

AN INTRODUCTION TO NORWEGIAN BUSINESS LAW FOR FOREIGN BUSINESSMEN

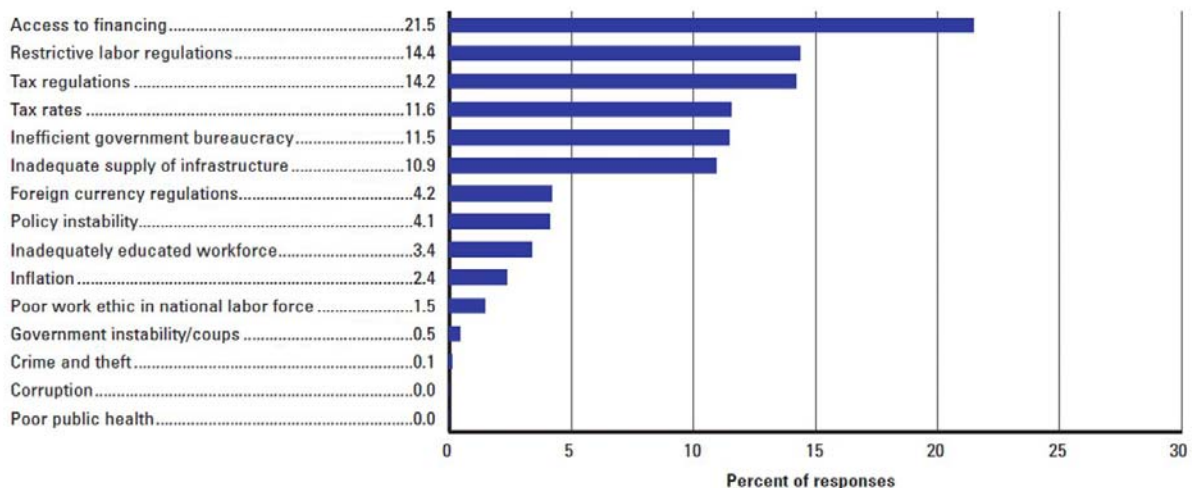
1. Introduction

1.1 Doing business in Norway – introduction to the topic

Norway is currently ranked 10 on the World Banks' Ease of Doing Business Index,¹ higher than most EU countries.

Although doing business in Norway is generally considered safe and easy, there are problematic factors. According to a survey conducted by the World Economic Forum the following factors are considered the most problematic for doing business in Norway (2009-2010):²

The most problematic factors for doing business



Note: From a list of 15 factors, respondents were asked to select the five most problematic for doing business in their country/economy and to rank them between 1 (most problematic) and 5. The bars in the figure show the responses weighted according to their rankings.

In our experience foreign companies and businessmen benefit from seeking professional advice before they start to conduct business in Norway. This applies especially to questions regarding business organization, immigration issues, tax related issues, VAT-representation as well as general labour law.

Brækhus Dege has broad experience in most legal areas of interest to foreign businessmen. In addition to the above mentioned areas of expertise, we specialise in general business law, international contracts, real estate law, insolvency, IT law, competition law, public procurement, intellectual property law and privacy protection law.

Based on our experience we have made a guide which we believe will be helpful when planning to start business activities in Norway. This guide will for obvious reasons not cover

¹ The Ease of Doing Business Index is an index created by the World Bank. Higher rankings indicate better, usually simpler, regulations for businesses and stronger protections of property rights.

² <http://www.gcr.weforum.org/>

all challenges facing foreign businessmen in Norway, but it covers in our opinion some of the most important aspects. If you have any further questions or need further advice, Brækhus Dege will be happy to provide assistance.

1.2 Doing business in Norway – an introduction to this guide

This guide is based on our broad experience and seeks to provide simple answers to the most common questions and challenges foreign businessmen are facing in Norway. How do I organize my business in Norway? Do I need a work permit? Are my employees liable to pay taxes? Where do I need to register and which forms do I need to complete?

The guide will outline the most important issues one should be aware of before starting business in Norway, covering especially the following issues:

- Immigration requirements - Visas, residence and work permits
- Forms of business organization
- General labour law
- Identity cards for workers in the Norwegian building and construction industry
- General tax law
- VAT representation
- Distinctive traits of Norwegian contract law

In addition we have included contact information for public offices, see page 26.

2. Country Profile

Norway is situated on the western part of the Scandinavian Peninsula. It covers 324.220 km², (385.155 km² including Svalbard) and has a population of 4.7 million.

The political system is a constitutional monarchy with a parliamentary system of government. After the Second World War, Norway has experienced rapid economic growth, and is one of the wealthiest industrialised countries in the world, with a fully developed welfare system.

The Norwegian economy is mixed, featuring a combination of free market activity and government ownership. The Norwegian government owns large companies in key areas, such as petroleum, hydroelectric energy production and aluminium production.

Norway is not a member of the European Union (EU). However, Norway, together with Iceland and Liechtenstein, participates in the European Union's single market through the European Economic Area (EEA) Agreement. Norway is hereby a highly integrated member of most sectors of the EU internal market. Some sectors such as agriculture, oil and fish, however, are not fully covered by the EEA Agreement.

3. Immigration law

3.1 Introduction

In order to work and stay in Norway most foreign citizens need a residence permit. The permit must, with a few exceptions, be granted before entry. Which type of permit that is required, depends on the applicant's nationality, qualifications, and the purpose and length of stay.

Citizens of the European Union (EU), covered by the European Economic Area (EEA) Agreement (with the exemption of Romania and Bulgaria, which are covered by transitional rules) do not have to apply for a permit. Citizens from EU/EEA only need to register with the police upon arrival.

