

# The importance of Dutch family businesses and the tax facilities for transfers under inheritance law or gifts

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## Abstract

The authors discuss the importance of family businesses for the Dutch economy and whether specific tax legislation should incentivise these enterprises or remove obstacles. There are about 300 thousand family businesses in the Netherlands which form a major part of the economy. About thirty percent of the Dutch labour force is employed in family businesses. Current Dutch tax law has no specific tax regime for family businesses. Nevertheless, there are regulations applicable to the transfer of a family business under inheritance law or gifts which are mainly used by family businesses. In this contribution, Dutch tax facilities that apply to a business transfer by gift or inheritance are considered and their pros and cons are discussed. Various Dutch studies show that the exemption in the gift and inheritance tax based on the going concern value is ineffective and that most firms do not need such a favourable treatment. This has fuelled the debate regarding the continuation and design of the facilities and have led to discrimination issues.

**Keywords:** Business succession; family businesses; taxation; gifts; inheritances.

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## 1. Introduction

In this contribution, we discuss the importance of family businesses for the Dutch economy (section 2) and whether specific tax legislation should incentivise these enterprises or remove obstacles (section 3). Current Dutch tax law has no specific tax regime for family businesses. Nevertheless, there are regulations applicable to the transfer of a family business under inheritance law or gifts. This legislation is not limited to family businesses, but because inheritances and donations (of business assets) mostly take place within the family, these facilities are mainly used by family businesses. In section 4 we consider these tax facilities that apply to a business transfer by gift or inheritance. Various studies show that the exemption in the gift and inheritance tax based on

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the going concern value is ineffective and that most firms do not need such a favourable treatment. This has fuelled the debate regarding the continuation and design of the facilities and have led to discrimination issues. In section 5 we discuss the pros and cons of business succession facilities. In section 6, we look a little further ahead into the future of tax legislation on family business. We conclude this contribution with a summary. Dutch (tax) legislation does not include the term 'family business'. For the economic importance of family businesses, we follow the definition used by Statistics Netherlands (CBS) (see section 2).

## 2. The economic position of family businesses in the Netherlands

### 2.1. Introduction: numbers and figures

To sketch the position of family businesses in the Dutch economy, it is important to have a clear understanding of family businesses. There are different definitions of family businesses. Two general requirements are that the family has most of the shares of the company. The second is that at least one family member is part of the management team. Also, this article takes these two requirements as the core characteristics of family businesses. However, for data on family businesses we use the data sources of Statistics Netherlands (CBS) which is the main provider of economic statistics in the Netherlands. They use a wider definition.<sup>1</sup> A family business is a company in which one family directly or indirectly has a majority of control (which is 25% for listed companies) and the family must be formally involved in the management and the company must also be legally transferable. This definition also includes first-generation family businesses that have not yet been passed on to the next generation. Sole proprietorships and self-employed businesses are also family businesses according to this definition (EC, 2009:10).<sup>2</sup> Statistics Netherlands explains that the statistics also include these groups, but self-employed persons without employees are often not included in the statistics, because they do not meet the condition that ownership or capital can be transferred. Moreover, CBS distinguishes a separate category "1 person employed". This includes self-employed by definition, and it thus not included in the data on family businesses.

This definition includes many (limited) corporations, but not exclusively. Although Statistics Netherlands should know the legal form of family businesses based on their selection, data are not provided in recent reports on family businesses. The data on family businesses overlap with the presented data on closely held ownerships, but they differ in two respects. First, the selection here is limited to family businesses. This is a (large) subset of all corporations. Second, the selection is more extensive because family businesses with other legal forms are also included in the figures.

There are approximately 285 thousand family businesses in 2020 (CBS, 2022).<sup>3</sup> Almost a quarter of these companies are active in trade. Agriculture, retail and specialist business services are sectors where about 10% of family businesses are active.<sup>4</sup> They are often small companies with no more than 10 employees. There are only 565 large companies with more than 250 employees in the beginning of 2021.

Almost half of these companies have already existed for 10 to 30 years and about 50 thousand companies have even a longer history.<sup>5</sup> The larger family businesses are on average older than the smaller family businesses; family businesses are generally older than other businesses. In other

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1. The data come from several CBS publications: *Familiebedrijven in Nederland 2020-2021*, *Familiebedrijven in Nederland 2019-2020*, *Familiebedrijven in Nederland 2015-2018* (in Dutch).

2. *Familiebedrijven in Nederland 2015-2018*, [cbs.nl](https://www.cbs.nl), 2021 (in Dutch) and *Final report of the Expert Group: Overview of family-business-relevant issues* (Report of the European Commission, 2009).

3. *Familiebedrijven in Nederland 2020-2021*, CBS, 2022 (in Dutch).

4. See CBS, 2022, *Familiebedrijven in Nederland, 2020*.

5. This is about 18% of the family businesses.

businesses there are relatively many younger firms. These are also smaller firms with at most ten employees. If we compare larger firms, the differences in age structure between family and non-family business are much smaller.

In 2020, the turnover of these companies was 456 billion euros.<sup>6</sup> This is a quarter of the total turnover in the Netherlands, which is about 1,616 billion euros in 2020. The limited number of large companies contribute to almost 35% of total turnover. This number highlights the importance of large businesses for the Dutch economy, but this applies to a lesser extent to family businesses. The reason is that there are relatively fewer large businesses (with more than 250 employees) owned by a family.

**Table 1** – Turnover of family businesses and other firms in the Netherlands, 2020 (billion euro)<sup>7</sup>

Size of firm	Number of employees	Turnover total	1 person employed	Family businesses	Other firms	Non-firms
Small	0-50	557.4	90.6	248.4	214.9	3.5
Medium	51-250	465.6	0	112.6	347.7	5.3
Large	Above 250	592.6	0	95.1	493.2	4.3
<i>All</i>	<i>All</i>	1,615.6	90.6	456.2	1,055.8	13.0

The heterogeneity between family businesses is large. In 2016, the largest two businesses - Heineken and SHV – had a turnover of 20.5 and 18.2 billion euro respectively. The largest ten family businesses had a turnover of 77 billion euro and the hundred largest ones together 130 billion euro. This is about 30% of the total turnover of all family businesses.<sup>8</sup>

The added value of family businesses is 115 billion euros in 2020, slightly more than a quarter of the turnover. The ratios in added value between the size of the companies (measured in number of employees), and in relation to the other companies are similar to those for turnover. The family businesses employ approximately 2.5 million people, which is about 30% of the Dutch labour force.<sup>9</sup>

**Table 2** – Value added (billion euro) and employment(thousand) of family businesses in the Netherlands, 2020.<sup>10</sup>

Size of firm	Number of employees	Value added total	Value added family businesses	Employment total	Employment Family businesses
Small	0-50	155.8	68.0	1,990	1,278.3
Medium	51-250	92.8	26.5	1,438.2	569.9
Large	Above 250	146.3	20.9	4,441.6	620.7
<i>All</i>	<i>All</i>	394.8	115.4	7,869.8	2,469

Although we can only present average numbers for large groups of firms, the numbers show that the heterogeneity between family businesses is large. There are many small firms and relatively less very large firms. Family businesses are important for the overall economy and for employment.

