

Responsible tax practices

This document describes the standards DNB Asset Management (DAM) expects companies to meet regarding their tax practices.

Objective

DNB's Group Standard for Responsible Investments shall ensure that DNB does not contribute to the infringement of human or labor rights, corruption, serious environmental harm or other actions that could be regarded as unethical and/or unsustainable. DNB Asset Management (DAM) bases its exercise of ownership rights on the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, and the G20/OECD Principles of Corporate Governance. The exercise of ownership rights is ensured by active ownership through dialogue, engagement, and voting¹. Risk management, standard setting, and Environmental, Social and Governance (ESG) integration are also important aspects of our responsible investment approach.

The purpose of this document is to define our criteria and expectations towards companies in terms of their obligation to adhere to responsible tax practices. Our expectations are directed towards companies we invest in or plan to invest in, and are used as a basis for screening and possible engagements by DAM. In addition, our expectations call for a high level of transparency around how companies identify, assess and manage their responsible tax practices such that this information can be utilized in our company analysis as an input to investment decision-making. Finally, companies may be excluded from our investment universe as a last resort if they do not adequately manage their tax obligations.

Definition of responsible tax practices

With the global taxation framework in flux, it is difficult to define what constitutes responsible tax practices. Nevertheless, a key element is that companies should strive to implement the guidance and the spirit of, the most internationally accepted standards relevant to taxation. Three key standards are (see more details in the appendix):

- The G20/OECD Principles of Corporate Governance².
- The OECD guidelines for Multinational Enterprises³.
- The OECD's Base Erosion and Profit Shifting (BEPS) initiative – and its 15 actions⁴.

Responsible tax practices can also be linked to UNs 17 Sustainable Development Goals (SDGs). In order to successfully deliver on the goals, much of the increased public financing required to achieve the SDGs needs to be generated domestically (including via taxes). This is specifically true in regards to goal number 17⁵, which considers the tax affairs of multinational companies⁶ through target 17.1: “Strengthen domestic resource mobilization, including through international **support to developing countries, to improve domestic capacity for tax and other revenue collection**”.

Finally, responsible tax practices encompass respect for both the letter and the intention of local tax laws.

Introduction to taxation and corporate tax practices

There is a growing consensus that the current international taxation framework is far from optimal and needs to be reformed. International tax rules were originally designed for “brick and mortar” businesses, and these rules are therefore less suited for the modern world where businesses rely heavily on hard-to-value intangible assets, data, automation, and global transactions (more “digital” business models). A report by the European Commission refers to statistics that show that domestic “digitalized” business models in the EU have an effective tax rate of 8.5% - less than half of that of traditional business models⁷. Tax erosion is increasingly seen as a challenge, eroding the sustainability of nations, including the welfare state.

A related topic is the use of “tax havens”. There can be both legitimate purposes for the incorporation of companies in tax havens (minimizing unnecessary paperwork/reporting, avoid double taxation or a well-functioning court system/legal framework) as well as questionable or illegitimate purposes (such as money

¹ https://www.dnb.no/portalfont/nedlast/en/about-us/corporate-responsibility/2018/Group_standard_for_responsible_investments.pdf

² <https://www.oecd.org/daf/ca/Corporate-Governance-Principles-ENG.pdf>

³ <http://www.oecd.org/investment/mne/1903291.pdf>

⁴ <http://www.oecd.org/tax/beps/>

⁵ <http://blogs.worldbank.org/governance/making-taxes-work-sdgs>

⁶ <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>

⁷ https://ec.europa.eu/taxation_customs/sites/taxation/files/1_en_act_part1_v10_en.pdf

laundering, tax evasion or aggressive tax planning). Globally, the public increasingly demands an explanation for the use of these “tax havens”.

The need to reform the international taxation framework has caused a wave of initiatives in the OECD, the US, EU, Norway (“Google tax”), and elsewhere. A key element in the reform initiatives is the aim to implement the principle for corporate taxation that profits should be taxed where value is created. However, in a digitalized world, it is often unclear what that value is, how to measure it, or where it is created. The BEPS initiative mentioned above is arguably one of the most important initiatives, and refers to tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations. Over 100 countries and jurisdictions are collaborating to implement the BEPS measures. The G20 ratified the key recommendations in 2015, and the multilateral BEPS convention went into effect in 2018⁸. Despite progress to date, it is likely that it will take several more years to complete implementation.

