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By PwC Deutschland | 10 June 2015

Nuclear fuel duty upheld

The ECJ has held that German nuclear fuel duty levied on the use of nuclear fuel in a reactor does not conflict with community law.

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Germany levies a nuclear fuel duty on plutonium 239 and 241 and uranium 233 and 235 and on their compounds or mixtures. The amount is €145/gram of pure fuel included in charges (typically pellets or rods) inserted into reactors in order to start a chain reaction. A nuclear power station contended that this duty was in conflict with a number of provisions and principles of community law and could not be levied. The ECJ has now rejected all the arguments raised against it, making the following main points:

- The duty does not duplicate the excise duty on electricity as it is levied on generation rather than consumption. In any case, it does not burden the consumer, since electric power prices in Germany do not differentiate by means of generation.
- The duty does not discriminate against other forms of non-pollutive electricity generation (wind, water etc.) as these do not lead to radioactive waste. For the same reason, it does not represent illicit state aid in favour of competitors.
- The duty is not a disguised import duty as it is not levied until the fuel is used without distinguishing between the fuel sources.

The ECJ case reference is C-5/14 *Kernkraftwerk Lippe-Ems* judgment of June 4, 2015

Keywords

electricity, nuclear fuel, power