



MEMORANDUM

To Association of Arctic Expedition Cruise Operators, att.: Frigg Jørgensen
From Espen Nordbø og Gina Roll
Date 20 January 2022
Partner in charge Geir Steinberg

TAX RULES FOR INTERNATIONAL SHIPPING IN SVALBARD

1. Introduction

We have been asked by the Association of Arctic Expedition Cruise Operators (**AECO**) to prepare this memorandum to clarify the current tax rules for international shipping in Svalbard. AECO wants the following questions answered:

- Whether Norway may charge taxes for companies engaged in international maritime activities in Svalbard when the activities take place continuously for 30 days or more.
- Whether Norway may claim personal tax from seafarers and other employees on board vessels that have stays of 30 days or longer.
- What will the relationship be between taxes paid to Svalbard and other tax claims these companies/seafarers are subject to?
- Who is responsible for paying the taxes? Ship owner, shipmanagement, ship operator (there are many parties on a vessel).
- What services may taxpayers (companies and persons in this context) expect/be entitled to from Svalbard if they pay tax to Svalbard?
- How is the tax calculated? How is the tax basis determined and which tax rates apply?
- What is required to "break" the 30-day stay? How long do you have to stay out of territorial waters before you've broken the period? Do you have to do something special outside the border for it to be counted?

These questions will be answered in the same order as listed here.

2. Background and clarifications

AECO is an international organization for cruise operations in the Arctic and for others with interest in the industry. The organisation represents parties who operate in the Arctic and in this connection have issues related to the tax consequences of operating in Svalbard.

Initially, it is necessary to define the area of Svalbard to clarify where Norwegian laws and regulations apply.

Svalbard is part of the kingdom of Norway. It is the international Svalbard Treaty that ensures Norway sovereignty in Svalbard. The treaty area is defined by geographical coordinates (between 10° and 35° east, and between 74° and 81° north), while the largest islands in the area are mentioned by name, including Bjørnøya. The area of validity is further clarified to also apply to "all the islands, islets and skerries that belong to these". The provisions of the treaty cover the territorial waters of the area.¹ Territorial waters include the sea area from the baselines out to 12 nautical miles from these.²

In this memorandum, reference to "Svalbard" includes both the land areas and the sea area from the baselines out to 12 nautical miles from these, unless otherwise specified.

Even though Svalbard is part of Norway, not all laws apply to the archipelago. There is therefore a distinction between laws and regulations in Svalbard and laws and regulations elsewhere in Norway, hereinafter referred to as "mainland Norway" or "mainland".

Svalbard is a separate area of taxation. The taxation is regulated by act of 29 November 1996 no. 68 on tax to Svalbard (the Svalbard Tax Act) and the Regulations of 15 December 1997 no. 1305 on tax to Svalbard. For payment and collection of tax and national insurance contributions to Svalbard, the Tax Payment Act applies, see Section 5-1 of the Svalbard Tax Act. For tax determined by withholding tax, special rules in the Svalbard Tax Act § 5-2 apply.³ Determination of holiday pay, tax deductions and payments are regulated by the Act of 29 April 1998 no. 21 on holidays (the Holidays Act).

Svalbard is not part of the Schengen cooperation or the EEA Agreement. Therefore, foreigners do not need a visa or work and residence permit from the Norwegian authorities to stay in Svalbard.⁴ The EEA agreement's provisions on social security do not apply. Nor do the tax agreements between Norway and other countries. The significance of this is discussed below.

In the memorandum, we will generally distinguish between natural persons (crew) and companies, and between resident or residents of Svalbard and resident or residents abroad or mainland Norway.

3. Tax on maritime activities in Svalbard

Companies that are resident outside Svalbard are taxable on income gained from business carried out in Svalbard, if the activities within the territory last continuously for at least 30 days.⁵

Svalbard is defined in the Svalbard Tax Act with reference to the Svalbard Act, where the definition coincides with the definition in the Svalbard Treaty, i.e. land areas within given coordinates. The territorial waters are also part of Svalbard and extend from the baselines out to 12 nautical miles from these.⁶ Activities in Svalbard's territorial waters are thus covered by the scope of the provision.

