

PRODUCT RULING - BR Prd 14/09

This is a product ruling made under section 91E of the Tax Administration Act 1994.

Persons to whom the Ruling applies ("the Applicants")

This Ruling has been applied for by:

- Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. ("**Rabobank Nederland**"); and
- Rabo Capital Securities Limited ("**Rabo Capital**")

Taxation Laws

All legislative references are to the Income Tax Act 2007 ("**the Act**") unless otherwise stated.

This Ruling applies in respect of sections CX 56C, GB 35, BG 1 and GA 1.

The Arrangement to which this Ruling applies

The Arrangement is the raising of capital by Rabo Capital and Rabobank Nederland. Rabo Capital offered to the public (in New Zealand and to investors in other jurisdictions where they may be lawfully offered) New Zealand dollar denominated, perpetual, non-cumulative, non-voting preference shares ("**PIE Capital Securities**") of up to \$200 million (with the option to accept unlimited oversubscriptions at its discretion). On 25 May 2009 Rabo Capital accepted applications of \$280 million. The PIE Capital Securities are listed on the New Zealand Debt Market ("**NZDX**").

Rabo Capital used the funds raised from the issue of the PIE Capital Securities to invest in capital securities issued by Rabobank Nederland ("**Underlying Securities**") on or about the issue date of the PIE Capital Securities. Rabobank Nederland uses these funds for its banking business.

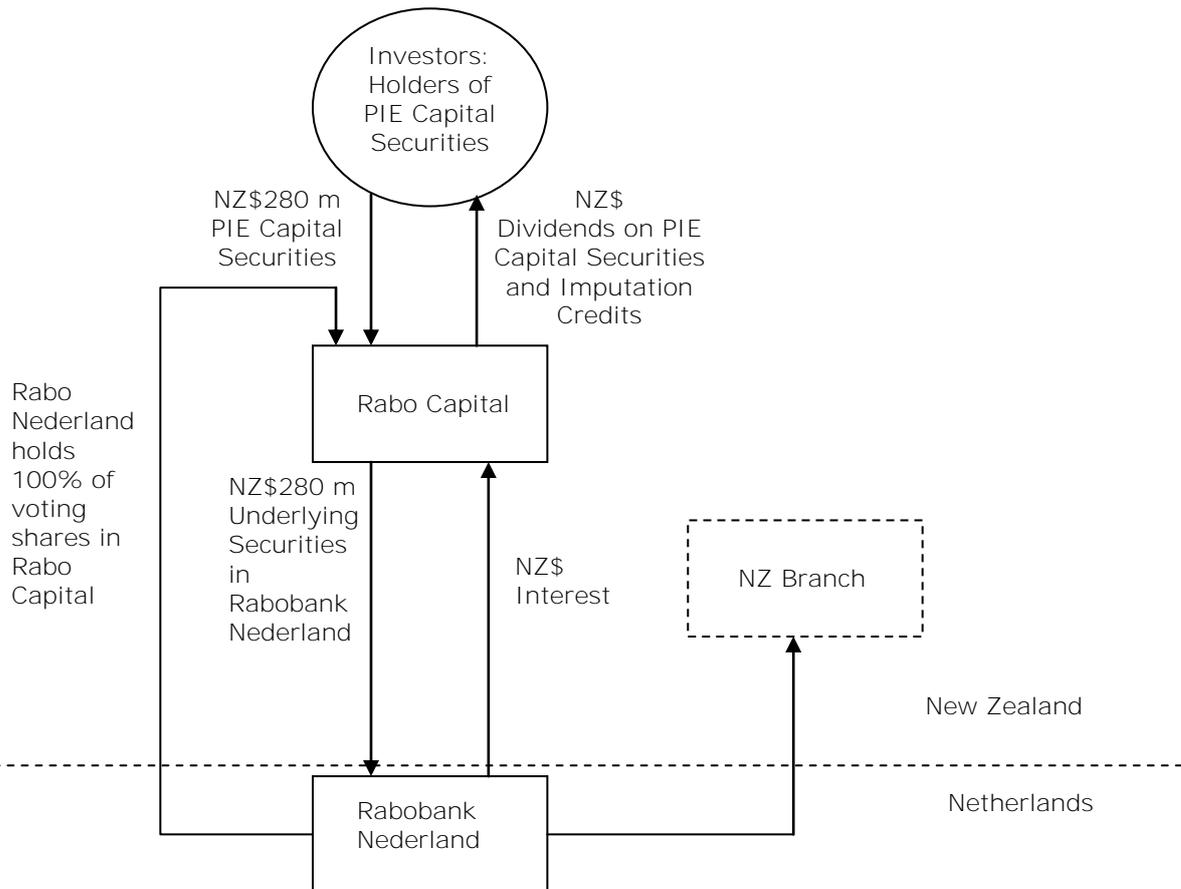
The Board of Directors of Rabo Capital and/or the Supervisory Board of Rabobank Nederland have no intention that Rabo Capital and/or Rabobank Nederland promote the acquisition of PIE Capital Securities by providing holders of PIE Capital Securities or prospective holders with a loan or other financing from any of the companies in the Rabo Capital or Rabobank Nederland Group.

