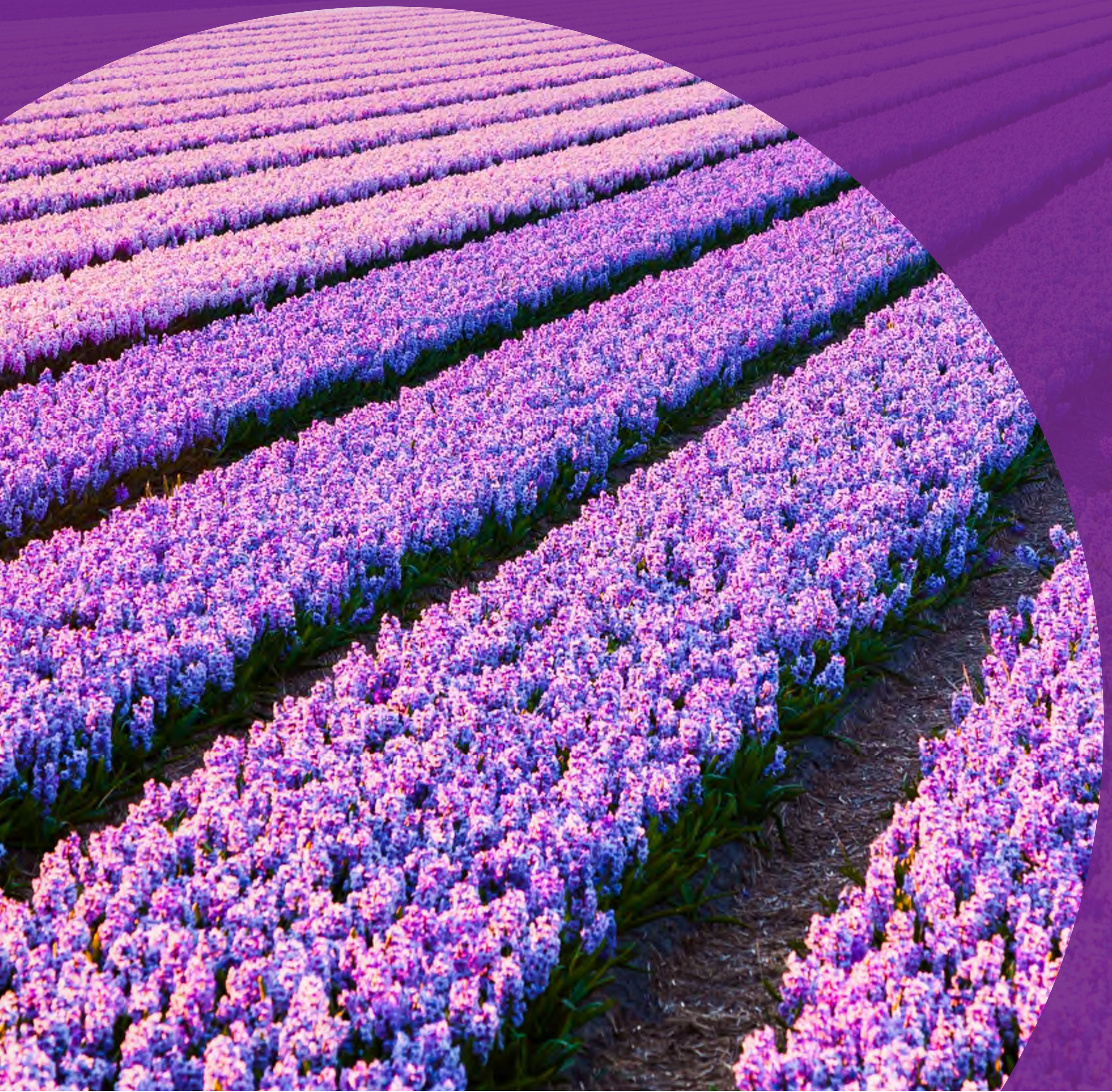
DENTONS

# Dutch Tax Plan 2025

Grow | Protect | Operate | Finance

19 September 2024

On 17 September 2024, the Dutch government presented its Tax Plan 2025 and other important tax proposals for the coming years. In this tax alert we will highlight the most important proposals and their potential impact on businesses and high-net worth individuals. We will also address other Dutch tax measures that have already been adopted as well as some proposals that were announced earlier.



