

As of 2022 it will be possible to establish family foundations

I. The government is holding consultations on family foundations bill

The long-awaited draft bill on family foundations, prepared by the Ministry of Finance and the Ministry of Development, Labor and Technology, was recently presented for external consultations. Under the bill, the institution of foundation is meant to protect a company from the shock associated with changing owners and make it easier to entrust its management to successors, according to the will of the founder. Thus the objective of the bill is to resolve the problem of family firm succession. The bill also provides tax solutions that should be looked at. The new regulations are to go into effect as of 1 January 2022.

II. There will be a special system for the taxation of family foundations and beneficiaries

Taxation of family foundations is to be based on several basic assumptions. And so, the assets contributed by the founder, designated for the performance of the foundation's objectives, will not constitute revenue as defined in the Corporate Income Tax (CIT) Act. Contribution of assets to the family foundation by its founder will not result in tax obligations. The family foundation's operating activity will be taxed with CIT on a general basis. Whereas the income of the founder and beneficiary from the so-called group zero (privileged), received from the family foundation, will not be subject to taxation with personal income tax (PIT).

The government is finishing work on a bill on family foundations that would enable easy generational succession for small and mid-sized companies. At the same time, the government is preparing a new system for the taxation of such foundations where payments would be taxed at a special rate of 19%.

III. Contribution made to a foundation cannot be lower than PLN 100 thousand

As indicated in the draft, the contribution of assets to the foundation by its founder will not be subject to taxation with income tax. In accordance with the new regulations, the founder would contribute assets designated for the performance of the family foundation's objectives, with a value of at least PLN 100 thousand. The family foundation's operative fund is to consist of the asset's contributed by the founder and acquired after the foundation is established. Donations to the family foundation could be made by the founder or by a person who is or would be appointed to the estate as a statutory successor of the founder or the founder's spouse, ascendant or descendant. Donors other than the founder would not, however, become founders as a result of making a donation.

IV. The foundation's statute will define the beneficiaries

The family foundation's statute will, among others, define the foundation's beneficiary or group of beneficiaries, or the method used to determine beneficiaries.

In addition, the founder will prepare a list of the first beneficiaries in writing. Once the family foundation has been formed, the list of beneficiaries will be updated by its management. As a rule, the beneficiary will be a natural person or a public benefit organization referred to in the regulations on public benefit activities and volunteering. The beneficiary may, in accordance with the founder's will expressed in the statute, receive benefits from the family foundation, or assets after the family foundation is liquidated.

V. Payments to beneficiaries cannot threaten the foundation's solvency

The family foundation's beneficiaries and their rights are to be defined by the foundation's statute. Payments of benefits to the family foundation's beneficiaries should not threaten the foundation's solvency with respect to its creditors who are not its beneficiaries, and should always depend on the foundation's current financial position. Should it be necessary to suspend a payment, the beneficiary's claim would not expire, but would be put on hold until the family foundation's financial position improves.

VI. Payments from founder's assets to immediate family members tax-exempt

Payments made to privileged beneficiaries (spouse, descendants, ascendants, stepchild, siblings, the founder's stepfather and stepmother and the founder him or herself) are to be exempt from inheritance tax if the benefit consists of the assets contributed to the foundation by the founder. This is significant in a situation when there is more than one founder. In such situations, the exemption will only pertain to that portion of the foundation's assets, which was contributed by the founder for whom the beneficiary is an immediate family member. The definition of assets includes the assets contributed by the founder of the family foundation, income therefrom, as well as possibly assets acquired or obtained by the foundation in exchange for those funds and the operative fund.



VII. Payments out of the taxable portion taxed at 19%

A flat inheritance tax at the new rate of 19% will be paid on benefits received from the family foundation, by privileged beneficiaries on payments made on the excess of the assets contributed by the founder, and by all the other beneficiaries on each payment. Thus in reality, if a beneficiary contributes PLN 100 thousand (minimum) to the foundation, and a payment of PLN 110 thousand is made to a privileged beneficiary, the privileged beneficiary will pay PLN 1900 in tax (19% on the excess of 100 thousand, i.e. on 10 thousand). Whereas a non-privileged beneficiary would pay PLN 20900. In the government's opinion this system of taxation is more favorable than taxation with PIT, which could result in taxation at the rate of 32% and the need to pay a 4% solidarity charge (on payments in excess of PLN 1 million).

VIII. Family foundations will be CIT taxable at the rate of 19%

Family foundations are to be taxable with corporate income tax (CIT) at the rate of 19%. No exemption will apply to the foundation's income even if it is used for statutory purposes. It will also not be possible to apply CIT at 9% or to use the so-called Estonian CIT. At the same time, family foundations will not be able to perform business activities. The bill provides that family foundations will manage and protect their assets and pay benefits to the beneficiary indicated by the founder, in particular cover his/her living or education expenses or, if the beneficiary is a public benefit organization, support its socially or economically useful objectives.

IX. Dividends paid to foundations not exempt from taxation

A family foundation's operative fund consists of the assets contributed by the founder and acquired after the foundation's formation. This means assets as defined in the Civil Code, as well as liabilities of the family foundation, including its liabilities to the beneficiary. Assets contributed to the foundation may also include company shares, and thus the foundation's income may include dividends from such shares. Dividend payments made to a family foundation will not, however, qualify for the kind of exemption that is currently available to limited companies after certain conditions are met. Such dividends will in fact be subject to taxation.

X. Foundations to be jointly and severally liable for the tax arrears of the founder

Changes would also be made to the regulations on tax liability. Under the new provisions, a family foundation would be liable with all of its assets, jointly and severally with the founder, for the founder's tax arrears that arose prior to its formation. The liability would, however, be limited to the value of the assets contributed by the founder to the foundation. If, therefore, the founder first contributes 100 thousand to the foundation (statutory minimum), and then it turns out that he/she has 50 thousand in tax arrears, the tax authorities would at their own discretion be able to seek to collect this amount from the founder or from the foundation. If, however, the arrears amount to 200 thousand, the tax authorities would be able to seek to collect the entire amount from the founder, or no more than 100 thousand from the foundation.



XI. Family foundations will keep special tax records

A CIT taxable person that is a family foundation will be required to keep a tax record with a separate list of the items, property rights and funds received from each founder, indicating those founders. It will also have to keep accounting records in a way that will make it possible to determine the revenue, tax-deductible costs and income (loss) from the items, property rights and funds received from each of the founders, broken down by founder, as well as keep accounting records in a way that will make it possible to determine the founder that contributed the funds used to pay benefits to a beneficiary, as well as to the founder. Amendments to the CIT Act would also include regulations on the depreciation of assets contributed to a family foundation.



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XII. Foundations to be audited after the end of the year

The bill will impose many obligations on foundations. One of them will be the need to conduct audits. The regulations are going to provide that within three months of the end of the foundation's financial year, an independent auditor or team of independent auditors, appointed by a meeting of beneficiaries, will have to perform an audit of the management and use of the family foundation's assets in terms of correctness, truth and compliance with legal regulations and with the foundation's objectives and documents. The audit will result in an audit report provided to the management. Within six months of the end of the financial year the management will submit the report to the register of family foundations. The following may be an auditor or member of the team of auditors: a certified auditor, tax advisor, legal counselor or attorney.

The information presented herein does not constitute comprehensive information or opinion. Consult your adviser before making any decisions.

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