

Rebuttal Provision Box 3 Act adopted by Upper House of Parliament

On July 8, 2025 the Upper House of the Dutch Parliament adopted the Rebuttal Provision Box 3 Act. The Act introduces a rebuttal provision in Box 3 for personal income tax purposes, as prescribed by the Dutch Supreme Court. The Act offers a temporary solution until a [new Box 3 regime](#) is implemented under the Actual Return on Investment Box 3 Act (probably as of January 1, 2028). This memorandum addresses some aspects of the new Act.

1 The Rebuttal Provision Box 3 Act

In the Christmas judgment of December 24, 2021 the Dutch Supreme Court ruled that the Box 3 regime applying since 2017 is contrary to the European Human Rights Convention. The government has attempted to offer the restoration of rights with the Box 3 Restoration of Rights Act for the years 2017-2022 and with the Box 3 Bridging Act for years from 2023 onward. In the [D-day judgments](#) of June 6, 2024 the Dutch Supreme Court ruled that both Acts are not sufficient to remedy the conflict with human rights.

Taxpayers who are treated unfairly as a result of this must be compensated. The compensation consists of a tax refund if and insofar as taxpayers can convincingly demonstrate that their actual return on investment is less than the flat-rate return applied since 2017. The Rebuttal Provision Box 3 Act stipulates that the actual return in Box 3 is made up of:

- positive normal benefits, such as interest, rent, lease payments, dividends, profit distributions, fees for the provision of capital, license and user fees, etc.
- negative normal benefits, such as interest expenses on debt. Other expenses are non-deductible.
- capital growth, consisting of the difference between the fair market value at the end of the calendar year and the value at the beginning of the calendar year, less any deposits and plus any withdrawals. For homes, the WOZ value is compared at the beginning and the end of the preceding calendar year, whereby value-adding investments are exempted if this can be demonstrated with a later WOZ decision.

Please also refer to our [previous memorandum](#) on this bill.

2 Amendments and motions

Various amendments and motions were submitted during the parliamentary debates on the bill. Only some were adopted.

Lower House of Parliament

- Amendment 1: the possibility to deduct expenses, in addition to the current possibility to deduct interest. The proposal was rejected.
- Amendment 2: the compulsory use of a OWR form to invoke the rebuttal provision ('OWR' being the abbreviation for *opgaaf werkelijk rendement* (Statement on actual return on Investment)). This proposal was accepted.
- Amendment 3: a one-off reduced rate of 2% real estate transfer tax for landlords to transfer homes to a BV. This proposal was rejected.
- Motion: to explore the possibility of temporarily ending the pre-completed tax return in order to facilitate the implementation of the rebuttal provision and the new regime in Box 3. This motion was adopted, but the Deputy Minister of Finance indicated that this would actually be inefficient.

Upper House of Parliament

- Motion 1: again, a request for a reduced rate for landlords to transfer their property to a BV. This motion was rejected.
- Motion 2: making maintenance and energy-efficiency expenses deductible for homes in Box 3, capped at EUR 10,000 per property per year. This motion was also rejected.

3 Temporal effect of the Rebuttal Provision Box 3 Act

Some parts of the Act have retroactive effect to January 1, 2017 and some to January 1, 2023, related to the Box 3 legislation that has applied since 2017.

For the years 2017-2022, there are three options for determining the Box 3 income:

- i) the original flat-rate scheme with a fixed capital composition;
- ii) the new flat-rate calculation method based on the actual composition of the assets. The tax inspector will automatically apply the most favorable of these two flat-rate methods;
- iii) the actual return, if the taxpayer can show that this is less than the flat-rate methods.

For the years 2023-2027 there are two options:

- i) the flat-rate calculation method based on the actual composition of the assets;
- ii) the actual return, if the taxpayer can show that this is less than that based on the flat-rate method.

In principle, the rules for determining the actual return in both periods are the same, taking into account any annual differences, such as the amount of the exemption for green investments.

4 The OWR form

The form is compulsory

On July 10, 2025 the OWR form was made available for use via *Mijn Belastingdienst*. As of that date, the form must be used to invoke the rebuttal provision; this also applies to tax returns, notices of objection, revision requests and requests for ex officio reductions that were filed before the form was made available. As of the 2025 tax year, the form will be integrated into the online tax return software. In some cases, taxpayers may download the form and send it to the tax inspector by regular mail.

As of mid-July, the Dutch tax authorities will send out notification letters with information about the OWR form. A separate form must be submitted for each tax year. It must be submitted within 12 weeks (or 26 weeks if the tax return is filed by an intermediary) of the date of the notification letter. Additional documents can be submitted up to six weeks after the form was submitted.

Various scenarios

The status of the OWR form depends on the stage in which the tax assessment finds itself. We have identified the following situations:

- If the tax assessment has been finalized and the OWR form is submitted within the deadline for filing a notice of objection, then the OWR form will be regarded as a notice of objection against the tax assessment. If a notice of objection has already been filed, then the OWR form will be regarded as a supplement to the notice of objection.
- If the tax assessment has been finalized and the form is submitted after the six-week deadline for filing a notice of objection has expired, then the OWR form will be regarded as a request for an ex officio reduction.
- If the final tax assessment has not yet been imposed, then the OWR form will be regarded as a supplement to the tax return. In that case, the OWR form will be taken into account in the (provisional) tax assessment.

- If a provisional tax assessment has been imposed, then the OWR form will be regarded as a request to revise the provisional assessment.

5 KPMG Meijburg & Co comments

The bill gives substance to the judgments by the Dutch Supreme Court and offers more clarity for taxpayers as regards providing rebuttal evidence to convincingly demonstrate that the actual return on investment is less than the flat-rate return in Box 3. That is certainly something worth appreciating, even if it is not always easy to make the calculation. Moreover, the OWR form will not in all cases be tailored to the complexities of a taxpayer's asset mix, or in those cases where it is evident that the actual return is substantially negative. It remains to be seen how a practical solution can be found for those cases so that the rebuttal provision can still be invoked. A mitigating measure is the opportunity to submit additional documents containing an explanation up to six weeks after the form has been submitted.

Lastly, we would like to point out that litigation is still pending on the question whether taxpayers who failed to file a notice of objection on time for (in particular) the years 2017 through 2020 may also be entitled to the restoration of rights (the class action-plus proceedings). The Hague District Court recently dismissed the first appeal. The appeal will now move directly (*sprongcassatie*) to the Supreme Court, so a final judgment is still pending.

If you have any questions about Box 3, submitting rebuttal evidence or completing the form, feel free to contact one of our Meijburg advisors.

KPMG Meijburg & Co
July 11, 2025

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