# Introduction

On 17 September 2024, Budget Day 2025 (known as *Prinsjesdag* in Dutch), the Dutch government presented its budget for 2025 as well as tax measures and plans for the coming years (Tax Plan 2025). The government stresses that it wants to improve the current climate for entrepreneurs, reduce the complexity of the applicable laws, provide (legal) stability, and stimulate innovation.

The government published a set of bills containing various tax-related measures. Most of the announced tax measures are expected to enter into force as of 1 January 2025. The most relevant tax measures for businesses and high-net worth individuals will be summarized in this tax alert.

The Tax Plan 2025 will be discussed in parliament. This parliamentary review can still lead to changes to the Tax Plan 2025.

# Corporate income tax

## CIT rate remains

In 2024, taxable profits amounting to EUR 200,000 are subject to a 19% CIT rate, any excess is taxed at 25.8%. These tax brackets will not be amended.

## Earning stripping rule amended

In 2019, as part of the ATAD package, the so-called earnings stripping rule, limiting interest deduction, was introduced. Currently, net interest exceeding EUR 1 million or 20% of the adjusted tax profit (**EBITDA**) is not deductible and can in principle be carried forward indefinitely. Starting 1 January 2025, the 20% will be increased to 25%.

Furthermore, the EUR 1 million threshold will no longer apply to taxpayers of which the assets consist for 70% or more of real estate (rights) for more than half of the year. In determining the 70%, the following assets are disregarded: assets which are considered participations, group financing and assets located abroad of which the income is exempt. This rule aims to combat the abuse of the threshold by splitting real estate ownership across multiple property companies.

## Extension of the ‘related-party’ definition due to the new qualification of partnerships

Various provisions of the corporate income tax act refer to ‘related parties’, such as the interest deduction limitation for certain intragroup financing arrangements (article 10a). As of 1 January 2025, partnerships and transparent entities will also qualify as related parties to widen the scope of the deduction limitation.

## The adjustment of the liquidation loss scheme

The liquidation loss scheme in the Netherlands is a tax provision that allows companies to deduct losses incurred during the liquidation of a subsidiary, provided that certain requirements are met.

As of 1 January 2025, two changes will be introduced: The first change affects the calculation of the sacrificed amount and therefore the amount of the loss for example in case of debt being settled by issuing shares or when the taxpayer forgives the receivable.

The second change concerns the modification of the intermediary holding provision. This provision generally prevents a non-deductible loss from being converted into a deductible liquidation loss. The provision will be tightened to ensure the intended effect.

## The codification of the General Anti-Abuse Rule

The General Anti-Abuse Rule (**GAAR**) from ATAD 1 will be incorporated into law. Previously, the introduction of the GAAR was not considered necessary, as the abuse of rights could already be addressed through the concept of *fraus legis*. The codification of the GAAR into law should not materially change the application of *fraus legis*. The GAAR applies to all CIT taxpayers and extends to domestic, intra-EU and third-country situations.

## Interplay between the debt waiver exemption and the loss settlement amended

A debt waiver exemption may apply for profits realized due to debt waived by a creditor. In principle, the exemption only applies to the portion of the waiver profit insofar it exceeds the sum of the available carry forward losses from previous years and the loss that arises in the year of the debt waiver. However, since

1 January 2022, companies can fully offset tax losses against taxable profits up to EUR 1 million each year and for any excess profit only 50% could be offset against the losses. Due to a technical issue, the remaining 50% of the profits for which losses existed, but could not directly be offset, these profits were not exempt by the waiver exemption.

Under the proposed measure, in case of waiver profit in excess of the EUR 1million, the waiver profit is now fully exempt and the loss carry forward is still considered fully used. Unfortunately, there is no retroactive effect, so waivers in the years 2022, 2023 and 2024 can be an issue. In practice we see arguments however to still claim the full relief, please contact us in case of questions.

### Deduction of donations disallowed

As of 1 January 2025, donations (such as sponsoring or donations to NGOs) made by companies are no longer deductible for CIT purposes. Instead, they will be considered distributions to the shareholders and therefore may be subject to dividend withholding tax and personal income tax.

