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Ministry of Trade, Industry and Fisheries
PO Box 8090 Dep
0032 Oslo
Norway

Subject: COVID-19 – Increased initial depreciation for investments in assets in Asset Group D

1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the notified scheme in the form of an increased initial depreciation rate for investments in assets in Asset Group D (“the measure”), it considers that the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections¹ to the measure, as it is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(b). ESA has based its decision on the following considerations.

2 Procedure

- (2) The Norwegian authorities notified the measure on 15 July 2020.²

3 Description of the measure

3.1 Background

- (3) As recognised in the Commission’s Communication on the Temporary Framework for state aid measures to support the economy in the current COVID-19 outbreak (“the Temporary Framework”),³ the COVID-19 outbreak has caused a major shock to global and national economies.
- (4) In the context of the debate on Prop. 67 S (2019–2020),⁴ the Norwegian Parliament, Stortinget, made Request 445 to the Government to change the initial depreciation for investments in assets in Asset Group D (cars, machinery and fixtures and fittings, etc.⁵) from 20% to 30%.⁶ Stortinget’s Standing Committee on Finance and Economic Affairs underlined the importance of measures to stimulate

¹ Reference is made to Article 4(3) of the Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

² Documents No 114484 and 114485.

³ Communication from the Commission – Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak of 19 March 2020, OJ C 91, 20.3.2020, p. 1, amended on 3.4.2020, OJ C 112, 4.4.2020, p.1, on 8.5.2020, OJ C 164, 13.5.2020, p. 3, and on 29.6.2020, OJ C 218, 2.7.2020, p. 3.

⁴ [Prop 67 S \(2019–2020\)](#).

⁵ See: <https://www.skatteetaten.no/en/rates/depreciation-rates/>.

⁶ See [list of requests from Stortinget](#) to the Government, Request 445.

activity in the Norwegian economy, including tax measures.⁷

- (5) Asset Group D includes all movable property that is not included in any of the other nine asset groups and includes passenger cars, tractors, other rolling machines and equipment, other machines, implements, instruments, fixtures, etc. The group can also include electronic installations in buildings that are not linked to the building's usability as a building.
- (6) The Government therefore proposed legislation in line with the Parliament's request, as part of the revised national budget for 2020, which was adopted by Stortinget on 16 June 2020.⁸

3.2 Objective

- (7) The purpose of the measure is to alleviate the liquidity shortage faced by many undertakings. The measure is designed to provide a broad stimulus to the economy, targeting the expected decline in investment caused by the COVID-19 outbreak. The prospect of lower net present value of payable future tax, due to accelerated capital allowances, will potentially have an immediate impact on companies' ability to obtain needed financing. An increased rate of depreciation will increase the net present value after tax for investments and reduce the effective tax rate on the investments. This will increase the possibilities of attracting equity or credit financing for investments in the affected assets, thereby increasing investments.
- (8) The measure targets the expected decline in investment and is designed to provide a broad stimulus to the economy and increase availability of liquidity. The assets covered by the measure are assets that have an acquisition time that is short and, in any event, shorter than the duration of the measure. The measure covers assets that are used in many types of economic activities.

3.3 Nature and form of the aid and eligible costs

- (9) The measure provides aid in the form of increased initial depreciation on assets in Asset Group D.
- (10) The eligible costs are the investment amounts in assets in Asset Group D.
- (11) The measure provides for 10 percentage points' additional initial depreciation for assets in Asset Group D. As a consequence, the depreciation rate for tax purposes will be 30% of the cost price for assets in this asset group acquired by the end of 2020. In the following years (2021 and onwards), the ordinary depreciation rate of 20% will be used for the assets covered by the measure, until fully depreciated.
- (12) Only assets acquired following ESA's approval of the measure and until 31 December 2020 can be subject to the new temporary rate of initial depreciation.
- (13) The Norwegian authorities have included a mechanism that limits the aid amount to maximum EUR 800 000 per beneficiary.

3.4 National legal basis

- (14) The national legal basis for the measure will be set out in amendments to the Tax Act,⁹ section 14-43. Certain features of the measure will be implemented through additional regulations issued by the Ministry Finance pursuant to said

⁷ See [Innst. 216 S \(2019–2020\)](#), section 1.2.

⁸ See [Innst. 361 L \(2019-2020\)](#), chapter 6 and [Lovvedtak 143 \(2019-2020\)](#).

⁹ [LOV 1999-03-26-14](#) *Lov om skatt av formue og inntekt (skatteloven)*.

amendments to the Tax Act.

3.5 Granting authority

- (15) The Norwegian Tax Administration (Skatteetaten) will administer the measure on behalf of the Norwegian Ministry of Finance.

