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February 2026

Quoted

The Dutch entity tax classification rules

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In this edition

The Dutch entity tax classification rules

1. Introduction

On 1 January 2025, various new rules relating to the classification of (Dutch and foreign) entities for Dutch tax purposes entered into force:[1]

1. The definition of the fund for joint account (*fonds voor gemene rekening*; **FGR**) was amended.
2. All partnerships became transparent for Dutch tax purposes. An exception applies if the partnership also qualifies as a(n) (non-transparent) FGR, in which case the non-transparent FGR classification prevails.
3. The classification framework for foreign entities was amended. As a starting point, foreign entities remain to be classified in line with their equivalent under Dutch law (*similarity approach*). In addition, two new classification methods have been introduced for when there is no clear Dutch equivalent (*fixed approach* and *symmetrical approach*).

Since 1 January 2025, there have been various developments regarding the definition of the FGR and the qualification of partnerships as FGR. New guidance and grandfathering rules have been introduced, and a draft legislative proposal was published for consultation in December 2025 in relation to further amendments to the FGR definition as per 1 January 2027.

This edition of Quoted covers the recent developments and provides an overview of the current state of play of the Dutch entity tax classification[2] rules.[3] For background on the pre-2025 rules and grandfathering rules applicable at that time, please refer to Quoted 161.[4]

2. The classification of (foreign) entities - FGR classification

2.1 Partnerships

All Dutch partnerships (including the Dutch limited partnership (*commanditaire vennootschap*; **CV**)) are, as a main rule, considered transparent for Dutch tax purposes under the current classification rules (as opposed to the pre-2025 classification rules, where certain partnerships could under circumstances also be considered non-transparent). Nonetheless, a Dutch partnership can still be considered non-transparent under the current rules, if it also qualifies as an FGR. In that case, the non-transparent FGR classification prevails. Based on the similarity approach, the above also applies for equivalent foreign partnerships (reference is made to paragraph 3 for more details on the similarity approach and the classification of foreign entities).

1 The tax classification rules for Dutch value added tax and real estate transfer tax purposes are not addressed in this edition of Quoted.

2 Both the term ‘qualification’ and ‘classification’ are used when it comes to classifying partnerships as tax transparent or non-transparent. In the rest of this contribution, we will use the term ‘classification’.

3 This edition addresses: (i) the Dutch tax act on the classification of Dutch and foreign entities, Bulleting of Acts and Decrees (*Staatsblad*; hereinafter **Stb**.) 2023, 508 (*Wet Fiscaal kwalificatiebeleid rechtsvormen*; hereinafter: **Tax Classification Act**) and (ii) the Act on the amendment of the fund for joint account (FGR) and exempt investment institution, Stb. 2023, 523 (*Wet aanpassing fonds voor gemene rekening en vrijgestelde beleggingsinstelling*; hereinafter: **FGR Act**).

4 https://www.loyensloeff.com/quoted-161.pdf.

Due to the prevailing classification of the FGR, certain tax transparent partnerships may have transitioned into a non-transparent FGR as of 1 January 2025.

2.2 FGR & transparent fund

Opposed to the CV, an FGR can still be considered both transparent and non-transparent under the current classification rules, albeit a tax transparent FGR is now referred to as a 'transparent fund'.

The FGR is defined as follows: (i) it qualifies as 'investment fund' or 'fund for collective investment in tradeable securities' within the meaning of the Dutch Financial Supervision Act (*Wet op het financieel toezicht*; hereinafter: **Wft**), (ii) it is established for collective investments, (iii) it has a strategy that is classified as 'normal' portfolio management and (iv) the participations in the FGR are embodied by 'tradeable participation certificates'.

The transparent fund is similar to an FGR but does not meet condition (i) and/or condition (iv). In relation to condition (iv), participation certificates are not considered tradeable if they are only transferable to the FGR by way of redemption (hereinafter: **Redemption Fund**). As such, a Redemption Fund is an example of a transparent fund.

