

Amendments to Dutch fund taxation regimes

On 9 December 2022, the Dutch Ministry of Finance announced certain proposed amendments to Dutch fund taxation regimes. Find below a quick overview including our Taxand takes:

Dutch REIT (FBI) regime: postponement of abolishment for direct real estate

- The previously announced abolishment of the Dutch FBI-regime for direct real estate investments will be postponed from 1 January 2024 to 1 January 2025. The postponement addresses timing concerns raised by market participants.
- Supporting REIT restructuring measures will take effect from 1 January 2024, to allow REIT-neutral restructurings taking place in 2024 i.e. ahead of 2025.
- The proposed amendments to the Dutch FBI-regime (continuing for securities investments) and supporting REIT measures will be published for consultation early 2023. Final draft legislation will be presented in September 2023 (Budget Day).
- **Taxand's take: whilst REIT conversions are expected to be tax-neutral at fund level, the abolition may substantially change the Dutch after-tax position at investor level – notably for foreign investors. Investors are recommended to review existing Dutch REIT investment structures.**

Dutch VBI fund tax regime: updates

- Introduced in 2007 as the Dutch SICAV, the existing VBI fund tax regime is currently available for open-end investment funds with passive investment strategies (excluding direct real estate). The regime allows for a full exemption from corporate tax and dividend withholding tax.
- The Ministry of Finance announced an update of the VBI fund tax regime, to increase its availability for Dutch fund managers raising capital from institutional investors. The update is expected to restrict the availability to licensed funds and fund managers only, and may see further improvements allowing a wider use by the Dutch investment management industry.
- The proposed amendments will be published for consultation early 2023 (together with the REIT amendments), with final draft legislation presented in September 2023 as well.
- **Taxand's take: existing VBI structures should be carefully reviewed in 2023, once the draft legislation is published. Depending on the final draft update legislation, the VBI regime may become a more widely available investment fund regime.**

Dutch FGR fund structure: continuation of dual transparency classification

- Dutch entity classification rules for (Dutch and foreign) limited partnerships have been announced to be amended per 2024 following an internet consultation. However the Dutch Ministry of Finance indicates to continue the optional tax-transparency (either tax-transparent or non-tax-transparent) for specific mutual funds set-up as an FGR ("*fonds voor gemene rekening*"), albeit with an announced amendment of the criteria for tax transparency.
- The proposed amendments will be published for consultation early 2023, together with the proposed VBI and FBI amendments – taking effect per 2024.
- **Taxand's take: managers of and investors in FGR structures should carefully review the potential tax impact, once the draft proposals are out for consultation early 2023.**

New entity classification rules for limited partnerships

- The Ministry of Finance intends to revise the Dutch entity classification rules for (Dutch and foreign) limited partnerships – expected to take effect per 1/1/2024 without transitional rules. Whilst not part of this announcement, it is an indispensable development in this quick overview.
- The new rules will include a default tax-transparent classification for limited partnerships, both Dutch and foreign. The classification of other foreign entities (e.g. UK LLP) will depend on availability of a similar Dutch entity. If a similar Dutch entity exists, the foreign entity classification will follow the Dutch entity classification. If no similar Dutch entity exists, the foreign entity will be classified as non-transparent for Dutch tax purposes.
- Following a public consultation in 2021, the final draft legislation is expected in the course of 2023.
- **Taxand's take: the new rules will (finally) align Dutch entity classification rules for limited partnerships with international tax standards. Whilst positive news, the immediate change per 1/1/2024 without transitional rules may have an unintended negative Dutch or foreign tax impact. We recommend to review limited partnership structures with Dutch investors/investments to assess any potential impact.**