The Taxation of the Family Foundation

A Guide for Founders and Beneficiaries: Where the Advantage Lies, Where the Risk Lies, and What a Family Foundation Really Is

Robert Nogacki

attorney-at-law (Bar No. WA-9026)

Managing Partner · Kancelaria Prawna Skarbiec · Warsaw

Familiae nostrae hereditas: virtus et memoria
The inheritance of our family is virtue and memory.

Contents

Foreword 4

Part I. What a Family Foundation Is and What Problem It Solves 5

Part II. The Tax Architecture of the Family Foundation 8

Part III. Permitted Activity and the Sanction Rate 11

Part IV. Beneficiaries and the Proportion Mechanism 14

Part V. Winding Up and Dissolving the Foundation 16

Part VI. The Family Foundation and Cross-Border Structures 18

Part VII. The Boundary Between Planning and Tax Engineering 21

Part VIII. Legislative Risk 26

Part IX. When a Family Foundation Does Not Pay Off 27

Part X. In Practice: How to Do It Well 28

Conclusion 29

About the Author 30

Foreword

“By failing to plan, you are preparing to fail.”
BENJAMIN FRANKLIN

The family foundation entered Polish law in May 2023, and almost at once it acquired two legends. The first holds that it is an instrument for the very rich, out of reach of an ordinary entrepreneur. The second, far more dangerous, holds that it is a universal machine for lowering taxes, a device you switch on so that profits begin to flow untouched. Both legends are false, and the second can cost a fortune.

This guide grew out of a simple observation drawn from practice. Clients come to us with a thesis already formed, usually heard at a conference, read online, or, increasingly, generated by a language model that has stitched several correct rules into a sequence that will not survive the first question from a tax officer. Each element of such a construction may well be lawful. The trouble begins where someone arranges those elements in a particular order and at a particular pace.

Our starting point, which runs through every chapter of this ebook, is this sentence: the family foundation is one of the best succession tools the Polish legislature has introduced in decades, but, like any powerful tool, it demands the right handling. The question that decides a structure’s fate is not “May I?” but “Does the way I am doing this look like succession planning or like tax engineering?” The difference between those two scenarios rarely lies in the statutes themselves. It lies in the sequence, the pace, the documentation, and in whether the foundation is an end in itself or merely a way station on the road to a lower tax bill.

This book is addressed to two audiences: to founders weighing whether to build a structure, who want to understand where the advantage truly lies before they sign the deed, and to beneficiaries and advisers who must be able to tell a promise from a mechanism. We use statutes and case law, but we translate them into language intelligible to a reader who does not spend his days in the Tax Ordinance. Where the law is settled, we say so plainly. Where it is merely probable, we mark the degree of uncertainty. Where it is unknown, we admit it. In our profession, “I don’t know” is a form of rigor, not of weakness.

One methodological note. Throughout, we distinguish what the legal system says today (the law as it stands) from what the legislature would like it to say (the law as proposed). The distinction is not academic. In November 2025, an amendment that would have changed the rules of the game was vetoed, and it is precisely the tension between the law in force and the legislature’s disclosed intentions that is one of the principal sources of risk a founder must factor into his planning today.

PART I. WHAT A FAMILY FOUNDATION IS AND WHAT PROBLEM IT SOLVES

“A society grows great when old men plant trees in whose shade they will never sit.”
GREEK PROVERB

1. The origin of the institution

The family foundation was introduced by the Act of January 26, 2023, on the Family Foundation (Journal of Laws 2023, item 326, as amended; hereinafter the “FF Act”), which took effect on May 22, 2023. For the first time, Polish law acquired a vehicle designed specifically to gather a family’s wealth, to manage it, and to pass it to the next generations. To accomplish the same thing before, Polish entrepreneurs had to reach for foreign constructions: private foundations in Liechtenstein or Malta, trusts in common-law jurisdictions, or elaborate holding structures built of capital companies. Each of these solutions came at a price, legal and fiscal.

The idea of the family foundation is simple in its purpose and sophisticated in its construction. Under Article 2(1) of the FF Act, a family foundation is a legal person created to gather assets, to manage them in the interest of its beneficiaries, and to make distributions to those beneficiaries; the specific purpose is set out in the charter. The sentence looks innocent, yet it contains the whole of the litigation to

come. The words “gather” and “in the interest of beneficiaries” suggest a long, multigenerational, accumulative horizon. A good part of the market, meanwhile, tries to use the foundation for one-off, transactional operations aimed at a quick tax effect. We return to that tension in the part devoted to the anti-avoidance rule, because it is what decides most real disputes.

2. The family foundation versus the holding company

Clients, especially those with corporate experience, instinctively compare the foundation to a holding company. The comparison is useful until it obscures differences that are fundamental.

A holding company has shareholders, and shareholders hold shares. A share is a property right: it can be sold, pledged, inherited, divided among heirs. It is precisely that transferability, so desirable in commerce, that is the Achilles’ heel of succession planning. A single heir who wants out, who wants to liquidate his stake, is enough to blow apart an order it took years to build.

A family foundation has no shares. Its beneficiaries hold, in their own estates, no transferable right by which to control it. Their entitlements flow solely from the charter, and along with the charter they can be shaped, limited, made conditional. This appears to strip the beneficiaries of power; in truth it protects the estate from dispersal. The beneficiaries need not belong to a single family, and the order of their succession need not match the order in which the founder’s own estate would devolve. A founder may design the rules of distribution so that they reward particular conduct, completing a degree, working in the family business, undertaking charitable work, and he may just as well revise them later.

