DET KONGELIGE
FINANSDEPARTEMENT

Royal Ministry of Finance

Your ref	Our ref	Date
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RESPONSE FROM NORWAY TO THE REASONED OPINION ON THE NORWEGIAN REPORTING OBLIGATION WHEN HIRING NON-RESIDENT CONTRACTORS

1. INTRODUCTION

We refer to the Authority's Reasoned Opinion of 5 December 2018 (in the following referred to as the "RO"), concerning the Norwegian rules on reporting obligations in cases where non-resident contractors are hired to perform activities in Norway. By letters of 18 January and 28 February 2019, the Authority extended the time limits for our response, in the latter letter to 5 April 2019. We also refer to extensive previous correspondence, including the Ministry's response of 23 March 2017 to the Authority's letter of formal notice. Finally, we refer to several meetings between the Authority and the Norwegian Government, including the meeting between the College Members and State Secretary Jørgen Næsje in October 2017. The Ministry of Finance hereby submits its written comments to the RO.

In the RO the Authority alleges that (p 26):

> *"by maintaining in force provisions such as Section 7-6 of the Tax Administration Act and Sections 7-6-1 to 7-6-6 of the Regulation implementing and specifying the obligations laid down in the Tax Administration Act, which require Norwegian based recipients of services and providers of services from other EEA States to submit to the Norwegian authorities specified information on all contracts concluded between them*

Postal address
P.O Box 8008 Dep
NO-0030 Oslo, Norway
postmottak@fin.dep.no

Office address
Akersg. 40

Telephone
+47 22 24 90 90
Org. no
972 417 807

Tax Law Department
Telephone +47 22 24 44 31/33
Telefax +47 22 24 27 16

with a value of at least NOK 20 000 within 14 days of the commencement of work in Norway, Norway has failed to comply with its obligations under Article 36 of the EEA Agreement."

The Ministry disputes this conclusion. The Ministry acknowledges that the reporting obligation under Section 7-6 of the Tax Administration Act ("TAA")[1] is a restriction pursuant to Article 36 EEA. However, the Ministry submits that this restriction is justified by both the need to ensure the effectiveness of fiscal supervision and tax collection, as well as the prevention of tax fraud. Furthermore, that restriction is both suitable and necessary to attain the said objectives. The Ministry will substantiate this view in the following.

This letter is structured in the following way:

- In **Section 2** we describe the background and purpose of Section 7-6 of the TAA, as well as its scope and content, following the amendments to the rule applicable as from 1 January 2018.
- In **Section 3** we describe and document why such a reporting obligation is necessary for tax assessment purposes, taking into account the different factual and legal circumstances between resident and cross-border service providers.
- In **Section 4** the Ministry gives its assessment of the reporting obligation under the relevant EEA rules; hereunder the evaluation on the type of restriction, the relevant justification grounds, as well as the application of the proportionality test (appropriateness and necessity).
- The Ministry gives its conclusion **in Section5**.

2. THE REPORTING OBLIGATION PURSUANT OT THE CURRENT SECTION 7-6 TAA

2.1 Introduction

Chapter 7 of the TAA contains provisions on third party reporting for tax purposes in general. Section 7-6 TAA imposes the obligation on private undertakings and public service operators to report to the tax authorities when procuring a service to be carried out in Norway, from a person or a company resident outside of Norway (hereinafter "the reporting obligation").

As the Authority has rightly noted in the RO, the reporting obligation in Section 7-6 TAA has recently been amended and new rules have been in force since 1 January 2018.

[1] By referring to Section 7-6 TAA in this letter, we also refer to Sections 7-6-1 to 7-6-6 of the Regulation implementing and specifying the obligations laid down in the Tax Administration Act

These are the rules to be assessed in this case, as they are described in paras. 43 to 47 in the RO.[2]

The Ministry would underline that the adoption of the current rules entailed substantial amendments to the previous rules applicable at the time when the Authority opened the formal procedure. Thus, the amendments decreased the administrative burden for the reporting entities in several, significant ways. This will be shown below in Section 2.2. It is also described in the preparatory works (Prop. 1 LS (2017-2018), Chapter 21.1) in the following way [unofficial office translation]:

> *«The purpose of the amendments is to ensure in a better way the balance between the need for a correct assessment and collection of taxes, and the need to keep the administrative costs as low as possible for the reporting parties and the tax authorities. In total, the amendments will reduce the scope of the reporting obligations.»*

As the Authority's RO, as well as the Ministry's arguments in earlier letters, are concerned mainly with the reporting obligations as they previously applied, we will in the following give a brief description of the current rules.

2.2 The content of the current reporting obligation

The reporting obligation established by Section 7-6 TAA imposes on the service recipient to report to the tax authorities when procuring a service to be carried out in Norway, from a physical or legal person resident outside of Norway.

At the outset, it should be noted that the *purpose* of the reporting rules in Section 7-6 TAA remains the same as before the 2018 amendments, *i.e.* to ensure the interests of financial supervision, a correct tax assessment and the effective tax collection, as well as preventing tax evasion.