6. These numbers do not include the sectors agriculture and forest, and financial services. The turnover of all corporations was about 500 billion in 2019. It seems the largest part comes from family businesses.

7. Source: CBS, 2022, *Familiebedrijven in Nederland 2020-2021* (in Dutch). The data include turnover of firms and institutions; non-financial sectors.

8. <https://www.consultancy.nl/nieuws/12473/de-top-100-grootste-familiebedrijven-van-nederland>, see also <https://www.ewmagazine.nl/economie/achtergrond/2020/04/dit-zijn-de-grootste-familiebedrijven-750630/> for 2019.

9. The source of these numbers is also CBS, see the note at the bottom of the table.

10. Source: see table 1.

Moreover, family businesses seem to exist longer than non-family firms and are therefore contribute to the continuity of the economy.

## 2.2. The development of family businesses between 2015 and 2020<sup>11</sup>

The overall economy of the Netherlands did well between 2015 and 2020. After the Great Recession in 2009-2010 and Euro crisis in 2011-2012, the economy started to grow until the Covid-crisis, which started in February 2020. The economy grew by 2.3% per year mainly due to the thriving market economy and more exports, before the Covid crisis disrupted society and the economy shrunk by 4%.<sup>12</sup> Employment grew by 1.7% annually and unemployment was only 4.4% in 2019. Government debt was reduced impressively from 65% in 2015 to 49% of GDP in 2019 due to higher tax revenue, less government expenditures and economic growth. 2020 was the first year of the Covid crisis, which impacted the economy due to lockdowns and high uncertainty.

Between January 2015 and 2021, the number of family businesses increased with about 15 thousand firms, somewhat lower than the increase of non-family businesses. In absolute numbers, the new firms are mainly those with one employee, but in relative terms the number of firms with 10 or more employees increased somewhat faster. The number of large firms (more than 250 employees) even increased by about 60%, from 370 to 535. Over time, the average age of family businesses is also increasing.

About 2% of the family businesses is a fast-growing firm, indicating that for at least three years the number of employees increases with at least 10%.<sup>13</sup> Here, the differences between family and non-family businesses are small, but the share of fast-growing firms in non-family businesses is about 0.5% points higher. In particular, between 2017 and 2020 there are many fast-growing firms, but this number decreased in 2021 due to the Covid crisis.

Figure 1 compares the economic development between family businesses and other businesses between 2015 and 2020. We present three economic variables: turnover, value added and employment. We compare the growth of these variables over time. For the comparison we set the level of each variable at 1 in 2015. The lines reflect the growth of these variables since 2015. So, value added of other business is 1.25 in 2019, which reflect that value added has increased by 25% between 2015 and 2019.

We see that between 2015 and 2019, value added and turnover of other firms increase monotonically. Between 2019 and 2020, due to the Covid-crisis, we see a sharp decrease in turnover and value added. The lockdowns and uncertainty had a severe impact on economic development. Turnover and value added of family businesses is developing at a more moderate pace but has still increased between 2019 and 2020. Compared to the development of other firms, this is remarkable, suggesting that these firms are more resilient regarding the Covid crisis. Unfortunately, we do not have data of later years available at this moment, so we are not sure whether family businesses were still resilient against the Covid-crisis in 2021.<sup>15</sup> The growth of employment develops more moderately between 2015 and 2020. For other businesses there was a small decrease in employment between 2019 and 2020, but for family businesses it remained stable.

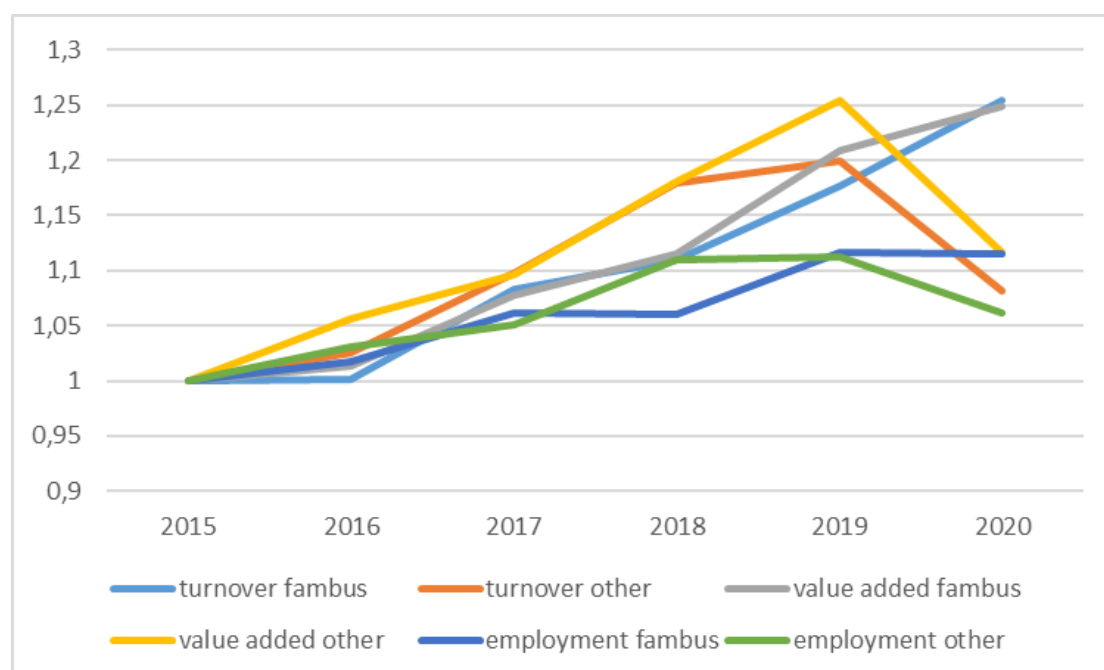
11. For stock variables like the number of firms we have data for seven years between January 1<sup>st</sup> 2015 and January 1<sup>st</sup> 2021. For economic variables like turnover, value added and employment we have data for six consecutive years, 2015-2020.

12. The numbers in this section are from CPB, [Verzamelde bijlagen met lange reeksen t/m 2028 \(mlt\)](#) (in Dutch).

13. Another condition is that the firm has at least 10 employees in the first year of this growth period.

14. Source: CBS, 2022, *Familiebedrijven in Nederland 2020-2021*; CBS 2021, *Familiebedrijven in Nederland 2019-2020*; and CBS (2020), *Familiebedrijven in Nederland 2015-2018*. The data include turnover of firms and institutions; non-financial sectors.

