



Origin Invest Ltd

Statutory obligations

VAT and other obligations when
carrying out limited installation
projects in Norway

14 November 2017

www.kpmglaw.no

Background

Origin Invest Ltd, a UK incorporated company, is planning to participate in construction projects in Norway. No agreement is in place, but they are planning for both assignments directly with building contractors and as sub-contractor for other contractors.

Origin Invest Ltd is already registered with organization number 919 362 723 in the Register for Business Enterprises in Norway. Origin Invest is registered with a general manager and a business address in Norway (Regus Oslo 5, Nydalsveien 28, 0484 Oslo), and not with a postal address.

We have been informed that Origin Invest Ltd will have no permanent employees in management functions or a fixed place of business (i.e. local office at a business address) in Norway.

Content

1	VAT	5
1.1	General	5
1.2	The reverse charge mechanism	5
1.3	Hiring out of labour	5
1.4	Installation and construction services	2
1.5	Combined supply	2
1.6	Reporting and payment	2
2	Tax liability	3
2.1	Tax liability	3
2.2	Permanent establishment	3
2.3	Consequences of permanent establishment	3
2.4	Tax liability for employees	3
3	Reporting obligations etc	5
3.1	Reporting of commissions in Norway	5
3.2	Physical ID-control	5
3.3	HES-card	5
3.3	Salary reporting and tax withholding	6
3.4	Tax return for the employee	6
3.5	Corporate tax return	6
4	Labor legislation	7
4.1	The employment contract	7
4.2	Minimum wages and compensation	7
5	Social security	8
5.1	National insurance	8
5.2	Occupational injury insurance	8
5.3	Occupational pension scheme	8
6	Book-keeping etc	9
6.1	Book-keeping	9
6.2	Annual accounts and audit	9

1 VAT

1.1 General

In principle, all supply of goods and services are liable to VAT. Supply is defined as delivery of goods or the rendering of services for a consideration. This means that VAT shall be calculated if the supply of the goods or services falls within the scope of the VAT Act.

A foreign business with taxable sales in Norway must register for VAT when the VAT liable turnover exceeds NOK 50,000 during the course of 12 months, unless the reverse charge mechanism will apply. For supply where the reverse charge mechanism will apply, the recipient in Norway has a duty to calculate and pay the VAT.

A foreign business without a fixed place of business in Norway, may be required to be registered through a representative. For companies domiciled in Belgium, Denmark, Finland, France, Germany, Iceland, Italy, Netherlands, Poland, Portugal, Slovenia, Spain, Sweden, **UK**, Czech Republic and Malta it is voluntarily to be registered with a representative, i.e:

Origin Invest as a UK company can be registered without a VAT representative in Norway.

1.2 The reverse charge mechanism

The reverse charge mechanism will only apply to those services that can be supplied from a remote location (intangible services). This means in cases where the provision of the service, by its nature, is difficult to associate with a particular physical location. Examples of this type of service are all those that can be supplied digitally, consultancy services, advertising services, hiring out of labour, legal services and various kinds of information services.

For services that cannot be supplied from a remote location, for example services relating to work on real property or goods in Norway, hiring out of goods, transport services and catering services, the reverse charge mechanism will not apply, i.e. the foreign business must register in the VAT Register and charge their services with VAT.

According to the above, construction services will not be comprised by the reverse charge mechanism. Further, construction management will neither be comprised by the reverse charge mechanism since the services will be tied to a construction site in Norway.

1.3 Hiring out of labour

Hiring out of labor from a foreign business will be comprised by the reverse charge mechanism, but it will still be required with a Norwegian organization number in order to comply with the reporting obligations in Norway for the employer. Further, the employees will be taxable to Norway from "day 1" when hired out to a Norwegian company.

A customer which is hiring in labor, will normally be leading the work and have the full responsibility and risk for the work.

It is our assumption that Origin Invest will be an ordinary building contractor and not hire out labor for use in projects in Norway.

1.4 Installation and construction services

Further to the above, supply of installation and construction services in Norway will not be comprised by the reverse charge mechanism. Thus, it will be required to register Origin Invest for VAT in Norway when the registration threshold has been exceeded. It may also be possible to pre-register Origin Invest for VAT in Norway before the registration threshold of NOK 50,000 is exceeded. The supply shall be invoiced with 25 % VAT.

The registration requirement, will apply regardless of whether the customer is a VAT registered/exempt business. A VAT registered customer may on certain conditions ("acquisition for use in VAT liable business") be entitled to deduct the invoiced VAT from Origin Invest in their VAT accounts.

If Origin Invest use foreign subcontractors for the installation and construction services in Norway, the subcontractors will also be obliged to be VAT registered in Norway.

1.5 Combined supply

A foreign company that has entered into an agreement regarding supply and installation of goods on a construction site in Norway is VAT liable for the entire supply agreement, cf. letter from The Directorate of Taxes from 25 November 1981. This entails that all import of goods shall be conducted in the name of the foreign company.

