



DET KONGELEGE
FINANSDEPARTEMENT

EFTA Surveillance Authority
Rue Belliard 35
B-1040 Brussels
Belgium

Your ref

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State aid complaints

Reference is made to the EFTA Surveillance Authority's letter of 15 December 2006 concerning an alleged grant of aid to publications falling within the zero-rated category of VAT under the Norwegian VAT Act (Event No 385379).

By letter dated 25 August 2006 the Norwegian Weekly Press Association (Magasin- og Ukepresseforeningen) has filed a complaint to the Authority. The complainant asserts that the differentiated VAT rates on newspapers and magazines are contrary to Article 61 (1) of the EEA agreement. The Norwegian authorities are invited to comment on the complaint within 31 January.

We have divided our answer in three parts. Part one provides a general overview of the Norwegian VAT system. In part two we give a closer account for the zero-rating for VAT on the sale of newspapers and periodicals as provided for in section 16 No. 7 and 8 of the Norwegian VAT Act. In part three we express our initial view on the topical allegation. We also look at the VAT treatment on newspapers and periodicals in some of the EU Member States.

1. General overview of the Norwegian VAT system

Value Added Tax (VAT) was introduced in Norway with effect from 1 January 1970. The VAT provisions are enacted in the Act relating to Value Added Tax of 19 June 1969 No. 66 (hereafter referred to as the VAT Act). From 1 July 2001 the underlying rule is that both the supply of goods and the supply of services are subject to VAT, Cf. Ot.prp. nr. 2 (2000-2001) Om lov om endringer i lov 19. juni 1969 nr. 66 om merverdiavgift (Merverdiavgiftsreformen 2001) (enclosed).

The Norwegian VAT provisions are based on the same basic principles as laid down in the VAT legislation in the EU Member States. VAT is collected on supply of goods and services which falls within the scope of the VAT Act. The importation and self-supply of goods and services are also taxable events.

Persons engaged in trade or business, whose taxable supplies exceed a financial limit, are liable to pay VAT. If the supplies exceeds NOK 50 000 over a period of 12 months, the supplier must register with the VAT authorities and charge the customers for VAT. For certain charities and public utility institutions and organisations the registration threshold is NOK 140 000.

As a general rule a registered person who is engaged in trade or business may deduct input VAT on goods and services for use in their business, Cf. section 21 of the VAT Act. When reporting to the VAT authorities, the input VAT will be set off against the output VAT in the same period. In case there is an excess of input VAT, repayment can be claimed from the government. Certain acquisitions are however without credit for VAT. The right to deduction does for example not include input VAT on expenses relating to catering and the hiring of premises for entertainment.

In Norway the normal VAT rate is at present 25% of the net price (taxable base). The rate is stipulated annually by the Parliament. The VAT rate is 14% on foodstuffs. On certain services a reduced rate of 8 % applies, e.g. passenger transport, movie tickets and accommodation in hotels.

According to section 5, 5a and 5b of the VAT Act certain supplies are exempted. The term exempted implies that the supplier of goods and services is not permitted to charge output VAT. Nor does the supplier get credit for input VAT on purchases for the exempted business. Some of the most relevant services exempted from VAT without the right to deduct input VAT are health care services, social services, educational services, financial services, admission fees to theatres, opera, cinema and museums, funeral services, services provided under Public Authority and fees paid for participation in sporting or athletic activities. The sale and hiring out of real property and other rights related to real property is also exempted from VAT.

According to section 16 and 17 of the VAT Act some goods and services are exempted with credit for input tax (the supply is "zero-rated"). A zero-rated supply falls within the scope of the VAT Act, but no output VAT is charged since the rate is zero. The provisions of the VAT Act however apply in full for such supplies, including the regulations relating to deductions for input VAT.

The zero-rating applies to certain domestic transactions, for instant the supply of newspapers, Cf. part two of this letter. The same applies to the supply of books and periodicals.

2. The zero-rating for VAT on the sale of newspapers and periodicals

Newspapers

The zero-rating for VAT on the sale of newspapers is provided for in section 16 No. 7 of the VAT Act. As stated above, the zero-rating implies that no output VAT is charged on the supply of newspapers. The provisions of the VAT Act however apply, including the right to make deductions for input VAT.

