Nordic Tax Law Bulletin

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We are pleased to introduce the very first Nordic Tax Law bulletin where we will highlight relevant news and trends on the Nordic Tax market scene. The bulletin intends to provide high-level knowledge and insight. Want to learn more? Our experts will be happy to hear from you.

Highlights from Norway

New Norwegian employee share-option tax scheme: From 1 January 2022, a new tax scheme for employee share options in start-up companies has been introduced, whereby qualifying share options will be subject to capital gains tax on shares when the shares are realized. There will be no salary taxation in connection with the grant or exercise. There are several conditions to qualify both on the company, employee and option level, including:

- The company must not be older than 10 years in the grant year
- Maximum NOK 60 million in market value of underlying shares for the entire option scheme
- Maximum NOK 3 million in market value of underlying shares per employee
- Strike price can not be lower than the market value of the shares at the time of grant
- Option must be exercised between 3- and 10-years following grant
- Does not apply to listed companies or groups. Further restrictions on companies involved in certain activities may be restricted such as, asset management, bank and insurance, real estate and raw materials.

Norwegian withholding tax on interest payments and royalty: During 2021, Norway introduced for the first-time withholding tax at a rate of 15% on interest and royalty payments, as well as lease payment for certain assets such as ships, vessels, rigs, planes and helicopters. The withholding tax is limited to payments to "related parties" tax resident in "low tax jurisdictions". The term "related parties" means companies or entities which, directly or indirectly, owns/controls, is owned/controlled by or under common ownership/control with the borrower/licensee/lessee with 50% or more. The term "low tax jurisdiction" generally means a jurisdiction with a tax rate of 14.7% or lower. Several tax treaties may exempt or reduce the withholding tax rate.

Government appointed committee to review the Norwegian tax system: In 2021 the Norwegian Government appointed a committee of experts to review the entire Norwegian tax system, including both direct and indirect taxes, and to propose revisions in order to adapt the tax system to new developments in technology, climate change, digitalization and globalization. The committee's report and proposals is to be delivered on 1 November 2022.

Highlights from Denmark

Ruling from Eastern High Court (in Danish *Østre Landsret*) in Maersk transfer pricing case: On 28 March 2022, the Eastern High Court issued its' ruling a joint cases between the Danish tax agency and the two companies (Mærsk Olie og Gas A/S og A.P. Møller - Mærsk A/S) previously part of the Maersk group. The case concerned the Danish companies' taxable income in 2006-2007, and whether the arm's length principle (in Section 2 of the Danish tax assessment act) had been applied correctly on the intercompany transactions.

The question before the court was whether "income" earned by Mærsk Olie og Gas A/S for providing knowhow at the disposal of Maersk subsidiaries in Algeria and Qatar for oil recovery was on arm's length. The case concerned two intercompany transactions.Firstly, whether the Danish tax agency could establish an intercompany transaction for know-how provided by Maersk Olie and Gas A/S. Secondly, whether remuneration for performance guarantees provided by Maersk Olie og Gas A/S for the oil projects was on arm's length. The Danish tax agency argued that Maersk Olie og Gas A/S possessed the knowhow for such oil recovery, and increased its' income based on an estimate of the arm's length price on these transactions. Further, the Danish tax agency had estimated an arm's length price for the performance guarantees, and increased the taxable income of Maersk Olie and Gas A/S.

The Maersk Group disagreed with the increase, and inter alia criticized the basis used for the increase. As far as the know-how is concerned, the Eastern High Court found that the subsidiaries in Algeria and Qatar - and not Mærsk Olie og Gas A/S - were the owners (legally and in reality) of the license/right for oil recovery. Accordingly, Mærsk Olie og Gas A/S was not the licensee, and the High Court found that no intercompany transactions had been carried out between the parties. The Eastern High Court found that costs held by Mærsk Olie og Gas A/S for feasibility studies on behalf of Algeria and Qatar were concluded 1990 and 1992. Mærsk Olie og Gas A/S had not held any costs in the later stages of the oil recovery.For the performance guarantees, the Eastern High Court found that the Danish tax agency's estimate of the increase in taxable income could not be used, as the principles applied by the Danish tax agency were based on wrong principles.

The ruling from the Eastern High Court hereby follows the principles established by the Danish Supreme Court in the Microsoft case from 2019, and the Adecco from 2020. The Maersk case is the third case in a row, where courts have rejected the basis on which the Danish tax agency estimate the increase in taxable income under Section 2 of the Danish tax assessment act.

New double tax treaty with France: On 4 February 2022, the Danish Ministry of Taxation announced that it has entered into a new double tax treaty with France. In 2008, Denmark terminated the previous double tax treaty between the countries, as pension income paid from Denmark were only taxable in France. The negotiations have been ongoing since 2017, and now the double tax treaty has finally been agreed.

In order for the double tax treaty to enter into force between the two countries, the governments of both countries need to sign the double tax treaty and both countries will need to rectify it.

The text and provisions of the new double tax treaty has not yet been published, but the aim in Denmark is for the treaty to enter into force on 1 January 2023.

