The ATP Group

2019
Tax

Part of ATP's responsibility

ATP’s tax work

It is important for the credibility of the pension fund and for the long-term returns of the members that ATP pays the correct amount of tax and that we support good tax behaviour in investments. Transparency and clarity with regard to ATP’s policy and processes for tax payment are part of our responsibility.

Basis

ATP has decided to take it further than what is required by law in the tax area. We do so to make our investments more resilient to taxation risks and to take co-responsibility for strengthening governance in the area. We have high standards for ensuring that ATP pays the correct amount of tax – neither too much, nor too little.

We also want to exert our influence in the fight against aggressive tax planning, while also retaining some degree of realism, since we do not always have the decisive mandata. We cannot force managers and co-investors to follow our tax policy and we cannot control how they act in relation to investments of which ATP is not part.

We cannot change the world on our own, but as a major investor we are willing to assume part of the responsibility. If aggressive tax planning is to be prevented entirely, it requires enhanced international cooperation. We believe that transparency and clarity about our policy and processes for tax payment are part of ATP’s responsibility.

Processes

ATP has fixed processes in place for including tax matters in our new unlisted investments. This way, we ensure that we have control of taxation in the investments and that we minimise taxation risks when we step in as owner. We also ensure that the tax structure is in accordance with our Tax Policy.

The purpose of the due diligence phase is to map out and uncover the taxation risks involved in the investments, including whether the investments comply with our Tax Policy.

ATP has its own tax experts who ensure that we can act promptly and profoundly when investment opportunities are identified. If the investments do not comply with ATP’s Tax Policy, we look into whether we can adapt the investment or the contractual basis.

Activities

In 2019, in cooperation with a group of Danish pension companies, ATP developed a common tax code for unlisted investments which lays down a number of requirement and expectations for the tax practice of external asset managers. If enough investors make requirements for responsible tax behaviour, it will limit the possibilities of the market players who do not want to align their tax practice to match the expectations of ATP and other responsible investors.

As part of ATP’s work, we make annual spot checks to ensure that our investments comply with our Tax Policy. In 2019, we made 13 spot checks which all showed compliance with ATP’s Tax Policy.

In 2019, ATP held a series of dialogues on tax practice with foreign pharmaceutical companies in the listed portfolio. The companies were responsive and provided satisfactory answers to how the companies deal with tax issues.

ATP’s ESG principles and tax

#1 ESG as an investment belief

ATP considers aggressive tax planning as an investment risk for ATP that does not contribute to the long-term value creation of our investments. With regard to ATP’s own tax matters, we seek to avoid being subjected to double taxation so that most of the return on investments is taxed in Denmark and that tax is not paid twice on the return for pensions. On the other hand, it is also important that we pay the tax we are required to pay.

#2 Strong tailored processes

ATP maps out tax issues in relation to all new, unlisted investments by conducting taxation due diligence. We seek to influence and, if possible, simplify the tax structures in connection with new investments and as far as possible commit external asset managers in which ATP invests as a minimum to comply with the tax policy. In ATP’s listed investments, tax is an integral part of our stewardship work.

#3 Development of ATP’s ESG competencies

ATP wants to stay updated on and follow the international initiatives in the tax area. Therefore, it is important to have the skills to continuously assess new tax structures on the basis of the Tax Policy. At the same time, we build knowledge of how it is possible to influence and make new requirements for investments in ATP.

#4 Preference for capital stewardship

ATP engages in an active dialogue with other pension funds and asset managers for the purpose of achieving common standards and criteria for international investment structures in order to reduce the related tax uncertainties.

ATP wish to be clear and transparent about tax payments

ATP plays a significant role in Danish society in a number of areas, and it is our assessment that when it comes to tax, ATP can assume a social responsibility that benefits both society and ATP. We believe that clarity and transparency in ATP's policy and processes for tax payments are part of our social responsibility.

Tax is an important parameter when investing, and in particular, this applies to international investments across countries with different tax rules. The globalised economy has created a great deal of growth and prosperity around the world, but it has also resulted in complex legal structures where taxable returns and earnings can be moved across borders.

