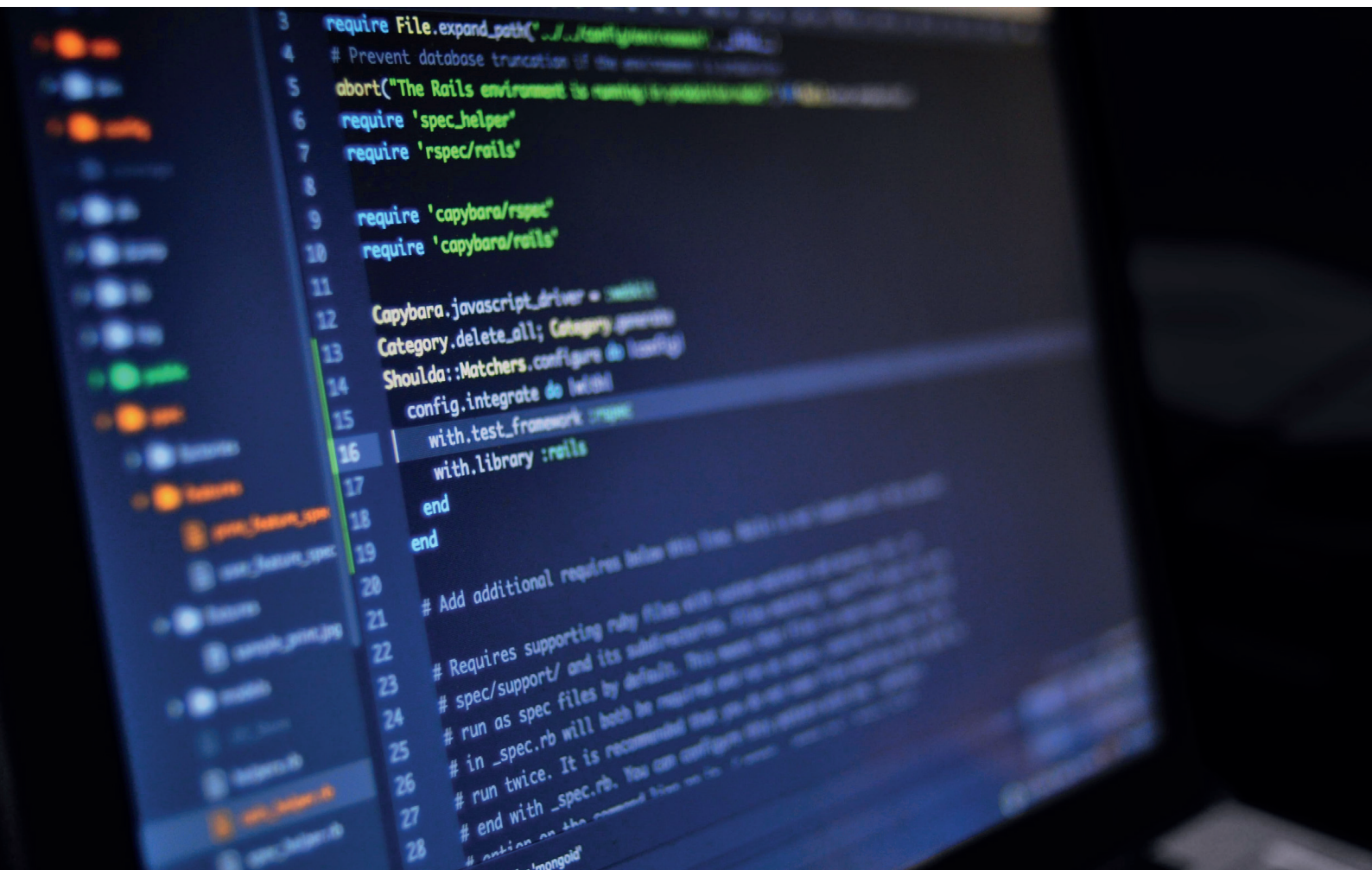


# Copyright Law in Poland: a Handbook for IT Companies



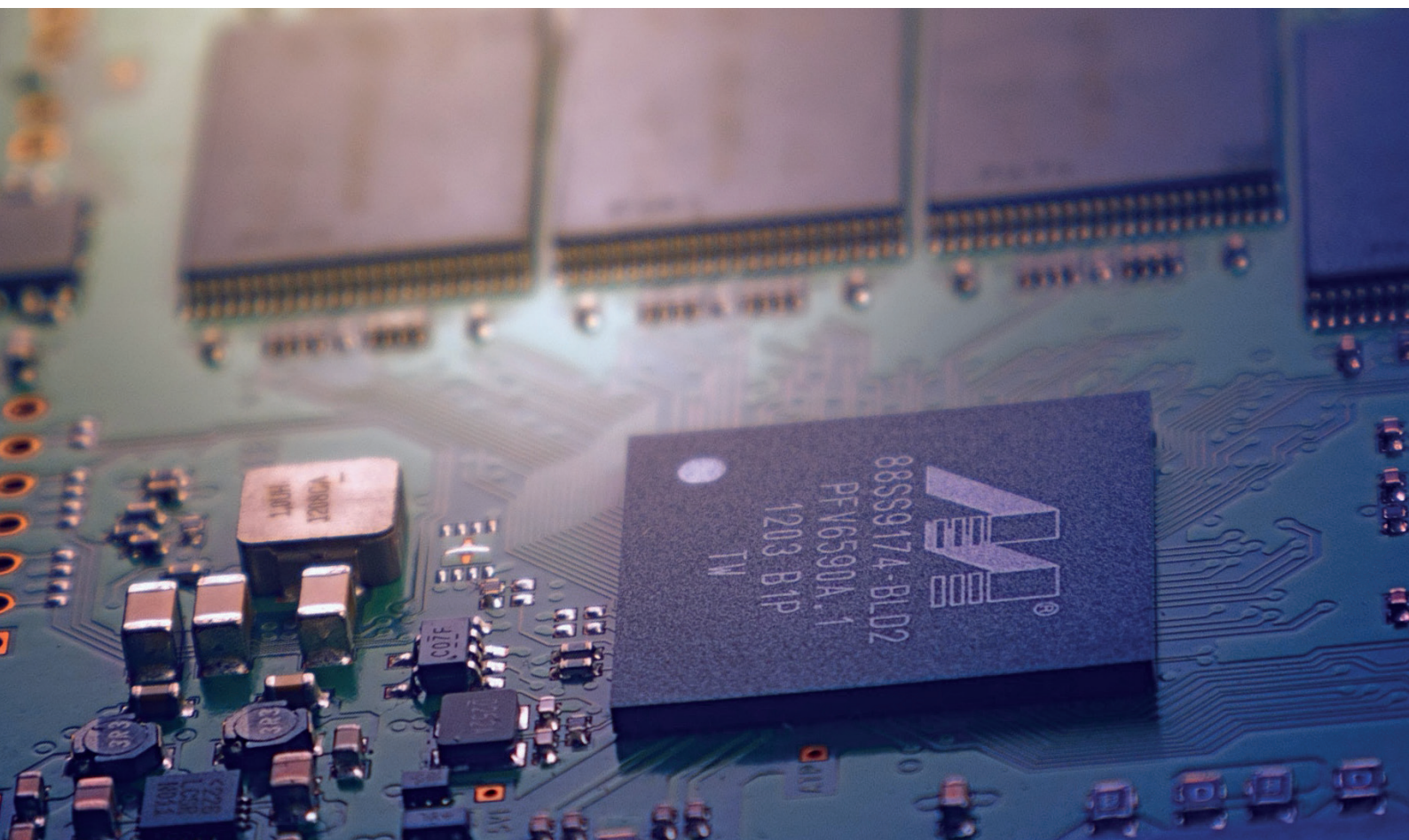
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# Introduction

At the KWKR Konieczny Wierzbicki & Partners Law Firm, we provide legal services to businesses operating in a variety of sectors, including but not limited to the IT sector. One of our main areas of expertise is the law of new technologies (IT) and intellectual property law. We have extensive experience in comprehensive legal advisory provided to IT companies, including in terms of international IT projects, which we have built over many years.

This handbook has been written with IT companies in mind. Its purpose is to discuss those aspects of the Polish copyright law that may be of particular interest to entities from the IT sector. We would like to present the key issues an IT company may face and offer several practical tips. This handbook may also be useful for entities that consider starting a business in Poland or plan to work with Polish companies with respect to software development or the provision of professional IT services.





