ROYAL NORWEGIAN
MINISTRY OF FINANCE

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Response to the request for information on the Norwegian exit tax rules for natural persons

1. Introduction and summary

The Norwegian Ministry of Finance (hereinafter "the Ministry) refers to the letter 13 June 2025 from the EFTA Surveillance Authority (hereinafter "the Authority"). Furthermore, we refer to subsequent dialogue between the Ministry and the Authority, whereby the Authority kindly extended the deadline for the Ministry's response until 17 and later until 18 September 2025.

The Authority requests information on the Norwegian exit tax rules for natural persons. More specifically, the Ministry is requested to provide an overview of the prevailing exit tax rules for natural persons, as well as information on the rationale for the amendments adopted through 2024 (hereinafter "the 2024 amendments"). Furthermore, the Ministry is requested to give information on its interpretation of relevant EEA law on certain parts of the exit tax rules, and the proportionality considerations made.

First, we would like to emphasize that it is important to consider the exit tax rules in light of the broader context of the Norwegian tax system of which they form part. Therefore, in item 2 we will provide an overall description of the Norwegian regime governing the taxation of income from shares. In item 3, we describe the international background and the development of the concept of a balanced allocation of taxing rights between states, the need to secure a level playing field also within the area of taxation, and the importance of fair and sustainable national tax systems in an increasingly globalized and digitalized world, where taxpayers are becoming more mobile. In the Ministry's view, this is crucial for understanding the development of EEA law in this field.

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A brief overview of the main findings in the case law of the European Court of Justice (hereinafter "CJEU") on exit taxation is presented in item 4.

Item 5 contains an overview of the prevailing Norwegian exit tax rules, as well as a more detailed account of the recent amendments to the rules and the rationale for each of these amendments.

Finally, in item 6, the Ministry presents its view on relevant EEA law, including an assessment of the relevant case law of the CJEU on exit taxation. This item also includes our response to the aspects in items 1 – 3 in the Authority's letter.

As our review will show, the Ministry is of the opinion that the exit tax rules are in compliance with EEA law.

To keep it simple, the descriptions and considerations below will primarily assume situations where the taxpayer holds shares in *a limited liability company* and *emigrates to another EEA country*. Where appropriate, we will explain and justify specific solutions adapted for other settings.

2. General description of the Norwegian taxation of share income

The Norwegian exit taxation rules must be seen in relation to the Norwegian tax system as a whole, particularly the taxation of capital gains.

Income from shares (*ownership income*) consists of distributed dividends and realised capital gains from investments in limited liability companies. The Norwegian tax system includes a comprehensive framework to prevent chain taxation in the corporate sector.

Norwegian *companies* are generally exempted from ownership income through the exemption method ("fritaksmetoden"). At the same time, there is no right to deduct corresponding losses. The purpose of the exemption method is to avoid taxation at multiple levels within the corporate sector (chain taxation). Without the exemption method, the total tax burden would have depended on the number of levels in the corporate structure. Norway applies a more liberal tax exemption method than most European countries, in the sense that it also includes income on portfolio investments.[1]

Individuals who are resident for tax purposes in Norway are generally liable to pay tax on ownership income and are taxed under the shareholder model ("aksjonærmodellen"). The shareholder model implies that share income accruing to a personal shareholder, exceeding a risk-free return allowance, is taxable as ordinary income. In the assessment, taxable ownership income is first multiplied by an upward adjustment factor (1,72 in 2025) and then

[1] Many other countries have exemption methods that don't include portfolio investments. This typically means that the exemption method is conditional upon the receiving company owning and/or having voting rights to a certain proportion of the shares in the distributing company (ownership requirement). The exemption method is often also conditional upon the receiving company having held ownership of the shares for a certain period prior to the distribution or realization (holding period requirement).

added to the ordinary income which is taxed at a rate of 22 per cent.[2] This makes out a tax rate of 37.84 per cent. The purpose of the upward adjustment factor is to align the marginal tax rate on share income with that on wages. This counteracts the incentive to withdraw labour income as dividends rather than as wages (income shifting).

The tax rate is in practice reduced through a risk-free return allowance which is granted against the assessed ordinary income. The purpose of the risk-free return allowance is to counteract distortions in household investments and the financing structure of companies as a result of dividend taxation. The risk-free return allowance is calculated by multiplying the risk-free return base, which is the cost of the share plus any unused risk-free return allowance from previous years, by a risk-free rate of return. The risk-free rate of return is calculated as the interest rate on three-month government treasury bills plus a premium of 0.5 percent.

If the share income is less than the risk-free return allowance, the unused risk-free return allowance is added to the risk-free return base for the next year. In practice, this means that any unused risk-free return allowance is carried forward at an interest rate equivalent to the risk-free rate of return. Unused risk-free return allowance is specific to each share and is deductible against subsequent dividends and realised capital gains on the share.

In summary, the exemption method allows for profits to be retained within a company. The shareholder model implies that the retained profits are not taxed at the shareholder's hand until they are distributed as dividends or through capital gains taxation when the shares are realized. If profits are retained within a company, substantial accumulated value can be built up in the company. Over time, this can lead to significant latent gains on shares in such companies. This is not necessarily an advantage in itself. However, if the shareholder leaves the Norwegian tax jurisdiction before the shares are realised, the retained profits would not be taxed in Norway without effective exit tax rules.[3] This would jeopardise the balanced allocation of the power to impose taxes between states.

Furthermore, the inheritance tax was abolished in respect of deaths and gifts donated from 2014 onwards and replaced by a new general rule, called “continuity for tax purposes”. The testator's input value, risk-free return base, unused risk-free return allowance and any other tax positions (such as acquisition date) are from 2014 carried forward to the beneficiary. All else being equal, this may have contributed to increase the value of unrealised gains and to increase the incentive to emigrate from Norway.

[3] Norway does not have the right to tax capital gains when shareholders that are tax resident abroad realize shares. This applies even if the company is resident in Norway. Furthermore, dividends distributed to non-resident shareholders will not be subject to the general dividend taxation rules. If the distributing company is resident in Norway, Norway may normally impose a withholding tax, but with significantly lower rates than the general tax rate on domestic dividends. Dividends distributed from a non-resident company to a non-resident shareholder will not be subject to any dividend taxation in Norway.

3. The international background

As referred to above, globalization and digitalization have led to enhanced integration across national borders, resulting in greater mobility for both taxpayers and tax bases. It is now easier, particularly for resourceful individuals, to move between homes in different countries. This prompts mechanisms to determine what sources of income and capital should be taxed where and when.

Along with improved mobility, the principles of taxation have evolved, both nationally and internationally. One example is the increased emphasis on the principle of taxing income in the state it is considered earned, to ensure a balanced allocation of taxing rights between countries. This reinforced awareness is reflected, inter alia, in the OECD's Base Erosion and Profit Shifting (BEPS) measures, applicable mainly within the company sector.

The taxation of individuals in the country of tax residence, has its roots further back in time, and represents another expression of the principle of a balanced allocation of taxing rights between countries. The idea is that the country of residence should have the right to tax income accrued during an individual's residence in that state. Part of the reasoning behind this principle, is that a person will generally have had access to the country's infrastructure, welfare services, subsidy schemes, healthcare, educational opportunities, etc. while tax resident there.

The new Norwegian rules for exit taxation are aligned with these international developments also supporting important distributional considerations.

There has also been growing attention internationally toward more effective taxation of so-called "High-Net-Worth Individuals", also within the EU member states. Such taxation can play an important role in reducing inequality, in addition to strengthening the legitimacy of tax systems. Without it being the leading purpose of the exit tax, a well-functioning tax on latent gains upon emigration from the country of tax residence, aligns with this rationale. It will ensure that large share gains earned by wealthy individuals are taxed more effectively.

In addition to ensuring a fair and balanced allocation of taxing rights, effective national exit taxes are suited to reduce the extent of harmful tax competition between countries. For companies, the EEA state aid rules will cancel out distortive tax incentives to attract investments in that state, if they are reserved for specific companies or sectors, and are not explicitly considered compatible with EEA law. For individuals, however, the state aid rules do not prohibit selective tax advantages (provided no rollover effect to a company).

Hence, a state's taxation of income and wealth accrued during the time of the individual's residence in that state, such as the exit taxation, may reduce some of the negative effects of jurisdictions selectively attracting specific individuals by offering regimes with low or no taxation on specific income or wealth. Without such rules, the costs of lost revenue will be borne by the state of emigration (and potentially by the disqualified taxpayers within the state of immigration). Without the possibility to tax the part of the income accrued in the state from which the individual emigrates, the special regimes of other states could prevent a level playing field and could lead to a “race to the bottom” scenario. This could potentially have significant effects on the economy in general. There were indeed examples of such negative effects during the financial crisis.

In line with this development there has been a gradual shift in the EU/EEA when it comes to the weighing of various principles and considerations against each other. The financial crisis, along with numerous revelations of international tax avoidance and evasion within the corporate sector as well as among individuals, underscored the need for measures against tax avoidance, evasion and erosion of the tax bases within the EEA states. The financial crisis led EU institutions to urge member states to introduce economically sustainable national tax systems. Political pressure was exerted on several member states to establish rules that safeguarded revenue and ensured more fair and reasonable taxing of companies and citizens. This was important not only to address large budget deficits, but also to promote overall trust in the tax systems of the EU member states. Part of the background was the dissatisfaction that member states with well-functioning tax systems were contributing funds to bailout packages for countries with poorly designed tax systems or systems that deliberately offered special arrangements with very low taxation to certain taxpayers. The result was insufficient tax revenues and large budget deficits in several member states.

The measures developed within the OECD to combat base erosion and profit shifting were followed up by the EU institutions from 2012 and onwards. In some respects, the EU institutions went further than the OECD, for example by issuing directives requiring member states to introduce extensive and detailed anti-tax avoidance legislation, as well as legislation for the sharing and public disclosure of tax-relevant information.

