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German Tax and Legal News

Federal Constitutional Court rejects complaint against trade tax addback

The court's decision was based on procedural grounds.

In a decision dated 15 February 2016 (1 BvL 8/12), Germany's Federal Constitutional Court refused to rule on an issue submitted by the tax court of Hamburg relating to the constitutionality of the trade tax addback for interest expense, rent and lease payments.

The amended Trade Tax Act that applies as from 2008 requires a (partial) imputation of expenses, i.e. interest expense, rent and lease payments for the use of movable and immovable property owned by another party must be added back to the trade tax base, on which trade tax will be due.

A German GmbH filed a protest against the trade tax addback in 2008 on the grounds that the addback was unconstitutional. The tax court of Hamburg agreed with the GmbH and referred the case to the Federal Constitutional Court to decide whether the (partial) imputation of expenses under the trade tax act violates the constitution.

The Constitutional Court refused to issue a ruling because the tax court of Hamburg failed to include a substantiated explanation when it referred the issue. According to the Constitutional Court, the lower court did not properly consider relevant decisions of the Constitutional Court and other courts or tax literature.

Although the constitutionality of the trade tax addback provisions remains open, it could be inferred from the statement of the Constitutional Court that there is no violation of the constitution.

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