The business activities in territorial waters must last for at least 30 days continuously. Transport by ship, including of passengers, is viewed as business.⁷ Normally, a company's overall operations, regardless of location, including on different ships, will be regarded as one business.⁸ A company that carries out activities in Svalbard through two or more vessels, where none of the vessels stay for 30 days in Svalbard, but where, due to overlap, there will be vessels in Svalbard for at least 30 days, can thus meet the condition of continuous activities for at least 30 days.

In the event of short-term cruises in the territorial waters or at port calls to bunker that last less than 30 days, the company will not be liable to tax in Svalbard, provided that the company has no other

¹ Article 1 of the Svalbard Treaty Article 2 and Section 5 of the Territorial Waters Act

² The Territorial Waters Act Section 2.

³ <https://www.skatteetaten.no/rettskilder/type/skattedirektoratets-meldinger/svalbardmeldingen-2021/>

⁴ <https://www.sysselmesteren.no/contentassets/7fe72a4c59a14a84b18e0eb08e657f51/norsk-informasjon-til-utenlandske-statsborgere.pdf>

⁵ The Svalbard Tax Act, Section 2-4

⁶ The Territorial Waters Act Section 2

⁷ Norwegian International Tax Law, Naas et al. page 531.

⁸ There may be cases where one company is deemed to be operating two separate businesses if there is no functional or economic connection between the activities.

vessels sailing in Svalbard. Concerning short interruptions and the importance of sailing in and out of Svalbard, see point 9 below.

As a starting point, companies that are resident in Svalbard are liable to tax to Svalbard regardless of where the income is earned. Such companies are nevertheless exempt from tax to Svalbard on income earned outside Svalbard, provided that the company can document that it has paid tax on this income either to Norway or to another state.⁹

Conducting activities may also include a company making its own employees available to others in Svalbard. Further information under section 6.1.

4. Tax of work carried out on board vessels in Svalbard

Individuals who are not resident in Svalbard have a tax liability to Svalbard if they have a temporary stay in Svalbard that lasts for at least 30 consecutive days, and they carry out work or business activities in Svalbard. It is not a requirement that the work lasts for at least 30 days continuously. It is sufficient that the stay lasts for at least 30 days. A person that works on a vessel that stays in the territorial waters of Svalbard for 29 days, disembarks on Svalbard territory and stays there for a few more days without working, will have fulfilled the conditions for tax liability to Svalbard.

Where a company has several vessels operating in Svalbard for at least 30 days, but where each vessel and its crew on board does not stay longer than 29 days in Svalbard, the company will have a tax liability, but not the crew.

Persons residing in Svalbard shall pay taxes on their entire wealth and income. A person is considered resident in Svalbard if the stay has a duration of at least 12 months, see Section 2-1 of the Svalbard Tax Act. Salary and other remuneration for work carried out outside Svalbard is exempt from the tax liability if substantiated that the income is liable to tax either in mainland Norway or in a foreign state.

5. The relevance of tax liability also in other states or in mainland Norway

Companies that are not resident in Svalbard and persons who are not resident in Svalbard and who have a tax liability to Svalbard pursuant to the rules in sections 3 and 4, will not be exempt from tax to Svalbard even if they may be liable to tax on the same income also in their state of residence.

Norway has tax treaties with many countries. Such agreements are intended to prevent or remedy double taxation. As mentioned earlier, these agreements do not apply to Svalbard. The consequence of this is that double taxation of both the company and the natural person may occur. The person affected by such double taxation must look to his or her own home state for rules that can remedy the situation.

On the other hand, double taxation does not occur between Svalbard and mainland Norway. Pursuant to the Norwegian Tax Act, persons resident on the mainland and companies resident on the mainland shall not be taxed on income and wealth taxed in Svalbard.¹⁰

As mentioned above in sections 3 and 4, companies and persons resident in Svalbard will be exempt from tax to Svalbard on income earned outside Svalbard provided they can document that they have paid tax on this income either to Norway or to another state.¹¹

⁹ Section 2-3, second subsection of the Svalbard Tax Act.

¹⁰ Tax Act Section 2-35 second paragraph (c).

¹¹ Section 2-1, fourth subsection, and 2-3 second paragraph of the Svalbard Tax Act.