15. Amore, M., F. Quarato and V. Pelucco (2020), CEPR Discussion Paper 14759, show that also in Italy firms with controlling family shareholders fared significantly better than other firms in the Covid-19 crisis. This effect is particularly pronounced among firms in which a family is both the controlling shareholder and holds the CEO position.



**Figure 1** – Annual growth rates of turnover, value added and employment of family and non-family businesses, 2015–2020<sup>14</sup>

These numbers reflect an average development. Between firms the differences can be huge, also heavily affected by the economic sector in general and the severity of the lockdown. Also, many family businesses were hurt by the Covid-crisis, but in particular middle-sized firms (50 to-249 employees) did on average well in 2020. For other firms that is not the case.

It is not clear why these firms had a better economic performance than others. According to a recent survey of PwC for more than 2000 family businesses in 82 countries, the family businesses themselves are very positive about their skills to adapt to changing circumstances.<sup>16</sup> Moreover, they often have a good governance structure, which facilitates decision making. Their focus is not only on economic growth and profits: nearly all Dutch firms in the survey have an ESG-policy or are planning to develop it.

### 3. The taxation of family businesses

#### 3.1. Introduction

The question arises whether specific tax legislation should incentivise family business or remove obstacles. And, if so, are there any possible discrimination issues or state aid issues? Dutch law has no specific tax legislation that incentivises family business (section 3.2). However, there are tax facilities for business transfers in general (section 3.3). Most of these tax facilities also apply to transfers of non-family businesses but are mostly used by family businesses.

#### 3.2. Desirability of a specific tax regime for family businesses?

If the family business is a corporation, it is taxed according to the corporate income tax in the Netherlands and distributed dividend is taxed according to the law on personal income taxation.

16. PwC's Global Family Business Survey (11<sup>th</sup> edition).

Income of non-incorporated businesses falls under personal income taxation, but there are provisions for firm owners as tax allowances for self-employed businesses and a reduced rate on profit income, so that the effective tax rate on business income is in general lower than for labour income. Moreover, there are some tax deductions for businesses regarding investments and loss offset provisions in both the corporate income tax and personal income tax law.

Neither tax regime distinguishes between family and non-family business and the question is whether this should be the case. Family businesses distinguish themselves due to the role of family in the management and ownership of the firm, see the definition in section 2. This affects decisions regarding the financing of the firm, the position of the management and succession,<sup>17</sup> among others, but does this justify a separate treatment in the tax law? In our opinion, this is in general not the case, although this could be different for some specific tax facilities, which we will discuss in section 4.

There are various arguments to plea for an equal tax treatment of family and non-family businesses. First, although family businesses make a major contribution to the economy and form a large share of corporate firms, their precise contribution is unknown due to missing data. The findings in section 2 already point to the conclusion that there is hardly any reason to treat family business differently in the corporate income tax law. Because of their number and economic impact on the economy, a special treatment would require changes in the corporate income tax law that affect many of even most firms. Family businesses contribute for about a quarter of the total turnover and valued added in the Netherlands. However, it is not a specific, small group with distinct economic features that would require a special treatment in the corporate income tax law regime.

The differences between firms are large regarding the economic sector, legal structure, productivity, size, and international orientation, but these differences are irrespective of the ownership and management by a family. So, if these differences would require separate tax treatments, this should be based on other legal and economic characteristics than family relations.

Another argument is that a separate tax treatment of family and non-family businesses would be arbitrary.<sup>18</sup> If this would require a certain degree of ownership, such as 25% of the shares, it is hard to defend why firms with 24% and 25% of family ownership are taxed differently. This could also induce firms to optimize the degree of ownership because of favourable tax treatment. Besides, the definition of family membership is not always unambiguous and could lead to inconsistencies between family and tax law. If family businesses would be distinguished from other businesses, there should also be clear criteria on the involvement of the family in the management of the firm, criteria that are also arbitrary.

### 3.3. Removing obstacles for family business succession

Tax facilities for business transfer focus on the accompanying taxes. The government uses exemptions, roll-over facilities and – usually interest-free – payment arrangements.<sup>19</sup> There is only one facility especially designed for a transfer of the business within the family. On the basis of this facility, the transfer tax on real estate ('overdrachtsbelasting') is exempt when the business is transferred to a partner, child, or a sibling. This facility aims to prevent the real estate from becoming fragmented because of the legitimate portion of an inheritance to which a disinherited child is entitled in the Dutch Succession law. This family exemption is also applicable in case of sale of the business. The Dutch Supreme Court ruled that this family-facility does not violate the principle of

17. OECD (2015), G20/OECD Principles of Corporate Governance, OECD Publishing, Paris.

18. See also the discussion on a separate tax treatment for closely-held companies in the corporate income tax law compared to multinationals firms in R.P. van den Dool a.o., 'De fiscale positie van de dga', *TFO* 2023/184.1, section 6.2.1. Although this discussion is not focussed on family businesses, many closely-held companies are family businesses and the arguments on the arbitrary distinction between different types of firms are similar.

19. In total, Dutch business succession tax legislation comprises 15 business succession facilities, pertaining to the collection of income tax, gift and inheritance tax, and transfer tax on real estate.



equality.<sup>20</sup> According to the Supreme Court, the impact of the legitimate portion offered adequate justification for the former parent-child exemption.<sup>21</sup>

Dutch law has also facilities in the Income Tax Act as well as in the Inheritance Tax Act to reduce business transfer taxes. In the Netherlands the transferor must pay income tax on the difference between the fair market value and the purchase price of the shares or book value of the business. The transferee owes tax if he or she acquires the business by inheritance or gift. The main purpose of the facilities is to prevent liquidity problems due to the payment of tax in business transfers and to remove obstacles in (family) business succession.<sup>22</sup> Although the legal text does not specifically refer to family businesses, the explanatory notes to the legislation on business transfers show that the Dutch legislator does keep family businesses in mind.<sup>23</sup> Because these facilities refer to donation or inheritance of a business, family businesses benefit most from these facilities. After all, donation or inheritance usually takes place within the family.

The facilities in the Income Tax Act and Inheritance Tax Act are applicable when the testator or donor has a substantial interest which is 5% or more of the total amount of shares. The Dutch business transfer tax law however contains a specific rule applicable for old family businesses, known as the dilution rule. This rule implies that an indirect substantial interest of at least 0.5% that has fallen below the 5% threshold (diluted) solely by inheritance, matrimonial property law or gift may nevertheless qualify for the facilities. Recently the House of Representatives amended the dilution scheme.<sup>24</sup> As from 2025 every interest which has been a substantial interest in the past and which has fallen below the 5% threshold by inheritance, matrimonial property law or gift will qualify for the facilities. The state secretary of Finance has raised objections to this adjustment. First, this would result in a different tax treatment of family businesses versus non-family businesses, for which there is in his opinion no justification.<sup>25</sup> As a result, according to the state secretary, there is a risk that this alternative will not comply with state aid rules and will violate the principle of equality. Moreover, this adjustment would lead to an increase in the complexity of the scheme.<sup>26</sup> Furthermore with such small interests the continuity of the company is not easily jeopardised, according to the state secretary.<sup>27</sup> Despite the state secretary's objections, the House of Representatives amended the dilution scheme.<sup>28</sup> Both the facilities of the income tax and gift and inheritance tax will be discussed below.

