Norway

Norway

General

1. What are recent tax developments in your country which are relevant for M&A deals?

The corporate tax rate is being reduced to 25% for the income year 2016, and it has been stated that the rate will go down to 22% in 2019.

Norway introduced interest limitation legislation with effect from 2014. Please see question 6 for further information. The interest limitation rules are tightened with effect from 2016, and they are also considered to limit external debt under the legislation.

2. What is the general approach of your jurisdiction regarding the implementation of OECD BEPS actions (action Plan 6 specifically) and, if applicable, the amendments to the EU Parent-Subsidiary Directive?

The Norwegian government is generally positive with regards to the BEPS initiative, and will most likely follow up on most BEPS actions. Several rules have already been implemented (e.g. anti-hybrid rules, rules limiting the deductibility of related party interest costs).

Please note that Norway is not an EU member, and the Parent-Subsidiary Directive does not apply.

3. What are the main differences among acquisitions made through a share deal versus an asset deal in your country?

a. Share deal

- Not taxable for seller;
- No step up for the purchaser;
- No transfer taxes or stamp duty;
- Most acquisition costs are not deductible.
- Most deals in Norway are carried out as share deals.

b. Asset deal

- Fully taxable (some gains may be deferred);
- Step up for the purchaser;
- Stamp duty on real estate;

Acquisition costs usually deductible, however often through depreciation.

Buy-side

4. What strategies are in place, if any, to step up the value of the tangible and intangible assets in case of share deals?

None.

5. What are the particular rules of depreciation of goodwill in your country?

Purchased goodwill (asset deal) may be depreciated with 20% on a declining balance basis.

6. Are there any limitations to the deductibility of interest on borrowings?

Yes. There are rules limiting the deductibility of interest costs to related parties. Net interest costs, per entity, exceeding 25% of the tax EBITDA is not deductible, if the interest costs are considered as related party interest costs. Other interest costs are fully deductible, but will use up the available interest ceiling before related party debt. It the net interest cost, per entity, does not exceed MNOK 5 the interest costs are fully deductible. Interest on guaranteed loans can be considered as related party interest.

7. What are usual strategies to push-down the debt on acquisitions?

Typically a Norwegian holding company (or several) is used as an acquisition vehicle. The Norwegian tax consolidation rules can be used to transfer profits from the target company to the holding company by way of group contributions.

8. Are losses of the target company(ies) available after an acquisition is made?

Generally yes. There is a special anti-avoidance rule which apply if the acquisition is mainly tax motivated. If the acquisition is mainly tax motivated, the losses will be eliminated.

9. Is there any indirect tax on transfer of shares (stamp duty, transfer tax, etc.)?

No.

10. Are there any restrictions on the deductibility of acquisition costs?

Yes. Typically most acquisition costs for share deals will not be deductible. The nature of the costs must be assessed. Costs related to the financing are normally deductible.

Acquisition costs related to assets deals must typically be capitalised on the purchased assets, and deducted through depreciation.

11. Can VAT (if applicable) be recovered on acquisition costs?

In share deals it is not usually possible to recover such VAT. In asset deals it is often possible to recover such VAT, however depending on the assets transferred, how the assets will be used after the transfer, and the VAT status of the buyer.

12. Are there any particular issues to consider in the acquisition by foreign companies? (for example non-resident taxation rules/substance rules and tax efficient exit routes)

Yes. There is withholding tax on dividends and an acquisition should therefore be structured in a way that eliminates the withholding tax. It is preferable to utilise a holding jurisdiction where there is both domestic ("substance requirement", see 17 below) and treaty protection ("beneficial owner").

13. Can the group reorganise after the acquisition in a tax neutral environment through mergers or a tax group?

Yes. There are tax consolidation rules and rules which provide for tax neutral reorganisation. There may, however, be restrictions with regards to mergers in the Norwegian company law. The acquisition debt cannot be placed in the acquired company.

14. Is there any particular issue to consider in case of companies of which main assets are real estate?

There is a stamp duty of 2.5% of the fair market value of transferred real estate if an asset deal is carried out.

VAT implications must also be considered. Such transaction may have severe impacts on the deductibility of VAT on accrued costs. In addition, Norway has adjustment rules for VAT on capital goods which must be considered.

The seller must normally give the purchaser a tax rebate if the real estate is sold through a share deal. The rebate is linked to the lost step up at the hand of the purchaser (lost tax depreciation).

Sell-side

15. How are capital gains taxed in your country? Is there any participation exemption regime available?

Capital gains on shares are fully tax exempt for corporate shareholders and there is no withholding tax. Other capital gains are taxable.

16. Is there any fiscal advantage if the proceeds from the sale are reinvested?

No. Gains on assets which may be depreciated (real estate, IPR, goodwill, machines etc.) may be deferred under special rules. Most gains are taken as income with 20% on a declining balance basis.

17. Are there any local substance requirements for holding/finance companies?

No substance requirement for domestic holding companies. It is, however, recommended that the company fulfills the Norwegian tax residency test, which is similar to the test in most tax treaties.

Foreign holding companies are subject to withholding tax, and there is a domestic exemption for companies within the EEA. The holding companies must fulfill certain substance requirements. The withholding tax exemption will only apply if the company is genuinely established and performs real economic activity in the relevant country. The fulfillment of this criterion is based on the particular facts and circumstances where a key factor is whether the foreign entity is established in a similar way as an equivalent to a Norwegian company.

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