The second difference concerns the tax regime, treated in detail in Part II. In brief: a capital company pays CIT on its current income, and the shareholder pays tax on the dividend. A family foundation enjoys an entity-level exemption from CIT within the scope of its permitted activity and pays no current tax on reinvested profits; the charge arises only on distribution. This shift in the moment of taxation is the heart of the advantage, but, we stress, a conditional advantage and not an automatic one.

3. The purpose: accumulation, succession, protection, a multigenerational horizon

A family foundation serves four functions worth separating, because different clients come for different ones, and not every structure can serve all of them at once.

The first is the accumulation of capital. The foundation lets a family gather profits from various sources, rents, dividends, gains from trading securities, and reinvest them without current CIT. That makes it an efficient instrument for building wealth over a long horizon.

The second is succession. The foundation solves the classic problem of the family business, namely handing the controls to the next generation without fragmenting control and without the risk that the heirs will liquidate what took decades to build. The foundation may even be an heir and receive an estate by will, provided it is entered in the register within two years of the will's publication.

The third is asset protection. Property contributed to the foundation ceases to be the founder's personal estate, which matters in light of business risk and personal liability.

The fourth, most often underrated, is the defining of a family's long-term aims. The charter can record a mission, values, rules that will hold across generations. No company performs this function as well.

Our position, which we will repeat, is the following. The family foundation is a tool of succession and accumulation, and the tax advantage is a by-product of its correct use, not an end in itself. A client who comes solely for the tax effect on a single transaction usually does not need a foundation and, worse, exposes himself to the charge of artificiality. This is not moralizing. It is a description of how the tax authorities and the administrative courts read the institution.

PART II. THE TAX ARCHITECTURE OF THE FAMILY FOUNDATION

“Always plan ahead. It wasn't raining when Noah built the ark.”
RICHARD CUSHING

4. The basic rule: the entity-level CIT exemption

The foundation of the whole regime sits in Article 6(1)(25) of the Corporate Income Tax Act (the “CIT Act”), which establishes the family foundation’s entity-level exemption from CIT. The exemption is neither unconditional nor boundless. It covers only activity falling within the catalogue of permitted business activity set out in Article 5 of the FF Act. Everything beyond that catalogue is taxed at the sanction rate, of which more in Part III.

We regard the legal status of this exemption as settled. A foundation that operates strictly within the bounds of Article 5 of the FF Act pays no current CIT on the income from that activity. Dividends received from capital companies, rents from long-term leasing, gains from the disposal of securities generate no tax at the foundation’s level, as long as the funds remain in its estate.

5. The neutrality of contributing assets

A founder’s contribution of assets to a family foundation is tax-neutral. No income arises on the founder’s side and no tax on the foundation’s side at the moment it is endowed with its founding fund or with later property. This holds for cash and for non-cash assets alike: real estate, shares in companies, securities.

Here lies the first practical trap, one we flag for clients proactively. The neutrality of the contribution does not mean the neutrality of everything that happens before it. If an asset generates income for the founder as an individual before it reaches the foundation, the foundation will not undo that moment. The classic example is employee stock. The mere acquisition of shares from an employer generates income for the employee at the moment of acquisition or vesting, depending on how the program is built. The shares are granted to the employee personally, not to the foundation, so contributing them to the foundation after acquisition does not eliminate that original taxation. The exception is programs that meet the criteria of Article 24(11) et seq. of the PIT Act, in which the moment of taxation is deferred until the shares are sold for value, but even then the benefit accrues to the individual, not the foundation.

6. Reinvestment without current CIT: where the advantage really lies

This is the chapter we would like every founder to read twice, because here the sense of the entire undertaking is decided.

The advantage of a family foundation does not consist in “not paying tax.” It consists in deferring the moment of payment and regaining control over that moment. As long as profits stay inside the foundation and are reinvested, the effective current CIT charge is zero. Compounding then runs on the gross sum, not on the sum reduced each year by tax. Over a horizon of ten or twenty years, the difference between compounding on the gross and compounding on the net is enormous, and it is that difference, not the rate at distribution, that constitutes the real value of the structure.

From this follows a conclusion we state without hedging, though clients do not always care for it. The family foundation pays off in a scenario of reinvestment, not in a scenario of full, current consumption. If a founder intends to withdraw the whole of the foundation’s earnings each year for his own needs, the effective 15-per-cent CIT on distributions can run higher than alternative forms of taxation, such as the flat-rate rental tax of 8.5 or 12.5 per cent. The client who consumes as he goes often comes out worse on the foundation, not better. We say so plainly, because to pass over it in silence would be a form of misleading him.

7. The two-tier model on distribution

When the foundation makes a distribution to a beneficiary, taxation occurs on two levels that must be understood together.

The first level is taxation at the foundation. Under Article 24q(1)(1) of the CIT Act, the foundation pays 15-per-cent CIT on the value of the distribution made. This is important and often confused: the tax burdens the foundation's estate, not the beneficiary's. If the charter provides for a distribution of 100,000 zlotys, the beneficiary receives the full 100,000 zlotys, and the foundation additionally remits 15,000 zlotys from its own funds, spending 115,000 zlotys in all. The tax is paid by the twentieth day of the month following the month of distribution.

The second level is taxation of the beneficiary under PIT, where the proportion mechanism comes into play, the subject of all of Part IV, because it is what decides whether the beneficiary pays PIT or is exempt.

