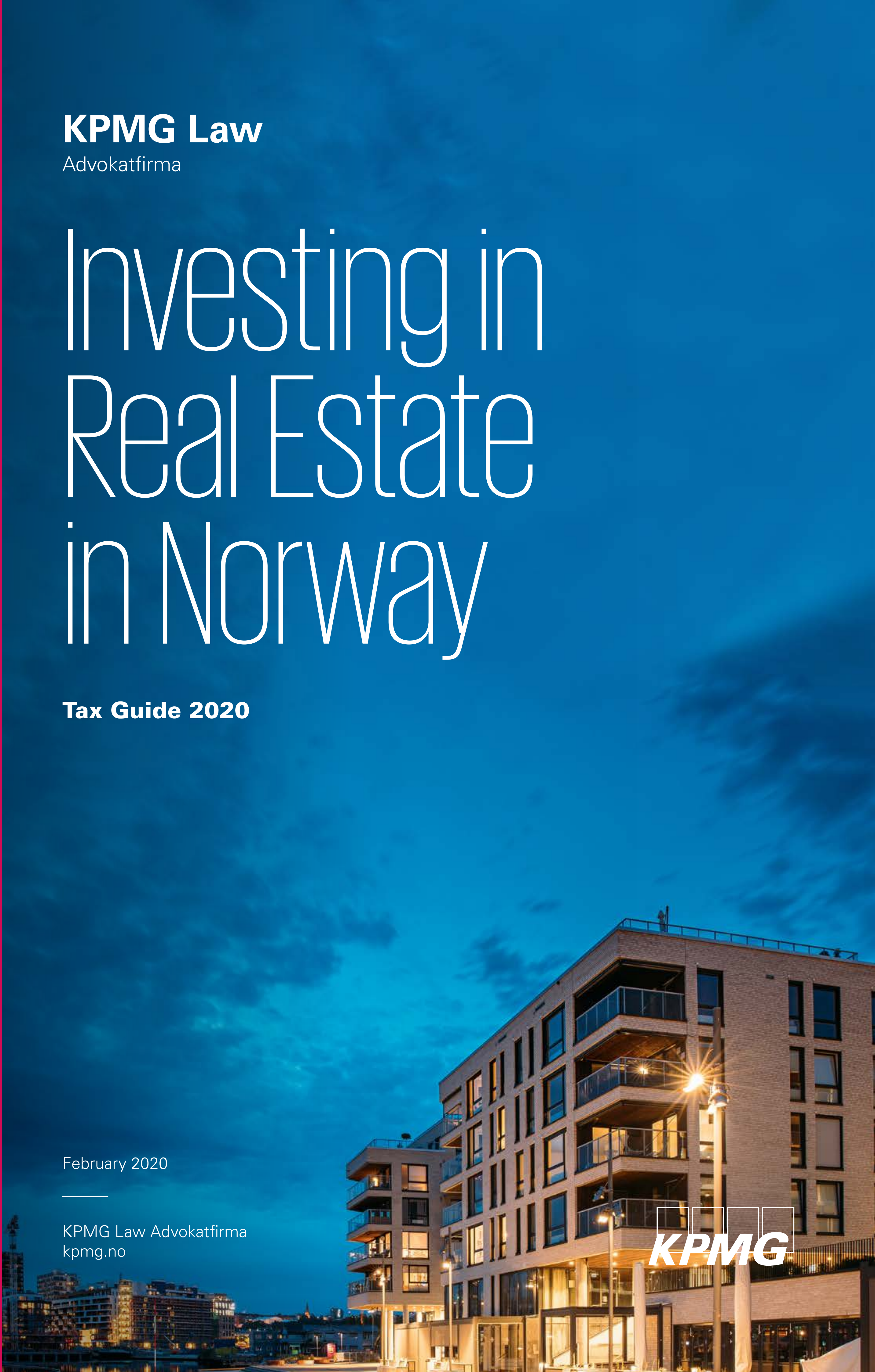


KPMG Law
Advokatfirma

Investing in Real Estate in Norway

Tax Guide 2020

February 2020

KPMG Law Advokatfirma
kpmg.no

1 | General

Investing in real estate in Norway may essentially be carried out in three different ways; a direct investment in the real estate, a purchase of a tax-transparent entity or a limited company.

The tax treatment and transaction costs will differ, and an investor should therefore always consider what would provide the most efficient structure for their investment.

Generally, most real estate transactions are carried out by purchasing either a transparent entity or a limited company in order to avoid stamp duty (payable by the purchaser) and capital gains tax (seller).

2 | Purchase of real estate

2.1. Introduction

As mentioned above, most real estate transactions are carried out by purchasing either a transparent entity or a limited company. For real estate that will be developed and sold as residential property this is, however, not always the case.

The rationale for selling real estate either through a transparent entity or a limited company is mainly to avoid a 22% corporate income tax charge (please see below in section 3.3. for the sale of participations in a transparent entity) on the realised gains and a 2.5% stamp duty on the fair market value (FMV) of the real estate for the purchaser. Furthermore, land cannot be depreciated, which means that the purchaser will normally not benefit from the higher tax book value on the land if an asset deal is carried out. In addition, the purchaser will assume all liabilities when acquiring the company, which is beneficial for the seller.

“Furthermore, land cannot be depreciated, which means that the purchaser will normally not benefit from the higher tax book value on the land if an asset deal is carried out.”

