PRESS RELEASE

THE WEALTH TAX ON WORKING CAPITAL MAY BE UNLAWFUL
Top lawyers prepare lawsuit against the Norwegian government

(OSLO, September 9, 2024) Small business owner Lars Oscar Øvstegård from Ørsta wants to take legal action against the state to test whether the wealth tax on working capital is unlawful.

– It's about fairness and justice. Wealth tax on working capital affects small and medium-sized enterprises, which make up 98% of Norwegian businesses. A court case will shed light on the problems with this tax," says Øvstegård.

With financial support from crowd funding, Øvstegård has obtained a legal opinion from three leading legal experts: The EFTA Court's long-standing President; Swiss Professor Carl Baudenbacher, President of the Swiss Competition Commission; lawyer Laura Baudenbacher, and Professor Mads Andenæs at the Faculty of Law, University of Oslo.

Other countries have removed the tax
The introductory legal study shows that the Norwegian wealth tax compares unfavorably to that of other countries. In Europe, only Switzerland and Spain have some form of wealth tax on owning a business, but compared to Norway, they have lower rates and exemption schemes. Norway's neighboring countries have all removed the tax. Wealth tax has been legally and politically challenged in several countries. The report provides a good basis to prepare for a lawsuit against the Norwegian Government.

Unconstitutional confiscation of property
According to the lawyers, a lawsuit can be based on several legal grounds. The report looks specifically at how wealth tax can be regarded as a state confiscation of business property. Section 105 of the Norwegian Constitution prohibits confiscation, i.e. the state seizing private capital in an unreasonable manner.

Impact from wealth tax hike is not sufficiently investigated
The lawyers point to a lack of impact assessment that should have been done ahead of the increased wealth tax in 2021. The rise included higher tax rates and changes in the valuation rules. At the same time, the dividend tax rose. The combined effect was not investigated with respect to cases where the increase would have a strong impact. This is in breach of the investigation instructions and the proportionality requirement under the Norwegian Constitution, the European Convention on Human Rights and the EU/EEA rules. These sets of rules require the effects to be assessed through thorough impact assessments. The studies that are available looked at the effects on the economy at a macro level but not on individual businesses that are particularly exposed. **The government's report does not assess whether the consequences of the increase violate the prohibition on confiscation in the Norwegian Constitution.**

Not investigated against ECHR and EU/EEA rules
In addition, there are the related rights under the European Convention on Human Rights and the EU/EEA rules that come into question. Article 1 of Additional Protocol 1 to the ECHR prohibits confiscation through wealth tax. The same applies to Article 17 of the EU Charter of Fundamental Rights. The EU/EEA rules also prohibit restrictions that make free movement less attractive. Nor is it clear whether the increase in wealth tax has been adequately considered by the government or the Storting in relation to these rules.

The lawyers have written a lengthy report focusing on confiscation and related legislation and case law, as well as a comparison of the structure of wealth tax in Switzerland and Norway. A draft summary is available. Further investigations for a court case are in progress.

Wealth tax on business ownership is problematic for numerous reasons:

Discriminates against Norwegian owners
With the court case, Øvstegård wants to shed light on the problems with the special Norwegian tax, including the fact that tax on working capital or business investments only affects private business owners, entrepreneurs and investors who live in Norway. It does not affect foreign owners of companies in Norway or state-owned companies. In practice, therefore, it discriminates against owners who live in Norway and distorts competition to the detriment of private Norwegian-owned companies.

Business owners lack the liquidity to pay their taxes
Wealth tax on working capital is imposed on Norwegian business owners, but the values that are taxed are tied up in the companies. Many do not have the liquid assets to pay the wealth tax. They are forced to withdraw dividends from the company year after year, funds that would otherwise have been used for investments and further development of the company. Foreign owners do not have to do this.

Foreigners get a discount on purchases from Norwegian companies
If a Norwegian owner does not have the opportunity to withdraw dividends or take out a loan, part or all the company must be sold. This contributes to increased foreign ownership in Norway. Since other countries do not have this type of taxation, foreigners get a "discount" on buying Norwegian companies compared with a Norwegian investor. What's more, there are more foreign buyers than Norwegian ones. In many ways, the tax has the opposite redistributive effect, as assets end up in even richer and often foreign hands.

Discriminates against companies
The wealth tax has an unfair impact, also between different types of Norwegian-owned companies. Unlisted (i.e. non-listed) companies with wealth tied up in working capital such as machinery, inventory and premises, such as an industrial company, are affected far more than an unlisted company with little working capital. Owners of an unlisted company pay wealth tax on the book value of their assets. If a company chooses to raise growth capital through an IPO, the owners will have to pay tax on a market capitalization that is often based on future visions, even if the owner/company has not made money or never succeeded. The tax thus also contributes to Norwegian entrepreneurs/growth companies having more difficult access to capital than, for example, in Sweden, where the listing of smaller companies is more common.

Must be paid even if the company does not make money
One of the main problems with the Norwegian wealth tax is that it is calculated on business investments, regardless of earnings or losses. It therefore hits entrepreneurs, small and large business owners particularly hard when they are struggling the most, unlike corporate income tax which is calculated on profits. What's more, it is levied on assets with an inherent risk of future decline in value or bankruptcy, and the tax itself can exacerbate this because companies are drained of liquidity, or key owners sell out.

Norway is losing capital and entrepreneurs
While many larger business owners have moved out of Norway due to the wealth tax, relocation is not an option for most small business owners across the country. However, the exodus of wealthy business owners and entrepreneurs has indirect consequences for founders and the innovative ecosystem. Norway is losing investors, venture capital and expertise in starting and developing new companies. Studies from several countries show that without wealth tax on working capital, public revenues increase, not the other way around. The tax therefore has several negative effects for the Norwegian economy and society in the short and long term.

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