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Wardyński & Partners was established in 1988. The firm focuses on helping clients find effective and practical solutions to their most difficult tax and legal problems. The firm is particularly noted among clients and competitors for its services in dispute resolution, M&A, intellectual property, employment, private client, real estate and title restitution and provide comprehensive multi-disciplinary tax and legal advisory services to wealthy individuals and families. With our knowledge and experience in Polish and international

tax law, international private law, and family and inheritance law, as well as business law, for many years we have delivered effective tax and legal solutions for estate planning, wealth management, investment planning, and family-owned/closely held businesses. The firm now has over 100 lawyers, providing legal services in Polish, English, French, German, Spanish, Italian, Russian, Czech and Korean. We have offices in Warsaw, Kraków, Poznań and Wrocław.

Authors



Dariusz Wasylkowski is the senior partner in charge of the tax and private client practices at Wardyński & Partners. He is a member of the IFA Permanent Scientific Committee, the IBA Tax Section, and ABA Taxation and International Law

Sections and the Mediation Committee of the International Institute for Conflict Prevention & Resolution. He advises domestic and international private clients on Polish and international tax regulations related to cross-border asset-planning, international tax compliance, inheritance, migration, etc. He assists clients in resolving disputes with the tax authorities and represents clients in tax litigation if contentious matters cannot be settled at the level of tax proceedings.



Stefan Jacyno is the managing partner at Wardyński & Partners and has over 30 years of experience starting out as sole practitioner. He used to work for individuals and organisations in a variety of cases, from family and criminal cases to

a full range of matters connected with real estate. He speaks Polish, English, Russian, French and Italian. He is a judge at the Bar's High Disciplinary Court. He is the author of numerous publications on privatisation and he is a frequent commentator of case law and new laws in a nationwide journal.



Wojciech Marszałkowski is a senior associate in the private client practice at Wardyński & Partners. He advises clients in tax matters related to wealth transfers, cross-border wealth structuring, changes in tax residency, and income tax planning.

He also advises tax-exempt organisations. Wojciech is a member of the Warsaw Bar Association. This year Wojciech published an article commenting on the new withholding tax regime in Poland, and co-authored an article on tax pitfalls for international taxpayers.



Radosław Wiśniewski is a senior associate in the private clients practice at Wardyński & Partners. His practice covers civil law, succession law, family law, conflict of law rules and human rights law. He is also experienced in property restitution proceedings in Poland involving the heirs of former owners living all over the world. He specialises in proceedings before the Polish Constitutional Tribunal and European Court of Human Rights. Radosław regularly advises clients on cross-border succession and family matters, particularly with regard to Francophone countries, UK and US.

1. Tax

1.1 Tax Regimes

Personal income tax

Tax-resident individuals are taxed on their worldwide income. In principle, income is subject to progressive tax rates up to 32%. Taxpayers may elect to be taxed with 19% flat tax rate charged on their business income. Selected types of income (lease, and several types of business activity) may be taxed under simplified taxation regimes.

Capital gains and other selected items of income are taxed with a flat 19% personal income tax rate.

Natural persons may be subject to additional tax of 4% of taxable basis charged on the excess of the annual income over PLN1 million (approximately EUR250,000). The basis consists of income taxable under general principles as well as selected capital gains, business income and controlled foreign corporation income taxable in Poland.

Sale of real properties and selected rights related to real properties is taxable with 19% tax rate. Taxpayers may take advantage of the fact that the sale is not subject to tax if it takes place after five years from the end of the year when a real property or a selected right related to real property was acquired.

Gift and inheritance taxation

Gifts and estates are subject to tax in Poland. The applicable tax rate depends on the personal relationship between the persons involved (circles) and is charged on the value of acquired items and property rights and reduced by the value of debts and burdens.

A spouse, descendants, ascendants, step-children, siblings, step-father and step-mother may benefit from gifts and estate tax exemption. The only requirements to benefit from the exemption are to report in a timely manner, and in the case of a gift, execute and document the gift properly.

