

International Tax News*

Tax Administrative update

Norway

Issue 5, 15 January 2007

Contents

1. Norwegian withholding tax on dividends to Lux SICAV
2. Active management of securities in Norway
3. TEM holding requirements for shares held by partnerships
4. Revised White/Black Lists

1. Norwegian withholding tax on dividends to a Luxembourg SICAV

A claim for refund of previous paid withholding tax ("WHT") on dividends to a Luxembourg SICAV was recently denied by the Central Office for Foreign Tax Assessments ("COFTA"). The refund claim for 2004 and 2005 was based on the SICAV being similar to a Norwegian stock investment fund or a Norwegian public limited liability company (ASA) leading to dividends being tax free under the Tax Exemption Method ("TEM"). Any WHT on dividends to the Luxembourg SICAV would therefore constitute discrimination under the EEA Agreement. For 2003, the WHT in question was contended to be in breach with Norway's commitments under the EEA treaty according to the EFTA Court ruling in the Fokus Bank case.

A Luxembourg SICAV is a public limited liability company under the Luxembourg corporate law. The investment fund fulfils the conditions laid down in EU's UCITS directives (Undertakings for Collective Investment in Transferable Securities) entitling the investment fund to market its products in all EU/EEA member states following a formal notification to regulatory authority in the country in question (so-called European Passport). The SICAV is recognised as a legal entity under the Luxembourg tax legislation but is not subject to

ordinary income tax, only a subscription tax levied on the net value of the SICAV's assets.

COFTA concluded that the Luxembourg SICAV was not the beneficial owner of the dividends distributed by the Norwegian companies in question, and could therefore not benefit from the TEM. Instead, the SICAV unit holders were regarded as beneficial owners of the dividends. Further, COFTA considered that the SICAV was not similar to Norwegian stock investment funds or public limited liability companies.

It is hard to follow COFTA's reasoning when keeping in mind that there is no doubt that Norwegian stock investment funds are deemed as beneficial owners of the shares they possess and the dividends distributed on them. The Norwegian law governing stock investment funds also implements the detailed provisions of the UCITS directives and there are only minor differences between the organisation of and laws governing Luxembourg SICAVs and Norwegian stock investment funds. It can also be noted that Luxembourg SICAVs are not treated consistently by the Norwegian tax authorities, as the Central Office for Large Enterprises has considered Luxembourg SICAVs as being comprised by the tax exemption method.

2. Active management of securities in Norway

A foreign company requested the Ministry of Finance for an interpretation statement on whether the active management of its securities by a Norwegian investment firm would create a permanent establishment for the company in Norway. The contractual relationship between the parties was regulated by the standard agreement for active management services prepared by the Financial Supervisory Authority (Kredittilsynet). The Ministry of Finance emphasised its non-competence to provide binding rulings in individual cases, but gave some general guidelines on the issue.

According to the General Tax Act ("GTA"), non-resident companies are taxable in Norway on income from business activities carried out here or managed from Norway. The Ministry found that the overall activities performed both by the foreign company and the Norwegian management company must be considered jointly when determining whether the income would qualify as "business income" for tax purposes

rather than passive capital income. If the activities performed by the Norwegian management company on behalf of the foreign investor are extensive, a business activity takes place even if the foreign investor's activities are limited to carrying out its ownership rights.

However an agreement for active management of securities based on the standard contract from the Financial Supervisory Authority was not considered to imply that a business activity being carried out here or managed from Norway for tax purposes. The Ministry emphasised that the management was carried out at the account and risk of the capital owner, and that the authority of the management company was subject to control and governance by the investor. Further, the Ministry placed emphasise on i.a. the fact that the management company was an independent company performing management services as part of its ordinary business.

In a concluding remark the Ministry mentions that specific circumstances can lead to a different tax treatment in other situations, especially if the foreign company is merely a passive company resident in a low-tax jurisdiction, and its only asset is finance capital being managed from Norway.

3. TEM holding requirements for shares held by partnerships

Income from shares (i.e. dividend payments and capital gains) in a limited liability company resident within the EU/EEA is tax exempt for a Norwegian corporate investor under the TEM. On investments made in a company resident outside the EU/EEA, the tax exemption on share income is subject to requirements for a 10 percent shareholding and a two year ownership period. The TEM is, however, not applicable to investments in low tax jurisdictions outside the EU/EEA.

If shares are held by a tax transparent entity, e.g. a partnership, it has not been clear whether the 10 percent holding requirement is to be considered (directly) at the partnership level or (indirectly) at the individual partner level. The Ministry of Finance has recently clarified this issue in an interpretation statement that the holding requirement under the TEM in these situations refers to the partnership's direct shareholding.

4. Revised White and Black Lists

The Directorate of Taxes recently published revised White and Black lists of countries assumed to be low-tax jurisdictions and not. The lists are relevant both under the TEM and the CFC legislation. To the extent EU/EEA jurisdictions are listed, this has no relevance under the TEM, as the tax exemption applies

without restrictions for cross-border share income within the EU/EEA. From 1 January, the TEM also covers the new European Union members, Romania and Bulgaria.

The amendments to the White and Black lists are:

- Denmark, Finland and Sweden are included in the White List;
- Morocco is removed from the White List;
- India is treated as a white list country provided that the relevant Indian company is not taxed at a reduced rate or is exempt from Indian income tax.

The White List is not binding without further considerations if the income of a company resident in the relevant country mainly consists of tax exempt share income etc.

* * *

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

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
Hilde Thorstad +47 95 26 05 48 hilde.thorstad@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 kjell.inge.gade@no.pwc.com
Bergen: Leif Drillestad +47 95 26 12 79 leif.drillestad@no.pwc.com

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