3.6 Beneficiaries

- (16) The measure is open to all beneficiaries in all sectors of the economy. It is, however, a prerequisite that a company has prospects for positive taxable income in 2020, or within relatively few years after 2020, for the company to get any actual benefits from the measure.
- (17) The Norwegian authorities expect that the beneficiaries will belong to a wide range of industries, which will thus benefit most economic sectors. Asset Group D covers a broad category of assets.
- (18) Furthermore, to be able to benefit from the measure, the Norwegian authorities have confirmed that the beneficiaries of the measure may not be undertakings that were in difficulty on 31 December 2019 (within the meaning of Article 2(18) of the GBER).¹⁰
- (19) In accordance with the 3rd Amendment to the Temporary Framework, aid can be granted to micro or small enterprises (within the meaning of Annex I of the GBER) that were already in difficulty on 31 December 2019, provided that they are not subject to collective insolvency procedures under national law and that they have not received rescue aid or restructuring aid.

3.7 Budget and duration

- (20) The Norwegian authorities estimate that the additional initial depreciation of 10 percentage points for assets in Asset Group D acquired in the last seven months of 2020 will result in a loss of accrued tax revenue in 2020 of approximately NOK 1 200 million.
- (21) The measure will enter into force following ESA's approval and will expire on 31 December 2020.¹¹

3.8 Calculation of aid amount

- (22) The Norwegian authorities have explained that the value of increased initial tax depreciation for each individual undertaking ideally should have been calculated using a discount rate reflecting relevant risk for the specific undertaking. Given the infeasibility and disproportionate administrative burden of implementing a method that defines, regulates and enforces a method for determining discount rates for individual beneficiaries based on factors representing the relevant risk of the individual undertaking, the Norwegian authorities will instead use a general nominal discount rate of 6% in the calculation of the net present value of the additional initial depreciation.

¹⁰ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1), referred to at point 1j of Annex XV to the EEA Agreement, as amended by Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating schemes for outermost regions and amending Regulation (EU) 702/2014 as regards the calculation of eligible costs (OJ L 156, 20.6.2017, p. 1), see Joint Committee Decision No 185/2017.

¹¹ See Temporary Framework, paragraph 22, letter d.

- (23) Given a nominal discount rate of 6% and provided that the beneficiary is in a taxable position, the aid element is calculated to be approximately 0.48 per cent of the investment expenditure. To secure that the aid amounts are limited to the maximum of EUR 800 000 per beneficiary, a cap of NOK 1 600 million is then included for the eligible investment amounts per beneficiary.¹²

3.9 Cumulation

- (24) The Norwegian authorities confirm that aid granted under the measure may be cumulated with *de minimis* aid, provided that the relevant conditions of the *de minimis* Regulation are respected.¹³ It may also be cumulated with aid granted under the GBER, provided that conditions of the relevant GBER provisions are respected.
- (25) To the extent that aid under different sections of the Temporary Framework is granted to the same undertakings, the relevant provisions of the Temporary Framework (as amended) on cumulation will be respected.

3.10 Monitoring and reporting

- (26) The Norwegian authorities have confirmed that the reporting obligations set out in Section 4 of the Temporary Framework will be complied with.

4 Presence of state aid

- (27) Article 61(1) of the EEA Agreement reads as follows: “Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”
- (28) The categorisation of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be granted by the State or through State resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.
- (29) The measure is financed through the State budget in the form of foregone tax revenues. Therefore, the aid is granted by the State and/or through State resources and is imputable to the State.
- (30) The measure provides certain undertakings an advantage in the form of increased initial depreciation. Therefore, the measure confers on the beneficiaries an economic advantage, which the recipients could not have obtained under normal conditions applying the current depreciation rules.
- (31) The measure appears to be selective, as it is only available to certain undertakings, i.e. those that invest in Group D assets during the period of validity of the measure. Other undertakings which, in the light of the objective pursued by the system in question, may find themselves in a comparable legal and factual situation,¹⁴ which is not ruled out for undertakings investing in other assets, do not

¹² The maximum amount is calculated on the basis of the estimated net present value benefit in per cent of the initial investment of 0.48 per cent, applying the average NOK/EUR exchange rate in 2019 of 9.8511.

¹³ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty of the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1), incorporated into Article 1ea of Annex XV to the EEA Agreement.

¹⁴ Judgment of 21 December 2016 in *Commission v World Duty Free Group*, C-20/15 P and C-21/15 P, EU:C:2016:981, paragraph 57.

benefit from the advantage.