The marginal tax rate for the first circle (if not covered by the above exemption) – a spouse, ascendants, descendants, step-children, sons-in-law, daughters-in-law, siblings, step-father, step-mother and in-laws – is 7%, whereas the tax-free amount is PLN9,637 (approximately EUR2400). The marginal tax rate for the second circle – descendants of siblings, siblings of parents, descendants and spouses of step-children, spouses of siblings and siblings of spouses, spouses of siblings of spouses, spouses of other descendants – is 12%, whereas the tax-free amount of PLN7,276 (approximately EUR1,800). The marginal tax rate for the third circle – others – is 20%, whereas the tax-free amount is PLN4,902 (approximately EUR1,200).

A new tax exemption was recently introduced which concerns the inheritance of an enterprise. The exemption applies if an heir reports the inheritance of an enterprise to a rel-

evant tax office and continues running the enterprise for another two years after the acquisition.

Corporate income tax

The basic corporate income tax rate is 19%. Small taxpayers whose revenue in a tax year does not exceed EUR1,200,00 may be taxed with respect to sources of income other than capital gains and several other items of income with a preferential tax rate of 9%. Finally, Polish income from qualified intellectual property rights (IP Box) may be taxed at the rate of 5%.

Regulated charities need not pay corporate income tax as long as their income is used for their statutory activity and is not used to run a business.

Foundations need not pay corporate income tax if their statutory purpose is, among others, education, science, culture, charity or health protection, as long as their income is used for those purposes. Transfer of assets to sponsor the foundation's initial capital does not result in taxable revenue.

Opportunities for income tax planning

In recent years, Polish tax law has offered income tax planning opportunities, on the domestic and cross-border plane. Dynamic development of anti-tax avoidance measures and penalisation of tax planning under penal fiscal law has made income tax planning less popular.

Other relevant tax matters

Poland has a well-developed network of treaties for the avoidance of double taxation. The total number of 90 treaties includes treaties with all major business partners of enterprises seated in Poland and major economies around the world.

With the beginning of the year, a whole new set of rules relevant for withholding taxation has been introduced. Rules effective at the beginning of 2019 brought a new strict requirement – a recipient of a payment must be a beneficial owner of such a payment to take advantage of exemptions and tax treaty rates in Poland. It is expected that, at the beginning of 2020, three new alternative withholding mechanisms will be introduced. First – tax withholding by an agent and request for tax refund. Second – a statement made by the management of the withholding agent 'guaranteeing' the existence of the right to use the beneficial tax treatment. Third – requesting an official opinion by the tax authorities confirming the right to use beneficial tax treatment. We expect that the tax authorities may look stringently at holding structures in jurisdictions being part of convenient wealth-preservation structures.

At the beginning of 2019, a very strict set of rules pertinent to recognition of controlled foreign corporations (CFC) was introduced. In particular, a foreign foundation, trust or another entity or fiduciary arrangement may be deemed a

CFC if a Polish resident holds shares, voting rights in its bodies, the right to share in profit, has its promise or will in the future have the right to share in profit, as a settlor, beneficiary or a person in control of such an arrangement.

As at the beginning of 2019, exit tax rules – partly based on Anti-Tax Avoidance Directive No 2016/1164 – have been introduced to personal and corporate income tax laws. The law is controversial due to its ambiguous wording and extensively wide scope. Exit tax covers most situations when, at the time of withdrawing Polish tax residency, a taxpayer holds assets with built-in gains or when an asset with built-in gains is transferred from one tax jurisdiction to another. The exit tax applies when Poland loses the right to tax the built-in gain. With respect to natural persons, the tax applies if the value of transferred assets exceeds PLN4 million (approximately EUR1 million). Whether this threshold applies when a natural person changes residency is a matter of controversy.

1.2 Stability of the Estate and Transfer Tax Laws

In recent years, Polish Estate Tax law and burdens related to property transfers have been relatively stable. Rumour has it that due to budget constraints, the exemption from estate and gift tax for close relatives may be abolished. Given the dynamically changing tax landscape in Poland, potential changes in the area have not been treated seriously and are not a significant concern for high net worth individuals.

1.3 Transparency and Increased Global Reporting

Polish tax law provides a general anti-avoidance rule, as well as special anti-avoidance rules, creating an umbrella that protects the tax system against various forms of abuse and preventing multiple tax optimisation arrangements.

Poland adopted Common Reporting Standards (CRS), US Foreign Account Tax Compliance Act (FATCA), is a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) and implemented Mandatory Disclosure Rules (MDR) in a significantly more restrictive manner than is required by EU law. Historically, Poland has also been an active partner in spontaneous and on-request exchange of information. Additionally, Poland implemented restrictive CFC rules which increase the transparency of structures and anti-money laundering rules which require reporting if an ultimate beneficial owner of a foreign structure has their subsidiaries in Poland.

