

A large, decorative graphic in the top right corner features a complex, interconnected network of blue lines and squares, resembling a molecular or digital structure, set against a light blue background.

# Norway

## Taxation

FUNDS AND FUND MANAGEMENT 2010

### 3.1 Taxation of funds

A collective investment fund (verdipapirfond) is a separate taxable entity and is liable to corporate income tax at the standard rate of 28 percent. For Norwegian tax purposes a collective investment fund is either classified as a share investment fund (aksjefond) or a bond investment fund (obligasjonsfond).

#### Gross income

##### *Resident share collective investment funds (share investment fund)*

Share investment funds are collective investment funds that invest in one or more shares.

Such funds are generally exempt from tax on capital gains on shares and units in share investment fund regardless of where the investment is made, cf. the Norwegian Tax Act § 10-31. Correspondingly losses are not deductible.

Pursuant to the Norwegian exemption method, an exemption also applies to dividends received from companies that are resident within the EEA, provided the distributing company is not regarded as being lowly taxed. Dividends from lowly-taxed companies resident within the EEA, may also be exempt, subject to a substance requirement. In the language of the legislation, this is the case if the company is properly established and performs real economic activity. A company is regarded as being lowly taxed if it is paying less than two-thirds of the tax that it would have paid had the company been resident in Norway.

For investments outside the EEA area, the exemption method only applies to dividends, when the share investment fund has 10 percent or more of the share capital/unit capital and voting rights in the company invested in. Furthermore, the shares/units must be held for a period of two years.

A share investment fund may purchase shares representing 10 percent of the share capital or voting rights of a company but may not purchase shares representing more than 10 percent of the share capital or voting rights, cf. Section 2.4. It is therefore rare that a share investment fund is exempt from tax on dividends on an investment outside the EEA.

The exemption from tax on dividends does not apply to investments in a low-tax jurisdiction outside the EEA area.

Exempt dividends received after 7 October 2008 are subject to a 3-percent claw back, which entails that such dividends are only 97-percent tax exempt.

All other income including interest and capital gain on bonds are taxable as ordinary income. Correspondingly, losses are deductible.

### Resident bond investment fund

For bond investment funds (that is, collective investment funds that exclusively invest in bonds and other securities and hold no investments in shares) capital gains on bonds and units in other bond investment fund are taxable. Correspondingly losses are deductible. This applies regardless of where the investment is done. Interest on bonds and dividends from a bond investment fund is also taxable.

There are no registration duties that are particular to collective investment fund and collective investment funds are not liable to capital duties. In addition there are no Norwegian transfer duties regarding overseas securities.

### Deductions

Bond investment funds may deduct dividends distributed to the unitholders, provided the dividend does not exceed the otherwise taxable income of the fund.

Share investment funds are not entitled to deduct distributed dividends.

All administration costs and interest paid (if any) are deductible. Share investment funds that are exempt from capital gains tax on shares are not entitled to deduct share transaction costs (such as brokerage commission, etc.) in relation to exempt investments.

Foreign withholding tax on interest received by a collective investment fund is deductible. The fund may, subject to special provisions, alternatively credit foreign withholding taxes against the corporate tax charge. Withholding taxes may be reduced or eliminated under the terms of a double taxation agreement.

Foreign withholding tax on dividends is deductible only if the dividend is taxable. The share investment fund may then, subject to special provisions, credit foreign withholding taxes against the corporate tax charge.

Credit may also be given for underlying tax on dividends if the recipient owns at least 10 percent of the capital and voting rights in the distributing company.

As mentioned above, a share investment fund may purchase shares representing 10 percent of the share capital or voting rights of a company, but may not purchase shares representing more than 10 percent of the share capital or voting rights, cf. Section 2.4.

#### Net wealth tax

Collective investment funds are not subject to net wealth tax.

### 3.2 Taxation of resident unitholders/investors in resident funds

A unitholder is only liable to tax on fund income which is distributed and not on accumulated fund income. In addition, a unitholder is liable to tax on gains realized on the disposal or redemption of the unit.

#### Distributions

##### *Corporate unitholder*

Distributions from a share investment fund distributed to a corporate shareholder are not taxable, except from a claw back of 3 percent from 7 October 2008. Distributions from a bond investment fund to a corporate unitholder are fully taxable income. The tax rate on such income is 28 percent.

