Nordic Tax Law Bulletin - November


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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 additional changes to the exit tax regime:** On 7 October, the Norwegian government proposed additional changes to the Norwegian exit tax regime for Norwegian tax resident individuals who move abroad with unrealized gains on shares and other ownership interests.

  The main proposed change is that in the case dividend distributions on the shares after emigration, a proportional part of the exit tax will be due, amounting to 70% of the dividend amount ("Exit Dividend Tax"). In addition, Norwegian withholding tax on dividends is generally applicable on dividends from Norwegian tax resident companies.

  The dividends would generally also be subject to taxation in the person's new country of residence. Consequently, the Exit Dividend Tax may result in the taxpayer's net distribution after all dues taxes are deducted and paid is zero or negative.

  In the previous proposal of 20 March 2024, the exit tax would only apply if the unrealized gains exceeded NOK 500,000. Due to strong criticism that the exit tax would be a heavy burden for e.g. founders of start-up companies, the Norwegian government has proposed to introduce a tax-free allowance of NOK 3,000,000, which implies that only unrealized gains in excess of NOK 3,000,000 will be subject to the exit tax. However, if the shares are transferred to a person or company abroad, the threshold amount is NOK 100,000.

  In addition, contrary to the proposal of 20 March 2024, the government has decided that the exit tax will not be payable on the death of the taxpayer while tax resident abroad, provided that the personal heirs assume the exit tax obligations of the deceased.

  The changes are proposed to take effect from 20 March 2024 (retroactive), with some exceptions, for example the Exit Dividend Tax, which will take effect from 7 October 2024.

Highlights from Sweden

- **Swedish Tax Board Ruling on External Owner Rule.**

  In July 2024, the Swedish Tax Board issued a ruling on the application of the external owner rule under the 3:12 tax regime (covering closely held companies). The ruling, based on a 2021 court decision, clarified that the whole shareholder structure is taken into consideration when determining whether the external owner rule applies.

  The ruling underscores that it is the overall effect of the structure, not just its individual components, that determines whether special reasons exist, emphasizing the importance of careful design in such tax structures.

- **Commission approves Swedish Tax exemption schemes for non-food biogas and bio-propane.**

  The European Commission has confirmed that two Swedish tax exemption schemes for biogas and bio-propane used for heating and motor fuel comply with EU State aid rules. Initially approved in June 2020, the schemes were annulled by the General Court in December 2022 due to procedural issues, prompting the Commission to reopen its investigation in January 2024. The Commission assessed whether the combined aid from Sweden and Denmark could lead to overcompensation for biogas producers.

  The Swedish schemes, extended until 2030, offer tax exemptions for biogas and bio-propane used in heating and motor fuel, with a combined budget of €1.027 billion. After further investigation, the Commission reaffirmed that the schemes are compatible with EU State aid regulations, including the 2014 and 2022 guidelines on environmental and climate aid. The Commission concluded that the schemes address market failures, encourage sustainable energy use, and provide proportionate aid limited to the cost difference between biogas and fossil fuels.

  The Commission found no evidence of overcompensation from the combined support of Sweden and Denmark, noting that both countries have mechanisms in place to monitor and prevent such risks.

  Carried interest taxation review:

- On 6 August 2024, the Swedish Government tasked the Ministry of Finance and a designated investigator with reviewing the taxation of carried interest. The goal is to improve transparency and predictability for professionals in the venture capital and private equity sectors. Sweden recognizes the importance of maintaining favorable conditions for equity supply and active ownership to support its economic growth.

  The matter of carried interest taxation has been a contentious issue in Sweden for over 15 years, with disputes between the Swedish Tax Agency, fund managers, and investment professionals. Despite numerous court rulings, uncertainty remains. In many cases, the courts have applied the 3:12 rules (covering closely held companies), treating carried interest like dividends from qualified shares in closely held companies. However, in other cases, it has been treated as income from employment, leading to inconsistent outcomes.

The ongoing uncertainty stems from the lack of specific rules governing carried interest taxation in Sweden. The investigator's task is to propose clearer rules that align carried interest taxation with that of qualified shares in closely held companies, ensuring greater predictability while addressing potential circumvention risks. The review is expected to be presented no later than on 20 January 2025.

