THE TAX DISPUTES AND LITIGATION REVIEW

SIXTH EDITION

Editor
Simon Whitehead

THE LAWREVIEWS

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PREFACE

The objective of this book is to provide tax professionals involved in disputes with revenue authorities in multiple jurisdictions with an outline of the principal issues arising in those jurisdictions. In this, the sixth edition, we have continued to add to the key jurisdictions where disputes are likely to occur for multinational businesses.

Each chapter provides an overview of the procedural rules that govern tax appeals and highlights the pitfalls of which taxpayers need to be most aware. Aspects that are particularly relevant to multinationals, such as transfer pricing, are also considered. In particular, we have asked the authors to address an area where we have always found worrying and subtle variations in approach between courts in different jurisdictions, namely the differing ways in which double tax conventions can be interpreted and applied.

The idea behind this book commenced in 2013 with the general increase in litigation as tax authorities in a number of jurisdictions took a more aggressive approach to the collection of tax; in response, no doubt, to political pressure to address tax avoidance. In the UK alone we have seen the tax authority vested with broad new powers not only of disclosure but even to require tax to be paid in advance of any determination by a court that it is due. The provisions empower the revenue authority, an administrative body, to compel payment of a sum, the subject of a genuine dispute, without any form of judicial control or appeal.

Over the past year, the focus on perceived cross-border abuses has continued with action by the European Commission on past tax rulings in Ireland, Luxembourg and Belgium and the BEPS reaching a crescendo in the announcement of a 'diverted profits tax' to impose an additional tax in the UK when it is felt that a multinational is subject to too little corporation tax even in an EU context. The general targeting of cross-border tax avoidance now has European legislation behind it with the passage this year of the second Anti-Tax Avoidance Directive. The absence of much previous European legislation in direct tax has always been put down to the need for unanimity and the way in which Member States closely guard their taxing rights. The relatively speedy passage of this legislation (the Parent–Subsidiary Directive before it took some 10 years to pass) and its restriction of attractive tax regimes indicates the general political disrepute with which such practices are now viewed.

These are, perhaps, extreme examples, reflective of the parliamentary cycle, yet a general toughening of stance seems to be felt. In that light, this book provides an overview of each jurisdiction's anti-avoidance rules and any alternative mechanisms for resolving tax disputes, such as mediation, arbitration or restitution claims.

We have attempted to give readers a flavour of the tax litigation landscape in each jurisdiction. The authors have looked to the future and have summarised the policies and approaches of the revenue authorities regarding contentious matters, addressing important

questions such as how long cases take and situations in which some form of settlement might be available.

We have been lucky to obtain contributions from the leading tax litigation practitioners in their jurisdictions. Many of the authors are members of the EU Tax Group, a collection of independent law firms, of which we are a member, involved particularly in challenges to the compatibility of national tax laws with EU and EEA rights. We hope that you will find this book informative and useful.

Finally, I would like to acknowledge the hard work of my colleague Ibar McCarthy in the editing and compilation of this book.

Simon Whitehead
Joseph Hage Aaronson LLP
London
February 2018

Chapter 25

NORWAY

Thor Leegaard[1]

I INTRODUCTION

Tax assessments may as a general matter not be negotiated with the tax authorities. Tax disputes are, therefore, normally resolved by administrative appeal to the Tax Appeal Board or through litigation. In litigation, the tax authorities are free to negotiate the result and settle out of court. This does take place to a certain extent, in cases where the tax authorities are worried about the outcome of a judgment or where it is evident that the taxpayer has a strong case.

While tax cases make up a fair percentage of the number of cases litigated in Norwegian courts, the vast majority of tax cases are solved at administrative level. A single Tax Appeal Board was established in July 2016 for the entire country, covering all types of taxes, except for Petroleum Tax, for which there is a separate appeal board.