1.6 Reporting and payment

Ordinarily Norway has bi-monthly VAT reporting, i.e. six VAT periods annually. The deadline for reporting and payment is normally one month and ten days after the end of the period, except for VAT period 3, comprising the months of May and June, where the deadline is 31st August..

Any refund of VAT will normally be received from the authorities within 3-4 weeks from the time for filing of the VAT return.

2 Tax liability

2.1 Tax liability

A foreign company which carries out business in Norway (e.g. construction services), is taxable to Norway for its business here, cf. the Tax Act, clause 2-3. However, Norway's entitlement to taxation is limited by tax treaties, which have been entered into with other countries.

The deciding issue for tax liability in Norway will be whether the activity of Origin Invest will be regarded to constitute a permanent establishment in Norway.

The conditions for a permanent establishment for a UK company in Norway is defined in the tax treaty between UK and Norway.

2.2 Permanent establishment

It follows from article 5 in the tax treaty between UK and Norway that the term permanent establishment means a fixed place of business, e.g. the place of management, office etc, through which the business of an enterprise is wholly or partly carried on.

Although Origin Invest is registered with a business address in Norway, it is our understanding that it is no office or management functions that will be performed from this place. Thus, we do not consider that the registration of this address by itself will constitute a permanent establishment for Origin Invest in Norway.

A permanent establishment can also be constituted by project activities in Norway. With reference to project activities, we refer to the tax treaty article 5, subsection 3, where it is mentioned that the term permanent establishment also includes a building site or construction or installation or assembly project, or supervisory or consultancy services connected therewith, but only if such site, construction, installation or project lasts, or such services continue, for more than twelve months. Thus, the duration of the project will be deciding for whether the project will constitute a permanent establishment for Origin Invest in Norway.

A permanent establishment may also be constituted by several projects if seen as a coherent commercial and geographic whole where the duration is more than 12 months.

2.3 Consequences of permanent establishment

If the activity will constitute a permanent establishment in Norway, Origin Invest will be liable to corporate tax in Norway for the related income from this business in Norway. The current tax rate is 24 %, but it is reduced to 23 % in the proposal for state budget for 2018.

Employees on temporary assignments in Norway are liable for tax from "Day 1" for the income derived from the permanent establishment.

2.4 Tax liability for employees

A foreign employee will be liable to tax from day 1 in following scenarios:

- Employed by Norwegian employer

- Hired in by a Norwegian company
- Employed in a foreign company with permanent establishment in Norway

In addition, a foreign employee can in addition to the above become tax liable to Norway as a result of actual residence. If the the employee stays in Norway for more than 183 days over a 12-month period or more than 270 days over a 36-months period, the employee will be liable to tax in Norway.

3 Reporting obligations etc

3.1 Reporting of commissions in Norway

The customer shall report commissions paid to foreign businesses (Origin Invest) to the Central Office, Foreign Tax Affairs ("COFTA").

Origin Invest shall report their own (foreign) subcontractors who perform work/deliver services in Norway to COFTA.

The customer, Origin Invest and subcontractors are jointly responsible for reporting foreign employees to COFTA.

Reporting should take place using specified forms or through the report gateway of the authorities www.altinn.no.

Failure to report may result in high penalties and joint liability for subcontractor's unpaid taxes and fees.

3.2 Physical ID-control

All foreign workers are obliged to apply for a tax card upon the commencement of their stay in Norway. The workers need to meet in person at one of the 43 tax service offices in Norway for ID-control and bring with them:

- 3 Passport or national ID-card approved as travel pass within the EU (must state "Gender" (male/female))
- 4 Copy of employment contract
- 5 Form RF 1209: "Application for tax deduction card for foreign citizens"

These obligations exist regardless of actual tax liability and duration of stay in Norway.

3.3 HES-card

All companies that carry out activity on a building/construction site shall ensure that employees have the HES card when they arrive on site. The purpose is to identify the worker and the employer.

In order to obtain the HES-card it is required that Origin Invest is registered with a business number and VAT number (if applicable) in Norway. Further, the employee need to be registered as employees by COFTA, cf. section 3.1 above..

The labor inspection accepts that a worker may not have the card as long as it can be documented that the application process has been initiated. However, some builders/principals have specific rules on site which requires that all workers shall have the card prior to work

Contract must be studied carefully, and additional costs related to extra travels and delays may apply

3.3 Salary reporting and tax withholding

The obligation below will exist regardless of tax liability and duration of stay for the employees in Norway.

Origin Invest is obliged to monthly reporting of salary and withheld tax, (possible) employer's national insurance contribution and other statistical information ("A-melding").

Origin Invest is in principle obliged to monthly tax withholding from the salaries of employees. This obligation exists even if employee is not in a tax position on Norway, and failure to comply will lead to demand for payment of the tax-amount from the employer. However, the Tax Collector has in practice accepted to grant exemptions from the obligation based on an application from the employer. In the application, it must be able to argue that tax liability does not exist according to the conditions in the tax treaty.

3.4 Tax return for the employee

The employee is obliged to file a personal tax return annually (income statement). The obligation exist regardless of tax liability and duration of stay in Norway.