6. Who is responsible for paying the taxes?

6.1 Personal income tax

Income earned when working on ships in the territorial waters of Svalbard where the stay lasts at least 30 days shall be taxed according to the tax withholding rules that apply in Svalbard.¹²

The tax rules state that anyone who receives a salary or other benefits for work in Svalbard must pay tax to Svalbard pursuant to the particular withholding scheme. This implies that the employer shall withhold tax and any national insurance contribution before paying out net salary.

Who the "employer" is, is determined by the formal employment contract. The crew of a boat can consist of both employees of the company that runs the business in Svalbard and of hired personnel from a staffing agency or similar. There may also be cases where two or more companies cooperate on the operation of a vessel. In any case, the withholding obligation lies with the formal employer, i.e. the enterprise that pays the employees' salaries.

Details on how the withholding is to be carried out, including how the tax basis is calculated, which rate is to be deducted from the salary, what duties are imposed on the taxable person and how the employer shall report on the tax deduction to the authorities, are discussed under section 8.1.

6.2 Business income

Companies that are not resident in Svalbard shall pay tax on income gained "through activities carried out in Svalbard" provided that the activities within the Svalbard territory last continuously for at least 30 days.

There may be several parties/companies in maritime activities considered to be "exercising" activities in Svalbard in the sense of the Act.

The clear case is the company that carries out the activity that takes place physically in Svalbard (for example cruise activities) and whose employees are engaged in this activity on behalf of the company in Svalbard.

Where several companies cooperate on the activities taking place in Svalbard, both/all companies may have a tax liability on the jointly earned income.

Furthermore, tax liability may also arise for companies that make their own employees available to companies engaged in activities in Svalbard. A staffing company or other foreign employer that hires out personnel to another company may be liable to tax to Svalbard of this hiring business if the personnel carry out their work in Svalbard. On the other hand, a pure employment agency, i.e. where the intermediary does not act as an employer, does not have a tax liability to Svalbard for fees earned from such activity.¹³

The other parties with ties to the vessel – ship owner, shipmanagement, the ship operator or others – may also be liable to tax in Svalbard, depending on whether they are operating in Svalbard, i.e. whether the company in question has personnel, employees or contractors over whom they have instructional authority, working from Svalbard. If the ship owner is a separate company (i.e. a different company than those who run the cruise business etc.) who is solely the owner of the ship and rents out the ship to another company, the ship owner will not be deemed to be doing business in Svalbard and shall not answer taxes to Svalbard. The same applies to ship management if they are a separate company without their own people on the vessel and provide maintenance and repairs outside

¹² Svalbardskatteloven Section 5-2.

¹³ Ministry of Finance in Utv. 2008 p. 531

Svalbard. As regards the ship operator, tax liability to Svalbard will also depend on whether they are a separate company and where their personnel carry out the work.

Further information on the determination of the taxable income, payment of tax and reporting to the authorities is presented under section 8.2.

7. Which services can taxpayers expect/be entitled to from Svalbard if they pay tax to Svalbard?

Entitlement to health services and benefits from the Norwegian Labour and Welfare Administration (NAV) in Svalbard requires membership in the Norwegian National Insurance Scheme.

Membership in the Norwegian National Insurance Scheme is achieved automatically if an employee works for a Norwegian employer in Svalbard.¹⁴ This applies regardless of whether the person concerned is resident in Svalbard or abroad. People who are already members of the Norwegian social security and who settle or stay in Svalbard, will keep their membership.¹⁵

However, note the National Insurance Act's exemption for persons employed in hotel and restaurant activities on board tourist ships registered in the Norwegian International Ship Register. These are exempt from mandatory membership and do not qualify for voluntary membership of the Norwegian social security.

Persons who do not work for a Norwegian employer in Svalbard and are also not already members of the Norwegian National Insurance Scheme do not qualify for membership of the Norwegian National Insurance Scheme on the basis of working on vessels operating in Svalbard. Voluntary membership is available to a very limited extent and requires a strong connection to Norway, which we understand is not relevant or desirable.

Persons who are not members of the Norwegian National Insurance Scheme have no rights under the National Insurance Act. They shall not pay national insurance contributions to Norway.¹⁶

Further information on the size and payment of the tax is explained in section 8, and thus only applies to those who work for a Norwegian employer in Svalbard.

