Chapter 3
Taxation of Individuals

3.1. Taxation of individuals in Poland

3.1.1. Tax system

Several authorities administer the Polish taxation system. The hierarchy is as follows.

3.1.1.1. Minister of Finance

The Minister of Finance is responsible for the execution of the national budget, and is, therefore, empowered to issue executive decrees. The Minister of Finance is responsible for the global supervision of everything related to the taxation system; he is responsible for ensuring that all decisions ultimately lead to a coherent application of fiscal regulations by local tax authorities. In addition, the Ministry of Finance issues bulletins that provide official interpretations of specific provisions.

3.1.1.2. Supreme Administrative Court (NSA)

Taxpayers have the right to lodge appeals against decisions issued by tax offices. If the taxpayer does not agree with the verdict of the Tax Chamber, he has the right to lodge an appeal with the Supreme Administrative Courts (Voivod Supreme Administrative Court as lower instance and Supreme Administrative Court as higher instance).

3.1.1.3. Chief of the Tax Chambers

Tax chambers are hierarchically superior to tax offices. Tax chambers rule on appeals against the pronouncements of tax offices.

3.1.1.4. Chief of the Tax Offices (Tax Tribunals)

Tax offices are tax tribunals authorised to issue administrative decisions that affect taxpayers located within the area of their jurisdiction. Taxes are paid to the local tax offices.
3.1.2. Residence rules

In the Polish tax system, a distinction has been made between residents and non-residents.

Polish income tax law provides that an individual whose place of residence lies within Poland is liable to Polish income tax on their worldwide income. In these circumstances, the individual is considered to have an "unlimited tax liability".

Conversely, an individual, whose place of residence is not Poland, has a "limited Polish tax liability". In this case, the individual is only liable to Polish tax in respect of Polish-source income.

A place of (permanent) residence is the sole criterion for determining the general tax liability of an individual in Poland.

Determination of a permanent place of residence in Poland may prove somewhat problematic in certain cases, especially as this term is not clearly defined by Polish tax law. Under such circumstances, it seems logical to assume the definition of a permanent place of residence as set out under civil law provisions, where it is defined as a place where an individual resides and intends to remain on a permanent basis. The intention to remain in a certain place is a key and decisive factor in this case and should be assessed on the basis of all surrounding facts and conditions of a given situation.

3.1.3. Income tax

The Personal Income Tax Law dated 26 July 1991 governs personal income tax. Under this law, all kinds of income earned by a taxpayer are aggregated and subject to general personal income tax at progressive rates.

However, certain categories of income are not aggregated, but taxed separately at flat rates. Please see section 3.1.3.4. for details.

3.1.3.1. Taxable base

Taxes are calculated on the basis of cash remuneration and benefits-in-kind. Income earned from an employment contract includes salary due and payable in a fiscal year, cash or otherwise, as well as most benefits-in-kind.

3.1.3.2. Taxable income

Types of compensation that are taxable
• Income from dependent services, including income from employment, pensions and membership in a co-operative
• Income derived from a business, but excluding income from agriculture apart from some specialised branches of agricultural activity
• Income from independent services, including scientific literary, artistic, educational or journalistic activity, or from any other independent activity of a similar nature
• Income from land or property
• Investment income (from monetary investment and proprietary rights)
• Income from the sale of movable property, immovable property or rights over immovable property, including the sale of property rights pertaining to cooperative apartments and from the barter of these properties or rights
• Income from other sources.

**Exempted income**

The following types of income are generally exempt from personal tax:

• Sums received from property and personal insurance policies under certain conditions
• Certain fringe benefits such as:
  • Allowances received for tools, materials and equipment owned by an employee and used by them in the course of employment
  • Cash payments related to work clothes
• Reimbursement of moving expenses and any allowances issued when relocating for business purposes (up to 200% of the remuneration due for the month in which an employee was transferred)1
• Per diem allowances and other reimbursed business expenses, within specified limits
• Some types of income resulting from certain stages of stock option plans, on certain conditions
• Benefits provided by the employer for improving professional qualifications.
• Benefits-in-kind and equivalents, due on the basis of statutory provisions regarding work safety, including provisions regarding work under “special conditions” that are provided for individuals having a “duty employment contract”, granted on the basis of a separate legal act.
• The value of vouchers, such as vouchers for meals and beverages received by an employee, if the employer could not provide the employee directly with such meals and beverages despite the fact that the employer is obliged to do so on the basis of statutory provisions concerning work safety.
• The interest from securities issued by the State Treasury and bonds issued by a local government - particularly that part representing the amount of the interest paid at the time of purchase of these securities from the issuer.

