

COMPANY FORMATION IN SCANDINAVIA

MAIN FORMS OF COMPANY/BUSINESS IN SCANDINAVIA

The most usual form of business entity in Scandinavia is the private or public limited company. Only public limited companies are allowed to issue a prospectus to the public when seeking equity capital. Further, only public limited companies can be listed on the Stock Exchange.

Another form of business is partnerships, of which the general partnerships (ANS) and limited liability partnerships (KS) are the most common. A general partnership consists of two or more partners having equal or differing shares in the partnership who are each fully liable for the partnership's debts. If the partners are only liable to the extent of their respective pro rata share in the partnership's debts, the partnership's name must include the letters "DA". A limited partnership consists of one or more general partners and one or more limited partners.

SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

A company tax resident in a Scandinavian country is taxable for its worldwide income. A branch of a foreign company in one of the Scandinavian countries is liable to pay tax only on the profits derived from its activities in that country. The current tax rate for business income is 27% in Norway and 22% in Sweden and Denmark.

Foreign shareholders are not taxable to Scandinavia for gains on Scandinavian shares unless the shares are connected to the activities of a branch tax liable to Scandinavia. However, dividends from a Scandinavian company paid to foreign shareholders is subject to withholding tax at a general rate of 25 percent. A relevant double taxation treaty normally modifies the rate. Further, the Scandinavian countries have adopted an exemption model for income derived on shares, which also applies to corporate shareholder resident in an EEA country. Consequently, dividends from a Scandinavian company received by corporate shareholders in the EEU will normally be exempt from Scandinavian countries tax.

Partnerships (both general and limited) are taxed on a transparency basis, thus the partners being liable for their portion of the partnership's net income.

The Norwegian tax regime contains comprehensive exit tax rules.

LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

There are no laws concerning conditions under which a foreigner may make a direct investment in Scandinavia. Foreigners must comply with the regulations applicable to Scandinavian citizens and others. A Scandinavian business/company may be 100% foreign owned. However, in the case where the business entity is an private or public limited company, at least half of the directors must reside in Norway or be a citizen and reside in an EEA country.

The capital requirements of a public company are NOK 30 000/DKK 30 000/SEK 50 000, and for an public limited company NOK 1 000 000/DKK 1 000 000/SEK 500 000, to be paid upon formation. There is no capital requirement in a general partnership. As for limited partnerships, it must have a fixed capital to be decided in the formation documents, and at least 2/5 of such capital must be paid up for to the company.

Both limited liability companies and partnerships must register with the Company house in the Scandinavian country.

OTHER COUNTRY-SPECIFIC ISSUES RELATED TO ESTABLISHING A COMPANY

Under the Norwegian Public Limited Liability Company Act, it is a requirement that at least 40 per cent of the directors of the board are women.