

## A year longer the time to restructure to a repurchase fund

On November 6, 2024 the government sent a [Memorandum of Amendment](#) to the 2025 Tax Plan to the Lower House of Parliament. The Memorandum proposes giving investment funds a year longer the time to restructure to a 'repurchase fund', subject to conditions. This is intended to prevent a fund qualifying as non-transparent (independently taxable) for a short period of time when the new rules take effect on January 1, 2025.

### Background

The (open) mutual fund is independently taxable (non-transparent) for Dutch tax purposes. As of January 1, 2025 the definition of a mutual fund will change and the mutual fund will be defined as:

*'a fund for the purposes of obtaining benefits for the unitholders through investing for joint account or otherwise using funds, provided that the fund is regarded as an investment fund or fund for the collective investment in transferable securities as referred to in Section 1:1 of the Financial Supervision Act and the unitholders in this fund can be evidenced from the negotiable certificates of participation. (...) The certificates of participation are not regarded as negotiable if they can only be sold to the mutual fund.'*

The mutual fund is a separate tax phenomenon (contract *sui generis*). A partnership or a limited partnership and therefore associated comparable foreign legal forms may thus, for example, also qualify as a (non-transparent for tax purposes) mutual fund if they comply with all the conditions for a mutual fund. In summary, as of January 1, 2025 those conditions mean that:

- there must be investment for tax purposes (normal asset management);
- this investment is done for and on behalf of multiple investors;
- the fund is an investment fund or a fund for the collective investment in transferable securities as referred to in Section 1:1 of the Financial Supervision Act or the UCITS Directive or the AIFM Directive, including funds that fall under Section 1:13a Financial Supervision Act or Section 2:66a Financial Supervision Act ('light regime'); and
- there are negotiable certificates of participation.

The condition that the certificates of participation in the mutual fund are negotiable means that the certificates may (also) be sold to third parties. In other words: there is *no* negotiability if the sale can only be to the mutual fund; i.e. a 'repurchase fund' (see also the last sentence of the legal definition). This is a change compared to current law, under which there may also be non-negotiability if all unitholders must consent to the sale. However, this consent requirement will no longer apply as of January 1, 2025. Due to the lack of negotiability, a repurchase fund is transparent for tax purposes (not independently taxable). Moreover, the fund conditions must show that a redemption obligation applies. The manager of the mutual fund is given some room to stipulate conditions regarding the time of the sale, for example at one or more fixed times per year, with the aim of not endangering the existence of that mutual fund.

### **The Memorandum of Amendment**

The changed definition of a mutual fund applying as of January 1, 2025 may mean that (foreign-law) entities or legal concepts that are not independently taxable under current law, will become independently taxable as of January 1, 2025 because as of that date they will meet the new conditions for being a mutual fund. The government has received signals from the practice and the Dutch tax authorities that some investment funds do intend to become a repurchase fund as of January 1, 2025, but that, for practical reasons, it is not possible or almost impossible to arrange this before January 1, 2025. If the government does not introduce legal measures to rectify this, it would mean that these funds will become independently taxable for a short time in 2025. The government considers this undesirable.

In the Memorandum of Amendment the government has therefore proposed that as of January 1, 2025 the certificates of participation in a fund will be deemed to be non-negotiable if, in summary, the following conditions are met:

1. that without the measure in the Memorandum of Amendment the (foreign-law) entity or legal concept would become independently taxable as of January 1, 2025 under the then applicable mutual fund provision in the Corporate Income Tax Act 1969;
2. that immediately prior to January 1, 2025 the (foreign-law) entity or legal concept was not independently taxable for the purposes of the Corporate Income Tax Act 1969 (thus transparent);
3. that no later than December 31, 2025 measures have been taken to ensure that the certificates of participation in the fund may only be sold to the mutual fund;
4. that before January 1, 2025 there had already been an intention to comply with condition 3.

With regard to condition 4, the (manager of the) fund must be able to convincingly demonstrate that before January 1, 2025 the (manager of the) fund had already intended to comply with condition 3. This condition can, for example, be met by providing minutes of meetings or correspondence showing that this intention already existed before January 1, 2025.

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

KPMG Meijburg & Co  
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