KPMG Meijburg & Co Tax & Legal

Internet consultation on new Box 3 regime

On Friday, September 8, 2023, the caretaker government launched the internet consultation on a draft bill for the new Box 3 system that is intended to replace the current regime. Although the next government will have to decide on the new form of Box 3, the outgoing government believes it desirable for the new regime to enter into force from 2027. According to the outgoing government, the draft bill should be seen as a building block and tool for a new government. What the actual Box 3 system will look like depends very much on the outcome of the next elections. In addition, the date of 2027 is not yet certain. The caretaker government has indicated that the final bill should already be pending before the Lower House of Parliament by the summer of 2024 at the latest in order to meet this effective date. In this memorandum, we present an overview of the proposal submitted for consultation. The public consultation will end on October 20, 2023.

1. Outlines of the new Box 3 regime

The general rule of the new system is that the taxation with regard to the assets that fall in Box 3 is based on the actual return on investment realized by the taxpayer with those assets. This concerns assets and liabilities that do not fall in Box 1 or Box 2. The draft bill does not specify what the new flat Box 3 rate will be; in the explanatory notes, budgetary impacts are calculated at rates of 33%, 35% and 37%.

a. Tax on direct and indirect returns

The actual return includes, on the one hand, the direct return and, on the other hand, the indirect return realized with the Box 3 assets. The direct return could include the rent, interest and dividend received in a year, less the related costs, such as the interest on the liabilities falling in Box 3. For example, in the case of a debt-financed property that belongs to Box 3 and is rented out, on the one hand the rental income is taxed in Box 3 but on the other hand the interest is also deductible in Box 3 at the same rate.
When renting out immovable property or lending money in affiliated relationships (transactions between parents and children, for example), a non-arm's length consideration can be adjusted to the fair market value. However, no adjustment will be made if the deviation remains within a bandwidth to be determined (the 'efficiency margin').

The indirect return concerns the movement in value of the Box 3 assets. This includes both the realized movement in value (the profit achieved on the disposal of a Box 3 asset, for example) and the unrealized movement in value of a Box 3 asset in a year. The latter involves a comparison of the fair market value of the Box 3 assets at the end of the calendar year less the value of the assets at the beginning of the calendar year. The result of this equity reconciliation must be adjusted with the value of additions and withdrawals of assets in Box 3. This valuation methodology is derived from the profit regime of Box 1, more specifically from the principle of sound business practice to which the draft bill explicitly refers.

In the new Box 3 regime, an exemption will be provided for debts of the taxpayer that are waived, similar to the exemption for debt relief income tax included in Box 1. For the provider of a loan from Box 3, any arm's length write-down loss will be deductible. In line with the rule in Box 1, Box 3 will also provide for deduction exclusions for certain types of costs.

b. Death and emigration of the taxpayer

Upon the death of the taxpayer, they will be deemed to have disposed of their Box 3 assets on the date of death at their fair market value.

In the case of the emigration of the taxpayer, they will be deemed to have disposed of their Box 3 assets on the date of emigration at their fair market value. For the settlement with regard to certain assets (see below, Section 2, part a), a protective assessment will be imposed with regard to the tax payable (this therefore does not have to be paid immediately). The conditions under which the deferral of payment of the protective assessment is provided have yet to be worked out.

c. Loss set-off

As the actual return under the new regime may be negative, provision is made for the possibility of offsetting a Box 3 loss over a year with positive Box 3 returns over future years. It is also possible (as suggested) to carry back a Box 3 loss against the positive Box 3 income of the previous year, provided that the new Box 3 regime applied to that previous year. A Box 3 loss cannot affect Box 1 or Box 2 income over the Box 3 loss year or Box 1 or Box 2 income over other years. In addition, it is stated that the introduction of a loss set-off threshold is desirable.

d. Changes as a result of the new regime

The existing tax-free amount will be replaced by tax-free income, the amount of which will be determined in more detail. The green investment scheme will be transformed into a tax credit for green investments.
The rules for the non-resident taxpayer and the deduction to avoid double taxation will also be adjusted as a result of the new tax regime.

e. What essentially remains the same

Existing exemptions for property in own use (for example, cars, etc.) and for works of art continue to exist, provided that they are not held for investment.
Forests, nature reserves and country estates referred to in the Nature Conservation Act of 1928 (*Natuurschoonwet 1928)* (with the exception of built properties) will also remain exempt.

f. Retirement provisions/term life insurance

Under the new regime, net pensions and net annuities remain exempt under certain conditions. With regard to term life insurance, a full exemption is provided.

2. Exceptions and nuances to the general rule

Under the new regime, a number of exceptions or nuances are provided to the general rule of the regime as understood above. Those exceptions relate in particular to the obligation to make an annual revaluation to fair market value. The exceptions and nuances depend on the nature of the assets in question.

a. Capital gains tax for indirect returns

The indirect return on the following assets will only be taxed upon sale, or upon the death or emigration of the taxpayer.

Immovable property

Immovable property that is not already taxed in Box 1 or Box 2 falls in Box 3. The annual revaluation does not have to take place. Direct returns (such as rent) are, as under the general rule, taxed in the year of receipt, however.