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20. HR 6 June 2003, ECLI:NL:HR:2003:AF9678, BNB 2004/5 and 7 November 2003, ECLI:NL:HR:2003:AN7744, BNB 2004/33 and 23 June 2006, ECLI:NL:HR:2006:AX9130, BNB 2006/292.

21. Hogeveen argues that this is not the case because this law only applies in the situation between parents and children. The extension to brothers and sisters is, in her opinion, contrary with the principle of equality.

22. Kamerbrief d.d. 9 December 2022 (parliamentary letter), *Kamerstukken II 2022/23*, 32 637 (parliamentary documents), nr. 525, p. 1, footnote 2; 'Antwoorden op Kamervragen over bericht 'Koester familiebedrijven, ze dragen de economie' (Answers to parliamentary questions)', d.d. 19 September 2023, answer to questions 8 and 13, and Kamerbrief (parliamentary letter) d.d. 16 October 2023 over de Uitvoering motie Stoffer en Inge van Dijk onderzoek BOR meer richten op familiebedrijven, p. 3.

23. See for instance *Kamerstukken II 2023/24*, 36 421, nr. 3, p. 1, 3 en 16.

24. *Kamerstukken II 2023/24*, 36 421, nr. 11, p. 2 en 3.

25. Kamerbrief d.d. 16 October 2023 over de Uitvoering motie Stoffer en Inge van Dijk onderzoek BOR meer richten op familiebedrijven, p. 3.

26. Kamerbrief d.d. 16 October 2023 over de Uitvoering motie Stoffer en Inge van Dijk onderzoek BOR meer richten op familiebedrijven, p. 4.

27. Kamerbrief d.d. 16 October 2023 over de Uitvoering motie Stoffer en Inge van Dijk onderzoek BOR meer richten op familiebedrijven, p. 5.

28. *Kamerstukken II 2023/24*, 36 421, nr. 11, p. 2 en 3.

## 4. Gift and inheritance: existing tax solutions

### 4.1. Introduction

In this section, we limit ourselves to the gift and inheritance tax facilities (section 4.2) and the income tax facilities (section 4.3). These facilities apply to a business transfer regardless of the legal form. It therefore makes no or little difference for the application of the facilities whether the business itself is transferred or the shares in a legal entity operating the business. The transfer of shares is subject to the requirement that the testator or donor must own at least 5% of the shares (substantial interest). As shown before there is a dilution rule specifically for family businesses. There are no requirements on the size of the donated package.

### 4.2. Exemption from gift and inheritance tax

#### 4.2.1. Content and terms of the facilities

The levy of gift and inheritance tax is subject to an exemption for the acquisition of business assets: the business succession regime (in Dutch abbreviated as BOR). It contains two exemptions and one payment arrangement. The first exemption is applicable if the liquidation value of a company is higher than the going concern value. This difference is 100% exempt. The second exemption of 100% per enterprise applies up to a value going concern of € 1.325.253 (2024). Of the excess, 83% (2024) is exempt. This exemption is calculated based on the going concern value. The non-exempt part of the company assets is subject to a deferral of payment scheme. The gift or inheritance tax can be paid after 10 years. This deferral is interest-bearing.

The exemptions only apply if the possession requirement and the continuation requirement are met. The possession requirement means that the testator must have operated the business for at least one year. For gift tax purposes, the possession requirement is five years. The transferee must continue the business for five years. If the transferee discontinues the business during that period, the exemption lapses and the gift or inheritance tax is still due. The legislator introduced these requirements to ensure that the facility only applies to real business successions.

#### 4.2.2. History of creation of the facilities

The two exemptions have a different background. The first exemption has the characteristics of a valuation facility. For gift and inheritance tax purposes, the taxable base is the value going concern, unless the liquidation value is higher. In the latter case, if the transferee does continue the business, the difference between the liquidation value and the value going concern is conditionally exempted. After five years of continuation, the exemption is final. The valuation facility has its origins in the agricultural sector.<sup>29</sup> That sector often involves capital-intensive enterprises with low returns. Meanwhile, the facility is formally and effectively open to all industries so there is no problem with state aid.<sup>30</sup>

Until 1997, the second facility consisted only of a deferred payment scheme,<sup>31</sup> which was only used 16 times a year on average.<sup>32</sup> Following the European Commission's recommendations to Member States to prevent liquidity problems due to taxation in order to ensure the survival and continuity of (family) businesses and maintain employment,<sup>33</sup> the facility was extended to a 25% exemption.

29. Invocation state secretary of Finance 25 August 1965 nr. D5/4310, V-N 6 October 1965, pt. 17.

30. Hoogeveen's thesis shows that in the 2002-2005 period 75% of cases the business was agriculture, livestock or fishing industry, followed by retail (7%). M.J. Hoogeveen, *De kwaliteit van de fiscale bedrijfsopvolgingswetgeving*, The Hague: Sdu 2011, p. 424.

31. *Kamerstukken II* 1995/96, 24 428, nr. 3, p. 14 and *Kamerstukken II* 1997/98, 25 688, nr. 3, p. 7.

32. *Kamerstukken II* 1989/90, 20 588, nr. 3, p. 75.

33. European Commission Recommendation of 7 December 1994 on the transfer of small and medium-sized enterprise, European Commission, nr. 94/1069/EG, art. 1 jo. art. 6 section b.



With this extension, the Dutch legislator intended to prevent the payment of gift and inheritance tax in the case of a business succession from requiring the withdrawal of liquid assets from the business to pay the tax burden, which would jeopardise the continuity of the business and thus employment.<sup>34</sup> Subsequently, the percentage of the facility was increased in 2002 (30%), 2005 (50%) and 2007 (75%).<sup>35</sup> Per 2010, the proposal was initially to increase the percentage further to 90% but eventually became 100% on company assets up to a value of 1 million and 83% on the excess.<sup>36</sup> The last increase was motivated by the legislator that the purpose of the facilities is to 'encourage an unimpeded continuation of economic activity for real business transfers'.<sup>37</sup> As from 2025 the 100% exemption of business assets is raised up to a value of €1.5 million and the excess will be exempted for 75%.<sup>38</sup> With this measure, the legislator aims to shift the benefit of the exemption more to the smaller enterprises and less to the large enterprises.<sup>39</sup>

#### 4.2.3. Case law: no violation of equality principle

With the facilities, the legislator makes a distinction between, on the one hand, acquirers of entrepreneurial assets, who can claim a tax facility and, on the other hand, acquirers of other assets, who are not eligible for it. This distinction may be justified by a reasonable and objective justification. A justified distinction exists if the legislator 1) thereby serves a legitimate aim and 2) the means of achieving that aim are proportionate.

