



MERGERS AND ACQUISITIONS

Norway

Taxation of Cross-Border
Mergers and Acquisitions

2010 Edition

TAX

Norway

Introduction

In Norway, a sale of shares in a Norwegian entity is tax exempt, and therefore it sometimes proves useful to purchase entities by setting up a Norwegian purchasing entity, so that the investor may exit without any major tax costs, and reinvest in another Norwegian entity.

The tax system and tax framework relevant for cross-border mergers and acquisitions (M&A) has been relatively stable, with the exception of the general tax exemption introduced in 2004.

Recent Developments

The most significant recent change is the change in the tax exemption for corporate sales of shares. In 2008 the full tax exemption was changed with the introduction of a 3-percent deemed income principle, bringing the tax on sale of shares from 0 percent to 0.84 percent (3 percent of capital gains is deemed income, and taxed at the standard tax rate of 28 percent).

A change in the tax treatment of carve-outs has also been introduced by a supreme court ruling. If a part of the payment is conditional on the continued employment of any of the sellers, this part of the remuneration might be deemed salary. And if such a payment makes the total payment disproportional with the shareholding, it could be deemed as something other than consideration for shares. It is, therefore, important to define and explain how payments are calculated.

Finally, a recent change of accountancy principles for mergers makes it easier to carry out a post-purchase upstream merger without entering goodwill into the company accounts (which will normally lead to a reduction of distributable equity).

Asset Purchase or Share Purchase

A foreign company which carries out business in Norway through a branch and acquires the assets of a Norwegian company will normally be regarded as having a permanent establishment in Norway. The foreign company will, therefore, be taxable in Norway in accordance with domestic Norwegian tax legislation. Any double taxation may be avoided if Norway has

entered into a double tax treaty with the country where the foreign company is resident.

Alternatively, a foreign purchaser may acquire the underlying business through a Norwegian subsidiary. The Norwegian subsidiary may be established for the purchase, or an existing company may be used.

A number of aspects related to asset acquisitions are discussed below, followed by a discussion of share acquisitions.

Purchase of Assets

Asset purchases will normally be the preferred choice of the purchaser, as it will clear any company history, and create a step-up for depreciation.

Purchase Price

The purchase price must be allocated on the individual assets, and this allocation will determine the tax bases for future depreciations. However, this is normally not a major obstacle, and for most practical purposes, it will be sufficient to mirror the allocation made for accountancy purposes.

Also, it is important that the purchase price is described in a way that avoids the risk of having some of the purchase price deemed as salary for any of the sellers (see earlier in the chapter).

Goodwill

- Goodwill paid for a business can be depreciated for tax purposes at 20 percent on a declining balance (Category B).
- Time-limited intangible rights, such as leasing contracts, rights of use, or patents, shall be amortized by equal annual amounts over the lifetime of the asset.
- Non-time-limited intangible rights, such as a company name or brands, are only depreciable if there is a clear decrease in value. If the decrease in value is clear, the right is amortized over the projected lifetime of the asset.

The seller is taxed on any gain on intangible assets and goodwill. The gain could be deferred and taxed at 20

percent on a declining balance through the company's gain and loss account. A higher amount could be entered as income.

Depreciation

All assets used in the business are depreciable if they are either listed in the following depreciation groups or are documented as having lost value over time. The rates for different depreciation groups are as follows:

Assets	Depreciation Rates (%)
Office machines, etc.	30
Acquired (purchased) goodwill	20
Trucks, buses, etc.	20
Cars, tractors, machines, tools, instruments, inventory, etc.	20
Ships, vessels, rigs, etc.	14
Planes, helicopters	12
Electrical plant	5
Buildings and plant, hotels, restaurants, etc.	4
Business buildings	2
Permanent technical installations in buildings	10

Value-Added Tax (VAT)

Value-added tax will be levied on any sale of assets, unless it can be deemed a sale of a whole activity. Sales of shares will not trigger VAT, but it is important to check whether the company was a part of a VAT group, and the continued business activity will have to be de- or re-registered for VAT purposes.

