

International Tax News*

Tax Administrative update

Norway

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1. The “Shell II” Case – State’s Appeal Rejected

In a 3 March 2008 ruling, the Appeal Committee of the Supreme Court refused the Norwegian State’s appeal in the “Shell II” case. This means that the tax authorities for the income years prior to 2005 shall have to accept deduction for a proportional part of estimated future abandonment costs related to closing down upstream installations on the NCS in accordance with the 2004 Shell verdict.

In the ruling, the Appeal Committee states the following:

“The appeal pertains to writs issued by the oil companies in 2000. The writs were issued in conjunction with the AS Norske Shell case which was decided in the Supreme Court verdict [of 14 December 2004]. It was agreed that the cases pertaining to the remaining oil companies were put on hold in accordance with Section 105 of the Civil Procedure Act, and the Shell case was tried as a “pilot case”.

It is clear that the issues raised by the present case are identical to those which were decided in the Shell case. The appeal is based on the Supreme Court verdict in the Shell case being incorrect.

The Appeal Committee finds that in the present situation, in which the Shell case was chosen as a pilot case and the other cases put on hold, both parties obviously assumed that the verdict in the Shell case would be final – regardless of in whose favour the outcome would turn out to be. None of the parties can possibly have had any assumption of the opportunity for a “rematch”, and thus potentially different tax treatment of the individual oil companies. The Appeal Committee does not consider whether this issue decides the outcome of the appeal on a contractual law basis. However, it is clear to the Committee that the issues mentioned mean that there is no basis for a deviation from the interpretation of the law as laid out in the Shell verdict [...]. The verdict must – as a judicial precedent – be final.”

The Appeal Committee ruling ends the Ministry of Finance’s highly controversial attempt to overthrow the Shell verdict. Although the Ministry’s interpretation of the law was introduced by amendments in the General Tax Act with (retroactive) effect from 1 January 2005, the Appeal Committee ruling entails that up to and including the income year 2004, oil companies may claim a tax deduction for a share of estimated future closing down costs. A requirement will be that these costs have been included in the statutory accounts of the companies. The verdict has no impact on the actual amount to be deducted as it only sets out the principle of such costs being deductible for tax purposes during the lifetime of the field and not only when actual abandonment/closing down takes place.

2. U.S.-Norway Tax Treaty – Status

In a letter published 18 February 2008 from the Minister of Finance to the Norwegian Parliament, the Minister informed the Parliament that the U.S. has requested a reopening of the tax treaty negotiations. Due to the further negotiations, the Minister refrained from informing the Parliament of which parts of the tax treaty the U.S. wishes to renegotiate and the reasons for this. Hence, it is at the current time uncertain when a new renegotiated tax treaty draft will be ready for signing.

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