2. Succession

2.1 Cultural Considerations in Succession Planning

Family-owned businesses started to grow dynamically in Poland after the transition to democracy in 1989-1990 when the free market economy was established. The dynamic development of the Polish economy and accession to the EU

resulted in transnational expansion of certain family-owned businesses and internationalisation of life of such families. As a result, individuals and families started again to accumulate wealth and assets which had been impossible in Poland after post-war nationalisation, when the principal residence (one small flat or house) and/or limited private business had been the only subjects of succession.

Bearing in mind the time factor of all these social, economic and political changes, this is the first time that older generations of such families are turning over wealth and control to younger generations. Therefore, lawmakers on the one side and families with their advisers on the other side are drawing up and creating some legal and tax solutions for succession planning.

2.2 International Planning

The phenomenon of internationalisation of life is also present among Polish high net worth families. Consequently, plenty of cross-border issues arise with regard to their private property, matrimonial property and business relations. Thanks to EU Succession Regulation No 650/2012 (to some extent also applicable to third states), it is now possible to choose the applicable law and relevant jurisdiction in the entirety, or at least a major part, of inheritance proceedings. However, this Regulation does not cover tax issues related to succession planning. In Poland, which has treaties for the avoidance of double taxation regarding inheritance signed in the 1920s with only four countries (Czechia, Slovakia, Austria and Hungary), high net worth families sometimes have to deal with double taxation issues. Therefore, tax matters (in particular in foreign states), wealth preservation and anti-forced heirship arrangements currently appear to be the leading elements of cross-border succession-planning mechanisms for Polish high net worth individuals.

2.3 Forced Heirship Laws

Poland is a civil-law country where the forced heirship laws are based on the legitime system (as opposed to the reserve portion system applicable in France and other countries). The legitime is a financial claim that descendants, surviving spouse or parents – if they were to inherit under intestate succession – are entitled to file against heirs, legatees per vindicationem or donees. Normally, the legitime claim corresponds to one half of what a claimant would inherit under intestate succession. However, claimants who are minors or permanently unable to work may claim two thirds of what such claimants would inherit under intestate succession.

In order to calculate the amount of a legitime claim it is necessary to estimate the value of the existing estate and add the value of considerable gifts made by the deceased. The gifts made in favour of heirs or persons entitled to the legitime are added with no exception. All other gifts (made in favour of all other donees) are added only if they were made within a ten-year period preceding the death. The estimated value of

the estate and gifts constitutes the basis for portion calculations. Finally, the persons entitled to legitime are obliged to reduce their claims by the value of gifts and legacies per vindicationem received from the deceased. There are several possibilities to avoid the legitime claims by way of alternate consensual arrangements either before the testator's death or afterwards (see **2.6 Transfer of Assets: Vehicles and Planning Mechanisms**).

The consequence of legitime (ie, financial claim) is that the heirs inherit the entire estate and there is no division of the estate between reserve and freely disposable portions. Therefore, the legitime is not obligatory. The person entitled to the legitime decides whether to file such a claim or not. The five-year limitation period of a legitime claim starts to run either at the moment of death (intestate succession) or at the moment of will announcement (testate succession).

2.4 Marital Property

The statutory matrimonial property regime in Poland is a joint property regime which provides that everything acquired at the time of marriage, ie, all the assets, gains and salaries, income from joint and personal property, is joint matrimonial property. Personal property includes everything acquired before the marriage, property acquired by inheritance or gift, property used for personal needs, rights that cannot be transferred and may be exercised only by one person, copyright and related rights, industrial property rights and rights of a creator, compensation for personal injuries or health disorder etc. Spouses may modify their matrimonial property regime under a post- or pre-nuptial agreement. In certain circumstances, each spouse may request that the court establish a separate property regime.

Under matrimonial property agreements, spouses are entitled to limit or expand their joint property or establish a community with an accrued gains regime or a separate property rights regime. In Poland, it is impossible to establish a full community regime of all property of the spouses because under the Family and Guardianship Code the spouses must not expand joint property on property that will be inherited or received as a gift by one spouse in the future, rights that cannot be transferred and may be exercised only by one person, compensation for personal injuries or a health disorder etc. Spouses have to conclude each kind of matrimonial property agreement before a notary.