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1 Please note, that 26 February 2001, a controversial ruling was made by the Polish Supreme Administrative Court (NSA), which challenges the possibility for regular employees to use the tax-free relocation allowance. NSA rulings do not constitute a source of law but may be a guideline for how the Polish tax authorities will interpret the regulation.
• Indemnity paid on the basis of a court verdict and concluded agreements to the owners of agricultural property, under certain conditions.

Taxable benefits

In principle, benefits in kind are included in the taxable base and taxed accordingly. Benefits are valued at their fair market value.

Remuneration paid to directors

Remuneration paid to directors (members of management boards) who enjoy limited tax liability in Poland on the basis of a resolution by the company’s relevant legal body or on the basis of the management service contracts may be taxed at a flat rate of 20%.

The payments of tax made in advance from income received from abroad from, among other things, non-Polish employment contracts, non-Polish personal service contracts and foreign pensions, may be paid at higher tax rates applicable to the appropriate level of income (30 percent, 40 percent). A 19 percent tax rate is currently applied to such tax advances, but at the time of the annual tax reconciliation, such income may be subject to progressive taxation and the individual could be obliged to pay additional tax.

Remuneration paid to directors on the basis of an employment contract is taxed in the same way as for other employees, that is, according to the progressive tax rates.

Investment income and capital gains

From 1 January 2005, changes have been introduced in the definition of certain capital gains; for example, the nominal value of shares in a limited liability company or in a joint stock company or the shares in cooperatives, acquired for a non-pecuniary contribution, are now considered capital gains.

Furthermore, a new rule with effect from 1 January 2005 has been introduced to eliminate the deductibility of costs related to the acquisition or purchase of certain shares (or parts in a cooperative), shares and stock in limited liability companies and in joint stock companies, as well as expenses for the purchase of capital funds units. Such expenses will be treated, however, as a tax deductible cost at the time of the determination of the income from the sale of said shares, stock, etc., including income from remitted shares, stock, or capital funds units.

Dividend and interest income and also income from sale of securities derived in Poland after 1 January 2004, though taxable, is not aggregated with income from other sources but is subject to a flat rate of tax of 19 percent (generally deducted at source, with the possibility of applying costs of earning revenues in case of sale of securities).

With effect from 1 January 2005, a major change has been introduced regarding taxation of capital gains from abroad. Capital gains sourced overseas, such as interest, dividends, income from capital funds, income from the sale of shares and stock on foreign markets, are subject to a 19 percent flat rate tax (a final tax). In addition, if
such income was taxed abroad, the tax paid in the foreign jurisdiction is deductible from the tax due in Poland, up to a certain limit (proportional deduction).

3.1.3.3. Allowances, deductions and credits

Certain types of expenditure and allowances may reduce the aggregated taxable base

The following types of expenditure are deductible for tax calculation purposes:

- Gifts and donations: From 2005, the maximum “relief” limit for donations is set at the level of 6% of income. There are certain conditions that need to be fulfilled in order to get this relief.
- Social security contributions paid in Poland during the tax year.
- Rehabilitation expenses if the taxpayer is disabled.
- Interest imposed on bank loans taken by the individual after 1st January 2002 for housing purposes such as building a house, purchase of the house or flat; the limit of the bank loan of which interest imposed is tax deductible is PLN 189,000 for 2004 (this exemption applies only to individuals having an unlimited tax liability).

Deductible expenditure includes:

The following types of expenditures are deductible from tax:

- Health insurance up to the amount of 7.75% of base for health insurance contributions.
- Payments to public charity organisations up to the limit of 1% of tax resulting from annual tax return.
- Internet expenses. From 2005, a new tax deduction has been introduced, whereby expenses incurred by taxpayers for using the Internet in their home will be deductible from the taxable base, with a maximum deduction of PLN 760. The tax relief may be applied if the amount of expenses is documented by the means of a VAT invoice.

