

Consultation on Dutch tax treatment of partnerships and mutual funds

March 31, 2021

On March 29, 2021, the Dutch government released a consultation document on proposed legislation aimed at amending the Dutch tax treatment of certain legal entities, including partnerships (both Dutch and non-Dutch) and mutual funds. The purpose of the amendments is to prevent hybrid mismatches that arise as a result of differences in tax treatment in different jurisdictions.

In the consultation document it is proposed that as of January 1, 2022:

- Dutch non-transparent partnerships (i.e. open limited partnership or in Dutch: “open commanditaire vennootschap”) will be considered transparent for Dutch tax purposes; and
- non-transparent mutual funds (“open fonds voor gemene rekening”) will also (almost always) be considered tax transparent, unless they are a regulated investment entity (“beleggingsinstelling”) or a listed fund.

To establish whether a foreign partnership should be classified as transparent or non-transparent for Dutch tax purposes, under the current rules the legal characteristics of that foreign entity are compared with the legal characteristics of Dutch entities (“legal entity comparison”). One important criterion currently used to establish whether a foreign partnership is considered tax transparent or not, is whether the partnership agreement reflects that the accession or substitution of a limited partner requires unanimous consent of all (general and limited) partners. Only if such unanimous consent is required (and obtained), will a limited partnership be classified as tax transparent for Dutch tax purposes. Comparable rules apply with respect to mutual funds. The consultation document proposes changes to these classification rules.

Besides the legal entity comparison, it is proposed to introduce an additional method in order to determine the Dutch tax treatment of a foreign partnership in two specific situations:

- i. if the foreign entity is established in another jurisdiction, the tax treatment of the entity in the country of formation will be followed by the Netherlands (“symmetrical method”); and
- ii. if the foreign entity is established in the Netherlands and no comparable Dutch entity exists, that entity will be treated as non-transparent for purposes of Dutch corporate income tax, Dutch dividend tax and Dutch withholding tax on interest and royalties (“fixed method”).

All existing non-transparent entities that will become transparent as per January 1, 2022, will be deemed to have sold all their assets at fair market value. Any gain deemed realized on the transition from non-transparent into transparent will be taxed with Dutch corporate income tax at a rate of 25% (tax rate 2021). The proposal includes a roll-over facility under which taxation may be deferred provided certain conditions are met.

If adopted, these new rules will have consequences for many existing limited partnership and mutual fund structures. All structures in which partnerships or mutual funds are used should be reviewed to prevent unforeseen tax consequences.

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