



**Guide to the
Model
Questionnaires
on outgoing
International
Value Transfers**

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A joint initiative of:

Dutch Pension Fund Federation
(*Pensioenfederatie*)
Dutch Association of Insurers
(*Verbond van Verzekeraars*)

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1. Introduction

Effective January 1, 2007 certain provisions concerning international value transfers (also known as international transfer payments) for individual persons were incorporated in the Dutch Pensions Act (*Pensioenwet*). Some of these provisions impose new obligations on pension administrators (pension funds). Thus, a pension administrator is now obliged to co-operate in certain situations and must decide itself whether the statutory conditions are met. In other situations the pension administrator has a discretionary power to decide whether or not to co-operate; in these cases too, certain statutory conditions apply. The pension administrator has thereby acquired a personal responsibility with regard to international value transfers.

All Dutch pension administrators have to deal with these new obligations and responsibilities under the Pensions Act, entailing a heavier administrative burden and greater liability risks.

The pension fund associations and certain pension administrators have recognised this and have developed a common approach by means of a Working Group. The *Pensioenfederatie* and *Verbond van Verzekeraars*, as well as the pension scheme administrators APG, Syntrus Achmea, Nationale-Nederlanden, DSM Pension Services, PGGM and the Dutch Shell Pension Fund have all participated in this “Joint Working Group on International Value Transfers”.

The aim of the Guide and the Questionnaires is to facilitate the practicalities of international value transfers and simplify the appraising of such transactions on legal and other aspects. It should, however, be noted that a completed (model) questionnaire does not discharge the Dutch pension administrator of the responsibility for checking whether the responses truly correspond with the submitted documentation and pension scheme regulations.

2. Model Questionnaires

To achieve this aim the Working Group has developed three model questionnaires which can be used by any Dutch pension administrator to process an international value transfer request. These model questionnaires enable the Dutch pension administrator to assess uniformly and easily whether an international value transfer request can or cannot be honoured.

In these model questionnaires the statutory requirements have been re-expressed as questions that have to be answered by the foreign pension-paying institution and the present or former pension scheme participant requesting an international value transfer. Each model questionnaire covers a specific transfer situation.

- The first questionnaire covers value transfers within the European Union (EU);
- The second questionnaire covers value transfers to what are termed designated institutions;
- The third questionnaire covers value transfers outside the EU.

The model questionnaires are to be used as follows. Whenever an international value transfer is requested, the Dutch pension administrator can select the appropriate questionnaire and send the English or Dutch version – possibly via the requester – to the foreign pension-paying institution.¹

Some of the questions specifically concern the present or former pension scheme participant submitting the request, and the foreign pension-paying institution must get the requester to answer them. When the questionnaire has been returned, the (simplified) appraisal can be conducted. If all questions have been answered “yes” and the foreign pension scheme (pension plan) has been submitted, the international value transfer process can be continued. In some cases this means that the Dutch pension administrator can proceed with the value transfer straightaway (e.g. if the value transfer is within the EU). In other cases the consent of De Nederlandsche Bank (DNB) must be requested (if the value transfer is outside the EU).

¹ The Model Questionnaires have been translated into English

3. Provisions of the Pensions Act

This section briefly summarises the relevant provisions of the Pensions Act (PW). International value transfers are governed by Articles 85 to 92 inclusive. The Act describes a large number of situations involving an international value transfer and defines the statutory requirements for each of these situations. A distinction is drawn between incoming and outgoing international value transfers. Within each category a further distinction is then drawn between those value transfers where the Dutch pension administrator is obliged to co-operate, and those where it has a discretionary power to co-operate, depending primarily on the nature of the foreign pension-paying institution concerned, the current domestic or foreign legislation governing international transfers of pension entitlements and whether the institution is or is not established in an EC Member State. Pursuant to Article 71a of the Pensions Act, the obligation to undertake an international value transfer is not effective if the opportunities for commuting the transfer value, after the value transfer, are wider in the foreign country than under the Pensions Act. Value transfers to European Community institutions or to foreign institutions designated by the Minister of Social Affairs and Employment (SZW) form a separate category.