## Copyrights in Poland: general description

Polish copyright law is a part of the continental tradition, which means that it focuses on the bond between the author and the work. Only a natural person can be the author of a work. Works include computer programs and the protection granted to a computer program covers all forms of expression, including but not limited to software recorded in the form of a source code.

In practice, if an IT company is to be in any way authorized to use software or decide about it, it needs to effectively acquire the copyrights to it.

In the context of holding copyrights to computer programs, it is necessary to differentiate between economic rights and moral rights, as well as to understand the principles of transferring them effectively.

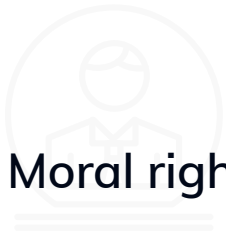


## Economic rights

Economic rights concern the economic aspect of using a work (a computer program). They allow the author to derive economic benefits from the fact that the work is being used. These rights are limited in terms of time (in principle, they expire after 70 years from the death of the author or the last of the surviving co-authors) and in most cases can be disposed of, meaning that they can be transferred to other persons through inheritance or on the basis of an agreement.

The author or another entity holding the rights to software may transfer these rights to another person (dispose of economic rights) or permit another person to use the software under a license (more on that below).

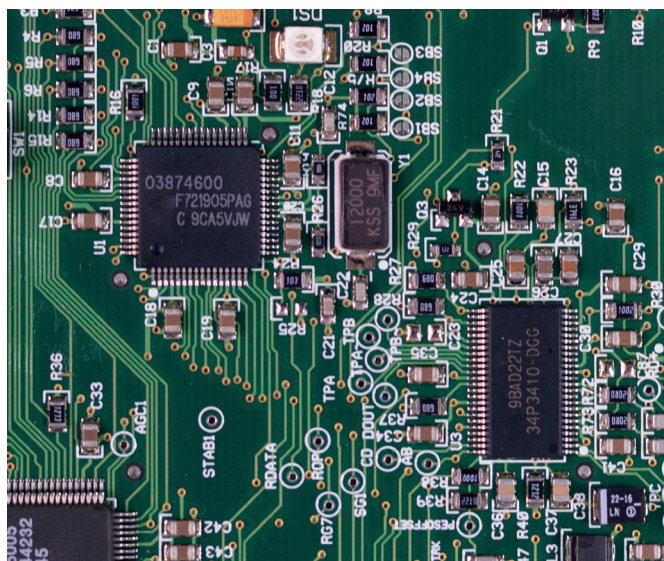




## Moral rights

Moral rights protect the bond between the author and the work. Examples of moral rights include the right to authorship, the right to mark the work with the author's name or pseudonym, the right to publish the work anonymously, the right to integrity of the work, the right to decide about how the work will be made available to an audience for the first time, and the right to supervise the way in which the work is used.

Unlike economic rights, moral rights cannot be disposed of. The author cannot transfer them to another entity. They are also unlimited in terms of time (they do not expire after the author's death) and cannot be renounced. However, there are no obstacles for the author to undertake, in an agreement, not to exercise these rights, at the same time authorizing another entity (e.g. an IT company) to exercise these rights on his or her behalf. The issue of regulating the principles of exercising moral rights is a crucial element of an agreement of disposal of economic rights.



## Transfer of copyrights in agreements with personnel

Since only a natural person can be an author of a work, an IT company should take good care to ensure that it can freely use the software developed by the members of its personnel. For this purpose, copyrights can be transferred and the personnel can also grant the relevant licenses.

A transfer of copyrights consists in a member of the company's personnel transferring his or her economic rights to the company. Under Polish copyright law, the principles of such a transfer differ depending on the type of the agreement executed between the IT company and the members of its personnel

### Employment contract

In the case of an employment contract, the employer whose employee has created a work as part of performing his or her employee duties acquires the economic rights at the moment of accepting the work. This means that unless the contract with the employee provides otherwise, if the employee creates a work while carrying out employee duties (if creating the work is within these duties and follows from the purpose of the contract), the IT company acquires the economic rights to this work at the moment accepting it from the employee. If the work is a computer program, special regulations apply, which are even more favorable for the employer: in that case, the economic rights are vested in the employer without the need to accept the program from the employee, which means that the employer acquires these rights already at the moment when the software is created.