The other spouse's consent is required only for legal transactions regarding real estate and other property rights, farms and enterprises and gifts made from joint matrimonial property. An agreement concluded without the required consent of the other spouse is only valid once the other spouse confirms agreement. However, unilateral legal acts executed without the required consent of the other spouse are always invalid.

Poland has not acceded to the EU Matrimonial Property Regimes Regulation No 2016/1103 (as well as the EU Property Consequences of Registered Partnerships Regulation No 2016/1104). However, Polish Private International Law provides many possibilities to choose the applicable law for matrimonial property regime.

2.5 Transfer of Property

Property transferred as a gift or an estate to a natural person may, in selected cases, benefit from a carry-over basis for tax purposes.

The carry-over basis is recognised at redemption of shares and stock received as a gift or an estate. However, the right to recognise the carry-over basis is limited to the transfer of assets through testation in the case of: sale of shares in a company, sale of share in a co-op, and sale of securities, buy-out by the issuer of securities or buy-back (redemption) of shares in capital funds, and reimbursement of contributions or shares in the co-op.

In addition, the sale of an inherited real property and selected rights related to real properties take the carry-over basis. Taxpayers may take advantage of the fact that the sale is not subject to tax if it takes place after five years from the end of the year when a real property or a selected right related to real property was acquired. The five-year period calculation includes the period when the deceased held an asset.

In relation to gift and estates received by corporate persons, the rule is that any such increment is taxable as regular income with corporate income tax. This results in a step-up of the tax basis to the market basis as of the date of transfer.

2.6 Transfer of Assets: Vehicles and Planning Mechanisms

In general, when it comes to transfer of property, close family members may apply for an exemption from inheritance and gift tax. Other family members benefit from relatively low inheritance and gift tax rates. Inheritance and gift tax do not apply to legal persons, ie, foundations, companies and associations (see **1.1 Tax Regimes**). In the case of transfer of real estate between further family members or non-relatives, it is advisable to apply a life annuity contract (see **8.3 Elder Law**) instead of a gift, since such a transfer is not subject to inheritance and gift tax and does not require the value of real estate to be taken into consideration for legitime calculation purposes (see **2.3 Forced Heirship Laws**). The downside is civil law transactions' tax charged at the market value of the real estate at the rate of 2%.

Apart from taxes, planning mechanisms focus on avoidance of legitime claims (see **2.3 Forced Heirship Laws**). Such a need arises when a testator wishes to transfer his or her estate to a particular person(s) after his or her death but he or she still has the closest family members (descendants, surviving

spouse or parents) who are potentially entitled to file legitimate claims in the future against future heir(s). In such situation, there are two possible scenarios. Before the testator's death, he or she may convince the person(s) entitled to legitimate by way of gifts or legacies to conclude before a notary a contract to waive inheritance from the testator or a contract to waive the legitimate claim after the testator's death. After the testator's death the heir(s) may convince the person(s) entitled to the legitimate by offering an amount of money (as a part of the legitimate value) to reach a settlement agreement on legitimate claims.

Finally, since 2011 it is possible to include a legacy per vindicationem in the notarial last will in Poland. This concerns the particular assets of the testator. The main advantage of this kind of legacy is that it automatically (by virtue of law) transfers the ownership of given assets at the moment of the testator's death. Compared with an ordinary legacy (ie, legacy per damnationem) which does not transfer the ownership of assets in question, the beneficiary of a legacy per vindicationem is entitled to claim back the possession of given assets from their holders, whereas the beneficiary of a legacy per damnationem is only entitled to file a claim against the heir(s) for recognition and execution of the legacy. The legacy per vindicationem is currently considered to be the most efficient and fastest planning mechanism in Polish succession law.

2.7 Transfer of Assets: Digital Assets

In Poland, there is no special legislation for digital assets succession. Moreover, this issue has not yet been discussed in Polish case law. Poland has not set forth a dedicated tax regime applicable to digital assets. Inheritance and gift tax will apply to digital assets on a regular basis.

