PROTOCOL ON THE PROCEDURE FOR LEVYING INDIRECT TAXES AND THE MECHANISM OF CONTROL OVER THEIR PAYMENT FOR EXPORTS AND IMPORTS OF GOODS IN A CUSTOMS UNION

The governments - members of the Customs Union within the Eurasian Economic Community, hereinafter referred to as the Parties, Recognizing the generally accepted norms and rules of international trade, Being guided by Article 4 of the Agreement on the principles of collecting indirect taxes on exports and imports of goods, works and services in a customs union on January 25, 2008, on the basis of mutual interest in strengthening controls over the export and import of goods, timely and complete collection of indirect taxes in the budgets of states - members of a customs union, Wishing for this purpose to assist each other, agreed as follows:

Article 1

The application of indirect taxes on exported goods

1. When exporting goods from the territory of one state - member of a customs union on the territory of another state - member of a customs union by the taxpayer (the payer) (hereinafter - the taxpayer) of the State - member of a customs union from the territory of which the goods are removed, apply a zero rate of value added tax (hereinafter - VAT), and (or) the exemption from excise taxes when submitting documents to the taxation body pursuant to paragraph 2 of this article.

When exporting goods from the territory of one state - member of a customs union on the territory of another state - member of the Customs Union, the taxpayer is entitled to tax deductions (offsets) in a manner, that is similar to those prescribed in the law of the State - member of a customs union, applied for goods exported from the territory of that State outside the customs union.

Place of sale of goods is determined in accordance with the laws of the States - Members of a customs union.

2. To confirm the validity of applying a zero rate of VAT and (or) the exemption from excise duty by the taxpayer of the State - a member of a customs union from the territory of which the goods were exported, along with the tax declaration the following documents (copies) should be presented to the taxation bodies:

1) agreements (contracts), reflecting changes, additions and annexes thereto (hereinafter - the agreements (contracts) under which the goods are exported, in case of a lease of goods or merchandise credit (merchandise loan, loan in the form of things); agreements (contracts) lease agreements (contracts), commercial loans (commercial loans, the loan in the form of things), agreements (contracts) for the manufacturing of goods; agreements (contracts) for the processing of raw material;

2) bank statements confirming the actual receipt of returns from the sale of exported goods at the account of the taxpayer-exporter, unless otherwise stipulated by law of the State - member of the customs union.

If the agreement (contract) provides payment for cash, and this payment does not contradict the laws of the State - member of a customs union from the territory of which the goods are exported, the taxpayer shall submit the bank statement (a copy of the statement) to the tax authority, confirming the payment of the amounts received by the taxpayer in his bank account, as well as copies of receipts, confirming the actual receipt of returns from the buyer of these goods, unless otherwise provided by law of the State - member of a customs union from the territory of which the goods are exported.

In case of export of goods under the agreement (contract) of lease, providing the transfer of title to them to the lessee, the taxpayer shall submit to the tax authority the bank statement (copy of statement), confirming the actual receipt of lease payment (in part of refund of the original value of the goods (leased assets) to the account taxpayer-exporter, unless otherwise provided by law of the State - member of the customs union.

In the case of foreign trade goods exchange (barter) operations, provision of commodity credits (commodity loans, the loan in the form of things) a taxpayer-exporter shall submit to the tax authority documents, confirming the importation of goods (fulfillment of works, provision of services) received (purchased) by him under these transactions;

3) statement on importation of goods and payment of indirect taxes, made under the form of Annex 1 of the Protocol on exchange of electronic information between the tax authorities of States - members of a customs union on the sums of indirect taxes paid, marked by the tax authority of the State - member of the Customs Union, to the territory of which the goods were imported, on payment of indirect taxes (offset or in other manner of the execution of tax liabilities) (hereinafter - Application) (in the original or a copy at the discretion of the tax authorities of States - members of a customs union);

4) transportation (shipping) documents stipulated by the law of the State - member of the Customs Union, confirming the movement of goods from the territory of one state - member of the customs union to the territory of another state - member of the customs union. These documents are not submitted in case certain types of movement of goods do not require such documents under by the laws of the State - member of the customs union;

5) other documents confirming the validity of applying of zero rate of VAT (or) exemption from payment of excise taxes under the laws of the State - member of the Customs Union, from the territory of which the goods are exported.

