Nordic Tax Law Bulletin - November 2023


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In our quarterly Nordic Tax Law bulletin our tax lawyers across the Nordic region 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

- **Proposed changes to the tax regime for onshore wind power plants:** On 6 October 2023, the Norwegian government presented its proposal for the state budget for 2024. The budget proposal included a number of proposed changes relevant to the onshore wind industry.

The government has presented a new and updated proposal (compared to the proposal presented in autumn 2022) to introduce a **resource rent tax** on onshore wind farms with effect from 2024. The main features are as follows:

- Nominal tax rate of 44.9% (effective 35%), which is 5 percentage points down from the 2022 proposal.

- Applicable to wind farms subject to licensing under the Norwegian Energy Act (wind farms with more than 5 turbines or a total installed capacity of 1 MW or more).
- Cash flow tax with immediate deductions for new investments.

- Existing wind farms continue to depreciate assets using the declining balance method. For existing wind farms that have depreciated assets according the special 5-year linear depreciations rule, the tax value of the assets subject to depreciations under the resource rent tax regime is set equal to the value of the assets as if the assets originally had been depreciated based on the declining balance method. In addition, existing wind farms are granted deductions for a so-called “investment interest” to compensate for the fact that no immediate deductions are available for historical investments.

- Taxable ground rent income is generally calculated to actual production multiplied by the spot market price. However, for contracts entered into before 28 September 2022 for the supply of energy at a predetermined price and financial hedging of volume sold in the spot market, the price is set at the contract price. Similarly, revenue from future long-term physical energy supply contracts between unrelated parties for projects established between 2024 and 2030 is set at the agreed price.

- Any negative resource rent income is carried forward and deducted in future positive ground rent income. Negative resource rent income is paid out upon discontinuation of the wind power plant.

- The resource rent tax comes in addition to corporate income tax (22%), with resource rent tax related corporate income tax is made deductible in the resource rent income.

Due to exceptionally high energy prices in Norway in 2022 and 2023, certain onshore wind farms (and hydro power plants) have been subject to a **top tax (high price contribution)** of 23% on prices exceeding NOK 0.7 per kWh. The Norwegian government has proposed to abolish the high price contribution tax with retroactive effect from 1 October 2023.

The **excise duty** on onshore wind energy introduced in 2022 is proposed increased from NOK 0.02 per kWh of produced electricity in 2023 to NOK 0.023 per kWh in 2024.

The above proposals are subject to approval by the Norwegian Parliament, which is expected before the end of the year.

Highlights from Denmark

- **Denmark to implement five measures to strengthen efforts against tax financial crime:** The Danish Ministry of Taxation has set forward a legislative proposal that implements a political agreement which has the purpose of strengthening efforts against tax financial crime. These measures are to apply to both direct and indirect tax evasions – e.g., corporate tax, VAT, payroll taxes, and excise duties.

The legislative proposal contains five measures:

1. Modification of several penal provisions within tax legislation, aimed at implementing a new practice of sanctions in cases of tax evasion.
2. Introduction of supplementary fines for smuggling cases punishable by imprisonment.
3. Granting the Tax Administration the authority to hold members of management accountable for unpaid taxes and charges resulting from the use of fictitious or false invoices within the company. The liability will be contingent on establishing an intentional or grossly negligent connection.
4. Enabling the Tax Administration to revoke the tax and duty registration of companies involved in the intentional or grossly negligent issuance or use of fictitious or false invoices.
5. Enabling the Tax Administration to place a freeze on deposits in companies' bank accounts, particularly when the company's operations pose an imminent risk of financial loss to the state.

Entry into force: Proposed 1 January 2024.

- **Denmark have issued a draft bill to implement to EU 'Pillar 2':** On 4 October 2023, the Danish Ministry of Taxation issued a draft bill (L 5) to implement the EU COUNCIL DIRECTIVE (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.

The wording and construction of the Danish draft bill is very close to the Directive, meaning that for calendar-year taxpayers the rules will have an impact as of 1 January 2024 through the so-called "Income Inclusion Rule", with the "Under-Taxed Profits Rule" to come into effect one year later.

The rules apply to large EU Groups with a turnover of at least EUR 750m. Broadly, the effect of enacting the EU Directive is that large EU groups, wherever headquartered, will now be subject to an effective tax rate of at least 15% on all their profits wherever arising.

The draft bill is scheduled for second and third public hearing on 5 and 7 December 2023, respectively and is expected to be enacted during December 2023.

Entry into force: Proposed 1 January 2024.

- **Danish Tax Ministry issues draft bill to finalize double tax treaty with Algeria:** On 4 October 2023, the Danish Ministry of Taxation issued a draft bill in order to obtain parliament majority to finalize the double tax treaty with Algeria.

The double tax treaty was signed on 30 September 2021 in Copenhagen, and now awaits a majority in the Danish parliament before being finalized.

The second and third public hearings are scheduled for 21 and 23 November 203, respectively.

Once approved, the double tax treaty will enter into force according to the applicable articles of the treaty, including the exchange of ratification instruments.

