NORWAY

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INTERNATIONAL DEVELOPMENTS

1. WHAT ARE RECENT TAX DEVELOPMENTS IN YOUR COUNTRY WHICH ARE RELEVANT FOR M&A DEALS AND PRIVATE EQUITY?

The general rate on income tax has since 2015 been reduced from 27% to 24% in 2017. It is expected that the tax rate will be reduced to 23% with effect from 2018.

The Ministry of Finance has recently proposed extending the scope of the Norwegian interest deduction limitation rule to also include interests to external parties. The proposed legislation implies that the deduction of interests paid also to non-affiliated loan providers may be denied for tax purposes if certain criteria are not met. The threshold for the interests covered by the legislation is set to NOK 10 million and the threshold is assessed at a group level. The ministry has proposed several exceptions in order not to disregard arrangements which are not tax motivated and artificial. The new rules are initiated by the OECD BEPS initiative. Please see question 6 for further information.

2. WHAT IS THE GENERAL APPROACH OF YOUR JURISDICTION REGARDING THE IMPLEMENTATION OF OECD BEPS ACTIONS (ACTION PLANS 6 AND 15 SPECIFICALLY) AND, IF APPLICABLE, THE AMENDMENTS TO THE EU PARENT-SUBSIDIARY DIRECTIVE AND ANTI-TAX AVOIDANCE DIRECTIVES?

The Norwegian government is generally positive with regards to the BEPS initiative, and will most likely follow up on most BEPS actions. Several of the BEPS actions have already been implemented (e.g. anti-hybrid rules, rules limiting the deductibility of related party interest costs). The suggested amendment of the existing interest deduction limitation rules are an example of this (BEPS action point 4).

As Norway is an EEA member, the EU Parent-Subsidiary Directive and the Anti-Tax Avoidance Directive are not applicable for Norway. However, Norway has implemented legislation which is similar to the legislation which is proposed in the directives, but there are several important differences.

Regarding Action 6 (prevent treaty abuse), Norway does currently not have LOB (“limitation of benefit”) or PPT (“principle purpose test”) clauses in most tax treaties to which it is a party. It is expected, however, that the government will implement such rules, although it is not yet clear whether it will go for both LOB rules and PPT rules. In any event such rules seems to be a part of Norway’s future tax treaty policy

Regarding Action 15 (multilateral instruments), Norway has participated in the negotiations and is expected to sign the MLI. The further content is however not clear.

GENERAL

3. WHAT ARE THE MAIN DIFFERENCES AMONG ACQUISITIONS MADE THROUGH A SHARE DEAL VERSUS AN ASSET DEAL IN YOUR COUNTRY?

A. Share deal

Most deals in Norway are carried out as share deals. A share deal is not a taxable event for the target company, thus, meaning that there will be no taxation of the target company’s underlying assets, and there will be no stamp duty. In addition, capital gains on shares are tax free for corporate shareholders. Thus, a share deal will not have any (direct) tax consequences.

However, a tax loss carry forward in the target company may lapse if the main purpose of the acquisition of the shares is to get access to the tax loss carry forward.

Tax advantages:

- Not a taxable event for the target company,
- Not taxable for seller,
- No transfer taxes or stamp duty.

Tax disadvantages:

- Any existing tax liabilities in the target company will continue to exist,
- The buyer will normally demand a discount for lost depreciations on the target's assets,
- No step up for the purchase;
- Most acquisition costs are not deductible.

B. Asset deal

An asset deal is a taxable event which implies that all assets are considered to be realised for tax purposes and capital gains are taxable at 24%. Losses are deductible. Because the asset deal is a taxable event a purchase price allocation of the assets must be prepared. The allocation will be the basis for the calculation of taxable gain/loss.

Tax advantages:

- Step up for the purchaser
- No tax liabilities transferred from the seller
- Acquisition costs usually deductible, however, often through depreciation.

Tax disadvantages:

- Fully taxable (some gains may be deferred)
- Stamp duty on real estate.

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?

It is not possible to get a step up on the values of the tangible and intangible assets in a share deal.