To put the whole model in one frame: reinvestment inside the foundation means zero current CIT; a distribution means 15-per-cent CIT at the foundation; for a beneficiary in the zero group the PIT is zero, while for the remaining beneficiaries 15-per-cent PIT is added. The effective burden of the entire journey, from the foundation's income to the pocket of a zero-group beneficiary, is therefore 15 per cent, provided that no charge arose at an earlier stage on some other ground, such as Estonian or other foreign CIT on a dividend flowing into the foundation.

PART III. PERMITTED ACTIVITY AND THE SANCTION RATE

“Lex specialis derogat legi generali.”
LEGAL MAXIM

8. The catalogue of permitted activity in Article 5 of the FF Act

The CIT exemption is exactly as wide as the catalogue of permitted activity, and not a step wider. Article 5(1) of the FF Act lists what a foundation may do while enjoying the exemption. The most important items, in practical terms:

First, disposing of assets, provided they were not acquired exclusively for the purpose of further disposal. This phrasing is the source of a separate interpretive dispute, to which we return in section 10.

Second, lease, tenancy, or making assets available for use on another basis.

Third, joining commercial companies, investment funds, and cooperatives, and participating in them, domestic and foreign alike. It is on this basis that a foundation may be a shareholder in an operating company and draw dividends from it without current CIT.

Fourth, acquiring and disposing of securities, derivatives, and rights of a similar character. This item is crucial for founders with investment portfolios: shares in listed companies, fund certificates, options.

Fifth, granting loans, within a defined scope, to companies in which the foundation holds shares, and to beneficiaries.

Sixth, dealing in foreign currency belonging to the foundation for the purpose of making payments connected with its activity.

The boundary between this catalogue and impermissible activity is the place where the tax regime is decided. Active trading, manufacturing, the provision of services to third parties in a manner bearing the marks of organized business activity outside the catalogue, these are the areas that carry a foundation beyond the exemption.

9. The 25-per-cent sanction rate

Business activity conducted outside the catalogue in Article 5 of the FF Act is taxed at a sanction rate of 25-per-cent CIT under Article 24r of the CIT Act, and the entity-level exemption is, to that extent, switched off by Article 6(7) of the CIT Act. The rate is higher than the standard CIT rate and serves to deter: a foundation that begins to behave like an ordinary trading enterprise loses the privilege and pays more than an ordinary company would.

The practical consequence is graver than it appears. It is enough for a fragment of a foundation's activity to stray beyond the catalogue for that fragment to be taxed at the sanction rate, while the rest remains exempt. This calls for constant monitoring of the activity profile and for restraint in the temptation to "round out" the foundation into the role of an active commercial operator. The charter may permit a great deal, but it is not the charter, it is the actual character of the activity, that determines the tax.

10. The boundary of "exclusively for further disposal": a quarrel over one word

The hardest practical question since the Act took effect is the taxation of a foundation's sale of real estate and other assets. The provision lets a foundation dispose of property, but only property it did not acquire exclusively for further disposal. The question of what "exclusively" means long had no clear answer, among taxpayers or authorities alike.

The breakthrough came in the judgment of the Provincial Administrative Court in Rzeszów of May 22, 2025 (I SA/Rz 172/25). For the first time, a court drew the line clearly. A foundation that buys real estate, rents it for years, and only then considers selling it does not act outside the permitted scope. Renting is a separate, self-standing purpose, and the provision says "exclusively," not "ultimately." The tax authority had treated the two words as synonyms, and the court rightly took issue with that.

Our position aligns with the Rzeszów line. Exclusively means exclusively. If an asset realizes, in the meantime, another, self-standing economic purpose, for instance by yielding rental income, then a later sale is not caught by the exclusion from the exemption, even if the founder assumed from the outset that he would one day cash the property out. The intention of a future sale is not the same as an acquisition "exclusively" for disposal.

We are obliged, however, to point out what weakens this position, because rigor requires showing not only what supports our view but also what could defeat it. First, this is a judgment of a provincial administrative court, not a settled line of the Supreme Administrative Court; we assess the legal status of this interpretation as probable, not certain. Second, and this is a systemic weakness, the provision still contains no objective criterion distinguishing a permitted investment from impermissible trading. The "intent of acquisition" test is elusive, because intent is an internal state that the authority reconstructs from external circumstances: the holding period, the manner of use, the frequency of transactions. Until the legislature introduces a hard criterion, such as a minimum holding period, every sale of real estate by a foundation carries a certain margin of uncertainty, and that gap is sometimes filled by the general anti-avoidance rule, of which more in Part VII.

11. Leasing: long-term residential versus short-term and commercial

Leasing is the most common first idea for a family foundation, because many clients hold a portfolio of rental property. Here a distinction is necessary that part of the market does not see.

Long-term residential leasing to individuals falls within the catalogue of activity covered by the entity-level CIT exemption. Current rental income is not taxed at the foundation's level, and the tax arises only on distribution to a beneficiary.

The situation changes with short-term leasing and commercial leasing to businesses. Here we return to the tension between the law as it stands and the law as proposed. The vetoed amendment would have taxed short-term leasing at a 25-per-cent CIT rate at the foundation's level. Because the amendment did not enter into force, each specific leasing activity must be assessed through the lens of the catalogue in force in Article 5 of the FF Act and of the activity's character, not through the lens of the vetoed provisions. Even so, the direction of the legislature's thinking has been disclosed, and a reasonable founder should assume that leasing resembling a hotel operation will be treated by the authorities with more suspicion than placid residential renting.

