

Case handler: Gaukur Jorundsson
Tel: +32 2 286 1848
e-mail: gjor@eftasurv.int

Brussels, 8 April 2025
Case No: 93011
Document No: 1525589

Dear Madam/Sir,

Subject: Complaint against Norway concerning exit taxation

1 Introduction

On 17 October 2024, you submitted a complaint to the EFTA Surveillance Authority (“the Authority”) against the Norwegian Government concerning its exit tax rules. In a letter dated 18 February 2025, your law firm provided additional comments to the initial complaint regarding the incompatibility of the exit taxation rules with the EEA Agreement.

The complaint argues that the exit tax rules outlined in the Norwegian Tax Act¹ on unrealised capital gains for natural persons are in breach of the provisions of the EEA Agreement on the free movement of persons (Article 28), freedom of establishment (Article 31), and free movement of capital (Article 40).² In this regard, the complaint particularly highlights that, according to existing rules, the tax levy is calculated on the value of shares at the time when the natural person relocates to another EEA State, without the possibility to re-evaluate the value of the shares if the person defers payment of the tax obligation and disposes of the shares at a later time, even if the value of the representative shares has decreased significantly.

On 22 October 2024, the Internal Market Affairs Directorate of the Authority (“the Directorate”) sent a letter of acknowledgment to you (Doc No 1492728).

After a preliminary assessment of your complaint, the Directorate has reached the conclusion that your case should not be pursued.

2 The Authority’s handling of complaints

Article 5(1)(a) of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“SCA”) confers on the Authority a mandate to ensure the fulfilment by the EEA EFTA States of their obligations under the EEA Agreement. To this end, Article 5(2) SCA empowers the Authority to adopt a range of measures.

When the Authority receives individual complaints, an examination is carried out as to whether there is an underlying issue with respect to EEA law. The Authority’s tasks, as explained in the initial letter of acknowledgement sent to you on 22 October 2024, are connected principally with identifying whether there are either elements of national law

¹ Lov 26. mars 1999 nr. 14 om skatt av formue og inntekt (skatteloven), hereby “the Tax Act”.

² Since the complaint mainly concerns the impact of a natural person's change of tax residence between EEA States, this case is evaluated based on the principles of the free movement of workers and the freedom of establishment. In any event, assessment of the proportionality of the Norwegian exit taxation rules under the free movement of capital provision of the EEA Agreement is unlikely to lead to a different conclusion. See e.g. judgment of 19 December 2024 *Halmer Rechtsanwalts-gesellschaft UG*, C-295/23, EU:C:2024:1037, paragraph 79.

which contravene EEA law, or a consistent and general administrative practice which contravenes EEA law.

According to settled case-law of the EFTA Court, the Authority enjoys wide discretion in deciding whether and how to pursue proceedings against an EEA EFTA State. The Authority alone is competent to decide whether it is appropriate to bring proceedings under Article 31 SCA for failure to fulfil the obligations under the EEA Agreement.³

Furthermore, any infringement proceedings brought by the Authority under Article 31 SCA should be concentrated so as to ensure the greatest impact for the functioning of the EEA Agreement, bearing in mind the resources of the Authority and having regard to alternative enforcement mechanisms available to complainants at national level.⁴

3 The Directorate's assessment

After a preliminary assessment by the Directorate, it seems that the issue raised in your complaint is closely connected with the issues already being examined by the Directorate in Case No 93706 (Norwegian exit tax rules for natural persons). That case was opened to broadly assess the Norwegian exit tax rules for natural persons.

In line with the Authority's view that in terms of prioritisation and efficiency, it is in principle better to avoid having several cases open on the same legal issue or subject matter, the Directorate intends to examine the issue you have raised in the context of the Case No 93706.

Unless you instruct us otherwise, your complaint and any relevant accompanying documents will be added to the list of pertinent facts and evidence in that case. We will keep you informed if any formal steps are taken.

As a result, and subject to a formal decision of the Authority, the case under which your complaint was initially registered will be closed. If in the future you wish to submit additional evidence, please inform the Directorate, referencing Case No 93706.

4 Conclusion

Given the existence of Case No 93706 (Norwegian exit tax rules for natural persons) and in view of the above considerations, the Directorate has decided to propose that the Authority close the case under which your complaint was initially registered. An eventual closure decision, if adopted, will not constitute, and should not be interpreted as constituting, a conclusion on the part of the Authority that any elements either of national law or of administrative practice identified in your complaint are compliant with EEA law. As set out above, the Directorate intends to continue to examine the underlying issue in Case No 93706.

³ See, for example, Order of the EFTA Court of 23 October 2013 in Case E-2/13, *Bentzen Transport v EFTA Surveillance Authority*, point 40.

⁴ As the European Commission has stated: "*Certain categories of cases can often be satisfactorily dealt with by other, more appropriate mechanisms at EU and national level. This applies in particular to individual cases of incorrect application not raising issues of wider principle, where there is insufficient evidence of a general practice, of a problem of compliance of national legislation with EU law or of a systematic failure to comply with EU law. In such cases, if there is effective legal protection available, the Commission will, as a general rule, direct complainants in this context to the national level.*" See "*EU law: Better results through better application*" (2017/C 18/02) paragraph 3, sub para 9. The same principles are applicable *mutatis mutandis* to the EEA legal order.

Before the Directorate makes such a proposal to close the case under which your complaint was initially registered, you are invited to submit your observations on the above assessment and to present any pertinent new information by *16 May 2025*.

Yours sincerely,

Jónína Sigrún Lárusdóttir
Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Jonina S. Larusdottir.