May 2005

Information to Orkla shareholders with a registered address outside Norway

New rules on the taxation of dividends paid to foreign shareholders

1. Background

In connection with the implementation of a new tax reform in Norway, important amendments were made in December 2004 and April 2005 to the rules governing the taxation of dividends paid out by Norwegian limited companies, etc. to shareholders who are resident for tax purposes in an EEA state. These changes entail full exemption from withholding tax subject to specific conditions, on dividends paid out by Norwegian companies to shareholders in Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and the UK.

The Norwegian tax authorities have now laid down guidelines indicating how the tax exemption is to be applied to dividends paid out by Norwegian companies to foreign shareholders. An explanation will be provided below.

2. Dividends paid out to companies liable to pay tax*/resident* in an EEA state

On 10 December 2004, the Storting (Norwegian parliament) adopted a resolution exempting Norwegian limited companies and other companies with the same status as limited companies from tax on dividends (the tax exemption model)**.** These rules also apply to foreign companies and other entities that correspond to the Norwegian companies, etc. that are covered by the tax exemption model, when the company or entity in question is resident for tax purposes in an EEA country. The tax exemption model applies only to companies, etc. that are the real beneficial owner of the dividend paid by a Norwegian company.

<u>The tax exemption model was introduced with effect for dividends received by companies, etc. as from 1 January 2004.</u> However, the tax exemption model was introduced after dividends were paid out in 2004 and tax was therefore withheld on the basis of the rate in force at the time the dividends were paid out. This means that all foreign shareholders who are covered by the tax exemption model must themselves apply to the Norwegian tax authorities for a refund of tax withheld in 2004.

In a statement dated 2 March 2005, the Directorate of Taxes laid down guidelines for the application of the tax exemption model to dividends paid out to foreign companies. The statement specifies the documentation required for applications for refunds of tax withheld when dividends are paid out. (It should be noted that these requirements apply to applications for refund of tax withheld on dividends paid out in both 2004 and 2005.) In the statement, the Directorate of Taxes stipulated that the Norwegian company paying out the dividend can only refrain from withholding tax in cases where the foreign shareholder is known to the company, and where it has been documented that the shareholder is both the real owner of the dividend and is covered by the tax exemption model. In this context, registration with the Norwegian Central Securities Depository (Verdipapirsentralen) is not considered to be adequate proof.

It is impossible, in practice, for Orkla to verify whether its foreign shareholders are eligible for the tax exemption model. According to the statement by the Directorate of Taxes, Orkla may therefore not refrain from withholding tax on the basis that the shareholder is registered in the Norwegian Central Securities Depository and thereby entitled to a reduced withholding rate pursuant to a tax agreement with an EEA state.

<u>This means that Orkla must also withhold tax on dividends paid out in 2005. Therefore, foreign companies, etc. which are covered by the tax exemption model must themselves apply to have the withheld tax refunded by the Norwegian tax authorities.</u>

In its statement of 2 March, the Directorate of Taxes laid down the following guidelines regarding the information and documentation that must be submitted when applying for a refund of withholding tax:

"*The tax exemption model applies to Norwegian private and public limited companies and other companies of the same standing as limited companies for tax purposes. Furthermore the tax exemption for companies' income from shares applies to Norwegian stock investment funds, associations, institutions, estates in bankruptcy, municipal and state-owned companies.*

The tax exemption model also applies to such foreign companies and other entities within the EEA that correspond to the Norwegian companies etc. comprised by the model.

According to the Norwegian regulations only the real beneficial owner may apply for a refund of withholding tax.

A foreign company etc. applying for a refund of Norwegian withholding tax under the tax exemption model must address the application to the Central Office – Foreign Tax Affairs, P.O. Box 8031, N-4068 Stavanger.

The refund claimant must submit the following documentation/information:

1. *A specification of the distributing company(ies) involved, the exact amount of shares, the date the dividend payments were made, the total dividend payment, the withholding tax drawn in Norway and what amount is being reclaimed. The withholding tax must be calculated in Norwegian currency and all sums specified accordingly (in NOK).*

2. *The claimant must submit documentation that shows that the refund claimant received the dividends and which withholding tax rate was used in Norway.*

3. *The claimant must submit a certificate of residence issued by the tax authorities stating that the refund claimant is resident for tax purposes in that state in the income*

year in question or at the time the dividends were decided. This documentation must be in original.

