Tax Code of Conduct

FOUNDING PARTNERS

ADOPTED BY

PREAMBLE

Tax revenue forms an essential part of a well-functioning society and constitutes a fundamental building block and funding source in achieving the UN's Sustainable Development Goals which focus on improving welfare, justice, education, emergency services, health, and environmental protection in developed and developing countries.

Internationally, there has been a growing focus on preventing aggressive tax planning and achieving increased transparency in the area of tax, resulting in a range of important international initiatives including the OECD's Base Erosion and Profit Shifting project and the EU Anti-Tax Avoidance Directives.

The Danish institutional investors ATP, PFA, PensionDanmark and Industriens Pension and the acceding parties (the "Investors") recognize the importance of tax as an integral measure in achieving the UN's sustainable goals as well as the need for a common framework for responsible tax behavior. The Investors wish to support and contribute to these developments as part of their responsible investment strategy.

The pension funds are subject to a fiduciary duty to their pension members with respect to selecting and managing their investments in the most optimal manner possible. Foundations, associations etc. are in a similar manner subject to a fundamental objective of managing their investments in the most optimal manner.

To facilitate the above principles, ATP, PFA, PensionDanmark and Industriens Pension have developed a mutually agreed set of tax principles for unlisted investments in the form of this Tax Code of Conduct outlining how the external managers (the "Manager") should behave in the area of tax with the aim of ensuring more efficient and sustainable investments from a tax perspective.

The Investors will endeavor to ensure that the Manager act within the framework of the Tax Code of Conduct. However, this cannot be guaranteed as the degree of influence that the Investors have over the Manager varies and depends on various factors including whether the Investors constitute majority or minority investors.

December 2020

1. Investors' Expectations of the Manager

The Investors expect the Manager to use best efforts to ensure compliance with applicable tax law and regulations within the jurisdictions where the investments are made and in such a way that consideration and foresight is given to tax law developments and international initiatives.

The Investors expect the Manager to use best reasonable efforts to act in accordance with the Tax Code of Conduct and encourage the Manager to implement and/or maintain a tax policy.

2. Tax Planning

The Investors welcome the various international tax initiatives aimed at defining a set of coordinated international rules and eliminating tax avoidance such as e.g. OECD's Base Erosion and Profit Shifting project, and encourage the Manager to anticipate these developments, when possible, and seek to implement structures that are sustainable in the long term.

Due to the Investors' fiduciary duties to their pension members and stakeholders with respect to the efficient management of the investments the Investors encourage the Manager to consider tax planning opportunities that prevents double taxation and maximizes the after-tax-return for its investors. However, the Investors urge the Manager to carefully consider such planning and only to undertake non-aggressive tax planning.

The Investors accept non-aggressive tax planning, which aims to ensure fair competition and avoid double taxation, as exemplified below (the list is not exhaustive):

(a) General use of holding companies

(b) General use of available double taxation treaties where the business substance justifies the use of a specific double taxation treaty

(c) General use of current and historic tax losses to reduce taxable income

(d) General use of debt financing

(e) Use of hybrid entities for non-aggressive tax planning.

The Investors do not accept aggressive tax planning. The Investors define aggressive tax planning as exploitation of technicalities in a tax regime or as exploitation of inconsistencies between tax regimes in order to reduce tax liability. The Investors expect the Manager to use best reasonable efforts not to engage in aggressive tax planning or structuring as exemplified below, or which conflicts with applicable tax law:

(a) Abuse of tax treaties, where holding companies which do not have sufficient substance in line with the OECD Principal Purpose Test, are used for the sole purpose of reducing or avoiding withholding tax.

(b) Transfer pricing planning for tax avoidance purposes

(c) Use of financial instruments for aggressive tax planning

(d) Use of hybrid entities for purposes of aggressive tax planning.

3. Restricted Jurisdictions

The Investors support increased transparency and the international initiatives that are implemented at OECD and European level towards increased transparency. In line with these principles, the Investors expect the Manager to also support these initiatives by using caution when investing in portfolio companies and not investing in intermediary holding companies incorporated or tax resident in:

(a) Jurisdictions that are deemed ”not compliant” according to the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes peer review process at the time of the investment[1], or

(b) Jurisdictions listed on the EU's list of non-cooperative tax jurisdictions at the time of the investment.[2]

4. Investments in Developing Countries

The Investors encourage the Manager to use caution in relation to tax structuring when investing into developing countries.

The Investor recognizes the right of governments to design their tax policies so that specific industries or areas become developed and for the Manager to make use of such generally available incentive schemes, e.g. in the form of depreciation and/or tax credits. However, the Investors encourage the Manager to use caution in the use thereof in developing countries.

Similarly, the Investors encourage the Manager to display caution when using shareholder loans as financing in developing countries and avoid the use of highly leveraged acquisition structures in jurisdictions without general interest limitation rules in line with OECD/US principles with the aim of reducing taxable income not in line with international market standards.

5. Transparency and Dialogue

The Investors expect the Manager to be transparent on its approach to tax and further expect the Manager to engage cooperatively in dialogue with the Investors.

The Investors will carry out spot checks on the Manager's general tax practises and expect the Manager to co-operatively enter into a dialogue if the Investors find that the Manager do not act in accordance with this Tax Code of Conduct. The Investors expect the Manager to cooperate and use best efforts to provide relevant information reasonably requested by the Investors.

The Investors expect the Manager to use best efforts to comply with the requirements under the mandatory automatic exchange of information rules contained in European Council Directive (EU) 2018/822.

6. Future Developments

Tax matters are dynamic and complex and social norms evolve over time. The Investors continuously monitor the development of international tax practice.

The Investors engage into an active dialogue with other institutional investors and fund managers in order to discuss initiatives to responsibly reduce tax risks associated with investments.

This Code of Conduct will be updated as needed.

---

[1] Reference is made to the OECD's website: http://www.oecd.org/tax/transparency/documents/exchange-of-information-on-request-ratings.htm

[2] Reference is made to the European Commission's website: https://ec.europa.eu/taxation_customs/tax-common-eu-list_en