KPMG Meijburg & Co Tax & Legal

Final bill on Actual Return on Investment in Box 3 Act published

On May 19, 2025 the Deputy Minister of Finance, Tjebbe van Oostenbruggen, sent the bill on the Actual Return on Investment in Box 3 Act to the Lower House of the Dutch Parliament. The government wants to implement the new regime, which will replace the current Box 3 regime, on January 1, 2028. The comprehensive bill stipulates entirely new rules for the levying of personal income tax in the Netherlands on income derived from assets. The implementation test carried out on the bill judged the consequences to be far-reaching, both for taxpayers and the Dutch Tax and Customs Administration.

Main features

Back in 2023, the previous government had published the draft bill via an internet consultation. The bill now made public does not differ much from this in terms of its main features, despite sharp criticism from the Council of State, in the professional literature and from the political-public arena. The aim of the new regime is to tax the actual return on investment as much as possible.

The basic assumption is that taxation will take place based on a capital growth tax, with the exception of property and shares in start-ups for which a capital gains tax will apply. The choice of a capital growth tax means the Netherlands is opting for a regime that is not common internationally, as is also the case with the Box 3 regime. A recently published survey (in Dutch) by the Dutch Association of Tax Advisors shows that none of the 12 surveyed countries has a capital growth tax.

Capital growth tax

The capital growth tax is the main category and means that all benefits, thus both appreciation in value and income from assets (interest, rent, dividends etc.) will be taxed. Any appreciation in value that has not yet been actually realized will also be taxed. Any unrealized depreciation in value will be deductible. This aspect of the new regime has been the most criticized, because tax has to be paid on income that has not yet been actually received and this deviates from what is usual in other countries.

Falling under this tax are assets (and any income derived from them) not falling in Box 1 or Box 2, such as investments in shares and securities, cryptocurrencies, certain insurance products, bank accounts and savings deposits. Foreign exchange results on bank balances in foreign currencies will also be taxed.

Unrealized changes in value will be determined based on their value on January 1 and December 31 of a year. The general rule in doing so is that assets will be valued at fair market value.

Capital growth tax: deposits and withdrawals

The new regime operates on the basis of principles now also applying for determining business profits. An important element of this is the doctrine of (capital) deposits and withdrawals. This will also apply to the new Box 3 regime. For example, there is a deposit if capital is transferred from another Box to Box 3. In that case, the value of the deposit must be eliminated from the closing assets in a year, because otherwise this will be wrongly included as a positive change in value in the capital growth tax. An example of this is the increase in the balance of the bank account due to the taxpayer's salary having been deposited (taxed in Box 1). Conversely, withdrawals from Box 3 assets will have to be added to the closing assets in a year, because otherwise a reduction in the assets will be reported when it should not have been. An example of this are payments for groceries.

Deposits and withdrawals will be taken into account at the fair market value at the time of the deposit or the withdrawal. Consider a taxpayer who sells shares in Box 3 to their child for price that is too low. It is, of course, an almost impossible task to manage all the (daily) deposits and withdrawals. Because deposits and withdrawals are usually only made to and from bank and savings accounts denominated in euros, which means there can be no capital increase or decrease on these accounts, the annual income statement from the bank stating the interest and expenses on the bank and savings accounts can in practice usually suffice. Securities accounts, on the other hand, will have to be analyzed to determine how many deposits and withdrawals were made, because securities holdings are subject to movements in value.

Capital gains tax

Immovable property in Box 3 and (shares and profit-sharing certificates in) start-ups that do not fall in Box 2 will be subject to capital gains tax. All 'annual' benefits, such as dividends and rental income, will also be taxed, and costs, such as interest on loans and maintenance costs will be deductible. In addition, positive appreciation in value will be taxed and depreciation in value will be deductible. But unlike the capital growth tax, capital gains tax will, in principle, only be levied at the time of realization, usually when the relevant asset is sold.