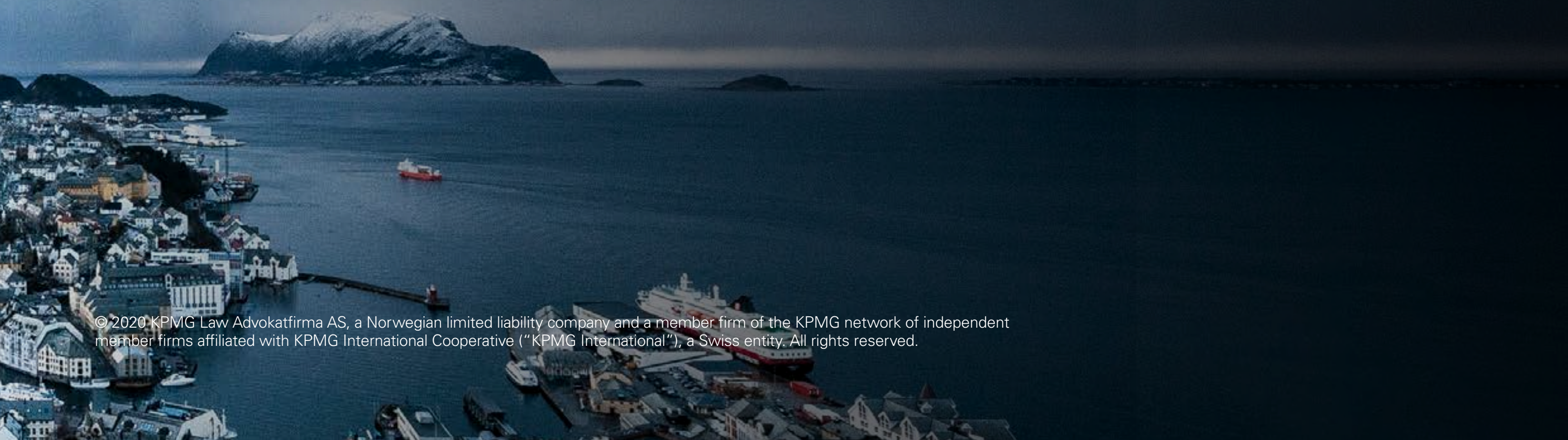
In the event that the seller would incur a loss, it may be beneficial to sell the real estate as an asset deal. However, it is important to consider the stamp duty payable (on the transaction price / FMV), as this could exceed the benefit of an asset sale. In addition, the latent tax benefit in the unrealised loss on the real estate could affect the purchase price.

If an asset deal is carried out, a purchase price allocation (PPA) must be made, as the purchase price must be allocated between the different assets acquired (mainly between the building, technical installations, and land).

2.2. Real estate transfer tax / stamp duty

The transfer of immovable property and rights in immovable property is subject to stamp duty. The purchaser is liable to pay the stamp duty. The rate is 2.5% of the transfer price of the property (fair market value). Except for stamp duty, no special taxes or charges are levied on a transfer of immovable property.

A transfer between companies that is or could have qualified as a tax-exempt transfer, mainly as tax-exempt mergers or demergers, is however exempt from stamp duty. It is not required that the transfer is in fact tax-exempt, provided the transfer could have qualified as such. In certain scenarios where a taxable transaction is considered beneficial, it may consequently nevertheless be possible to structure the deal in such a way as to mitigate stamp-duty on the transfer.



2.3. VAT

Sale of real estate is in general exempt from VAT. However, upon purchasing commercial real estate, the buyer will in most cases find that there are VAT-liabilities attached to the property in the form of adjustment obligations (see 3.1 for a closer description). From the buyer's point of view, it is vital to clarify if there are such liabilities, as well as the nature and size of the liabilities.

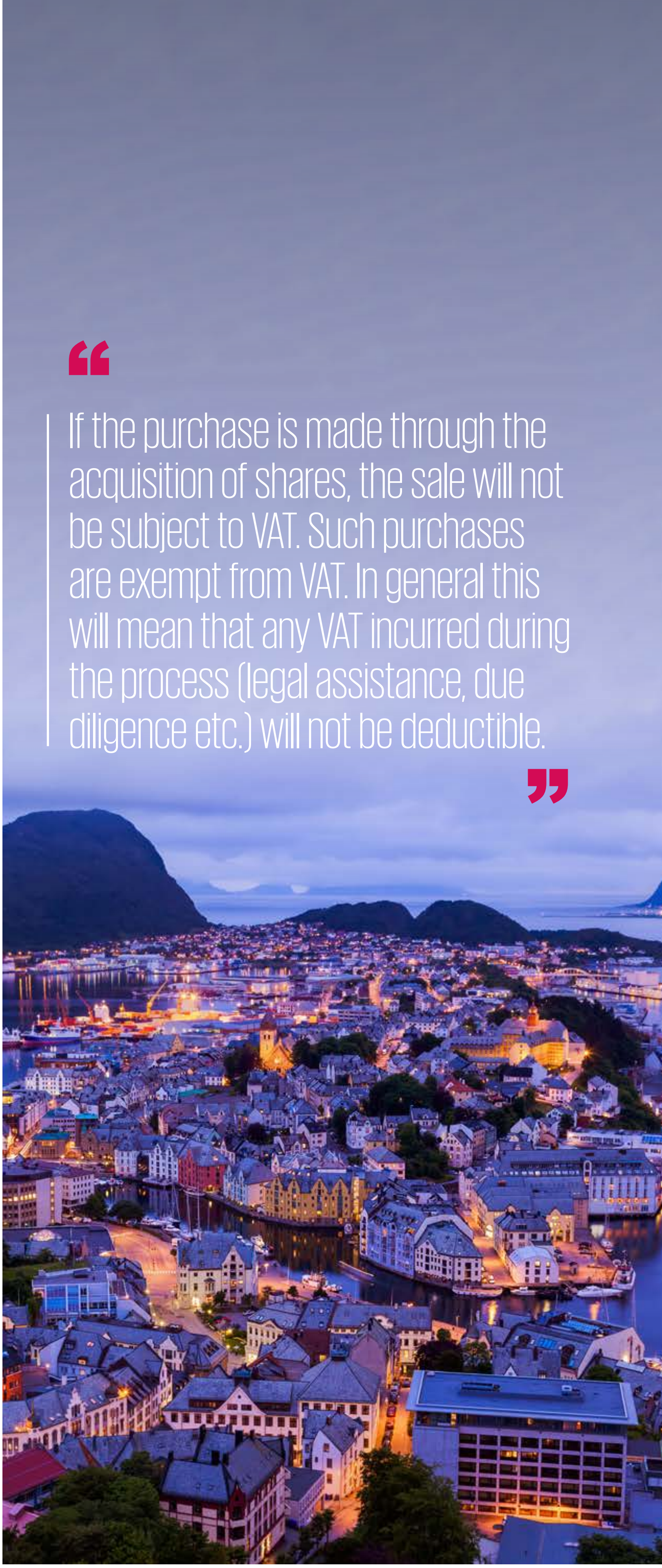
These liabilities may come in two forms. Adjustment duty will require the buyer to repay VAT to the authorities, should the VAT liable use of the property decline. Adjustment rights will allow the buyer to increase his deductions (possibly triggering a refund) should the VAT liable use of the property increase.

