Norges Bank
Investment
Management

Tax and 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.

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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. They 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 and transparency

Corporate taxes play an important role in the public finances and policy frameworks 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 to be transparent about where they generate economic value.

International principles for responsible business conduct establish that companies should comply with both the letter and the spirit of the tax laws in all the countries in which they operate. There is nevertheless a widespread perception that some multinational enterprises pay less than appropriate levels of tax through the use of improper tax avoidance and tax evasion strategies, including base erosion and profit shifting. Recent national and international tax policy efforts have concentrated on reducing the incentives and scope for such practices. Critical to these efforts are the various transparency initiatives being introduced in many countries, such as enhanced filing obligations, country-by-country tax reporting requirements and the spontaneous exchange of tax rulings issued to companies.

Board accountability and transparency underpin appropriate and prudent tax behaviour. Some multinational enterprises have begun to make public their global tax policies. This is nevertheless not yet 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. 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.

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Representatives of the investment community have nevertheless been slow to issue 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. Similar risks may arise where companies are reliant on material tax incentives that are vulnerable to expiration or changed criteria.

Transparency around tax payments and practices is an important way in which companies demonstrate their contribution to society. Such transparency fosters trust and confidence and is conducive to the maintenance of a stable business environment. Tax disclosures are also important elements of investors' financial analysis. The complexity of tax regimes means that meaningful tax reporting often requires contextual information as well as quantitative financial information. Tax disclosures made in accordance with best practice principles and reporting standards such as GRI 207 and the B Team Responsible Tax Principles are more likely to provide the tax information relevant to investors. With the increasing use of taxes as policy instruments to drive sustainability, disclosures relating to those instruments will be increasingly valuable to investors and other stakeholders.

As an investor, geographical and jurisdictional information on value generation and tax is critical to our analysis of opportunities and risks to our investments. Complex or opaque ownership and organisational structures hamper transparency and may compromise investors' fundamental financial analysis. We recognise that geographical reporting of value generation and taxes paid could theoretically impair competitive advantage in specific instances, but we believe this is unlikely to be the case for the vast majority of multinational companies. We also believe that the benefits of such disclosure are highly likely to outweigh the costs.

Our expectations on tax and transparency rest on three main principles. The first is that companies should comply with the letter and the spirit of tax laws and pay appropriate taxes where economic value is generated. The second is that company tax arrangements are a board responsibility. The third is that tax transparency, including public country-by-country reporting, is a core element of responsible tax behaviour.

Company tax arrangements are a board responsibility.

A. Implement appropriate and prudent tax policies

- Boards should take the lead in setting corporate tax policies, which should be publicly disclosed. The OECD BEPS actions, the OECD Guidelines for Multinational Enterprises and the G20/OECD Principles of Corporate Governance all provide useful guidance for boards on the elements of responsible tax practice. Responsible tax practice requires a commitment to compliance with the letter and spirit of the tax laws.
- Boards should ensure strategic decisions are driven by long-term value creation. Maximising long-term value does not require aggressive tax behaviour.
- Boards should manage local and cross-border tax affairs carefully to avoid incurring undue tax and other costs through failures to obtain applicable reliefs, failures to take advantage of appropriate tax incentives, or inaccurate tax documentation.
- 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 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 remuneration policies should take this into consideration.
- Companies should manage their advisers to ensure the consistency of any advice taken with the board's tax policy and view on tax risk.

Maximising long-term value does not require aggressive tax behaviour.

B. Report transparently on corporate value generation

- Multinational enterprises should disclose their approach to tax, including a description of their governance and control framework and their approach to stakeholder engagement and public policy advocacy.
- 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 and loss, related-party revenues and expenses, tangible and intangible assets, taxes paid and accrued, effective tax rates and rate reconciliation information, activities, 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.
- The complexity of tax systems increases the likelihood that tax reporting may be misinterpreted. Companies should proactively provide relevant contextual information to allow stakeholders to understand any positions or results that are likely to raise questions. Companies 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.
- Tax incentives are important policy tools, used in many jurisdictions to achieve a range of economic and sustainability objectives. Multinational enterprises should be transparent about their approach to seeking and accepting tax incentives and should provide basic information on material tax incentives, including criteria and duration.
- 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.

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See our website www.nbim.no for a full and updated list of our expectations on sustainability topics. We also regularly publish our perspectives on issues such as sustainability reporting and the UN Sustainable Development Goals.

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