

## **Bill on rebuttal provision actual return on investment Box 3**

On Thursday, March 13, 2025 the bill on the Rebuttal Provision Box 3 Act was presented to the Lower House of Parliament. The bill stipulates how taxpayers can convincingly demonstrate that the actual return on investment is lower than the fixed deemed return in Box 3. The bill is largely a codification of what the Dutch Supreme Court has ruled on determining the actual return. What is different though, is that the government has proposed a scheme for the own use of a second home and has also regulated several formal aspects. We discuss the bill in this memorandum.

### **1. Why this bill?**

#### *1.1 The actual return for the purposes of the rebuttal provision, according to the Dutch Supreme Court.*

The reason for this bill is that the Dutch Supreme Court has ruled that the rules for the fixed deemed return in Box 3 are, as of the year 2017, contrary to the discrimination prohibition and the property right contained in the European Convention on Human Rights in situations where the actual return on investment is lower than the fixed deemed return. The taxpayer must convincingly demonstrate that lower actual return. The taxpayer therefore has a choice. The basic assumption is that tax is levied on the basis of the fixed deemed return included in legislation. However, if the taxpayer convincingly demonstrates that the actual return is lower than the fixed deemed return, the taxpayer will be taxed on the lower return.

The Dutch Supreme Court has in various judgments further elaborated on the concept of 'actual return' in the context of the rebuttal provision. In short, the following basic assumptions apply:

- The actual return is determined per year.
- No carry-back or carry-forward is possible.
- The actual return on the entire assets should be taken into account (not per individual asset).
- The actual return includes the normal benefits, such as any interest, dividends and rent realized.
- The actual return also includes unrealized appreciation and depreciation in value. For homes, the appreciation in value is measured based on the WOZ value for the tax year itself and the WOZ value for the following year.
- Appreciation in value through investment does not constitute a return.
- Expenses are non-deductible, with the exception of interest expenses.
- The return realized on a second home that is not rented out, is set at nil (no benefit from own use). However, any changes in value are taken into account based on the WOZ values.

Not all aspects had however been clarified. One of those aspects was how to treat the actual return on property that is used by the taxpayer themselves ('the second home'). Those aspects have now been further elaborated in the bill.

#### *1.2 Target group*

The rebuttal provision can only be used by:

- taxpayers for whom the 2017, 2018, 2019 and 2020 tax assessments were not yet irrevocable on December 24, 2021 (the date of the 'Christmas judgment') or were imposed after that date, and who had submitted a notice of objection or a request for an ex officio reduction on time;<sup>1</sup>
- Taxpayers with tax assessments for the years 2021 through to the present.

The statutory rebuttal provision not only applies to the years as of 2017 through to the present, but will continue to apply until the fixed deemed return in Box 3 is replaced by a new Box 3 regime in which only the actual return is taxed (probably as of January 1, 2028).

## **2. The rebuttal provision according to the bill**

### *2.1 The actual return according to the bill*

The bill defines the actual return. The definition is in line with the rules formulated by the Dutch Supreme Court and fills in the existing gaps. If persons in the aforementioned target group wish to provide rebuttal evidence, they must follow the rules proposed for this. The actual return includes all positive and negative results on Box 3 assets. These are the normal benefits and any capital growth. If in a year the result on Box 3 assets is negative, it will be set at nil.

### *2.2 Positive normal benefits*

The positive result on Box 3 assets includes the normal benefits, which in any case include: interest, rent, lease payments, dividends, profit distributions, payments received for providing capital, licensing and user fees. Moreover, an arm's length principle applies here: if conditions are stipulated in an agreement not concluded at arm's length, which conditions differ from the conditions that independent parties would have agreed in the course of trade, the normal benefits will be determined as if the latter conditions had been agreed. The moment when the normal benefits are paid is the moment on which the income is received, credited, made available, becomes interest-bearing, or becomes due and payable and collectible.

As of 2026 (but not yet for 2025) a market rental value will be taken into account for any property that is available for own use. The market rental value is the rent that can be demanded under normal circumstances. For homes, the number of points on the basis of the housing evaluation system can serve as an indication for the market rental value.

### *2.3 Negative normal benefits*

The negative result on Box 3 assets consists of the interest on debt. This is taken into account when it is paid, made available, credited or becomes interest-bearing.

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<sup>1</sup> Taxpayers who have not submitted a notice of objection, or who did not do so on time, and who did not request an ex officio reduction on time are in principle not entitled to legal redress (restoration of rights). However, a submission has been made to the court concerning whether there nevertheless is a right to legal redress (the class action proceedings). If the court rules that this group is entitled to legal redress (restoration of rights), then these taxpayers will also be given the opportunity to convincingly demonstrate that the actual return is lower than the fixed deemed return.

## 2.4 Capital growth

Capital growth consists of:

- the difference between the fair market value at the end of the calendar year less the fair market value at the beginning of the calendar year. For homes, this means that the WOZ values are compared;
- less any deposits; and
- increased by any withdrawals.

An example of a deposit is money from salary (Box 1) that is deposited into a bank account (Box 3). Another example is an asset in Box 1 or Box 2 that moves to Box 3. An expansion or improvement of a Box 3 asset as a result of an investment is also regarded as a deposit. It should be noted that an appreciation in value resulting from maintenance is not regarded as a deposit and is thus taxed. It is therefore extremely relevant whether an appreciation in value is caused by an improvement or by maintenance. The expansion or improvement of a home is not regarded as a deposit, because a separate scheme that is in line with WOZ values applies to homes.

The appreciation in value of a home is determined based on the WOZ value for the tax year (first WOZ value) and the WOZ value for the following calendar year (second WOZ value). In some cases, investments in the home are made during the course of the tax year, which means that the second WOZ value is not determined on the value reference date (January 1 year t-1) but on the status date (January 1 year t). In those cases, the impact of the investments on the second WOZ value must be eliminated from this insofar as the investments bring about an expansion or improvement (instead of maintenance).

An example of a withdrawal is an amount that is withdrawn from a bank account for the purposes of consumer spending or to buy an exempt asset.

## 2.5 Some special features

In calculating the actual return, the tax-free amount or debt thresholds are not taken into account. In principle, the benefits and losses on all assets and liabilities count for the purposes of the calculation. Excluded are the benefits and losses on statutory exempt assets (for example, art for own use). Special rules apply for green investments. Tax partners are free to choose how to split the total actual return between them. The actual return received by a minor can be attributed to the parents.

## 3. The 'Statement of Actual Return on Investment' form

In the summer of 2025 taxpayers with Box 3 assets will receive a Statement of Actual Return on Investment form, which they can use to report the actual return in an organized manner. However, the actual return can be reported in another way to the Dutch tax authorities. The above applies to tax years through to 2024. As of the 2025 tax year, the data for the actual return can be entered in the tax return.

*KPMG Meijburg & Co comments*

*The bill attempts to explain more clearly than the Supreme Court what is meant by actual return in the context of providing rebuttal evidence. That is certainly something worth appreciating, even if it is not always easy to make the calculation. What is less appealing, is that the government, just as the Supreme Court, is not allowing the deduction of expenses, except if these are interest expenses. Many taxpayers will not yet have the feeling that the economic actual return is being taxed. We expect that will change after January 1, 2028.*

KPMG Meijburg & Co  
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