Immovable property and capital gains tax

Capital gains tax will not only apply when immovable property is sold, but also if immovable property leaves Box 3 for another reason. Capital gains tax will also be levied when immovable property is gifted, upon emigration (does not apply to immovable property located in the Netherlands), if the immovable property is destroyed, when entering into a (limited) community of property, upon divorce and death. The bill does not include any transfer facilities, but does provide for deferral of payment upon emigration.

The 'capital gain' is determined by deducting the purchase price from the sale price. If there is no sale price or the sale price has not been determined at arm's length, the fair market value will count as the sale price. The capital gain is adjusted for costs incurred for the purchase, improvement costs and for costs incurred for the sale. It has been proposed to set the opening value of homes in Box 3 on January 1, 2028 at the WOZ value based on the value reference date of January 1, 2028. That is the WOZ value for the 2029 calendar year.

Immovable property falling in another Box, such as the owner-occupied home or property belonging to the business assets, will not be subject to capital gains tax. User rights related to immovable property, such as a right of usufruct, easement, leasehold, superficies and a right of use and occupation, will also be subject to capital gains tax.

For the annual taxation of immovable property in Box 3, a regime has been proposed in which the actual rental income (less any costs and charges) will be taxed if the immovable property is rented out for at least 90% (or 328 days; 329 in a leap year) of a year. If the immovable property is not rented out during the year, a flat-rate gross addition to income for property of 3.55% on the WOZ value of the immovable property will apply. The (actual) maintenance costs may be deducted from this addition to income. In doing this, the government wants to tax own use. In the case of mixed use (rental during less than 90% of the year) the highest of the following two will apply: the gross addition to income for property or the actual rental income, less any costs. The costs of improvement - other than maintenance costs - may not be directly deducted, but will be deducted from the taxable income upon realization or sale. This system will mainly be relevant for taxpayers with a second home or holiday home in the Netherlands.

Start-ups and capital gains tax

In order not to discourage investment in start-ups, investments in shares and profit-sharing certificates (of less than 5% in the capital) in a company will not be subject to capital growth tax, but to capital gains tax. A start-up is defined as a company carrying on a business that was incorporated no more than five years ago and whose annual turnover does not exceed EUR 30 million. No more than 25% of the shares may be owned by a business that is not itself a start-up. At the date on which the shares no longer meet the requirements for the capital gains tax, a deemed sale will apply.

Deduction of costs

The basis assumption in the new regime is that costs are deductible. To make the regime workable, costs that are deductible have been defined. Costs that also have a personal component, such as a newspaper subscription to keep track of investments, are not deductible. Maintenance costs and managements fees are directly deductible, but another approach applies to improvement costs and costs incurred for acquiring an asset (transaction costs for the purchase and sale). For the purposes of capital growth tax, these are taken into account as deposits and for the purposes of capital gains tax the purchase price (the ‘acquisition price’) of the asset will be increased by these costs. Consequently, these costs can only be deducted from the taxable sales proceeds when the asset is sold. There is a list of non-deductible cost categories, such as the costs for attending a congress, telephone subscriptions and literature.

Debts

Interest on debts falling in Box 3 is deductible as negative Box 3 income. It is irrelevant whether and which assets are debt-financed. However, debts do not fall in Box 3 if they are taken into account in another Box, such as debts that have to be included in the business assets and debts related to the acquisition of shares in a substantial interest.

Exceptions and exemptions

The plan is to include the current exceptions and exemptions as much as possible in the new regime. This will mean that movable property that is not primarily held for the purposes of investment (such as cars, caravans and boats) will fall outside the scope of the tax. The current system with its special rules for monetary claims that are not fully due and payable and rights of enjoyment in property acquired from the estate of someone who has died have also been incorporated into the new regime.

Benefit exemption for waived debt

It has been proposed to have the new regime include a benefit exemption for waived debt so that debtors do not have to pay any tax on the benefit derived from uncollectable debts that have been waived. This is, for example, the case with debt restructuring.

