



# **TAXATION IN A FAMILY FOUNDATION CONTRIBUTION OF ASSETS, CURRENT OPERATIONS AND BENEFITS FROM THE FAMILY FOUNDATION**

**GWS**

**This brochure provides key information on the taxation of important events relating to the establishment and operation of a family foundation.**

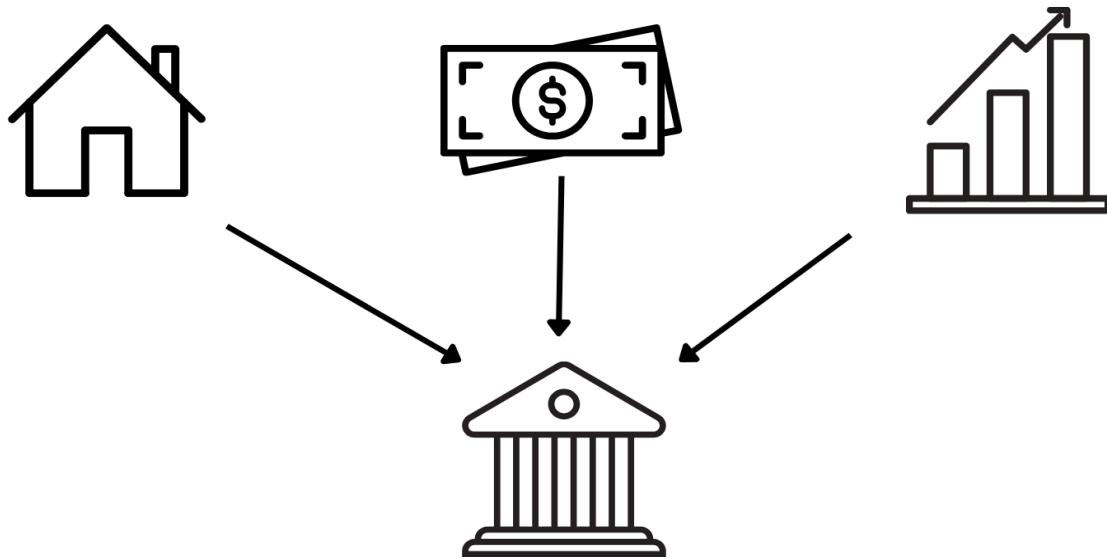
**If you cannot find the answers to your questions in the brochure, please do not hesitate to contact us. We will be happy to clarify any doubts you may have.**

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# CONTRIBUTING ASSETS TO A FAMILY FOUNDATION



## WHAT IS IMPORTANT

Assets may be contributed to a family foundation as covering the initial capital or in the form of a donation.

Contributing assets in the form of cash is always tax neutral. Fixed assets (movable and immovable property) or an entire enterprise may also be contributed to the foundation, which is also generally tax neutral for the founder and the foundation.

In some situations, contributing assets to a family foundation may be subject to value added tax (VAT).

## MORE ON THIS TOPIC

What can be contributed to a family foundation?

The founder may endow the foundation with property as defined in the Civil Code (assets only), i.e.:

- cash, including foreign currency (for accounting purposes, foreign currency is converted into Polish zlotys at the average exchange rate announced by the National Bank of Poland on the last working day preceding the date of contribution of these funds);

- property rights – e.g. ownership of movable property (e.g. a yacht, a work of art), real estate, including agricultural real estate, a farm, perpetual usufruct, a share in joint ownership, an enterprise or an organised part thereof;
- obligatory rights – e.g. shares in capital companies, all rights and obligations of a partner in a partnership, a partner's claims against another entity, securities;
- property rights to intangible assets – industrial and intellectual property rights, i.e. trademark protection rights, utility model protection rights, invention patents, industrial design registration rights, geographical indication registration rights, integrated circuit topography registration rights.

The most common contributions to foundations are: money, shares in companies or tangible movable and immovable property.