While the fundamental premise of the EEA framework is that tax legislation should facilitate the free movement of persons, goods, services, and capital across borders, this principle must be balanced against overriding public interests. Among such acknowledged public interests, is a state’s right to tax value that a person has built up while that person was tax resident within that jurisdiction, ensuring a balanced allocation of taxing powers. Balancing the right to tax its residents, against the obligation to respect the four freedoms, helps to reduce the risk of tax base erosion in one member state to the benefit of another state. In turn, this reduces the risk of increased tax burdens, or cuts to public welfare, for those who remain resident in that country. This may again strengthen the public confidence in both the tax systems and the internal market *i.a.* within population groups without resources to engage in tax-planning.

4. Descriptive overview of EEA cases on exit taxation

Norwegian tax rules must comply with the primary law of the EEA Agreement. The principle of free movement of persons, capital, services and goods forms part of both the Treaty on the Functioning of the European Union (TFEU) and the EEA Agreement. Thus, the decisions and the interpretations of primary law by the CJEU will normally be regarded as binding for Norway and the other EEA/EFTA states, in the same way as for the EU member states.

The CJEU has in a number of cases considered national rules on taxation of unrealised gains against the provisions on free movement when shares and other assets are moved out of a state's taxing jurisdiction. In the following, we will provide a purely descriptive overview of the development in relevant case law, as we see it. The implications of, and the further reasoning around these judgments with respect to the Norwegian rules, will be given in item 6.

In the *C-9/02 Lasteyrie du Saillant* case from 2004, the CJEU assessed French rules on exit taxation for individuals. Under the French rules, exit tax was triggered on unrealised share gains upon emigration. The French rules were justified by the aim of preventing tax avoidance. The taxpayer could obtain a deferral of payment until the shares were actually realised, provided certain conditions were met. The taxpayer had *i.a.* to provide security for the assessed tax. The CJEU found that both the imposition of exit tax and the requirement of security for deferral constituted restrictions. Furthermore, the Court found the aim of tax avoidance to be relevant in principle. However, the rules were contrary to the freedom of establishment because, due to their broad scope, they would also apply to emigration without a tax avoidance purpose. The rules thus went further than necessary to safeguard the objective pursued.

In the *C-470/04 N* case, the CJEU assessed Dutch rules on exit taxation for individuals, which were very similar to those considered in *Lasteyrie du Saillant*. The Netherlands argued that the purpose of the rules was to ensure a balanced allocation of taxing rights between states. The CJEU accepted the imposition of exit tax when payment was deferred until actual realisation. The Court also accepted that the Dutch tax authorities could require the submission of tax returns necessary to calculate the tax. However, the requirement to provide security was considered disproportionate, as an EU directive already existed on exchange of information and mutual assistance in recovery. It was also disproportionate that the rules did not take account of value decreases after emigration, in cases where the decrease had not already been recognized in the host state.

Subsequently, the CJEU delivered several judgments on exit taxation of legal persons. In the *C-371/10 National Grid Indus* case, the Court held that requiring immediate payment of exit tax constituted a restriction, because it created a liquidity disadvantage for an emigrated company compared with one remaining in the home state. However, the payment requirement could be justified by the need to ensure a balanced allocation of taxing rights between states. In its proportionality assessment, the Court distinguished between the assessment and the collection of the tax claim. It found it proportionate that the tax claim be assessed at the time of emigration. For collection, however, the taxpayer had to be given the choice between immediate payment and deferred payment. If deferred payment was chosen, the taxpayer had to accept the administrative burdens involved. Unlike in the *N* case, the CJEU accepted that the exit state did not take account of value decreases after emigration.

The Court further stated that states may take into account the risk that the tax cannot be collected, a risk that increases over time. Therefore, the Court accepted that security for the tax claim could be required, even though there was already a directive on information exchange and recovery assistance.

In the *C-261/11 Commission v. Denmark* case, the CJEU stated that states may operate other criteria triggering obligation to pay the exit tax than the actual realisation of the assets. However, the criteria must constitute a measure less restrictive than immediate payment of the entire tax amount upon the asset's transfer out of Denmark.

In the *C-164/12 DMC case*, concerning a company, the CJEU upheld German rules providing that exit tax should be paid in annual instalments over five years. The Court reiterated that the risk of non-recovery increases with time, and that states may establish other criteria for triggering the obligation to pay than actual realisation. It further stated that security may only be required following an assessment of the actual risk of non-recovery.

In the *C-657/13 Verder LabTec* case, also concerning companies, the CJEU accepted rules providing that exit tax should be paid in annual instalments over ten years.

Then, in the *C-503/14 Commission v. Portugal* case, the CJEU once again considered exit taxation of individuals. The Portuguese rules required immediate payment of the exit tax. The European Commission argued that *Lasteyrie du Saillant* and *N* were the relevant cases here, as they concerned individuals. The *National Grid Indus* case was, according to the Commission, not relevant because it concerned legal persons. The CJEU, however, stated that in previous judgements, it had *transposed the principles established in National Grid Indus also to the taxation of capital gains of natural persons*. In assessing whether the restrictive rules could be justified by the need to ensure a balanced allocation of taxing rights between states, the CJEU held that there is *no objective reason to distinguish between individuals and legal persons*. The Court then concluded that the rules requiring immediate payment went further than necessary. The taxpayers must be given the choice between immediate payment and deferred payment, possibly with interest in accordance with relevant national law. The taxpayer must accept the administrative burdens that a deferral entails, such as providing security. The Commission had also pointed out that the Portuguese rules did not allow post-emigration value decreases to be deducted in the host state. The Court, however, stated that the state of origin has no obligation to reduce the tax claim, as the claim was definitively determined at the time of emigration.

In the *C-581/17 Wächtler* case, the CJEU considered the previous German rules on exit tax on share gains for individuals moving from Germany to Switzerland. The rules prescribed immediate payment of tax on unrealised gains when moving to a country outside the EU/EEA, including Switzerland. For moves to an EU/EEA country, the assessed tax was payable only when the share was realised (without interest). Since Switzerland is not part of the EEA, the case concerned interpretation of the EU-Switzerland Agreement on free movement of persons. The CJEU found that requiring immediate payment was disproportionate. The Court stated that taxpayers must be granted deferral of payment in order for the rules to be compatible with the freedom of establishment and the EU - Switzerland Agreement. Under the then applicable German rules, a taxpayer could be granted deferral in the form of instalment payments provided immediate payment would involve significant difficulties for the taxpayer. This issue was not at stake in the case, as Mr. Wächtler was not in such a situation. Nevertheless, the CJEU stated that instalment payment in a situation of significant hardship cannot eliminate the liquidity disadvantage of having to pay part of the tax at the time of emigration. Instalment payment will in any event be more burdensome for the taxpayer than deferral until actual realisation.

5. The recent amendments to the exit tax regime for natural persons and the underlying objectives

Whereas the 2007 exit tax rules' primary objective was to prevent natural persons exiting Norway in order to reduce or avoid capital gains taxation in Norway, the principal objective of the current exit tax rules is to make sure that unrealised capital gains accrued while the owner is a tax resident in Norway, is actually taxed here, in line with the legitimate objective of ensuring the balanced allocation of taxing rights between states. The change in purpose has prompted amendments to the rules, which will be commented upon throughout the letter.

Below, we will provide a background for the debate which led to the recent amendments, before we give a brief overview of the current exit tax regime. After this, we describe the 2024 amendments and the reasoning behind each amendment in more detail.

5.1 Background: The public debate and development of the exit tax for individuals until 2024

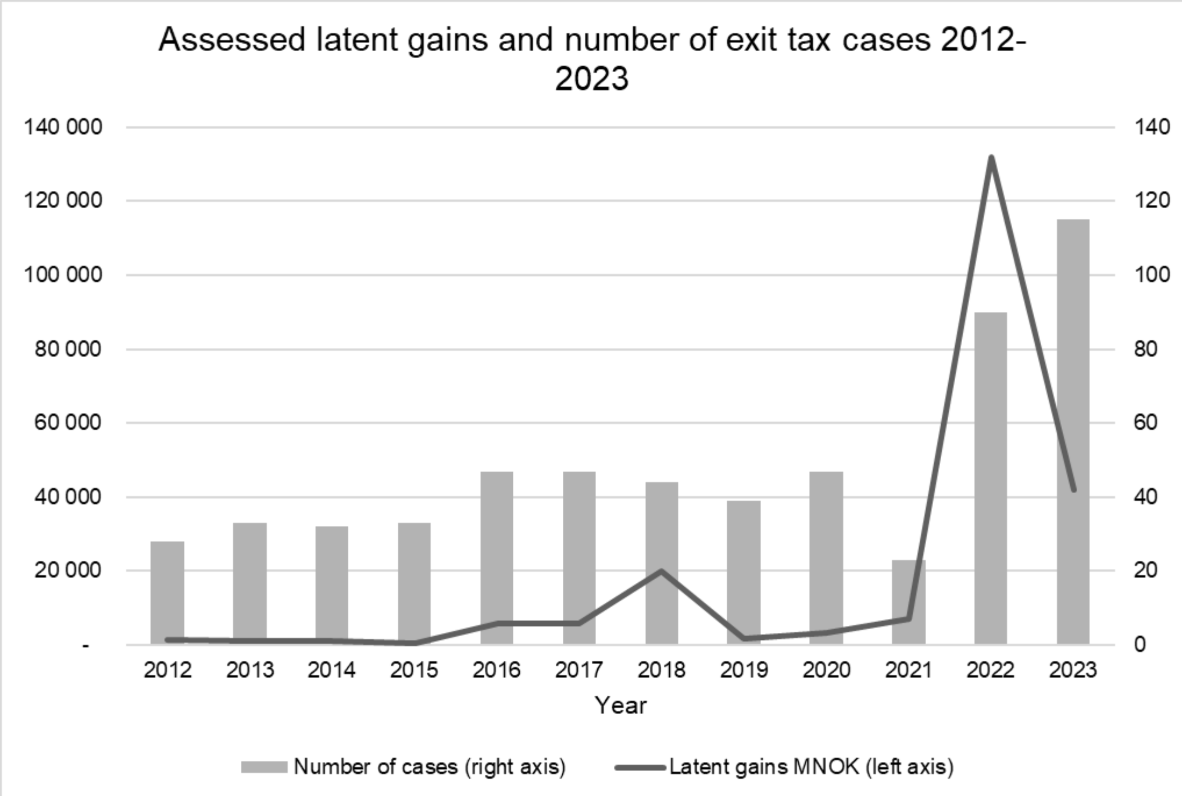
Upon the introduction of the shareholder model, the preparatory works pointed out that individual shareholders may have tax incentives to emigrate from Norway before realising their shares - typically to a country where capital gains are not taxed. It was emphasized that the implementation of the shareholder model and the exemption method could reinforce these incentives, cf. Ot.prp. no. 1 (2004–2005) Section 5.6.9.

