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 been reduced from 27% in 2015 to 23% in 2018. It is currently not expected that the tax rate will be reduced further.

The Ministry of Finance has proposed extending the scope of the Norwegian interest deduction limitation rule to also include interests to external parties. The new rules was planned to be introduced with effect from 2018, but due to several objections, they were postponed. An amended proposal is expected to be proposed in 2018, with effect from 2019.

The proposal from last year implies that the deduction of interests paid to non-affiliated lenders may be denied for tax purposes if certain criteria are not met. The rules apply if net interest costs are higher than NOK 10 million at Norwegian group level (what constitutes a Norwegian group is defined under the legislation). The ministry proposed safe harbour rules in order to safeguard against loans, which are not tax motivated or artificial, but the rules were criticised for not being accurate enough. Please see question 6 for further information.

The Norwegian Ministry of Finance will most likely publish a proposal on withholding tax on interests and royalties within the end of the year. Amendments to the Norwegian CFC legislation may also be published, but that is more uncertain.

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?

Generally, Norwegian authorities are positive to the implementation of the OECD BEPS actions. With respect to BEPS action Plan 6, the Norwegian Ministry of Finance has announced that they will implement the “Principle Purpose Test” (PPT) in Norwegian tax treaties for the avoidance of treaty shopping.

Norway has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“MLI”) (action Plan 15). The Norwegian Ministry of Finance has announced that it wishes 28 bilateral tax treaties to be covered by the MLI.

Below is an abstract of some of the positions Norway has taken with respect to the different options available under the MLI:

- Article 4 – Dual Resident Entities: Norway has reserved the right for the entirety of Article 4 not to apply to its covered tax treaties that already address cases where a person other than an individual is a resident of more than one contracting jurisdiction by requiring the competent authorities of the contracting jurisdictions to endeavour to reach mutual agreement on a single contracting jurisdiction of residence, and that set out the treatment of that person under the covered tax treaty where such an agreement cannot be reached. This reservation applies to Bulgaria, Chile, Cypros, Estonia, Latvia, Lithuania, Romania, Serbia and United Kingdom
- Article 5 – Application of Methods for Elimination of Double Taxation: Norway has chosen to apply option C of the Article.
- Article 7 – Prevention of Treaty Abuse: It is expected that the principal purpose test (PPT) will be introduced in 28 Norwegian tax treaties. Among six of these tax treaties, also a simplified limitation on benefit provision (LOB) is expected to be introduced (in addition to the PPT). However, the Norwegian authorities have expressed that while Norway accepts the application of Article 7(1) (PPT) alone as an interim measure, it intends where possible to adopt a limitation of benefits provision, in addition to or in replacement of Article 7(1), through bilateral negotiation. Norway has chosen to apply Article 7(7)(a)

- Article 9 (Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property) and 10 (Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions): Norway has reserved the right for Article 9(1) and the entirety of Article 10 not to apply
- Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions: Norway has chosen to apply Option A under paragraph 1
- Article 14 – Splitting-up of Contracts (relating to permanent establishment): Norway has reserved the right for the entirety of the Article not to apply with respect to provisions of its covered tax treaties relating to the exploration for or exploitation of natural resources.

GENERAL

3. WHAT ARE THE MAIN DIFFERENCES BETWEEN AN ACQUISITION OF SHARES AND 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, 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 exempt for corporate shareholders, and there is no stamp duty on the transfer of shares. Thus, a share deal will not have any (direct) tax consequences.

However, tax loss carry-forward at the level of the target company/group may lapse if the main purpose of the acquisition of the shares is to utilise 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 and liabilities of the business are considered to be realised for tax purposes. Gains are taxable at a rate of 23%. Losses are deductible. Because an asset deal is a taxable event a purchase price allocation must be prepared. The allocation will be the basis for the calculation of taxable gain/loss.

Taxation of capital gains related to assets and goodwill may be deferred through special rules. Tax deduction for losses must be deferred. Normally, gains/losses are booked at a profit and loss account, where 20% shall be booked as income/loss per tax year on a declining balance basis. This only applies with respect to tax and not for accounting. Thus, there will be a temporary difference between the tax and the accounts.

Furthermore, a purchase price allocation must be prepared by the buyer. The purchase price allocation will be the basis for tax depreciation. Normally, the tax depreciation will be slower than the seller's deferral of gains.

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 value of the tangible and intangible assets in a share deal.

5. WHAT ARE THE PARTICULAR RULES OF AMORTISATION OF GOODWILL AND SIMILAR INTANGIBLE ASSETS IN YOUR COUNTRY?

Purchased goodwill (e.g. through a direct acquisition of business) may be depreciable at a 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 ON THE DEDUCTIBILITY OF INTEREST EXPENSE? ARE THERE SPECIAL INTEREST LIMITATIONS IN THE CASES OF ACQUISITION OF SHARES AND ASSETS?

