

(Provisional version)

Ministry of Finance

# **Prop. 113 L**

**(2019 - 2020)**

**Proposition to the Storting (bill)**

## **Temporary amendments to the Petroleum Taxation Act**

*Recommendation from the Ministry of Finance of 12 May 2020,  
approved in the Council of State on the same date.*

*(Solberg Government)*

**Provisional version**



# 1 Introduction and summary

The Government has been requested to «*consider various policy initiatives and submit proposals that may stimulate investment in the oil and gas industry and in the Norwegian supply industry*» no later than in connection with the Revised National Budget for 2020, cf. the Storting's petition resolution no. 474 of 31 March 2020. In the Revised National Budget for 2020, the Government is proposing a NOK 70 million appropriation for seabed mineral surveying under the auspices of the Norwegian Petroleum Directorate. Such surveying will provide this part of the industry with contract opportunities in 2020. In addition, the Government will revert to the Storting with a green restructuring package proposal in late May. The present proposition sets out a proposal for temporary changes to petroleum taxation.

Oil demand has declined sharply in the wake of the coronavirus disease outbreak. This has severely impacted the oil price. The gas price is also low. Operational challenges resulting from infection control measures are causing petroleum companies to defer investment and maintenance. Infection risk is addressed by scaling back offshore crews. The coronavirus disease outbreak and the oil price slump give rise to temporary liquidity and financial challenges, as well as increased uncertainty about future developments. In the absence of temporary tax initiatives, investment activity on the Norwegian continental shelf may undershoot current projections over the next few years due to deferral of planned profitable investment projects. The supply industry has faced a challenging profitability situation for some time and has, like most other industries, incurred additional costs as the result of infection control measures. Businesses will find themselves in an even more precarious situation if the very low oil price causes petroleum companies to significantly scale back anticipated activity.

The Government is of the view that the prevailing situation in the petroleum industry and the supply industry now calls for temporary measures to improve the liquidity of petroleum companies. The measure offers companies improved prospects for going ahead with planned investments. This may serve to keep the supply industry going by expected contracts in relation to new projects being put out for tender. One may thereby counter a negative trend of layoffs, redundancies and, potentially, bankruptcies.

In view of the current situation, the Government is proposing temporary changes to petroleum taxation that will accelerate deductions, thereby deferring tax payments and improving company liquidity. Specifically, the Government proposes immediate deduction of investments in the special tax base, with the addition of 10 percent uplift. The proposal applies to certain specified investments incurred from the income years 2020 up to and including 2024; see Chapter 3.2. It is proposed, furthermore, that payment may be claimed of the tax value of any loss and unused uplift for the income years 2020 and 2021; see Chapter 3.3. Payment of the tax value of loss also provides liquidity for companies that are operating at a loss or recording a loss as the result of early deductions. The Ministry proposes that granting of security interests in the claim for payment of the tax value be permitted. A clarification is also proposed in Section 3 d of the Petroleum Taxation Act on limitation of net financial costs.

The changes will serve to accelerate investment cost deduction and the tax value of negative tax bases will be paid out. Liquidity improvements resulting from the proposal will serve to enable companies to go ahead with investments. The estimated profitability of investments after tax may also increase, depending on what required rate of return is applied by petroleum companies, cf. Box 3.2.

It is estimated that the proposals as a whole will provide petroleum companies with considerable liquidity, in the region of NOK 100 billion for the years 2020 and 2021, cf. Chapter 4. It is estimated that the proposal will increase tax revenues by about NOK 14 billion over time, measured as net present value at a risk-free discount rate. It is emphasised that the estimates are uncertain and will depend on, inter alia, how companies' investments develop.

For petroleum companies that apply a risk-adjusted required rate of return in their valuation of the tax deductions, the Government's proposal will entail a tax reduction over time. The reduction will for example be about NOK 15 billion, measured at net present value if applying a risk-adjusted required real rate of return of 8 percent.

The overall proposal increases administrative burdens for companies and tax authorities, especially inasmuch as there will for several years be two parallel sets of rules for the tax treatment of expenses incurred in acquiring production facilities and pipelines.

The Ministry proposes that the proposal on immediate deduction of costs, with the addition of 10 percent uplift, in the special tax base shall enter into force immediately with effect for the income years 2020 up to and including 2024, cf. Chapter 5. It is proposed that payment of the tax value of loss and unused uplift shall enter into force immediately with effect for the income years 2020 and 2021. The ordinary rules will apply to any costs incurred and any loss and unused uplift arisen subsequent to the said income years. It is proposed that the clarification in Section 3 d of the Petroleum Taxation Act shall enter into force immediately with effect as from the income year 2020.

