Real estate fiscal investment institution to be abolished and changes to regimes for exempt investment institutions and mutual funds

On December 9, 2022 the government's response to the report presented by SEO Amsterdam Economics on the effectiveness and efficiency of the regimes for fiscal investment institutions (*fiscale beleggingsinstellingen*; FBIs) and exempt investment institutions (*vrijgestelde beleggingsinstellingen*; VBIs) was published and the following three measures were announced:

- As of January 1, 2025 FBIs will no longer be allowed to directly invest in property.
- As of January 1, 2024 only investment institutions that have a license from and fall under the supervision of the Netherlands Authority for the Financial Markets and the Dutch Central Bank will qualify as a VBI. In other words: the VBI regime will be abolished for family-held VBIs.
- As of January 1, 2024 the conditions governing (open) mutual funds will be amended.

The new rules primarily affect institutional investors (FBI and mutual fund), (listed) real estate funds (FBI) and high-net-worth families (VBI and mutual fund). Existing structures may have to be altered. The proposed measures are addressed in more detail below.

Real estate FBI abolished; securities FBI retained

As of January 1, 2025 FBIs will no longer be allowed to directly invest in Dutch or foreign property. The reason for this change is that a tax loophole may arise in situations where foreign investors invest in Dutch property through an entity that claims the FBI status. This is because there is a possibility that the Netherlands will then not be able to levy corporate income tax or any or only a limited amount of dividend withholding tax. If no additional measures are introduced, existing real estate FBIs will be liable for corporate income tax as of January 1, 2025. As this will create an undesirable corporate income tax burden especially for exempt institutional investors, they will have to alter their structure before 2025. As of January 1, 2024 through December 31, 2024 a conditional exemption will apply in order to avoid real estate transfer tax being payable. An internet consultation will be launched in the spring of 2023, after which the final bill will be published on Budget Day 2023.

With regard to securities FBIs, the government currently does not see any urgent need to amend the FBI regime. The FBI will thus remain an option for investment institutions that invest in securities.

Changes to the VBI regime

The VBI regime was introduced in 2007 to make the Netherlands more competitive in the area of investment institutions that focus on a broad public. In particular, the VBI was to become an alternative for investment institutions that were established in Luxembourg and Ireland. However, surveys carried out by SEO Economics Amsterdam show that of the approximately 1350 VBIs only 30 are of the type that focus on a broad public. And only a small number of investment institutions returned to the Netherlands. Most VBIs are used by high-net-worth individuals and families so that they can invest together. In that case, the tax burden is limited to 26.9% substantial interest tax on (ultimately) the actual return, which may be more advantageous than the tax burden in Box 3 (the fixed return). The government sees the VBI as thus being used by an unintended target group. The government therefore no longer wants to maintain the VBI regime for that group, but wants to only make it available for investment institutions that have a license from and fall under the supervision of the Netherlands Authority for the Financial Markets and the Dutch Central Bank. If no additional measures are introduced, family funds will be liable for corporate income tax as of January 1, 2024. This measure will also be included in the aforementioned internet consultation in the spring of 2023 and the final bill will be published on Budget Day 2023.

Changes to (open) mutual funds

Open mutual funds have been subject to corporate income tax since the introduction of the current Corporate Income Tax Act; the same applies to investment public limited companies (investment NVs). As open mutual funds fulfill the same function as NVs in the social and economic sphere, it is logical to treat them the same for corporate income tax purposes. A mutual fund is 'open' if the consent of all the participants is not required in order to dispose of the participations (consent requirement). If the consent requirement is not met, there is a tax transparent closed mutual fund. There is also a closed mutual fund (redemption option) if the participations can only be sold to the fund itself or to blood relatives or relatives by marriage in the direct line of the participant. Both the open and the closed mutual fund are widely used, including by institutional investors as part of their asset management.

There are approximately 1800 investment funds with the form of an open mutual fund, of which an estimated 200 are (listed) funds. The other 1600 open mutual funds are mainly family funds that were set up for a variety of reasons. For example, investing in Box 2 rather than in Box 3 and investing anonymously. The latter because a mutual fund does not have to register with the Chamber of Commerce and is not obliged to publish its annual figures.

The government has recognized two problems with the current regime:

1. The consent requirement is not commonly used internationally and creates qualification differences.
2. The actual use of the regime is often not in line with its original purpose.

The government has therefore proposed replacing the consent requirement with another criterion. It is also looking into whether it would be possible to align the definition of mutual fund with the definitions of investment institutions in the Financial Supervision Act. In a stricter definition of a mutual fund, the consent requirement becomes irrelevant for the corporate income tax liability of the fund. For the time being, however, the intention is that a mutual fund remains closed (transparent) for tax purposes, if the fund has included a redemption option in its fund conditions. This, so that institutional investors such as pension funds, can continue to use that option. This proposal will also be opened for public consultation in the first quarter of 2023, after which the final proposal will be included in the 2024 Tax Package

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Not all aspects of the measures currently proposed are a surprise. Some parts of the plans had already been announced and that led to several changes, for example, FBIs have been given a year longer to change their structure. A temporary exemption for real estate transfer tax purposes will also be introduced for restructuring resulting from the real estate FBI being abolished. The substantiation of the VBI measure was also much criticized. That the VBI is not used much by investment institutions that focus on a broad public, but is especially popular with high-net-worth individuals, can hardly be regarded as unintended or unexpected. After all, as early as 2007, during the parliamentary debates on the introduction of the VBI regime, it had already become very clear that the VBI would mainly be used by high-net-worth families as an investment vehicle. Specific policy had also been created for this. In that category, it has certainly resulted in much invested equity capital returning to the Netherlands from abroad. It is not inconceivable that foreign regimes will again become more attractive if the VBI is abolished for high-net-worth families.

The changes for (open and closed) mutual funds have not yet been worked out in sufficient detail to say much about them except that open mutual funds in the family sphere (for example, the aforementioned family VBIs) will become transparent. If no transitional rules are introduced, this will often mean that tax will have to be paid on the substantial interest claim. Assigning a different qualification to Dutch mutual funds may also affect funds established outside the Netherlands that are comparable to the Dutch mutual fund.

If you have any questions about the above, your Meijburg advisor would be pleased to answer them for you.

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