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By PwC Deutschland | 30 June 2011

Court may not accept Statistics Office classification without review in substance

The Constitutional Court has held that a court may not reject an appeal against the refusal of an investment grant claim, merely on the basis of a statement from the Statistics Office, without reviewing the substance of that statement.

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Eastern German businesses in a "processing industry" are entitled to an investment grant on their qualifying assets. Under the Investment Grant Act 2010, the industry classification of a business is that assigned to it by the official government Statistics Office. However, the acts for earlier grant periods confined grant entitlement to businesses in specific industries including "processing", but did not explicitly mention the Statistics Office as a competent authority. Nonetheless, tax offices and tax courts have regularly referred to Statistics Office classifications when ruling on grant applications. A company engaged in crushing asphalt and concrete rubble applied to the Statistics Office for confirmation that its activities were "processing". The office, however, denied the request, seemingly equating "processing" with manufacturing. In consequence, the company lost its appeals against a tax office refusal to allow it an investment grant on its new equipment. In particular, the Supreme Tax Court did not examine the substance of the claim, merely relying on the statement of the Statistics Office that rubble crushing was not "processing".

The Constitutional Court has now held that the applicant had been denied a fair hearing and ordered a retrial. The Supreme Tax Court had not examined the substance of the grant claim, but had relied on the statement from the Statistics Office to the effect that the applicant was not active in a qualifying industry. This meant, though, that the tax court had accepted as binding in an investment grant case the statement of a government department with no investment grant authority. Such authority could only be vested by statute. Accordingly, the Supreme Tax Court must examine the Statistics Office decision in substance, before coming to its own decision on the merits of the case.

Constitutional Court resolution 1 BvR 857/07 of May 31, 2011 published on June 30

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