A general exit tax on accrued unrealised (latent) gains on shares and similar assets for natural persons has been in place since 2007. The main purpose of the original exit tax was to prevent Norwegian taxpayers emigrating to avoid taxation on the accrued gains. The exit tax was fully waived if the shares were not realised within five years after the cessation of the taxpayer's tax residence in Norway. This so called five-year-provision was based on the presumption that a taxpayer that stayed resident abroad for five years, would be less likely to have emigrated for tax reasons. Nevertheless, it gave Norwegian taxpayers with large unrealised gains considerable incentives to emigrate and realise gains after five years abroad and thereby avoid Norwegian capital gains tax. This provided a potentially large benefit to individuals who emigrated compared to individuals who remained in Norway.

In recent years there has been an increasing trend of higher mobility among high-net-worth individuals, workers in highly mobile professions and individuals with close ties to other countries (e.g. foreign nationals). Alongside variations in tax rates and tax benefits across jurisdictions, this has increased the opportunities for tax planning for individuals both at domestic and international levels.[4]

Figure 1 shows exit tax cases between the years 2012 and 2022. Though the *assessed* latent gains sum up to 180 BNOK, which results in aggregate exit taxes of 50 BNOK, only 50 MNOK was paid in exit taxes over this period (numbers are approximates and in nominal terms).

Figure 1 Assessed latent gains and number of exit tax cases 2012–2023. MNOK (left axis) and number of cases (right axis).



This led to the exit tax regime becoming one of several topics in a comprehensive public and political debate over the last few years concerning especially wealth tax and emigration.

The large increase in emigrations seen from 2022, both in terms of the number of persons as well as the amount of unrealised capital gains, indicated that the exit tax regime was not fit for purpose. Furthermore, the debate and news articles covering these exits, sparked a debate on whether it was feasible to maintain the comprehensive Norwegian exemption method and the shareholder model with the exit tax regime applicable at that time. It seemed

[4] Taxation and Inequality. OECD Report to G20 Finance Ministers and Central Bank Governors. July 2024, Brazil. https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/07/taxation-and-inequality_b7cf450c/8dbf9a62-en.pdf.

relatively easy to completely avoid taxation in Norway of the accumulated and untaxed capital gains held through personal holding companies.

The Norwegian Tax Committee (NOU 2022: 20) stated that the exit tax rules should be designed in a way that ensures Norwegian taxation of value appreciation accrued while the owner was tax resident in Norway. In the Committee's view this should apply regardless of how the taxation of capital gains in Norway is structured at any given time, and thus independently of the current design of the shareholder model and the exemption method. The Committee emphasised that as mobility in society has increased, the principle of a reasonable and fair allocation of the tax base between states also has become more apparent within EU/EEA law. They recommended to abolish the five-year-provision to limit the possibility of avoiding Norwegian capital gains tax by emigrating, as well as an assessment of whether the EEA-agreement permits further tightening of the exit tax rules.

The five-year-provision was abolished as of 29 November 2022. The scope of the rules was also expanded to include transfers of shares and similar assets to close relatives residing abroad, beyond just spouses. However, it was still possible to circumvent payment of the exit tax by different methods. For example, it was possible to defer the payment of the exit tax indefinitely, and at the same time "emptying the company" through distribution of dividends. In such a case there might be no potential capital gains left to tax, with respect to income accrued while resident in Norway.[5] Certain reorganisations after emigration also made it possible to avoid the withholding tax on dividends from Norwegian companies to residents abroad. Several of these loopholes were addressed by the Advisory Panel on Fiscal Policy Analysis in their 2025-statement. They emphasized that the recent amendments in the Norwegian exit tax should not be reversed unless there are alternative mechanisms in place to effectively close the loopholes.

An effective exit tax allows for the exemption method and shareholder model to work consistently and for the domestic tax rates in general to remain lower than without an effective exit tax regime. This will contribute to minimizing economic inefficiencies and to preserve the overall effectiveness of the Norwegian tax system. An effective exit tax will also reduce resources spent on tax planning and can also have redistributional effects. Without effective exit tax rules, gains earned in Norway might not be subject to taxation here, thereby jeopardising the balanced allocation of the power to impose taxes between EU/EEA states.

Furthermore, during the adoption of the national budget for 2023, the Norwegian Parliament adopted the following request resolution (no. 82), see Recommendation 2 S (2022–2023):

'*The Storting requests that the government assess and propose an exit tax that ensures unrealised gains accumulated in Norway up to the time of emigration are actually taxed in Norway.*'

[5] When dividends are paid to foreign owners from Norwegian companies, a standard withholding tax of 25 percent applies. However, if the owner resides in a country that has a tax treaty with Norway, the rate is typically reduced to 15 percent. To avoid double taxation, it is usually possible to claim a credit for the Norwegian withholding tax against any tax liability in the country of residence.

In the negotiations on the 2024 national budget, the rules were further expanded to apply to transfer of shares and similar assets to any individuals or legal entities tax resident outside Norway. This amendment applied to transfers made on or after December 3, 2023.

In the following, we will describe the amendments made to the exit tax regime throughout 2024, and the reasoning behind them. The description will focus especially on the amendments related to exit tax triggered by emigration of a person owning shares.

5.2 Overview of the Norwegian exit tax rules

The following description is limited to the current rules specifically governing the exit taxation when a natural person *changes tax residency to another EEA state*. It also briefly describes exit tax on *transfers of shares* etc. to a legal or natural person resident in another EEA state.

As mentioned above, the primary objective of the Norwegian exit tax is to safeguard a balanced allocation of taxing rights between Norway and the states of immigration, and to secure that Norway has the power to tax any capital gains on shares etc. accrued during the taxpayer's tax residency in Norway. Furthermore, the exit tax regime is designed to ensure the effectiveness of tax collection, as well as reducing the risk of circumvention of the general rules governing the taxation of capital gains on shares etc.

Thus, the exit tax regime is intended to strike a fair balance between, on the one hand, an efficient taxation of capital gains accrued during the period as a tax resident in Norway and the collection of this tax, and on the other, the mobility of the taxpayer.

When a natural person is tax resident in Norway, they will be taxed for capital gains on shares etc. upon emigration, as if these assets had been realised the day before the tax residency in Norway ceased[6]. Cf. the Act on Tax of Wealth and Income (the Tax Act) Section 10-70, paragraph 1.

Correspondingly, when shares etc. are transferred[7] from a tax resident natural person to a person or entity not tax resident in Norway, the transferor will be taxed as if the shares were realised the day prior to the transfer.

The exit tax comprises any unrealised gains on shares, ownership interest and equity certificate in companies domiciled both within and outside of Norway, as well as share savings accounts (ASK). They also comprise *i.a.* subscription rights, stock options, equity funds, endowment insurances and any other financial instruments with the aforementioned assets as underlying object. Cf. the Tax Act Section 10-70, paragraph 2.

[6] The exit tax rules are applicable correspondingly when a person travels to Svalbard and becomes tax resident there, and if shares etc. is transferred to any person tax resident or domiciled on Svalbard. Cf. the Tax Act Section 2-35 paragraph 2.
[7] This comprises any transferral with a gift element or discount etc., including disbursements from a Norwegian tax resident deceased person's estate.

A loss is deductible[8] upon emigration or transfer to, another EEA State, to the same extent and on the same conditions as a gain is taxable according to Section 10-70 of the tax act. Cf. the Tax Act Section 10-70, paragraph 3.

The taxable amount at emigration to another EEA state is the net (unrealised) capital gain or loss exceeding NOK 3 million on all aforementioned assets directly held by the person the day prior to the termination of Norwegian tax residency. For transfers, the taxable amount is the total net capital gain or loss on assets transferred within the same income year, given that the total amount exceeds NOK 100 000. Cf. the Tax Act Section 10-70, paragraph 4.

For the purpose of calculating the taxable gain or loss, the realisation value is set to the fair market value at the time realisation is deemed to occur.[9][10] If there is no known observable market value, the realisation value shall be assessed using various known valuation methods. Cf. the Tax Act Section 10-70, paragraph 5.

The input value shall in the outset be set to the acquisition value, with the addition of any costs related to the acquisition. However, for assets held at the time the taxpayer became tax resident in Norway, the input value shall be set to their fair market value at the time of acquiring tax residence here. Furthermore, if the taxpayer has been tax resident in Norway in any previous periods, any capital gains on the asset accrued during these periods which have not yet been taxed in Norway, shall be deducted from the input value. Correspondingly, losses accrued in previous periods of tax residency in Norway without being deducted here, shall be added to the input value. Cf. the Tax Act Section 10-70, paragraph 6.

