

Supreme Court decides: no box 3 restoration of rights for non-litigants for 2017-2020

On 25 June 2026, the Dutch Supreme Court rendered [judgment](#) in two cases about non-litigants in box 3. These cases are part of the so-called class action-plus proceedings (*massaalbezwaarplusprocedure*). On 8 May 2026, Advocate General Pauwels already [advised](#) the Supreme Court to dismiss the appeals in cassation. The Supreme Court followed that advice. In this news item, we discuss what the judgment is about and what this means in practice.

Christmas judgment

In the infamous [Christmas judgment](#) of 24 December 2021, the Supreme Court ruled that the legal methodology for personal income tax on income from savings and investments (box 3) that applied as of 1 January 2017 is in conflict with the right to free enjoyment of property in combination with the prohibition of discrimination in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). In addition, the Supreme Court ruled that the aggrieved taxpayers are entitled to legal restoration if the levy based on the statutory deemed return is higher than the levy based on the actual return. The Christmas judgment specifically related to the tax years 2017 to 2020.

Ex officio reduction

After the Christmas judgment, taxpayers who had not objected to their assessment in time, i.e. not within the statutory objection period of six weeks, [took action](#). This group of non-litigants invoked the ex officio reduction scheme, on the basis of which a taxpayer can request an ex officio reduction of an assessment within five years after the end of the tax year. However, this scheme has an important limitation: the inspector does not grant an ex officio reduction if the incorrectness of the assessment results from case law that was only rendered after the assessment has been irrevocably established. This is also called the new case law exception.

Class action-plus

In May 2022, the Supreme Court [ruled](#) that the Christmas judgment qualifies as new case law for non-litigants within the meaning of this scheme. It was therefore obvious that non-litigants would in principle not be entitled to an ex officio reduction as a result of the Christmas judgment. Nevertheless, the so-called class action-plus proceedings were initiated to ask the Supreme Court whether the distinction between litigants and non-litigants was (among other things) discriminatory and/or in violation of the principle of proportionality. The two judgments of 25 June 2026 provide an answer to that question.

No exception for non-litigants

Following the judgment of May 2022, the Supreme Court decided in the judgment of 25 June 2026 that there is no reason to make an exception to the new case law exception for non-litigants. This means that the inspector is not obliged to reduce assessments ex officio if those assessments were already irrevocably established before the Christmas judgment was rendered. In doing so, the Supreme Court allows

the existing legal methodology to be leading. The non-litigants have therefore been unsuccessful in these proceedings.

The Deputy Minister of Finance will have to issue a collective decision on the class action-plus within six weeks, taking into account this judgment. The ministerial authority to nevertheless grant an ex officio reduction notwithstanding the new case law exception formally remains in place. However, this will almost certainly not be used. As a result, the class action-plus proceedings for the non-litigants for the years 2017 to 2020 seem to have materially come to an end.

The judgment in a broader perspective

This judgment confirms that taxpayers for the years 2017 to 2020 can only obtain legal restoration if they have filed an objection in time, or if their assessment had not yet been irrevocably determined at the time of the Christmas judgment and they have requested an ex officio reduction in time. It remains the case that legal restoration is only relevant to the extent that the levy based on the statutory deemed return is higher than the levy based on the actual return.

Still an ex officio reduction?

Insofar as assessments have only become irrevocable after the date of the Christmas judgment and a request for an ex officio reduction has been made in time, the inspector can still grant an ex officio reduction. The new case law exception does not preclude this. For the tax years 2017 to 2020, the five-year period for submitting a request for an ex officio reduction has now expired. As of 1 January 2026, no new requests can be submitted for these years that would lead to an ex officio reduction.

Later years

Finally, we note that the judgment of 25 June 2026 relates to the tax years 2017 to 2020. The position is different for later years, because assessments for those years were generally not yet irrevocable at the time of the Christmas judgment. For those years, therefore, it must be assessed separately whether, and if so in what way, legal restoration can still be obtained.

Conclusion

Various Meijburg publications on box 3 have previously been published, in which we also discuss the other tax years (see [here](#), [here](#) and [here](#), among others). We will continue to keep you informed of further developments regarding the restoration of rights in box 3.

Want to know more? Please feel free to contact us or your usual Meijburg advisor. Do you need specific support with proceedings or with the assessment of your box 3 position? Then our Tax Controversy & Litigation team is ready to assist you.

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