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## **Norway**

### **Direct taxation: Income and net wealth taxation**

A Norwegian business enterprise will have its net profits taxed at 28 %. The tax rate is the same regardless of organisational form. The 28 % tax is payable by limited liability companies, foundations, associations and cooperatives etc, e g any legal person that runs a taxable business.

Norway exempts from income taxation any legal person that does not have a for profit purpose (Income Tax Act 26<sup>th</sup> March, 1999 No 14 § 2-32). The exemption is and has been based on statutory law. The definition of for profit purpose is that the organisation, from an objective consideration of its activities, should not be suitable as an instrument for profit raising activities. The fact that the organisation runs commercial activities, i e charges fees etc for its activities (entrance fees for events, tuition for educational activities etc) does not necessarily make it into a taxable for profit enterprise. There are no specific organisational requirements apart from the fact that the NPO has to be a legal person. There is no such thing as a NPO part of a natural person (apart from leisure activities and consumption).

It is considered wise to include in the statutes of the organisation an explicit provision that the purpose is non-profit. The tax exempt status of the organisation will be facilitated by provisions stating that any net assets should be at the disposal of similar, or any, NPO purposes in case of the organisation being dissolved.

Norway does not require any charitable or praiseworthy purpose for an organisation to be tax exempt. Hells Angels, Neo Nazis or any other “evil” organisation will be tax exempt under the Norwegian Income Tax Act § 2-32 as long as it does not run activities deemed to be for profit.

Schools, universities and educational institutions are tax exempt if they receive any governmental funding prescribed by law, see Income Tax Act § 2-32(4). Normally, such institutions would qualify as tax exempt NPOs, but the tax exemption for educational institutions does not depend upon being classified as NPO. However, only foundations and associations may qualify, not limited liability companies. The educational institutions will be taxable for any unrelated business income apart from teaching and research. Consequently, the criteria of what constitutes taxable unrelated business income is somewhat more limited than for other NPOs, see *infra*.

If an organisation arranges courses etc and other educational activities, but do not receive any governmental funding under law, its status as tax exempt will depend upon its qualifying as NPO under the general criteria.

Political parties, trade unions and trade associations are classified as not for profit and tax exempt organisations. If a trade association also provides a service centre for its members trading activities, e g legal counselling, IT guidance etc, these activities will be deemed as assisting another person directly in its business activities. These activities will then be considered as taxable unrelated business income.

As already stated, the Norwegian Tax Code § 2-32 does not reserve the tax exemption for a specified group of organisational forms like associations or foundations. Normally, a NPO will be an association or foundation. It is, however, possible to have limited liability company qualifying as a tax exempt NPO. Consequently, the Norwegian tax law does not recognise any strict non-distribution requirement. If the limited liability company is chosen as

the form of incorporation, for the organisation to be tax-exempt, there should be included a provision that any distributions to the owners should not exceed a very limited amount. At the maximum these amounts distributed to the owners should not exceed an amount equal to a moderate interest rate on the amount invested as equity.

There are not any maximum thresholds as to what kind of amounts may go untaxed as income of an NPO. Some NPOs have grown quite large – also taking into account that Norway is a small country. There are no limits as to the numbers of employees the NPO may engage, or what salaries the employees may receive. However, if in doubt concerning the classification as NPO, the courts will consider factors like these when making its overall assessment.

Like in most countries, Norway taxes the unrelated business income of a NPO. When the gross receipts do not exceed NOK 70,000 (approx euro 9,000) the profits will be tax exempt. If the NPO is a charitable or public benefit organisation (veldig eller allmennting), the threshold is NOK 140,000 (approx euro 18,000), see Income Tax Act § 2-32. These limits do not refer to the net profits, but the gross income. As long as these thresholds are not exceeded, it is not necessary to decide whether the income will qualify as unrelated business income.

E.g. political parties and trade unions are not considered as charitable or public benefit organisations. Amateur sports organisations will qualify. It will again be evident that under Norwegian tax law, NPO is a broader category than charitable or public benefit organisations.