Highlights from Finland

- **Preparation of a tax credit for large industrial investments that promote the clean transition continues:** The draft Government Proposal on the tax credit has been under comments and the comment period has ended on 11 October 2024.

  The aim of the tax credit is to encourage large industrial investments in electricity and at the same time to support the development of clean transition industries in Finland. The support can be targeted at investments that accelerate the green transition and reduce dependence on fossil fuels. However, the policy of the Economic Policy Committee would exclude renewable electricity production from support.

  The tax credit would apply to investments of at least EUR 50 million, up to a maximum of 20% of the investment cost, and would be limited to EUR 150 million per group. The company making the investment would receive the tax credit in the form of a deduction from its corporate income tax.

  The tax credit would only be granted to new projects, i.e. those where work starts after an application for the credit has been filed. According to the Temporary State Aid Framework, the tax credit must be applied and granted until the end of 2025.

  For the tax credit to enter into force, the European Commission must approve the tax credit as a compatible state subsidy. The Act is expected to enter into force as soon as possible after its adoption and approval by the European Commission.

- **The potential amendments made to the taxpayer's income tax and real estate tax after the standard tax assessment period became public on 24 September 2024.**

  In the past, only income tax and real estate tax information from the standard tax assessment period was published, i.e. the tax information was published as it was on the closing date of the standard tax assessment period. If there have been subsequent amendments to the income tax or real estate tax, e.g. due to an appeal or correction by the taxpayer or the authority, the amendments have not been published until now.

  Public income tax information includes e.g. the amount of taxable income and the amount of tax paid and the amount of any residual tax or tax refund. Public real estate tax information includes e.g. the amount of real estate tax. Income tax information for 2023 and real estate tax information for 2024 were published on 7 November 2024.

  As a result of the change in legislation, potential amendments in income tax and real estate tax will now also be published as public information. The new legislation will apply to amended tax information from the tax year 2022. The first amended tax information was published in September 2024 and will be published once a month in the future. Public information on amended tax information includes amendments made to the tax, e.g. following a request for adjustment or an appeal. Information on amended tax information will be published in the month following the decision.

  Public tax information can be reviewed at the offices of the Tax Administration or requested by telephone from the Tax Administration. For corporate income tax, the Tax Administration also publishes the public information as open data.

Highlights from Denmark

- **Denmark to implement tax incentives related to the Government's 'Entrepreneur Incentive Strategy' (in Danish *Iværksætterpakken*)**

  In June 2024, the Danish Government, supported by a number of political parties in opposition, presented their so-called 'Entrepreneur Incentive Package'. The objective is that Denmark becomes a world-class entrepreneurial country, and the initiatives shall provide an easier access to capital for start-up companies, as well companies already in operation.

  The strategy contains a number of tax-related incentives and changes, and on 2 October 2024, the first tax-relevant draft bills (L 25 and L 28) were presented to the Parliament. Please find a summary below of the most significant proposals for Danish and foreign companies.

  No withholding tax on dividend payments from tax-free portfolio shares

  Under the current rules, capital gains and losses from the disposal of unlisted Danish shares, where the shareholder owns less than 10% of the shares (tax free portfolio shares), are excluded from taxable income. However, dividend payments from tax free portfolio shares are currently subject to an effective withholding tax of 15%.

  The proposal abolishes Danish withholding tax on dividend payments from tax-free portfolio shares, which aims to increase the attractiveness of these investments for Danish and foreign investors, and thus enhancing entrepreneurs' access to capital.

  The proposal will also have spillover effect on a number of existing rules as well. Firstly, management reinvestments in an M&A context will no longer be subject to Danish withholding tax on the cash consideration, which is not reinvested in the structure.

  Secondly, liquidation proceeds from tax free portfolio shares will no longer be subject to Danish withholding tax, if the liquidation proceeds are treated as dividend.

  Thirdly, sales of tax-free portfolio shares to the issuing company will no longer be subject to Danish withholding tax.

  Taxation upon realization for recently listed shares

  Under the current rules, listed Danish shares are taxed annually according to a mark-to-market principle. This entails that recently listed shares will be taxed under this principle after being listed.