This Ruling does not apply to any holder of PIE Capital Securities who or which has funded the acquisition of PIE Capital Securities by means of borrowing or other financing from any of the companies in the Rabobank group of companies, where such borrowing or other financing was part of an express agreement or arrangement (whether in writing or otherwise) with such company that the proceeds of some or all of such borrowing or other financing would be used for the purposes of acquiring PIE Capital Securities.

- 1 Parties to the Arrangement are:
 - Rabobank Nederland, a co-operative entity incorporated under Dutch law and tax resident in the Netherlands;
 - Rabo Capital, a limited liability company incorporated under New Zealand law which is a wholly-owned subsidiary of Rabobank Nederland; and
 - Holders of PIE Capital Securities (**"the Holders"**).

- 2 The transactions comprising the Arrangement are governed by documents that were provided to Inland Revenue on 2 April, 22 April or 24 April 2009. The documents are:
 - Agency Agreement between Rabo Capital, Rabobank Nederland and **Computershare Investor Services Limited ("Registrar") dated 16 April 2009 ("Agency Agreement")**;
 - Terms and Conditions of the Underlying Securities set out in Exhibit A of the Agency Agreement;
 - Constitution of Rabo Capital registered with the New Zealand **Companies Office on 27 April 2009 ("the Constitution")**;
 - Terms and Conditions of the PIE Capital Securities attached as the Appendix to the Constitution (**"PIE Conditions"**);
 - Investment Statement for the purposes of the Securities Act 1987 for **the offer of PIE Capital Securities, dated 17 April 2009 ("the Investment Statement")**;
 - NZX Regulation Decision dated 17 April 2009; and
 - Listing Agreement NZDX Market between Rabo Capital and NZX **Limited ("NZX")**.

- 3 The Arrangement is summarised in the diagram below and discussed in subsequent paragraphs:



- 4 The PIE Capital Securities and the Underlying Securities will constitute Tier 1 Capital of the Rabobank Group (comprising Rabobank Nederland together with its branches, consolidated subsidiaries and local member banks, including Rabo Capital) for the purposes of the Dutch Central Bank, which is the home prudential authority for Rabobank Nederland.

Rabo Capital

Incorporation of Rabo Capital

- 5 Rabo Capital is a special purpose company incorporated on 15 April 2009 under the Companies Act 1993 with 1000 \$1 ordinary shares, all of which are held by Rabobank Nederland. Rabobank Nederland is a co-operative entity incorporated under Dutch law and tax resident in the Netherlands.
- 6 The ordinary shares carry all the voting rights in Rabo Capital but the holder of the ordinary shares is not, by virtue of that holding, entitled to participate in any dividend or distribution (including by way of a return of capital) made by Rabo Capital.

Rabo Capital Constitution

- 7 Rabo Capital has no power to carry on any business or activity other than that described in the Constitution.

8 Clause 5.1 of the Constitution states:

5.1 Limitation on Business: The only business or activity which the Company may carry on is to:

- (a) issue and maintain in existence PIE Capital Securities, including listing (and maintaining a listing of) those shares on any stock or securities exchange in New Zealand or elsewhere;
- (b) use the proceeds of PIE Capital Securities to subscribe for perpetual Tier 1 bonds issued by Rabobank Nederland, or a related company of Rabobank Nederland;
- (c) enter into the Agency Agreement and the Security Trust Deed (and any other administration agreements, security trust deeds, registration agreements and/or deed polls in connection with the issue of PIE Capital Securities); and
- (d) do all other things reasonably incidental to the activities referred to in sub-paragraphs (a), (b), (c) above and this Constitution.

The Company has no power to:

- (e) carry on any other business or activity; or
- (f) apply amounts received by way of interest on, or repayment of, the bonds referred to in sub-paragraph (b) above for any purpose other than in payments to Holders, meeting costs and expenses incurred in connection with the issuance and maintenance in existence of PIE Capital Securities and making income and other tax payments to the New Zealand Inland Revenue Department.

