

Brussels, 06 April 2022
Case No: 88307
Document No: 1271131
Decision No 068/22/COL

Ministry of Trade, Industries and Fisheries
PO BOX 8090 Dep
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Norway

Subject: Amendments to certain tax incentives for zero-emission vehicles

1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the amendments to the re-registration tax and the favourable income tax calculation for employees benefitting from private use of zero-emission vehicles (“the measures”), it considers that they 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). ESA has based its decision on the following considerations.

2 Procedure

- (2) The Norwegian authorities notified the measures on 9 March 2022.²

3 Description of the measures

3.1 Introduction

- (3) By [Decision No 150/15/COL](#) (“first approval decision”) and [Decision No 228/17/COL](#) (“second approval decision”) (together referred to as “the previous decisions”), ESA approved a number of measures in favour of zero-emission vehicles (“ZEVs”).

3.2 The re-registration tax

- (4) ZEVs are currently exempted from re-registration tax in Norway. The exemption was approved in the second approval decision and has been in force since 2018. The exemption from re-registration tax is approved until 31 December 2023.
- (5) The Norwegian authorities have notified the replacement of the existing exemption from re-registration tax with a reduced rate for ZEVs compared to conventional vehicles. A new category (category e) will cover all ZEVs in category b (passenger cars) and category c (lorries, tractors, motor caravans, tracked vehicles and busses). Category e will be subject 25% of the rate paid for category b vehicles over 1 200 kg.

¹ Reference is made to Article 4(3) of the 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 1274327.

3.3 The favourable income tax calculation for employees benefitting from private use of ZEVs

- (6) By the first approval decision, ESA approved a taxable benefit of 50% of that of conventional cars for employees that privately use ZEVs. The approval was not limited in time and has been in force since 2009.
- (7) The current taxable benefit is set at 60% of that of a conventional car.³ This rate was implemented in 2018 and was not notified to ESA at the time.
- (8) The second notified amendment is the increase of the taxable benefit for ZEVs with an additional 20 percentage points. Accordingly, the taxable benefit will be set at 80% of that of a conventional car.

4 Presence of State aid

- (9) Article 61(1) of the EEA Agreement reads as follows: “Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”
- (10) The qualification of a measure as aid within the meaning of this provision requires the following cumulative conditions to be met: (i) the measure must be granted by the State or through State resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.
- (11) In its previous decisions, ESA concluded that the support granted through the measures constituted state aid within the meaning of Article 61(1) of the EEA Agreement.⁴ There is nothing in the notified amendments which alters this conclusion. Consequently, ESA concludes that the measures constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

5 Lawfulness of the aid

- (12) 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”): “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.”
- (13) The Norwegian authorities implemented the increase in the taxable benefit for employees benefitting from private use of ZEVs from 50% to 60% without notifying ESA. In doing so, the Norwegian authorities did not respect their obligations under Article 1(3) of Part I of Protocol 3. The introduction of that change therefore resulted in unlawful aid.

³ See Section 5-13 of the Norwegian Taxation Act, available at: <https://lovdata.no/dokument/NL/lov/1999-03-26-14?q=skatteloven> and Section 5-13-5 of the Ministry’s supplementing Regulation, available at: <https://lovdata.no/dokument/SF/forskrift/1999-11-19-1158?q=forskrift+il+skatteloven>.

⁴ See Decision No 150/15/COL part II, section 2, and Decision No 228/17/COL, section 4.

- (14) The Norwegian authorities have notified the other measures subject to this decision and have yet to let them enter into force, in line with their obligations under Article 1(3) of Part I of Protocol 3.

6 Compatibility of the aid

- (15) Article 61(3)(c) of the EEA Agreement provides that ESA may declare compatible “aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest”.
- (16) In its previous decisions, ESA considered that no state aid guidelines were applicable.⁵
- (17) Since the adoption of the previous decisions, the Guidelines on State aid for climate, environmental protection and energy (“CEEAG”) have entered into force.⁶ The CEEAG do not, however, apply to “State aid for the design and manufacture of environmentally-friendly products, machinery, equipment or means of transport with a view to operating with fewer natural resources [...]”.⁷ Accordingly, ESA considers that the measures should be assessed directly under Article 61(3)(c) of the EEA Agreement.
- (18) In its previous decisions, ESA concluded that the measures were compatible with Article 61(3)(c) of the EEA Agreement.
- (19) The notified amendments entail neutral reductions of the aid intensities, leaving the measures otherwise unaltered. Importantly, the amendments build on the same underlying logic as the already approved measures, namely that all ZEVs are treated in the same manner and that there is no discrimination between different types of ZEVs.
- (20) Accordingly, ESA considers that the amendments do not alter the conclusion on the compatibility of the measures set out in the previous decisions.
- (21) Based on the foregoing, ESA concludes that the measures comply with Article 61(3)(c) of the EEA Agreement.

7 Conclusion

- (22) On the basis of the foregoing assessment, ESA considers that the measures constitute state aid with the meaning of Article 61(1) of the EEA Agreement. Since ESA has no doubts that this 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.
- (23) The Norwegian authorities have confirmed that the notification does not contain any business secrets or other confidential information that should not be published.

⁵ See Decision No 150/15/COL part II, section 4, and Decision No 228/17/COL, section 6.

⁶ Communication from the Commission, Guidelines on State aid for climate, environmental protection and energy 2022, C/2022/481, OJ C 80, 18.2.2022, p1-89 and ESA Decision No 029/22/COL of 9 February 2022 amending the substantive rules in the field of State aid by introducing new Guidelines on State aid for climate, environmental protection and energy 2022.

⁷ *Ibid.*, paragraph 13 (a).

For the EFTA Surveillance Authority,

Yours faithfully,

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This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.