Real Estate Tax Services News

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Consultation on abolishment of the Dutch REIT and changes to other Dutch funds

In brief

The Dutch Ministry of Finance has launched an internet consultation in relation to changes of various Dutch fund tax regimes. The changes include (1) the disallowance of direct investments in real estate by Dutch Fiscal Investment Institutions (*fiscale beleggingsinstellingen*), (2) amendments of the conditions for tax transparency for Mutual Funds (*fonds voor gemene rekening*) and (3) limitation of the Exempt Investment Institutions (*vrijgestelde beleggingsinstellingen*) to regulated funds.

Responses to this consultation can be submitted until 5 April 2023.

Background information

Dutch REIT regime (Dutch Fiscal Investment Institutions)

Dutch Fiscal Investment Institutions currently apply a 0% corporate tax rate on income and gains. The regime for the Fiscal Investment Institutions is also applied by Dutch REITs. Similar to other REIT regimes, certain requirements apply to be eligible under this regime. These include distribution requirements, shareholder requirements, governance requirements, financing limitations and an asset/ income/activity test. The regime is available for listed and non-listed entities.

As of 1 January 2025, it is proposed to abolish the Dutch REIT regime by disallowing Fiscal Investment Institutions to hold real estate directly. Additionally, Dutch Fiscal Investment Institutions may no longer govern a related real estate owning entity. Further amendments include that eligible Dutch Fiscal Investment Institutions may no longer have a loan-to-value exceeding 20%, measured against the tax book value of all investments (whereas currently the limit is 60% over tax book value of the real estate).

A temporary real estate transfer tax exemption is proposed to allow transfer tax neutral restructurings from Dutch REITs into tax transparent Mutual Funds during 2024 only. This real estate transfer tax exemption is intended to apply only for acquisitions of beneficial ownership (legal ownership is therefore excluded).

Further restrictions are introduced on the entity disposing and the entity acquiring the economic ownership of real estate in connection with the reorganisation.

Dutch Mutual Funds

As of 1 January 2024, the conditions for tax transparency of Mutual Funds are changed. The purpose is to bring the transparency rules for the Dutch Mutual Funds more in line with international standards. Going forward, Dutch Mutual Funds will only be considered opaque/non-transparent for Dutch income tax purposes if:

1. the entity is a regulated vehicle under the Dutch Financial Supervision Law (*Wet Financieel Toezicht*), and
2. the units are transferable in another way than solely by redemption by the Dutch Mutual Fund.

The existing possibility for Mutual Funds to be considered transparent for Dutch income tax purposes by way of a ‘unanimous consent clause’ in the fund terms (a clause requiring unanimous consent of all unit holders for the transfer of units), will no longer be available as of 1 January 2024.

The consultation assumes a deemed disposal of the Dutch Mutual Fund’s assets and liabilities and a disposal of the units by all investors against fair value if the tax qualification shifts from opaque to flow-through/ transparent. Any relating taxable gains will be subject to Dutch (corporate) income tax at the regular rates. Three additional facilities are introduced as transitioning law in this respect:

(i) a roll-over facility of the deferred tax claim on deferred gains, tax reserves and goodwill;
(ii) a share merger facility for unitholders subject to income tax allowing them to transfer the units to a Dutch corporate entity in exchange for shares, and
(iii) a temporary exemption from real estate transfer tax in connection with the merger for unitholders subject to income tax.

In case a taxpayer does not fulfil the conditions to apply the facilities (i) and (ii), a 10-year deferral of (corporate) income tax may be requested, provided that the tax claim can be preserved by the Dutch tax authorities.

Dutch Exempt Investment Institutions

As of 1 January 2024, it is intended to restrict the eligibility to the Dutch Exempt Investment Institution regime to regulated vehicles under the Dutch Financial Supervision Law (*Wet Financieel Toezicht*) only. Under the regime of Dutch Exempt Investment Institutions investing in real estate is not allowed, so the impact of this rule for the real estate industry is limited.

Takeaways

The above measures have a substantial impact for real estate investment funds and in particular REITs currently applying the regime for Fiscal Investment Institutions. Many real estate funds will need to restructure to preserve tax efficiency. The consultation is open to the public until 5 April 2023. The input under this consultation will be used to further draft legislation, which is expected in September 2023 (Dutch Budget Day).

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