Loan agreements in capital companies

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Introduction

Capital companies, such as limited liability companies (sp. z o.o.) or joint-stock companies (S.A.), often use loan agreements as a means of obtaining financial resources. A loan, regulated by the provisions of the Civil Code (articles 720–724 of the CC), allows for flexible financing of current operations or investments without the need to engage equity capital. However, in the context of Polish tax law, granting and repaying a loan generates numerous obligations, including the civil law activities tax (PCC), corporate income tax (CIT), and potentially withholding tax (WHT) in the case of transactions with foreign entities. This article, prepared based on the current regulations in force in 2025, discusses key tax aspects, with particular emphasis on who pays the tax and when, from which dates obligations are calculated, and what taxes arise depending on the entity providing the loan. The analysis is based on the Act on the Civil Law Activities Tax (Journal of Laws of 2023, item 1285, as amended), the CIT Act (Journal of Laws of 2023, item 2805, as amended), and executive regulations, considering changes introduced in 2024–2025, such as the update of the safe harbor mechanism for financial transactions.

Civil Law Activities Tax (PCC) – Basic Principles

The PCC tax is the first and most common burden associated with a loan agreement. The tax obligation arises at the moment of concluding the loan agreement, regardless of the actual disbursement of funds – even if the disbursement occurs in installments, the tax basis includes the entire amount of the obligation. The tax rate is 0.5% of the gross value of the loan (including any interest paid upfront), calculated by multiplying the loan amount by 0.005. The taxpayer is always the borrower, i.e., the capital company, which is obliged to calculate and pay the tax independently without being prompted by the tax authority.

The tax payment deadline is 14 days from the date the tax obligation arises,

usually from the date of signing the agreement. The PCC-3 declaration must be submitted to the appropriate tax office (according to the company's registered office), and the tax must be paid into the office's account. In case of delay, default interest for late payment is imposed at a rate of the NBP reference rate plus a 50% margin (currently about 8–9% per year, depending on the reference rate). If the loan is not disclosed and the authority detects it (e.g., during an audit), a penalty rate of 20% on the tax base is applied.

Exemptions and Exceptions from PCC

Not all loans are subject to PCC taxation. Key exemptions depend on the entity granting the loan:

- **Loans from shareholders of capital companies**: Total exemption from PCC based on art. 2 point 4 of the PCC Act. This applies to loans granted by an individual who is a shareholder (shareholder) to a sp. z o.o. or S.A., regardless of the amount and purpose. This exemption does not require notification, but the agreement must be in writing for evidentiary purposes. The tax obligation does not arise from the date of concluding the agreement, thus eliminating both PCC and the PCC-3 declaration. This provision has remained unchanged since 2016 and has not been modified in 2025.
- **Loans between unrelated capital companies**: Rate of 0.5% from the date of the agreement, without exemptions. The borrowing company pays the tax within 14 days.
- **Loans from related entities (e.g., parent-subsidiary companies)**: Basic rate of 0.5%, but if the transaction is subject to transfer pricing rules (art. 11a–11n of the CIT Act), exemptions or simplifications may arise from the safe harbor mechanism (see below). No new exemptions were introduced in 2025, but the necessity for documenting financial transactions was emphasized.
- **Loans from close relatives of the shareholder or other individuals**: If it is not a shareholder, a rate of 0.5% applies, with the possibility of exemption for loans between ancestors, descendants, spouses, siblings, or stepparents (up to PLN 36,120 in 2025, after submitting SD-Z2). For capital companies, such an exemption does not apply unless the lender is a shareholder.

In the case of foreign loans (e.g., from a company from the EU), the territorial scope of PCC taxation is limited to agreements concluded in Poland; if the agreement is concluded abroad, PCC may not arise, but this requires analysis of the place of conclusion.

Income Taxes (CIT) – Interest and Costs of Generating Income

Interest on loans generates consequences in CIT for both the lender and the borrower. The regulations did not undergo significant changes in 2025 apart from the updates to the safe harbor.

- **For the lender (capital company)**: Interest constitutes income from financial assets (art. 17 paragraph 1 point 1 of the CIT Act), taxed at the CIT rate of 19%. Income arises on the date of receipt of interest (accrual basis). If the lender is a company with Estonian CIT (lump-sum tax on corporate profits, introduced in 2021 and maintained in 2025), the interest is included in the lump-sum base of 10–20%.
- **For the borrower (capital company)**: Interest is a cost of generating income (art. 15 paragraph 1 of the CIT Act), deductible from income at the time of payment or availability. However, in related transactions, restrictions from art. 15e apply (thin capitalization) – interest costs on debt exceeding PLN 3 million or 30% EBITDA are not deductible unless the transaction is documented at market prices.

