

Translation from Norwegian

**TAX ON
EMISSIONS OF NO_x**

2007

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Tax code NX

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CUSTOMS AND EXCISE**

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In the event of conflict between the Norwegian and the English circular, the Norwegian circular shall have priority.

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Resolution on tax on emissions of NO_x

1. Pursuant to the Act of 19 May 1943 No. 11 concerning a special tax shall be payable to the Treasury from 1 January 2007 in the amount of NOK 15 per kilogram of emission of nitrogen oxides (NO_x) on energy production delivery from the following sources:

- a) Propulsion machinery with a total installed capacity of over 750 kW,
- b) motors, boilers and turbines with a total installed capacity of more than 10 MW, and
- c) flares on offshore installations and facilities on land.

In the case of NO_x emissions from taxable incineration of refuse, tax is payable pursuant to the Storting resolution on tax on the end processing of refuse.

The Ministry may issue regulations on the subject of the liability for taxation and on restrictions and supplements to this provision.

2. Exemption from, refunds of or subsidies for are granted with respect to emissions of NO_x from the following sources:

- a) Vessels in traffic between Norwegian and foreign ports, or aircraft in traffic between Norwegian and foreign airfields,
- b) vessels used for fishing and hunting in remote waters,
- c) vessels considered worthy of preservation, museum railways, technical and industrial cultural heritage monuments and sites and technical facilities in the museum sector,
- d) emission sources encompassed by environmental agreements with the State concerning the implementation of measures to reduce NO_x in accordance with a predetermined environmental target.

The Ministry may issue regulations limiting and imposing conditions on exemptions.

3. The Ministry may issue regulations on the basis for the tax and on rounding off the tax payable.

4. In the event of doubt about liability for the tax the question shall be decided by the Ministry.

- 5.** The Ministry may grant exemption from tax or reduce the tax payable in the event of the occurrence of individual instances or situations that were not considered when the tax resolution was adopted and in special individual cases in which the tax has an unintended effect.
- 6.** The Ministry may adopt resolutions under which outstanding tax amounts or amounts in credit that are lower than a predetermined limit shall not be payable or refunded.

Act No. 11 of 19 May 1933 concerning Special Taxes

Title of Act amended by Act of 27 March 1998 No. 13, cf. Acts of 4 November 1948 No. 1 (pictorial art), 19 June 1959 No. 2 (motor vehicles and boats), 19 June 1969 No. 66 (value added tax).

Section 1. When with reference to this act the Storting adopts special taxes to the Treasury not provided for in other acts, the Ministry will issue further provisions relating to calculation, collection and control. If the special tax concerns ethanol for technical use, the Ministry will issue regulations concerning prohibition, production, imports, exports and sales. Moreover, the Ministry may issue rules concerning the obligation of banks to refuse payment orders containing insufficient information.

Amended by Acts 18 Dec. 1970 No. 97, 28 April 1978 No. 17, 27 March 1998 No. 13, 14 April 2000 No. 23, 10 December 2004 No. 77 (in force 1 July 2005 pursuant to Res. 17 June 2005 No. 658).
Amended by Act of 17 June 2005 No. 67 (in force from such time as decreed by the King).

Section 2. Contravention of regulations issued in pursuance of this Act is punishable, including when such contravention has taken place through negligence, with fines unless a specific penalty for the contravention is laid down in the General Criminal Code.

If a breach of the first paragraph is especially serious, the punishment shall be fines or imprisonment for up to two years, but imprisonment for up to six years in the case of wilful or grossly negligent breaches.

In deciding whether a contravention shall be counted as especially serious, weight shall be attached to whether the scope of the contravention was extensive, whether importation and exportation or use is prohibited or subject to special conditions, whether the offender intended to sell the goods to which the contravention applies, whether the offender has previously been convicted of contravention of the legislation on taxes and excise duties or whether other circumstances of a particularly aggravating nature are present.

Amended by Acts of 16 May 1947 No. 2, 27 March 1998 No. 13, 10 Dec. 2004 No. 77 (in force 1 July 2005 pursuant to Res. of 17 June 2005 No. 658).

Section 3. Any person who wilfully or negligently contravenes this Act or any regulations issued in pursuance of the Act, whereby the public treasury is or might have been deprived of tax or excise duty, shall be required to pay an additional duty equivalent to double and in repeated instances four times the amount of tax or excise duty due.

With respect to responsibility under this section, the person liable for tax or excise duty is answerable for the actions of assistants, spouse and children.

Amended by Act of 26 June 1992 No. 73.

Section 4. For unlawful use of marked oil an administrative fine shall be imposed which is to be calculated in accordance with further rules laid down by the Ministry. For any repetition the Ministry may decide that double the administrative fine shall be imposed. The Ministry may waive or reduce the administrative fine imposed if there are special circumstances.

The registered owner and user of the vehicle are jointly and severally liable for an administrative fine under this section.

For unlawful use of marked oil the provisions of Section 5 first to third paragraphs of Act No. 2 of 19 June 1959 concerning Excise Duty on Motor Vehicles and Boats apply correspondingly.

Added by Act of 26 June 1992 No. 73. Amended by Act of 17 June 2005 No. 67 (in force from such time as decreed by the King).

Section 5. With respect to the recovery of tax or excise duty the rules which apply to wealth tax and income tax payable to the State apply correspondingly.

The Ministry may issue regulations concerning obligation to pay interest on tax or excise duty that has not been paid when due and concerning credit interest on tax or excise duty repayments.

Amended by Acts of 31 May 1963 No. 2, 28 April 1978 No. 17, 22 March 1991 No. 9, 26 June 1992 No. 73 (which amended Section 4 to Section 5). Repealed by Act of 17 June 2005 No. 67 (in force from such time as decreed by the King).

Section 6. The tax or excise duty is to be paid in accordance with the rules that apply at the time the liability for the tax arises.

If at the time the tax or excise duty imposition comes into operation a contract for supply has been entered into, the recipient has a duty to pay an additional sum equivalent to the tax or excise duty unless evidence is produced to show that account was taken of the tax when the price was determined.

Amended by Acts of 13 April 1951 No. 2, 26 June 1992 No. 73 (which amended Section 5 to Section 6), 27 March 1998 No. 13. Amended by Act of 17 June 2005 No. 67 (in force from such time as decreed by the King – becomes new Section 5).

Section 7. Those authorities who are invested with functions in pursuance of the Price Regulatory Measures Act have a duty on demand and notwithstanding the obligation of secrecy otherwise incumbent upon them to provide the county tax offices and the Directorate of Taxation with information concerning grants they have allowed to be paid out of the public purse or out of special price regulation funds.

The Ministry may decide that the Police, the Tax Authorities and the Food Safety Authority have a duty notwithstanding the obligation of secrecy to furnish Customs and Excise with the information necessary for the processing of applications for registration for excise duty on alcoholic beverages.

Added by Act of 19 June 1964 No. 17, amended by Acts of 26 June 1992 No. 73 (which amended Section 6 to Section 7), 11 June 1993 No. 66, 20 June 2003 No. 44 (in force 1 July 2003 pursuant to Res. of 20 June 2003 No. 712), 17 Dec. 2004 No. 86 (in force 1 July 2005 pursuant to Res. of 17 June 2005 No. 599). Amended by Act of 17 June 2005 No. 67 (in force from such time as decreed by the King – will become new Section 6).

Section 8. This Act comes into operation immediately.

Amended by Act of 19 June 1964 No. 17 (formerly Section 6), 26 June 1992 No. 73 (which amended from Section 7 to Section 8). Amended by Act of 17 June 2005 No. 67 (in force from such time as decreed by the King – becomes new Section 7).

Excerpt from the Regulations on Special Taxes – tax on emissions of NO_x

Chapter 1. Introductory provisions

1-1. *Area of application*

These regulations apply to taxes collected pursuant to the Act of 19 May 1933 No. 11 concerning special taxes.

0 Amended by regulations of 22 June 2005 No. 682 (in force 1 July 2005).

1-2. *Definitions*

- (1) A taxable good is a good that has been imported into or manufactured in this country and is encompassed by the tax resolution enacted by the Storting.
- (2) Production means all and any processing, including packaging, repackaging or assembly, that results in the good becoming taxable or in a change in the tax status of the good.
- (3) Registered undertaking means an undertaking registered in accordance with the provisions of Section 5-1 to Section 5-6.
- (4) Approved premises means storage premises, production premises or the like approved by the customs region in accordance with the provisions of Section 5-7.

0 Amended by regulations of 12 December 2003 No. 1533 (in force 1 January 2004).

Chapter 2. Ordinary provisions on liability for the tax

2-1. *When liability for the tax occurs*

- (1) In the case of registered undertakings liability for the tax arises
 - a) at the time of withdrawal from the approved premises of the undertaking, including as a result of theft and shortfall. Losses during operations do not constitute withdrawal,
 - b) at the time of importation, when the goods are not lodged in approved premises,
 - c) at the time of cessation of registration.
- (2) In the case of non-registered importers liability for the tax arises at the time of importation.
- (3) In the case of bankruptcy estates or mortgagees, liability for the tax arises at the time of withdrawal of taxable goods if tax has not been calculated for such goods at an earlier time.