The documents provided by this paragraph, except for Application, are not to be submitted to the tax authority, if the non-provision of documents, confirming the validity of applying of zero rate of VAT and (or) the exemption from excise

taxes, along with the tax return, is comes from the law of the State - member of a customs union from the territory of which the goods are exported.

The documents provided in this paragraph, are not to be submitted along with the relevant tax declaration on excise taxes, if they were presented with the tax declaration of VAT, unless otherwise provided by law of the State - member of the customs union.

3. The documents provided for in paragraph 2 of this Article shall be submitted to the tax authority, within 180 calendar days from the date of shipment (transfer) of goods.

In case of failure of these documents within the prescribed period the sums of indirect taxes to be paid to the budget for the tax (reporting) period, which covers the date of shipment of goods, or other tax (reporting) period established by law of the State - member of a customs union, with the right to deduct (offset) the respective sums of VAT under the laws of the State - member of a customs union from the territory of which the goods are exported.

In order to calculate VAT on the sale of goods the date of the formation of the first primary accounting (calculating) a document issued for the buyer of goods (the first carrier), or the date of issue of another binding document under the law of the State - member of a customs union for the taxpayer of VAT, is recognized as the date of shipment.

In order to calculate excise taxes on excisable goods produced from own raw materials, the date of the first by time formation of the primary accounting (calculating) document, issued for the buyer (receiver) of goods is recognized as the date of shipment of goods; on excisable goods produced from provided raw materials, the date of signing of the act of transfer and acceptance of excisable goods is recognized as the date of shipment, unless otherwise provided by law of the State - member of the customs union, on the territory of which the excisable goods are produced.

In the case of non-payment, partial payment of indirect taxes, payment of such taxes with the violation of the period, established by this paragraph, the tax authority shall recover indirect taxes and penalties in a manner and amount, prescribed by the law of the State - member of a customs union, from whose territory the goods are exported, as well as applies measures of fulfillment obligations on payment of indirect taxes, penalties and liabilities, established by the law of this state.

In case the taxpayer provided documents, prescribed in paragraph 2 of this article, beyond the period specified in this paragraph, the paid sums of indirect taxes are subject to deduction (offset), return in accordance with the laws of the State - member of a customs union from the territory of which the goods were exported. The amounts of fines, penalties, assessed and paid for delay in payment of indirect taxes, are not refundable.

4. The volume of goods, excise tax rates that are in force at the date of shipment of excisable goods exported to the states - members of a customs union, as well as the amount of excise taxes, should be recorded in the appropriate tax declaration on excise taxes.

5. Tax Authority verifies the validity of applying zero rate of VAT and (or) the exemption from excise taxes, tax deductions (offsets) for this tax, and takes (makes) a decision under the laws of the State - member of a customs union from the territory of which the goods were exported.

In case of non-provision to the tax authority of Application, the tax authority is entitled to take (make) a decision to confirm the validity of applying of zero rate of VAT and (or) the exemption from excise taxes, tax deductions (offsets) for such taxes in respect of transactions on the sale of goods exported from the territory of one State - member of a customs union into another state - member of a customs union, provided availability of confirmation in electronic form of fact of the payment of indirect taxes in full (exclusion from the payment of indirect taxes) in the tax authority of a state - member of a customs union from the tax authority of another state - member of a customs union.

6. If data, provided by taxpayer, about the movement of goods and payment of indirect taxes does not correspond to the data obtained in the framework of exchange of information, established between the tax authorities of states - members of a customs union, the tax authority shall recover indirect taxes and penalties in the manner and amount prescribed by the legislation of the state - member of a customs union, from the territory of which the goods are exported, as well as shall apply the measures of enforcement of obligations fulfillment on payment of indirect taxes, penalties and liabilities established by the laws of this state.

7. The provisions of this article referring to VAT shall also apply in respect of goods, that are the result of works performance under the agreements (contracts) on their production, and being exported from the territory of the state - member of the customs union, on whose territory the works on their production were provided, to another state - member of a customs union territory. The goods that are the result of the work on processing of provided raw materials do not refer to the abovementioned goods.