In total, this means that the intended use of the property may trigger adjustments, both in a positive and a negative way. A seller will in most cases expect the buyer to purchase the property with all adjustment obligations intact, and will set the price in accordance with this expectation. As adjustments may carry a fiscal risk or benefit, it is recommended that these obligations are mapped in advance, to ensure a proper valuation.

If a property is purchased outright, the transfer of adjustment obligations is a matter of negotiation. On the other hand, if a property changes ownership through a transfer/sale of shares, the obligations will automatically be transferred.

If the purchase is made through the acquisition of shares, the sale will not be subject to VAT. Such purchases are exempt from VAT. In general this will mean that any VAT incurred during the process (legal assistance, due diligence etc.) will not be deductible. If the purchase is carried out by using an acquisition vehicle, it might be possible to argue that transaction costs are deductible in accordance with the level of VAT liable activity if certain requirements are met. Due to recent case law, it is vital that the VAT-classification of the services utilized during the process is assessed and classified in advance.

In summary, there are several potential VAT issues when purchasing commercial real estate. The nature of the issues will depend on the method of purchase as well as the state of the property, and should be clarified thoroughly before a purchase is made.



“If the purchase is made through the acquisition of shares, the sale will not be subject to VAT. Such purchases are exempt from VAT. In general this will mean that any VAT incurred during the process (legal assistance, due diligence etc.) will not be deductible.”

2.4. Valuation of tax positions

2.4.1. Tax book value on assets

If a purchase is carried out as a purchase of either a transparent entity or a limited company, the tax positions related to the real estate will be acquired and carried forward, and the purchaser will therefore assume the latent tax position and the historical (lower) basis for tax depreciations.

It is not possible to achieve a "step-up" on the cost-base of the purchased assets when acquired indirectly through the acquisition of a property-holding company, thus the direct benefit for the purchaser is merely that no stamp duty will be levied. For the seller, the benefit is that no tax is levied on the latent tax on the assets.

Due to the fact that most real estate transactions are carried out as a sale of a transparent entity or a limited company, there is no purchase price discount linked to the latent tax on the purchased assets (as it is assumed that the latent tax will never be realised). The purchase price will however in most cases reflect a discount related to the lack of "step-up" on the tax cost and, consequently, foregone tax depreciations.

"There is no tax depreciation on land, and the discount is therefore only linked to the difference between the value of the building and the tax book value."

There is no tax depreciation on land, and the discount is therefore only linked to the difference between the value of the building and the tax book value, which is depreciable for tax purposes (mainly buildings and technical installations).

In principle, the discount should reflect the net present value of tax depreciations foregone / lost in the acquisition due to it not being carried out as an asset-deal (with corresponding step-up on tax depreciable assets). In practise, the discount is subject to negations and commercial considerations and will often not reflect detailed valuation-considerations. In market-transactions, it is common that the seller asks that bids specify the rate of the tax discount and the assumed allocation to land (which is unaffected by the tax discount). A seller may also state a specific allocation to land, which means that a bidder may only specify the applied rate of tax discount. The decisive factor for the seller is generally the net purchase price offered, and the tax discount may be a wholly commercial consideration.

Barring such considerations, buildings which are depreciated at a rate of 2% annually (commercial property) are generally subject to a tax discount rate between 7 10%. For buildings which are depreciated at a rate of 4% annually (industrial property and similar) the discount rate may be up to 13-14%. Residential property is generally not subject to tax depreciations and therefore generally not subject to a tax discount.

As the general corporate tax rate has been reduced in recent years, from a nominal rate of 28% to 22% per 2020, the market practice for tax discounts may be subject to change.

2.4.2. Other tax positions

In addition, there are other tax positions to consider if a limited company is being purchased. Typically, the tax positions relate to tax losses carried forward and gains and losses accounts (see section 3.1).

Similar to the above, the valuation and purchase price implication of such positions are subject to negotiations and commercial considerations. For both positions, the net present value of the tax asset / liability will be a decisive fact, taking into consideration factors such as how soon a tax loss carry forward may be utilized and when a deferred tax liability will become payable. In practice, however, the tax positions are often valued comparably with the overall tax discount rate applied in the transaction.

2.5. Financing

When purchasing real estate it is typical that the acquisition is carried out through a mix of equity and debt. In order to obtain relief for interest expenses, foreign investors often use an existing holding company or establish an acquisition company in Norway to efficiently leverage the acquisition structure. It may also be possible to obtain an interest deduction in Norway if acquiring real estate directly by a foreign taxpayer.

As a starting point, all interest paid is deductible for the calculation of the taxable income of the taxpayer. A general arm's length principle applies both with respect to the level of interest charged on related-party debt and the debt/equity ratio ("thincap"). In addition, an EBITDA-based earnings stripping rule applies, also with respect to debt on unrelated-party debt (see section 4.1.3. below). Debt-levels, allocation of debt, interest rates applied and the mix between external and internal financing must be carefully structured.

There is currently no interest withholding tax in Norway but a public discussion paper to this effect is expected in 2020 (although already subject to a number of delays). It may therefore be that an interest withholding tax is introduced in the future. Currently, most Norwegian tax treaties offer a full exemption from interest withholding tax, subject to a beneficial ownership test.

2.6. Financial assistance regulations

As a starting point, a target company may only provide collateral, loans or other funding or security to an acquiring entity (financial assistance) within the headroom of its distributable equity. A practical exception applies, however, if the target company, after the acquisition, forms part of the same group as the acquiring company (provided the acquiring entity is resident within the EU / EEA). Financial assistance can in such cases be granted regardless of the distributable equity of the target, but a number of procedural requirements must be met, hereunder the board of directors must affirm that the financial assistance is in the interest of the target company and that the company will maintain a reasonable equity and liquidity after having granted the financial assistance.

2.7. Cost related to the purchase of real estate

As a main rule, costs incurred in order to obtain, maintain or secure taxable income are deductible. Acquisition costs are generally required to be capitalised on the acquired asset. If the acquisition is carried out as a direct acquisition of a property ("asset deal"), the cost is generally deducted through depreciation of the capital asset. If the acquisition relates to an acquisition of shares in a property holding company ("share deal"), then the acquisition cost in generally capitalized on the shares and no tax deduction is in effect obtained.