Many foreign citizens need a visa to enter Norway. The type of visa required depends on the reason for visiting. Different conditions apply for different types of visas, and there are also different conditions depending on who is applying for a visa.

Citizens from the Nordic countries (Norway Sweden, Denmark, Finland and Iceland) have since the 1950'es been allowed to reside and work in each others countries without any kind of work- or residence permit.

3.2 Visa

3.2.1 Visa waiver agreement

A visa is not required for citizens of countries with which Norway has signed a visa waiver agreement. Citizens of signatory states may stay in Norway for up to 90 days within a period of 180 days. The countries with which Norway has a visa waiver agreement are:

Andorra, Argentina, Australia, Austria, Belgium, Bermuda (BDTC passport), Brazil, Brunei, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Hong Kong (SAR passport), Honduras, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korean Republic, Latvia, Liechtenstein, Lithuania, Luxembourg, Macau (SAR passport), Malaysia, Malta, Mexico, Monaco, Netherlands, New Zealand, Nicaragua, Panama, Paraguay, Poland, Portugal, Romania, San Marino, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, UK, Uruguay, USA, Vatican State and Venezuela.

3.2.2 Short term visa

Short time work – not exceeding three months – may be performed on the basis of a short term visa.

A short term visa gives the holder the right to stay for 90 days in the course of a six month period. However, this type of visa does not allow anyone to stay in the Schengen area for more than 90 days in the course of six months.

This type of visa is not applicable for all types of work. Among the groups that may work on the basis of a short term visa are commercial and business travellers, researchers/scholarships, holders/lecturers and technical experts providing maintenance of, or information about, machinery.

3.3 Residence permit

The requirements for obtaining a residence permits depend on different circumstances, such as the citizenship of the applicant and the type of work to be performed in Norway. A general requirement is, however, that the applicant must have a genuine offer of employment of a certain scope.

3.3.1 EEA/EU Citizens

EEA/EU citizens do not need to apply for residence permits.

Transitional rules apply for employees from Romania and Bulgaria. The transitional rules contain more stringent employment requirements than those that apply pursuant to the ordinary EU/EEA/EFTA regulations. The main difference is that it is normally necessary to provide documentation of full-time work and that wages are in accordance with the relevant collective agreement or other tariff agreements that are normative for the profession in Norway.

3.3.2 Non EEA/EU Citizens

For non EEA/EU citizens different rules apply. There are specific requirements for employees, self-employed, service providers, service recipients, students, persons who have permanent and regular benefits of private means and persons who have terminated their working period after having worked in Norway.

To obtain a residence permit for self-employment it is necessary to submit a precise description of the enterprise.

Skilled workers/specialists may be granted a residence permit if they have an offer of full-time work for a single employer in Norway. This group comprises persons who have specialist training in a particular field or special qualifications needed by the employer. It is possible to apply for this permit from Norway. If all documents are in order the permit may be granted within 5 working days.

Employees in multinational companies, who have an offer of employment from the Norwegian office of the multinational company, can also be granted a residence permit, if the employee has specialist training or other special qualifications needed in the Norwegian office. Employees, who are entitled to live in Norway up to three months without a visa, may apply for this type of residence permit from Norway.

3.4 Summary

In order to work and stay in Norway, most foreign citizens need a residence permit. As a general rule the permit must be granted before entry. Which type of permit that is required, depends on the applicant's nationality, qualifications, and the purpose and length of stay.

It can be difficult to determine which type of permit you should apply for and how you should proceed with the application process. If you need assistance with your application we recommend to contact the Immigration authorities (UDI) or a law firm specialized in immigration law, such as Brækhus Dege.

4. Forms of business organization

4.1. Introduction

There are several corporate forms available if you want to carry out your business activity in Norway.

The principal forms of business organization in Norway are mainly limited liability companies (AS or ASA), liable partnerships (ANS), limited partnerships divided liability (DA), sole proprietorship (self-employed business) and branches of foreign companies.

4.2 Business with Limited liability companies

4.2.1 Types of companies with Limited liability

Private Limited Liability Companies (AS) or Public Limited Liability Companies (ASA) are both enterprises where none of the shareholders have personal liability for the company's obligations, either in full or for parts which together comprise the company's total obligations. The actual liability is limited to the share capital itself. The company's creditors may, with limited exceptions, only seek compensation from the values of the company.

Since the creditors only can demand payment from the valuables and assets of the company, The Norwegian Companies Act state that all the shareholders have to pay a minimum of share capital. The minimum share capital requirements are different between the two types of limited companies. An AS must have a minimum of share capital of NOK 100.000 whereas an ASA must have a minimum share capital of NOK 1.000.000.

Several rules protect the company capital, including a principle of property and a duty of action for the Board of Directors in connection with loss of at least half of the equity.

4.2.2 Formation requirements

The only legal way in which to form both an AS and an ASA is by simultaneous formation. Simultaneous formation means that the drawing up of the Memorandum of Associations and the subscription for shares take place at the same time. The entire share capital must be paid within three months after the signing of the Memorandum of Association.

The Memorandum of Association must contain the company's articles of associations and the founders' names or business names, the number of shares to be subscribed by each of the founders, the amount to be paid for each share, and an overview of the company's director and the company auditor.

Please note that according to the Limited Liability Company Act the general manager and at least half of the board members must reside in Norway or be citizens of an EEA country (all EU and EFTA countries).

4.2.3 Formation costs

If the company is to pay the formation costs, an equivalent amount must be paid by the subscribers as a premium simultaneously with the share capital. This is to ensure that the share capital reflects the actual share capital amount.

