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Global Tax Alert

Norway proposes Revised Fiscal Budget 2020

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Executive summary

On 12 May 2020, the Norwegian Government issued a proposal for a Revised Fiscal Budget for 2020. The proposal will now be discussed by the Norwegian Parliament, and subject to any potential changes, it is expected to be approved in June 2020. In short, no major changes have been included in the Revised Fiscal Budget from an international tax perspective. The main proposals are:

- Accelerated depreciation for machinery and possibly for ships in near sea shipping
- Reduced employer contributions on salaries
- Changes in tax depreciation and uplift for oil and gas investments

In addition, the Ministry of Finance made some statements on how certain tax law provisions should be interpreted. The most significant one relates to whether the general anti-abuse rule may be applied to disregard a demerger followed by a tax-exempt sale of shares in the spun-off company.

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Detailed discussion

Business tax

Application of the GAAR to tax-free demergers

Effective 1 January 2020, Norway has implemented a statutory general anti-abuse rule (GAAR), which is based on a non-statutory GAAR developed by the Norwegian Supreme Court since the 1920s[1] and which was effective until 2020.

In a landmark case from 2014 (*ConocoPhillips III*) under the non-statutory GAAR, the Supreme Court ruled that a transaction sequence involving the de-merger of all other assets except a real estate asset, which was carved out, followed by a tax-exempt sale of shares, was not to be taxed under the non-statutory GAAR. As a brief summary, the Supreme Court stated that such transaction structures had been considered when developing the exemption method and were in line with the objective of the rule. Consequently, the non-statutory GAAR could not be applied.

Based on the *ConocoPhillips III* case, the tax administration has not applied the GAAR to disregard transaction structures involving demerger of assets for the purpose of a subsequent (tax-exempt) sale of shares. During the preparation of the statutory GAAR, the Ministry of Finance proposed that the new statutory GAAR could be applied to disregard such transaction structures. However, the Parliamentary Finance Committee rejected this proposal. Consequently, both taxpayers and tax authorities have continued to practice the rule set out by the Supreme Court in the *ConocoPhillips III* case, including after the introduction of the statutory GAAR.

The Ministry of Finance is now issuing a statement to clarify what it considers legal uncertainty regarding the applicability of the statutory GAAR. In the Ministry's view, the precedence effect of ConocoPhillips III is limited to transactions involving real estate and not to other types of assets.

The Ministry's statement brings uncertainty over an issue that was believed to have been resolved by the Parliamentary Finance Committee. Given the high practical importance of this issue, it is expected that this statement will be subject to political discussion in the weeks ahead.

Accelerated depreciation

The Ministry of Finance has proposed the increase in the first-year depreciation of assets that fall in asset group D (such as machinery, passenger cars, movable furnishings) by 10 percentage points, from 20% to 30%, provided that the assets are acquired from third parties from the time the proposal enters into force and until the end of 2020. This temporal increase will also apply to qualifying additions to existing assets which are made from the time the proposal enters into force and until the end of 2020.

As this proposal may be considered State aid, it will need to be approved by the European Free Trade Association (EFTA) Surveillance Authority before entering into effect.

Also, the Ministry has considered implementing a temporary accelerated depreciation of ships acquired in 2020 for "near sea shipping," which includes ships transporting passengers and goods between ports in Norway and ports in Europe. The proposed depreciation rate will be 20% versus the ordinary rate of 14%. This proposal has previously been notified as the introduction of a new statutory depreciation bracket. However, due to increased administrative burden and an unresolved compliance with the European Economic Area (EEA) agreement's limitations on State aid, the Ministry has decided not to introduce a new temporary depreciation bracket. Instead, they propose issuing a proxy law that will give them the legal basis to implement the required changes as regulations, i.e., without needing parliamentary approval, after necessary considerations have been carried out.

Employer contributions: reduced rate and payment deferments

The Ministry proposes a reduction in the employer contribution rate for the third payment period of 2020 (May and June) by four percentage points. Employers in parts of Northern Norway, which are generally exempt from paying employers' contributions, will instead receive the same amount in the form of a compensation payment during this period.

