
Court practice on tax disputes

April 2017

Insurance company against the Customs Control Department of Almaty region

Amount of assessments: ~ KZT 195 mln.

Court instance: Supreme Court

Date: August 2016

Major issues: payment of customs duties at the expense of the insurance company.

Issues

The Insurance company concluded an agreement of voluntary civil responsibility insurance with the Company. The insurance agreement covered obligations of the Company arising from its activities as an authorized economic operator, i.e. payment of customs duties and taxes in accordance with the Kazakhstan customs legislation.

The Company imported goods, but did not fulfil its obligation to declare and pay customs duties on crossing the customs borders.

The customs authorities issued a claim to the Insurance company for payment of the Company's customs duties and taxes. The Company received a notification from the customs authorities of outstanding customs payments.

The Insurance company believes that the customs authorities' claim for payment of customs duties is illegal, because the request for payment was sent after the expiration of the insurance agreement. It also claims that the liability to pay customs duties was fulfilled on confiscation of the imported goods by the state. Additionally, the process of enforced collection of customs duties was implemented incorrectly.

The customs authorities argued that the import of goods and actions of the Company that led to customs duty liabilities took place when the insurance agreement was valid. In addition, expiration of terms for issuance of a claim for payment of customs duties does not restrict the customs authorities from issuance of the claim.

The position of the court

The Supreme Court decided in favour of the Customs Control Department.

The court established that the Customs Control Department correctly issued the request for payment of customs duties to the Insurance company due to the Company's failure to pay customs duties.

Our opinion

According to Article 144.1 of the Customs Code, payment of customs duties and taxes may be secured by cash, a bank guarantee, bail, pledge of property, or an insurance agreement.

Based on Article 149.1, insurance agreements pledged as a collateral to the customs authorities should be issued by a licensed insurance company, included in the register of insurance companies.

In addition, the content of the insurance agreements should comply with the relevant legislative requirements. A list of such requirements is provided in Article 826 of the Civil Code.

In this case, there were no violations of the established requirements, and the customs authorities accepted the insurance agreement as collateral for payment of customs duties.

Actions of the Company leading to assessment of liability to the state budget occurred during the period when the insurance agreement was in force. This is supported by the customs accounts of the Company, copies of shipping declarations and notifications of the customs authorities on the debt being incurred.

The customs authorities issued the claim for payment of customs duties and taxes within the dates provided by Article 149.4 of the Customs Code.

As such, requesting payment of customs duties from the Insurance company was consistent with the legislation.

Company against the State Revenue Department of East Kazakhstan

Amount of assessments: ~ KZT 66,8 mln.

Court instance: Supreme Court

Date: January 2017

Major issues: delivery of injunction on tax audit initiation and non-confirmation of receipt

Issues

The State Revenue Department issued an injunction on initiation of a thematic audit of the Company on fulfilment of its corporate income tax ("CIT") liability.

The Department issued an act stating that the Company refused to sign the injunction and confirm its receipt. This act was issued without witnesses and did not specify the reasons for refusal. This act was issued in the hospital, where the Company's director was on medical treatment.

The tax authorities sent a request for provision of documents for a tax audit via the post office. The request was returned to the tax authorities due to the absence of the Company employees at the Company's legal address.

As the tax authorities did not receive documents, they conducted the audit using the indirect method.

The tax authorities disallowed deductions for transactions with sham enterprises recognized as such by the court.

The Company denies receiving the injunction on tax audit initiation and refusal to accept and sign it. It claims that it did not receive a notification of the beginning of the tax audit.

The position of the court

The Supreme Court decided in favour of the Company. The injunction was revoked by the court due to failure to deliver the injunction to the taxpayer in compliance with established procedures.

Our opinion

Article 633.1 of the Tax Code stipulates that the date of beginning of the tax audit is the date when a taxpayer received an injunction on tax audit initiation or the date when the taxpayer refused to sign the injunction and the tax authorities issued a corresponding act.

Article 633.5 envisages that in the case of taxpayer's/tax agent's refusal to sign the injunction, the tax authority should issue an act on refusal to sign the injunction in the presence of at least two witnesses. In the act, the authorities should state the reason for such refusal.

The State Revenues Department did not comply with the procedures for initiation of the tax audit due to failure to deliver the injunction to the Company in the established manner, leading to violation of

the taxpayer's rights. The act on refusal to sign the injunction could not be deemed as the beginning of the tax audit, because it was issued with procedural violations (i.e. without witnesses and not mentioning the circumstances of refusal to sign the injunction).

Tax and Legal Alert

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Let's talk

If you are interested in further information, please contact PwC specialists providing services to your Company or any person below.



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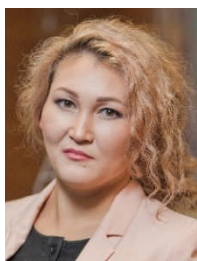
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