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Alert | Tax

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Tax Implications of New Dutch Partnership Rules: Your CV May Become Taxable

Go-To Guide:

- Regulated funds using a tax-transparent Dutch CV structure may face Dutch tax as of 2025.
- Funds using a foreign partnership equivalent to the Dutch CV may also see changes to their Dutch tax position as of 2025.
- Changes to partnership's terms and conditions may be required.

Regulated CVs May Be Taxable Entities Under New Rules

New partnership rules set to take effect in 2025 may subject regulated funds using tax-transparent Dutch *Commanditaire Vennootschap* (CV) structures to Dutch corporate income tax (CIT) and dividend withholding tax (DWT). The CV is a frequently used partnership vehicle to structure regulated funds and associated feeder/investment entities. Such CVs are often set up to be transparent for CIT and DWT purposes. Under current law, Dutch CVs achieve this transparency by applying the "consent criterium," which requires consent from all its partners to have limited partners join or be replaced. The Dutch government terminated this internationally uncommon mechanism due to concerns it led to hybrid mismatches.

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Accordingly, all Dutch CVs will in principle be considered tax transparent in 2025. CVs that already qualify as tax transparent may not experience changes.

Importantly, however, despite the new general principle on the tax qualification of a CV, additional changes in Dutch tax legislation taking effect in 2025 may result in some CVs becoming subject to CIT and DWT, thus contrary to what is envisaged by the new general principle. These additional legislative changes introduce an amended definition of a fund for joint account (in Dutch: *Fonds voor Gemene Rekening*, or FGR). Consequently, a Dutch CV that qualifies as an investment fund under Art. 1:1 of the Dutch Financial Supervision Act (or WFT) will typically qualify as an FGR. An FGR (and thus, a CV qualifying as an FGR) will be treated as a regularly taxable entity in 2025, unless it allows participants and partners only to sell their stake in the FGR directly to the FGR itself.

In other words, CVs that currently use the “consent criterium” for their tax transparency and those that qualify as investment funds under the WFT will be subject to CIT and DWT as of Jan. 1, 2025, while these are currently tax transparent.

Implications for Foreign Partnerships

The changes also will affect the Dutch tax qualification of foreign partnership funds located outside the Netherlands. Foreign funds that meet the amended Dutch FGR definition will also be treated as non-transparent for Dutch tax purposes. This may particularly impact Dutch investors of such foreign funds with changes on the Dutch personal income tax position of individuals (i.e., a potential shift from box 3 to box 2) or the ability to credit foreign withholding taxes. For Dutch corporate investors, it may influence their ability to apply for the Dutch participation exemption.

Takeaways

The Dutch government has explicitly stated that for now, it will not amend the legislation taking effect in 2025. Therefore, taxpayers must solve any issues that may arise from the changes before the end of 2024. Regulated funds may have to amend their CVs’ terms and conditions (or those of their foreign equivalent) if they desire continued transparency for Dutch tax purposes.

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