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**Chapter 21**

# POLAND

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## I INTRODUCTION

Poland displays some of the most typical phenomena that are characteristic for the economic development of the entire CEE region.

First, one can point to unprecedented economic growth over the past three decades, resulting in a rapid increase of wealth for a part of the society. This primarily pertains to private business owners and entrepreneurial investors skilfully aggregating capital into real estate investments. This, in turn, especially over the past few years, has created an urgent need to provide solutions that would prevent outbound outflows of capital, enable wealth accumulation based on local structures and create tax incentives to keep it in the country.

Second, businesses established after the collapse of socialism in the early 1990s are currently undergoing a stage of planned or forced succession, facing all the common pitfalls. This implies the need for flexible and modern legal solutions to facilitate complex wealth transfers. Until recently, the application of locally available options used to give far from satisfactory outcomes. It has therefore been common practice for wealthy clients to turn to foreign solutions. At the turn of last year, however, a long-awaited reform took place with a surprising momentum, incorporating modern solutions both on the ground of inheritance law and in the area of wealth structuring.

## II TAX

### i Personal income tax

In January 2022, a large package of tax changes collectively referred to as the Polish Deal came into force in Poland. These changes have had a significant impact on personal tax planning. Among the modifications adopted, the basic tax rate in personal income tax (PIT) was lowered from 17 to 12 per cent, a fixed tax-free amount of 30,000 zlotys was introduced and the second tax threshold was raised from 85,528 zlotys to 120,000 zlotys. At the same time a deduction of health insurance contributions from tax was abolished. As a result, although the official tax rate is lower than before, in many cases the overall fiscal burden has actually increased.

As a rule, Polish tax residency conditions are similar to those found in most European jurisdictions. Individuals having their centre of economic or personal interest in Poland and

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residing in Poland for more than 183 days per year are subject to taxation in Poland on their total income. These conditions are applied taking into account international law, including applicable double taxation treaties.

For those who have a tax obligation in Poland, the majority of income is taxed under the tax scale, whereby the taxpayer benefits from a 30,000 zlotys tax-free earnings amount, while income up to 120,000 zlotys is taxed at a 12 per cent tax rate. Once this amount is exceeded, the tax on the excess increases to 32 per cent. This form is used, for example, for the taxation of business activity, salaried work or directors' remuneration. Capital income, including both the sale of financial assets and the interest or dividends earned on them, is subject to tax at 19 per cent, as is the sale of real estate. In the case of business activity (performed individually or in a partnership), there is also a possibility to opt for the flat rate tax of 19 per cent. The individuals performing business activity (alone or in a civil partnership) may also choose the lump sum tax on registered revenues. This form of taxation bases on the revenues (without taking into account the costs) and the rate depends on the subject of business activity – between 2 and 17 per cent. This form of income may be chosen only by the individuals whose revenue from the preceding year did not exceed €2 million. This form of taxation became very popular, particularly among programmers and consultants (wide range) who can benefit from the effective tax rate at 12 per cent.

Those who earned more than 1 million zlotys have to pay the additional 4 per cent tax on the excess above that threshold (solidarity surcharge). Income from interest, dividends, rent, leases and sale of real estate is exempt from the solidarity surcharge. The same applies to registered revenues on the lump sum taxation.

Due to the ongoing war in Ukraine, the taxation of refugees has proven to be an important and complicated issue. In the opinion of the Polish tax authorities, the provisions of the double taxation treaty between Poland and Ukraine will be applied to determine the tax residence of refugees. This approach will result in the granting of the status of a Polish resident to refugees who have moved their centre of interest to Poland or stay in its territory for more than 183 days per year. Importantly, the Polish tax authorities do not accept an approach according to which the counting of the duration of stay should be suspended due to a *force majeure* relating to the impossibility of returning to Ukraine caused by the ongoing military conflict there. It contravenes the approach recommended by the OECD.

