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Ministry of Trade, Industry and Fisheries
Akersgata 40
PO Box 8008,
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Norway

**Subject: Amendments to the employee share option tax scheme
for start-up and growth companies**

1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the three amendments to the scope of eligible employers under the existing employee share option tax scheme for start-up and growth companies (“the measures”), ESA considers that the measures constitute State aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections¹ to the measures, as they are compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(c).
- (2) ESA has based its decision on the following considerations.

2 Procedure

- (3) The Norwegian authorities notified the measures on 12 February 2025.²

3 Description of the measures

3.1 Background

- (4) The measures consist of amendments of the current employee share options tax scheme for start-up and growth companies which was approved by ESA’s [Decision No 267/21/COL](#)³ and is in effect until the end of the income year of 2031 (“the current scheme”).
- (5) The current scheme repealed and replaced a similar aid scheme that was first approved by ESA’s [Decision No 225/17/COL](#),⁴ and subsequently amended and

¹ Reference is made to Article 4(3) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

² Document No 1517343 and Document No 1517347.

³ OJ C 131, 24.3.2022, p. 11 and EEA Supplement No 19, 24.3.2022, p. 1.

⁴ OJ C 88, 8.3.2018, p. 18 and EEA Supplement No 13, 8.3.2018, p. 3.

prolonged in [Decision No 079/19/COL](#)⁵ and amended again in [Decision No 064/20/COL](#).⁶

3.2 Description of the standard tax treatment of employee share options

- (6) An employee share option is a right granted by an employer to an employee, allowing the employee to buy shares in the company they are employed in at a predetermined price (“the option”).
- (7) The positive difference between the market value of the option’s underlying shares at the time the option is exercised by the employee (“the option exercise price”) and the price paid for the underlying shares, including any option premium (“the option benefit”) constitutes taxable income pursuant to the Norwegian Tax Act.⁷
- (8) Subject to some exemptions, all taxable income is taxed as so-called general income at a rate of 22%, after deductions, under the Tax Act. Additionally, the option benefit constitutes employment income and is taxed as personal income.⁸ The personal income tax includes a gross tax, consisting of a progressive bracket tax and social contributions, which is capped at a rate of 25.4% and applied in addition to the general income tax.
- (9) Any subsequent gain from the underlying share of the exercised option is taxed as general income and is subject to shielded deduction⁹ and an upward adjustment of a factor¹⁰ of 1.72.
- (10) Finally, the employer is liable for social security contributions on the option benefits that have been achieved from the options it has granted.

3.3 Description of the current scheme

3.3.1 Tax treatment of employee share options under the current scheme

- (11) Under the current scheme, the taxation of the benefit accrued from the eligible option is deferred from the time the eligible employee exercises the eligible option to the time the eligible employee realises the underlying share or after a specific period of time (“the realisation date”).
- (12) Thus, the taxable benefit under the current scheme is any positive difference between the sales price of the underlying share at the realisation date and the option exercise price, including any option premium and other costs. This benefit constitutes the share capital gain and will be taxable in accordance with the Tax Act’s rules on taxation of share capital gain¹¹ which is subject to a shielded deduction and an upward adjustment of a factor of 1.72.¹²
- (13) The deferral of the option’s tax liability and the associated re-classification of any benefit derived from the option as share capital gain also relieve the eligible

⁵ OJ C 23, 23.1.2020, p. 5 and EEA Supplement No 3, 23.1.2020, p. 2.

⁶ OJ C 323, 1.10.2020, p. 9 and EEA Supplement No 63, 1.10.2020, p. 1.

⁷ Act No 14 of 26 March 1999 on the taxation of assets and income (*nw. Lov om skatt av formue og inntekt (skatteloven)*) (“the Tax Act”), Section 5-10.

⁸ Ibid. Section 12-2.

⁹ In Norwegian: “Skjermingsgrunnlag”.

¹⁰ In Norwegian: “Oppjusteringsfaktor”.

¹¹ The Tax Act, Section 10-30 and following sections.

¹² The Tax Act, Section 10-31 and following sections.

employer of the obligation to pay social security contributions on the mentioned benefit.

3.3.2 Eligible employers, employees and share options under the current scheme

- (14) To benefit from the current scheme, the employer, the employee, and the option must fulfil certain eligibility criteria.
- (15) For a detailed overview of the eligibility criteria regarding the employer, the employee, and the option under the current scheme, reference is made to sections 3.4.2, 3.4.3 and 3.4.4, respectively, of [Decision No 267/21/COL](#).

3.4 Description of the measures

- (16) The notified measures increase the number of eligible employers under the current scheme through the following amendments to the eligibility criteria concerning employers:
 - (i) An increase of the maximum number of full-time equivalent employees that eligible employers can have from 50 to 150;
 - (ii) An increase of the balance sheet cap that eligible employers cannot exceed from NOK 80 000 000 to NOK 200 000 000; and
 - (iii) An increase of the age limit of eligible employers from 10 years to 12 years at the time the option is granted.

