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Global Tax Alert

Norwegian Government issues 2020 Fiscal Budget

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Executive summary

On 7 October 2019, the Norwegian Government published its proposal for the 2020 Fiscal Budget (the Budget). The proposal will now be discussed by the Norwegian Parliament, and subject to any potential changes, it is expected to be approved in December 2019. In short, no major changes have been proposed in the 2020 Fiscal Budget from an international corporate tax perspective. The main proposals are:

- Minor amendments and clarifications to the Norwegian interest cap rules, covering -among others- which entities are within the scope of the rules and providing special rules for companies that have been part of a merger during the taxable year.
- Certain amendments to the research and development (R&D) tax incentive regime "SkatteFUNN."

In the Budget, the Norwegian Government has also provided some comments regarding the position of the Government regarding Brexit, the expected introduction of withholding tax on interest and royalty payments and the taxation of the digital economy. This Alert summarizes some further details in relation to these topics, as well as in relation to the potential impact of Brexit to British entities that carry out shipping activities in Norway.

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Detailed discussion

No changes to corporate income tax rate

The statutory income tax rate is proposed to remain at 22%.

Amendments to the interest cap rules

The Norwegian Government introduced several amendments to the interest cap rules in 2018 with effect from 1 January 2019.[1] Among the main amendments, the scope of application of the rules was expanded to cover interest on both related party loans and external loans. In addition, the possibility to apply two alternative equity escape rules was included.

The Fiscal Budget proposes, inter alia, the following amendments and clarifications to the interest cap rules:

- Companies can no longer rely on the international financial reporting standards (IFRS) in order to avoid the application of the rules. Currently, the interest cap rules only apply to companies which are included in the group financial statements. To avoid application of the rules, optional exceptions to consolidation under IFRS can be used. The proposal provides for the abolition of this option, which implies that all group companies must be included in the group consolidation and may be subject to the interest cap rules.
- Companies that have acquired assets as a result of a merger (as the overtaking entity) would not be entitled to apply the equity escape rule at the company level during the year of the merger.
- It is clarified that the interest cap rules shall also apply to group companies with net interest expenses to related parties outside the group below the threshold of NOK25 million (but over the threshold amount of NOK5 million per company).

The changes are proposed to have effect as of the 2019 tax year.

Amendments to the R&D tax incentive regime "SkatteFUNN"

A Consultation Paper on proposed changes to the SkatteFUNN regime was published by the Ministry of Finance on 9 May 2019. This has been followed up in the 2020 Budget with minor adjustments. Below is a brief description of the key proposals:

- Purchases of R&D services from third parties would have an annual limit within the scheme reduced from NOK50 million to NOK25 million, to be the same as for internal R&D.
- Deduction at a rate of 19% shall apply for all taxpayers under the regime, regardless of the size of the company.
- The hourly maximum rate for internally developed R&D would be increased from NOK600 to NOK700.
- In order to prevent abuse of the SkatteFUNN regime, introduction of a geographical restriction on the deductibility of R&D services is proposed. This implies that the right of deduction is limited to the purchase of R&D services from countries within the European Economic Area (EEA) and from countries with which Norway has a tax treaty or exchange of information.

The changes are proposed to have effect from the 2020 tax year.

Brexit

Britain may leave the European Union (EU) with effect from 1 November 2019. Both the scenarios of a "no-deal" and "deal" pertaining the Britain's exit from the EU were discussed in the Fiscal Budget.

For Norwegian tax purposes, legislation is already in place should Britain leave the EU with a deal. This legislation ensures that Britain in a transitional period will be treated as a country within the EEA. If, however, Britain leaves the EU without a deal, this will have an immediate effect for Norwegian tax purposes and Britain will not be considered as an EEA country.

In a "no deal" scenario, the Norwegian Government is considering committing to a unilateral transition period where Britain will be treated as an EEA country until 31 December 2019 for Norwegian tax purposes.

This will however not apply to areas where Norway is required not to treat third states on the same conditions as EU/EEA member states. An important example is the Norwegian Tonnage Tax Regime, where there is a requirement to have a minimum ratio of EU/EEA registered vessels. British registered ships will no longer be considered EU/EEA registered vessels in the event of a British No Deal exit from the EU.

Thus, entities tax resident in Britain that carry out shipping activities in Norway through a branch will no longer qualify for the Norwegian Tonnage Tax regime. In this area, the tax effect of Britain leaving the EU without a deal on 31 October would be immediate.

Withholding tax on interest and royalty payments

The Norwegian Government has previously stated that it would publish a consultation paper for introducing withholding tax on interest and royalty payments during 2018. The work has been delayed. A consultation paper is expected to be published in 2019 with a law proposal in 2020.

Taxation of the digital economy

No digital tax is proposed in the National Budget for 2020. The Government has mentioned that Norway will not follow the EU proposal, but that it will await the solutions which are expected to be proposed by the Organisation for Economic Co-operation and Development (OECD) during 2020. The Government states that the challenges posed by the digital economy are best met through internationally accepted solutions, thus any possible implementation of a digital tax in Norway will be based on the recommendations from OECD/G20.

Endnote

1. See EY Global Tax Alert, *Norwegian Government issues 2019 fiscal budget*, dated 10 October 2018 for further details.

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