

# International Tax News\*

Proposed regulations on exit tax

Norway

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In 2008, Norway enacted new rules on exit taxation when assets or liabilities are transferred out of Norwegian taxing jurisdiction. On 25 March 2009 the Ministry of Finance published proposed regulations to supplement the amendments. The proposal is now subject to a public hearing until 6 May 2009. Final regulations can most likely be expected promulgated before this summer.

## Background

The exit rules are intended to impose an exit tax when assets or liabilities are transferred out of Norwegian taxing jurisdiction. Among the transactions covered by the rules are:

- the transfer of assets from a permanent establishment of a Norwegian company, where Norway has the right to tax the profits of the permanent establishment and avoid double taxation through the credit method, to a permanent establishment which is exempt from tax in Norway pursuant to a double tax treaty,
- the transfer of assets from a Norwegian permanent establishment of a foreign company, and
- if the conditions for CFC taxation is no longer met due to cessation of Norwegian control.

Transfer of assets to a permanent establishment in a country which either has no tax treaty with Norway or the applicable double tax treaty is based on the credit method is, however, not regarded as a taxable event.

The gain or loss is in general computed as the difference between asset's tax basis and the fair market value at the time of the transfer. Tax treaties may reduce Norway's taxing rights and thus the potential gain arising.

If the transferred assets are either intangible business assets or inventory, the exit charge cannot be deferred. Gains on transfer of other types of assets, such as tangible business assets and financial assets, may be deferred if certain conditions are met. Furthermore, the gains or losses are not included if the assets are not sold within five years.

The Ministry of Finance has now published proposed regulations to supplement the amendments. The proposal addresses three issues:

1. The period of pre-exit presence in Norway needed to be comprised by the rules,
2. Threshold amounts of gain and loss for triggering exit tax, and
3. Specific filing requirements.

## Pre-exit presence

The proposed regulations require a minimum presence in Norway before an exit charge is triggered on transfers of tangible business assets. The length of the pre-exit period is proposed to be 12 months.

The period starts to run from the first time the asset is within Norwegian taxing jurisdiction. The 12 months period does not need to be continuous; several shorter periods will be taken into account. However, the total assessment period is limited to six years, meaning that if the asset has not been used within Norwegian taxing jurisdiction for at least 12 months during a six year period, no exit charges is levied upon the transfer.

If the tax payer has acquired the asset, whether in Norway or elsewhere, during the last two years prior to transferring it out of Norwegian taxing jurisdiction, exit charges are levied regardless of the 12-months requirement described above.

## Threshold amounts

The gains and losses upon exit have to be assessed on a net basis in each category of assets. The asset categories are as follows:

1. tangible business assets,
2. financial assets,
3. liabilities,
4. inventory, and
5. intangible business assets.

The Ministry proposes that a net gain or loss within one of the categories is only included if it exceeds a certain threshold amount in that income year. For tangible business assets the threshold amount is NOK 5m whereas for all other types of assets the amount is NOK 1m. If the threshold amount is met, then the entire net gain or loss will be taxable.

## Filing requirements

The Ministry of Finance also proposes that any tax payer that carries out a transaction as described above will have to submit additional forms with the annual tax return identifying the assets or liabilities that have been transferred from Norwegian taxing jurisdiction. Furthermore, a calculation of the gains or losses, with supporting documentation, must be submitted.

The filing requirements apply not only when the net gain or loss from one or more transactions reach the threshold amount; all tax payers that have conducted any of the listed transactions will have to meet the new filing requirements.

In certain situations, the payment of the exit tax is deferred as long as the tax payer still owns the asset for a period of five years after the exit from Norwegian taxing jurisdiction. The tax liability will cease to exist after five years. To benefit from this deferral, it is proposed that the tax payer will have to fulfill certain filing requirements throughout this period. Non compliance will trigger immediate taxation.

## Contacts

For more detailed information, please do not hesitate to contact your local PwC contact or

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