2.3 Developments

After 1 January 2025, new guidance was issued on the FGR rules, including:

- A decree published by the Dutch State Secretary for Finance addressing the definition of the FGR and transparent fund for Dutch tax purposes in November 2024, which was updated in November 2025 (hereinafter: **Fund Decree**).[5]
- A Q&A document addressing a number of practical questions in relation hereto was published by the Dutch Ministry of Finance in April 2025 and later updated in December 2025 (hereinafter: **Q&A Document**).[6]
- A letter issued by the Dutch State Secretary for Finance in June 2025 in relation to three main bottle necks (*knelpunten*) in respect of the FGR definition (hereinafter: **Fund Letter**), which were identified during a public consultation on the issues and uncertainties with respect to the FGR rules.[7]

5 Decree of 28 November 2025, no. 2025-23416, Government Gazette (*Staatscourant*) 2025, 40593.

6 Questions and Answers practical implementation corporate income tax (*Tax Classification Act and FGR Act*) (*Vragen en antwoorden uitvoeringspraktijk vennootschapsbelasting (Wet fiscaal kwalificatiebeleid rechtspersonen en Wet aanpassing fonds voor gemene rekening en vrijgestelde beleggingsinstelling)*), 14 April 2025, update 15 December 2025.

7 Letter regarding implementation motion on bottle necks and solutions in relation to FGRs (*Kamerbrief over uitvoering motie over knelpunten en oplossingen ten aanzien van het fonds voor gemene rekening*), 12 June 2025.

2.4 FGR criteria

The Fund Decree, Q&A Document and Fund Letter provide guidance on the cumulative criteria that must be met by a(n) (investment) fund to be (re)classified as a non-transparent FGR. In short, the guidance provides the following additional explanation on the FGR criteria:

i. The investment fund should invest for joint account (i.e., it should be established for collective investments)

In general, the purpose of an FGR (and a transparent fund) is to obtain benefits for its participants by investing for joint account. The terms 'for joint account' (as follows from the FGR Act) and 'collective' (in respect of collective investments as follows from the Wft) are considered interchangeable and mean that there should be at least two participants to be able to classify as an FGR. This implies that an investment fund with only one participant cannot classify as an FGR. However, an FGR does not lose its status if, for a short period, all participation rights are held by one investor in anticipation of other investors joining. A single-investor fund will not be considered to invest for joint account (only) if the general partner has no profit right at all.

The joint account requirement is met if the fund is in possession of an AFM license or registration. Without it, the free evidence principle (*vrije bewijsleer*) applies and some materiality is unavoidable. Where a company and its 100% shareholder are the only participants, there is no collective pooling of capital and thus no possible FGR classification.

ii. The investment fund should have an investment strategy that is classified as 'normal' portfolio management (i.e., generally not a 'value-add' strategy)

To answer the question whether the investment strategy of an investment fund should be considered 'normal' portfolio management (not entrepreneurial by nature) reference is made to relevant criteria developed in Dutch case law. The additional reference to 'otherwise utilizing funds' ('*anderszins aanwenden van gelden*') merely provides an extension of the concept 'normal' portfolio management. It does not mean that the activities of a non-transparent FGR (or transparent fund) may constitute a business undertaking for Dutch tax purposes.

The Fund Decree clarifies how the 'normal' portfolio management test applies to funds investing in tax-transparent limited partnerships and loans:

- For investments in tax-transparent limited partnerships, the assets and liabilities are attributed to the participants for Dutch tax purposes. However, (solely) participating in a limited partnership that carries on a business enterprise does not automatically result in the fund itself being deemed to carry on a business enterprise. The fund can therefore still meet the investment criteria and classify as an FGR.
- For funds investing in loans, a case-by-case analysis is in principle required to determine whether the lending activities qualify as 'normal' portfolio management. A set of certain strict criteria provides for a safe harbour, where lending activities should in any case qualify as 'normal' portfolio management. However, most private debt funds generally do not meet these conditions. As a result, an assessment based on the relevant facts and circumstances remains required.

In the Fund Letter, it is acknowledged that uncertainty can arise as to whether an investment fund is to be considered to meet the 'normal' portfolio management test, due to its subjectivity and the need for a factual assessment. Although this is identified as a bottle neck, the Dutch Ministry of Finance (so far) sees no possibility of amending this test to resolve the uncertainty. Certainty on this test can be obtained in the form of an advance tax ruling.

iii. The investment fund should qualify as an 'investment fund' (e.g., an AIF) or 'fund for collective investment in tradeable securities' (i.e., a UCITS) within the meaning of the Dutch Wft

To be in scope of the FGR classification, an investment fund should meet the definition of an 'investment fund' or 'fund for collective investment in tradeable securities' as referred to in the Wft. This requirement is presumed to be satisfied if the fund manager registers the fund as such with the Dutch Financial Markets Authority (*Autoriteit Financiële Markt*, **AFM**), either with an AFM license or under an exemption. An EU-based fund could demonstrate its qualification as an investment fund or a collective investment in securities by providing a license or registration comparable to that of the AFM. Unfortunately, no further guidance is provided on funds based outside the EU.