Model questionnaires have been developed to cover those value transfer situations that most commonly occur in practice. Other situations hardly ever arise. The model questionnaires cover the following situations:

Article:	Description:
Art. 85 PW ²	Obligation to effect value transfer to a pension-paying institution in another Member State or to an insurer having its registered office outside the Netherlands, at the pension scheme participant's request
Art. 86 PW	Obligation to effect value transfer to one of the European Communities or to a designated institution
Art. 87 PW	Discretionary power to effect value transfer to some other foreign institution

If the transferring pension administrator is obliged to effect an international value transfer under Articles 85 and 86 of the PW, no costs may be charged. If the transferring pension administrator has the discretionary power to effect an international value transfer under Article 87 of the PW, it may charge the costs of doing so, but those costs must not be deducted from the transfer value.

The pension scheme participant's partner must also agree to the value transfer.³ For this purpose, the partner must explicitly countersign the value transfer request.

4. Fiscal legislation

The basic rule in the Netherlands is that a value transfer is treated for tax purposes as the commutation of a pension, which constitutes grounds for levying wage tax on the transfer value (Article 19b(2) of the Wages and Salaries Tax Act [*Wet LB*] 1964).

Under Article 19b(6) of the Wages and Salaries Tax Act 1964, an international value transfer in the context of an acceptance of employment outside the Netherlands does not entail fiscal consequences (*i.e.* no tax is levied; this is an untaxed value transfer). However, certain conditions must then be satisfied, as specified in the Decree (*Besluit*) of January 31, 2008, No. CPP 2007/98M, Government Gazette (*Staatscourant*) 2008, No. 27 (International aspects of pensions).⁴

The conditions imposed by this Decree have likewise been re-expressed as questions and incorporated in the model questionnaires. Consequently the model questionnaires may also be used to verify, for tax purposes, whether the conditions have been met.

An important aspect of untaxed value transfers is that the Tax and Customs Administration (*Belastingdienst*) does impose a protective assessment (*conserverende aanslag*) or exit levy. If it transpires, after the value transfer has been effected, that the stipulated fiscal conditions have not been fully satisfied, then the Tax and Customs Administration can recover the tax due by means of this assessment.

² Pensioenwet.

³ If the partner does not agree, only the retirement pension may be transferred.

⁴ This Decree (in Dutch) can be found on www.minfin.nl.

Dutch tax law enables a value transfer to be effected without a Dutch tax levy being imposed, but the Tax and Customs Administration (Dutch address: Belastingdienst Limburg, kantoor Buitenland, Postbus 2865, 6401 DJ Heerlen, The Netherlands) has to verify the content of the fiscal conditions and take a formal decision.

In addition, the transferring pension administrator must be relieved of liability in the event of a tax claim by the Tax and Customs Administration. This is only possible if:

- the foreign pension administrator states that it is assuming this liability. For this purpose, the Tax and Customs Administration will again have to be contacted; or
- the employee submitting the value transfer request declares to the Tax and Customs Administration that he is providing sufficient security.

If the Tax and Customs Administration does not give its consent, the transferring pension administrator cannot co-operate in an untaxed value transfer.

How can these conditions be met?

The Tax and Customs Administration can sign an agreement with the *receiving* pension-paying institution in which the latter assumes liability for the tax and revision interest payable by the employee with pension entitlements. For this purpose the foreign pension administrator must assume, in writing, liability for the protective assessment *vis-à-vis* the Tax and Customs Administration, and accept post-transfer liability (under Article 44b of the Collection of State Taxes Act [*Invorderingswet*] 1990).

Alternatively, the employee himself may provide sufficient surety to the Tax and Customs Administration.