The discussion of whether there is a violation of the principle of equality concerns mostly the exemption on the value going concern. The Dutch Supreme Court ruled that the legislator pursued a legitimate objective with the exemption, namely, to contribute to the unfettered continuity of family businesses within the entrepreneur's circle, to stimulate entrepreneurship, to preserve employment and economic diversity.<sup>40</sup> The Supreme Court then ruled that there was a reasonable relationship between the chosen means and the intended purpose. In the Supreme Court's view, 'the prohibition of discrimination does not go so far that the distinction is permissible only if the existence and extent of that problem and the effectiveness of the solution chosen have been empirically established'. The Supreme Court added that 'in view of its discretion, the tax legislator may also base such a distinction on assumptions about the problem and the effectiveness of the solution, unless those assumptions are that non-obvious that it is manifestly unreasonable to base them on this distinction'.<sup>41</sup> The European Court of Human Rights has also ruled that with the current facilities, the Dutch legislator has not exceeded the set limits of its wide discretion; therefore, there is no violation of the principle of equality.<sup>42</sup> Because of the legislator's wide margin of discretion, the court tests only marginally whether there is a violation of the principle of equality.

### 4.3. Income tax facilities

The income tax has the so-called pass-through scheme (in Dutch abbreviated as DSR); a rollover facility. This facility is aimed at the unimpeded progress or continuation of economic activity.<sup>43</sup>

34. *Kamerstukken II* 1997/98, 25 688, nr. 3, p. 7.

35. *Kamerstukken II* 2001/02, 28 015, nr. 3, p. 4; *Kamerstukken I* 2004/05, 29 767, C, p. 7.

36. *Kamerstukken II* 2009/10, 31 930, nr. 79.

37. *Kamerstukken II* 2008/09, 31 930, nr. 3, p. 4-5.

38. The original bill mentioned 70% here, but by amendment, the House of Representatives changed it to 75%, *Kamerstukken II* 2023/24, 36 421, nr. 11, p. 1.

39. *Kamerstukken II* 2023/24, 36 421, nr. 3, p. 16, 17; [factsheet bundel pakket Belastingplan 2024](#), p. 62/88.

40. HR 22 November 2013 (Dutch Supreme Court), ECLI:NL:HR:2013:1211, r.o. 3.3.4, 3.3.7 and 3.3.8.; see also ECLI:NL:HR:2013:1212, ECLI:NL:HR:2013:1206, ECLI:NL:HR:2013:1209 and ECLI:NL:HR:2013:1210.

41. HR 22 November 2013, 13/01622 ECLI:NL:HR:2013:1211, r.o. 3.3.11-3.3.12.

42. HR 22 November 2013 13/01622 ECLI:NL:HR:2013:1211, r.o. 3.3.13;  
HR 27 May 2014, 18485/14 (*Berkvens / Netherlands*).

43. *Kamerstukken II* 2009/10. 32 129, nr. 8, p. 3.

When a substantial interest holder dies, he or she is deemed to have disposed of his substantial interest, leading to a 26.9% (2023) levy on the difference between the actual value of the shares and the acquisition price. This also occurs in the case of a gift of a substantial interest. Because this levy could impede the progress of the business, the transferor who donates or bequeaths substantial interest shares is not required, subject to conditions, to settle on any capital gain on these shares. The tax claim is passed on to the transferee of the shares by the latter taking over the acquisition price from the testator. In this way, deferral of taxation takes place. Unlike the BOR in gift and inheritance tax, DSR is thus about deferring taxation rather than exempting it. This is precisely why the legislator did not consider a possession and continuation requirement, as are applicable in the case of the BOR, necessary for the DSR.<sup>44</sup> This deferral of taxation with the DSR explains why - unlike with the BOR - there is little or no discussion of any “distribution effect” of the facility.

One of the conditions of the DSR is, however, much debated: the employment requirement. This requirement means that immediately prior to a gift of substantial interest shares, the transferee must have been employed in the company in question for 36 months. The legislator introduced this requirement to ensure that the facility only applies to real business successions, where the donor can transfer his or her knowledge and experience to the business successor and the business successor is closely involved in the business.<sup>45</sup> A major criticism of this requirement is that the law does not set any qualitative or quantitative requirements for employment, so that, for example, a zero-hours contract and very limited work will suffice. Thus, it is highly doubtful that the employment requirement contributes to the quality of the business succession.<sup>46</sup> Moreover, a business successor who gained the necessary experience at other companies would not meet the employment requirement, so the donation of the shares cannot take place without pass-through. This leads to a disruption of the business succession process and to implementation burdens for the Tax Administration, which must formally test for that requirement.<sup>47</sup> Due to the criticism on the employment requirement, the legislator decided to abolish this requirement as from 1 January 2025.<sup>48</sup> Instead, it is required from then on that the business successor must be at least 21 years old to apply the DSR on a gift of a substantial interest and also for applying the BOR. By doing so, the legislator mainly wants to combat unintended use of the facilities via donation to very young children or grandchildren. This age requirement does not apply to business succession upon death because unintended use is less likely to occur there.<sup>49</sup>

## 5. Necessity, effectiveness and efficiency of the BOR

### 5.1. Introduction

The purpose of the 100%/83%-exemption is to prevent liquidity problems due to the payment of tax in business transfers. The legislator assumes a liquidity problem that could cause the business to go bankrupt, but studies show that it is not as bad as assumed. It also appears that the regulation is complex and contributes to wealth inequality. The legislator introduced the exemption without any scientific evidence of these liquidity problems. Later research shows that the facilities are not needed in a large proportion of cases and that a payment scheme would be sufficient.

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44. *Kamerstukken II* 2009/10, 32 129, nr. 8, p. 9.

45. *Kamerstukken II* 2009/10, 32 129, nr. 3, p. 46-47.

46. R.P. van den Dool a.o., ‘De fiscale positie van de dga’, *TFO* 2023/184.1, section 3.3.3.

47. *Evaluatie fiscale regelingen gericht op bedrijfsoverdracht*, CPB, April 2022., p. 24, 30, 34 and 73.

48. Wet aanpassing fiscale bedrijfsopvolgingsfaciliteiten 2024, *Kamerstukken II* 2023/24, 36 421.

49. *Kamerstukken II* 2023/24, 36 421, nr. 3, section 2.5, p. 14.

## 5.2. Necessity

Much criticism on the generous 100%/83% facility has been voiced both in the parliamentary process and in literature. For example, the Council of State (advisory body to the Dutch legislature) has in the past been critical of the rapidly successive increases in the exemption for which research into its necessity was lacking.<sup>50</sup> In the opinion of the Council of State, the facility cannot be justified therefore from the continuity threat that the levying of gift and inheritance tax would entail.

