

On 29 March 2021 a consultation bill was published that may have a large impact on holding and investment structures of private clients in the Netherlands. It is proposed to treat all Dutch limited partnerships (CV's) as tax transparent as from 1 January 2022. The same applies to Dutch mutual funds (FGR's), if the interest in the fund is held by members of a single family. Below we summarise this draft proposed law (the 'Proposal').



### **Commanditaire vennootschap ('CV')**

- Under the Proposal, the so-called open CV (opaque CV) will no longer exist as from 1 January 2022. As a consequence all open CV's, often used as holding companies, will become tax transparent as from this date.
- As a consequence of the change in tax treatment, the open CV is deemed to transfer all its assets to its partners and tax is due immediately. Under the following four provisions of the Proposal, the actual levy of tax can be postponed:
  - Share-for-share merger facility. A limited partner is allowed to transfer the interest in the open CV to another entity resident within the EU or EEA, while preserving the existing tax claim. This facility is primarily relevant for limited partners who hold their interest in a holding CV in private. It prevents that the tax transparency of the CV results in income taxation (box 2). Under certain conditions, the share-for-share facility can be implemented after 1 January 2022, but before the end of 2022 at the latest;
  - A rollover facility that allows to transfer all built-in gains and goodwill of the CV to its limited partners that are subject to corporate income tax. It is possible to combine this provision with the above share-for-share merger;
  - A rollover facility in certain specific situations in which limited partners provide private assets to an open CV;
  - If none of the provisions mentioned above are used, it is possible to pay the tax due in 10 equal annual installments.

## Fonds voor gemene rekening ('FGR')

- It will remain possible to create an open, tax opaque, FGR. The Proposal however changes the requirements for an open FGR. An FGR can only be tax opaque if one of the following two conditions is met:
  - the ownership interests (participations) are publicly traded on a regulated market; or
  - upon request of its participants, the FGR is obliged to regularly repurchase participations.
- If the participations in an FGR, formally or factually, can only be held by a single family (a so-called family fund) it will become tax transparent as from 1 January 2022.
- Unlike the proposed legislation for the CV, there is no transitional law in the Proposal for the situation that a FGR becomes tax transparent. Also, the Proposal does not mention anything about the consequences of tax transparency for a tax exempt investment institution (*VBI/Vrijgestelde Beleggingsinstelling*) held by a single family.

## Foreign legal entities

- Currently, the tax classification of foreign entities is based on the civil law characteristics of a foreign entity as compared to existing Dutch entities. Generally, the Dutch tax treatment of a foreign entity is equal to the tax treatment of a comparable Dutch entity. This similarity approach will remain the primary classification rule, but is changed in the following circumstances:
  - The unanimous consent requirement for the classification of foreign entities that are comparable to a CV, such as a Limited Partnership, will be cancelled. Under the Proposal, these types of foreign entities will always be treated as tax transparent;
  - If there is no comparable entity in the Netherlands, such as a Limited Liability Partnership, the foreign tax treatment will determine the Dutch corporate income tax treatment (the so-called symmetric method);
  - If there is no comparable entity in the Netherlands, and the foreign entity is based in the Netherlands, the entity will always be subject to Dutch corporate income tax (the so-called fixed method).

We will keep you updated on further developments.

## About Arcagna

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