4. *The claimant must provide the information necessary to decide whether the refund claimant is an entity comprised by the tax exemption model.*

5. *The claimant must provide the information necessary to decide whether the refund claimant is the beneficial owner of the dividend payment(s).*

6. *If the securities are registered with a foreign custodian/bank/clearing central the claimant must submit information on which foreign custodian/bank/clearing central the securities are registered with in Norway.*

7. *The claimant must sign the application. If someone else signs the application, a copy of the letter of authorisation must be enclosed.*

There is no standard application form for refund of withholding tax.

According to Norwegian regulations, only the real beneficial owner (i.e. the one who ultimately receives the dividend payments) is entitled to a refund under the tax exemption model. This implies that only the real beneficial owner himself can apply for a refund, enclosing documentation issued accordingly. An entity that is in fact acting on behalf of someone else as either trustee or investment manager, and is as such the registered or indirect owner of the dividends, is not entitled to a refund. Neither is an entity that receives the dividend payments and passes them directly on to other entities/persons entitled to a refund.

Whether the applicant is entitled to a refund or not depends on to what extent the claimant is transparent for legal and/or tax purposes. In order to enable the Central Office – Foreign Tax Affairs to decide on whether the claimant is comprised by the tax exemption model and the beneficial owner of the dividends the claimant must submit information regarding:

- *The legal structure of the claiming entity. A refund claimant who is not a company with limited liability has to submit the information necessary to decide whether it is an entity comprised by the tax exemption model.*
- *Whether the entity is a fully or a partially tax exempt entity or not.*
- *Whether the entity invests its own capital or capital belonging to other persons or entities on their behalf.*
- *Who is actually taxed on the dividends from Norway as such, the entity itself, a trustee or the investors and in which state the dividends are taxed. The claimant must confirm that the tax is not levied on the company in its capacity as trustee or as any kind of advanced tax, levied in fact on behalf of other investors who later may claim a tax credit for this tax.*

Some kind of entities may be requested to give additional information.

Further we may require that the claimant itself gives the requested information.”

3. Dividends paid to personal shareholders resident in an EEA state

On 12 April 2005, the Storting adopted a resolution whereby no tax is to be withheld for the 2005 income year on share dividends paid out to personal rights holders who are resident in an EEA state. (For personal shareholders, this does not apply to 2004.) According to the Directorate of Taxes, in order to be covered by the tax exemption model, the foreign shareholder must prove that he is resident for tax purposes in an EEA state and that he is the real owner of the dividend.

In a statement issued on 2 May 2005, the Directorate of Taxes determined that for 2005 the company paying out a dividend may refrain from withholding tax on dividends paid to persons who are directly registered as the owner of the share in the Norwegian Central Securities Depository when the shareholder is also registered as being subject to tax assessment by an EEA country. This is conditional on it being evident from the registration that the securities account belongs to a personal shareholder.

As regards personal shareholders who are registered with the Norwegian Central Securities Depository through a foreign investment manager who is authorised to register a withholding tax rate of less than 25 %, the Directorate of Taxes has stated that tax need not be withheld when the investment manager is aware that the real holder of rights to the dividend is a personal shareholder resident in an EEA state. The foreign investment manager must, when so requested by the tax authorities, be able to provide further information on the shareholders who have received dividends from Norwegian companies without tax being withheld.

Orkla will take the statement of the Directorate of Taxes into account when paying out its dividend in 2005 to personal shareholders resident outside Norway. Since the Directorate of Taxes' guidelines were published on the same date as the basic data for payment of dividends were obtained, foreign shareholders who are registered as being entitled to exemption from withholding tax will be refunded any tax withheld at source, or will receive the full dividend with no tax withheld, a few days later.

Personal shareholders who are resident in an EEA state, but who are not registered with the Norwegian Central Securities Depository as being entitled to exemption from withholding tax may apply to the tax authorities for a refund of tax withheld. The application must be submitted to: Central Office – Foreign Tax Affairs, P.O. Box 8031 Stavanger, N-4068 Stavanger (Tel.: +47 51 96 96 00).

4. Supplementary information on tax withheld on dividends

Unfortunately, Orkla does not have the capacity to assist shareholders with applications for refund of tax withheld on dividends. We therefore request that any questions concerning the new rules be addressed directly to: The Central Office – Foreign Tax Affairs, P.O. Box 8031 Stavanger, NO-4068 Stavanger, tel. +47 51 96 96 00, e-mail: e-mail: postkassesfu@skatteetaten.no