If the proceeds from the unrelated business activities is used to finance the non-profit activities of the organisation, the profits will still be taxable. A decision by the Norwegian Supreme Court regarding a sports club may appear to leave this question somewhat unsettled (Rt 1997 p 1602), but on this point it is probably more prudent to interpret the decision as another illustration that sports activities may evoke more sympathy than disciplined and analytical reasoning from the court.

If the unrelated business activities constitute a substantial part of the total activities of the organisation, it may alter the classification of the organisation from NPO to FPO and taxable. The Supreme Court decision in Rt 1991 p 491 may be read as saying that where the core not-for-profit activities only constitute 43 % of the total, the organisation may not qualify as tax-exempt.

A NPO may establish subsidiaries incorporated as limited liability companies. These companies will be taxable. It is, however, not settled to what extent the FPO-activities of subsidiaries may influence the classification of the NPO.

Activities that realise the NPO purpose of the organisation will not be deemed as providing unrelated business income. Rental income from renting student accommodation to students will not be taxable. When, during the summer recess, the housing units are employed as a hotel or as tourist accommodation, the income will be taxable.

The tax rate for unrelated business income is 28 per cent – the general tax rate for capital and business income.

Under Norwegian tax law any legal person will not be taxed for capital gains or received dividends and distributions on shares and equity interest in partnerships (within the EEA area or when holding at least 10 per cent of the equity in a company not resident in a low tax jurisdiction (Income Tax Act 1999 § 2-38). Foundations and associations qualify for this tax exemption regardless of their status as NPO or FPO. – It is speculated that this general tax exemption may be restricted to shares held as part of a controlling interest of at least 10 per cent when the shares are held in a company quoted on a stock exchange – in the same way as in many other countries with a similar exemption.

If a NPO realises a capital gain on assets, this gain will be tax free as long as the asset was held as part of the NPO activities of the organisation, or as a capital asset to receive passive investment income not connected to any business activity.

But even for assets held as part of the unrelated business activities, the taxation will be very limited according to the special rules for assessing the capital gain. The only part of the gain subject to taxation is any reversed depreciation charges. Concerning e.g. land and housing units, where depreciation charges are not allowed under Norwegian tax law, no depreciation recapture is possible and no part of the capital gain will be taxable. Capital gains on equities will not be taxable according to the general exemption for legal persons regarding such assets.

If the assets are held by subsidiaries that are taxable, the capital gains will be taxable at the general rate of 28 per cent with no special rules for assessing the capital gain.

Norway has a net wealth taxation. Limited liability companies are not subject to net wealth taxation. The shareholders who are natural persons, will have their shares assessed and subjected to a maximum 1,1 per cent net wealth taxation.

Foundations and associations that qualify as tax exempt for income tax, will also be exempt from net wealth taxation. Assets held as part of unrelated business income activities will be subject to net wealth taxation at a rate of 0.3 per cent. Any debt incurred by the NPO subject to a mortgage on assets held as part of the taxable activities, may be deducted against the assessed value of the assets, regardless of how the borrowed funds are employed.

### **Deductibility of contributions**

Norwegian tax law does not recognise any general deductibility for contributions to NPOs or charitable purposes. A subsidiary owned by a NPO may not, e.g. eliminate any taxable profits by contributing the amount to the NPO.

Contributions to certain categories of NPOs may be deducted with a maximum annual amount of NOK 12,000 (approx. euro 1,600). see Income Tax Act § 6-50. Only monetary contributions, not gifts in kind, are accepted as deductible. Also contributions to NPOs within the EEA will qualify.

The deduction for contributions under Income Tax Act § 6-50 may be claimed by both natural and legal persons. It may be claimed against general income that is taxable at 28 per cent, rendering the maximum tax value of the deduction at NOK 3,360 (approx. euro 450). Among the organisations that will qualify as recipients of taxable deductions are NPOs working for underprivileged groups, organisations promoting theatre, sports etc. for children and youth, environmental organisations and religious and philosophy of life organisations. Organisations promoting cultural or health (preventive) activities among the normal adult population will not qualify.