The practical conclusion: if a foundation is to rest on leasing, it is worth making sure the model fits entirely within the definition of long-term residential leasing to individuals, and that any elements bringing it closer to short-term services have been deliberately identified and priced for risk.

PART IV. BENEFICIARIES AND THE PROPORTION MECHANISM

“Success without a successor is a failure.”
JOHN C. MAXWELL

12. The zero group and the PIT exemption

Distributions made by a family foundation to beneficiaries belonging to the so-called zero group in relation to the founder are exempt from PIT. The zero group comprises the founder’s spouse, descendants (children, grandchildren), ascendants (parents, grandparents), and siblings. The basis of the exemption is Article 21(1)(157)(b) of the PIT Act. For the typical family, in which the founder funds the foundation and the beneficiaries are his closest relatives, this exemption means the effective burden on a distribution stops at the 15-per-cent CIT borne by the foundation.

Beneficiaries outside the zero group have no exemption and additionally pay PIT on the distributions they receive. This is a significant factor when designing the circle of beneficiaries: adding a person from outside the zero group to the charter increases the total burden on distributions to that person.

13. The asset-proportion mechanism

The PIT exemption is not, however, complete for every zero-group beneficiary in every situation. Its scope depends on the proportion of the value of assets contributed by the founder (and persons in his closest circle) to the total assets of the foundation. The mechanism follows from Article 21(1)(157)(b) in conjunction with paragraph 49 of the PIT Act.

The proportion is calculated as follows. The numerator is the value of assets contributed by the founder and the persons of his closest family. The denominator is the total value of the foundation's assets. The quotient, expressed as a percentage, marks the part of a distribution covered by the exemption.

Take a first example, with the founder as the sole contributor. The founder contributes real estate worth 2,000,000 zlotys (roughly half a million dollars), and no one else contributes assets. His asset proportion is 2,000,000 over 2,000,000, that is, 100 per cent. When the foundation distributes 500,000 zlotys to that founder as a beneficiary, the taxation runs thus: 15-per-cent CIT at the foundation comes to 75,000 zlotys, while the PIT is zero, because the whole distribution is covered by the exemption at a proportion of 100 per cent. The total burden therefore closes at 15 per cent, at the foundation's level.

Take a second example, with assets contributed by outsiders as well. The founder contributes 2,000,000 zlotys, and a person outside the circle of those entitled contributes a further 1,000,000. The foundation's total assets are 3,000,000 zlotys; the founder's proportion is 2,000,000 over 3,000,000, that is, about 67 per cent. This means that, on a distribution to a zero-group beneficiary, roughly two-thirds is covered by the exemption, and the remainder is subject to PIT. The practical lesson is plain: letting assets in from persons outside the circle of those entitled dilutes the exemption and should be planned with care.

14. Loans to beneficiaries: when they become a distribution

A loan made by the foundation to a beneficiary is a device some founders treat as a way of "drawing out" funds without a formal distribution. The legislature has closed that door, though not entirely tight.

Taxable as a distribution is a loan made to a beneficiary, to the extent it was due for repayment in a given tax year and was not repaid by the deadline for filing the return for that year. Taxable, too, is a loan made to a beneficiary for a term of at least ten years, or for a shorter term if the agreement's ultimate duration came to at least ten years. In other words, a loan no one really intends to repay, or a long-term loan of a quasi-gift character, will be treated as a distribution from the foundation and taxed accordingly. Our recommendation: if a loan to a beneficiary makes sense, let it be a real loan, with a schedule, interest, and actual repayment, not a distribution in disguise.

PART V. WINDING UP AND DISSOLVING THE FOUNDATION

“Verba volant, scripta manent.”
LATIN MAXIM

15. Taxation of the dissolution estate

The dissolution of a family foundation is not a tax-neutral event. The property remaining for distribution in connection with the dissolution is taxed at 15 per cent at the foundation’s level, under Article 24q(1)(2) of the CIT Act. This is analogous to the taxation of current distributions, with one important adjustment to the base.

16. The reduction by the tax value of contributed assets

Under Article 24q(3) of the CIT Act, on the dissolution of a foundation the income corresponding to the value of the property is reduced by the tax value of the property contributed by the founder or founders. By tax value is meant, in simplified terms, the value the founder could have treated as a cost had he disposed of the property before contributing it. The mechanism is meant to guard against double taxation of the substance the founder brought in.

The practical consequence concerns appreciation. If the founder contributed shares worth 1,000,000 zlotys at the moment of contribution, and at the moment of dissolution they are worth 3,000,000, then the taxable amount is the difference, the appreciation, not the whole sum. This is an important argument when designing the time horizon of a structure and the moment of its eventual dissolution.

17. Dissolving the foundation versus liquidating a portfolio company: do not confuse them

This distinction saves clients from costly mistakes. The dissolution of the family foundation itself is one thing; the liquidation of a company whose shares the foundation holds in its portfolio is quite another.

When a portfolio company is liquidated, the foundation, as a shareholder, receives the liquidation surplus. At the foundation’s level this is an element of “participation in a company” within the meaning of Article 5(1)(3) of the FF Act, so the foundation pays no CIT on the surplus received. This is a wholly different procedure and a different tax outcome from the dissolution of the foundation as such.

One must also bear in mind a further level. If the liquidated company distributes property in kind rather than in cash, income may arise on the company’s own side

from the delivery of a non-cash benefit (Article 14a(1) of the CIT Act). That charge arises at the company's level, independent of the neutrality on the foundation's side, and it is sometimes overlooked in hasty calculations. We flag it, because it can materially change the arithmetic of the whole operation.