9 Rabo Capital **constitutes a "listed PIE"** under the **"portfolio investment entity"** ("PIE") regime. Rabo Capital elected into the PIE regime on 22 April 2009, with a commencement date of 27 May 2009.

10 Under the Constitution, Rabo Capital may take all steps it considers necessary or desirable to ensure it continues to be eligible as a PIE and a listed PIE or otherwise to comply with the requirements of the Act relating to PIEs. These requirements include (but are not limited to):

- refusing to register the transfer of any PIE Capital Securities;
- treating the transfer of any PIE Capital Securities as void (*ab initio* or from such other date as Rabo Capital may decide in its complete discretion) (clause 3(i)(ii) of the PIE Conditions);
- deeming any PIE Capital Securities held that would result in any holder (or where the holder is a nominee their beneficial owner) exceeding the maximum holding that an investor may hold in Rabo Capital in order for it to meet the PIE eligibility requirements in the Act, to be held by the holder of the PIE Capital Securities on trust for any member of the Rabobank Group appointed by Rabo Capital and allowing such member full powers of direction in relation to those PIE Capital Securities, including when, how and to whom they may be transferred (clause 3(i)(ii) of the PIE Conditions);
- allowing Rabo Capital or the Registrar to request any holder (or any person associated with that holder) of PIE Capital Securities to provide such information or evidence as it may require to determine

whether Rabo Capital is eligible or continues to be eligible as a PIE and qualify as a listed PIE and, where holders do not provide such **information within specified time periods, deeming that such holder's** (or where the holder is a nominee, such **beneficial owner's**) PIE Capital Securities are held on trust for a member of the Rabobank Group appointed by Rabo Capital and such member of the Rabobank Group shall have full powers of direction in relation to those PIE Capital Securities including when, how and to whom they may be transferred (clauses 3(i)(iii) and (iv) of the PIE Conditions);

- allowing Rabo Capital or the Registrar to take any of the steps in clause 3(i)(v) of the PIE Conditions to ensure that any breach of the **PIE regime "investor interest size" requirement is remedied within** the period required by the Act.

PIE Capital Securities

- 11 Rabo Capital offered PIE Capital Securities with a face value of \$1 each to the public in New Zealand for \$1 per security. The minimum holding amount is \$5,000. The offer which opened on 27 April 2009 and closed on 22 May 2009, was available to retail and institutional investors. Rabobank Nederland acquired 5,000 PIE Capital Securities on 5 February 2010.
- 12 On 25 May 2009 Rabo Capital accepted a total of \$280 million in applications.
- 13 Rabo Capital has entered into a Listing Agreement with NZX for the PIE Capital Securities to be quoted on the NZDX (the debt security market operated by NZX). Although the PIE Capital Securities are not debt securities for the purposes of the Securities Act 1978, NZX Regulation has given certain rulings and waivers from the NZDX Listing Rules in relation to the listing of the PIE Capital Securities on the NZDX.
- 14 The PIE Capital Securities are perpetual non-cumulative non-voting preference shares of Rabo Capital and shall at all time rank *pari passu* and without any preference among themselves (clause 4(a) of the PIE Conditions). They are direct, unsecured and subordinated obligations of Rabo Capital and are not guaranteed by Rabobank Nederland or any other person.
- 15 Dividends are paid on the PIE Capital Securities quarterly in arrears on the **"Initial Rate Dividend Payment Date", with the first dividend payment date** occurred on 18 June 2009 (clause 5(c) of the PIE Conditions).
- 16 The dividend amount is the amount of cash payable to holders of PIE Capital Securities on the relevant dividend payment date. The dividend amount for each dividend period from 18 June 2009 to 18 June 2019 is calculated as follows:

$$\frac{\text{face value} \times \text{dividend rate} \times (1-t)}{4}$$

4

Where **"t"** is the weighted basic rate of New Zealand corporate income tax expressed as a percentage applicable to Rabo Capital (currently 28 percent) during the period ending on the relevant dividend payment date.

The "*dividend rate*" used to calculate the dividend amount will be as follows:

- (a) for the first 10 years, the initial rate, which is equal to the sum of the margin and the benchmark rate (the five-year swap rate), which will be reset after five years; and
- (b) thereafter, the floating rate, which is equal to the sum of the margin and the three-month bank bill rate, which is reset quarterly.