**Tax consequences of contributing cash or shares in companies to a family foundation (contribution to cover the initial capital / donation)**

The contribution of fixed assets (machinery, equipment, real estate) to a family foundation in Poland is subject to special tax regulations, the most important aspects of which are presented below:

#### CIT and PIT

- As a rule, the contribution of fixed assets to a family foundation does not generate income for the founder or the family foundation if it is made in pursuit of the family foundation's objectives.
- The act of contribution itself is not subject to CIT or PIT; the family foundation does not pay tax on the investment or fixed assets received.
- An exception may be the contribution of assets in connection with the liquidation of a company, in which case the specific tax consequences should be analysed.
- The value of the contributed assets becomes the basis for keeping the family foundation's balance sheet records.

#### VAT

- If a private asset has never been used for business purposes and the founder has not deducted VAT related to its acquisition, such a contribution to the foundation should not be subject to VAT.

## Tax consequences of transferring a business to a family foundation (contribution to cover the initial capital/donation)

### CIT and PIT

Contributing a business (or a so-called organised part of a business) to a family foundation does not generate income for the founder. Receiving assets by a family foundation also does not give rise to CIT liability. It is irrelevant whether the contribution is made to cover the initial fund or, for example, at a later stage, in the form of a donation made by the founder or by his or her ascendants or descendants.

### VAT

The contribution of an enterprise (or a so-called organised part of an enterprise) to a family foundation will be exempt from VAT in accordance with the general rule that the sale of an enterprise is not subject to VAT (Article 6(1) of the VAT Act).

A family foundation will not be required to adjust the input tax on goods and services if the fixed assets acquired through a donation of an enterprise are used exclusively for taxable activities. VAT adjustments are made only if there is a change in the purpose of the acquired assets, e.g. for non-taxable or VAT-exempt activities.

### PCC

A donation (contribution to cover the initial capital) in the form of an enterprise (or a so-called organised part of an enterprise) is subject to civil law transaction tax (PCC) in the part concerning the acquisition by the donee of the donor's debts, encumbrances or liabilities.

This means that a donation (contribution to cover the initial capital) in the form of an enterprise (or a so-called organised part of an enterprise), accompanied by the assumption of the donor's liabilities, may be subject to PCC - this requires individual analysis.

## WHAT IS WORTH REMEMBERING

- Contributing cash, shares or fixed assets to a family foundation does not generate income for the founder or the foundation, in principle.
- Contributing a business (or an organised part of a business) to a family foundation is exempt from VAT, as the sale of a business is generally not subject to VAT.
- If fixed assets (e.g. machinery, cars or real estate) are contributed to a family foundation as part of business activities, or if they were used in business activities, there may be an obligation to pay VAT. This requires an individual analysis.
- As a rule, the transfer of assets by the founder to a family foundation is tax-neutral in terms of civil law transaction tax (PCC). However, a donation (contribution to cover the initial capital) in the form of a enterprise (or an organised part of an enterprise) accompanied by the family foundation taking over the donor's debts, encumbrances or liabilities may be subject to PCC.

# ONGOING MANAGEMENT OF THE FAMILY FOUNDATION



## WHAT IS IMPORTANT

A family foundation may only conduct certain types of economic activity.

A family foundation is, as a rule, exempt from corporate income tax (CIT) on income derived from business activities conducted within the so-called permitted scope.

The foundation will pay income tax in the following situations:

- when it generates income from rental, lease and similar agreements serving the activities of beneficiaries or related entities – 19% CIT,
- when it provides benefits to beneficiaries in accordance with the foundation's statutes – 15% flat-rate CIT,
- when it provides so-called benefits in the form of hidden profits – 15% flat-rate CIT,
- when it transfers property in connection with the dissolution of a family foundation – 15% flat-rate CIT,
- when it conducts unauthorised activities – 25% CIT.

## MORE ON THIS TOPIC

The main areas in which a family foundation may conduct business activities are:

- Sale of property (e.g. real estate, shares, stocks, securities, property rights), provided that it was not acquired solely for the purpose of resale.  
↳ Example: sale of shares in a company that the foundation has owned for years.
- Renting, leasing or making property available for use on another basis.  
↳ Example: renting an office, warehouse or flat owned by the foundation.
- Joining and participating in commercial companies, investment funds, cooperatives and similar entities.  
↳ Example: the foundation is a partner in a limited liability company or a shareholder in a joint-stock company.
- Acquisition and disposal of securities, derivatives and similar rights.  
↳ Example: investing in treasury bonds, stocks and ETFs.
- Granting loans:
  - to companies in which the foundation or founder holds shares,
  - to beneficiaries,
  - to the founder.
- Currency trading — to the extent necessary to conduct the above activities.  
↳ Example: conversion of euros into Polish zlotys in connection with a foreign investment.

