

# DIFFICULTIES IN APPLYING VAT IN THE CUSTOMS UNION

As Customs Union legislation has only recently entered into force, it's only now becoming clear that certain issues, in particular those relating to taxation, are not being regulated properly. This relates to regulation of some non-standard situations, which, in our opinion, needs further development.



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In this article we would like to discuss in brief, using a specific example, one of those unusual situations. Suppose that a Kazakhstan Company has entered into a supply contract with a Belarusian company, where the Kazakhstan company acts as a seller, and the Belarusian company – a buyer. However, the goods under the contract are not imported into Belarus, but are exported to Russia, bypassing Belarusian territory, to a Russian company which has entered into a supply contract with the Belarusian company.

In this situation, it is important to define who is required to pay VAT and where.

In our opinion, VAT should be paid in Russia pursuant to the rule stating that VAT is payable in the country into which goods are imported.

VAT in Belarus, in this case, is not payable, because: firstly, goods are not imported into Belarus; and, secondly, when the goods are sold to Russia, Belarus is not recognised as the place of supply.

As for Kazakhstan, based on the principle set forth in the international treaties, namely the Treaty on the principles of levying indirect taxes in the Customs Union and the Protocol on the collection of indirect taxes when exporting and importing goods from and to the Customs Union, as well as the Tax Code of the Republic of Kazakhstan, exported goods are subject to zero-rate VAT. Thus, the Kazakhstan exporter should be entitled to record zero-rate VAT in its invoice to the Belarusian company.

These conclusions were confirmed by Mr Tengebayev, Kazakhstan Tax Committee Deputy Chairman, during a round table held on 4 November 2011 in Almaty to discuss "Problems of Tax Administration in the Customs Union, including VAT refunds". However, it is difficult to imagine in practice that the tax authorities will allow the Kazakhstan company to apply zero-rate VAT in an invoice issued to the Belarusian company when no export was made to Belarus, but to Russia.

Furthermore, the question of how to fill in an application to import goods and pay indirect taxes, as well as who (Belarus or Russia) should provide the application to the Kazakhstan company to allow it to apply zero-rate VAT and request an "input" VAT refund remains unclear. Logically, an application should be drafted by the importer, i.e., in this case, the Russian company. However, the application form has no sections applicable to the case under discussion. So, this scenario could give rise to certain practical difficulties.

In connection with the above, we hope that work to further improve Customs Union legislation will continue, and any gaps and inconsistencies will be removed.