3.5 Corporate tax return

Foreign entities are required to prepare and file an annual corporate tax return if their activity is considered to be tax liable in accordance with the Norwegian Tax Act, section 2-3. Applies even if the activity/project is exempted from actual taxation by tax treaty.

In the past it has been possible to ask for exemption from this obligation when the activity is exempt from taxation by tax treaty. However, from 2017 (tax year 2016), the tax authorities seems to have revoked this option.

4 Labor legislation

4.1 The employment contract

We assume that the foreign workers on the Norwegian projects will be posted workers. The term posted workers refer to a worker that is sent out by his employer to work in another country than he normally is working. The EU's directive for posting of workers (a choice of law directive) has been implemented in Norwegian legislation through the Working Environment Act and a Regulation. The following applies in any case, regardless of the nationality of the employer or employee, and regardless of what has been agreed between employer and employee:

- Requirement for workplace environment.
- General rules for working hours.
- Right to maternity leave etc.
- Written contract of employment which satisfies certain minimum requirements of the Act.
- Protection against termination of employment when pregnant.
- Annual Holiday Act.

If the Norwegian rules differ from the home country's rules, the Norwegian rules takes precedence over home country's legislation as long as the worker is posted to Norway.

Employment contracts which are in conflict with mandatory rules in Norwegian law will be deemed to be invalid.

4.2 Minimum wages and compensation

Norway has regulations regarding "general application" of certain items in a tariff agreement within certain tariff areas; minimum salary, compensation and working conditions. Generally applicable tariff agreements are agreements concerning pay and working conditions that apply to everyone who works in the specific sector, regardless of whether they are party to the agreement.

It does not exist one single regulation which applies to all sectors. There are several regulations regarding general application of the tariff agreement for employees performing production work within specific sectors/ tariff areas. Certain elements of the tariff agreement, in particular, minimum salary, detailed list of additional salary and compensations related to work away from home, shift work, overtime etc. is applicable to all that performs work within this tariff area.

As an example, it can be mentioned that the minimum hourly wage in the tariff agreement for construction is NOK 197,70 for skilled workers and NOK 177,80 for unskilled workers. Just in sake of good order, please note that the tariff agreements that potentially may be applicable can vary a lot when it comes to salary level and other forms of mandatory compensation.

5 Social security

5.1 National insurance

Foreign employees are liable to become members of the Norwegian national insurance scheme from the first day of work in Norway. The regular rate for this is 14.1% (employer's contribution) and 8.2 % social security contribution.

It is possible to be exempted from membership of the Norwegian national insurance scheme if an A-1 form is obtained as documentation that the employee is a member of his/her homelands social security system. The A-1 form should be sent together with an application to be excluded to the Norwegian national insurance authorities.

The exemption decision should be attached to the salary and deduction statements and to the tax returns of the employees.

5.2 Occupational injury insurance

It is only mandatory to take out occupational injury insurance in a Norwegian scheme if the employees are members of the Norwegian national insurance scheme.

5.3 Occupational pension scheme

All employers must take part in the mandatory occupational pension scheme (OTP) on behalf of persons working in Norway from day 1 if the employees are members of the Norwegian national insurance scheme (and exemption has not been applied for).

The minimum payment for the employer is at least 2% of the salary, plus administrative costs and insurance to cover payment in the event of disability.

If a worker is covered by a joint scheme in their home country which ensures equal or better benefits, the employer can apply to the Financial Supervisory Authority of Norway to be exempt from the pension scheme.

6 Book-keeping etc

6.1 Book-keeping

Companies that are obliged to prepare and submit tax returns in respect of income tax or VAT in accordance with the Tax Administration Act, are also obliged to keep books "for the the activity in Norway".

Book-keeping shall be done in accordance with Norwegian GAAP.

6.2 Annual accounts and audit

All foreign entities are required to prepare annual statutory accounts, if their activity is considered to be tax liable in accordance with the Norwegian Tax Act, section 2-3. This applies even if the activity/project is exempt from taxation by tax treaty.

It may be possible to grant exemption from the obligation to submit annual accounts if the company in the fiscal year:

- Has not had any activity in Norway or,
- Has been exempted from tax under Norwegian internal law or,
- Has had revenues less than 5 million Norwegian kroner, and operated only temporarily in Norway

If Origin Invest is of the opinion that it is exempt from the obligation in a fiscal year c.f. the criteria listed above, the Accounting Register must be notified. Such notification must be sent for each year in order to get exemption.

Companies that have a duty to prepare annual accounts have also auditing duty if the turnover exceeds 5 million kroner.



Contact details

Jan Ove Fredlund

Attorney-at-law

T +47 40 63 90 88

E jan.ove.fredkund@kpmg.no

Jardar Aavik Skarprud

Attorney-at-law

T +47 40 63 92 37

E jardar.aavik.skarprud@kpmg.no

kpmglaw.no



© 2017 KPMG Law Advokatfirma AS, a Norwegian member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.