In many cases, the use of complex legal structures is completely legitimate in order to avoid double taxation, but as a number of controversial cases has demonstrated, they can also be used to bypass the intentions of the tax legislation. Among other things, this is because the national tax legislation and rules are not yet sufficiently adapted to a globalised world, and as a result, aggressive tax planning has been an international challenge that investors need to take into account in their work

ATP has high standards for ensuring that we are paying the correct amount of tax – neither too much or too little. This is so that ATP can use its influence to fight aggressive tax planning. We recognise that ATP is not always the sole decider in our investments, and we also recognise that we cannot force external managers and co-investors to follow our tax policy. In other words, ATP cannot change the world on its own. If aggressive tax planning is to be prevented, it requires an increased international cooperation, legislation and standards.

As an investor, ATP is not authorised to control the actions of co-investors and external managers. That is the job of the authorities. However, ATP will work towards ensuring that the money that is invested in the framework of ATP's tax policy and that, as a result, the funds that Danes contribute to ATP are taxed correctly. ATP will also work towards selecting external managers that operate in accordance with the spirit of the tax policy, though we recognise that there are no guarantees.

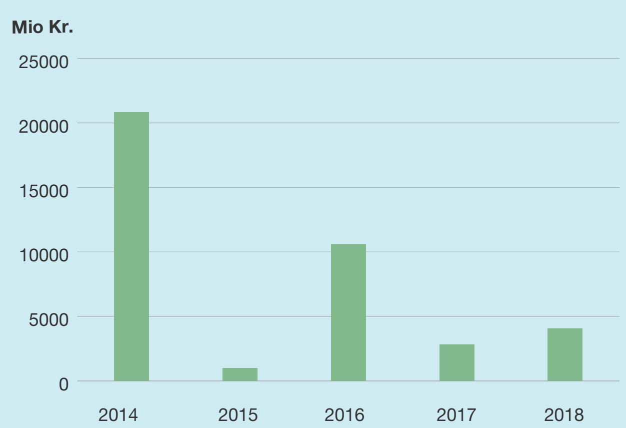
ATP's experience is that it is not easy to get everyone to accept ATP's relatively tough policy against aggressive tax planning. In some cases, this has meant that ATP has turned down investment opportunities. Conversely, ATP has also found a willingness to embrace the agenda of contributing to good tax practices and increased transparency.

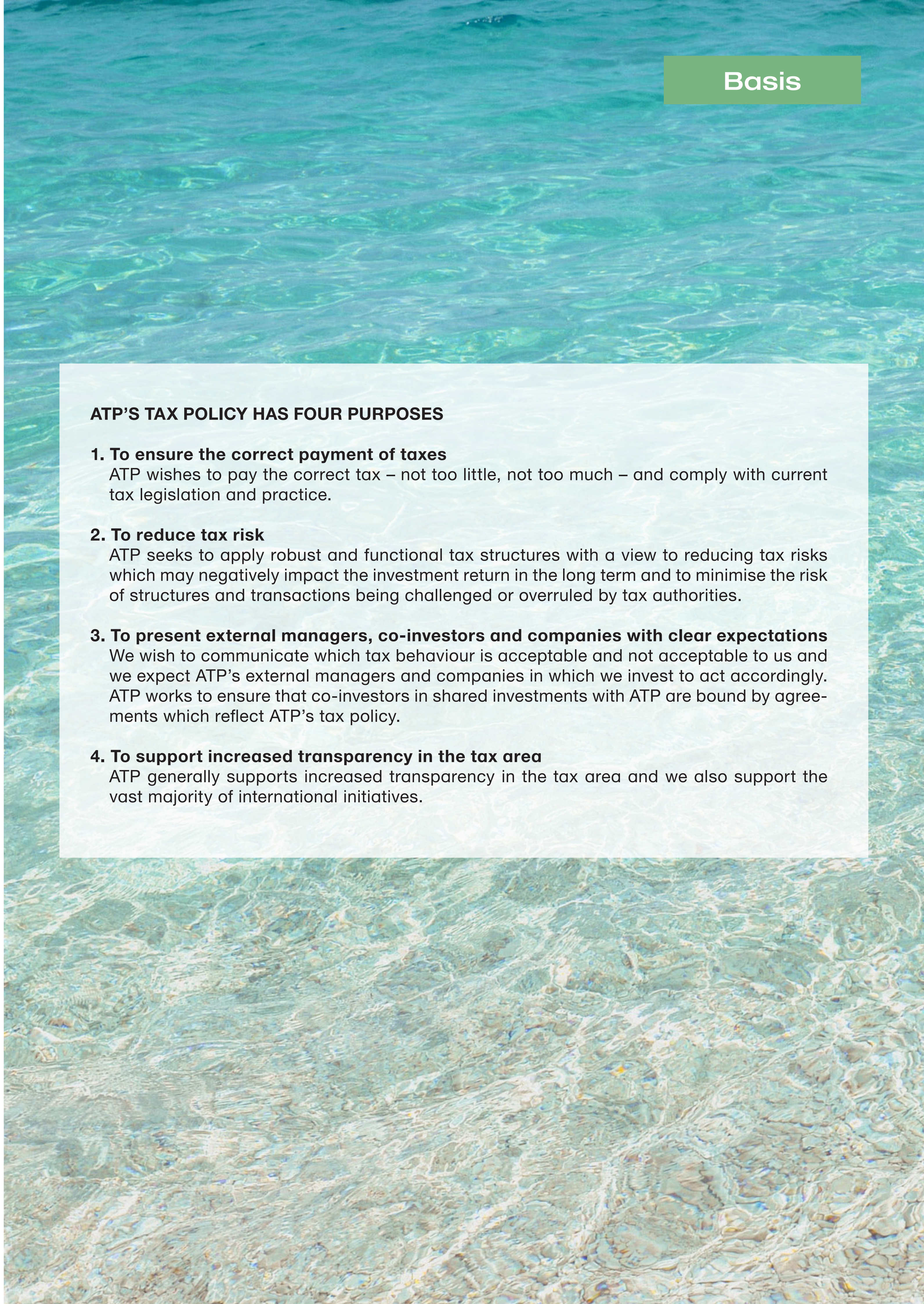
The cooperation between investors is an important factor in impacting external managers, and ATP is working towards improving this cooperation and knowledge sharing between investors who all have an interest in sound tax principles. In 2019, together with PFA Pension, Industriens Pension and PensionDanmark, ATP prepared a common tax codex with principles and recommendations for investments in unlisted companies that describe how investors believe that external asset managers should behave when it comes to taxes.