3. Trusts, Foundations and Similar Entities

3.1 Types of Trusts, Foundations or Similar Entities

Trusts are not present in Polish law. In particular, Polish law does not recognise the division of title to property into legal title belonging to trustees and equitable title belonging to beneficiaries. Consequently, trusts may only be established under foreign law. If Polish law applies to trusts created under foreign law, issues may arise as far as these trusts conflict with mandatory provisions of Polish law. Most problems relate to testamentary trusts.

Domestic foundations are very rarely used for succession-planning purposes, as under Polish law they should act only as public charities.

3.2 Recognition of Trusts

Poland is not a party to the Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. Polish law only recognises trusts as far as it is possible to translate them into institutions known to it. Under Polish law, trustees are treated as sole owners of property under trust. They are deemed to be bound by civil law obligations towards beneficiaries.

3.3 Tax Considerations: Fiduciary or Beneficiary Designation

The law governing taxation of fiduciary institutions in Poland is scarce. The existing CFC regulation was introduced to target tax optimisation and foster tax transparency. In principle, indication of a person as a fiduciary or a beneficiary of a fiduciary institution may lead to finding that the person in question is an owner of income of CFC for tax purposes in Poland.

Additionally, Polish General Tax Act makes reference to fiduciary institutions when allocating the responsibility for failure to withhold tax properly. In principle, the withholding agent bears the responsibility, unless the taxpayer was responsible for such failure. The withholding agent responsibility may not be limited if that entity is in any relevant relation with a fiduciary institution.

The two examples above indicate that fiduciary institutions are generally associated by the tax law with potential abuse of tax law.

Apart from these two examples, the tax treatment of fiduciary arrangements is shaped by individual tax rulings. In principle, the tax authorities apply Polish legal and tax concepts to institution of foreign law. A significant portion of tax rulings refers to inheritance by Polish citizens under a foreign will establishing a foreign trust or gifts by fiduciary institution. In the former case, the tax authorities usually agree that the beneficiary of a trust is equivalent to a legatee under Polish law and, among others, may benefit from tax exemption for inheritance between close relatives under general principles. In the latter case, regular rules for taxation of gifts should apply.

Effectively, inheritance and making gifts through a fiduciary institution may defer taxation of estate and gifts. Historically, foreign fiduciary institutions have been used as wealth protection and preservation vehicles, which in many cases were also increasing the corporate structure's tax effectiveness. Among others, for this reason, structures where a settlor serves as a fiduciary may be under scrutiny by the tax authorities searching for cases of tax avoidance.

3.4 Exercising Control over Irrevocable Planning Vehicles

Polish jurisdiction does not provide for any wealth-management fiduciary institutions. The only available institution which may allow the preservation of funds is a foundation. From the rules governing the existence and operations of such a foundation, it transpires that the priority for these foundations is to pursue their charitable goals. No discussions have taken place in Poland with respect to exercising control over irrevocable planning vehicles.

4. Family Business Planning

4.1 Asset Protection

Polish law does not provide for any asset protection structures popular in foreign jurisdictions. For instance, Polish law does not recognise trusts. However, although Polish regulations do not provide for family foundations, it recognises foreign family foundations as foreign legal persons or other types of entities. Therefore, Polish investors and entrepreneurs often decide to create asset protection structures under foreign jurisdictions. In the last couple of years, many wealthy families decided to expatriate their wealth to Austria, Benelux, Malta, Cyprus, Liechtenstein and other jurisdictions. Predominantly, they used private foundations. Although Polish tax authorities introduced an exit tax to prevent this phenomenon (see **1.1 Tax Regimes**), the new law on taxation of unrealised gains did not hamper the transfer of assets effectively, in particular cash assets.

Regardless of possible foreign structures, wealthy Polish families nurture the concept of ‘constitution for business families’. The constitution is a deed that specifies how a family enterprise should operate in the face of change of generations. Constitution for business families allows the creation of an asset protection policy.

Moreover, Polish law offers (i) matrimonial contracts, under which spouses may choose which part of their assets is held in marital joint property, and (ii) gift contracts. If a gift is made within the closest family, it is tax-free.

4.2 Succession Planning

Since succession planning mechanisms for family businesses are not provided for in Poland, family business succession strategies are based on classic succession structures such as gifts, notarial wills including different types of legacies as well as various kinds of notarial arrangements targeted at avoidance of legitimate claims (see **2.3 Forced Heirship Laws** and **2.6 Transfer of Assets: Vehicles and Planning Mechanisms**). Additionally, Polish law provides for an instrument that allows the automatic transfer of ownership of assets belonging to the testator mortis causa onto a person specified in a will (ie, legacy per vindicationem). This has recently

been in more common use (see **2.6 Transfer of Assets: Vehicles and Planning Mechanisms**).