### Clarification of subject-to-tax rules

The ‘subject-to-tax rules’ in the corporate income tax act will be clarified to include qualifying top-up tax from Pillar 2 as ‘tax paid’. This is relevant for various measures such as anti-base erosion provision or the participation exemption. The amendments however do not cover mismatches between tax systems.

### Pillar 2 – technical amendments

Pillar 2 aims to ensure a minimum effective tax rate of 15% for large multinationals. It applies to fiscal years commencing on or after 1 January 2024.

A number of technical amendments have been proposed. We highlight the following:

The Dutch minimum tax act implementing Pillar 2 explicitly limits the applicability of the OECD guidance issued after 14 December 2021. The proposed amendments will implement previously published, but not codified, OECD guidance into Dutch law. This concerns the administrative guidance published in February 2023 (carry-forward of Excess Negative Tax Interest), July 2023 (definition of Qualifying Ownership Interest, guidance on certain credits, guidance on currency conversions and guidance on the substance-based income exclusion).

The Guidance published in December 2023 (Guidance for Safe Harbour rules) and June 2024 is currently under review and may be implemented at a later point. In addition, some technical changes have been implemented concerning the application of the QDMTT to Joint Ventures and the relevant accounting standards for Safe Harbours.

Timing: most amendments will be implemented with retroactive effect – i.e. they will apply for fiscal years starting on or after 1 January 2024. While this is unusual in the Netherlands, the Dutch government considers this acceptable if the respective measures are not burdensome for the taxpayers. However, some measures will therefore be amended only for financial years starting on or after 31 December 2024: the tie-breaker between IFRS and Dutch GAAP for the QDMMT, the application of Excess Negative Tax expense administration if the Top-up Tax exceeds 15%, the calculation of the substance based income exclusion, the hybrid arbitrage arrangement rules

## Withholding Tax

### Changes to withholding tax exemption on dividends

So far, the application of the dividend withholding tax exemption was not mandatory, leaving a shareholder otherwise entitled to the exemption without the option to directly object against the dividend withholding tax assessment himself. This will be amended in the case of dividend distributions to a qualifying domestic shareholder. This means the company is now in principle obliged to apply the withholding exemption at source. The recipient of the dividend can now also object independently to a tax assessment. Unfortunately, this does not change the reality that the distributing entity can be held liable for the non-withholding if it later turns out that the withholding should have taken place, for instance in case of abuse. We recommend companies to properly administrate any choice to apply an exemption from withholding.

### Facility for tax-free buyback of shares for listed entity remains

Previously, a facility for tax-free buyback of shares for listed entities would have been abolished as of 1 January 2025. Consequently, this buy-back would

have therefore been subject to dividend withholding tax. The abolishment will be taken back and the facility will therefore remain.

### Dividend stripping - clarification of the registration date of listed shares

To combat dividend stripping, the decisive moment for determining the entitlement to dividends from listed shares refers to the registration date.

The current wording seemed unclear. It will be clarified that the provision refers solely to the specific moment in time for determining the recipient, which is the close of business on the registration date set by the issuing company. This determination will be based on the records of the central securities depository or another designated intermediary. In Dutch practice, this is typically the central securities depository, but if another party manages the share register, their end-of-day update will be used to determine the beneficiary.

### New definition of 'group' for withholding tax: qualifying unity

In certain cases, the Netherlands levies conditional withholding tax on interest, royalties, or dividends to affiliated entities in low-taxed jurisdictions, black-listed jurisdictions, to certain hybrid entities and in abusive situation.

An entity may also qualify as an affiliated party if it is part of a cooperating group. To alleviate practical issues and reduce legal uncertainty, the term 'cooperating group' will be replaced with a new, distinct group concept, the so called "qualifying unity". To qualify, they must act together with the main purpose or one of the main purposes to avoid withholding tax being levied (Motive Test). The burden of proof lies with the tax inspector. It will also be possible to obtain certainty in advance concerning the existence of such a qualifying unity.

## Personal income tax

### Box 1: Introduction of a new tax bracket

The government introduces a third tax bracket starting from 1 January 2025, which will feature a lower tax rate applied to the Dutch personal income tax. This adjustment aims to provide tax relief at the lower end of the income spectrum.