### ii Exit tax

Polish individuals who consider moving abroad must face the obligation to pay exit tax (19 per cent). It is payable by either those who change the tax residence or transfer free of charge Poland-based assets to a non-resident, provided the market value of assets exceeds 4 million zlotys. The assets that are included in the calculation of tax cover capital assets, shares in companies and partnerships, securities, derivatives and investment fund units.

However, the currently established practice of the authorities allows the use of a civil partnership or a family foundation to avoid paying this tax, provided that any income tax deriving from those assets remains payable in Poland.

### iii Extension of corporate income tax to transparent entities

In Poland partnerships used to be treated as tax-transparent structures. For that reason for many years a limited partnership – having its own legal capacity but still fiscally transparent – was a very popular vehicle for running businesses in Poland.

However, since 2021 most partnerships, including limited ones, have been treated as the corporate income tax taxpayer. Therefore, the income is taxed twice – on the partnership level and by the partners. In the case of general partners, though, if they are individuals they are still entitled to deduct the proportional part of income tax paid by the partnership from the tax due on their own income.

### iv Controlled foreign corporations within the Polish jurisdiction

Poland implemented the taxation of controlled foreign corporations (CFCs) in 2015 and the legislation has been subject to numerous amendments since then. The concept of a CFC refers to a foreign entity, trust or similar arrangement in which a Polish resident holds a significant ownership interest or a share of profits, or exercises effective control.

A Polish resident who controls a foreign corporation has to pay 19 per cent tax on the CFC's income. These rules mainly target companies accumulating passive income or earnings from low value adding services, provided the effective tax paid by the CFC abroad is lower than 14.25 per cent. In cases where the CFC does not have any income, the taxpayer may face an obligation to pay CFC tax anyway, with a tax base calculated as 8 per cent of the company's market value.

Companies that run substantial active business are beyond the scope of these rules.

### v Withholding tax

Subject to the provisions of double tax treaties the Polish withholding tax rate is 19 per cent, and it is imposed on the income from the dividends, interests, capital gains obtained from the capital funds or copyrights. Poland also imposes a 20 per cent withholding tax on immaterial services such as, inter alia, consulting, accounting, market research, legal, advertising, management and surety.

Despite the fact that Poland implemented the EU Parent–Subsidiary Directive, any cross-border distributions (including those to EU-based parent companies) that exceed the threshold of 2 million zlotys are subject to additional restriction. Polish authorities require the paying agent to withhold tax, even if a dividend or interest distribution to a parent company should be exempt under EU law. The tax could be not withheld only if the taxpayer or the paying agent had previously applied for a tax ruling on the application of a preferential rate, or the directors of the paying agent submit a declaration under the pain of criminal liability that the recipient of a dividend or interest is its beneficial owner. Because of the potential consequences, such declaration is very rarely submitted in practice. Polish law also provides a pay and refund mechanism, meaning that whenever the tax is withheld in full a taxpayer may apply for a refund afterwards. Despite the fact that the tax authorities should decide on such a request within six months at the latest, the waiting time can extend up to a year.

### vi Social insurance contributions

In addition to income tax, Polish taxpayers are usually required to pay social insurance and health insurance contributions. In the case of an employment relationship or a contract of mandate, the contribution rates of social insurance are as follows: 13.71 per cent on the individual's side and 20.48 per cent on the remitter's side.

The contributions are deducted from an individual's income when calculating tax for PIT purposes. In addition, the remitter is also obliged to pay part of the contributions that are not deducted from the employee's salary. In contrast, the health insurance contribution for employees is paid at a 9 per cent rate.

The situation is slightly different in the case of entrepreneurs. In their case, the amount of the health contribution depends on the chosen form of taxation:

*a* 9 per cent in the case of general taxation (12 or 32 per cent);
*b* 4.9 per cent in the case of a flat tax (19 per cent); and
*c* fixed amount in the case of the lump sum tax.

### vii Reporting obligations

Every Polish taxpayer is obliged to submit an annual tax return on income earned in the completed tax year. As of 2023, all personal income tax returns must be filed by 30 April of the year following the completed tax year.

The other reporting deadline concerns real estate companies. Real estate companies and their shareholders, being the corporate income tax (CIT) taxpayers, are obliged to inform the head of the National Tax Administration about the number of their shares in the company on special forms at the end of the third month after the end of the tax year.