3.5 Objective

- (17) The eligible employers under the current scheme generally have restricted access to capital which renders it challenging to offer competitive wages to attract and retain employees required to develop the employer's business activities to the benefit of society.
- (18) The current scheme therefore aims to enhance start-up and growth companies' ability to recruit and retain key employees. To this extent, the current scheme introduces more favourable taxation of options that makes options a more desirable method of compensation to employees. It also alleviates the eligible employer of its liability to pay social security contributions on the option benefit. This enables employers that are experiencing capital constraints to offer compensation that is competitive to that of bigger companies that can offer higher fixed wages.¹³
- (19) Nevertheless, the Norwegian authorities note that certain larger and/or older growth companies than those eligible under the current scheme are also subject to the same market failure as listed in paragraph (17).
- (20) In support of this, they point out that the utilisation of the current scheme remains moderate. The Norwegian authorities refer to stakeholder feedback that indicates that the moderate use of the current scheme is due to the scope of the current scheme being too narrow to cover larger and older start-up and growth companies that are also experiencing capital constraints, especially within industries such as

¹³ For a more detailed description of the objective of the current scheme, ESA refers to the description provided in section 3.1 of [Decision No 267/21/COL](#) which is still relevant.

biotech, life sciences and advanced materials and technologies.¹⁴ Therefore, the stakeholders propose to increase the employee and balance sheet cap, as well as the age limit from 10 to 12-15 years, for eligible employers under the current scheme. These proposals are also supported by an economic report from Menon Economics.¹⁵ Finally, the Norwegian authorities highlight that both Sweden and the United Kingdom have implemented similar employee share option tax schemes. These schemes are open to similar or larger companies than the measures allow for.

- (21) The measures' objective is therefore to enable larger and/or older growth companies that are subject to the same market failure as eligible employers under the current scheme to attract and retain required employees. To this extent, the measures increase the scope of the current scheme to encompass larger and/or older growth companies.

3.6 National legal basis and aid granting authority

- (22) The legal basis of the measures will not enter into force before ESA has approved the notification in a Decision. The legal basis will be found in Section 5-14 of the Tax Act, and a complementary administrative regulation.¹⁶ The aid granting authority is the Norwegian Ministry of Finance.

3.7 Beneficiaries, duration and budget

- (23) The measures will extend the number of eligible companies to 70 000, from an estimated number of 60 000 eligible companies under the current scheme. This corresponds to approximately 57% of all Norwegian non-financial limited liability companies with employees.
- (24) Nevertheless, the Norwegian authorities estimate that the 70 000 eligible employers have only employed around 22% of the employees in Norwegian non-financial limited liability companies. Furthermore, they estimate that only around 0.2% of these employees, which is to say 700 employees, will make use of the scheme annually.
- (25) The Norwegian authorities have notified the measures for the remainder of the duration of the current scheme, which is to say until the end of the income year of 2031.
- (26) The overall long-term effects of the current scheme including the measures are estimated to be an annual tax revenue loss for the State of NOK 20 000 000. For the period 2022-2031, the estimated revenue loss corresponds to NOK 200 000 000.

¹⁴ Akademikerne, [Hearing input to the Norwegian Government White Paper on Entrepreneurs and Startups, Meld. St. 6 \(2024-2025\)](#), 15.03.2024, section 3; Oslo Cancer Cluster, [Hearing input to the Norwegian Government's on new employee option tax scheme rules](#), 13.07.2021.

¹⁵ Menon Economics, [Report on Academics and Entrepreneurship](#), No 97/2020, section 11.5.1.

¹⁶ Regulation No 1158 of 19 November 1999 concerning the supplementation and implementation etc. of the Tax Act (nw: Forskrift til utfyling og gjennomføring mv. Av skatteloven), Section 5-14-12.

3.8 Overlap with other schemes

- (27) The Norwegian authorities have confirmed that aid granted under the current scheme with the inclusion of the measures is not related to any costs that could be eligible for other State aid measures or schemes.

4 Presence of State aid

- (28) In its [Decision No 267/21/COL](#), ESA considered that the current scheme constituted State aid to eligible employers within the meaning of Article 61(1) of the EEA Agreement.¹⁷ Considering that the measures extend the scope of eligible employers under the current scheme, ESA finds that there is nothing in the present case that alters the conclusions drawn in [Decision No 267/21/COL](#) as regards the existence of aid. ESA therefore considers that the measures constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

5 Lawfulness of the aid

- (29) Pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("Protocol 3 SCA"): "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."
- (30) The Norwegian authorities have notified the measures and have yet to let them enter into force. They have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3 SCA.

