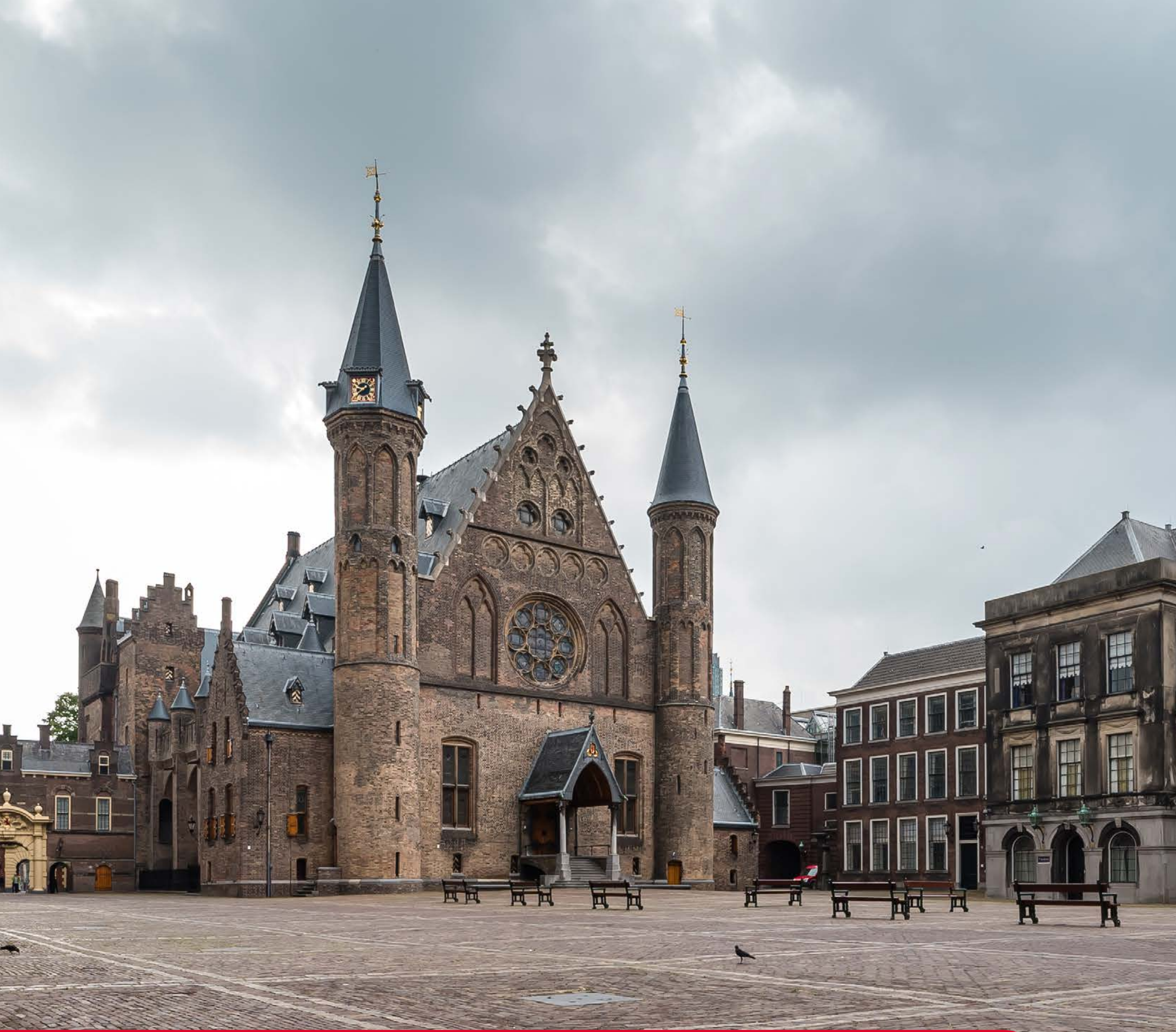

Tax alert | Dutch government publishes 2024 Tax Package

21 September 2023

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On 19 September 2023 on the occasion of Budget Day the Dutch government presented the 2024 Tax Package.

We already informed you about certain expected changes by way of our tax alert dated 1 June 2023 (https://www.burenlegal.com/en/news/tax-alert-changes-dutch-tax-treatment-dutch-partnership-cv-and-investment-funds-fgr-fbi-vbi).

Please find below the main highlights of the proposed tax measures that are relevant for companies and entrepreneurs doing business in or with the Netherlands, with a special focus on new developments. Also, certain other legislative proposals are summarized which are expected to enter into force on 1 January 2024 or 1 January 2025.

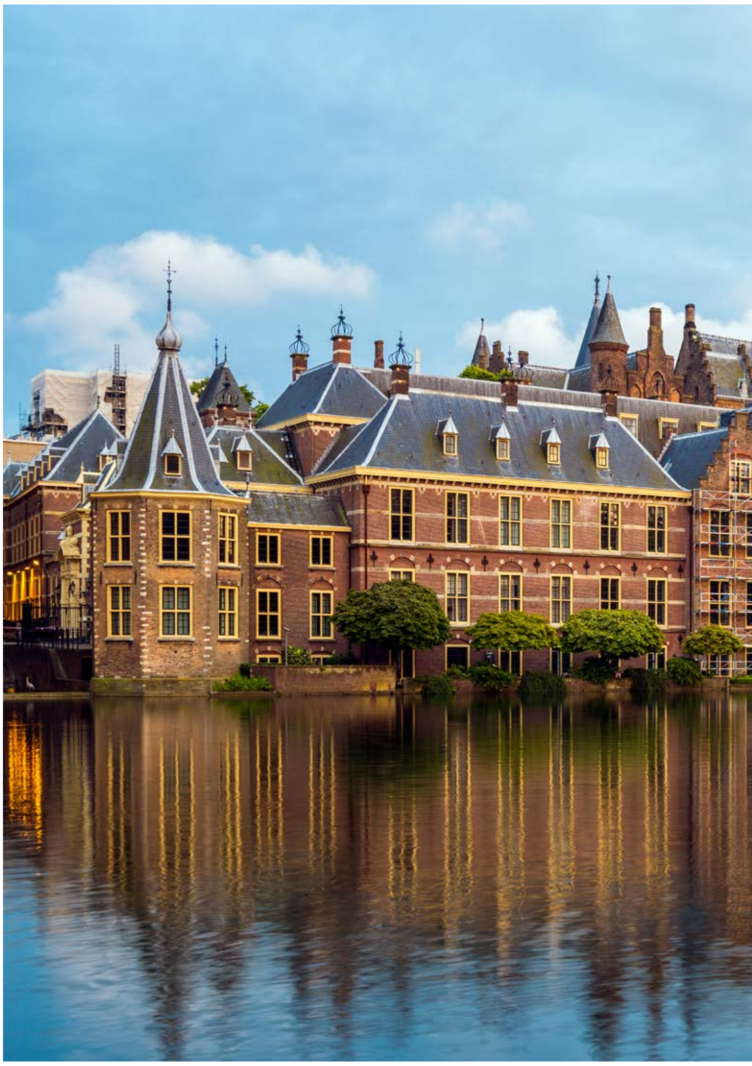
Classification of Dutch and foreign entities

The Dutch legislator is aiming to change the entity tax classification rules. The tax classification of a limited partnership under Dutch law as a tax transparent or opaque entity under current rules depends on whether or not both the admission and substitution of partners is subject to the prior unanimous approval of all partners (the so-called prior consent requirement). With the Netherlands following the similarity approach when classifying an equivalent legal form under foreign law, this approach in practice often resulted in mismatch situations and undesirable tax consequences when classifying foreign entities.

Under the proposed rules as the default situation a limited partnership (CV) under Dutch law would always be treated as transparent for Dutch tax purposes. In other words, the so-called prior consent requirement would no longer be relevant. This proposed change would also be relevant for the qualification of foreign limited partnerships and other foreign entities. In addition to the similarity approach applying to for example the Luxembourg SCSp, US LP and German KG, the symmetry approach provides for the Dutch tax classification of a foreign entity incomparable to a Dutch legal entity (such as UK LLP, German KgaA, French SCPI) to align with the foreign entity's tax treatment in the foreign jurisdiction. An exception applies if the foreign entity is resident in the Netherlands, which results in a an opaque classification (fixed approach).

With the default rule being that a limited partnership is tax transparent, existing limited partnerships that are now structured as opaque shall by operation of law convert into a tax transparent entity which shall result in a deemed disposal of assets which is a taxable event. Deferral rules have been proposed both for the entity and its partners. The proposed date of entry into force of the entity classification rules is 1 January 2025 and of the deferral rules is 1 January 2024.

It is noted that adverse tax consequences may occur in 2024 in case of dividend payments to foreign hybrid entities considering that the rules for classification of legal entities shall apply as from 1 January 2025 with the conditional dividend tax rules being applicable as from 1 January 2024 (see below).



Changes to FGR and specific fund regimes (FBI and VBI)

The Dutch rules for specific fund regimes FGR (fund for joint account), FBI (the fiscal investment institution) and VBI (the exempt investment institution) will change on 1 January 2025.

The entity classification rules of the FGR and foreign entities that are comparable to a FGR will change as per 1 January 2025. In short, a FGR qualifies as an opaque entity only if it classifies as an AIF or UCIT within the meaning of the Dutch Financial Supervision Act and its units are tradeable. Deferral rules have been proposed allowing a FGR in scope to assess possible restructuring alternatives which would apply from 1 January 2024 onwards. In all other situations the FGR will be deemed tax transparent. It is noted that when units of an FGR can only be disposed of to the FGR it is also considered non-tradeable even when it is a regulated investment institution.

Under the proposed changes it shall no longer be possible to benefit from the FBI regime when investing directly in real estate in the Netherlands. Transitional rules apply during 2024 allowing an exemption from real estate transfer tax applies for restructurings directly related to the above measure, subject to certain conditions. The FBI regime continues to be available for non-real estate investments.

It is proposed for the VBI regime to be only available for AIFMD- or UCIT licensed investment institutions.

For more information reference is made to our alert of 1 June (https://www.burenlegal.com/en/news/tax-alert-changes-dutch-tax-treatment-dutch-partnership-cv-and-investment-funds-fgr-fbi-vbi).

Dutch dividend stripping rules

Draft legislation has been announced which has previously been published for consultation aimed to make the current Dutch anti-dividend stripping rules stricter. The most important amendment concerns reversing the burden of proof that a beneficiary is the "beneficial owner" from the tax inspector to the beneficiary in certain situations. This applies in case of a claim for a tax credit or refund of withholding tax of at least EUR 1,000 per book year or calendar year and in case of the application of the Dutch dividend tax exemption. The second proposed amendment is a change in the scope of anti-abuse rules describing situations in which a beneficiary should not be considered the beneficial owner. It is proposed that transactions performed by related parties or related individuals can be allocated to the beneficiary. The last amendment is a codification of the moment on which recipients of distributions from listed companies are considered the beneficial owner for Dutch dividend tax purposes. The so-called dividend record date (i.e. at the end of the working day) is decisive for the ownership of such dividend and whom will be entitled to a tax credit or a reduction or refund of dividend tax.

The new rules are expected to apply from 1 January 2024 onwards.

Personal income tax

Business succession regime

The legislator proposes several changes regarding the business succession regime (BOR) for Dutch personal income tax and Dutch gift and inheritance tax purposes.

The most important changes can be summarized as follows:

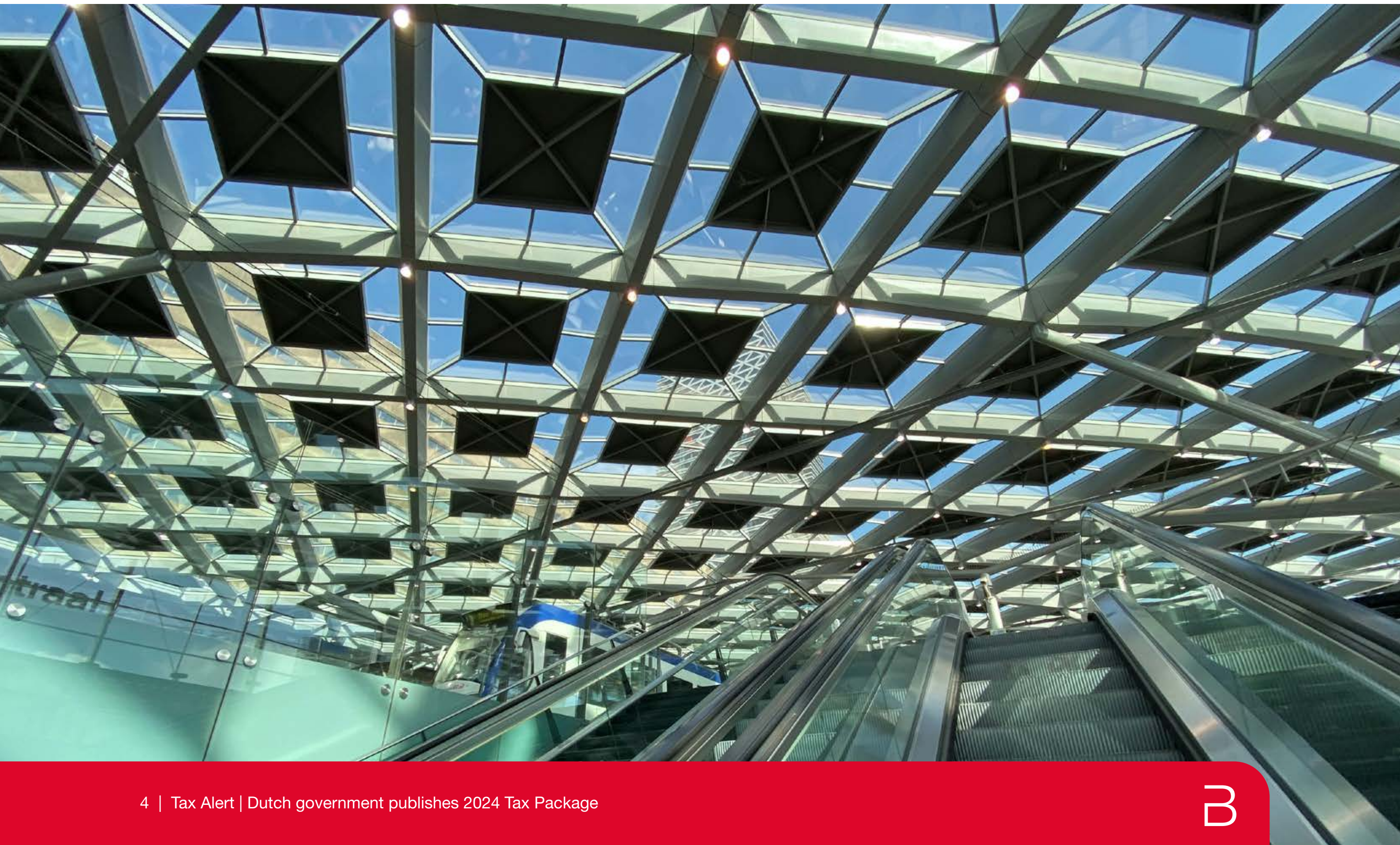
- Immovable property leased to third parties always qualify as investment assets instead of business assets. Consequently, taxpayers cannot benefit from the BOR with respect to such assets per 1 January 2024. Determination of leased immovable property to third parties will be based on two tests. The immovable property will be regarded as investment assets if the immovable property has actually been made available (test 1) or it is intended to be made available to third parties on the moment of gift of inheritance (test 2).
- Per 1 January 2025, the 5% efficiency margin for invested assets will be removed. This margin considers investment assets up to 5% of the value of the business assets as business assets, which therefore qualify for the BOR.
- The employment requirement will no longer apply as per 1 January 2025. This requirement mentions that the successor should be an employee for application of the BOR. The 100%- tax exemption in the BOR increase from EUR 1.2 million to 1.5 million of the business assets, the excess of these business will be exempted for 70% (instead of 83%).

Business incentives
The small-scale investment incentive provides for tax deductions for corporate income tax and personal income tax purposes in connection with the acquisition of one or more new qualifying business assets. Due to positive outcomes from evaluation of the Energy Investment Deduction (EIA), the legislator proposes to extend the application of the EIA including the Arbitrary depreciation of environmental investments (VAMIL) and the Environmental Investment Deduction (MIA) to 1 January 2029. The legislative proposal also proposes to reduce the percentage of deduction of the EIA from 45.5% to 40%.