The Tax Appeal Board replaced regional appeals boards, and is served by a secretariat that is independent from the tax authorities, but administratively managed by the Directorate of Taxes. The secretariat is understaffed. As a consequence, administrative appeals are now extremely time-consuming, at the time of writing estimated to up to two years until a decision in the Tax Appeal Board. On the positive side, it seems more appeals result in a decision in favour of the taxpayer than earlier.

There is generally only one court system in Norway, dealing not only with administrative law, but also private law and criminal law. Court proceedings are as a matter of principle oral, in the sense that written submissions are not taken into account unless argued before the court.

The time to a final judgment in tax cases can take several years, in particular in complex cases. Especially the Tax Appeal Board and the courts of appeal have a significant backlog.

II COMMENCING DISPUTES

All taxpayers are required to file annual tax returns, although for the vast majority of individuals who are subject to tax only on salaries and other reportable income and wealth, it is not strictly necessary to file a return. Tax returns for individuals are generated and made available through the government portal, Altinn. If the information included in the pre-populated return is correct, it is not necessary to actively confirm the return.

Businesses, including corporations, file returns. For significant or unusual transactions, it is also common to include an appendix to the return with a description of the tax treatment.

1 Thor Leegaard is a partner at KPMG Law Advokatfirma AS.

Under the current Taxes Management Act (TMA), such an appendix may prevent tax penalties in cases where the tax authorities disagree with the position taken by the taxpayer, and provide for a five year statute of limitation.

Until 2015, the statute of limitation was two years (10 years with regard to VAT until 2017). If the taxpayer had failed to provide correct and complete information to the tax authorities, the statute of limitation was 10 years. From 2015 (2017 with regard to VAT), the statute of limitation is five years, unless there are grounds to impose higher rate of tax penalties. In such cases, the statute of limitation is 10 years.

A tax dispute may start either through an audit or through a more simple exchange of letters with the tax authorities. Often, such exchanges may start with a request for additional information. The administrative process ahead of a dispute may in some cases be time consuming. In many cases, the tax office requests detailed and extensive information, which prolongs the process.

It is important to consider requests for information properly. Correspondence with advocates is generally privileged, but if consent has been given to share such correspondence with the tax authorities, it may be used as evidence.[2] In cases where the tax authorities have seized and copied electronic archives, this may contain correspondence that is privileged. In HR-2017-467-A *Saga Tankers* of 1 March 2017, the Supreme Court held that the tax authorities are allowed to review all correspondence and determine as a starting point what is considered privileged. The Court held that sufficient safeguards were in place under Article 8 ECHR. The decision is widely criticised, but must nevertheless be taken into account in preparing for a tax audit.

In some cases, the tax authorities request information about group companies and transactions outside Norway. It may be appropriate, depending on the circumstances, to refer the tax authorities to the available agreements for exchange of information in such cases.

A tax audit is normally initiated by a notice from the tax authorities. This may in many cases detail the scope of the audit, although this would not limit what the tax authorities are allowed to investigate, should other issues surface during the audit. The tax authorities are also allowed to perform unannounced audits, but this is quite uncommon.

In most cases, there would be a start-up meeting with the tax authorities. To ensure documentation of information requests and information provided, this meeting should be limited to a presentation of the business and of facts requested by the tax authorities. In addition, the meeting is a good opportunity to discuss expectations and timing of the process.

During the audit, the tax authorities may either be on site of off site, and may request electronic access to the company's accounting systems and may request access to personnel for interviews. It is important to manage the process and ensure that information requests are documented and that the tax authorities clarify the transactions under investigation and their positions. It is possible (if uncommon) to challenge decisions made by the tax authorities during the process, either by appeal to the Directorate of Taxes or in court.

At the end of the audit, the tax authorities issue a draft audit report, mainly to allow the taxpayer to correct factual mistakes, including submission of additional evidence. Once a final report is issued, it would normally be accompanied by an updated notice of reassessment, allowing for additional submissions in fact and in law by the taxpayer.

