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EY Law Alert



New Customs Authorities' Practice of Inclusion of Dividends in the Customs Value of Imported Goods

We would like to inform you about the recent audit practice that the territorial customs authorities of the Republic of Kazakhstan (the "Customs Authorities") adopted over the past few months.

Thus, the Customs Authorities have initiated numerous audits of business enterprises across the country to assess the inclusion of dividends in the customs value of imported goods. As a result of these audits, the Customs Authorities have begun to include dividends in the customs value of goods and accrue additional charges accordingly.



The better the question.
The better the answer.
The better the world works.

The Customs Authorities conduct audits of the entities that meet the following criteria:

1. The company's income is primarily derived from the sale of goods purchased from a related party;
2. Under the Customs Authorities , the interrelationships between the parties involved in the sale and purchase transaction have affected the customs value of the imported goods;
3. The company distributes net income and pays dividends to its founder.

In this instance, the Customs Authorities refer to Articles 39.9 and 40.1.3 of the Customs Code of the EAEU and determine that dividends must be included in the customs value of goods if, by their nature, these payments provide the seller with a portion of the income (revenue) due to the seller from the sale of imported goods.

The Customs Authorities divide dividends into:

- Dividends;
- Payments designated as dividends but being such only in form.

The Customs Authorities determine that payments designated as dividends but being such only in form arise when:

- (i) The company's shareholders decide to distribute income (net profit) generated from the sale of goods imported under contracts with suppliers that are also founders (participants) of the Company;
- (ii) The importer of record fails to provide evidence demonstrating that the transaction value of the imported goods aligns with their actual value.

It is noteworthy that the Customs Authority bases its arguments on the evolving customs and judicial practices of the Russian Federation. However, this practice of incorporating dividends into the customs value of imported goods does not align with the customs legislation of the Republic of Kazakhstan and the ratified international treaties.

Given the current situation, we recommend that companies importing goods from interrelated parties get prepared for potential customs audits by the Customs Authorities. For these purposes, we can review the company's customs processes using the EY IT tool.

If you need support in challenging the legality of the Customs Authorities' actions, we are ready to assist you during the preparation phase for the customs audit, as well as throughout all stages of support during the audit and subsequent appeal. Our customs and tax specialists have expert knowledge in supporting customs audits, including the inclusion of dividends in the customs value, and have a proven track record of successfully appealing the audit results.

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