3.1.3.4. Tax rates

Personal income tax is levied at progressive rates according to the following table (effective in 2006):

<table>
<thead>
<tr>
<th>Taxable income [złoty]</th>
<th>Tax payable [złoty]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 37,024</td>
<td>19% less 530.08</td>
</tr>
<tr>
<td>37,024 - 74,048</td>
<td>6,504.48 + 30% on the amount exceeding 37,024</td>
</tr>
<tr>
<td>Over 74,048</td>
<td>17,611.68 + 40% on the amount exceeding 74,048</td>
</tr>
</tbody>
</table>
A monthly statutory deduction is applicable to the income obtained by an individual in a given month. The statutory cost of earning income stands at 102.25 zloty per month. This cost of earning income applies to employment contracts (regardless of limited or unlimited tax liability in Poland), remuneration for being a member of a supervisory board, and for performing duties on the basis of a management service contract (for individuals with unlimited tax liability).

The rules apply to all income except that which is taxed at special flat rates and certain types of income of individuals with limited tax liability in Poland.

Special flat rates of tax apply to certain types of income that are not aggregated with other income. These rates and types of income are:

- 19% on interest received from loans
- 19% on dividends and other receipts derived from shares in the profits of legal entities
- 10% on receipts from the sale of immovable property and proprietary rights
- 10% on prizes won in games and competitions and prizes related to bonus sales
- 75% on unspecified sources of revenue assessed by the tax authorities
- 19% on interest on savings on bank accounts in Poland.

It should be noted that special tax rules apply to certain types of income earned by non-residents (that is, individuals with limited tax liability in Poland). Flat rate tax (a final tax) of 20% is imposed on the following types of income:

- Income from royalties, trademarks, patents, designs or models and know-how and income from the sale of the appurtenant rights
- Income from independent services, including income from artistic, literary, scientific, educational and journalistic activity, the independent activities of professionals, freelance and commission work, and work performed on the basis of a management service contract
- Remuneration of members of boards of directors, supervisory boards or other decision-making bodies of legal entities.

3.1.4. Tax year and tax assessment

The tax year runs from 1 January to 31 December.

In general, income is subject to tax advances paid during the year. If there is a tax remitter, the remitter withholds the tax advances on behalf of the taxpayer. Beginning from the reconciliation for 2004, tax remitters will be obliged to prepare and submit to the tax office by the end of February of the following year the PIT-1 1/8B, PIT 8C, and PIT 40 information forms.
In other cases, for example in case of a taxpayer’s own business activity, income from abroad, or the provision of services, the taxpayer himself is obliged to pay tax advances during the year.

Taxpayers must also submit an annual tax return to the tax office in the appropriate form, indicating the amount and source(s) of income earned in the given tax year before 30 April of the following year. Taxpayers keeping ledgers must attach the annual financial statement to the tax return.

From 2004, companies must prepare and complete an annual information form (PIT-8C). This applies not only to Polish tax residents but also to non-residents (individuals with limited tax liability in Poland).

Polish employers are obliged to withhold advance payments of tax on their employees’ monthly remuneration and transfer them to the tax authorities.

3.1.5. Tax on capital

Real estate tax

Individuals who own real estate are charged an annual local tax. Real estate tax for all buildings is calculated on the basis of the floor area of the building, while land ownership is taxed on the basis of the area of the land.

Real estate tax rates (which are fixed by the municipal councils) are capped, and the maximum charge for 2006 was 0.56 zloty per m2 for dwellings, 18.43 zloty per m2 for buildings used for businesses, 6.17 zloty for other buildings, 2% of the value of fixed installations, 0.68 zloty per m2 for land used in a business and 0.33 zloty per m2 for other land.

3.1.6. Social security

In 1999 the social security system underwent a major reform. The system now consists of three “pillars”, to which payments are made. The first and second are mandatory, the third is not. What is of significance is that as of 1 January 1999, contributions are split between the employee and the employer. Also, in the case of salaries paid under Polish employment contracts, basic employee salaries were grossed by a factor of 123.0164 percent. It is essential to note that this procedure pertains solely to salaries established before 1 January 1999 and was a one-time event.

Pillar I

Social security contributions (ZUS) are made in respect of income derived under Polish employment contracts, service contracts, and from business activity, etc. Contributions are split between the employee and the employer.
**Pillar II**
The second pillar consists of public pension funds chosen by the insured individuals. In this case, 7.3% of the employee’s 9.76% pension fund contribution to ZUS is forwarded to the pension fund of the employee’s choice.

**Pillar III**
The third pillar consists of private pension funds, employee pension funds, and group life insurance, etc. This is not mandatory and contributions made to such schemes are not tax-deductible for the individual.

In the case of local payroll remuneration, the social security contributions are currently made by both the employer and employee. However, in the case of the employee’s contributions, it is the employer who makes the actual payment to the social security authorities.