The disposal of operating assets or shares as part of the transfer of a business, or part of a business, to a new owner can take place without triggering VAT. One of the conditions is that the new owner continues the activity within the same industry. If there is evidence of purchasing with the intention of closing down the business, a VAT liability is triggered.

Transfer Taxes

Norway does not have such taxes, except for registration of new legal owners of cars and real estate. Stamp duty on real estate is 2.5 percent of fair market value.

Purchase of Shares

A share purchase will normally be the choice of the seller, because a Norwegian corporate seller will benefit from the tax exemption model, and will not remain liable for the business.

There are no immediate Norwegian tax consequences for a foreign company, when it acquires the shares of a

Norwegian company. This means that where goodwill is included in the value of shares, depreciation for tax purposes would not be permitted. Do however note the introduction of a 0.84-percent tax on sales of shares (see earlier in the chapter).

Apart from the carry-forward of losses, as described later in the chapter, the tax position of the acquired Norwegian company remains unchanged. There is thus no possibility of a tax-free step-up in the tax base of the assets of the acquired company.

An acquisition of shares can be restructured in such a way that the purchaser obtains tax benefits (see later in the chapter).

It is not possible to obtain from the tax authorities assurances that a potential target company has no tax liabilities or advice as to whether the target is involved in a tax dispute.

In the case of negotiated acquisitions, it is usual for the purchaser to request, and the vendor to provide, indemnities and/or warranties with respect to any undisclosed taxation liabilities of the company to be acquired. The extent of the indemnities or warranties is a matter of negotiation.

With negotiated acquisitions, it is usual for the vendor to make the books of the target company available for a due diligence review by the prospective purchaser. A normal part of the due diligence process involves an in-depth review of the tax affairs of the potential target company.

Generally, financing costs, ordinary operating costs, and organizational cost are immediately deductible. Costs for legal assistance, other consultancy costs, and costs for due diligence, among others, related to the purchase of shares, shall, however, be treated as part of the shares' cost price and will, therefore, not be deductible for a Norwegian corporate shareholder.

Tax Indemnities and Warranties

Such provisions are normal and legal for Norwegian purposes, and the parties may freely agree the terms.

Tax Losses

Tax losses will normally be accepted after a change of shareholder, and there is no expiry-date on carry-forward losses in Norway. However, if the calculated value of tax losses exceeds half the purchase price for the company, the use might be set aside by the tax authorities. The calculation is as follows; if the total purchase price is 100, the calculated value of the loss

must not exceed 50. The value is calculated as 28 percent of the total carry-forward loss. The loss in this example must, therefore, not exceed $((100 / 0.28) \times 0.5 =) 178$.

Pre-Sale Dividend

Dividend payments will be taxed in the hands of the receiver, regardless of whether the dividends are paid before or after the transaction, and regardless of whether the payment is made to the old or the new shareholder.

Transfer Taxes

There is no stamp or transfer duty payable on the issue or transfer of securities. A stamp duty is levied on the transfer of real estate. The duty, which is payable by the buyer, amounts to 2.5 percent of the purchase price. It should be noted that such duty is not payable when shares are transferred in a corporation holding real estate. Re-registration of cars also triggers a stamp duty.

Tax Clearances

It is possible to get pre-clearance from the tax authorities on transactions, as long as the facts are clearly presented. This normally requires one to three months.

Choice of Acquisition Vehicle

The following vehicles may all be used to acquire the shares and assets of the target:

- Branch of a foreign company
- Subsidiary of a foreign company
- Treaty country intermediary
- Local holding company
- Joint venture

Generally, the advantages and disadvantages of the different acquisition vehicles must be considered on a case-by-case basis.

Local Holding Company

Profits and losses within a Norwegian group of companies may be equalized by means of group contributions between companies. Group contributions may be made between a parent company and its more than 90 percent-owned subsidiaries, and between such subsidiaries, subject to certain other conditions. Such group contributions are tax deductible for the payer and taxable for the recipient.

A deduction may also be granted for group contributions between Norwegian subsidiaries of a foreign parent company. Group contributions may also be granted from a Norwegian company to a Norwegian branch of a European Economic Area (EEA) resident company, provided that one can document more than 90-percent common ownership. Further, group contributions may be granted from a Norwegian branch of an EEA-resident company to a Norwegian subsidiary on the same 90-percent common-ownership condition.