If such calculations result in the assessment of an exit tax, the amount payable will in the outset be due three weeks after the tax assessment is sent to the taxpayer. The earliest due date for payment of the exit tax is 20 August the year after the income year in which the tax residency in Norway was terminated. However, the taxpayer may opt for a 12-year deferral of the payment of the exit tax due. The deferred exit tax may either be paid in twelve yearly instalments without interest, or at the end of the 12-year period with interest covering the deferral period. If there is a real risk that the tax and possible interest cannot be collected, the deferral is contingent on the provision of satisfactory[11] security. Cf. the Tax Act Section 10-70, paragraph 7 and Regulation for the completion and implementation etc. of the Tax Act of 26 March 1999 No. 14 (FSFIN) Section 10-70-1, paragraph 4. Furthermore, the taxpayer is obliged to give *i.a.* annual reports demonstrating that the conditions for deferral are (still) fulfilled. Failure to comply with the reporting obligations may entail that the right to deferral

[8] However, the deduction will lapse in the event that, within the 12-year deferral period, the person subject to the exit tax relocates to a non-EEA state or the assets object to exit tax are transferred to any entity resident or domiciled outside the EEA area.
[9] In case of relocation; the day prior to termination of tax liability in Norway. In case of transferral; the day prior to the transferral.
[10] There are special rules for the calculation of the gain or loss on share savings accounts, cf. the Tax Act Section 10-70 paragraph 5, last subsection.
[11] The security shall cover the tax liability and any interest and may be in any form, e.g. bank guarantee or a pledge of real estate or financial assets. When the exit tax is triggered by the taxpayer (owner of the assets) emigrating, the security in the assets subject to exit tax shall be deemed as satisfactory, even if there is a risk that the value of the assets decreases. Cf. FSFIN Section 10-70-1 paragraph 4, subsections 3 and 4.

lapses. Confer in this connection the Tax Act Section 10-70, paragraph 7, final subsection and FSFIN Section 10-70-1, paragraph 1 and 2.

The right to maintain a deferral may also lapse totally or in part for a number of substantive reasons. Cf. the Tax Act Section 10-70, paragraph 8. First, the deferral lapses if the taxpayer dies. However, the deferral may be continued by a natural person who inherits assets subject to exit tax, given that the heir takes on full responsibility for the corresponding obligations of the deceased taxpayer. However, if the heir is tax resident in Norway, the exit tax is waived, and thus also the deferred exit tax claim. Second, a deferral lapses (in part) if assets subject to exit tax are realised or transferred to an entity tax resident or domiciled outside (mainland) Norway. Third, if dividends are distributed on the shares to which the exit tax is attached, the right to defer the exit tax lapses for an amount (an instalment) corresponding to the distribution multiplied by 0.7[12][13].

In the event that the taxpayer reverts to Norway and becomes tax resident here within the 12-year deferral period, the exit tax will be waived if the taxpayer still holds the assets subject to the exit tax. Cf. the Tax Act Section 10-70 paragraph 9. If the taxpayer has settled the exit tax in full or by yearly instalments, the tax will be refunded with interest. However, if the taxpayer has paid parts of the exit tax due to distribution of dividends, the corresponding exit tax is final and will not be waived. Instead, the input value of the remaining assets subject to exit tax will be increased with an amount corresponding to the instalment. Cf. the Tax Act Section 10-70, paragraph 9 subsections 5 and 6.

If the taxpayer becomes tax resident in Norway after the expiration of the 12-year period, the input value on any assets subject to exit tax that they still hold will be[14] increased[15] with an amount corresponding to the gains that have been subject to exit taxation. Cf. the Tax Act Section 10-70, paragraph 9, subsection 3.

5.3 Further on the amendments adopted through 2024

5.3.1 Amendments to the substantive scope

The 2024 amendments included the following elements regarding the substantive scope of the exit tax regime:

- Inclusion of share savings account (ASK) and investment fund accounts
- Increase of tax triggering amount and conversion to a tax-free allowance
- Clarification regarding transfer by inheritance

[12] If the instalment, in combination with any tax calculated on the distributed dividend, exceeds the dividend, the exceeding amount may be deducted from the instalment. Cf. FSFIN section 10-70-4

[13] Similarly, a withdrawal of deposits from a share savings account subject to exit tax entails that the deferral lapses for a corresponding amount.

[14] Provided that the exit tax is actually settled.

[15] If the amount subject to exit tax was negative (*i.e.* a net loss), the input value will be decreased.

Share savings accounts and investment fund accounts
As of 20 March 2024,[16] the substantive scope of the exit tax rules was extended to share savings account (ASK) and investment fund accounts. These accounts will usually contain both realised and unrealised capital gains on shares and other derivatives of shares. These gains are tax free as long as they remain in, or are reinvested within, the account. Furthermore, such gains are not subject to tax on the hands of the account holder, unless, and until, they are withdrawn from the account.

Thus, in the same way as in a personally held holding company, it is possible to accumulate substantial untaxed capital gains on shares etc. within such accounts. Hence, in light of the principal objective of the exit tax, it appears illogical to exclude these accounts from the scope of the rules.

Replacing the threshold amount by a tax-free allowance for emigrations
Until 20 March 2024, a common threshold amount of NOK 500.000 applied to both the relocation of individuals and the transfer of assets. The exit tax was applicable only if the calculated net capital gain amounted to NOK 500.000 or more, and if so, on the whole amount.

With effect as of 20 March 2024, the threshold amount was reduced to NOK 100.000 for transfers carried out within one income year.

For emigration of individuals, the threshold was replaced by a tax-free allowance of NOK 3 million.[17] This means that the tax-free amount now applies to everyone, including taxpayers whose gains exceed NOK 3 million.

The reasoning behind these amendments was based on broad considerations, also taking into account input from stakeholders during the public consultation.

The new principal objective alone – to ensure the balanced allocation of taxing rights by safeguarding that unrealised capital gains on shares etc. accrued during tax residency in Norway is actually taxed here – would imply no threshold or tax-free allowance. Nevertheless, the amendment was made due to the fact that an increased amount may mitigate the possible negative effects on the taxpayer's mobility, *i.a.* by:

- Shielding emigrants, both native Norwegians and temporary residents having a more moderate amount of latent net capital gains
- Reducing administrative costs

[16] Generally, the entry into force date on migrations relates to the day the migration has effect for the tax residency. Thus, a taxpayer who no longer is considered tax resident in Norway as of 19 March 2024 will not be affected by the 2024 amendments. In cases of transferrals or distributions of dividends etc., the amendments have effect for transactions concluded on the day the amendments entered into force, or later.
[17] The tax-free allowance has effect for emigrations where the termination of Norwegian tax residency occurred on 20 March 2024 or later.

- Reducing the possible negative effects for startups and entrepreneurs moving abroad to expand the business
- Making it easier for companies to temporarily recruit foreign persons who might have substantial investments, *i.a.* in pension schemes in their home country that may be subject to exit tax in Norway
- Reducing the risk of being taxed on calculated gains on such pension schemes on the part that is primarily due to fluctuations between NOK and the currency in their home country

In the response to the public consultation, stakeholders suggested various other targeted mechanisms to reduce these possible negative effects for specific groups of taxpayers and companies. In the Ministry's view, those targeted mechanisms would to a greater extent impede the exit tax regime's effectiveness in taxing gains accrued by tax residents in Norway. Furthermore, a general tax-free allowance is a clearer and more just way of addressing the above-mentioned issues.

The substantial tax-free allowance is meant to strike an overall reasonable balance between the objective of the exit tax regime and the mobility of taxpayers.

<u>Transfers</u> of assets, however, have far less implications for the taxpayer than an emigration. Transfers may also be done repeatedly, making it possible over time to transfer substantial amounts of unrealised gains, even with a moderate yearly exit tax threshold. Thus, there is a larger risk of undesirable adaptations through transfer. Furthermore, the administrative obligations related to exit tax on transfers will often be less burdensome compared to the obligations upon emigration, and a transfer will not affect the mobility of the taxpayer (*i.e.* the transferor). Hence, in light of the objective of the Norwegian exit tax regime, this suggests that the threshold for transfers should be lower than for emigrations.

Transfer by inheritance

During the public consultation, two stakeholders raised the question of whether a transfer of shares etc. in the form of inheritance from the estate of a deceased tax resident in Norway to a person tax resident or domiciled outside Norway, is within the subjective scope of the exit tax.

In light of the objective of the exit tax, there is no reason why transfers from the estate of a deceased should be treated differently from transfers while the owner is alive. However, it was not sufficiently clear from the wording of the Tax Act Section 10-70 first paragraph, that such transfers were within the scope of the provision. Thus, the provision was amended accordingly, with effect for shares etc. distributed from the estate on 1 January 2025 or later[18].

[18] The late effect, in comparison to the other 2024 amendments, was due to an acknowledgement that the legal basis had been unclear, and that the risk of undesirable adaptations between the proposal of the amendment and the enactment by the Norwegian Parliament, was limited.

5.3.2 Calculation of the taxable base for exit tax

The taxable amount for exit taxation shall in the outset be calculated according to the general rules for calculating gains or losses on shares, as if they were realised the day before the owner's cessation of tax residency in Norway or the transfer of the shares to an entity resident or domiciled outside Norway. For emigrations and transfers within the EEA area, losses are deductible to the same extent as gains are taxable.

The exit value (realisation value) is the market value of the asset at the deemed time of realisation. If there is no observable market value, *i.e.* for unlisted shares etc., the market value must be estimated, taking into consideration all relevant rights and restrictions related to the asset. There are no alterations regarding this in the 2024-amendments.

However, there are several specific provisions governing the calculation of the exit tax base, of which the following have been adjusted as part of the 2024 amendments:

- Input value of assets held at immigration
- Loss deduction
- Reduction of exit tax due to subsequent events

The primary rationale for these amendments is to ensure that the rules are consistent with the principle of territoriality and a balanced allocation of the taxing rights. *I.e.* that the tax base for the Norwegian exit tax is limited to gains and losses accrued whilst the taxpayer was a tax resident in Norway. Thus, any gains or losses accrued before or after the taxpayer was tax resident in Norway, shall have no impact on the Norwegian exit tax.

Input value on assets held at immigration

Up until 19 March 2024, the assessment of the input value on assets was governed by the same rules as when the asset was actually realised by a person tax resident in Norway. Thus, the input value for calculating exit tax was in the outset set to the historical cost price. Taxpayers that were not born in Norway and had been tax resident for less than 10 years, might instead opt for the input value to be set at the market value at the time he or she became tax resident in Norway.

This could imply that gains or losses accrued in periods prior to the person becoming tax resident in Norway were included in the calculation of the exit tax base. This does not correspond well with the principle of territoriality and the balanced allocation of taxing rights, and the relevant rules were therefore amended.

As of 20 March 2024, the input value for assets held at immigration shall, for exit tax purposes, be set to the market value at the time when the person became tax resident in Norway, regardless of the length of the immigrant's residency in Norway[19]. Cf. the Tax Act Section 10-70 paragraph 6.

