



Norway tax alert

Budget 2019 includes significant corporate tax, withholding tax proposals

Norway's budget for 2019, presented by the Ministry of Finance on 8 October 2018, includes proposals such as a reduction in the corporate income tax rate, a revision of the interest expense deduction limitation rules, the introduction of a formal definition of residence for tax purposes and the introduction of withholding tax on interest and royalties paid to a nonresident.

General corporate tax rate

To ensure that Norway's corporate income tax rate remains competitive with the rates in other countries, the government has proposed a reduction in the general corporate rate from 23% to 22% with effect for 2019 (i.e. for fiscal years ending in 2019; the fiscal year normally is the same as the calendar year, although subsidiaries and branches of non-Norwegian companies may apply the fiscal year of the parent company.)

However, since the current government is a minority government and a political agreement was reached in 2017 to keep the corporate tax rate at 23% (the rate reached for fiscal years ending in 2018, following the progressive reduction in the rate from 28% over several years), it is uncertain whether this proposal will be approved and enacted.

Interest expense deduction limitation rules

The budget proposes changes to the Norwegian interest expense deduction limitation rules. The proposal largely is based on a consultation paper released on 4 May 2017 (for prior coverage, see [Norway tax alert, 4 May 2017](#)). One of the reasons for the proposed

changes is to bring Norway's rules in line with the recommendations in the OECD's final report on action 4 of the BEPS project.

The main proposed changes would apply to Norwegian companies (or Norwegian branches of a foreign company) within a multinational or Norwegian consolidated group. For such companies, the limitation on the deductibility of net financial interest expense would be extended to apply to loans from unrelated parties (currently, the limitation applies only to related party loans).

The threshold for the interest expense deduction limitation rules to apply for companies within a group is proposed to be changed from NOK 5 million on an entity-by-entity basis to a total of NOK 25 million for all Norwegian companies within a group. For companies other than those that would fall within the definition of a "company within a group" (described below), the current restrictions on related party loans and the NOK 5 million threshold are (with some minor exceptions) not proposed to change.

A company within a group would be defined as a company whose closing balance sheet for the year prior to the relevant fiscal year was consolidated line-by-line into a consolidated financial statement according to one of the sets of generally accepted accounting principles (GAAP) listed below, or that would have been consolidated if IFRS had been applied. The GAAP that would be included within the scope of the definition include the following:

- Norwegian accounting rules;
- IFRS, including IFRS for small and medium-sized enterprises;
- GAAP in another European Economic Area country (i.e. the EU member states, plus Iceland, Liechtenstein and Norway);
- US GAAP; or
- Japanese GAAP.

As a result, a company acquired during the fiscal year would not qualify as a company within the group for the year of acquisition, but a company incorporated in the fiscal year would qualify if the relevant conditions otherwise are fulfilled at the time of incorporation.

As mentioned above, for companies within a group, the limitation on the deductibility of net financial interest expense would be extended to apply to loans from unrelated parties. As a starting point, no changes would be made to the current rules, under which, where the relevant threshold is exceeded, the limitation on the deductibility of interest is applied to the amount exceeding 25% of taxable income, less tax depreciation and net interest costs (taxable EBITDA) on an entity-by-entity basis.

The restrictions on the deductibility of interest would not apply for a Norwegian company within a group that can demonstrate the following:

1. The ratio between the company's equity and its total balance sheet (equity ratio) is at least as high as the overall equity ratio for the consolidated group; or
2. The equity ratio between the total consolidated equity of the Norwegian entities within the group is at least as high as the equity ratio for the entire consolidated group.

To invoke one of these exceptions, the company's consolidated financial statements must have been prepared based on the one of the sets of GAAP mentioned above. To the extent a Norwegian company's financial statements or the Norwegian subgroup's

consolidated financial statements are based on GAAP other than the “allowable” GAAP applied by the entire consolidated group, the Norwegian financial statements would need to be restated based on the same GAAP applied by the consolidated group to invoke the exceptions. Significant adjustments would have to be made in the local accounts for items such as goodwill, additional values and impairment, shares in subsidiaries, intercompany receivables, etc. to make them comparable to the GAAP of the consolidated group. The relevant documentation would have to be audited.

To the extent the (adjusted) equity ratio for Norwegian entities/the Norwegian subgroup does not vary by more than two percentage points compared to the consolidated group’s equity ratio, it is proposed that the ratio would be deemed to equal the group ratio.

As mentioned above, as a “starting point,” the proposal does not contain any changes on the limitation basis for interest expense deductibility. However, there is one exception: if a Norwegian company within a group applies the first exception above (“exception 1”) but the equity ratios of other Norwegian companies within the group would prevent the conditions for “exception 2” from being fulfilled, the group contributions from the company applying exception 1 would not be included in the limitation basis (taxable EBITDA) for the transferee companies.

The amended rules are proposed to apply as from the fiscal year ending in 2019.

Tax residence rules for corporations

Norwegian tax law currently does not contain a definition of tax residence for corporations.

Based on domestic case law, it is assumed in practice that entities that have their “real management” in Norway—typically taken to mean that decisions at the board of directors level are made in Norway—are tax resident in Norway, even if the entity is not incorporated according to Norwegian legislation. Conversely, it is unclear to what extent a company that is incorporated under Norwegian legislation may be treated as nonresident in a case where decision-making mainly takes place outside Norway.

Under the budget proposals, companies incorporated under Norwegian corporate law would be regarded as tax resident in Norway as long as they are not regarded as tax resident in another country based on tiebreaker rules in a tax treaty between Norway and another country.

It also is proposed that corporations that have their real management in Norway would be deemed to be resident in Norway. The determination of the location of real management would take into account not only where the decisions at the board of directors level are made, but also where the day-to-day management takes place and “other circumstances based on the company’s organization and business.” An example of “other circumstances” mentioned in the budget commentary would be shareholder meetings.

The rules are proposed to have effect from fiscal year 2019. For companies with fiscal years other than the calendar year, it is proposed that the rules would not take effect until the fiscal year starting after 1 January 2019 and no later than 1 January 2020 (to the extent the codification of the definition of tax residence would lead to a change of residence status).

Withholding tax on interest and royalties

Norway currently has domestic rules providing for withholding tax on dividends, but not for interest or royalties. As part of the budget, the Ministry of Finance has announced that it will issue a white paper on proposed rules for a withholding tax on interest and royalties paid to nonresidents sometime this year, with final rules expected to be proposed in 2019. The effective date for the proposals is uncertain.

Contacts

If you have any questions or would like additional information on the topics covered in this alert, please email one of the following Deloitte professionals:

Petter Gruner
pgruner@deloitte.no

Rolf Saastad
rsaastad@deloitte.no

Daniel Herde
dherde@deloitte.no

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