Nordic Tax Law Bulletin - July 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

Proposal to implement the Income Inclusion Rule (Pillar 2: Global Minimum Taxation under the Inclusive Framework on BEPS) in Norway: On 6 June 2023 the Norwegian Government issued for public consultation a proposal to implement the Income Inclusion Rule under Pillar 2.

Pillar 2 is a result of cooperation between the OECD-countries under the co-operative body Inclusive Framework for the purpose of ensuring that multinational enterprises with an annual revenue of more than EURm 750 pays a minimum tax of 15 % (effective) on the local income arising in each jurisdiction where they operate.

For the rules under Pillar 2 to work it is an important prerequisite that similar rules are implemented in the different states. The Government`s proposal is therefore based on the model framework with comments and guidelines drafted by the Inclusive Framework.

Pillar 2 consists of two sets out rules, (i) the Income Inclusion Rule and (ii) the Undertax Profit Rule.

In short, the Income Inclusion Rule entails that the (ultimate) parent company is imposed a Top-Up Tax on the difference between an effective tax rate of 15 percent and actual tax levied on its subsidiaries. If the ultimate parent company is not comprised by the Income Inclusion Rule, the tax liability is transferred to the intermediate parent company (if qualified).

The implementation of the Income Inclusion Rule will give Norway a right to impose a Top-Up Tax on (ultimate) parent companies' resident in Norway for undertaxed group entities. Furthermore, Norwegian intermediate parent companies may be imposed Top-Up Tax if the foreign ultimate parent company is not comprised of the Income Inclusion Rule in its home state, provided that the Norwegian entity is not owned by another intermediate parent company levied Top-Up Tax in its home state.

The Undertax Profit Rule is to ensure Global Minimum Taxation if neither the ultimate nor intermediate parent companies are comprised of the Income Inclusion Rule. In this case, the right to levy Top-Up Tax is distributed to the other states where the group operates and rules on Global Minimum Taxation is implemented. The Undertax Profit Rule is not proposed implemented by the Norwegian Government this round.

Entry into force: Proposed 1 January 2024

Highlights from Denmark

Denmark tries to revoke a double tax treaty with Russia: In 2017 EU adopted the first list of non-cooperative jurisdictions for tax purposes. The list is composed of countries which have refused to comply with good tax governance or have failed to do so within a specific timeframe. To be considered on the list, the country must fail to be considered cooperative for tax purposes. The listing criteria relates to tax transparency, fair taxation and measures against base erosion and profit shifting.

On 14 February 2023 British Virgin Islands, Costa Rica, Marshall Islands and Russia were added to the list. Countries added to the list will be met with EU-coordinated tax sanctions to increase the pressure on the countries to adapt their national tax regulation, to comply with the listing criteria.

The Danish Parliament is currently processing a bill updating the list of countries governed by the Danish tax sanctions. However, due to a Danish double tax treaty with Russia, Russia is currently not affected by the sanctions.

Consequently, on 3 May 2023 the Danish Minister of Taxation introduced a bill to revoke the double tax treaty with Russia. This would imply that Russia would be affected by the Danish tax sanctions towards countries on the EU list of non-cooperative jurisdictions going forward.

Naturally, these measures could have a significant impact for Danish companies still operating in Russia.

Highlights from Sweden

A special investigator will submit a proposal for tax incentives for donations from legal entities to non-profit organisations: In order to create an incentive for companies to contribute more to international aid activities, the Swedish Government has declared that an investigation will be commissioned regarding the introduction of tax relief for donations made by legal entities.

The Swedish Government explains the need for an investigation with the statement that a strong and thriving non-profit sector has a major impact on society and that the non-profit sector carries out important activities in areas such as culture, sport and social welfare.

Natural persons currently have the opportunity to receive a tax reduction for donations given to certain non-profit recipients pre-approved by the Swedish Tax Agency. There is no comparable opportunity for legal entities.

The investigator shall, inter alia, present proposals on how such tax incentive should be designed and submit the necessary legislative proposals. Such a tax incentive should according to the Swedish Government, to the extent it is appropriate, be based on the existing system of authorised recipients which applies to natural persons. Furthermore, it is of importance that the chosen solution is designed as a general set off rules for legal entities, not discarding for instance closely held companies.

The Supreme Administrative Court has ruled that a gift from a limited liability company to a charitable organisation would result in the company's owner being taxed on dividends: A sole shareholder in a company intended to donate money to various charitable organisations. He had previously transferred his right to dividends to the organisations, but now considered letting the general meeting decide on gifts in accordance with Chapter 17, Section 5 of the Swedish Companies Act.

The paragraph contains a provision setting out the conditions required for deciding on a gift for a public benefit or a similar purpose. The main issue in the case was whether a gift from a limited company would result in the company's owner being taxed on dividends.

The Supreme Administrative Court found that the planned transfers of assets to the charitable organisations could not be considered commercially motivated. According to Swedish case law, such a transfer of assets is considered to entail such a disposal of the transferred value that it must be treated as a dividend to the shareholders of the transferring company.