All these arrangements are accompanied by shareholder agreements so that shares in the family business are not transferred onto third parties.

Another structure that meets succession planning expectations with regard to family business, albeit only partly, is the proxy mortis causa. However, it concerns only individual entrepreneurs. An individual entrepreneur may nominate a succession manager responsible for managing the enterprise in the event of the founder’s death. Such a nomination protects the endurance of the enterprise but only until the division of the estate left by the founder. In other words, the proxy mortis causa does not concern the succession itself but allows the founder to provide for a safe transfer of the business to his or her heirs.

However, it has become increasingly popular to apply foreign structures or implement strategies which are not regulated by law such as the ‘constitution for business families’. Under this constitution, the founder lays down the rules, the business management policy and its succession. The main aim of such a document is to transfer the enterprise to subsequent generations without arguments between successors. One of the important advantages of the constitution for business families is that it protects the endurance and sound functioning of the enterprise in the case of misfortune in the family (such as a serious disease, divorce, etc).

Since the ‘constitution for business families’ is not governed by Polish law, there are no specific requirements for such a document. The deed is usually signed by the founder(s) of the enterprise and may govern virtually every aspect of its operation, such as the composition of its corporate bodies (often comprising members from within and without the family in order to provide for genuine objectivity of decisions), rules of investment, development plans, etc.

4.3 Transfer of Partial Interest

For the purposes of transfer tax charged on gifts and estates, the taxable basis should be equal to the fair market value of the partial interest that is subject to transfer. Fair market value is established on the basis of average prices in sale transactions pertinent to comparable interest. Pricing should take account of all relevant circumstances; however, there is no specific proviso for consideration of marketability and control.

5. Wealth Disputes

5.1 Trends Driving Disputes

Property disputes relate primarily to family property and have their sources in family law (including mainly property

division after divorce) and inheritance law. For historical reasons, considerable private estates only came into being after 1989, and there is currently a clear upward trend in such disputes, related to the natural demise of the first generation of wealth creators and inheritance of estates by their successors.

Such disputes also arise in the context of reprivatisation proceedings leading to restitution in kind of real estate confiscated by state authorities in 1944-1989. Poland did not develop any special legal principles for restitution of nationalised property (movable and immovable) over the years after 1989 and recovery of this property takes place by challenging the legality of nationalisation acts. Restitution of property in kind even after several decades often means its return to many heirs of former owners, living in different countries and jurisdictions. Court proceedings take place in the event of disagreement between the heirs.

Property disputes are largely settled by civil courts in which court settlements may be concluded. Courts are increasingly encouraging parties to seek mediation. The parties may even conclude out-of-court settlements during court proceedings (usually in the form of a notarial deed) which leads to the discontinuation of a trial.

5.2 Mechanism for Compensation

Compensation is awarded by court judgments or court settlements in accordance with the Code of Civil Procedure. Compensation includes redress of damage for actual losses and lost profits. When determining the amount of compensation, the courts have regard for all the circumstances, including the contribution of the injured party to the occurrence or increase of losses. Courts also have the right to adjust the amount of compensation.

6. Roles and Responsibilities of Fiduciaries

6.1 Prevalence of Corporate Fiduciaries

Polish law does not provide for corporate fiduciaries. Trusts and family foundations are also not regulated by Polish law. Polish regulations provide only for charitable foundations, to which it is possible to donate one's assets. A charitable foundation can conduct business activity in the scope stated in its deed of incorporation.

Due to the absence of corporate fiduciaries in Poland, Polish nationals may seek a solution by using corporate fiduciaries operating in foreign jurisdictions.

6.2 Fiduciary Liabilities

Given that Polish law does not provide for corporate fiduciaries, there are no specific rules governing their responsibility. For this reason, it is prudent for Polish residents setting

up foreign structure to investigate foreign regulations, and subject potential disputes to jurisdiction of foreign courts.

6.3 Fiduciary Regulation

To the extent that the institution of corporate fiduciaries is not recognised in Polish legislation, there are no specific provisions regulating this method of asset investment.

