JUDGMENT OF THE COURT
3 October 2012*

(Freedom of establishment – Articles 31 and 34 EEA – Taxation– Anti-avoidance principles – Proportionality)

In Case E-15/11,

REQUEST to the Court from Oslo tingrett (Oslo District Court) under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in the case of

Arcade Drilling AS

and

The Norwegian State, represented by Tax Region West,

concerning the interpretation of Articles 31 and 34 of the EEA Agreement.

THE COURT,

composed of: Carl Baudenbacher, President, Per Christiansen, and Páll Hreinsson (Judge-Rapporteur), Judges,

Registrar: Skúli Magnússon,

having considered the written observations submitted on behalf of:

- Arcade Drilling AS, ("Arcade"), represented by Hanne Skaarberg Holen, Ulf Werner Andersen and Daniel M. H. Herde, Advocates at the law firm PricewaterhouseCoopers AS, Oslo;

- the Norwegian State, represented by Anders Wilhelmsen and Amund Noss, Advocates, Office of the Attorney General (Civil Affairs), acting as Agents;

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* Language of the request: Norwegian.

- the Finnish Government, represented by Mervi Pere, Ministry for Foreign Affairs, acting as Agent;

- the French Government, represented by Géraud de Bergues, Head of the European Law and International Economic Law Department, and Natacha Rouam, member of the same department, Ministry of Foreign and European Affairs, acting as Agents;

- the EFTA Surveillance Authority (“ESA”), represented by Xavier Lewis, Director, and Florence Simonetti, Deputy Director, Department of Legal & Executive Affairs, acting as Agents;

- the European Commission (“the Commission”), represented by Richard Lyal and Walter Mölls, Members of its Legal Service, acting as Agents.

having regard to the Report for the Hearing,

having heard the oral arguments of the Plaintiff, represented by Hanne Skaarberg Holen; the Norwegian State, represented by Anders Wilhelmsen; ESA, represented by Florence Simonetti; and the Commission, represented by Walter Mölls, at the hearing on 29 May 2012,

gives the following

Judgment

I Legal context

EEA law

1 Article 31 of the EEA Agreement (“EEA”) provides:

> *1. Within the framework of the provisions of this Agreement, there shall be no restrictions on the freedom of establishment of nationals of an EC Member State or an EFTA State in the territory of any other of these States. This shall also apply to the setting up of agencies, branches or subsidiaries by nationals of any EC Member State or EFTA State established in the territory of any of these States.*
>
> *Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of Article 34, second paragraph, under the conditions laid down for its own nationals by the law of the country where such establishment is effected…*

2 Article 34 EEA reads:

> *Companies or firms formed in accordance with the law of an EC Member State or an EFTA State and having their registered office, central administration or principal place of business within the territory of the Contracting Parties shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of EC Member States or EFTA States.*
>
> *'Companies or firms' means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.*

3 Article 36(1) EEA reads:

> *Within the framework of the provisions of this Agreement, there shall be no restrictions on freedom to provide services within the territory of the Contracting Parties in respect of nationals of EC Member States and EFTA States who are established in an EC Member State or an EFTA State other than that of the person for whom the services are intended.*

National Law

The Limited Liability Companies Act

4 Section 2-2 (1) point 2 of the Norwegian Act relating to limited liability companies (the "Limited Liability Companies Act") requires limited liability companies incorporated under Norwegian law to have a "registered office" in Norway. The wording of Section 2-2 (1) of the Limited Liability Companies Act is as follows:

> *(1) The articles of association are to at a minimum state:*
> 1. *The name of the company;*
> 2. *The municipality of the kingdom in which the company shall have its registered office;*
> 3. *The business of the company;*
> 4. *The size of the share capital, cf. Section 3-1;*
> 5. *The face value of the shares, cf. Section 3-1;*
> 6. *The minimum and maximum number of directors on the board of directors cf. Section 6-1;*
> 7. *If the company shall have more than one general manager or if the board of directors or the corporate assembly has the authority to decide whether the company shall have more than one general manager, and if these are to act collectively as one body;*

8. *What matters are to be resolved at the ordinary general meeting, cf. Section 5-5;*
9. *If the shares of the company are to be registered in a securities register.*

5 At the relevant time, the Limited Liability Companies Act Section 16-15 read:

> *(1) If the general meeting does not adopt a resolution on dissolution, the district court shall decide by order that the company is to be dissolved in the following cases:*
>
> *1. if the company is to be dissolved as a result of statutory provisions or provisions in the articles of association;*
>
> *2. if the company has not notified the Register of Business Enterprises of a board of directors that meets the requirements set out in statutory provisions or pursuant thereto;*
>
> *3. if the company is required by law to have a general manager and has not notified the Register of Business Enterprises of a general manager who meets the statutory requirements;*
>
> *4. if the company has not notified the Register of Business Enterprises of an auditor who meets the statutory requirements;*
>
> *5. if the annual accounts, the directors' report and the auditor's report which the company must submit to the Register of Company Accounts pursuant to Section 8-2 of the Accounting Act have not been submitted within six months of the deadline for submission, or if, upon the expiry of the deadline, the Register of Company Accounts cannot approve material submitted as the annual accounts, directors' report and auditor's report.*
>
> *(2) The court may only order the company to be dissolved pursuant to a provision in the articles of association if a shareholder has so demanded, and the general meeting has not adopted a resolution on dissolution pursuant to Section 16-1.*

6 At the relevant time, the Limited Liability Companies Act Section 16-16 read:

> *(1) When the conditions set out in Section 16-15 (1) nos. 1 to 4 have been met, the Register of Business Enterprises must notify the company thereof. In cases as mentioned in Section 16-15 (1) no. 5, the notice will be given by the Register of Company Accounts. The company must be given a period of one month in which to rectify the matter and must be informed of the consequences of any failure to meet the deadline*
>
> *(2) If the company has not rectified the matter upon expiry of the deadline, the Register of Business Enterprises or the Register of Company Accounts must repeat the warning by the insertion of a notice in the Brønnøysund Register Centre's electronic publication and in abbreviated from in a newspaper which is widely read in the area in which the registered office of the company is located. The notice must state that the terms and conditions for dissolution of the company have been met, and that the*

company has a deadline of four weeks from the notice was inserted in the Brønnøysund Register Centre's electronic publication in which to rectify the matter. The consequences of any failure to meet the deadline must also be stated.