Whether a Norwegian taxpayer can claim tax deductions for costs paid to an affiliated party in an acquisition process depends on whether such costs can be allocated to the Norwegian taxpayer. Broadly, the deductibility is contingent on the fulfilment of a "benefit test", whereby it must be demonstrated that the costs have been incurred as remuneration for services that will benefit the taxpayer, as opposed to the shareholders.

If the costs can be charged to the Norwegian company, it must be assessed whether the costs are deductible immediately, or whether they must be capitalised (added to the tax book value of the assets of the company). If costs must be capitalised, they will become deductible at a subsequent realisation of the acquired object (by reducing a future gain/increasing a future loss) or through depreciation. An increased tax book value would normally be deductible by way of depreciation. Costs incurred in connection with the acquisition of shares must as a general rule be capitalised on the shares. They are in effect non-deductible, as gains on shares are tax exempt and losses are non-deductible.

When assessing whether to deduct or capitalise an expense, the deciding factor will be the purpose for which the expense is incurred. For instance where a service is acquired with an objective to utilise it towards the future operation of the target company, the associated costs will normally be immediately deductible (e.g. cash flow and tax structuring). If the expenses are related to the acquisition as such (i.e. brokerage fees, legal advice in relation to contracts), or an up-to-date assessment of the company (historical due diligence), such expenses must normally be capitalised on the acquired shares. An exception to this principle is financing fees, which are unconditionally deductible.

For broken deals, costs must be treated in the same way as for completed transactions, which means that costs which would have been capitalised on the shares if they were acquired, are non-deductible.

> “Costs incurred in connection with the acquisition of shares must as a general rule be capitalised on the shares.”

2.8. VAT related to the purchase of real estate

For VAT purposes, the costs must be broken down and classified as VAT recoverable, VAT non-recoverable or VAT exempt. As a main rule, input VAT charged on costs related to a company’s VAT liable activities (i.e. business operations subject to VAT) may be recovered, while input VAT charged on other costs may not be recovered. Certain services, e.g. financing, are VAT exempt, meaning that no VAT should be invoiced (and no VAT shall be calculated according to the reverse charge mechanism). Broadly, costs must be split between those related to the financing operation, and those related to the acquisition itself. Only the latter may be deductible. In all instances it will be necessary to closely review the costs to ensure correct classification.

The purchase of shares is deemed to be of a financial nature end outside the scope of the VAT-act. As such, VAT incurred on acquisition costs is non-recoverable, regardless of the potential VAT-liable business undertaken in the target company itself.

The purchase of real estate is likewise outside the scope of the VAT-act, and as with a share deal VAT on acquisition, costs are non-recoverable.

However, if the acquisition takes the form of an asset purchase, and the underlying asset can be qualified as an ongoing activity (typically in the form of the building and a set of active rental agreement, this may qualify as TOGC (transfer of going company)). TOGC is subject to VAT, but zero rated. This may however allow for the deduction of VAT on the acquisition costs.

2.9. Anti-avoidance

Norway has a general and a specific anti-avoidance provision which may apply if the transaction or a series of transactions is deemed mainly motivated by obtaining a tax benefit / advantage. In real estate transaction, the most practical issue would be acquisition of companies with significant tax loss carry forwards or other tax attributes. Provided there is a genuine business rationale behind the transaction, the risk of being in scope of the anti-avoidance provisions should be limited.

2.10. Other

There are specific regulations concerning acquisitions of land in Norway, mainly these are properties for the exploitation of natural resources, such as farmland, hydropower and forests.

3 Sale of real estate

3.1. Sale of real estate

In general, capital gains/losses on the sale of real estate (asset deal) are taxable/deductible regardless of the seller's tax residence.

The gain is taxed at 22%. Normally, gains from a sale of real estate can be transferred to a gain and loss account, where at least 20% of a positive balance on the account must be recognized as income annually on a declining balance basis. Gains relating to technical installations are recognised under the same method, but on a separate account.

Due to the exemption method, the seller will normally prefer to sell his shares or participation to avoid tax on the latent gain on the real estate.

3.2. VAT – Adjustment obligations

For VAT, the key issue is adjustment obligations. Upgrades exceeding a set threshold are subject to adjustments, meaning that the level of deduction is dependent on use within a VAT liable line of business for the next ten years.

A sale of the property will trigger an obligation to partially reverse the deduction. The percentage of the reversal will depend on the number of years left of the ten years period. This reversal may, however, be avoided, provided that the buyer accepts responsibility for the remaining period.

From a seller's point of view, it is preferable to transfer the obligation to the buyer in order to avoid having to repay VAT. If the buyer is unwilling to accept the transfer, this should be reflected in the price.

It should, however, be noted that for the buyer, the adjustment obligation represents a potential risk, and the buyer will likely keep this risk in mind when making an offer.

When selling real estate, it is particularly important to note that for the sale of development properties where no physical work has been performed at the site, it will not be possible to transfer adjustment obligations for services related to non-physical development work. The consequence could be that any input VAT incurred will be a final cost without the possibility of reclaiming the input VAT.

Note also that it has been indicated by the VAT-Administration that when transferring projects under construction and empty buildings, the seller is obliged to reverse all VAT deducted to date. This VAT may be transferred as a latent deduction, and claimed by the buyer at a later date, once the premises are occupied.

3.3. Sale of shares or participation

Capital gains on shares in a Norwegian company or participation in a transparent Norwegian entity owned by a Norwegian limited liability company or a Norwegian transparent entity are tax exempt under the Norwegian exemption method, and losses are non-deductible (see section 4.1.6. below). For foreign investments the gains may be covered by the exemption method.

The sale of shares in a Norwegian company will not result in any tax charges in Norway, unless the foreign entity is considered to have permanent establishment in Norway. The Norwegian Tax Act does not have legal basis for imposing tax on a non-resident's gain on shares.

If a foreign investor sells a participation in a transparent Norwegian entity, the tax treatment is somewhat unclear. According to the Norwegian Ministry of Finance the foreign investor will be considered to have realised his share of the underlying assets, and should thus be taxed at 22% on any realised gains, unless the income is tax exempt. Since such gain would be tax exempt for a Norwegian investor, the tax treatment may be in breach with Norway's obligations under the EEA agreement.