The proposals on immediate deduction and payment of loss and unused uplift shall apply for a limited period of time, cf. above. The Ministry proposes that the amendments be set out in a temporary provision in the Petroleum Taxation Act. Reference is made to the proposed new Section 11 of the Petroleum Taxation Act. Reference is made, furthermore, to the proposed amendment to Section 3 d, Sub-section 2, of the Petroleum Taxation Act.

## **2 The current provisions**

Companies involved in the extraction and pipeline transport of petroleum on the Norwegian continental shelf are taxed under the special rules in Act of 13 June 1975 No. 35 relating to the Taxation of Subsea Petroleum Deposits, etc. (the Petroleum Taxation Act).

Costs incurred in acquiring pipeline and production facilities, including the installations which form part of, or are related to, such facilities, may be depreciated on a straight-line basis at a maximum rate of 16 2/3 percent per annum, i.e. over six years, cf. Section 3 b,

second sentence, of the Petroleum Taxation Act. The first year of the depreciation period may be the year in which the costs were incurred. The deduction is granted in both ordinary income and the special tax base.

A special deduction; uplift, is granted in determining the special tax base, cf. Section 5 of the Petroleum Taxation Act. The purpose of the uplift is to compensate for investments being depreciated over several years. The uplift is 5.2 percent of the cost price of operating assets that are depreciated pursuant to Section 3 b of the Petroleum Taxation Act (production facilities and pipelines), and is deductible upon the assessment of special tax for four years from the first year of the cost price depreciation period, inclusive. The uplift comes to a total of 20.8 percent of the cost price of the operating asset, on a nominal basis over the uplift period.

Section 3 f and Section 5, Sub-section 5, of the Petroleum Taxation Act set out special rules on realisation or withdrawal of operating assets as referred to in Section 3 b of the Petroleum Taxation Act. The rules are intended to ensure symmetric treatment of depreciation and uplift on the part of the purchaser and divestment taxation on the part of the seller.

If a company does not in any given income year have sufficient income from which to deduct costs (losses) and uplift, any uncovered loss and unused uplift may be carried forward for deduction in subsequent years. Interest is added to the amount carried forward, cf. Section 3 c, Sub-section 2, and Section 5, Sub-section 6, of the Petroleum Taxation Act. Interest is added in order not to reduce the deductible value of the loss when the loss is carried forward to subsequent income years, thereby furthering equal tax treatment of companies that are in a tax paying position (i.e. companies that in any income year have income from which costs can effectively be deducted) and companies that are not in a tax paying position (i.e. companies that will only obtain effective deduction of costs in any future income).

If the company's loss is caused by exploration expenses, the company may alternatively claim annual payment from the State of the tax value of the exploration expenses (exploration reimbursement). The tax value is determined by multiplying the deductible exploration expenses in ordinary income and in the special tax base by the applicable tax rates for the year in which the exploration expenses are incurred. The amount is determined by the tax authorities for the relevant income year, cf. Section 3 c, Sub-section 5, of the Petroleum Taxation Act.

A company that upon the discontinuation of its petroleum activities on the Norwegian continental shelf still has any uncovered loss or unused uplift to carry forward, may claim payment of the tax value of such uncovered loss and unused uplift from the State, cf. Section 3 c, Sub-section 4, and Section 5, Sub-section 7, of the Petroleum Taxation Act. The tax value is determined by multiplying uncovered loss in ordinary income in the shelf district and in the special tax base by the applicable tax rates at the time of discontinuation, and correspondingly for unused uplift in the special tax base. The amount is determined by the tax authorities for the year in which the taxable activities are discontinued. Alternatively, the company may assign uncovered loss and unused uplift to

another company upon joint divestment of the extraction business or upon company amalgamation, cf. Section 3 c, Sub-section 3, and Section 5, Sub-section 6, of the Petroleum Taxation Act. All in all, the provisions on carrying forward uncovered loss or unused uplift, with the addition of interest, and reimbursement upon the discontinuation of activities implies that petroleum companies are guaranteed full value of the tax deductions.

### **3 Assessments and proposals**

#### **3.1 Background**

The oil price has declined sharply in the wake of the coronavirus disease outbreak. The gas price is also low. Low prices obtained for oil and gas, as well as operational challenges resulting from infection control measures in relation to the coronavirus disease outbreak, mean that petroleum companies are deferring exploration activity, field investment, as well as investments related to finds that are not tied into existing investment projects. Non-critical maintenance is also being deferred. Parts of the supply industry were facing a challenging situation already before the coronavirus disease outbreak, characterised by poor profitability. Infection control measures have imposed additional costs on most industries in the Norwegian economy in relation to existing activity. This also applies to many supply businesses. If planned activities are deferred by petroleum companies, supply businesses anticipate a severe demand contraction in the near future. Oil market and petroleum industry developments are outlined in further detail in Chapter 2.1 of the Revised National Budget.