**However, the regulations do not guarantee the right to use the work or decide about it** (the employer cannot exercise the moral rights to the work or use or decide about any adaptations of the work). For this reason, it is important to properly regulate these issues in the contract with the employee. Furthermore, the sole fact of establishing an employment relationship is insufficient to conclude that the work created by the employee is within his or her employee duties—the scope of these duties should be laid down in the employment contract. Therefore, it is necessary to make sure that the contracts with personnel members guarantee the IT company with a possibility of utilizing the results of the employees' creativity to the maximum extent.

### **Contract for specific work**

The situation is different in the case of a contract for a specific work (i.e. a contract where the parties agree that the contractor will produce a specific deliverable, e.g. a computer program). This type of contract imposes fewer obligations on the IT company than an employment contract, but, at the same time, under a contract for specific work, the principal (the IT company) does not automatically acquire the rights to the works created by the contractor (a member of personnel employed under the contract). This means that in the case of a contract for a specific work, **it is particularly important to include in it provisions that transfer the copyrights to the software to the IT company.**

### **B2B contract**

In the Polish IT sector, B2B (business-to-business) contracts with personnel members have recently been growing popular. In this case, the personnel member acts as a business (usually a sole proprietorship, sometimes a private limited company). A B2B contract is highly beneficial and flexible from the point of view of the IT company. It provides more freedom to contract and imposes few obligations on the IT company compared to other types of contracts. What is more, a B2B contract assumes more independence on the part of both parties (in particular, the contractor is responsible for paying his or her taxes and social and health insurance contributions).

At the same time, more freedom to contract means that statutory regulations do not guarantee the IT company to acquire the copyrights to the works created by the B2B contractor. Therefore, careful attention needs to be paid in order to ensure that the **rules concerning the acquisition of copyrights (and other intellectual property rights) are exhaustively described directly in the B2B contract.**

Our Law Firm provides support in terms of choosing the relevant contract type to govern the relationship with the given personnel member; we also audit and draft contract templates. We make sure that the IT company effectively and comprehensively acquires intellectual property rights. We have extensive experience and knowledge of market standards in the area of contracts with IT personnel.



## License

An alternative to a transfer of copyrights is a license agreement executed with the relevant personnel member.

Under the license, the IT company acquires the right to use the work, but will not be able to decide about it (e.g. it will not be able to sell the copyrights to another company). A license agreement provides the IT company with fewer rights, but also entails fewer requirements than a transfer of copyrights.

In the case of a **license agreement with a personnel member, it is a good idea to make sure that this is done on an exclusivity basis**, i.e. that the IT company, as the licensee, is the only entity allowed to use the work in a specific way.

If the **IT company is a contractor (e.g. develops standard software for its client), a license agreement with the client will be a convenient solution** since the company will retain copyrights and will also be able to grant licenses to other entities.



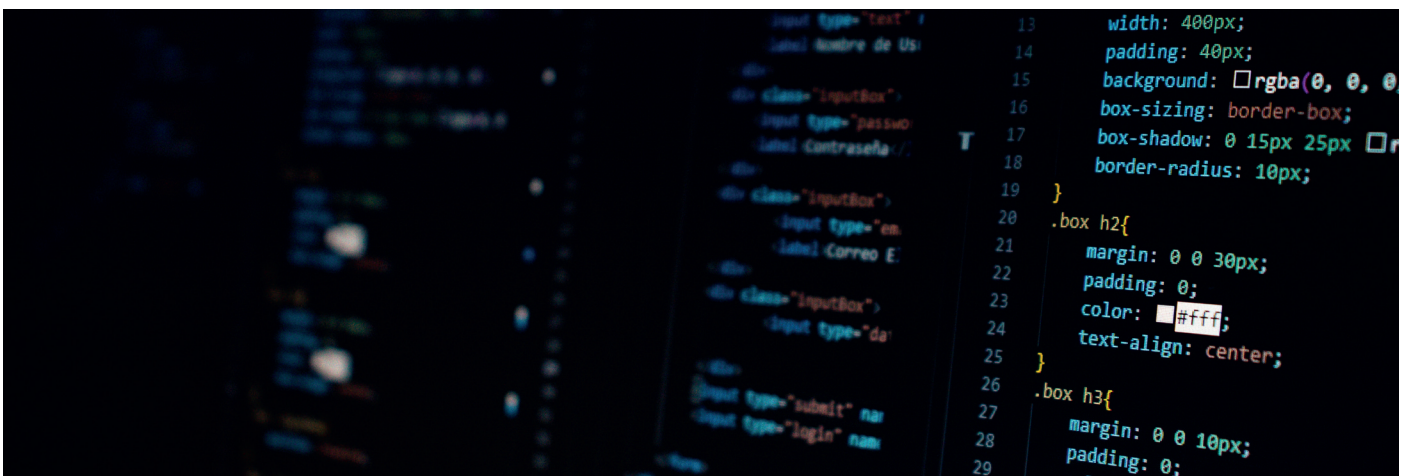
## Practical copyright issues related to IT agreements