The Dutch tax authorities follow the AFM's interpretation. A family fund can therefore not classify as an FGR. When a fund raises capital exclusively within an existing group of family members, it falls outside the definition of collective investment and therefore outside the scope of the Wft.

Furthermore, the Fund Decree stipulates that a non-Dutch investment fund will be treated as an 'investment fund' or 'fund for collective investment in tradeable securities' for purposes of the FGR classification if it: (i) is established or incorporated under the laws of another EU member state that does not make a legal distinction between an 'investment fund' (*beleggingsfonds*) and an 'investment company with legal personality' (*beleggingsmaatschappij*) for purposes of the implementation of the AIFMD or UCITS Directive[8]; and (ii) possesses a legal form that is not comparable to a Dutch public limited company (*naamloze vennootschap*) or Dutch private limited company

8 If the investment fund is established in or incorporated under the laws of another EU member state that does make a legal distinction between an 'investment fund' and an 'investment company with legal personality', the local classification will be followed, based on the Q&A Document.

(*besloten vennootschap*). Whether the non-Dutch investment fund has legal personality is as such irrelevant for purposes of the FGR classification. Due to the references to the Dutch implementation of the AIFMD and UCITS Directive, uncertainty can arise for limited partnerships in other EU jurisdictions and non-EU jurisdictions.

In the Fund Letter, it is acknowledged that the 'investment fund' concept required knowledge of (Dutch) financial supervisory rules to determine whether an entity classifies as an FGR. The Dutch State Secretary for Finance has identified this as a bottle neck. In order to mitigate issues for foreign limited partnerships arising from the reference to Dutch law concepts, the draft legislative proposal published for public consultation in December 2025 provides for replacement of the Dutch law concepts by the EU-harmonised concepts of 'investment institution' and 'icbe' (reference is made to paragraph 2.7 for more details on the draft legislative proposal).

iv. The participations in the investment fund should be embodied by 'tradeable participation certificates', whereby participation certificates are (only) not considered tradeable if they are only transferable to the investment fund by way of redemption (in which case it would be a Redemption Fund)

To qualify as Redemption Fund, the fund documentation must show a redemption mechanism. The redemption mechanism entails that the participation certificates are only transferable to the fund itself, whereby the fund terms must explicitly state that the participant has a (conditional) redemption right, or that participants may only transfer their participation certificates to the fund itself.

This means that (also) a transfer to a group company of the investor and the transfer to an investor's relative by blood or marriage constitute a prohibited transfer to a third party. Further, the transfer restriction also applies to any participation certificates of the general partner. Exceptions to the restriction on transfers apply for transfers by universal succession (including mergers and demergers), transfers by singular succession under inheritance law and transfers resulting from the creation or division of a marital community of property.

If an investment fund redeems participation certificates with the intention to re-issue them, or immediately re-issues a certificate sold back by a participant to a designated third party, the participation certificates remain non-tradeable.

Also semi open-ended investment funds with illiquid assets (e.g., real estate) and closed-ended investment funds may qualify as Redemption Fund.

Secondary Trade

In addition to a redemption mechanism, Redemption Funds are allowed to include a mechanism in the fund documentation that permit the transfer of participation certificates to a third party under defined conditions (a 'Secondary Trade' clause) while the Redemption Fund status is preserved. This allows the investor to sell its participation to a buyer 'through' the Redemption Fund by way of a redemption and reissuance, with settlement handled through the fund's manager or general partner. Any discount or premium to net asset value can still be settled directly between the parties.

If the actual cash settlement does not occur through the fund, the fund may still qualify as a Redemption Fund if its documentation states that transfers are deemed to occur via the fund and the manager or general partner charges a fee for the deemed redemption and issuance. In practice, this means an 'outside' transfer can be arranged, provided that based on the fund documentation this is deemed to go via redemption followed by reissuance and the manager or general partner receives a fee.

In a stacked structure of funds, each fund is assessed independently to determine whether it qualifies as a Redemption Fund.

A Redemption Fund may still be classified as a reverse hybrid entity if at least 50% of ownership rights are held by related entities in jurisdictions that classify the entity as non-transparent.

2.5 Remaining uncertainties

Although the various guidance elaborates on the FGR criteria in more detail and provides additional clarity on several relevant matters, certain key uncertainties remain.

