

## SkatteFUNN: Enterprises in difficulty

The Ministry of Finance has sent letters to the Directorate of Taxes on 26 February and 30 October 2020 regarding the handling of SkatteFUNN and the prohibition on support for enterprises in financial difficulties. Here you will find more information on how the assessment will be carried out for projects that were approved in 2019 and beyond. Below you will find more information about how this is calculated, and what consequences this will have for applicants for SkatteFUNN.

SkatteFUNN applicants must submit a self-declaration stating that they do not meet the criteria for being in difficulty. From 2020 the applicant declaration form is obtained through the application form for SkatteFUNN.

### GBER: The Block Exemption Regulation's prohibition of state support to firms in difficulty

The SkatteFUNN scheme has been notified to ESA (the EFTA Surveillance Authority) under the so-called General Block Exemption Regulation (GBER). According to this regulation, there is a prohibition on granting state support to "enterprises in difficulty". An enterprise is considered to be in difficulty where at least one of the circumstances listed in the General Block Exemption Regulation (GBER) Article 2, paragraph 18, letters a-e, has occurred.

As a general rule, the company will be classified as an enterprise in difficulty if the company is in one of the following situations:

1. more than half of the subscribed share capital of the company has disappeared as a result of accumulated losses (except for SMEs that have existed for less than three years)
2. the company is a general partnership where more than half of its carrying capital has disappeared as a result of accumulated losses (except for SMEs that have existed for less than three years)
3. public debt negotiations or bankruptcy proceedings have been started for the company, or the company meets the conditions for bankruptcy under the Bankruptcy Act
4. the company has received crisis support and has not yet repaid the loan or redeemed the guarantee, or it has received restructuring support and has not yet completed the planned restructuring
5. the company is not an SME, and in the two previous financial years:
  1. the ratio of book debt to book equity has been greater than 7.5
  2. and EBITDA interest coverage ratio has been lower than 1.0

Please note that the above paragraphs are an abbreviated version of the Terms and Conditions. The full description of the conditions in Article 2, point 18, letter a-e of the General Block Exemption Regulation can be found here: [The General Block Exemption Regulation](#).

What is considered to be an SME is stated in GBER Appendix 1 and FSFIN § 16-40-5. The full description of the conditions for being considered an SME can be found here (see "ANNEX I"): [The General Block Exemption Regulation](#).

See also the definition of SMEs on the European Commission's website: [SME definitions](#).

### The time of assessment

For the SkatteFUNN scheme, the date for assessing whether the enterprise is in difficulty under the Block Exemption Regulation is the date on which the Research Council makes a decision to approve the research content of the SkatteFUNN application.

## **The basis for assessing whether the enterprise is in difficulty**

The basis for the assessment of whether the enterprise is in difficulty pursuant to the General Block Exemption Regulation shall be the financial statements, or income statements for enterprises without an accounting obligation, that were last submitted prior to the Research Council's decision to approve the enterprise's application.

For entities subject to the accounting obligation, this means the accounts that were last submitted before the date of approval. After the SkatteFUNN application has been approved, accounts may be submitted for a more recent accounting period that provide information about the company's financial position closer to the time of approval than the submitted accounts. Accounts that are submitted later shall not be used as a basis for the assessment.

However, an interim balance sheet, where the balance sheet date is between the most recently submitted accounts and before the Research Council's approval of the application, may be used as a basis for the assessment. There is no requirement that the interim balance sheet must be approved by an auditor.

## **Exemptions for small and medium-sized enterprises that have existed for less than three years**

Small and medium-sized enterprises (SMEs) that have existed for fewer than three years must not be assessed against the criteria of financial difficulties set out in Article 2 paragraph 18 letter a and b of the GBER. What is considered to be an ME is stated in GBER Appendix 1, see the SME definition.

A company is considered to have existed for fewer than three years for SkatteFUNN purposes where three or fewer years have passed from the time the company was registered until the date on which the Research Council makes a decision on approval of the company's application.

The exemption for SMEs that have existed for less than three years does not apply to companies that are insolvent or have received crisis support, see GBER Article 2 paragraph 18 letter c and d, see [The Block Exemption Regulation](#).

## **Group-level or company-level assessment**

Pursuant to Article 2 paragraph 18 of the GBER, an enterprise may not be in difficulty when awarded SkatteFUNN support.

The assessment of whether the enterprise meets the criteria for being considered to be in difficulty in principle shall be made at group level (i.e. a normal company group according to the Norwegian understanding). However, in ESA's view, it is also necessary to carry out the same assessment for the individual company applying for support. ESA states that if the company is in difficulty (and not the group), the company may receive support on condition that the group provides the company with sufficient capital to remedy the situation so that the company does not meet the criteria for being in difficulty.

The Ministry of Finance writes in a [statement on 30 October 2020](#) that it assumes that the date on which such a creation by the group must be completed in order for the company not to be considered to be in difficulty pursuant to Article 2 paragraph 18 of the GBER coincides with the date on which the support was awarded. For the SkatteFUNN scheme, it is the time of approval of the application from the Research Council of Norway that is to be taken into account.