PART VI. THE FAMILY FOUNDATION AND CROSS-BORDER STRUCTURES

18. CFC: why it does not reach the Polish foundation but does reach foreign ones

The rules on controlled foreign companies (CFC) in Article 30f of the PIT Act are one of the most important reasons the Polish family foundation wins the comparison with foreign foundations for Polish residents.

The Polish family foundation is not subject to the CFC regime. It enjoys the entity-level exemption and constitutes a separate regime to which the CFC construction does not apply. This simplifies the tax administration and eliminates the obligation to recognize the structure's income, on a current basis, as the resident's own.

The case is otherwise with foreign structures: private foundations in Liechtenstein or Panama, common-law trusts. Such a structure may be classified as a controlled foreign entity on any one of five independent grounds set out in Article 30f(3) of the PIT Act, and satisfying any one of them suffices for CFC status. The first ground is the entity's situation in a so-called tax haven (point 1). The second is its location in a jurisdiction with which neither Poland nor the European Union has an agreement permitting the obtaining of tax information (point 2). The third is the classic three-part test (point 3), in which three conditions must be met together: control, that is, more than 50 per cent of the rights; a share of passive income of at least 33 per cent; and tax actually paid that is at least 25 per cent lower than the tax the entity would pay in Poland. The fourth (point 4) and fifth (point 5) are tests built on the structure of the assets and on the relation of the entity's income to the value of its assets, employment costs, and depreciation, likewise coupled with low taxation. Within the point-3 test the conditions are cumulative: if even one of the three is not met, that particular ground does not apply. A company conducting genuine trading activity, in which passive income is a fraction of a per cent of the whole, will not pass the passive-income test of point 3, which does not, however, relieve one of the duty to examine the remaining grounds.

Toward foreign foundations and trusts the legislature has gone further still. Article 30f(2a) introduces a presumption that such an entity is a controlled foreign entity whenever a Polish resident founded it and transferred assets to it, unless the founder shows that he divested himself of those assets definitively and irrevocably. The burden of proof thus falls on the founder, and the foreign foundation becomes a solution far harder to administer than the Polish family foundation, which is not subject to the CFC regime at all.

19. The place-of-management risk

Here lies a risk often confused with CFC, though it is independent of it and frequently graver. A foreign company, an Estonian one, say, whose effective place of management is in Poland, may be deemed a Polish tax resident. The effect is then not the application of the CFC regime but the full taxation of the company in Poland, as though it were a Polish entity. Folding such a company into a structure with a family foundation does not remove this risk. The foundation eliminates the CFC risk, but it does not cure a poorly located management. A client building a cross-border structure must address both questions separately.

20. The Polish foundation versus a foreign private foundation: which, when

Polish clients often face a choice between a Polish family foundation and a private foundation in Malta or Liechtenstein, or they combine a Polish foundation with a change of their own tax residence, for instance to non-domiciled residency in Malta.

Here it is worth dispelling a common illusion, that “more tools mean more protection.” The family foundation and a foreign non-dom residency solve a similar problem, the current taxation of passive income, but they operate on opposite levels. The foundation operates at the level of the entity; it shelters assets inside a CIT-exempt structure and defers taxation until distribution; the founder remains a Polish resident, and the instrument works inside the Polish system. The foreign residency operates at the level of the person; it severs Polish tax residency, by which Poland loses the right to tax most foreign income; the instrument works by leaving the Polish system.

Since both tools attack the same variable, combining them does not sum the benefits but usually duplicates them or creates new problems. As a Maltese non-dom resident the client is no longer subject to unlimited tax liability in Poland, so a family foundation, whose task would be to keep taxation in Poland, loses its point, because there is no longer anything to keep. What is more, a Polish foundation, as a Polish legal person, remains a Polish CIT taxpayer regardless of where the founder lives, and a distribution to a non-resident beneficiary raises the question of Polish withholding tax. One would thus have added a layer of Polish structure in order to distribute abroad from it, with a potential withholding tax, which without the foundation could have been avoided more simply.

21. Distributions to non-resident beneficiaries

From the foregoing follows a separate thread to think through when beneficiaries live abroad. A distribution from a Polish foundation to a non-resident beneficiary may carry an obligation to collect withholding tax, subject to the applicable double-tax treaty. This requires analysis of the specific treaty and the

beneficiary’s status, and we flag it as a point not to be omitted when designing a structure with an international circle of beneficiaries.

PART VII. THE BOUNDARY BETWEEN PLANNING AND TAX ENGINEERING

“Great things are not done by impulse, but by a series of small things brought together.”
VINCENT VAN GOGH

This is the part in which we set out the firm’s position most fully, because here most real disputes are decided and here clients most often receive, from the market, advice that looks like a legal plan but is in truth a sophisticated illusion.

22. Every element is lawful, but the effect is problematic

Across the internet, in the answers of language models, and even in some trade publications, a construction circulates that can be summed up in three moves: set up a foundation, contribute your company’s shares to it, then liquidate the company so the foundation receives the liquidation surplus tax-free, and then pay yourself the funds at 15 per cent rather than 19-per-cent PIT, deciding for yourself when. Deferral, a lower rate, control over the moment the liability arises. It sounds irresistible.