In addition, taxpayers taxed on CFCs are obliged to report their income and information about having a CFC on the CIT-CFC/PIT-CFC form. The deadline also is based on the tax year of each taxpayer, and is the end of ninth month of the tax year.

### viii Reporting to the National Bank

The obligation to submit financial reports to the National Bank of Poland (NBP) applies to legal and natural persons who are tax residents of Poland and who engage in foreign exchange trading with non-residents. Depending on the value of the total amount of assets and liabilities related to their foreign exchange trading, the scope of the obligations and their timing vary.

Monthly reports must be submitted to the NBP by those entities whose total assets and liabilities relating to foreign exchange at the end of the year amount to at least 300 million zlotys. Quarterly reports are submitted within 20 days after the end of the quarter by those entities whose total amount of assets and liabilities at the end of the year was higher than 10 million zlotys and lower than 300 million zlotys. On the other hand, residents who did not meet the above reporting thresholds at the end of the year or the end of a given quarter, but who have assets or liabilities relating to foreign trade of at least 3 million zlotys at the end of the year, are obliged to submit quarterly reports to the NBP anyway.

## III SUCCESSION

### i General principles of succession in the Polish jurisdiction

There are essentially three basic options for drawing up a will in Poland: entirely by hand and having it signed and dated by the testator; visiting a notary public office and drawing up a document in the form of a notarial deed; or making an oral declaration before a local official in the presence of two witnesses. The other three solutions known as special wills – oral, travelling and military wills – provide an opportunity for the testator to express his or her will as to the fate of the estate in urgent and unforeseen situations. Handwritten wills are still the most popular, but in practice they also account for the largest proportion of those wills that are challenged. Usually this is because of doubts regarding the authenticity of the signature and the mental capacity of the testator. Computer-printed but hand-signed wills do not meet the handwriting requirement and are invalid.

In the case of a lack of a valid will, the statutory rules of inheritance apply. There are four groups of statutory heirs. The first to inherit are the deceased's children and spouse. They inherit in equal shares, but the spouse is subject to additional protection – the share that falls to them cannot be less than 25 per cent of the total inheritance. If a child does not live to see the opening of the inheritance, an appropriate share falls to his or her descendants. An adopted child inherits as if he or she were a biological child.

If the deceased has no descendants, his or her spouse and parents are called to the inheritance. In such a situation, the parents' share is 25 per cent of the total inheritance. If the parent's paternity has not been established, the testator's mother's share of the inheritance is half.

If the deceased has no descendants or spouse, the entire succession shall fall to his or her parents equally. If a parent does not live to see the opening of the inheritance, the share of the inheritance that would have accrued to them shall accrue to the deceased's siblings in equal shares. It is also possible for children and further descendants of the deceased's brother and sister who do not live to see the opening of the inheritance to take their place.

In the absence of any of the above-mentioned statutory heirs, the grandparents will inherit. Their share of the total inheritance is 50 per cent each. If one of the grandparents does not live to see the opening of the inheritance, his or her share will go to his or her descendants. The order of succession can, therefore, also include the deceased's uncles and aunts.

If the deceased leaves no spouse or relatives as indicated above, a stepchild (a child of the spouse from another relationship) may inherit from him or her. However, the law does not provide for the possibility of the stepchild's share being taken over by his or her descendants.

If the deceased leaves no one behind, the inheritance falls to the municipality of the testator's last place of residence as the legal heir. If the place of residence cannot be established or was abroad, the inheritance falls to the State Treasury as the legal heir.

### ii Recent legal developments concerning a forced heirship

Whenever statutory heirs are left out of a will or receive less that they were entitled to under statutory rules, they can claim financial compensation from the testamentary heirs (forced heirship). As a general rule, the forced heirship is half of the share of the estate that would have accrued to the omitted persons in the event of statutory succession.

The legislator has just introduced the possibility of requesting deferment of payment, payment in instalments and, in exceptional cases, reduction of a forced heirship claim, taking into account the personal and financial situation of both parties.[2] This amendment to the law was very much needed.