Members of the Norwegian National Insurance Scheme will be entitled to Norwegian health services in line with more detailed rules.¹⁷ Persons who are not members of the Norwegian National Insurance Scheme must pay for health services, childbirth services and hospitalization themselves.

8. How is the tax calculated? How is the tax basis determined and which tax rates apply?

8.1 Income from employment

Salary and other remuneration for work in Svalbard may be liable to tax in Svalbard either on the basis of tax residency (permanent residence) in Svalbard or due to temporary residence in connection with work where the stay lasts for at least 30 days continuously. Taxation is carried out by the employer withholding tax (and possibly also National Insurance contributions) from the salary payment.

¹⁴ Norwegian National Insurance Act Section 2-3 second paragraph

¹⁵ National Insurance Act Section 2-3 first paragraph

¹⁶ <https://www.nav.no/no/person/flere-tema/arbeid-og-opphold-i-norge/relatert-informasjon/medlemskap-i-folketrygden>

¹⁷ In principle, the National Insurance Act entitles to sickness benefits, parental benefits in connection with pregnancy and childbirth, child benefit and care days to care for sick children. For at least 5 years of membership, the right to an old-age pension is also earned. We assume this has little practical significance for foreign crew on board cruise ships and will therefore not discuss it further.

The basis for taxation is the gross value of the compensation (sum of work remuneration).¹⁸ No deductions are granted in salary, pension etc. that are taxed according to the withholding tax scheme in Svalbard.

The compensations and benefits included in the basis are mainly

- salary and other remuneration for work and assignments in and outside contractual employment relationship, including fees, commissions, etc.
- director's fees etc.
- natural benefits and profits on remuneration
- remuneration upon termination of employment

From 1 January 2022, the Holiday Act came into force in Svalbard. Salary and other remuneration for work include statutory holiday allowance, so-called holiday pay. The accrual of holiday pay is taxable income in the same way as salary, and tax shall therefore also be withheld from what is earned in holiday pay. The tax withholding shall take place at the time of accrual, as is done on in mainland Norway, and not at the time of payment, as we understand the practice has been in Svalbard in the past when the Holiday Act did not apply.

The tax is calculated at the low rate for income up to 12 times the basic amount of the National Insurance Scheme (currently NOK 106,399), and at a higher rate for excess income, see Section 3-1 of the Svalbard Tax Act. Only the benefits earned when working in Svalbard for at least 30 days are included in the calculation of which rate to use.

Rates for 2022:¹⁹

- Low rate: 8%
- High rate: 22%

National insurance contributions shall also be withheld for those who have membership in the National Insurance Scheme, see section 7 on this. National insurance contributions are paid at 8% on the same basis as for taxation. Employer's National Insurance contributions (0-rate) shall not be paid.

For crew members on vessels that are temporarily in Svalbard, the delimiting of the income gained when working in Svalbard will normally depend on a concrete assessment. When paying salary, the employer must decide how much of this salary relates to work that is taxable to Svalbard and make a tax withholding in this share.

The Act on Employers' reporting of employments and remunerations (the a-information Act) mandates that in the event of tax withholding, the employer must submit notification of the withholdings made, so-called "a-melding".²⁰ Delivery of a-melding must be done electronically in Altinn.²¹ This presupposes that the employer is registered in the Register of Legal Entities and, if applicable, the Register of Business Enterprises (if the company itself is to conduct business in Norway/Svalbard), which gives the company an organisation number. If a foreign company is to register in the Register of Legal Entities, it must as a starting point submit a register form on paper including various documentation.

Reporting on the a-melding requires that the employees have a Norwegian social security number or D-number (a Norwegian identity number). Obtaining a D-number usually requires that the person in question has met for ID control physically at Tax Office's service point.

Cruise operators and other foreign enterprises must notify the Svalbard Tax Office prior to entering the Svalbard territory. As of today, there are no guidelines or forms for what kind of information and documentation such a notification should contain. We assume that the Tax Administration will adapt the systems that are already available on reporting of foreign enterprises that have been assigned

¹⁸ Ot.prp. no. 32 (1995-1996) Act relating to taxation to Svalbard and the Act relating to taxation of persons on Jan Mayen Chapter 7.