### CIT (corporate income tax)

As a rule, a family foundation is exempt from CIT on income generated from business activities conducted within the permitted scope described above. This means that the foundation does not pay tax on its income on an ongoing basis.

There are certain exceptions to this rule, the most important of which are:

- The income of a family foundation from the lease (rental) of an enterprise, an organised part of an enterprise, real estate or other assets used to conduct business by an entity affiliated with the family foundation, beneficiary or founder is subject to CIT at a rate of 19%.
- If a family foundation owns real estate with a value exceeding PLN 10 million and leases it, an additional so-called minimum tax on buildings of 0.035% per month is charged on the surplus above PLN 10 million.

A family foundation pays a flat-rate 15% CIT on an ongoing basis on:

- Benefits for beneficiaries in accordance with the foundation's statutes

The tax base is the market value of the benefit (e.g. money, goods, rights) that the foundation makes available to the beneficiary.

↳ Example:

The foundation pays 15% corporation tax on a benefit of PLN 1,000 (PLN 1,000 x 15%). Therefore, in order to make a payment of PLN 1,000 to the beneficiary, the foundation requires funds of PLN 1,150 (PLN 1,000 + PLN 150) to cover the tax. Therefore, the effective tax rate on the foundation's income is approximately 13% (150/1,150). To be precise, the tax rate is 13.04%.

- Benefits in the form of hidden profits

Hidden profits are a specific catalogue of benefits provided by the foundation to the founder, beneficiaries or related entities, which do not fall within the normal catalogue of statutory benefits and are taxed to prevent abuse in tax optimisation. Hidden profits include, in particular:

- interest, commissions, remuneration for loans granted to the foundation by the founder or beneficiaries.
- donations and other gratuitous or partially remunerated benefits that are not provided for in the Family Foundation Act.
- remuneration for consulting, legal, accounting and advertising services provided by related persons.
- loans granted by the foundation to beneficiaries for a period of at least 10 years.

The tax base is the market value of the benefit transferred (hidden profit), and CIT at a rate of 15% is calculated in the same way as for statutory benefits provided by the foundation.

- Transfer of property in connection with the dissolution of a family foundation

The tax base is the market value of the property at the time of the foundation's dissolution, less the tax value of the property contributed by the founder. The tax value means the cost value that the founder could recognise on the sale of the property immediately before contributing it to the foundation. The foundation pays CIT on the difference between the market value of the property and its tax value (cost value).

⌚ Example:

Tax base: PLN 1,000,000 (market value of the property) - PLN 700,000 (tax value of the property) = PLN 300,000.

CIT rate: 15%

CIT payable:  $PLN\ 300,000 \times 15\% = PLN\ 45,000$

#### IMPORTANT

A family foundation may reduce the flat-rate 15% CIT by the equivalent of the tax paid on income from rental (lease) to a related entity.

⌚ How does this work in practice?

- The family foundation pays a flat-rate CIT of 15% 'on an ongoing basis', e.g. on benefits transferred to beneficiaries.
- The foundation obtains income from rental (lease) to a related entity and taxes it 'on an ongoing basis' with CIT at a rate of 19%.
- In its annual CIT-8 tax return, the foundation reduces the tax on benefits for beneficiaries by the tax on rental (lease) income; however, this reduction may not exceed the amount of tax on benefits.

If the foundation only generates income exempt from CIT, it cannot use this tax reduction mechanism.

A family foundation pays CIT 'on an ongoing basis' at a rate of 25% (so-called punitive CIT) when it conducts business activities beyond the scope permitted by law.

Examples of economic activity beyond the scope permitted by law include trading in cryptocurrencies, property development and the purchase of flats with the intention of reselling them quickly, known as flat flipping. However, it should be emphasised that the sale of real estate originally purchased for a purpose other than resale is permitted, provided that

it is not typically a property development activity. There is also no obstacle to a family foundation holding shares in a special purpose vehicle that is involved in property development or property flipping.