However, general civil rules and Polish case law conclusions permit the concept of fiduciary transactions which are not performed by institutional fiduciaries. Such transactions were very common at the beginning of the process of establishing a free market economy in Poland after transition to democracy – in particular with regard to acquisition of real properties and shares. Nowadays, it is still applied mainly between individuals where the investor wants to remain anonymous and the fiduciary is the investor's trusted person (ie, relative, friend, or adviser).

6.4 Fiduciary Investment

With regard to corporate fiduciaries, there are no investment theories or standards in this field in Poland.

Charitable foundations, regulated by Polish law, can run a business to the extent required to pursue the foundation's goals stipulated in the foundation's deed of incorporation. Foundations may also own shares of a company. In many instances, such companies run businesses with core values and ethics common to business and charity. Distributions by such companies are often financial injections allowing the financing of a foundation's charitable activity.

7. Citizenship

7.1 Requirements for Domicile, Residency and Citizenship

The right of legal stay (residence) in Poland depends on the foreigner's nationality. Citizens of the EU, EFTA/EEA Member States and Switzerland benefit from the freedom of movement and do not require any visa or residence permit to enter and remain in Poland for up to three months (six months if actively looking for work). Nationals of other countries generally require a visa or residence permit to enter and stay in Poland legally. There are different kinds of visas/residence permits, depending on the purpose of the foreigner's desired stay (eg, a permit for temporary stay and work).

Polish nationals and foreigners alike staying in Poland for more than 30 days are obliged to register their residence (either permanent or temporary).

Residency (domicile) is generally required to determine the individual's tax residency, and may be also a prerequisite for permanent residency, EU long-term residency and Polish citizenship.

Polish citizenship can be acquired either by virtue of law or through one of the following procedures: (a) being recognised as a Polish citizen, (b) having Polish citizenship restored and (c) being granted Polish citizenship.

The primary way of acquiring Polish citizenship by virtue of law is its acquisition by birth – a minor becomes a Polish citizen if at least one of the parents holds Polish citizenship. Moreover, Polish citizenship can be obtained by a minor in the event of adoption by a Polish citizen/citizens. Additionally, Polish citizenship can be acquired by virtue of law, under certain conditions, if a minor was found on Polish territory and by repatriation. In practice, an administrative procedure for confirmation of Polish citizenship by descent is often applied to persons who left Poland many years ago as a result of various historical and political events or to their descendants, if they can prove that they have maintained their Polish citizenship over the years (ie, they have never lost or resigned their Polish citizenship).

Upon the foreigner's application and once the statutory prerequisites are met (eg, uninterrupted residency in Poland for a specific period based on a permanent residence permit, long-term EU residence permit, right of permanent residence, officially certified knowledge of Polish language, marriage to a Polish citizen, etc), the competent authority may issue an administrative decision on recognition as a Polish citizen. Polish citizenship can also be restored at a foreigner's request in an administrative decision, if it was lost before 1 January 1999 on the basis of previously binding Polish citizenship acts and when the relevant statutory conditions are met. Furthermore, Polish citizenship can be granted by the President of Republic of Poland at his discretion upon a foreigner's justified request.

Polish citizenship may be lost only as a result of its renunciation, after obtaining the consent of the President of the Republic of Poland for renunciation of citizenship.

Granting Polish citizenship to parents, recognising them as Polish citizens and obtaining consent to renounce Polish citizenship also applies to minors remaining under parental guardianship.

Polish citizens can hold at the same time the citizenship of another country, ie, can have dual citizenship; however, in such a case, Polish citizenship prevails when its holder deals with Polish authorities.

7.2 Expeditious Citizenship

There is no expeditious path towards obtaining Polish citizenship. However, for example in the case of sportspersons, meritorious individuals or in other specific cases where fast and effective measures are required, a procedure of granting Polish citizenship is applied where the President of the

Republic of Poland may decide whether to grant Polish citizenship and speed up the citizenship-granting procedure.