5. WHAT ARE THE PARTICULAR RULES OF AMORTISATION OF GOODWILL IN YOUR COUNTRY?

Purchased goodwill (e.g. through an acquisition) is depreciable at the rate of 20% on a declining balance basis. Goodwill which is created by the taxpayer is not subject to depreciation for tax purposes.

6. WHAT ARE THE LIMITATIONS TO THE DEDUCTIBILITY OF INTEREST ON BORROWINGS IN THE CASES OF ACQUISITION OF SHARES AND ASSETS?

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. If the net interest cost, per entity, does not exceed NOK 5 million the interest costs are fully deductible. Interest on guaranteed loans can be considered as related party interest.

In accordance with the BEPS initiative, the Ministry of Finance has proposed to extend the current interest deduction limitation rule to also include external interests. For Norwegian companies that form part of a group interest expenses on external debt will also be subject to limited deductions (25% of EBITDA). The Norwegian part of such a group is proposed to have a combined threshold of NOK 10 million for the limitations to apply. However, two alternative escape clauses for the rules are now also proposed under which the company or group can escape the limitations completely provided the following requirements are met;

1) The relevant company on a stand-alone basis has a debt to equity ratio similar to or stronger than the consolidated debt to equity ratio in the group which the company is a part of (defined by financial accounting rules).

2) If the Norwegian part of the group has a consolidated debt to equity ratio which is similar to or stronger than the consolidated debt to equity ratio in the wider group (defined by financial accounting rules).

The rules are proposed to come into force from the income year 2018.

7. WHAT ARE USUAL STRATEGIES TO PUSH-DOWN THE DEBT ON ACQUISITIONS?

Typically a Norwegian holding company ("bidco") is used as an acquisition vehicle. Norway applies group contribution rules, implying that the target company can contribute equity to the holding company with tax deduction in order to net the tax loss (resulting from interests) in the holding company.

8. ARE THERE ANY TAX INCENTIVES FOR EQUITY FINANCING?

There are generally no tax incentives for equity financing in Norway.

9. ARE LOSSES OF THE TARGET COMPANY(IES) AVAILABLE AFTER AN ACQUISITION IS MADE?

Losses in the target company are generally available after an acquisition. There are, however, special anti-avoidance rules which apply if the acquisition is mainly tax motivated. If the acquisition is mainly tax motivated, the losses will be eliminated.

10. ARE THERE ANY ITEMS THAT SHOULD BE INCLUDED IN THE SCOPE OF A TAX DUE DILIGENCE THAT ARE VERY SPECIFIC TO YOUR COUNTRY?

The Norwegian tax authorities have in later years been focusing on transfer pricing, the allocation of costs between group companies and reorganisations of group companies (e.g. if the consequence is a step up on the value of the tangible and intangible assets, or a debt push down). Thus, we recommend that these matters are included in the request list and that the target company must give an account for such transactions.

11. IS THERE ANY INDIRECT TAX ON TRANSFER OF SHARES (STAMP DUTY, TRANSFER TAX, ETC.)?

There are no indirect taxes, stamp duties or similar assessed on the transfer of shares.

12. ARE THERE ANY RESTRICTIONS ON THE CORPORATE TAX 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 asset deals must typically be capitalised on the purchased assets, and deducted through depreciation.

The costs related to the acquisition of the target company shall be capitalised on the shares in target. As capital gain on shares for corporate shareholders is tax free in Norway the acquisition costs will be non-deductible. The typical acquisition costs are costs to; due diligence, estimation of value, contract negotiation etc. However, certain costs related to an acquisition are still deductible;

- Costs related to incorporating BidCo
- Costs related to financing the acquisition
- Costs related to the structuring of the corporate structure of the acquisition
- Costs related to the preparation of the corporate documents and meetings (minutes from board meetings etc.)

13. CAN VAT (IF APPLICABLE) BE RECOVERED ON ACQUISITION COSTS?

In share deals it is not usually possible to recover such VAT. However, under certain conditions, acquisition costs can be deducted provided that the buyer is registered in the Norwegian VAT register and performs business which is subject to 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.

14. ARE THERE ANY PARTICULAR TAX ISSUES TO CONSIDER IN THE ACQUISITION BY FOREIGN COMPANIES?

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 20 below) and treaty protection (“beneficial owner”).