(4) In the case of tax on technical ethanol, excise duty on electrical power, tax on the end processing of refuse and tax on emissions of NO_x, liability for tax arises in accordance with the provisions in Section 3-3-3, Section 3-12-2, Section 3-13-2 and Section 3-19-4, respectively.

(5) In the case of users entitled to full or partial tax-exempted use of goods that are otherwise subject to tax, liability for tax will also arise if the preconditions for exemption are nevertheless not fulfilled.

- 0 Amended in regulations of 25 June 2004 No. 1040 (in force 1 July 2004), 10 Dec. 2004 No. 1599 (in force 1 Jan. 2005), 22 June 2005 No. 682 (in force 1 July 2005), 15 Dec. 2006 No. 1442 (in force 1 Jan. 2007).

(Section 2-2 – Section 2-7)

Section 2-8. *Documentation of exemption from tax*

Claims for exemption from tax shall be documentable. Unless otherwise provided for in these regulations the documentation must show the scope of the claim and that the preconditions for exemption have been fulfilled.

(Chapter 3-1 – Chapter 3-12)

Chapter 3-13. Tax on the end processing of waste

(Section 3-13-1 – Section 3-13-7)

Section 3-13-8. *Basis for and calculation of tax*

- (1) The basis for the tax is actual emissions to the air of the taxable substances, measured in grams, during ordinary operation of the facility. Nevertheless, emissions of CO₂ are determined on the basis of the quantity of waste delivered, measured in tonnes.
- (2) In the case of continuous measurement of emission the concentration of taxable substances is determined on the basis of a daily average value for each of the 24-hour periods in the tax period. In determining a valid daily average value, no more than two hourly, five half-hourly or fifteen ten-minutes average values may be rejected per 24-hour period on the grounds of faults in or maintenance of the equipment used for continuous measurement. If a valid daily average value cannot be determined for one or more 24-hour periods, each of these must be replaced with the average of the valid daily average values for the period. If no valid daily average value can be determined over a period of at least fourteen 24-hour periods during the course of the tax period, the average value from the preceding tax period must be applied.
- (3) If the concentration is determined with the aid of manual measurements or analyses, these shall be conducted every six months by an independent third party. The measured concentration must be used for the purpose of calculating tax from and including the month after the measurement or analysis was conducted. If the concentrations of other taxable substances than dioxins or the heavy metals Hg, Cd, Pb, Cr, Cu, Mn, As and Ni are determined with the aid of such measurements or analyses, the measured concentration must be multiplied by 1.10 when calculating tax.

(4) If the concentration of a taxable substance cannot be determined because it lies below the detection limit for the method of measurement or analysis used, the concentration must be set as equal to this detection limit. The third paragraph final point will apply correspondingly.

(5) The smoke gas quantity used in calculating actual emissions of a taxable substance during the tax period may be determined with the aid of continuous measurements. Plants that do not use measurements of this nature shall use a smoke gas quantity of 7.5 Nm³ (dry gas and 11 volume per cent O₂) per kilogram of refuse delivered during the period. Plants that conduct continuous measurements but that during the period have suffered interruptions in their measurements of smoke gas shall utilise the higher of measured quantity or quantity determined in accordance with the second point.

(6) The plants must be able to document that the concentration used for the purpose of calculating emissions is based on the same volume size as the smoke gas quantity in accordance with the fifth paragraph.

(7) If the basis for the tax cannot be considered to have been calculated in a representative way, Customs and Excise may deviate from the calculation. In such cases, Customs and Excise will fix the basis for tax at the level considered to be most probable. The third paragraph final point will apply correspondingly.

0 Added in regulations of 25 June 2004 No. 1040 (in force 1 July 2004).

(Section 3-13-9 – Chapter 3-18)

Chapter 3-19. Tax on emissions of NO_x

0 Chapter added in regulations of 20 Dec. 2006 No. 1587 (in force 1 Jan. 2007).

Section 3-19-1. *Technical area of application*

The tax liability encompasses emissions of nitrogen oxides (NO_x) in energy production from:

- a. propulsion machinery with a total installed capacity of more than 750 kW,
- b. motors, boilers and turbines with a total installed capacity of more than 10 MW,
- c. flares on offshore installations and on facilities on land.

0 Added in regulations of 20 Dec. 2006 No. 1587 (in force 1 Jan. 2007).

Section 3-19-2. *Physical area of application*

(1) In the case of vessels the liability for tax applies to the following emissions:

- a. emissions from traffic within Norwegian territorial waters,
- b. emissions from domestic traffic even if parts of the traffic takes place outside Norwegian territorial waters,

- c. in the case of Norwegian registered vessels liability for tax will also apply in the case of emissions in near waters.

(2) In the case of aircraft, liability for tax applies to emissions between Norwegian landing fields and between Norwegian landing fields and installations on the Norwegian Continental Shelf. In the case of aeroplanes, the liability for tax in these instances will apply only to emissions from takeoff and landing. In the case of aircraft, the liability for tax will moreover apply to emissions between Norwegian landing fields and landing fields on Svalbard, Jan Mayen and the dependencies. In the case of aeroplanes the liability for tax in these instances applies only to emissions from takeoff and landing on Norwegian landing fields.

(3) In the case of vehicles, including railway vehicles, the liability for tax applies to emissions in Norway.

(4) In the case of other energy production, the liability for tax applies to emissions in Norway and on the Norwegian Continental Shelf.

0 Added in regulations of 20 Dec. 2006 No. 1587 (in force 1 Jan. 2007).

Section 3-19-3. Definitions

In this chapter the following terms shall have the following meanings:

- a. “propulsion machinery” - machinery used or designed for the propulsion of vessels, aircraft or vehicles,
- b. “Norwegian territorial waters” – sea areas around the Norwegian mainland encompassed by the Act of 26 June 2003 No. 57 concerning Norway’s territorial waters and adjoining zones,
- c. “domestic traffic” – traffic between two Norwegian ports and between Norwegian ports and Svalbard, Jan Mayen, the dependencies and installations on the Norwegian Continental Shelf,
- d. “installations on the Norwegian Continental Shelf” – facilities or devices, including floating facilities or devices, linked to the exploitation of natural deposits in the sea areas outside Norwegian territorial waters,
- e. “near waters” – sea areas where the distance to the Norwegian coast (base line) is less than 250 nautical miles,
- f. “remote waters” – sea area where the distance to the Norwegian coast (base line) is 250 nautical miles or more,
- g. “direct traffic” – traffic between Norwegian and foreign ports without fishing or hunting or other activities taking place during the voyage.
- h. “port” – any place at which a vessel can go alongside a quay, workshop or Continental Shelf installation and any place within the territorial borders at which a vessel loads or unloads goods or allows persons to embark or disembark,
- i. “landing field” – a landing field as provided for in Section 7-5 first paragraph of the Aviation Act,
- j. “aircraft” – aeroplanes and helicopters,
- k. “revolutions per minute” – the maximum revolutions per minute of the engine as shown on a certificate or the like.

0 Added in regulations of 20 Dec. 2006 No. 1587 (in force 1 Jan. 2007)

Section 3-19-4. *When the liability for tax arises*

The liability for tax arises at the time of emission of NO_x.

0 Added in regulations of 20 Dec. 2006 No. 1587 (in force 1 Jan. 2007).

Section 3-19-5. *Basis for the tax*

Tax is calculated per kilogram of NO_x.

0 Added in regulations of 20 Dec. 2006 No. 1587 (in force 1 Jan. 2007).

Section 3-19-6. *Calculation of tax*

(1) The tax is calculated on the basis of actual emissions of NO_x, calculated as NO₂-equivalents. If actual emissions are determined by measurement, Section 3-13-8 second paragraph shall apply correspondingly. Measurements shall be conducted under ordinary and representative operating conditions. Sampling and analysis shall be performed in accordance with a Norsk Standard (Norwegian Standard – NS). The same applies to the calibration of measuring equipment. Where no Norwegian Standard exists, some other international standard may be used.

(2) If actual emissions as provided for in the first paragraph are not known, the tax must be calculated on the basis of source-specific emission factor and the quantity of energy consumed. In the case of aeroplanes, the tax is calculated using the formula in Section 3-19-8.

(3) If actual emissions as provided for in the first paragraph are not known or if source-specific emission factors as provided for in the second paragraph have not been determined, emission will be calculated using the table in Section 3-19-9.

0 Added in regulations of 20 Dec. 2006 No. 1587 (in force 1 Jan. 2007).

Section 3-19-7. *Determining the source-specific emission factor*

A competent authority may determine the source-specific emission factor subject to application by the tax liable entity. The competent authorities for this tax are the Norwegian Pollution Control Authority in the case of land based activities, the Norwegian Maritime Directorate in the case of vessels, the Civil Aviation Authority, Norway, in the case of aircraft and the Norwegian Petroleum Directorate in the case of installations on the Continental Shelf. The competent authority may give guidelines on determining the source-specific emission factor.