Shares in family businesses

Shares in family businesses that fall in Box 3 also belong to the category for which the exception to the general rule applies. The shares are valued at their acquisition price. The annual revaluation therefore does not have to take place. With regard to the definition of family businesses, further criteria will be added. However, a family business is considered to exist when one family holds majority control and/or is formally involved in both the management and the company. Furthermore, it is proposed to define family as the taxpayer, his partner, and blood relatives or relatives by marriage in the direct line or through to the fourth degree of kinship (including second cousins, great aunts, etc.). Based on the wording of the bill and the explanatory notes, it appears that this exception only applies to persons who also belong to the family and not to shareholders from outside the family (for example, the management).

Shares in innovative start-ups

The shares in unlisted innovative start-ups and scale-ups are valued at their acquisition price under the new Box 3 regime. The annual revaluation does not have to take place. Direct returns (such as dividend) are, as under the general rule, taxed in the year of receipt, however. The draft explanatory memorandum states that the exception for start-ups and scale-ups will be focused on innovative start-up businesses. What will become the defining criterion here has not yet been further elaborated. It is still being investigated how the rule can be designed specifically for the intended target group.

Acquisition price (step-up?)

For the time being, the bill itself does not provide for a revaluation to the fair market value for this exception category when the new Box 3 regime becomes applicable and the acquisition price is determined ('step-up'). From the further consideration of the draft bill it will have to become clear whether the step-up results from the application of the profit regime as of the introduction of the Box 3 regime. If no step-up is deliberately assigned, the bill will have a far-reaching retroactive effect for these categories.

Exemption transition (settlement)
If shares lose the qualification of family business or innovative start-up business, a return on the difference between the fair market value and the acquisition price must be taken into account at that time.

Settlement in the case of emigration/protective assessment
With regard to immovable property located outside the Netherlands as well as shares in family businesses and innovative start-ups, settlement is provided at the fair market value less the acquisition price if the owner or the shareholder emigrates abroad. A protective assessment will be imposed with regard to this settlement. The documents are not entirely clear about the consequences of emigration with regard to immovable property located in the Netherlands. In principle, the Netherlands retains the right to tax in this regard, which argues against delaying lump sum settlement until the year of the actual disposal of the immovable property.

b. Holiday homes
The income from a holiday home ('first home for savings and investment') will, for the sake of simplicity, be taxed on a flat-rate basis (similar to the current system), by considering a percentage of the WOZ value as income. This will presumably be a few percentage points. A condition for making use of this rule is that the WOZ value of the home does not exceed 1.2 million euros. If the WOZ value is higher, the market rental value of the immovable property in own use must be taken into account as income, as well as for other immovable property for own use.

If the taxpayer, either alone or together with their partner, has more than one immovable property that could be classified as 'first home for savings and investment', they can choose in their tax return which of those immovable properties is designated as such. If a choice is made in any calendar year to designate one immovable property as 'first home for savings and investment', that choice cannot be retracted in a subsequent calendar year. Costs related to the 'first home for savings and investment' are not deductible.

c. Bank balances and cash
Bank balances and cash are not included in the equity reconciliation. Any capital growth of these assets (exchange rate movements, for example) is not taxed.

d. Loans between natural persons
The fair market value of receivables and payables under a loan agreement between natural persons may be set at the nominal value.

e. Right of enjoyment
The taxable return also includes what is received in consideration of the establishment of a right of enjoyment (for example, a right of usufruct) on an asset belonging to Box 3.

The following applies to the valuation of the right of enjoyment and the asset on which the right of enjoyment has been established. The value of the right of enjoyment is

determined at nil. Assets on which the right of enjoyment is established must be valued without taking into account the value of the right of enjoyment.
A right of enjoyment is understood to mean any entitlement to benefits from goods.

3. Overview of the most common assets

The diagram below is taken from the letter to the Lower House of Parliament on the draft bill:

Category	Taxed direct return	Taxed indirect return
Bank and savings balances	Actual income (interest less costs)	n/a
Shares, bonds, profit-sharing certificates, options	Actual income (dividend/interest less costs)	Movement in value in the form of price gains or losses less costs (capital growth)
Shares (start-ups, family businesses)	Actual income (dividend/interest less costs)	Movement in value upon realization (capital gain)
Immovable property (general rule)	Actual income (rent/lease less costs) or flat rate for own use (less costs)	Movement in value upon realization (capital gain)
Immovable property (first home in Box 3 for own use)	Flat rate	Flat rate
Receivables and payables	Actual income (interest less costs). Interest paid on liabilities is negative income.	Write-down (with the creditor) or release of profit (with the debtor) upon remission of the receivable (capital growth)

4. KPMG Meijburg & Co comments

The proposal launched for internet consultation is an attempt by the caretaker government to provide a 'posthumous' suggestion for a new interpretation of Box 3. Whether the government that will be formed after the upcoming elections will want to use this initiative will partly depend on the election results. The question arises as to whether a more decisive government could not have come up with this proposal quite soon after the so-called Christmas judgment on Box 3 as the current proposal is not particularly earth-shattering. In addition, further elaboration is still lacking in several places, which makes it difficult to see whether and to what extent this bill meets the concerns already raised in the public debate about a capital growth tax.

We will of course keep you informed about the follow-up to this proposal. For an analysis of how the draft bill will affect your current situation, please contact your advisor at KPMG Meijburg & Co.

KPMG Meijburg & Co
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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.