PROTOCOL ON THE ORDER OF LEVYING OF INDIRECT TAXES IN VIEW OF PERFORMANCE OF WORKS AND RENDERING SERVICES IN THE CUSTOMS UNION

the Governments of members of the Customs Union (hereinafter – CU) within the Eurasian Economic Community, hereinafter referred to as the Parties,

recognizing the generally accepted norms and rules of international trade,

guided by the Article 5 of the Agreement «On the Principles of Collecting Indirect Taxes on exports and imports

of goods, works, services in the Customs Union as of 25 January 2008,

on the basis of mutual interest in the timely and full earnings of the CU members' budgets of indirect taxes in view of performance of works and rendering services,

wishing to assist each other for this purpose,

agreed as follows:

Article 1

For the purposes of this Protocol, the following terms:

«immovable property» – land, subsoil, isolated water bodies and all that is firmly connected with land, i.e. objects, which move without disproportionate damage to their appointment is not possible, including forests, perennial plantings, buildings, facilities, pipelines, power lines, enterprises as property complexes and space objects;

«movable property» – things that do not relate to immovable property and the vehicles;

«vehicle» – air and sea vessels, inland navigation vessels, combined river-sea vessels, units of railway rolling stock; buses, vehicles, including trailers; cargo containers;

«audit services» – services for the audit of accounting, tax and financial reporting;

«bookkeeping services» – services for the formulation, management, restoration of accounting, for the preparation and (or) the submission of tax, financial and accounting records;

«design services» – services for designing of artistic forms, appearance of products, building facades, interior space, an artistic design;

«engineering services» – engineering and consulting services for the preparation of the production and sale of goods (works, services), preparation of construction and operation of industrial, infrastructure, agricultural and other

objects, as well as pre- and design services (preparation of technical and economic basis studies, design development, technical testing and analysis of their results);

«consulting services» – services of providing explanations, advice and other forms of consultations, including the identification and (or) an assessment of problems and (or) capabilities of person on managerial, economic, financial (including tax and accounting) issues, as well as planning, organizing and operating a business, human resource management;

«marketing services» – services related to research, analysis, planning and forecasting in the production and circulation of goods, works and services in order to identify measures to create the necessary economic conditions of production and circulation of goods, works and services, including the description of goods, works, services, development of pricing strategy and advertising strategies;

«scientific research» – research, due to technical requirements of the customer;

«development and technological work» – development of new products' model, design documentation for it or new technology;

«advertising services» – services for the creation, distribution and display of information to unspecified persons and designed to generate or maintain interest in a person or entity, products, trademarks, works, services, by any means and in any form;

«information processing services» – services for the collection and collation of information, organizing information files (data) and giving users the results of processing this information;

«legal services» – legal services, including providing advice and clarification, preparation and examination of documents, representation of clients in the courts.

Article 2

Levying of indirect taxes on the execution of works, services performed in the CU member-state, which territory is recognized as the place of selling of works and services (except work referred to in Article 4 of the present Protocol).

When performing works and rendering services tax base, rates of indirect taxes, the procedure of tax levying and tax breaks (tax exemption) are determined in accordance with the laws of the CU member-state, which territory is recognized as the place of selling of works and services, if other is not stipulated by the present Protocol .

Article 3

1. The territory of the CU member-state is recognized as the place of sellings of works and services if:

1) works or services are directly related to immovable property located in the territory of this State.

The provisions of this subparagraph shall also apply in respect of rental services, employment and the provision for use of the immovable property on other basis;

2) works, services are directly related to movable property, vehicles, located in the territory of this State;

3) services in the sphere of culture, arts, education (education), physical education, tourism, recreation and sports are provided in the territory of this State;

4) the taxpayer (payer) of this State purchased:

consulting, legal, accounting, auditing, engineering, advertising, design, marketing services, information processing, as well as scientific research, development and technological work;

work services for the development of computer programs and databases (software and information products of computer technology), their adaptation and modification, maintenance of such programs and databases;

staff-providing services, if the staff works in the place of the purchaser.