(3) If it is considered expedient, public notice in accordance with the present provision may instead be given by the district court.

7 At the relevant time, the Limited Liability Companies Act Section 16-17 read:

(1) If the company has exceeded the period in Section 16-16 second paragraph, the Register of Business Enterprises or the Register of Company Accounts shall notify the District Court thereof.

(2) The court shall without further notice decide by decree to dissolve the company pursuant to § 16-15, unless such decision to dissolve has already been adopted by the general meeting. The decree has the same effect as a decree to open bankruptcy proceedings under chapter VIII of the Bankruptcy Act.

(3) If major social economic considerations so indicate, the King may resolve that the company shall be permitted to continue operations, and that the case shall not be sent to the District Court for compulsory dissolution, but that the company shall be given an extended deadline before compulsory dissolution is implemented. The King shall in such case resolve that the company shall pay a current coercive fine to the state with effect from a date to be stipulated until the matter has been rectified.

8 In an interpretative statement of 6 January 1998, the Ministry of Justice contended that companies that relocate their head office outside the realm are in breach of Norwegian company legislation. According to that interpretative statement, whether a "head office" can be deemed to have been relocated outside the realm will depend on an "overall evaluation, based not only on where the board's management functions are exercised".

9 It is further noted in the statement that there is no case law defining the conditions for when a head office shall be considered to have been relocated outside the realm, and that, in legal doctrine, opinion varies concerning what is required to establish that a head office has been relocated and whether or not a head office or only a registered office in Norway is required under Norwegian limited liability company legislation.

10 The following passages are presented from the statement:

In our opinion, it needs to be acknowledged that neither the Limited Liability Companies Act nor any other legal sources established a rule which clearly states what affiliation a company needs to have to Norway in order to be Norwegian. The assessment must, as a starting point, be based on a common understanding of the term "head office". In most cases this will probably provide sufficient guidance for establishing the *nationality of the company. In some cases, however, the different functions may be divided and spread out, to the extent that it is not obvious where the head office should be considered to be. In such cases the question of nationality must be based on an assessment taking into account all relevant circumstances, in which it will obviously be of importance where the board holds their meetings and where the administration performs their functions. Besides this we cannot rule out that other factors in general connecting the company to Norway may be of some importance, meaning that a weaker management connection to Norway may be outweighed by the company being connected to Norway in other ways.*

...

3. Consequences of illegal migration

In a case where the management and/or administration of a company to a material extent have been relocated abroad so that it must constitute a violation of the rule that the head office should be in Norway, the question is what consequences this should have. One can imagine several possible judicial consequences; penal liability for the management, relocation of the legal domicile abroad, a shareholder may obtain a ruling of remigration, dissolution of the company, etc. A violation of the rule will not necessarily entail all these consequences. In the following we will only comment on the question of dissolution.

Irrespective of whether one considers the rule of a company having its registered office in Norway as non-statutory law or as an interpretation of the Limited Liability Companies Act Section 2-2 first paragraph no. 2, there is no doubt that a relocation of the head office is a violation, which the company is obliged to correct. The correction may either take place by remigration or by dissolving and liquidating the company. A limited company may therefore not "migrate" abroad without dissolution and liquidation in accordance with the Limited Liability Companies Act chapter 13 and incorporation in the new jurisdiction of residency in accordance with the relevant rules in that jurisdiction.

Pursuant to the Limited Liability Companies Act Section 13-1 the general meeting has the authority to resolve on a company's dissolution. The bankruptcy court does not have the authority to rule on a forced dissolution in accordance with Section 13-2. We refer to that Section 13-2 first paragraph no. 1, which authorizes the bankruptcy court to rule on a forced dissolution when "the company shall be dissolved as stated by law", is aimed at statutory provisions which state that a violation has the consequence that the company should be dissolved."

11 According to the Ministry's statement, if a limited liability company's head office is relocated from the realm, this is an illegality that the company is obliged to rectify. This can be done by moving the head office back to the realm or by dissolving and winding up the company. In principle, it is the company's general meeting that has the competence to decide on dissolution or winding up of the company, cf. Section 16-1 of the Limited Liability Companies Act.

Liquidation taxation of companies

The Tax Assessment Act

12 If a limited liability company is dissolved, the company is liable to liquidation tax, which entails that all the company’s assets are realised with a tax liability on the company’s part pursuant to the universal rules on realisation laid down in the Taxation Act.

13 Before the dissolution of a company is completed, it must submit a tax return and demand an advance assessment, cf. Section 4-7(8) of the Tax Assessment Act. For the current income year, the advance assessment shall cover the period up until the company is finally dissolved, cf. Section 8-10 of the Tax Assessment Act. Consequently, when submitting its tax return for advance assessment, the company shall declare all latent tax liabilities for taxation, including gains on the realisation of assets. The withdrawal of operating assets in connection with dissolution, i.e. as liquidation dividend to the shareholders, is deemed to constitute realisation and must be included for taxation in the advance assessment, cf. Sections 5-1, 5-2 and 5-30 of the Taxation Act.

14 For shareholders liable to taxation in Norway, liquidation will involve realisation tax, i.e. shareholders’ gains/losses on the shares will be liable to tax/deductible, cf. Section 10-37 of the Taxation Act.

15 In a statement of 7 May 1998 from the Ministry of Finance (the “second Interpretative Statement”), it is assumed that, when its head office is relocated abroad, a company may be liable to liquidation tax even if it is not actually liquidated or its dissolution is not demanded.

16 The Ministry of Finance stated:

> *“In the case that a Norwegian incorporated limited company is no longer considered Norwegian in relation to Norwegian company law, as mentioned, the shareholders are obliged to dissolve the company (as a Norwegian limited company) through dissolution and liquidation, cf. the mentioned statement of 6 January 1998 from the Ministry of Justice. Such liquidation entails taxation in accordance with the Corporate Tax Act Section 5-8. Even if the shareholders neglect this liquidation obligation, there may be a basis for liquidation taxation based on anti-avoidance rules. For the tax authorities it will in such cases be close at hand to consider the failure to dissolve to be tax motivated and disloyal toward Norwegian tax rules (in addition to being illegal and punishable in accordance with the corporate legislation).”*

The Double Taxation Convention between Norway and the United Kingdom.