2 Rt 2013.1206 *Seadrill Norge AS.*

The administrative process before a reassessment by the tax authorities also includes the right to review a draft version of the proposed reassessment. The draft is reasoned, stating the relevant facts and legal arguments the tax authorities are making for the reassessment. It is also possible to ask for a meeting with the tax authorities to clarify facts and legal arguments.

Once a decision has been made by the tax office to reassess, a claim for payment of the outstanding tax will be issued and must be paid within three weeks. This includes interest until the due date for payments. If the case is on appeal, it may be possible to agree a postponement of the payment, subject to security and late payment interest in case of a loss. Tax penalties, on the other hand, are not payable until the deadline for appeal is passed or the case is finally decided either by the Tax Appeal Board[3] or in court.

A decision by the tax office may either be appealed to the Tax Appeal Board or be brought before the courts. Appeals must be made within six weeks of the time a decision has reached the taxpayer.[4] A lawsuit must be filed within six months.[5] The tax authorities may decide that a lawsuit cannot be filed before an appeal has been heard by the Tax Appeal Board.[6]

In the choice between an administrative appeal to the Tax Appeal Board and a lawsuit, it is important to consider whether additional evidence is required. Taxpayers are to a certain degree prevented from presenting new evidence in court, to the extent that they could reasonably be expected to have been presented during the administrative process.[7] If, on the other hand, the tax authorities have presented additional evidence, the taxpayer may be allowed to counter this new evidence.[8] These principles are governed by case law, and can be complex to navigate.

A decision by the tax authorities may also be brought before the parliamentary Ombudsman for review. The view of the Ombudsman is not binding. An appeal to the ombudsman does normally provide for an extension of the deadline for a lawsuit.[9]

III THE COURTS AND TRIBUNALS

The Tax Appeal Board is independent of the tax authorities, and members are appointed for a period of four years. They are mainly recruited from academia, the professions and business. It is assisted by a secretariat in charge of preparing cases before the Board. Neither the secretariat nor the members can be instructed by the tax authorities.[10]

The Appeal Board consists of a leader, a deputy leader and 51 members. Most cases are tried by three members without a physical meeting, but cases can be referred to an extended group, in which the leader and deputy leader participates. If the case is tried in a meeting, the Board may decide that the taxpayer is allowed to be present. Such a decision may not be appealed.

3 Section 14-10 TMA.
4 Section 13-4 TMA.
5 Section 15-4(1) TMA.
6 Section 15-5(1) TMA.
7 Rt 2002.509 *Sundt*.
8 Rt 2001.1265 *Agip*.
9 Section 15-4(2) TMA.
10 Section 2-9 TMA.

Administrative appeals are sent to the tax office that prepared the reassessment. The tax office can decide to cancel the reassessment if it agrees with the taxpayer.[11] It is also allowed to provide comments in other cases.[12] The secretariat thereafter prepares a draft decision for the Board. The taxpayer is entitled to a copy of the comments from the tax office, and also to review the draft from the secretariat.[13]

The Tax Appeal Board has full jurisdiction and can try all parts of the case, including new evidence. It can also consider issues that have not been raised by the taxpayer.[14] This does not mean that the Board can consider issues that are unconnected with the reassessment or the appeal. An example provided in a white paper[15] is that it cannot consider the taxpayer's employment income if the appeal concerns wealth taxation and income from real estate. This is evident, but there may be gray areas. In its application of law, it is nevertheless certain that the Board is not bound by the arguments made by the tax office or the taxpayer.

Currently, there is a significant backlog in cases before the Board, and it is estimated that some cases may take up to two years to decide. This is partly because of the time spent by the tax offices preparing arguments before sending appeals to the secretariat, and partly because the secretariat is understaffed.

There are three court instances in Norway. The district courts are the courts of first instance. Norway is divided into court districts, consisting of one or more municipalities.

The courts of appeal are the second instance, hearing appeals against judgments in the district courts within their geographical jurisdiction. There are six courts of appeal in Norway. Judgments from the district courts must be appealed within one month of when it was serviced.[16] In cases concerning less than 125,000 kroner, leave of appeal is required.[17] The court may also refuse appeal if it finds that it is evident that it cannot succeed. This is intended to be applied only in exceptional cases and in practice, the courts of appeal have proved reluctant to refuse appeal.

