

Reasoned opinion on Norwegian exit tax

Today the EFTA Surveillance Authority - the EEA equivalent of the European Commission - announced that they have issued a reasoned opinion against Norway regarding the Norwegian legislation on exit taxes.

The reasoned opinion follows a formal notice that was issued by the Authority on 10 April 2010. The Norwegian Ministry of Finance argued, in a letter dated 10 May 2010, that the Norwegian rules are in compliance with EEA law and that there is no need to amend the Norwegian exit rules. On the other hand, the Ministry of Finance stated that the formal notice would be taken into account when new cross-border transaction rules are drafted and that ESA will be kept informed of the development of the new rules. These legislative proposals have yet to be published.

Domestic legislation

Under Norwegian law, when a company transfers its seat to another EEA State in order to relocate its activities, unrealised capital gains on its assets must be included in the taxable base of that financial year. Furthermore, a tax on unrealised capital gains on the company's shares must be paid by its shareholders. In contrast, capital gains on assets or shares of similar domestic transactions are not taxable until they are realised.

Reasoned opinion

Presently, the full reasoned opinion is not published. According to today's press release, the Authority considers that the immediate, and potentially also higher, taxation penalizes those companies that wish to leave Norway. It results in less favorable treatment compared to companies which relocate or merge within Norway. The same applies to shareholders of these companies. The rules in question are, therefore, likely to dissuade companies from exercising their right to freedom of establishment and, in certain circumstances, they also hinder the free movement of capital. As a result, these rules constitute unlawful restrictions according to EEA law.

The purpose of a reasoned opinion is to give the State in question a last change to take corrective measures before the Authority decides whether to bring the matter before the EFTA Court. The Norwegian Government is requested to take the necessary measures to comply with the reasoned opinion within two months.

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