0 Added in regulations of 20 Dec. 2006 No. 1587 (in force 1 Jan. 2007).

Section 3-19-8. *Formula for calculating emissions from aircraft*

(1) For aircraft the tax is calculated on the basis of the following formula:

$$\text{Emission value} = a * \text{engines} * \sum_{\text{LTO mode}} \left(\frac{60 * \text{time} * \text{fuel rate} * \text{NO}_x - \text{index}}{1000} \right)$$

<i>a (average)</i>	factor depending on the HC (<i>hydrocarbon</i>) value of the engine. <i>a</i> = 1 if the average HC value is less than or equal to the applicable ICAO standard of 19.6 g/kN. <i>a</i> > 1 if the average HC value is greater than the applicable ICAO standard. <i>a</i> cannot exceed 4.0
<i>engines</i>	number of engines
<i>LTO mode</i>	4 phases: takeoff, climb, approach, taxiing (movement up to 3,000 feet above the ground)
<i>time</i>	standardised time-period for each individual LTO mode for a given type of engine (minutes)
<i>fuel rate</i>	fuel rate per mode (kg/sec)
<i>NO_x index</i>	emission index per mode (g/kg fuel)

(2) In the absence of emission or engine data, engines with the highest HC value and NO_x index will be used for the purpose of calculating tax.

0 Added in regulations of 20 Dec. 2006 No. 1587 (in force 1 Jan. 2007).

Section 3-19-9. Table for calculation of emissions

(1) Engines

a.	rpm less than 200:	100 kg NO _x per tonne of energy product
b.	200 rpm to 1,000 rpm:	70 kg NO _x per tonne of energy product
c.	1,000 rpm to 1,500 rpm:	60 kg NO _x per tonne of energy product
d.	1,500 rpm upwards:	55 kg NO _x per tonne of energy product

(2) Boilers

a.	9.6 kg NO _x per tonne of heavy oil
b.	4.5 kg NO _x per tonne of hard coal
c.	3.6 kg NO _x per tonne of light oil
d.	3.6 kg NO _x per tonne of marine gas oil/diesel
e.	3.6 kg NO _x per tonne of heavy distillate
f.	1.8 kg NO _x of bio-fuel, virgin fuel (dry solids)
g.	2.4 kg NO _x per tonne of bio-fuel, recycled wood (dry solids)
h.	1.7 g NO _x per Sm ³ natural gas, gas boiler
i.	2.8 g NO _x per Sm ³ natural gas, converted boiler
j.	2.0 g NO _x per Sm ³ LPG, gas boilers
k.	3.4 g NO _x per Sm ³ LPG, converted boilers

(3) Turbines

a.	Turbines:	16 g NO _x per Sm ³ gas 25 kg NO _x per tonne liquid energy product
b.	Low NO _x turbines:	1.8 g NO _x per Sm ³ gas

(4) Flares

- a. 4 g NO_x per Sm³ gas, refinery flares
- b. 2 g NO_x per Sm³ gas, landfill gas flares
- c. 12 g NO_x per Sm³ gas, other flares

(5) Helicopters

For helicopters the tax is calculated on the basis of a factor of 6.67 kg NO_x per tonne of energy product consumed.

(6) Railway vehicles

For railway vehicles the tax is calculated on the basis of a factor of 47 kg NO_x per tonne of energy product consumed.

0 Added in regulations of 20 Dec. 2006 No. 1587 (in force 1 Jan. 2007).

Section 3-19-10. *Documentation for calculation of tax*

- (1) If the tax is calculated on the basis of actual emissions, the calculation must be documented.
- (2) If the tax is calculated on the basis of a source-specific emission factor, documentation shall be provided showing that the calculation is in accordance with Norwegian Standard or an equivalent international standard. Where the source-specific emission factor is not determined in accordance with NS or an equivalent international standard, documentation must be submitted from a competent authority verifying the factor used.
- (3) In the case of engines where the rpm figure is used this shall be documented by means of a certificate or the like.
- (4) The undertaking shall document the type and quantity of energy product used in taxable emissions.
- (5) For calculating the tax on emissions from low NO_x turbines, the undertaking shall submit a certificate from the manufacturer or other documentation verified by a competent authority showing that the turbine is a low NO_x turbine.

0 Added in regulations of 20 Dec. 2006 No. 1587 (in force 1 Jan. 2007).

Section 3-19-11. *Exemption from tax – direct foreign traffic and fishing and hunting in remote waters*

- (1) Emissions from vessels in direct traffic between Norwegian and foreign ports and from aircraft in direct traffic between Norwegian and foreign landing fields are exempted from tax for the entire voyage.

(2) Emissions from vessels used for fishing and hunting in remote waters are exempted from tax for that part of the voyage that takes place in remote waters.

(3) The basis for exemption pursuant to this provision shall be documented by means of the submission of a copy of a log or the like showing the vessel's name, nationality, destination and the quantity of energy product consumed in taxable and tax exempt emissions, respectively.

(4) Emissions encompassed by this provision shall be recorded exclusive of tax in the tax return.

0 Added in regulations of 20 Dec. 2006 No. 1587 (in force 1 Jan. 2007).

Section 3-19-12. *Exemption from tax – Environmental Agreement*

(1) Emissions from sources that are encompassed by an environmental agreement with the State on the implementation of NO_x-reducing measures in accordance with a predetermined environmental target are exempted from the tax.

(2) The basis for exemption pursuant to this provision shall be documented by means of the submission of a copy of the environmental agreement concluded with the State.

0 Added in regulations of 20 Dec. 2006 No. 1587 (in force 1 Jan. 2007).

Section 3-19-13. *Payment of tax – foreign owners of vessels and aircraft liable for tax*

(1) Foreign owners with no place of business or domicile in Norway shall pay tax through a representative registered for taxable traffic pursuant to Section 5-2 letter d.

(2) Upon arrival in Norway the master or pilot of the vessel or aircraft shall notify the customs authority of the representative that will pay the tax.

(3) The owner of the vessel or aircraft and the representative are jointly and severally liable for the tax.

0 Added in regulations of 20 Dec. 2006 No. 1587 (in force 1 Jan. 2007).

Section 3-19-14. *Tax refunds for undertakings that install treatment equipment – transitional arrangements*

(1) Taxable undertakings that before 1 July 2007 conclude an agreement with a workshop or the like on the time at which treatment equipment will be installed may apply for a refund of tax. The refund shall be equivalent to the difference between emissions before and after installation of the treatment equipment, for the period between 1 January 2007 and the time at which the treatment equipment is installed. An application for a refund must be submitted to the customs region when the treatment equipment has been installed.

(2) The basis for a refund pursuant to this provision shall be documented by means of the submission of a copy of a dated agreement with the workshop or the like, confirmation from the workshop or the like in question that the treatment equipment

has been installed and documentation from a competent authority or a credit institution showing emissions after installation.

0 Added in regulations of 20 Dec. 2006 No. 1587 (in force 1 Jan. 2007).

Section 3-19-15. *Tax refund for undertakings that install measuring equipment – transitional arrangement*

(1) Taxable undertakings that by installing measuring equipment before 31 December 2007 are able to document that previously paid tax has been based on an excessively high emission may apply for a refund of tax. The refund shall be equivalent to the difference between emissions before and after the installation of the measuring equipment, for the period from 1 January 2007 and until the measuring equipment has been installed. The application for a refund shall be submitted to the Customs Region when the measuring equipment has been installed.

(2) The basis for a refund pursuant to this provision shall be documented by means of a confirmation of the installation of the measuring equipment from a competent authority or an accredited institution.

0 Added in regulations of 20 Dec. 2006 No. 1587 (in force 1 Jan. 2007).

Section 3-19-16. *Tax refund for undertakings with assessed source-specific emission factor – transitional arrangement*

(1) Taxable undertakings that before 1 July 2007 have applied for a source-specific emission factor to be assessed may apply for a refund of tax. This refund shall be equivalent to the difference between the calculated emissions before and after the assessment of source-specific factor, for the period from 1 January 2007 and until the factor has been assessed. Applications for refunds must be submitted to the customs region when the factor has been assessed.

(2) The basis for a refund pursuant to this provision shall be documented by means of the submission of a dated application for assessment of source-specific factor and documentation from a competent authority or accredited institution verifying the factor used.

0 Added in regulations of 20 Dec. 2006 No. 1587 (in force 1 Jan. 2007).

Chapter 4. Tax exemption and reduced rates for certain areas of use

Chapter 4-1. Vessels worthy of preservation, museum railways, technical and industrial cultural heritage monuments and sites and technical facilities in the museum sector

Section 4-1-1. *Technical area of application*

(1) Refunds are granted for paid-up excise duty on electrical power, CO₂ tax on mineral oil, basic tax on fuel oil etc., sulphur tax and tax on lubricating oil etc. on taxable products supplied for use in the operations of vessels worthy of preservation, museum railways, protected technical and industrial cultural heritage monuments and

sites and technical facilities in the museum sector for purposes of imparting knowledge. Exemptions are granted for paid-up tax on NO_x emissions from vessels worthy of preservation, museum railways, technical and industrial cultural heritage monuments and sites and technical facilities in the museum sector for the purpose of imparting knowledge.