- 17 The Investment Statement contains the following statement, relating to dividends payable on the PIE Capital Securities (at page 6):

Dividend:

The PIE Capital Securities will pay a non-cumulative dividend. Dividend Amounts are scheduled to be paid quarterly on each 18 March, 18 June, 18 September and 18 December. The Dividend Amount is the cash component of the dividend and is a proportion of the amount calculated using the Dividend Rate. Dividend Amounts payable on the PIE Capital Securities will be paid to the person registered as the Holder on the relevant Record Date (including in relation to the first Dividend Amount payable).

Initial Dividend Rate:

The initial Dividend Rate will be set for an initial period of approximately 5 years from the Issue Date to 18 June 2014 at the greater of:

- the Minimum Initial Rate, which is 8% per annum; and
- the Benchmark Rate on 25 May 2009 plus the Margin.

Dividend Rate reset:

The Dividend Rate will be reset for a further 5 years on 18 June 2014 at the prevailing Benchmark Rate plus the Margin. From 18 June 2019 the Dividend Rate will reset quarterly, at the 90 day bank bill rate plus the Margin.

- 18 On 25 May 2009 the dividend rate for the period until 18 June 2014, incorporating the margin (which has been set at 3.75 percent per annum) and the swap rate, was set at 8.7864 percent per annum.
- 19 On 19 June 2014 the dividend rate for the period until 17 June 2019, incorporating the margin (which has been set at 3.75% per annum) and the swap rate was set at 8.3425 percent per annum.
- 20 Rabo Capital attaches imputation credits to distributions made to holders of PIE Capital Securities to the maximum extent permitted by the imputation credits available. At the current corporate income tax rate of 28 percent, this would be a maximum of 28/72 of the dividend amount. The Investment Statement contains the following statement (at page 11) – note that the corporate tax rate was 30 percent in 2009:

Imputation Credits

The Issuer will attach imputation credits to Dividend Amounts to the extent permitted by the imputation credits that the directors of the Issuer determine are available. It is expected that dividends will have imputation credits fully attached to a Dividend Amount (30/70th of the Dividend Amount assuming a corporate tax rate of 30%). If the Issuer does not fully impute a Dividend Amount, this may trigger an Exchange Event and the PIE Capital Securities

may, at the Issuer's option, exchange into the Underlying Securities issued by Rabobank Nederland or be redeemed. Alternatively, the Issuer may, at its discretion, put in place an arrangement to reimburse Holders who are adversely affected by the dividends not being fully imputed.

Underlying Securities

- 21 Rabo Capital used the funds raised from the issue of PIE Capital Securities to invest in Underlying Securities issued by Rabobank Nederland on or about the issue date of the PIE Capital Securities. The Underlying Securities are interest-bearing, unsecured, perpetual, non-cumulative subordinated bonds. The principal amount of the Underlying Securities is equal to the subscription amount of the PIE Capital Securities. The Underlying Securities will have terms conforming substantially to the terms of the PIE Capital Securities. However, the Underlying Securities constitute bonds paying interest rather than shares paying imputed dividends. The Underlying Securities will be the only material asset of Rabo Capital and at least 90 percent of the income Rabo Capital will derive from interest from its investment in the Underlying Securities.
- 22 Rabobank Nederland uses the funds raised from the issue of Underlying Securities for its banking business. The funds are not being raised **specifically for the purposes of Rabobank Nederland's New Zealand branch ("NZ Branch"), although Rabobank Nederland may "on-lend" some of the funds raised to NZ Branch.**
- 23 Interest received by Rabo Capital on the Underlying Securities will constitute assessable income for Rabo Capital.
- 24 Rabo Capital will receive credits in its imputation account for New Zealand tax paid.

Termination of Arrangement

- 25 The PIE Capital Securities are perpetual securities that have no scheduled repayment date, but the PIE Capital Securities will be redeemed in the following circumstances (among others). The circumstances are set out in clause 8 of the PIE Conditions and are:
 - (a) if Rabo Capital exercises the option contained in clause 8(c) of the PIE Conditions **on the "First Call Date" which is specified as being 18 June 2019 or on any dividend payment date thereafter;**
 - (b) if, as a result of a Netherlands tax law change, there is more than an insubstantial risk that additional amounts are payable under the Underlying Securities or interest payable on the Underlying Securities would not be deductible to Rabobank Nederland for Netherlands tax purposes and Rabo Capital elects to redeem the PIE Capital Securities;
 - (c) if the Dutch Central Bank notifies Rabo Capital that the PIE Capital Securities may not be included in consolidated Tier 1 Capital of the Rabobank Group and Rabo Capital elects to redeem the PIE Capital Securities;
 - (d) where the Underlying Securities are redeemed; or