Social security contributions

An employer is obliged to pay social security contributions on its own behalf and on behalf of its employees.

The employee makes payments to three funds: the pension fund, the disability fund, and the illness fund. The total amount equals 18.71% of the gross remuneration, although payments to the first two funds cease once the employee’s year-to-date gross compensation in a given year exceeds thirty average estimated national salaries for a given year (73,560 zloty for 2006).

The employer also makes payments to the pension and disability funds, which are subject to the same limit. In addition, the employer makes contributions to the accident fund [calculated between 0.97% and 3.86% of the employee’s gross compensation], which, like the employee’s illness fund payments, are not subject to limits. In total, before the limit is exceeded, the employer makes payments equalling 19.83% to 22.72% of the employee’s monthly gross remuneration.

It should also be noted that the employer makes payments to the Labour Fund and the Employee Guaranteed Benefits Fund [Fundusz Gwarantowanych Świadczeń Pracowniczych], which are calculated on the gross salary of the individual. The amounts paid are 2.45% of an individual’s gross salary for the Labour Fund, and 0.15% to the Employee Guaranteed Benefits Fund.

### 3.1.7. EU member countries and international social conventions

As of 1 May 2004, EU regulations Nos 1408/71 and 574/72 became binding in Poland. These regulations govern the rules of co-ordination of EU systems for migrant workers, establishing which national legislation concerning social security that is applicable in each individual case. According to the regulations, as a rule, only the legislation of one EU member state may be applied at a time.
The general rule is that an employee is subject to the social security rules of the country in which he is working. However, due to the regulation in EU regulation 1408/71, employees who are seconded from one EU country to another can remain subject to social security in the EU country from which he or she comes if certain conditions are fulfilled.

The EU rules replaced social security conventions between Poland and EU members. Thus, only the following conventions are currently in use:

- Bulgaria______________________________________1961
- Libya____________________________________1985
- Yugoslavia________________________________________1958

3.1.8. Pensions

In Poland, pensions and social security are described as a single system. Please refer to section 3.1.6. for further details.

Pension contributions, paid to the mandatory pension plan (Pillars I and II - see section 3.1.7.) by the employer and the employee are deductible for tax purposes. The contributions paid by the employer are not taxable at source for the employee. The employee will be taxed at the time of receipt.

Pension contributions paid to voluntary private pension funds (Pillar III - see section 3.1.7.) by the employee are not tax deductible. The employee may not be taxed on benefits received from these funds under certain conditions.

Taxable pension benefits are taxed as employment income.

3.1.9. Inheritance and gift taxes

The recipient by gift or inheritance of property located in Poland is subject to inheritance or gift tax. Polish citizens and persons domiciled in Poland are also liable to pay tax on property located outside Poland. The amount of tax is assessed on the value of the property at varying rates, depending on the relationship between donor and beneficiary as follows:

- 3-7% for spouses, children, parents, brothers and sisters
- 7-12% for nieces and nephews, spouses of brothers and sisters
- 12-20% for most others.
3.1.10. Non-residents

Individuals who are non-resident in Poland are subject to tax on Polish source income only. For non-residents, income derived from employment in Poland, or paid for duties performed in Poland, is deemed to be income from Polish sources even if it is not paid in Poland.

Non-residents are subject to the same tax rates as residents.

However, the following types of income are subject to a final 20% withholding tax: dividends, interest, royalties, income from independent services, income earned in Poland by enterprises from entertainment or sports activities, income earned from management or supervisory board duties and income earned for performing services on the basis of a management service contract.

Furthermore, non-residents are not entitled to credits normally granted for certain types of expenditure (see section 3.1.3.3).

3.1.11. Permits

Individuals from non-EU countries intending to work in Poland must generally obtain a work permit, regardless of whether they are employed by a local or a foreign company. The procedure to obtain a work permit is divided into three stages:

- obtaining a preliminary “consent” for employment,
- obtaining a work visa and,
- obtaining a final work permit.

In total, it currently takes about two months for a work permit to be issued. The work permit may only be issued for a specified period of time, which may not exceed 12 months. The work visa may be issued for a maximum period of three months. A foreigner may remain in Poland on the basis of a visa for a maximum of three months during any six consecutive months from the date of arrival in Poland. Prior to obtaining a visa, individuals must apply for a document confirming that they have registered their temporary residence in Poland (within 48 hours of arrival). Individuals who intend to stay within the territory of Poland for more than three months should apply for a temporary residence card, based on the following criteria:

- they have been granted a work permit,
- they have registered for economic activity as self-employed persons,
- they have started education in Poland, or
- they are married to a Polish citizen or a foreigner who has permanent residence status in Poland.

