

# Active Owners Denmark, Tax Code of Conduct

Date: June 6<sup>th</sup> 2021

## Introduction

Tax revenue forms an essential part of a well-functioning society.

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 from among others OECD and EU.

Furthermore, the four Danish pension funds ATP, PFA, PensionDanmark and Industriens Pension have published a tax code of conduct which outlines how the pension funds expect external fund managers to act in the area of tax. Seven other Danish pension funds and six additional funds and associations have since then joined the tax code of conduct.

Active Owners Denmark welcomes this initiative and wishes to support and align our private equity and venture fund members with the principles and recommendations set out by the pension funds.

Active Owners Denmark have therefore formulated this tax code of conduct and based it on the principles developed by the pension funds. It is one set of joint principles that set out how private equity and venture fund members of Active Owners Denmark should behave in the area of tax.

Responsible behavior is important to the members of Active Owners Denmark accordingly this code of conduct is building on articles of association and ethical guidelines already set out for the organization.

It is the belief of Active Owners Denmark that responsible behavior builds trust with investors in general, among other stakeholders and with society in general.

## Tax Code of Conduct

1. Scope
  - 1.1. Active Owners Denmark's Tax Code of Conduct applies to venture and private equity funds and similar alternative investment funds, who are members of Active Owners Denmark, cf. articles of association art. 5, section 1, bullets 2 and 4.
  - 1.2. For members of Active Owners Denmark, where the majority of their activities are located outside Denmark, it is the part of their organization that is relevant to their Danish portfolio companies that is covered by this Tax Code of Conduct.
  
2. Active Owners Denmark' expectations to its members
  - 2.1. Active Owners Denmark expects its members to review and comply with Active Owners Denmark's Tax Code of Conduct.



- 2.2. Active Owners Denmark encourages the members who deviate from Active Owners Denmark's Tax Code of Conduct to implement and publish a tax policy, if not already available, comprising the Manager and/or the Company/Fund.
  - 2.3. The members shall use best efforts to ensure compliance with applicable tax law and regulations within the jurisdictions where they invest and/or operate. The members shall use best efforts to ensure that this obligation equally applies to the companies held by or invested in by the members.
3. Tax Planning
- 3.1. Active Owners Denmark does not accept aggressive tax planning. Active Owners Denmark defines aggressive tax planning as exploitation of technicalities in any given tax regime or as exploitation of inconsistencies between tax regimes ("rule arbitrage") to artificially reduce tax liability.
  - 3.2. Members are free to structure their business in tax optimal ways if this is guided by commercial considerations. It is e.g. an acceptable goal to ensure that the same investment return is not taxed more than once. Within these parameters this can for example take the form of (the list is not exhaustive):
    - a. General use of holding companies (not falling within section 4.3 below).
    - 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 and forward carried tax losses to reduce taxable income.
    - d. General use of debt financing (not falling within section 3.3 below).
    - e. Use of hybrid entities for non-aggressive tax planning (e.g., managing tax filing obligations).
    - f. Use of local tax incentive schemes generally available such as depreciation and/or tax credits. Active Owners Denmark recognizes the sovereign right of nations to design their own tax policies so that specific industries or areas are promoted and for the members and portfolio companies to make use of such incentive schemes.
  - 3.3. The members of Active Owners Denmark shall use best efforts not to engage in aggressive tax planning or any tax structuring, which conflicts with applicable tax law or its intentions, including general anti-tax avoidance rules or conflicts with the examples/principles listed below:
    - a. Abuse of tax treaties, where holding companies, which do not satisfy the OECD Principal Purpose Test, are used for the sole or main purpose of reducing or avoiding withholding tax.
    - b. Transfer pricing planning where risks and income are artificially shifted to low-tax countries.
    - c. Use of financial instruments for aggressive tax planning.
    - d. Use of hybrid entities for purposes of aggressive tax planning.
    - e. Use of highly leveraged acquisition structures in jurisdictions without general interest limitation rules with the aim of reducing taxable income not in line with OECD- and EU-principles.

4. Domiciliation of holding companies
  - 4.1. The starting point for Active Owners Denmark is the use of domestic (relative to the Portfolio Company in question) holding companies (e.g. use of Danish holding companies for a Danish Portfolio Company).
  - 4.2. Provided that the requirements of this Tax Code of Conduct are otherwise complied with, Active Owners Denmark accept that non-domestic holding companies are used when a use is reasoned in significant commercial matters.
  - 4.3. The member shall ensure that it does not make use of holding companies established or tax resident in jurisdictions which at the time of this is blacklisted with reference to section 5.1.a. and 5.1.b. below.
  
5. Blacklisted jurisdictions
  - 5.1. The member shall ensure that it does not make investments in portfolio companies established 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 members initial investment, or
    - b. Jurisdictions listed on the EU’s list of non-cooperative tax jurisdictions at the time of the members initial investment.
  
6. Handling of Tax and related Risks
  - 6.1. If establishing a structure, the member must ensure that the structure is compliant with applicable tax rules and the structuring advice shall contain a statement to this effect.
  - 6.2. In case of investments in countries that are not members of EU, EEA and/or OECD, the member shall use reasonable efforts to use a reputable and independent tax advisor for tax reporting/compliance or review of tax reporting/compliance.
  - 6.3. 6.3. The member is expected to fully disclose facts and circumstances when requested to do so by competent tax authorities.
  
7. Mandatory Disclosure and Exchange of Cross-border Tax Arrangements (DAC6)
  - 7.1. The member shall comply with the requirements under the mandatory automatic exchange of information rules contained in European Council Directive (EU) 2018/822 (the “MDR Directive” and an “MDR Directive Obligation” as applicable) with respect to all investments/transactions of the member.
  
8. Enforcement of the Tax Code of Conduct
  - 8.1. If a member of Active Owners Denmark fails to comply with the obligations arising from this Tax Code of Tax Conduct, the Board of Active Owners Denmark may decide that the member be excluded from the Association of Active Owners Denmark, cf. articles of association art. 7.



**AKTIVE EJERE**  
ACTIVE OWNERS DENMARK

- 8.2. If there is doubt as to a member's compliance with obligations under this Tax Code of Conduct, the Member shall, at the request of Active Owners Denmark, justify that the obligations are not being breached.
- 8.3. All members of Active Owners Denmark covered by this Tax Code of Conduct must annually inform the Board of Active Owners Denmark whether they comply with this Tax Code of Conduct.