### iii Agreement to waive succession as a practical mechanism for succession planning

An agreement on the renunciation of inheritance is expressly provided for in the inheritance law. The agreement can only be concluded by a statutory heir with testator in the form of a notarial deed. It has the effect of excluding the person concerned from the circle of statutory heirs and, moreover, from the circle of persons entitled to claim a forced heirship. It also extends to his or her descendants. That person can still be included as a testamentary heir, however.

2 The changes were introduced as part of the Family Foundation Act of 26 January 2023 (Dz.U.2023.326) amending the Civil Code as of 22 May 2023.

It has been long disputed whether is it possible to limit the agreement on the renunciation of inheritance to forced heirship only, meaning that the heir still remains entitled to statutory inheritance. Although in 2017 the Supreme Court considered this permissible in one of its rulings,[3] it was only in 2023 that the relevant modification was introduced to the Civil Code.

### iv Further changes on the horizon – acceptance or rejection of an inheritance

This year is expected to bring even more changes to the Civil Code's provisions on inheritance.[4] The bill that is currently being processed by the Parliament will introduce significant changes regarding acceptance or rejection of an inheritance.

Currently, the law provides that an heir has six months from the date of becoming aware of the testator's death to declare whether he or she accepts or rejects the inheritance. The expiry of the time bar results in a deemed acceptance of the inheritance with a limitation of liability, meaning that the creditors of the deceased may enforce their claims against the heir up to the net level of inherited assets.

The legal doctrine signalled a need to protect those persons who do not have full legal capacity and whose statutory representatives must obtain the consent of the guardianship court in order to be able to make a declaration on their behalf. According to the proposed amendments, the time limit will be met if the application to the guardianship court is submitted before the time limit expires.

### v Unworthiness to inherit

At the core of the institution of unworthiness to inherit is the ethical presumption that a person who has engaged in reprehensible behaviour against the deceased him or herself or has unlawfully sought to influence the order of succession should not benefit from the succession.

There are currently three grounds for declaring an heir unworthy:

*a* committing a grave intentional offence against the testator;

*b* persuading the testator, by deceit or threat, to make or revoke a will or preventing the testator, by deceit or threat, from doing one of these acts; and

*c* the intentional concealment or destruction of the testator's will, its counterfeiting or alteration, or the deliberate use by another person of a forged or altered will.

It has been proposed, in the bill that is currently being processed by the Parliament, to expand the circle of persons who may be considered unworthy of the inheritance to the following:

*a* persons who have persistently evaded the testator's alimony obligations, defined in amount by a court decision, a settlement concluded before a court or other authority or other agreement; and

*b* persons who have persistently evaded the testator's custody obligations, in particular those arising from parental authority, guardianship, exercising the function of a foster parent, the matrimonial obligation of mutual assistance or the obligation of mutual respect and support between the parent and the child.

3 Resolution of the Supreme Court of 17 March 2017 (reference III CZP 110/16).

4 The bill was forwarded to the Marshal of the Senate and the President on 20 June 2023. The course of the legislative work can be followed on the Parliament's website: https://www.sejm.gov.pl/sejm9.nsf/PrzebiegProc.xsp?nr=2977.

### vi Wills of Ukrainian citizens residing in Poland under the scrutiny of the Court of Justice of the European Union

As a result of the war, many Ukrainian refugees arriving in Poland intend to dispose of their assets in the event of their death by drawing up a will before a Polish notary public. The issue arises if the testator wants to choose Ukrainian inheritance law.

Poland and Ukraine are linked by the 1993 agreement on legal assistance and legal relations in civil and criminal matters.[5] Under the agreement, the legal relationship in respect of the succession of movable property (e.g., a car, valuables) is governed by the law of the country of which the testator was a national at the time of death, while in respect of the real estate, the law of the country in whose territory it is situated applies. Under the agreement, the applicable law in inheritance matters cannot be chosen.