In particular, while the distinction between a 'passive' investment strategy and a strategy that is considered more entrepreneurial or value-add in nature has been acknowledged, objective criteria to determine the main objective of an investment fund are still not comprehensively defined. Outside safe harbours introduced for certain lending activities and the clarifications provided for investments in tax-transparent limited partnerships, investment funds and their investors are still required to perform case-by-case assessments, applying existing criteria developed in Dutch case law to determine whether the investment activities qualify as normal portfolio management. Based on the Fund Letter, no further clarifications can be expected in this regard and no further clarifications have been included in the draft legislative proposal that was published for public consultation in December 2025.

In addition, while further guidance is provided on the tradeability of participation rights, including clarification on redemption rights, disregarded transfers and the assessment of stacked fund structures, it does not provide an exhaustive definition of when participation certificates are deemed to be issued. As a result, uncertainties remain for limited partnerships that allocate profits and voting rights through capital accounts rather than participation certificates.

Furthermore, although the assessment of whether an entity qualifies as an 'investment fund' or a 'fund for collective investment in transferable securities' within the meaning of the Wft remains complex, the Fund Decree has partly reduced uncertainty by introducing a presumption of qualification where the fund is registered or licensed with the Dutch AFM, or, for EU-based funds, where a comparable authorisation applies. At the same time, some uncertainty persists for funds established outside the EU, as no further guidance is provided in this respect. The draft legislative proposal that was published for public consultation in December 2025, as set out in paragraph 2.7, intends to tackle the uncertainty surrounding this requirement.

Separately, the Dutch Ministry of Finance has acknowledged that the current legislation, and the potential (re)classification of transparent (Dutch and foreign) limited partnerships as non-transparent FGR, does not align with the purpose of changing the Dutch tax classification rules (notably, bringing the Dutch classification rules more in line with international standards) and can be problematic in certain situations. In that respect, in other situations, an investment fund becoming transparent may also create issues. In respect of the latter, an example is given in the Fund Letter where a large group of foreign investors invests in Dutch real estate via an entity that has become transparent as from 2025 and thereby creates Dutch tax filing obligations for the investors (while the entity previously functioned as a 'blocker').

The Dutch State Secretary for Finance considers this a bottle neck as well, and has further investigated an amendment of the FGR definition, such that not all limited partnerships are at risk of being (re)classified as an FGR. However, in scenarios where a tax transparent classification of a limited partnership could be an issue (see above), an option should remain to (re)classify such limited partnership as a non-transparent FGR. The Dutch State Secretary for Finance submitted a draft legislative proposal for public consultation in December 2025, which contains an opt-out regime, allowing certain funds to choose to remain tax transparent. Reference is also made to paragraph 2.7 in this regard.

2.6 Grandfathering rules

Based on prior grandfathering rules, limited partnerships that classified as tax transparent prior to 2025 were, under conditions, allowed to implement a redemption mechanism during the calendar year 2025 if needed to retain a tax transparent classification. One of the key conditions for application of these grandfathering rules was that the limited partnership was required to have demonstrated the intention to implement such redemption mechanism prior to 1 January 2025.

In anticipation of amendments to the FGR definition, new grandfathering rules are available for (non-)Dutch limited partnerships that would be (re)classified as a non-transparent FGR based on the current FGR criteria. As a result, investment funds that might not have been able to apply the prior grandfathering rules may (temporarily) retain their tax transparent status, with effect from 1 January 2025 until the new FGR criteria (expected to follow from the draft legislative proposal currently under public consultation, see paragraph 2.7) enter into effect.

These new grandfathering rules provide for additional discretionary flexibility for (non-)Dutch limited partnerships that were transparent under the rules prior to 1 January 2025 and wish to continue that status. Further to the parliamentary process, entities established on or after 1 January 2025 will also be eligible to apply the grandfathering rules.

Limited partnerships may opt to apply these new grandfathering rules, subject to the following conditions:

(i) the Dutch or non-Dutch limited partnership existed and classified as tax transparent prior to 2025 (this condition only applies to entities established prior to 1 January 2025);

(ii) the limited partnership would, under the current FGR definition, be (re)classified as a non-transparent FGR as of 1 January 2025 (or as of its date of establishment, if on or after 1 January 2025); and

(iii) the limited partnership can demonstrate the intention to retain its tax transparent status, either by:

  (a) having demonstrated, prior to 1 January 2025, its intention to implement a redemption mechanism (irrespective of whether the redemption mechanism was actually implemented or not), or, if this intention was not demonstrated prior to 1 January 2025,

  (b) the limited partnership and its participants choosing to retain the transparent status ultimately on 28 February 2026, and such choice can be demonstrated.

