Family Owned Business & Private Wealth

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New framework announced of tax regime for the income from savings and investments (box 3)

On Friday 6 September 2019, the Dutch State Secretary of Finance outlined in a letter to the Dutch Parliament a new framework with respect to the Dutch personal income tax treatment on income derived from savings and investments (box 3). The State Secretary of Finance envisages to submit a bill to parliament before the summer of 2020, after which the proposed amendments should enter into force on 1 January 2022.

The announced amendments have the effect that income derived from savings will be subject to a lower effective tax rate. Income derived from investments, such as portfolio investments, government bonds and real estate, will be subject to a higher effective tax rate. Together with the legislative proposal 'excessive borrowing from own company', the new box 3 framework strongly discourages debt financing of box 3 assets.

Background of the proposed amendments

The announced amendment of box 3 is no surprise. Over the last years, the current box 3-regime for Dutch resident taxpayers has been subject to debate, as box 3 takes into account a deemed yield over the net assets (i.e. fair market value of the assets minus debts) on 1 January of each tax year, the so-called reference date. Due to this deemed yield, taxpayers owning low-yielding assets - like bank account savings - are often confronted with an effective tax rate of more than 100% on the income they derive from their box 3 wealth.

On 14 June 2019, the Dutch Supreme Court ruled that the box 3 tax treatment in 2013 and 2014 as a system in certain situations infringes EU law. However, the Supreme Court also ruled that the judiciary should not take the lead in amending deficits in the system, thus maintained box 3 taxation for the years concerned.

The Dutch government already introduced certain amendments to the box 3-regime on 1 January 2017. These legislative amendments were aimed at aligning the deemed yield with the actual yield derived from box 3 wealth. The Dutch Supreme Court has not yet ruled on the question whether the system of box 3 taxation as of 2017 still includes infringements. Regardless, after these amendments the actual wealth composition of the taxpayer is still not taken into account, but is incorporated in the assumption that a higher box 3 net wealth generates a higher yield. Based on the proposed changes in the letter of Friday 6 September 2016, box 3 income will be determined based on the actual composition of assets and debts of each taxpayer.

Outlines of the amended box 3-regime

As of 1 January 2022, box 3 will contain three types of wealth components. A deemed yield will be determined for each of these types. The sum of these deemed yields shall be subject to an (expected) tax rate of 33% (currently: 30%).

The three types of wealth components and their corresponding deemed yields are as follows:

1. Savings. This asset class includes deposits, such as bank account savings and term deposits. The deemed yield shall be set at a yield based on a recent market interest rate. Based on 2020 figures, the deemed yield on savings would be 0.09%.
2. Other investments. This asset class includes all other investments of a taxpayer, such as receivables, stock investments and real estate (please note that the primary home of a taxpayer is generally not included in box 3). The deemed yield of these other investments does not change and shall be set at a rate based on the average long-term yield on stock investments, government bonds and real estate. Based on 2020 figures, the deemed yield would be 5.33%.
3. Debts. This class covers all box 3 debts, including current account debts to a personal holding company and debts to family members. A deemed interest expense, based on the average mortgage interest rate, will be taken into account. Based on the 2020 figures, the deemed interest expense would be 3.03%.

Under the new framework, taxable box 3 income can be computed as follows:

(0.09% x savings) + (5.33% x other investments) – (3.03% x debts).

The taxable box 3 income below € 400 is exempt from taxation. All taxable box 3 income in excess of € 400 is subject to personal income tax at a rate of (an expected) 33%.

The reference date of 1 January per annum will continue to apply. Furthermore, anti-abuse provisions will be introduced to prevent taxpayers from converting other investments into savings around the reference date to obtain tax benefits. Further, taxpayers owning box 3 assets (debts excluded) with a value not exceeding € 30,000 will not be subject to box 3 taxation, while taxpayers owning box 3 assets exceeding a value of € 30,000 will be subject to box 3 taxation on the basis of their total wealth.

Consequences for Dutch resident taxpayers

As of 1 January 2022, the box 3 taxation of Dutch resident taxpayers of which their wealth (almost) solely consist of savings will be more aligned to the actual yield realized on those savings. Due to the taxable box 3 income threshold of € 400, Dutch resident taxpayers and their partners, would be exempt from box 3 taxation for savings accounts up to approximately € 880,000, based on a deemed yield of 0.09%.

Dutch resident taxpayers that have their wealth predominantly invested in low-yield investments such as government bonds, will expectedly be subject to a higher effective box 3 tax rate than under the current box 3-regime. As these taxpayers will still be deemed to realize a yield of 5.33% on their low-yield investments, the effective tax rate shall be equal to or exceed 100% if the yield on those low-yield investments does not exceed 1.75%.

Dutch taxpayers who have entirely debt-financed their box 3 investments are currently not subject to box 3 taxation, as a deemed yield is calculated on the basis of net asset value. As of 2022, a full set-off of assets and debts will no longer take place. Instead, the deemed yield on all box 3 investments other than savings will be reduced with the deemed interest expense. Hence, box 3 investments which are fully debt-financed will be deemed to have realized a net return of 2.30% (5.33% - 3.03%).

Contact

Do you have any questions in relation to this newsletter? Or are you interested which impact that the proposals could have on your own box 3 tax position? Please contact your trusted Loyens & Loeff adviser or one of our specialists of the Family Owned Business & Private Wealth practice group. We are of course more than happy to assist.