The concept of “formation costs” covers all costs necessary for the formation and registration of the company, i.a. lawyer – preparation of Articles of Association and Memorandum of Association and forwarding to the register of Business Enterprises, auditor – confirmation that the share capital has been paid and of any special statement prepared in connection with any non-cash contribution and fees – registration with the Register of Business Enterprises (2010: Electronic registration NOK 5.160 - manual NOK 6.190).

4.2.4 Main difference

The main difference between an AS and an ASA is that only ASA may invite subscriptions from the general public when it wants to obtain new share capital. Another important difference is the minimum share capital requirements.

In general, more stringent requirements apply to public limited companies than to private limited companies, regarding equity, accounting and financial reporting.

4.3 Unlimited liability Partnerships

According to the Partnership Act partnerships is a commercial business established for the joint account of two or more partners, one of which must have unlimited personal liability for the total obligations of the company.

In unlimited liability partnerships (ANS) all partners are jointly personally liable for the total obligations of the company. If organized as a limited partnership with apportioned liability (DA) the partners are personally liable on a pro rata basis. In businesses organised as a sole proprietorship the single partner has personally responsibility for settlement of the business' debts.

The formation costs for unlimited liability companies, does not hold the same significance as it does in a limited liability company. Based upon the fact that the partners are personally liable, jointly (ANS) or apportioned (DA) for the total obligations of the company, the safety of creditors is ensured.

It is thus recommended that the company has a significant financial buffer in order to reduce the personal risk.

4.4 Norwegian branches

A foreign entity may register a branch in Norway. The foreign branch must be registered in the Register of Business Enterprises.

When registering a branch of a foreign entity in Norway, it is the foreign entity itself that is registered. The branch has the same liability and the same equity as the head office and is considered to be part of the foreign company.

The main advantage regarding registering a Norwegian branch of a foreign company is that you can reduce the economic risk regarding personal liability without paying a minimum of share capital as for a private limited liability company (AS). The main disadvantage is considered to be the lack of credit credibility branches may experience in the market.

Most commercial business establishments are established as private limited liability companies (AS) in Norway.

4.2 Summary

As this chapter shows there are several types of business organization available in Norway. One of the main questions arising when starting a business organization is the financial risk of the business you intend to establish.

Since different types of business organization may have different advantages and disadvantages, we generally recommend foreign businesses to seek advice from accountants, auditors, and lawyers before starting a business in Norway. Brækhus Dege has broad experience in advising foreign businesses who wish to conduct business in Norway.

5. Norwegian Labour Law

5.1 Introduction

The Norwegian Labour market is governed by laws, regulations and collective agreements. The employees enjoy extensive protection of their rights and it is important for the employer to be aware of the main principles of Norwegian Labour Law when doing business in Norway.

This article gives a brief overview of Norwegian labour law. Collective agreements regulating the employment relationship may have other regulations.

The most important act in the field of Labour law is the Working Environment Act of 2005. This act entered in to force on 1 January 2007. Previous to the act of 2005 the main law in the area of labour law was The Working Environment Act of 1977.

The Working Environment Act regulates the relationship between the employer and the employee, such as the rights and duties of the parties, requirements for the physical and psychosocial working environment, requirements for information and consultation with the employees, working hours, entitlement to leave of absence, protection against discrimination, rules of employment, termination of the employment relationship, rights of the employees regarding transfer of ownership of undertaking, rules regarding disputes concerning working conditions, regulatory supervision and penal provisions.

An English version of the Working Environment Act can be found at the website of the Norwegian Labour Inspection Authority at the following Internet address:

<http://www.arbeidstilsynet.no/binfil/download.php?tid=42156>

According to section 1-9 of the Working Environment Act it is indispensable. Thus, the act may not be deviated from by agreement to the detriment of the employee, unless this is expressly established by law.

5.2 The employment contract

A written employment contract is required when appointing employees in Norway. The contract must include factors of major significance for the employment relationship including the identity of the parties, the place of work, a description of the work or the employee's title, date of commencement of the employment, if the employment is of a temporary nature,³ its expected duration, provisions relating to a trial period of employment, the employee's right to holiday and holiday pay and the provisions concerning the fixing of dates for holidays, the periods of notice applicable to the employee and the employer, the pay applicable or agreed on commencement of the employment, supplements and other remuneration not included in the pay, method of payment and payment intervals for salary payments, duration and

³ There are strict rules for temporary employment in Norway. Employees must, with a few exceptions, be appointed permanently. The following conditions must be fulfilled in order to employ a person temporarily except when warranted by the nature of the work and the work differs from that which is ordinarily performed in the undertaking or for work as a temporary replacement for another person or persons. Infringement of these regulations may cause permanent employment.

disposition of the agreed daily and weekly working hours, length of breaks, agreement concerning a special working-hour arrangement, and information concerning any collective pay agreements regulating the employment relationship.

5.3 Working hours

Working hours are strictly regulated in the Working Environment Act. The main rule is that normal working hours must not exceed nine hours per 24 hours and 40 hours per seven days. For work that exceeds normal working hours a supplement shall be paid in addition to the pay with at least 40 %.

Work in excess of agreed working hours must not take place except in cases when there is an exceptional and time-limited need for it.

It is possible to enter into individual or collective agreements to adjust the maximum working hours.

5.4 Termination of the employment relationship

Persons employed in Norway enjoy a very high level of employment protection. The Working Environment Act governs when and in which specific situations an employment contract can be terminated.

Employees may not be dismissed unless this is objectively justified on the basis of circumstances relating to the undertaking, the employer or the employee.

There are two situations where the employment relationship can be terminated unilaterally by the employer.

