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**ATP**

Information requirements for  
foreign investments funds in  
ATP FritValg

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# 1 Introduction

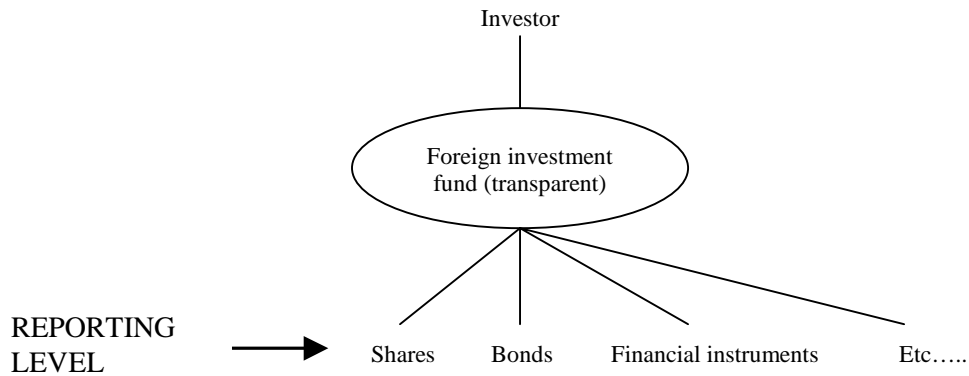
## 1.1 Background

ATP FritValg gives investors the opportunity to place part of their ATP pension savings (more specifically the part placed in SP) in investment funds, including foreign investments funds, according to their individual preferences.

The yields from the investment funds are taxed at the level of ATP and allocated to the individual investors. Yields are taxes in accordance with the Danish regime for pension yield taxation (PAL). Although the principles for calculating the tax base according to PAL are fairly simple, the requirements for reporting the tax base in its individual components make a detailed reporting system necessary.

This is especially so in connection with investments through foreign investment funds that are classified as tax transparent according to Danish principles. In this situation, the investor in the investment fund is for tax purposes regarded as owning a fractional share of the underlying assets and liabilities of the investment fund. As a consequence, the tax reporting will need to be completed at the level of the underlying investments of the foreign investment fund.

The reporting level can be illustrated as follows:



## 1.2 Classifying a foreign investment fund as transparent/non-transparent

Only foreign investment funds classified as transparent in accordance with Danish tax principles are subject to the detailed reporting obligations set out in this report. Please note that the classification as transparent or non-transparent will have to be made in accordance with Danish tax principles and a classification according to the rules of the country in which the fund is based, or any other foreign country, is not decisive.

The following factors may be considered in classifying an investment fund as transparent or non-transparent. Please note that a classification for Danish tax purposes is an overall evaluation and that all factors will need to be considered together.

- Capital. Issue of (transferable) shares/units (indication of non-transparency) vs. tracking the funds of investors in individual capital accounts (indication of transparency).
- Liability. All members have limited liability (indication of non-transparency) vs. at least one member have unlimited liability (indication of transparency).
- Distributions. Distributions made on the basis of the share of invested capital would be an indication of non-transparency.
- Liquidation. Allocation of liquidation proceeds on the basis of the share of invested capital would be an indication of non-transparency.
- Life span. Is the life of the investment entity unlimited (indication of non-transparency) vs. the life of the investment entity is limited or is dependent on the participating investors (indication of transparency).
- Legal status. Separate legal status (indication of non-transparency) vs. no independent legal status (indication of transparency)
- Management. Separate management organs (e.g. board of directors) that can make decisions on behalf of investors not participating in the management (indication of non-transparency) vs. management from external provider such as separate management company (indication of transparency).
- Treatment under local tax rules. Is the entity treated as a separate tax subject (indication of non-transparency) vs. the tax is imposed on the members of the entity (indication of transparency).
- Constitutional documents. Separate articles of association as constitutional documents for the entity (as opposed to merely an investor agreement) would be an indication of non-transparency.
- Accounts. The maintenance of separate accounting records and the preparation of annual accounts would be an indication of non-transparency. The maintenance of partnership style capital accounts would be an indication of transparency.

Please note that due to the amount of relevant factors to be considered in determining the transparency, including the weighting of these, the determination is by no way straight forward. Obtaining professional advice on the classification is strongly advisable.