Group contributions may only be granted from a Norwegian branch of a company outside the EEA to a Norwegian subsidiary to the extent the relevant tax treaty has a non-discrimination clause stating that the taxation of a permanent establishment shall not be less favorable than the taxation of companies.

Foreign Parent Company

A foreign company purchasing assets in Norway will normally be deemed as having formed a permanent establishment or fixed place of business (see also under Norway Branch). If so, the taxation will normally equal the taxation of a company, but the company is free to remit the profit without awaiting completion of the formalities, such as approving the annual accounts or deciding a dividend distribution, and there is no requirement that payments are within distributable equity.

Non-Resident Intermediate Holding Company

Norway has comprehensive tax treaties with more than 80 countries, including all industrialized countries and almost all of the important developing countries.

Local Branch

A non-resident company would normally carry on business in Norway through a Norwegian corporation (subsidiary) or through a registered branch. The corporate tax rate of 28 percent applies to both subsidiaries and branches. Although the choice of the legal form of an enterprise should be determined on a case-by-case basis, the following tax issues should be considered:

- Profits of a branch are currently taxed in Norway (the source country) as well as in the home country (where the source-country tax will normally be credited against the home-country tax unless an exemption applies), while profits of a subsidiary are taxed in Norway only. If distributed, the dividend taxation of the owner must be examined separately for each situation.

- A branch will not be allowed to deduct interest on loans from the head office.
- No branch profits tax is withheld in Norway. Likewise, distributions from a Norwegian subsidiary are normally not subject to withholding tax (WHT), but each case must be examined separately.
- There are dividend limitations for Norwegian corporations for goodwill, research and development, and net deferred assets recorded in the balance sheet.
- A subsidiary is not subject to net wealth tax, nor is a branch.
- Filing requirements are more extensive for subsidiaries than for branches.

Joint Ventures

No special tax legislation applies to joint ventures.

Choice of Acquisition Funding

Debt

Interest on loans is normally deductible for the purposes of calculating the net profits from business activities and when the loan is taken out for the purpose of acquiring shares. The deduction is made on an accrual basis. Norway has no formal thin-capitalization rules except in the oil industry. However, the tax authorities are focusing on the funding of subsidiaries of foreign companies. A debt versus equity ratio of 4:1 would normally be considered a safe harbor.

If a Norwegian company is thinly capitalized, the tax authorities might deny deduction for a part of the interest, or a part of the interest might be considered a dividend distribution to the foreign parent company.

Companies must account for interest in the period to which it applies.

There is no WHT on interest in Norway.

Deductibility of Interest

If a Norwegian company is granted an interest-free loan from its foreign parent company, generally no tax consequences arise in Norway.

If a Norwegian parent company grants a loan to a foreign subsidiary, it is normally required that the loan is at fair market interest.

Withholding Tax on Debt and Methods to Reduce or Eliminate

There is no WHT on correctly priced interests in Norway. Payments on interests above fair market value from Norway could be deemed dividend payments and thus trigger WHT on dividends. Documentation of fair pricing should therefore be gathered to avoid such taxation.

Checklist for Debt Funding

When funding a Norwegian entity, the following questions should be asked:

- Does the debt exceed 80 percent of the total funding? If so, the funding might be classified as thinly capitalized.
- Do you have a business reason for setting up a Norwegian purchasing entity? If not, the anti-avoidance rules may apply and the interest deemed void for tax purposes.
- Is the interest set at fair market value? If so, provide documentation on the market conditions (similar types of loan, similar market, similar security, etc.). For subordinated loans, interest could be challenged if the situation of the company is such that such interest poses a threat to the equity.

Equity

There is no capital duty of any kind on contributions to equity.

Hybrids

The tax treatment of a financial instrument is usually determined by the instrument's form rather than its substance. It is not possible to point to any single characteristic that is of decisive significance for the classification. However, the following characteristics are emphasized as being typical of debt:

- there is an obligation to repay the capital, possibly with the addition of interest; and
- there is an agreement governing interest, date of maturity, and what priority the loan has in relation to other creditors.