- (e) **on the occurrence of certain "Exchange Events" the PIE Capital Securities may be, at the option of Rabo Capital either cancelled and exchanged for Underlying Securities with a face value equal to the face value of the PIE Capital Securities or redeemed. The types of circumstances that would constitute an "Exchange Event" are described in the "Definitions" section of the PIE Conditions and summarised in the Investment Statement as follows (at page 12):**

Exchange Events

On the occurrence of certain events (each an "Exchange Event") the PIE Capital Securities may, at the option of the Issuer, exchange into the Underlying Securities issued by Rabobank Nederland or be redeemed. The Exchange Events are:

- (a) if the Dutch Central Bank requires that all PIE Capital Securities must be issued directly by Rabobank Nederland; or
- (b) an Insolvency Event in relation to the Issuer or Rabobank Nederland; or
- (c) a default by the Issuer for more than 30 days in the payment of Dividend Amounts or Redemption Amounts (other than relating to an administrative error) in respect of any of the PIE Capital Securities; or
- (d) any of the following events that the Issuer determines in its absolute discretion is an Exchange Event:
 - (i) an Increased Costs Event; or
 - (ii) any Tax Law Change which has or is expected to have the effect that the anticipated tax outcomes for the Issuer or for Holders as at the Issue Date are adversely affected (as determined by the Issuer); or
 - (iii) the Issuer does not impute a Dividend Amount at the maximum imputation ratio under the Tax Act and an arrangement is not in place, or in the Issuer's opinion is not expected to be in place, within 90 Business Days of the relevant Dividend Payment Date to fully reimburse Holders who are adversely affected; or
 - (iv) the New Zealand Inland Revenue Department has indicated that it will not provide or renew a satisfactory binding ruling or rulings (as determined by the Issuer) confirming the anticipated tax implications of the transaction for the Issuer and the Holders.

Upon the occurrence of an Exchange Event, Holders of the PIE Capital Securities may, at the option of the Issuer, receive Underlying Securities in a principal amount equal to the Redemption Amount of each Holder's PIE Capital Securities at the relevant time or have their PIE Capital Securities redeemed. Prior to the distribution to Holders of the Underlying Securities or redemption, any Outstanding Amounts and any surplus amounts (after accounting for the Outstanding Amounts and the distribution of the Underlying Securities) held by the Issuer will be paid out pro rata to Holders.

Administration Costs

- 26 Rabo Capital pays Rabobank Nederland an administration fee for administration services provided by Rabobank Nederland. The administration does not exceed an arm's length amount.
- 27 The New Zealand branch of Rabobank Nederland ("**NZ Branch**") provided a liquidity facility to Rabo Capital pursuant to which Rabo Capital may request advances of up to NZ\$10 million from NZ Branch. Any interest paid by Rabo Capital to NZ Branch pursuant to the liquidity facility will be **on arm's length terms or, if not on arm's length terms, on terms that are**

in favour of Rabo Capital. It is expected that money from this funding facility will only be used to pay tax or other expenses of Rabo Capital if it has insufficient available funds before receiving income under the Underlying Securities. There is no intention on the part of the Board of Directors of Rabo Capital and/or the Supervisory Board of Rabobank Nederland that Rabo Capital, Rabobank Nederland and/or NZ Branch would be paid any of the income that should otherwise be paid to the holders of PIE Capital Securities.

Condition stipulated by the Commissioner

This Ruling is made subject to the following condition:

- a) This Product Ruling will cease to apply if the Binding Private Ruling (BR Prv 14/38) issued in respect of the Rabo Capital PIE regime Arrangement no longer applies or Rabo Capital ceases to be eligible to be a PIE and a listed PIE.

How the Taxation Laws apply to the Applicants and the Arrangement

Subject in all respects to any condition stated above, the Taxation Laws apply to the Applicants and the Arrangement as follows:

- Distributions or dividends made by Rabo Capital to Holders constitute excluded income of a New Zealand tax resident Holder who is a natural person or a trustee and who does not include the amount as income in their return of income for the income year, pursuant to section CX 56C(1) of the Act.
- Where section CX 56C(1) does not apply, distributions or dividends made by Rabo Capital to Holders under the PIE Capital Securities constitute excluded income of a Holder to the extent to which the amount of the distribution or dividend is more than the amount that is fully credited as described in section CD 43(26) of the Act.
- Section GB 35 (streaming) does not apply to the Arrangement.
- Section BG 1 and section GA 1 (tax avoidance) do not apply to the Arrangement.

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 1 July 2014 and ending on 30 June 2019.

This Ruling is signed by me on the 25th day of August 2014.

John Trezise
Investigations Manager