

International Tax News*

Fiscal Budget 2008

Norway

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The Norwegian fiscal budget 2008 – the most relevant tax amendments

On 5 October 2007, the Norwegian government presented its fiscal budget for 2008. The red-green Coalition Government has the majority in parliament. Hence, we expect that the proposed changes to the Norwegian tax system will be adopted. An overview of the most relevant amendments is presented below.

1. CFC rules

Currently, Norwegian CFC rules will only be applicable for Norwegian investments in entities resident in countries in the EEA which Norway has a tax treaty with, if the foreign entity's income is mainly of a passive character.

The Ministry of Finance is proposing amending the Norwegian CFC rules as a consequence of the European Court of Justice's judgment in the Cadbury Schweppes case. A new substance requirement will be introduced, and if it is fulfilled, Norwegian tax payers holding at least 50 % of the shares in EEA resident companies in low tax countries will avoid CFC taxation of these entities (even if their income mainly is of passive character). In the Cadbury Schweppes judgment, the question was whether the company in question was a total artificial arrangement which was used to evade national (tax) legislation. The condition for avoiding CFC taxation is in the Norwegian Budget is whether *"the company is actually established and actually carrying out business in an EEA country"*.

The said condition is closer described in the preparatory works. The elements mentioned in the preparatory works are to a large extent the same as those which were pointed out in an interpretative statement from the Ministry of Finance earlier this year. We have previously criticized this statement for being more restrictive with respect to substance than the ECJ in the Cadbury Schweppes case (see issue 6 of this newsletter).

Furthermore, the government proposes a new rule that will clarify that if a foreign entity being comprised by the Norwegian CFC rules has income or loss that would have been covered by the Norwegian participation exemption method had the income or loss been earned/suffered directly by the Norwegian shareholder, the said income or loss shall not be taxable / deductible for Norwegian tax

purposes. If the foreign entity distributes such income as dividends, the dividends shall be exempt from taxation on the hands of the shareholders.

This clarification is in line with a previous interpretative statement from the Ministry of Finance issued earlier this year (see issue 7 of this newsletter).

The amendments are proposed coming into effect as from income year 2007.

2. The tax exemption method

The Norwegian tax exemption method (TEM) exempts gain on shares and dividends from taxation without any holding requirements if the investment is made in a company resident in the EEA.

The government proposes to restrict these rules by introducing a condition similar to the new condition mentioned for CFC taxation.

This means that an investment made in a company resident within an EEA-state that is considered a low tax country, will not be comprised by the TEM unless *“the company is actually established and actually carrying out business in an EEA country”*. The tax consequences will be that a gain on sale of shares and a dividend distribution from such an entity will be taxable for the Norwegian investor.

The same condition will also apply for companies resident in another EEA state which invest in Norwegian shares. Hence, an entity resident in a low tax country investing in Norway will only be exempt from Norwegian withholding tax if the entity *“is actually established and actually carrying out business in an EEA country”*.

Most likely these new rules are in breach of the EEA Agreement. To some extent the discrimination issue will depend on how these rules are interpreted and actually used by the Norwegian tax authorities in the future.

The amendments are proposed coming into effect as from income year 2008.

3. Regulations on the depreciation of assets taken in and out of Norwegian tax jurisdiction

The regulations on the depreciation of assets which are taken in and out of the Norwegian tax jurisdiction are proposed amended. Assets moved into Norway by taxpayers' resident within the EEA are proposed to be subject to depreciations using the declining balance method, contrary to today's linear depreciation. When an asset enters into Norwegian tax jurisdiction the depreciation value of the asset is proposed estimated on the basis of the assets' acquisition costs, the number of years where the assets have been in the possession of the tax payer, and the maximum depreciations that would have occurred using the Norwegian declining balance method for those years. Assets subject to depreciation using the declining balance method that temporary are located in Norway shall be subject to pro rata depreciation.

It is also proposed to repeal the rules regarding the limited income settlement on the exit of assets which have been subject to depreciation using the declining balance method. These proposed rules will have their main impact on rigs and vessels.

The amendments are proposed coming into effect as from income year 2008.

4. Regulation on the taxation of gains on the exit of European companies (SE companies) from Norway

In the current Norwegian Tax Act there is no legal basis to tax SE companies as liquidated if they move out of Norway.

The new proposed rules will introduce taxation on gains, and deductions for losses on a company's assets when an SE company is not regarded as resident in Norway for tax purposes either based on the Norwegian internal law or based on tax treaties. Any gain or loss will be calculated at exit as if the assets were transferred at market value. The exit taxation will include all assets included in the Norwegian tax base. The gain or loss should be calculated as if the asset was transferred on the day before the tax liability to Norway ceased.

A relocation of the headquarters of a SE company will not lead to taxation for the shareholders.

The amendments are proposed coming into effect as of 5 October 2007.

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