

Directorate-General for Fiscal Affairs  
Direct Taxes & Allowances Directorate  
Ministry of Finance  
Netherlands

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Chief Post Office  
Level 1, 12 Queen Street  
Auckland CBD 1010  
New Zealand

PO Box 106 607  
Auckland 1143  
New Zealand

Phone: +64 9 300 6980  
Email: [enquiries@nzsuperfund.co.nz](mailto:enquiries@nzsuperfund.co.nz)

## **Consultation document on additional measures against dividend stripping**

New Zealand Superannuation Fund (NZ Super) is New Zealand's sovereign wealth fund. The fund is a long-term investor with a globally diversified portfolio, including interests in Dutch listed companies. We invest on behalf of the New Zealand Government and operate under a statutory mandate in which reputation and compliance with laws and regulations are explicitly embedded. NZ Super therefore expressly does not participate in aggressive tax structures, including dividend stripping.

We support the importance of effective measures to combat abuse of dividend withholding tax. At the same time, we believe it is essential that new anti-abuse measures are proportionate and do not create unintended barriers for bona fide institutional long-term investors such as NZ Super.

Our experience as a globally active investor is that rules targeting dividend stripping and similar measures often impose a significant administrative and evidentiary burden, particularly on parties that are not involved in abusive structures. This may adversely affect the willingness to invest in a jurisdiction, especially where the burden and uncertainty in practice are greater than in other comparable markets.

Our main concern is that the proposed measures, taken together, may lead to an accumulation of reviews and evidentiary requirements. This results in increasingly onerous documentation and evidentiary obligations, higher compliance costs, and greater uncertainty regarding the ultimate tax treatment of dividends. Ultimately, this may cause the Netherlands to be regarded as less attractive, compared with other jurisdictions, for long-term investments in listed companies.

In addition, the relationship with EU law principles, in particular the free movement of capital, deserves specific attention. If foreign institutional investors are, in practice, more heavily affected by documentation requirements, evidentiary risks or the loss of refund rights than comparable domestic investors, this may constitute a restriction on cross-border investments in Dutch shares.

Below, we address the key elements of the consultation document. We will not respond to each individual question separately, but will instead combine our comments by proposed measure.

### **1. Net return approach**

Although the formal burden of proof initially rests with the Dutch Tax Administration, we expect that in practice this approach will require institutional investors to provide highly detailed information regarding their positions, hedging strategies and transactions around the dividend date. For a large institutional investor such as NZ Super, the materiality threshold is likely to be exceeded relatively quickly, even though that threshold is intended to exclude bona fide structures.

We would therefore stress that the net return approach is only workable if it is accompanied by:

1. Practical safe harbours, in particular for:
  - investments in listed shares traded in the ordinary course through the market;
  - passive and index-related investment strategies;
  - long-term positions that are not exchanged or temporarily shifted around the dividend date.
2. Proportionate documentation requirements, based on information that is already available in the ordinary course of business, rather than on new administrative obligations.

In this way, the measure can remain targeted at the intended abusive situations without unduly burdening normal market activity or long-term investment.

## **2. Holding period / 45-day rule (German-Austrian model)**

NZ Super has practical experience with holding period rules in other countries, including Austria. Our experience is that such rules lead to substantial additional compliance obligations and costs. This is particularly the case where the holding period is structured strictly, there are limited or no exceptions for ordinary market transactions, and the evidentiary requirements (documents, statements, transaction data) are extensive and country-specific.

In some cases, we see that the entitlement to a dividend withholding tax refund is lost even where there is no abuse, but merely normal portfolio movements in the context of risk management or index rebalancing. This undermines the intended proportionality of such measures.

In addition, as a global investor, we find that fragmented rules across different countries create significant complexity. Each jurisdiction applies its own time periods, definitions and evidentiary requirements, requiring custodians to prepare different, tailor-made reports.

Finally, a strict holding period rule may influence investment decisions. Investors may be discouraged from trading around dividend dates, even where such trading is commercially rational. This may disrupt normal market activity and produce undesirable effects for passive or index-tracking investment strategies.

We would therefore recommend that any holding period introduced in the Netherlands:

1. Contain broad safe harbours and exceptions for ordinary stock exchange orders, passive and index-related investments, transactions resulting from index rebalancing or risk management, and transactions that demonstrably have no connection with dividend stripping.
2. Align as closely as possible with international practice. Harmonisation of evidentiary requirements and documentation within the EU would significantly improve the practical feasibility for international investors. This also applies to the use of standard documentation from globally active custodians.
3. **Pension fund measure**

The proposed pension fund measure does not raise any direct substantive concerns for NZ Super.

## **4. Group / related entities measure**

In some jurisdictions where comparable group or related-entities measures apply, NZ Super has been asked to substantiate its position not only at fund level, but on a broader, government-related basis as well (for example by looking at other state-related entities with separate operationally independent mandates).

We do not consider such an approach appropriate in the Dutch context, unless there are concrete indications of abuse.

NZ Super would be pleased to provide further explanation, based on our international practical experience, of which solutions are workable in day-to-day investment practice and how anti-abuse measures can be effectively combined with an attractive investment climate.

Also if you wish to receive a Dutch translation of our input on this consultation document, please do let us know.

A handwritten signature in black ink that reads "John Payne". The signature is written in a cursive, flowing style.

John Payne

Head of Tax

Guardians of New Zealand

Superannuation