Executive summary

On 12 October 2017, the Norwegian Government published its proposal for the 2018 Fiscal Budget. The proposal will now be discussed by the Norwegian Parliament and, subject to any potential changes, it is expected to be approved in December 2017. In short, the following changes are proposed:

- A reduction of the corporate income tax rate from 24% to 23% with effect from 1 January 2018.
- For companies taxed under the special petroleum tax regime and the hydro power regime, the reduction in corporate tax rate will be offset by a corresponding increase in the special tax rates for these regimes.
- A limitation to the right to deduct tax losses in cases where dividend distributions are tax-exempt according to a tax treaty. The change would come into effect retroactively, from 12 October 2017.
- A possibility to deduct group contributions to European Economic Area (EEA) companies with tax losses from previous business in Norway. It is proposed that the changes will come into effect from 1 January 2018.
- Certain changes to the interest expense limitation rules, in relation to both the amount of interest expense that can be carried forward by partnerships with tax losses (with effect from 2017) and the definition of financial institutions (with effect from income year 2018).
It should be noted that the Fiscal Budget does not contain the expected amendments to the domestic tax residency rule or the interest deduction limitation rules. The Norwegian Government has announced that these rules are still under review and that it will revert soon on these issues.

Several of the international tax proposals mentioned by the Norwegian Government in its 2016 White Paper are not included in this proposal. This includes the previous announcements of a potential introduction of a withholding tax on interest and royalties and potential changes to the Norwegian controlled foreign corporation (CFC) regime.

Detailed discussion

Corporate income tax rate reduction
The Government proposes to reduce the corporate income tax rate from 24% to 23% with effect from 1 January 2018.

Petroleum and hydro power taxation
The general reduction in the corporate income tax rate from 24% to 23% will be offset by a corresponding increase in the tax rates for the hydro power regime and the special petroleum tax regime.

For companies owning hydroelectric power plants, an increase of the tax on resource rent from 34.3% to 35.7% is proposed.

For companies that carry out petroleum related activities, it is proposed to increase the rate of the special tax on petroleum income from 54% to 55%. In addition, the rules for calculating the taxable base will also be amended. To calculate the special tax on petroleum income, the taxable base is reduced by an uplift of 5.4% (frinntekt - exempt income) in order to compensate any loss of value due to the fact certain investments have to be depreciated. It is proposed to reduce this uplift from 5.4% to 5.3% per year going forward.

Limitation for deductions of tax losses when dividend income is tax-exempt according to a tax treaty
The Government proposes to introduce a rule limiting the deduction of tax losses incurred by Norwegian companies on the disposal of shares in foreign subsidiaries if the applicable tax treaty between Norway and the subsidiary’s country of residence provides for an exemption of dividend income.

In certain tax treaties that Norway has entered into with other countries, such as the tax treaty with Singapore, Norway has waived its right to tax dividend income received by a Norwegian company. The effect is that any dividend income received from a subsidiary resident in these treaty countries would be tax-exempt in Norway due to the tax treaty, even if such dividend would have been taxable in Norway under Norwegian domestic law.

In cases where shares are not covered by the Norwegian exemption method, e.g., shares in a company resident in a low tax jurisdiction (potentially, Singapore), a Norwegian corporate shareholder is entitled to deduct any tax losses on the disposal of the shares for Norwegian tax purposes, even if the treaty provides for an exemption of the dividend income received from such company. This may create situations where, before the disposal of the shares, all the profits of the foreign subsidiary are distributed to the Norwegian shareholders and a loss is triggered upon the disposal of the shares.

The Government proposes to restrict the right of Norwegian companies to deduct tax losses in this type of situations, by not allowing a tax deduction for the amount of tax losses equivalent to tax-exempt dividends received during the last 10 years. The change is proposed to come into effect from 12 October 2017.

Group contributions to foreign entities with tax losses from previous business activities in Norway
According to current law, a Norwegian company would be entitled to deduct a group contribution to a foreign company, provided that such group contribution is treated as taxable income in Norway for the recipient. A foreign company with tax losses from previous business activities in Norway will therefore only be able to offset its tax losses when resuming operations in Norway. This is because the company will then be taxable to Norway, including for the group contributions received.

The Government proposes to allow a deduction for group contributions for the Norwegian company when the recipient is a company tax resident within the EEA with a tax loss carried forward from previous operations in Norway, without the EEA recipient being taxable through a permanent establishment in Norway at the date the group contribution is paid. The EEA recipient must reduce its tax loss carried forward in Norway accordingly.

The changes are proposed to come into force immediately with effect from the 2018 income year.
Amendments to the rules limiting the carry forward of interest expenses for partnerships with tax losses

Interest expenses that cannot be deducted during a fiscal year due to the interest deduction limitation rules can be carried forward up to 10 years. However, a special limitation rule applies when a partnership has a tax loss in the income year and, at the same time, is restricted to deduct its interest expenses according to the earnings before interest, taxes, depreciation and amortization (EBITDA) rule. The rule states that the amount of interest expenses that can be carried forward would be reduced by 30% of the current year’s tax losses calculated at the level of the partnership. The reason for this rule is that the tax losses should not affect the amount of interest expense that can be carried forward to later years.

When the EBITDA limit for deducting interest expense was reduced from 30% to 25% in 2016, the rate used to reduce the carry forward interest deduction for partnerships was not changed accordingly. It is proposed that the rate used to reduce the carry forward interest deduction for partnerships is also reduced to 25% to be aligned with the rate in the EBITDA rule. The amendment is proposed with effect from the 2017 income year.

Changes to the definition of financial institutions under the interest deduction limitation rules

Financial institutions, as defined in Norwegian company legislation, were intended to be exempt from the interest deduction limitation rules. However, due to changes in the company legislation from 2016, the scope of the interest deduction limitation rules was broadened to include certain financial institutions originally not intended to be covered by the interest deduction limitation rules. The Government proposes that the interest deduction limitation rules are amended so that they do not apply to financial institutions according to the new company legislation.

The amendment is proposed to enter into force with effect from the 2018 income year.

Amendments to the domestic tax residency rule

On 16 March 2017, the Ministry of Finance proposed a change in Norwegian domestic law stating that a company incorporated in Norway should be considered as resident in Norway. In addition, it was proposed that companies with “place of effective management” in Norway should also be considered tax resident in Norway. The proposal aligns the interpretation of the term “place of effective management” with the Organisation for Economic Co-operation and Development 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.

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. The Government therefore suggests 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.

By the end of the consultation deadline (which was 16 June 2017), the Ministry of Finance had received a number of consultation inputs. It appears from the proposal for the 2018 Fiscal Budget that the Ministry of Finance is currently working on the proposals and aims to submit a bill to the Parliament as soon as possible.

Amendments to the interest deduction limitation rule

In the public consultation paper dated 4 May 2017, the Norwegian Government issued a public consultation paper regarding amendments to the interest deduction limitation rules, as notified in their letter to European Free Trade Association Surveillance Authority on 31 January 2017. Major changes from the current rules with respect to companies that are part of a consolidated group for financial accounting purposes, or companies that can be part of such group, include:

- Extended scope to cover interest on external loans in addition to internal loans
- Introduction of two alternative equity escape rules
- An increased threshold for when the rules will apply from NOK5 million to NOK10 million

In the 2018 Budget, the Government states that it needs more time to assess the comments received during the public consultation process. It also states that it will revert with the proposed amendments to the rules as soon as possible, so that the new rules can have effect from the 2019 income year.
Endnotes


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