The Government has introduced comprehensive measures to reduce the negative impact on businesses and jobs, and on the Norwegian economy in general. These measures include, inter alia, more flexible layoff, care benefit and sickness benefit arrangements, tax deferrals and temporary tax reductions, including employer's social security contribution reductions, government loans, compensation scheme for enterprises with large revenue reductions and guarantees, as well as increased energy and petroleum research appropriations. Many of these measures will also serve to alleviate the situation in the petroleum industry and the supply industry. In addition, Norges Bank has reduced the key policy rate to 0 percent, and the Ministry of Finance has reduced the countercyclical capital buffer.

The Government is nonetheless of the view that the prevailing situation in the petroleum industry and the supply industry calls for temporary measures to improve the liquidity of petroleum companies, thereby improving their prospects for going ahead with planned investments. The estimated profitability of investments after tax may also increase, depending on what required rate of return is applied by petroleum companies, cf. Box 3.2. The measures may serve to keep the supply industry going by expected contracts in relation to new projects being put out for tender, and countering a negative trend of layoffs, redundancies and, potentially, bankruptcies.

The Government will also propose a green restructuring package to improve competitiveness, facilitate restructuring and promote accelerated emission reduction on the part of businesses for the period after the coronavirus disease outbreak. This will be submitted to the Storting in late May.

## 3.2 Immediate deduction of investments and uplift

### 3.2.1 The proposal in detail

The purpose of the temporary tax changes is to offer companies, in the prevailing situation, improved prospects for taking projects forward.

The Ministry proposes that certain specified costs incurred in acquiring production facilities and pipelines, see below, may for a limited period of time be deducted in the year in which the costs are incurred instead of being depreciated over six years, cf. Chapter 2. Such deduction will be limited to the special tax base. It is proposed, at the same time, that the uplift for the same operating assets to be reduced from a total of 20.8 percent in nominal terms (over four years) to 10 percent of the cost price. The proposal calls for the 10 percent uplift to also be deductible in the special tax base in the year in which the costs are incurred. Equal treatment of various industries is an objective as far as ordinary corporation tax is concerned, thus implying that investments should be depreciated in line with economic depreciation. Petroleum companies already benefit from rapid depreciation over six years and depreciation should therefore not be further accelerated in respect of ordinary corporation tax.

The proposal for immediate deductibility of the cost price and 10 percent uplift in the special tax base shall apply to costs *incurred in the income years 2020 and 2021* in acquiring production facilities and pipelines, cf. Section 3 b, second sentence, of the Petroleum Taxation Act.

Moreover, the Ministry proposes that immediate deductibility of the cost price and 10 percent uplift in the special tax base shall apply to costs incurred in acquiring Section 3 b operating assets falling within the scope of certain specific plans (PDO and PIO, etc.) under the Petroleum Act. It is necessary to link the provisions to conditions that can be verified by the tax authorities. Similar criteria were used to operationalise the transitional provision upon the uplift amendment in 2013, cf. Prop. 150 LS (2012-2013), Chapter 5.8. Applying criteria with which one has past experience will reduce administrative burdens for companies and the tax authorities.

The Ministry is therefore proposing that immediate deductibility in the special tax base shall apply to costs falling within the scope of *a plan for development and operation (PDO) or a plan for installation and operation (PIO) pursuant to Section 4-2 and Section 4-3 of the Petroleum Act* received by the Ministry of Petroleum and Energy prior to 1 January 2022 and approved by the Ministry prior to 1 January 2023. It is proposed, moreover, that the provisions shall apply to costs incurred in acquiring operating assets falling within the scope of *an application for exemption from submission of a PDO or PIO* pursuant to Section 4-2, Sub-section 6, and Section 4-3, Sub-section 4, cf. Section 4-2,

Sub-section 6, of the Petroleum Act, received by the Ministry of Petroleum and Energy prior to 1 January 2022 and approved by the Ministry prior to 1 January 2023. Besides, the proposal encompasses costs incurred in acquiring 3 b operating assets falling within the scope of *a written notification (application)*, received by the Ministry of Petroleum and Energy prior to 1 January 2022 and approved by the Ministry prior to 1 January 2023, of material deviation from, or change in, the assumptions underpinning a submitted or approved plan and material changes to facilities pursuant to Section 4-2, Sub-section 7, and Section 4-3, Sub-section 4, cf. Section 4-2, Sub-section 7, of the Petroleum Act, *provided that the Ministry of Petroleum and Energy approves such change or deviation*. Moreover, in an application for exemption for a PDO or PIO, and a written notification (application) as mentioned, the project needs to be specifically described in order to demonstrate that exemption or approval of the deviation or change would be justified. Such description is necessary to enable the tax authorities to establish which operating assets and costs fall within the scope of the temporary provisions.