EU/EEA nationals
Theoretically, EU/EEA nationals are allowed to work in Poland without work permits after 1 May 2004. However, employees from Austria, Belgium, Denmark, Finland, France, Greece, Spain, Iceland, Liechtenstein, Luxembourg, The Netherlands, Germany, Norway, Portugal and Italy still need a work permit to work in Poland after 1 May 2004 (because of the reciprocity rule).

A streamlined procedure for issuing work permits applies to citizens of Denmark, the Netherlands and Norway.

EU/EEA nationals are also obliged to obtain a residence permit if they intend to stay in Poland for more than three months.

There are two types of residence permit:

- A permit for a temporary stay, which is issued if the individual intends to stay in Poland for a period of between 3 and 12 months, and
- a permit for stay, which is issued if an EU national intends to stay in Poland for more than 12 months (such permits are issued with a validity of 5 years)

New residence permits for EU nationals (and their family members) are automatically issued if the formal conditions are fulfilled (proper application and documentation). The authorities are generally not entitled to refuse to issue a permit except in extreme cases, such as threat to public safety.

3.2. Danish tax implications when leaving Denmark (case)

Mr and Mrs Jensen are both Danish nationals. At present, they live and work in Denmark. They have a house in Denmark and two children aged one and six.

Mr Jensen's Danish employer intends to assign him to Poland for a period of three years. He will be employed by the Polish branch - or a subsidiary - of the Danish company. Mr Jensen will leave Denmark before his family to find a home in Poland. His family will join him in Poland after a few months.

On completion of the period abroad, Mr Jensen and his family will return to Denmark and Mr Jensen will continue to work for his Danish employer after his return.

3.2.1. Tax position

The Jensens' tax position is determined by residence, availability of accommodation and the family's place of abode.

When an individual is a tax resident, he or she is normally liable to pay tax in the country of residence on his/her worldwide income.

An individual may be a tax resident of two countries at the same time. In this situation, the double tax treaty determines the country in which the individual will be a treaty
resident and, consequently, which country is entitled to tax the different types of income. The country in which the individual is a treaty resident (country of residence) will tax all income and grant relief for tax paid in the other country (country of source). The country of source only has the right to tax specific types of income (for example, real property situated in the country of source).

When an individual is a non-resident for tax purposes, he or she is only liable to pay tax on specific types of income which relate to the country in question (for example, tax on real property, and interest from a bank account).

3.2.1.1. Tax residence - domestic legislation

As a rule, an individual will continue to be resident in Denmark if he or she has accommodation available in Denmark.

In order to become a non-resident, the individual’s Danish accommodation must be sold or the rental agreement terminated, or the accommodation must be let out or sublet for at least 3 years; the contract has to state that it cannot be terminated by the owner during the 3-year period.

Mr Jensen will remain a resident of Denmark during his period abroad if the family decides to retain ownership to the house. It will not be possible to conclude a lease contract for a 3-year period, as Mrs Jensen will be away for less than three years.

Mr Jensen will become a non-resident of Denmark from the date of his departure, provided that a sales contract on the house is concluded before he leaves and Mrs Jensen will become a non-resident the day following the date of her departure. In order to become non-residents, the Jensens must remove all their belongings from their house and leave the keys with the agent.

As non-residents of Denmark or as Danish residents but Polish treaty residents, Mr and Mrs Jensen will not be entitled to the usual Danish personal tax allowances. Furthermore, only expenses related directly to their Danish source income will be tax deductible.

The Jensens may also be tax residents of Poland from the beginning of their stay there if they buy or lease a permanent place of residence in Poland (see the information on Polish tax rules).

3.2.1.2. Tax residence - Double tax treaty

When an individual is a tax resident of two countries, he will be a treaty resident of the country in which he has a home available. If he has a home available in both countries, he will be a treaty resident of the country with which his personal and economic relations are closer (centre of vital interests), which will normally be the country where his family lives (country of residence). If it cannot be determined in which state he has his
centre of vital interests, or if he does not have a permanent home available to him in either country, he is deemed resident in the country in which he has a habitual abode. If he has a habitual abode in both countries or in neither of them, he is deemed resident in the state of which he is a national. The country of residence will normally require that all income be declared. If the other country [country of source] is entitled to tax specific income, the total tax in the country of residence will be reduced.