## **More on measuring share capital and accumulated losses**

An enterprise may be considered to be in difficulty pursuant to Article 2 point 18 letter a of the GBER if accumulated losses after deduction of reserves exceed half of the subscribed share capital.

Article 2 paragraph 18 letter a of the GBER states that share premium shall be included "where relevant".

Premiums shall be included in the same way as share capital in the assessment of whether more than half of the company's subscribed share capital has disappeared as a result of accumulated losses, cf. Article 2 paragraph 18

letter a of the GBER. A premium means a premium that appears from the submitted annual accounts, see item 3 of [the statement of 30 October 2020](#).

The sum of retained equity is added to all items for paid-in equity, except what is considered to be share capital and premium. This will correspond to uncovered losses less all equity items other than share capital and premiums. If the amount obtained is a negative amount where the absolute value exceeds half of the share capital and the premium is summed up, the enterprise is considered to be in difficulty.

It follows from the above that subordinated loans or convertible loans do not have an impact on the assessment.

It is assumed that decided but unregistered capital reductions and increases shall respectively reduce or increase the items that are changed, whether they are share capital or premiums. It is a condition that the capital change is actually carried out, but it is not a condition that it is registered before the balance sheet date.

Changes in the company's balance sheet, which include a reduction in share capital, will be used as a basis for the assessment. If the change is not apparent from the most recently submitted annual accounts, an interim balance sheet must be prepared as described above.

## **Net debt and EBITDA ratio**

According to GBER art. 2 paragraph 18 letter e, companies are considered to be in difficulty "... in the case of an enterprise that is not an SME, if the following applies to the previous two years:

- 1) the enterprise's book ratio between debt and equity has been greater than 7.5 and
- 2) the company's EBITDA interest coverage ratio has been lower than 1.0."

"EBITDA" is to be understood as the accounting operating profit before depreciation and amortisation, and "interest" is to be understood as net interest expenses, measured on the basis of what is classified as interest expenses and income according to the chosen accounting standard. Concerning which accounts are to be used as a basis, and whether company or consolidated accounts are to be used, reference is made to the text above.

## **Projects approved in 2019**

For projects approved by 2019, see link (to FIN letter of 26 February 2020, item 3), the Ministry is of the view that the criteria for whether the enterprise is considered to be in difficulty should in principle be assessed on the basis of the financial statements, or income statements for enterprises without an accounting obligation, that were most recently submitted prior to the Research Council's approval of the enterprise's application. If the annual accounts for 2018 have been submitted after approval of the application in 2019, the most recent accounts will normally be the annual accounts for 2017.

For projects that were approved during 2019, there will be companies that do not fall under the criteria for being considered to be in difficulty at the time of approval and companies that are considered to be in difficulty at the time of approval. Among the latter, there may be enterprises that have carried out, for example, equity transactions, so that they are no longer considered to be in difficulty.

Companies with a SkatteFUNN project approved in the course of 2019 could document that the situation has been rectified by either referring to more recent accounts than the last one submitted prior to the approval date, or by presenting an interim balance sheet with a balance sheet date before the submission of the tax return, which shows that the company is not considered to be in difficulty.

## **Multi-year projects approved before 2019**

In a letter from the Ministry of Finance dated 29 November 2019, a system of self-declaration for projects approved during 2019 is described. For SkatteFUNN deductions related to projects that were approved before 2019 and that are still ongoing, the enterprise does not have to submit such a self-declaration on its own initiative.

## **Temporary exemption**

The EU/ESA has laid down a temporary rule stating that enterprises that have experienced financial difficulties in the period from 1 January 2020 to 31 December 2021 and that were not in financial difficulties as of 31 December 2019 may nevertheless receive support, provided that the other conditions for receiving support are met. Link: [State aid: Commission widens scope of GBER \(europa.eu\)](#)

The Ministry of Trade, Industry and Fisheries has assumed that enterprises that apply for approval of a SkatteFUNN project for 2022, and which are only based on the most recently submitted annual accounts (accounts for 2021), which show that it is an enterprise in difficulty, will be considered to be an enterprise in difficulty. Such enterprises are therefore not eligible for support.

If such an enterprise submits additional documentation in the form of an interim balance sheet indicating that the enterprise is not an enterprise in difficulty at the time of award (in this case, the date of the Research Council's approval of the SkatteFUNN project for 2022), it will still not be considered an enterprise in difficulty.

## Links (in Norwegian only)

- [Prinsipputtalelse om hvordan vurderingen skal gjøres for 2022, 30. august 2022 \(Skatteetaten.no\)](#)
- [SkatteFUNN - når skal et selskap anses å inngå i et konsern 17. februar 2022 \(Regjeringen.no\)](#)
- [Finansdepartementets avklaringer 30. oktober 2020.](#)
- [Finansdepartementets avklaringer 26. februar 2020.](#)

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