There is a special provision allowing for deductions for contributions for scientific research and occupational training, see Income Tax Act § 6-42. There is no maximum nominal limit to the contribution. But if it exceeds NOK 10,000, it may not amount to more than 10 per cent of net income apart from the contribution.

Also contributions to NPOs within the EEA will qualify. Furthermore, there are no explicit restrictions regarding whether the NPO spends the received funds within Norway or abroad. The Income Tax Act § 6-50 implies that the funds may be spent abroad by explicitly listing activities protecting human rights and aid to developing nations. The Income Tax Act does not in any explicit way limit the amount of received deductible donations that may be spent abroad. The preparatory works of the law, that has been changed several times as the maximum limit of the contribution has increased, do not suggest any limitation regarding spending the money abroad. As Norway likes to regard itself as a high profile country regarding foreign aid, such a limitation would probably be controversial.

The law does not prescribe any other restrictions regarding how the received donations should be spent. The basic requirement has to be fulfilled: The funds have to be used in furthering the purposes of the organisation that qualify for receiving deductible contributions. One may not, however, construct any requirement saying that a certain percentage of the received funds should be spent during the same year as received, or within a certain time period. There are, of course, limits regarding the indefinite hoarding of contributions, but no exact time limits may be construed. The organisation may also choose freely between current spending and investing in physical assets like buildings etc. E.g. when channelling the money abroad, the organisation may invest through a wholly owned subsidiary organised as a limited liability company if this is the organisational form that stands out as most prudent and cost-effective, all factors considered.

## **VAT**

### **VAT reform 2001**

Before 1 July 2001, under the former Norwegian VAT Act 1969 No. 66, only services explicitly enumerated in the Act were subject to VAT. With effect from 1 July 2001, the taxation principle was reversed. From that date, unless they are explicitly listed by law in the current VAT Act 2009 No. 58as being exempt, all services are subject to VAT.

The 2001 VAT reform has not in any significant way affected most NPOs' output VAT situation. During the process leading up to Parliament's enactment of the 2001 VAT Reform, intense lobbying ensured broad exemptions for different kinds of services, the scope of which was extended to beyond what could be exempt in the EU under the Sixth Directive. Broad exemptions apply to health, social, educational and cultural services, for example, admission to concerts, movies, theatres, amusement parks and sports facilities are covered by exemptions. These exemptions apply regardless of the provider being a for-profit or a not-for-profit entity. However, the consequences of the reform were different regarding services acquired by NPOs. Many categories of services that were previously exempt are now subject to VAT, such as consultancy services, legal and accounting services, postal services, and the importation of electronic services. By consequence, the input tax burden of many organisations increased to a considerable extent.

To some extent, relief for the increased VAT burden for NPOs was provided as part of the budgetary procedure. A limited amount of money was allocated to provide compensation to NPOs in the form of refunds. This refund arrangement has been changed several times. The refund arrangements could have been incorporated into the VAT Act but, for obvious reasons, they were not. In Norway, just like in many other countries, erosion of the tax base is a very sensitive issue to the Treasury and, in contrast to income tax, it has urged the politicians to avoid incorporation of all kinds of tax expenditures into the VAT Act. In addition, the Treasury and the tax authorities were expected to be strongly opposed against having to refund input VAT to NPO's. In view of their powerful position, they may have pushed for the refund arrangements not to be incorporated into the VAT Act itself.