17 Norway and the United Kingdom signed a double taxation convention (hereinafter referred to as the "DTC") on 12 October 2000, which has been effective in Norway since 1 January 2001. The DTC is incorporated into Norwegian law through Act No 15 of 28 July 1949 Relating to the King's Authority to Enter into Agreements with Foreign States for the Prevention of Double Taxation etc.

18 Section 4(1) of the DTC provides:

> *For the purposes of this Convention, the term 'resident of a Contracting State' means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.*

19 Section 31(1) of the DTC states:

> *The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention, in particular, to prevent fraud and to facilitate the administration of statutory provisions against legal avoidance. The exchange of information is not restricted by Article 1 of this Convention. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.*

II Background to the dispute in the main proceedings and questions referred for an Advisory Opinion

20 In the case pending before the national court, Arcade is seeking the annulment of a decision made by Tax Region West on 22 March 2010 ("the decision at issue in the main proceedings"), which revised the tax assessment of the company on the

basis that it was deemed to have relocated its head office outside Norway and was under an obligation to liquidate pursuant to domestic company law.

21 Arcade was incorporated on 26 October 1990 and registered as a Norwegian limited liability company in Norway. The company was part of the Reading & Bates group and, to date, its business has consisted of the ownership and operation of two oil rigs. From 1995, both these rigs were in operation on the UK continental shelf and the company did not have any operational activities in Norway. From 1995, marketing, financing and operational management of both rigs was attended to by employees at Reading & Bates's offices in Aberdeen. From 1999, one of the two rigs was leased to R&B Falcon Canada Co under a bare boat charter, meaning that the rig was operated by the lessee. From 1999 until the present, Arcade's business has consisted of operating one rig and leasing the other. The company's board of directors had two members resident in the USA and two members resident in Norway.

22 From 1995, the company had no employees in Norway. It maintained a registered address, administered by a Norwegian lawyer, and held board meetings and annual general meetings in Norway.

23 On 31 January 2001, Reading & Bates, including Arcade, was taken over by the Transocean group. The key employees at Reading & Bates's Aberdeen office stepped down from their positions, and responsibility for following up Arcade's business was assigned to the Transocean group's Aberdeen office.

24 During the 2001 and 2002 financial years, Arcade was legally registered in Norway; the company had a partially Norwegian board of directors and a Norwegian general manager. With effect from 19 December 2002, the company's Norwegian board members were replaced by board members resident in the UK.

25 The company had activities and operational management functions in Aberdeen, and, after June 2001, the board held its meetings there. Both Norwegian and UK law contained provisions under which the company might conceivably have an obligation to pay tax on all its worldwide income and gains. Pursuant to the Tax Treaty between Norway and the UK, the decisive factor was the "place of effective management" of the company.

26 When it submitted its Norwegian tax return for 2001, the company included a proviso that the UK tax authorities might conclude that the company was based there for tax purposes, in which case the company would no longer be under an obligation to pay tax on all its worldwide income and gains to Norway.

27 The UK tax authorities decided that Arcade was taxable as a UK-based company with effect from 1 January 2001. This decision was sent to the Stavanger Tax Office. The tax office obtained some more information from the company and then accepted it without further investigation.

28 On 22 March 2010, Tax Region West adopted the decision at issue in the main proceedings and revised Arcade's tax assessment for the 2001 and 2002 income years. Tax Region West found that, with effect from 19 December 2002, Arcade was deemed to have relocated its head office outside Norway and, pursuant to company law, was under an obligation to liquidate. This gave rise to liquidation taxation regardless of whether the company was actually liquidated. Tax Region West has given advance notice of the imposition of 60% additional tax in the case, but a decision concerning additional tax has not been made.

29 The decision at issue in the main proceedings means that Arcade's general business income for 2001 and 2002 is liable to taxation in Norway. The decision also entails liability for Norwegian liquidation tax at the end of 2002. A partial deduction was granted for tax paid abroad. According to the revised assessment, the company's income is to be increased by NOK 70,923,400 for 2001 and by NOK 2,372,777,524 for 2002. A credit deduction of NOK 28,616,806 was granted for tax paid abroad. Of the relevant reassessed items, the liquidation tax constitutes the biggest item by far, involving an increase in income of NOK 2,155,323,524. Tax, additional tax (notified but not imposed) and interest on this amount are estimated to amount to NOK 1,303,539,667.

30 On 20 September 2010, Arcade filed legal action against the Norwegian State, claiming annulment of the decision at issue in the main proceedings. Arcade argued that the assessment is invalid, *inter alia* because the liquidation tax is in contravention of EEA law. Notice of defence was filed on 15 October 2010. The State contests the objections of invalidity and maintains that the decision is valid.

31 On 3 February 2011, Oslo tingrett decided to request an Advisory Opinion on the validity of liquidation tax under EEA law. On 14 June 2011, Oslo tingrett decided on the wording of the questions to be put to the Court. On 19 October 2011, the parties submitted an agreed draft letter containing questions to Oslo tingrett for referral to the Court. On 28 November 2011, Oslo tingrett referred the case to the Court.

32 Oslo tingrett states that the parties to the case disagree about whether an obligation to liquidate exists pursuant to Norwegian law. The Norwegian State has conceded that, in this specific case, liquidation tax cannot be imposed on Arcade if it cannot be established pursuant to company law that a liquidation obligation exists when a limited liability company relocates to another State. The referring court notes that it has not yet concluded as regards this question and that its questions to the Court have therefore been formulated on the assumption that a liquidation obligation exists under Norwegian law.

33 In its request, Oslo tingrett states that, if Arcade is deemed to have relocated its head office to another EEA State, the tax assessment decision will be invalid insofar as the liquidation tax is concerned, provided that such tax is in violation of EEA law. The court has therefore decided to request an Advisory Opinion on the following questions:

1) **Is it a restriction pursuant to Article 31 EEA, cf. Article 34 EEA, to impose liquidation tax on a company if national company law entails an obligation to liquidate the company because the company has relocated its *de facto* head office from Norway to another EEA State?**

   Is it of any significance that deferral of tax payment is not given until a realisation, if any, is effected?