The following characteristics are emphasized as being typical of equity:

- a right is granted for a share in surplus liquidity and any dividend in the intervening period;

- the equity must take a certain form and be subject to certain restrictions and obligations regarding repayment of the provider of capital; and
- the equity is to cover ongoing losses and the yield is conditional on the company's performance.

Deferred Settlement

Any settlement which permanently reduces the company's obligation to make payments, or reduce its claims against third parties, will be accepted as income/loss at the time of settlement, as long as the settlement is made with third parties. Any settlement within a group must be documented as a fair market action. If not, it would probably be challenged.

Other Considerations

Concerns of the Seller

The seller will normally prefer a sale of shares, because this will free him from responsibilities and historic risk and attract more favorable tax treatment. However, the tax benefit will normally be a part of the purchase price discussions, and thus make the choice less crucial for both parties.

Company Law and Accounting

In Norway, labor laws are quite protective and favor the employees, who are entitled to have all their earned rights transferred with them.

Norwegian legislation also makes all contracts, etc. valid after a sale of shares, unless there are specific changes of control clauses, or a change of ownership is clearly a breach of important explicit and implicit conditions.

For the dissolving entity a formal merger will not be considered a liquidation. The company will be regarded as a fully continuing corporation for all legal aspects, unless otherwise stated in contracts.

For accountancy purposes, a purchase of assets will be considered as a transaction, and the purchase price must be allocated. Only transactions within a group, without change of control, will be treated as a continuity-transaction if the consideration is shares in the purchasing company.

Group Relief/Consolidation

In a cross-border merger, it is possible to obtain roll-over relief from the Ministry of Finance. If a Norwegian company is merged with a foreign company (transferee company) and the Norwegian shareholders receive shares in the foreign company, roll-over relief might be obtained. The Norwegian shareholders will keep the original tax-base cost on the received shares in the

foreign company. The transaction must be an element of a re-organization aimed at making a business operation more rational and efficient.

Transfer Pricing

In Norway, transfer pricing policies must be documented at the request of the tax authorities. Failing to comply with such a request will lead to fines. In addition, the company must keep a documentation file that, on short notice, can be forwarded to the tax authorities. The transfer pricing system in Norway is based on the Organization for Economic Cooperation and Development (OECD) guidelines.

Dual Residency

Dual residency will be treated in accordance with whatever tax treaty Norway has entered into.

Internal law does, however, clearly state that a person is a Norwegian tax-resident if the number of days he/she spends in Norway exceeds 183 within any given one-year period.

Comparison of Asset and Share Purchases

Advantages of Asset Purchases

- The purchase price (or a portion) can be depreciated or amortized for tax purposes.
- A step-up in the cost base for tax purposes is obtained.
- No previous liabilities of the company are inherited.
- There is no acquisition of a tax liability on retained earnings.
- It is possible to acquire only part of a business.
- There is greater flexibility in funding options.
- Profitable operations can be absorbed by loss-making companies in the acquirer's group, thereby effectively gaining the ability to use the losses.

Disadvantages of Asset Purchases

- There may be a need to renegotiate supply, employment and technology agreements, and change stationery.
- A higher capital outlay is usually involved (unless the debts of the business are also assumed).
- It may be unattractive to the vendor, thereby increasing the price.

- Accounting profits may be affected by the creation of acquisition goodwill.
- The potential benefit of any losses incurred by the target company remains with the vendor.

Advantages of Share Purchases

- There is a lower capital outlay (purchase net assets only).
- More attractive to the vendor, since a capital gain is (almost) tax-free for companies.
- The purchaser may benefit from tax losses of the target company.
- The purchaser may gain the benefit of existing supply and technology contracts.

Disadvantages of Share Purchases

- The purchaser acquires an unrealized tax liability for depreciation recovery on the difference between the market and tax book values of assets.
- There is no deduction for the purchase price or for underlying goodwill.
- There is less flexibility in funding options.

Withholding Tax Rate Chart

The rate information and footnotes contained in this table are from the 2009 IBFD/KPMG Global Corporate Tax Handbook.