The contract can be terminated when this is objectively justified on the basis of circumstances related to the employee. This gives the employer a right to terminate the contract when the employee neglects his job functions or does something in defiance of the employment contract. In order to terminate the employment relationship on the basis of circumstances related to the employee the circumstance must be of a severe manner.

The employment relationship can also be terminated on the basis of circumstances related to the undertaking or the employer. This gives the undertaking the possibility to terminate the employment relationship when they wish to increase the efficiency, reorganize or when the economic situation in the undertaking makes it necessary to reduce the workforce. When reducing the workforce there are procedural principles that must be complied with.

In both situations the employer must prior to making a decision regarding dismissal with notice discuss the matter with the employee and the employee's elected representatives, unless the employee himself prefers not to.

According to the Working Environment Act, in the event of a dispute concerning whether an employment relationship has been legally terminated, an employee may remain in the post as long as negotiations or legal proceedings are in progress. This is a distinctively Norwegian

rule and gives the employee a good negotiating position. This leads to extensive use of compensation for loss of office when employees are terminated, especially when terminated on the basis of circumstances related to the employee.

5.5 Transfer of ownership of undertakings

Norway has implemented the EU directives concerning similar rules in other EU countries. However, in some areas Norway has given the employee better protection than the minimum rights pursuant to the EU directives.

5.6 Summary

Norwegian labour law is extensive and quite complex. In many situations errors caused by the employer may lead to liability for damages and compensation. We therefore recommend contacting a Norwegian lawyer when appointing, terminating or when considering undertaking changes that will affect your employees. Brækhus Dege has extensive experience in the field of labour law.

6. Identity cards for workers in the Norwegian building and construction industry

6.1 Introduction

Since 1 January 2008 all workers in the Norwegian building and construction industry are obliged to have identity cards issued by The Norwegian Labour Inspection Authority. In our experience foreign companies find these cards difficult to obtain. The main reason for this is that both the company and the workers need to register several different places to obtain such cards, and no single public authority has either the capacity or the necessary skills to provide proper assistance to foreign companies in this respect. In an attempt to simplify the necessary procedure, we have made the following guide.

6.2 Procedure to obtain identity cards

It is important to be aware of the fact that different rules may apply to different companies, depending inter alia on whether your company is exempt from VAT-registration.

First of all, any company doing business in Norway should register in the Central Coordinating Register for Legal Entities, in order to obtain a nine digit company registration number. If your company is not exempt from VAT-registration, you should also register your company for VAT-purposes.

Furthermore, all employees working in Norway need a d-number - a Norwegian personal identity number - and this should be applied for with the form RF-1199 to the Central Office for Foreign Tax Affairs immediately upon arrival in Norway.

After your company has obtained both a company registration number and d-numbers for all the employees, it is possible to register in the Register of Employers and Employees (AA-register). The form for this registration is found on the www.nav.no website.

At this point an employee at your company, who actually will be working in Norway, may apply for a user-id at the official website for identity cards – <https://www.norsik.no/byggekort/>. This person needs to fill out an online form and will receive a user-id within 4 hours per e-mail. With this user-id this person may upload a photo, a copy of valid id i.e. passport as well as a copy of the person's signature. These copies need to be of good quality and they need to be in one of the following formats: *.gif, *.jpg or *.png.

You should now get an identity card sent to the address you have entered during the registration. If not, you may contact your locale NAV-office and apply for a manual form.

The employee with the user identity may apply for identity cards for all employees working in Norway.

6.3 Summary

We recommend seeking professional advice in this process, especially since the authorities in fact are entitled to issue fines to companies who do not provide such cards for their employees. Furthermore foreign companies may incur difficulties in obtaining and keeping contracts with Norwegian companies if the workers lack such identity cards.

Brækhus Dege has broad experience in obtaining identity cards for foreign companies doing business in Norway.

7. Norwegian Tax Law

7.1 Corporate tax

7.1.1 Introduction

Enterprises doing business in Norway are subject to a vast number of direct and indirect taxes. The most common taxes are:

- Corporate income tax at 28%
- Value added tax at 25%
- Employers part of social security contribution, ranging from 0-14,1%

Income from petroleum activities are taxed with 50% in addition to the ordinary corporate tax rate of 28%. In addition there are very beneficial tax regulations for ship owners in Norway.

Norway has tax treaties based on the OECD Model Tax convention with most developed countries. If a tax treaty is applicable, taxation in Norway requires that an enterprise residing outside Norway has a permanent establishment in Norway. A permanent establishment is for instance an office, a branch or a building- or construction site lasting for more than 12 months. However, projects on the continental shelf lasting more than 30 days will be taxable to Norway according to most tax treaties.

Double taxation is avoided according to the regulations in the tax treaty by the tax administration in the country of which the enterprise is residing.

7.1.2 Corporate income tax

The corporate income tax rate is 28% flat. The taxable income will be the income from the business activity performed in Norway for non-resident enterprises. For enterprises being resident in Norway, the global income principle applies making all income world wide taxable in Norway unless exempted according to tax treaty. Income is at the outset taxable when it is realized, but completed contract method may be used for manufacture/construction contracts.

All expenses related to the business performed in Norway, including interest on loans, are in principle deductible. Fixed assets are depreciable according to the declining balance method. Depreciation rates vary between 2% and 30%, with 20% for important fixed assets such as machinery and vehicles. A loss can be carried forward unlimited. A loss realized when a business in Norway is closed down can be set off against income the two preceding years.

Income between affiliated companies residing in Norway with a parent company owning and voting for at least 90% of the shares can be consolidated through group contributions. Norwegian tax law does not allow group contribution from companies residing in Norway to foreign affiliated companies. However, group contributions can be made with tax effect between subsidiaries residing in Norway.