Entry into force: To be decided.

Highlights from Sweden

- **Proposal to implement a minimum tax for large group companies (Pillar 2):** On 26 of October 2023 the Swedish Government presented a proposal to implement Council Directive 2022/2523, Pillar 2. Group companies with a revenue of EUR 750m would have an effective tax rate of 15 per cent, which would be achieved by way of a Top-Up-tax. The threshold would be determined by the groups consolidated report, and would not require any additional reporting.

The proposal received criticism from the Swedish Council on Legislation as well as remarks from other referral bodies. While compliant with formal legislative provisions, the government bill was deemed to be rushed and to not meet the required standards of simplicity, foreseeability and clarity that a law requires. The Council warned that the legislation would need additional adjustments and consequently, additional legislative procedures.

It is estimated that around 13 000 Swedish companies in groups would be affected by the bill, 124 of which have the parent company domiciled in Sweden.

It serves to remind that the work on Pillar 2 is not yet final, and revisions and additional legislative procedures may come.

Entry into force: Proposed 1 January 2024.

- **Swedish Supreme Administrative Court clarifies partial exemption method:** In a recent judgment the Supreme Administrative Court of Sweden has confirmed that the use of turnover to determine partial input VAT recovery was always permitted.

Volkswagen Finans Sverige AB, a Swedish company, carried out mixed activities i.e. the leasing of cars as well as insurance and financing services. Part of the company’s economic activity was therefore VAT exempt with no input VAT recovery right.

The Swedish tax authorities demanded that the company sectorised (in other words, split) its two activities for the purpose of accounting for VAT, which resulted in a lower input VAT recovery balance than if the company had used a general apportionment method based on turnover. The Supreme Administrative Court held that, in the absence of clear and unambiguous guidance implemented into the Swedish VAT legislation, the taxpayer could rely on the general provisions of the EU VAT Directive, which, by default, provides for an apportionment method based on turnover.

Highlights from Finland

- **The** Government published proposals to amend the Transfer Tax Act: The Finnish Government proposes several amendments to the Transfer Tax Act in two separate government proposals dated 9 and 12 October 2023. Most amendments are intended to enter into force at the beginning of 2024. The proposals include the following key changes to the Transfer Tax Act.

- The transfer tax rate would be reduced from 4.0 % to 3.0 % for the transfer of real estate, from 2.0 % to 1.5 % for the transfer of shares in housing companies and other real estate companies and from 1.6 % to 1.5 % for the other shares. The changes in the tax rates would apply to transfers made under a contract concluded on or after 12 October 2023.

- Loan receivables acquired in connection with the purchase of shares would be subject to transfer tax if the consideration for the purchase is paid for the benefit of the seller of the shares. The change would broaden the tax base, as currently the acquisition of loan receivables is not, in general, subject to transfer tax.

- The tax-neutral transfer of assets involving real estate and shares to an existing company would have no transfer tax implications. Under the current rules, to be exempt from transfer tax, transfer of assets must be made to a company established for the purpose of the transaction to be exemption from transfer tax. This change would take effect from 9 October 2023.

- If shares are distributed as a dividend in kind, the distributing company would be liable for the transfer tax instead of the shareholders, as is currently the case. This change is proposed to take effect on 1 January 2025.

- In addition, certain transfers by municipalities in connection with the reform of health and social services would be temporarily exempt from transfer tax, and the provisions on the redemption of minority shareholders and the voluntary payment of transfer tax by a foreigner purchaser when the Finnish seller is liable for the tax would be clarified and exemption from transfer tax for first-time homebuyers would be abolished.

Entry into force: Proposed 1 January 2024.

- **The Government published a proposal on minimum tax for large group companies:** On 19.10.2023, the Finnish Government published a proposal aimed at implementing Council Directive (EU) 2022/2523 on ensuring a worldwide minimum level of taxation in the EU for multinational groups and large domestic groups.

It is proposed to implement the Directive be implemented by providing for minimum group taxation within the meaning of the Directive in a separate national act on minimum taxation of large groups. The law would apply to group entities that are part of a multinational group or a large national group with an annual turnover of at least EUR 750 million.

If the effective tax rate is below 15%, the new legislation would introduce taxation up to the 15% level. The minimum taxation would be implemented through the two separate tax regimes described in Chapter II of the

Directive, but the effective tax level would be determined in the same way for both regimes. The main rule to be applied would be the Income Inclusion Rule. A secondary rule for calculating the tax level would be the Undertax Profit Rule. Taxes levied as top-up taxes would be a completely new type of tax compared to the current Finnish tax system and would be regulated in a new Tax Act.

According to the proposal, the number of group companies within a multinational group falling within the scope of the Directive is estimated to be around 2 800 in Finland. There are about 50-60 multinational groups with a Finnish parent company at the top, and

about 10-20 purely domestic large groups have been identified. The proposed system is a large and complicated package, which will require extensive analysis and create costs for groups moving to the system and setting up the reporting system.

Entry into force: Proposed 1 January 2024.

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