

# More flexibility for structuring fiscal investment institutions

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We advise FBIs to consult Dutch tax counsel about the consequences of the revised decree for their specific situations.

The Dutch Ministry of Finance issued a revised decree on 28 February 2014 which offers more flexibility for structuring FBIs. These institutions benefit from a favourable tax treatment subject to certain requirements, and the additional flexibility now offered relates to two of these requirements. FBIs should consult Dutch tax counsel about how the revised decree impacts their specific situations.

Fiscal investment institutions (FBIs) benefit from a favourable tax treatment, including a zero per cent corporate income tax rate, subject to the satisfaction of certain requirements. The revised decree offers additional flexibility in respect of two of these requirements:

- an FBI distributes its adjusted profits within eight months following the end of the financial year
- distributions are made *pro rata* on the FBI's shares.

## *Distribution of adjusted profits*

The distribution requirement is linked to profits realised for *tax purposes*. In certain cases, the same profits may have already been realised for commercial accounting purposes in a previous year as a result of differences between Dutch tax accounting standards and commercial accounting standards. If a distribution out of these commercial profits was made before the year in which the profits are realised for tax purposes, the FBI must effectively distribute the same profits again in the year of realisation for tax purposes. The revised decree provides, on request to the tax inspector and subject to certain conditions, for relief from this double distribution obligation if this relates to capital gains realised by subsidiaries of the FBI from the disposal of real estate.

## *Pro rata distributions*

The revised decree allows an FBI to issue classes of shares with different profit rights, but only to the extent that these are the result of

- certain differences in the allocation of management fees
- the registration of shares in different currencies, and
- certain differences in the allocation of marketing costs.

The previous decree already allowed umbrella funds / FBIs to deviate from the *pro rata* distribution requirement in respect of the creation of (sub) funds. The revised decree also allows these (sub) funds to issue different classes of shares for the purposes mentioned above.

The revised decree also includes a number of technical changes.