Settlement deadline: In the CIT-8 declaration (by the end of the 3rd month after the tax year) or CIT-8R for Estonian CIT.

Impact of the Lender on CIT

- **Loan from a shareholder (individual)**: Interest for the shareholder is income from financial assets taxed at PIT 19%. For the company – full cost, without thin cap restrictions, as long as there is no capital linkage. No WHT if the shareholder is a resident.

- **Loan from another unrelated capital company**: Interest – CIT income at 9% or 19% for the lender (if it meets the Estonian CIT conditions). For the borrower – cost, provided the interest rate is market-based (benchmarking).
- **Loan from a related entity**: Transfer pricing applies. In 2025, the safe harbor for loans allows for simplification of documentation if the interest margin falls within: for loans granted by a related entity – 1.25–6.5% (2024 update of the MF regulation). TP documentation must be prepared by the end of the 10th month after the fiscal year; failure to do so incurs a penalty of up to PLN 10 million. Exemption from documentation for transactions below PLN 2 million (2025 threshold).
- **Foreign loan**: Interest is subject to WHT of 20% (art. 21 paragraph 1 point 2 of the CIT Act), unless the directive 2003/49/EC (exemption for EU companies) or a double taxation treaty (e.g., 5–10% for interest) applies. Withholding of WHT occurs on the day of payment; refund possible after application.

Transfer Pricing (TP) Rules in Loan Transactions

In 2025, TP regulations (art. 11a–11n of the CIT Act) remain stable, with an emphasis on financial transactions. The documentation obligation applies to loans exceeding PLN 2 million annually from related entities (shareholding >25% or control). Verification methods: CUP (comparable uncontrolled price) or TNMM (transactional net margin method). The Transfer Pricing Forum report of October 1, 2025, highlights benchmarks for intra-group loans. Non-compliance with TP may result in income adjustment and a penalty of PLN 30,000–400,000.
For loans from shareholders: TP does not apply if the shareholder is an individual without control (art. 11a paragraph 1).

Interest Calculation for Partially Disbursed Loans

In the context of loan agreements regulated by the Polish Civil Code (art. 720–724 CC), the calculation of interest primarily depends on the moment of actual **disbursement of funds**, not the date of signing the agreement. The loan agreement is a consensual agreement, meaning the obligation arises at the moment of its signing, but interest (resulting from the use of someone else's funds) begins to be calculated only from the day after the actual disbursement of the loan amount. This is due to the general principles concerning interest on monetary amounts (art. 359 CC), where interest is due from the due date of the amount, and in the case of a loan, this due date falls on the moment the ownership of the funds is transferred to the borrower.

Case of Full Loan Disbursement

- If the entire loan amount is paid out at once, interest is calculated from the **day after the date of disbursement**.
- For example: Agreement signed on October 1, 2025, disbursed on October 3, 2025 – interest from October 4, 2025.

Case of Disbursement in Installments (Partially)

- When the loan is granted in installments or tranches (which is common in transactions between capital companies or with shareholders), interest is calculated **proportionally from the date of disbursement of each tranche**, exclusively from the amount actually provided in that tranche.
- Interest is not calculated on the undisbursed portion, as the borrower has not yet utilized those funds. Only after the disbursement of the last tranche are interest calculated on the entire amount, but taking into account different periods for each part.
- For example: A loan of PLN 100,000 divided into two tranches – PLN 50,000 disbursed on October 1, 2025, and PLN 50,000 on November 1, 2025, with an interest rate of 5% per year. Interest on the first tranche calculated from October 2 to the repayment date, on the second – from November 2 to the repayment date.

This approach minimizes costs for the borrower and is consistent with banking practices and court rulings (e.g., NSA judgments emphasizing that an agreement does not generate interest before the actual performance of the lender's obligation).

Tax Aspects (in the context of capital companies)

- **For the borrower (CIT)**: Interest is a cost of generating income from the moment they are calculated (accrual basis, art. 15 paragraph 1 of the CIT Act), but only from the amounts actually disbursed. In installments – proportionally.

- **For the lender**: Revenue from interest arises on the day of receipt or availability (art. 17 paragraph 1 point 1 of the CIT Act).
- **PCC**: The tax base includes the entire loan amount (including any upfront interest, if agreed), regardless of installments – the tax obligation arises from the date of the agreement (art. 6 paragraph 1 point 1 letter b of the PCC Act). However, current interest does not affect PCC.

Important Tips

- **Agreement**: Always specify in the agreement the schedule for disbursement of tranches and the method of calculating interest (e.g., "interest on each tranche from the date of its disbursement"). In the absence of a reservation – statutory interest applies (art. 359 § 1 CC).
- **Maximum Interest**: Cannot exceed double the statutory interest (art. 359 § 2^1 CC; in 2025 about 11.25% per year, depending on the NBP rate).
- **Late Payment Interest**: If the payment of a tranche is delayed, additional interest is calculated from the day after the due date (art. 481 CC).