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[19] If the taxpayer has been subject to exit tax on the same assets after a previous period as a tax resident in Norway, but that exit tax was later waived because he/she relocated to Norway, the (untaxed) gain/loss from this period shall reduce/increase, respectively, the input value when calculating the current exit tax base.

Deduction of losses
Before 20 March 2024, a net loss exceeding the threshold of NOK 500.000 was deductible when the owner relocated to another EEA state, provided that the loss was not deducted in another state.[20] Furthermore, the deduction would lapse if the taxpayer, or the recipient in case of transfer, relocated to a state outside the EEA area before the asset was realised.

As of 20 March 2024, the requirement that the loss had not been deducted in another state, was repealed. This is in line with the fact that the Norwegian tax system is based on a symmetrical treatment of gains and losses. This implies that a loss deduction should be granted on the same conditions as gains are taxable. Given that the exit taxation of gains as of 20 March 2024 is limited to gains accrued whilst being tax resident in Norway, and no longer is influenced by previous or subsequent events, deduction for a loss accrued as a tax resident in Norway should not be conditional upon whether this loss turns also out to be deductible in another state. Instead, according to the principle of territoriality, it is for the state of immigration to consider whether it should have measures to avoid (double) deduction for a loss incurred and deducted in another state.

Reduction of Norwegian exit tax due to subsequent events
Before 20 March 2024, a taxpayer who realised shares after emigration at a lower value than the value used to calculate the exit tax upon emigration, could demand a reassessment of the exit tax based on the later, actual realisation value. Thus, a reduction[21] in the value of assets accrued in a period as tax resident in another state, might reduce the Norwegian exit tax.

Furthermore, if the taxpayer was obliged by the state of immigration to pay tax on gains accrued whilst being a tax resident in Norway, the taxpayer was entitled to a so-called reverse credit in Norway for the tax paid on these gains in the immigration state. Thus, the exit tax due in Norway would be reduced with the amount of realisation tax paid in the immigration state on gains accrued before exiting Norway – effectively representing a transfer of the taxing rights based on residence, to the (subsequent) state of immigration.

Both of the above-mentioned rules that gave reductions in the exit tax were contradictory to the principles of territoriality and a balanced allocation of the taxation rights. These principles imply, contrary to the previous Norwegian rules, that it is the state of immigration that should consider measures to avoid any double taxation of values accrued before the taxpayer becomes a tax resident in that state.[22]

Furthermore, the reductions were in conflict with the principle of symmetry. If the taxpayer is allowed to deduct potential losses after emigration, but is not subject to taxation on corresponding gains, this creates an asymmetry where the taxpayer can take significant risks

[20] CF. the now repealed NTA 10-70 third paragraph, second subsection.
[21] Any subsequent gains, however, would not affect the exit tax in Norway.
[22] See to that effect, *National Grid Indus* and *Commission vs. Portugal*

in his/her investments without Norway/the exit state benefiting from any potential upside and only bearing the risk of a downside.

Thus, as of 20 March 2024 these rules were repealed.

5.3.3 Payment of the tax due

Prior rules

As a general rule, the exit tax claim fell due for payment in the year in which the exit tax was assessed, cf. Section 10-21 of the Tax Payment Act. This means that the due date fell in the year after the taxpayer was no longer considered resident in Norway under domestic Norwegian law, or under a tax treaty. Similarly, in principle, the exit tax claim falls due for payment in the year after a transfer of shares has been made to a person, company or entity that is not liable to tax pursuant to the Tax Act Sections 2-1 or 2-2 or that is to be considered resident or domiciled in another state pursuant to a tax treaty.

However, the taxpayer could be granted a deferral of the due date and payment of the exit tax claim until actual realisation, or until the share for certain other reasons was not considered to be retained.

The deferral was contingent on the taxpayer fulfilling certain yearly reporting obligations. Furthermore, if the taxpayer emigrated to an EEA state with which Norway did not have an agreement on the exchange of information and collection, the taxpayer should provide security for the tax claim in order to be granted a deferral.

The requirement for security applied correspondingly to transfers to an individual or entity tax resident outside Norway.

If the taxpayer, or receiver following a transfer, subsequently emigrated from an EEA country to a country outside the EEA, the taxpayer must provide security in order to be entitled to a continued deferral.

These rules implied that the payment could be deferred without any limit in time. In the meantime, the actual value of exit tax claim would deter, due to the fact that no interest had to be paid. Furthermore, it was necessary for the Norwegian Tax Authority to establish and maintain systems and routines to handle deferred claims over lengthy periods of time, potentially for decades. Correspondingly, the taxpayer had to report yearly information necessary for the tax authority to assess whether the conditions for a continued deferral were fulfilled.

In addition to the administrative challenges mentioned above, there were multiple ways in which the taxpayer can get hold of the values in the underlying company without actually realising the shares subject to exit taxation.

A well-known example is the distribution of dividends to the taxpayer after exiting Norway. If the distributing company is resident outside Norway, these dividends can not be taxed in Norway. If, instead, the company is domiciled in Norway, the dividends are within the Norwegian taxing jurisdiction. However, the rates of withholding tax on distributed dividends are far below the tax rate on dividends distributed to a shareowner tax resident in Norway.

For obvious reasons, it is not appropriate for the ministry to elaborate on other possible ways and means for a taxpayer to get access to the underlying values of shares subject to exit tax, without realising the shares as such. It should suffice to mention that it is impossible to anticipate and effectively implement countermeasures to every current and future way of gaining access to the underlying values of a share in other jurisdictions, without it being classified as a realisation under Norwegian tax law.

Thus, the prior rules governing deferrals did not safeguard the balanced allocation of taxing rights and the effective collection of the deferred tax.

Current rules

Based on the above, and the international developments regarding the principle of territoriality, the ministry considered that a deferral until realisation, without any time limit, would not be sufficient to ensure an effective collection of the exit tax following a shareholder’s exit from Norway.

Thus, as of 20 March 2024, a 12-year time limit for deferrals was introduced. Taxpayers may choose between the following three alternatives:

1. Payment in full in the tax assessment year
2. Payment in twelve equal instalments from the tax assessment year (no interest, as long as the instalment is paid in time)
3. Deferral of the payment for 12 years, with interest added

The Tax Administration may require security if there is an actual risk that the tax claim will not be paid in the future. The assessment must include the stipulated tax claim and any interest.

This means that the Tax Administration can only claim security following a specific assessment indicating a risk that the claim will otherwise not be paid. The decision as to whether security should be required must depend on a specific and comprehensive assessment. The assessments will largely be the same as for the exit of fixed assets, cf. Section 9-14 of the Tax Act and the preparatory works for this in Proposition 1 LS (2013–2014) item 15.3.

Any requirement for security must be made before a deferral is granted and the Tax Administration may not later request increased security when the taxpayer stays resident in the same country, see below. Furthermore, if the exit tax is triggered by emigration, the assets subject to exit tax (normally shares) shall always be considered as sufficient, regardless of any possible future reduction of the value of these assets. However, the Tax Administration may require (increased) security after a deferral has been granted, if the taxpayer moves on to another EEA country that is associated with a higher risk of the tax claim not being paid, or to a country outside the EEA.

The Ministry's considerations
The time limit for deferral was introduced to make the exit tax regime more efficient towards the objective of ensuring Norwegian taxation of capital gains accrued whilst the owner is tax resident in Norway, thereby safeguarding the balanced allocation of taxing rights and the effective collection of the deferred tax. At the same time, the Government acknowledges that the mobility of persons is vital, and that the efficiency of the exit tax regime has to be balanced against the mobility of the taxpayers.

The payment of assessed tax before realisation will affect the taxpayer's liquidity. However, in the Ministry's opinion, the proposal provides for a generous deferral period. This reduces the liquidity burden for the taxpayer. Furthermore, in the event the security is required to obtain a deferral, the possibility to meet this requirement by offering the assets subject to the exit tax as collateral should not impose further liquidity constraints on a taxpayer that emigrates. Thus, with a deadline of 12 years, with the option of interest-free instalment payments over the same period, it is possible for the taxpayer to change tax residence to another country without too great immediate liquidity disadvantages. At the same time, the solution helps to ensure that the capital gains accrued in Norway are actually taxed here.

Furthermore, the Ministry recalls that the exit tax is waived if the taxpayer becomes resident in Norway again with the shares still inn possession within 12 years. This will facilitate temporary stays abroad and secure the taxpayer free mobility for at least 12 years after physical emigration, without having to pay tax on the latent gains assessed 12 years earlier. Relocation within 12 years is discussed below.

The Ministry also notes that in some cases, the taxpayer will physically move abroad, without losing his or her tax residence in Norway. This may happen both in cases where there is a tax treaty between Norway and the country of relocation, and where there is no such agreement. Where the criteria for losing residence in Norway are not met, *i.e.* under domestic Norwegian law or under a tax treaty where such an agreement exists, exit tax is not assessed on the taxpayer's latent gains. A taxpayer who wishes to take temporary residence outside Norway, for example to study or work, can thus have relatively long-term stays outside Norway without any exit tax being assessed.

The Ministry further notes that the basic allowance of NOK 3 million (referring to net gains or losses) implies that most people who move out of Norway will not be subject to the exit tax. In addition, the input value shall be set at market value at the time a foreign national is considered tax resident in Norway pursuant to domestic law and tax treaties where this exists. This means that gains that a foreign taxpayer has accumulated before he or she is resident for tax purposes in Norway will not be subject to exit tax. This also applies in cases where the country of departure has not taxed the latent gains.

The Ministry furthermore notes that, depending on the circumstances, it is possible to stay in Norway for longer periods without becoming tax resident here. This may be relevant in cases where Norway has a tax treaty with the country of departure, and the criteria for tax treaty residence in Norway are not met. In such cases, the exit tax rules do not apply. If this is the case, the taxpayer can work or study in Norway for many years, without it being relevant to assess exit tax when the stay in Norway ends.

In sum, the Ministry believes that the prevailing exit tax rules strikes a sound balance between on the one hand, the taxpayer's liquidity and mobility, and on the other, the principle of taxing capital gains earned in Norway, ensuring the balanced allocation of taxing rights and an effective tax collection.