HOW ATP ITSELF PAYS TAX

Danish pension companies – unlike most other pension companies abroad – have to pay taxes on the ongoing return on investments. Thus, ATP pays a Danish pension yield tax on the returns from all investments, no matter where in the world the returns are generated. Generally speaking, this means that if ATP realises a positive return, then it will pay 15.3 per cent in tax on the return on behalf of our members.

Pension returns tax on ATP's investments





Basis

ATP'S TAX POLICY HAS FOUR PURPOSES

1. **To ensure the correct payment of taxes**
   ATP wishes to pay the correct tax – not too little, not too much – and comply with current tax legislation and practice.

2. **To reduce tax risk**
   ATP seeks to apply robust and functional tax structures with a view to reducing tax risks which may negatively impact the investment return in the long term and to minimise the risk of structures and transactions being challenged or overruled by tax authorities.

3. **To present external managers, co-investors and companies with clear expectations**
   We wish to communicate which tax behaviour is acceptable and not acceptable to us and we expect ATP's external managers and companies in which we invest to act accordingly. ATP works to ensure that co-investors in shared investments with ATP are bound by agreements which reflect ATP's tax policy.

4. **To support increased transparency in the tax area**
   ATP generally supports increased transparency in the tax area and we also support the vast majority of international initiatives.

This is how ATP incorporates tax in the investment process

ATP has fixed processes in place to incorporate tax matters in our new investments. As a result, we are taking care of tax-related compliance and risks in our investments and this protects us against unnecessary surprises when we step in as owners. Similarly, we are working towards ensuring that our tax policy is implemented to the greatest possible extent.

- The due diligence phase is aimed at mapping ATP's tax position and uncovering the tax-related risks in the investments, including assessing if the investments comply with ATP's tax policy. ATP has its own tax specialists who ensure that ATP can act swiftly and thoroughly when investments opportunities are identified. If the investments do not comply with ATP's tax policy, we will investigate whether we can adjust the investment or the contractual basis so that it does comply with our requirements in this area.

- In the structuring phase, it is analysed whether the investment is optimally structured for ATP within the framework of the tax policy or if it should be adjusted so that it meets our needs.

- In the negotiation phase, we negotiate with the other party concerning:
  - I. Ensuring that ATP's tax policy is implemented in the contractual basis for the investment
  - II. ATP's requirements for the tax structure
  - III. Ensuring that the purchase sum reflects any potential extra tax costs due to historical events in the investment
  - IV. Requirements for tax reporting.