It is the responsibility of the foreign investment fund to arrive at the correct qualification as transparent or non-transparent according to Danish tax principles. Should the qualification be questioned by the Danish tax authorities, as part of a future tax audit, it is the responsibility of the foreign investment fund to provide the documentation necessary to support the qualification arrived at including any reporting for earlier years necessary for filing amended tax returns.

### 1.3 The PAL tax regime

Danish investors subject to the PAL tax regime is taxed at a flat rate of 15% on all gains and losses on investments (calculated on a mark-to-market basis) and on all net income (subject to certain restrictions on the deductibility of expenses). Asset management costs and interest expenses are generally tax deductible.

The calculation of the taxable yields must be done for the calendar year.

As mentioned above, all yields must be reported broken down into the different categories of yields.

All amounts should be reported in Danish Kroner using appropriate conversion rates (see definitions section).

All amounts reported should reflect ATP's share of the yields from the foreign investment fund, and should take into consideration any fluctuations in ownership percentages during the year.

#### 1.3.1 Foreign investment funds classified as non-transparent

Where a foreign investment fund is classified as non-transparent for Danish tax purposes all Danish tax reporting is done at the level of the foreign investment fund. Thus the detailed information reporting outlined in this report is unnecessary.

#### 1.3.2 Foreign investment funds classified as transparent

For foreign investment funds classified as transparent, the required breakdown is as follows:

Yield category	Type of yield	Box reference	Amount (dkr.)
Bonds, mortgage bonds and other debt claims	Interest from bonds, convertible bonds and other debt claims denominated in dkr.	101	
	Gains and losses on bonds, mortgage bonds and	102	

	other debt claims denominated in dkr.		
	Gains and losses on certain index-linked bonds denominated in dkr.	103	
	Deductions or add-ons in connection with certain index-linked bonds	104	
Financial instruments	Gains and losses on financial instruments	105	
Equity	Distributions from equity investments	106	
	Gains and losses on shares and convertible bonds	107	
Subscription rights	Gains and losses on subscription rights and other rights subject to the Danish Act on the taxation of equity gains.	108	
Unit trusts/investment associations	Distributions from investment associations.	109	
	Gains and losses on investments in investment associations.	110	
Liquidation proceeds	Gains and losses on the distribution of liquidation proceeds from corporates or from investment associations.	111	
Foreign securities etc.	Interest on securities and other debt claims denominated in a foreign currency	112	
	Gains and losses on securities denominated in a foreign currency.	113	
Real property	Profits and losses in connection with a real property business	115	
	Gains and losses on real property	116	
Debt liabilities	Gains and losses on debt liabilities.	119	
Other taxable yield	Other taxable yield	126	
Deductions	Deductible interest	127	
	Deductible asset management costs	128	
	Other deductible costs	130	

### 1.3.3 Withholding taxes and fund level taxes

In addition to the information above certain information must be reported in connection with non-reclaimable foreign withholding taxes and fund level taxes (see definitions section). Any reclaimable foreign withholding taxes and fund level taxes should be reclaimed by each foreign investment fund on behalf of ATP subject to a de minimis limit of dkr. 1,000 per country per year. The amount of reclaimable foreign withholding tax and fund level tax should be determined with reference to the double tax treaty between Denmark and the country imposing the withholding tax.

The following diagram illustrates the responsibilities of the foreign investment fund in relation to withholding taxes and taxes at the fund level:

<b>Type of foreign investment fund</b>		<b>Reclaim of tax on behalf of ATP</b>	<b>Information on non-reclaimable taxes to be provided to ATP</b>
Transparent			
	Fund level tax	Yes, if possible	Yes
	Withholding tax on distributions from foreign investment fund	Yes, if any	Yes, if any
	Withholding tax on underlying investments	Yes	Yes
Non-transparent			
	Fund level tax	N/A	N/A
	Withholding tax on distributions from foreign investment fund	Yes	Yes
	Withholding tax on underlying investments	N/A	N/A

## 1.4 Frequency of information reporting

As mentioned above the taxable yields must be calculated based on the calendar year. For each calendar year there are two tax return submission dates. On the 15 December in the calendar year a preliminary return must be submitted. The final return must be submitted by 15 July in the year following the calendar year.