- (2) Vessels worthy of preservation are:
- a) vessels where an agreement on protection and maintenance has been concluded between the Directorate for Cultural Heritage and the owner with the granting of a commitment of a subsidy of NOK 50,000 or more. The agreement shall be registered in the Ship Register as an encumbrance on the vessel,
 - b) vessels defined as worthy of preservation pursuant to Section 2 No. 53 of the Norwegian Maritime Directorate's Regulations of 15 September 1992 No. 695,
 - c) fishing vessels where an agreement on preservation has been concluded between the Directorate for Cultural Heritage and the owner concerning the protection of older fishing vessels worthy of preservation. The preservation agreement shall be registered in the Register of Norwegian Fishing Vessels Subject to a Labelling Requirement.
- (3) Museum railways are railways and rolling stock that the cultural heritage authorities consider to be worthy of preservation on antiquarian principles.
- (4) Protected technical and industrial cultural heritage monuments and sites and technical facilities in the museum sector are technical devices, buildings and facilities in the museum sector considered to be worthy of protection by the cultural heritage authorities on antiquarian principles (technical cultural heritage monuments and sites).
- 0 Amended in regulations of 13 Dec. 2002 No. 1639 (in force 1 Jan. 2003), 15 Dec. 2006 No. 1442 (in force 1 Jan. 2007).

Section 4-1-2. Procedure for refunds

Applications for refunds shall be submitted to the customs region quarterly.

- 0 Amended in regulations 12 Dec. 2003 No. 1533 (in force 1 Jan. 2004).

(Chapters 4-2 – 4-8)

Chapter 5. Administration of tax etc.

I. Registration

Section 5-1. Registration requirement

The following undertakings shall be registered for the individual tax:

- a) Producers of taxable goods with the exception of micro power stations and energy recovery plants that supply electrical power directly to the end user.

- b) Undertakings that produce or import technical ethanol with an alcoholic strength of over 2.5 volume per cent.
- c) Undertakings operating refuse dumping sites or incineration facilities for the end processing of refuse.
- d) Undertakings that recover TRI and PER where recovery is conducted with a view to resale.
- e) Undertakings that transport electrical power to the consumer.
- f) Importers of alcoholic beverages with an alcoholic strength of over 2.5 volume per cent where no special permit or licence has been granted.
- g) Undertakings that own or operate entities liable for NO_x tax, with the exception of undertakings that have only tax-free emissions or foreign activities using a representative registered pursuant to Section 5-2 letter d.

0 Amended by regulations 19 Dec. 2002 No. 1836 (in force 1 Jan. 2003), 19 Dec. 2003 No. 1758 (in force 1 Jan. 2004), 25 June 2004 No. 1040 (in force 1 July 2004), 22 June 2005 No. 682 (in force 1 July 2005), 15 Dec. 2006 No. 1442 (in force 1 Jan. 2007), 20 Dec. 2006 No. 1587 (in force 1 Jan. 2007).

Section 5-2. *Right to register*

The following undertakings may be registered subject to application to the customs region:

- a) Importers of taxable goods liable for value added tax pursuant to Section 28 of the Act of 19 June 1969 No. 66 concerning Value Added Tax.
- b) Importers of taxable goods when the goods are to be used as raw materials or are for tax-free use pursuant to the provisions of tax resolutions adopted by the Storting.
- c) Importers of boat engines and undertakings engaged in commercial production of vessels for sale.
- d) Representatives of foreign undertakings that own or operate vessels or aircraft liable for NO_x tax.

0 Amended by regulations of 12 Dec. 2003 No. 1533 (in force 1 Jan. 2004), 15 Dec. 2006 No. 1442 (in force 1 Jan. 2007), 20 Dec. 2006 No. 1587 (in force 1 Jan. 2007).

(Section 5-3)

Section 5-4. *Place of registration*

Registration shall be in the customs region in which the place of business of the undertaking is located. Undertakings with places of business in multiple customs regions shall register the undertaking in the customs region in which their head office is located.

0 Amended by regulations of 12 Dec. 2003 No. 1533 (in force 1 Jan. 2004).

Section 5-5. *Registration notification etc.*

- (1) Notification of or application for registration shall be sent no later than one month before production or importation commences.
- (2) The notification or application shall contain information on

- a) the production and storage premises (drawings), including the location of the premises,
- b) the type of goods that will be produced or stored,
- c) when production or storage will commence,
- d) stocks of goods,
- e) budgeted and current sales,
- f) the scope of imports and intakes of taxable goods,
- g) accounting procedures and stock holding,
- h) who will effect ongoing payment of the tax,
- i) customs credit number if applicable,
- j) organisation number,
- k) street address and postal address,
- l) where applicable, licence, concession or statement of good conduct.

(3) Changes in the circumstances provided for in the second paragraph shall be reported to the customs region without delay. Notification shall also be filed if the business ceases or stops for more than three months and in the event of the resumption of the business.

(4) In the case of tax on expenditure on electrical power, the end processing tax on refuse and NO_x tax, the provisions of the second paragraph shall apply correspondingly, subject to the adjustments necessary in light of the nature of the tax.

- 0 Amended in regulations of 12 Dec. 2003 No. 1533 (in force 1 Jan. 2004), 19 Dec. 2003 No. 1758 (in force 1 Jan. 2004), 22 June 2005 No. 682 (in force 1 July 2005), 15 Dec. 2006 No. 1442 (in force 1 Jan. 2007).

Section 5-6. *Refusal or revocation of registration*

- (1) The customs region may refuse or revoke registration if
- a) the undertaking, board of directors or management are not considered creditworthy,
 - b) the business has unpaid arrears with regard to taxes, excise or customs duties or is in breach of the regulations governing special taxes, customs duty or value added tax, or
 - c) the nature of the business is changed.
- (2) The customs region may revoke registration if the conditions provided for in Section 5-3 are no longer fulfilled or if the registered entity is no longer fulfilling the obligations provided for in these regulations.
- (3) In the event of the revocation of registration for the handling of technical ethanol or the death of the holder, the owner or the estate shall ensure that the stock of these goods is sold or transferred to a registered undertaking. Failing this, the goods shall be confiscated or destroyed.

- 0 Amended by regulations of 12 Dec. 2003 No. 1533 (in force 1 Jan. 2004), 18 Feb. 2004 No. 411, 22 June 2005 No. 682 (in force 1 July 2005).

(Section 5-7)

III. Accounts

Section 5-8. *Accounts*

(1) In the case of registered undertakings required to record accounts under the Act of 17 July 1998 No. 56 concerning annual accounts etc. (the Accounting Act), the accounts shall show the consumption of raw materials and the scope of production. Furthermore, the accounts shall be set out in such a way that the scope of the taxable goods can be readily controlled and verified. In the case of registered undertakings that declare special taxes on a terminal basis, stock accounts shall be recorded of goods in stock that are liable to special tax. The stock accounts shall contain goods in stock, intakes and delivery of goods that are subject to special tax, including any tax-free transfers to other registered undertakings or to dedicated approved premises, as well as withdrawals for own sales outlets or own use. The accounts shall show any difference between measured or counted stocks and the stocks as shown in the stock accounts.

(2) Before the end of the filing time limit for the tax term in question, registered undertakings that record stock accounts in accordance with the first paragraph shall reconcile the figures contained in their tax return with the stock accounts. This reconciliation will be included together with the stock accounts as part of the accounting material that the undertaking is required to store.

(3) Registered undertakings that are not subject to an accounting requirement under the Accounting Act may be instructed by the customs region to store documents of significance to the scope of the tax, for example purchase and sales invoices, contracts and payment vouchers. Moreover the undertaking may be instructed to record stock accounts and to reconcile the accounts in the way provided for above. The duty to store documents, where applicable stock accounts and reconciliations, remains in force for ten years.

0 Amended in regulations of 12 Dec. 2003 No. 1533 (in force 1 Jan. 2004), 18 Feb. 2004 No. 411.

IV. Inspection provisions etc.

Section 5-9. *General rules on inspection*

(1) Customs and Excise may at any time inspect whether the correct tax has been calculated and paid and whether the conditions of Section 5-3 have been fulfilled. To this end Customs and Excise may inspect premises in which taxable goods are produced or stored, adjoining rooms and vehicles used to transport taxable goods. Moreover, Customs and Excise may check the accounts in their entirety and the associated documentation, including electronic documents and software.

(2) Customs and Excise may investigate taxable goods and require samples of goods to be submitted without payment.