2) **In the event that the district court holds that a restriction exists: what criteria will be decisive in determining whether the national regulation pursues grounds of overriding public interest and whether it is suitable and necessary for the attainment of such grounds?**

34 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only insofar as is necessary for the reasoning of the Court.

III The first question

Preliminary remarks

35 In its first question, the national court asks whether it constitutes a restriction pursuant to Articles 31 and 34 EEA to impose liquidation tax on a company if national company law entails an obligation to liquidate the company because the company has relocated its *de facto* head office from Norway to another EEA State.

36 The Norwegian State argues that it follows from settled case law that Arcade cannot plead infringement of its freedom of establishment under Articles 31 and 34 EEA, as it follows from national company law that a company relocating its effective management to the United Kingdom cannot retain its status as a Norwegian company and thus must be liquidated. This view is, in principle, supported by the Finnish and French Governments.

37 Arcade submits that the contested taxation does not result from a duty under company law to liquidate, but instead from the application of a general anti-tax avoidance principle of Norwegian law. Arcade furthermore contends that it is a fully operational company that has never been requested nor forced to enter into liquidation by the Norwegian authorities. It claims that it maintains its status as a legal person in Norway and that it has done so ever since its incorporation.

38 This argument is, in essence, endorsed by ESA and the Commission. ESA submits that Arcade was never actually liquidated and points out that the request of the national court states that enforced dissolution pursuant to the Limited Liability Companies Act can only be effected after the company has been

notified and given a deadline to rectify the situation, and after a decision by a district court.

39 In this regard, both ESA and the Commission point out that the Norwegian authorities responsible for the enforcement of company law have taken no steps to require Arcade to dissolve itself or change its status during the period since its head office was relocated to the United Kingdom. Instead, the only reaction of the Norwegian authorities to the company's relocation of its real seat appears to be the imposition of a tax. The Commission argues that, in these circumstances, it may be questionable whether, in reality, there is any company law obstacle to the relocation, and hence any justification for the tax decision, but that is a matter to be examined by the national court.

40 At the outset, it must be recalled that EEA law contains no uniform definition of which companies may enjoy the right of establishment on the basis of a single connecting factor determining the national law applicable to a company. Certain States require that not merely the registered office but also the real seat – that is to say, the central administration of the company – should be situated in their territory. The removal of the central administration from that territory thus presupposes the winding up of the company with all the consequences that winding up entails under company law. The legislation of other States permits companies to transfer their central administration to a foreign country but some of them make that right subject to certain restrictions.

41 Thus, the question of whether Article 31 EEA applies to a company that seeks to rely on the fundamental freedom enshrined therein is a preliminary matter that, as EEA law now stands, can only be resolved pursuant to the applicable national law. Consequently, the question of whether the company is faced with a restriction on its freedom of establishment within the meaning of Article 31 EEA can only arise if it has been established, in light of the conditions laid down in Article 34 EEA, that the company actually has a right to that freedom (see, for comparison, Cases 81/87 *Daily Mail and General Trust* [1988] ECR 5483, paragraphs 19 to 23; C-208/00 *Überseering* [2002] ECR I-9919, paragraphs 67 to 70; and C-210/06 *Cartesio* [2008] ECR I-9641, paragraph 109).

42 According to Oslo tingrett, it is undisputed that Arcade was originally established as a company under Norwegian law. Furthermore, it follows from the request and information submitted by the parties at the oral hearing that Arcade is still operating as a company in Norway and that no procedure whatsoever has been initiated in order to liquidate it.

43 It is also clear from the request that the subject matter of the main proceedings does not relate to a decision to wind up or liquidate the company as a result of failure to meet the requirements of national company law. On the contrary, the proceedings concern the decision of Tax Region West to revise the previous taxation of Arcade and impose additional tax, following its assessment that Arcade failed to comply with its duty to wind up and liquidate pursuant to Norwegian law, thus evading possible liquidation tax. Moreover, it is not

contested that the taxation in question is based on the application of the general and unwritten anti-avoidance principles of Norwegian tax law.

44 The decision at issue in the main proceedings does not concern the determination of the conditions required by an EEA State for a company incorporated under its law to be able to retain its status as a company of that State after relocating its head office to another EEA State. It is solely related to attaching tax consequences following the assessment of the tax authorities that a company has failed to liquidate, and does not affect the status of the company as such under the applicable national law. However, the view of the tax authorities that Arcade is obliged to liquidate appears to be based on the fact that the company relocated its seat from Norway to another EEA State, and that it thus lost its connecting factor, and may not retain its status as a company governed under Norwegian law.

45 In the absence of clear and precise provisions of national law that a company moving its head office out of Norway must liquidate, and of any decision by the competent authorities or courts putting the liquidation into effect, the relocation of Arcade‘s head offices to the United Kingdom does not frustrate its right to rely on Article 31 EEA in the present case. Arcade therefore benefits, in accordance with Article 34 EEA, from the provisions on freedom of establishment under the EEA Agreement, by virtue of its status as company established under the legislation of an EEA State and having its registered office and central management within the European Economic Area.

46 In such circumstances, a company may rely on Article 31 EEA to challenge the lawfulness of a tax imposed on it by its home State on the occasion of the relocation of its head office to another EEA State (see, for comparison, Case C-371/10 *National Grid Indus*, judgment of 29 November 2011, not yet reported, paragraphs 31 to 32).

47 Consequently, as suggested by several interested parties that submitted written observations and arguments at the oral hearing, it is appropriate to consider the question of whether the tax imposed on Arcade by the decision of Tax Region West on 22 March 2010 is contrary to Articles 31 and 34 EEA.

Observations submitted to the Court

48 Arcade argues that the revision of its tax assessment for the 2001 and 2002 income years entails immediate taxation, with no option of deferring payment of the tax. Arcade contends that to impose such a tax on the basis that the company has relocated its seat to another EEA State constitutes a restriction pursuant to Articles 31 and 34 EEA.

49 In this regard, Arcade submits that the general anti-tax avoidance rule that forms the basis for the contested taxation is only applied to cross-border relocations. In Arcade‘s view, imposing an immediate tax charge levied on exit from one EEA State to another is discrimination under the freedom of establishment in cases

where no similar taxation is charged in connection with purely domestic relocations.