5.3.4 Lapse of the right to deferral

Following the rules applicable before the 2024 amendments, the primary event which lead to the cessation of the right to deferral of payment of exit tax was the actual realisation of the share.[23] There was no time limit for the deferral. However, a deferral would lapse if the taxpayer relocated to a country outside EEA or transferred assets to a person resident or domiciled outside the EEA area. And finally, a deferred exit tax would be due if the taxpayer died.

Except for the principal rule on deferral until realisation, the above rules are still applicable under the current regime. However, following the introduction of the 12-year deferral limit, they are only relevant if the lapsing event occurs before the time limit for deferral has expired.

In addition, as of 7 October 2024, any distributions of dividends etc. on an asset that is subject to exit tax during the 12-year period, shall lead to the due payment of a proportion of the exit tax claim (the distribution-rule). The size of the distribution determines the proportion of the exit tax claim due for payment. This applies regardless of whether the dividend exceeds the proportion of the exit tax claim that is linked to the latent gain on the share from which the dividend is received. However, any tax costs incurred in connection with the distribution may reduce the liquidity provided by the distribution. To take this into account, the exit tax amount due is calculated by multiplying the distributed amount by a standard adjustment factor of 0.70. In the case of a distribution of NOK 100, NOK 70 of the exit tax claim is then due for payment. Cf. the Tax Act Section 10-70 eight paragraph subsection 4.

In the event that the tax costs (*i.e.* any withholding tax in the jurisdiction where the distributing company is resident and dividend tax in the country where the taxpayer is tax resident) exceed the remaining 30 per cent of the distributed dividend, the exit tax amount

[23] The right to deferral also ceased if the exit tax was linked to shares in companies assessed as partnerships, and the activity in Norway ceased.

due may be reduced with an amount corresponding to the exceeding tax costs. Cf. FSFIN Section 10-70-4. The consequence is that the taxpayer will never pay more than 100 per cent of the distributed dividend, in total tax costs and instalments on the exit tax.

The distribution-rule applies both to taxpayers who choose to defer the entire tax claim for 12 years with the addition of interest, and to those who choose a deferral in the form of instalment payment. If the taxpayer has chosen to pay instalments, the remaining instalment amount will be adjusted proportionately.

Furthermore, in case of repatriation with the shares retained within the 12-year period, the assessed exit tax corresponding to the amount due following distributions, is considered as final and non-refundable. Instead, the input value of the retained shares will be adjusted to reflect the settled amount.[24]

In this context, distribution of dividends, etc., means dividends and distributions as mentioned in the Tax Act Sections 10-11 and 10-42, second and eleventh paragraphs. This includes any form of free transfer of value from a company to a shareholder. In addition, loans from the company to shareholders are covered. It also includes distributions to the shareholder's close associates.

The purpose of distribution-rule is twofold:

Firstly, the distribution-rule safeguards the effective collection of the deferred exit tax, and thereby the balanced allocation of taxing powers. It reflects that distribution of dividends has a positive effect on the taxpayer's liquidity. Thus, the taxpayer's need for further deferral due to possible liquidity constraints will be reduced. Furthermore, we would like to recall that the Tax Administration may not require additional security for the tax claim if the shares fall in value after emigration. Thus, even where the taxpayer remains emigrated, depreciation in value due to distributions can be problematic. Without the distribution-rule, it could be impossible or more costly to obtain coverage for the tax claim, at the same time as the taxpayer has received the value of the shares through distributions.

Secondly, the distribution-rule counteracts undesirable adaptations that would otherwise undermine the objective of the exit tax regime, to the detriment of a balanced allocation of taxing powers between the states. Without the distribution rule, a taxpayer with an assessed exit tax could receive assets from the company after emigration through distributions with low or no withholding tax in Norway. The distributions reduce the value of the shares. If the taxpayer moves back to Norway, the exit tax will be waived. In such a case, the shares in the company could be realised with no or a lower taxable gain because the company's values are lost or diminished, as the taxpayer has obtained the values from the company during the residency abroad. This would mean that Norwegian shareholder taxation, including exit tax, can be replaced with a lower withholding tax on dividends, if any.

[24] This is elaborated on below in the section regarding repatriation.

Furthermore, the rules governing the right to (a continued) deferral following the death of the taxpayer, have been amended in a lenient way as of 20 March 2024:

Heirs resident outside Norway at the time of distribution of the assets subject to exit tax from the estate, may enter into the deceased's exit tax positions. This applies on the condition that one or more heirs assume responsibility for the testator's obligations pursuant to Section 10-70, and that they meet the conditions for obtaining a deferral. For heirs resident abroad, this will entail an opportunity to step into the deceased’s right to deferred payment, limited to the remaining part of the deferral period at the time of death. This amendment was motivated by the fact that a lapse of a deferral in the event of the taxpayer's death may have adverse effects, and that there are no particular concerns about the exit tax claim that would justify immediate payment in these cases.

For heirs tax resident in Norway, the exit tax – and consequently also the exit tax claim – may lapse, cf. the section below.

5.3.5 Lapse of the exit taxation upon repatriation

According to the law until 20 March 2024, assessed exit tax or losses lapsed for any assets subject to exit tax retained by the taxpayer upon repatriation to Norway, cf. Section 10-70 ninth paragraph of the Tax Act. This applied without any time limit.

As of 20 March 2024, the lapse of exit tax due to repatriation is limited to repatriations within 12 years. Thus, in order for the exit tax to lapse, the repatriation has to happen within 12 years after the end of the year of emigration. Cf. Section 10-70 ninth paragraph, first sentence.

Any claim for interest also lapses. Furthermore, if the exit tax claim has been paid (in full or in part), the payment will be refunded with interest for assets that are retained.[25] (Correspondingly, any loss deductions related to the retained assets will be reversed.)

5.3.6 Repatriation - adjustment of the input value

According to the general rules for calculation of gains and losses, the input value of a share owned by a person when moving to Norway shall, as a general rule, be set at cost price, plus any adjustments, cf. Section 10-32, second paragraph of the Tax Act. Before the 2024 amendments, there were no special rules concerning the input value on shares that had been subject to Norwegian exit tax and that was still retained by the taxpayer upon repatriation.

[25] The interest on overpaid tax is to be calculated in accordance with the rules on interest subsidy in the event of changes to tax assessments, etc., cf. Section 11-4 of the Tax Payment Act, cf. Section 11-6, second paragraph. This means that an interest subsidy must be paid from the time payment was made, and until the due date in section 10-60. In the loss situation, where too little tax has been paid, the deprivation interest shall be calculated pursuant to Section 11-2, cf. Section 10-53. This means that the underpaid tax must be calculated with interest from the time the deduction was given, and until the due date after the new settlement.

As of 20 March 2024, the taxpayer's input value shall be adjusted on any shares retained upon repatriation later than 12 years after the year in which the exit tax is dated, provided that the exit tax claim has been settled, alternatively that losses have been deducted. The adjustment shall reflect the gain or loss which has been subject to the final and settled exit tax in Norway. The result is that the input value is set equal to the market value at the time of the emigration that led to the assessment of exit tax.

An adjustment of the input value shall also be made on any retained shares if the taxpayer repatriates within the 12-year period, in so far as the exit tax has fallen due and become final following the distribution-rule. Cf. Section 10-70, ninth paragraph, fifth and sixth sentences of the Tax Act.

The purpose of these adjustments is to prevent a potential double taxation in Norway of the gains and losses comprised by the settled and final exit taxation.

5.3.7 Duty of disclosure and reassessment

Disclosure

The Norwegian tax system is based on self-declaration, where the taxpayer assesses, in first instance, his or her tax by delivering a tax return.

Chapter 8 of the Tax Administration Act contains rules on the duty of disclosure. These rules deal with the taxpayer's duty to provide information of their own initiative. This duty of disclosure applies to the *assessment of exit tax*. This applies both when the taxpayer emigrates, and when the taxpayer transfers shares etc. to someone who is resident or domiciled outside Norway. The taxpayer has a duty to provide information about his or her factual circumstances and is obliged to help ensure that his tax liability is clarified and fulfilled in a timely manner. After exit tax has been assessed, the taxpayer has a duty to notify the tax authorities of any errors in the assessment.

Furthermore, up until the 2024 amendments there were specific rules on disclosure in the exit tax rules in the Tax Act and in the tax regulation (FSFIN), *i.a.* related to deferrals.

However, as of 7 October 2024 a general provision on the duty of disclosure for cases concerning deferred payment of exit tax claims was introduced. The right to deferral is conditional on compliance with this duty of disclosure. The disclosure obligation applies to all information of importance to any obligation and right pursuant to Section 10-70 of the Tax Act and associated regulatory provisions.

The reason for the amendment was that it was no longer considered appropriate to simply amend and supplement the previous specific provisions. With such specific provisions, situations might arise where relevant information was not covered by the wording of the provisions. That could create unnecessary doubts of interpretation and possible loopholes.

Time limit for reassessing exit tax assessments

Tax assessments may be amended by the taxpayer or by the Norwegian Tax Authorities within certain time limits.

According to the general reassessment rules in the Tax Administration Act, these time limits could result in Norway losing the right to impose exit tax if the taxpayer did not fulfil his or her duty to provide information about the emigration in a timely manner.

As of 20 December 2024, a specific time limit of 15 years was introduced for reassessment in cases where exit tax has not been assessed. The deadline runs from the end of the taxation period (income year) in which the conditions for assessing exit tax were met. Cf. last sentence in Section 12-6, first paragraph of the Tax Administration Act.

This amendment reflects the special circumstances in connection with emigrations. The Tax Authorities had experience from previous cases, where necessary information came several years after the fulfilment of conditions for being considered tax resident in another country. At the same time, the Tax Administration normally has very limited other opportunities to discover, by own means, that tax emigration has actually taken place. The authorities will therefore normally be dependent on the taxpayer providing timely and complete information about emigration, unsolicited.

Exit tax cases can include significant values and many shares. Furthermore, it can often be challenging to value such shares correctly. The valuation can be even more demanding if it has to be carried out several years later.

