

International Tax News*

Tax update

Norway

Issue 7,13 August 2007

Contents

1. Public hearing on detailed regulations on the documentation of inter-company transactions etc

2. Guidance on application of Tax Exemption Method on CFC-companies

1. Public hearing on detailed regulations on the documentation of inter-company transactions etc

In a white paper published on 15 May 2007, the Ministry of Finance indicated that more detailed regulations and further guidance on the documentation of inter-company transactions would be subject to a public hearing this fall. The Ministry has recently subjected the following documents to a public hearing (deadline: 8 October 2007):

- Draft regulations on the documentation of inter-company transactions
- Draft regulations on the Filing Requirement regarding inter-company transactions and outstanding accounts

As is well known by now, the new documentation rules in Section 4-12 of the Norwegian Tax Assessment Act provide for two different levels of documentation; a standardized high-level statement to be submitted along with the tax return (the Filing Requirement) and a more detailed and extensive transfer pricing documentation to be submitted within 45 days of the tax authorities' request (the Documentation Requirement).

The former of the above draft regulations contains supplementary rules on the Documentation Requirement. The draft clarifies when the documentation is to be filed, and in what form. It provides for rather strict requirements as to the contents of the documentation. Judging from its wording, the draft entails that the Norwegian Documentation Requirement will not be any more lenient than the Danish requirements.

As indicated in the white paper, the new documentation rules will only apply if the Norwegian entity engages in inter-company transactions exceeding certain thresholds. The latter of the above draft regulations sets these thresholds on the levels suggested in the white paper: The Norwegian taxpayer is exempt from the Filing Requirement if the inter-company transactions to which it is party do not exceed a total of NOK 10 million (approx. EUR 1.2 million) and the outstanding accounts between the Norwegian taxpayer and all related parties do not exceed a total of NOK 25 million (approx EUR 3.1 million).

In addition to the above, two documents from the Directorate of Taxes are included in the public hearing:

- Standardized form for the filing of information on inter-company transactions (with instructions) (draft)
- Draft instructions on the documentation of inter-company pricing (including to appendices)

The Filing Requirement is to be met by filing the standardized form along with the tax return. The instructions apply to the Documentation Requirement, providing comparatively detailed directions as to the preparation of the documentation.

All the documents mentioned above can be downloaded from this location (in Norwegian only):

<http://www.regjeringen.no/nb/dep/fin/dok/hoeringer/hoeringsdok/2007/Horing-om-internprising---forskrifter-om/-2.html?id=476284>

2. Guidance on application of Tax Exemption Method on CFC-companies

The Norwegian Ministry of Finance has recently published an interpretation statement regarding the applicability of the tax exemption method (TEM) on entities subject to Norwegian CFC (NOKUS) taxation.

The TEM exempts certain types of taxpayers (qualifying subjects) from taxation on income (capital gains and dividends) on certain shares and financial instruments (qualifying objects). The Norwegian CFC-rules imposes a type of participation taxation, where the participant is attributed a portion of the CFC's net income. The CFC-company is therefore in this respect treated as transparent for tax purposes.

The Ministry of Finance confirmed that the CFC-company is not in itself a qualifying entity under the TEM due to the fact that it is the Norwegian resident shareholder, and not the CFC-company, which is the taxable entity under the CFC-rules. The decisive criterion is therefore whether the shareholder is a qualified subject under the TEM or not. Provided the shareholder qualifies as a subject under the TEM, the transparent tax treatment of the CFC-company affects the TEM and the taxation of qualifying share capital gains and income in the following way:

- Income (capital gains and dividends) on qualifying objects held by the CFC-company is tax exempt at shareholder level and will thus not be subject taxation.
- Dividends and share capital gains from shares in a CFC-company resident within the EEA will be exempt from taxation.
- Dividends from shares in a CFC-company resident outside of the EEA will be tax exempt to the extent the dividends derive from income which has either been subject to Norwegian CFC taxation or income which qualifies under the TEM.
- Capital gains arising from the disposal of shares in a CFC-company outside the EEA will be subject to tax in Norway. Any undistributed CFC-taxed income or income which qualifies under the TEM will increase the tax base of the realised shares and thus reduce any capital gain or increase any capital loss.

Contacts

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

Oslo:

Aleksander Grydeland

+47 95 26 01 62

aleksander.grydeland@no.pwc.com

Morten Beck

+47 95 26 06 50

morten.beck@no.pwc.com

Kristiansand:

Svein T. Sonning

+47 95 26 10 71

svein.t.sonning@no.pwc.com

Stavanger:

Kjell Inge Gade

+47 95 26 11 75

kiell.inge.gade@no.pwc.com

Bergen:

Leif Drillestad

+47 95 26 12 79

leif.drillestad@no.pwc.com

* * *

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

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. page 2