There are rules limiting the deductibility of interest costs to related parties. The rules apply if net interest costs per tax entity exceed MNOK 5. Net related party interest costs are deductible within 25% of the tax entity's tax EBITDA. Net non-related party interest costs are also deducted from the 25% tax EBITDA, and will therefore reduce the maximum related party deduction. If a non-related party loan is guaranteed by a related party, the interest costs may be reclassified as related party debt.

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 tax entities, which form part of a group, interest expenses on external debt will also be subject to limited interest deductions (25% of EBITDA). The rules will apply if all of the Norwegian tax entities within a group have net interest costs of more than MNOK 10. Two safe harbour rules have been proposed, under which a company or the Norwegian tax entities of a group may fully deduct interest costs (related and non-related);

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

After the proposal went on public hearing last fall, it was decided that amendments were necessary. An amended proposal is expected later this year, with the new legislation planned to come into force from 2019.

7. WHAT ARE COMMON STRATEGIES TO PUSH-DOWN 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. Please see section 17 for further information.

8. ARE THERE ANY TAX INCENTIVES FOR EQUITY FINANCING?

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

9. ARE LOSSES OF A TARGET COMPANY AVAILABLE AFTER AN ACQUISITION IS MADE? ARE THERE ANY RESTRICTIONS ON THE USE OF SUCH LOSSES?

As a main rule, losses are available also after an acquisition is carried out. However, if tax positions in the target company are unrelated to any asset or liability, and the exploitation of such tax position is the main purpose of the acquisition of the target company, the tax positions will lapse. The legislation will normally only be relevant if the target company is included in a tax group through the acquisition (more than 90% shares and votes) and the losses may be utilised by the other companies in the tax group.

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

No items are very specific to Norway. Similar to other countries, incentive schemes for management, debt push down, tax-exempt reorganisations, etc., are important matters to consider in a due diligence. Thus, we recommend that these matters are included in the scope/request list.

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

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

12. ARE THERE ANY RESTRICTIONS ON THE CORPORATE TAX DEDUCTIBILITY OF ACQUISITION COSTS?

Typically, most acquisition costs for share deals will not be deductible. The nature of the costs must be assessed. Costs related to financing are normally deductible. Acquisition costs related to asset deals shall 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 gains on shares for corporate shareholders are tax exempt 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, being costs related to;

- incorporating BidCo
- financing the acquisition
- the structuring of the corporate structure of the acquisition
- 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 usually not possible to recover such VAT. However, in extraordinary situations it may be argued that VAT on such acquisition costs are deductible if the costs are used in and closely connected to the buyer's VAT applicable business.

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 OF A DOMESTIC COMPANY BY A FOREIGN COMPANY?

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 22 below) and treaty protection ("beneficial owner").

Furthermore, repayment of paid-in capital is not subject to withholding tax in Norway, and distributions from Norwegian companies should be structured as repayments of paid-in capital (and not dividends) in order to avoid or postpone withholding tax on distributions. Moreover, capital gains are not subject to withholding tax in Norway, and a repayment of paid-in capital, which increases a later capital gain upon a realisation of shares, will thus be more tax advantageous from a Norwegian perspective than dividends being subject to withholding tax.

15. CAN THE GROUP REORGANISE AFTER THE ACQUISITION IN A TAX NEUTRAL MANNER THROUGH MERGERS OR A TAX GROUPING?

Yes. There are rules that provide for tax neutral reorganisations. However, there are anti-avoidance rules that could be applicable if the sole purpose of the transaction is tax motivated.

In addition, restrictions in the Norwegian company law may apply, e.g. if the acquisition debt will be placed in the acquired company through the reorganisation.

Furthermore, a cross border merger/demerger may lead to exit taxation if the business/assets is/are exited from Norwegian tax jurisdiction.

16. ARE THERE ANY PARTICULAR ISSUES TO CONSIDER IN THE CASE OF A TARGET COMPANY THAT HAS SIGNIFICANT REAL ESTATE ASSETS?

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 no stamp duty triggered upon the transfer of shares, even if the main assets of the company are real estate. Therefore, it is normal to organise real estate in (single purpose) companies and to sell shares rather than assets, implying that the seller avoids both capital gains taxation (due to the exemption method) and stamp duty.

The seller must normally give the purchaser a tax rebate if a 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 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 (typically 9–10% for buildings with a 2% depreciation rate on the building and 10% on technical installations).

Several municipalities have introduced property tax on the value of real estate. In the municipality of Oslo, the property tax is 0.2%. Thus, the element of property tax should 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 tax consolidation between group companies which are taxable in Norway provided that the parent company holds more than 90% of the shares and votes in the subsidiary, and in case of indirect ownership, each company in the structure holds more than 90% of the shares and votes in the relevant company's subsidiary ("Tax Group"). A company that has taxable profit may transfer its taxable profit to another group company to offset against tax losses. Both horizontal and vertical consolidation are accepted provided that the donor and recipient belong to the same Tax Group.