As a general rule, Mr Jensen will be a treaty resident of Denmark until his family leaves for Poland (if he remains a resident of Denmark) as the family will be retaining its Danish accommodation. He is therefore obliged to declare his worldwide income in Denmark and will be granted tax relief for tax on remuneration that relates to his duties in Poland.

He will, as a rule, be a treaty resident of Poland from the day his family moves to Poland. Consequently, he will be taxable in Poland on his worldwide income from that day. It makes no difference whether the income is earned in Poland or abroad. In Denmark, only income relating to Danish source income need be declared.

3.2.2. Tax after departure

3.2.2.1. Departure tax return

When the Jensens become non-residents of Denmark or become treaty residents of Poland, they must file Danish tax returns for the year of departure no later than 1 May the following year.

3.2.2.2. Tax calculations

When a Danish resident becomes non-resident, income relating to the period from January 1 to the date of departure should be declared in the tax return, and allowances should be apportioned to the period of full and limited tax liability.

In order to take progression into account when calculating tax, income and allowances for the taxable period are converted into full-year income. The tax payable is computed on the basis of the calculated full-year income and then reduced to correspond to the income for the taxable period. Alternatively, the individual can choose to include the actual entire-year income, whether Danish or foreign income, for progression purposes.

If Mr Jensen does not become a non-resident but becomes a treaty resident of Poland during the calendar year, the income should not be converted into full-year income. For the period during which Mr Jensen is a treaty resident of Poland, only Danish source income should be declared and only expenses related to this income are tax deductible.
3.2.2.3. Property value tax

If the Jensens retain their house in Denmark, they will remain liable to pay property value tax, except for periods during which the house is let out. The property value tax is not deductible for income tax purposes.

The taxable value is the lesser of the property value at 1 January 2001 plus 5%, the property value on 1 January 2002 or the property value at 1 October in the current income year. Restrictions apply to the increase of real property value tax from one year to the next.

Lower rates apply to property acquired on or before 1 July 1998 and to property owned by retired individuals.

If the Jensens' house is rented out during their stay in Poland, the net income from the rental will be subject to Danish tax. If, in addition, the Jensens are liable to Polish tax on the rental income, the Polish tax will be reduced.

3.2.3. Exit tax

When Mr Jensen becomes a non-resident of Denmark or becomes a treaty resident of Poland, exit taxes may apply. Exit taxes apply to certain unrealised capital gains, large extraordinary contributions to employer-managed pension schemes and some foreign investments. Special rules apply to majority shareholders.

On departure from Denmark, that is, if an individual interrupts Danish tax residency or becomes a treaty resident of Poland, a Danish exit tax on shares may apply. This tax implies that the individual is deemed to have sold shares upon departure from Denmark and any unrealised gains on such shares may be taxable. All shares held upon exit from Denmark must be subject to exit tax regardless of the length of ownership. The taxpayer can apply for a deferral of payment of exit tax deemed payable.

Share options or warrants may also be subject to exit tax. Determination of taxability depends on the specific plan and the conditions for exercising the plan.

If contributions to employer-managed pension schemes have exceeded 20% of Mr Jensen’s annual salary during the year of departure and any of the previous four years, the amount exceeding 20% of the salary will be added to the taxable income in the year in which the contribution was paid. Exemption from this type of exit tax can be applied for in certain cases.
3.2.3.1. Holiday pay

Holiday allowance (to which Mr Jensen has earned the right before his departure) is taxable at the time of departure.

3.2.4. Social security

3.2.4.1. Allowance for children

In order to receive the allowance, the parents must be tax residents [see above] of Denmark or of a country with which Denmark has concluded a social convention, including the EU convention. Furthermore, the children must be resident in Denmark.

During their stay in Poland, the Jensens will not be entitled to Danish children's allowance unless they are seconded to Poland and still covered by Danish social security legislation. The allowance is paid quarterly, and Mrs Jensen will receive the allowance for the last quarter in which she was resident in Denmark even though she may not have been resident for the whole quarter.

3.2.4.3. Early retirement pension

The entitlement to early retirement pension depends basically on unbroken membership of a Danish unemployment insurance fund (A-kasse), entitlement to unemployment allowances under Danish legislation and payment of contributions.