In addition to the requirement that a plan, etc., shall be received and approved by the Ministry of Petroleum and Energy by certain deadlines, it is a prerequisite that the plan, etc., is approved after the date of submission of the present proposition, i.e. 12 May 2020.

Immediate deduction of costs and uplift shall nonetheless only apply to costs that are incurred during a limited period of time. Additional investments may be made over an extended period within the scope of an approved PDO or PIO, etc. The Ministry proposes that immediate deduction shall only apply to costs incurred no later than in the year of actual commencement of production with regard to the deposit, or commencement of operation with regard to the facility. If a plan or application concerns additional investments on a petroleum deposit that is already in production, the proposal only applies to costs incurred no later than in the year of the commencement of operation with regard to the additional investment. Costs incurred in the years subsequent to the commencement of production or the commencement of operation will be subject to the ordinary rules on depreciation and uplift in Section 3 b and Section 5 of the Petroleum Taxation Act (unless the costs are incurred in the 2020 and 2021 income years, cf. above).

In addition, the Ministry is proposing an absolute deadline for the immediate deduction of costs. It is noted that these provisions are intended to be temporary. The proposal on immediate deductibility of costs and uplift for costs falling within the scope of a PDO and PIO, etc., does not apply to any costs incurred subsequent to the 2024 income year.

Section 3 d of the Petroleum Taxation Act includes a limitation on which financial costs (net interest costs and foreign exchange items) are deductible in income liable to special tax. The deductible equals such proportion of said financial costs as corresponds to 50 percent of the ratio between the value, net of tax depreciation, of operating assets in the shelf district and the average interest-bearing debt over the year. The proposal for immediate deduction of costs in the special tax base implies that values net of tax depreciation will differ for purposes of ordinary income and the special tax base, respectively. The Ministry proposes a clarification in Section 3 d, Sub-section 2, that the financial cost limitation shall be based on values net of tax depreciation for purposes of

the special tax base. Section 3 d, Sub-section 7, provides scope for reversing net financial costs to ensure that the company will in any event be able effectively deduct financial costs in ordinary income, either in the shelf district or the onshore district.

When costs incurred in acquiring pipeline and production facilities are deducted immediately under the provisions proposed herein, the general depreciation and uplift provisions in Section 3 b and Section 5, Sub-section 4, of the Petroleum Taxation Act shall not apply to such costs in the special tax base.

Section 3 f and Section 5, Sub-section 5, of the Petroleum Taxation Act set out special rules on realisation or withdrawal of operating assets as referred to in Section 3 b of the Petroleum Taxation Act. The rules are intended to ensure symmetric treatment of depreciation and uplift on the part of the purchaser and divestment taxation on the part of the seller. The proposal for immediate deduction of costs and uplift shall apply to costs for a limited period of time. Taxation of the transfer of Section 3 b operating assets is in any event normally regulated under Section 10 of the Petroleum Taxation Act. The Ministry is of the view that the proposal in the present proposition does not give rise to any need for corresponding modification of the realisation or withdrawal provisions. Supplementary provisions on this may, if applicable, be laid down in regulations, cf. below.

There may be a need for issuing further supplementing and implementing provisions in the form of regulations, including on what shall be considered the commencement of production or the commencement of operation with regard to a plan or application encompassing several stages or petroleum deposits, etc. There may, moreover arise a need for regulating in further detail the tax treatment of realisation and withdrawal, cf. above. It is proposed that the Ministry be authorised to issue such regulations.

The proposal means that expenses incurred in acquiring production facilities and pipelines, cf. Section 3 b of the Petroleum Taxation Act, with the addition of 10 percent uplift, may for a limited period of time be deducted immediately in the special tax base instead of being depreciated over six years with 20.8 percent uplift, nominally distributed over four years. The scope of the temporary proposal corresponds to the scope of the special depreciation and uplift provisions applicable to the petroleum companies in Section 3 b and Section 5 of the Petroleum Taxation Act. The Ministry is of the understanding that the proposal does not confer any selective advantage within the meaning of the state aid provisions and that it is therefore not incompatible with the EEA Agreement.

The Ministry refers to the proposed amendment to Section 3 d, Sub-section 2, third sentence, and to the new Section 11, Sub-sections 1 to 5 and Sub-section 7, of the Petroleum Taxation Act.

### **3.2.2 Effects of the proposal**

The proposal implies that petroleum companies are granted immediate deductibility of investment costs and uplift in the special tax, i.e. in the year in which the investment costs are incurred, instead of making such deductions gradually through depreciation over six

years and uplift over four years. Consequently, the proposal will provide petroleum companies with liquidity, and the estimated profitability of the investments after tax may increase, depending on what required rate of return is applied by petroleum companies, cf. below and Box 3.2. The proposal will improve liquidity for all companies that go ahead with investments, including companies that are recording a loss. This results from the proposal being combined with a proposal for payment of the tax value of loss and unused uplift, cf. Chapter 3.3.

Immediate deduction of investment costs in the special tax represents a cash flow tax element. At present, companies are granted an uplift in the special tax. The uplift compensates for investments being depreciated over several years. When the Government allows for immediate deduction of investment costs, the uplift should be reduced. The Government proposes that the uplift be reduced from 5.2 percent per annum for the first four years (20.8 percent in total) to 10 percent in the first year. The scope for deduction of interest costs (deduction of net financial costs) in the petroleum activities is linked to the residual tax value of the operating assets. The interest limitation will, as mentioned in Chapter 3.2.1, be based on tax values in the special tax base under the proposal. The interest deduction in the special tax in relation to the investments falling within the scope of the proposal will lapse since the tax value of the operating assets for purposes of the special tax is reduced to zero upon the deduction.

Under the petroleum tax regime, companies are guaranteed full value of the tax deductions. With high investments and a total tax rate of 78 percent, the tax value of the investment deductions represents a major portion of companies' cash flow for most investment projects. Correct valuation of the tax deductions is therefore important for a complete valuation of the investment projects after tax. Since the tax deductions are guaranteed, it is appropriate to value the tax deductions at a risk-free discount rate after tax.

When the tax value of the current investment deduction (depreciation plus uplift and interest deduction) is calculated at a risk-free discount rate after tax, companies' share of the investment cost after tax is about 12 percent, cf. the tax expenditure estimate in Annex 1 to Prop. 1 LS (2019-2020). With the temporary tax changes proposed by the Government and valuation at the same risk-free discount rate after tax, companies' share of the investment cost after tax will be about 17 percent.<sup>1</sup> Under a neutral petroleum tax, companies should have covered about 23 percent of the investment cost after tax. In other words, the Government's proposal entails a lower estimated tax expenditure, and the temporary tax provisions will still remain investment-friendly, cf. Box 3.1.

Petroleum companies state that they use a valuation method in which the guaranteed tax deductions are valued together with other cash flow at a risk-adjusted required rate of

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<sup>1</sup> In response to question no. 1424 from Åsmund Aukrust, member of the Storting, the Ministry calculated companies' share of the investment cost after tax under an alternative proposal from the Norwegian Oil and Gas Association (Norog), a trade association. Under this proposal, the share is increased from 12 to 14 percent.

return. The estimated profitability of investments after tax may then increase, depending on what required rate of return is applied by petroleum companies, cf. Box 3.2.

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### Box 3.1 Valuation of investment deduction under the petroleum tax regime

In order to assess the profitability of investments, cash flows that are spread out over time must be valued by applying a required rate of return that reflects systematic risk.

With high investments and a total tax rate of 78 percent, the tax value of the investment deductions represents a major portion of petroleum companies' cash flow after tax.

Under the petroleum tax regime companies are guaranteed full value of the tax deductions. This suggests that the tax value of the deductions shall be valued at a risk-free discount rate. If the tax value of guaranteed deductions is valued separately at a risk-free discount rate, the risk-adjusted required rate of return for the remainder of the cash flow must pay heed to the systematic risk in such part of the cash flow. This method is consistent with investment analysis articles and textbooks.

This is the valuation method underpinning the estimated tax expenditure under the petroleum tax regime, as discussed in the annual national budgets. Based on a nominal risk-free discount rate before tax of 2.5 percent, i.e. 1.95 percent after tax, companies' share of the investment cost after tax is estimated at 12 percent under the current provisions, cf. Table 3.1. This share is increased to 17 percent under the Government's proposal, cf. Table 3.2. Under a neutral petroleum tax, companies should have covered about 23 percent of the investment cost after tax.

The net present value of the tax deductions is lower under the Government's proposal, but the deductions are made earlier. As under the current rules, the proposal will imply that investments which are unprofitable to society may nonetheless be profitable to companies after tax. A field development will involve many sub-decisions on individual investments and the scope of investment. Even if a field development is profitable as a whole, the tax system may give rise to sub-decisions that result in excessive investment, thereby reducing value added for society, as well as tax revenues.

Table 3.1 Numerical example of investment deduction under the current provisions

Year	1	2	3	4	5	6	Total
Investment	100						
Deduction under the current provisions:							
- depreciation in ordinary tax and special tax	16.7	16.7	16.7	16.7	16.7	16.7	
- interest deduction in special tax (3.5 percent loan interest rate)	1.5	1.2	0.9	0.6	0.3	0.0	
- uplift in special tax	5.2	5.2	5.2	5.2			

Tax value of the deductions	16.7	16.6	16.4	16.2	13.2	13.0	
Net present value of tax deductions (Risk-free discount rate: 1.95 percent)	16.7	16.2	15.8	15.3	12.2	11.8	88
Companies' investment share after tax (100-88)							<b>12</b>

<sup>1</sup> The calculations are made on an accrued basis.

Source: Ministry of Finance.

**Table 3.2 Numerical example of investment deduction under the Government's proposal**

Year	1	2	3	4	5	6	Total
Investment	100						
Deduction under the Government's proposal:							
- depreciation in ordinary tax	16.7	16.7	16.7	16.7	16.7	16.7	
- depreciation in special tax	100						
- interest deduction in special tax (3.5 percent loan interest rate)	0.0	0.0	0.0	0.0	0.0	0.0	
Uplift in special tax	10.0						
Tax value of the deductions	65.3	3.7	3.7	3.7	3.7	3.7	
Net present value of tax deductions (Risk-free discount rate: 1.95 percent)	65.3	3.6	3.5	3.5	3.4	3.3	83
Companies' investment share after tax (100-83)							<b>17</b>

Source: Ministry of Finance.



Source: Ministry of Finance.

Correspondingly, valuation of guaranteed tax values of investment deductions at a risk-adjusted required rate of return will entail a tax reduction over time, measured at net present value. In contrast to the estimated tax revenue increase of NOK 14 billion over time referred to in Chapter 4, the Government's proposal will result in a tax reduction for companies of NOK 15 billion over time, measured at net present value, if the investment deductions are valued at a required rate of return of 10.2 percent in nominal terms after tax.

### **3.3 Payment of the tax value of loss and unused uplift**

#### **3.3.1 The proposal in detail**

Section 3 c, Sub-section 2, and Section 5, Sub-section 6, of the Petroleum Taxation Act stipulate that loss and unused uplift can be carried forward, with the addition of interest. If there is any uncovered loss or unused uplift upon the discontinuation of activities that are liable to special tax, the taxpayer may claim payment of the tax value of such loss and unused uplift from the State, cf. Section 3 c, Sub-section 4, and Section 5, Sub-section 7.

The Ministry proposes that a company with any uncovered loss and unused uplift arisen in the 2020 and 2021 income years may instead claim payment from the State of the tax value for each income year. Under the current provisions, a petroleum company with any loss in the income year that its origin in exploration expenses, may claim annual payment of the tax value of the exploration expenses incurred in the income year, cf. Section 3 c, Sub-section 5, of the Petroleum Taxation Act. The proposal implies that the company may for the two income years in question claim payment from the State of the tax value of the loss, irrespective of what type of costs in the petroleum activities the loss has its origin in. It is proposed, in the same way as for the payment arrangements for exploration expenses and upon discontinuation, that the tax value be determined by multiplying uncovered loss in ordinary income and in the special tax base by the applicable tax rates, and correspondingly for unused uplift in the special tax base. Furthermore, the Ministry proposes that the amount shall be determined correspondingly by the tax authorities upon the tax assessment for the year in which the loss and the unused uplift has arisen (the 2020 and 2021 income year, respectively).

If the company claims payment of the tax value of any loss and unused uplift for the 2020 and 2021 income years under the proposed rules, such loss and uplift shall not be carried forward to subsequent years with the addition of interest and potential payment at the time of discontinuation, etc., under the general rules in Section 3 c and Section 5 of the Petroleum Taxation Act.

Section 10-1, Sub-section 3, of the Tax Payment Act permits the granting of security interests in the claim for payment from the State of the tax value of exploration expenses, cf. also the accompanying rules in Section 3 c, Sub-section 5, final sentence, of the

Petroleum Taxation Act. The Ministry proposes the introduction of corresponding rules permitting the granting of security interests in the claim for annual payment of loss and unused uplift as proposed herein (including rules on set-off, cf. Section 10-1, Sub-section 3, second sentence, of the Tax Payment Act).

The proposal on payment of loss and unused uplift means that the petroleum company may for the two income years in question claim payment from the State of the tax value instead of carrying forward the loss and the uplift, with the addition of interest, for deduction in future income or, alternatively, payment of discontinuation imbursement. The Ministry is of the understanding that this proposal does not, like the rules on reimbursement of exploration costs, cf. ESA Decision 018/19/COL, confer any selective advantage and that it is therefore not incompatible with the EEA Agreement.

