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# Complaints against Norway relating to reporting obligations when contracts are given to non-resident contractors

Letter | Date: 12/10/2016 | [Ministry of Finance](http://www.regjeringen.no/en/dep/fin/id216/) (http://www.regjeringen.no/en/dep/fin/id216/)

Recipient: EFTA Surveillance Authority

Your reference: 77290 and 77291

Our ref.: 15/1761 SL HLy/KR

The Norwegian Tax Assessment Act (TAA) § 5-6 and Regulation on Third Party Reporting Obligation ("Third Party Regulation") § 5-6-1- to § 5-6-6.

## **1. Introduction**

We refer to previous correspondence, inter alia our letter 19 February 2016 in which the Ministry of Finance informed that it has initiated a legal review of the reporting legislation in the Norwegian Tax Assessment Act (TAA) § 5-6 and Regulation on Third Party Reporting Obligation ("Third Party Regulation") § 5-6-1- to § 5-6-6.

The Ministry wishes to update the Authority on the progress of the legal review.

## **2. Discussion paper 11 October 2016**

As explained in our letter 19 February 2016, the Ministry of Finance requested the Norwegian Directorate of Taxes to put forward amendments to the reporting regulations. The Norwegian Directorate of Taxes submitted its report to the Ministry 13 July 2016. Based on an assessment of the report, the Ministry 11 October 2016 published a discussion paper proposing several amendments to the reporting obligation.

The discussion paper and other relevant documents may be downloaded from the webpage:

<https://www.regjeringen.no/no/dokumenter/horing---forslag-om-endring-av-reglene-om-rapportering-av-utenlandske-oppdragstakere-og-arbeidstakere-til-sentralskattekontoret-for-utenlandssaker/id2515389/>

Please observe that the case contains of the following documents:

- Letter from the Ministry of Finance 11 October 2016
- Discussion paper from the Ministry of Finance 11 October 2016
- Report from the Norwegian Directorate of Taxes 13 July 2016
- List of bodies invited to submit their observations on the discussion paper

The following paragraphs hold a summary of the discussion paper and enhancement of certain parts of the proposal.

Sections 1 and 2 contain a summary of the proposed amendments and an overview of the current legislation.

Sections 3 and 4.1 contain an assessment of the objectives that has to be taken into account when framing the future reporting system. The Ministry notes that the objectives of fiscal supervision etc. have to be balanced with the objective of reducing compliance cost for the relevant parties. Further, The Ministry observes that the reporting system must comply with EEA-law.

Sections 4.2 to 4.6 contain a more detailed presentation of the proposed amendments.

The Ministry proposes to continue the basic principles of the existing legislation, which inter alia implies that a principal – at an outset – has to report information on any non-resident contractors and subcontractors in the contract-chain. The reporting obligation shall apply to all business sectors. However, the Ministry proposes several amendments which aim at repealing the reporting obligations in situations where it may be difficult for the obligated parties to provide the requested information or situations where the need for information, i.e. the need for fiscal supervision etc., is not as extensive as it normally is.

Firstly, the Ministry proposes to repeal the existing exception from reporting obligation when contracts are performed on site that is under the client's control. Indeed, it is true that this proposal – if one looks at it isolated – extends the scope of the reporting obligation. However, this existing exception shall be replaced by a rule that implies that the reporting obligation only comprises information on two contractors in the contract-chain, cf. section 4.2. For instance, in a contract-chain consisting of principal A, contractor B and the sub-contractors C, D, E and F, A is only obligated to give information on B and C (not D, E and F), B is only obligated to give information on A, C and D (not E and F), while C is only obligated to give information on B, D and E (not A and F).

It must be assumed that the proposed limitation will ease the burden of fulfilling the reporting obligation. From the principal's point of view, it is more difficult to keep control of, and collect information from, sub-contractors several steps below in the contract-chain than it is to collect the same information from its own contracting parties and one sub-contractor.

We stress that the limitation shall apply on a general basis, i.e. that it applies to all contracts regardless of the sort of business sector and where the business is performed. By contrast, the existing exemption for contracts which is not performed on a site that is under the principals control, does not apply to contracts performed in the continental shelf or contracts or on a site of building or assembly work.

Secondly, the Ministry proposes to raise the threshold exempting contracts with low contracts amounts from reporting obligation from 10 000 NOK to 50 000 NOK, cf. section 4.3.

Thirdly, the Ministry proposes that the principal's obligation to report information on the workers shall apply only if it is established that information is not given by the contractor, cf. section 4.4. According to current law, the principal's reporting obligation to report information on the contractor's employees is equal to the reporting obligation of the contractor. The proposed amendment implies that the reporting obligation in TAA § 5-6 – on this particular point – is brought in accordance with the Belgian regulations assessed by EUCJ in the case C-315/13. In that case, the EUCJ expressed that at national legislation which requires a recipient of services to report information on the contractor's workers as a supplement to a declaration requirement already imposed on the contractor, is capable of being proportionate to the objectives stated by the Member State.

Finally, the Ministry proposes to repeal TAA § 10-6 regarding joint and several liability, cf. section 4.5. The proposal implies that breach of the reporting obligation may only be sanctioned by an enforcement fee or a penalty, cf. TAA §§ 10-7 and 10-8. We refer to the explanations given in our letters 20 August 2015 and 19 February 2016 on the interpretation and application of these regulations.

In addition to the proposed amendments, the Ministry of Finance specifically invites the hearing bodies to submit observations on possible amendments which were rejected by the Norwegian Directorate of Taxes in its report 13 July 2016, cf. section 4.6. For instance, the hearing bodies are invited to consider whether contracts given to non-resident contractors with some sort of presence in Norway, i.e. have established a branch in Norway, should be exempted from the reporting obligation. Observations on these possible amendments will be taken into consideration by the Ministry in the final assessment of the legal review.

The question whether the reporting legislation is in compliance with EEA-law is addressed in the discussion paper section 4.7. The Ministry of Finance maintains the view that Norway may uphold the current reporting obligation. Further, it is the view of the Ministry that amendments proposed in the discussion paper, if adopted by the Parliament, strengthens a conclusion that Norway comply with EEA-law.