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FINANSDEPARTEMENT

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Reasoned opinion - registration tax applicable to foreign-registered leased motor vehicles used by Norwegian residents

Reference is made to the Authority's reasoned opinion dated 21 November 2012 regarding registration tax applicable to foreign-registered leased motor vehicles used in Norway by Norwegian residents. Reference is also made to the Authority's e-mail dated 7 January 2013, where the deadline to comply with the reasoned opinion was postponed to 21 February 2013.

In its reasoned opinion the Authority states that by maintaining in force Section 15 of Act of 18 June 1965 No. 4, Section 1 of Act of 19 May 1933 No. 11 on Special Charges, Section 1(1) of Act of 19 June 1959 No. 2 on taxes for motor vehicles and boats, Section 1-1 of Regulation of 19 March 2001 No. 268 on registration tax for motor vehicles and Section 1, paragraph 4 and Section 5(c) of Regulation No. 381, which provides that a full amount of registration tax is due for foreign-registered leased motor vehicles temporarily imported by Norwegian residents to Norway, without the person having any right to an exemption or refund where the vehicle is neither intended to be used essentially in Norway on a permanent basis or in fact used in that manner, Norway has failed to fulfil its obligations arising from Article 36 of the EEA Agreement.

In letter 23 May 2012 the Ministry of Finance acknowledged that the Norwegian system regarding the registration tax on leased motor vehicles imported and used on a temporary basis by Norwegian residents might be in conflict with the obligations arising from Article 36 of the EEA Agreement. It was further stated in the letter that the Directorate of Customs and Excise had been given the task to examine the case and to present possible amendments. The Directorate of Customs and Excise has presented

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their findings to the Ministry in letter dated 23 October 2012.

The issue was also discussed at the package meeting in Oslo on 25 October 2012.

Article 36 of the EEA Agreement prohibits a Member State to impose any restriction that is liable to impede or render less advantageous conditions of a provider of services established in another Member State where he lawfully provides similar services. Restrictions on the free movement of services are however acceptable if they are justified by overriding reasons relating to the public interest and comply with the principle of proportionality.

As the Court of Justice pointed out in the Case C-451/99 Cura Anlagen it should be recalled that the taxation of motor vehicles has not been harmonised and differs considerably from one Member State to another. Member States are therefore free to exercise their powers of taxation in that area provided that they do so in compliance with Community law. It is lawful for Member States to base the taxation on criteria such as the territory in which a vehicle is actually used or the residence of the driver. Both these criteria are various components of the territoriality principle. Member States may also conclude agreements amongst themselves to ensure that a vehicle is subject to indirect taxation in only one of the signatory States.

Furthermore the Court has stated that in that respect, registration appears to be the natural corollary of the exercise of those powers of taxation. Therefore, in a situation where a vehicle leased from a company established in one Member State is actually used on the road network of another Member State, the latter may impose an obligation for that vehicle to be registered in its territory.

As the Court pointed out in paragraph 69 of the judgment in Cura Anlagen, it is also necessary for the tax to comply with the principle of proportionality. In relation to an Austrian consumption tax, linked to an obligation to register vehicles leased in another Member State, the Court held that such a tax is contrary to the principle of proportionality in so far as the aim which it pursues could be achieved by introducing a tax proportionate to the duration of the registration of the vehicle in the State where it is used, which would ensure there was no discrimination with respect to amortisation of the tax against vehicle leasing undertakings established in other Member States.

Consequently, by introducing a possibility of reimbursement of the registration tax in cases where leased motor vehicles, provided by companies sited in other Member States, are used in Norway for a limited time span, the Norwegian system would meet the requirements set down Article 36 of the EEA Agreement.

The Finnish government made amendments in their registration tax in 2010, introducing a scheme for refunding registration tax in the event of export of vehicles

registered in Finland. The amendments were a result of the case law of the Court of Justice.

The Ministry of Finance are planning to introduce a system for refunding registration tax in the event of export of leased vehicles registered in the Central Motor Vehicles Register (Autosys) based on the Finnish system.

According to Ministry of Finance preliminary assessments, the new scheme will consist of the following elements:

Regulation No. 381 of 20 June 1991 on tax-free import and temporary use of foreign-registered motor vehicles in Norway, which contains provisions concerning exemption from motor vehicle tax, import duties and value added tax in connection with the importation and temporary use of foreign-registered motor vehicles will not be affected by the new amendments.

Leased motor vehicles will be subject to value added tax when imported to Norway. If the vehicle is to be used in Norway outside the scope of the exceptions in regulation No. 381, it must be inscribed in the Central Motor Vehicles Register (Autosys), and registration tax must be paid.

The leasing companies will be entitled to a reimbursement of the registration tax if a leased motor vehicle, registered in Autosys, is exported from Norway. The reimbursement will be calculated in accordance with the system for calculating registration tax on imported second hand vehicles set out in regulation No. 381 section 3-3 and 3-4. The leasing company must apply for reimbursement before the vehicle is exported, and the reimbursement will take place after the exportation.

The vehicle must have a valid periodic vehicle inspection (EU inspection) approval, and be in roadworthy condition at the time of exportation. It is for the applicant to document the condition of the vehicle. The Customs Authorities may require an examination of the vehicle in order to establish the technical condition of the vehicle before the refund is granted.

The elements listed above are in line with the Finnish refund system.

According to the Finnish refund system an administration fee of 300 euro is deducted from the calculated refund. Refunds less than 1000 euro are not paid out. It is not calculated interest on refund. The Ministry is considering applying similar arrangement in the Norwegian system.

The implementation of a system as describe above will need a further consideration, in cooperation with the Norwegian Customs Authorities. An extension as outlined will render necessary an amendment of the current legislation, hereunder the Parliament's

resolution on registration tax on motor vehicles and Regulation of 19 March 2001 No. 268 on registration tax for motor vehicles, and in the technical systems of both the custom administration and the road administration. This will also entail a 3 months hearing procedure.

The introduction of a system for refunding registration tax in the event of export of leased motor vehicles is likely to have fiscal consequences, and must therefore be presented in the national budget before adoption.

The Ministry of Finance is planning to send a proposal on a public hearing in May 2013, and present a draft for amendments to the Parliament in the national budget in October 2013. Given approval from the Parliament a new system may enter into force 1 January 2014.

In light of the above, the Authority is invited to submit its observations on the content of this letter.

Yours sincerely,

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