

EFTA COURT

Request for an Advisory Opinion from the EFTA Court by Borgarting Court of Appeal dated 20 June 2023 in the case of ExxonMobil Holding Norway AS v Staten v/ Skatteetaten

(Case E-7/23)

A request has been made to the EFTA Court dated 20 June 2023 from Borgarting Court of Appeal (*Borgarting lagmannsrett*), which was received at the Court Registry on 27 June 2023, for an Advisory Opinion in the case of *ExxonMobil Holding Norway AS v Staten v/Skatteetaten*, on the following questions:

1a:

Is the application of the “final losses” exception as set out in the EFTA Court’s judgment in Case E-15/16 *Yara* and the case law referred to therein precluded where a subsidiary is in receipt of even minimal income in the fiscal year after the year for which a deduction is claimed, or must a specific assessment be conducted to determine whether the subsidiary’s continued income actually will reduce its losses, or that part of the losses for which a deduction is claimed?

1b:

If the answer to question 1a is that a specific assessment must be conducted of the subsidiary’s continued income, the EFTA Court is requested to indicate how probable it must be that the income actually will reduce the losses, whether the amount of the reduction is of any significance and which factors will be of particular relevance in the assessment.

2:

Is it compatible with Articles 31 and 34 of the EEA Agreement to require as a prerequisite for the application of the “final losses” exception that the liquidation process be formally decided on immediately after the end of the fiscal year for which a deduction is claimed?