The seller is not required to calculate VAT on the fee, as sales of sharers or participation are not liable for VAT. Note that the seller cannot expect to gain deductions for any VAT incurred as part of the sales process.

3.4. Deductions of costs related to the sale of real estate

Costs directly related to a sale of real estate, such as broker commission, advertisement etc. are tax deductible, if the gain is taxable.

If the real estate is sold as a sale of shares or participation, the costs will be linked to the sale of the shares or participation, and be treated as non-deductible. For broken deals, the costs must be treated similarly, which means that most costs are non-deductible.

For VAT purposes, deductibility of input VAT on costs incurred during the sale is unclear under current law. A recent decision from the lower court indicates that VAT on sales costs is non-recoverable. Deductions may be allowed if the sale can be viewed as winding down a VAT liable business, for instance renting out property under a voluntary registration. This generally means that the real estate should be sold as a running business, with tenants intact.

3.5. Distribution of proceeds from a sale

3.5.1. Permanent establishment

If the real estate is owned directly by a foreign investor (i.e. in effect through a taxable branch/property in Norway), the proceeds can be distributed without any tax being levied in Norway.

3.5.2. Limited company

There are different ways for a limited company to distribute the proceeds from the sale of real estate. The proceeds could be distributed through dividends, a repayment of paid-in capital, repayment of loans or liquidation.

The taxation for a Norwegian investor would depend on the investor. For foreign investors, the tax treatment depends on the repayment method. In Norway, there is currently only withholding tax on dividends, at a domestic rate of 25%. The rate may be reduced for corporate shareholders within the EEA or under an applicable tax treaty (see section 4.1.7. below). Repayment of paid-in capital is not taxable. If a company is liquidated, the liquidation proceeds will be considered as capital gains on shares, and not a distribution of dividends for Norwegian tax purposes, and no withholding tax will be levied.

3.5.3. Transparent entity

Distributions from transparent entities are tax exempt for Norwegian investors, except for a 3% claw back. There is no tax charge on distributions to foreign investors.

4 | Taxation of real estate

4.1. Corporate income tax

4.1.1. General

The tax rate on corporate income is currently 22%. Taxable income includes capital gains.

As a main rule, costs are deductible for tax purposes provided they are for expenses incurred in order to acquire, maintain or secure taxable income.

Costs for maintaining/upholding the same standard of the property are in general deductible. If the costs are related to upgrading the property standard the costs must be capitalised.

The main rule for the timing of income and costs is the realisation principle. For income this implies that the income must be recognized for tax purposes in the same year as the taxpayer obtains an unconditional right to the remuneration. For costs, the realisation principle implies that the costs are deductible in the income year in which the taxpayer incurs an unconditional obligation to pay the remuneration. The time of payment formally agreed upon is of no consequence.

4.1.2. Tax deprecation

All types of property and technical installations are subject to the declining-balance method of depreciation.

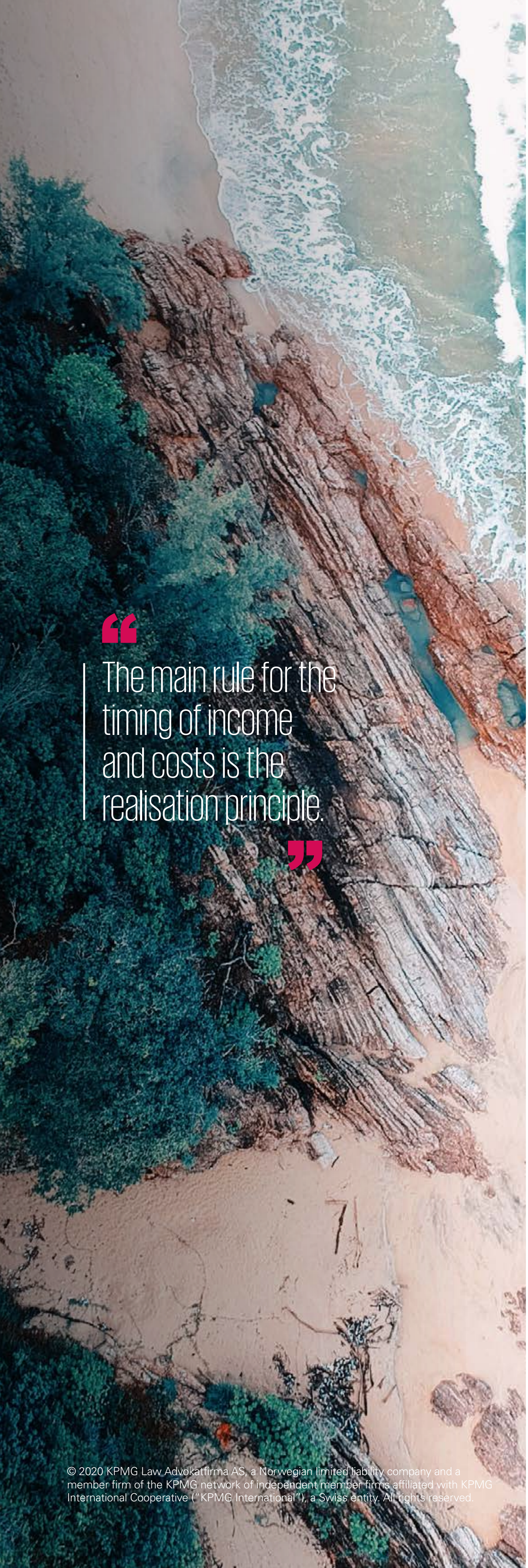
The depreciation rates for real estate depend on the type of property. Office buildings and other commercial property may be depreciated at 2% per annum. If the expected economic life of a building is less than 20 years, a 10% rate may be applied. Other properties are depreciated at a 4% rate. Technical installations may be depreciated at 10% per annum. Land may not be depreciated for tax purposes.

Maintenance costs that are considered necessary to uphold taxable income are tax deductible in the year of accrual. Costs for improvements to the building must be capitalised and depreciated together with the cost of the building.

4.1.3. Transfer pricing and thin capitalisation

Interest costs are as a main rule fully deductible on an accruals basis, and there is as a starting point no difference between debt from shareholders/intra-group and debt from unrelated parties.

The arm's length principle applies to related party loans, and the tax authorities may make a reassessment based on thin capitalisation or an adjustment of the interest rate.



4.1.3. Transfer pricing and thin capitalisation

Interest costs are as a main rule fully deductible on an accruals basis, and there is as a starting point no difference between debt from shareholders/intra-group and debt from unrelated parties.

The arm's length principle applies to related party loans, and the tax authorities may make a reassessment based on thin capitalisation or an adjustment of the interest rate.

4.1.4. Interest limitation rules / earnings stripping

Effective for all financial years ending on or after 1 January 2019, deductibility of net interest expenses (regard of the status of the payee, i.e. both related and non-related party debt) is limited to 25% of the borrower's "tax EBITDA," if the borrower is part of a consolidated group (or could have been under IFRS principles).

> Broadly, the tax EBITDA can be represented as:
>
> Taxable income
>
> +/- Group contributions received (/ surrendered)
>
> - Use of tax losses carried forward
>
> +/- Net interest expenses
>
> +/- Tax depreciations
>
> = "Tax EBITDA"

A de minimis threshold applies at Norwegian group level: If the total interest cost is less than NOK 25 million, the rules do not apply.

Equity escape provisions

Taxpayers may claim relief for all net interest expenses if they qualify for the "equity escape provisions." Broadly, the provisions seek to establish whether the borrower (or the Norwegian subgroup as a whole) is over-indebted relative to the worldwide consolidated group.

The taxpayer can claim relief for interest in excess of the EBITDA threshold provided the ratio of the taxpayer's equity to total assets is equal to or higher than the corresponding ratio of the worldwide consolidated group (see below for the definition of the group).

For the purposes of the comparison, a number of adjustments to the borrower's financial statements are required:

- Goodwill (or badwill) in the consolidated financial statements attributable to the borrower must be added to (or subtracted from) total assets and equity.
- The assets and liabilities of the borrower must be revalued in accordance with the consolidated financial statements, and added to (subtracted from) total assets and equity / liabilities.
- Deferred tax liabilities / assets relating to the revalued assets / liabilities must be subtracted from / added to total assets and equity.
- If the borrower owns shares and interests in other entities that are part of the consolidated group, the carrying value of such assets must be subtracted from total assets and equity.
- If the borrower holds receivables on other entities that are part of the consolidated group, the carrying value of such assets must be subtracted from total assets and liabilities.

Alternatively, the test can be applied at the level of the Norwegian consolidated subgroup. The Group test requires the group to prepare a set of consolidated financials comprising all the Norwegian entities in the group. Shares and intercompany balances with non-Norwegian subsidiaries would not be eliminated. The financial statements of the Norwegian consolidated subgroup must be adjusted according to the principles set out above.

The ratio of equity to total assets is considered "equal to or higher than" the worldwide group ratio provided it is no more than 2 percentage points lower than the worldwide group ratio.

The adjusted financial statements, and relevant tax return forms, must be approved by auditors.

The consolidated group

In order to apply either exception under the equity escape provisions, the group must have qualifying consolidated financial statements available for the comparison. Qualifying consolidated financial statements must satisfy the following tests:

- The borrower applying the exception is consolidated on a line-by-line basis,
- The financial statements are prepared under one of the following accounting standards: Norwegian GAAP, the GAAP of any EU / EEA country, US GAAP, Japanese GAAP, IFRS, or IFRS for SMEs.
- The consolidated financial statements are prepared by the ultimate parent of the group, or a direct subsidiary of the ultimate parent if an accounting standard listed above provides that the ultimate parent does not need to prepare consolidated financial statements, or that the company applying the exception should not be included in the consolidation.
- If a borrower is subject to the rules, but does not have qualifying consolidated financial statements, a set of consolidated financial statements may be prepared for the purposes of application of the exception.