This construction is not the invention of a single adviser. It appears so often because each of its elements, examined alone, is legally correct. Contributing shares to a foundation falls within Article 5(1)(3) of the FF Act and is neutral at the CIT level (Article 6(1)(25) of the CIT Act). Liquidating a company in which the foundation is a shareholder delivers the foundation a liquidation surplus as an element of participation in a company, exempt from CIT at the foundation’s level. A distribution to a zero-group beneficiary bears 15-per-cent CIT at the foundation and is exempt from PIT for the beneficiary. Each brick, on its own, is lawful, confirmed in the doctrine, uncontroversial. The trouble begins precisely when someone stacks those bricks in a particular sequence and at a particular pace.

23. The “set up, contribute, liquidate” scheme under a test of logic

The simplest test, which the authors of such a construction most often fail to run, is this. If the only aim is to simplify the structure, that is, to eliminate a redundant company, why create a foundation at all? The shareholder could simply liquidate the company and receive the surplus directly. Inserting a foundation as a new entity between the shareholder and the company, only to liquidate that company at once, is the exact opposite of simplification. It is a complication of the structure that makes sense for one reason only, which is tax. The argument from “administrative simplification” is worthless here, because simplification is achieved by liquidating the company without creating a new entity, and the logical

alternative is to liquidate the company first and only then, if it makes sense, to set up a foundation.

24. The case law: where the courts drew the line

A line of case law has already grown up around this construction, and it must be read in two layers, because the courts attacked the scheme from two independent directions. The first layer is substantive and concerns the limits of the catalogue in Article 5 of the FF Act. The second is procedural and concerns the anti-avoidance rule. We note at once what these judgments do not settle: they are rulings of provincial administrative courts, most issued in simplified proceedings, and three of the four central ones arose against a refusal to issue a private ruling rather than a substantive imposition of tax under the rule. We therefore assess their force as probable and cautionary, not as settled by the Supreme Administrative Court.

The first layer, the interpretation of the catalogue. The judgment of the Provincial Administrative Court in Kraków of April 19, 2024 (I SA/Kr 245/24) resolved a question seemingly technical but, in its consequences, fundamental: a foundation's acquisition of loan receivables by assignment is not the same as making loans. Since the catalogue of permitted activity covers, in Article 5(1)(5)(a) of the FF Act, the granting of loans, and not the acquisition of others' loan receivables, a foundation that takes an assignment of loan receivables from the founder acts outside the catalogue. The consequence is the loss of the exemption and taxation at the 25-per-cent CIT sanction rate (Article 24r of the CIT Act), not exemption. The court dismissed the complaint, upholding the unfavorable ruling. This decision is the doctrinal foundation on which the later Gdańsk judgments rest.

The second layer, the anti-avoidance rule. Here three rulings fell in 2025, all against a refusal to issue a private ruling on the ground of a reasonable suspicion of tax avoidance (Article 14b(5b) of the Tax Ordinance).

The judgment of the Provincial Administrative Court in Gdańsk of August 5, 2025 (I SA/Gd 432/25) concerned the assignment to a foundation of the founder's claims for repayment of loans, with interest, owed by companies of which the foundation was becoming a shareholder. The effect: interest that had until then been the founder's income, taxed as it arose, would henceforth flow into the CIT-exempt foundation, and the liability would arise only on distribution, the moment of which the founder himself fixes through the charter. The court endorsed the position that the foundation would be treated as an instrument serving to defer the arising of a tax liability on funds originally due to the founder.

The judgment of the Provincial Administrative Court in Gdańsk of June 18, 2025 (I SA/Gd 304/25) concerned an almost twin set of facts and confirmed the same thesis of the foundation as an instrument for deferring taxation. Two separate Gdańsk judgments on a convergent subject show that this is not a single, isolated decision.

The judgment of the Provincial Administrative Court in Poznań of April 15, 2025 (I SA/Po 782/24) concerned the contribution to a foundation of the full bundle of rights and obligations in partnerships, whose dissolution followed by operation of law the moment the foundation became their sole partner. Had the founder received the dissolved partnerships' property directly, he would have paid tax. Through the foundation, no tax arises at the partner's level, and the charge appears only on distribution. The court held that such a sequence may be artificial and gives rise to a reasonable suspicion of using the foundation as an intermediary.

For balance and a full picture, we note a ruling favorable to the taxpayer. The judgment of the Provincial Administrative Court in Poznań of May 14, 2024 (I SA/Po 152/24) concerned a foundation that acquired real estate and contributed it in kind to a company in exchange for shares. The authority wanted to treat this as the disposal of property acquired exclusively for further disposal (Article 5(1)(1) of the FF Act, taxed at the sanction rate). The court set the ruling aside, holding that a contribution in kind is a joining of a company within the meaning of Article 5(1)(3) of the FF Act, and that this provision is lex specialis to Article 5(1)(1) and therefore takes precedence. The line of case law is thus not one-sidedly restrictive. The conclusion we draw from the whole is consistent: the courts do not attack the family foundation as such; they attack artificiality and the stepping beyond the catalogue of permitted activity.

25. The protective opinion of the Head of the National Revenue Administration: what a defensible restructuring looks like

The other side of the same coin is the protective opinion of the Head of the National Revenue Administration of April 16, 2025 (DKP3.8082.5.2024). The Head of the Administration assessed a multistage restructuring in which a founder contributed the shares of a holding company to a foundation and then eliminated the redundant intermediary layers (among other means, through a reverse merger and share cancellations), so that the foundation became the direct shareholder of the operating companies. Most important for us, the authority admitted two things at once: that obtaining a tax advantage was one of the main purposes of the exercise, and that the sequence showed an element of the unjustified splitting of an operation within the meaning of Article 119c(2)(1) of the Tax Ordinance. And the rule was nonetheless not applied.