50 Arcade contends that, pursuant to Norwegian law, the relocation of management functions or operational functions within Norway does not give rise to any form of income taxation, while the decision at issue in the main proceedings imposes an immediate tax on all unrealised gains upon the relocation of functions to the United Kingdom – as if the company were dissolved at this time. Arcade argues that the cross-border relocation of its place of effective management is objectively comparable to a situation in which a company relocates its place of effective management within an EEA State.

51 This argument is essentially supported by ESA and the Commission. In the view of the Commission, the relocation of a company's seat or assets to another EEA State may trigger an exit tax charge that is not borne by companies that do not relocate their seat, their operations or their assets out of the realm, but only within the national territory. The latter only pay tax when the value of the assets is realised, for example through their disposal. That tax is charged later, sometimes much later. The Commission argues that such a difference in treatment is undeniably an obstacle to free movement, as it places companies that relocate their head office abroad at a clear disadvantage in comparison with companies that do not exercise their right to free movement.

52 Accordingly, Arcade argues that it is a restriction pursuant to Articles 31 and 34 EEA to impose immediate taxation on a company because it has relocated its effective management from Norway to another EEA State. In Arcade's view, if the company is not actually in liquidation, this applies irrespective of whether national law entails an obligation to liquidate.

53 As regards the argument of the Norwegian State that Arcade has a duty to liquidate under Norwegian company law and that the taxation of the company is a result of this duty, Arcade submits that this question is disputed in national law. Moreover, Norwegian companies are not taxed on the basis of an obligation to liquidate, but on their actual disposal of assets as part of the liquidation process.

54 Moreover, in Arcade's opinion, the principle of legal certainty should require that the liquidation taxation be dependent on actual liquidation. Otherwise, it is possible to end up with a situation in which domestic liquidation taxation only takes place where companies are actually liquidated, while a different and discriminatory rule will apply to cross-border situations. Arcade contends that all the normal liquidation rules under the Limited Liability Companies Act should also apply in a cross-border situation.

55 As regards Arcade's argument that liquidation taxation treats the relocation of a real seat from Norway to the United Kingdom less favourably than a corresponding relocation within Norway, the Norwegian State contends that this is not a relevant comparison. The relevant benchmark is the taxation of a company that does not comply with its obligation to liquidate. Such a company

would be subject to liquidation taxation to the same extent as Arcade, regardless of whether or not actual liquidation had taken place. It is the obligation to liquidate that gives rise to the liquidation taxation, not the relocation of the real seat of the head office as such.

56 It is common ground between the parties that the taxation that follows from the decision at issue in the national proceedings is not a direct consequence of liquidation. Instead, this taxation is based on general anti-tax avoidance principles, which Norwegian authorities have applied in arriving at their assessment that Arcade has not met its obligation to liquidate under Norwegian company legislation and thus evaded consequential taxation.

57 However, Arcade claims that these principles are only applied to cross-border relocations. On the other hand, the Norwegian State argues that general unwritten anti-avoidance principles have been applied in order to enable "the actual written statutory rules on liquidation taxation of companies to come into effect". In this regard, the Government argues that, since the company could not retain its status as a Norwegian company under national company law and was obliged to liquidate, but chose not to do so, this was seen as an avoidance of this obligation and the consequent liquidation taxation.

Findings of the Court

58 Freedom of establishment under Article 34 EEA entails a right for companies, formed in accordance with the law of an EEA State and having their registered office, central administration or principal place of business within the EEA, to pursue their activities in another EEA State through a branch established there.

59 Even though, according to its wording, Article 31 EEA is intended in particular to secure the benefit of national treatment in a host State, it also prohibits the home State from hindering the establishment in other EEA States of its own nationals or companies incorporated under its legislation (see Case E-7/07 *Seabrokers* [2008] EFTA Ct. Rep. 172, paragraph 28, and case law cited).

60 The prohibition on discrimination, whether it has its basis in Article 4, 31 or 40 EEA, requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (compare Case C-155/09 *Commission* v *Greece*, judgment of 20 January 2011, not yet reported, paragraph 68 and the case law cited).

61 The Norwegian State maintains that general anti-avoidance principles are applied in the same manner to the taxation of all companies that are deemed to be in avoidance of taxation consequent to the winding up and liquidation of companies. Arcade, on the other hand, submits that these principles are only applied to cross-border situations.

62 If the view of the Norwegian State is correct, the application of anti-avoidance principles should be regarded as being compatible with Articles 31 and 34 EEA.

63 If, however, Arcade’s submission is deemed to be correct, such application entails unequal treatment and constitutes a restriction on the freedom of establishment of Norwegian companies. A difference in treatment relating to the taxation being imposed on companies by the competent authority on the basis of a general anti-avoidance rule is liable to deter a company incorporated under Norwegian law from relocating its place of management to another EEA State (see, to that effect, Cases C-9/02 *de Lasteyrie du Saillant* [2004] ECR I-2409, paragraph 46; C-470/04 *N* [2006] ECR I-7409, paragraph 35; and *National Grid Indus*, cited above, paragraph 37).

64 Such a difference in treatment cannot be explained by an objective difference in situation. From the point of view of the legislation of an EEA State that aims to tax capital gains and other sources of income generated in its territory, the situation of a company incorporated under the law of that State which relocates its head office to another EEA State is similar as regards the taxation of gains on the assets that were generated in the former State before the relocation of the head office, to that of a company that is also incorporated under the law of the former EEA State that retains its head office in that State (compare *National Grid Indus*, cited above, paragraph 38).

65 In proceedings under Article 34 SCA, the Court cannot resolve a dispute as to how national legislation is in fact applied. Like any other assessment of the facts involved, such a dispute is within the province of the national court. It is therefore for the national court to establish whether the circumstances in the proceedings before it correspond to the situation described in paragraph 62 or 63 of this judgment.

66 In light of the preceding considerations, the answer to the first question must be that a definitive determination of the amount of tax payable by a company that relocates its head office outside the realm of Norway on the basis of the tax authorities’ assessment that it is an avoidance of taxation consequent to an obligation to wind up and liquidate the company pursuant to national company law, constitutes a restriction under Articles 31 and 34 EEA, if companies deemed to be in breach of such an obligation, but which are not seeking to relocate, are not subjected to liquidation taxation.