## Depreciation of fixed assets

- A family foundation has the right to depreciate contributed machinery, equipment or real estate in accordance with accounting regulations. The initial value for accounting depreciation purposes is the value specified in the founding deed or records.
- If fixed assets have been contributed to the foundation as a contribution to cover the initial capital or in the form of a donation, then tax depreciation is not possible (which results in no costs for CIT purposes). Tax depreciation is only possible if the family foundation acquires fixed assets from its own funds. This also applies to situations where fixed assets were contributed to the foundation together with an enterprise or a so-called organised part of an enterprise.
- The inability to depreciate fixed assets for tax purposes is irrelevant from a tax perspective if the family foundation only conducts tax-exempt activities. In the case of exemption, the foundation cannot include depreciation in its tax costs because it has no taxable income.

## VAT

- A family foundation may be a VAT taxpayer under general rules if it conducts activities subject to VAT registration.
- The foundation does not account for VAT on its statutory activities that are not subject to VAT (e.g. sale of shares or stocks). In the case of economic activities (e.g. property rental), the foundation accounts for VAT in the same way as other entities.
- Before establishing a foundation, it is worth determining whether the planned activities of the family foundation will be subject to taxation under the VAT Act.

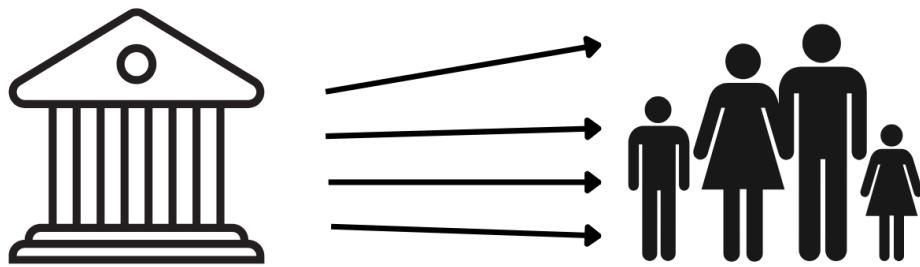
## PCC (Civil law transaction tax)

- Typical foundation operations (e.g. benefit payments) are not subject to PCC.
- PCC may apply, for example, to the purchase of real estate if the purchase is not subject to VAT.
- In the case of the purchase (acquisition for consideration) of shares, a family foundation – as a legal entity – is, in principle, subject to PCC according to the general rules, i.e. 1% of the market value of the shares according to the PCC Act.

## WHAT IS WORTH REMEMBERING

- As a legal entity, a family foundation is generally exempt from CIT on its current business activities permitted by law.
- A family foundation pays income tax on:
  - benefits provided by the foundation to beneficiaries (flat rate of 15% CIT),
  - so-called hidden profits (flat rate of 15% CIT),
  - transfer of property in connection with the dissolution of a family foundation (flat rate of 15% CIT),
  - income from rental, lease and similar agreements serving the activities of beneficiaries or related entities (19% CIT),
  - business activities exceeding the permitted scope (in which case a punitive CIT of 25% applies),
  - and the so-called minimum tax on buildings in the amount of 0.035% per month on the surplus value exceeding PLN 10 million.
- A family foundation may reduce the flat-rate 15% CIT by the equivalent of the tax paid on income from rental, lease and similar agreements serving the activities of beneficiaries or related entities. If the foundation only generates income exempt from CIT, it cannot use this tax reduction mechanism.
- If it conducts unauthorised activities, the family foundation will pay a 25% CIT penalty on such income. Therefore, when planning to establish a family foundation, it is necessary, among other things, to ensure that the planned activities fall within the catalogue of permitted activities provided for in the Family Foundation Act.
- A family foundation may be a VAT taxpayer under general rules. The foundation pays VAT only on economic activities that are subject to this tax (as do other VAT taxpayers). Therefore, it is worth determining whether the planned activities of the family foundation will be subject to taxation under the VAT Act.
- Depreciation write-offs on assets contributed to the foundation free of charge are not a tax cost, while depreciation write-offs on assets purchased by the foundation may constitute a tax cost for CIT purposes. The inability to depreciate fixed assets for tax purposes is irrelevant from a tax perspective if the family foundation only conducts activities that are exempt from taxation.

