Nordic Tax Law Bulletin – Special Edition – Energy Taxation


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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

Increased production fee on onshore wind:
The Norwegian government has increased the production fee for onshore wind in Norway from NOK 0.01 to NOK 0.02 per KWh produced for 2023.

The production fee of NOK 0.01 entered into force on 1 July 2022.

The tax is calculated from the power produced in the wind plant. The tax basis is calculated as the total amount of power produced in the wind plant, net of any (i) power used in utility equipment in connection with the production, (ii) power lost in the main transformer through production in the power plant and (iii) energy use in auxiliary generators (Nw. hjelpegenerator). Power produced outside the ordinary operations of the wind plant, such as test runs of turbines and similar, are also included in the basis for calculation.

The production fee is set to NOK 0.01 per KWh produced.

The fee is expected to be reduced back to NOK 0.01 in 2024.

High price contribution on hydropower and onshore wind:
The Norwegian government has implemented a new top tax of 23% on hydro power and onshore wind on prices exceeding NOK 0.70 KWh.

The high price contribution is effective from 28 September 2022 for hydro power plants with generators with a total nameplate power rating of 10,000 or more. From 1 January 2023, the high price contribution will be effective for hydro power plants producing 1 MW or more and wind power plants subject to licensing under the Norwegian Energy Act (wind power plants with more than 5 turbines or total installed effect of 1 MW or more).

The tax basis is in general set to the actual prices achieved in the marked. For financial contracts which are entered into before 28 September 2022 to ensure sale to spot prices, the high price contribution is determined based on the price achieved adjusted for losses or gains on the financial contract with minor exceptions and adjustments.

Proposed implementation of resource rent tax on onshore wind farms:
The Norwegian Government has proposed to introduce a resource rent tax on inshore wind farms with a nominal tax rate of 51.3% (effective 40%).

The resource rent tax is proposed to hit onshore wind farms subject to licensing under the Norwegian Energy Act (wind power plants with more than 5 turbines or total installed effect of 1 MW or more). The resource rent tax comes in addition to the corporate income tax (22%) and is proposed to be a cash-flow tax meaning that investments are deducted immediately as opposed to the costs being activated and depreciated over time. The taxable income is generally to be based on the spot price of electricity. For power purchase agreements which are entered into before 28 September 2022, the power production shall be valued at the contract price. Furthermore, the corporate income tax shall be calculated before the resource rent tax and resource rent tax related corporate income tax is deducible in the resource rent tax basis (equivalent to the current resource rent tax on petroleum and hydropower).

The Government has proposed that half of the income from the resource rent tax shall be allocated to the municipalities and counties through the implementation of a natural resource tax. As the natural resource tax is fully deductible NOK for NOK in the resource rent tax, the natural resource tax should not increase the tax burden of the wind farms.

The resource rent tax on onshore wind farms is proposed to have effect from 2023. The proposal is submitted for public consultation with 15 March 2023 as the due date to provide input. The formal adaptation of the tax is not expected to happen before the spring of 2023.

Increased resource rent tax rate on hydropower:
The resource rent tax rate on hydropower has been increased from 47.4% to 57.7% (effective 45%) with effect from 2022.

The change entails that the marginal effective tax rate including corporate income tax is increased from 59% to 67%.

Proposed implementation of resource rent tax on aquaculture:
The Norwegian Government has proposed to implement a resource rent tax on aquaculture covering the production of salmon, trout and rainbow trout with effect form 2023.

The tax is proposed to be a cash-flow tax with an effective tax rate at 40%. The resource rent tax will only hit the largest operations with a tax-free allowance of between 4,000 and 5,000 tons. The income basis is set to the norm price (Nasdaq) for salmon and actual marked prices for trout and rainbow trout. The corporate income tax is determined before the resource rent tax and resource rent tax related corporate income tax is deductible in the resource rent tax basis (equivalent to petroleum, hydro power and the proposed resource rent tax on onshore wind farms). The effective marginal tax rate including corporate income tax will be 62%.

As for onshore wind, the Government has proposed to implement a natural resource tax for the allocation of resource rent tax to the municipalities and counties. The natural resource tax shall be fully deductible in the resource rent tax and should therefore not increase the tax burden.

The proposal has been submitted for public consultation with 4 January 2023 as due date for providing input. The formal adaptation of the tax is not expected to happen before winter/spring 2023.

Highlights from Denmark

New Danish Green Tax Reform agreed:
In June 2024, the former Danish government, and a majority of political parties in the Danish Parliament, agreed on a so-called green tax reform. Most significantly, the reform involves a large increase in the carbon taxes paid by companies located in Denmark, but also certain tax credits, such as accelerated depreciation for green investments.

The green tax reform proposes to amend the current Danish carbon tax, with companies outside the EU Emission Trading System seeing their carbon tax gradually increase from the current level of €24 per tCO2 to €100 in 2030, while companies covered by the EU ETS are expected to pay a total €150 per tCO2 in 2030.

