KPMG Meijburg & Co Tax & Legal

Internet consultation on changes to definition of mutual fund and introduction of an opt-out scheme

On Monday, December 15, 2025 an internet consultation was launched regarding proposed changes to the definition of a mutual fund (*fonds voor gemene rekening*; FGR). Firstly, it has been proposed to change the reference to terms used in the Financial Supervision Act (*Wet op het financieel toezicht*; WFT). In addition, an optional FGR opt-out scheme has been proposed for funds with no more than 20 unitholders. Under this scheme, these smaller funds can opt to be treated as tax transparent. Other features of the FGR, such as the investment criterion and the exception for repurchase funds, remain unchanged for the time being.

1. The revised FGR definition

1.1. Essence of the proposal

Under the proposed new legislative text, the following will be regarded as an FGR – and thus as being independently liable for tax: a fund for the purposes of obtaining benefits for the unitholders through investing for joint account or otherwise using the funds:

a) that is an investment *undertaking* or *undertaking* for the collective investment in transferable securities (UCITS) as referred to in Section 1:1 WFT;
b) of which the unitholders in this fund can be evidenced from the negotiable certificates of participation, whereby the certificates of participation are not regarded as negotiable if they can only be sold to the FGR (repurchase fund); and
c) that is not already independently liable for tax because of its legal form.

1.2. Other WFT terms

Investment undertaking or undertaking for collective investment in transferable securities
In the terminology used in the WFT, investment undertakings are divided into 'funds' and 'companies'. One of the problems identified is that the current FGR definition refers to the terms 'investment *fund*' and '*fund* for the collective investment in transferable securities' found in Section 1:1 WFT. However, the reference to this specific 'fund' concept may require further knowledge of financial regulatory law and can make the assessment of this more difficult and may lead to disputes, especially in the case of foreign funds.

The revised definition therefore refers to the more comprehensive terms 'investment undertaking' or 'undertaking for collective investment in transferable securities' as referred to in Section 1:1 WFT. Both entities with a legal personality (investment *companies*) and entities without a legal personality (investment *funds*) fall under this new definition. As a result of this, it is clear that foreign partnerships with a legal personality may also qualify as an FGR.

According to the Explanatory Notes, in order to determine whether there is an investment undertaking or UCITS as referred to in Section 1:1 WFT, the fund must meet the conditions stipulated for this in the AIFM Directive or the UCITS Directive. Reference is also made to the parliamentary records on the WFT.

Not already independently liable for tax because of its legal form
A new condition is that there is only an FGR if the investment vehicle is not already independently liable for tax because of its legal form. Under the proposed revised FGR definition, an entity that is already independently liable for tax because of its legal form – for example a private limited liability company or a comparable foreign entity – may also be regarded as an FGR. To avoid this overlap and disputes arising, the condition that there is only an FGR if the investment vehicle is not already being treated as a person having independent legal rights for tax purposes because of its legal form has now been included.

1.3. Change to definition of transparent fund

In conjunction with the proposed revised definition of the FGR, it has also been proposed to change the definition of transparent fund. This change will prevent a BV or NV from becoming transparent for tax purposes under certain circumstances.

2. Opt-out scheme: upon request not regarded as an FGR

It has been proposed to offer smaller funds the opportunity to deregister as an FGR, as a result of which these funds will be transparent for tax purposes. This is called the opt-out scheme. This opt-out scheme is to function alongside the 'repurchase fund', which also results in the tax transparency of the fund. The opt-out scheme is subject to three cumulative conditions, which are discussed below.

1. *Not more than 20 unitholders*
   Applying the opt-out scheme – resulting in tax transparency – must not lead to the assets of the funds and its income, expenses and costs being allocated to more than 20 unitholders for Dutch tax purposes. This is an ongoing assessment. An exception applies if the certificate of participation is transferred by virtue of inheritance law and the exceeding of the limit of 20 unitholders resulting from this is temporary (in principle 'temporary' is defined as: a period of 12 months after the settlement of the inheritance).

2. *Information obligation*
   A fund that uses the opt-out scheme has an information obligation. That obligation means that the fund must provide data and information that is relevant for taxation purposes (such as address, place of residence or place of business, and the Dutch tax identification number). The fund must do this when submitting the request and with regard to each subsequent change in the unitholders in that fund.

3. *Only once per fund*
   The latter condition means that a fund may only use the opt-out scheme once. If the fund has previously used the opt-out scheme and that scheme or transparency ended at a certain point in time because the conditions were no longer met or because the fund had requested this, then the opt-out scheme cannot be used again.

Date for submitting request
If a fund wishes to use the opt-out scheme, then the request to do so must,

- if the fund is established in the Netherlands: be submitted no later than in the year in which the fund would be regarded as an FGR for the first time;
- if the fund is not established in the Netherlands but receives Dutch income: be submitted no later than in the year in which the fund would be subject to tax in the Netherlands for the first time if there was no opt-out scheme; or
- in any other case: in a year at the discretion of the fund.

In the year in which the opt-out scheme is introduced for the first time, funds qualifying as an FGR on December 31 of the preceding year may also use the scheme, provided they meet the conditions for this. That also applies to funds that make use of the transitional rules as contained in the Other Tax Measures Act 2026. The funds that meet the conditions and wish to use the opt-out scheme must make their choice known no later than in the year in which the opt-out scheme takes effect.

KPMG Meijburg & Co comments

Almost a year after its introduction, the revised FGR concept continues to cause difficulties and lead to ambiguities in practice. The proposed changes to the FGR definition address two of the three identified problems. In doing so, the consultation document continues to balance the aims of qualifying family funds as transparent (and therefore retaining a link with the WFT), but treating (real estate) investment funds with many unitholders as one taxpaying entity (and thus only offering an opt-out scheme to small funds). Nevertheless, a positive is that the Ministry of Finance has been relatively quick to take action with the aim to formulate a better and clearer definition of the FGR.

The reference to the broader WFT terms ‘investment undertakings’ and ‘UCITS’ overcomes some of the disputed points in the qualification of foreign funds. The link with the WFT is, however, retained, which means that what the status of a fund entity is under financial regulatory law remains important.

The opt-out scheme also provides a practical alternative for retaining the envisaged transparency of funds, and, where appropriate, to remedy international mismatches. The proposed opt-out scheme offers a fund with a small number of unitholders an alternative for structuring itself as a repurchasing fund, which is sometimes not commercially or practically desirable. The opt-out scheme can be applied by both domestic and foreign FGRs, regardless of whether the qualification as FGR would result in them becoming a corporate income taxpayer.

Finally, we would like to stress that this is a consultation proposal. The bill for which a consultation has now been launched may therefore be subject to amendment. The consultation closes on February 2, 2026. It is expected that the earliest any legislative amendment arising from this consultation can take effect is on January 1, 2027.

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

KPMG Meijburg & Co
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