¹⁹ The Svalbard Tax Act Section 3-1 and the Storting's tax decision for Svalbard Section 3 litera a.

²⁰ Section 8-8, first subsection of the Tax Management Act.

²¹ Section 5 of the Act.

assignments for execution in Norway (mainland)²². The foreign enterprises must be prepared to provide documentation from registers in their own home country and names and other personal data for the personnel on board, and probably also copies of passports.

Taxable employees do not submit a tax return for the income earned in Svalbard. The tax withholding scheme described above is the only and final reporting obligation. This means that the employer has the full responsibility for that the information is correct, as the employee does not submit a notification himself or herself.

8.2 Business income

Companies that are not resident in Svalbard, but who conduct activities in Svalbard for at least 30 days, will be liable to tax on income from this activity. If the company operates in other jurisdictions in addition to Svalbard, the company must specifically determine the income to be allocated to the activity in Svalbard. For example, if the company has been carrying a group of cruise passengers for 2 months at a time, where 30 days have been spent in the territorial waters of Svalbard, it would be natural to allocate half of the income from this cruise to Svalbard, unless there is basis to determine this in a different way.

Companies with tax liability to Svalbard must submit a business statement and tax return, in much the same way as companies with tax liability to mainland Norway²³. The forms are filled in and delivered in the same way as on the mainland – in Altinn. For foreign companies, this means that to the extent that they do not already have a Norwegian organisation number, they must register in the Register of Business Enterprises. They must also register in the Employer and Employee Register (Aa Register) so that they can submit a tax withholding report. We assume that the tax office will draw up guidelines adapted to the foreign shipping companies that visit Svalbard.

There are two different steps with different tax rates for companies that are liable to tax in Svalbard. As a starting point, the low rate applies to income up to MNOK 15 and a high rate of income exceeding MNOK 15. However, the entry point for the high rate is increased to the highest of the following amounts:

- i) 10 times the cost of salary taxed under the withholding tax scheme, or
- ii) 0.20 times the tax value of facilities, real estate or other real capital (including ships) that are in Svalbard at the end of the income year (Note that tax value is not the same as net wealth, so as not to deduct loans in determining the tax value of the ship).

The threshold for when to use a high rate is thus the highest of MNOK 15 and point i) and ii) above.

The low rate is 16%. The high rate is 22%²⁴.

9. What is required to "break" the 30-day period How long do you have to stay out of territorial waters before you've broken the period? Do you have to do something special outside the border for it to count?

For both companies and persons, the Act states that the stay and the business must last "continuously" for at least 30 days for the tax liability to occur. The law has historically been interpreted in a way that even very short exits will break the period. For example, if a person works in Svalbard for 14 days, leaves Svalbard for the weekend and then returns to work 20 days in Svalbard, these are deemed two stays of less than 30 days.

²² [Information about contracts, contractors and employees - The Norwegian Tax Administration](#)

²³ Section 8-2, first paragraph (b) of the Tax Management Act.

²⁴ The Storting's tax decision for Svalbard Section 3 litera b

According to its wording, the condition "continuous" does not allow for a discretionary assessment, which could present several challenges if one were to allow short stays outside Svalbard not to break the period.

The Tax Office in Svalbard has verbally stated that they will not accept any short-term stay outside the territorial waters as breaking the 30-day limit. If you sail out of the 12-mile zone for no other reason than to avoid tax liability to Svalbard, the Tax Office believes that you do not interrupt the period. The viewpoint is probably based on the general circumvention rule of the Tax Act in Section 13-2. However, the same section has a special rule that seems to allow one to adapt to rules with sharp time delimitations. We have not found sources that take a position on this issue but doubt that this is understood correctly by the tax office.

The Tax Office has also verbally stated that it will not accept brief exits out of the 12-mile zone to avoid storms (possibly in combination with avoiding dangerous waters) as sufficient to breach the 30-day limit. We are even more doubtful about such an understanding of the regulations.

Please note that when calculating "30 days", travel days to and from Svalbard must not be counted; only whole days within Svalbard are counted. In other words, entry days and departure days do not count.