  The proposal introduces an elective realization taxation for 7 years after the listing date for corporate investors holding less than 10% of the shares in the listed company. After the expiration of the 7-year period, the shares will be taxed according to the mark-to-market principle, and unrealized gains will be taxed at 22% accordingly.

Utilization of tax-losses carried forward is increased

Under Danish law, tax losses carried forward may be utilized indefinitely. However, Danish law currently contains a maximum 100% utilization of tax losses carried forward of DKK 9.5m on group level (2024). The remaining losses carried forward may only reduce the residual income by up to 60%.

The proposal increases the annual maximum to DKK 20m for income years starting as of 1 January 2025.

Reimbursement of tax losses related to R&D costs is increased

Danish companies can receive an advance payment of the tax value of qualifying R&D costs, effectively providing them with additional liquidity to support their operations and growth.

Under the current rules, the can receive payment equal to the tax value of these losses with a maximum of DKK 25m. The proposal increases the ceiling to DKK 35m, entailing an advance payment of DKK 7.7m.

R&D deduction is increased to 120%

Danish tax law provides companies with an increased tax deduction for qualifying R&D costs. In 2023-2025, the tax deduction is 108% and in 2026, the deduction will be 110%.

The proposal increases the deduction to 120% as of 2028, which will be implemented in steps as follows:

- 2026: 114%
- 2027: 116%
- 2028: 120%

The current rules contain a ceiling of costs of DKK 793m (group level), which will be increased to approx. DKK 1.04b in 2025 (group level).

Lower salary ceiling in tax scheme for highly paid employees

Under Danish law, foreign employees hired by Danish companies may – subject to a number of conditions – be subject to a reduced personal income taxation of approx. 32%.

Under the current rules, the salary requirement is an average monthly salary of DKK 78k in 2025. The proposal lowers the salary requirement to DKK 61,100 per month as of 2026, which entails that more key employees may comprised by the favourable tax regime.

This will – in the words of the proposal – increase the competitiveness of Danish companies and increase the growth possibilities of Danish economy.

Furthermore, the Danish Ministry of Taxation has presented a draft bill (L 32) with a revised version of the Øresund Agreement between Denmark and Sweden. The objective of the draft bill is to reduce administrative burdens on cross-border commuters between the two countries, and their employers by simplifying the existing tax rules.

In addition to the above, the Danish Ministry of Taxation is expected to present a draft bill suggesting reducing the estate and gift tax on transfers of family-owned businesses from 15% to 10%. Furthermore, a standardised valuation scheme for businesses is planned to be introduced to standardize the calculation of this tax base. The upcoming proposal should also expand the possibility of transferring real estate businesses with succession (tax deferral).

- **VAT leakage on advisory services in share transactions**

BidCo's are considered non-taxable persons for VAT purposes. Therefore, they are limited in their recovery of purchase VAT. According to a recent ruling, Danish companies are not necessarily established in Denmark for VAT purposes, and therefore not liable to pay reverse charge VAT.

Therefore, the VAT cost on transaction services may be reduced when the services are provided by a third-country supplier.

A foreign company's supply of advisory services to a Danish BidCo was not considered to have its place of supply in Denmark.

The Danish Tax Council ("**DTC**") found that BidCo was not a taxable person for VAT purposes, as its sole purpose was to hold shares. Additionally, BidCo was not established in Denmark for VAT purposes, as it had no employees, and its management was based in a third country where all decisions were made.

The DTC then considered whether the place of supply should be determined by the main rule for supplies to non-taxable persons, which identifies the supplier's place of establishment as the place of supply, or by the provision in the Danish VAT Act implementing Article 59a(b) of the VAT Directive, according to which the place of supply for advisory services can be deemed to be in Denmark if the services are effectively used and enjoyed in Denmark.

In this case, the Danish provision on use and enjoyment only applies if the supplier is established in Denmark. Therefore, the supply to BidCo was determined by the main rule. Since the supplier was not considered established in Denmark, the place of supply was not deemed to be in Denmark.

Consequently, the BidCo was not liable for VAT on the purchase of services.

Services	Tax