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Global Tax Alert

Norwegian Government proposes amendments to domestic tax residency rule

Executive summary

On 16 March 2017, the Norwegian Government issued a proposal for public consultation, introducing amendments to the domestic tax residency rule. Comments must be submitted by 16 June 2017. The proposed changes affect both Norwegian and foreign companies and include:

- A company incorporated in Norway will be regarded as tax resident in Norway.
- A foreign company with its place of effective management in Norway will still be regarded as tax resident in Norway. The proposal, however, aligns the interpretation of the term "place of effective management" with the Organisation for Economic Co-operation and Development (OECD) definition providing that the place of the day-to-day management is increasingly important.
- A company is nevertheless not to be considered as tax resident in Norway if it is tax resident in another country according to the rules of a tax treaty entered into between that country and Norway. However, such company will be required to file a Norwegian tax return.

Detailed discussion

Background

A company tax resident in Norway under domestic law is subject to Norwegian 24% corporate income tax on its worldwide income.

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Under the current proposal, the Norwegian Government aims to counteract both situations where a company does not have any country of residence for tax purposes, as well as tax planning opportunities available for a company tax resident in Norway according to domestic legislation (and thus, entitled to certain benefits e.g., use of group contribution rules) but in another country according to a tax treaty.

The proposal must be viewed in light of the proposal from the Scheel Committee delivered to the Government on 2 December 2014, the Norwegian Parliament's white paper on tax reform published on 7 October 2016, as well as the recommendations set out by the OECD in Actions 2 and 6 of their Base Erosion and Profit Shifting (BEPS) project.

Requirements for being tax resident in Norway under domestic legislation

The proposed rules apply to both Norwegian and foreign companies and other companies with limited liability.

In addition to having the right legal form, a company will be considered a Norwegian tax resident if it has a sufficient connection to Norway. Until now, the crucial factor for determining the company's tax residency is where the board functions and the top level management of the company is located and exercises its powers. According to the new proposal, a Norwegian company shall by nature of its incorporation in Norway, automatically be regarded as a Norwegian tax resident regardless of its place of effective management.

A foreign company is still subject to a concrete assessment of its place of effective management. However, the proposal aligns the interpretation of the term "place of effective management" with the OECD interpretation. This means that the assessment shall not only be based upon the place of executive management at the board level but also be based on a broader assessment of where key management and commercial decisions that are necessary for conducting the entity's business as a whole are in substance made. On this basis, the proposed change implies that the place of the day-to-day management is becoming more important.

Exemptions

The above extension of the rules will increase the likelihood for companies being regarded as tax resident in Norway under domestic legislation, while they are resident in another country according to an applicable tax treaty. In line with OECD BEPS Action 2, the Government suggest that a company tax resident in another state according to the rules of a tax treaty, shall not be regarded as tax resident in Norway under domestic law either. The purpose is to combat tax planning arising from this asymmetry between domestic legislation and tax treaties.

However, a company not tax resident in Norway due to this exemption is still required to file a Norwegian tax return.

Entry into Norwegian tax jurisdiction triggered by the new rules

If a company becomes tax resident in Norway due to these new rules, the tax basis on the company's assets and liabilities has to be determined.

The Government suggests that the current rules for determining the tax basis on tangible and intangible fixed assets (acquisition price less taxable depreciations) shall apply. The tax basis on other assets such as e.g., current assets, shares, receivables, financial assets, etc. shall be based on the fair market value of the assets on 31 December 2017. The Ministry of Finance is granted power to prepare more detailed administrative regulations in this respect.

Exit from Norwegian tax jurisdiction triggered by the new rules

A company incorporated in Norway will, as a starting point, remain tax resident in Norway until the company is liquidated. However, if the company is tax resident in another country according to the relevant tax treaty, the company will be deemed to have exited the Norwegian tax jurisdiction with effect from the day it became tax resident in this other country according to the tax treaty.

A foreign company is on the other hand no longer tax resident in Norway if the place of effective management as described above, is no longer located in Norway. A concrete assessment must be carried out in order to determine whether the place of effective management has changed.

In the case of exit, the latent capital gains in the company are regarded as realized the day before the exit and taxed at the ordinary corporate tax rate of 24%. Losses will be deductible and can be carried back for up to two years.

Entry into force

It is proposed that these rules enter into force with effect from 1 January 2018.

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