International Tax

Norway Tax Alert

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MOF issues exceptions to interest deduction limitation rules

Contacts

Petter Gruner
pgruner@deloitte.no

Rolf Saastad
rsaastad@deloitte.no

Norway's Ministry of Finance issued regulations on 24 April 2014 that set out certain exceptions to the application of the interest deduction limitation rules. The regulations apply as from fiscal year 2014, i.e. for the same period as the interest deduction limitation rules in general.

The interest deduction limitation rules, which are designed to prevent earnings stripping via intercompany debt financing, were adopted in 2013 and apply as from fiscal year 2014. The general rules primarily limit the deduction of interest expense on related party debt, but also will capture interest on third-party debt if a related party provided security for the debt.

At the time the interest deduction rules were adopted, it was announced that the Ministry of Finance would issue supplementary regulations for certain types of loans guaranteed or secured by a related party. The newly issued regulations exempt the following securities provided by related parties:

- Security provided by a company or entity that is at least 50% owned or controlled directly or indirectly by the borrower; and
- Security in the form of a pledge of shares or loan notes issued by the borrower.

If the security falls within one of these exceptions, interest expense on the external loan will be fully deductible for the borrower, regardless of the security granted by the related party.

With the new regulations, Norway's interest limitation rules are complete. The main features of the rules are as follows:

- Interest deductibility on related party debt is nondeductible in a year to the extent the net interest expense exceeds 30% of tax EBITDA (earnings before interest, tax depreciation and amortization), subject to certain adjustments.
- "Related party" for purposes of the rules means direct or indirect ownership or control of at least 50% of a debtor. Related parties may be resident in Norway or abroad.

- The limitation rules apply once the net interest expense exceeds a threshold of NOK 5 million.
- The limitation is calculated on an entity-by-entity basis, so a consolidated group approach is not available.
- Net interest expense in excess of the limitation may be carried forward for 10 years, provided the expense falls within the 30% limitation for the relevant years.
- External loans that are guaranteed by a related party will be considered internal debt and, therefore, will fall within the scope of the rules, except:
    - Security provided by a company or entity that is at least 50% owned or controlled directly or indirectly by the borrower; and
    - Security in the form of a pledge of shares or loan notes issued by the borrower.
- Tax losses carried forward and group contributions are not deductible if the tax base before the limitation for deducting the net interest expense is negative or zero. If an interest deduction is disallowed, the taxpayer could have a positive tax base and tax payable even though it has tax losses carried forward.
- Even if the deduction of interest is limited at the level of the borrower, the interest is taxable for the related party lender.