- In the implementation phase, we ensure that the investment is implemented correctly in all of ATP's systems so that the correct tax is reported and paid on time.

- The asset management process is part of ATP's ongoing work with our investments. In this context, we follow up on whether the investment complies with ATP's tax policy and agreements. Likewise, we also assess the tax structure compared to the general developments in this area.

ATP's experience is that it is not easy to get everyone to accept ATP's tough policy against aggressive tax planning. In some cases, this has meant that ATP has turned down investment opportunities. Conversely, ATP has also found a willingness to embrace the agenda of contributing to good tax practices and increased transparency.

ATP has opted out of investments that do not comply with ATP's tax policy

This particularly applies to fund investments, for example, private equity funds, where ATP invests together with other investors and where ATP generally has a weaker negotiation power which makes it more difficult to get the funds to commit to following ATP's tax policy.

It is particularly US-based funds that have been sceptical when talking to ATP, as they have a hard time committing to the OECD's tax guidelines (BEPS) when it has not been contractually specified what they may or may not do. On the other hand, our experience has been that Danish and European funds have been more cooperative.

TAXATION IN THE OECD'S GUIDELINES FOR MULTINATIONAL COMPANIES

OECD's guidelines for multinational companies makes it clear that companies have a responsibility to not just follow the letter of the law but also the spirit of the tax laws of the countries they operate in. However, this does not mean that companies should pay more in tax than legislation commits them to. OECD's guidelines make it clear that it is important for companies to work constructively with authorities so that they have the information they need to enforce the tax legislation.

Processes

There is a difference between acceptable and aggressive tax planning

ATP does not wish to take part in aggressive tax planning. We consider aggressive tax planning as an investment risk that does not contribute to the long-term value creation in investments.

At the same time, however, we have an interest in ensuring that our members are not unduly taxed on the returns of their investments, for example, via double taxation or triple taxation. Therefore, it is important for us to understand the background of the tax-related choices that are taken on behalf of ATP.

It is important for ATP that the correct tax is calculated and determined on the basis of the international tax consensus, which is found in the OECD's Base Erosion Profit Shifting (BEPS) project and in the EU's initiatives related to tackling aggressive tax planning.

ATP defines 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 contrary to the intention of the tax legislation. In addition, ATP considers it to be aggressive tax planning if a structure exploits the tax legislation to gain an unwarranted tax advantage.

THE TAX STRUCTURES MUST COMPLY WITH THE LAW

For all new investments in unlisted companies, ATP has had a dialogue on which tax structures should be used and we have been able to impact the structure in those cases where it has not been in line with the tax policy.

For example, we have changed the corporate and tax structure in an investment away from an original setup that involved an intermediary company being placed between the operating company and ATP to avoid an EU tax directive to being a setup where the intermediate company was cut out and thus in compliance with the EU tax directive.

"It is important for ATP to look into whether the tax behaviour is acceptable and not just look at where a company is domiciled . We must ensure that investments are not subject to aggressive tax planning while also ensuring that ATP's members are not taxed unnecessarily on their pension."

Steffen Bonde Jensen, Tax Business Partner

Processes

ATP does not accept...

investments that make use of the following structures:

- Investments in jurisdictions that are on the EU's blacklist (EU list of non-cooperative tax jurisdictions)
- Abuse of double taxation treaties where holding companies with insufficient substance are used for the sole purpose of reducing or avoiding withholding tax
- Transfer pricing planning, where risks and income are systematically shifted to low-tax countries
- Use of financial instruments for aggressive tax planning
- Use of hybrid companies for aggressive tax planning
- Use of shares for dividend arbitrage, including making shareholdings available to others through loans
- Use of highly leveraged acquisition structures with the aim of wrongfully reducing taxable income

ATP accepts...

tax planning that is intended to ensure fair competition and avoid double taxation. These are structures that are, for example, characterised by:

- souse of available double taxation treaties where the business substance justifies the use of a specific double taxation treaty
- Use of historic tax losses to reduce taxable income
- Use of a reasonable level of debt financing
- Use of tax depreciations, for example, on infrastructure assets

Common tax principles are to increase transparency and reduce aggressive tax planning

For a number of years, ATP has actively used its tax policy in negotiations with potential investment partners and asset managers. Even though ATP has succeeded in changing a number of conditions and structures in several investment agreements, ATP also recognises that in order to get more negotiating power, more investors needs to demand responsible tax behaviour.

