

Family foundations can be registered as of 22 May

I. From six months to two years to register the family foundation

Pursuant to the regulations in force from as of 22 May 2023, the family foundation will acquire legal personality upon entry in the register of family foundations.. Upon drawing up of the deed of incorporation or announcement of the last will and testament, a family foundation in organisation is established. If the family foundation is not entered in the register of family foundations within six months from the date of drawing up of the deed of incorporation or announcement of the last will and testament, or if the court decision refusing to register the foundation becomes final and non-appealable, the family foundation in organisation is dissolved by virtue of the law.

II. The founding assets of the foundation are exempt from taxation

The assets of the family foundation resulting the founder equipping it will constitute the founding capital, the value of which may not be lower than PLN 100,000. This capital will have to be contributed in full before the foundation is registered. However, there is an exception to this rule. In the case of foundations established in the last will and testament, the assets must be contributed within 2 years from registration of the foundation at the latest. When contributing assets to a family foundation to cover the founding capital, the founder must prepare a written inventory of assets. Assets contributed to the foundation by the founder, intended for pursuit of the foundation's objects of operation, are not income within the meaning of the Act on Corporate Income Tax (CIT).

III. Not every business activity is permitted by the law

The family foundation can conduct a business activity only in a strictly defined scope. Only activities in the following fields can be conducted: disposal of property unless the property was acquired solely for the purpose of further disposal; renting, leasing or making property available for use on any other basis; joining commercial companies and partnerships, investment funds, cooperatives and entities of similar nature, domiciled in the country or abroad, as well as participation in these companies and partnerships, funds, cooperatives and entities; purchase and sale of securities, derivatives and rights of similar nature; granting loans (only to: capital companies in which the family foundation holds shares; partnerships in which the family foundation participates as a partner; beneficiaries); trade in foreign currencies belonging to the family foundation in order to make payments related to the activities of the family foundation; production of plant and animal products processed in a manner other than industrial, with the exception of processed plant and animal products obtained as part of special departments of agricultural production and products subject to excise duty, provided that the quantity of plant or animal products from own cultivation, breeding or rearing, used for the production of a given product accounts for at least 50% of that product; forest management.

The Act on Family Foundation regulating the issue of organisation and functioning of the family foundation entered into force on 22 May 2023. The Act also introduces special taxation rules for family foundations. As a rule, the family foundation will be exempt from corporate income tax.



IV. The foundation is not always exempt from CIT

The provisions of the Act on CIT will apply to the family foundation, which also applies to family foundations in organisation and to general partnerships with at least one family foundation as a partner. As a rule, despite being subject to the provisions of the Act on CIT, the family foundation is exempt from this tax. However, there are exceptions to this rule. Firstly, this exemption does not apply to benefits transferred or made available by the family foundation, directly or indirectly, provided by a family foundation to the beneficiary, including the founder who is also a beneficiary, and property in connection with the dissolution of the family foundation. In these cases, CIT of 15% is to be charged. Secondly, income from business activity conducted outside the scope permitted by the Act is to be taxed. In this case, the CIT rate of 25% is to be applicable.

V. Tax on income from buildings, VAT and tax on civil law transactions according to general principles

The family foundation is obliged to pay tax on income from buildings. Income tax on income from a fixed asset being a building (tax on income from buildings) applies to taxpayers when a given building: is owned or co-owned by the taxpayer; is an asset related to business activity; has been released in full or in part for use under a rental, tenancy or other similar agreement; is located in the territory of the Republic of Poland. The tax base is the sum of revenues from individual buildings, less PLN 10,000,000. The tax on income from buildings is 0.035% of the tax base for each month. Also in the case of taxes such as VAT or tax on civil law transactions, the family foundation is subject to them according to the general principles.

VI. Beneficiaries from the immediate family exempt from PIT on pay-outs received from the foundation

As a rule, the benefit for the beneficiary is taxed with personal income tax at the rate of 15% and classified as income from other sources. However, there is an exemption from taxation for beneficiaries belonging to the so-called the zero group within the meaning of the Act on Inheritance and Donation Tax (i.e. for the spouse, descendants, ascendants, siblings, stepson, stepdaughter, stepfather, stepmother). For people from group I (in-laws, son-in-law, daughter-in-law) and group II (descendants of siblings, parents' siblings, descendants and spouses of stepchildren, spouses of siblings and siblings of spouses, spouses of spouses' siblings, spouses of other descendants) a reduced rate of 10% tax is provided for. If there is more than one founder, it will be necessary to analyse the relationship and affinity of the given beneficiary with each of the founders.





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VII. Audit will be required for the family foundation

The family foundation will be subject to audit obligations. The audit firm or a team of auditors appointed by the assembly of beneficiaries audit the management of assets of the family foundation, incurring and satisfying liabilities and public law obligations, in terms of correctness, reliability and compliance with the law, objects and documents of the family foundation. The team of auditors includes a registered auditor, tax advisor, attorney or legal counsel. Such an audit shall be carried out at least once every four years. However, in the case of a family foundation whose financial statements are audited in accordance with the Accounting Act, the audit is carried out annually before approving the financial statements. The audit firm and a member of the audit team have the right to request documents from the management board of the family foundation, including the current list of beneficiaries. The audit ends with the preparation of a report, which is submitted to the management board.

VIII. The Foundation will be responsible for the founder's tax arrears and alimonies

According to the new regulations, the family foundation is jointly and severally liable with the founder, with all its assets, for the founder's tax arrears originating before its establishment. However, the liability is limited to the value of the assets contributed by the founder to the family foundation. Therefore, if the founder first transfers PLN 100,000 (statutory minimum) to the foundation and then it turns out that he has tax arrears amounting to PLN 50,000, the tax office can, at its discretion, to claim this amount either from the founder or from the foundation. However, if the arrears amount to PLN 200,000, the tax office can claim the total amount due from the founder or claim from not more than PLN 100,000 from the foundation. The foundation will be also liable for the founder's alimony obligations originating both before and after establishment of the family foundation, when enforcement against his/her property is ineffective. Claims of persons in relation to whom the founder is obliged to pay alimonies, regardless of whether they are beneficiaries, will be satisfied in the first place.

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

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