

Restoration of rights and Box 3 transitional legislation

On April 28, 2022 Deputy Minister of Finance, Mr. Van Rij, sent another letter about Box 3 to the Lower House of Parliament. In that letter he explains which option for restoring rights will be offered and which group of taxpayers will, for the time being, be eligible for this. These points are briefly discussed below.

The option chosen for restoring rights

The government has decided to have the restoration of rights take place according to the flat rate savings option. This means that a taxpayer's income from savings and investments will be reduced if the newly calculated flat rate return is lower than the originally calculated fixed return on investment. There are three flat rates: for savings, debts and other assets (see [our memorandum of April 15, 2022](#)). These flat rates will be applied to the actual capital mix, i.e. to the actual savings, the actual debts and the actual other assets. The fixed capital mix currently used in Box 3 will therefore be abandoned.

The target group

For the time being, the restoration of rights will only be offered to taxpayers who took part in the class action lawsuit for the 2017 through 2020 tax years and to taxpayers for whom the tax assessments for the 2017 tax year and subsequent years had not yet become irrevocable at the time the 'Christmas judgment' was rendered (December 24, 2021). The latter group includes all taxpayers as regards the 2021 and 2022 years.

The government has therefore not yet taken a decision on offering the restoration of rights to taxpayers for whom the tax assessment for the 2017-2020 tax years was already irrevocable at the time the Christmas judgment was rendered (the non-litigants). Whether these non-litigants must also be compensated partly depends on what the Supreme Court rules in a case currently before it. That judgment – which is expected within six months – must clarify exactly what freedom of choice the government has in deciding on the restoration of rights for this group of taxpayers. The government will await this judgment before taking a decision. According to the letter sent to the Lower House of Parliament, a decision will be taken before the end of 2022.

Next steps

2017-2022 years

Taxpayers do not have to take any action themselves at the moment. Everyone who is eligible for the restoration of rights will receive this automatically. The order in which the restoration of rights will be granted (subject to unforeseen complications) is:

- From July 1 through August 4, 2022: phased restoration of rights for the 2017 through 2020 tax assessments of the class action litigants. The legal deadline for the restoration of rights for this group is August 4, 2022.
- As of August 1, 2022: phased restoration of rights for 2021 tax assessments with a Box 3 component.

- As of mid-September 2022: phased restoration of rights for the 2017-2020 tax assessments that were not yet irrevocable on December 24, 2021.
- As of mid-October 2022: 2017-2020 tax returns with a Box 3 component for which a tax assessment has not yet been imposed.
- The final 2022 tax assessments will be imposed according to the normal tax assessment process in 2023.

The year 2023 and subsequent years

Transitional legislation will be drawn up and take effect for the years 2023 and 2024. That legislation will replace the current Box 3 regime for those years and will be based on the solution chosen for the restoration of rights: the flat rate savings option. The bill will be part of the 2023 Tax Plan package to be presented to the Lower House of Parliament on Budget Day. As of 2025 the Box 3 regime must be a capital growth tax, whereby tax is levied annually on regular income (such as interest, dividends, rent and lease income) and the movement in value of assets (such as share price gains or losses and increases or decreases in the value of immovable property).

Should you have any questions about the above, Meijburg's advisors would be pleased to use their expertise to help you.

KPMG Meijburg & Co
April 29, 2022

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