Country	Dividends	
	Individuals, Companies (%)	Qualifying Companies ¹ (%)
Albania	15	5
Argentina	15	10
Australia	15	0/5 ²
Austria	15	0
Azerbaijan	15	10 ³
Bangladesh	15	10 ⁴
Barbados	15	5 ⁴
Belgium	15	5
Benin	20	20
Brazil	5	5
Bulgaria	15	15
Canada	15	5 ⁶
Chile	15	5
China (People's Rep.) ⁷	15	15
Croatia ⁸	15	15
Cyprus ⁹	5	0 ¹⁰
Czech Republic	15	0 ⁴
Denmark	15	0 ⁴
Egypt	15	15
Estonia	15	5
Faroe Islands	15	0 ⁴
Finland	15	0 ⁴
France	15	0/5 ¹¹
The Gambia	15	5
Germany	15	0
Greece	20	20
Greenland	15	5 ⁴
Hungary	10	10
Iceland	15	0 ⁴
India	25	15 ¹²
Indonesia	15	15
Ireland	15	5 ⁴
Israel	15	5 ¹⁰
Italy	15	15
Ivory Coast	15	15
Jamaica	15	15
Japan	15	5
Kazakhstan	15	5 ⁴
Kenya	25	15
Korea (Rep.)	15	15
Latvia	15	5
Lithuania	15	5
Luxembourg ¹³	15	5
Malawi ⁹	5	0 ¹⁰
Malaysia	0	0
Malta	15	15
Mexico	15	0
Morocco	15	15
Nepal	15	5/10 ¹¹
Netherlands	15	0
Netherlands Antilles ¹⁴	15	5
New Zealand	15	15
Pakistan	15	15
Philippines	25	15 ⁶

Country	Dividends	
	Individuals, Companies (%)	Qualifying Companies ¹ (%)
Poland	15	5
Portugal	15	10
Romania	10	10
Russia	10	10
Senegal	16	16
Sierra Leone ⁹	5	0 ¹⁰
Singapore	15	5
Slovak Republic	15	5
Slovenia ⁸	15	15
South Africa	15	5
Spain	15	10
Sri Lanka	15	15
Sweden	15	0 ⁴
Switzerland	15	0 ¹⁵
Tanzania	20	20
Thailand	15	10 ⁴
Trinidad and Tobago	20	10
Tunisia	20	20
Turkey	25	20
Uganda	15	10
Ukraine	15	5
United Kingdom	15	5 ⁶
United States	15	15
Venezuela	10	5 ⁴
Vietnam	15	5/10 ¹⁶
Zambia	15	15
Zimbabwe	20	15

Notes

1. Unless otherwise indicated, the reduced treaty rates given in this column apply if the recipient company owns at least 25 percent of the capital in the Norwegian company.
2. The 5-percent rate applies if the Australian company holds at least 10 percent of the voting power in the Norwegian company; the zero rate applies if more than 80 percent of the voting power is held, subject to several conditions.
3. The rate applies if the recipient company owns at least 30 percent of the capital in the Norwegian company and has invested in Norway at least USD 100,000.
4. The rate applies if the recipient company owns at least 10 percent of the capital in the Norwegian company.
5. The domestic rate applies; there is no reduction under the treaty.
6. The rate applies if the recipient company owns at least 10 percent of the voting power in the Norwegian company.
7. The treaty does not apply to Hong Kong.
8. The Yugoslav treaty applies to Croatia and Slovenia.
9. Extension of the 1951 treaty with the United Kingdom.
10. The rate applies if the recipient company owns at least 50 percent of the voting power in the Norwegian company.
11. The lower rate applies if the recipient company owns at least 25 percent of the capital in the Norwegian company; the higher rate applies if it owns at least 10 percent of the capital of the Norwegian company.
12. The dividends must be attributable to new issues of capital.
13. The treaty does not apply to exempt Luxembourg holding companies.
14. Treaty benefits do not apply to Antilles holding companies, etc.
15. The rate applies if the recipient company owns directly at least 20 percent of the capital in the Norwegian company.
16. The 5-percent rate applies if ownership is at least 70 percent. The 10-percent rate applies if ownership is at least 25 percent, but less than 70 percent.

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