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Global Tax Alert

Norway to impose new tax liability rules and requirements for applying reduced withholding tax rate on dividend payments to foreign shareholders

Executive summary

With effect from 1 January 2018, new approval and documentation requirements will apply for obtaining reduced withholding tax rates on dividend payments from Norwegian companies to foreign shareholders.[1] These requirements will apply to dividends on both shares registered on an account of the Norwegian Central Securities Depository (VPS) and shares not registered with the VPS. The main changes are:

- New approval and documentation requirements for obtaining reduced withholding tax rates
- Repeal of current permits granted to foreign custodians allowing them to register nominee accounts with reduced or no withholding tax rates
- Account operators or custodians who wish to offer VPS accounts with reduced or no withholding tax after 1 January 2018 have to apply to the Central Office – Foreign Tax Affairs (COFTA) for a new permit. COFTA will assess the applications on an ongoing basis in 2017

Further, the tax liability rules applicable to dividend-distributing companies that have failed to withhold the correct amount of tax in connection with a dividend distribution have been amended with effect from 1 January 2017. Under the new rules, such liability will no longer apply if the dividend-distributing company has acted with diligence and proper care.

Detailed discussion

Relief at source

Introduction

Dividends paid by a Norwegian company to shareholders tax resident abroad are generally subject to withholding tax at a statutory rate of 25%, unless a lower rate applies under an applicable tax treaty. For shareholders tax resident within the European Economic Area (EEA), dividends may also be exempt from withholding tax according to the domestic participation exemption rules.

Current procedure

The current procedure for shares registered with the VPS is that the dividend-distributing company withholds tax based on the ownership information registered on the investors' securities account. Provided certain requirements are fulfilled, it is currently possible for foreign shareholders and nominees to register a reduced withholding tax rate on dividends for these accounts. In order for a nominee account to be registered with full withholding tax exemption, this must be approved by the tax authorities, and the nominee account holder must agree to provide information and documentation on demand.

When the shares are not registered with the VPS, the shareholder has to provide the dividend distributing company with documentation proving that the shareholder is entitled to a reduced or no withholding tax.

New rules

The new rules reflect the administrative practice previously applied towards shares registered with the VPS, but with more restrictive regulations and broader scope of application, as they also will be applied to shares not registered with the VPS. The following is a brief overview of the new rules for registering nominee accounts as well as the new documentation and approval requirements.

Permit to register nominee accounts with reduced withholding tax with the VPS

Custodians that currently hold permits to register nominee accounts with reduced withholding tax rate with the VPS will have these permits revoked with effect from 1 January 2018. In order to continue applying withholding tax rates lower than 25% after 1 January 2018, the foreign custodians must apply for a new permit. COFTA will assess the applications on an ongoing basis in 2017.

Documentation requirements

For shares registered with the VPS, there will be new documentation requirements that the account operator or custodian must receive from the shareholder before shares can be registered on a VPS account with a withholding tax rate of less than 25%. For shares not registered with the VPS, the dividend-distributing company may deduct withholding tax of less than 25% if the company has received the new required documentation from the shareholder.

According to the new rules, a corporate shareholder needs to document its entitlement to a reduced withholding tax rate by either presenting an approved withholding tax refund application or presenting an approval from the Norwegian tax authorities confirming that the dividend recipient is entitled to a reduced withholding tax rate.

Approval requirements

A corporate shareholder which has not previously obtained a withholding tax refund from the tax authorities, can apply for a specific approval for relief at source based either on an applicable tax treaty or the Norwegian participation exemption rules. If no approval is obtained before the date of the dividend payment, the foreign corporate shareholder will be subject to a 25% withholding tax rate and will need to submit an application for refund of excess withholding tax.

An approval will remain in force until there are significant changes in circumstances relevant for approval for relief at source.

Mitigation of strict liability for correct withholding tax at the hands of the dividend-distributing company

Under the previous rules, dividend-distributing companies had strict liability for withholding the correct amount of withholding tax on dividends paid to its non-Norwegian shareholders. If the tax authorities found that the amount of tax withheld was too low, the dividend-distributing company would need to seek recourse for damages caused due to the error.

Under the new rules, the dividend-distributing company is still required to withhold the correct amount of tax on the distributed dividends. However, failure to withhold the correct tax amount will not trigger any liability for the dividend-distributing company if the company or any of its service providers have exercised due care and have not been neglectful. Further, given that custodians have an important role in the practical administration of withholding tax on dividends paid by listed companies, the custodians may, on a separate basis, be held liable for the withholding tax if the error is attributable to their actions. For example, in the preparatory documents, it is indicated that a failure to provide documentation for the shareholder's tax status can be considered as a possible ground for tax liability.

Entry into force

The requirements for obtaining a reduced withholding tax rate will enter into force with effect from 1 January 2018, while the changes to the tax liability provisions entered into force 1 January 2017.

Endnote

1. As reported on the Norwegian Tax Authority's website.

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