As of 1 January 2024, the Dutch personal income tax rates for individuals who are subject to Dutch social security contributions are as follows:

| | Taxable income from employment | Tax rate |
|---|---|---|
| **Bracket 1** | EUR 0 – EUR 75,518 | 36.97% |
| **Bracket 2** | EUR 75,518 and more | 49.50% |

As of 1 January 2025, the updated tax brackets will be structured as follows:

| | Taxable income from employment | Tax rate |
|---|---|---|
| **Bracket 1** | EUR 0 - EUR 38,441 | 35.82% |
| **Bracket 2** | EUR 38,441 - EUR 76,817 | 37.48% |
| **Bracket 3** | EUR 76,817 and more | 49.50% |

### Box 1: Reversal of the reduction in the 30% ruling

The 30% ruling allows employers to provide a tax-free allowance of up to 30% of wages for highly skilled foreign employees for a maximum period of five years. This allowance is intended to cover additional costs incurred by these employees for their stay in the Netherlands, such as housing, travel, education and living expenses. To be eligible for the 30% ruling, an employee must meet certain conditions.

Since 2024, new rulings phase out the tax-free allowance over three periods: 30% for the first 20 months, 20% for the next 20 months, and 10% for the final 20 months.

However, research has shown that the phase-out of the 30% ruling has a negative effect on the Dutch labor market and economy. Therefore, the phase-out will be eliminated. Instead, the 30% ruling will become the 27% ruling – i.e. up to 27% of the wages are in scope

of the allowance. In addition, the salary criterion will be increased to EUR 50,436

For employees who applied the 30% ruling prior to 2024, transitional rules will apply.

## Box 2: Reduction of tax rate

Since 1 January 2024, Box 2 was structured with two tax brackets, with the top tax rate set at 33%. Starting in 2025, this top rate in Box 2 will be reduced from 33% to 31%. The lower bracket for the first EUR 67,000 will remain at 24.5%.

## Box 2: Amendments to business succession scheme

In the event of the transfer of business assets through a gift or inheritance, the personal income tax act includes a rollover provision (**DSR**). When the DSR is applied, the grantor or decedent is not liable for personal income tax. The tax liability is transferred to the recipient(s) of the business assets. The gift and inheritance tax act includes a business succession relief scheme (**BOR**). Under the BOR, a recipient of business assets may be exempt from or subject to a relatively low tax rate of gift or inheritance tax.

In 2024, various amendments were made to the DSR and BOR. For 2025 the following amendments, that were already planned in 2024, have been proposed:

Currently, the exemption of the BOR is applicable to 100% of the going concern value up to EUR 1,325,253. 83% of the excess of the going concern value is exempt. As of 1 January 2025, the going concern value up to EUR 1,500,000 will be exempt under the BOR and 75% of the excess of the going concern value will be exempt.

The 5%- efficiency margin in the BOR and the DSR will be abolished as of 1 January 2025. The efficiency margin in the BOR and the DSR means that investment assets up to 5% of the total value of the business assets could qualify as business assets for the application of the BOR and DSR.

As of 1 January 2025, assets with the characteristics of both business assets and private assets will only qualify for the BOR and DSR if these assets are used within the business. The proposed amendment is only applicable to (i) assets with a fair market value of over EUR 100,000 and (ii) assets that are used for at least 90% for business purposes.

Effective 1 January 2025, the 36-month employment requirement for the application of the DSR will be repealed. The employment requirement in the DSR means that when a substantial interest or a personal income tax company is gifted, the DSR can only be applied if the business successor has already been employed by the company for at least 36 months (about 3 years).

A minimum age of 21 years will be introduced for the beneficiary in relation to the application of the DSR in situations of gifts.

It is proposed that the application of the BOR and DSR will be limited to ordinary shares with a minimum ownership of 5% that participate in profit and liquidation proceeds as of 1 January 2026. Nevertheless, the BOR and DSR will continue to apply to preferred shares issued as part of a business succession in stages.

It has been announced that the government has the intention to ease the ownership and continuation requirements for the application of both the BOR and DSR as of 1 January 2025. The continuation requirement will be reduced from five years to three years for acquisitions from 1 January 2025. Additionally, certain easements are introduced regarding the ownership and continuation requirements in restructurings. The principle remains that if only the legal structure of the business changes, this should not hinder compliance with the ownership or continuation requirements, provided that the beneficial ownership of the business does not change.

