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Judgment in Case E-3/21 *PRA Group Europe AS v the Norwegian Government*

A COMBINATION OF LIMITED INTEREST DEDUCTION RULES AND GROUP CONTRIBUTION RULES MAY INFRINGE THE FREEDOM OF ESTABLISHMENT

In a judgment delivered today, the Court answered questions referred by Oslo District Court (*Oslo tingrett*) regarding whether the Norwegian rules on limitation of deductibility of interests in combination with the group contribution rules are compatible with Articles 31 and 34 of the EEA Agreement.

The case in the main proceeding concerns the validity of the Norwegian Tax Appeals Board's decision to limit PRA Group Europe AS' claim for a full tax deduction for interest payments on debt to affiliated parties in the fiscal years 2014 and 2015. The claim was denied on the grounds that the Norwegian Tax Act limited the deductible amount to 30 per cent of the company's EBITDA.

The referring court sought guidance on whether it is a restriction of the freedom of establishment when national legislation only allows a company liable to taxation in Norway, that is in a group with Norwegian-based companies to apply group contribution rules to lessen or remove the impact of the limited interest deduction rules. The referring court also enquired whether a foreign EEA company which is part of a group with a Norwegian-based company, is in a comparable situation to that of a Norwegian-based company which is part of a group with another Norwegian-based company. Furthermore, it asked whether it is relevant for the comparability assessment that no actual group contribution had been made. Finally, the referring court sought advice on which overriding reasons in the public interest may justify such a restriction.

The Court found that the combination of the limited interest deduction and the group contribution rules constitutes an obstacle to the freedom of establishment. The Court held that Norwegian-based companies, which form part of a group with companies of other EEA States are placed at a disadvantage vis-à-vis companies in entirely Norwegian-based groups. Only the latter are able to lessen or remove the impact of the limited interest deduction rules through the application of intra-group contribution rules. In this respect, the Court held that the internal and cross-border situations are comparable. The fact that no actual group contribution has been made from the foreign EEA-based company to the Norwegian-based company is immaterial for this comparability assessment. Finally, the Court concluded that a restriction which arises from the combination of the interest deduction and the group contribution rules may be justified by the legitimate objective of preventing wholly artificial arrangements leading to tax avoidance. However, if national law does not provide the taxpayer with the opportunity to demonstrate that the transaction took place on terms corresponding to what would have been agreed had the relationship between the parties been on at arm's length, it goes beyond what is necessary to pursue that objective.

The full text of the judgment may be found on the Court's website: www.eftacourt.int.

This press release is an unofficial document and is not binding upon the Court.