If the receiving institution and the employee fail to co-operate in this, the Dutch pension administrator may be faced with the consequences of a protective assessment, even years after the value transfer has been effected. It can safely be assumed that a Dutch pension administrator would be unwilling to bear liability for a protective or other tax assessment after an international value transfer has been effected.

5. Agreement with Tax and Customs Administration Limburg (Foreign Countries Office), the Ministry of Social Affairs and Employment (SZW) and De Nederlandsche Bank (DNB)

This "Guide to the Model Questionnaires on International Value Transfers" has been discussed with the Tax and Customs Administration Limburg (Foreign Countries Office), the Ministry of Social Affairs and Employment and De Nederlandsche Bank. Both DNB (as supervisory agency for pension funds) and the Tax and Customs Administration have informed the pension fund associations that they welcome this standardisation initiative, because this uniform procedure by pension administrators will promote operational efficiency within the pensions sector and proper compliance with the statutory provisions.

The Tax and Customs Administration has confirmed that a Dutch tax pension administrator would be informed by the Tax and Customs Administration whenever it is relieved of fiscal liability under the Collection of State Taxes Act.

6. General information

On completion and after signing the applicable 'Model Questionnaire Value Transfer' the questionnaire should be sent to the Dutch pension administrator for further assessment of the request for international value transfer. If, on the basis of the completed questionnaire and the supporting information, it can be concluded that the request is compliant with the required conditions in respect of international value transfer laid down in the (Dutch) Pension law, the Dutch pension administrator will, as far as fiscal conditions are concerned, provide feedback to the Dutch Tax and Customs Administration.

Model Questionnaire for Value Transfers within the EU

Explanatory note

Under Article 85 of the Pensions Act, the Dutch pension administrator is obliged to co-operate with a value transfer to a pension-paying institution in another Member State or an insurer with a registered office outside the Netherlands (value transfer within the EU). This provision includes a number of statutory conditions which have been re-expressed as questions in the questionnaire below. If all questions are answered “Yes”, then the requirements imposed by Dutch legislation on an international value transfer within the EU will have been satisfied.

Questionnaire

Question: Subject:

Yes: No:

1	<p>Can your pension-paying institution be classified as either:</p> <ul style="list-style-type: none"> • a pension-paying institution in another (apart from the Netherlands) Member State of the European Union (EU) or European Economic Area (EEA), • an insurer with registered office outside the Netherlands? <p>The Annex to this Model Questionnaire explains what is meant by such a pension-paying institution.</p>	<input type="checkbox"/>	<input type="checkbox"/>
2	<p>Is the purpose of the value transfer to enable the person requesting the international value transfer to acquire pension entitlements with your institution as the pension administrator of that person’s employer?</p>	<input type="checkbox"/>	<input type="checkbox"/>
3	<p>Will you (as the pension-paying institution) utilise the transfer value of the pension capital to acquire pension entitlements for your pension scheme participant?</p>	<input type="checkbox"/>	<input type="checkbox"/>
4	<p>Are you (as the pension-paying institution) the direct recipient of the pension capital’s transfer value from the Dutch pension administrator?</p>	<input type="checkbox"/>	<input type="checkbox"/>
5	<p>Is the actuarial value of the pension entitlements to be acquired with your pension-paying institution at least equal to the value, as calculated on the same principles, of the pension entitlements to be transferred by the Dutch pension administrator?</p>	<input type="checkbox"/>	<input type="checkbox"/>
6	<p>Can you confirm that <u>no</u> costs will be charged to the pension scheme participant for the requested international value transfer?</p>	<input type="checkbox"/>	<input type="checkbox"/>

- Name of signatory:

- Telephone number of signatory:

- E-mail address of signatory:

- Position of signatory:

- Date:

- Name of present or former pension scheme participant:

- Signature of present or former pension scheme participant::

- Date:

Annex to Model Questionnaire for Value Transfers within the EU

Question 1 of the model questionnaire reads as follows:

1	<p>Can your pension-paying institution be classified as either:</p> <ul style="list-style-type: none"> • a pension-paying institution in another (apart from the Netherlands) Member State of the European Union (EU) or European Economic Area (EEA), • an insurer with registered office outside the Netherlands? 	<input type="checkbox"/>	<input type="checkbox"/>
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A pension-paying institution in another Member State of the European Union (EU) or European Economic Area (EEA) is understood to mean:

- A fully funded institution, regardless of its legal form, that has its registered office in a Member State other than the Netherlands and has been constituted as an entity independent of any contributing enterprise or business sector, having as its aim the payment of employment-related pension benefits under an agreement concluded:
 - individually or collectively between one or more employers and one or more employees or their respective representatives; or
 - with self-employed persons
 and pursuing activities that are directly related thereto.

An insurer with registered office outside the Netherlands is understood to mean:

- an insurer who is qualified under Dutch legislation to conclude pension insurance arrangements within or into the Netherlands.

Model Questionnaire for Value Transfers to a designated international institution

Explanatory note

Under Article 86 of the Pensions Act, the Dutch pension administrator is obliged to co-operate with an international value transfer to an (international) institution designated as such under the Pensions Act, or to one of the European Communities.

This provision includes a number of statutory conditions which have been re-expressed as questions in the questionnaire below. If all questions are answered “Yes”, then the requirements imposed by Dutch legislation on an international value transfer to a designated (international) institution will have been satisfied.

The Pensions Act Regulations (*Regeling Pensioenwet*) and Occupational Pension Scheme (Obligatory Membership) Act (*Wet verplichte beroepspensioenregeling*) lists the designated (international) institutions in question. These 20 designated international institutions are also listed in Annex 1 to this questionnaire.

For the sake of completeness it should be noted that the fiscal conditions governing supranational value transfers to the designated institution European Central Bank and to any of the European Communities include certain further arrangements. The relevant conditions and further arrangements are given in Annex IV of the Tax Decision of January 31, 2008, which can be found (in Dutch) on www.minfin.nl

Questionnaire

Question: Subject:

Yes: No:

1	Is the purpose of the value transfer to enable the person, requesting the international value transfer, to acquire pension entitlements with your international institution?	<input type="checkbox"/>	<input type="checkbox"/>
2	Is your international institution the direct recipient of the pension capital's transfer value from the Dutch pension administrator?	<input type="checkbox"/>	<input type="checkbox"/>
3	<p>Are you, as the (transfer-receiving) pension-paying institution associated with the international organisation, prepared to sign an agreement with the Dutch Tax and Customs Administration to cover the eventuality of a Dutch tax claim if the transferred Dutch pension capital is commuted by you (as the receiving institution), <i>i.e.</i> is not used to generate periodic pension payments as from the normal pension commencement date?</p> <p>If not, is the employee prepared to provide adequate security to the Dutch Tax and Customs Administration?</p> <p><i>Note:</i> <i>The Dutch pension administrator is legally liable for a Dutch tax claim on the pension capital. If pension capital is transferred abroad, the Dutch pension administrator must be relieved of this liability. This liability can be assumed by the international pension-paying institution or by the employee concerned.</i> <i>The liability is invoked if a transaction attracting a tax sanction is carried out on the Dutch portion of the pension capital abroad <u>and</u> the employee concerned has not paid the resultant tax assessment.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>



4	Has the person requesting this international value transfer accepted “substantial” employment? Irrespective of other criteria, employment is “substantial” if it has been contracted for a period of at least 5 years.	<input type="checkbox"/>	<input type="checkbox"/>
	If the employment is “substantial”, evidence of this must be submitted in the form of the employment contract and proof of residence of the person concerned. Are both documents enclosed?	<input type="checkbox"/>	<input type="checkbox"/>

5	Can it be confirmed that the person requesting this international value transfer is <u>not claiming any tax deduction</u> , on account of the value transfer, on any taxable income in the Netherlands of himself or his partner?	<input type="checkbox"/>	<input type="checkbox"/>
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- Full name and address of the international organisation:

- Signed (pension-paying institution):

- Name of signatory:

- Telephone number of signatory:

- E-mail address of signatory:

- Position of signatory:

- Date:

- Name of present or former pension scheme participant:

- Signature of present or former pension scheme participant::

- Date:

Annex to Model Questionnaire for Value Transfers to a designated institution

The following organisations are designated institutions as listed in Annex 1 of the Pensions Act Regulations (*Regeling Pensioenwet*) and Occupational Pension Scheme (Obligatory Membership) Act (*Wet verplichte beroepspensioenregeling*):

1. The European Centre for Nuclear Research (CERN);
2. The European Centre for Medium-Range Weather Forecasts;
3. The European Molecular Biology Laboratory;
4. The European Organisation for Astronomical Research in the Southern Hemisphere;
5. The European Space Agency;
6. The European Central Bank;
7. The European Organisation for the Exploitation of Meteorological Satellites (EUMETSAT);
8. The European Patent Organisation;
9. EUTELSAT Communications;
10. The European Organisation for the Safety of Air Navigation (Eurocontrol);
11. The Intergovernmental Committee for Migration (ICM);
12. The International Atomic Energy Agency (IAEA);
13. The North Atlantic Treaty Organisation (NATO);
14. The Organisation for Economic Co-operation and Development (OECD);
15. The Council of Europe;
16. The United Nations (UN), including associated specialised organisations;
17. The World Trade Organisation;
18. The West European Union (WEU);
19. The European Police Office (Europol);
20. The European Investment Bank.

Model Questionnaire for Value Transfers outside the EU

Explanatory note

Article 87 of the Pensions Act governs the discretionary power to effect a value transfer to a foreign institution. A foreign institution is understood to be an institution having its registered office outside the Netherlands that is not a pension-paying institution in another Member State, an insurer with registered office outside the Netherlands, one of the European Communities or a designated institution. Article 87 of the Pensions Act applies in those situations where there is no obligation to co-operate pursuant to Articles 85 or 86 of the Pensions Act. More specifically this concerns the discretionary power to effect a value transfer to a pension administrator established outside the EU.

The Dutch pension administrator must report the value transfer request to De Nederlandsche Bank (DNB), which is the supervisory agency. Of course, this is only necessary if the Dutch pension administrator intends to co-operate with the value transfer.

The discretionary power to effect a value transfer is subject to certain conditions, and it must be demonstrated “to the satisfaction of DNB” that these conditions have been fulfilled. According to DNB, it is primarily the Dutch pension administrator’s responsibility to assess whether all conditions are met. DNB has a secondary role. The supervisory agency merely conducts a summary verification and issues a declaration that the requirements of the law have been fulfilled “to the satisfaction of DNB”. On its website (www.dnb.nl), DNB has published the downloadable factsheet “Procedure internationale waardeoverdracht artikel 87 PW”.

Questionnaire

Question: Subject:

Yes: No:

1	Is the purpose of the value transfer to enable the person requesting the international value transfer to acquire pension entitlements with your institution as the pension administrator of that person’s employer?	<input type="checkbox"/>	<input type="checkbox"/>
2	Does your pension-paying institution administer the pension scheme of your pension scheme participant’s employer?	<input type="checkbox"/>	<input type="checkbox"/>
3	Is your pension-paying institution the direct recipient of the pension capital’s transfer value from the Dutch pension administrator?	<input type="checkbox"/>	<input type="checkbox"/>
4	Is your pension-paying institution subject to government supervision in the country in which it is established?	<input type="checkbox"/>	<input type="checkbox"/>
5	Are the assets of your institution and of the pension scheme participant’s employer legally separated? This separation may be effected by your institution being a separate legal entity or having a special preferential arrangement in favour of pension beneficiaries, or by some other means.	<input type="checkbox"/>	<input type="checkbox"/>

- Position of signatory:

- Date:

- Name of present or former pension scheme participant:

- Signature of present or former pension scheme participant:

- Date:
