

Energy Overview

Renewable energy plays a substantial role in Norway's energy sector. Hydro energy accounts for close to 90 pct. of the total production of electric energy, while on-shore wind power accounts for about 9 pct.

The public sector today owns about 90 per cent of the production capacity for electric power in Norway, mainly the state and municipalities. Statkraft SF, which is owned by the state, is Europe's largest producer of renewable energy, mainly hydroelectric power but also to some extent wind power.

Production and sale of electric power are exposed to competition, and the Norwegian legislation has established the principle of market-based power sales. Transmission and distribution of electric power is a natural monopoly. The costs of building grid and other infrastructure are high, and it is not deemed rational to build several parallel and competing grids. Thus, transmission and distribution of electric power is subject to monopoly control. The central grid and overseas cables, which are the highway for distribution of electric energy domestically as well as internationally, are owned by the state-owned company Statnett SF.

Wind power production in Norway is still quite small compared to Europe. Construction of wind power plants requires license from the Government. In recent years, there has been considerable opposition to new wind power projects. This is mainly due to the interventions such projects make in nature, the environment and wildlife.

Moreover, the Norwegian Supreme Court ruled in 2021 that the public licenses allowing the Fosen Peninsula wind power plant, the largest wind power project built in Northern Europe, was invalid due to violation of the reindeer herders' rights under the UN Convention on Civil and Political Rights Article 27. The Supreme Court unanimously ruled that the rights had been violated, and that the decisions on concessions and expropriation permits therefore were invalid.

The offshore oil and gas industry is Norway's most important industry. Oil and gas constitute 20 pct. of the Norwegian GDP, over 30 pct. of the government's total income and nearly 45 pct. of total exports. The framework for the petroleum industry is established and closely supervised by the Norwegian Government.

Equinor ASA, a publicly listed company in which the State owns 70 pct. of the shares, accounts for about 80 pct. of the extracted oil on the Norwegian continental shelf.

Norway is committed under the Paris treaty to reduce greenhouse gas emissions by at least 50 per cent and up to 55 per cent by 2030. Norway's goal is to become a low-emissions society and to reduce emissions by 90-95 per cent in 2050 (both compared to 1990 levels).

Tax Overview

The profits of all industries are taxed as corporate income at the ordinary rate of 22 pct. The corporate tax is imposed on net taxable income, i.e. the company's total income minus the allowable deductions.

The Norwegian tax system is generally based on the principles of a broad tax base and neutral treatment of different industries, companies and investments.

Despite the general principle of fiscal neutrality, a special resource rent tax is levied on hydropower, wind power and oil and gas exploration companies. The resource rent tax is imposed in addition to the ordinary corporate income tax. The purpose of the tax is to ensure that a substantial part of income from the exploitation of the natural resources is returned the community.

The resource rent tax is designed with the purpose that projects that are profitable before such tax are also profitable after resource rent tax. The resource rent tax is determined on the basis of a normalized market value of the power production (actual production during the relevant time slot multiplied by spot market prices, or norm prices for oil and gas) minus operating expenses, license fee and property tax. The resource rent tax is designed as a cash flow tax with immediate deduction of investments.

The effective resource rent tax rate for hydropower plants is 45 pct., implying that the total tax rate (including corporate income tax) is 67 pct.

Power plants with generators below 10 MVA are exempt from resource rent tax. Hydropower plants with generators of at least 10 MVA are also subject to a natural resource tax of NOK 0.013 per kWh. The natural resource tax is paid to the municipalities but is deductible on a NOK-by-NOK basis in ordinary taxable income and thus normally does not constitute an effective tax for the companies (only a redistribution from the Government to the municipalities).

For oil and gas exploration companies the effective resource rent tax rate is 56 pct., implying that the total tax rate is 78 pct.

For wind power plants the effective resource rent tax rate is 25 pct., implying a total tax rate of 47 pct. In addition, a special tax on on-shore wind power of NOK 0.023 per kWh is introduced. The purpose of the special tax is especially to give the host municipalities additional incentives to facilitate wind power production.



In addition to the tax on ordinary income and the resource rent tax, hydropower, wind power and oil and gas exploration companies are subject to a municipal real estate tax. The tax base is determined as the plant's technical value, which is assessed as the current construction value less value reduction due to wear and tear. The tax rate is subject to the decision by the municipalities, up to a maximum tax rate of 0.7 pct.

A social security contribution of 14.1 pct. is computed on payment of salaries to employees, deductible in the tax base for both corporate income tax and resource rent tax.

Norway applies VAT at a rate of 25 pct.

Taxation of Energy Projects

Norwegian energy projects are normally carried out in partnerships or corporations.

A partnership is transparent for tax purposes and will thus allow for full tax consolidation between the company and the partners (any tax losses in the partnership may be deducted in the partner's other taxable income). A corporation is not tax transparent, implying that tax consolidation can only be achieved by way of group contribution. In order to qualify for group contribution, the consolidating companies must be under joint ownership and control by more than 90 pct. Otherwise, corporation and partnerships are subject to equal taxation.

Corporations may carry forward tax losses for an unlimited period.