The Supreme Court is the highest court in Norway. Its decisions are final and cannot be appealed (although the European Court of Human Rights may try the Court's application of the ECHR). Appeal to the Supreme Court requires leave from the Court.[18] Leave requires that the appeal concerns questions of interest also for other case, or that there are other significant reasons for requesting a judgment from the Court. In practice, it is not certain that leave will be granted even if the case concerns significant amounts or if the judgment from the Court of Appeal is questionable. The Court can also limit the leave of appeal to certain parts of the case.

In exceptional situations it is possible to make an appeal over a judgment from the District Court directly to the Supreme Court.[19] This requires leave from the Court and applies only in cases concerning significant cases of public importance where it is of interest quickly to obtain the view of the Supreme Court.

11 Section 13-6(3) TMA.
12 Section 13-6(4) TMA.
13 Section 13-6(5) TMA.
14 Section 13-7(2) TMA,
15 Prop. 38 L pkt. 19.9.3.
16 Section 29-5(1) Civil Procedures Act.
17 Section 29-13 Civil Procedures Act.
18 Section 30-4 Civil Procedures Act.
19 Section 30-2 Civil Procedures Act.

Cases before the Supreme Court are normally heard by five judges, but the Court can decide to hear the case with 11 judges or in plenary session. In addition to granting a judgment, the Supreme Court may return the matter to the Court of Appeal for new hearing. The reasoning for judgments are provided in full by the Court, and all judgments are publicly available.

A mention must also be made of the possibility of requesting an advisory opinion from the EFTA Court of Justice. Such a request may be made at all stages of the appeals procedure by the relevant court, including the Tax Appeal Board. In joined cases E-3/13 and 20/13 *Fred Olsen and others* Paragraphs 66 and 72, the EFTA Court held that the former Tax Appeal Board of the Central Tax office for Large Sized Enterprises, exercised a judicial or quasi-judicial function and as such qualified as a court or tribunal.

Review by a court of law is limited to the examination of the assessment of the evidence and the application of the law. The courts are not limited to testing the legal reasoning in the decision from the tax office, but may apply the law freely (within the boundaries of the arguments made by the parties). One limitation is that it cannot test a different transaction or factual situation.[20]

Courts will not assess the tax office's discretionary assessment (e.g., pricing or valuations) unless they are held to be contrary to the evidence or to be arbitrary or grossly unreasonable. The tax authorities, therefore, generally argue that discretionary assessments are modest in order to limit the examination by the courts.

IV PENALTIES AND REMEDIES

The general rate of tax penalties is 20 per cent (of the additional tax), and may be imposed if the taxpayer has failed to provide correct and complete information.[21] Penalties may be increased to 40 per cent or 60 per cent if the failure to provide information is deliberate or grossly negligent.[22] In disputes over penalties, the courts can try all aspects of the decision of the tax authorities.

Criminal liability can be applied if the taxpayer has failed to provide correct and complete information.[23] There are also provisions in the TMA providing for criminal liability for third parties not supplying information to the tax authorities[24] and for failure to assist in tax audits.[25]

V TAX CLAIMS

i Recovering overpaid tax

Tax returns may be amended within three years of the deadline for the original submission. This applies only in cases of self assessment, and applies to income and corporation tax, wealth tax, VAT, employers' social security contributions, financial activities tax and excise duties. Such voluntary amendments do not necessarily involve the tax authorities, in the

20 E.g., Rt 1998.1779 *INA* and Rt 2010.999 *First Securities*.

21 Section 14-5 TMA.

22 Section 14-6 TMA.

23 Section 378 of the Criminal Code.

24 Section 14-12 TMA.

25 Section 14-13 TMA.

sense that the amendments are made under the self assessment regime. In cases where the previously assessed tax is too low, an amendment may be obligatory in the sense that failure to amend could lead to tax penalties.