“Controlled transactions”, including transactions between affiliated companies and between branches and head office, has to be made on an arm’s length basis. The arm’s length principle

is by Norwegian tax authorities applied in accordance with the OECD Transfer Pricing Guidelines for Multinational enterprises and Tax Administrations (Paris 1995 and later editions). With effect from 2008 controlled transactions between large entities have to be reported in the tax return. If required by the Norwegian tax authorities, documentation for the pricing of a controlled transaction will have to be provided within 45 days. Entities with less than 250 employees and either sales income below NOK 400 million or balance sheet amount below NOK 350 millions are exempted from the documentation requirements.

Norway has introduced an exit tax regime effective from 2009 for all assets related to business activity which has been taxable in Norway, making estimated capital gains on such assets taxable when the business activity is no longer taxable in Norway. Such exit tax will in most cases be limited by tax treaty, if applicable.

Norway has “participation exemption regulations”, which was introduced in 2005. According to these regulations dividends and capital gains on most shares/partnership shares and derivatives received by a company is tax free. Consequently losses are not deductible. With effect from 2009 3% of such income is taxed with the 28% corporate income tax rate. This rule is introduced because costs related to dividends and capital gains are deductible. The participation exemption regulations do not apply to gains or dividends deriving from a low tax country outside the EEA or on portfolio investments outside EEA (less than 10% ownership). For gains or losses from companies residing in a low tax countries within the EEA, there is an additional requirement for the participation exemption rule to apply that the company has got sufficient business activity in the low tax country.

Dividends paid by a company residing in Norway are subject to Norwegian withholding tax. The ordinary withholding tax rate is 25%, but may vary from 0% to 25% according to tax treaty. However, the above mentioned participation exemption rule implies that corporate shareholders residing within the EEA-area are exempted from Norwegian withholding tax.

7.1.3 Employer’s part of social security contribution

Enterprises having employees in Norway are subject to employer’s part of social security contribution. The rate is ranging from 0 - 14,1 % of gross remunerations dependant on where the business is registered as taking place geographically, but 14,1% is most common. Employees having a social security membership in their home country may be exempted from paying social security contributions in Norway. If employees are exempted, the employer will also be exempted from Norwegian social security contribution.

7.1.4 Corporate tax compliance

The tax administration for foreign entities being temporarily in Norway is handled by the Central Office Foreign Tax Affairs (COFTA). The tax is collected by the tax collector for foreign affairs.

Norwegian corporate income tax has to be estimated by the enterprise and paid in two instalments. First down payment is due 15 February and second down payment is due 15 April in the year following the income year.

Corporate income tax return has to be filed within 30 March. However, if the corporate tax return is filed electronically the time limit is 31 May. Based on the tax return the enterprise will receive a tax assessment notice in October the year following the income year showing refund or tax arrears – if the tax computed by the tax authorities differs from the estimate made by the enterprise.

In addition, there are several reporting obligations which have to be fulfilled. Subcontracts and related employees for work in Norway have to be reported on the form RF-1199. Norwegian tax authorities focus on these reporting obligations being fulfilled, and fines may be levied.

Employers are also obliged to carry out salary withholding tax for employees working in Norway. The salary withholding tax is due for payment 6 times during the year. First term is due 15 March covering January and February, second term is due 15 May covering March and April etc.

7.2 Income tax for individuals

7.2.1 Income tax

Individuals taxable in Norway are subject to a progressive income tax ranging from 7,8% to 47,8%. If residing in Norway, the individual will in addition be subject to net wealth tax ranging from 0-1,1%.

Individuals will be considered as tax residents of Norway if they have stayed for 183 days in any 12 month period or 270 days in a 36 month period. If a tax treaty applies, the tax treaty regulations of tax residence will decide in which country the individual shall be deemed having tax residence.

All individuals working in Norway is at the outset obliged to be a member of the Norwegian social security system. The social security rate is 7,8% for employees and 11% for self employed. However, if the foreigner is a member of the social security system in his home country or has sufficient insurance, he may be exempted from paying social security contribution in Norway. If residing in the EEA-area, exemption is based on the form called E101. The E101 is obtained by contacting the local social security office in the home country. With the E101, the employer will also be exempted from employer's part of social security contribution.

For individuals being tax resident in Norway, the global income principle will apply. For individuals with limited tax liability, for instance foreigners working in Norway, only income with Norwegian source will be taxable in Norway.

Deductions in salary income will in most cases be limited to a so called "minimum deduction" of 36 %, limited to NOK 67 000 per year (this deduction will be prorated according to months spent in Norway. Double housing costs and costs for home visits will in addition be deductible for commuters. Foreign employees can in addition claim 10% standard deduction for foreigners, limited to NOK 40 000. However, choosing 10% standard deduction, all

allowances and other remunerations received in kind must be included in the gross taxable income and double housing costs and costs for home visits are not deductible.

Interests on loans are also deductible. However, if net wealth taxation is exempted on real estate tax in Norway according to tax treaty, interest on mortgage financing such real estate is not deductible.

Dividends and capital gains are taxable at 28% flat, likewise is loss deductible. For dividends and capital gains on shares and partnership shares residing within the EEA-area, an estimated “risk free return” is tax free. This is calculated by multiplying the cost price of the share with a “risk free interest rate” set each year. For 2009 this interest rate was 1,8%.

Dividends received by foreign individuals are subject to withholding tax with a rate of 25%. However, the tax rate may vary from 0% to 25% according to tax treaty. The enterprise paying the dividends is obliged to make withholdings in payments of dividends for tax purposes (withholding tax).