For the preliminary tax return ATP will not need the detailed tax reporting as set out in this report but will calculate the taxable yields based on accounting reporting otherwise received from the fund.

For ATP to be able to meet the deadline for the submission of the final tax return the detailed information reporting should be received by 10 January in the year following the calendar year reported on.

## **1.5 Format**

The detailed information reporting should be provided split between the different categories of yields as set out in section 1.3 above. The reporting should clearly indicate the box reference number.

Electronic reporting (in the format of an Excel spreadsheet) is preferred.

Section 2 of this report contains definitions of the different items of yields referred to in the boxes set out in section 1.3. Also section 2 contains guidelines as to how the different yields should be calculated.

## **1.6 Access to information**

ATP reserves the right to ask questions to, and to request breakdowns and background calculations in connection with, the reporting received.

As part of the contractual agreement between ATP and the individual foreign investment funds ATP will reserve the right of access to underlying documentation used in connection with the preparation of the detailed reporting. Such access is necessary should ATP be subjected to tax audit by the Danish tax authorities.

## 2 Definitions and comments

This section contains a list of general definitions of the different types of yields required to be reported on together with more general definitions that should be referred to in the calculation of the different yields.

### 2.1 Definitions and comments relating to the categorisation of the different types of yields

#### Boxes 101 to 104 Bonds, mortgage bonds and other debt claims

These boxes should only be used where investments are made in bonds, mortgage bonds and other debt claims denominated in dkr.

Generally the definition of debt claims and debt liabilities is broad under Danish tax law and includes any relationship involving the borrowing or lending of money.

Debt instruments convertible into shares will not normally be regarded as debt claims under Danish tax law but instead as equity, see below. However, interest from convertible debt instruments denominated in dkr. should be reported in box 101.

Special rules exist for calculation of the taxable yield on certain Danish index linked bonds. Should such instruments be invested in specific tax advice, it should be sought to determine the reportable yield.

#### Box 105 Financial instruments

Forward and futures contracts, put options, call options and any other contracts representing a combination of other financial instruments (eg swap contracts).

Both dkr. and foreign currency denominated financial instruments should be reported in box 105.

Special rules in relation to financial instruments relating to the purchase or sale of equity instruments. Where such instruments can be fulfilled by physical delivery only, where the contract is not traded but held to maturity and where no opposite contract is entered into these instruments will be treated as equity instruments and should be

reported on together with the underlying equity.

Boxes 106 to 107 Equity

Investments in equity of corporate entities. Equity also includes some debt instruments convertible into equity (convertibles), see immediately below.

Both dkr. and foreign currency denominated equity yields should be reported in boxes 106 and 107.

Convertibles. An instrument incorporating both a loan relationship claim against the issuer of the convertible and a right (but not necessarily a duty) for the holder to convert the loan relationship claim into equity at a defined time or within a defined period. Convertibles are normally treated as equity instruments for Danish tax purposes.

Please note that the conversion right must be of real substance and not be conditional for an investment to qualify as a convertible.

Where the right to conversion is not of real substance, the instrument must be split into its separate parts and treated as an ordinary loan relationship claim and as a financial instrument respectively.

Distributions from equity investments include all distributions including proceeds from the repurchase of shares by the issuing company, share redemptions, reductions in share capital and from the distribution of stock.

Box 108 Subscription rights

A right to the subscription of shares on a defined point in time or within a defined period of time at a predetermined price.

Both dkr. and foreign currency denominated subscription rights should be reported in this box.

Please note that the right must relate to newly issued shares and not existing shares. Where the right relate to exiting shares the subscription right may have to be treated as a financial instrument (see definition above).

Boxes 109 to 110 Unit trusts/investment associations

Distributions and gains and losses on investments in investment

associations should be reported in boxes 109 and 110 where the investment association issues transferable certificates representing the investment by members and is classified as a certificate issuing investment association according to Danish tax principles.

Both dkr. and foreign currency denominated investment association investments should be reported in these boxes.

Where an investment association cannot be classified as a certificate issuing investment association but rather as an account-based investment association, the investment association is regarded as transparent from a Danish tax perspective and should be looked through for reporting purposes. Thus it is the underlying yields of the investment association that must be reported on in the appropriate boxes.

Box 111

Liquidation proceeds:

Any distributions of liquidation proceeds from equity investments or from investment associations classified as a certificate issuing investment association (see above) (both dkr. and foreign currency denominated) should be reported in this box.

Please note that a distribution of liquidation proceeds made in the same calendar year, as the company of investment association is finally wound up, should be treated as sales proceeds and should in the reporting be included in the relevant box for equity and investment association gains or losses as appropriate.

Boxes 112 and 113

Foreign securities etc:

These boxes should be used where investments are made in bonds, mortgage bonds and other debt claims denominated in a foreign currency. Please refer to the comments to the boxes 101 to 104 above.

Boxes 115 and 116

Real property:

Include in these boxes profits and losses from the running of a real property business and gains and losses on real property. Include yields from both dkr. and foreign currency denominated real property investments.

Where profits or losses from the running of a real property business are included in the reporting, please include a specification of the

calculation of the profits or loss. Please note that depreciation on buildings and installations cannot be deducted in the calculation of the profit or loss.

Box 119

Debt liabilities:

Include here all gains and losses on debt liabilities, both those denominated in dkr. and those denominated in a foreign currency.

Please note that where the debt liability is denominated in dkr. special rules restricting the deductibility of losses exist. Also certain gains on debt liabilities with connected parties may not be subject to PAL tax. Where losses on debt liabilities denominated in dkr. and gains on connected party debt liabilities are relevant, special tax advice should be sought to determine the amounts to be reported.

Box 126

Other taxable yield:

Any yield not included in the boxes above should be reported in box 126. Any amounts reported in box 126 should be supported by a detailed breakdown to determine the nature of the yield.

Box 127

Deductible interest:

Include here interest expenses from debt liabilities in both dkr. and in foreign currencies.

Box 128

Deductible asset management costs:

Include here all asset management costs (all costs associated with the management of the assets subject to PAL tax). Do not include any transaction costs. Transaction costs should instead be added to the acquisition costs of the relevant assets or deducted from the sales proceeds.

Box 130

Other deductible costs:

Include here any costs not included in the boxes above. Numbers reported in this box should be supported by detailed breakdowns/explanations of the type of costs.

## 2.2 Definitions and comments relating to the calculation of yields

Acquisition:	An investment is regarded as acquired where an unconditional right of ownership has been transferred to the purchaser.
Currency:	<p>In connection with income and expenses in a foreign currency, the exchange rate to dkr. on the day the income arose or the expense was incurred should be used. Where expenses are accrued an average rate for the period can be used.</p> <p>In connection with gains and losses in a foreign currency, translations to dkr. should be made at transaction dates (acquisition, disposal etc.) and at the beginning and end of each calendar year. Any foreign currency gains or losses should be reported together with the gain or loss on the asset or liability they relate to.</p>
Disposal:	A disposal requires a final and unconditional transfer of ownership rights normally by way of a sale.
Mark-to-market:	All gains and losses reported should be determined on a mark-to-market basis. Where market prices are not readily available (quoted securities) a recognised valuation method for the assets and liabilities must be used (e.g. EVCA).
Timing issues:	<p>Expenses, including interest expenses, and interest income should generally be reported on an accruals basis.</p> <p>Income items (other than interest income) should generally be reported on the basis on when the right to the income arises. Please note that according to Danish tax rules the right to dividend income arises at the time the dividend is declared at a general meeting of the distributing company.</p>
Transaction costs:	<p>Costs incurred by the fund in relation to the evaluation, acquisition, disposal etc. of investments. This includes transaction taxes, commissions and legal and accounting costs associated with an acquisition or sale.</p> <p>Broken deal costs should be treated as asset management costs.</p>
Withholding taxes and fund level taxes:	All income and gains should be reported gross. Where foreign withholding tax or fund level tax has been deducted details of the amount, currency, rate and country imposing the withholding

tax/fund level tax together with evidence of the tax should be provided as part of the reporting.

The reporting should clearly distinguish between the amount of tax reclaimed/reclaimable by the foreign investment fund and the amount not possible to reclaim in accordance with the double tax treaty between Denmark and the country imposing the withholding tax.