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**NETHERLANDS:
NEW ENTITY
CLASSIFICATION
RULES PER 2022**

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Netherlands: new entity classification rules per 2022

- On March 29th 2021, the Dutch Ministry of Finance announced a long-awaited overhaul of Dutch entity classification tax rules per 2022 – basically aligning the rules with global standards. The rules include the withdrawal of the ‘unanimous consent requirement’ for tax-transparency classification of Dutch CV and foreign limited partnerships, classifying these entities as tax-transparent by default. It also leads to termination of the Dutch non-transparent CV. Dutch FGR’s in principle also become tax transparent, with an option of electing for a non-transparent tax status in certain situations.
- The announcement responds to the escalation of hybrid entity mismatches under ATAD2: as the current Dutch entity classification rules deviate from international standards, hybrid entity mismatches occur as the Netherlands and other jurisdictions do not align on entity classification.

Practical impact

- Impact of the announced overhaul is that as of 1/1/2022, any Dutch CV and comparable foreign limited partnership entity will classify as tax-transparent by default, without the need for specific unanimous consent language anymore. Certain transitional rules will apply for existing Dutch non-transparent CV’s as they become tax-transparent for Dutch tax purposes.
- For other foreign entities that are not comparable to a Dutch entity (such as UK LLP, Irish ULC, German KGaA), the Dutch classification will align with the foreign entity classification.
- Due to the automatic entity classification switch per 1/1/2022, the tax position of existing CV/FGR and comparable foreign entities and its investors will have to be assessed. It could have a major impact, impacting inter alia the application of the participation exemption regime, (ATAD2) interest deduction rules, loss compensation and foreign tax liability.

What’s next

- The announcement came in the form of a public consultation, open for responses until 26 April 2021. Final draft legislation is expected in September 2021, allowing a go-live per 1/1/2022.
- For more information on the above, please contact Evert-Jan Spoelder (evert-jan.spoelder@taxand.nl)