

## The regulatory environment for E&P on the Norwegian Continental Shelf

by Gunnar Slettebø, Partner PwC Stavanger, and Per Fossan-Waage, Director PwC Oslo



**Gunnar Slettebø**  
Partner PwC  
Stavanger

### Taxation – developments in the fiscal framework

The extensive welfare system in Norway is depending on a large tax base. The tax base is, however, under threat by other countries lowering the tax rates and an increased mobility of the tax basis. Countries like Finland, Sweden and Britain have reduced or plan to further reduce their corporate tax rate. The question is therefore how Norway – as a small open economy in a globalized world – should design its corporate tax income system to maintain its tax base and remain competitive, taking into account the reduced tax levels in other countries and the increased mobility of companies.

To address this important issue, the Stoltenberg government (which since has been replaced by the Solberg government) appointed a Norwegian Tax Commission on March 15, 2013.

The mandate of the commission – named the "Scheel tax commission" after Hans Henrik Scheel, the committee leader – is to consider implementation of measures to protect the domestic tax base as well as to attract business activities, investments and foster job creation.

The focus areas of the Commission are far reaching, and include (among others) a review of the corporate tax rate, measures against profit transfer, tax treatment of debt and equity, the exemption method for international share transactions and consideration of tax basis not subject to mobility.

In November 2013, the Solberg government also revised the mandate for the Scheel tax commission to include an assessment of depreciation rules and rates as well as considering recommendation that are leading to net reductions in tax proceeds.

A report including recommendations from the Scheel tax commission was originally due by October 15, 2014. Late Au-

gust, the Ministry of Finance approved an application from the Commission that will delay the reporting until December 2, 2014.

Effective January 1, 2014, a new legislation came into force in Norway that will limit the deductibility of interest on related-party debt. This measure can be seen as part of the efforts to protect the Norwegian tax base and will limit tax deduction for interest costs for highly leveraged subsidiaries of foreign companies operating in Norway. The petroleum sector is currently temporarily exempted from this new piece of legislation.

Transfer pricing issues have been high on the agenda of tax authorities internationally for some time. It is expected that the report from the Scheel tax commission will contribute to this focus. The recommendations from the commission might also affect the petroleum industry in areas like withholding taxes and deductibility for bare-boat costs to mention a few.

On April 25, 2014 the Ministry of Finance changed the tax rules regarding uplift for Norwegian offshore investment in the Petroleum sector under the Petroleum tax act. The uplift in the petroleum tax system was reduced from 7.5 per cent to 5.5 per cent. The overall uplift is thereby reduced from 30 per cent to 22 per cent. The government at the same time reduced the ordinary business tax from 28 per cent to 27 per cent, while increasing the special tax (for petroleum companies) from 50 to 51 per cent. Hence, the total marginal tax rate in the petroleum sector was kept constant at 78 per cent.

### Results from exploration drilling: Guidelines Norsk Olje og gass

Since 2005 a large number of smaller E&P companies have been listed on Oslo Børs or Oslo Axess. For such E & P companies the results from

exploration drilling might often have a much larger impact on the share price than for bigger companies like Statoil. Thus, with all the small E&P companies entering Oslo Børs/Axess the focus on results from exploration drilling has increased dramatically.

Up to 2009 it was the Norwegian Petroleum Directorate (Oljedirektoratet) which released such results, prior to any release from the listed company. In 2009 Oslo Børs introduced a new practice for such information, and E&P companies could no longer wait for the NPDs release. The companies would have to make their own judgments regarding when to release a stock exchange notice to the market.

In 2012, the national authority for investigation and prosecution of economic and environmental crime (Økokrim) looked into the practice of the listed E&P companies. It turned out that the E&P sector had some characteristics that meant that the companies had to handle insider information differently than more "ordinary" companies.

The insider information (whether there is hydrocarbons in the reservoir that is being drilled into or not) is information that flows "bottom up". The drill crew will – at the time of drilling into the reservoir – very often know more about the result of the drilling (hydrocarbons or not) than the management of the company. (Compare this to an ordinary company where a Board is contemplating a merger with another corporation, in such a case the information is top-down and hence the company can more easily control the flow of information).

Based on Økokrims clamp-down on the practice followed by the E & P companies, Norsk Olje og Gass (the Norwegian Trade association for the oil industry) prepared a set of guidelines.

The guidelines state that a listed company is bound legally

to report the results from exploration drilling as soon as possible when facts have been established on whether hydrocarbons are present or not, and that such notice to the stock exchange should be coordinated with any other involved E&P companies to the extent possible. Alternatively the company could consider "delayed disclosure", but this would depend on fulfilling certain legal criteria which often might not be the case.

Any later assessment of the *commerciality of the discovery* (if this is the case) would be done by a group of engineers in the consortium. At this stage – with a limited number of people involved – it would be much easier to control the information, meaning that that the

companies can more easily opt for "delayed disclosure" until the relevant conclusions are reached. Then a second (ideally speaking) stock exchange notice on the commerciality of the discovery will be reported to the markets. NPD would follow up with their own press release in due time.

Norsk olje og gass have prepared two examples (for discovery of hydrocarbons or a dry well) of the first stock exchange notice.

Finally, it should be noted that other non-listed companies involved in the exploration drilling should as well get familiarized with the guideline, as it is a legal requirement for all parties involved with insider

information to handle such information with proper care (ref Norwegian Securities Trading Act sections 3-3 and 3-4).

This very brief summary does not cover all aspects of the new guidelines, and readers are encouraged to see more on the website [www.norskoljeoggass.no](http://www.norskoljeoggass.no), guideline number 139.

### The Financial Supervisory Authority of Norway: Review of financial information

The FSA is routinely reviewing the financial reporting of listed companies. The E&P companies are covered as well. In 2013 the FSA had comments to various financial reporting

issues related to Noreco's E&P activities. The FSA also reviewed the 2012 consolidated financial statements of Statoil. The review report was published in March 2014 and focused on key elements of Statoil's principles for impairment testing.

The review of Noreco can be found here; <http://www.finanstilsynet.no/no/Artikkelarkiv/Aktuelt/2013/1/kvartal/Kontroll-av-finansiell-rapportering/> and Statoil review here: <http://www.finanstilsynet.no/en/Document-repository/Press-releases/2014/Q1/Control-of-financial-reporting--Statoil-ASA/>



PwC  
Oslo Norway