6. The appropriateness and proportionality of the Norwegian exit tax rules for natural persons

The primary objective of the 2024 amendments is to preserve a balanced allocation of the taxing powers between the EEA states, in accordance with the principle of territoriality, by securing a more efficient taxation in Norway of capital gains accrued while the taxpayer is tax resident in Norway. Furthermore, the amendments aim to ensure the cohesion of the tax system, an effective fiscal supervision and collection of taxes, as well as the prevention of tax avoidance and evasion.

To recall the essence of the 2024 amendments described above:

- The substantive scope of the exit tax and the calculation of the taxable base is more consistent with the principle of a balanced allocation of the powers of taxation, *i.a.* by designing a more targeted tax base, excluding all gains and losses accrued before and after the taxpayer's residence in Norway.
- By introducing a 12-year time limit for the payment of the exit tax claim as well as a distribution rule, the effective collection of taxes and the effectiveness of fiscal supervision is improved, while at the same time preventing tax avoidance and evasion.

- The introduction of a basic allowance of NOK 3 million in tax free gains and a more targeted and predictable obligation to provide security updated with the wording in the CJEU's decisions, as well as the lapse of the exit tax on shares retained at repatriation. Combined with a liberal 12-year limit for the payment of deferred exit tax claims, these features safeguard the mobility of the taxpayers as much as possible without rendering the rules ineffective.

The Ministry considers the current Norwegian exit tax regime to be appropriate and necessary to attain the legitimate objectives, and in compliance with the EEA law and the principles of free movement of persons, as clarified by the CJEU in the relevant cases referred to in item 4.

EEA case law
It is well established through long-lasting EU/EEA case law that exit taxation on unrealised gains constitutes a restriction on the free movement. Such restrictions must be justified on grounds of overriding public interest. For exit tax rules, the most relevant justification grounds are the need for a balanced allocation of taxing rights between states and the need for effective tax collection and control, but also the prevention of tax avoidance. In addition, exit tax rules must not only be justifiable on such grounds, but also be suitable and not go beyond what is necessary to achieve these objectives (the principle of proportionality).

Before we go into the Authority's request for specific information, we would like to present the Ministry's view on the relevant CJEU case law.

It is well established in EEA law that the assessment of an exit tax on accrued, unrealised capital gains at the time the taxpayer ceases to be a tax resident of a state, is a measure acknowledged under the legitimate objective of preserving a balanced allocation of taxing rights between EEA states.

Furthermore, in the relevant case law of the CJEU, the court has clarified the EEA boundaries for national legislation regulating the *payment* of such exit tax. This will be elaborated on in the following.

In line with several CJEU rulings, including the *National Grid Indus* case and the *Commission v. Portugal* case, the Norwegian exit tax rules provide the taxpayer with a choice between immediate tax payment upon emigration or deferred payment, potentially with interest.
In two rulings, the CJEU has explicitly addressed the length of the deferral period. In the *DMC* case and the *Verder LabTec* case, the Court considered instalment payments over five and ten years, respectively, to be proportionate. In the *DMC* case, the Court reasoned that the risk of non-recovery of the tax claim increases over time and that the states of emigration must be able to establish other criteria than realisation for triggering an obligation to pay the assessed exit tax.

The *DMC* and *Verder LabTec* cases concerned companies. As the Authority points out, one could question whether the same should apply when the taxpayer is a natural person.

However, the CJEU made this clear in the *Commission v. Portugal* case, which involved individuals. In the judgement, the CJEU stated that in previous judgements, the Court had transposed the principles established in National Grid Indus also to the taxation of capital gains of natural persons. The CJEU then explicitly stated that there are no objective reasons to distinguish between the emigration of natural and legal persons. See paragraph 53 of the decision *C-503/14 Commission v. Portugal*.

In all three cases, the Court emphasized that the risk of non-payment of tax increases over time.

One might argue that the *Wächtler* case represents a shift in the CJEU's case law. In this connection, it is important to notice that *Wächtler* concerned the *previous* German rules for individuals moving with shares from Germany to Switzerland. As Switzerland is not a member of the EU or the EEA, the specific case concerned the interpretation of the EU - Switzerland Agreement on the Free Movement of Persons (AFMP). As we will explain below, the Ministry's opinion is that the *Wächtler* case should not be relevant for determining the EEA legal framework for exit taxation.

The CJEU held that the principles of equal treatment and justification following from the CJEU's practice should be the basis for the interpretation of the AFMP. The Court concluded that the previous German rules on immediate taxation upon emigration constituted a restriction on the freedom of establishment under the AFMP that could not be justified. This conclusion was consistent with earlier CJEU judgements invalidating requirements to pay the tax immediately upon emigration.

However, in paragraph 68, the Court made an additional side remark without bearing on the concrete outcome in *Wächtler*. The earlier German rules included a mitigating provision for relocations outside the EEA, allowing payment in equal instalments over five years if immediate payment would cause significant hardship for the taxpayer. Since this criterion was not fulfilled in Mr. Wächtler's case, the instalment alternative was not available to him. The Court nevertheless stated that this option in the German rules did not alter the conclusion that the rules were disproportionate. The reason was that instalment payments, requiring immediate payment of one-fifth of the liability, did not remove all the liquidity disadvantages. Moreover, instalment payments could be more costly to the taxpayer than deferral until realisation.

At first sight, the wording of paragraph 68 seems to lack consistency with earlier CJEU case law in which instalment payments, as well as interest and collateral, were accepted by the Court as proportionate measures to ensure a balanced allocation of taxation rights. With a view to the special legal basis of the *Wächtler* case and its factual circumstances, the Ministry takes the liberty to express that it seems unlikely that the CJEU would deviate from established case law on such central issues without explicitly stating and justifying such a shift, particularly as the statement came as a side remark and had no impact on the actual outcome of the case. Even though the AFMP contains a provision giving relevance to EU law in certain areas, the fact that the *Wächtler* case concerned an EU - third country relationship assessed under an international treaty between the non-member state Switzerland and the EU, further underpins the view that the side remark was case-specific.

In the Ministry's view, paragraph 68 of the *Wächtler* judgement bears the imprint of the fact that, at the time, German rules for emigration to other EEA states were far more lenient than those applicable to emigrations to Switzerland (and other third states). This substantial difference in treatment appears inconsistent with the purpose of the EU–Switzerland treaty. Since the German state at that time considered the very lenient exit tax rules when moving to an EEA country, as appropriate and sufficient to counter tax-avoidance and secure a balanced allocation of taxing rights, it does not seem far-fetched that the significantly stricter tax treatment when moving to Switzerland, was considered to be in conflict with the purpose of the agreement between Switzerland and the EU.

Held together with what we see as unambiguous past CJEU case law, permitting taxation before realisation and setting conditions for deferral, the Ministry does not consider paragraph 68 in *Wächtler* to imply that earlier CJEU case law can be disregarded.

Accordingly, we argue that the relevant CJEU case law *preceding* the *Wächtler* judgement represents the relevant EEA case law when assessing the Norwegian exit tax legislation. *Wächtler* was delivered on 26 February 2019. New German rules were introduced in 2022 specifically as a consequence of this *Wächtler* judgement and its invalidation of the earlier rules. The new German exit tax rules provide for instalment payments and a time-limited deferral. Rather than easing rules for relocations to Switzerland, Germany tightened the rules for relocations within the EU/EEA, applying the same, stricter rules to Switzerland. Germany considers these rules consistent with EU law. As far as the Ministry is aware, the new rules have not been challenged in German courts, in the CJEU, or by the European Commission.

To recall, the primary objective of the Norwegian exit tax is to safeguard a balanced allocation of taxing rights between Norway and the states of immigration, and to secure that Norway has the power to tax any capital gains on shares etc. accrued during the taxpayer's tax residency in Norway. Furthermore, the rules seek to reduce the risk of tax avoidance, and to secure effective tax collection. With that in mind, and what we consider to be relevant case law for the assessment of the Norwegian exit tax rules, we will in the following respond to the Authority's questions in points 1 to 3.

1. *Companies vs. natural persons*

As stated above, the Ministry believes that the *Commission v. Portugal* case and the case law it refers to, still represents the relevant expression of the EEA law framing of exit taxation of natural persons. Thus, we have found no basis in EEA law indicating that the proportionality assessment should be different for natural persons on the one hand and companies on the other, when it comes to exit taxation.

Nevertheless, we would like to add that the Norwegian exit tax rules are, all rules taken into account, more lenient for natural persons than they are for companies. For example, firstly, natural persons are only subject to exit tax for the amount of net gains or losses that exceeds MNOK 3. The exit tax for companies has no basic allowance. Secondly, natural persons may opt for a full 12-year deferral with interest, or payment in twelve yearly instalments without interest. Companies may only opt for instalments over seven years, with interest. Thirdly, the exit tax for natural persons is waived if the taxpayer repatriates to Norway with the shares retained, whereas the exit tax for companies is final.

The Ministry considers a 12-year payment deadline for the exit tax claim, instead of payment only upon realisation, to be an appropriate and necessary requirement for ensuring that the objectives of the exit tax regime are met.

First, there are multiple possibilities for the taxpayer, through relatively simple measures, to gain access to the assets of the company after the emigration without selling the shares. It is impossible for the legislator to foresee and effectively counteract every possible legal or illegal way of gaining such access. Furthermore, the risk of non-recovery will increase over time, as highlighted by the CJEU in several rulings mentioned above. *I.a.*, if the value of the taxpayer's assets decreases after emigration, this might in itself pose a threat to the possibility to collect the exit tax claim. Thus, relying only on actual realisation of the share itself as a criterion for the obligation to pay a deferred tax claim, will not ensure effective collection.

Accordingly, the Ministry believes that it is also proportionate not to take into account, for the exit tax assessed at the time of departure, any subsequent alterations in the market value of the assets and/or any (double) taxation in the immigration state of gains accrued before the taxpayer departed from the exit state. This was explicitly confirmed by the CJEU in the *Commission v. Portugal* case. In this judgement, the Court stated that the state of origin has no obligation to reduce the tax claim, as the claim is definitively determined at the time of emigration. The proportionality of the exit tax must be evaluated in relation to the relevant recognised EU objective of common interest, which in the present case is primarily the balanced allocation of taxing rights.