These rules do not require implementing a redemption mechanism in 2025 or 2026, which also means that limited partnerships that made use of the prior grandfathering rules were ultimately not required to implement a redemption mechanism in 2025 to safeguard the tax transparent classification.

Limited partnerships established on or after 1 January 2026, which would under the current definition classify as a non-transparent FGR, may apply the new grandfathering rules as well, by electing a transparent classification.

Insofar the above three conditions are met, the limited partnership should further demonstrate its intention to opt-in to these new grandfathering rules by not registering as an FGR with the Dutch tax authorities (and accordingly not filing a Dutch corporate income tax return starting 2025). It shall then (automatically) continue to be treated as a transparent vehicle by the Dutch tax authorities for the time being. It is noted that these grandfathering rules do not guarantee ongoing tax-transparency.

As will be mentioned in paragraph 2.7, the Dutch government proposed further changes to the FGR criteria, by means of a draft legislative proposal open for public consultation. It may take (at least) until 1 January 2027 until any changes in legislation will enter into effect. The new grandfathering rules apply as from 1 January 2025 until 1 January 2028, whereby this period of application may be shortened if the amendments to the FGR definition enter into effect before that moment (e.g., on 1 January 2027). Additionally, further grandfathering rules may be proposed at such time.

Summary - Tax transparent or non-transparent FGR?

The Dutch tax classification for limited partnerships that would in principle classify as a non-transparent FGR* can be summarised as follows:

Limited partnership (that also meets the FGR requirements)	**Prior to 2025**	**2025–2026 (current FGR rules)**	**From 2027 onwards (consultation proposal)**
Set up prior to 2025 – historically transparent	Transparent	**Transparent if**: • Redemption mechanism in place as of 1 January 2025; **or** • Grandfathering applies: – Intention shown to incorporate redemption mechanism pre-2025 (irrespective of actual incorporation of redemption mechanism) – Election by 28 February 2026, if no intention shown pre-2025 **Otherwise**: Non-transparent (FGR)	**Transparent if**: • Redemption mechanism in place as of 1 January 2027; **or** • Opt-out election, provided: – ≤ 20 ultimate investors – Investor-level reporting – No prior opt-out **Otherwise**: Non-transparent (FGR)
Set up prior to 2025 – historically non-transparent	Non-transparent	**Transparent only if**: • Redemption mechanism in place as of 1 January 2025 **Otherwise**: Non-transparent (FGR)	**Transparent if**: • Redemption mechanism in place as of 1 January 2027; **or** • Opt-out election (≤ 20 investors, reporting, one-time) **Otherwise**: Non-transparent (FGR)
Set up in 2025 or later	N/A	**Transparent if**: • Redemption mechanism from outset; **or** • Application grandfathering rules: – Set up in 2025: election by 28 February 2026 – Set up in 2026: election for transparency **Otherwise**: Non-transparent (FGR)	**Transparent if**: • Redemption mechanism in place as of 1 January 2027; **or** • Opt-out election (≤ 20 investors, reporting, one-time) **Otherwise**: Non-transparent (FGR)

* The proposal to amend the FGR rules, which was published for public consultation in December 2025, may lead to a different outcome as of 2027 (at the earliest), as shown in the right-hand column.

2.7 Consultation proposal to amend the FGR regime

On 15 December 2025, a consultation proposal was published containing a draft legislative amendment to the definition of the FGR and the introduction of an optional opt-out regime (*afmeldregeling*) for Dutch tax purposes.

The consultation proposal focuses on resolving two key items:

1. The potential qualification of (non-Dutch) partnerships as FGRs; and
2. The reliance on regulatory definitions under the Wft, which has led to complexity and legal uncertainty.

The statutory FGR definition would be amended by replacing references to the Dutch law concepts under the Wft of *beleggingsfonds* (investment fund) and *fonds voor collectieve belegging in effecten* (fund for collective investment in transferable securities), with *beleggingsinstelling* (investment institution) and *icbe* (UCITS). This aligns the tax definition more closely with EU-harmonised concepts under the AIFMD and UCITS Directives and also provides certainty that partnerships with legal personality can classify as FGR.

A ranking rule would be introduced to ensure that an entity subject to Dutch corporate income tax based on its legal form (e.g., a BV, NV or comparable foreign entity) cannot also classify as an FGR.