Over the past decade, several studies have been conducted into the usefulness and necessity of the BOR. Hoogeveen's thesis shows that in the 2002-2005 period, in 70% of cases, the estate contains sufficient free resources to pay inheritance tax on the acquired business assets.<sup>51</sup> In line with Hoogeveen's research, the CPB<sup>52</sup> study on the 2010-2017 period concludes that in about three-quarters of transfers, there are sufficient free financial resources for the testators, donors or transferees to pay the tax directly.<sup>53</sup> In these cases, there is a 'distribution effect' when the scheme is applied. For the remaining cases, according to CPB, a generous payment scheme is a cheaper means for the government to ensure continuity than an exemption. Along the same lines is the IBO<sup>54</sup> report on wealth distribution of 2022, which, like the CPB report and the 'Bouwstenen' (Building Blocks) memorandum,<sup>55</sup> proposes replacing the exemption with a 10-year deferral scheme for those with insufficient funds to pay the gift and inheritance tax due.<sup>56</sup> The Council of State has also again critically questioned the legislator on the usefulness and necessity of these facilities.<sup>57</sup>

Dutch legislator recognises that the Dutch facility is sometimes granted to acquirers for whom the exemption is not necessary to enable a business transfer.<sup>58</sup> The Dutch government maintains that the objective of the facility is to prevent the taxation of real business transfers from jeopardizing the continuity of the business because there are insufficient funds to pay the tax.<sup>59</sup> The facility plays an important role in business succession in family businesses, which the government believes have an added economic value with which a public interest is at stake.<sup>60</sup> Despite the findings of the aforementioned studies that in about three-quarters of the cases sufficient 'free' funds are available to pay the tax due, and that the use of the facility is skewed,<sup>61</sup> the Dutch government has decided to keep the facility with some adjustments. The government admits that the facility is also granted while the transferee has sufficient resources to pay the gift and inheritance tax and, in many cases, the tax payable does not threaten the continuity of the business.<sup>62</sup> In other words, the facility is inefficient: budgetary resources are used when they are not always needed. Therefore, the government wanted to change this exemption as from 2025. There will then be a 100% exemption of business assets up to €1.5 million and the excess will be exempted for 75%.<sup>63</sup> With this measure, the legislator aims to shift the benefit of the exemption more to the smaller enterprises and less to

50. *Kamerstukken II* 2008/09, 31 930, nr. 4, p. 3.

51. M.J. Hoogeveen, *De kwaliteit van de fiscale bedrijfsopvolgingswetgeving*, The Hague: Sdu 2011, p. 456.

52. CPB stands for Centraal Planbureau (Central Planning Office).

53. *Evaluatie fiscale regelingen gericht op bedrijfsverdracht*, CPB april 2022. This study was conducted at the request of the Ministry of Economy and Climate Change and the Ministry of Finance, p. 5.

54. IBO stands for Interdepartmental policy research.

55. Ministry of Finance official report, *Bouwstenen voor een beter belastingstelsel*, 1 May 2020, p. 64.

56. *Licht uit spot aan: de vermogensverdeling* (IBO Wealth Distribution), July 2022.

57. *Kamerstukken II* 2023/24, 36 421, nr. 4, p. 2-6.

58. *Kamerstukken II* 2023/24, 36 421, nr. 3, p. 16.

59. *Kamerstukken II* 2023/24, 36 421, nr. 3, p. 2.

60. *Kamerstukken II* 2023/24, 36 421, nr. 3, p. 3.

61. For example, for donations in 2018, 58% of the budgetary attachment comes from 14% of donations.

62. *Kamerstukken II* 2023/24, 36 421, nr. 3, p. 16.

63. The original bill mentioned 70% here, but by amendment, the House of Representatives changed it to 75%, *Kamerstukken II* 2023/24, 36 421, nr. 11, p. 1.

the large enterprises.<sup>64</sup> The payment scheme of ten years of interest-bearing deferral for the taxed portion of the acquisition of business assets is retained. After this change, the effective tax burden for companies goes up from around 3.4 percent to a maximum of 5%.

Finally, in arguing for the need for the facility, Kuivenhoven and Nieuwenhuizen point out that Hoogeveen's study only covers inheritances and not gifts.<sup>65</sup> With gifts, the acquisition consists only of the company or shares, and, unlike inheritances, the business successor does not acquire other assets from which the tax can be paid. The authors argue that the business successor rarely has sufficient private resources to pay the gift tax. However, as mentioned above, the CPB study that also included gifts, concluded that in approximately three quarters of the transfers the testators, donors or transferees have sufficient free financial resources to pay the inheritance or gift tax directly.<sup>66</sup>

### 5.3. Effectiveness

#### 5.3.1. Effective but expensive

CPB concludes that the BOR is effective because the gift and inheritance tax on business assets are (almost) completely abolished. Therefore, these taxes can (virtually) no longer pose a threat to the continuity of enterprises. The BOR appears however not necessary for a substantial part of the transfers, because the testators, donors and/or acquirers have sufficient free resources (see section 5.2). However, according to CBS, the budgetary costs of this exemption are unnecessarily high where a payment plan is sufficient.<sup>67</sup>

#### 5.3.2. Small scope

The BOR is only applicable for business successions that take place via gift or inheritance law and is therefore only relevant for a small percentage of all business transfers. The largest group of entrepreneurs will have to obtain the funding for the purchase price in a different way, for instance via a bank.<sup>68</sup> During the period 2010-2017, an average of about 300 out of a total of 400,000 substantial interest holders<sup>69</sup> used the facility each year. From this, Van den Dool et al. conclude that the macroeconomic impact of the facility on the continuation of business operations in the Netherlands is very limited.<sup>70</sup>

#### 5.3.3. Level playing field-issues

Hoogeveen and Van den Dool et al. mention as a major disadvantage of the facility that it favours the successors of businesses that transfer under gift and inheritance law over start-up entrepreneurs or buyers of businesses, who cannot use this or a similar facility.<sup>71</sup> Interest groups on the other hand conclude that the business succession facilities should be maintained because without them, the competitive position of Dutch businesses would be put at a disadvantage.<sup>72</sup> They do not deny

64. *Kamerstukken II 2023/24*, 36 421, nr. 3, p. 16, 17; *Factsheetbundel van het pakket Belastingplan 2024*, p. 62/88.

65. L.C.H.N. Kuivenhoven & J.H.M. Nieuwenhuizen, 'De bedrijfsopvolgingsregeling (BOR) is objectief en gerechtvaardigd', *WFR 2020/140*, section 4.2.

66. *Evaluatie fiscale regelingen gericht op bedrijfsoverdracht*, CPB april 2022., p. 5, 54.

67. *Evaluatie fiscale regelingen gericht op bedrijfsoverdracht*, CPB april 2022, p. 2.

68. M.J. Hoogeveen, *De kwaliteit van de fiscale bedrijfsopvolgingswetgeving*, The Hague: Sdu 2011, p. 529.

69. These include holders of at least 5% of the shares or profit shares in a company.

70. R.P. van den Dool a.o., 'De fiscale positie van de dga', *TFO 2023/184.1*, section 2.6.2.

71. M.J. Hoogeveen, *De kwaliteit van de fiscale bedrijfsopvolgingswetgeving*, The Hague: Sdu 2011, p. 413-416 and p. 446-448. R.P. van den Dool a.o., 'De fiscale positie van de dga', *TFO 2023/184.1*, section 2.6.2.

