

17 September 2024

By email: [public.consultation@ird.govt.nz](mailto:public.consultation@ird.govt.nz)

Tēnā koe,

[PUB00454: Income tax - Share Investments](#)

The New Zealand Law Society Te Kāhui Ture o Aotearoa welcomes the opportunity to comment on the following documents relating to PUB00454:

- Draft Interpretation Statement: Income tax – Share investments
- Draft Fact Sheet: Income tax – Share investments (dividends and taxable share sales)
- Draft Fact Sheet: Income tax – Share investments (whether the FIF rules apply)

This submission has been prepared with the assistance of the Law Society's Tax Law Committee.

As a general comment, the Law Society is broadly in agreement with the content of the draft IS. Our feedback relates to specific paragraphs and, for ease of reference, is set out in the **attached** tables.

We hope this feedback is useful. Should you wish to discuss any aspect of this feedback, please feel free to contact Aimee Bryant, Manager Law Reform and Advocacy ([aimee.bryant@lawsociety.org.nz](mailto:aimee.bryant@lawsociety.org.nz)).

Nāku noa, nā



Taryn Gudmanz  
**Vice President**

## Draft Interpretation Statement

Para	Comment
12	We suggest deleting the following sentence, as it does not add to the point being made: <i>'The onus is on the investor to prove whether their dominant purpose for buying shares was to dispose of them.'</i>
	Regarding the first bullet-point that 'share sales will not be taxable if an investor can show that shares were bought for the dominant purpose of receiving dividend income': we suggest the draft IS should note that dividend yield is not always a relevant factor, as many shares do not pay dividends or only a small dividend, especially foreign shares.
14	The draft IS suggests that where an investor holds some shares for sale and some for long-term investment, it would be advisable for these to be held in separate accounts with the platform provider or broker. Has it been considered whether this is possible on platforms?
21	For clarity, we recommend referring to NZ\$ throughout the draft IS and fact sheets.
27	In the second sentence, we recommend referring to <i>'direct share investment.'</i>
Example 1	We suggest also including an example where the person has a 39% marginal tax rate. It would be useful to show the "top up" after ICs and RWT.
39	We suggest amending to read: 'Dividends received from a foreign company are <i>usually</i> taxable in that other country and also in New Zealand.'
45	Where the paragraph states 'Investors cannot <i>generally</i> claim...', we recommend instead using the term ' <i>usually</i> ' or deleting the word 'generally.'
49	We suggest amending the third bullet-point to read 'part of a profit-making <i>undertaking or scheme.</i> '
50	The title of this section should refer to <i>dominant</i> purpose.
59	We recommend deleting the following sentence, as it does not add to the point of the paragraph: <i>'The onus is on the investor to show that disposal was not their dominant purpose at the time they acquired shares.'</i>
60	Same as comment at paragraph 14, above. Has it been considered whether it is possible on platforms to hold shares acquired for sale and shares acquired for long-term investment in separate accounts?
Example 6	It would be good to also have an example where someone invests in one parcel of shares for dividend returns and because they expect the value of the shares to perform strongly, but because disposal is not 'dominant' they are not taxable.
Example 7	To be clearer, the example should mention the existence of evidence that Sally was investing in shares in order to fund a house deposit.
67	Same as comment at paragraphs 14 and 60 above. Has it been considered whether it is possible on platforms to hold shares acquired for sale and shares acquired for long-term investment in separate accounts?
68	At bullet-point 3, we recommend deleting the words ' <i>in some way</i> ' as these words do not add to the point being made. At bullet-point 5, we recommend cross-referencing 'the factors from <i>National Distributors</i> ' to the discussion in paras 50 – 56 of the draft IS.