As energy projects often require substantial initial investments, joint venture projects are regularly established as partnerships in order to obtain tax consolidation during the investment phase. The disadvantage by a partnership, however, is that the partners are (fully or partly) liable for the partnership's obligations. Thus, when the project has moved into the operational phase and generates taxable profits, the partnership may be transformed to a corporation exempt of taxation.

Norway applies special limitation rules for deduction of interest expenses, under which interest expenses in excess of 25 pct. of the company's taxable EBITDA are non-deductible (subject to several exemptions).

Interest expenses restricted due to the interest limitation rules may be carried forward for 10 years.

Two important exemptions from the interest limitation rules applies: Firstly, group companies are only subject to the limitations if the total interest expenses of the Norwegian group exceed MNOK 25 (MEUR 2.15). Secondly, the limitations do not apply if the equity ratio of the Norwegian company (or the Norwegian group) exceeds the global equity ratio (the "equity escape rule").

Investments are generally subject to tax depreciation at rates varying from 2 pct. (Office buildings) to 30 pct. (office equipment). 20 pct. rate applies to machinery. Land is not depreciable, and neither are costs to establish roads and installation- and storage spaces connected to power plants.

Operating costs are generally tax deductible. In order to claim deduction in the basis for the resource rent tax, however, only costs regularly incurred by power production are deductible. Costs linked to other parts of the power plant owner's business than power production are not deductible in the basic rate. This additional qualification has given rise to several disputes before the tax administration and the courts.

Other Tax Issues To Be Considered

- ❖ Owners of larger hydropower plants are obliged to pay a license fee to the Government and municipalities. The fee is calculated independently of the power plant's actual production capacity.
- ❖ Owners of larger hydropower plants are obliged to deliver up to 10 per cent of the power base to the municipality affected by the development as licensed power. The purpose of the licensed power scheme has been to secure the developing municipalities power for general supply at a reasonable price.
- ❖ As the resource rent tax basis for hydro and wind power is generally calculated on power spot prices, exceptions applies to certain long-term power purchase agreements (PPA). It is important to consider such exceptions when PPAs are negotiated, as the total taxes may be substantially reduced due to a more favorable determination of the resource rent tax base.
- ❖ It has become increasingly popular to establish solar cell systems on private roofs and on apartment blocks. There have been several regulatory changes in recent years to facilitate more solar power in private households. There is, however, uncertainty as to the taxation of such generated power. The Norwegian tax administration has clarified that electricity produced and used continuously in the household by the owner is not taxable. However, sale of excess electricity from one's own home or holiday home will normally be taxed as capital income at 22%. It is not clarified how the income should be calculated.
- ❖ Intra-group sale of power must be priced under the arm's length principle. In cross border transactions Norway generally applies the OECD transfer pricing guidelines. Transfer pricing documentation must be prepared.



- ❖ In 2022 and 2023 a certain surtax applied on power production due to the increased power prices (referred to as “high-price contribution”). The revenues were partially used to provide financial support to the households due to the high power prices. The tax for 2022 and 2023 was 23 pct. of the power price exceeding MOK 0.70 per kWh. The surtax was not continued in 2024, but it is not unlikely that it will be reintroduced in the event of increasing power prices.

Relevant Experience

Selmer has advised on many major Norwegian energy projects:

- ❖ Statkraft SF, in the restructuring and establishment of Fosen Wind Farm, and the sale of part of Fosen to operator Aneo. This is the largest wind power project in Northern Europe.
- ❖ Statnett SF, in numerous projects, including advice on property tax questions as well as tax-related court cases in all levels of Norwegian courts.
- ❖ Advised BKW Energie on structuring, cross border tax issues, and offtake arrangements for the 55MW Marker wind farm
- ❖ Å Energi AS, in the fusion of Agder Energi AS and Glitre Energi AS, creating one of Norway’s largest hydropower companies, yearly producing 11 Twh electricity from hydropower.
- ❖ Pandion Energy AS, in establishing an independent, full-cycle oil and gas company driving value by maturing resources to reserves in high-quality assets on the Norwegian continental shelf.
- ❖ HydrogenPro AS, in establishing green hydrogen technology and systems in Norway and internationally.
- ❖ ST1. Advising the owners of the 800MW Davvi wind farm on part divestment and pre-consent development activities, including CPO process
- ❖ We assist Aker Clean Hydrogen and Varanger Kraft developing a hybrid wind to hydrogen project Finnmark.
- ❖ We have assisted Hafslund Oslo Celsio in its major CCS project for CO2 capture at Klemetsrud, including the financing, state aid, real estate, BECCS certificates and the drafting, review and negotiations of contracts.
- ❖ Carbon Circle is a specialised carbon capture and storage contractor offering turn-key units and engineering support to emitters and operators of carbon capture units. We regularly assist the company with operational support related to contracts and other legal matters.

- ❖ Advised Varanger Kraft on the development, financing, investor process and construction of the 200MW Raggovidda 1 - 3 wind farms
- ❖ Advised Vauban Infrastructure Partners on the due diligence and acquisition of two 80+48 MW operational onshore projects in Norway
- ❖ Advised Finnmark Kraft on licensing and regulatory processes relating to the 70MW Hamnefjell 2 wind farm
- ❖ Advised EnBW on several physical and financial PPAs with Nordic onshore wind projects



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