State Aid in the Form of Tax Exemptions – Some Thoughts from Norway

‘It is typically Norwegian to be good’ is a famous quotation from Gro Harlem Brundtland’s New Year’s speech of 1 January 1992. In her speech, Norway’s first female Prime Minister referred to Norwegian sportsmen and sportswomen who succeeded in the international arena and who could be an inspiration to the Norwegian economy during difficult times. When Norway took 10 gold medals and 26 in total in the 1994 Winter Olympics in Lillehammer, Prime Minister Brundtland ‘upgraded’ her already famous and widely discussed quotation to ‘It is typically Norwegian to be the best’.

Unsurprisingly, this rather bold statement kicked off an ongoing debate on the qualities of the Norwegian people and since 1992 a lot has been said and written about whether they do have reasons to consider themselves the best. Yet, there is at least one field in which Norway undeniably prevails: Norway is a true champion as regards granting State aid in the form of tax exemptions.

According to the latest edition of the State Aid Scoreboard for the EEA-EFTA States, that is Norway, Iceland and Liechtenstein, Norway granted most of its aid – 74% – via tax concessions. Given the special relation between Norway and its ‘big brother’ Sweden, it is not without satisfaction that the Norwegians may note Sweden taking the second place with almost 71%. By comparison, at the EU level tax exemptions accounted for 29% and they constitute the second most popular State aid instrument, while direct grants accounted for 64% of all non-agricultural aid expenditure in 2017. 74% of all aid expenditure in Norway should not come as a surprise given the fact that the five largest measures in 2017 were a regionally differentiated social-security scheme, a tax credit scheme for R&D (Skattefunn), a reduced electricity tax for industries, a reduced CO2 tax for natural gas, and State aid in favour of zero-emission vehicles.

In this respect, State aid in favour of electric cars is worth taking a closer look. The zero VAT rating alone amounts to NOK 3.2 billion (approx. €325 million) a year and applies to both vehicles and batteries. Other measures that were approved by the EFTA Surveillance Authority (ESA) include amongst others an exemption from annual vehicle tax and registration tax. The Norwegian policy of subsidising the supply and use of zero-emission cars, including the provision of the necessary charging infrastructure have produced rather remarkable results. At present, no other country in the world has more electric cars per capita than Norway. The approximately 200,000 electric cars constitute around 7% of the passenger car fleet. In March 2019, for the first time in history, more than half of the passenger car market was fully electric. One may certainly ask what will happen with demand for zero-emission vehicles when subsidies to electric cars may no longer be justified. As the ESA pointed out in 2017,

the market for electric cars is experiencing rapid technological advances, creating both better and cheaper cars. To avoid an overcompensation that benefits neither the market nor the consumers, the ESA asks Norway to evaluate the zero VAT rating after two years.

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Moreover, State aid in favour of electric cars is also criticized. While one may ignore tabloid-like discussions that focus on subsidizing Teslas, there is certainly more one can do to reduce the environmental footprint of electric cars. Most electric cars have a heavy battery, which leads to an increased particulate matter emission from tyres. Moreover, producing batteries for electric cars requires additional resources and energy.

Yet, during the last couple of months, the application of State aid rules to tax measures has aroused a truly nationwide interest due to two complaints lodged with the ESA. The first concerned the petroleum industry. In March 2019, the ESA finalized its preliminary examination of an alleged aid in form of the annual cash refund of the tax value of petroleum exploration costs. Under the Norwegian Petroleum Tax Act (PTA), companies with taxable income can deduct exploration costs, an indispensable phase of petroleum extraction. Petroleum companies that do not have taxable income can carry forward their losses with interest, or ask for an annual cash refund of the tax value of these costs.

Unsurprisingly, the key question concerned the condition of selectivity under Article 61(1) EEA. In this respect, the ESA applied the three-step selectivity analysis. Having identified the PTA as the correct reference system in the present case, the ESA verified whether the annual cash refund was prima facie selective. On 20 March 2019, the ESA concluded that the said measure is not selective, as it does not discriminate between petroleum companies that are not in a tax paying position and that have exploration costs, and petroleum companies that are in a tax paying position or petroleum companies that are not in a tax paying position and have costs from other phases of extraction (development, production and closure).

Understandably, the outcome of the ESA’s examination was impatiently awaited and widely discussed not only by State aid and tax lawyers. The oil industry plays a vital role in the Norwegian economy and the financing of the Norwegian welfare state. The oil and gas sector is Norway’s largest when measured in terms of value added, government revenues, investments and export value.

The second case that truly engages Norwegians – and that allows for spreading the word about the EU/EEA State aid law – originates from a substantial increase in excise duties on chocolate and sugar products and non-alcoholic beverages by 83% and 42.3%, respectively, that was introduced in 2018. Following quite dramatic consequences to the Norwegian industry and an increase in trade with Sweden, the Government decided to partly reverse the changes. In this case, however, the ESA has not yet finalized its assessment. Thus, one may expect more interesting developments as regards the application of State aid law to taxation in the land of fjords. Stay tuned!

Małgorzata Cydecka