

## Real Estate Newsflash

### Highly relevant publication Dutch tax authorities about Dutch tax classification of foreign entities

#### Introduction

On 1 October 2024, the Dutch tax authorities (DTA) published a knowledge group position (Kennisgroepstandpunt) addressing the tax classification of certain foreign entities under the new Dutch entity classification rules, effective from 1 January 2025.

The DTA confirmed that foreign entities with legal personality can be considered sufficiently comparable with a Dutch fund for mutual account (fonds voor gemene rekening; FGR). This means that such foreign legal entities may classify as opaque per 1 January 2025. This is highly relevant for all foreign vehicles investing in Dutch assets, for example foreign legal entities investing in Dutch real estate directly, such as French SCPIs.

It is important to verify on a case-by-case basis the impact of the new rules in your structure, to avoid adverse Dutch tax consequences and make sure your structure is compliant with Dutch tax rules in 2025.

#### Background

As of 1 January 2025, the tax treatment of various Dutch legal entities will significantly change. This will also affect the tax treatment of foreign legal entities. In March 2024, a draft decree was published. According to this draft decree, the Dutch tax treatment of foreign legal entities will depend on their similarity to Dutch legal entities, following the comparability method. If no equivalent Dutch entity exists, the tax classification of foreign entities established outside the Netherlands will follow the tax classification of the country where the entity is established.

With the comparability method, certain foreign entities currently treated as opaque will, per 1 January 2025, be classified as tax transparent for Dutch tax purposes. In these cases, the entity itself will no longer be taxable for Dutch tax purposes. This means a deemed transfer of the assets to the participants which is in principle subject to Dutch taxation, subject to certain exceptions.

As a result of this deemed transfer, the participants in the entity will become subject to Dutch taxation. In summary, this deemed transfer can result in material capital gains tax and significant compliance obligations for investors. In anticipation of these undesired consequences, we sent a letter to the Dutch tax authorities, in which we explained that foreign legal entities with legal personality should be considered sufficiently comparable to an FGR, as a result of which the adverse Dutch tax consequences described above should not occur.

### **The knowledge group position**

Further to our letter, in the knowledge group position, the DTA confirmed that foreign entities, whether or not they have legal personality under foreign law, may remain opaque for Dutch tax purposes after 2024, provided they are comparable to the opaque Dutch FGR. The knowledge group position confirms that, depending on specific facts and circumstances, an entity with legal personality established in an EU Member State may qualify as an FGR and thus be treated as opaque from 1 January 2025. This could be particularly relevant for foreign investment companies.

The knowledge group position explicitly mentions the French SCPI as an example of a foreign entity with legal personality that may still qualify as opaque if it is comparable to a Dutch FGR.

Although the SCPI is explicitly mentioned, this position may also be relevant for other foreign entities. Whether a foreign entity is comparable to a Dutch FGR and can qualify as opaque for Dutch tax purposes should be assessed on a case-by-case basis, depending on the specific facts and circumstances of each individual entity.

### **Next steps and recommendations**

We highly recommend verifying how the entities in your structure should be classified for Dutch tax purposes per 1 January 2025. More specifically, it is good to verify whether non-Dutch legal entities can be classified as FGR, in order to avoid adverse Dutch tax consequences and ensure your structure is compliant with Dutch tax law in 2025. If you require further information regarding the tax classification of your foreign entity for Dutch tax purposes as of 1 January 2025, please feel free to reach out to us. We would be pleased to assist you with any questions you may have.

### **Contact details**

**Arthur Smeijer**  
T. +31 610 454 265  
E. [as@atlas.tax](mailto:as@atlas.tax)

**Emilie Meeùs**  
T. +31 645 298 354  
E. [em@atlas.tax](mailto:em@atlas.tax)