NORGES BANK
INVESTMENT MANAGEMENT

Tax transparency

Expectations of companies

Norges Bank Investment Management manages the assets of the Norwegian Government Pension Fund Global. We work to safeguard and build financial wealth for future generations. As a long-term and global financial investor, we are dependent on sustainable development, well-functioning markets and good corporate governance.

Our expectation documents set out how we expect companies to manage various environmental and social matters. Our expectations are based on internationally recognised principles such as the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the G20/OECD Principles of Corporate Governance, the OECD Guidelines for Multinational Enterprises and other topic-specific standards. This document serves as a starting point for our interaction with companies on tax transparency. We expect companies to address this topic in a manner meaningful to their business model and wish to support them in their efforts.

Our expectations are primarily directed at company boards. Boards should understand the broader environmental and social consequences of company operations, taking into account the interests of relevant stakeholders. Boards must set their own priorities and account for the associated outcomes. Companies should pursue relevant opportunities and address significant risks. They should report financially material information to investors, and broader impacts as appropriate. Boards should effectively guide and review company management in these efforts.

Tax transparency

Corporate taxes play an important role in the public finances of developed countries and may be even more critical in developing ones. Tax is one of the ways in which businesses contribute to the societies on whose legal and financial infrastructure they rely for the orderly execution of their activities. Aggressive tax behaviour undermines the effectiveness of tax systems and may expose investors to reputational and financial risks. We expect companies to adopt appropriate and prudent tax policies and be transparent about where they generate economic value.

International principles for responsible business conduct establish that companies should comply with both the letter of the tax laws and the intention of the legislature at the time those laws were passed, in all the countries in which they operate. Multinational enterprises operate globally, while tax regimes are national and are not harmonised between countries. The international tax framework of domestic tax laws and the tax treaties that link them together has not developed as fast as the international business environment for multinational enterprises.

There is a widespread perception that multinational enterprises sometimes do not pay tax according to where they generate economic value, but according to where it is most advantageous for them to report economic activity for tax purposes. Recent national and international tax policy efforts have concentrated on reducing the incentives and scope for such practices. Many countries are in the process of introducing transparency initiatives such as enhanced filing obligations, country-by-country tax reporting requirements and the spontaneous exchange of tax rulings issued to companies.

As an investor, we analyse opportunities and risks to our investments. Complex or opaque ownership and organisational structures hamper transparency and may compromise investors' fundamental financial analysis. To us, it seems unlikely that transparent geographical reporting of value generation and the taxes paid in relation to that value, would necessarily impair competitive advantage. It is not clear that the principal content of such reports would comprise sensitive information on which commercial competitors could capitalise.

Board accountability and transparency underpin appropriate and prudent tax behaviour. Some multinational enterprises have begun to make public their tax policies. This is nevertheless not default behaviour. The G20/OECD Principles of Corporate Governance highlight how boards increasingly are expected to oversee the finance and tax planning strategies management is allowed to conduct, and to discourage the pursuit of aggressive tax avoidance not in shareholders' long-term interest. The OECD Guidelines for Multinational Enterprises emphasise the role of internal tax control functions and that boards should be informed of material tax risks. We share the view that corporate tax strategy is a board responsibility.

Representatives of the investment community have nevertheless not generally issued expectations as to how businesses should govern and conduct their tax affairs. This may be one reason why companies and business commentators often assert that companies, through their directors, owe a fiduciary duty to their shareholders to minimise taxes.

The long-term validity of this assertion and whether it necessarily serves investor interests is uncertain. Businesses engaged in aggressive tax behaviour may in some ways rely on this assertion to pass reputational tax risks onto their investors. Aggressive tax behaviour may also create additional investment risks that are hard for investors to diligence or monitor. Business operations that are unduly shaped by tax planning rather than long-term value creation may be more vulnerable to changes in regulation or enforcement.

Our expectations on tax and transparency rest on three main principles. The first is that taxes should be paid where economic value is generated. The second is that company tax arrangements are a board responsibility. The third is that public country-by-country reporting is a core element of transparent corporate tax disclosure.

A.

Implement appropriate and prudent tax policies

- Boards should manage local and cross-border tax affairs carefully to avoid incurring undue tax and other costs through failures to obtain applicable reliefs or inaccurate tax documentation. Maximising long-term value does not require aggressive tax behaviour.

- Boards should ensure strategic decisions are driven by long-term value creation. They should take the lead in setting corporate tax priorities and disclose their policy on tax. The OECD BEPS actions, the OECD Guidelines for Multinational Enterprises and the G20/OECD Principles of Corporate Governance all provide useful guidance for boards in this context.

- Boards should integrate and align their chosen tax policy with their core business considerations and ascertain that the responsibilities ensuing from board policies are clearly defined within the organisation.

- Boards should ensure they receive reporting sufficient to affirm that the company's tax affairs are managed consistently and in accordance with their chosen policy. Multinational enterprises should in this regard routinely assess their exposure to tax risk.

- Corporate culture should encourage consistent tax behaviour across the organisation. The design of company training programmes and methods used to calculate pay should take this into consideration. Advisers should be alerted to the content of the board's tax policy.

B.

Report transparently on corporate value generation

- Multinational enterprises should publish country-by-country breakdowns of how and where their business model generates economic value, where that value is taxed and the amount of tax paid as a result. This could include reporting on metrics such as revenue, profit/loss, tax paid and number of employees, disaggregated by jurisdiction. Where companies choose not to apply such transparency principles, they should publicly state why.

- Multinational enterprises should help to ensure that tax authorities have sufficient information to reach robust conclusions regarding the tax treatment of their activities by providing appropriate economic context for those activities when reporting to tax authorities. Wariness when negotiating tax positions with tax authorities may at times be appropriate.

- Multinational enterprises should publicly explain the business case for locating subsidiaries in "closed" jurisdictions, significantly low-tax environments, or countries where no local employees carry out substantive business functions or the number of such employees is disproportionately low compared to the economic value generation attributed to that part of the business.

- Multinational enterprises contribute large aggregate sums of tax and similar levies around the world. We believe that multinational enterprises could also seek to increase public awareness of their wider tax contribution. They should present the tax contributions that they make beyond taxation of their corporate income, including sales taxes, payroll taxes, customs duties, property taxes and environmental levies.

See our website www.nbim.no for a full and updated list of our expectations on sustainability topics.

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