Lucrative interest
Income derived from instruments qualifying as a so-called lucrative interest may be subject to income tax in Box 1 (progressively taxed at a rate up to 49.5%) which can be considered to be a remuneration for labor. One of the categories of a lucrative interest is ‘comparable rights’ which resemble subordinated shares which class represent less than 10% of the total issued share capital. Share premium and informal share capital must be taken into consideration for the determination of the total issued share capital. It is now proposed that shareholder loans should be included when determining the total issued share capital if such loans would not qualify as informal capital but are considered remuneration for labor. The new rules would apply retroactively on 26 June 2023 and are intended to reverse case law issued by the Dutch Supreme Court.

Box 3 rules
A Dutch tax resident individual is subject to personal income tax in box 3 in respect of investment income (including share interests of less than 5% and real estate which is not used as the residential home (and not derived in the form of an enterprise) of the taxpayer). The tax basis is in principle determined on the value of all investment assets minus debts for the fair value on 1 January each year. As per 1 January 2024, the box 3 rate will increase to 34% (compared to 32% in 2023). The tax-free exemption for the first EUR 57,0000 (EUR 114,000 for taxpayers with a tax partner) of net box 3 assets will not increase and remains at EUR 57,000.

Real estate transfer tax
The current real estate transfer tax exemption (RETT) applicable to share transactions whose supply is subject to VAT will be abolished. Such transactions will be subject to RETT at a rate of 4% per 1 January 2025. Certain transitional rules apply for ongoing projects.



Other rules which enter into force per 1 January 2024 or 2025

Box 2 rules

Box 2 of the personal income tax consists of income derived from substantial interest in entities (i.e. more than 5% shares). From 1 January 2024, Box 2 will have two brackets instead of one, which is currently taxed at 26.9%. Income derived from substantial interest up to EUR 67,000 will be taxed at a rate of 24,5%, the excess will be taxed at rate of 31%.

Conditional withholding tax

The Netherlands levies a conditional withholding tax (**CWT**) on interest and royalty payments at a rate of 25.8% in the year 2023. This tax is only levied on interest and royalty payments to affiliated companies in designated low tax jurisdictions (i.e. jurisdictions with a statutory CIT rate of less than 9% or those on the EU list for non-cooperative jurisdictions) and in hybrid situations. For 2023, the Dutch blacklist includes Anguilla, Bahama's, Bahrain, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Fiji, Guernsey, Guam, Isle of Man, Jersey, Palau, Panama, Samoa, Trinidad and Tobago, Turkmenistan, Turks and Caicos Islands, the United Arab Emirates, the US Virgin Islands, US Samoa and Vanuatu. Until 1 January 2024, the CWT will not yet apply to tax treaty jurisdictions (e.g. United Arab Emirates).

On 1 January 2024, the scope of the CWT will be expanded and will also cover distributions (e.g. dividends) to affiliated companies in designated low tax jurisdictions and in hybrid situations. In addition, the CWT will apply to tax treaty jurisdictions. CWT on distributions will be levied alongside the already existing dividend tax, although the rates and scope of both taxes differ. The dividend tax rate is 15% and the CWT rate is 25.8%. An anti-cumulation rule ensures that cumulation of CWT and Dutch dividend tax is not possible and that the effective tax levied does exceed 25.8%. The tax treatment of Dutch cooperatives under both taxes differs. More specifically, the CWT rules apply to Dutch cooperatives but dividend tax rules only apply to holding cooperatives (in other word, non-holding cooperatives are not treated as withholding agents). Consequently, adverse CWT consequences can also occur for non-holding cooperatives which are currently not subject to Dutch dividend tax. Special attention is required in case of dividend payments to foreign hybrid entities during the year 2024. Based on the currently applicable entity classification rules, which will remain applicable in 2024, foreign entities are often considered hybrid entities and therefore in scope of the CWT rules. As from 1 January 2025 onwards, the new rules for classification of legal entities are expected to apply which will most likely reduce the risk for a hybrid classification for CWT purposes.

30% extraterritorial allowance

It is proposed to maximize the basis for the calculation of the extraterritorial allowance to the maximum amount under the Standards for Remuneration Act (EUR 223,000 in 2023) from 1 January 2024 onwards. A transitional regime applies for employees who already applied the extraterritorial allowance in 2022.