Individuals born after July 1, 1964, must have been a member of an unemployment fund for at least 25 years within the last 30 years before retirement and must have paid contributions to the early retirement plan during this period.

After Poland became a member of the EU, and the EEA convention on social security became applicable in Poland, only half of the required insurance period can be earned during insurance periods in Poland; the remaining period should be based on work in Denmark. It is also a requirement that the individual has been a member of the fund and a Danish resident for at least one year before moving to Poland, and that contributions to the early retirement plan are paid for any period during which the individual has been paying contributions to another EEA country.

The other requirement (the individual must be entitled to Danish unemployment benefit) means that the individual must have worked full-time at least 52 weeks in Denmark within the three years immediately preceding retirement. If the individual has been working in an EEA country and fulfils the membership requirement as a member of a Danish A-kasse, the requirement is at least 26 weeks' work in Denmark.
Finally, it is important to apply for a certificate stating the person's right to the pension just before the person's 60th birthday. The application should be filed with the unemployment insurance fund.

An early retirement pension can only be paid to residents abroad if they stay in one of the EU/EEA countries, in Greenland or on the Faeroe Islands.

If Mr and Ms Jensen want to benefit from the early retirement pension, they should both continue to pay contributions to the Danish unemployment fund and to the early retirement plan during their stay in Poland, provided they are covered by Danish social security.

### 3.2.4.4. National pension

Danish nationals are entitled to a Danish national pension if they have been residents of Denmark for at least three years between the age of 15 and 65. It is normally also a requirement that the individual is a resident of Denmark at the time when the pension is granted.

If the individual has been a resident of Denmark for at least 10 years after the age of 15 or at least a quarter of the years between the age of 15 and 65, the individual can receive the pension abroad after it has been granted. Please note that only the basic parts of the pension are paid to individuals who live abroad.

The right to full pension requires at least 40 years of residence in Denmark after the age of 15; otherwise, only a proportion of the pension is granted. When counting the years of residence, employment abroad with a branch or a subsidiary of a Danish entity will be included in the figure (this will also apply to the spouse if he or she is not covered by another national pension scheme at that time).

The 3-year period in Poland will have no impact on the Jensens’ entitlement to Danish national pension, provided they are covered by Danish social security.

### 3.2.4.5. Social security contributions

See 3.1.7.

If Mr Jensen is no longer fully liable for Danish taxation, he is not liable to pay the AM contribution, even if he is covered by Danish social security.

If he is fully liable to Danish taxation and covered by Danish social security, he is liable to pay Danish social security contributions.

If they are members of a Danish unemployment fund, both Mr and Mrs Jensen should continue to pay their contributions to this fund.
If Mr Jensen is covered by Polish social security, he is not liable to pay Danish social security contributions. He should not continue as a member of the Danish unemployment fund if covered by Polish social security.

3.2.4.6. Benefits and rights

If Mr Jensen is covered by Danish social security during their stay in Poland, Mr Jensen and his family (wife and children) are entitled to Danish social security benefits in cash, and to benefits-in-kind, as for example health care, in both countries.

On their return to Denmark, Mr and Mrs Jensen will be entitled to health care from the first day.

3.2.5. Pensions

3.2.5.1. Private pensions and pension schemes administered by the employer

Contributions to normal private Danish pension schemes not managed by an employer may be offset against personal income in Denmark in the income year in which they are paid.

Contributions to Danish employer administered pension schemes are tax-exempt in Denmark, provided that the scheme is set up with a Danish bank or insurance company.

Distributions from the Danish pension schemes are taxable as personal income if Mr Jensen lives in Denmark when he retires. Depending on the tax treaty with the country in question, Mr Jensen may also be liable to pay Danish tax on the pension distributions even though he decides to spend his retirement abroad.

During his stay in Poland, Mr Jensen can neither benefit from tax relief on contributions to a Danish pension scheme withheld by his employer nor obtain a deduction for private contributions to Danish pension schemes.

Furthermore, contributions to a Danish pension scheme withheld by the employer are taxable in Poland as salary income, and contributions to a Danish private pension scheme cannot be offset against income in Poland.

Consequently, the continuation of contributions to a normal Danish pension scheme places Mr Jensen in a position whereby his pension is taxed twice: firstly, when the contributions are made; and secondly, when Mr Jensen retires and the pension is disbursed.
3.2.5.2. PBL Section 53 A-scheme

Instead of contributing to a normal Danish pension scheme during his period abroad, Mr Jensen could (under Danish domestic law) establish a Section 53 A-scheme.