Valuation

The general rule is that assets must be valued at their fair market value. Special rules apply for cases where the usufruct and the bare ownership of an asset has been split. Life insurance must be valued at its actuarial value. Receivables and payables under a loan agreement between natural persons must be valued at their nominal value.

Partners

Just as is currently the case, future taxation in Box 3 will also be determined at the individual level, with the exception of tax partners. Tax partners are free to decide how to allocate their joint income in Box 3.

Calculating the tax, losses

In the proposed new regime the benefits derived from all the results (capital growth tax and capital gains tax) must be added together. An amount (the 'tax-free result') will then be deducted from this. The tax-free result in the bill that has now been presented to the Lower House of Parliament has been set at EUR 1,800. The tax will subsequently be calculated on this outcome. If the outcome is negative, there will be a loss in Box 3 that can be set off against a positive result in later years. Carried-back loss set-off is not possible. The tax-free result won't be of any use in a loss-making year. Losses in Box 3 cannot be set off against income from other Boxes. A threshold of EUR 500 applies for loss set-off. The proposed rate for the new Box 3 regime is 36%.

Administrative expenses

The new regime is far more complex than the currently applicable flat-rate on deemed investment income (with rebuttal evidence) and will ask a lot of taxpayers. Compared to the current regime, it is expected that 400,000 more people will have to report income in Box 3. However, it is the intention that the majority of the taxpayers will be able to suffice with checking the pre-completed tax return, because the Dutch Tax and Customs Administration already receives a lot of the data from Dutch financial institutions. However, taxpayers with immovable property, unlisted shares and savings and investment accounts at foreign financial institutions will be confronted with an increased administrative burden and obligations. Certainly, if there is a 'life event' in the tax year, such as a death, immigration, emigration, marriage or divorce, the complexity of the new regime will be felt, because people will have to make their own calculations to determine the tax to be paid.

The Dutch Tax and Customs Administration will also have to adapt numerous systems and employ a lot of additional staff in order to properly implement the new regime. All the same, according to the Explanatory Notes, there is a realization that there will be diminished service, limited opportunities for preliminary consultation and insufficient monitoring during a period of three to five years after the new Box 3 regime has taken effect.

Effective date: is it feasible?

In the documents that have now been sent to the Lower House, the government is sticking to implementation as of January 1, 2028, but also notes that a number of preconditions will have to be met to realize implementation as of that date. If, for example, far-reaching amendments are adopted during the parliamentary debate on the bill, this date could come under pressure. The Lower House also has to adopt the bill by March 15, 2026 at the latest in order to give the 'cooperating organizations' sufficient time to adapt their systems to the new requirements regarding the submission of financial data to the Dutch Tax and Customs Administration ('disclosure'). Also, the Dutch Supreme Court must not render any new judgments that could lead to additional corrective activities. The latter condition is a very touchy subject, because legal proceedings about the current Box 3 regime are still pending before the court.

KPMG Meijburg & Co comments

That there is now a specific bill with a clear horizon is certainly positive. But it is extremely doubtful whether this will quickly bring an end to all the problems related to the taxation of income derived from assets. The proposed capital growth tax is internationally divergent and may encourage high-net worth individuals to emigrate for tax reasons. Meijburg would have preferred to see a generic choice for a uniform capital gains tax, which could then potentially be supplemented by the annual interim taxation of unrealized appreciation in value in order to prevent this being postponed indefinitely to the future. We also believe that not enough attention has been paid to incorporating the proposed new Box 3 regime into the Personal Income Tax Act 2001 and the interaction with current schemes in the other Boxes. Questions can also be raised about the protective assessment imposed upon emigration in respect of property not located in the Netherlands. It is difficult to understand why the Netherlands wants to secure the taxation of Dutch citizens with a second home in Spain who emigrate to Spain. This aspect of the bill appears to be at odds with EU law.

If you would like more information about this bill or the potential consequences for your situation, feel free to contact one of our Meijburg advisors.

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