The parent company may be resident in another state; however, as a main rule this does not apply in case the parent company is the donor or recipient of the relevant group contribution. Nevertheless, the donor and/or the recipient may be resident in another EEA state if:

i. the foreign company corresponds to a Norwegian company qualifying under the tax consolidation rules

ii. the foreign company is liable for tax in Norway for having a permanent establishment here or pursuant to section 2, cf. section 1, of the Petroleum Taxation Act; and

iii. the received group contributions constitute taxable income in Norway on the part of the recipient

Also if the recipient is a company within the EEA as mentioned in letter i. and the recipient has tax loss carry forward from business conducted in Norway, tax consolidation is also accepted to the extent the amount is not exceeding the loss carry forward of the recipient.

For VAT purposes, it is possible to register a group together, provided that the top company holds at least 85% of the shares in the subsidiaries.

18. DOES YOUR COUNTRY HAVE ANY SPECIAL TAX STATUS SUCH AS A PATENT BOX FOR COMPANIES THAT HOLD INTANGIBLE ASSETS?

Norway does not have any special status for companies that hold intangible assets.

19. DOES YOUR COUNTRY IMPOSE ADVERSE TAX CONSEQUENCES IF OWNERSHIP OF INTANGIBLES IS TRANSFERRED OUT OF THE COUNTRY?

Transfer of assets, including ownership of intangibles, is regarded as realisation for tax purposes, and gains are taxable at a rate of 23%. Losses are deductible and must be deferred. Gains may be deferred. These rules also apply if ownership of intangibles is transferred out of Norway. Normally, gains/losses are booked at a profit and loss account, where 20% shall be booked as income/loss per tax year on a declining balance basis (only for tax purposes, see further under section 3 b above).

Also, if a company's tax liability to Norway is discontinued pursuant to Norwegian legislation or if the company shall be deemed to be resident in another state under a tax treaty (an exit event), any gains and losses on assets (including intangibles) owned by a company, shall be taxable or deductible as if such assets were realised the last day before the tax liability to Norway was discontinued (exit taxation). The output value shall be equal to the assets' market value.

For a company that becomes tax resident in another EEA-state which is not regarded as a low-tax jurisdiction or in another EEA-state which is regarded as a low-tax jurisdiction and the company is genuinely established and performs real economic activity in that EEA-state, only assets and liabilities that are removed from Norwegian tax jurisdiction upon relocating abroad shall be subject to exit taxation. The taxpayer may claim deferral of such exit tax; however, the tax shall nonetheless be paid with one seventh of the original tax amount for each tax year with effect from the exit year.

SELL-SIDE

20. HOW ARE CAPITAL GAINS TAXED IN YOUR COUNTRY? WHAT, IF ANY, GAINS ARISING IN AN M&A CONTEXT ARE ELIGIBLE FOR SPECIAL TREATMENT?

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 23%. It is possible to obtain tax deferral on capital gains from sale of business assets. Normally, gains may be booked at a profit and loss account, where 20% shall be booked as income per tax year on a declining balance basis (only for tax purposes, see further under section 3 b above).

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

There are no fiscal advantages if the proceeds from the sale of shares are reinvested.

Are there any local substance requirements for holding companies?

There are no substance requirements for domestic holding companies. However, the holding company must have effective management in Norway in order to meet the tax residency test.

Foreign holding companies are subject to Norwegian withholding tax of 25% (which may be reduced by tax treaty) on dividends distributed from Norwegian companies. There is a domestic exemption for distribution to shareholders domiciled within the EEA. If the establishment of the holding company in the other EEA state does not lead to any tax advantages compared to an establishment of a holding company in Norway, the withholding tax exemption shall apply. If the establishment in the other EEA state may lead to tax advantages, the withholding tax exemption will not apply if the subjective purpose of the establishment solely was to obtain a tax advantage. The subjective purpose shall be determined based on objective circumstances.

22. 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. In mergers and spin-offs (demergers), it is important that the VAT adjustment obligations are transferred to the acquiring company. The VAT adjustment period for real estate investments is for example 10 years.

MANAGEMENT INCENTIVES

23. WHAT ARE THE TAX CONSIDERATIONS IN YOUR JURISDICTION FOR MANAGEMENT INCENTIVES IN CONNECTION WITH SELLING OR BUYING A COMPANY?

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 (gain on the option) is considered as employment income for the tax payer.

An employer may offer up to 20% discount on shares, provided that the shares are offered as a general scheme to the employees in the company. The total (annual) benefit for each employee cannot exceed NOK 3,000 (EUR 320).

There is also a special scheme for employees in start-up companies. Under the scheme, the taxation of taxable profits on options shall be postponed until the shares (received) are realised, and not when the options are exercised. Several conditions must be met for the special tax treatment to apply, and the rules are therefore unpractical. The tax deferral only applies to taxable profit up to a limit of NOK 500,000 per employee.

FOR MORE INFORMATION CONTACT:

Einar Bakko
Tel: +47 23 11 65 00
E-mail: e.bakko@selmer.no

Daniel Loken Hogtun
Tel: +47 23 11 65 00
E-mail: d.hogtun@selmer.no