The proposal also introduces an optional opt-out regime allowing qualifying FGRs, upon request, not to be treated as a non-transparent FGR for Dutch tax purposes. In that case, the fund would generally be treated as tax transparent, with taxation occurring at the level of the investors therein.

The opt-out regime would be subject to three cumulative conditions:

1. **Attribution threshold**: assets, liabilities, income and expenses may be attributed to no more than 20 ultimate investors, where a look-though approach is applied to transparent investors (a continuous test). In practice, this means one must also look through other transparent funds or transparent entities in general. For multi-layered partnership structures or fund-of-funds setups, this threshold is hugely restrictive as each underlying layer adds additional ultimate investors and will often be exceeded in common private equity structures.
2. **Information obligation**: the fund must provide the Dutch tax authorities with investor-level information necessary to ensure effective taxation (including identification data such as name, address and BSN/RSIN).
3. **One-time election**: the opt-out may be exercised only once per fund.

This opt-out regime is a welcome change to the rules for certain partnerships that wish to be classified as tax transparent. However, due to the attribution threshold, it does not provide a workable solution for all structures and may be difficult to meet in practice, particularly for foreign partnerships. In addition, the accompanying information requirement for demonstrating compliance is highly burdensome and, in many cases, not practically feasible for complex or multi-layered investment structures.

The tax consequences of the opt-out and re-entry are as follows:

- Upon opting out, the fund ceases to be independently taxable and becomes tax transparent. Unrealised capital gains are recognised at fund level to preserve the Dutch tax claim.
- If the opt-out subsequently ends (e.g. due to breach of conditions), taxation resumes at fund level, with assets recorded at fair market value on the opening balance sheet.
- The proposal explicitly provides that no roll-over relief or deferral mechanism will be introduced in these situations.

Following the consultation, which was open until 2 February 2026, the Dutch legislator will determine whether and how the draft legislation will be submitted to parliament. Any legislative change is expected to take effect no earlier than 1 January 2027. We have been actively involved in the consultation process via various industry bodies and will continue to monitor developments closely.

A general view that can be derived from the various consultation reactions is that the opt-out regime being proposed is too strict and not workable in its current form (in particular in relation to non-Dutch investment funds without Dutch source income). In various consultation reactions, an opt-in regime is proposed as an alternative, whereby all partnerships can elect to be treated as non-transparent FGR if they meet all relevant conditions (with a mandatory non-transparent classification for certain FGRs with more than 150 participants).

3. Additional classification methods for foreign entities

3.1 Similarity approach

For entities formed under foreign law, the similarity approach is the primary method of classification. In short, this means that based on the characteristics of the foreign entity, as they follow from the articles of association or the partnership agreement and foreign company law, corporate resemblance of the foreign entity is sought with a Dutch equivalent. Based on the equivalent form, the classification as transparent or non-transparent for Dutch tax purposes is followed. As an exception, if a foreign entity classifies as an FGR or a transparent fund, the corresponding classification for Dutch tax purposes (non-transparent or transparent, respectively) is followed.

The table below shows Dutch legal forms with their classifications:

Dutch legal form	Entity classification
Limited partnership (*Commanditaire vennootschap*)	Transparent
General partnership (*Vennootschap onder firma*)	Transparent
Partnership (*Maatschap*)	Transparent
Transparent fund (*Transparant Fonds*)	Transparent
Limited liability company or private company with limited liability (*Naamloze Vennootschap or Besloten Vennootschap*)	Non-transparent
Association (*Vereniging*)	Non-transparent
Foundation (*Stichting*)	Non-transparent
Cooperative and association on cooperative basis (*Coöperatie*)	Non-transparent

If the foreign entity does not have a Dutch equivalent (and does not classify as an FGR or transparent fund), the similarity approach does not suffice. In that case, two additional classification methods apply:

- the 'fixed approach' (when the foreign entity is tax resident in the Netherlands); and
- the 'symmetrical approach' (when the foreign entity is tax resident outside the Netherlands).

3.2 Fixed approach

Based on the fixed approach, which is not expected to occur often in practice, foreign entities with no clear Dutch equivalent that are tax resident in the Netherlands are always classified as non-transparent for Dutch tax purposes and therefore subject to Dutch corporate income tax.

