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## **NEW DUTCH LEGISLATION ON TRUSTS**

On 1 January 2010 new legislation on gift and inheritance tax entered into force, which reformed the existing Inheritance Tax Act 1956. A number of important changes have been made, such as those concerning rates and exemptions, and in addition some tax avoidance schemes have been tackled, including the Trust.

### **Amendments to the Inheritance Tax Act 1956 - General**

First and foremost, the rates have been substantially reduced and the exemptions extended.

In addition, so-called 'tax avoidance schemes' have been tackled. These include usufruct constructions, the 'grandfather clause' in wills, immediately due and payable interest-free loans, revocable gifts and certain life assurance schemes.

In order to finance the rate reductions and extended exemptions, trusts have also been examined.

In the view of the State Secretary of Finance, a trust is a specific form of tax avoidance scheme.

### **Trusts under old Dutch legislation up to and including 2009**

In the past, many trusts and foundations were set up in practice involving Dutch taxpayers. Either they were the 'settlor' (contributor) or the beneficiary. Under old trust rules, in the case of irrevocable and discretionary trusts these were regarded as floating assets, based on the trust case law of November 1998 (BNB 1999/35-37). The specific features of these trusts were that the settlor of the assets had irrevocably surrendered his assets and it was entirely at the discretion of the trustee to designate the beneficiaries of the assets. These were known as Irrevocable Discretionary Trusts. Neither the settlor nor the beneficiary could be taxed on the assets contributed, and so they were not liable for income tax or inheritance tax. However, the trust was deemed to be a special-purpose fund and the tax authorities could levy gift tax at the highest rate when establishing the trust.

According to the State Secretary of Finance, a sum of more than € 250 million in taxes would be involved with only a very few trusts belonging to residents in the Netherlands, especially in the Caribbean. This implies that it involves assets running into several billions, and would affect only a few dozen families. The State Secretary succeeded in convincing the Lower House that these assets do exist and are taxable, and received approval to introduce new legislation governing trusts.

### **Trusts under the new Dutch legislation with effect from 2010**

The term introduced in 2010 for trusts and similar vehicles is the 'Afgezonderd Particulier Vermogen', or APV (Separate Private Fund). This means a fund with an intended private interest that is more than secondary, unless certain economic rights are obtained in respect of this separation, for example shares. National and foreign foundations and the Antilliaanse Stichting Particulier Fonds (SPF) also fall within the scope of the definition of an APV.

Under the new legislation, trusts are regarded as transparent for tax purposes, and so the assets contributed to the trust are deemed to be part of the settlor's assets. This means that from a Dutch perspective the assets may no longer be regarded as floating assets for tax purposes.