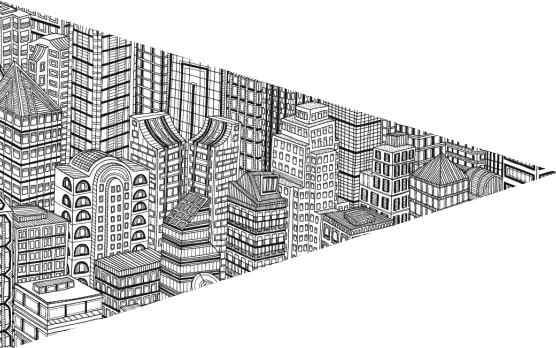


International Tax Alert



Greenland bill on conversion of enterprises subject to limited tax liability, transfer of licenses, amortization of licenses and gross taxation schemes

On 30 August 2010, the Greenland Self Rule Government introduced a bill to amend Landsting Act no. 12 of 2 November 2006 on Income Tax, as amended by Inatsisartut Act no. 3 of 30 December 2009. The bill proposes a number of significant changes to the rules on conversion of enterprises subject to limited tax liability, transfer of license interests, amortization of license interests, and gross taxation schemes for some non-residents.

Below is an outline of the proposed changes. According to the explanatory notes, the bill is part of the ongoing harmonization of tax rules with the development of society. Once the bill is adopted, which is scheduled to take place in mid-November this year, we shall issue a news-letter discussing the bill in more detail.

Conversion of enterprises subject to limited tax liability

According to the Act on Mineral Resources, exploitation licenses can, as a general rule, only be granted to limited liability companies domiciled in Greenland. However, the Act on Mineral Resources does not stipulate that the exploration activity must be carried out by limited liability companies and therefore such activities may be carried out by a branch. Under the

existing tax rules, a conversion of a branch into a limited liability company would be deemed a taxable disposal of assets and liabilities.

The bill proposes that in connection with a conversion of a branch into a limited liability company, the limited liability company is allowed to succeed to the tax position of the branch. It is a condition, though, that the limited liability company succeeds in every respect to the rights and obligations of the enterprise subject to limited tax liability under the Act on Income Tax and the Tax Administration Act. The proposed rules are to apply only to enterprises subject to limited tax liability that have received a license under the Act on Mineral Resources.

All of the following conditions must be fulfilled in order for an enterprise to succeed to the tax position of an enterprise subject to limited tax liability:

1. Naalakkersuisut must approve the transfer of the license from the enterprise subject to limited tax liability to the company in accordance with the rules of the Act on Mineral Resources.
2. All the assets and liabilities of the enterprise subject to limited tax liability related to prospecting, exploration and exploitation activities must be comprised by the conversion.
3. The succeeding company must, within 30 days of the conversion, notify the tax authorities of the conversion

and submit documentation that the succeeding company is registered with or has filed for registration with the Danish Commerce and Companies Agency.

4. Irrespective of the income tax return deadline, the enterprise subject to limited tax liability must file a duly completed tax return within 90 days of the conversion.
5. The enterprise subject to limited tax liability must not be in arrears with direct or indirect taxes or any other public payments. Further, income tax returns must be filed for all income years more than 90 days prior to the conversion or transfer.

Naalakkersuisut may lay down additional rules for the submission of documentation to the tax authorities in connection with a conversion, including deadlines for the filing of such documentation.

According to the succession rule, assets and liabilities acquired in connection with a conversion must, for purposes of computing the company's taxable income, be treated as if they had been acquired by that company at the time when they were acquired by the enterprise subject to limited tax liability and at the cost at which they were acquired by the enterprise subject to limited tax liability. Any amortization or depreciation for tax purposes provided for by the enterprise subject to limited tax liability is deemed to have been provided for by the company.

According to the bill, all assets and liabilities acquired by the enterprise subject to limited tax liability for speculation or commercial purposes will be deemed to have been acquired by the succeeding company for speculation or commercial purposes.

Transfer of license interests (farm-out)

Farm-out is a term used by the oil industry to describe the situation where a licensee transfers part of his license to another enterprise in return for this other enterprise's defrayment of (part of) the exploration costs.

