

The issues of including royalties in customs value

In 2011, many companies importing goods into Kazakhstan and using others' trademarks, patents, know-how and other objects of intellectual property to do so have been subjected to customs audits with respect to the inclusion of royalties and other license payments in the customs value of the imported goods. For example, companies that imported goods and paid royalties on them had to pay additional import customs duties and import VAT as a result of a customs audit because the license payments in question had not been included in the customs value of the imported goods. In some cases, these additional accruals were quite significant and put many companies' potential to stay in business in Kazakhstan in doubt. As far as we know the customs audits are still continuing to this day.



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Due to the relevancy of this subject, in this article we would like to discuss one of the conceptual problems of including license payments in the customs value of imported goods, which is double taxation, in particular the simultaneous imposition of import customs duties and CIT at source. Royalties and other license payments are included in the customs value of imported goods

based on subpoint 7) of point 1 of article 102 of the Kazakhstan Customs Code, and also subpoint 7) of point 1 of article 5 of the Treaty for determining the customs value of goods transferred across the Customs Union border, and are subsequently subject to customs payments and taxes. At the same time, according to subpoint 12) of point 1 of article 192 of the Tax Code,