For refund of dividend withholding tax, a special administrative regime applies, whereby claims must be submitted within the five year period to the Central Tax Office for Foreign Tax Affairs. The distributing company may also amend the withholding tax return within three months of the due date for the return, though at the latest by 31 December in the year in which the dividend was paid (or when the taxpayer could have claimed payment if earlier).

ii Challenging administrative decisions

General administrative law applies alongside the Tax Assessment Act. These principles have the role of protecting taxpayers against injustice, arbitrary decisions, the tax authorities' attack on fundamental rights and predictability. A basic requirement is that administrative proceedings must be proper, hereunder that they must be considerate and allow for contradiction.

The behaviour of the tax office cannot be in conflict with good administrative practice, that is, the tax office cannot make unfounded claims or attempt to turn the burden of proof.

Another principle is that the administration cannot make arbitrary or grossly unreasonable decisions.

In addition to this, there is a general rule against (domestic) double taxation. This rule was previously in the Taxes Act. While the wording was changed in 1999, the rule still applies. It prohibits double taxation even where the tax is not payable by the same taxpayer[26] and was last confirmed in Rt 2015.982 *Barlaup*.

iii Claimants

It is the party to the decision from the tax office who is entitled to make administrative appeals.[27] However, anyone who is ultimately liable for the tax may also apply. For corporation tax, this does not extend to other group companies, as Norway does not provide for consolidated group taxation. For VAT, however, the entity that is the head of a VAT group may appeal as well as the entity that is party to the decision.

In addition, companies may appeal against the tax valuation of its shares for wealth tax purposes, and partnerships may appeal in respect of the determination of taxable income to be taxed at the level of the partners.[28]

These rules also determine who is entitled to bring a case to court.[29]

Since the Tax Appeal Board may determine in favour of the taxpayer, the Ministry of Finance has the right to sue the Board.[30] This right is limited to the factual basis for the decision and the application of law, and is not extended to the discretionary assessment of the Board. In such cases, the taxpayer is not party to the case, but may decide to intervene as an

26 Rt 1987.723 *Vestre Strandgate*.

27 Section 13-1 TMA.

28 Section 13-2 TMA.

29 Section 15-1 TMA.

30 Section 15-2(1) TMA.

accessory party in the court case. Therefore, the taxpayer must be notified of a decision to sue the Board.[31] Such lawsuits are uncommon, but have taken place recently in a case concerning deductibility of input VAT on certain real estate transactions.

VI COSTS

Under Section 5-9 TMA, costs are awarded where a decision is amended in favour of the taxpayer. This applies where an appeal leads to an amendment or repeal of a reassessment by the tax office, or where the Tax Appeal Board overturns a reassessment. Recoverable costs are limited to significant costs that were necessary to have the decision amended.

In court, the ordinary rules apply for the award of costs. The general rule is that a party who has won the case is entitled to a full award of costs.[32] Therefore, both the tax authorities and the taxpayer may be awarded costs. Unusually, the court may refrain from awarding costs if there were good reasons for trying a contested legal issue if the winning party is to blame for not resolving the case earlier.[33] Costs may also partly be awarded in cases where a party has won parts of the case.[34]

VII ALTERNATIVE DISPUTE RESOLUTION

Advance rulings are available under Norwegian law for planned transactions, subject to certain material limitations. Most importantly, an application cannot concern liability to tax in Norway or the tax residency of companies, valuation or matters depending on the interpretation of a tax treaty. Advance rulings are binding for the tax authorities for a period of three years after the year in which the ruling was issued, and provided that the transaction is in accordance with the facts provided to the tax authorities and in line with the ruling. A ruling can be appealed to the Tax Appeal Board. It cannot, however, be tried in Court.

Norway does not have legislation providing for advance pricing arrangements, but the tax authorities have established a centralised team dealing with advance pricing arrangements and MAP under Articles 7 and 9 of the OECD Model Convention.