Under the existing tax rules in Greenland, taxation is generally triggered at the time when the transfer agreement is signed. The decisive factor is not when payment actually takes place.

The bill proposes to allow the seller of part of a license to prospect for, explore for or exploit mineral resources to disregard the consideration when computing his taxable income where the consideration received is the acquirer's defrayment of exploration costs (which the licensee is legally bound to pay).

The rule applies to oil and gas as well as minerals but only to the transfer of part of a license.

It is a condition that before the end of the seller's fifth income year the acquirer pays a fixed share of the seller's future prospecting or exploration costs in respect of the license transferred. Under certain circumstances, the tax authorities

may extend the deadline by up to three years where, for reasons related to logistics or nature, the agreement cannot be implemented within the 5-year period. Further, it is a condition that all costs can be deducted as operating expenses for the enterprise in question.

If these conditions are met, the consideration is not taxed. If the conditions are not fulfilled, the seller is subject to tax in accordance with the general rules of the Act on Income Tax.

It should be noted that where the consideration takes another form than payment of exploration costs, this part of the consideration is subject to full taxation in the year of disposal. Likewise, it should be noted that the proposal does not apply to intra-group transfers.

As the acquirer pays his share of the explorations costs, he can deduct the operating expenses paid for purposes of computing his taxable income.

Amortization of license interests

The bill proposes to allow amortization of the cost of licenses to prospect for, explore for or exploit mineral resources.

According to the bill, amortization will be restricted and must be provided at equal amounts over ten years with respect to hydrocarbons and four years with respect to minerals. In connection with the acquisition of a license with a shorter remaining term than

the above periods at the time of acquisition, the cost is amortized by equal annual amounts over the remaining term of the license.

Under this rule, amortization must be provided for each individual license or license interest. The proposal should be seen in the light of the fact that raw material enterprises have unrestricted access to carrying forward losses and therefore suffer no losses in connection with restricted amortization.

Where a license is sold, the seller cannot provide for amortization in the year of disposal. That right belongs to the acquirer.

According to the bill, gains and losses arising in connection with a license to prospect for, explore for or exploit mineral resources are to be computed in the same way as gains and losses on the disposal of other amortizable assets.

Gross taxation scheme

In order to ensure taxation of foreign labor and simplify the collection process, the bill proposes to introduce a gross taxation scheme for foreign labor employed to carry out construction work outside existing towns and villages or with prospecting, exploration or exploitation activities.

Under the simplified rules, such employees will exclusively pay a final tax of 35% of their working income (gross income) from work carried out in Greenland. It is a condition that the work is carried

out under an employment contract and that the person in question has not been liable to tax to a Greenland municipality within the preceding six months.

The rule will not apply to self-employed persons. An assessment must thus be made in each individual case as to whether the person in question is subject to an employment contract.

Only personnel carrying out planning, building and construction, and installation activities or activities related to the prospecting for, exploration for or exploitation of mineral resources are comprised by the new rules.

The calculation of the six-month period includes the day of arrival and departure.

According to the bill, the gross tax will be levied only on salary income earned under the employment contract. Personal, tax and other allowances are not deducted before the tax is calculated. Spousal losses, unutilized personal allowances and tax-free amounts for non-salary income are not deductible either.

Expenses incurred to obtain, secure and maintain the salary income earned under the employment contract, including labor union dues, are not deductible.

Where a person's entire income is comprised by the gross taxation scheme, that person is not required to file an income tax return. Nor are the tax authorities required to send final statements, etc., to that

employee. However, the employee may request the tax authorities to confirm the gross taxes paid in order to be able to provide documentation for the taxes to his home country.

It follows from the bill that where a person earns salary income from activities other than the ones mentioned above, that person is

not subject to the gross taxation scheme. In that case, the persons in question must compute their taxable income in accordance with the general income taxation rules.

Effective date

The rules concerning conversion of enterprises subject to limited tax liability, farm-out and amortization

of license interests are to become effective as from the income year 2010, while the gross taxation scheme is expected to be become effective as from the income year 2011.

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