Lawyer's M&A fee is subject to VAT: Denmark has historically applied a wide interpretation of the VAT exemption governing transactions, including negotiation in shares (VAT Directive article 135 (1) (f). This has broadly been used by lawyers to exempt their fees in relation to transactions. However, in a third ruling in a row, the Danish Tax Council has narrowed the scope of the VAT exemption - clearly stating that lawyer's typical M&A services such as, initial advice to the seller including a collection of target data, drafting and negotiation of SPA, completion of transaction documents, VDR housekeeping, preparation and completion during closing are subject to VAT.

We find that the movement over the last few years has brought the Danish interpretation of the VAT exemption in line with what is the case in most other EU Member States.

Highlights from Sweden

Businesses engaged in cryptocurrency mining entitled to tax relief: The Supreme Administrative Court has in a new judgement ruled that a company conducting cryptocurrency mining is subject to reduced energy tax. The reduced energy tax is due to the classification of the conducted business which is determined on the basis of the purpose and type of activity in which the electricity is used. The Supreme Administrative Court deemed that the company's facility corresponds to what is considered to be a computer hall. In Sweden computer halls are subject to reduced energy tax due the industry's electricity-intensity and exposure to international competition.

Joint Property Associations may be considered to provide services subject to VAT: In a new statement, the Swedish Tax Agency has made the assessment that Joint Property Associations may be considered to provide services subject to VAT. According to previous case law, the services provided by Joint Property Associations to their member properties, such as water, heating and/or roads in accordance with their statutes, have not been considered to be transactions or supplies subject to VAT. The new statement challenges previous beliefs of the vat liability of services that Joint Property Associations provide and many associations may need to register for VAT as a result of this new approach.

Fuel tax temporarily reduced to the minimum limit allowed in the EU: The Swedish Government has proposed to temporarily reduce the fuel tax due to soaring fuel costs. The proposal is expected to be in effect between 1 June to 31 October and will reduce the tax cost by 1 SEK and 30 cents. With an already adopted proposal, which will lower the cost of fuel with SEK 50 cents at the beginning of May, the fuel tax in Sweden will be at the lowest level allowed in the EU.

New proposal regarding stamp duty: On 3 December 2020, the Swedish Government commissioned The Swedish Mapping, Cadastral and Land Registration Authority (Sw: Lantmäteriet) to investigate whether there are conditions for introducing a general stamp duty for the acquisition of real estate through property formation. Lantmäteriet identified three different property development measures for the acquisition of real estate without stamp duty. Lantmäteriet has now presented their results in a report in which it proposes that stamp duty be levied on acquisitions under the Swedish Land Code that follow from property formation, property regulation acquisitions and division acquisitions.

Highlights from Finland

Introduction of exit tax for individuals: The Finnish Government has commenced a legislative project aiming to introduce capital gains tax / exit tax for individuals. Currently, the capital gains tax is, in general, levied if the individual is a tax resident in Finland at the time of the sale of the assets (certain exclusions apply).The exit tax would apply in situations where individuals move outside Finland.

In practice, Finland would tax the appreciation of the assets which have occurred while the individual lived in Finland when the assets are sold. No draft legislation has yet been published and the details of the legislation remain open. According to the Finnish Government, the exit tax would be effective as from 2023.

Finland's transfer pricing provision expands: The amendments to the transfer pricing provision (Section 31 of the Tax Assessment Act), which entered into force at the beginning of 2022, specify the arm's length principle and extend its coverage to correspond with the arm's length principle in accordance with the OECD Transfer Pricing Guidelines.

One essential element of the reformed provision is that it allows the form given to the transaction by the taxpayer to be disregard and replaced by a form reflecting the actual contents of the transaction. The arm's length nature of the transaction would then be assessed in the light of the form determined to the transaction. Disregarding the transaction's form, i.e. the so-called recharacterization, has not been previously possible in Finland in accordance with the Supreme Administrative Court's ruling 2014:119. Previously, the Tax Administration has been able to intervene on transfer pricing matters mainly to the pricing and terms of transactions carried out by a taxpayer, but it must have respected the form chosen by the taxpayer for the transaction.

The reform has been driven by a desire to bring Finland's national legislation closer to the internationally recognised OECD Transfer Pricing Guidelines, which have recognized such disregard and re-characterization of a transaction.

Re-characterization of a transaction in taxation is possible from tax year 2022 onwards.

Additional deduction for research and development costs: Between 1 January 2022 and 31 December 2027, an additional deduction of 150 per cent can be made from the expenses related to a research and development of business and agricultural activities. The additional deduction can only be granted for research and development activities carried out together with a research organisation. In practice, the reform allows a taxpayer to deduct the accrued expenses that meet the criteria by 2.5 times to the actual expenditure.

The balance sheet test of interest deduction limitation rules will be tightened: A taxpayer has the right to deduct otherwise non-deductible interest expenses under a balance sheet test exception. Pursuant to the exception, the restriction on the right to deduct interest does not apply if the company proves that its equity-asset ratio is equal to or higher than the corresponding ratio of the group the company belongs to at the end of the tax year.

According to the reform that entered into force at the turn of the year, for balance sheet test purposes a debt should be considered as equity at the level of the group if it has been received from a party that directly or indirectly owns at least 10% of the taxpayer or its related entity. After the reform, it is more difficult to apply the exception in situations where the group has been financed by an entity that owns a significant share of the group.