VIII ANTI-AVOIDANCE

A general anti-avoidance standard developed by the courts exists, under which transactions undertaken with little or no other purpose than avoiding tax under certain circumstances may be disregarded for tax purposes. There is ongoing work to incorporate the general anti-avoidance standard in the legislation.

For the general anti-avoidance standard to be applicable, two conditions must be met. The first condition is that the main motive for carrying out a transaction is tax savings. The assessment is based on the taxpayer's subjective motives for carrying out the transaction. However, a presumption for tax motivation exists where the predominant effect of a

31 Section 15-2(4) TMA.

32 Section 20-2(1) Civil Procedures Act.

33 Section 20-2(2) of the Act.

34 Section 20-2(3) of the Act.

transaction is that the taxpayer obtains substantial tax savings. The tax savings must have been a notably more important motive for carrying out the transaction than all other motives combined, for example, Rt 2006.1232 *Telenor*.

The second condition is that the tax benefits gained from the transaction are obtained contrary to the legislative intent. When considering whether the tax benefits gained from the transaction are contrary to the legislative intent, it is necessary to take into consideration all aspects of the transaction, including its effects and the taxpayer's subjective motives. Based on jurisprudence, the threshold is quite high, for example, Rt 2014.227 *ConocoPhillips*.

Norway has been active in the OECD BEPS project, and continues to take an active approach to its effect on domestic legislation. The main changes that are in the pipeline is an extension of earnings stripping rules to cover interest paid to unrelated parties and implementation of further anti-hybrid rules. The Ministry of Finance is also considering implementing withholding taxes on interest and royalties.

IX DOUBLE TAXATION TREATIES

Tax treaties become an integral part of domestic law by ratification, under a law from 1949, under which the King may enter into agreements for the avoidance of double taxation. Treaties must, therefore, be applied by the tax authorities and by the courts. The interpretation and application of tax treaties follow the provision in Article 31 No. 1 of the Vienna Convention on treaty law, even if Norway has not ratified the Convention.[35] The OECD commentaries are relied on extensively in the interpretation of tax treaties.[36] This applies also to versions of the Commentaries issued after the relevant treaty was ratified, and to a degree even when the new version is intended to reflect a change of practice.[37]

In transfer pricing cases, the arm's length provision in Section 13-1 of the Taxes Act (TA) specifies that the OECD Transfer Pricing Guidelines must be taken into account. This refers to the current Guidelines at any point in time, but it is an open question whether material changes to the taxpayer's detriment may be applied. The Guidelines will also be applied in cases concerning transactions involving parties that are not resident in a country with which Norway has a tax treaty. In Rt 2001.1265 *Norsk Agip AS*, the Supreme Court held that Section 13-1 TA entails the same principles as those expressed in the guidelines.

Norway is not a Member State of the EU, but is part of the internal market through the EEA Agreement. The Agreement is incorporated into Norwegian domestic law by virtue of Section 1 of the EEA Act. Section 2 of the Act determines that the EEA Agreement takes precedence over domestic law in case of conflict. Effectively, therefore, the provisions of the EEA Agreement may be invoked directly by taxpayers.

Norwegian courts and tribunals may refer questions of interpretation of the Agreement to the EFTA Court of Justice. The Court will provide advisory opinions to the domestic Court, and while these are not binding, they will be of significant importance.[38] Jurisprudence from the CJEU from before the EEA Agreement was signed is incorporated in the Agreement and, therefore, binding on Norwegian courts. In practice, also newer jurisprudence is relevant.[39]

35 Rt 2011.1581 *Dell Products* paragraph 41.

36 Rt 2008.577 *Sølvik* paragraph 47.

37 Rt 2004.957 *PGS Geophysical AS* paragraph 49.

38 Rt 2000.1811 *Finanger*.

39 Rt 2002.391 *God Morgen*.

The EEA Agreement does not cover tax and VAT, and as a consequence, the tax directives therefore do not have EEA relevance. The fundamental freedoms and state aid rules are included in the Agreement and, therefore, limits the Norwegian legislator. This was contested by the Norwegian government, until the advisory opinion of the EFTA Court of Justice in E-1/04 *Fokus Bank*. The courts have also gone further, and will interpret domestic legislation in a way which ensures that the application does not conflict with the fundamental freedoms.[40]

