

Case No: 61023
Event No: 397461
Dec. No.: 366/06/COL

EFTA SURVEILLANCE AUTHORITY DECISION
OF 29 NOVEMBER 2006
REGARDING AMENDMENTS TO THE “SKATTEFUNN” SCHEME CONCERNING
TAX DEDUCTION FOR RESEARCH AND DEVELOPMENT EXPENSES
(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY¹,

HAVING REGARD TO the Agreement on the European Economic Area², in particular to Articles 61 to 63 and Protocol 26 thereof,

HAVING REGARD TO the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice³, in particular to Article 24 thereof,

HAVING REGARD TO Article 1(3) in Part I and Article 4(3) in Part II of Protocol 3 to the Surveillance and Court Agreement,

HAVING REGARD TO the Authority’s Decision of 14 July 2004⁴ on the implementing provisions referred to under Article 27 in Part II of Protocol 3 to the Surveillance and Court Agreement, in particular Article 4 thereof,

HAVING REGARD TO the Authority’s Decisions of 25 September 2002⁵ and of 5 February 2003⁶,

WHEREAS:

¹ Hereinafter referred to as the “Authority”.

² Hereinafter referred to as the “EEA Agreement”.

³ Hereinafter referred to as the “Surveillance and Court Agreement”.

⁴ Decision No 195/04/COL, hereinafter “the Authority’s Decision No.195/04/COL”.

⁵ Decision No 171/02/COL. The Decision can be found on the Authority’s website <http://www.eftasurv.int/fieldsOfWork/fieldstateaid/stateaidregistry/>.

⁶ Decision No 16/03/COL. The Decision can be found on the Authority’s website <http://www.eftasurv.int/fieldsOfWork/fieldstateaid/stateaidregistry/>.

I. FACTS

1 Procedure

By letter dated 2 November 2006 from the Norwegian Ministry of Government Administration and Reform, forwarding a letter from the Ministry of Finance dated 1 November 2006, both received and registered by the Authority on 2 November 2006 (Event No: 396526), the Norwegian authorities notified, according to Article 4(2) of the Authority's Decision No. 195/04/COL, the proposed tightening of the criterion regarding the personnel and indirect costs⁷ deemed as eligible for aid under the "SkatteFUNN" scheme.

2 Description of the aid measure

2.1 The existing SkatteFUNN scheme

By Decision dated 25 September 2002⁸, the Authority approved the "SkatteFUNN" aid scheme (para. 16-40 of the Tax Law, Tax deduction for expenses for research and development (R&D)) which was introduced in the State Budget for 2002.

It appears from the Decision referred to above that the overall objective of tax deduction for expenses for R&D is to stimulate enterprises to increase their efforts regarding R&D. The scheme supports both internal R&D projects and the purchase of such services from R&D institutions. The aid scheme is not limited to specific sectors and concerns industrial research (projects aimed at the acquisition of new knowledge, the objective being that such knowledge may be useful for the undertaking in developing new or improved products, processes or services) and pre-competitive development activity (the shaping of results of industrial research into a plan, project or design for new, improved products, processes or services, including the creation of an initial prototype which could not be used commercially).

It appears from the Decision of 25 September 2002 that the aid is granted by a tax deduction. To qualify for deduction, expenses must also be deductible from taxable income. The scheme implies a tax deduction of 18% of the actual R&D expenditure for the approved R&D project, limited to expenses not exceeding NOK 4 million (approximately €550 000) for each project per year if it is an internal project. If the expenses are related to the purchase of services from an R&D institution, the limit is NOK 8 million (approximately €1.1 million). Enterprises that meet the criteria for being a small and medium-sized enterprise in the meaning of Chapter 10 of the Authority's State Aid Guidelines⁹ are entitled to a deduction of 20%.

Eligible costs are:

⁷ Personnel costs and indirect costs cover salary, social security and indirect costs such as rent, secretarial help, telecommunications and computing costs, etc.

⁸Decision No 171/02/COL. The Decision can be found on the Authority's website <http://www.eftasurv.int/fieldsofwork/fieldstateaid/stateaidregistry/>.

