

Summary

EY has been hired by KS to perform an assessment of the legal basis for the Norwegian Tax Administration interpretation of the VAT compensation law within municipal housing and municipal centers of culture. EY has also made an estimate of the financial consequences for the municipalities. EY has based the assessment and analysis on case studies of Norwegian municipalities.

The Norwegian Tax Administrations practice for VAT compensation for municipal housing requires that the house must be physically adapted for residents in need of such adaptations because of age or disabilities. However, the studies show that Norwegian Tax Administration rarely accepts VAT compensation for homes that are adapted for social purposes.

A review of "case municipalities" practice of the VAT compensation laws shows that the municipalities interpret the regulations differently than the Norwegian Tax Administration. The municipalities claim VAT compensation for a higher number of municipal housing than Norwegian Tax Administration accepts. The difference is primarily related to housing for people with substance abuse or mental illness.

Estimates show that municipalities in Norway may have received VAT compensation of approx. NOK 1.9 billion related to housing, in which the Norwegian Tax Administration does not consider to be entitled to compensation.

EY considers, based on the sources of law, that the Norwegian Tax Administrations interpretation and application of the rules is too rigid. In addition, the Norwegian Tax Administration requires documentation that is very difficult for the municipalities to comply with.

Decisions from the Norwegian Tax Administration regarding centers of culture in Kristiansand and Stavanger, shows that the Norwegian Tax Administration interprets the "exception of competition" very broad. This means that the Norwegian Tax Administration considers these centers of culture to compete with a lot wider range of activities than the municipalities presume. In these cases the Norwegian Tax Administration states that these centers of culture do not have the right to VAT compensation. A review of these and other cases, show that the municipalities claim VAT compensation for centers of culture in a far greater extent than the Norwegian Tax Administration will accept.

Since 2008 local municipalities have invested about NOK 10 billion in new centers of culture. Estimates show that municipalities have received VAT compensation of NOK 1.3 to 1.4 billion more than the Norwegian Tax Administration presumably would accept.

It is EY's opinion, based on an assessment of the legislative history of the "exception of competition", that the Norwegian Tax Administrations practice of the law is too rigid. An assessment of the Norwegian Tax Administration regulatory practice in relation to ESA's practice, shows that the Norwegian Tax Administration considers municipalities' rights to VAT compensation more limited than the ESA decision justifies.

This indicates a potential refund claim from the Norwegian Tax Administration towards local municipalities of NOK 3.2 to 3.3 billion. This amount is limited to investment costs within social housing

and centers of culture. Annual VAT compensation for the operation of the same buildings will be added to the amount. In addition, the "exception of competition" will partly or in whole also include operational and investment costs in such as swimming pools, dental services to paying customers , reception centers for appliers of asylum , school camps , pupils / students canteens , free ferry transport, marinas, free museums etc. The potential loss for municipalities is far greater than NOK 3.3 billion.