7.2.2 Individual tax compliance

Individuals receive a pre-completed tax return in the spring the year after the income year. This has to be filed within 30 April the year after the income year. The pre-completed tax return is based on available information from employers regarding salary and various sources like banks etc regarding deductible interest costs, capital returns and so on.

If changes are not made, the individual will be taxed based in the pre-completed tax return.

7.3 Summary

The Norwegian tax system is quite complex with a wide range of specific regulations applicable for foreign enterprises doing business in Norway. In addition, there are a lot of reporting requirements which have to be adhered to. Non-compliance with Norwegian tax regulations can cause a lot of unnecessary work and be quite expensive.

Our law firm has a wide and long experience in assisting foreign enterprises doing business in Norway with their Norwegian taxes. Our services include:

- **Corporate tax compliance**
 - Reporting requirements
 - Corporate tax return
 - Salary withholding tax
 - Employer’s part of Norwegian social security contribution
- **Employee tax compliance**
- **Tax planning**
- **Complaints and court proceedings against decisions by tax administration**



View from the office of Brækhus Dege at “Rådhusplassen” the City Hall Place in Oslo, the capital of Norway. Part of city hall on the left side, the seaside and harbour to the right.

8. Value added tax - VAT

8.1 Introduction

Norway introduced Value Added Tax (VAT) in 1970 through the Value Added Tax Act of 19 June 1969, hereinafter referred to as the VAT Act. A number of regulations have been established on the basis of the VAT Act. These regulations delimit, supplement and implement the provisions of the VAT Act. In addition, the Storting (the Norwegian Parliament) decides the VAT rate for each year in the annual fiscal budget. The standard VAT rate is 25 percent.

Up until 1 July 2001 there was a general liability to pay VAT on the supply of goods, whereas the liability to pay VAT on the supply of services was limited to certain services specifically referred to in the VAT Act. This system was based on the EU Second VAT Directive. From 1 July 2001 Norway introduced a general VAT liability on the supply of services.

By virtue of the VAT Reform, Norway now has a VAT system that is more consistent with for example EU legislation. The Norwegian VAT Act is largely based on the same principles as the EU Sixth VAT Directive. However, since Norway is not a member of the EU, the VAT Act does not constitute an implementation of the directive.

8.2 General explanation of VAT

8.2.1 Value Added Tax

Value Added Tax is an indirect tax on the consumption of goods and services. VAT is calculated at all stages of the supply chain and on the import of goods and services from abroad. The final consumer, who is not registered for VAT, absorbs VAT as part of the purchase price.

The terms “output tax” and “input tax” are key words in the VAT system, and are explained as follows:

Output tax is the VAT calculated and collected on the sale of goods and services. Output tax is charged on supplies of goods and services to other persons engaged in trade or business and to the ordinary consumer. Non-registered entrepreneurs are not permitted to calculate or indicate VAT on the sales document.

Input tax is the VAT that accrues on the purchase of taxable goods or services. Taxable persons receiving goods and services liable to VAT are entitled to deduct the VAT charged in their VAT accounts. The VAT that is owed to the tax authorities amounts to the difference between the output and input tax for the relevant tax period.

Private persons engaged in trade, or business whose annual turnover from supplies of taxable goods and services exceeds NOK 50.000,-, are obliged to register for VAT.

In principle, all sales of goods and services are liable to VAT. However, some supplies are exempt (without a credit for input tax), which means that such supplies fall entirely outside the scope of the VAT Act; e.g. supply / letting of real property and financial services.

Businesses that only have such supplies cannot register for VAT, and are not entitled to deduct VAT.

Some supplies are zero-rated (exempt with a credit for input tax). When a supply is zero-rated, it means that the supply falls within the scope of the VAT Act, but output VAT shall not be calculated as the rate is zero. Zero-rated supplies are e.g.; export, offshore activities, transfer of business to a new owner, services for the account of foreign principals.

The provisions of the VAT Act apply in full for such supplies, including the regulations relating to deductions for input VAT.

8.2.2 Foreign businesses

Foreign businesses that only supply goods or services from abroad to recipients in Norway, are not liable for VAT in Norway. However, the imports of goods is a taxable event and VAT is payable at the time of importation by the owner of the goods.

Foreign businesses that are established or resident in Norway are liable for VAT accounting to the same regulations as Norwegian businesses and shall be registered for VAT if the conditions for registration are met.

If the foreign business supplying goods and services is neither established nor resident in Norway, it shall be registered for VAT through a representative. By registering in this way, the foreign business has the same rights and obligations that a normal registration for VAT would have entailed.

8.3 VAT representation in Norway - Brækhus Dege Consult AS

Brækhus Dege (BD) Consult AS is a wholly-owned subsidiary of the law firm Brækhus Dege ANS.

BD Consult AS has been established to act as VAT (Value Added Tax) representative of foreign businesses that are liable to register for VAT in Norway.

BD Consult AS, located in Oslo, is the VAT representative of about 25 foreign businesses.

Please note that a registration through a VAT representative as such, will not result in a Norwegian direct tax liability for the foreign business. However, only when registered for VAT, the foreign VAT-liable business will be entitled, through the representative, to claim refund for all input VAT paid on imports and local supplies related to the "vatable" activity in Norway.

9. Distinctive traits of Norwegian contract law

Norwegian law follows the main rule of freedom of contract. Two contracting parties may in general agree on whatever terms and conditions they want, and a contract can be formed without any formal requirements. However, this is only a starting point which may vary in several different ways depending on the legal area. Also, the Norwegian rules regulating the formation, interpretation, and validity of contracts may be different from that of other countries.

