

Case: The customs value and license payments

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Situation

A Kazakhstani company imported goods to Kazakhstan. The scheme of delivery included two license agreements: the trademark license agreement, owned by a German company ("license agreement №1»); and the license agreement for the sale of goods ("license agreement №2»), owned by a Dutch company. License Agreement №1 provides for the payment of royalties for the right to use a trademark to import the goods into the country. The license agreement №2 provides for the payment of 5% from total sales in future, excluding the VAT.

During the customs clearance the Kazakhstani company paid customs duties based on the customs value of the imported goods, including all payments, according to the license agreement №1.

After the customs inspection the authorities imposed an additional charge based on the adjustment of the customs value. The authorities included the sum of all license fees, including payments made according to the license agreement № 2 in the customs value.

Is the action by customs authorities lawful? What to do in such situation?

Solution

If there are two or more license agreements connected to the sale and delivery of imported goods to Kazakhstan, it is necessary to examine all agreements for presence of risks related to the customs value of goods.

To minimize fiscal risks, it is necessary to structure all license agreements as to eliminate possible additional charges on customs duties of imported goods in future. In this situation, payments by the license agreement №2 should not have been included in the customs value of the imported goods. Such payments are not a condition of purchase-sale agreements between the Kazakhstani and the Dutch companies. License agreement №2 provides for the payment of 5% royalty on the sold amount of goods and is therefore not a direct or indirect condition of the import of the imported products.

In this situation, the Kazakhstani company did not agree with the additional charge and launched an appeal. The company won this case. When considering the case, the court confirmed that two license agreements contained different payment conditions. The first agreement provides for the payment of royalties for the right to use the trademark for imported goods to Kazakhstan. The second agreement provides for the payment of charges based on future sales in the amount of 5% of total sales, not including VAT amount that was paid to the Dutch company, which was taxed at the source of payment.