

HR & Tax Alert

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Norway – Proposed Changes to Exit Tax Regime

November 2006

Executive summary

The Norwegian government had previously announced the introduction of an 'exit tax' for individuals emigrating from Norway, which was to take effect for the 2006 calendar tax year (see our Alert of 18 November 2005). However, in the State Budget 2007 the Norwegian government proposed amended rules regarding exit tax on unrealized capital gains. It is proposed that the rules become effective as of 1 January 2007, together with a cancellation of the exit tax regime initially introduced as of 1 January 2006.

The amended rules are controversial and have been the topic of much debate. However, it is expected that the Parliament will pass the measures with the rest of the State Budget in the middle of December 2006.

This Alert summarises the main issues regarding the proposed Norwegian exit taxation.

Proposed Exit Tax Regime

The Norwegian government proposed the introduction of a new exit tax regime in the 2006 budget, which was to take effect from 1 January 2006. This was to have taxed unrealized gains on shares held when individuals emigrated from Norway. However, several issues have come to light with the suggested regime, which in many cases would not have been applicable due to double tax agreements.

Therefore, the Norwegian government has suggested an amended regime in the 2007 Budget to apply with effect from 1 January 2007 in order to reduce tax motivated emigration from Norway. The amended rules would tax unrealized profit on shares or share units in Norwegian or foreign companies including, importantly, units in securities funds and stock options. The exit taxation would only apply to profits exceeding NOK 500 000 (representing an increase from the 200 000 NOK exemption under the previously proposed regime).

Under the proposed legislation, individuals who have been resident in Norway for tax purposes will be taxed on profits as if the shares, units or options etc were realized on the last day the individual was considered a tax resident of Norway for either domestic or tax treaty purposes. The deemed gain would be chargeable to capital gains tax normally at 28%. The exception to this would be employee share options, where the deemed gain would be charged as normal compensation income at the individual's marginal rate.

For individuals who have resided in Norway for more than ten years, the profit will be calculated as the spread between the original cost price of the asset and the market value at the time of the emigration. However, individuals who have resided in Norway for less than ten years and were not born in Norway may choose to use the market price at the time he or she became tax resident in Norway in lieu of actual

cost basis, but only on shares and share units owned when taking up residence in Norway.

Under the proposals, the exit tax liability would cease to apply if the gain on the assets was not actually realized within five years after the emigration (or in the case of stock options, if the options are not exercised in this period). The taxable profit could also be reduced if the actual sales price was lower than the value of the share at the date of emigration. This would allow individuals the opportunity to minimize their exit tax liability by ensuring they retain their shares for five years after leaving Norway, but may be less possible with employee stock options if there are restrictions on the exercise period.

Accordingly it will also be possible to defer the payment of this exit tax until the actual realization of the gain takes place. To do this the taxpayer would need to furnish adequate security for the payment obligation, or move to a state within the EEA with which Norway has provisions for exchange of information and assistance with recovery of taxes.

Deemed losses on emigration would also be calculated using the same rules, i.e. on shares sold

within five years of emigration, and any loss would be offset against gains chargeable at the capital gains rate of 28%. However, the loss may be excluded upon emigration outside the EEA and no loss would be granted due to a step-up of the historic cost price.

Generally, strict documentation requirements apply at the time of emigration and the following five years. Please also note that even if the deemed profit is less than NOK 500.000 and, hence, no exit tax applies, the taxpayer would still have an obligation to report the unrealized profit to the Norwegian tax authorities.

Next Steps

These proposals continue to be debated, and there are still many unanswered questions. We expect that provisions, regulations and tax authorities' opinions will follow in the coming months to clarify the practical implications of the legislation. We will keep you updated of further developments via future Alerts. In the meantime, individuals considering breaking residence in Norway, or who have done so during 2006, should seek further advice to ensure the implications of the new regime are fully understood and can be planned for.

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