TRANSFER OF THE FAMILY BUSINESS

Advisory Handbook 2025

What should you consider when transferring a business within the family? For family businesses, continuity is one of the key objectives. Fiscal and legal aspects also play a major role. In view of the changes to the Business Succession Scheme (BOR) and the Income Tax Deferral Scheme (DSR), thorough and timely preparation is essential.

The Business Succession Scheme (BOR) and Income Tax Deferral Scheme (DSR) are Dutch fiscal facilities designed to reduce or postpone taxation when transferring business assets within families. These schemes are subject to specific conditions and are intended to facilitate continuity in family-owned enterprises.

TAX CLAIMS ON BUSINESS TRANSFER

When transferring a sole proprietorship (an income tax enterprise), you must account for tax claims. Income tax becomes payable if the transferor realises a fiscal profit on the transfer. This happens when the business is sold for more than its fiscal book value, thereby realising hidden reserves in assets and/or goodwill. The transferor must pay income tax on these profits at the progressive rate in box 1.

Note!
When transferring a business, also consider the disinvestment addition. This taxable profit addition partially reverses investment deductions from the previous five years if more than €2,900 is disinvested in a calendar year (2025 amount; €2,800 in 2024). This is assessed per asset, using the original percentage of the investment deduction, applied to the current transfer price. Fiscal reserves released during the business transfer must also be considered.

If the business includes real estate (such as business premises) recorded on the balance sheet, the buyer may be liable for transfer tax. In the Netherlands, transfer tax ("*overdrachtsbelasting*") is a tax levied on the acquisition of real estate. The standard rate for business real estate is 10.4% as of 2025. This is generally not the case when selling shares in a private limited company (BV), and exemptions may apply under certain conditions, which are discussed later.

If the business is gifted or sold at an undervalue, the recipient must pay gift tax. Gift tax ("schenkbelasting") is a Dutch tax payable by the recipient of a gift, calculated on the fair market value of the assets transferred. Exemptions or reductions may apply under family succession rules. Exemptions and payment schemes may be available, subject to specific conditions, which are briefly outlined below.

Tip!
The transferor of a sole proprietorship may, under certain conditions, defer taxation on the cessation profit by paying a premium for a cessation annuity or by contributing to an annuity savings account or annuity investment right. The annuity premium is deductible from taxable profit. Tax is only payable when the annuity benefits are received. This also allows the conversion of an existing retirement reserve into an annuity. Note: building up a retirement reserve has not been permitted since 2023.

Where shares in a BV are directly transferred by a director and major shareholder, and the sale price exceeds the acquisition cost, a capital gain (or disposal benefit) arises—classified as income from a substantial interest. A BV (besloten vennootschap) is a Dutch private limited company. A substantial interest generally exists when an individual owns 5% or more of the shares. In 2025, this is taxed at 31% (24.5% up to €67,804, and for tax partners, up to €135,608) in box 2.

Tip!
You can avoid immediate income taxation in box 2 upon the sale of shares by using a holding structure. A holding structure typically involves an intermediary BV that holds shares in the operational BV. Gains realised within the holding BV may qualify for tax exemptions under the participation exemption ("deelnemingsvrijstelling").

Ensure this structure is set up in good time. If a sale takes place within three years of setting up the holding company, and certain facilities are used, the Dutch Tax and Customs Administration may raise objections. Although a counter-evidence scheme exists, it is best to avoid any potential disputes.

Note!
Consider the implications under inheritance law when gifting a business. Such gifts may adversely affect the statutory share entitlements of children not involved in the business. Review any inheritance law consequences and amend your will if necessary.

BUSINESS SUCCESSION FOR SOLE PROPRIETORSHIPS (INCOME TAX)

There is no universally optimal way to save income tax when transferring a sole proprietorship. The appropriate method depends on individual circumstances. In family businesses, successors are often familiar with the company—typically a son, daughter, or in-law.

To benefit from tax relief, the successor must already be involved in the business as an entrepreneur. You may then choose between tax settlement or deferral.