### Securing intellectual property rights in agreements

Depending on the role of the IT company, it will be necessary to properly secure its intellectual property rights in agreements with counterparties.

If the company commissions software to be developed, it should be interested in executing a copyrights transfer agreement under which it will acquire the right to use and decide about the computer program.

In turn, if the IT company wishes to offer its software on the market, it is reasonable to grant the relevant licenses to the clients—these licenses should not restrict the company in terms of continuing to generate profit on the computer program.



## Form of an agreement transferring copyrights and of a license agreement

Depending on the type of the agreement (transfer of copyrights or license agreement), Polish law specifies different rules regarding the form of the agreement. **It is mandatory to execute the agreement of transfer of copyrights in writing; otherwise it is null and void. This does not apply to a license agreement, which can be produced in any form;** however, if the license is to be an exclusive one, the written form will be necessary.

According to Polish law, the requirement of the written form will be complied with if the document is signed with a qualified electronic signature. This signature may be placed only by using a special device purchased from certified vendors.

Our Law Firm offers assistance in verifying the correctness of the form of agreements concerning intellectual property rights. We also provide instructions on how to sign documents electronically and, if necessary, help acquire qualified electronic signature devices.

## Prohibition of transfer/licensing and remuneration

The scope of a transfer of copyrights or of a license should be properly specified in the agreement transferring copyrights or in the license agreement. This applies in particular to the so-called areas of exploitation, i.e. the forms of using the work. **Polish legal regulations impose an obligation to clearly specify the areas of exploitation in the agreement.** Otherwise, there may be doubts concerning the permitted use of the work; in extreme cases, the agreement may be deemed invalid.

It is also necessary for the parties to regulate whether the transfer of economic rights or the granting of a license is to take place free of charge or against remuneration. If this is not specified, the author will be entitled to a remuneration.



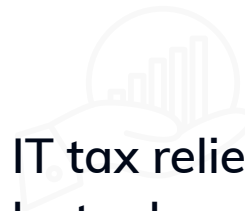




## Copyrights and cross-border contracts

In the IT sector, international agreements are commonplace. In this respect, **it is important to specify which law will govern the agreement.** Depending on whether this will be Polish law or the law of another country (e.g. the law of the counterparty's country), legal consequences may be different, including in terms of copyright law, form of agreement execution, prescription periods, rules of agreement termination, etc.

Polish copyright law is significantly different from common law (e.g. the law of the particular US states or the law of England and Wales). When drafting the agreement with the counterparty, this should be kept in mind. Our Law Firm has extensive experience in working with IT sector agreements based on foreign law.



## IT tax reliefs related to intellectual property rights

Polish law provides for a number of dedicated reliefs and favorable tax solutions for companies operating in the IT sector which utilize intellectual property rights (e.g. economic rights, patents, industrial designs, etc.).

One of the key solutions is the option to take advantage of 50% tax-deductible costs (author's tax-deductible costs). This concept consists in decreasing the advance paid by the IT company (as an employer and remitter of taxes) towards the income tax payable on employee remunerations. This increases the remuneration received by the employee. The relief may be used only if the employees carry out creative work—the types of this work are specified in tax law and include e.g. software and video games development. Importantly, however, the 50% tax-deductible costs do not apply to individuals who operate a business (e.g. B2B contractors).