The Ministry refers to the proposed new Section 11, Sub-section 6, of the Petroleum Taxation Act.

### **3.3.2 Effects of the proposal**

The proposal implies that petroleum companies may claim payment of the tax value of any loss and unused uplift for each income year, instead of such loss and unused uplift being carried forward, with interest, and, if applicable, deducted in future profits. Consequently, the proposal will provide petroleum companies that are incurring a loss with liquidity. How much liquidity will depend on how many companies are incurring a loss and the amount of any loss and unused uplift. It is expected that both figures will increase as the result of the proposal for immediate deduction of investments and uplift, cf. Chapter 3.2.

Companies are under the current provisions guaranteed full value of the losses carried forward. Consequently, payment of the tax value does not represent a loss of tax revenues, measured as the net present value at a risk-free discount rate after tax. Tax revenue implications are outlined in Chapter 4.

## **4 Economic and administrative implications**

It is estimated, on an uncertain basis, that the proposals as a whole will provide petroleum companies with considerable liquidity, in the region of NOK 100 billion for the years 2020 and 2021. The proposals may serve to enable companies to go ahead with planned investments. The tax revenue loss in 2020 is estimated to be about NOK 59 billion accrued and NOK 29.5 billion booked, while the tax revenue loss in 2021 is estimated to be NOK 40 billion accrued and NOK 50 billion booked. The tax revenue loss for 2020 and 2021 is estimated by using the current provisions as the benchmark.

Over time, the short-term tax revenue loss will be compensated by a tax revenue increase as the result of the lapsing of future depreciation deduction, uplift and interest deduction. The Ministry estimates that the proposal will all in all increase tax revenues by about NOK 14 billion over time, measured as net present value at a risk-free discount rate after

tax. The tax revenue estimates are based on the investment estimate in the Revised National Budget for 2020, and the estimates will depend on how investments develop.

The overall proposal implies that there will for several years be parallel sets of rules for the tax treatment of expenses incurred in acquiring production facilities and pipelines and losses, etc. Moreover, the proposal for immediate deduction of costs that fall within the scope of plans, etc., under the Petroleum Act, does give rise to a number of delineation issues. This increases administrative burdens on companies and the tax authorities in relation to the tax assessment. Administrative burdens are reduced by the proposals being partly based on criteria with which one has past experience, as well as by their duration being clearly defined.

## **5 Effective date**

The Ministry proposes that the scope for immediate deductibility of the cost price and 10 percent uplift in the special tax base shall enter into force immediately with effect for costs incurred in the income years 2020 up to and including 2024. It is proposed that payment of the tax value of loss and unused uplift shall enter into force immediately with effect for loss and unused uplift arisen in the income years 2020 and 2021. It is proposed that the clarification in Section 3 d, Sub-section 2, third sentence, of the Petroleum Taxation Act on limitation of financial costs shall enter into force immediately with effect as from the income year 2020. It is proposed that the authorisation for the issuance of regulations shall enter into force immediately.

The Ministry of Finance

hereby recommends:

that Your Majesty approves and signs the submitted proposal for a proposition to the  
Starting on amendments to the Act relating to the Taxation of Subsea Petroleum Deposits,  
etc. (the Petroleum Taxation Act).

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**We HARALD**, King of Norway,

hereby confirm:

that the Storting is requested to enact the Act on amendments to the Act relating to the Taxation of Subsea Petroleum Deposits, etc. (the Petroleum Taxation Act) in accordance with the submitted proposal.

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**Proposal**  
**for an Act on amendments to the Act relating to the Taxation of Subsea Petroleum Deposits, etc. (the Petroleum Taxation Act)**

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The following amendment shall be made to Act of 13 June 1975 No. 35 relating to the Taxation of Subsea Petroleum Deposits, etc. (the Petroleum Taxation Act):

Section 3 d, Sub-section 2, third sentence, shall be worded as follows:

The deduction shall equal such proportion of the net financial costs of the company as corresponds to 50 percent of the ratio between the value, net of tax depreciation, *in the special tax base* as per 31 December of the income year, of assets attributed to the shelf district and the average interest-bearing debt over the income year.