According to section 16 No. 7 of the VAT Act the newspaper must be published regularly, with at least one edition per week. The zero-rating applies at all stages in the supply chain, starting when the newspaper is printed. Thus, it is not only the supply of newspapers to consumers which is zero-rated. The supply of ready-made products from a printing office to the publisher is also zero-rated. The supply of other goods and services to the printing office or the publisher is however not zero-rated. The zero-rating does therefore not apply to the supply of paper and printer's ink. Nor does the zero-rating apply to a newspapers supply of adverts. Such supply is charged in accordance with the standard VAT rate.

The zero-rating also applies to foreign newspapers sold in Norway. No VAT is levied on importation of newspapers. In a letter from the Norwegian Tax Director of 23 February 1970 (enclosed) it is stated that for example "Die Welt", "France Dimanch" and "Le Figaro" are zero-rated. But the zero-rating applies to all foreign newspapers which fall within the scope of section 16 No. 7 of the VAT Act.

It appears from the preparatory works to section 16 No. 7, Cf. Ot.prp. nr. 17 (1968-69) Om lov om alminnelig omsetningavgift og særskilt avgift på visse varer og tjenester (merverdiavgiftsloven) and Ot.prp. nr. 31 (1969-1970) Om lov om endringer i lov om merverdiavgift (enclosed), that the Government considered that in a minor speech community, such as in Norway, it is justified to exempt newspapers from the burden of VAT. In the bill to the Parliament it was also made a reference to the view of the press organs. The press organs asserted that VAT on newspapers might restrain the expression of public opinion and damage cultural assets.

The conception of "newspaper" in section 16 No. 7 of the VAT Act is in accordance with the definition of "daily press", as used by the State and Press Committee (Hellerudkomiteen) in its recommendations of 28 September 1967. The State and Press Committee was appointed inn 1966, due to the concern about the future of Norwegian newspapers. In the 1960 several Norwegian newspapers closed down. Many newspapers in Norway also experienced declining sales. Thus, the object of the State and Press Committee was to make proposals in order to preserve the information pluralism.

In order to distinguish which publications that belong to the "daily press", the State and Press Committee made a reference to the definition which was recommended by the

Daily Press Committee (Dagspresseutvalget) in 1966. This definition is also used to distinguish the concept of “newspaper” in section 16 No. 7. According to the definition the following publications are deemed as “daily press”:

- Newspapers which are members of the National Federation of Norwegian Newspapers (Norske Avisers Landsforbund) and are published with at least two editions per week.
- Other publications which, due to their regular publication (at least two editions a week), give information to the public about topical matters home or abroad, or within the range zone of the publication. Certain demands are made to the editor of the publication. The payment for the publication must also be in accordance with public price schedules.
- A newspaper which is published only once a week, but incidentally fulfils the demands above, may also be considered as a daily newspaper if it is based on political or idealistic ideas.

The National Federation of Norwegian Newspapers has been replaced by the Norwegian Media Businesses’ Association (Mediebedriftenes Landsforening). The Norwegian Tax Directorate has however stated that a member of this association cannot be deemed as a newspaper just because it is published with at least two editions a week.

According to administrative practices the content of a publication has to fulfil certain demands to be deemed as a newspaper in the sense of section 16 No. 7 of the VAT Act. When distinguishing between zero-rated newspapers and weekly press publications (journals and magazines which are liable for 25% VAT) the amount of “relevant news” is deemed decisive. To be considered as “relevant news” the publication must provide information of general public interest, such as politics, economics and cultural matters. Thus, weekly press publications which predominantly provide information about for instance the entertainment business cannot be deemed as a newspaper in the sense of section 16 No. 7.

The zero-rating on newspapers did not become a subject for further investigation when Norway introduced a general liability to pay VAT on both supply of goods and services as from 1 July 2001, Cf. Ot.prp. nr. 2 (2000-2001) chapter 8.3.4. Thus, the zero-rating on newspapers has not been altered since the introduction in 1970.

Periodicals

The zero-rating for VAT on the sale of periodicals (journals and magazines) is provided for in section 16 No. 8 of the Norwegian VAT Act. The scope of the zero-rating for periodicals is outlined in regulations, Cf. forskrift 13. desember 1969 om gjennomføringen av avgiftsfritaket for tidsskrifter (forskrift nr. 16) (enclosed). The reasons for zero-rating periodicals are the same as for zero-rating newspapers and books, Cf. Ot.prp. nr. 17 (1968-69) and Ot.prp. nr. 31 (1969-70).