(3) Investigations as provided for above may be conducted at the manufacturer, importer, exporter, dealer, intermediary, warehouse of stocks and carriers of taxable goods as well as users claiming tax relief or exemption. Moreover, investigations may

take place at manufacturers and dealers of goods that can be used in or for the production of a taxable good.

(4) The undertaking's owner, board of directors, general manager and other employees are required to provide the necessary assistance and guidance in connection with the investigation. Accounting material and other documents that are to be inspected shall be presented, released or forwarded to Customs and Excise without delay.

0 Amended in regulations 22 June 2005 No. 682 (in force 1 July 2005).

(Section 5-10 – Section 5-14)

Chapter 6. Tax return and payment etc.

Section 6-1. Tax return

(1) Registered undertakings shall for each month file a tax return with the customs region by the 18th of the following month (time limit for filing return). A return shall be filed even if no tax is collectable for the period (zero return).

(2) Undertakings registered for tax on electrical power shall file a return with the customs region within one month and eighteen days after the end of the quarter in which the invoice was sent and/or delivery/withdrawal without invoicing took place.

(3) Undertakings registered for tax on emissions of NO_x shall file returns with the customs region within the 18th of the month after the end of the quarter in which the emission took place.

(4) The customs region may fix a shorter time for filing returns if information exists on the circumstances of the undertaking that indicate that it is likely that tax will not be paid on time.

(5) Undertakings registered pursuant to Section 5-1 letter b that exclusively import or produce technical ethanol with approved denaturing are not required to file returns.

(6) Importers registered pursuant to Section 5-2 letter b are not required to file returns.

(7) The tax return shall be provided on the form specified by the Directorate and shall be signed by the party liable for the tax or by a party authorised to commit the entity liable for tax.

0 Amended by regulations of 12 December 2003 No. 1533 (in force 1 Jan. 2004), 19 Dec. 2003 No. 1758 (in force 1 Jan. 2004), 22 June 2005 No. 682 (in force 1 July 2005), 20 Dec. 2006 No. 1587 (in force 1 Jan. 2007).

Section 6-2. Place for payment and means of payment

(1) The tax shall be paid to the customs region in question or by transfer to the bank account nominated by the customs region.

(2) In the case of electronic payment to the account of the customs region, the customer identification number (KID) shall be quoted together with the payment order to the payer's bank if Customs and Excise has so decided. In such cases the provider of payment transfer services shall reject electronic payment orders if a valid customer identification number (KID) is not quoted.

0 Amended by regulations of 12 Dec. 2003 No. 1533 (in force 1 Jan. 2004).

Section 6-3. *Due date and timely payment*

(1) The tax for registered undertakings comes due for payment at the same time as the time for filing returns.

(2) If payment is by transfer to the customs region's account, payment will be deemed to have been effected when the tax has been credited to the bank of the customs region in question. If payment is by transfer from an account with the same bank, payment will be deemed to have been effected when the amount has been credited to the customs region's account. In the event of payment by cheque, the time for payment will be deemed to have been interrupted when the recipient receives and accepts the cheque.

(3) If a time limit expires on a Saturday, Sunday or public holiday, the time limit will be postponed until the next business day.

(4) In the case of parties other than registered undertakings, the tax shall be paid in accordance with the same rules as apply to customs duties.

(5) Foreign owners of vessels or aircraft shall pay tax on NO_x emissions through a representative pursuant to Section 3-19-13.

0 Amended by regulations of 12 Dec. 2003 No. 1533 (in force 1 Jan. 2004), 18 Feb. 2004 No. 411, 15 Dec. 2006 No. 1442 (in force 1 Jan. 2007), 20 Dec. 2006 No. 1587 (in force 1 Jan. 2007).

Section 6-4. *Interest on late payment*

(1) Interest shall be paid on tax that is not paid on time. The interest rate shall be three percentage points above the interest rate applicable from time to time as provided for in regulations enacted pursuant to Section 3 first paragraph first point of the Act of 17 December 1976 No. 100 concerning Interest on Late Payment etc. Interest is calculated from the due date and until payment is effected.

(2) Interest amounts of less than NOK 50 are not collected.

Section 6-5. *Interest on refunds of tax*

Interest will be paid on refunds of tax pursuant to Section 4-1-1 and Section 4-2-1 and Section 4-3-1. The Directorate determines the rate of interest applicable from time to time.

Section 6-6. *Calculation of tax in arrears etc.*

- (1) In the event of non-calculation or incomplete calculation of tax, the customs region may calculate tax in arrears.
- (2) Moreover, the customs region may calculate tax in arrears if tax and interest have been refunded on the basis of incorrect or incomplete information. The same applies if goods that have been supplied free of tax or at a reduced tax rate have been used for taxable purposes.
- (3) In instances as provided for in the second paragraph the customs region may decide that the exemption should in future be practised in some other way than provided for in these regulations.

0 Amended by Regulations 12 December 2003 No. 1533 (in force 1 Jan. 2004).

Section 6-7. *The furnishing of security*

- (1) The customs region may require manufacturers and importers of taxable goods to furnish security for tax payable in the future. The security requirement may be imposed at the time of registration of the business or at a later time.
- (2) In assessing whether security should be demanded, account shall be taken of inter alia the following factors
 - a) Whether the undertaking has repeatedly paid taxes late or has in other respects been in breach of the tax provisions,
 - b) whether the undertaking has unpaid arrears with regard to taxes and excise and customs duties,
 - c) whether the business, board of directors or management can be regarded as creditworthy.
- (3) The security shall be furnished in the form of a surety from a bank, insurance company or other financial undertaking with a licence to operate in and subject to the regulatory authority of Norway or some other state in the European Economic Area.
- (4) Further requirements applicable to security, including the scope of the security, are determined by the customs region. As a general rule, security shall at all times cover the taxes payable for two months. If new circumstances or information so indicate, the customs region may impose further requirements as to security.

0 Amended by regulations 12 Dec. 2003 No. 1533 (in force 1 Jan. 2004).

(Section 6-8 – Section 6-9)

Chapter 7. Closing provisions

Section 7-1. *Supplementary regulations etc.*

- (1) Questions concerning the scope of liability for tax must be put to the customs region.

- (2) The customs region may require the installation of measuring equipment and the like for the purpose of tax calculation and inspection. The Directorate may issue regulations concerning measuring equipment requirements and measurement methods.
- (3) The Directorate may issue regulations requiring the use of fixed conversion factors where taxable goods are sold by measure of capacity rather than by weight.
- (4) The Directorate may issue regulations according to which Norges Birøkterlag AS may retain a predetermined amount for administration costs for each application granted for subsidies for beekeeping, cf. Section 3-16-4.
- (5) The Directorate may issue regulations clarifying, supplementing and implementing these regulations, including on calculation, repayment, collection and inspection etc. Moreover, the Directorate may issue regulations concerning the preconditions for exemption from tax, including requirements as to documentation and minimum limits for exemption.

0 Amended by regulations 12 Dec. 2003 No. 1533 (in force 1 Jan. 2004).

Section 7-2. *Electronic data exchange*

The customs region may grant permission for notifications to be given with the aid of electronic data exchange. Provisions granted under or pursuant to Section 40 to Section 44 of the Act of 10 June 1966 No. 5 concerning Customs shall apply as far as applicable, unless otherwise provided for in or pursuant to these regulations.

0 Amended by regulations 12 Dec. 2003 No. 1533 (in force 1 Jan. 2004).

Section 7-3. *Transitional rules*

Undertakings with approved premises must within two years from the entry into force of these regulations renew their approval in accordance with Section 5-7.

Section 7-4. *Entry into force etc.*

- (1) These regulations apply from 1 January 2002.

Tax on emissions of NO_x (nitrogen oxides) – the comments of the Directorate of Customs and Excise

On 28 November 2006, the Storting passed a resolution to introduce a tax on emissions of nitrogen oxides (NO_x) from 1 January 2007 (cf. Report No. 2 to the Storting (2005 - 2006) Revised National Budget 2006, and Proposition No. 1 to the Storting (2006 – 2007) Tax, Excise and Customs Resolution).

The object of the tax is to reduce Norway's annual emissions of NO_x to 156,000 tonnes by 2010 in accordance with our commitments under the Gothenburg Protocol of 1999 (ratified by Norway on 30 January 2002). Emphasis has been placed on achieving as accurate a tax system as possible. This applies in particular to the provisions on tax calculation and the requirements applicable to documentation of the calculation.

Moreover, in formulating the provisions of the Regulations, weight has been attached to choosing solutions that safeguard the need for neutrality and are not liable to have unintentional effects on competition in the industries in question or with respect to foreign undertakings.

The tax is directed primarily at emissions from domestic activities and encompasses emissions from large units within the sectors shipping, aviation, land-based activities and the Continental Shelf.

The owner of the emissions is the taxable undertaking. This entails that shipping companies/shipowners (shipping), airlines (aviation), owners of undertakings (land-based activities) and operators (the Continental Shelf) are required to register for the tax.

Taxable undertakings must contact the customs regions in order to register.