Therefore, together with a number of Denmark's largest investors, ATP has prepared a common tax code of conduct outlining the expectations for the tax practices of external asset managers.

ATP CONTRIBUTES TO BEST PRACTICE

In 2019, ATP has participated in a number of international conferences on international taxation, and our tax employees have been talking about our tax policy and the experiences we have had. This is important as it both allows us to talk to other investors about our experiences but also to talk to our counterparts in negotiations such as, for example, lawyers, tax consultants and asset managers.

Initially, Industriens Pension, PensionDanmark and PFA Pension have joined ATP in signing the common tax code of conduct. ATP expects that more investors will endorse these principles and change their tax practices accordingly.

If enough investors make requirements for responsible tax behaviour, it will limit the possibilities of the market players who do not want to align their tax practices to match the expectations of ATP and other responsible investors.

At the same time, it will increase the pressure applied from investors on asset managers in specific investment cases if more of the potential investors put forth the same requirements. This will increase the likelihood of asset managers agreeing to the investors' demands and thereby reduce the risk of having to decline investments that were otherwise seemingly good.

Finally, the common tax principles encourage a process of continuing learning and knowledge sharing between the group of investors. Tax on investments is a complex and resource intensive area and the tax rules and societal norms develop over time. ATP is continually keeping itself up to date on this area.

"We have more power to impact developments when we stand together as investors. There should therefore be no doubt that we here at ATP are working towards a more responsible tax behaviour, and with the common tax principles, we are in an even stronger position."

Bo Foged, CEO

Activities

The common tax codex

The common tax codex covers six areas and outlines the expectations for external asset managers and investors.

Expectations for external asset managers
Investors expect that external asset managers do their best to ensure compliance with tax legislation in the countries where investments are made and that this includes taking into account future developments in tax legislation and international initiatives.

Tax planning
Investors are obliged to effectively manage investments, and therefore they expect that external managers apply an acceptable level of tax planning for the purposes of limiting double taxation for investors and ensuring fair competition. Aggressive tax planning, which takes advantage of technicalities in the tax legislation or inconsistencies between different tax systems is not acceptable.

Blacklisted countries
The investors behind the tax codex support increased transparency and the international initiatives that are working towards this under the auspices of the EU and the OECD. Therefore, the investors expect that external managers are not investing in companies that are based in countries that are on the EU's blacklist or which do not meet the requirements in the OECD's peer review for tax transparency.

Investments in developing countries
The investors recognise that governments, particularly in developing countries, can use tax incentives as part of their development policy, but external managers are encouraged to be cautious when using these – for example, by being cautious about using shareholder loans that can be used to decrease the taxable income.

Transparency and dialogue
The investors expect that external managers are to be transparent in their approach to taxes and also be willing to enter into a constructive dialogue with the investors about taxes, including providing the investors with access so that they can perform spot checks of the tax matters for the investment.

Future development
The investors behind the tax codex are continually monitoring the developments in the area and entering into active dialogues with other investors and managers about it as well. The tax codex will be updated on an ongoing basis if developments require it.

Spot checks are used to study the implementation of ATP's tax policy

ATP carries out spot checks of the tax-related matters in the underlying investments in order to ensure a better monitoring of the tax-related risks in ATP's portfolio. In addition, ATP wants to get asset managers used to being more transparent when it comes to taxes

In 2019, ATP has completed 13 spot checks on ATP's investments

ATP has been very successful in its dialogue with funds, as with new investments, it has succeeded in adding to the contractual basis that ATP must be given access to carry out spot checks of the underlying portfolio of companies that the funds invest in.