- (32) Beneficiaries of the measure are active in sectors subject to intra-EEA competition and trade. Therefore, the measure is liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement.
- (33) In the light of the above assessment, ESA cannot exclude that the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

5 Procedural requirements

- (34) Pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("Protocol 3"): "The EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. ... The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision."
- (35) The Norwegian authorities have submitted a notification of the aid measure and the measure has not entered into force yet. They have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3.

6 Compatibility of the measure

6.1 Introduction

- (36) Pursuant to Article 61(3)(b) of the EEA Agreement, ESA can declare state aid compatible with the functioning of the EEA Agreement "to remedy a serious disturbance in the economy of an EC Member State or an EFTA State".
- (37) The disturbance must affect the whole or an important part of the economy of the State concerned, and not merely that of one of its regions or part of its territory. This is in line with the requirement of the case law to interpret exceptions, such as Article 61(3)(b) of the EEA Agreement, strictly.
- (38) In the context of the current COVID-19 outbreak, the Commission adopted the Temporary Framework that sets out temporary state aid measures that it considers compatible under Article 107(3)(b) TFEU, which corresponds to Article 61(3)(b) of the EEA Agreement. The Commission confirms that the current situation, specifically the effect of the containment measures adopted by national States on their economies, justify that aid can be granted on the basis of this provision. This type of aid is available for a limited period to remedy the liquidity shortage faced by undertakings to ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability.
- (39) In order to ensure a uniform application of the state aid rules throughout the European Economic Area, in line with the objective of homogeneity established in Article 1 of the EEA Agreement, ESA applies the compatibility conditions set out in the Temporary Framework to state aid granted by the EEA EFTA States under Article 61(3)(b) in the context of the COVID-19 outbreak.

6.2 Temporary limited amounts of aid

- (40) In the context of the COVID-19 outbreak, the compatibility conditions for measures regarding limited amounts of aid are set out in Section 3.1 of the Temporary Framework.
- (41) The measure fulfils the criteria laid down in Section 3.1 of the Temporary Framework, in particular:
- Aid granted under the measure in the form of initial increased depreciation will not exceed EUR 800 000 per undertaking. Therefore, the measure

complies with the condition in paragraph 22(a) of the Temporary Framework.

- The aid is granted on the basis of a scheme, with an estimated budget of NOK 1 200 million. Therefore, the measure complies with the condition in paragraph 22(b) of the Temporary Framework.
- The Norwegian authorities have included a condition in the measure saying that the scheme will not be open to undertakings that were already in difficulty (within the meaning of the GBER) on 31 December 2019, unless the undertakings are micro or small enterprises and meet the conditions of paragraph 22(c)(bis) of the Temporary Framework. A prerequisite to actually benefit from the increased accelerated depreciation is that the undertaking initiates an investment and has prospects for positive taxable income in 2020, or within relatively few years after 2020. It is highly unlikely that an undertaking in difficulty will both initiate investments and have such prospects for taxable income. ESA therefore finds that the measure complies with paragraph 22(c) of the Temporary Framework.
- The aid will be granted no later than 31 December 2020 in compliance with the condition set out in paragraph 22(d) of the Temporary Framework.

(42) In addition, the Norwegian authorities have confirmed that all applicable rules on cumulation will be respected.

(43) ESA therefore considers that the requirements laid down in Section 3.1 of the Temporary Framework are complied with.

6.3 Reporting and monitoring

(44) The Norwegian authorities have confirmed that they will comply with all the monitoring and reporting provisions laid down in Section 4 of the Temporary Framework.

(45) The Norwegian authorities will publish relevant information on each individual aid award under the measure on the comprehensive state aid website within 12 months from the moment of granting. The Norwegian authorities commit to submitting annual reports. They will also provide ESA with a list of measures put in place on the basis of schemes approved under the Temporary Framework by 31 December 2020.

(46) The Norwegian authorities commit to keeping detailed records regarding the granting of aid provided for by the Temporary Framework. Such records, which must contain all information necessary to establish that the necessary conditions have been fulfilled, must be maintained for 10 years upon granting of the aid, and be provided to ESA upon request.

(47) ESA therefore considers that the requirements laid down in Section 4 of Temporary Framework are complied with.

7 Conclusion

(48) On the basis of the foregoing assessment, ESA cannot exclude that the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement. However, since no doubts are raised that the aid is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(b), ESA has no objections to the implementation of the measure.

(49) The Norwegian authorities have confirmed that the notification does not contain any business secrets or other information that should not be published.

For the EFTA Surveillance Authority,

Yours faithfully,

Bente Angell-Hansen
President
Responsible College Member

Frank J. Büchel
College Member

Högni Kristjánsson
College Member

For Carsten Zatschler
Countersigning as Director,
Legal and Executive Affairs

*This document has been electronically authenticated by Bente Angell-Hansen,
Catherine Howdle.*