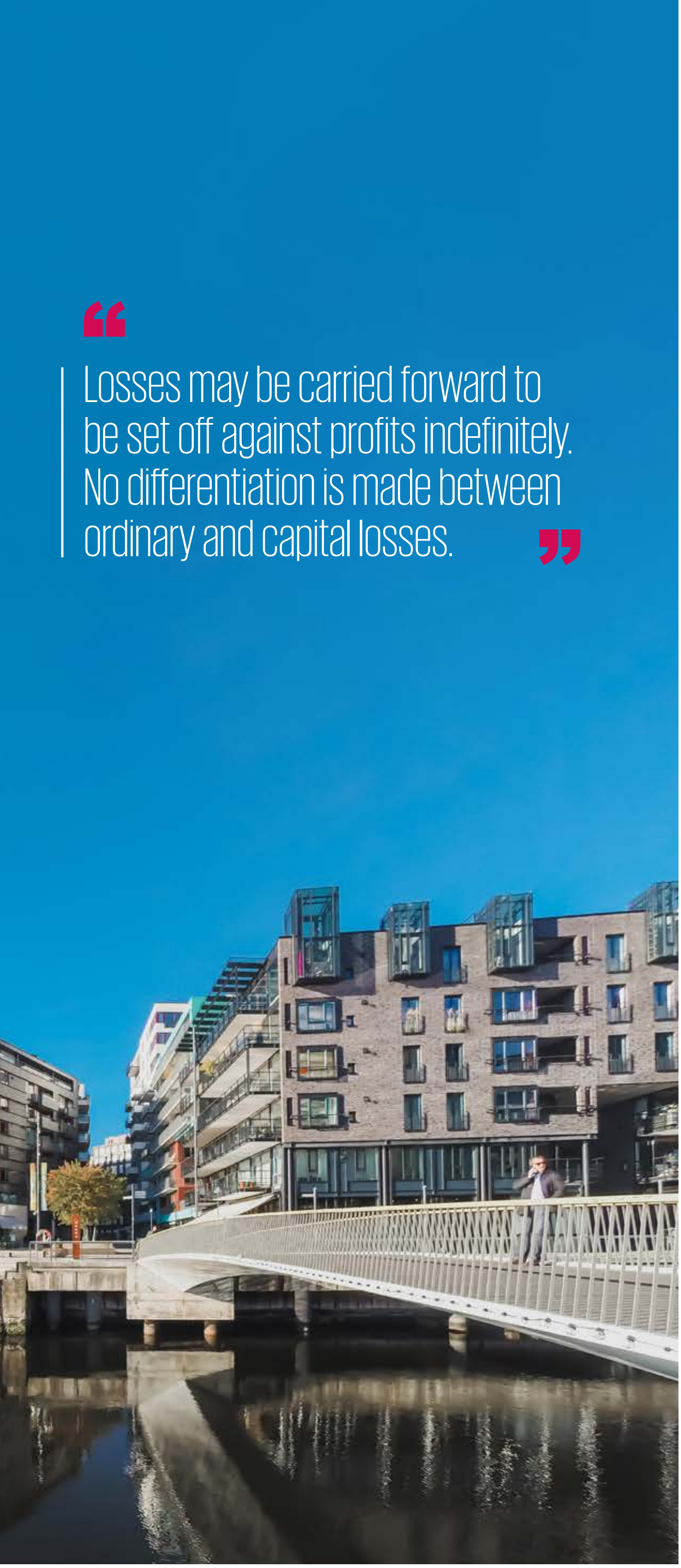
Companies that are not part of a group

Companies that are not part of a group may nevertheless be subject to the earnings stripping rules. However, for companies that are not part of a group, only the deductibility of interest on related-party debt may be disallowed.

For in-scope entities, deductibility is similarly restricted to 25% of "Tax EBITDA" but only related-party interest in excess of the limitation is denied deductibility. The threshold for application of the rules is NOK 5 million.

Related parties are entities that directly or indirectly control (≥50%) or are controlled by the borrower, and entities controlled by the same direct or indirect parent as the borrower. If debt to a third-party is guaranteed by a related party, it is considered related party-debt. Specific exceptions apply, e.g. upstream guarantees from the subsidiaries of the borrower, and guarantees in the form of a simple pledge over the shares in the borrower.

These rules may also apply for companies that are part of a group (even if the before mentioned exceptions apply) if the company has debt to a related-party which is nevertheless outside of the consolidated group.



4.1.5. Group contributions

Norwegian tax law is based on the principle that each company is a separate taxpayer, regardless of whether it belongs to a Norwegian or international group. However, Norwegian tax law allows for tax consolidation/group relief by way of group contributions between corporate entities.

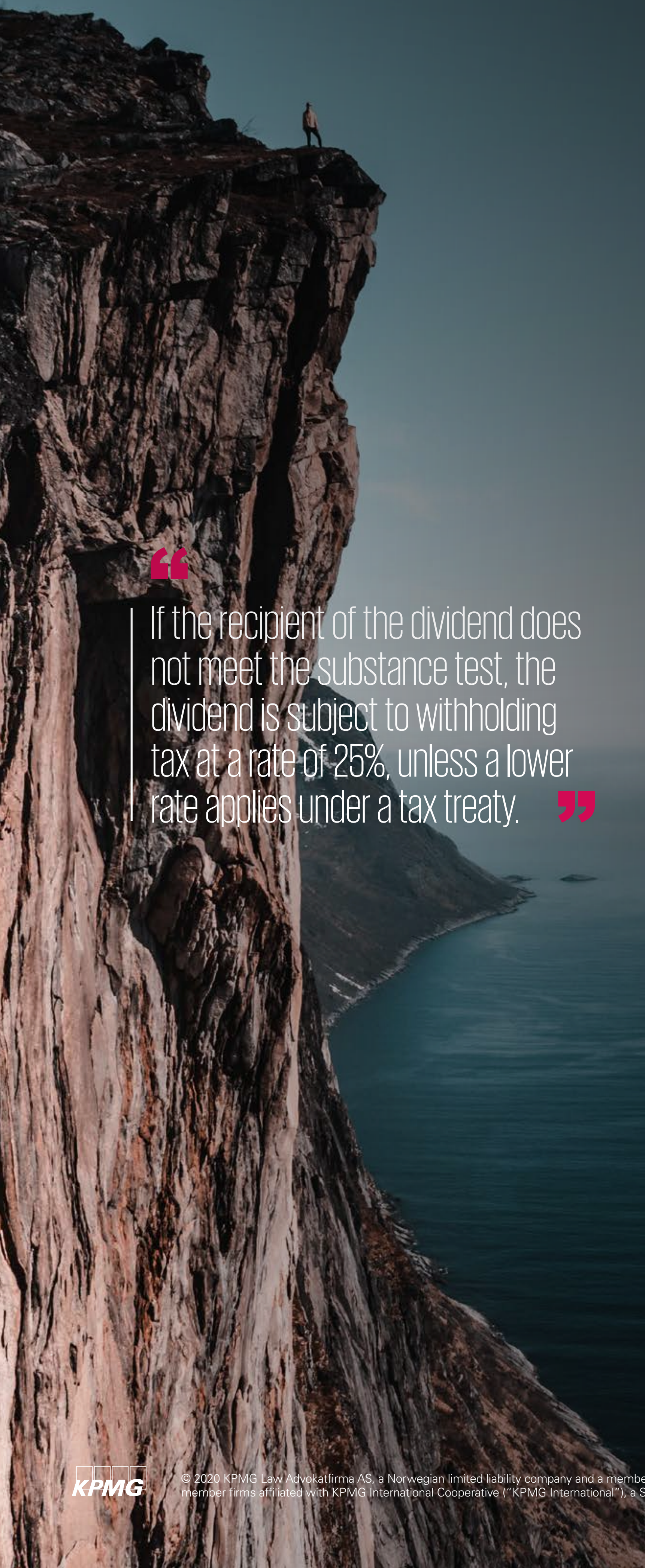
A group contribution is a transfer of value from one tax subject to another within the same group. Group contribution allows a group company to transfer its profits to another group company. Besides being closely related to dividend, group contributions, in addition to being made to the direct parent or shareholder, may also be made to an indirect shareholder, such as a subsidiary or a sister company.

Group contributions are deductible by the providing company and taxable income for the recipient company. The holding requirement for group contribution purposes is more than 90%. The parent company must hold, directly or indirectly, more than 90% of the shares and the voting rights of the subsidiary. The ownership requirement must be met at the end of the fiscal year. Group relief is also available between Norwegian subsidiaries of a foreign parent as long as the ownership requirement is met.

