

Supreme Court rules on ex officio reduction and settlement of Box 3 class action

On Friday, May 20, 2022, the Dutch Supreme Court delivered a judgment in two Box 3-related cases.

No ex officio reduction for non-litigants

The first case involved a taxpayer who had failed to file a notice of objection against his personal income tax assessments by the statutory deadline (of six weeks). His lawsuit was about the question whether these tax assessments should be reduced on an ex officio basis in view of the Box 3 judgment of December 24, 2021. In that judgment, the Supreme Court ruled, in short, that the Box 3 regime that has been in effect since 2017 goes against the European Convention on Human Rights and that restoration of rights is to be offered by taxing actually earned returns only. We refer to our previous [tax alert](#) for more details.

The Supreme Court ruled that the tax inspector will not have the obligation to grant ex officio reductions for personal income tax assessments against which no objection had been filed by the statutory deadline and the deadline for which had expired before the judgment of December 24, 2021. That said, the Ministry of Finance may still decide to grant an ex officio reduction to non-litigants. That would be a political decision. In his letter of April 28, 2022, Deputy Minister of Finance Mr. Van Rij said that this decision would be made after the judgment had been delivered.

The taxpayer had also asked the court whether, under the judgment of December 24, 2021, his rights should be restored for the years prior to 2017 as well. The Supreme Court left no doubt in this matter: the judgment of December 24, 2021 applies to 2017 and subsequent years only.

Objections filed by deadline: opportunity to bring legal proceedings after decision on restoration of rights

The second case involved a taxpayer who had, in fact, filed a notice of objection against his personal income tax assessments by the statutory deadline. His objections were about the Box 3 tax liability. The tax inspector had divided these objections into an individual part and a class action part. The Supreme Court ruled on the class action in the aforementioned judgment of December 24, 2021.

Further to this judgment, the Deputy Minister of Finance issued a collective decision on the class action on February 4, 2022. The tax assessments for the years 2017 through 2020 that were included in the class action are to be reduced within six months. These reductions will not be open to objection and appeal by taxpayers.

The Supreme Court has now ruled that, if a taxpayer disagrees with the reduction granted under the class action, they have the option to file a request for an ex officio reduction. Partial or full rejection of such a request will in fact be open to objection and appeal with a court.

Page 2

Please do not hesitate to contact us if you have any questions about the above. Meijburg's advisors would be pleased to use their expertise to help you.

KPMG Meijburg & Co
May 20, 2022

The information contained in this memorandum is of a general nature and does not address the specific circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.