In a recent case, the notary public, and subsequently also the court, had fundamental doubts where a woman holding only Ukrainian citizenship, who resided in Poland and owned an apartment there, wanted to draw up a will and refer all matters concerning her inheritance exclusively to Ukrainian law. It raised a question as to how Regulation No. 650/2012. the Succession Regulation, should be interpreted, and a request for a preliminary ruling was submitted to the Court of Justice of the European Union (CJEU).[6]

The Advocate General of the CJEU recently took a position on this matter.[7] In the Ombudsman's view, the EU Succession Regulation allows that, under a bilateral agreement concluded between a Member State and a third country, a national of a third country resident in a Member State is not permitted to choose the law applicable to his or her succession. The case is yet to be decided by the CJEU itself.

## IV WEALTH STRUCTURING AND REGULATION

### i Navigating asset protection and succession planning: family foundations in Poland

The year 2023 introduced novel legal provisions into the Polish legislation, which allow for an intriguing alternative for family business management and succession planning.

Effective from 22 May 2023, Polish family foundations serve as legal entities aimed specifically at accumulating family assets, managing them in the best interests of the beneficiaries and granting them the benefits intended by the founder. Family foundations can acquire diverse rights, including ownership and other property rights, and undertake corresponding responsibilities.

5 The Convention between the Republic of Poland and Ukraine on judicial assistance and judicial relations in civil and criminal matters of 24 May 1993.

6 Regulation of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ 2012 L 201, p. 107).

7 Case C-21/22. Opinion of Advocate General Campos Sánchez-Bordona delivered on 23 March 2023: https://curia.europa.eu/juris/document/document.jsf?mode=DOC&pageIndex=0&docid=271769&part=1&doclang=EN&text=&dir=&occ=first&cid=24034308#Footnote1, accessed 12 June 2023.

Within the organisational structure of a family foundation, several key bodies assume pivotal roles:

*a* the founder (a natural person only), who contributes an initial fund of no less than 100,000 zlotys and lays down the fundamental principles governing the foundation's operations and the conditions for the distribution of benefits to the beneficiaries;

*b* the foundation board, which is in charge of external representation and management, carrying out the founder's wishes;

*c* the beneficiaries' assembly, composed of the beneficiaries themselves, which approves financial statements and acknowledges the fulfilment of its obligations by the foundation board;

*d* the supervisory board, which has the critical task to oversee the foundation board's compliance with legal requirements and provisions outlined in the statutes; and

*e* other facultative bodies, such as protectors or auditors, may also play significant roles in a family foundations structure.

Family foundations allow for diverse contributions, encompassing various assets, including cash, securities portfolios, financial instruments, shares in companies, and all rights and responsibilities associated with partnerships.

Polish legislation grants considerable flexibility in determining the beneficiaries, the timing of benefit distribution and the conditions on which such disbursements are contingent. The founder enjoys the liberty to define the class of beneficiaries and establish the terms that govern benefit distributions, which may be contingent upon such factors as attaining a specific age, completing education, working in the family business, signing prenuptial agreements, having children and more.

The founder is also free to construct flexible and sophisticated rules for asset transfer from the foundation in the event of his or her death. By fulfilling specific conditions, the regime of forced heirship can be excluded, ensuring an uninterrupted execution of the founder's intent.

Polish family foundations, therefore, present a compelling option for asset protection and succession planning, which is a strong contender alongside the established jurisdictions, especially given that some elements, like strong control over the assets of the founder, seem not to undermine the asset protection potential of this structure.

The noteworthy tax benefits should also be taken into account. Contributions to the foundation are tax-exempt for the foundation and the contributor alike.

As long as the foundation limits its activity to passive investments, the taxation (15 per cent CIT rate) is deferred until the moment of distribution to the beneficiaries. Passive investment mainly pertains to a disposal of assets (excluding active trading activities), lease of the assets, participation in companies and investment funds, granting loans, securities and derivatives trading, and enjoys a favourable exemption from CIT in Poland. Income generated from business activity is subject to CIT at 25 per cent and does not benefit from the deferral.