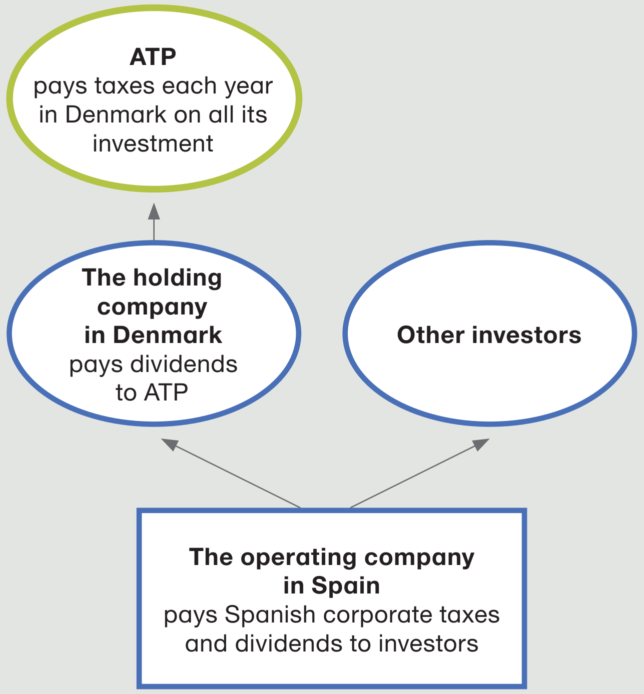
In 2019, we have completed 13 spot checks on ATP's investments. The spot checks have given ATP insight into the structures that the funds are using and no issues were found in relation to ATP's tax policy.

INVESTMENT IN SPANISH COMPANY ACTIVE IN TRANSPORTING GAS

In a spot check, we investigated whether an investment in a gas pipeline in Spain via a Danish holding company was in compliance with our tax policy. Among other things, we investigated whether the structure was aggressive tax planning and how the Spanish group ensured that the ongoing management of tax-related issues in the group were handled in a satisfactory manner.

The structure itself was no cause for concern, as ATP is regarded as a pension fund in Spain. This means that the dividends distributed from the Spanish operating company were not subject to Spanish dividend taxes. However, ATP pays 15.3 per cent tax on dividends.

The company stated that they have implemented a tax policy that sets forth requirements for the company's own appetite for risk on the tax area. In relation to the ongoing management of tax-related issues, the Spanish company informed us that it has an internal tax department charged with, among other things, ensuring that the group pays its taxes on time and reports as needed to the Spanish tax authorities. Due to the above, ATP concluded that this investment was in compliance with ATP's tax policy.



Activities

INVESTING IN A FUND ON THE CAYMAN ISLANDS

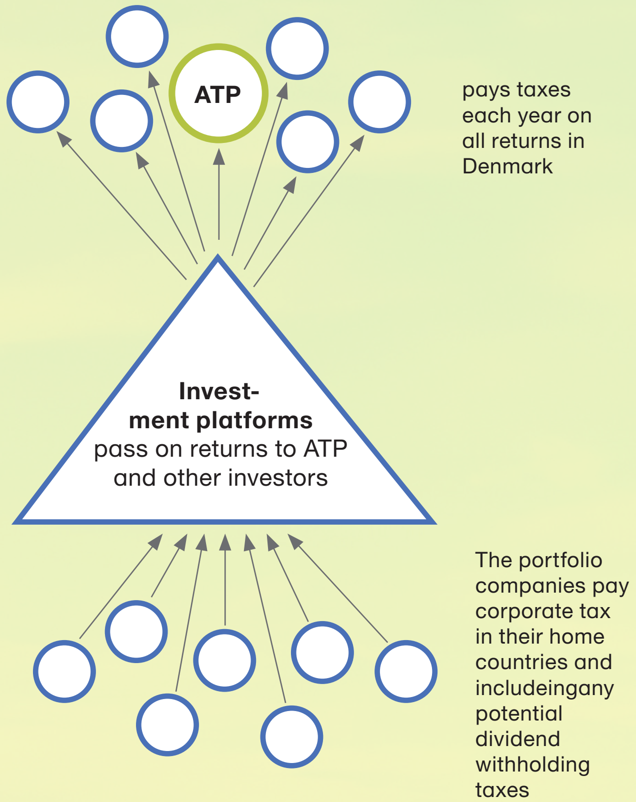
In another one of our spot checks, we investigated tax matters in an investment platform – including the risk associated with being based on the Cayman Islands. ATP analysed the structure to ensure that it complied with our tax policy. The investment platform is based on the Cayman Islands and organised as a tax transparent entity – different tax rules and tax positions among investors tend to encourage such structures as no extra taxes are levied compared to if the investment was made directly by individual investors. The Cayman Islands have been used for such activities for a long time, and this also means that many asset managers and investors know the regulatory and administrative frameworks and feel confident in usingthis jurisdiction.

In terms of taxes, it has no impact on ATP whether an investment platform is based in the Cayman Islands or Denmark, because the entity itself does not pay taxes in any case – it is the underlying portfolio companies and ATP that are subject to taxation. If there has been paid tax in the investment platform itself, this might mean that ATP was being triple taxed – i.e., taxed in the portfolio company, taxed in the investment fund and finally taxed in Denmark as well.

