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Results of investigation into bottlenecks of the mutual fund

On Thursday, June 12, 2025, the Deputy Minister of Finance informed the House of Representatives about the investigation into the bottlenecks and possible solutions with regard to the mutual fund (*fonds voor gemene rekening;* FGR). This research follows the motion by Lower House MP Van Eijk, which was adopted during the parliamentary debate on the 2025 Tax Plan. Three bottlenecks have been identified: domestic and foreign partnerships can qualify as an FGR, the link with the Financial Supervision Act (*Wet op het financieel toezicht*; Wft) and the investment criterion. The Deputy Minister will further investigate potential solutions to the first and second bottleneck. A possible solution to the last bottleneck (the investment criterion) will not be investigated further.

1. Partnerships can qualify as FGR

Bottleneck
As of January 1,2025, the typical Dutch phenomenon of an independently taxable open limited partnership (*open commanditaire vennootschap*; 'open CV') – and the associated consent requirement – has been abolished. The bottleneck that has been identified is that the (foreign) CV can now qualify as an FGR and is therefore independently taxable for Dutch tax purposes. As a result, the old qualification problem with regard to the CV, resulting in international mismatches, has partly shifted to the FGR.

Almost all parties involved have indicated that in many cases it is restrictive that partnerships, especially CVs and foreign CV-like entities, can qualify as an FGR. The same parties also acknowledge that from a practical point of view it is undesirable to treat a CV as tax transparent by definition, especially in the case of large(r) (real estate) investment funds with a dynamic group of participants.

Solution direction
According to the Deputy Minister, the solution to this bottleneck can be sought in a measure that, on the one hand, has the effect that CVs remain or become transparent if tax transparency will not lead to tax problems, but on the other hand also regulates that CVs that do have these tax problems remain or become independently taxable – optionally or otherwise . This will probably require a change in the legal definition of the FGR, which will probably require transitional law.

2. The reference to terms in the Wft

Bottleneck
Several parties have indicated that the reference to the terms 'investment *fund*' and '*fund* for the collective investment in transferable securities' as referred to in Section 1:1 of the Wft leads to difficulties in practice. In particular, because specific reference is made to the phenomenon of an '(investment) fund'.

Solution direction
Several groups propose as a solution to refer to the terms 'investment *institution*' and 'undertaking for collective investment in transferable securities' (UCITS) included in the

Wft, instead of the more specific terms 'investment *fund*' and '*fund* for the collective investment in transferable securities'. This solution is being investigated further, but requires a change in the law. It will also be investigated whether the test for foreign investment institutions can be simplified, for example by linking up with registrations of these foreign investment institutions with authorities comparable to the Dutch Authority for the Financial Markets (AFM) in other EU member states and possibly third countries.

3. The investment criterion

Bottleneck
One of the conditions of the FGR is that it 'invests', according to Dutch tax standards. The interpretation of the concept of investment is left to the court in tax law. Whether there is an investment therefore depends on the facts and circumstances of the case.

The Deputy Minister does not consider it desirable to adjust (the interpretation of) the investment criterion. Alignment with the investment concept in the Wft, as put forward by certain parties, would only increase the group of potential FGRs. It would also lead to more uncertainty for the tax (legal) practice, because in that case a second link with the Wft would arise. Moreover, the tax distinction between investing and running a business is more common and has been recurring in Dutch tax legislation for some time.

Conclusion

Further research will be carried out with regard to bottleneck 1 (domestic and foreign partnerships qualify as FGR) and bottleneck 2 (reference to terms in the Wft) and the solutions proposed in this context. If this study shows that a solution is possible, a bill will be submitted for internet consultation in the autumn. In view of the complexity of this legislation and the multitude of different structures, the Deputy Minister considers the quality and effectiveness of this 'solution legislation' to benefit from an internet consultation.

Any change in the law is expected to enter into force on January 1, 2027 at the earliest. The aim is to avoid short-term tax liability or transparency as much as possible as a result of this possible change in the law, for example by means of transitional law.

Comments by KPMG Meijburg & Co

The points described above can rightly be called bottlenecks in practice. It is commendable that the Deputy Minister of Finance has worked energetically on this point. Whether bottlenecks 1 and 2 will be resolved can only be assessed once the (draft) legislation has been published. At first glance, the possible solutions, which have been developed together with the tax (legal) practice, seem to be a good approach to solve the bottlenecks. The timing of the possible implementation of the solutions (January 1, 2027 at the earliest) does mean that uncertainty will remain for some time.

The Deputy Minister of Finance also notes that taxpayers are free to submit a request with the Dutch Tax Authorities to obtain certainty in advance about the bottlenecks.

If you would like to know more, please feel free to contact us or your usual Meijburg advisor.

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