3.3 Symmetrical approach

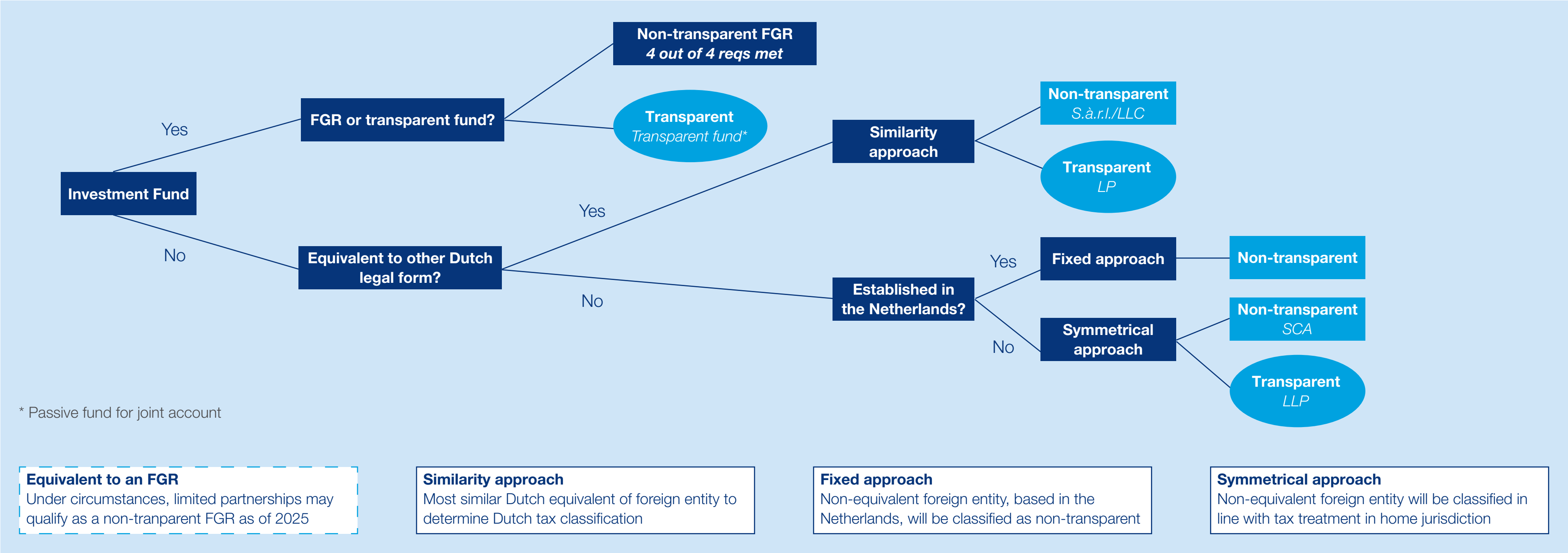
For entities with no clear Dutch equivalent that are tax resident outside the Netherlands, the 'symmetrical approach' will apply. Here, the Netherlands follows the tax classification of the country of establishment.[9]

This means that the foreign entity will for Dutch tax purposes be classified as non-transparent if in the jurisdiction that treats the foreign entity as tax resident, the assets and liabilities as well as income and expenses are attributed to the foreign entity.

Vice versa, foreign-based entities without corporate resemblance to a Dutch entity and to which the assets and liabilities as well as income and expenses are not attributed are thus considered transparent for Dutch tax purposes.[10]

Summary – tax classification rules for foreign entities

The tax classification rules for foreign entities can be summarised as follows:



9 For countries with a federal tax / state tax system, the federal tax classification will be followed.
10 For example, a UK LLP which is not independently liable to pay tax in the UK.

3.4 Classification Decree

The Dutch State Secretary for Finance has published a decree containing the legal framework for the comparison of foreign entities with Dutch legal forms, applying as from 1 January 2025 (hereinafter: **Classification Decree**).[11] The Q&A Document contains several clarifications in relation to the Classification Decree as well.

The Classification Decree contains the key characteristics of all Dutch entities including partnerships (except the FGR and transparent fund of which the characteristics are included in the Fund Decree). A foreign entity that is sufficiently equivalent in nature and structure to a Dutch entity will for Dutch tax purposes be classified in accordance with such Dutch law equivalent (similarity approach as referred to above under 3.1), whereby a classification as an FGR or transparent fund will prevail.

However, if a foreign entity is equivalent to more than one type of Dutch entity (but not to an FGR or transparent fund) or is not equivalent to any type of Dutch entity at all, a classification based on the similarity approach will not be possible. The entity will then be classified based on the symmetrical approach or fixed approach.