##### *Individual unitholder*

An individual unitholder is taxable for distributions from a share investment fund at the rate of 28 percent, on any amount which exceeds the shielding deduction (skjermingsfradraget). The shielding deduction is calculated for each share and equals the individual's cost price of the share multiplied with a risk free interest rate. The interest rate is decided by the Ministry of Finance each year, and corresponds to the interest rate for a three-month exchequer bill after tax. Unused shielding deductions may be carried forward and is added to the cost price for tax purposes.

Distributions from a bond investment fund to individual unitholders are taxable income. The tax rate on such income is 28 percent. There is no shielding deduction available.

### Disposal or redemption of units in share investment fund and bond investment funds

#### *Corporate unitholders*

Capital gain on disposal or redemption of a unit in a share investment fund is not taxable for a corporate unitholder, except for a claw back of 3 percent from 7 October 2008.

Capital gain on disposal or redemption of a unit in a bond investment fund is taxable for a corporate unitholder. The tax rate on such income is 28 percent.

#### *Individual unitholders*

Capital gains on disposal or redemption of a unit in a share investment fund is taxable at the rate of 28 percent, on any amount which exceeds the shielding deduction.

The shielding deduction is calculated for each share and equals the individual's cost price of the share multiplied with a risk free interest rate. The interest rate is decided by the Ministry of Finance each year, and corresponds to the interest rate of a three-month exchequer bill after tax. Unused shielding deductions may be carried forward and are added to the cost price for tax purposes.

Capital gains on the disposal or redemption of a unit in a bond investment fund is taxable at a rate of 28 percent. No shielding deduction is available.

### Net wealth tax

Resident individual unitholders are subject to a national and municipal net wealth tax on assets held on 31 December in the fiscal year. The tax base will be equal to the market value.

There is a standard deduction of NOK 120,000 on both taxes. The rate of the municipal net wealth tax is 0.7 percent (2009). The rates of the national net wealth tax are progressive:

NOK 120,000 to NOK 420,000: 0.2 percent. Over NOK 420,000: 0.4 percent.

### Inheritance tax

Inheritance of units in Norwegian collective investment funds is subject to inheritance tax provided the deceased was resident in Norway or a Norwegian national. The same applies for gifts of units from a specified circle of persons. The tax base cost for the recipient is equal to the cost price of the deceased plus any shielding deduction carried forward, although it is limited to the tax base for inheritance tax.

### 3.3 Taxation of resident unitholders/investors in a non-resident fund

The unitholder is not liable for taxation unless he/she receives a distribution, disposes of or redeems a unit.

#### Distributions

##### *Corporate unitholders*

Distributions to a corporate unitholder from a fund which is comparable to a Norwegian share investment fund and which is resident within the EEA-area, is not taxable income, except for a claw back of 3 percent. Currently, it is unclear when a foreign fund is regarded as being sufficiently comparable to a Norwegian fund. However, it seems that the tax administration is accepting SICAV and other corporate type of funds, based on the decision of the European Court of Justice in the Aberdeen properties case.

The exemption applies only to investments within the EEA, provided the fund is not regarded as being lowly taxed. In that case, the exemption is applicable subject to a substance requirement only. According to a statement of practice from the Ministry of Finance, this should be regarded as being fulfilled for all foreign funds organised in a way similar to that which is applicable for Norwegian funds. Generally, therefore, the low-tax limitation does not apply for investments in funds established within the EEA. For investment outside this area, the exemption is only applicable if the unitholder has 10 percent or more of the unit capital and voting rights in the fund. Furthermore, the units must be held for a period of two years.

In addition the exemption is not applicable to investments in a lowly-taxed fund outside the EEA. An entity is regarded as being lowly taxed if it is paying less than two-thirds of the tax that it would have paid had the company been resident in Norway.

Distributions from a fund which is not regarded as a share investment fund to a corporate unitholder is treated as taxable income. The tax rate on such income is 28 percent.

If a taxable distribution from any foreign fund is subject to withholding tax, a tax credit is given for foreign withholding tax limited to the Norwegian tax charge on the distribution.

Credit may also be granted for underlying tax on distributions from a share investment fund if the recipient holds at least 10 percent of the capital and voting rights in the distributing fund.