9.1 The formation and interpretation of contracts:

In Norway, there are no formal requirements as to the formation of a contract. Thus, a contract can be formed both orally and in writing.

According to Norwegian law an offer is *binding* and may not freely be revoked. If an offer is made, requiring an acceptance before a set date, the offer is binding until that date. In such a case it would be up to the recipient of the offer to choose whether or not he or she wants to accept the offer. If such a deadline is not set by the offering party, the offer must be accepted within reasonable time to be binding for both parties. Especially English business people should be aware of this rule, as the English system follows the direct opposite rule, whereas until acceptance, an offer binds no one, and is fully revocable.

Moreover, a contract may be considered as binding from the moment that two parties agree on the *main terms* of a contract. All of the terms and conditions need not necessarily be settled for a contract to be considered as effective between the parties. This differs from e.g. the British or German system where the parties usually are considered to be negotiating the entire contract as long as they have not yet agreed on all of the terms of the contract, even minor issues.

With respect to the *interpretation* of contracts, Norwegian courts enjoy a great deal of flexibility. The judge will mainly try to establish the will of the parties, based on many different factors, such as the circumstances which preceded the contract, the purpose of the contract, the parties' conduct subsequent to the contract, and even reasonableness. If a written contract contains a clause that is objectively crystal clear, but however seems meaningless, or even contrary to the purpose of the contract, the Norwegian courts may very well establish an understanding that is different from the wording. In many other legal systems, such as e.g. in Italy or England, the wording of a contract is given considerably more respect than in Norway. This applies especially in English law, where the so called parole evidence rule, with some reservations, actually prevents the parties from submitting other evidence than the contract itself. Also reasonableness and fair dealing is given a lot of weight in the interpretation process, Norway is perhaps one of the countries whose law attaches the most weight to such considerations, as opposed to for example Germany or Italy, where these considerations usually are secondary.

Compared to other countries, Norwegian courts also enjoy a great deal of freedom with respect to *altering* a contract. In some cases, Norwegian courts have altered contracts even where the interpretation process has left no room for doubt. Accordingly, it can be said that part of the task of the Norwegian judge is to create a balanced solution between the parties. In

England, on the other hand, the judge's task is solely to provide that the contract is enforced according to its interpretation.

9.2 Liability for non-performance

Norwegian law follows the rule of negligence (*culpa*) as a prerequisite for liability. As a main rule, the parties are not liable for non-performance unless they have been negligent or have in some way made a mistake. However, in some legal areas the liability is stricter, such as e.g. the sales of goods. A party breaching a sales contract is usually liable for damages unless he or she proves that the non-performance is a result of circumstances outside of his or her control. In other areas, such as the duty to pay money, the liability is fully objective. Thus, there is no valid excuse for the inability to pay a bill.

Under Norwegian law, the mere process of entering into negotiations might sometimes give rise to liability according to the rule of precontractual liability. A typical example would be when a party decides to initiate parallel negotiations with two different subcontractors, knowing that only one of them will be favoured in the end. The employing party decides for example not to tell the subcontractors that he or she is having parallel discussions. Instead he or she simply brakes off the negotiations with one of them as soon as he or she has decided to use the other. According to Norwegian law, this might entitle the disfavoured contractor to claim compensation for the expenses he or she has had with regards to the negotiation process. The employer's failure to inform the losing contractor of his or her "true intention" would easily be considered as an act contrary to good faith, thus entitling the other to compensation. In some other countries, this scenario would not give rise to liability. In England, for example, the employing party would be entirely free to initiate such parallel negotiations without any risk of liability.

9.3 Consumer legislation

The Norwegian legislature has, over the last few decades, provided Norwegian consumers with several consumer protection acts. These acts generally work in favour of the consumer, thus limiting professional businesses from unilaterally regulating their own terms and conditions with the consumer. Here are some examples:

The Consumer Purchase Act of 2002 (*Forbrukerkjøpsloven*) gives several rights to consumers purchasing goods from professional tradesmen. For example, if a consumer buys a TV from a TV shop, and the TV does not work, the shop can only attempt to repair the TV two times. If the second attempt does not succeed, the consumer may demand a replacement TV. Moreover, the rights given to the consumer can not be set aside through a contract, as the Consumer Purchase act is mandatory to the benefit of the consumer. Thus, a contract clause stating that the TV shop has the right to more than two attempts of repairing the TV would automatically be invalid.

Furthermore, for the cases of credit purchases, the Credit Purchase Act of 1985 (*Kredittkjøpsloven*) gives consumers several rights in disfavour of credit card companies and other credit offering tradesmen. The act is mandatory with respect to consumers, and can therefore not be set aside through a contract.

Similarly, the Consumer Enterprise Act of 1997 (Bustadoppføringslova) provides mandatory rights to consumers regarding building contracts for private housing. Also these regulations are mandatory in the favour of the consumer.

Even another example is the Cancellation Act of 2000 (Angrerettloven), giving consumers the right to cancel purchases made outside of a regular store, i.e. products sold over the internet or from a door-to-door salesman. If the consumer, after having agreed to the terms, regrets the purchase, he or she may decide to cancel the entire contract by sending the product back to the seller within 14 days. The seller will then be obligated to reimburse the customer the purchase amount. The purpose of the act is to give consumers a remedy from being subjected to aggressive or persuasive sales techniques that convince them to agree on contract terms that they would not otherwise have agreed to.

9.4 Product liability

In Norway, the producers of goods have a strict liability for the products they manufacture.