Interest Calculation from the Date of Signing the Agreement – Legality in Polish Law

Yes, the parties to a loan agreement can agree to calculate interest **from the date of signing the agreement**, even if the actual disbursement of funds occurs later. This follows directly from art. 359 § 1 of the Civil Code (CC), according to which interest on a monetary amount is due only if it arises from the **legal act** (i.e., the agreement of the parties), statute, court ruling, or decision of an authority. The freedom of contracts (art. 353^1 CC) allows for freely shaping the content of the obligation, including the moment the obligation to pay interest arises, provided it does not violate principles of social coexistence, statutes, or lead to abuse (e.g., usury – art. 359 § 2^1 CC).

Key Conditions and Practice

- **Legal Basis**: A loan agreement (art. 720 CC) is a paid agreement if the parties so decide. Capital interest (for using funds) can be calculated from any moment specified in the agreement, including from the date of its conclusion. This is not contrary to law, even if the lender delays disbursement – in such a case, interest before payment may be treated as compensation for "reserving" the funds or risk, but a court may verify this for balance between the parties.

- **Jurisprudence**: Courts confirm the permissibility of such a provision. For example, in the ruling of the District Court in Szczecin from February 19, 2013 (case II Ca 990/12), the court held that interest could be calculated for the period **from the date of signing the agreement to the date of repayment of the loan**, without the need for disbursement on the date of signing. A similar position appears in legal literature and commentaries to the CC, emphasizing that the moment of interest calculation is a contractual matter.

Risks and Limitations

- **Before Disbursement of Funds**: If interest is calculated before the actual disbursement of the loan (art. 721 CC requires delivery of the subject), the agreement may be contested as not fulfilled by the lender. In such a scenario, interest before disbursement could be deemed impermissible (e.g., as a hidden commission), but this is not automatic – it depends on the circumstances (e.g., whether the delay is due to the borrower's fault).
- **Interest Limits**: The total amount of interest cannot exceed double the statutory interest for delay (art. 359 § 2^1 CC; in 2025 about 11.25% per year, depending on the NBP reference rate). Exceeding this is usury, null and void (art. 58 CC).
- **Tax Aspects (for capital companies)**: In CIT, interest is settled on an accrual basis (from the moment of calculation, art. 15 paragraph 1 of the CIT Act), so the provision in the agreement affects the moment of expense recognition for the borrower and income for the lender. In PCC, the tax base includes any upfront interest (art. 7 paragraph 1 of the PCC Act), regardless of the date of calculation.
- **Practical Recommendations**: Always specify in the agreement the precise moment of calculation (e.g., "interest calculated from the date of signing the agreement, regardless of the date of tranche disbursement"). In the case of tranches – proportionally from each. In the absence of a provision – statutory interest applies from the due date (i.e., disbursement).

In the context of capital companies, such a provision facilitates planning, but we recommend verification in terms of transfer pricing (if there are linkages). This is not personalized advice – consult a lawyer or accountant before implementation.

Other Important Aspects and Risks

- **VAT**: Loan agreements are exempt from VAT (art. 43 paragraph 1 point 38 of the VAT Act), regardless of the entity. Exception: if the company conducts financial activities (PKD 64.19.Z), it may be subject to 23% VAT.
- **Changes in Law 2024–2025**: No revolutionary news for loans; a key update to the safe harbor (MF regulation from June 2024, effective in 2025) and facilitation of tax-neutral restructuring from September 2025 (amendment to the CIT Act). The Polish Deal (2022) did not directly affect loans.
- **Documentation and Risks**: The agreement must be in writing (art. 720 §2 CC); failure to do so results in joint liability. In the KAS audit, the following are checked: market interest rate (minimum 5–7% for PLN in 2025), purpose of the loan (not for dividends) and repayment (no donation).
- **Computational Examples**:
    - Loan PLN 100,000 from an unrelated entity: PCC = PLN 500, payable within 14 days.
    - Interest 5% per year: For the lender CIT 19% from PLN 5,000 = PLN 950.
    - Safe harbor: Margin 2% – no full TP documentation required.

Summary

Loan agreements in capital companies are an effective financial tool, but require precise tax planning. Key: PCC exemption for loans from shareholders (from the date of the agreement), 0.5% PCC for others (14-day deadline), CIT on interest (accrual method) and TP for related parties. In 2025, safe harbor facilitates compliance. We recommend consultation with an accounting office before concluding an agreement to avoid penalties and optimize costs. This article does not constitute tax advice – in case of doubts, consult a consultant.