⁹ The Chapter 10 which is referred to in Decision No 171/02/COL is the one preceding the existing Chapter 10. The Authority deleted the previous Chapter 10 by Decision No. 198/03/COL of 5 November 2003.

- (i) personnel and indirect costs¹⁰ (researchers, technicians and other supporting staff employed solely for the research activity);
- (ii) costs of instruments, equipment and land and premises used solely and on a continual basis (except where transferred commercially);
- (iii) costs of consultancy and equivalent services used exclusively for the research activity, including the research, technical knowledge and patents, etc. bought from outside sources;
- (iv) other operating expenses (e.g. costs of material, supplies and similar products) incurred directly as a result of the research activity.

The scheme is limited to undertakings that fulfil two of the following three conditions related to the size of the undertaking carrying out the R&D:

- annual sales income is less than NOK 80 million (approximately €10 million);
- the enterprise has less than NOK 40 million (approximately €5 million) on the annual balance sheet total;
- the enterprise has fewer than 100 employees.

In addition, and pursuant to Section 16-40 in the Regulation to the Tax Law, a company is eligible for the tax deduction if the R&D project is approved by the Norwegian Research Council.

By Decision dated 5 February 2003¹¹, the Authority approved three notified amendments to the SkatteFUNN scheme. The changes notified to the Authority were as follows:

- the conditions regarding the size of the enterprises entitled to tax deduction were deleted;
- the Norwegian Research Council adopted internal regulations concerning the process of application and evaluation of projects; and
- some provisions of the Regulation to the Tax law were amended to clarify certain questions regarding cumulation.

2.2 The proposed amendment

The Norwegian authorities have now notified a proposed amendment regarding personnel and indirect eligible costs (see above 2.1 (i)). The proposed amendment introduces a statutory upper ceiling for the number of working hours and a rate per hour for R&D personnel that may be deducted. The proposal introduces a cap of 1850 hours per year per employee and a maximum rate of NOK 500 per hour. Personnel and indirect costs will thus be eligible up to NOK 925 000 per R&D personnel per year.

¹⁰ See footnote 7 above.

¹¹ Decision No 16/03/COL. The Decision can be found on the Authority's website <http://www.eftasurv.int/fieldsOfWork/fieldStateAid/stateAidRegistry/>.

II. APPRECIATION

1 Procedural requirements

Pursuant to Article 1 (3) in Part I of Protocol 3 to the Surveillance and Court Agreement, *“the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid (...). The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision”*.

Article 4(2) of the Authority’s Decision No. 195/04/COL provides that a tightening of the criteria for the application of an authorised aid scheme may be notified by way of a simplified notification form.

The Norwegian authorities have notified the introduction of a ceiling for personnel and indirect costs entering into the deduction base. This corresponds to a tightening of the criterion for the application of the authorised scheme.

Norway has met its reporting obligations under Article 5, 6 and 7 of the Authority’s Decision No. 195/04/COL and the simplified notification procedure can therefore be used according to Article 4(3) of the Authority’s Decision No. 195/04/COL.

By submitting a simplified notification for the tightening of the criteria for the application of the SkatteFUNN scheme by letter dated 2 November 2006, the Norwegian authorities have complied with the notification requirement pursuant to Article 4 of the Authority’s Decision No. 195/04/COL on simplified notifications.

2 Assessment

The requested maximum ceiling to be applied to eligible personnel and indirect costs is the only alteration to the existing SkatteFUNN scheme. The notified amendment does not therefore alter the assessment made by the Authority in its prior decisions approving the scheme.

The notified amendment can therefore be approved by the Authority on the basis of the reasoning provided for in the Authority’s Decisions Nos. 171/02/COL and 16/03/COL.

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority has decided not to raise objections to the proposed introduction of a maximum ceiling in respect of personnel and indirect eligible costs entering into the deduction base provided by the Norwegian authorities under the SkatteFUNN scheme.
2. The Norwegian authorities are requested to submit simplified annual reports regarding the implementation of the aid in accordance with Chapter 32 of the State Aid Guidelines.

3. This Decision is addressed to the Norwegian authorities.
4. Only the English version is authentic.

Done at Brussels, 29 November 2006

For the EFTA Surveillance Authority

Bjørn T. Grydeland
President

Kristján Andri Stefánsson
College Member