It is also possible to take advantage of the IP Box, i.e. a form of relief that consists in lower taxation of the income achieved from operating a business. IP Box allows a software developer who is a B2B contractor to enjoy a preferential 5% tax rate in his or her annual re-



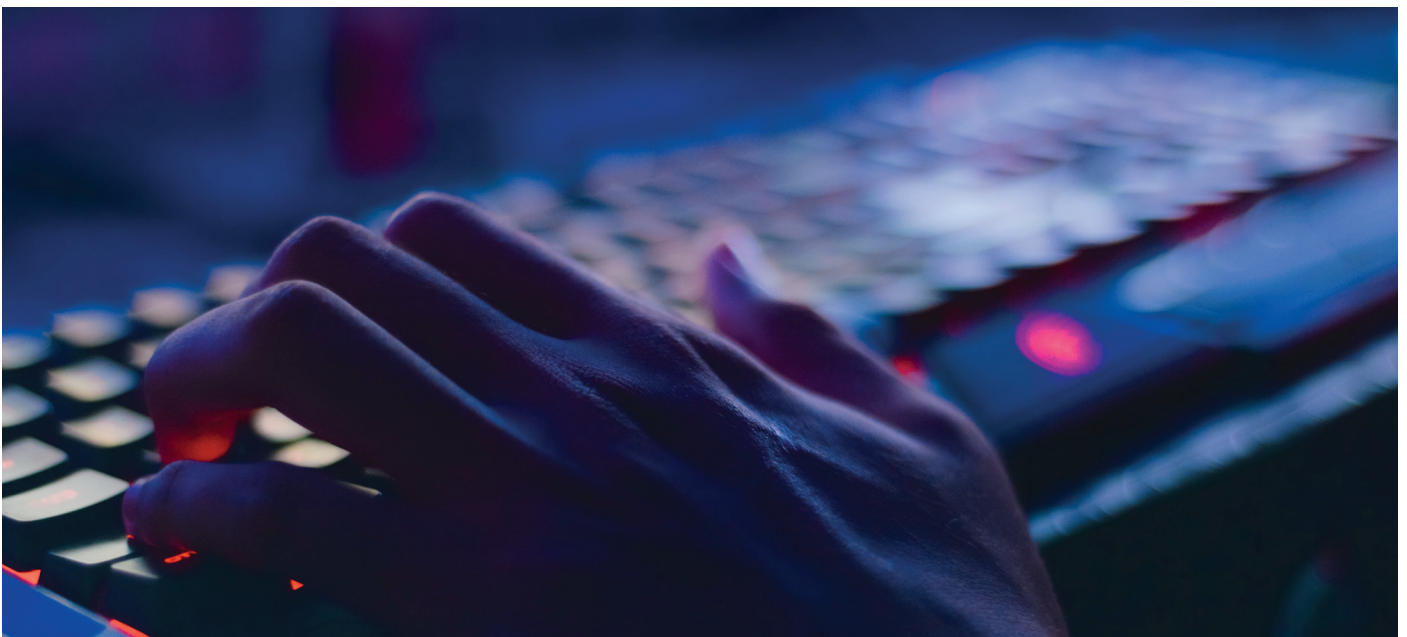
## Summary

turn. This relief applies to commercialization of intellectual property rights, including transferring economic rights and granting the relevant licenses to use software.

Our Law Firm has advised on a number of implementations of 50% tax-deductible costs, the IP Box, and the R&D relief. We also regularly assist in identifying and taking advantage of reliefs dedicated to the IT sector.

More and more IT companies are deciding to do business in Poland, whether by incorporating their own companies (e.g. software houses) or by working with Polish counterparties. For a number of years now, Polish IT companies have also been expanding onto foreign markets. This handbook describes the key practical elements of Polish copyright law that should be taken into account at the stage of starting and developing an IT business in Poland.

Our Law Firm provides comprehensive services to entities operating in the IT sector. We have extensive knowledge of the IT sector backed with hundreds of successful projects and cases, including those of international nature. We understand how important it is for an IT company to secure intellectual property rights. Please contact us if you have any questions or require legal assistance.



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