Situation with regard to the regulations on tax on the end processing of refuse
(cf. the Storting resolution on tax on emissions of NO_x, Section 1 second paragraph and the Storting resolution on the end processing of refuse, Sections 1 and 3)

The liability for tax does not encompass NO_x emissions on taxable incineration of refuse encompassed by the Storting resolution on tax on the end processing of refuse, cf. Sections 1 and 3. Emissions from facilities not encompassed by the liability for tax on refuse are encompassed by the NO_x tax.

Scope of the liability for tax – technical area of application

(cf. the Storting resolution on tax on emissions of NO_x, Section 1 first paragraph and Section 3-19-1 of the Regulations)

The provisions specify points for the units encompassed by the tax liability and emphasise that the liability for tax is related to emissions from *energy production*. This entails that emissions from industrial processes are excluded. In the event of doubt about whether an emission source is used for energy production, this will need to be resolved with a competent authority so that sufficient documentation is available in the event of an inspection.

According to *letter a*, the regulations apply to propulsion machinery with a total installed capacity of more than 750 kW. Here, the rated power of the engines will be decisive. *Propulsion machinery* is defined in Section 3-19-3 letter a as “machines used or designed for the propulsion of vessels, aircraft or vehicles”. Auxiliary engines and other engines used for the operation of generators etc. are not included for the purpose of calculation unless these have been designed for use for propulsion. The output of the propulsion machinery alone determines whether a unit is encompassed by liability for the tax. However, once a unit is encompassed by the liability for tax, the tax shall be calculated on all emissions, including emissions deriving from sources other than the propulsion machinery.

The certified output of the engine shall be applied. This to avoid evasion of tax by means of uncertified downward adjustments of engine power. Documentation of downward adjustments of power from the engine manufacturer will also be accepted. Further, the liability for tax will apply irrespective of whether the emission is to water, air or ground.

According to *letter b*, engines, boilers and turbines with a total installed capacity of more than 10 MW are encompassed. The rated power is without significance since installed power will constitute a known size for the units in question.

In assessing whether an undertaking is encompassed by liability for the tax, the total output of the local legal entity’s individual emission units will be applied. A local legal entity with two units of e.g. seven MW each will accordingly be encompassed by the tax. Here too, all emissions from energy production in the stated sources will be encompassed. Emissions from furnaces fall outside the scope of the tax liability since it is difficult to document NO_x emissions from large furnaces, which are primarily what are used in process industry.

According to *letter c*, the burning of gas from flares is encompassed by the liability for tax. These are flares on offshore installations and facilities on land.

The scope of the liability for tax – physical area of application

(cf. Section 3-19-2 first to fourth paragraphs of the Regulations)

The provision specifies the geographical limits on the scope of the liability for tax.

Vessels

The first paragraph clarifies physical area of application of the tax for vessels. According to *letter a*, all emissions from vessels within Norwegian territorial waters are encompassed by the liability for the tax. This applies irrespective of the nationality of the vessel and her activities in the area. The definition of “Norwegian territorial waters” is linked to the Act of 27 June, No. 57 concerning Norway’s territorial waters and adjoining zone, although for the purposes of the NO_x tax, the liability for tax applies only to the territorial waters around the Norwegian mainland, cf. Section 3-19-3 letter b.

The liability for tax does not apply to emissions from vessels sailing within Norwegian territorial waters on their way from one foreign port directly to a second foreign port.

According to letter b, all emissions from domestic traffic are encompassed by the liability for tax. “Domestic traffic” is defined as traffic between two Norwegian ports and traffic between Norwegian ports and Svalbard, Jan Mayen, the dependencies or installations on the Norwegian Shelf, see Section 3-19-3 letter c. Even if parts of the domestic traffic take place outside Norwegian territorial waters, emissions from the voyage as a whole will be encompassed by the liability for tax. Here again, the nationality of the vessel will have no bearing on the liability for tax. “Port” is defined in more detail in Section 3-19-3, letter h.

According to letter c, the liability for tax applies to emissions from Norwegian registered vessels in near waters. “Near waters” are defined as “sea areas where the distance to the Norwegian coast (base line) is less than 250 nautical miles,” cf. Section 3-19-3 letter e. Norway does not have the same authority to tax foreign vessels this far out at sea unless the foreign vessel is engaged in domestic traffic.

The physical area of application of the liability for the tax for vessels must be viewed in the context of the exemption applicable to direct foreign traffic and fishing and hunting in distant waters, cf. Storting resolution Section 2, first paragraph, letter a and b, and Section 3-19-11 first and second paragraphs.

Aircraft

The second paragraph emphasises the physical area of application of the liability for the tax in the case of aircraft. “Aircraft” are defined as “aeroplanes and helicopters”, cf. Section 3-19-3 letter j.

As a general rule, the liability for the tax applies to emissions from all aircraft flying between Norwegian landing fields and installations on the Norwegian Continental Shelf. In the case of aeroplanes, the liability for tax applies only on take-off and landing (see the comments to Section 3-19-8). In the case of helicopters, emissions from the whole flight are encompassed by the liability for tax, not solely take-off and landing.

Furthermore, the liability for the tax applies to emissions from aircraft flying between Norwegian landing fields and landing fields on Svalbard, Jan Mayen and the dependencies. In the case of aeroplanes, the liability for the tax will in these cases apply only upon take-off and landing at landing fields on the Norwegian mainland since emissions from take-off and landing at landing fields on Svalbard require special regulation. “Landing field” is defined in Section 3-19-3 letter i.

Vehicles, including railway vehicles

The third paragraph regulates the local area of application of the tax with regard to emissions from vehicles, including railway vehicles. As a general rule all emissions occurring in Norway are encompassed by the liability for the tax. In practice, the limit of 750 kW entails that no cars will be taxable.

The term “railway vehicle” encompasses all devices that run on rails. The geographical delimitation entails that tax will be calculated on all emissions that take place on Norwegian territory up to the border.

Other energy production

The fourth paragraph emphasises that emissions from other energy production than provided for in the first to third paragraph is liable for tax if the emission takes place in Norway or on the Norwegian Continental Shelf.

For example, a mobile device encompassed by the liability for tax pursuant to Section 3-19-1 travelling under its own engine power from a Norwegian port and out to the Norwegian Continental Shelf to conduct activities will be encompassed by Section 3-19-2 first paragraph for the purpose of the voyage from the Norwegian port and out to the Norwegian Continental Shelf, and by Section 2-19-2 fourth paragraph for the purpose of activity on the Shelf.

When the liability for tax arises

(cf. Section 2-1 fourth paragraph and Section 2-19-4 of the Regulations)

The liability for tax arises with the emission of NO_x.

It is the emission that is encompassed by the requirement to file returns. The emission shall be reported by the 18th of the month after the end of the quarter in which the emission actually took place, cf. Section 6-1 third paragraph of the Regulations on Special Taxes. The tax comes due for payment at the same time as the filing requirement, cf. Section 6-3.

Taxable activities

(Section 5-1 letter g of the Regulations)

Based on the principle of environmental law that “the polluter must pay”, the emission owner is defined as the undertaking liable for tax within the sectors encompassed by the tax liability. This also safeguards the need for equality of sectors within the tax system. This entails that the vessel owner/shipping company is liable for tax on vessels, the owner of the facility is liable for land-based activities, the operator for activities on the Shelf and the owner/airline for the aircraft.

As a general rule, activities liable for tax on NO_x emissions follow the general provisions on tax management in Chapter 5 of the Regulations on Special Taxes. It is important that the individual undertaking should apply to the customs region for registration, cf. Section 5-1.

The tax base

(the Storting resolution on tax on emissions of NO_x, Section 3 and Section 19-5 of the Regulations)

The tax shall be calculated per kilogram of NO_x.

Calculation of tax

(cf. Sections 3-19-6, 3-19-8 and 3-19-9 of the Regulations)

The tax shall be calculated on all NO_x emissions from the units encompassed by the tax liability.

The rules on the calculation of tax are based on a three-way principle where the point of departure is that the tax shall be calculated on the basis of actual NO_x emissions. If actual emissions are not known, the tax shall be calculated on the basis of a source-specific emission factor. If neither actual emissions nor the source-specific factor are known, factors determined by standard values will be used. These three methods of calculation are intended to be alternatives, not optional.

1. Actual emissions

Section 3-19-6 first paragraph specifies the general rule that the tax is to be calculated on the basis of the actual NO_x emissions from the individual emission source. This applies to vessels, land-based activities and activities on the Norwegian Continental Shelf. Actual emissions may be determined by means of measurement or by some other method of calculation that provides exact emission data. Sampling, analysis and calibration of measuring equipment shall be performed in accordance with Norwegian Standard (NS), or in accordance with some other international standard if no Norwegian standard exists. In the case of activities where actual emissions are known, using these values for calculating tax is mandatory.

If an inspection reveals irregularities in connection with measurement or calculation of actual emissions, the competent authority may overrule the reported quantity.