Furthermore, unintended use of the BOR will be countered with additional measures starting from 1 January 2026. Improper use of the BOR is assumed when the business succession facilities are applied multiple times to the same business (BOR-carousel). The additional measures aim to ensure that business assets previously donated under the BOR and repurchased with assets that do not qualify for the BOR, will no longer qualify for the BOR if they are donated again after the ownership or continuation requirements. It is also considered socially undesirable when wealthy individuals at an advanced age transform non-business assets in such a way that they qualify as business assets, with the intent of taking advantage of the BOR. Therefore, the ownership requirement is extended for donors and testators of an advanced age.

### Box 3: Tax rate for income from savings and investments and relation to real estate

The Dutch Box 3 regime taxes (notional) income from privately owned assets and serves as the relevant income category for all income which cannot be categorized as income in Box 1 and Box 2. Different than previously communicated, the tax rate will not be reduced.

An exemption for house owners with damage claims due to damage from earthquakes will be introduced.

## Value added tax

### Revision on valuable real estate services

This new measure introduces a five-year VAT revision period on services relating to immovable property servicing the property on a multiyear basis and amounting to at least EUR 30,000. This relates to e.g. remodeling/renovation services. Among other things, this measure will counteract short-stay rental constructions in VAT, where, for example, properties are let short-stay for a short period (subject to VAT) before proceeding to regular (VAT-exempt) rentals whereas all VAT on such services was previously deductible. The measures will enter into force effective 1 January 2026.

### Abolition reduced VAT rate in various sectors and industries

Under the announced Tax Plan various reduced VAT rates will be further restricted/abolished. The following changes have been announced:

- i) Abolition of reduced VAT rate for providing accommodation excl. campsites;
- ii) Abolition of reduced VAT rate for (non-exempt) sports;
- iii) Restriction of reduced VAT rate for cultural services only to granting access to the circuses, cinema, zoos, attraction parks and other daily leisure activities;
- iv) Abolition of reduced VAT rate for (digital) books, magazines and newspapers.

These measures will enter into force effective 1 January 2026.

### Place of supply rules virtual services

The Dutch Government has implemented new place of supply rules for virtual services as part of the Council VAT Directive. The services covered under the new place of supply rules are cultural, artistic, sporting, scientific, educational or entertainment services that are virtually performed. As a result of the change, the place of supply will shift towards the country where the customer is established. The new place of supply rules will enter into effect on 1 January 2025.

### Revised SME scheme

As of 1 January 2025, the revised small business scheme (**SME**) will enter into force. The current SME scheme allows applicants to be exempt from VAT if they perform under EUR 20,000 of annual supplies in the Netherlands. In addition to the previous SME scheme, the revised SME allows applicants to make use of the SME scheme in other EU countries than the country of establishment. In order to make use of the SME scheme businesses cannot surpass an annual EU turnover of EUR 100,000.

## Real estate transfer tax

### Lower 8% rate for investors of residential property

The standard real estate transfer tax rate on a second home for investment or rental purposes will be reduced from 10.4% to 8%. The real estate transfer tax rate for other immovable properties will remain at 10.4%.

### Adjustment land consolidation exemption

Plot consolidation is a form of area development in which at least three parties voluntarily exchange immovable property. The land consolidation exemption serves for consolidation of plots of land taking place in rural areas. Due to the broad scope of this exemption, it can also apply to plots of land on which, for example, houses or other buildings are located. The above is considered undesirable by the Dutch Government. With the amendment, the land consolidation exemption will no longer apply to houses and other buildings. An exception will continue to exist for agricultural company houses and buildings which are exploited commercially for agricultural purposes.

### Limitation concurrence exemption

As announced in an earlier Budget Day the concurrence exemption will be limited further as of 1 January 2025 by abolishing the concurrence exemption for certain share transactions. Currently, new real estate can be transferred free of VAT and

real estate transfer tax through a share transfer by relying on the concurrence exemption.

Under the new measure, the concurrence exemption in the real estate transfer tax will no longer apply to the acquisition of a qualifying interest (usually 1/3 or more) in a so-called real estate rich entity, if less than 90% of the use of the underlying real estate is subject to VAT for at least two years after the acquisition of the interest (e.g., residential or healthcare real estate). The acquisition of such an interest will be subject to a reduced transfer tax rate of 4%.