# **BENEFITS FROM THE FAMILY FOUNDATION FOR BENEFICIARIES**



## **WHAT IS IMPORTANT**

A family foundation pays a flat-rate 15% CIT on:

- benefits provided by the foundation to beneficiaries,
- transfer of property in connection with the dissolution of a family foundation.

A beneficiary who receives a benefit or property from the foundation in connection with the dissolution of the family foundation:

- does not pay income tax (PIT) if they belong to the founder's immediate family,
- pays income tax (PIT) if they do not belong to the founder's immediate family, at rates of 10% and 15% respectively

## **MORE ON THIS TOPIC**

Family foundation benefit for the beneficiary

The benefit is the transfer of the foundation's assets to the beneficiary or making them available for use (e.g. on the basis of a loan agreement, lease agreement or establishment of a right of use). It may also cover the costs of maintenance, medical treatment, education of the beneficiary or other financial benefits provided for in the foundation's statutes.

☞ Examples of cash benefits:

- Cash payment or transfer of funds to the beneficiary's account,
- Covering the costs of medical treatment, rehabilitation, education and training.

☞ Examples of non-cash benefits:

- Transfer of ownership of real estate, movable property, shares or stocks,
- Transfer of items or real estate for use, e.g. on the basis of a loan or lease agreement.

**CIT (corporate income tax paid by a family foundation)**

The foundation pays a flat rate of 15% CIT on benefits provided to beneficiaries.

The tax base is the market value of the benefit (e.g. money, goods, rights) that the foundation makes available to the beneficiary.

☞ Example:

The foundation pays 15% corporation tax on a benefit of PLN 1,000 (PLN 1,000 x 15%). Therefore, in order to make a payment of PLN 1,000 to the beneficiary, the foundation requires funds of PLN 1,150 (PLN 1,000 + PLN 150) to cover the tax. Therefore, the effective tax rate on the foundation's income is approximately 13% (150/1,150). To be precise, the tax rate is 13.04%.

The foundation also pays a flat-rate 15% CIT on the transfer of property in connection with the dissolution of the family foundation.

The tax base is the market value of the property at the time of the foundation's dissolution, less the tax value of the property contributed by the founder. The tax value means the cost value that the founder could recognise on the sale of the property just before contributing it to the foundation. The foundation pays CIT on the difference between the market value of the property and its tax value (cost value).

☞ Example:

Tax base: PLN 1,000,000 (market value of the property) - PLN 700,000 (tax value of the property) = PLN 300,000.

CIT rate: 15%

CIT payable: PLN 300,000 x 15% = PLN 45,000

As explained on page 9 of the brochure, a family foundation may reduce the flat-rate 15% CIT by the equivalent of the tax paid on income from rental, lease and similar agreements serving the activities of beneficiaries or related entities.

### PIT (personal income tax paid by beneficiaries)

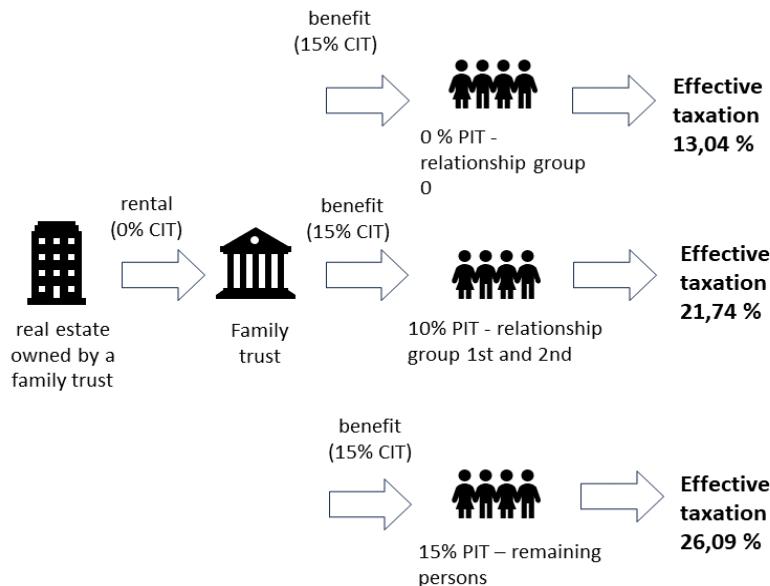
A beneficiary who receives a benefit or property from a foundation in connection with the dissolution of a family foundation:

