luxembourgian SIF, Cypriot ICIS or by redemption of stocks/investment certificates under certain circumstances).

For further details please see GGI intranet ITPG section and respective pdf-file on Limited Joint Stock Partnership.

GGI member firm

**EFS Group**

Tax Consulting, Corporate Finance

Warsaw, Poland

Artur Plutowski

E: [artur.plutowski@efsgroup.eu](mailto:artur.plutowski@efsgroup.eu)

W: [www.efsgroup.eu](http://www.efsgroup.eu)