Earning stripping rules

Based on EU Anti Tax Avoidance Directive 1 (ATAD 1), taxpayers cannot deduct all interest expenses from their taxable income in case the interest expenses exceed the interest income. The deductibility of the interest expense excess is limited to 20% of the taxpayers' EBITDA (carving out tax-exempt
income) or a safe harbour threshold of EUR1 million, whichever is higher. From 1 January 2025 onwards, taxpayers which lease properties to third parties are no longer allowed to use the EUR 1 million safe harbour threshold.

If you have any questions regarding the above, please do not hesitate to contact us.

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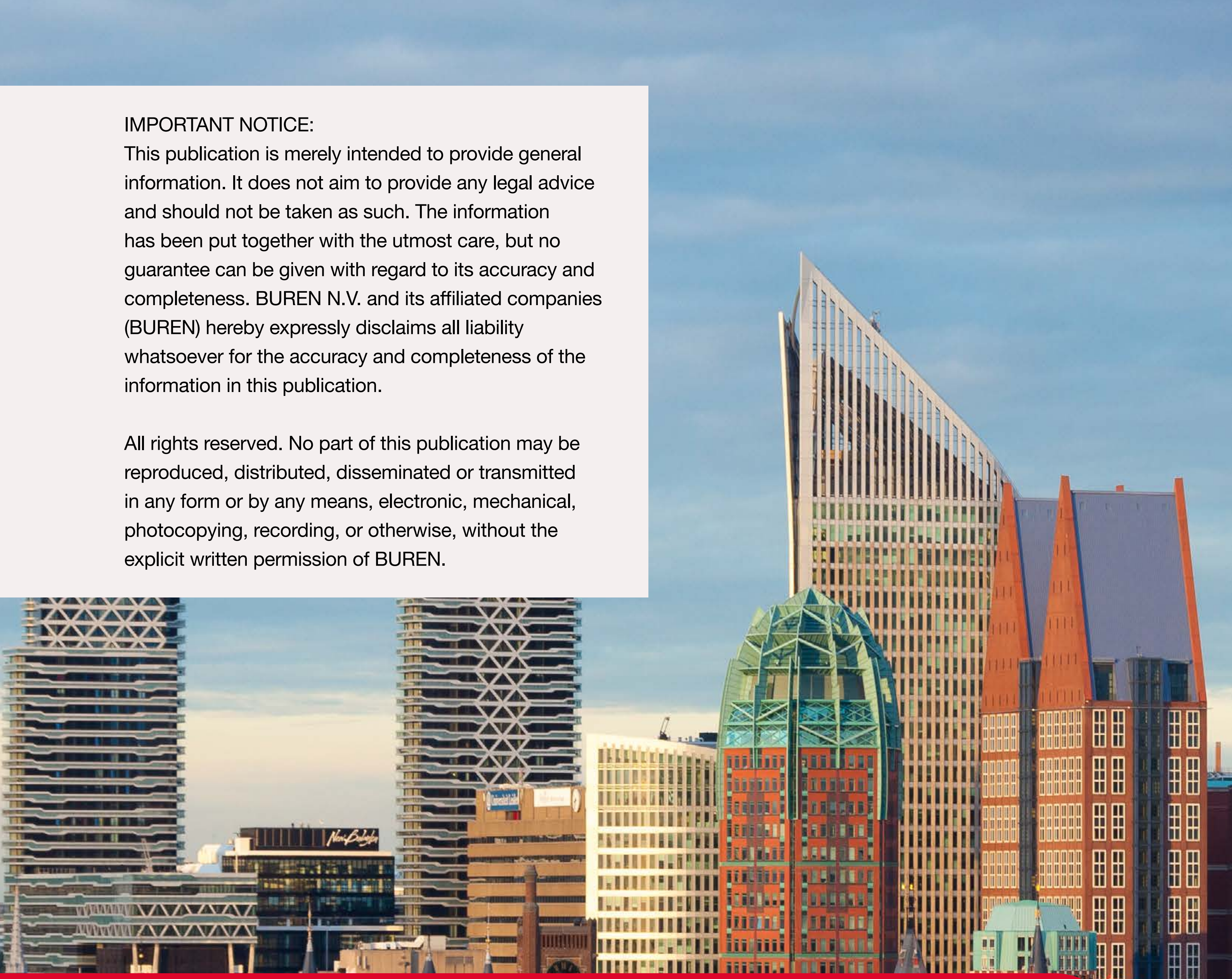

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