The deadline for payment of employer contributions for the third payment period is postponed from 15 July 2020 to 15 October 2020.

Oil and gas taxation

The Norwegian Government has also issued details of the proposed temporary stimulus package to the Norwegian upstream sector that was announced on 30 April 2020. Overall, there were no material changes to the previously announced temporary measures, except for the introduction of a limitation of interest cost deductions in the special tax base.

A summary of the proposed measures follows below.

In short, oil and gas companies operating within the Norwegian jurisdiction are subject to the general corporate tax of 22% and a special tax of 56%. In its announcement, the Ministry of Finance proposes that companies can depreciate 100% of investments in 2020 and 2021 against the special tax basis only. This measure will also include investments that are part of development plans submitted by 1 January 2022 and approved by the authorities by 1 January 2023 and up to start of production. The last year for full deductions against the special tax base will in all circumstances be 2024.

According to the proposal, the calculation of deductible interest expenses will be based on the tax basis of investments in the special tax base. Because of the immediate deduction, this entails that companies may only claim 22% interest expense deductions for financing of investments that fall within the temporary regime.

The Ministry also proposes to reduce the additional deduction from the special tax base (uplift) from 20.8% (5.2% annually for four years) to 10% in the investment year (only) for the same years/period as above. This means that although accelerated/100% deductions apply in the first year, total uplift and tax deductions are reduced compared to the current/ordinary regime.

Furthermore, under the proposed scheme, companies may apply for tax refund (78%) of tax losses in 2020 and 2021. As with the current annual exploration tax refund, this claim can be made annually through the 2020 and 2021 tax returns. It is also proposed that it should be possible to pledge these tax loss refund claims, thereby opening up for (bank) financing.

Indirect tax and duties

Reduced electricity tax for electric power used for mining cryptocurrency

Electrical power to large data centers is subject to a reduced electricity charge. In 2019, the Norwegian Parliament concluded that the reduced electricity tax scheme should not cover electric power supplied for cryptocurrency mining in data centers. After the comments received during the public hearing process, the Government has decided to repeal the above with immediate effect and electric power used for cryptocurrency extraction in large data centers will continue to be entitled to the reduced electricity charge.

Exemption from CO2 tax for businesses subject to the emission trading system

In the National Budget for 2020 it was proposed that certain businesses and activities (chemical reduction, electrolysis, metallurgical and mineralogical processes) should no longer be granted an exemption from CO2 taxes. It is proposed that, from 1 April 2020, these exemptions will be reinstated, with the aim of a gradual increase to regular duties towards 2024. This implies a gradual increase of the CO2 tax by 25% in 2021, 50% in 2022, 75% in 2023 and full tax from 2024.

Production tax on salmon/trout and rainbow trout

The Ministry will propose to introduce a production tax of NOK0.4 per kg of produced salmon, trout and rainbow trout in the state budget for 2021. The tax will be introduced with effect from 1 January 2021 and will be paid as tax arrears in 2022. The tax will be paid out to the aquaculture municipalities and county municipalities in 2022.

Other proposals

- To address legal uncertainty, the Ministry proposes to amend the Norwegian tax code such that dividends received by a tax transparent entity (either a partnership, limited partnership or a limited liability company under Norwegian Controlled Foreign Company taxation) that is owned through several tiers of tax transparent entities, will be liable for 3% added back dividend income in each tier of the ownership structure that is taxable in Norway.
- The Ministry proposes an amendment to the tax administration law stating that companies under the tonnage tax regime will not have the possibility to amend the tonnage tax election in previous years' tax returns. Under the current rules, companies are able to self-amend the position in their tax returns for three years after the tax return deadline. This has, in theory, allowed companies to retroactively amend their position to be inside or outside the tonnage tax regime, based on later events. Under the proposal this will, in general, not be allowed. In special cases, permissions to make such a change retroactively may still be granted on application.

Endnote

1. See EY Global Tax Alert, *Norwegian Ministry of Finance issues bill proposal for statutory general anti-abuse rule*, dated 12 April 2019.

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