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## Luther successful for German asphalt industry in test case before Federal Fiscal Court

**Luther Rechtsanwaltsgesellschaft was able to secure important energy and electricity tax relief for over one hundred companies in the industry in a coordinated action with the German Asphalt Association. Luther and an asphalt mix manufacturer successfully challenged an administrative practice of the customs administration before the Federal Fiscal Court, according to which asphalt mix companies should no longer receive previous tax relief.**

For many years, asphalt mix producers were able to use fuels and electricity tax-free because they were treated by the customs administration as eligible for preferential treatment under the Energy Tax Act and the Electricity Tax Act. This was to change in 2018, when the customs administration used a new wording in the Energy Tax Act and the Electricity Tax Act as an opportunity to revoke the tax exemption and also to collect the taxes retroactively. Within a short period of time, the German asphalt industry was thus threatened with an economic disadvantage in the double-digit millions, especially due to overpaid energy tax.

Many companies in the industry decided to initiate model proceedings before the tax courts on the recommendation of the Deutscher Asphaltverband e. V. and Luther - with success. An asphalt mix manufacturer, represented by the Luther team in Hamburg, was victorious in summary and main proceedings, first before the Düsseldorf Fiscal Court in 2019 and now again in appeal proceedings before the Federal Fiscal Court. According to an initial assessment, the objection raised by Luther that there was no legal basis for withdrawing the previous electricity and energy tax benefits from the German asphalt industry was probably the decisive factor.

With its victory in the test case before the Federal Fiscal Court, Luther achieved that, with retroactive effect from November 2018, companies in the German asphalt industry can once again use tax-free fuels and electricity and reclaim the energy tax and electricity tax paid since then from the customs administration. Luther is now working with the German Asphalt Association (Deutscher Asphaltverband e.V.) and the customs administration on the refund of energy and electricity tax overpaid by the companies concerned in the meantime.

### **On behalf of asphalt industry:**

Dr Gernot-Rüdiger Engel, Dr Mathias Mailänder (lead)

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### **Brief profile Luther Rechtsanwaltsgesellschaft mbH**

Luther is a leading German commercial law firm that offers comprehensive legal and tax advice. The full-service law firm employs over 420 lawyers and tax advisors and is represented in ten German economic hubs as well as with ten of its own international offices in key investment locations and financial centres in Europe and Asia. Its clients include medium-sized enterprises and large corporations, as well as the public sector.

Luther works closely with other commercial law firms in all the prevailing jurisdictions. Luther is a founding member of unyer ([www.unyer.com](http://www.unyer.com)), a global organisation of leading professional services firms that cooperate exclusively with each other.

Luther Rechtsanwaltsgesellschaft mbH is a law firm with a business approach: our innovative awareness aspires us to provide our clients with customised legal advice that addresses individual needs and delivers the greatest possible economic benefit. All of Luther's lawyers and tax advisors have a solid understanding of interdisciplinary matters and a wealth of experience in collaborating on complex tasks. Luther was named "Law Firm of the Year 2019" by the German legal publisher JUVE. Further information is available at: [www.luther-lawfirm.com](http://www.luther-lawfirm.com)

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