### **Taxable person**

To qualify as a taxable person liable to charge output VAT, a NPO has to be a business enterprise under the VAT Act 2009. The criteria are somewhat unclear, but generally regarded as wider than under the income tax. A NPO may be tax exempt under the Income Tax Act § 2-32, but still a taxable person under the VAT Act § 2-1. One way of stating the difference is that under the income tax the organisation has to be not-for-profit. Under the VAT Act the question is more whether the organisation is commercial, i.e. whether it charges fees for its goods and services. To avoid making the VAT into a mechanism for subsidies, to qualify as a taxable person the output VAT of the NPO in general has to exceed the input VAT.

Gross revenues from the sale of goods and services liable to VAT have to exceed NOK 50,000 (exclusive of VAT) (approx auro 8,000) within a 12 month period for any business enterprise to register. If the organisation is a charitable or public benefit organisation (veldig eller allmenntlig), the threshold is NOK 140,000 (approx euro 18,000), see VAT Act § 28.

Normally, a registered taxable person has to file VAT returns every second month. If the annual gross receipts do not reach NOK 1,000,000, exclusive of VAT, the organisation, regardless of being FPO or NPO, only has to file a return for the whole year by the 10<sup>th</sup> of February the subsequent year.

### **Exempted services**

The VAT Act § 5 b and attending regulations exempt a number of services from VAT. Some of them may be very important to NPOs. The exemptions are general and related to the service, regardless of the provider being a NPO or FPO. To NPOs, the most important exemptions relate to health services, social services, educational services, and various cultural services. For the delimitation of health services and social services, one should consult the attending regulations. The exemption for educational services relate to all kinds of courses and education; professional, as part of an exam preparing program, leisure courses etc. This exemption is interpreted in fairly broad terms, e g including the conductor of an amateur choir. It has to be distinguished against consultancy services, concrete advice to individual customers that will be taxable.

### **Exempted goods – books and periodicals**

Books are not subject to VAT at the retail level. The retailer may register with the VAT authorities and have all incoming VAT deducted. Consequently, books are subject to zero-rating.

If an NPO conducts publishing activities, it will charge VAT when distributing books to retailers etc, but no VAT on the sale of books to consumers. All input VAT may be deducted or refunded.

Periodicals that for at least 80 per cent are distributed to subscribers or members of an association, or that have predominantly political, literary or religious content, are not subject to VAT when sold to the consumer. This is the same kind of zero-rating as applies to books.

If an associated group of NPOs render services to each other that otherwise would be subject to VAT, e g administrative services, bookkeeping etc, these services will be subject to VAT even when they are only paid for on a non-profit cost contribution basis. Cost sharing arrangements may still be considered as a taxable supply under the general Norwegian VAT rules. However, there special provisions exemptions related to services rendered within an associated NPO grouping as long as the services are directly connected to the realisation of the NPO purpose of the organisations involved.

A Norwegian NPO that is involved in any kind of sales against a consideration, even though it is non-profit, will have to apply a reverse charge VAT on any kinds of services capable of remote delivery (e g all kinds of electronic services) from any foreign supplier. There are no exemptions for NPOs qualifying as a VAT business regarding this reverse charge VAT. If the NPO does not qualify as a VAT business, it will still be charged VAT on imports of electronic services, but not through the VAT the foreign supplier will have to charge. NPOs have to pay import VAT on all goods imported.

### **Inheritance and gift taxes**

Norway has a general inheritance tax with maximum rates of 10 % (children) and 15 % (other heirs). There is no general gift tax. But the inheritance tax is payable for gifts to children and other close relatives.

Organisations with a charitable purpose is exempt from the inheritance tax. There is no minimum threshold or maximum limitation. Due to various reasons, one is the strict rules and supervision regarding foundations in Norway, foundations are not much used for inheritance tax planning in Norway. For very wealthy people there have been many other tools to avoid inheritance tax.

Norway does not have any rules on trusts.

### **Other taxes**

Norway levies a net wealth tax. Corporations are exempt, but the tax is payable by foundations and associations at a rate of 0.3 per cent. Foundations and associations that qualify as NPOs, are exempt.

NPOs will have to pay payroll tax as any other employer. Normally, excise taxes are also payable by NPOs.