Payments to beneficiaries from the immediate family circle comprising the founder and their spouse, descendants, ascendants, stepchildren, sons-in-law and daughters-in-law, siblings, stepchildren and in-laws, are fully exempt from PIT and inheritance and gift tax. Conversely, payments made to beneficiaries falling under the extended family encompassing descendants of siblings, siblings of parents, descendants and spouses of step-children, spouses

of siblings and siblings of spouses, as well as spouses of siblings of spouses, are subject to PIT at a reduced rate of 10 per cent. Meanwhile, payments to unrelated individuals are taxed at a rate of 15 per cent.

### ii Are Polish financial institutions overlooking the legal definition of beneficial ownership?

Recently, there has been an emerging tendency among banks and other financial institutions operating in Poland to ignore the exact wording of the national anti-money laundering regulations. Instead, they have chosen to rely directly on EU directives and on internal banking regulations that are not based on the law in force. This worrying trend has led to a practice that jeopardises legal certainty, affecting in particular ultimate beneficial owners (UBOs) having foreign private foundations or trusts in their structures.

The peculiarity of the Polish legal approach lies in the divergence between the Polish definition of a beneficial owner in the Anti-Money Laundering and Terrorist Financing Act (AML Act) and that under the Fourth Anti-Money Laundering Directive (4AMLD). The Polish AML legislation lacks an explicit reference to the application of the principles governing the identification of beneficial owners of trusts to foundations and similar entities, unlike the 4AMLD. Although this disparity may at first sight appear inconsequential, it has pivotal implications from a legal standpoint.

The AML Act specifies that the beneficial owners of a trust are:

*a* the settlor;
*b* the trustee or trustees;
*c* the protector, if any;
*d* the beneficiaries, or, where the individuals benefiting from a given trust have yet to be determined, the class of persons in whose main interest the trust has been set up or operates; or
*e* any other person exercising control over the trust.

The AML Act fails to provide any significant clarification or reference regarding the identification of UBOs in the context of legal entities such as foundations. Specifically, it does not explicitly state that the criteria used for identifying UBOs of trusts should apply, respectively, to identifying the beneficial owners of foundations.

According to the AML Act, a trust is defined as a legal arrangement governed by foreign laws, where assets are transferred to a trustee to hold and make available to the beneficiaries. One should apprehend the fundamental distinction between trusts and foundations. In the absence of explicit legislative reference, the criteria used for identifying the UBOs of trusts should not be directly applied to foundations.

As a result, the identification of the UBOs of foundations shall be performed based on the general rules deriving from the AML Act, meaning that the persons exercising actual control over the entity in question shall always be looked for. This does not necessarily include all individuals encompassed within the framework of the foundation, such as a founder, foundation council, protector and beneficiaries.

Unfortunately, financial institutions operating under Polish law often neglect these nuanced divergences between the AML Act and the 4AMLD. They tend to categorise all individuals associated with the family foundation as its beneficial owners, while disregarding their actual level of control over the structure.

## V CONCLUSIONS AND OUTLOOK

We perceive many of the changes and legislative developments that have been introduced recently as positive. However, our concern, reflecting the fears and anxieties of clients, is the high volatility of the law, particularly in the area of taxation. Frequent changes in tax rates, income thresholds and filing procedures have created uncertainty for taxpayers, hindering private wealth planning for individuals and their businesses.

To illustrate this point, consider that between 2016 and 2021, Poland implemented an average of 17 rounds of amendments to tax laws per year, resulting in a total of 85 tax-related legislative adjustments during that period. Such volatility also translates into strategic decisions of private wealth holders. For instance, in spite of the implementation of a favourable family foundation regime, many clients are very reticent about this arrangement. They fear that the regulations will change drastically in the next few years and they may find themselves trapped in this structure for years.

Moreover, the government's politically motivated reform of the judiciary in recent years has undermined the rule of law and democratic foundations. It has led to a growing mistrust of the legal system and the courts. As a result, there is still a visible tendency for high net worth Polish individuals to use foreign structures and place their assets abroad. As long as there is no stabilisation of the system, they will continue to do so to protect their assets from the instability of laws and institutions in Poland.

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