The provisions of this subparagraph shall also apply when:

transfer, grant, assignment of patents, licenses and other documents certifying the entitlements for protected by the state industrial property rights, trade marks, trademarks, trade names, service marks, copyrights, related rights or other similar rights;

renting, leasing and lending movable property for other reasons, except renting, leasing and lending vehicles for other reasons;

provision of services by a person getting another person on behalf of the main contracting party to take part in performing work and rendering services provided by this subparagraph;

5) the work performed, services are provided by the taxpayer (payer) of the State, if other is not stipulated by subparagraphs 1) – 4) of paragraph 1 of this article.

The provisions of this subparagraph shall also apply when renting, leasing and lending vehicles for other reasons.

2. Documents certifying place of selling of works (services) are:

agreement (contract) for works, services, concluded by taxpayers (payers) of the CU member-states;

documents certifying the fact of performance of works and rendering services;

other documents stipulated by the legislation of the CU member-states.

Article 4

1. Works on processing of goods made on commission imported to the territory of one of the CU member-states from the territory of another CU member-state of a with the subsequent export of refined products to the territory of another state, shall be subject to Value Added Tax (hereinafter – VAT), in accordance with the provisions of the Article 1 of the Protocol "On the Order of Levying Indirect Taxes and the Mechanism of Control over their Payment for Exports and Imports of goods in a CU" on the basis of the documents indicated in the present article. At the same time the tax base of VAT is defined as the value of work carried out on processing of goods made.

2. To confirm the validity of the zero rate of VAT on the stated works to the tax authorities simultaneously with the tax declaration (calculation), the following documents (copies) should be presented:

agreement (contract) concluded between taxpayers (payers) of the CU member-states;

documents certifying the implementation of works and services;

proof of export (import) of goods listed in paragraph 1 of the present article;

application on the import of goods and payment of indirect taxes, compiled from the form of Schedule 1 to the Protocol "On the Exchange of Electronic Information between Tax Authorities of the CU Member-States" on the amounts of indirect taxes that has been paid, with a note on the payment of the tax authority (in original or in copy at the discretion of tax authorities of the CU member-states);

Customs (Customs Freight) declaration confirming the export of products of processing of goods made outside the territory of the CU member-states;

other documents stipulated by the legislation of the CU member-states.

3. The documents provided by the paragraph 2 of this Article shall not be submitted to the tax authority if together with the tax return non-submission of documents confirming the validity of applying a zero VAT rate follows from the legislation of the CU member-stste, on which territory the processing is carried out.

Article 5

If the taxpayer (the payer) is carrying out several types of works or services, taxation procedure of which is governed by the present Protocol, and the performance of certain works and services is subsidiary to the performance of other works and services, than the place of sale of subsidiary works and services is recognized as the place of performance of primary works and services.

Article 6

The amendments and additions may be made in the present Protocol on a mutual agreement of the Parties and shall be drawn up by separate protocols.

The issue of advisability of the amendments and additions to the present Protocol shall be considered by the authorized bodies of the Parties not less frequently than once a year.

Article 7

Disputes and disagreements between the Parties concerning the interpretation and (or) the application of this Protocol shall be settled through consultations or negotiations between the interested Parties. In case of failure to reach agreement within six months from the date of the beginning of such consultations or negotiations, the dispute will be delegated to the Court of the EurAsEC by the initiative of any of the Parties.

Article 8

The present Protocol shall enter into force from the date of receipt through diplomatic channels by the Depositary of the last written notification on fulfillment by the Parties of the domestic procedures required for entry into force of the present Protocol.

Article 9

The present Protocol shall be applied from the date of entry into force of the Agreement “On the Principles of Levying Indirect Taxes on Exports and Imports of Goods, Works, Services in the CU” of 25 January 2008.

Article 10

Done in St. Petersburg on 11 December 2009, in one original copy in Russian.

The original of this Protocol is stored in the CU Commission, which, as the depositary of this Protocol, will send a certified copy to each Party.