VAT was introduced in 1970 and applies to domestic sales of most goods and services. The current VAT Act entered into force from 1 January 2010. Tax is charged at all stages, including on import and purchases from abroad regarding services capable of delivery from a remote location, except if an exemption is obtained. The standard rate of VAT is 25 per cent. The registration threshold is 50,000 kroner.

Financial services, financial instruments, educational services, healthcare and certain other supplies are outside the scope of the VAT system. Furthermore, the transfer and letting out of real estate is outside the scope of the VAT system, except in cases of voluntary registration. The transfer of ships and platforms used in oil and gas production, export sales, and a few other transactions, are VAT zero-rated.

X AREAS OF FOCUS

There is a continued focus on permanent establishments from the Norwegian tax authorities, including the taxation of individuals working in Norway. This is likely to increase with the changes through Article 12 of the MLI on avoidance of PE through commissionaire arrangements, although it seems many treaty partners do not match Norway's position.

In 2014 a national project group was established, and the most recent reports shows that the resources used on transfer pricing is around 90 full-time employees. In practice, the tax authorities often take quite aggressive positions testing out the boundaries of the arm's-length principle. Notably, the Supreme Court accepted the use of secret comparables in Rt 2015.353 *Total E&P Norge AS*, although this may have turned on the specific facts.

According to the latest reports from 2016, leasing (mostly in relation to bareboat charters) and management fees and other services were the most significant group of cases. In addition, allocation of profits to permanent establishments and thin capitalisation have been high on the agenda for the tax authorities.

It could also be mentioned that EEA Law is an area with increased importance in tax disputes. This is partly because of the fact that Norwegian taxpayers and their advisers are more aware of the principles than previously, but also to the fact that there have been high-profile cases concerning the application of CFC legislation, wealth tax and cross-border group contributions recently.

XI OUTLOOK AND CONCLUSIONS

Whether or not the courts will accept the recent more aggressive approach of the tax authorities in transfer pricing cases will be interesting to follow going forward. The impact of the changes to the PE-definition on the approach of the tax authorities also remains to be

40 Rt 2012.1380 *Statoil Holding* paragraph 54.

seen. Building on historical experience, it can be envisaged that the tax authorities may take more bold positions in the future. The big question is when we can expect to see such cases tried in court, given the time lag for cases before the Tax Appeal Board. This means it may be many years before disputes on controversial positions in law are finally settled.

It should also be expected that the implementation of further measures inspired by BEPS will increase the number of enquiries and tax audits. There is certainly no lack of interest in strengthening the resources of the tax authorities. In addition, the effects of automation means that resources are freed up to deal with more complex tasks than processing tax returns.

The issue of tax certainty and of objectiveness of the tax authorities in disputes is much in discussion. While (perceived) aggressive tax planning is unlikely to get much attention in this context, taxpayers in general are adversely affected by the time and cost required to have cases tried in court. Some developments in recent years, such as the establishment of an independent secretariat for the Tax Appeal Board and the unenforceability of tax penalties before cases are final, have been positive. There remain, however, significant issues on which further progress is required.

Appendix 1

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Thor Leegaard has been with KPMG since 2002 and a tax partner since 2007. He was educated at the University of Bergen and has an LLM in taxation from the London School of Economics. Thor started his career with the Norwegian tax administration in Oslo, and later worked for the International Bureau of Fiscal Documentation where he focused on UK and Irish tax developments.

Thor covers company law and domestic and international tax law as well as European law issues connected to taxation, and has extensive M&A experience. He has handled a number of complex disputes on administrative level, and has practical experience from tax litigation, including litigation before the EFTA Court of Justice.

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