The Product Liability Act of 1988 (Produktansvarsloven) states that any producer of any product is liable for any personal injury that results from a defect or security breach in a product that the producer has made available to the market, provided that the producer has acted in capacity of a professional tradesman. The liability also includes damage to physical things that are meant for use by, or actually being used by consumers. For example, if a fondue pot falls over due to a construction error in the making, causing burn injuries to participants of a dinner party, the producer of the fondue pot would be liable to pay damages. If the dinner table was damaged as well, the producer would be liable for the damage to the table, as the table was used by consumers at the time of damage.

The regulations require producers to generally secure that their products are safe to the public. The liability for damages can not be set aside through a contract. The act explicitly states that any clause limiting the liability is automatically invalid.

9.5 Petroleum contracts

Norway is often referred to as an oil nation. Today, the oil industry provides about one quarter of the GNP.

The oil industry is characterized by being one of high risk, both physically and economically. It is also highly demanding on both time and resources. Furthermore, the influence of the government is easily conceivable through governmental petroleum regulations concerning the industry. Consequently, the goals and needs of the industry can be viewed as *dynamic*, in the sense that the actors operate in an environment of high complexity, high expense, high risk and broad governmental control.

Needless to say, the need for detailed contractual control is present. In order to satisfy this need, the largest Norwegian oil company StatoilHydro has negotiated a standard contract with the Norwegian association for industrial businesses (Norsk Industri), which aims to regulate these types of contract relationships. The negotiations have resulted in a set of standard contracts called NF (Norsk Fabrikasjonskontrakt) and NTK (Norsk Totalkontrakt).

These standard contracts contain detailed regulations of the rights and duties of the parties concerning performance, progress, alterations and variations, delivery, payment, non-performance, insurance, liability etc. For example, by signing the NF standard contract, both parties agree that they have no liability for damage or injury to the other party's property or people. They also agree that each party has an extensive duty to provide insurance for their own property and people. Moreover the subcontractor is obligated to accept certain changes to, and even suspension of the contract, in exchange for compensation.

A foreigner wishing to do business with the Norwegian oil industry is likely to meet one or more of these standards.

9.6 Summary

When doing business in Norway, one should be aware that the rules regarding the making and interpretation of contracts may differ somewhat from that of other countries. One should especially be cautious when negotiating a contract to avoid being bound to a contract sooner than one might have thought. We also recommend bearing in mind that consumer rights are pretty strong in Norway, and that there is a fairly strict law on product liability. If you have any doubts regarding a sizable contract, you should always contact a lawyer.

PUBLIC CONTACT INFORMATION:

Service Centre for Foreign Workers

Street address: Hagegata 28, 0630 Oslo

Visitor centre in Oslo, jointly for the Police, the Directorate of Immigration, Tax Authorities and the Labour Inspection Authority.

Residence: The Police

Phone no.: 02800

Internet address: www.politi.no

The Norwegian Directorate of Immigration (UDI)

Street address: Hausmanns gt 21

Postal address: P.O.Box 8108 Dep. NO-0032 Oslo

Phone no: + 47 23 35 15 00

UDI Information service: +47 23 35 16 00,

e-mail: ots@udi.no

UDI Employer's service: +47 23 35 15 33,

e-mail: arbeidsgiverservice@udi.no

Tax:

Questions on tax deduction cards/tax assessment etc:

Skatteetaten, Central Office – Foreign Tax Affairs (Skatteetaten, COFTA)

Postal address: P.O.Box 8031

NO-4068 Stavanger

Phone no: +47 51 96 96 00

Fax no: +47 51 96 96 96

E-mail: sfu@skatteetaten.no

Questions on payment of tax, tax refunds, etc:

Skatteetaten, Tax Collector – Foreign Tax Affairs

Postal address: P.O. Box 8103

NO-4068 Stavanger

Phone no: + 47 22 07 70 00

Fax no: + 47 51 86 89 60

E-mail: sokkel-utland@skatteetaten.no

Questions on value added tax (VAT):

Local Tax Office

Phone no: 800 800 00

From abroad: + 47 22 07 70 00

The Norwegian Tax Authorities' Internet address: www.taxadministration.no

The Norwegian Tax Authorities' Switchboard Services:

Phone no: 800 800 00

From abroad: + 47 22 07 70 00

Registration in the Central Registers of Business Enterprises and Legal Entities

Brønnøysund Register

Postal address: NO-8910 Brønnøysund

Information services telephone: + 47 75 00 75 00

Internet address: www.brreg.no

National Insurance:

Local NAV offices

Internet address: www.nav.no

NAV AA register

Postal address: P.O.Box 4330, NO-2308 Hamar

Phone: + 47 62 02 40 00

NAV National Office for Social Insurance Abroad

Postal address: P.O.Box 8138, NO-0033 Oslo

NAV Health Service Administration Service Centre

Phone: 815 70 030

E-mail: nav.helsetjenesteforvaltning.servicesenter@nav.no

Questions on exemption from Norwegian National Insurance:

NAV Internasjonalt

Postal address: P.O.Box 8138 Dep, NO-0033 Oslo

Phone: + 47 21 07 37 00

<http://www.nav.no/English>

<http://www.nav.no/Polski>

Working conditions:

The Norwegian Labour Inspection

Authority's answering service

Phone: 815 48 222

Internet address: www.arbeidstilsynet.no



Oslo, 1.1.2010.

Written by the lawyers at

Brækhus Dege Advokatfirma DA

Dronning Mauds gate 10

P.b. 1369 Vika

0114 Oslo, Norway

Tel.: +47 23 23 90 90

Fax: +47 22 83 60 60

Norwegian homepage: www.bd.no

English homepage: <http://www.bd.no/en/>