SETTLING UP

Settling up means the business owner sells the company, declares the cessation profit to the Tax and Customs Administration, and pays tax on it. A cessation allowance of €3,630 may be deducted from this profit if it equals or exceeds that amount. The SME profit exemption of 12.7% for 2025 also applies in the cessation year. However, the deduction only applies up to a maximum tax rate of 37.48% in 2025. Whether tax is due also depends on the size of the annual profit, cessation profit, and any annuity premium deductions.

Note!
A cessation on the first working day of the year is treated as a cessation in the previous year. The cessation profit is therefore added to the regular annual profit of that prior year.

Tip!
Check for any unused self-employment deduction (NGZA) from previous years. Entrepreneurs cannot claim more than the amount of taxable profit. Any unused portion is carried forward.

SETTLING DUE TO UNUSED LOSSES OR CESSATION ANNUITY

Income tax losses can be offset against income from the past three years and the next nine calendar years. If the transferor has unused losses that can be offset against the cessation profit, settlement may be fiscally beneficial. Converting the cessation profit into an annuity might also justify settlement.

In such cases, little or no tax is payable at the time of transfer, while the successor can depreciate the higher actual value of the business rather than the transferred fiscal book value. The successor also qualifies for investment deductions and, if eligible, can use random depreciation.

Tip!

If the buyer of a sole proprietorship is an individual and the purchase price remains unpaid, the seller may apply for a maximum of ten years' interest-free deferral of income tax on the cessation profit—limited to the transfer of assets. Repayment must be made in equal annual instalments. A formal request and collateral are required.

DEFERRAL (DOORSCHUIVEN)

Deferral means the transferor sells the business and the successor assumes the tax liability. The business is valued similarly to the settlement option, but the (present value of the) tax liability is deducted. The successor uses the fiscal book value of the acquired business for income tax purposes.

Tip!

You can only defer to someone who has been a co-entrepreneur or employee for at least 36 months. Ensure your successor has been involved for at least that long before the transfer.

Let op!

This 36-month requirement may be shortened in cases of prolonged illness.

The successor continues depreciation based on the original book value, offering no depreciation advantage. Taxable profit will be higher than under settlement. They are not entitled to random depreciation and will forfeit the cessation allowance if operations cease within three years.

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Deferral significantly affects the purchase price. Valuation depends on variables such as duration and interest rate, which can lead to disputes between transferor and transferee.

Deferral must be suitable for both parties. Regardless of your choice, numerous conditions apply. Seek professional advice for an informed decision.

GENERAL PARTNERSHIP AS A SUCCESSION INSTRUMENT FOR SOLE PROPRIETORSHIP

If you prefer not to transfer your sole proprietorship at once and wish to supervise the transition or remain involved, a general partnership (VOF) or limited partnership (CV) may be appropriate. In a CV, you may continue as a managing partner (actively involved) or act solely as a limited partner (financial contributor). A VOF (vennootschap onder firma) and CV (commanditaire vennootschap) are Dutch legal forms of partnership. In a VOF, all partners share liability and management. In a CV, limited partners contribute capital but are not involved in management and have limited liability.

Your successor becomes a partner in the VOF, and you agree on a profit distribution that reflects each party's capital contribution. You may also agree on a pre-distribution remuneration based on labour input. You can transfer your share of the partnership to your successor either in one transaction or gradually.

Tip!
If you have a business with significant assets but limited liquidity, a general partnership (or CV) can support succession planning. You remain in the partnership as a financier, enabling your successor to finance the transition using retained profits. Eventually, they may buy out the limited partner. Don't overlook potential transfer tax consequences.

PARTNERSHIP AGREEMENT

Ensure all succession arrangements are formalised in a partnership agreement. A partnership agreement ("vennootschapsovereenkomst") is a formal contract between partners in a VOF or CV that governs profit sharing, contributions, and exit arrangements. By establishing asset allocation provisions, you help ensure business continuity in the event of the partnership's termination. These provisions—known as continuation, survivorship, allocation, or acquisition clauses—govern the continuation of the business and its operational assets after one partner leaves.

You should also specify which assets each partner contributes. For example, if you intend to retain ownership of business premises, exclude them from the partnership and designate them as your personal business assets. Hidden reserves in the property will remain with you, and you can lease the premises to the partnership.