### *Individual unitholders*

Distributions from non-resident share investment funds to individual unitholders are taxable income at the rate of 28 percent, on any amount which exceeds the shielding deduction, cf. 3.2. Currently, it is unclear when a foreign fund is regarded as being sufficiently comparable to a Norwegian fund. However, it seems that the tax administration is accepting SICAV and other corporate type of funds, based on the decision of the European Court of Justice in the Aberdeen properties case.

Distributions from other foreign investment funds to individual unitholders, are taxable income at the rate of 28 per cent. No shielding deduction is available.

If a taxable distribution from any foreign fund is subject to withholding tax, a tax credit is given for foreign withholding tax limited to the Norwegian tax charge on the distribution.

### **Disposal or redemption of units in non-resident funds**

#### *Corporate unitholders*

Capital gain on the disposal or redemption of a unit in investment funds may be exempt under the same rules as those applicable to distributions.

#### *Individual unitholders*

Capital gains on the disposal or redemption of a unit in non-resident share investment funds are taxable at the rate of 28 percent, on any amount which exceeds the shielding deduction, cf. 3.2. The same rules as those applicable to distributions apply to gains on units in all types of funds.

If the dividends are subject to withholding tax, a tax credit is given for foreign withholding tax limited to the Norwegian tax on the distribution.

### **Net wealth tax**

Individuals are subject to net wealth tax as described under Section 2.2. All units in foreign funds are valued at the full market value.

### **Inheritance tax**

Inheritance of units in foreign funds is subject to inheritance tax provided the deceased was resident in Norway or a Norwegian national. The same applies for gifts of units from a specified circle of persons.

### 3.4 Taxation of non-resident unitholders/investors in a resident fund

Foreign unitholders are not taxed on undistributed income.

#### Distributions

Subject to a substance requirement, distributions from a resident share investment fund to corporate unitholders resident in the EEA are not subject to Norwegian withholding tax.

Distributions to other unitholders are liable to Norwegian withholding tax at the rate of 25 percent, unless a lower rate applies under a tax treaty. For a number of foreign funds, it is not certain that treaty protection is available.

Distributions from a bond investment fund are exempt from withholding tax.

#### Disposal or redemption of units in resident funds

Non-resident corporate unitholders are not liable to capital gains tax in Norway on disposal of units. This also applies for individual unitholders provided that they have been non-resident for more than five years.

Taxpayers emigrating from Norway are subject to an exit charge on unrealized gains, which may be deferred under certain circumstances.

#### Net wealth tax and inheritance tax

Non-resident individual unitholders are normally not subject to Norwegian net wealth tax. However, gift or inheritance tax is chargeable if the deceased or donor is a Norwegian national or a Norwegian resident.

### 3.5 Taxation of fund management/custodian companies

Management companies and depositories are liable to taxation at the standard company rate of 28 percent.

As a starting point the services of a management company or a depository are value-added tax (VAT) liable. When depository services are bundled together with other financial services and treated as a new service, it may be possible to avoid VAT liability under the condition that the liable parts/elements are considered to be supportive secondary elements to an exempted main financial service.

### 3.6 Entitlement to income

A unitholder is entitled to income only on the fund making a distribution and not when income arises.

### 3.7 Double tax agreements

A resident collective investment fund is a taxable entity. Resident collective investment funds may therefore claim treaty relief as the beneficial and legal owner of any underlying securities.

Whether or not foreign collective investment undertakings are able to claim treaty relief must be considered on a case-by-case basis.

### 3.8 Transfer taxes, stamp duty, capital duty

Collective investment funds are not subject to transfer tax, stamp duty or capital duty on securities.

### 3.9 Miscellaneous

#### VAT

Financial services, including management of collective investment funds, are exempted from VAT.

Entities engaged only in non-VAT liable activities are not entitled to register in the VAT register and are therefore not entitled to deduct input VAT. For such entities, input VAT represents a final cost.

Rendering of custodian services and account operator services are VAT liable activities.

#### CFC regulations

Norwegian CFC-regulations (NOKUS) may apply if the fund is based in a low-tax jurisdiction, and at least 50 percent of the units or fund capital is owned or controlled by resident unitholders.

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