8. The tax base for taxation of goods with excise taxes, that are the result of performing of works under the agreement (contract) on processing of provided raw materials, is defined as the volume, quantity (other indicators) of excisable goods produced from provided raw material, in natural value, in respect of which fixed (specific) excise tax rates are established, or as the value of excisable goods produced from provided raw material, in respect of which ad valorem excise rates are established.

9. When exporting goods (the leased asset) from the territory of one state - member of a customs union to the territory of another state - member of the customs union under the agreement (contract) of lease, prescribing transfer of title

for them to the lessee, under the agreement (contract) of commodity credit (commodity loan, loan in the form of things), under the agreement (contract) on the manufacture of goods, the zero rate of VAT and (or) the exemption from excise taxes (if such a transaction is subject to excise taxes in accordance with the laws of the state - member of a customs union) is applied, provided submission of documents to the tax authority, prescribed under paragraph 2 of this article.

The tax base for VAT when exported from the territory of one state - member of a customs union to the territory of another state - member of a customs union of goods (leased assets) under the agreement (contract) of lease is determined at the date of receipt of each lease payment in the amount of the initial cost of goods (leased assets) under the agreement (contract) of lease, but not more than the amount of actually received payment.

Tax deductions (offsets) are provided in accordance with the legislation of the state - member of the customs union, in part, attributable to the cost of goods (leased asset) upon lease payment received.

The tax base for VAT when exporting goods from the territory of one state - member of a customs union to the territory of another state - member of a customs union under the agreement (contract) of commodity credit (commodity loan, loan in the form of things) is the cost of transferred (provided) goods, prescribed in the agreement (contract), in case of the absence of value in the agreement (contract) – the cost specified in the shipping documents, in case of absence of the cost in the agreement (contract) and shipping documents - the cost of goods, as reflected in accounting.

10. To ensure completeness of payment of indirect taxes the legislation of the state - member of a customs union can be applied, governing principles for determining the price for tax purposes.

Article 2

The procedure for levying indirect taxes on imported goods

1. Levying of indirect taxes on goods imported to the territory of one o the CU members from the territory of another CU member, unless otherwise is provided in this Protocol, is carried out by the tax authority of the State – CU member, on the territory of which the goods are imported, at the place of records of taxpayers - the owners of goods, including taxpayers, applying special tax regimes, according to the following features.
For the purposes of the given Protocol, the owner of the goods is the person who holds the title for the goods or to whom the ownership of the goods is transferred according to an agreement (contract).

1.1. If the goods are being bought under the basics of an agreement (contract) between the taxpayer of one of the CU members and the taxpayer of another CU

member, payment of indirect taxes is being carried out by the taxpayer of the CU member, on the territory of which these goods were imported – by the owner of the goods or, if it is provided by the legal framework of the CU member, by the commission agent, attorney or agent.

1.2. If the goods are being bought under the basics of an agreement (contract) between the taxpayer of one of the CU members and the taxpayer of another CU member and these goods are being imported from the territory of a third country – the CU member, the indirect taxes are being paid by the taxpayer of the CU member, on the territory of which these goods were imported – by the owner of these goods.

1.3. If the goods are being sold by the taxpayer of one of the CU members on the basics of a commission agreement (contract), assignment or agency agreement (contract) with the taxpayer of another CU member and are being imported from the territory of a third country – the CU member, payment of indirect taxes is being carried out by the taxpayer of the CU member, on the territory of which these goods are imported – by the owner of these goods, or, if it is provided by the legal framework of the CU member, by the commission agent, attorney or agent.

1.4. If the taxpayer of one of the CU members purchases goods that were previously imported to the territory of this CU member by the taxpayer of another CU member, and indirect taxes for these goods were not paid, payment of indirect taxes is being carried out by the taxpayer of the CU member, on the territory of which these goods were imported – by the owner of these goods, or, if it is provided by the legal framework of the CU member, by the commission agent, attorney or agent (in case these goods will be sold through a commission agent, attorney, agent).

1.5. If the goods are being bought under the basics of an agreement (contract) between the taxpayer of the CU member and a taxpayer of State, which is not the CU member, while goods are being imported from the territory of another country – the CU member, the indirect taxes are being paid by the taxpayer of the CU member, on the territory of which these goods were imported – by the owner of these goods or, if it is provided by the legal framework of the CU member, by the commission agent, attorney or agent (in case these goods will be sold through a commission agent, attorney, agent).

