

Shipping Group newsletter*

Proposed amendments of the tonnage tax regime Norway

30 March 2010

The Ministry of Finance proposes amendments of the tonnage tax regime based on the Supreme Court ruling of 12 February

On 12 February the majority of the Norwegian Supreme Court concluded that the transitional rules for tonnage taxed companies from 2007 were unconstitutional. The Ministry of Finance has on 26 March issued a press release announcing that amendments to the tonnage tax regulations will be proposed later this year. The amendments imply that the tax liability related to untaxed profits accumulated prior to 2007 can be settled once and for all with an effective taxation of approximately 6.7 per cent tax. It will be voluntarily for the tonnage taxed companies to accept the 6.7 per cent taxation.

Background

Shipping profit was subject to a tax exemption under the old tonnage tax system as long as the profit was not distributed to shareholders outside the tonnage tax regime or the company exited the tonnage tax system. The original transitional rules entailed that untaxed profit earned prior to 2007 was subject to taxation even if the profit remained within the tonnage tax system. This was considered as unconstitutional by the Supreme Court. The Ministry of Finance has now announced that the Government will propose amendments to the tonnage tax regulations.

Voluntary settlement of tax liability

The Government will propose a voluntary settlement of the tax liability related to untaxed profits accumulated prior to 2007. The tax liability can be settled by paying 10 % tax on the original amount on the settlement account (the two thirds that could not be waived by investing in environmental measures). This implies a 6.7 per cent

taxation of the total gain calculated upon entry into the new tonnage tax system as per 1 January 2007.

The tax liability related to the "environmental fund" (one third of the total capital gain calculated upon entry into the new tonnage tax system) will be waived for companies that choose the voluntary settlement by paying 10% tax on the remaining two thirds of the capital gain.

The tax liability must be paid over a three year period from 2011 to 2013. It must be assumed that companies comprised by the new regime that have been levied correction tax based on distribution of untaxed profits accumulated prior to 2007, can offset the correction tax against the 10% tax liability resulting from the voluntary settlement.

The tonnage taxed companies must elect the voluntary settlement in the tax return for 2010.

We note that the correction tax rules still will be in force for distributions carried out in 2009, however we expect that detailed regulations will be presented by the Government later this year.

Taxation of companies that do not elect voluntary settlement of the tax liability

Companies that do not elect voluntary settlement of the tax liability, will be subject to continued taxation as under the old tonnage tax regime. This implies a 28 % taxation of untaxed profits upon distributions to shareholders outside the tonnage tax regime or at exit from the tonnage tax regime.

For the companies not electing the voluntary settlement the possibility to waive one third of the tax liability by investing in environmental measures will be abolished, i.e. the total gain calculated upon entry into the new tonnage tax system will be regarded as untaxed profits even if environmental investments are made in the future. Companies that have already invested in environmental measures will be able to benefit from these investments.

According to the prevailing transitional rules accounting profits pre tax accumulated from 2007 onwards can be distributed

without taxation, even if the companies have untaxed profits accumulated prior to 2007.

The Government will propose a first in first out rule with respect to dividend distributions which implies that untaxed profits from the years prior to 2007 will be regarded as distributed, before profits earned in 2009 and later years should be regarded as distributed. The new rules will be applicable to distributions made from 26 March 2010.

Profits earned in income years 2007 and 2008 can still be distributed without taxation based on the principles in the existing transitional rules, even if the distribution is not made before 26 March 2010. This implies that all companies are treated equally as far as profits accumulated in 2007 and 2008 are concerned.

For income year 2009 there will be a difference between companies that have adopted dividend distributions before 26 March 2010 and companies that have not yet carried out the dividend distributions. In our view, it could be questioned whether this proposed rule can be justified, as all tonnage taxed companies by the end of 2009, based on the transitional rule X no 7, had a legitimate reason to believe that profits from 2009 could be distributed without provoking tax liability.

Additional proposed amendments

Minimum real capital requirement

The Government will also propose that the tonnage taxed companies should have a minimum real capital compared to financial capital to be considered qualifying for tonnage taxation.

The details of this potential new requirement have not been released. It is unclear whether this proposed rule will be applicable for all tonnage taxed companies.

Security in favour of related parties

It will also be proposed that companies with untaxed profits from the old tonnage tax system cannot furnish security in favour of related parties as of 26 March 2010 and onwards. Securities established prior to 26 March 2010 can thus still be maintained.

The Government will present the proposed amendments to the Parliament later this spring.

Accounting treatment

The tax payable deriving for the companies that choose to accept the voluntary settlement of the tax liability in the tax return for 2010 should most likely be regarded as payable tax in the annual accounts for 2010.

Companies that choose not to accept the voluntary settlement will remain with a tax liability. Whether the tax liability should be included as a liability in the balance sheet of the companies should be based on a separate evaluation for each company, as under the current regime after the Supreme Court ruling.

Contacts

For more detailed information, please do not hesitate to contact national contacts or local PwC contact.

National

Svein T. Sønning
Partner Tax – Kristiansand. Tel. +47 9526 1071
svein.t.sonning@no.pwc.com

Elin Sund
Attorney-at-Law / Manager – Kristiansand. Tel + 47 9526 1074
elin.sund@no.pwc.com

Pål Heggernes
Attorney-at-Law / Manager – Oslo. Tel. + 47 9526 0455
paal.heggernes@no.pwc.com

Local

Oslo
Rita Granlund
Partner – Assurance. Tel. +47 9526 0237

Stavanger
Torbjørn Larsen
Partner – Assurance. Tel. +47 9526 1096

Kjell Inge Gade
Partner – Tax. Tel. +47 9526 1175

Bergen
Jon Haugervåg
Partner – Assurance. Tel. +47 9526 1300

Dag Saltnes
Partner – Tax. Tel. +47 9526 0632

Kristiansand
Torstein R. Robstad
Partner – Assurance. Tel. +47 9526 1020

Bjørn Einar Strandberg
Partner – Assurance. Tel. +47 9526 1015