8. Planning for Minors, Adults with Disabilities and Elders

8.1 Special Planning Mechanisms

No special planning mechanism applies to minors or adults with disabilities. Parents or guardians need to apply the right combination of legacies and/or instructions in their last wills to provide them with proper protection. For instance, with regard to adults with disabilities, their parents or guardians may appoint an heir in their last will and instruct him or her to provide day-to-day maintenance in the future. They may also include a legacy providing lifetime support and protection of needy adults. Finally, they may appoint an executor in their will to ensure (under the court's supervision) that the heir executes the legacy properly in favour of the adult with disabilities. With regard to minors, parents may use their last will to appoint a future guardian for their children in the event of the death of both parents. Such an appointment is not binding on the court, but the court must specify very strong arguments if the parents' will is ignored.

8.2 Appointment of Guardian

A guardian is always appointed in proceedings before the Court of Protection – a specialised section of the district court. In the case of minors, a guardian is necessary when both parents die or else are deprived of parental authority over the children. In the case of adults, it is possible to appoint a guardian or curator only after the regional court has made a decision on full or partial incapacitation. Full incapacitation applies to persons who are completely unable to conduct their affairs. The Court of Protection appoints a guardian for fully incapacitated persons. Partial incapacitation applies to persons who are not completely unable to conduct their affairs, but require help in their everyday life. The Court of Protection appoints a curator for partially incapacitated persons. The guardian and curator perform their duties under the supervision of the Court of Protection.

8.3 Elder Law

Apart from different kinds of private pension funds and special insurance policies, the main means of financial preparation for longer lives rely on various annuity and reverse mortgage plans. Elderly people often decide to conclude a life annuity contract under which they transfer the ownership of their real estate to the other party to the contract (family member or close friend), who in return is obliged to provide lifetime support to the original owner of this real estate. The life annuity contract is not subject to inheritance and gift tax and is not taken into account when determining the value of a legitimate claim (see 2.3 Forced Heirship Laws). The downside is civil law transactions tax charged at the market value of the real estate at the rate of 2%. Under another type of annuity

contract, it is possible to transfer the ownership of real estate in exchange for a regular and lifetime disbursement of annuity payments. Since 2014, elderly people may enter into a reverse mortgage agreement with financial institutions, which guarantees the original owner the lifetime right to use and reside in the real estate in exchange for regularly disbursed payments.

9. Planning for Non-Traditional Families

9.1 Children

The succession regulations do not differentiate in any way between the position and rights of adopted, surrogate or children born out of wedlock from those of legitimate children. There is no regulation or discussion in case law on posthumously conceived children with regard to succession rules. Traditionally, it is only possible for a child conceived before the parent's death and born alive afterwards to inherit after its deceased parent. Surrogate pregnancy arrangements are not allowed, but they are not expressly prohibited.

9.2 Same-Sex Marriage

Same-sex marriages and registered partnerships (either opposite-sex or same-sex) are not recognised in Poland. Domestic partners are recognised in very limited situations related to the continuation of lease agreements after the death of a lessee or refusal to give evidence that could incur the criminal liability of a domestic partner. In general, domestic partners are not recognised with regard to succession rules. Therefore, general instruments of civil and succession law (special powers of attorney, gifts, annuity contracts, last wills, legacies per vindicationem, etc) as planning mechanisms should be applied to non-traditional families.

Due to the lack of recognition of same-sex marriages and registered partnerships Poland has not acceded to the EU Matrimonial Property Regimes Regulation No 2016/110 and the EU Property Consequences of Registered Partnerships Regulation No 2016/1104.

10. Charitable Planning

10.1 Charitable Giving

Corporate and personal income tax laws allow recognition of charitable donations as tax-deductible, provided that donations are made to public benefit institutions, for religious purposes and to selected schools. The deductible amount cannot exceed 10% of the appropriate tax basis in the case of corporate income tax payers, and 6% in the case of personal income tax payers.

In addition, a testator may set up a foundation in his or her notarial last will. If such a foundation is registered within two years from the last will announcement it will be entitled to inherit after the testator.

10.2 Common Charitable Structures

The only institution used commonly in Poland for charitable purposes is a foundation, usually having a status of public benefit institution. It may happen that associations pursue charitable purposes; however, their operations are usually of a smaller scale. Individual taxpayers are entitled to give the equivalent of 1% of their tax due on annual tax return to a selected public benefit institution instead of paying it to the treasury.

Wardyński & Partners

Al. Ujazdowskie 10
00-478 Warsaw
Poland

Tel: +48 22 437 82 00
Fax: +48 22 437 82 01
Email: warsaw@wardynski.com.pl
Web: www.wardynski.com.pl

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