BUSINESS SUCCESSION FOR A PRIVATE LIMITED COMPANY (INCOME TAX)

If your business is a private limited company (BV), be aware that transferring shares results in a capital gain, calculated as the difference between the acquisition cost and the transfer or sale value. This gain is taxed at 31% in box 2 in 2025 (24.5% up to €67,804 and, for tax partners, up to €135,608).

If shares are gifted or sold for less than market value, the full value is still subject to tax. However, if the BV holds business assets and conditions are met, you may qualify for a deferral of tax liability. The donor then does not settle the tax, and the recipient takes over the original acquisition value—this is the deferral scheme (DSR). The DSR for shares (DSR ab) only applies to business assets, not to investment assets. Investment assets are generally considered non-operational holdings such as securities, investment properties, or cash reserves not used in active business activities.

One condition for the DSR ab in 2024 was that the recipient must have been employed by the BV for at least 36 months. From 1 January 2025, this employment condition is abolished; the recipient must be at least 21 years old at the time of the gift.

Tip!
If the DSR applies, the Business Succession Scheme (BOR) for gift tax usually applies as well.

Tip!
If your successor owes you the purchase price, you may, under certain conditions, apply for a ten-year interest-free payment plan for the income tax liability. One requirement is that less than 30% of the BV's assets are investment assets. The transferor must submit a formal request and provide security.

Important!
If the shares are gifted, you cannot request a payment plan for income tax.

HOLDING STRUCTURE

To avoid immediate tax on capital gains, many entrepreneurs use a holding structure instead of a standalone BV. If your holding company owns shares in the operating company, it does not pay tax on capital gains from selling the operating company due to the participation exemption. The proceeds remain within the holding company. Only when dividends are distributed to you personally is tax applied—24.5% up to €67,804 (or €135,608 for tax partners) and 31% on amounts above.

BUSINESS SUCCESSION INVOLVING REAL ESTATE – TRANSFER TAX

If your business succession includes real estate as part of the business assets (in a sole proprietorship or BV), be aware of the 10.4% transfer tax on the real estate's value. Exemptions may apply in some succession scenarios.

TRANSFER TAX EXEMPTIONS

For sole proprietorship family successions, a transfer tax exemption may apply under certain conditions. This includes transfers to children, grandchildren, siblings, or their spouses. The entire business (possibly in phases) must be transferred, and the real estate must be business-related.

If the transferor and successor enter into a partnership, an exemption may apply when contributing business assets and real estate. A further exemption applies during asset division, provided the original contributor receives the real estate and it was initially transferred without tax.

Note!
If you hold real estate in your business, consider the transfer tax consequences during succession planning. Family transfers may allow you to avoid transfer tax through exemptions or by excluding the real estate.

Tip!
Include your succession plan in your will. Bequeathing the business via a legacy allows the successor to receive it as an inheritance, exempt from transfer tax. This also applies if your will requires the successor to compensate the estate for other heirs.

REAL ESTATE ENTITY (ONROERENDEZAAKRECHTSPERSOON)

Transfer tax may also apply when transferring shares in a BV classified as a real estate entity. A company is considered a real estate entity if more than 50% of its assets are real estate (at least 30% in the Netherlands) and 70% or more of that real estate is used for real estate activities (e.g., acquisition, sale, or operation). If someone acquires (or already holds) at least one-third of the shares, transfer tax applies on the value of the real estate.

BUSINESS SUCCESSION SCHEME FOR GIFT AND INHERITANCE TAX (BOR)

The Business Succession Scheme (BOR) under inheritance tax law applies to the transfer of sole proprietorship assets (including those in a sole trader business, general partnership, or CV) and to substantial interests in active BVs. To use the scheme, a formal request must be submitted via the gift tax return, which must be filed within two months after the year in which the business or shares were acquired.

Tip!

The BOR also applies, under certain conditions, to inherited sole proprietorships and substantial interests in BVs.

Note!

From 2025, the BOR for gifts only applies if the recipient is at least 21 years old at the time of the gift. This requirement did not apply in 2024.

Important!