The rules also apply to foreign companies that are resident within the EEA and are considered comparable to Norwegian companies, as long as they are taxable to Norway through a per¬manent establishment and the group relief is taxable to Norway. Also, under non-discrimination clauses of double tax treaties, group relief is available for contributions made from a branch of a foreign resident company to a Norwegian subsidiary of the same tax group.

4.1.6. Tax losses

Losses may be carried forward to be set off against profits indefinitely. No differentiation is made between ordinary and capital losses. When a company is liquidated, losses of the year of liquidation may be carried back to the preceding two years. Otherwise, a reversal of losses is not allowed.



“If the recipient of the dividend does not meet the substance test, the dividend is subject to withholding tax at a rate of 25%, unless a lower rate applies under a tax treaty.”

4.1.7. Tax exemption method

Corporate shareholders are exempt from taxation of dividends from and gains on shares in Norwegian companies, except for a claw back of 3% on dividends. The claw back does not apply to dividends within a tax group (see section 4.1.4. above). Losses on shares qualifying under the exemption method cannot be deducted.

The exemption method also applies to gain/loss on a participation in a Norwegian transparent entity, and the claw back on dividends also applies to distributions of profits from transparent entities.

The exemption may also apply to foreign investments.

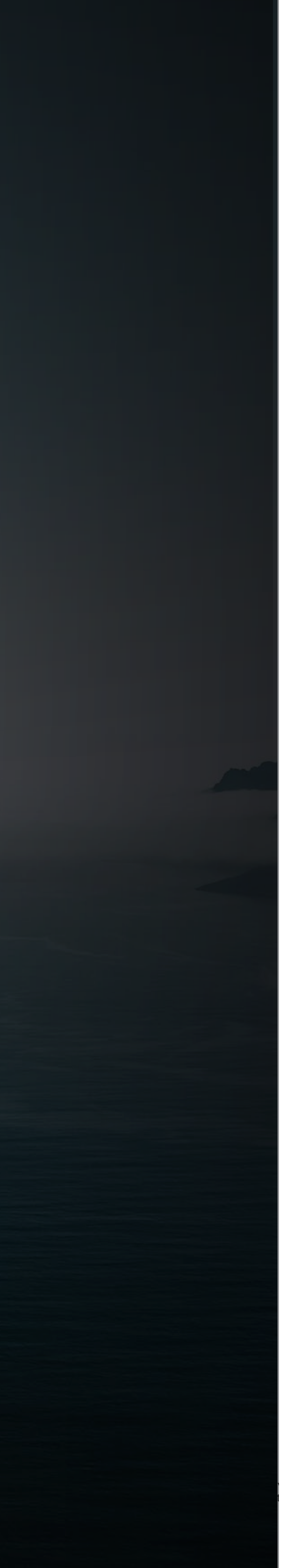
4.1.8. Withholding tax

The exemption method also provides a tax exemption for shareholders resident within the EEA, meaning that no Norwegian withholding tax will be due for shareholders covered by the exemption method.

The exemption method will, in relation to corporate shareholders resident within the EEA, only apply if the shareholder meets a substance requirement. In the language of the legislation, it applies only if such a company is properly established in and performs real economic activity in the relevant country. The fulfilment of this criterion is based on particular facts and circumstances where a key factor to be considered is whether the foreign entity has been established in a similar manner as the normal organisation of such entities, both in the country of residence and in Norway. The substance test is based on case law from the CJEU, and is therefore in continuous development. If the recipient of the dividend does not meet the substance test, the dividend is subject to withholding tax at a rate of 25%, unless a lower rate applies under a tax treaty.

Shareholders resident outside the EEA would still be charged withholding tax, subject to limitations under tax treaties.

There is currently no withholding tax on interest and royalties but a cross-parliament agreement from 2016 states that such measures should be considered. A public discussion paper in this respect is expected in 2019.



4.2. Value added tax

Value added tax, roughly similar to the VAT systems of the EU Member States, is an indirect tax on the consumption on goods and services. As a general rule, VAT is calculated for all stages of the supply chain and on the import of goods and services from abroad. The final consumer, who is not registered for VAT, absorbs VAT as part of the purchase price.

The standard rate of VAT is 25%. A reduced rate of 15% applies to food. VAT on the supply of passenger transport, cultural arrangements such as museum and sport arrangements, services provided by travel agents, cinema tickets, hotel and accommodation services and rentals of vacation property is calculated at 10%.

The supply and letting of real estate or rights to real estate are as a main rule exempt, without any credit for input tax. Real estate used as an asset within one VAT-liable business will however allow for deductions.

Voluntary registration (opt-in) for VAT is possible for letting out real estate to VAT liable businesses as well as counties and local municipalities (qualified tenants). Letting out real estate to the government is VAT exempt without any credit.

Registering and charging VAT on lease to qualified tenants allows for deduction on related costs, as well as a percentage of common costs equal to the percentage of qualified tenants.

It is possible to register Norwegian group companies for VAT as a VAT group if the companies are owned by at least 85% of the group. The VAT group may also include companies with no sales (such as holding companies etc.) The most practical consequence of a VAT group is that transactions between the VAT group registered entities will be invoiced without VAT.

4.3. Local municipality tax

Immovable property located in Norway is subject to municipal real estate tax provided the municipality has resolved to levy the tax. The tax is levied at fixed rates ranging from 0.2% to 0.7%, depending on the municipality. The taxable base is the assessed value of the immovable property, which is usually between 20% and 50% of the fair market value (the municipality may use 100% of the fair market value).

Real estate tax is deductible for the purposes of corporate income tax.

KPMG Law
Advokatfirma

KPMG Law Advokatfirma AS

Thor Leegaard
Tax Partner/Attorney-at-law
Corporate Tax
E: thor.leegaard@kpmg.no
T: +47 4063 9183

Jan Ove Fredlund
VAT Partner/Attorney-at-law
Indirect Tax
E: jan.ove.fredlund@kpmg.no
T: +47 4063 9088

Anders Ekern
Senior Tax Manager/Attorney-at-law
Corporate Tax
E: anders.ekern@kpmg.no
T: +47 4063 9047

kpmglaw.no

Designed by CREATE | CRT125319 | February 2020