# Excises, climate, and energy taxes

## Reduction energy tax rate on natural gas

As announced in the coalition agreement of the Dutch Government, the energy tax on natural gas will be reduced. This reduction entails the reduction of the energy tax rate in the 1st and 2nd brackets by EUR 0.028 per m3 in 2025 up to EUR 0.048 per m3 by 2030.

## Introduction of specific energy tax rate on hydrogen

The current structure of the energy tax does not differentiate between energy sourced from hydrogen and other means such as natural gas. In order to encourage the transition to hydrogen energy and prevent hydrogen being affected by the increased energy taxes on natural gas, the Tax Plan sets to introduce a separate energy tax rate on hydrogen energy based on the highest bracket of the energy tax on electricity for commercial purposes.

# Earlier adopted measures effective from 1 January 2025

As some of the measures announced on Budget Day are in relation to tax regulations already adopted that will take effect from 1 January 2025, we briefly summarize the important tax measures.

## Changes to the Dutch REIT Regime – Effective 1 January 2025

From 1 January 2025 onwards, Fiscal Investment Institutions (**FIIs**) will no longer be allowed to directly invest in Dutch real estate, as it is no longer acceptable for FIIs to avoid both Dutch corporate income tax and dividend withholding tax on such investments.

FIIs can still invest in Dutch real estate through subsidiaries that are subject to regular Dutch corporate income tax. Dividends paid to FIIs by these subsidiaries will be subject to 15% dividend tax, with mechanisms to avoid double taxation. The Dutch REIT-regime remains unchanged for non-Dutch real estate investments.

## Changes to Dutch Tax Classification Rules for Dutch and Foreign Legal Entities

As of 1 January 2025, all Dutch partnership will by default be tax transparent entities. Under current rules, Dutch and foreign limited partnerships (*commanditaire vennootschappen*, **CV**s) are often considered non-transparent for tax purposes, leading to hybrid entities.

Concerning the treatment of foreign entities, foreign partnerships will in principle also be tax transparent, but for that purpose they must be comparable to Dutch partnerships. Further information on the comparability has yet to be published.

## Changes to the Tax Treatment of Funds for Mutual Account (*fonds voor gemene rekening*)

From 1 January 2025, the conditions for a non-transparent Funds for Mutual Account (*fonds voor gemene rekening,* **FGR**) will change to align with the Dutch Financial Supervision Act. Non-transparent FGRs must be investment institutions or Undertakings for Collective Investment in Transferable Securities with tradeable participation certificates. All other FGRs will become tax transparent.

FGRs that no longer qualify as non-transparent will be deemed to have transferred their assets at fair market value, potentially triggering taxable gains, but transitional rules offer deferral options.

## Changes tax exempt investment institution regime

It is proposed that as of 1 January 2025, the Exempt Investment Institution (**VBI**) regime will be restricted to only investment vehicles regulated under the Dutch Financial Supervision Act (*Wet Financieel Toezicht*). The proposed adjustment will mean that VBIs owned by (a limited group of) family members will become

subject to normal corporate tax with effect from 1 January 2025.

### Abolishment of the partial foreign tax regime for individuals

As of 1 January 2025, the partial foreign tax regime for individuals will be abolished. These plans have not been retracted.

## Closing remarks

Last year various relevant and significant changes were made to the tax plans during the parliamentary process. We will monitor these updates.

Should you have any questions or need our assistance, please contact your trusted advisor at Dentons or one of the key contacts below.

# Key contacts

**Jurjen Bevers**
Partner
D +31 20 795 34 13
jurjen.bevers@dentons.com

**Rezan Ökten**
Partner
D +31 20 795 39 41
rezan.okten@dentons.com

**Heico Reinoud**
Partner
D +31 20 795 34 14
heico.reinoud@dentons.com

**Marnix Veldhuijzen**
Partner
D +31 20 795 34 10
marnix.veldhuijzen@dentons.com

**Sebastiaan Wijsman**
Partner
D +31 20 795 36 63
sebastiaan.wijsman@dentons.com

**ABOUT DENTONS**

Across over 80 countries, Dentons helps you grow, protect, operate and finance your organization by providing uniquely global and deeply local legal solutions. Polycentric, purpose-driven and committed to inclusion, diversity, equity and sustainability, we focus on what matters most to you.

**dentons.com**

© 2024 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. Please see dentons.com for legal notices.