IV The second question

67 In its second question, the national court asks what criteria will be decisive when determining whether the national regulation in question pursues an overriding public interest and whether it is suitable and necessary for the attainment of such an interest.

68 In other words, the referring court is asking what grounds may justify taxation based on the assumption that a company is obliged to liquidate, even if it is still operating and has not actually been ordered to wind up and liquidate by the competent national administrative or judicial authorities. In this context, it is also appropriate to address the national court‘s question of whether it is of any

significance that deferral of tax payment is not granted until realisation, if any, is effected.

Observations submitted to the Court

69 The Norwegian Government contends that the taxation at issue in the main proceedings is justified by the need to ensure a balanced allocation of powers of taxation between EEA States, and by the objective of preventing avoidance of national legislation. It is submitted that the objective attained by imposing tax on companies that are under an obligation to liquidate and can no longer exist pursuant to Norwegian legislation because they have relocated their real seat to another State is that assets generated by the company while it was legally a Norwegian entity are taxed in Norway.

70 It is also submitted that it will be relevant to apply this tax rule in situations other than cross-border situations in which a failure to effect *de facto* liquidation prevents the settlement of tax positions. In both cases, the application of the rule will rely on a specific assessment based on the same standards. It is argued that the national tax rule that applies to avoidance arrangements of the type in question is clearly appropriate in relation to preventing avoidance of liquidation tax.

71 As regards the need to preserve balanced allocation of powers of taxation, ESA submits that, in the case at hand, both Norwegian and UK law contain provisions under which Arcade might conceivably have an obligation to pay tax on all its worldwide income and gains. However, pursuant to the double taxation treaty, the decisive factor is the company's place of management. This means that, as long as the place of management was in Norway, Arcade was tax-resident there and paid tax on income and capital gains in Norway even though its actual assets were located in the United Kingdom.

72 In ESA's view, Norway was therefore in principle entitled to tax any unrealised capital gains that arose within the ambit of its power of taxation before Arcade relocated its head office to the United Kingdom.

73 Arcade asserts that neither the balanced allocation of powers of taxation nor the prevention of tax avoidance is an overriding reason that can justify the contested taxation in this matter. In any event, Arcade submits that the taxation is disproportionate, as it does not allow the taxpayer to choose between immediate and deferred taxation.

74 As to the national court's question of whether it is of any significance that deferral of tax payment is not granted until realisation, if any, is effected, Arcade argues that immediate taxation of the company due to the assessment of the tax authorities that it is obliged to liquidate goes further than necessary, as it means that the taxpayer will be subject to double taxation through the taxation of a fictitious liquidation.

75 In Arcade's opinion, it essentially follows from the ECJ's judgment in *National Grid Indus* that taxation without the possibility of deferral of payment of the tax until the time of realisation, as in the present case, must be regarded as disproportionate and that Article 31 EEA precludes national measures that prescribe the immediate recovery of tax on unrealised gains relating to assets of a company relocating its head office to another EEA State prior to actual liquidation. In Arcade's view, it is possible to determine the tax liability when the company relocates its head office and to defer the payment until the dissolution process has reached the point where liabilities to the creditors are normally settled. This would make the taxation more proportionate.

76 The Commission essentially concurs with this view, arguing that, insofar as it is possible for the State of departure to ensure recovery of the tax debt by other means, there is no justification for the immediate payment of tax on the departure of the company or of the assets concerned. It is sufficient that the tax be calculated and charged at some later time when the gain would have become taxable in the ordinary course of events.

77 Arcade, ESA and the Commission submit that, even though Norway is not obliged by the EU Mutual Assistance Directives, during the period in question the country had entered into international agreements on the exchange of information in tax cases with nearly all the EEA States.

78 Moreover, Arcade adds that the company has an obligation to keep accounts and an auditing duty pursuant to Norwegian law, and it therefore submits revised accounts to the Norwegian authorities every year. Hence, the Norwegian tax authorities have every opportunity to check the information provided by the company. Should the company fail to fulfil the above obligations, a possible consequence would be a demand for dissolution from the Norwegian authorities, including related liquidation taxation.

79 The Norwegian State contends that, due to the Norwegian rule of law stating that a company cannot relocate its real seat to another state and continue to be a legally incorporated company, it is not relevant for the purposes of the present case to draw a distinction between the establishment of the amount of tax and the recovery of that tax. The immediate recovery of the tax must in such case also be deemed to be necessary to pursue the objective of preserving the allocation of powers of taxation between the EEA states.

80 If the Court should find that the distinction between the establishment of the amount of tax and its recovery is relevant in the present case, the Norwegian Government submits that Norway and the United Kingdom had no mutual agreement on recovery of tax for 2002. The Norwegian authorities thus did not have the necessary means to obtain useful information in connection with the recovery of the claim, or to obtain assistance necessary to actually recover the tax claim. The Government argues that it is not relevant, also for this reason, to distinguish between the establishment of the amount of tax and the recovery of the tax in the present case.

81 If the Court should disagree, the Norwegian Government argues that the possible restriction constituted by the tax will be justifiable if the tax authorities in Norway gave Arcade a choice between settling the tax as of 2002, or at the time of subsequent realisation by disposal etc., according to the principles laid down in *National Grid Indus*.

Findings of the Court

82 According to settled case law, a restriction of freedom of establishment is only permissible if it is justified by overriding reasons in the public interest (see, for example, Case E-3/06 *Ladbrokes* [2007] EFTA Ct. Rep. 86, paragraph 41).

83 In such case, it is also necessary that the restriction is appropriate to ensuring the attainment of the objective in question and that it does not go beyond what is necessary to attain that objective (see Case E-9/11 *ESA* v *Norway*, judgment of 16 July 2012, not yet reported, paragraph 83, and case law cited).

84 In the absence of any unifying or harmonising measures, the EEA States retain the power to define, by treaty or unilaterally, the criteria for allocating their powers of taxation (compare Case C-540/07 *Commission* v *Italy* [2009] ECR I-10983, paragraph 29, and case law cited). In particular, they are competent to define when a company can operate as a separate legal entity with regard to their powers of taxation, since EEA law, as noted in paragraph 35 above, contains no uniform definition of which companies may enjoy the right of establishment on the basis of a single connecting factor determining the national law applicable to a company.