From the discussion above, it should be clear that there is a need for governments (through international cooperation) to develop a better global tax framework. However, each individual company also needs to be part of the solution and act in a responsible manner. Furthermore, companies should keep in mind that complex and/or opaque company structures may obstruct investors’ financial analysis and the functioning of financial markets. Finally, transparency is also a key element in responsible tax practices including making public company-specific key tax rulings, arbitrations, and tax disputes.

DAM’s expectation towards companies

1. Company tax arrangements and disclosure are key **Board responsibilities** (including tax risk management). The G20/OECD Principles of Corporate Governance, the OECD Guidelines for Multinational Enterprises, and the OECD BEPS actions all provide useful guidance for the Board. The Board should implement best practice including ensuring that relevant tax responsibilities are clearly defined within the organization⁹.
2. The company should **avoid aggressive tax planning**.
3. The company should strive to follow the principle - **“taxes should be paid where economic value is generated”**.
4. The company should have effective policies and practices for dealing with the risk of facilitation of tax evasion by employees or key business partners/customers.
5. The company should have a **proactive and transparent relationship with tax authorities** in all jurisdictions.
6. The company should strive **for openness around their tax policies in general** (especially in the case of complex and/or opaque company structures). Furthermore, multinational enterprises should also publish **country-by-country breakdowns** of:
 - a. How and where their business model generates economic value.
 - b. Where that value is taxed and the amount of tax paid.
7. If requested, multinational enterprises should be prepared to publicly explain the business case for locating subsidiaries in the following:
 - a. “Closed” jurisdictions and/or significantly low-tax environments (“tax havens”).
 - b. Countries where no local employees carry out business functions to any substantive degree or where the number of such employees is very low compared to the economic value generation attributed to that part of the business/country.
8. If the Board decides to **deviate from the guidelines above, they should be prepared to provide a public explanation** detailing their reasons for the deviation.

Summary

Attempts to reform the international framework for taxation are underway. However, each individual company also needs to be part of the solution and act in an open and responsible manner. This document defines our criteria and expectations towards companies in terms of their obligation to adhere to responsible tax practices – and will be used as basis for screening and possible engagements by DAM.

(See also appendix: Laws, norms and standards concerning tax that DAM expects companies to consider).

⁸ <http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf>

⁹ For best practice, see for example NBIM, 2017. <https://www.nbim.no/en/transparency/news-list/2017/expectation-document-on-tax-and-transparency/>

Appendix: Laws, norms and standards concerning tax that DAM expects companies to consider

Laws/norms/standards	Comments
The G20/OECD Principles of Corporate Governance	See especially chapter VI about the responsibilities of the Board. Regarding tax: <ul style="list-style-type: none"> Highlights how the Board is expected to oversee the finance and tax planning strategies management is allowed to conduct (and the risk management system). The Board should also discourage aggressive tax avoidance not in shareholders' long-term interest.
The OECD Guidelines for Multinational Enterprises¹⁰	The only multilateral agreed code for responsible business conduct governments have committed to promoting. Regarding tax, see especially chapter XI: <ul style="list-style-type: none"> The Board should proactively develop appropriate tax policy principles, adopt tax risk management strategies, and develop structures - to ensure tax risks are fully identified and evaluated. The Board should be informed about all potentially material tax risks. Emphasizes the role of internal tax control functions in an enterprise. Enterprises should comply with both the letter and spirit of the tax laws. Transactions should not be structured in a way that will have tax results that are inconsistent with the underlying economic consequences of the transaction (unless there exists specific legislation designed to give that result). Tax compliances also entail cooperation with tax authorities to facilitate effective and equitable applications of the tax laws (including conforming transfer pricing practices to the arm's length principle).
The OECD's Base Erosion and Profit Shifting (BEPS) initiative^{11 12}	The 15 actions of the OECD's BEPS are based on three main pillars: <ul style="list-style-type: none"> Coherence: Introducing coherence in the domestic rules that affect cross-border activities. Substance: Reinforcing substance requirements in the existing international standards. Transparency: Improving transparency, as well as certainty for businesses that do not take aggressive positions.
Various national tax laws	Responsible tax practices encompass respect for both the letter and the intention of local tax laws.

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¹⁰ <http://www.oecd.org/daf/inv/mne/48004323.pdf>

¹¹ <https://www.oecd.org/ctp/beps-reports-2015-information-brief.pdf>

¹² <https://www.oecd.org/ctp/beps-explanatory-statement-2015.pdf>