

International Tax News*

Fiscal budget 2009
– tax proposals

Norway

Issue 14, 8 October 2008

Contents

1. Exit taxation
2. Limitations on the tax exemption method
3. Amendments in the tonnage tax regime
4. Depreciation of technical installations in buildings

1. General rules on exit taxation

The Norwegian General Tax Act (“GTA”) contains no general exit taxation rule. The GTA, however, contains provisions which on certain conditions provide for a calculation of a taxable income if some assets are transferred out of the Norwegian tax jurisdiction.

In the need to prevent erosion of the Norwegian tax base, the Government has proposed general exit tax rules.

The proposed rules levy exit taxes in respect of assets or liabilities “emigrating” from Norway. An “emigration” should be treated in accordance with the usual rules on capital gain taxation and the exit taxes should be calculated by reference to accrued but unrealised gains.

Exit charges are levied in accordance with the proposal if a company:

- i) transfers its operational headquarters to another country, or
- ii) if assets are transferred to a permanent establishment which is tax exempt pursuant to a double tax treaty, or
- iii) if assets are transferred from a Norwegian permanent establishment of a foreign company.

Transfer of operational equipment to a permanent establishment in a country where the double tax treaty in question is based on the credit method is, however, not regarded as a taxable event.

According to the proposal, the tax treatment is different depending on the type of assets being transferred. Business related operational equipment and financial assets being transferred out of Norwegian tax jurisdiction will be considered as taxable events. The tax charges can, however, be deferred if certain conditions are met. In addition, the tax charges can be avoided if the assets are not sold within five years after the assets have left Norway. In respect of intangible assets and assets meant for trade, exit charges are levied unconditionally and immediately upon emigration.

According to the proposal, exit charges will also be levied in respect of companies “emigrating” from Norway on a deemed liquidation basis. In this regard it should also be noted that the company emigration should also be regarded as a taxable event for the shareholders and this is not in line with what the Norwegian Ministry of Finance and the Directorate of Taxes have indicated earlier with regards to SE companies.

In our view it is uncertain whether the new rules are compatible with Norway’s obligations under the EEA treaty. There is a pending case before the European Court of Justice regarding whether a company can transfer its seat within the EEA area without restrictions.

The new rule is proposed effective as of 7 October 2008.

2. Limitations on the tax exemption method

The Tax Exemption Method (TEM¹) implies that corporate shareholders as the main rule are exempt from tax on share income. Certain costs related to such tax exempt share income are deductible according to a special provision in the GTA. The Ministry of Finance is, as a matter of principle, of the opinion that costs related to tax exempt share income should not be deductible. Introduction of a general abolishment for deduction of shareholders' costs is, however, not seen as a practical solution, as it will create difficulties to distinguish between deductible and non-deductible shareholder costs.

The Ministry therefore proposes that three percent of all share income covered by the TEM will be taxable. This taxable portion of share income is deemed to reflect a fixed/stipulated re-allocation/ of the deductible shareholder costs. Share income liable for tax under the new rule will cover

- dividends on shares etc. covered by the TEM.
- gains upon realisation of shares, partnership interests and financial instruments etc. covered by the TEM;

The new rule will apply to all corporate entities eligible for the TEM, except for foreign entities exempt from withholding tax on dividends under the TEM. Thus, there will as a main rule not be levied any withholding tax if the recipient is an EEA corporate shareholder.

Group contributions are not covered by the TEM and will not be affected by the new rule for taxation of a proportionate part of the share income. Group contributions are, on certain conditions, deductible for the rendering company and taxable for the receiving company, thus allowing for a limited tax consolidation for group companies. We expect that future transfer of funds from one group company to another will require careful planning in order to evaluate whether the transfer can be carried out as group contributions rather than dividend distributions, as group contributions will not give rise to taxes on a consolidated basis. However, the group contribution rules are as the main rule only applicable for Norwegian companies and Norwegian permanent establishments.

The TEM applies to share income from investments within the EEA, provided that the EEA entity meets the substance requirements if the country in question is regarded as a low-tax jurisdiction. The TEM does not, however, cover share income from investments outside the EEA if it is regarded as i) a portfolio investment, or ii) an investment in a low-tax jurisdiction. Share income which fall outside the scope of the TEM is fully taxable at 28 %, and will not be affected by the new rule.

The new rule is proposed effective from 7 October 2008.

3. Amendments in the tonnage tax regime

The Government proposes to abolish the prohibition on tonnage taxed companies against providing funds and guarantees towards group companies outside the tonnage tax regime. For tonnage taxed companies holding tax credits from the previous tonnage tax regime, the prohibition on lending funds and providing guarantees will, however, still apply. The amendments are proposed effective from the income year 2007.

The Government has considered proposing a requirement for strategic and commercial management of the tonnage taxed company or the ships in Norway, but states in the White Paper that such a requirement will not be introduced.

The information contained in this publication should not be relied on as professional advice and should not be regarded as a substitute for advice in individual cases. No responsibility for any loss occasioned to any person acting or refraining from action as a result of material in this publication is accepted by the author or the publisher.

4. Depreciation of technical installations in buildings

The Government proposes to introduce a separation of technical installations in buildings into a new asset group for tax depreciation purposes. This will increase the depreciation rate on these assets from either 2 or 4 per cent up to 10 per cent. The new rule is proposed effective from the income year 2009.

Contacts

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

Oslo:

Aleksander Grydeland

+1 347 534 5219

aleksander.grydeland@no.pwc.com

Christian Grevstad

+47 95 26 03 78

christian.grevstad@no.pwc.com

Hilde Thorstad

+47 95 26 05 48

hilde.thorstad@no.pwc.com

Stavanger:

Kjell Inge Gade

+47 95 26 11 75

kiell.inge.gade@no.pwc.com

Bergen:

Dag Saltnes

+47 95 26 06 32

dag.saltnes@no.pwc.com

* * *

If you do not wish to receive our newsletter, please reply to this message with:

"unsubscribe International Tax News"