72. See for instance the reference to the 'various organisations', in the Letter of the State Secretary of Finance to the House of Representatives of 12 July 2004, nr. WDB 2004-420M, *V-N 2004/37.7*. It concerns the following organisations: VNO-NCW, MKB Nederland, de Raad voor Zelfstandig Ondernemerschap, de Nederlandse Orde van Belastingadviseurs and de Federatie van Belastingadviseurs. See also the PwC study of December 2014 to be downloaded via: <https://doi.org/10.6092/issn.2036-3583/19806>

the findings of the aforementioned studies but apply different criteria for the usefulness and necessity of the business succession facilities. The payment of gift or inheritance tax would have a considerable impact on the (necessary) financial buffer of companies, putting them at a disadvantage compared to competitors. They claim also that abolishing the facility would affect the financial buffer of family businesses and ultimately have a negative impact on the Dutch economy because abolishment would disadvantage the playing field with surrounding countries.<sup>73</sup>

Van den Dool et al. point out that very large family-owned companies must compete with listed companies, which do not face a large liquidity need of the shareholders when they die, because the shares can easily be sold on the stock exchange.<sup>74</sup> That liquidity need requires additional cash drawdown or taking out a loan. Both options limit the growth of a family business. This increases the likelihood of the family business falling into the hands of a public company or private equity. There is also a chance that the family business will leave for a country with a wider facility or one that does not have gift and inheritance tax. Van den Dool et al consider that further research is needed on the economic (competitive) effects of abolishing the facility. With an effective tax burden of 3.4% based on the current facility, the Netherlands is not out of step with other Western European countries with an average effective tax burden of 2.8%.<sup>75</sup> However, after the change of the exemption in 2025 the effective tax burden for companies after application of the facility increases to a maximum of 5%. This could argue in favour of keeping the Dutch facility in line with surrounding countries. However, the legislator does not expect any negative effects of the tightening of the facility on the level playing field. The legislator points out the positive differences with neighbouring countries.<sup>76</sup> An example is the previously mentioned generous interest-bearing ten-year deferral of payment.

#### 5.3.4. Increasing wealth inequality

The discussion about the BOR takes place against the background of increasing wealth inequality in the Netherlands. Business assets are concentrated mainly among the 10% richest households. According to the Building Blocks memorandum, the tax loss associated with the business succession allowances in the gift and inheritance tax over the period 2010 to 2016 amounts to €2.8 billion, or about €400 million per year.<sup>77</sup> Of this, about 40% ends up with the 2% largest transfers, which is about 300 acquirers. These are inheritances and gifts with an average value of €19 million. These 300 transferees received tax relief amounting to over €1 billion over the period 2010-2016. According to the OECD, inheritance tax facilities for business transfers in many countries are particularly - and sometimes unnecessarily - generous and mainly benefit the highest net worth individuals.<sup>78</sup>

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[//www.pwc.nl/nl/assets/documents/pwc-bedrijfsopvolgingsregelingen-zijn-noodzakelijk.pdf](https://www.pwc.nl/nl/assets/documents/pwc-bedrijfsopvolgingsregelingen-zijn-noodzakelijk.pdf) and the study of KPMG of June 2021, to be downloaded via: [KPMG-onderzoek naar bedrijfsopvolgingsregelingen](#) | Meijburg & Co Tax & Legal. The latter study was commissioned by FBNed & Stichting Familie Onderneming.

73. Van Vijfeijken points out that the impact on the playing field, however, is beyond the objective of the facility, which is to prevent liquidity problems due to the payment of tax in business transfers. I.J.F.A. Van Vijfeijken, 'De fiscale positie van de aanmerkelijkbelanghouder onder vuur', *Ars Aequi* January 2023, section 2. If the legislature considers calling on financial buffers and affecting the playing field undesirable, according to Van Vijfeijken the legislature should link the facility's objective to this.
74. R.P. van den Dool e.a., 'De fiscale positie van de dga', TFO 2023/184.1, section 2.6.2. Also Kamerstukken II, 2009-2010, 31 930, nr. 17 multinationals, p. 315.
75. *Western Europe aligned on tax treatment of Family Business transfer – Study into business succession tax schemes in Western Europe*, PwC april 2015, p. 2.
76. *Kamerstukken II 2023/24, 36421, nr. 6, section 1.10, p. 22; Antwoorden op Kamervragen* over bericht 'Koester familiebedrijven, ze dragen de economie', d.d. 19 september, antwoord op vraag 11.
77. Belasten van (inkomen uit) aanmerkelijk belang (Taxation of (income from) substantial interest), *Bouwstenen voor een beter belastingstelsel*, p. 61.
78. OESO, *Inheritance Taxation in OECD countries*, 2021, section 4.2.3.



### 5.3.5. Transfer within the family

Another disadvantage is the tax incentive created by the BOR to transfer the business to a child when this is not always the (most) suitable business successor.<sup>79</sup> Therefore this preferential treatment will lead to efficiency disadvantages. As the CPB report shows, economically there is no rationale for the government to encourage business succession within the family.<sup>80</sup> Selling the business to the suitable business successor leads to liquidity in the estate on which inheritance tax is simply due.

### 5.3.6. Bottlenecks in the application

In practice, several bottlenecks arise in the application of the facility. Due to the high financial importance of the BOR, users have a strong incentive to comply with the terms of the scheme. The scheme is complex and for each transfer, the tax authorities must determine whether the conditions are met. Therefore, the scheme places a relatively large burden on the high-quality capacity of the Tax Administration.<sup>81</sup>

Improper use of the facilities needs to be addressed, such as so-called rollator investments and double application of the facilities.<sup>82</sup> In rollator investments, wealthy people in old age convert their investment assets into business assets in order to use the facility with the artificially created business assets.<sup>83</sup> This is contrary to the purpose of the facilities, because in such cases the facilities are not applied because the continuity of an existing company is at risk, but a company is started purely with the intention of achieving significant tax savings through the facilities. The government mentions as a solution a stepwise extension of the holding period by a certain period each year above the state pension age up to a certain maximum holding period.<sup>84</sup>

Double application of the facility (double BOR) occurs in the following case. A company is gifted by a parent to his child with application of the facilities. After five years, the child has fulfilled the possession period. The parent repurchases the company with investment capital, e.g. savings. After five years, the company is again gifted to the child with application of the BOR. In this way, investment assets are converted into qualifying business assets so that these assets are transferred to the child with application of the BOR. The successor then received not only the business virtually tax-free, but also the investment assets of the transferor. The government wants to counter this by regulating that the facilities cannot be applied if the business in any form was ever previously run by the transferor.<sup>85</sup> Addressing improper use requires further investigation and could come into effect in 2026 at the earliest. However, it is still uncertain whether a subsequent cabinet will adopt this measure.

