Dutch Budget Day 2024: What to Expect for Private Equity Real Estate?

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The European real estate market has experienced a sharp correction over the past years, which was fuelled in the Netherlands by (amongst others) tax legislation. Examples in this respect are the increase of the real estate transfer tax rate to 10.4%, the abolishment of the REIT regime and an increase of non-deductible interest under the earnings stripping rule due to rising interest rates.

As we're approaching Budget Day in the Netherlands – which will take place on 17 September 2024 – we have prepared an overview of tax measures to keep an eye on. Some of these measures may provide for some sought after relief, whereas other measures are expected to increase the overall tax cost when investing in real estate in the Netherlands.

REAL ESTATE TRANSFER TAX RATE

On 25 June 2024, the Dutch parliament adopted a motion to assess how the Dutch real estate transfer tax rate can be lowered for investors to ensure that investments in residential property are boosted. The formal announcement to lower the rate is expected on Budget Day.

EARNINGS STRIPPING RULE

On 16 April 2024, the Dutch Ministry of Finance announced that the de minimis amount of €1 million under the earnings stripping rule will no longer be available for companies that lease out immovable property to third parties. The exact scope of this tightening will be published on Budget Day and is expected to become effective per 1 January 2025. At the same time, the current 20% limit of the tax-based EBITDA will be increased to 25%.

VAT INCREASE HOSPITALITY SECTOR

On 16 May 2024, the coalition agreement of the new Dutch government was published which includes the plan to increase among others the VAT rate on hotel stays from 9% to 21% as of 2026. At this time, the relevant industry bodies are still lobbying to get this plan revoked.

ACTING TOGETHER CONCEPT FOR CONDITIONAL WITHHOLDING TAX

On 16 April 2024, the Dutch Ministry of Finance published an overview of tax measures that are expected to be submitted on Budget Day. This overview mentions that the acting together concept for Dutch conditional withholding tax purposes will be replaced with a new group definition. The existing acting together concept refers to the term 'cooperating group' which generally leads to uncertainty in the context of investment funds with multiple investors (such as limited partnerships and mutual funds). At this stage there is no further guidance on what the new group definition will look like.

DEBT WAIVER EXEMPTION AND TAX LOSSES

On 16 April 2024, the Dutch Ministry of Finance published an overview of tax measures that are expected to be submitted on Budget Day. This overview mentions that adverse effects of the tax loss compensation rules on the so-called waiver exemption will be eliminated. Income resulting from the waiver of loans can be eligible for this exemption. Before the exemption can be applied, any existing carry forward tax losses must be absorbed first. The tax loss compensation rules allow for a full offset against taxable profits up to € 1 million, whereby only 50% of any excess profits can be offset against tax losses. These mechanics can result in part of the waiver income not being exempt from corporate income tax under the exemption.

VAT ADJUSTMENT RULES FOR IMMOVABLE PROPERTY SERVICES

On 5 March 2024, the Dutch Ministry of Finance launched a public consultation to extend the Dutch VAT adjustment rules (i.e., revision period rules) to cover certain immovable property services when the remuneration for those services amounts to at least € 30,000. The current VAT adjustment rules are limited to capital goods, such as immovable property itself. These new rules are expected to be published on Budget Day and would become effective as of 1 January 2026.

LEGAL DEMERGER FACILITY AND REAL ESTATE TRANSFER TAX

On 16 April 2024, the Dutch Ministry of Finance reiterated that the legal demerger exemption for real estate transfer tax will (shortly put) be restricted to active business situations and subject to a mandatory claw back period of three years. These amendments are expected to become effective as of 1 January 2025.

REAL ESTATE INVESTMENT TRUST REGIME

On 7 June 2024, the Dutch Ministry of Finance published a letter stating that research shows that a REIT regime can have a positive impact by virtue of attracting foreign capital that can (for example) be used to fund property development and to make real estate more sustainable. This while the existing Dutch REIT regime will still be abolished per 1 January 2025. The decision to introduce a new REIT regime is explicitly left to the newly formed Dutch government, which makes Budget Day a likely date for a follow-up announcement.

TAX CLASSIFICATION OF FOREIGN “INVESTMENT FUND” LPS

As of 1 January 2025 and as part of a broader overhaul of the Dutch tax entity classification rules, all Dutch limited partnerships and sufficiently comparable foreign limited partnerships (e.g., the Luxembourg SCSp and Cayman LP) should in principle always qualify as transparent for Dutch direct tax purposes. On 5 February 2024, the Dutch Ministry of Finance launched a public consultation for a Decree that (shortly put) outlines the characteristics of Dutch legal forms to allow for a comparison against those of foreign legal forms. The foreign legal form is subsequently (and again shortly put) treated the same as its Dutch equivalent (i.e., as tax transparent or opaque). Foreign limited partnerships will thus first need to be classified as sufficiently comparable to a Dutch limited partnership. If so, they should in principle always qualify as transparent under the classification rules that will become effective on 1 January 2025.

Strangely, the (draft) Decree that was consulted included a specific rule that could impact the tax classification of foreign limited partnerships in a fund context. It appears that a foreign limited partnership that qualifies as an “investment fund” and that has freely transferable participations would still qualify as tax opaque as of 1 January 2025. Participations in the limited partnership are not freely transferable when they can only be redeemed by the partnership itself. If this specific rule in the (draft) Decree is implemented, the hybrid mismatches that the Dutch Ministry of Finance wants to remove would remain applicable for limited partnerships in fund structures, as limited partnerships in fund structures generally qualify as investment funds and have freely transferable participations, meaning they would remain opaque for Dutch tax purposes after 1 January 2025.

We expect that the updated (and final) Decree with more clarity on this point will be published on Budget Day.

MORE INFORMATION

If you would like to receive more information or discuss the impact of the proposed rules for your investment structure(s), please feel free to get in touch with Nick Crama, Roel de Vries, Tim Jansen, Rasmus Steiness or Oscar Traast.

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Authors:
Roel de Vries
Rasmus Steiness
Nick Crama
Tim Jansen