

October 2021

New draft bill on family foundations

The latest version of the draft bill on family foundations, developed by the Ministry of Economic Development, Labour and Technology in cooperation with the Minister of Finance, was published on the Government Legislation Centre's website. The new version of the bill includes comments to provisions submitted in the public consultation process.

The main goal of the bill is to introduce the institution of family foundation to the Polish legal framework, to facilitate family business succession as well as accumulation and securing of the family's assets. Key amendments to the bill include authorizing a family foundation to perform specific actions in the field of business activity as part of asset management and investments, along with amendments to the rules of taxation of income from capital gains (dividends) and interest earned by the foundation.

Below we present the most important implications of the introduction of family foundations into the Polish regulatory framework.

Family foundation

In principle, a family foundation is an entity set up to manage the family company's assets and secure property for the group of individuals indicated by the founder, most often members of their family, providing for more efficient family business succession.

Under the proposed legislation, family foundations shall possess legal personality and will be required to have their seat in the territory of Poland. Setting up a family foundation is to take place based on a notarial memorandum of association or a testament including a declaration on establishing a family foundation. Family foundations may be established only by an individual in a full legal capacity or a group of such individuals, who will be jointly referred to as a founder (a family foundation set up under a testament can have only one founder). A family foundation shall be established upon drawing up its memorandum of association or the opening of the testament. Subsequently, it will become authorized to manage and secure the company's property on its own behalf.

The foundation's bodies will include the foundation board, board of protectors, and the meeting of beneficiaries. The foundation board will be appointed by the founder and will have the roles similar to the ones vested in the management board in companies.

The board of protectors is to supervise the activities of the family foundation and compliance with the law and internal governing documents, while the meeting of beneficiaries is to be authorized to appoint and dismiss members of the foundation board in the absence of the founder and the board of protectors and adopt resolutions on matters specified in the Act or the foundation's articles of association.

Family foundation beneficiaries

The group and the scope of rights of the foundation beneficiaries is to be determined by the founder. Nevertheless, under the draft bill, not only a natural person related to the founder, but also a public benefit organization will be able to become a beneficiary of the foundation.

Importantly, in the event of a threat to the security of claims of creditors not being the foundation's beneficiaries, pay-outs made to beneficiaries will depend on the current financial situation of the family foundation, and the foundation's managing body will be authorized to adjust their amounts.

Business activity

The new version of the draft bill upholds the ban on conducting business activity by family foundations, which is explained by the need to contain risks related to conducting business activity and the necessity to secure the assets involved.

It provides, however, a list of activities that may be taken up by the family foundation in the field of asset management and investments. Such activities may consist in:

- disposing of property owned or held by the foundation (provided that the property was not purchased solely for the purpose of its further re-sale);
- rent, lease or making available the property on any other basis;

- joining and participating in companies, investment funds, cooperative societies and similar entities seated in Poland or abroad;
- purchasing and selling securities, derivative financial instruments, and rights of similar character;
- granting loans to companies in which the family foundation holds shares and to partnerships in which it participates as a partner, as well as to the foundation's beneficiaries;
- trading in foreign currencies belonging to the foundation to make payments related to its operations;
- running an enterprise as part of a farm.

Taxation

Important amendments were also made to the principles of taxation of family foundations.

The latest draft bill provides for a new objective exemption on capital gains.

In the area of CIT, it takes form of the exemption from tax on the revenue of a family foundation derived from capital gains (including dividends) and interest, as well as, in principle, revenue from capital gains and interest received from trusts subject to worldwide income taxation in the state in which they are established, the property of which consists solely of donations from the founder or individuals who would be appointed to the inheritance as statutory heirs.

This means that family foundations will be exempt from the 19 percent CIT on dividends and capital gains received from companies for which they will act as shareholders or owners. Profits earned in such a way will be taxed on the side of beneficiaries, should they receive benefits from the family foundation or property after the liquidation of the family foundation (or as a supplement to the legitim).

Payments made to the immediate family of the founder (the group of which up to now consisting of the spouse, descendants, ascendants, stepchildren, siblings, stepfather, and stepmother, under the new bill got extended by the son in law, daughter in law and in-laws) as well as the founder themselves, will be exempt from inheritance and donation tax in part that it was financed from the property contributed by the founder to the foundation (and income derived from it). The exemption, however, will find no application to payments made from income of family foundations that applied the CIT exemption on income from capital gains and interest. Payments made to other beneficiaries will be taxed according to the general tax scales specified in the provisions of the Act on Inheritance and Gift Tax, for recipients belonging to one of the three groups, with the exception of payments from income or revenue of a family foundation benefiting from CIT exemption – in this case, the inheritance and gift tax rate will be 19 percent.

Acting as payer of the inheritance and gift tax, the foundation will be required to keep relevant property records separately for each of the founders and records of payments made by the family foundation.

CIT exemptions for family foundations and inheritance and gift exemptions for the immediate family of the founder are to promote beneficial and effective transfer of business to the next generation and other family members.

Other changes

The latest version of the draft bill provides for establishing a separate record of family foundations kept by district courts, following the model of the register of investment funds (the previous version of the bill assumed keeping a register of family foundations by the National Court Register).

Furthermore, amendments to the provisions on legitim included in the latest bill provide for time limit regarding the transfer of property to a family foundation when determining the amount of the legitim due. Consequently, pursuant to the new bill, family foundations need to adhere to the basic rules of inheritance law in this regard. The bill also provides for the possibility of renouncing the legitim, dividing it into instalments, postponing the payment deadline, or reducing its amount, i.a. when assurance of continuation of the company's operations is taken into account calculating the legitim.

The provisions on meetings of the foundations' bodies, as well as liability and remuneration of members thereof have also been modified.

Effective date

The new draft bill is currently being assessed by the government. New provisions are at this moment planned to enter into force on 1 June 2022.

If you would like to learn more about the issue discussed, please do not hesitate to contact us.

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