2. Source-specific factor

According to Section 3-19-6 second paragraph first point the tax is calculated on the basis of a source-specific emission factor in cases in which the actual emission is not known. The source-specific factor is determined separately for each individual emission source or separately for a specifically delineated group of emission sources that are assumed to be equal. Quantity of energy product consumed is used in the calculation to determine the taxable quantity of emissions.

Taxable undertakings may apply to the applicable competent technical authority to have the source-specific emission factor determined, cf. Section 3-19-7. The “competent authority” is the Norwegian Maritime Directorate in the case of vessels, the Civil Aviation Authority in the case of aircraft, the Norwegian Petroleum Directorate in the case of installations on the Shelf, and the Norwegian Pollution Control Authority in the case of land-based activities. The competent authority may provide detailed guidelines on the way in which source-specific factors are to be determined.

In the case of vessels, the keels of which were laid down or fitted with engines converted after 1 January 2000, the vessel’s EIAPP (*Engine International Air Pollution Prevention*) certificate will constitute the source-specific factor for the purpose of Section 3-19-6 second paragraph first point. This shows that the vessel’s engine satisfies the IMO (*International Maritime Organisation*) requirements as to the NO_x emissions. To be valid, the EIAPP certificate must be accompanied by an NO_x Technical File.

When calculating the tax using this alternative, the source-specific factor must be multiplied by the total quantity of fuel consumed.

Calculating emissions from aeroplanes

In the case of aeroplanes, the tax shall be calculated in accordance with the formula provided in Section 3-19-8 first paragraph, cf. Section 3-19-6 second paragraph second point.

The formula was created by a working group within the ECAC (*European Civil Aviation Conference*), known as the ERLIG (*Emission Related Landing Charges Investigation Group*) and calculates NO_x emissions from aeroplanes during the landing and takeoff phase (LTO phase, below 3,000 feet above the ground).

The emission value for a given aircraft is found by multiplying factor *a* by the number of engines on the aircraft, which in turn is multiplied by the NO_x emissions of the aircraft during the LTO phase (Σ).

The data necessary for calculating emissions is available from the ICAO (*International Civil Aviation Organization*) emission database for regulated engines (in other words where the engine data is based on the ICAO standardised LTO cycle), and from FOI (*Totalförsvarets forskningsinstitut*) in Sweden in the case of engines that are not regulated by ICAO. Data is reported to the ICAO and FOI databases by amongst other parties engine manufacturers in countries in which the ERLIG model is used (including Sweden, Switzerland and the United Kingdom).

If the relevant data cannot be secured from the available databases, the aircraft owner/airline must apply the factors applicable to engines with the highest known emission value, cf. Section 3-19-8 second paragraph. This provides parties with a liability for the tax with an incentive to acquire the most accurate documentation available.

3. Factor determined by standard value

Section 3-19-6 third paragraph specifies the final alternative for calculating tax. This alternative applies where the actual NO_x emission is not known and where there is no source-specific emission factor. In such cases the tax must be calculated on the basis of the standard value multiplied by the quantity of energy product consumed. In the case of emission sources for which the table cannot be used, the first or second alternative must be used for calculating tax. It is assumed that the standard factor will at some time in the future be replaced with better and more accurate factors.

The individual specific standard values follow from Section 3-19-9 and apply to a variety of emission sources and various types of energy product.

Engines

In the case of engines the factors are differentiated on the basis of maximum revolutions per minute, cf. Section 3-19-9 first paragraph. Factors have been fixed for four different rpm groups and the maximum rpm of the engine must be applied. Accordingly actual revolutions per minute during an individual journey will not be of significance. The factors lie in the upper area of this range in order to provide an incentive to reduce emissions. It is assumed that the rpm groups can be used for all types of engines.

Boilers

The emission factors for boilers vary depending on the type of energy product used, the operating conditions and the type of boiler.

Turbines

The emission factors for turbines depend on the type of energy product used, the operating conditions and the type of turbine.

Flares

The emission factors for flares depend on gas composition and type of flare.

The term Sm³ (“standard cubic metre”) means that cubic metres must be related to standard conditions, which are 15°C and 1 atmosphere. This is the most widely used international reference condition and it is essential that this be used in determining emissions. If this is not used, measured volume can be reduced by increasing pressure and/or lowering temperature.

Helicopters

Because engine data on helicopters cannot be found in either the ICAO or the FOI databases, and because it is difficult to determine an individual engine output for helicopters, NO_x emissions from helicopters must be calculated solely on the basis of a standard factor of 6.67 kg NO_x per tonne of energy product consumed, cf. Section 3-19-9 fifth paragraph. This factor is equal to the factor used by Statistics Norway for calculating emissions from helicopters for the purpose of reporting NO_x emissions under the Gothenburg Protocol.

Railway vehicles

In the case of railway vehicles an emission of 47 kg NO_x per tonne of energy product consumed must be applied, cf. Section 3-19-9 sixth paragraph. This factor is equal to Statistics Norway’s factor for calculating emissions.

Documentation for tax calculation

(cf. Section 3-19-10 of the Regulations)

The calculation of tax must fulfil the general provisions relating to the information that must be shown in the tax accounts, cf. Section 5-8 of the Regulations. The tax accounts provide the point of departure for Customs and Excise’s inspection procedures and must accordingly be arranged in such a way that it will be traceable at a later point.

Actual emission

According to Section 3-19-10 first paragraph undertakings that report and pay tax on the basis of actual emissions must document their calculations. Examples of types of documentation as provided for in this alternative include verification that a measurement on a vessel has been conducted by an accredited classification company, for example Det norske Veritas, or verification from the Norwegian Maritime

Directorate that actual emissions from the vessel have been determined by an operator with the competence to do so.

Source-specific emission factor

Section 3-19-10 second paragraph contains the requirement that where a source-specific emission factor is used, documentation must be submitted to show that it was determined on the basis of a Norwegian Standard (NS) or an equivalent international standard.

As far as the Directorate is aware there is at present no Norwegian Standard for factors of this type. One example of an “international standard” is the EIAPP certificate referred to earlier with the associated NO_x Technical File, which is normally issued for vessels laid after 1 January 2000 and older vessels that have converted engines in accordance with the IMO’s NO_x requirements. In such cases the EIAPP certificate will constitute approved documentation for calculating tax under this alternative.

If neither a Norwegian Standard nor an international standard can be used as documentation, the competent authority must verify the factor that is used. “Competent authority” are the respective technical authorities within the individual sectors, cf. Section 3-19-7 and must in these instances verify the factor used in accordance with the authority’s own guidelines.

Engines

Section 10-19-10 third paragraph contains documentation requirements for engines where the rpm figure is applied. As a general rule, the engine’s rpm must be confirmed by means of a certificate. However, other documentation such as verification from the manufacturer may also be applied if sufficient evidence can be presented that the verification reflects the true situation.

Low NO_x turbines

Section 3-19-10 fifth paragraph provides that the calculation of emissions from low NO_x turbines must be documented with a certificate from the manufacturer or some other documentation verified by a competent authority showing that the turbine is a low NO_x turbine.

Tax exemption – direct foreign traffic, fishing and hunting in remote waters
(*cf. the Storting Resolution on tax on emissions of NO_x, Section 2 first paragraph letters a and b and Section 3-19-11 of the Regulations*)

Direct foreign traffic

Section 2 first paragraph letter a of the Storting Resolution and Section 3-19-11 first paragraph of the Regulations provide for exemptions in the case of emissions from vessels operating in direct traffic between Norwegian and foreign ports and aircraft operating in direct traffic between Norwegian and foreign landing fields. The background for the tax exemption is that the emission accounts underlying the Gothenburg Protocol do not encompass emissions of this nature. If the preconditions for exemption are met, emissions from the voyage as a whole will be exempted from tax.

A precondition for the exemption is that the traffic is *direct traffic*. “Direct traffic” is defined in Section 3-19-3 letter g. Whether or not this precondition is fulfilled in the case of an aircraft will be relatively simple to determine. If the aircraft takes off from a Norwegian landing field, stops at a second Norwegian landing field and then continues to a foreign landing field, the journey between the Norwegian landing fields will be subject to tax, whereas the journey from the Norwegian to the foreign landing field will be exempted from tax. See Section 3-19-2 second paragraph on which parts of the flight are subject to a tax liability.

The same principles apply to vessels. Any emissions from intermediate calls at Norwegian ports will be encompassed by the tax liability, whereas emissions from the voyage from the last Norwegian port to a foreign port will be exempt from tax. Nevertheless, a vessel will not be considered to be in direct traffic to a foreign port if she is engaged in fishing, hunting or other activities during the course of the voyage.

“Other activities” include situations where a cruise vessel sailing between Norwegian and foreign ports or vice versa calls in at, for example, a fjord underway, allows passengers to go ashore, and then continues to her final destination. In this case the requirements as to “direct traffic” will not have been fulfilled.

As has already been noted, the tax liability does not encompass emissions from vessels sailing within Norwegian territorial waters on their way from a foreign port directly to another foreign port, cf. Section 3-19-2 first paragraph.