2. For the purposes of the VAT payment the tax base is being determined on the date of the registration of imported goods by the taxpayer (but not later than the date which is set by the legal framework of the CU member, on the territory of which these goods are imported) on the basics of the cost of purchased goods (including goods that are the result of the fulfillment of an agreement (the contract) on their manufacture), as well as goods received under an agreement (contract) on commercial loan (commercial loan, loan in the form of things), goods that are the product of processing of raw material, and excise taxes payable on excisable goods.

Value of the purchased goods, including goods that are the result of the fulfillment of an agreement (the contract) on their manufacture is the cost of transaction that is chargeable for the supplier for goods (works, services) under the terms of an agreement (contract).

The value of goods received according to an agreement (contract) on exchange of goods (barter) and an agreement (contract) on commercial loan (commercial loan, loan in the form of things), is the price of the goods according to an agreement (contract), with no cost stipulated in the agreement (contract) - the value specified in the shipping documents, without the cost stipulated in the agreement (contract) and in shipping documents - the cost of goods, as reflected in accounting.

The tax base for import to the territory of the CU member from the territory of another CU member of refined products is being defined as the cost of work on tolling.

3. The tax base for import of goods (leased assets) into one of the CU members from the territory of another CU member according to an agreement (contract) on leasing which provides the transition of the title for these goods to the lessee, is being defined as a rate of cost of goods (leased assets) which is being stipulated on the date of its payment by an agreement (contract) on leasing (regardless of the actual size and the date of payment). Lease payments in foreign currency is being converted into national currency according to an exchange rate of the central (national) bank of the CU member on the date corresponding with the time (date) of the determination of the tax base.

4. The tax base for excise taxation is the amount, quantity (other indicators) of imported excisable goods in natural value subject fixed (specific) excise tax rates or the cost of imported excisable goods subject to ad valorem excise rates. The tax base is being determined on the date of the registration of imported goods by the taxpayer (but not later than the date which is set by the legal framework of the CU member, on the territory of which these goods are imported).

5. Amounts of indirect taxes payable on goods imported to the territory of one of the CU members from the territory of another CU member, are being estimated by the taxpayer according to the tax rates established by the legal framework of the CU member, on the territory of which these goods were imported.

6. To ensure the completeness of the payment of indirect taxes the legal framework of the CU member which governs principles for determining the price for tax purposes can be applied.

7. Indirect taxes, excluding excise taxes on labeled excisable goods shall be paid not later than on the 20-th of the month following the month: of registration of the imported goods;

of the payment period stipulated by an agreement (contract) on leasing. Payment of excise taxes on labeled excisable goods is being carried out in terms established by the legal framework of the CU member.

8. A taxpayer must submit to the tax authorities an appropriate tax return form, indicated by the legal framework of the CU member, on the territory of which goods are imported, including goods under an agreement (contract) for leasing, not later than on 20-th of the month following the month of the registration of imported goods (the payment period, stipulated by an agreement (contract) for leasing). Along with the tax return the taxpayer shall submit to the tax authority the following documents:

1) An application - a hard copy (four copies) and electronic form;

2) bank statement confirming the actual payment of indirect taxes on imported goods, or other document confirming the fulfillment of tax obligations for the payment of indirect taxes, if it is indicated by the legal framework of the CU member. If a taxpayer has overpaid (collected) taxes, fees or sums of indirect taxes that are refundable (set-off) while importing goods on the territory of one of the CU members from the territory of another CU member, and while selling goods (works, services) on the territory of the CU member, the tax authority in accordance with the legal framework of the CU member, on the territory of which goods were imported, makes (comes to) a decision on their set-off for a repayment of indirect taxes on imported goods. In this case, the bank statement (its copy), confirming the actual payment of indirect taxes on imported goods, is not submitted. According to the agreement (contract) on leasing documents specified in this sub article are being submitted on the maturity date which is specified in the agreement (contract) on leasing;

3) shipping documents stipulated by the legal framework of the CU member, confirming the transportation of goods from the territory of one of the CU members to the territory of another CU member. These documents are not submitted when for certain types of transportation of goods such documents are not provided by the legal framework of the CU member;

