KPMG Meijburg & Co Tax & Legal

2025 Tax Plan package revised with Memorandums of Amendment

On October 3, 2024 four Memorandums of Amendment to the 2025 Tax Plan package were published. The changes to the bill on the Business Succession Tax Relief (Amendment) Act 2025 will especially have a significant practical impact. In this memorandum we briefly address the most important changes to the bill on the 2025 Tax Plan and the bill on the Business Succession Tax Relief (Amendment) Act 2025.

Bill on the 2025 Tax Plan

Fiscal investment institutions
As of January 1, 2025 fiscal investment institutions will no longer be allowed to invest directly in Dutch immovable property. Indirect investment in Dutch immovable property is however still possible. For example, via the holding of shares in companies that own Dutch immovable property and that are subject to the normal corporate income tax regime. Fiscal investment institutions will also still be allowed to provide loans. By means of having a fiscal investment institution provide hybrid loans to a company with Dutch immovable property that is taxed normally, some of the benefits from that immovable property could effectively be enjoyed tax-free. The Memorandum of Amendment has now closed that route. Receivables for which the payment is generally primarily related, in law or in fact, to income from immovable property located in the Netherlands, will from now also be prohibited assets for fiscal investment institutions.

Adjustment of order for costs in WOZ and BPM cases
In response to the no-cure-no-pay-issue, the Reassessment Legal Costs WOZ and BPM Act ('Reassessment Act') took effect on January 1, 2024, under which the order for costs in WOZ and BPM notice of objection proceedings has been reduced to 25%, expressed as a factor of 0.25 in law, pursuant to the Legal Costs (Administrative Law) Decree. On July 12, 2024 the Dutch Supreme Court rendered a judgment as a result of which the low rate for the order for costs in tax and social security/national insurance contributions cases must not be applied. This judgment will be codified in the Legal Costs (Administrative Law) Decree on January 1, 2025. The only rate then remaining is the rate for miscellaneous cases, which is twice as high. The Memorandum of Amendment provides for the factor to be reduced to 0.125 as of January 1, 2025. This will ensure that the order for costs that may be awarded in the notice of objection stage will remain in line with what the legislator had in mind when the Reassessment Act was introduced.

Bill on the Business Succession Tax Relief (Amendment) Act 2025

For the purposes of personal income tax and the Inheritance Tax Act, business succession tax relief currently does not apply to preference shares, unless these are 'qualifying preference shares'. Qualifying preference shares are shares that have been converted from ordinary shares and whereby ordinary shares were also issued to another party. At present, legislation does not contain a definition of 'preference share'. In practice, the rather vague explanatory notes in the parliamentary records have to suffice. Therefore, debates about what exactly a preference share is regularly arise. Certainly, in situations where a share, in addition to giving a right to a preference

payment or precedence when liquidation dividends are distributed, also gives a right to surplus profit (a so-called hybrid share). Based on policy, there is normally no preference share in cases where there is a right to a share in the surplus profit.

The bill on the Business Succession Tax Relief (Amendment) Act 2025 proposes including a definition of preference share as of January 1, 2026. Shares that only give a right to a preference payment or precedence when liquidation dividends are distributed are preference shares. Based on the Memorandum of Amendment, hybrid shares will be 'split' into a preference component and a non-preference component. The non-preference component is eligible for business succession tax relief, provided the other conditions are met. The preference component is in principle *ineligible* for business succession tax relief, unless these are qualifying preference shares.

The entity's business assets and its invested equity capital will be allocated to the (fictitiously split) non-preference component and preference component in proportion to the fair market value of the relevant share. A share can only take precedence if it has precedence over other shares. That will be assessed based on the share. Who the holder is of those other shares is irrelevant.

The following straightforward example shows how this works:

> *BV X has 100 A shares and 100 B shares. The paid-in share capital on both shares is EUR 100,000. The A shares provide an entitlement to a profit reserve of EUR 250,000. The B shares provide an entitlement to a profit reserve of EUR 750,000. Under the articles of incorporation, 4% is first paid on the profit reserves. The surplus profit accrues to all shares in proportion to the paid-in capital. As of January 1, 2026, the B shares will qualify for EUR 500,000 as preference shares.*

The example also makes clear that not only profit distributions but also paid-in or repayments of preference share premium or nominal paid-in capital can change the size of the preference component/non-preference component. Consequently, a larger or smaller part of the value of the shares will qualify for business succession tax relief.

It has been stated that the new rules will only apply to gifts and inheritances on or after January 1, 2026. The current rules will continue to apply to gifts and inheritances before that date.

We recommend taking a closer look at all situations involving hybrid shares and to do so before 2026.

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

KPMG Meijburg & Co
October 4, 2024

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