70	We suggest deleting the words ' <i>on a large scale</i> ', as this is covered in more detail later in that paragraph.
	At the third bullet-point: this needs to be considered in the modern-day context, where share portfolios are available 24/7 on mobile devices. The Court of Appeal in <i>National Distributors</i> would have not contemplated this.
75	'the purpose' should read 'the <i>dominant</i> purpose'.
76	'a purpose' should read 'a <i>dominant</i> purpose.'
77	While we appreciate the focus of the draft IS is on share sales, for clarity this section on expenses should mention the deductibility of platform fees for remitting dividends and interest on funds borrowed to acquire shares held on capital account (i.e. for dividend returns).
Example 10	It would be good to also have an example where someone does not acquire shares for the dominant purpose of disposal but spends significant money and time in relation to their share portfolio, in addition to their full-time occupation. This would be to solely illustrate the application of <i>CIR v Stockwell</i> .
Page 22	Regarding the section on share lending, the technical requirements of the share lending rules are complex, so any summary needs to be at a very high level and cross reference to detailed IR material. The comments below on paras 86 – 88 of the draft IS illustrate the issues that this raises.
85	Regarding the sentence: ' <i>Investors should carefully read the terms and conditions when signing up to platforms and seek advice before agreeing to participate in these arrangements.</i> ' While sensible, we are not sure this advice belongs in an Interpretation Statement.
86	Does 'intention to share lend' mean there is a purpose of disposal?
87	Does the reacquisition reset the purpose of acquisition if things have changed during the lending period?
88	Regarding the statement that investors should consult a tax advisor to determine their tax obligations, can mention be made of the likely issues that should be considered?
Example 14	Many home loans are structured as revolving credit facilities. If a person has domestic bank debt that is a VPDI, and holds a small portfolio of shares, is subject to the FA rules, the compliance costs, unfunded tax liabilities (and permanent timing issues) associated with the FA rules will be a surprise to many taxpayers.
103 Footnote 4	'An exempt Australian unit trust is also Australian resident...' should read ' <i>An Australian unit trust is exempt if it is an Australian resident and...</i> '.
115	We recommend explaining that the 'opening market value' is on 1 April.
Example 16	Could this example be expanded to cover more income years? For example: 2023 year: FIF / FDR on \$55k at 1 April 2022 2024 year: FIF / FDR on \$59,125 at 1 April 2023 2025 year: What if Jax sells \$20k of the portfolio before 31 March 2024, so below threshold on 1 April 2024? 2026 year: What if Jax acquired \$30k of new US shares on 1 April 2025?
Appendix	As a general note, this Appendix is very tax-technical. We query whether this IS is the place for such analysis given the audience.

118	For readability we suggest amending 'has reached views in part one' to read ' <i>has reached the views expressed in part one.</i> '
119	The title should refer to ' <i>dominant purpose</i> '.

### Fact sheet: Income tax – Share investments (dividends and taxable share sales)

Para	Comment
2	Bullet-point two should refer to 'the <i>dominant</i> purpose of disposing of them...'
8	'... is less than \$200' should read ' <i>is \$200 or more.</i> '
8	Reference to the \$200 <i>limit</i> should, for consistency, be a reference to a ' <i>\$200 threshold.</i> '
12	Should read 'for the <i>dominant</i> purpose'.
16	At bullet-point 3, in two places we recommend replacing 'your main reason' with 'your <i>dominant purpose.</i> '
17	Has it been considered whether it is possible on platforms to hold shares acquired for sale and shares acquired for long-term investment in separate accounts?
18	Bullet-point two should read 'If you bought shares <i>for the dominant purpose of selling them...</i> '.
19	We suggest this should also cover off allowable deductions where shares are acquired for deriving dividends.

### Fact sheet: Income tax – Share investments (whether the FIF rules apply)

Para	Comment
7	At this paragraph and throughout – for clarity – we recommend referring to NZ\$.
	Where the box text refers to an attributing interest in a FIF including shares in a foreign company, this should also note that it can include a unit trust.
18	As this relates to individuals, we suggest stating '1 April' instead of 'for example, 1 April.'
19	As this relates to individuals, we suggest stating '31 March' instead of 'for example, 31 March.'