On the other hand, the stringent requirements for the possession and continuation period hinder actions that are desirable from a business point of view. Think of an acquisition within the possession period or disposal of an unprofitable branch in the continuation period. Entrepreneurs perceive these requirements as complicated and unfair and should be relaxed. The five-year period could be shortened, in line with the shorter periods in neighbouring countries.<sup>86</sup> Hooegeveen and De Beer argue that the intention of the transferor and the successor should play a more important role

79. German research shows that preferential treatment of companies continued within the family at best does not lead to welfare losses. V. Grossmann & H. Strulik, 'Should continued family firms face lower taxes than other estates?', Hannover: Leibnitz Universität Hannover, version January 2009, Discussion paper nr. 387, ISSN 0949-9962.

80. *Evaluatie fiscale regelingen gericht op bedrijfsoverdracht*, CPB April 2022, p. 20.

81. *Evaluatie fiscale regelingen gericht op bedrijfsoverdracht*, CPB April 2022, p. 3.

82. *Kamerstukken II 2023/24*, 36 421, nr. 3, p. 4 en 5.

83. *Licht uit spot aan: de vermogensverdeling* (IBO Vermogensverdeling), July 2022, p. 85-86, mentions an example in which a wealthy aunt is going to participate for €70 million in a company of her cousin, who is also her heir.

84. Kamerbrief 29 June 2023 Uitkomsten vervolgonderzoek bedrijfsopvolgingsregelingen, p. 12/17.

85. Kamerbrief 29 June 2023 Uitkomsten vervolgonderzoek bedrijfsopvolgingsregelingen, p. 12/17.

86. *Kamerstukken II 2023/24*, 36 421, nr. 3, p. 6.



here. For example, if the transferor actually wants to dispose of the shares to a suitable business successor, but donates them to the children in order to make use of the facility, after which the children still dispose of the shares after the continuation period, then there cannot be a continuation intention and the facility should not be granted.<sup>87</sup> If the successor does have the intention to continue the business but still sells the shares within the continuation period due to unforeseen circumstances, such as disability, there is no liquidity problem to pay the tax, so there is no reason to grant the facility. In case of cessation of the business within the continuation period for other reasons and without abusive intent, following the example of German legislation, the facility could be withdrawn on a pro rata basis.<sup>88</sup> The government has promised to further examine the design of the possession and continuation requirement.<sup>89</sup>

## 6. Suggestions for future tax legislation on family business

Various proposals for adjustments on the business succession facilities have been made. First, Hoogeveen's recommendation is to replace the exemption facility with a non-tax-related financing facility specifically designed for business successions.<sup>90</sup> If so, the buyer of the company respectively the successor under inheritance law benefits from the same facilities. As a result, the facilities would not have an economic distorting effect. The CPB study mentioned above and in the IBO report on wealth distribution recommend a financing facility. If continuity risk alone is the criterion, Van den Dool et al suggest capping the exemption at, for example, five million euros as this would cover 98% of cases.<sup>91</sup> An initiative bill from left-wing parties includes the proposal to reduce the exemption percentage to 25% (the original exemption percentage when the facilities were introduced) with a cap of one million euros.<sup>92</sup> As mentioned above, the government chose to raise the limit for the 100% exemption to 1.5 million and reduce the exemption above that from 83 to 70%, but by amendment, the House of Representatives changed the latter percentage to 75%. The fact remains that on the one hand, scientific studies show that the exemption can be replaced by a generous deferral scheme because the acquirers have sufficient liquid assets. On the other hand, there are some arguments to maintain the exemption. Given the outcomes of the studies and the pros and cons of the exemption mentioned in section 5 we recommend research for all EU Member States on the possibilities for establishing a fund for financing family businesses. If the exemption maintains, it should preferably be the same in all European countries and granted under the same conditions to avoid possible relocations of family businesses due to differences in these facilities.

## 7. Closing

Family businesses are important for the Dutch economy. We saw that the added value of family businesses is 115 billion euros in 2020, slightly more than a quarter of the turnover and that they employ approximately 2.5 million people, which is about 30% of the Dutch labour force. Moreover, family businesses seem to exist longer than non-family firms and therefore contribute to the continuity of the economy. Between January 2015 and 2021, the number of family businesses increased with about 15 thousand firms, somewhat lower than the increase of non-family businesses. Thus, family businesses are an important factor for the Dutch economy.

87. A.M.A. de Beer and M.J. Hoogeveen, 'Een zoektocht naar de reële bedrijfsopvolging', *TFO* 2019/160.5.

88. M.J. Hoogeveen and M.L. Neve, 'Actualiteiten bedrijfsopvolgingsactiviteiten. Deel 3: de voortzettingseis', *WPNR* 2021/7344, section 2.1.

89. *Kamerstukken II* 2023/24, 36 421, nr. 3, p. 3.

90. M.J. Hoogeveen, *De kwaliteit van de fiscale bedrijfsopvolgingswetgeving*, The Hague: Sdu 2011, p. 511, 521.

91. R.P. van den Dool e.a., 'De fiscale positie van de dga', *TFO* 2023/184.1, section 2.6.2.

92. *Initiatiefvoorstel* van de leden Maatoug, Van der Lee en Nijboer voor het doen vervallen van enkel fiscale regelingen en het vervangen van het box 2-tarief door een progressief tarief (initiative proposal to scrap some tax schemes and replace box 2 rate with progressive rate), d.d. 4 October 2022, article IV.

A precarious moment in the survival of a family business is the moment of transfer to a new owner. To avoid liquidity problems that could arise from the imposition of inheritance tax or gift tax if a family business is passed on to the next generation, various tax facilities have been created. These facilities - broadly speaking - apply to testators or donors who own at least 5% of the shares in the company concerned. The definition of family businesses used by CBS is therefore not followed for the facilities.

Many studies by independent institutes show that the facilities are inefficient, have a large distributive effect and contribute to wealth inequality. According to these studies, a generous payment scheme does more justice to the objective of the facilities, visually preventing liquidity problems due to tax payments in business transfers. However, if the Dutch legislator considers calling on financial buffers and affecting the playing field with neighbouring countries undesirable, in our opinion, the legislator should adjust the objective of the facilities accordingly. Politically, limiting the facilities in the Netherlands is extremely sensitive because it concerns entrepreneurs who have a strong lobby and affects the economic interest of family businesses. The first curtailments of the facilities have been announced, although these are only marginal. However, the discussion on adjusting the facilities is still in full swing and the caretaker government has announced further proposals to relax restrictive conditions on the one hand and counter improper use of the facilities on the other. It remains to be seen, however, whether a next Dutch government will continue this course. Therefore, EU initiatives for family businesses would be helpful, such as an EU-wide study on the possibilities for a family business financing fund or a uniform business succession scheme for all EU countries.

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