



C/2024/5660

19.9.2024

JUDGMENT OF THE COURT

of 13 May 2024

in Case E-7/23

ExxonMobil Holding Norway AS v Staten v/ Skatteetaten (the Norwegian State, represented by the Tax Administration)

(Freedom of establishment – Articles 31 and 34 EEA – Balanced allocation of taxation powers – Concept of ‘final losses’ – Deduction of losses of a non-resident subsidiary – Even minimal income)

(C/2024/5660)

In Case E-7/23, ExxonMobil Holding Norway AS v Staten v/ Skatteetaten (the Norwegian State, represented by the Tax Administration) – REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by Borgarting Court of Appeal (*Borgarting lagmannsrett*), concerning the interpretation of Article 31 of the Agreement on the European Economic Area as regards the possibility for ExxonMobil Holding Norway AS to deduct from its taxable income the losses of a subsidiary established in another EEA State, the Court, composed of Páll Hreinsson, President (Judge-Rapporteur), Bernd Hammermann and Ola Mestad (ad hoc), Judges, gave judgment on 13 May 2024, the operative part of which is as follows:

1. It is compatible with Articles 31 and 34 EEA to require that the application of the ‘final losses’ exception within the meaning of the Court’s judgment in Case E-15/16 *Yara* is precluded where a non-resident subsidiary is in receipt of even minimal income in the fiscal year after the year for which a deduction is claimed.
2. It is compatible with Articles 31 and 34 EEA for an EEA State to require, in order to demonstrate that a loss is final, that a liquidation process be formally decided upon immediately after the end of the fiscal year for which a deduction is claimed.