The zero-rating for periodicals applies if supply is, in the main (at least 80%), made to regular subscribers, or if the periodical is distributed to members of a society or an association, or if the content is predominantly political, literary or religious. Unlike the zero-rating for newspapers the zero-rating for periodicals only applies at the final stage in the supply chain.

The zero-rating for periodicals as provided for in section 16 No. 8, Cf. the regulations in forskrift nr. 16, also applies to foreign periodicals sold in Norway. No VAT is levied on imports of these periodicals. According to the Tax Directors letter of 23 February 1970 the content of for instance "Newsweek", "Time" and "Der Spiegel" is deemed as predominantly political, literary or religious. These publications are therefore liable for zero per cent VAT. The content of e.g. "Life" and "Paris Match" is however not deemed to be predominantly political, literary or religious. Hence, these publications are liable for 25% VAT.

The different VAT rate on newspapers and periodicals was considered in St.meld nr. 17 (1971-72) Om gjennomføringen av merverdiavgiftsloven og investeringsavgiftsloven chapter VI section 5 (enclosed).

3. Comments of the Ministry

It is not inconsistent with EU law to apply zero-rated VAT on the supply on newspapers and periodicals. The Ministry therefore believes that the differentiated VAT rates on newspapers and magazines are in compliance with the provisions of the EEA Agreement.

Under the current VAT system, Member States of the European Community are required to have a single standard VAT rate of at least 15% and may have a maximum of two reduced rates set no lower than 5%. However, this basic structure which applies to all Member States is complicated by numerous individual temporary derogations granted to particular member States. Thus, under specific conditions Member States may apply more VAT rates; super-reduced rate, parking rate and VAT exemption with refund of the input tax paid at the preceding stage (the zero rate).

Thus a number of different rate structures apply in the member countries.

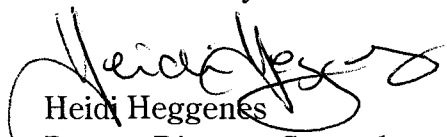
According to Doc/1829/2006 of the European Commission "VAT Rates Applied in the member States of the European Community - Situation at 1st September 2006" (enclosure), Belgium, Denmark, Ireland, Italy, Cyprus, Malta, Poland, Sweden and United Kingdom apply zero rates to various goods. The goods subject to the zero-rating may be quite different among these states. However, for some of the states the list of goods subject to the zero-rating is quite extensive. For instance, the descriptive list of zero-rated goods in chapter V of Doc/1829/2006 contains 20 category lines for the United Kingdom and 12 for Ireland.


As in Norway, the majority of EU Member States have recognised that newspapers are an essential element of citizenship and play a central role in any democratic society. Hence, several Member States apply reduced VAT rates on the supply of newspapers. The VAT rate on supply of newspapers is for instance 2% in France, 3% in Luxemburg, 4% in Spain and Italy, 5% in Poland and 6% in the Netherlands and Sweden. Some Member States also apply the zero rate of VAT on the supply of newspapers, Cf. chapter V of Doc/1829/2006 where it is stated that Denmark, Belgium, Finland and the United Kingdom apply the zero rate on such supply. As in Norway certain conditions may be linked to the zero-rating. In Belgium the zero-rating only applies to the supply of daily and weekly newspapers of general information. In Denmark the zero-rating only applies to newspapers which are published at a rate of more than one issue per month. In Finland the zero-rating only applies provided that the newspapers are sold on subscription for a period of at least one month.

According to chapter V of Doc/1829/2006 Finland and the United Kingdom also apply zero-rate VAT on the supply of periodicals. However, in Finland the zero-rating only applies if the periodicals are sold on subscription for a period of at least one month. If this demand is not met, the VAT rate is 22%. As this shows, it is not only in Norway that the VAT rate on newspapers and magazines may differ. The same applies in Belgium and Denmark.

If the Authority is in need of any more information, please do not hesitate to contact us.

Yours sincerely


Heidi Heggnes
Deputy Director General


Elisabeth Berge
Legal Advisor

Enclosure