Contributions to a Section 53 A scheme are not tax exempt or tax deductible in Denmark, but the scheme can be discontinued at any time, without any Danish tax implications. If Mr Jensen is a Danish tax resident, the yield from the scheme will be subject to Danish tax.

When Mr Jensen returns to Denmark, he can withdraw the accumulated savings on the Section 53 A pension scheme and an amount (for example, corresponding to the savings) can be contributed, with no tax withheld, to an employer-managed, tax-exempt Danish pension scheme. There is no limit on the total amount, but the monthly contribution cannot exceed the monthly salary.

A large amount (for example, the accumulated savings) can also be contributed to a private scheme. In this case, he can choose to make deductions from his personal income each year over a maximum period of 10 years.

3.2.6. Cross-border implications

3.2.6.1. Double taxation relief

International double taxation occurs when both Poland and Denmark claim the right to tax the same income or capital.

Double taxation occurs when Mr Jensen, as a Danish tax resident, is subject to tax on his worldwide income in Denmark and, at the same time, as a Polish tax resident, is subject to tax on his worldwide income in Poland.

It also occurs when Mr Jensen, as a non-resident, is liable to pay tax on income deriving from one of the countries and, at the same time, is liable to pay tax as a resident of the other country on his worldwide income.

In these cases, the treaty between Denmark and Poland for the elimination of double taxation on income and capital determines which of the two countries that is entitled to tax each type of income.

3.2.6.2. Elimination of double taxation

If Mr Jensen is liable to pay tax on income earned in Poland but must also pay tax in Denmark on his worldwide income as a resident or treaty resident, Denmark must reduce the Danish tax by an amount corresponding to the tax paid in Poland (credit relief).
Similarly, if Mr Jensen is liable to pay tax on income earned in Denmark but must also pay tax in Poland on his worldwide income as a resident or treaty resident, Poland must reduce the Polish tax by an amount corresponding to the tax paid in Denmark (credit relief).

Under Danish legislation, no Danish tax is imposed on employment income earned in Poland if certain conditions are fulfilled. Tax relief under this rule (Section 33 A) requires a minimum stay in Poland and a maximum stay in Denmark. It is also a requirement that the individual is a Danish tax resident. Under this rule, the proportion of Danish tax related to the foreign salary income (exemption relief) reduces the total Danish tax.

### 3.2.6.3. Income from personal services

As a rule, Mr Jensen is a treaty resident in Denmark for the period during which Mr Jensen's family remains in Denmark (see 3.2.1.1.).

During this period, Mr Jensen's salary for his Polish duties is taxable in Poland, as he is working in Poland for a Polish employer.

### 3.2.6.4. Interest income

Interest income from Danish sources can be taxed at a maximum of 5% in Denmark if Mr Jensen is tax resident in Poland according to the treaty. If Mr Jensen is non-resident in Denmark, Danish source interest is not taxable in Denmark.

### 3.2.6.5. Dividends

Any dividends that Mr Jensen receives from a company domiciled in Denmark during the period in which he is resident in Poland may be taxed in both Denmark and Poland.

Danish tax cannot exceed 15% of the gross dividends. The tax paid in Denmark reduces the Polish tax.

### 3.2.6.6. Real property

Net rental income received by the Jensens from their Danish house is taxable both in Poland and in Denmark. Tax paid in Denmark on the net income from rent reduces the
Polish tax on the same income in the period during which they are Polish treaty residents.

Capital gains on real property can be taxed both in the country of residence and in the country where the property is situated. Denmark does not normally tax capital gains on disposal of the family home. Capital gains on real property are taxable in Poland. The Jensens are therefore liable to pay tax in Poland on any capital gains earned if they sell their Danish accommodation during the period in which they are treaty residents of Poland if the gain is not used to repay a credit or loan from a bank or a savings and credit-providing co-operative bank, which was used to purchase a building or apartment. It is, however, not possible to claim the exemption of Polish tax on capital gain from the sale of a house/apartment if the mortgage interest has been deducted in the taxable income.

If the capital for the house has been provided through a loan in Danish kroner, gains or losses due to exchange rate fluctuations may occur.

3.2.6.7. Child care allowance

If Mrs. Jensen receives a Danish child care allowance from the beginning of the period during which she is a treaty resident of Poland, the allowance is taxable in Denmark and in Poland. The Polish tax is, however, reduced by the tax paid in Denmark.

For further details about KPMG, please see section 5.5.