- does not pay income tax (PIT) if they belong to the founder's immediate family. This applies to the founder's spouse, children, parents, siblings, grandchildren and parents-in-law (persons classified in tax groups I and II according to the Inheritance and Gift Tax Act – SiD);
- pays income tax (PIT) at a rate of 10% of the market value of the benefit/property in connection with the dissolution of the family foundation if they belong to the so-called I or II tax group within the meaning of the SiD Act, but do not belong to the founder's immediate family. These are: son-in-law, daughter-in-law, parents-in-law, descendants of siblings, siblings of parents, descendants and spouses of stepchildren, spouses of siblings and siblings of spouses, spouses of siblings of spouses, spouses of other descendants;
- pays income tax (PIT) at a rate of 15% of the market value of the benefit/property in connection with the dissolution of the family foundation, unless they belong to one of the above groups.

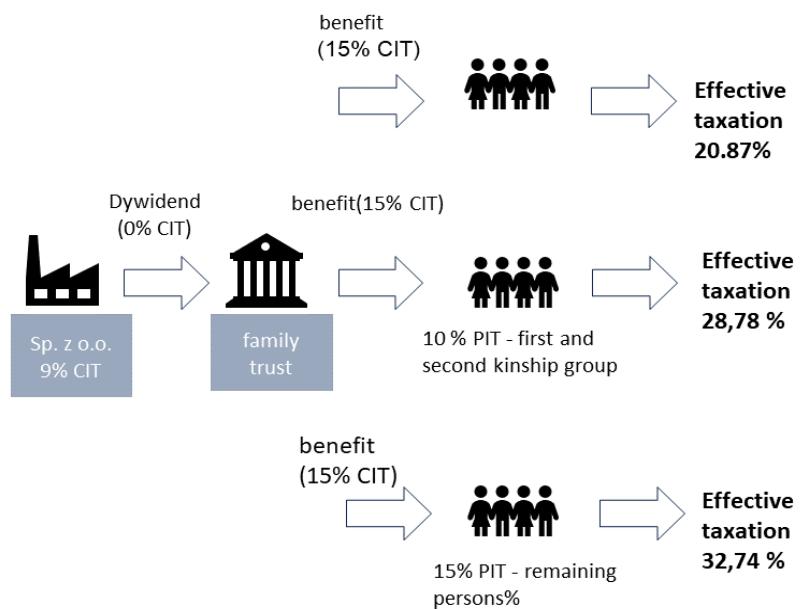
Benefits paid to beneficiaries are included in the basis for the solidarity levy when a certain income threshold is exceeded (4% above the limit).

## Effective taxation of family foundations

Below we present a calculation of the effective taxation of a family foundation, assuming that it derives income from rental property that is exempt from taxation (this is not rental property used for the activities of beneficiaries or related entities).



Below we present a calculation of the effective taxation of a family foundation, assuming that it derives income from a limited liability company.



## **WHAT IS WORTH REMEMBERING**

- A family foundation that provides benefits or transfers property to beneficiaries in connection with its dissolution pays a flat-rate CIT of 15%.
- Beneficiaries who are immediate family members of the founder do not pay personal income tax (PIT) on benefits or property received in connection with the dissolution of the family foundation.
- Beneficiaries who are not immediate family members of the founder pay PIT at rates of 10% or 15% on benefits or property received in connection with the dissolution of the family foundation.

# **SUMMARY**

When planning to establish a family foundation, you should consider the following, among other things:

- ensure that the planned activities fall within the scope of permitted activities provided for in the Family Foundation Act,
- verify whether the contribution of assets to the family foundation will be subject to VAT,
- verify the rules and timing of taxation of the family foundation's assets under the CIT Act,
- correctly value the assets contributed to the foundation and determine their tax value,
- determine whether the planned activities of the family foundation will be subject to taxation under the VAT Act.

Please contact us if you need assistance with setting up a family foundation or verifying its legal and tax solutions. We will work with you to find the best solution for your situation.

The team at **Ginelli Wienskowski Sobczak Radcy Prawni i Doradcy Podatkowi S.K.A.**