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(Announcements)

COURT PROCEEDINGS

EFTA COURT

JUDGMENT OF THE COURT

of 13 September 2017

in Case E-15/16

Yara International ASA v The Norwegian Government

(Freedom of establishment — Articles 31 and 34 EEA — Necessity — National rules on intra-group contributions — Balanced allocation of taxation powers — Final loss exception — Risk of tax avoidance — Wholly artificial arrangement — Prohibition of abuse of rights)

(2018/C 16/04)

In Case E-15/16, *Yara International ASA v The Norwegian Government* — REQUEST to the Court pursuant to 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 in the context of national rules on intra-group contributions, the Court, composed of Carl Baudenbacher, President and Judge-Rapporteur, Per Christiansen, and Ása Ólafsdóttir (ad hoc), Judges, gave judgment on 13 September 2017, the operative part of which is as follows:

Articles 31 and 34 EEA do not preclude the application of national rules on intra-group contributions, such as the rules in the Norwegian Taxation Act, under which the contribution reduces the transferor's taxable income and is included in the recipient's taxable income regardless of whether the recipient makes a loss or a profit for tax purposes, that lay down the condition that both the transferor and the recipient are liable to taxation in the EEA State in question. It is a condition of EEA law that the national rules must serve a legitimate objective such as the need to safeguard the balanced allocation of taxation powers between EEA States or to prevent wholly artificial arrangements leading to tax avoidance. However, the requirements of national law go beyond what is necessary to pursue those objectives in cases where the loss sustained by the foreign subsidiary is final.
