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NEWSLETTER - POTENTIAL AMENDMENTS TO THE PETROLEUM TAX REGIME

The Government announced on a press conference 31 August 2021 that they would propose amendments to the petroleum tax act. The Ministry of Finance has now issued a public consultation paper where it is proposed that the rules on depreciation and tax-free income in the special tax for petroleum from 2022 should be replaced by immediate expense recognition of investments (cash flow tax – direct tax deduction). The Ministry of Finance emphasizes that the proposed amendment is similar to amendment that entered into force for hydroelectric power with effect for investments made from 2021.

The deadline for remarks is set to 3 December 2021. The intention is that the legislative amendments shall be presented to parliament during its spring session in 2022. The amendments, if adopted by the parliament, shall then enter into force with effect for investments made from and including 2022. Please note that, given the current political landscape, there are a lot of uncertainties as whether amendments to the petroleum tax regime will be made and the nature of such amendments.

September 6th 2021

LEGISLATIVE PROPOSALS OVERVIEW

Immediate tax deduction for investments

The proposal entails immediate tax deduction in the special tax base of costs incurred for the acquisition of production facilities and pipelines, which are currently subject to linear depreciation over 6 years in accordance with the Petroleum Tax Act § 3b. The proposed amendment covers new investments made from 1 January 2022 onwards only, except investments made under the temporary rules in the Petroleum Tax Act § 11. The temporary rules will be phased out gradually in line with the decision from the parliament when enacting said § 11.

The proposal on immediate tax deduction for investments made from 1 January 2022 onwards covers deductions in the special tax base only. The Ministry of Finance has not proposed any amendments with regard to tax depreciation in the corporation tax base (ordinary income).

Repeal of the uplift scheme

Uplift shall compensate the companies for the fact that investments made under the current regime are tax deducted over several years. The rationale for uplift lapses if the proposed immediate tax deduction is implemented. Hence, the Ministry of Finance proposes in the consultation paper to repeal the uplift.

Annual pay-out from the state of annual tax loss for companies not in tax position

A key part of the proposal from the Ministry of Finance is to pay out to companies not in tax position the tax value of special tax (currently 56% and proposed 71.8%) of the tax loss the year in question, regardless of the type of expenses in the petroleum business the loss arises from. It is suggested that this should take effect from the income year 2022.

According to the Ministry of Finance, this will help strengthen the companies' liquidity. The proposal implies that a pay-out could take place in connection with the tax assessment in the autumn the year after the income year. We point out that this part of the proposal means that most companies will need an intermediate financing, as a pay-out could take place about 8-10 months after the end of the income year it relates to. We further point out that in order for a company to be able to receive an intermediate financing, the ability to pledge the company's claim for future pay-out as security for such loan will probably be necessary. The Ministry of Finance states will consider comments to this during the consultation process.

Tax rates

The proposal further entails that the 22% corporation tax shall be deductible in the basis for calculation of special petroleum tax. Because the basis for calculation for special petroleum tax thereby will be reduced, the Ministry of Finance states that it is necessary to increase the special petroleum tax rate from 56% to 71.8% in order for the marginal tax rate to remain 78% ($22\% + (1 - 0.22) \times 71.8\% = 78\%$).

The Ministry of Finance claims that this a technical adjustment only. As described below, and acknowledged by the Ministry elsewhere in the consultation paper, this technical adjustment may nevertheless have a negative impact for pure exploration companies. We refer to comments below.

Termination of exploration refund scheme and discontinuation refund scheme

Under the current petroleum tax legislation, companies not in tax position may, in their annual income tax returns, claim a refund from the state of the tax value of direct and indirect costs, except financial charges, incurred in exploration for petroleum resources – the exploration refund scheme. Companies have furthermore the opportunity to claim the state for the tax value of losses carried forward upon discontinuation of petroleum activities on the Norwegian Continental Shelf – the discontinuation refund scheme.

In the consultation paper the Ministry of Finance proposes to terminate both the exploration refund scheme and the discontinuation refund scheme. This is partly because the basis for taxation should be as similar as possible for companies liable to petroleum tax and other companies carrying out business activities, and partly because the proposed immediate tax deduction implies an annual pay-out anyway so that the exploration refund scheme covering exploration costs only will become unnecessary.

According to the Ministry of Finance the proposed amendments may initially imply a reduced liquidity for pure exploration companies, because the tax value of the pay-out from the state will be

reduced from currently 78% to 71.8% (cf. above). The difference, 6.2%, cannot be utilized until the basis for corporation tax (alminnelig inntekt) becomes positive in a later income year.

INTERIM RULES AND ECONOMIC EFFECTS FOR THE STATE

The Ministry of Finance currently considers interim rules and regulations for unrealized currency gains and losses. It is possible that such interim regulations will entail unrealized gains and losses per 31 December 2021, to be recognized as income or deducted in the fiscal year of 2021.

The tax value of unused loss carry forward and unused uplift is proposed to be paid out to the companies in connection with the tax assessment for income year 2022.

According to the Ministry of Finance, the proposal will reduce the state's revenues the first year, while subsequently increasing it.