The Classification Decree contains an Appendix with a list of foreign entities that have already been classified based on the Classification Decree. Examples include some commonly used foreign entities such as the Delaware LLC, which is considered equivalent to a BV and therefore remains non-transparent for Dutch tax purposes.

It is important to note that the symmetrical approach is not applied instantly. The first step is always to assess whether the foreign entity classifies as an FGR or transparent fund under Dutch rules. If it does, it is non-transparent or tax transparent, respectively, by definition. The symmetrical approach should only be applied if the entity does not classify as an FGR, transparent fund or another Dutch legal form. An example of a foreign entity that is considered a non-equivalent is the Luxembourg *société en commandite par actions* or SCA, which will remain non-transparent based on the symmetrical approach due to its non-transparent classification for Luxembourg tax purposes if it does not classify as a transparent fund.

It is helpful that the list of foreign entities contains the classification of various foreign entities that are often used in international investment structures (including Luxembourg, German, UK and US limited partnerships). That said, there is still a significant number of foreign entities that have not yet been classified (e.g., the French SLP and FPCI) which creates uncertainty for the market as to how such foreign entities should be classified for Dutch tax purposes. In addition, if a foreign entity classifies as FGR or transparent fund, such classification will (still) prevail over the classification based on the list.

The list of foreign entities will annually be updated to reflect the classification of additional foreign entities as confirmed by the Dutch tax authorities' knowledge group (lastly updated on 4 December 2025). In addition, the Q&A Document contains a form that is intended to assist in classifying foreign entities that have not yet been classified.

3.5 Other

The Tax Classification Act has a so-called 'tax attribution provision' for personal income tax purposes, that also has effect on other tax laws including corporate income tax, dividend withholding tax and conditional withholding tax. Based on this provision, the assets and liabilities as well as income and expenses, respectively costs, must be attributed to the participants in the Dutch or foreign tax transparent entity *pro rata parte* each participant's entitlement.

The introduction of this provision further anchors the tax transparency of both Dutch and foreign tax transparent entities, which is helpful. However, we do expect that in the context of a participation in a tax transparent investment fund, this provision will often be difficult to apply. Reason being that investment funds generally do not provide all information relevant

11 Decree of 9 November 2024, Stb. 2024, 339, as updated by Decree of 4 December 2025, Stb. 2025, 425.

to enable application of the attribution provision. In fund-of-fund structures this information is often in particular extremely difficult to obtain or simply unavailable.

4. Closing remarks

We generally welcome the tax classification rules for partnerships as well as the amended definition of the FGR and the two new classification methods for non-equivalent foreign entities.

Furthermore, the Fund Decree provides for some helpful insights and the Dutch State Secretary for Finance has followed through on his commitment to investigate adjustments to the FGR definition by publishing a draft legislative proposal for public consultation in December 2025. Although this consultation proposal does not amend the existing legal framework and has no legal effect at this stage, it provides insight into the possible direction of future legislative changes aimed at narrowing the scope of the FGR definition and improving legal certainty (albeit that input to the consultation did suggest further amendments and improvements). The available grandfathering rules are in certain situations helpful to reduce adverse impact in the meantime.

While the Fund Decree provides additional clarifications on various aspects of the currently applicable FGR definition, investment funds are still required to perform case-by-case assessments in several areas.

Loyens & Loeff has ample experience on this topic. We are well placed to advise on these matters as we can provide combined tax, legal and regulatory advice in relation hereto. We have been actively involved in the consultation process and will continue to monitor developments closely.

Should you have queries or need any assistance, please contact your trusted adviser at Loyens & Loeff or one of the specialists mentioned below.

About Loyens & Loeff

Loyens & Loeff N.V. is an independent full service firm of civil lawyers, tax advisors and notaries, where civil law and tax services are provided on an integrated basis. The civil lawyers and notaries on the one hand and the tax advisors on the other hand have an equal position within the firm. This size and purpose make Loyens & Loeff N.V. unique in the Benelux countries and Switzerland.

The practice is primarily focused on the business sector (national and international) and the public sector. Loyens & Loeff N.V. is seen as a firm with extensive knowledge and experience in the area of, inter alia, tax law, corporate law, mergers and acquisitions, stock exchange listings, privatisations, banking and securities law, commercial real estate, employment law, administrative law, technology, media and procedural law, EU and competition, construction law, energy law, insolvency, environmental law, pensions law and spatial planning.

Quoted is a periodical newsletter for contacts of Loyens & Loeff N.V. Quoted has been published since October 2001.

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