Despite a new government being elected in November 2022, the proposals are expected to be implemented in Danish law in the near future, whereas a draft bill is yet to be presented.

No sign of Danish tax initiatives on Council regulation (2022/1854) to address high energy prices in Denmark:
Within the European Union (the "EU"), the Council inter alia approved a temporary windfall tax in September to curb fossil fuel companies' surplus profits made in 2022 or 2023, as well as a levy on excess revenues that low-cost power producers make from electricity costs, and a mandatory 5% cut in electricity use during peak price periods.

The measures are temporary and apply – as a starting point – from 1 December 2022 until 31 December 2023, however the excess revenue cost applies until 30 June 2023.

In Denmark, the tax gained political support within the government and its' supporting political parties. Apart from the energy producers, increased scrutiny has been on energy traders in Denmark, have similarly enjoyed significant profits as a result of the energy crisis.

However, as of today no draft bill has been issued or announced to be issued. Following the Danish Governmental elections in November 2022, a new government was formed in December 2022, which did not mention the any of the initiatives from the EU in its published government plan.

Lowering of electricity excise duty:
As a response to the escalating energy crisis following from Russia's invasion of Ukraine, a majority in the Danish parliament had agreed to reduce the amount of excise duty charged on electricity beginning from the last quarter of 2022.

For the last quarter, the excise duty on electricity was eased by 4 øre (1 øre is one hundredth of a krone) making the electricity rate 72.3 øre per KWh. In 2023 the excise duty will be eased by 4.3 øre per KWh resulting in a rate of 68.6 øre per KWh.

Liberal professions are granted a right of electricity excise duty deduction:
Prior to 1 January 2023, liberal professions (e.g., architects, engineers, accountants etc.) where not entitled to

deduct a share of the electricity tax. Such right of deduction has been granted to said businesses as of 1 January 2023. Through this amendment, liberal professions will be treated as other production businesses as long as they are registered for VAT.

Upcoming:

Due to the recent November election in Denmark, all legislative work was put on-hold, meaning that no new proposals nor bills were passed during this period. With the formation of the new Government, the legislative work has been resumed.

Prior hereto, political agreements have been concluded on the following areas:

• Introduction of flight tax

The proposal of introducing a flight tax has considered for a prolonged time by the political parties in Denmark. It is expected that the Government will introduce a tax on flight tickets of approximately DKK 100 to finance inter alia zero-emissions domestic flights.

• Introduction of CO2-tax on agriculture

According to Denmark's action plan to reduce greenhouse gas emissions by 70 % by 2030, the agriculture and forestry sector must reduce emissions by 55-65%. In pursuance of this climate target, the Danish Government is to introduce a CO2-tax on agriculture. An expert group has been appointed to make recommendations on the CO2-tax set-up.

We are currently monitoring both areas.

VAT rate on energy products and food stuff:

The increase in the costs of certain goods due to the economic disruption following from Russia's invasion of Ukraine, has sparked discussions of whether a differentiated VAT rate should be introduced and applied to inter alia energy products and food stuff.

The Danish Minister of Taxation has in this regard responded to questions set forward by the Tax Committee regarding the impact of adopting a differentiated VAT rate. According to the responses provided by the Danish Minister of Taxation, it is highly unlikely that a differentiated VAT rate on energy products and food stuff will be adopted in Denmark.

Highlights from Sweden

An emergency intervention to address high energy prices was agreed in a Council regulation (2022/1854) on October 6, 2022:
In order to implement the regulation, the Swedish Ministry of Finance has proposed to enact temporary legislation.

The first proposed legislation relates to an additional and targeted tax on excessive profit for certain energy producers. The tax will be structured as an addition to the regular corporate income tax for companies that to an extent of 75 per cent or more carry out business within extraction of crude petroleum, natural gas or coal, petroleum refining or manufacturing of coal products. To the extent that the taxable surplus of these companies in the year 2023 exceeds the average taxable profit in the years 2018–2021 by more than 20 per cent, in addition to the ordinary corporate tax of 20.6 per cent, a temporary tax on extraordinary profits of 33 per cent shall be paid.

The temporary legislation for certain energy producers is to be enacted as of 1 January 2023.

On 12 December, in addition to the above proposal, the Swedish Ministry of Finance presented a second legislation to be implemented. According to the second draft legislation an income limitation that is designed as a tax levy for excess revenues from electricity is introduced. The law is meant to complete EU Regulation. The additional tax applies to everyone who supplies electricity to a heavy current line (power line). Unlike the earlier legislation suggestion this one targets all electricity suppliers and not only those mentioned above regarding non renewables. Taxation is suggested to be 90 per cent of a calculated tax base. As a summary the following will apply:

• The tax is levied on the part of the electricity producers' realized income that exceeds SEK 1,957 per megawatt-hour of electricity produced. The size of the tax is proposed to be 90 percent.
• The law is proposed to enter into force on 1 March 2023 and should be applied to certain electricity produced from March to June 2023. The law is temporary and will not be applied retroactively.
• Electricity from power production facilities under 1 MW is exempt from the temporary legislation.