II

The following amendment shall be made to Act of 13 June 1975 No. 35 relating to the Taxation of Subsea Petroleum Deposits, etc. (the Petroleum Taxation Act):

New Section 11 heading and Sub-sections 1 to 5 shall be worded as follows:

Section 11 *Temporary rules on depreciation, uplift and loss*

- (1) *Expenses incurred in the 2020 and 2021 income years in acquiring pipeline and production facilities, including the installations which form part of, or are related to, such facilities, cf. Section 3 b, second sentence, with the addition of 10 percent uplift, may be deducted in the special tax base in the year in which the expenses are incurred.*
- (2) *Expenses incurred in acquiring pipeline and production facilities, including the installations which form part of, or are related to, such facilities, cf. Section 3 b, second sentence, with the addition of 10 percent uplift, may be deducted in the special tax base in the year in which the expenses are incurred if these fall within the scope of the following plan, application or notification:*
  - a. *a plan for development and operation pursuant to Section 4-2 of the Petroleum Act received by the Ministry of Petroleum and Energy prior to 1 January 2022 and approved prior to 1 January 2023; or*
  - b. *a plan for installation and operation pursuant to Section 4-3 of the Petroleum Act received by the Ministry of Petroleum and Energy prior to 1 January 2022 and approved prior to 1 January 2023; or*
  - c. *an application for exemption for a plan pursuant to Section 4-2, Sub-section 6, and Section 4-3, Sub-section 4, cf. Section 4-2, Sub-section 6, of*

*the Petroleum Act, received by the Ministry of Petroleum and Energy prior to 1 January 2022 and approved prior to 1 January 2023; or*

*d. a written notification (application) of material deviation from, or change in, the assumptions underpinning a submitted or approved plan and material changes to facilities pursuant to Section 4-2, Sub-section 7, or pursuant to Section 4-3, Sub-section 4, cf. Section 4-2, Sub-section 7, of the Petroleum Act, received by the Ministry of Petroleum and Energy prior to 1 January 2022 and approved prior to 1 January 2023.*

*(3) Any plan, application or notification under Sub-section 2 shall be approved by the Ministry of Petroleum and Energy after 12 May 2020.*

*(4) Sub-section 2 shall only apply to expenses incurred no later than in the year of the commencement of production with regard to the petroleum deposit or the year of the commencement of operation with regard to the facility. If a plan or application under Sub-section 2 concerns additional investment on a petroleum deposit that is already in production, Sub-section 2 shall only apply to expenses incurred no later than in the year of the commencement of operation with regard to the additional investment. Sub-section 2 shall not apply to any expenses incurred subsequent to the 2024 income year.*

*(5) The provisions in Section 3 b, second sentence, and Section 5, Sub-section 4, first and second sentence, are not applicable in the special tax base for expenses that are deducted, pursuant to Sub-sections 1 and 2, in the year in which these are incurred.*

### III

The following amendment shall be made to Act of 13 June 1975 No. 35 relating to the Taxation of Subsea Petroleum Deposits, etc. (the Petroleum Taxation Act):

New Section 11, Sub-section 6, shall be worded as follows:

*(6) Payment of the tax value of any loss and unused uplift arisen in the 2020 and 2021 income years may be claimed from the State. The tax value of loss shall be determined by multiplying uncovered loss in ordinary income in the shelf district and in the special tax base by the applicable rates in the income year. The tax value of unused uplift shall be determined by multiplying unused uplift by the applicable rate of special tax in the income year. The amount shall be determined by the tax authorities for the income year in which the loss and unused uplift has arisen. When payment of the tax value of loss and unused uplift is claimed pursuant to this Sub-section, such loss and unused uplift shall not be dealt with in accordance with other provisions in Section 3 c or Section 5. Section 10-1, Sub-section 3, of the Tax Payment Act shall apply correspondingly to claims for payment from the State pursuant to this Sub-section. If any claim for payment from the State pursuant to this Sub-section, first sentence, has been assigned, or if a security interest has been granted therein, such loss and unused uplift shall be dealt with in accordance with the rules in the first sentence, unless the*

*holder of such security interest or the assignee of such claim consents to these being dealt with otherwise in accordance with Section 3 c or Section 5.*

#### IV

The following amendment shall be made to Act of 13 June 1975 No. 35 relating to the Taxation of Subsea Petroleum Deposits, etc. (the Petroleum Taxation Act):

New Section 11, Sub-section 7, shall be worded as follows:

*(7) The Ministry may issue regulations for purposes of implementing and supplementing the provisions of this Section, including on what shall be considered the commencement of production or the commencement of operation for purposes of Sub-section 4 with regard to any plan or application encompassing several stages or petroleum deposits. Furthermore, the Ministry may lay down rules on taxation upon realisation and withdrawal when the cost price of the operating asset is subject to Sub-sections 1 and 2.*

#### V

The amendment under I shall enter into force immediately with effect as from the income year 2020.

The amendment under II shall enter into force immediately with effect for any expenses incurred in the income years 2020 up to and including 2024.

The amendment under III shall enter into force immediately with effect for any loss and unused uplift arisen in the income years 2020 and 2021.

The amendment under IV shall enter into force immediately.