4) an invoice, drawn up in accordance with the legal framework of the CU member when shipping goods, if their exposure (extract) is provided by the legal framework of the CU member;

5) agreements (contracts) on the basics of which goods imported to the territory of the CU member from the territory of another CU member were purchased; in case of leasing of goods (goods leasing) - agreements (contracts) for leasing; in case of trade credit (commodity loan, the loan in the form of things) - agreements (contracts) for commercial loans (commercial loans, the loan in the form of things); agreements (contracts) on the manufacture of goods; agreements (contracts) on the processing of raw material;

6) announcement (in the cases stipulated in paragraphs 1.2, 1.3, 1.4 and 1.5 of the given article), submitted by the taxpayer of one of the CU members to the taxpayer of another CU member, or by a taxpayer of the country which is not the CU member (signed by the head of an organization (individual entrepreneur) and duly stamped), selling goods imported from the territory of a third country which is the CU member, on the following information about the taxpayer of the third

country which is the CU member and on the agreement (contract) concluded with the taxpayer of that third country which is the CU member on the purchase of imported goods: the number that identifies the person as a taxpayer of the CU member;

full name of the taxpayer (organization/individual entrepreneur) of the CU member; location (residence) of the taxpayer of the CU member; number and date of the agreement (contract);

number and date of specification. If the taxpayer of the CU member, from who the goods are purchased, is not the owner of these goods (is a commission agent, attorney, agent), the information specified in paragraphs 2 - 6 of the given subparagraph shall be submitted also on the owner of goods being sold. If the informational message is being submitted in a foreign language the Russian translation is required. Informational message is not being submitted when information specified by the given subparagraph is stipulated by the agreement (contract, referred to in paragraph 5) of the given paragraph;

7) agreements (contracts) on commission, commission or agency agreement (contract) (in cases of its conclusion);

8) agreements (contracts) on the basics of which the goods imported on the territory of the CU member from the territory of another CU member, under agreements (contracts) on the commission, order or under an agency agreement (contract) (in the cases provided by paragraphs 1.2 and 1.3 of the given Article, except cases when indirect taxes are paid by the commissioner, attorney or agent) were purchased. The documents referred to in subparagraphs 2) - 8) of the given paragraph may be submitted in copies certified in accordance with the legal framework of the CU member. According to the agreement (contract) on leasing with the first payment of VAT the taxpayer shall submit to the tax authority documents under subparagraphs 1) - 8) of the given paragraph. Later, the taxpayer shall submit to the tax authority along with the tax return documents (its' copies), under subsections 1) and 2) of the given paragraph.

9. In cases of non-payment, partial payment of indirect taxes on imported goods, the payment of such taxes at a later date than set forth in paragraph 7 of the given article, as well as in the case of detecting failure of tax returns, submitting them in violation of the period established by paragraph 8 of the given article or in cases of discrepancy of data specified in the tax declarations, with the data obtained through the exchange of information between the tax authorities of the CU members, the tax authority shall recover indirect taxes and penalties in the order and amount specified by the legal framework of the CU member, on whose territory these goods were imported, as well as applies means for the enforcement of obligations on payment of indirect taxes, penalties and liabilities established by the legal framework of the CU member.

In case of merchandise return according to the cause confirmed by participants of the agreement (contract) which is an inadequate quality and (or) packaging of goods imported on the month of their registration, a reflection of

these goods in the tax declaration is not required. In case such imported goods were returned by the end of the month when these goods were registered, corresponding specifications (additional) tax returns are being presented.

10. When goods, imported on the customs territory of the CU member in accordance with its legal framework without the payment of indirect taxes, are being utilized for purposes other than those for which the exemption or other order of payment was granted, import of such goods is subject to indirect taxes in the order indicated by the given article.

11. Amounts of indirect taxes paid (credit) on goods imported on the territory of one of the CU members from the territory of another CU member, are subject to deductions (credits) in accordance with the legal framework of the CU member, on the territory of which these goods were imported.

12. Collection of excise taxes on goods subject to marking with excise stamps (accounting and control marks, signs), is being carry out by the customs authorities of the CU member, if it is specified by the legal framework of the CU member.

Article 3

Amendments and additions

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 4

Dispute settlement

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 5

Entrance into force

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 6

Date of application

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 7

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.