As described in the response to question 3, the rules on deferred payment pursuant to Section 10-70 of the Tax Act and its implementing regulation are already significantly more lenient than the general rules on deferred payment under the Tax Payment Act. However, if the taxpayer needs a further deferral, having exhausted the deferral options according to the Tax Act Section 10-70, he or she may apply for an additional deferral according to the Tax Payment Act.

2. *Proportionality of the rules governing deferral*

Our understanding is that this question relates to the proportionality of the deferral rules, *i.e.* the length of the deferral period and the conditions for deferral. We consider the rules on losses <u>after</u> emigration as an issue regarding the *assessment* of the exit tax, not the deferral or recovery of the exit tax claim. However, to ensure completeness, we reiterate that the CJEU has confirmed that the state of origin has no obligation to reduce the tax claim, as the claim is definitively determined at the time of emigration, cf. the *Commission v. Portugal* case.

As to the proportionality of the conditions for deferral, this has been a central part of the deliberations leading to the proposition for and subsequent adaptation of the 2024 amendments. The conditions for deferral in the Norwegian exit tax regime are similar to or more lenient than those that have been accepted in CJEU case law.

During the public consultation of the proposed amendments, most of the respondents had comments to the proportionality of the proposed rules. After considering these responses, the Government made some easing amendments in the proposition to the Storting. Most notably, a substantial basic allowance of MNOK 3 was introduced. And it was decided that a requirement for security can be complied with by offering the shares subject to exit tax as collateral, regardless of how the value of the shares develop after the exit.

Taking into account, on the one hand, the objective of the rules, the increasing risk of non-recovery over time and the administrative burden related to deferrals, and on the other, the possible liquidity constraints for the taxpayer and how that might affect his/her mobility, we argue that the current conditions for deferrals are within the limits of what is considered as appropriate and proportionate to attain these objectives.

As to the legal certainty in relation to a possible obligation to provide security, we would first emphasise that the criteria for requiring such security from the taxpayer were amended in the Norwegian rules, to better align them with the wording used by the CJEU. In *i.a.* the *DMC* case, the Court held that a requirement to provide security must be imposed on the basis of the *actual risk* of non-recovery of the tax. We believe the legal certainty is well taken care of. Regulations have been enacted and FSFIN 10-70-1 has provisions related to the postponement of the payment of the exit tax. However, the regulations do not contain any specific provisions regarding the “actual risk” assessment in relation to the security requirement.

The tax authorities have issued a guideline on the application of the “actual risk” assessment. The guideline is primarily an instruction from the Directorate of Taxes to the tax administration on how they should practice the requirement. The guideline is also published on the home page of the tax administration and serves as guidance to the taxpayer.[i]

The guideline emphasises that the assessment of “actual risk” should be based on an overall evaluation where multiple factors are relevant, but that the evaluation should always take into consideration the taxpayer’s payment history in relation to tax claims and whether Norway has an agreement with the EEA state in question for assistance with tax collection.

We also emphasise that the tax administration has a duty to provide guidance to taxpayers. Hence, an individual that considers a potential relocation to another EEA-country, can contact the tax administration and request guidance on tax matters, including questions related to the security requirement.

The security must correspond to the tax liability and any interest, and may take the form of a bank guarantee, a pledge of securities or other satisfactory security, ref FSFIN 10-70-1 paragraph 4. In the event of the exit tax being triggered by the taxpayer moving abroad, security in the assets that are subject to the exit tax shall be considered satisfactory. This applies even if the value of the assets decreases after the exit. Thus, a share value decrease does not alone imply that further security has to be provided for continued deferral.

It follows from the issued guideline that if the taxpayer wishes to provide security in assets other than those covered by the exit tax, for example in real estate, the tax administration must assess whether the relevant asset has a value that provides adequate security for the claim. If the taxpayer wishes to provide security in assets located abroad, the tax administration must also be aware of the legal protection rules and possible challenges associated with the possible realisation of the asset in the country in question. In this context, it may be necessary to obtain a statement from a lawyer, and the tax administration may order the taxpayer to provide such a statement.

3. *The Distribution rule*

The ministry would like to point out that the distribution rule <u>does not</u> concern the taxation of the distributed dividends as such.

To recall, the objectives of the distribution rule are the following:

Firstly, the distribution rule is meant to safeguard the effective collection of the deferred exit tax, by limiting deferrals which objectively seem unnecessary due to the correspondingly reduced liquidity constraints of the taxpayer.

Secondly, it is meant to safeguard the balanced allocation of the taxing power between EEA states also in cases where the taxpayer repatriates and the exit tax is waived.

Thus, the distribution rule should in first instance be considered in light of the purpose of the deferral option, which is to alleviate possible liquidity constraints of the taxpayer following the assessment of an exit tax.

When a distribution is made on a share subject to exit tax, it is a reasonable assumption that the taxpayer's liquidity will improve. Consequently, the need for a deferral will be reduced. Furthermore, if the shares subject to exit tax is provided as security for the deferred exit tax claim, any distributions will reduce the value of the security.[26] Thus, a distribution will increase the risk of non-recovery.

[26] To enhance the legal certainty and predictability for the taxpayer, the Tax Administration may <u>not</u> request further security if the shares subject to exit tax has been provided as security, even if the value of these shares decrease.

Therefore, the Ministry believes that the distribution rule is appropriate to ensure the effective collection of the exit tax claim. We also believe it is proportionate, by (in practice) limiting the amount due to the net distribution (*i.e.* the net distribution after deduction for any withholding tax and dividend taxation). It could also have been argued that it is proportionate to claim instalments of the deferred exit tax claim if the taxpayer's liquidity was improved by other means. However, that would imply a need for an ongoing individual consideration of the taxpayer's overall financial position, which might be disproportionately burdensome both for the taxpayer and the tax authorities.

Secondly, the distribution rule should be considered in light of the objective of preserving a balanced allocation of the taxing power between the EEA states.

If distributions were to have no effect on the right for deferral, this would pose a considerable threat to the objective of preserving a balanced allocation of the taxing power between the EEA states in cases where the taxpayer repatriates to Norway. This is due to the fact that distributions – all else being equal – will reduce the value of the distributing company. Thus, when the exit tax lapses upon repatriation and the taxpayer later realises the shares as tax resident in Norway, the capital gains accrued before the exit might be nulled by the distributions received as a tax resident outside Norway. This would mean that Norwegian shareholder taxation, including exit tax, could be replaced with a lower withholding tax on dividends – if any.

Thus, accepting that distributions could be made without any effect on the payment of the exit tax would pose a considerable limitation on the effectiveness of the exit tax regime. We do not believe that such a limitation to the effectiveness of the Norwegian exit tax regime would be proportionate.

Similar distribution rules exist also in *i.a.* the German and Danish exit tax regimes. We are not aware that these distribution rules have been challenged before national or international courts, nor by the European Commission.

Table 1 Possible circumvention of the exit tax through distribution of dividends after exiting Norway (illustrative example).

Exit	
Market value	200
Input value	100
Gain/loss	200 – 100 = 100
Assessed exit tax	100 * 0,3784 = **37,84**
Distributed dividend on share after exit[1]	70
Repatriation	
Lapse of exit tax (if share is still held)	37,84
Market value	200 – 70 = 130
Input value	100
Gain/loss	130 – 100 = 30
Tax on realised share income in Norway	30 * 0,3784 = **11,35**
Sum taxes paid to Norway (tax on realised share income in Norway, no exit tax paid)	0 + 18,92 = **11,35**

[1] When dividends are paid to foreign owners from Norwegian companies, a standard withholding tax of 25 percent applies. However, if the owner resides in a country that has a tax treaty with Norway, the rate is typically reduced to 15 percent. To avoid double taxation, it is usually possible to claim a credit for the Norwegian withholding tax against any tax liability in the country of residence.

As to the Authority's question regarding deferral options in purely domestic situations v. the deferral options within the exit tax regime and the principle of equivalence: The special deferral provisions on exit tax were motivated by the fact that the general Norwegian rules on deferred payment, and the administrative practice associated with them, did not provide sufficient flexibility to accommodate the type of deferrals deemed appropriate under the amended rules on exit tax.

The rules on deferred payment pursuant to Section 10-70 of the Tax Act and its implementing regulation are significantly more lenient than the general rules on deferred payment under the Tax Payment Act.

In general, the tax administration applies a strict practice with respect to the granting of payment deferrals. According to current guidelines, deferrals are generally not granted for periods exceeding two years (one year for businesses). It may be included as a condition in the deferral agreement that the debtor is obligated, during the term of the agreement, to disclose any significant improvements in their financial situation. The Tax Authority usually reserve the right to reassess the agreement if the debtor's ability to pay becomes substantially better than what was originally assumed. Typical changes in financial circumstances may include a significant increase in income or receiving inheritance, gifts, or winnings. The rules for deferral apply equally regardless of whether the taxpayer and/or the relevant asset is located in Norway or abroad. A deferral under the current Tax Payment Act does not alter the due date of the tax claim, and interest on late payment accrues during the deferral period. Waiver of such interest is only granted under exceptional circumstances.

As of January 1, 2026, the new Collection Act will enter into force. The provisions on payment deferrals in Sections 15-1 and 15-2 of the Tax Payment Act will be replaced by a new provision on payment agreements in Section 17 of the new Act. This provision authorises the Collection Authority to grant a payment agreement when deemed appropriate. However, the threshold for granting a longer payment agreement under Section 17 of the new Act will be significantly higher than under Section 10-70 of the Tax Act and its implementing regulation.

Based on the above, the Ministry's conclusion is that the current Norwegian exit tax regime, including the rules governing the options for deferral of the payment of the exit tax claim, is in compliance with the EEA agreement, including the existing relevant CJEU case law.

Yours sincerely

Cecilie Beck Landet
Deputy Director General

Hans Peter Lødrup
Legal Adviser

This document is signed electronically and has therefore no handwritten signature

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[i] Retningslinje for utsettelse av innbetaling av fastsatt utflyttingsskatt etter skatteloven § 10-70 - Skatteetaten