

Public consultation on strengthening measures against “dividend stripping”

Paper from BNY Mellon

This paper contains responses from BNY Mellon to some of the questions raised in the public consultation “Mogelijkheden versterking maatregelen ter voorkoming van dividendstripping” that ends on 26 January 2022.

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Vraag 1

Hoe beoordeelt u de alternatieven in het licht van de in onderdeel 4 geschetste randvoorwaarden?

BNY Mellon answer:

BNY Mellon fully agrees that any options that will be implemented should satisfy specific preconditions.

BNY Mellon believes that the preconditions sketched out in section 4 are valid, but they are drafted in a very broad manner. It would be of benefit if these preconditions were drafted in a more detailed and more precise manner.

BNY Mellon believes that relevant preconditions should include the following:

- Consistency with the objective of a common, standardised EU-wide system, as set out in Recommendation 15 of the Final Report of the CMU High Level Forum, and in Action 10 of the European Commission’s CMU Action Plan
- Consistency with the Market Standards for Corporate Actions Processing
- Consistency with the regulatory objectives of supporting the use of collateral as a tool to manage risk



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At a high level, it is possible that some elements contained within Options A, B, D and E are consistent with these requirements. But it may also be possible that some elements from Options A, B and D are inconsistent with these requirements. Some more detailed information is given in our answers below to some specific questions.

Option C does not appear to be a practical or relevant option from the point of view of cross-border investors, and so would appear not to meet precondition c. relating to European and international sustainability.

Vraag 3

Welk alternatief – of combinatie van alternatieven – heeft uw voorkeur en waarom?

BNY Mellon answer:

BNY Mellon believes that the core building blocks of an effective, well-functioning tax relief system include:

1/ Recognition of the end investor (i.e. the holder of the securities account at the last intermediary in the custody chain) as the legal owner of a securities position.

2/ Consistent application of the record date principle, so that tax benefits are attributed to holders as of record date.

This suggests that Option E is appropriate, together with elements of Options A and D.

For both Options A and D, it is critical to ensure that the implementation does not create excessive obligations that would hamper the ability of end investors to receive the tax benefits to which they are entitled.

Option B would be very difficult to implement and would disadvantage some investors. If implemented, it would have to meet requirements set out in the answer to Question 8.

Vraag 4

Welke overwegingen zijn van belang bij de keuze om dit alternatief in te voeren voor alle aandelen of enkel voor girale (beurs)aandelen?

BNY Mellon answer:

BNY Mellon response to this question, and to other questions in this questionnaire, relates just to shares deposited in a central securities depository.

This option relates to the core definition of which party is entitled to receive tax benefits. Fundamentally, an end investor that holds a securities position with the last intermediary in the custody chain, and that has the right to receive the economic benefits from the securities position, should be entitled to any tax benefits associated with its tax status. It is important that any new tax processes and requirements achieve this outcome.



This option raises two key questions.

One is the question of how the end investor can prove that it also has the right to receive economic benefits from the securities position. Given that what would be asked is that an end investor proves a negative, namely, that it has not lost the right to receive the economic benefits from a securities position, we believe that it is important that any such procedures should be designed so that they are practical and manageable for all parties, including the end investor, intermediaries in the custody chain, the withholding agent and the tax authorities.

The second question is what exceptions are needed to this simple rule. There is a need for two categories of exceptions. Any exceptions should, of course, be subject to clear and strict conditions to avoid abuse.

One category of exceptions relates to the case of a legal owner that does not hold an economic interest. Classic examples of such a scenario are pension funds and investment funds.

A second category of exceptions relates to economic beneficiaries that are not the end investor in the custody chain. A classic example is the case of securities provided as collateral. In such cases, it would be appropriate for the tax benefits to be allocated to the collateral giver, and this would have the additional benefit of reducing the risk of "dividend stripping". With respect to collateral provided in the context of triparty collateral management services, there are major safeguards in place to prevent abuse, as the triparty agent has a contractual relationship with both the collateral giver and collateral receiver.

Vraag 6

Bij de introductie van dit alternatief zal geen verrekening, vermindering of teruggaaf van dividendbelasting toekomen aan diegene die het vruchtgebruik heeft op aandelen. Is dit gewenst en hoe moet hiermee worden omgegaan?

BNY Mellon answer:

Please see our answer to Question 4.

Vraag 7

Welke varianten op dit alternatief zijn mogelijk om te voorkomen dat ook gevallen worden geraakt waarbij geen sprake is van dividendstripping

BNY Mellon answer:

Please see our answer to Question 4. We see the example of tri-party collateral management as a clear example of a case in which a variant is needed.

Vraag 8

Hoe waardeert u de introductie van een houdsterperiode?

BNY Mellon answer:

This would be very difficult to implement, and would have the effect of disadvantaging under some circumstances investors with legitimate activity.

If it were implemented, it would have to meet the following set of requirements:

- Common pan-European rules (not a distinct Dutch system)
- Agreed methodology on how to determine holding periods (based on Last In First Out)
- Holding periods to be determined with relation to the record date, and identified using the actual settlement date of a transaction or movement
- Rules on how to treat movements arising out of corporate actions
- Exemptions for movements of collateral
- Exclusion from these rules for some categories of investor, such as supranationals
- Rules that are applied per securities account
- Rules on how to treat transfer of shares between two accounts that are owned by the same beneficial owner.

Vraag 9

Welke termijnen, voor en na record datum, zouden geschikt zijn voor het bepalen van de houdsterperiode?

BNY Mellon answer:

Any minimum holding period should end at close of business on record date.

There are several reasons why this should be the case. One is that a holding period extending after record date would be inconsistent with a relief at source system and entitlement to tax relief on the actual dividend distribution date.

Vraag 10

Hoe waardeert u het opnemen van een doelmatigheidsdrempel en welk drempelbedrag zou volgens u geschikt zijn?

BNY Mellon answer

We would support the application of a minimum threshold, so that, for example, retail investors are not impacted.