The mechanism of the decision is instructive, because the conditions for tax avoidance must be met cumulatively. The Head of the Administration found that, in these circumstances, the tax advantages were not contrary to the object and purpose of the Act, and that the manner of acting was not artificial, because an entity acting reasonably would have adopted it predominantly for justified economic and succession reasons. What proved decisive: a genuine succession purpose (the holding company had been created as a succession vehicle before the family foundation even existed in Polish law), the continuation of operating

activity (one of the companies was to go on doing business in real estate), and the fact that the foundation was becoming the permanent, direct owner of the group, not a way station. Tellingly, the authority weighed the alternative of liquidating the holding company and judged it less, not more, economically justified, which inverts the naïve intuition that the simplest path is the safest.

This decision is crucial for us, because it shows that the anti-avoidance rule is not a punishment for the mere wish to pay less tax, nor even for the fact that a tax advantage is one of the main purposes. From the opinion and the cited judgments the same precise boundary emerges. The rule does not attack the family foundation, and it does not attack the tax advantage as such. It attacks artificiality and the stepping beyond the catalogue of permitted activity, that is, the situation in which a foundation is set up in order to consummate a transaction already in motion, with no genuine succession purpose and no continuation of activity.

26. The pre-existing-plan test and the criteria of artificiality

From the whole of the case law we derive a test we apply in practice to every structure involving a foundation. What is decisive is the pre-existing plan, that is, whether the intention of the transaction (a sale, a liquidation, the realization of a receivable) existed before the foundation was set up. If a client writes that he is “in the middle of selling his shares” or that he “plans to liquidate the company after the contribution,” it means the intention precedes the foundation, and that is exactly the element the courts have held to be decisive.

The criteria of artificiality are set out in Article 119c(2) of the Tax Ordinance. In the context of a foundation, two most often come into play: the unjustified splitting of an operation, and the engagement of an intermediary entity with no economic justification other than tax, as well as the achievement of a state close to the state before the act. This last element can be lethal: if the founder still controls the same assets, only through a new entity, and then returns to a single-entity structure, the picture is of an operation that changed nothing real except the tax regime.

The holding period alone is not a decisive criterion in isolation from the rest. Liquidating a company within six or twelve months of contributing the shares does not, in itself, settle the question of artificiality, but combined with the absence of any purpose other than tax and with a liquidation plan formed in advance, it creates the picture of artificial conduct. From our practice: liquidating a company after three to five years, following a natural simplification of the portfolio, is defensible; liquidating it after six to twelve months is, to put it bluntly, suicidal.

27. The “reasonable suspicion” threshold for a private ruling

There is one more procedural element that makes the matter graver than it seems to clients. For the authority to refuse a private ruling, it need not prove tax

avoidance. A “reasonable suspicion” that the act may be the subject of the rule is enough (Article 14b(5b)(1) of the Tax Ordinance). And without a ruling there is no protective shield. The taxpayer is left alone, with a construction no authority has confirmed and with case law that says something disquieting. For a client planning an aggressive scheme this means that, however convinced he is of being right, the authority need not be convinced in order to close off the path to a protective ruling.

28. What does work: the foundation as a reinvestment vehicle

The situation of a client in the middle of selling assets is not hopeless, but it requires reversing the order. Instead of contributing shares to a foundation and selling them from the foundation’s level, which is optimization on the transaction itself and exposes him directly to the rule, the sensible path is to sell the shares personally, paying the PIT due, and then contribute the proceeds to a foundation and manage them within the CIT exemption. This is not optimization on the sale transaction but on everything that follows it. The foundation as a vehicle of accumulation and reinvestment is lawful, faithful to the purpose of the Act, and defensible. For a client who already holds realized capital and wants to build wealth over a long horizon, this is exactly where the real and safe value of a foundation lies.

Where the risk is high and the structure complex, there is also a formal path: an application for a protective opinion (Article 119w of the Tax Ordinance). It is costly and time-consuming, but it gives a certainty no private analysis can provide. We recommend it in situations where the stakes are high enough that the price of certainty is justified.

PART VIII. LEGISLATIVE RISK

“Tempora mutantur, et nos mutamur in illis.”
LATIN MAXIM

29. The veto of November 27, 2025, and what was to have entered into force

On November 27, 2025, the President vetoed an amendment to the CIT Act that would have imposed significant restrictions on family foundations. The effect is unambiguous and certain: the changes did not enter into force, and the family foundation operates on its existing terms. It is worth knowing, however, what exactly the vetoed bill contained, because it is a map of the legislature’s intentions.

First, the introduction of a thirty-six-month lock-up on the disposal of assets contributed to a foundation. Here a crucial and often-confused distinction: the lock-up was to apply to property under Article 5(1)(1) of the FF Act, that is, real estate and shares in operating companies, and not to the securities and derivatives under Article 5(1)(4). A portfolio of listed-company shares, fund certificates, and options would never have been caught by the lock-up, even had the amendment entered into force.

Second, the taxation of short-term leasing at a 25-per-cent CIT rate at the foundation’s level.

Third, the subjection of the family foundation to the CFC regime and exit tax in defined configurations, a partial removal of the advantage described in Part VI.

Fourth, the inclusion of distributions from the foundation in the base for the solidarity levy, that is, an additional 4 per cent on income above one million zlotys.