The shareholder would thus be taxed on dividends for the gifts according to the provisions on closely held companies.

In our view the ruling is in line with previous case law and it is still of importance to make a distinction as to when a shareholder has assigned its right to dividends, and thus is not taxed on such dividend, and a direct donation from the company.

A new Swedish Value Added Tax Act set to enter into force on 1 July 2023: The proposed new Value Added Tax Act (the "new VAT Act") is a revision of the current Swedish Value Added Tax Act (the "VAT Act"). The new VAT Act consists of amendments with the purpose of making the legislation more comprehensible, modern and adapted to the European Union's VAT Directive.

The changes are substantially of structural and systematic nature, with the Swedish regulation now set to follow the structures and systematics of the European Union's VAT Directive. Worth mentioning are changes of substantial nature in attempt to align with the VAT Directive. For instance, the regulated exemption on VAT on services provided by independent groups has become adapted to the VAT Directive.

The structure in the new VAT Act will mainly follow the one established in the European Union's VAT Directive. The new VAT Act will have 24 chapters and the chapter division will mainly follow the departmental one in the European Union's VAT Directive. The language has also been modernised, whereas concepts and terms previously found in the VAT Act now has been abolished and replaced in an attempt to align with the terminology used in the European Union's VAT Directive. The cross-referencing previously present in the VAT Act has been minimised with referencing in the provisions becoming more clear. Lastly, the more extensive provisions in the VAT Act have been divided, along with the addition of subheadings relating to the provisions.

In addition to the structural and systematic changes, the modernised language, and elimination and replacement of certain terminology in the proposed new VAT Act, other Acts concerning VAT have also been amended with provisions and propositions of change.

Entry into force: 1 July 2023

Highlights from Finland

The new Finnish government introduces its tax programme for the upcoming four-year parliamentary term on 16 June 2023: Government taxation policy will seek to boost the purchasing power of households, improve incentives for working, and strengthen conditions for economic growth. Taxation policy will encourage work and self-employment, and support domestic ownership. The Government will avoid discretionary measures that increase the overall tax rate.

Taxation of companies and entrepreneurs: The Government will maintain a competitive rate of corporate income tax and react as necessary to amendments of taxation in benchmark countries. No major changes are anticipated e.g. regarding the dividend taxation or the corporate income tax regime.

VAT: The reduced VAT rate 10% (e.g. pharmaceutical products, physical exercise services, entrance fees to cultural and entertainment events and passenger transport) will be raised to 14% VAT rate except for newspapers and periodicals. The VAT rate applicable to incontinence and sanitary pads and children's nappies will be reduces from normal 24% rate to reduced 14% rate.

Excise duties: Excises on tobacco products, wines, spirits and soft drinks will be raised. Nicotine pouches will be made subject to tobacco tax. Purchaser's tax liability will be extended for online sales of alcohol. Taxation of beer will be reduced.

Taxation of fuels: The CO2 component of fuel taxation will be reduced.

Vehicle tax: The basic vehicle tax will be reduced.

Taxation of earned income: The purchasing power of households will be reinforced by reducing taxation of work and mobility. The reduction in taxation of earned income to improve incentives for accepting work will be focused on the low- and middle-income bracket.

Foreign workers: Government taxation policy will eliminate obstacles to sending foreign workers to Finland. The Government will improve tax incentives for attracting internationally mobile specialists by prolonging the employment period from four years to seven years, during which their salary will be taxed at source with a fixed 32% tax rate.

Taxation of capital income: There will be no increase in taxes on capital income or in taxation of small investors for any type of assets. Domestic ownership will be supported by increasing the deposit cap on equity savings accounts from current EUR 50,000 to EUR 100,000.

Real estate taxation: The Government will implement a reform of real estate taxation rectifying the disparity between real estate tax values and the fair value of properties. This reform will be implemented over a long transition period. The changes in real estate tax will be reasonable for property owners. The minimum real estate tax rate applied to ground areas will be increased to 1.30%.

Mining mineral tax: The mining mineral tax will be reviewed at the mid-term policy review session and another tax category will be introduced.

Inheritance tax: The payment period for inheritance tax will be increased to 10 years.

Tax evasion and the grey economy: The Government will continue working to combat tax evasion and the grey economy. The Government's work to combat tax evasion will nevertheless refrain from promoting projects that impose a disproportionate administrative burden, and that are more far-reaching than is necessary for achieving the objective of countering tax evasion.

In addition, the Government programme includes various potential tax amendments that will be investigated. Some of the topics includes:

- Adjusting tax regulations relating to investment funds to match European Union statutory requirements and investigating a strengthening of the tax base.
- An enlargement of the scope of the Act on the Individual Tax Number and the Tax Number Register to cover the tourism and catering sector (currently only construction sites and shipyards are covered).
- Investigating the introduction of real-time reporting for VAT collection.
- Replacing inheritance tax with a tax on capital gains from inherited property.

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