From 2026, anti-abuse rules will apply to prevent repeated use of the BOR.

To qualify for the deferral scheme (DSR ab) and BOR on the gifting or inheritance of shares, the donor or deceased must have held a substantial interest in the BV—generally, at least 5% of the issued share capital.

Note!

A legislative amendment has been adopted to restrict the DSR ab and BOR to ordinary shares with a minimum 5% interest. This will exclude profit-sharing certificates and share options once the change takes effect. The exact date is not yet confirmed.

EXEMPTION

The BOR exemption applies to the going concern value of the business. If the liquidation value exceeds the going concern value, the difference is also exempt. This is particularly relevant for capital-intensive companies with modest profits. In 2025, the exemption is 100% up to €1,500,000 and 75% on the excess.

PAYMENT ARRANGEMENT

If the going concern value exceeds the exemption threshold, the recipient may request an interest-bearing payment deferral of up to ten years on the gift tax owed on the taxable portion.

OWNERSHIP AND CONTINUATION REQUIREMENTS

The donor must have operated the business for at least five years before the gift is made (ownership requirement). For gifted shares, the donor must have held the substantial interest for five years.

The successor must continue the business for a specified number of years. For gifts made before 1 January 2025, the requirement is five years. From 1 January 2025, the requirement is three years. If this is not met, gift tax becomes payable on the received business.

Important!
In the case of inheritance, a minimum ownership period of one year applies before death.

Tip!
From 2026, planned reforms will make it easier to change a business's legal form or structure without breaching the continuation or ownership conditions.

Note!
From 2026, "walker investments"—where older individuals acquire a business shortly before death to reduce inheritance or gift tax—will be discouraged. The proposal includes extending the ownership period for individuals who, at the time of death, are state pension age plus three years, or at the time of gifting, state pension age plus seven years.

BUSINESS ASSETS

The BOR exemption only applies to business assets. For a sole proprietorship, this includes assets that must or may be placed on the business balance sheet—mandatory business assets or those where business designation is optional. Assets that must be treated as private (such as long-term investment assets) do not qualify and must be excluded from the business balance sheet.

Important!
From 2025, assets with a market value of €100,000 or more that are used more than 10% for private purposes must be split into business and non-business components. Such assets will no longer be fully treated as business assets.

The exemption for BVs also only applies to actual business assets, following the same rules used for sole proprietorships. Until the end of 2024, up to 5% of investment assets could be considered business assets under an efficiency margin. This margin will no longer apply to the BOR from 2025. You may no longer classify 5% of investment assets as business assets.

Important!
For the DSR ab related to share gifts and inheritance, the efficiency margin will be abolished at a later date—expected no earlier than 1 January 2028.

Tip!
Maximise the classification of liquid assets as working or investment capital, rather than long-term investment assets, to ensure they qualify for the BOR.

In a holding structure, business assets are assessed on a consolidated basis. This means assets of the operating company are attributed to the holding company, allowing the exemption to apply when holding company shares are gifted. The ultimate shareholder must hold at least a 5% indirect substantial interest in the operating company.

LETTING OF PROPERTY IS USUALLY AN INVESTMENT ASSET

As stated, the BOR and DSR ab only apply to business assets. The Dutch Tax and Customs Administration has now clarified that real estate let or made available to third parties is classified as investment assets and does not qualify for BOR or DSR ab from 1 January 2024.

Tip!
Real estate used in your own business remains exempt and qualifies as a business asset. So does property let for short-term use, such as hotel rooms or sports facilities.

ASSETS MADE AVAILABLE FOR USE (TBS REGULATION)

The BOR may also apply to assets made available for business use. For example, if a director-major shareholder rents a building to their BV and then gifts both the building and the shares to a successor, the BOR may apply to both—provided the building is used by the BV.

Note!
Gifting is less favourable here due to income tax liability. The difference between the market value and the book value of the property is taxed at progressive income tax rates. No deferral is available. However, payment can be spread over up to ten years if requested.

IN CONCLUSION

Start tax planning for a business transfer well in advance. Allow for a preparation period of five to seven years. For personalised advice and a full review of your options, please contact us.

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