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Industry with Luther wins case against North Rhine-Westphalia's "water cent" levies

Düsseldorf – The red-green coalition of North Rhine-Westphalia has been illegally charging the industry with excessive water levies since 2011. In two precedent cases, the Administrative Court of Arnsberg decided that the water extraction levies imposed on quarries and brown coal mines were twelve times too high. North Rhine-Westphalia may now have to make repayments amounting to millions. This decision was based on two lawsuits filed by the businesses from the cement and lime industry, who were represented by Luther Rechtsanwaltsgesellschaft mbH (Administrative Court of Arnsberg, Judgments dated 8 October 2013, case nos 11 K 2811/11, 11 K 2813/11).

“Quarry and opencast mine operators have also been burdened financially with the “water cent” tax since 2011 for merely pumping water and not utilising it any further. Up until a few months ago, this charge was 4.5 cent per cubic metre of water and it was increased in March 2013 to 5 cent. Overall, and especially from brown coal mines, this has meant that annually several millions have been paid into North Rhine-Westphalia’s state budget”, said Dr Stefan Altenschmidt from Luther. The corporate lawyer and expert for environmental and financial constitutional law represented the claimants at the administrative court and expressed his reservations under constitutional law about the charges for draining quarries and mines.

“The administrative court has broadly agreed with the strong criticism that had already been voiced by the industry in the legislative procedure”, said Dr Stefan Altenschmidt. “Whilst it endorsed the

general decision to implement the water taxes, the court accused the coalition of over-charging the affected businesses. According to the Judgment, the mere pumping of water from a quarry without further utilisation should incur less charges than, for example, the water used for production purposes. If businesses only pump the water, and it is not used any further and allowed to drain away, according to the court, they should only have to pay a reduced charge of 0.35 cent per cubic metre of water. The court also referred to the legislative material of the State Parliament which the coalition had not taken into consideration.”

“The current judgments serve as a precedent for a number of similar cases where quarry operators are involved and, in particular, also brown coal mines. If they become legally binding (the Administrative Court of Arnsberg has allowed an appeal to be made to the Higher Administrative Court of North Rhine-Westphalia), North Rhine-Westphalia’s Minister of Finance will have to pay out a two-digit million sum to the North Rhine-Westphalia industry and in the future will have to reckon with lower revenue from the water levies”, explained Dr Altenschmidt on the consequences of the Arnsberg decision in practice.

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Brief Profile Luther Rechtsanwaltsgesellschaft mbH

Luther is a leading German commercial law firm that offers comprehensive legal and tax services. The full-service law firm employs over 350 lawyers and tax advisors and is represented at 11 German economic centres and at important investment locations and financial centres in Europe and Asia with international offices in Brussels, Budapest, London, Luxembourg, Shanghai and Singapore. Our clients are 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 worldwide. On the Continent, Luther is part of a group of independent leading law firms who have worked together for many years on joint cross-border projects. Luther is also the German member of Taxand, a global organisation of tax advisory firms.

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. Our lawyers and tax advisors have a solid understanding of interdisciplinary matters and a wealth of experience in collaborating on complex tasks. Further information is available at: www.luther-lawfirm.com

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