85 Accordingly, EEA States must be able to take appropriate measures with a view to preserving the exercise of their tax jurisdiction when a company ceases to exist under that jurisdiction as a result of national company law. In this regard, it must be recalled that preserving the allocation of powers of taxation between the EEA States is a legitimate objective (compare, to that effect, Cases C-446/03 *Marks & Spencer* [2005] ECR I-10837, paragraph 35; C-231/05 *Oy AA* [2007] ECR I-6373, paragraph 51; and C-414/06 *Lidl Belgium* [2008] ECR I-3601, paragraph 31).

86 Justification on these grounds may be accepted, in particular if the system in question is designed to prevent conduct capable of jeopardising the right of an EEA State to exercise its tax jurisdiction in relation to activities carried out in its territory (see, for comparison, Case C-311/08 *SGI* [2010] ECR I-487, paragraph 60, and case law cited).

87 As regards the tax avoidance argument, the Court notes that an EEA State is entitled to take measures designed to prevent certain companies established in that State from attempting, under cover of the rights created by the EEA Agreement, from improperly circumventing their national legislation, or to prevent these companies from improperly or fraudulently taking advantage of provisions of EEA law.

88 Although, in such circumstances, national courts may in each case take account of objective evidence of abuse or fraudulent conduct on the part of the persons concerned in order, where appropriate, to deny them the benefit of the provisions of EEA law on which they seek to rely. National courts must nevertheless assess such conduct in light of the objectives pursued by those provisions (see, for comparison, Case C-212/97 *Centros* [1999] ECR I-1459, paragraphs 24 and 25, and case law cited; and the Opinion of Advocate General Poiares Maduro in Cases C-255/02 and C-223/03 *Halifax and Others* [2006] ECR I-1609, points 60 ff.).

89 For the purposes of preventing tax avoidance, a national measure restricting freedom of establishment may be justified when it specifically targets artificial arrangements designed to circumvent the legislation of the EEA State concerned (see, to that effect, *Marks & Spencer*, cited above, paragraph 57; and Case C-196/04 *Cadbury Schweppes and Cadbury Schweppes Overseas* [2006] ECR I-7995, paragraph 51).

90 If a company ceases to fulfil the requirements for existing as a separate taxable entity under national law in the EEA State of origin by reason of relocating its head office to another EEA State, but continues to operate in the former, this cannot mean that the EEA State of origin has to abandon its right to tax gains that arose within the ambit of its powers of taxation as a consequence of the company losing its legal status. An EEA State is entitled to charge tax on the company's gains and assess its tax positions at the time when the taxpaying entity is dissolved and the gains are distributed to its owners. In this case, the taxation may be based on the principle of fiscal territoriality linked to a temporal component, namely the taxpayer's existence as a separate legal entity for tax purposes within national territory during the period in which the gains arise and other tax positions become effective.

91 In the present case, it must be held that to permit companies to relocate their head office to another EEA State in violation of national company law without this having any consequences for taxation would undermine the balanced allocation of the power to impose taxes between the EEA States.

92 By providing that the resident company is to be taxed in light of an obligation to liquidate, the application of national anti-avoidance principles in the main proceedings enables the Norwegian State to exercise its tax jurisdiction in relation to activities carried out in its territory and prevent practices whereby companies seek to evade taxation obligations that are corollary to failing to meet the conditions of national company legislation.

93 In light of these considerations, concerning the need to both maintain the balanced allocation of powers of taxation between the EEA States and prevent tax avoidance, it must be held that a national measure such as the measure at issue in the main proceedings pursues legitimate objectives that are compatible with the EEA Agreement and constitute overriding reasons in the public interest, and that it is appropriate for ensuring the attainment of these objectives.

94 That being the case, it remains necessary to examine whether a measure such as that at issue in the main proceedings goes beyond what is necessary to attain the objectives pursued.

95 A national measure that provides for the consideration of objective and verifiable elements in order to determine whether the relocation of a head office represents an arrangement incompatible with the rules of domestic company law must be regarded as not going beyond what is necessary to attain the objectives relating to the need to maintain the balanced allocation of powers of taxation between the EEA States and to prevent tax avoidance where there is due reason to believe that the relocation in question entails that the company in question ceases to meet the conditions for existing under national law.

96 Where the consideration of such elements leads to the conclusion that the company does not fulfil these conditions and should therefore be subject to liquidation, the corrective tax measure must be confined to the consequences of liquidation in order to remain compatible with the principle of proportionality.

97 In those circumstances, it must be concluded that the definitive establishment of the amount of tax may be proportionate to the set of objectives pursued by it, namely to maintain balanced allocation of powers of taxation and to prevent tax avoidance. This conclusion is subject to verification by the referring court as to the condition that the revised taxation is confined to the consequences of a duty to liquidate, which concerns the interpretation and application of Norwegian law.

98 Moreover, it may be relevant to definitively establish the amount of tax following liquidation before the actual winding up or liquidation in order to clarify the financial situation of the company with regard to outstanding debts and obligations before its assets are realised and distributed, and thus enhance legal certainty. The Court notes that such clarification may be of particular importance to shareholders where national law prescribes that they may be held personally liable for outstanding taxation debts incurred by the company prior to liquidation.

99 However, the establishment of the amount of tax for a company that has been deemed by the national tax authorities to have lost its status as a separate legal entity must be distinguished from the issue of recovery (see, to that effect, *National Grid Indus*, cited above, paragraph 77).

100 It must be kept in mind that immediate payment of tax relating to unrealised assets and other tax positions may give rise to a significant disadvantage for that company in terms of cash flow and, in some cases, even force it into liquidation. This problem may be avoided by deferring the recovery of the tax debt until such time as the assets and other tax positions, in respect of which a tax amount was established by the authorities of the EEA State on the occasion of the relocation of a company’s place of head office to another EEA State, are actually realised (compare *National Grid Indus*, cited above, paragraphs 68 and 73).

101 In this regard, the national authorities may take certain measures in order to secure the eventual payment of the amount of tax, provided that there is a genuine and proven risk of non-recovery.

102 This risk is essentially dependent upon the nature and extent of the company‘s tax positions, and the sources of information available to the national authorities regarding these tax positions, *inter alia*, through cooperation with and the exchange of information with the authorities of other EEA States.