15. 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. However, there are anti-avoidance rules that could be applicable if the sole purpose of the transaction is tax motivated. In addition, there are some restrictions with regards to mergers in the Norwegian company law, e.g. the acquisition debt cannot be placed in the acquired company. Also, a cross boarder merger/demerger can be considered as a taxable event (exit tax) if business is taken out of Norwegian tax jurisdiction.

16. IS THERE ANY PARTICULAR ISSUE TO CONSIDER IN CASE OF TARGET 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. There is not, however, any stamp duty triggered upon the transfer of shares, even if the main assets of the company are real estate. Thus, it is in Norway usual to organise real estate in (single purpose) companies and to transfer the shares in the company rather than the asset, implying that the seller avoids both capital gains taxation (due to the exemption method) and stamp duty.

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). The rebate is calculated as a percentage (9–10% for buildings with 2% depreciation rate) of the difference between the property value (after the deduction of the estimated market value of the land) and the basis for tax depreciation on the property as per closing.

As the interest deduction limitation rule caps the deduction of interest at 25% of an EBITDA calculated for tax purposes this should be a particular issue to consider.

In addition, several municipalities have introduced property tax on the value of the real estate. In the municipality of Oslo, the property tax is 0.2%. Thus, the element of property tax must also be taken into account.

17. IS FISCAL UNITY/TAX GROUPING ALLOWED IN YOUR JURISDICTION AND IF SO, WHAT BENEFITS DOES IT GRANT?

The Norwegian Tax Act allows a tax consolidation between group companies which are domiciled in Norway provided that top company holds more than 90% in each of the subsidiaries. A company within the group, which is taxed for profit, can transfer its taxable profits to another group company to cover tax losses.

For VAT purposes it is possible to register a group together provided that the top company holds at least 80% in its subsidiaries.

SELL-SIDE

18. HOW ARE CAPITAL GAINS TAXED IN YOUR COUNTRY?

Capital gains on shares are fully tax exempt for corporate shareholders, foreign and domestic, and there is no withholding tax on capital gains. Other capital gains are usually taxable at a flat rate of 24%. It is possible to obtain tax deferral on capital gains from sale of business assets, normally by annually entering 20 pct. of the capital gain as income (applying the declining balance method).

19. IS THERE ANY FISCAL ADVANTAGE IF THE PROCEEDS FROM THE SALE OF SHARES ARE REINVESTED?

There are no fiscal advantages if the proceeds from the sale of shares are reinvested. Individual tax payers must enter the capital gain as income for the year in which the capital gain is realised. As note above, corporate tax payer are generally be exempt from capital gains taxation on shares.

However, in asset deals, 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.

20. ARE THERE ANY LOCAL SUBSTANCE REQUIREMENTS FOR HOLDING COMPANIES?

There is no substance requirement for domestic holding companies. The holding company must, however, have effective management in Norway in order to meet the tax residency test.

Foreign holding companies are subject to Norwegian withholding tax on dividends distributed from Norwegian subsidiaries, however, there is a domestic exemption for distribution to shareholders domiciled within the EEA. There is no minimum shareholding required, however, the shareholding company must meet certain substance requirements. The withholding tax exemption will only apply if the company is genuinely established and performs real economic activity in an EEA state. 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.

21. ARE THERE ANY SPECIAL TAX CONSIDERATIONS REGARDING MERGERS/SPIN-OFFS?

With regard to mergers and spin-offs it is important to take into account any VAT adjustment obligations.
The VAT adjustment period for real estate investments is 10 years. In mergers and spin-offs it is important that the VAT adjustment obligations are transferred to the acquiring company.

MANAGEMENT INCENTIVES

22. WHAT ARE THE TAX CONSIDERATIONS IN YOUR JURISDICTION FOR MANAGEMENT INCENTIVES?

There are no particular tax benefits applying to management incentive plans. A share option is, however, not deemed as taxable income before it is exercised, in which event the entire benefit is deemed earned income for the tax payer. Further, a general scheme applies under which the employer may offer up to 20 pct. discount on shares, provided that it is offered as a general scheme to the employees and the total (annual) benefit for each employee does not exceed NOK 3 000 (EUR 320).

It is expected that the Ministry of Finance will propose more favorable incentives legislation in the near future.

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