To fulfil these purposes, the tax authorities need to have relevant, early information on temporary, short-term assignments in Norway in order to be able to assess whether the specific assignment/work performed in Norway involves a taxability to Norway, or not.

Without the reporting obligation in Section 7-6, the Norwegian authorities would in a large number of cases not have any information on the services performed in Norway by a person or company resident abroad, and thereby no information on the income from such services possibly subject to Norwegian taxation. The reporting obligation provides the tax authorities with information about the service provider and whether he has income in Norway that could be taxable. It also provides information about any employees who has possible taxable income in Norway. If the non-resident person is

[2] In paras. 24-38 and paras. 39-42 of the RO, the Authority describes the contents of the previous reporting obligation, in force before 1 January 2018.

found to be taxable in Norway, according to the tax authorities' assessment of national law and tax treaty criteria seen up against the factual circumstances in the concrete case, the person will be registered in the tax census, and the tax authorities are able to follow up with submitting the necessary tax returns. Furthermore, it also enables the tax authorities to carry out the necessary control and tax collection, if no tax return is returned by the service provider or the employees. It should again be recalled that, without the reporting obligation, the authorities would in a large number of cases be unaware of the presence of the service provider and its employees in Norway and, thus, be unable to carry out its financial supervision and tax collection.

Moreover, in the case of non-resident service providers from other EEA states, there is often a need, depending on the relevant tax treaty, to consider whether the service provider has a permanent establishment in Norway or not. This depends on a number of circumstances, and the information submitted by means of Section 7-6 TAA, provides the tax authorities with the necessary documentation to assess this question. Also in the case of employees, there is a need, depending on the relevant tax treaty, to consider whether the threshold of days worked in Norway results in tax liability to Norway.

The end purpose of the reporting obligation is to provide the tax authorities with sufficient and reliable information to establish taxability, make the assessments and carry out the tax collection, or, alternatively, conclude that the tax payer is not taxable in Norway on income from the specific assignment. Without the reporting obligation in Section 7-6, the Ministry would not have any information which would ensure this financial tax supervision.

As will be shown in Section 3.2 in this letter, the necessary information to make these assessments is only received by the tax authorities by means of the reporting obligation under Section 7-6 TAA.

When assessing the reporting obligation, it must be recalled that even though the reporting obligation at the outset covers services from physical and legal persons *resident outside of Norway*, a foreign resident will fall outside the scope of the reporting obligation, if the person is considered to have a presence in Norway of a more *permanent character* (that includes some sort of administrative functions), *i.e.* a branch. The Norwegian service recipient will in such cases not be obliged to make any third party reporting under Section 7-6 TAA. This follows from a firm and consistent interpretation of Section 7-6 TAA and is in accordance with its purpose, *e.g.* the consideration that foreign residents with a permanent presence in Norway should be treated under the same reporting rules as companies and persons resident in Norway. This applies to all types of business activity, including service assignments such as on-site construction, assignments on the continental shelf, labour contracting etc.

The information to be submitted from the service recipient under the current rules is the following:
- the expected point in time for the start-up and the termination of the assignment
- the geographical site where the assignment is to be performed
- the type of contract, the contract amount and the contract number (if relevant)
- the name, address and organization number of the service provider and, if relevant, the same information on the (one) sub-contractor,
- if relevant, the name, address and organization number of the service recipient's principal and the main contractor if relevant
- a contact person

The information from the service recipient is to be submitted through the form RF 1199[3]. As the Authority may observe from this, the reporting obligation was from 2018 reduced to comprising information on the primary service provider, and if relevant *one* sub-contractor, as opposed to the previous obligation for the service recipient to report on an *indefinite* number of sub-contractors down the contracting chain. In addition, the obligation to report on any contractor above the service recipient was limited to one step up the contract chain (and where relevant, on the one main contractor).

Furthermore, as from 2018 the service recipient does no longer have to report on the contractor's and the sub-contractor's employees. The threshold amount for the reporting obligation to occur, was at the same time doubled from NOK 10 000 to NOK 20 000.

Moreover, it should be noted that the system provides for flexible arrangements between the reporting units. Firstly, where there are more service *recipients* in a contractual line they may agree that one is to report for all of them. If one of these service recipients fulfils the reporting obligation correctly, the other service recipients will be freed of responsibility.

Likewise, if the service *provider* has already reported the necessary information on the assignment, there will be no need for the service recipient to fill in information about the assignment. The service recipient and the service provider may for example agree that the service provider gives the necessary information to the tax authorities by proxy. In such a case there will naturally be no sanctions executed on either of the parties, as the reporting obligation as such is already fulfilled by the service provider. This interpretation of the rules is in accordance with the purpose of Section 7-6's TAA of ensuring that the tax authorities receive the necessary information for tax purposes, but without demanding unnecessary duplicate information from the parties.

The relevant information is, as before, to be reported to the tax authorities as soon as possible, and at the latest within 14 days of the commencement of the work in Norway.

[3] https://www.skatteetaten.no/globalassets/skjema/2018/rf-1199b.pdf