Fishing and hunting in remote waters

Section 2 first paragraph b of the Resolution by the Storting and Section 3-19-11 second paragraph of the Regulations grant exemptions in the case of emissions from vessels engaged in fishing and hunting in distant waters. The term “remote waters” is defined in Section 3-19-3 letter f as “sea areas where the distance to the Norwegian coast (base line) is 250 nautical miles or more”. The tax exemption applies only to emissions occurring outside this limit. Emissions occurring within this limit are encompassed by the liability for tax. The exemption also applies if the voyage is also regarded as domestic traffic, cf. Section 3-19-2 first paragraph letter b.

Preconditions for exemption

Section 3-19-11 third paragraph makes exemption conditional upon the availability of relevant documentation. The relevant documentation requirement will be fulfilled in the form of a copy of a log book or similar showing the vessel’s name, nationality, destination and quantity of energy product consumed for taxable and tax-free use, respectively.

Procedure for exemption

Section 3-19-11 fourth paragraph specifies how the exemption is to be recorded in the tax return. Undertakings with both taxable and tax-free emissions must record the total quantity of emissions in the tax return. Tax-free emissions are recorded exclusive of tax, i.e. at the zero rate.

Exemption from tax – vessels worthy of preservation, museum railways and technical and industrial cultural heritage monuments and sites and technical facilities in the museum sector

(cf. the Storting Resolution on tax on emissions of NO_x, Section 2 first paragraph letter c and Section 4-1-1 second paragraph of the Regulations)

Emissions from vessels worthy of preservation, museum railways and technical and industrial cultural heritage monuments and technical facilities in the museum sector are exempted in the Storting Resolution from tax on NO_x emissions. Equivalent exemptions apply in the case of a number of other special taxes.

Tax exemption – undertakings that conclude environmental agreements with the State

(cf. Section 2 first paragraph letter d of the Storting Resolution on tax on the emissions of NO_x)

Exemption from tax on emissions of NO_x is granted in the case of emission sources that are encompassed by an environmental agreement with the State on the performance of measures to reduce NO_x in accordance with a specified environmental goal. The exemption is conditional upon the conclusion by the undertaking of agreements on specific emission reductions with defined time frames.

Exemption from tax liability

(cf. Section 5 of the Storting Resolution on tax on emissions of NO_x)

Subject to application the customs region may grant exemption from liability for the tax. The provision imposes two conditions, both of which must be fulfilled, and as a consequence the right to dispensation is limited. In accordance with practice, weight is not ascribed to economic, social, health or other factors.

Tax refunds for undertakings that install treatment equipment – transitional arrangement

(cf. Section 3-19-14 of the Regulations)

A lack of workshop capacity can create problems with regard to the installation of treatment equipment. Against this background a transitional arrangement has been introduced involving refunds for taxable undertakings that have concluded an agreement with a workshop or the like by 1 July 2007 on the time for installation of treatment equipment. Refund applications must be submitted to the applicable customs region and the amount of the refund will be equivalent to the difference between the tax that was paid without treatment equipment and the tax payable with treatment equipment, in the period between 1 January 2007 and until the date on which the treatment equipment is installed.

“Competent authority” is the responsible technical authority within the individual sector, cf. Section 3-19-7.

Tax refund for undertakings that install measuring equipment – transitional arrangement

(cf. Section 3-19-15 of the Regulations)

In light of possible problems with arranging for the installation of equipment for emission measurement, a transitional arrangement has also been introduced involving tax refunds for undertakings that have installed measuring equipment before 31 December 2007. As in the case of the transitional arrangement for the installation of treatment equipment, the refund will be equivalent to the difference between the tax paid before installation of measuring equipment, for example in accordance with a standard factor value, and the tax paid after the installation of the measuring equipment, for the period from 1 January 2000 and until the measuring equipment has been installed. Application for refunds must be submitted to the customs region in question.

“Competent authority” is the responsible technical authority within the individual sector, cf. Section 3-19-7.

Tax refunds for undertakings for which a source-specific emission factor is fixed – transitional arrangement

(cf. Section 3-19-16 of the Regulations)

The background to this provision is the need for a transitional arrangement for undertakings that have not had a source-specific emission factor fixed in accordance with Section 3-19-6 second paragraph by the time of the first tax payment and which must therefore calculate tax on the basis of a template factor until such time as the factor is in place. This transitional arrangement applies to all undertakings, irrespective of sector. An application for a specific factor to be set must be sent to the competent authority before 1 July 2007.

The amount of the refund will be equivalent to the difference between the tax paid before the fixing of the specific factor and the tax paid after the factor is in place, for the period from 1 January 2007 and until the factor has been determined. Applications for refunds must be sent to the customs region in question.

“Competent authority” is the responsible technical authority within the individual sector, cf. Section 3-19-7.

Undertakings subject to registration requirements

(cf. Section 5-1 letter g of the Regulations)

The emission owner is defined as undertaking liable for the tax within the sectors encompassed by the tax liability. The vessel owner/shipowning company, owner of facility for land-based activities, operator in the case of activities on the Continental Shelf and the owner/airline in the case of aircraft must register with the customs region in question, and must as a general rule follow the general provisions on tax management in Chapter 5 of the Special Tax Regulations.

The registration requirement does not apply to undertakings with tax-free emissions only. Examples include shipowners with vessels that operate only in direct foreign

traffic. Foreign undertakings that use a representative registered in accordance with the rule in Section 5-2 are not encompassed by the registration requirement in Section 5-1.

Optional registration – foreign representative

(cf. Section 3-19-13 and Section 5-1 letter d of the Regulations)

Foreign owners of taxable vessels and aircraft with no place of business or domicile in Norway are not required to register in Norway. Undertakings of this nature may pay tax through a representative on their taxable traffic in Norway, cf. Section 3-19-13 first paragraph. The representative has the right to register under Section 5-2 letter d.

Upon arrival in Norway the master or pilot of a foreign vessel or aircraft shall notify the customs authorities of the identity of the representative who will pay the tax, cf. Section 3-19-13 second paragraph. The owner of the vessel or aircraft and the representative are jointly and severally liable for the tax, cf. Section 3-19-13 final paragraph.

Registered representatives have the same rights and obligations with respect to the customs authorities as other registered undertakings.

Place of registration

(cf. Section 5-4 of the Regulations)

Registration shall take place in the customs region in which the undertaking has its registered office/head office as shown in the Central Coordinating Register for Legal Entities.

Tax terms

(cf. Section 6-1 third paragraph No. 3 of the Regulations)

Registered taxable undertakings are required to submit tax returns to the Customs Region by the 18th day of the month after the end of the quarter in which the emission took place, cf. Section 6-1 third paragraph.

A system of quarterly tax terms, instead of the monthly terms applicable to the other special taxes, will afford entities liable for the tax greater scope for determining specific emission factors by the time of the first tax payment, which will be on 18 April 2007 and if applicable for installing treatment equipment and measuring equipment. This will give a greater number of taxable undertakings the opportunity to pay tax on as correct a basis as possible and fewer undertakings will need to apply for refunds. Moreover, the undertakings will also be afforded greater scope for establishing and implementing procedures for registration and other administrative systems linked to this tax.

Tax codes and completion of the tax return (form RD-0007)

(cf. Chapter 6 of the Regulations)

The following tax type and tax groups shall be used for the purpose of declaring tax on emissions of NO_x on the tax return:

No.	Type	Group	Tax area	Unit	Rate in kroner
14	NX	100	Emissions from fishing and hunting	kg	15.00
		200	Emissions from shipping	kg	15.00
		210	Emissions from aviation	kg	15.00
		220	Emissions from railway vehicles	kg	15.00
		300	Emissions from industry	kg	15.00
		400	Emissions from petroleum activities	kg	15.00
		900	Emissions from other activities	kg	15.00

The type of tax must always be entered in column 13 and the tax groups in column 14, cf. the tax return.

Additional codes:

Tax-free sales must also be declared on the tax return, but with an additional code from 00 to 99. The following additional codes apply in the case of nitrogen oxides (NO_x):

- 22 Emissions from vessels and aircraft in direct traffic between Norwegian and foreign ports or airfields
- 69 Emissions from vessels worthy of preservation, museum railways, technical and industrial cultural heritage monuments and sites and technical facilities in the museum sector

Exemptions:

All the stated codes are exemption codes. These must be entered on the tax return, adjacent to the correct tax types and tax groups, with the number of units, but tax must NOT be calculated. Please note that certain exemptions are granted only subject to application to the customs region and cannot be recorded on the terminal tax return using a supplementary code.

Calculation of interest

(cf. Section 6-4 of the Regulations)

The interest rate on tax not paid on time will be three percentage points above the interest rate applicable from time to time in accordance with regulations adopted pursuant to the Act concerning interest on late payment, Section 3 first paragraph first point. The interest on late payment is assessed every six months. The applicable rate of interest on late payments can be found on the website of the customs authorities.