We sent a questionnaire to the asset manager in order to investigate how they ensure that they comply with ATP's tax policy. The asset manager responded that when it is thinking about making an investment, it first contacts a highly regarded tax advisors who is then tasked with ensuring that the investment is structured in such a way that it is not considered aggressive tax planning and that it also prevents ATP from facing double taxation. If it turns out that the asset manager or advisor are unsure about whether an investment complies with ATP's tax policy, the asset manager will take the initiative to contact ATP before the investment is made in order to clarify whether the investment meets the requirements.

In addition, the asset manager ensures that ATP receives information on any potential reporting in local countries that might include ATP. That allows us to ensure that ATP complies with legislation in the individual countries.

Due to the above, it was concluded that the investment fund was in compliance with ATP's tax policy.



Tax in listed companies

Tax matters have for a number of years been an integrated part of ATP's active ownership of listed companies. The purpose of ATP's tax dialogue remains the same, whether it is about listed or unlisted companies, but in practice, the approach differs.

Understanding a company's tax payments requires that one understands the national tax systems, relevant double taxation agreements and the company's specific circumstances. Whereas ATP can gain insight into the underlying tax structures when it comes to investments in unlisted companies, the same is not the case when ATP invests in listed shares.

Historically, ATP has had good experiences with its tax dialogues with Danish companies, but our experience with the foreign companies that ATP itself (or other investors, via PRI) have tried discussing tax issues with has been less fruitful.

ATP's tax dialogue with international listed companies was more successful in 2019 than before, however, where the companies were hesitant to enter into a dialogue. The positive development can be partly attributed to a new approach for the dialogues from ATP's side and also the increasing focus on corporate tax issues in Denmark – which has now also begun to appear in a growing number of other countries.

Therefore, tax will again in 2020 also be a natural part of ATP's active ownership in relation to both Danish and international listed companies.

DIALOGUE WITH MACQUARIE

In the autumn of 2019, the Australian investment bank, Macquarie, which ATP invested in TDC with, apologised for its role in the so-called dividend scandal. Macquarie had, among other things, lent money to a number of funds who then tried to gain dividend refunds from various European countries which they were not entitled to.

ATP takes Macquaries statement under consideration, but continues the critical dialogue together with other investors in TDC and will monitor the company's so-called "self-cleaning process" before we consider making new investments with Macquarie.

SCREENING FOR TAX IN ATP'S INVESTMENTS IN LISTED COMPANIES

ATP's policy for social responsibility in investments with minimum requirements for all of ATP's investments also covers the companies' tax issues. Information about companies violating tax rules are just as important as other factors in our internal fact-finding process.

For a number of years, transparency in tax payments has been a subject of debate – and the public's legitimate interest in ensuring that taxes are paid correctly has often clashed with the competitive considerations that the companies prioritise. ATP recognises that it is difficult to make a formula for how much companies need to disclose to the public, and therefore ATP's work focuses on the companies' tax policies.

In general, we believe that it is important for companies to win the trust of the people and civil society and being transparent about taxes is one way of doing so. Similarly, keeping tax issues secret may create undue suspicion towards a company which can harm its reputation. With our tax policy for investments in unlisted companies, we have chosen to focus on tax in order to ensure transparency and encourage a dialogue.

Activities

DIALOGUE WITH PHARMACEUTICAL COMPANIES

In 2019, ATP has completed a thematic dialogue about taxes with nine international listed pharmaceutical companies.

We decided to talk to international pharmaceutical companies as these typically operate in many different countries and have so-called intellectual property rights in the form of patents, which may be a challenge in the context of determining precisely how to divide the tax payments across the various countries.

The companies were responsive and provided satisfactory answers to how they deal with tax issues. The dialogues were about a number of issues for the purposes of, for example:

- Having ATP learn more about how the companies' internal tax departments are organised so that it is ensured that the head office has control of and insight into the tax issues in relation to the different markets that the company operates in and thereby ensuring that the company's policies are also applied in practice.
- Having ATP get an impression of how the companies stay up to date on changes to tax legislation and international taxation rules.
- Having ATP gain greater insight into potential challenges that the companies have historically faced with their tax payments.

Based on the good experiences and the dialogues, in 2020 ATP is considering to also focus on the tax challenges faced by other relevant industries based on the same approach.