It should be noted that the two suggested laws will apply parallel with each other.

Temporary tax exemption for the benefit of charged electricity at the workplace:
Provided that the charging takes place at a charging point or an electrical outlet provided by the employer in connection with the workplace, the Swedish government has found that charging of class I passenger cars, light trucks, motorcycles, mopeds and bicycles shall be possible without the employee being subject to benefit taxation for the electricity consumption.

The temporary regulations enter into force on 1 July 2023 and apply to benefits provided after the entry into force. The provisions are proposed to expire at the end of June 2026.

The tax reduction for computer halls is to be abolished:
In 2017, a tax reduction was introduced in the energy tax on electricity consumption in computer halls. For

computer halls covered by the reduction, the tax today is 0.6 ore/kWh compared to the regular tax rate, which is currently 39.0 ore/kWh.

The tax reduction for computer halls will be abolished as of July 1, 2023. The possibility of a tax refund on electric power consumed for the production of heat or cooling delivered for consumption in a computer hall will also be abolished. The change has the purpose of giving the computer halls additional incentives for energy efficiency in light of the situation on the electricity market today. The decision entails that the tax cost for the companies concerned increases as they will be taxed at the general rate of 39.0 ore/kWh, while the tax level for the computer hall companies operating in certain municipalities in northern Sweden amounts to 29.4 ore/kWh.

Enhanced tax reduction for the installation of solar cells:
The tax reduction for the installation of solar cells is increased from 15 per cent to 20 per cent.

Private individuals can receive a tax reduction for installing certain green technology, the so-called green deduction. Among other things, a tax reduction is given for part of the labor and material costs for installing solar cells. This support contributes to more households choosing to install solar cells, which in turn can lead to increased production of renewable electricity and reduced dependence on fossil-based electricity production.

The demand for solar cells has been deemed to need further stimulation. Therefore, the reduction rate for the installation of solar cells has been increased from 15 to 20 per cent.

Highlights from Finland

The Finnish Government has published its proposal for windfall tax on Power Companies:
The proposal follows on from EU`s Council Regulation 2022/1854 on revenue cap and solidarity contribution as an emergency intervention to address high energy prices, as well as the government's policy in the autumn 2022 budget negotiations.

The proposed tax for electricity companies would take 30 percent of the firms' net profits exceeding a 10% return on capital in 2023. The tax would apply to companies in the electricity sector within electricity generation, wholesale and partly retail sales in Finland.

A new temporary tax on fossil fuel companies would be 33%. The tax would apply to companies with more than 75% of their turnover from the production of crude oil, natural gas, refined petroleum products, crude oil or manufacture of coal products. The tax would be levied on a company's business income that exceeds 120% of its average business income for the 2018–2021 tax years.

The proposed taxes would be collected in addition to the usual corporate income tax (20%), and they would not be deductible for corporate income tax purposes. The temporary laws are anticipated to enter into force at the beginning of 2023. The laws would apply for tax year 2023 and the taxes would become payable in 2024.

The Government has estimated that, under certain assumptions, it would cumulatively collect EUR 0.5–1.3 billion of the temporary tax from the electricity sector during 2023. Tax revenues from the fossil fuel sector are estimated to be low.

Changes to the taxation of biogas and electric fuels:
In order to improve the predictability of the operating environment and legal certainty, the tax subsidy for sustainable heating biogas used in heating and work machines will be reduced.

Instead of being completely tax exempt, a low excise tax is levied on it, which is in line with the Energy Tax Directive's minimum tax level of 1.20 euros per megawatt hour. The tax subsidy will decrease from the current 10.33 euros to 9.13 euros per megawatt hour. The majority of sustainable heating biogas is also exempt from carbon dioxide tax. Small-scale production of sustainable biogas for heating remains tax exempt. Hydrogen will continue to be exempt from taxation.

The changes are not estimated to have significant fiscal effects. The laws will mainly enter into force on 1 January 2023.

Tax credit for electricity:
The amount paid for the electrical energy consumed in the place of electricity use of the taxable person's permanent residence on or after 1 January 2023 but before 1 May 2023 entitles to credit for household expenses for the tax year 2023 to the extent that it exceeds EUR 2,000 but does not exceed EUR 6,000.

The deduction is 60% of the above amount. If the taxpayer has more than one permanent residence at the same time, the deduction is only granted based on one place of use.

The tax credit for household expenses on the basis of the amount paid for electricity shall not be taken into account when calculating the maximum amount of the other tax credit for household expenses as referred in the Income Tax Act.

The tax credit for household expenses on the basis of electricity bills is estimated to reduce tax revenues by a total of approximately EUR 265 million.

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