Fifth, the narrowing of the catalogue of permitted business activity.

30. What this means for planning

The legal status of these changes is certain: they are not in force. What is uncertain, and worth signaling to clients, is that the government may return to them; announcements of renewed work appeared in subsequent quarters. The veto did not close the subject; it disclosed the legislature’s mind.

A foundation’s charter is worth drafting “with slack,” that is, with the flexibility to adapt the structure should the legislature return to the abandoned ideas. A reasonable founder assumes that today’s favorable legal climate is not guaranteed forever, and builds a structure that will outlast a change in the rules.

PART IX. WHEN A FAMILY FOUNDATION DOES NOT PAY OFF

This chapter is written rarely, because it does not help to sell the service. We write it because an honest answer to the question “is this for me?” matters more to us than a single engagement.

31. Small estates and the full-consumption model

A family foundation generates fixed costs: of formation, of bookkeeping, of reporting, of corporate administration. These costs exist regardless of how large an estate the foundation gathers. With a small estate they can exceed or match the tax benefits. A client running a sole proprietorship, holding two properties, one of which he lives in and one of which he rents on a mortgage, will usually not build on a foundation an advantage that would justify its cost and complication. We tell him so plainly, rather than fit him for a structure that will become a burden.

32. The effective 15-per-cent rate versus the flat-rate rental tax

We repeat the thesis from Part II, because it is what most often decides. In a model of full distribution, the effective 15-per-cent CIT on distributions is higher than the flat-rate rental tax of 8.5 or 12.5 per cent. For a client who wants to consume the whole of his rental income each year, the foundation is more expensive, not cheaper. The foundation begins to pay off only when the funds stay inside it and work, financing further investments. The question to put to a client before any calculation is this: do you intend to consume your current income or to build a portfolio? On the answer depends whether a foundation makes sense.

PART X. IN PRACTICE: HOW TO DO IT WELL

“Succession should be gradual and thoughtful, so that when it happens it is almost a nonevent.”
ANNE M. MULCAHY

33. Substance, succession purpose, documentation

From this ebook one operative conclusion follows. A family foundation is safe and effective when it is run seriously and for the long term, with a genuine succession purpose and with documentation that confirms that purpose. Substance prevails over form. A foundation that truly gathers assets, manages them, reinvests, and serves its beneficiaries over a multigenerational horizon has nothing to fear. A foundation that is merely a way station on the road to a lower tax bill on a single transaction is a risk.

34. The charter “with slack”

A charter should be drafted with an eye to changes that do not yet exist but may appear. Flexibility as to the rules of distribution, the circle of beneficiaries, and the permitted activity within the bounds of the Act lets one adapt the structure without a costly rebuild. The charter “with slack” is an insurance policy against the legislature’s unpredictability.

35. The founder’s checklist

Before deciding to set up a foundation, it is worth going through the following questions. Is my purpose successional and accumulative, or transactional and one-off? Do I intend to reinvest, or to consume as I go? Is there a transaction plan that precedes the founding of the foundation, and if so, does it expose me to the charge of artificiality? Is my estate large enough that the benefits will outweigh the costs? Are there foreign elements in my structure that call for a separate analysis of CFC and place of management? Do assets come into the foundation solely from persons in my circle of those entitled, or also from third parties who dilute the proportion of the exemption? Is my charter flexible enough to outlast a change in the law? An honest answer to these questions says more than ten calculations of the effective rate.

CONCLUSION

“A leader's lasting value is measured by succession.”
JOHN C. MAXWELL

A family foundation is a good tool. It is good, however, not because it lets one “not pay tax,” but because it lets one gather wealth, protect it, and pass it to the next generations in an orderly way, and, in the process, as a by-product of correct use, defers the moment of taxation and gives the founder control over that moment.

The boundary between safe and dangerous use does not lie in the statutes. It lies in the sequence, the pace, the documentation, and in the answer to a single question: does what I am doing look like succession planning or like tax engineering? The case law of 2025 gave a clear answer as to which side of that line the “set up, contribute, liquidate” scheme stands on, and showed just as clearly what a defensible structure looks like. It is worth reading that answer before one acts, and not after the tax authority calls.

Like any powerful tool, the family foundation rewards those who use it as intended and punishes those who treat it as a shortcut. Our role is to see that the client ends up on the right side of that difference.

This guide is informational and educational in character. It does not constitute legal or tax advice. Every structure involving a family foundation calls for an individual analysis taking into account the specific facts, economic purpose, and tax profile of the founder. The law reflected here takes the veto of November 27, 2025, into account; in light of announced legislative work, the currency of the provisions should be verified case by case. The case law cited has been verified against primary sources; the provisions cited should, before publication, be confirmed against the current consolidated text.

Kancelaria Prawna Skarbiec works on the establishment and administration of family foundations, on succession planning, and on the assessment of anti-avoidance-rule risk.

About the Author

Robert Nogacki

attorney-at-law (Bar No. WA-9026)

Managing Partner and founder of Kancelaria Prawna Skarbiec in Warsaw. For nearly two decades he has handled matters in tax and fiscal-penal law, including disputes under the general anti-avoidance rule and GAAR proceedings, as well as advisory work in cross-border matters.

He works on the establishment and administration of family foundations, on succession planning, on holding structures, and on the representation of persons harmed in cases of investment fraud.

Kancelaria Prawna Skarbiec

Maciejki 13, 02-181 Warsaw · kancelaria-skarbiec.pl