6 Compatibility of the aid

6.1 Introduction

- (31) In its previous [Decision No 267/21/COL](#), ESA assessed the compatibility of the current scheme under Article 61(3)(c) of the EEA Agreement. ESA found that the current scheme contributed to the development of start-up and growth companies by allowing them to attract and retain employees required for their economic activities¹⁸ without adversely affecting trading conditions to an extent contrary to the common interest.¹⁹ Consequently, ESA concluded that the current scheme was compatible aid within the meaning of Article 61(3)(c) of the EEA Agreement.²⁰ ESA considers that this assessment remains valid with regard to the measures.

6.2 Facilitation of development of certain economic activities or areas

- (32) Due to capital constraints generally experienced by eligible employers under the measures, these companies would likely experience challenges in attracting and retaining employees without binding up their available capital that is required to develop their economic activities to the benefit of society.
- (33) The measures mitigate this market failure by extending the favourable taxation on options under the current scheme to larger and/or older growth companies which experience capital constraints (see paragraph (20)). This enables them to offer

¹⁷ Decision No 267/21/COL, paragraphs 40-53, in particular paragraph 49.

¹⁸ Decision No 267/21/COL, paragraphs 62 and 65.

¹⁹ Ibid., paragraph 96.

²⁰ Ibid., paragraph 98.

competitive wages to retain and attract qualified employees, without binding up their available capital in fixed wages and social security contributions. Thus, the measures facilitate efficient matching of employees with medium-sized growth companies which in turn facilitates development of their economic activities to the benefit of society.

- (34) In view of the above, ESA considers that the measures contribute to facilitate the development of certain economic activities and have an incentive effect.

6.3 Whether the aid adversely affects trading conditions to an extent contrary to the common interest

- (35) ESA does not find sufficient reason to alter its assessment concerning necessity and appropriateness in [Decision No 267/21/COL](#)²¹ in relation to the measures.
- (36) In that Decision, ESA concluded that the current scheme was needed and appropriate as it, unlike earlier policy instruments, enabled the eligible employers to retain and attract required employees by allowing them to offer competitive wages despite suffering from capital constraints.
- (37) The measures extend the current scheme to larger and/or older growth companies that are also experiencing capital constraints that are limiting their ability to offer competitive wages to required employees (see paragraph (20)). They are therefore subject to the same market failures as currently eligible employers due to similar capital constraints without being eligible for the favourable option tax scheme. Consequently, ESA considers the extension of the current scheme to include these larger and/or older growth companies to be both appropriate and necessary to address the market failure these companies are also subject to.
- (38) ESA expects the measures to have a limited negative effect on the labour market and competitors, despite strengthening the position of more companies in the labour market compared to the current scheme. This is due to the continuation of the other eligibility criteria concerning the employers, employees and options.²² These safeguards ensure that the aid remains available only to employers that are subject to the labour market failures. Furthermore, the eligibility criteria help reduce the aid to the minimum necessary for these employers to offer competitive wages that retain and attract required personnel.
- (39) Consequently, ESA expects the measures to only strengthen the beneficiaries to an extent where they can compete with larger and more established employers for the labour they require. Thus, the measures level the playing field with larger companies in the labour market, which is likely to result in a more efficient matching of the workforce with the demand of small- and medium-sized growth and start-up companies. The eligible employers are in turn better positioned to develop their business activities to the benefit of society. Therefore, ESA finds that the measures are proportionate to their objective.²³

²¹ Ibid. paragraphs 77 and 83.

²² Ibid., paragraphs 85 – 89 concerning the specific eligibility criteria.

²³ In [Decision SA.63421 of 14 October 2021 \(2021/N\) Sweden](#), the European Commission assessed a measure which extended the Swedish share option tax scheme, that had the same objective and substantially similar terms as the current Norwegian scheme, to employers with 150 employees and a net turnover or balance sheet of SEK 280 million. The European Commission found the scheme

- (40) Balancing the above considerations, ESA considers that the measures do not adversely affect trading conditions to an extent contrary to the common interest. Hence, ESA concludes that the compatibility assessment in its previous Decision remains valid with regard to the measures.

6.4 Transparency

- (41) The Norwegian authorities have confirmed that the aid, should it exceed EUR 100 000, will be published in the [national transparency register](#). Therefore, the measures fulfil the transparency requirements.

7 Conclusion

- (42) On the basis of the foregoing assessment, ESA considers that the measures constitute State aid within the meaning of Article 61(1) of the EEA Agreement. Since ESA has no doubts that the aid is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c), it has no objections to the implementation of the measures.
- (43) The Norwegian authorities have confirmed that the notification does not contain any business secrets or other confidential information that should not be published.

For the EFTA Surveillance Authority,

Yours faithfully,

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Responsible College Member

Árni Páll Árnason
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Stefan Barriga
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For Melpo-Menie Joséphidès
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This document has been electronically authenticated by Arne Roeksund, Sigrun Ingibjorg Gisladdottir.