



March 2021

Draft bill on family foundations

A draft bill on family foundations prepared by the Ministry of Economic Development, Labour and Technology in cooperation with the Ministry of Finance was published on the Government Legislation Centre's website.

The main purpose of the bill is to introduce the institution of family foundation to the Polish legal framework, to facilitate family business succession.

A summary of key measures provided therein can be found below.

Family foundation and opportunities it brings for family business

In Poland, there are nearly 830k family companies that generate a total revenue of around PLN 322 billion per year, contributing to ca.18 percent of the gross domestic product. According to the data provided by the Family Business Institute Poland, 57 percent family companies are planning to enter succession over the next five years.

At the same time, it was revealed that only 8.1 percent of successors want to take over a family business, usually established by their parents. Thus, the issue of succession poses an important challenge for family companies. Effective succession relies on successors willing to take up the task of becoming the company's manager or owner relying on professional management bodies. This condition is often hard to be met, especially when legal successors of the business are the family's heirs.

By securing the future of family members and continuity of family business, the family foundation model may constitute a response to succession-related issues.

Family foundation setup and scope of activity

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

Under the proposed legislation, family foundations will 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 last will and 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.

The foundation will be precluded from conducting business activity, but may be involved with operational activity, understood as activity aimed at passive multiplication of assets.

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.

Furthermore, the draft bill on family foundations brings amendments to the Polish inheritance law in the scope of legitim (i.e. the part of an estate that children or other close relatives can claim against the decedent's testament). The amended regulations provide for, inter alia, a possibility to renounce the legitim,

spread it into instalments, postpone the payment deadline, or reduce its amount if the company's guaranteed share is considered when calculating it. Moreover, the benefits received from the family foundation by the entitled person will reduce the legitims value.

Taxation

Contribution of property to the family foundation by the founder will be tax neutral. In turn, operational activity of the foundation, acting as a legal person, will be subject to CIT on general terms.

Payments made to the immediate family of the founder, i.e. the spouse, descendants, ascendants, stepchildren, siblings, stepfather and stepmother, 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 property brought into the foundation shall mean not only the property actually contributed at the time of establishing the foundation, but also the income derived from it and any property acquired or obtained by the foundation in return for the property and income contributed or paid from the operating fund. Payments made to other beneficiaries will be subject to a 19 percent inheritance and donation tax.

Acting as a remitter, the foundation will be required to keep relevant property records separately for each of the founders and records of the benefits of the family foundation.

Importantly, the fact that payment of benefits to persons belonging to the founder's immediate family is exempt from taxation with inheritance and donation, may allow these individuals to gain non-taxable benefits and efficiently transfer the business to the next generation

and other family members, without excessive fiscal burden on the beneficiaries. This, undoubtedly, constitutes a major advantage of the planned regulations.

Entry into force

Currently, the draft bill has been put out to consultation.

It is projected that the bill will be submitted to the parliament in the second half of 2021, with the expected date of its entry into force being 1 January 2022.

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

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

© 2021 KPMG Tax M. Michna sp. k., a Polish limited partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

KPMG offices

Warsaw

ul. Inflancka 4a
00-189 Warsaw
Tel. : +48 22 528 11 00
Fax: +48 22 528 10 09
kpmg@kpmg.pl

Gdańsk

al. Zwycięstwa 13a
80-219 Gdańsk
Tel. : +48 58 772 95 00
Fax: +48 58 772 95 01
gdansk@kpmg.pl

Kraków

ul. Opolska 114
31-323 Kraków
Tel. : +48 12 424 94 00
Fax: +48 12 424 94 01
krakow@kpmg.pl

Katowice

ul. Francuska 36
40-028 Katowice
Tel. : +48 32 778 88 00
Fax: +48 32 778 88 10
katowice@kpmg.pl

Poznań

ul. Roosevelta 22
60-829 Poznań
Tel. : +48 61 845 46 00
Fax: +48 61 845 46 01
poznan@kpmg.pl

Łódź

ul. Składowa 35
90-127 Łódź
Tel. : +48 42 232 77 00
Fax: +48 42 232 77 01
lodz@kpmg.pl

Wrocław

ul. Szczytnicka 11
50-382 Wrocław
Tel. : +48 71 370 49 00
Fax: +48 71 370 49 01
wroclaw@kpmg.pl



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

© 2021 KPMG Tax M. Michna sp. k., a Polish limited partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.