103 If the nature and extent of those positions means that it would be easy to trace the individual assets, capital and other positions for which a tax amount was ascertained at the time when the company relocated its head office from the EEA State of origin to another EEA State, the company could be offered a choice in the EEA State of origin. It could then choose between immediate payment of the amount of tax, which creates a disadvantage for that company in terms of cash flow but frees it from subsequent administrative burdens, and deferred payment of the amount of tax. The latter option could possibly entail interest in accordance with the applicable national legislation, which necessarily involves an administrative burden for the company in connection with tracing the relocated assets.

104 Such a choice would constitute a measure that, while being appropriate in relation to ensuring the balanced allocation of powers of taxation between the EEA States and preventing tax avoidance, would be less harmful to the freedom of establishment than the measure at issue in the main proceedings. If a company were to consider the administrative burden in connection with deferred recovery to be excessive, it could opt for immediate payment of the tax (see, for comparison, *National Grid Indus*, cited above, paragraphs 72 and 73).

105 However, account should also be taken of the risk of non-recovery of the tax, which increases with the passage of time. That risk may be taken into account by the EEA State in question through measures such as the provision of a bank guarantee (see, to that effect, *National Grid Indus*, cited above, paragraph 74). In relation to the particular circumstances regarding the liquidation of a company, a bank guarantee might even be unnecessary if the risk of non-recovery is covered by the personal liability of shareholders for outstanding tax debts of the company.

106 Consequently, the answer to the second question must be as follows:

- The definitive establishment of the amount of tax payable by a company based on the assessment of the tax authorities that the company is in avoidance of taxation consequent to an obligation to wind up and liquidate the company pursuant to national company law may be justified on the grounds of maintaining the balanced allocation of powers of taxation between the EEA States and preventing tax avoidance. These grounds constitute overriding reasons in the public interest. Moreover, the definitive establishment of the amount of tax payable by a company is appropriate in relation to ensuring the attainment of these objectives.

- The definitive establishment of the amount of tax payable by a company based on the assessment of the tax authorities in the EEA State of origin that the company is in avoidance of taxation consequent to an obligation to wind up and liquidate the company pursuant to national company law must be regarded as not going beyond what is necessary to attain the objectives relating to the need to maintain the balanced allocation of powers of taxation between the EEA States and to prevent tax avoidance, insofar as it provides for the consideration of objective and verifiable elements in order to determine whether the relocation of a head office represents an arrangement incompatible with the rules of domestic company law.

- If the consideration of objective and verifiable elements leads to the conclusion that the company is not in compliance with the rules of national company law and should therefore be subject to liquidation, the definitive establishment of the amount of tax payable must be confined to the consequences of liquidation in order to remain compatible with the principle of proportionality. It is for the national court to verify whether the decision at issue in the main proceedings goes beyond what is necessary to attain the objectives pursued by the legislation.

- A national measure that prescribes the immediate recovery of tax on unrealised assets and tax positions at the time of the assessment of the tax authorities that a company has lost its status as a separate legal entity under national law, but without any decision by the authorities or courts competent to determine that the company has lost that status, is precluded by Article 31 EEA.

V Costs

107 The costs incurred by Arcade, the Norwegian, Finnish and French Governments, ESA and the Commission, which have all submitted observations to the Court, are not recoverable. Since these proceedings are a step in the proceedings pending before Oslo tingrett, any decision on the costs of the parties to those proceedings is a matter for that court.

On those grounds,

THE COURT

in answer to the question referred to it by Oslo tingrett, hereby gives the following Advisory Opinion:

1. In the absence of clear and precise provisions of national law that a company moving its head office outside the State of incorporation must liquidate, and of any decision by the competent authorities and courts putting the liquidation into effect, the relocation of head office to another EEA State does not frustrate the company‘s right to rely on Article 31 EEA. In such circumstances, the company may rely on Article 31 EEA to challenge the lawfulness of a tax imposed on it by the home State on the occasion of the relocation of its head office to another EEA State.

The definitive establishment of the amount of tax payable by a company that relocates its head office outside the realm of Norway based on the assessment of the tax authorities that it is in avoidance of taxation consequent to an obligation to wind up and liquidate the company pursuant to national company law, constitutes a restriction under Articles 31 and 34 EEA if companies deemed to be in breach of such an obligation, but not seeking relocation, are not subject to liquidation taxation.

2. The definitive establishment of the amount of tax payable by a company based on the assessment of the tax authorities that the company is in avoidance of taxation consequent to an obligation to wind up and liquidate the company pursuant to national company law may be justified on the grounds of maintaining the balanced allocation of powers of taxation between the EEA States and preventing tax avoidance. These grounds constitute overriding reasons in the public interests. Moreover, the definitive establishment of the amount of tax payable by a company is appropriate in relation to ensuring the attainment of these objectives.

The definitive establishment of the amount of tax payable by a company based on the assessment of the tax authorities in the EEA State of origin that the company is in avoidance of taxation consequent to an obligation to wind up and liquidate the company pursuant to national company law must be regarded as not going beyond what is necessary to attain the objectives relating to the need to maintain the balanced allocation of powers of taxation between the EEA States and to prevent tax avoidance, insofar as it provides for the consideration of objective and verifiable elements in order to determine whether the relocation of a head office represents an arrangement incompatible with the rules of domestic company law.

If the consideration of objective and verifiable elements leads to the conclusion that the company is not in compliance with the rules of national company law and should therefore be subject to liquidation, the definitive establishment of the amount of tax payable must be

confined to the consequences of liquidation in order to remain compatible with the principle of proportionality. It is for the national court to verify whether the decision at issue in the main proceedings goes beyond what is necessary to attain the objectives pursued by the legislation.

A national measure that prescribes the immediate recovery of tax on unrealised assets and tax positions at the time of the assessment of the tax authorities that a company has lost its status as a separate legal entity under national law, but without any decision by the authorities or courts competent to determine that the company has lost that status, is precluded by Article 31 EEA.

Carl Baudenbacher Per Christiansen Páll Hreinsson

Delivered in open court in Luxembourg on 3 October 2012.

Gunnar Selvik
Registrar

Carl Baudenbacher
President