

IMPORT OF PRODUCTION EQUIPMENT:

POSSIBLE WAYS TO MINIMIZE EXPENSES AND RISKS AS STIPULATED BY RUSSIAN LEGISLATION

INFORMATION LETTER

When implementing production projects in Russia, investors are interested in obtaining the best possible tax, duty and levy preferences in relation to the import of production equipment. Both Russian legislation and the legislation of the Customs Union of Russia, Belarus and Kazakhstan offer several possible ways to reduce the expenses of importing investors, and guarantee that they are able to apply effective preferences. The principle methods of stimulating the acquisition of production equipment are exempting importers from payment of VAT, and making it possible for them to benefit from preferential customs duties on certain types of equipment.

I. Exemption from Payment of VAT

Article 150 of the Tax Code of the Russian Federation establishes that the import of production equipment into the Russian Federation (including component and spare parts thereof), analogs of which are not manufactured in Russia, is not subject to taxation (is exempt from taxation) in accordance with the list approved by the Government of the Russian Federation (hereinafter the "List"). The List was approved by the Government of the Russian Federation No. 372 dated April 30, 2009, and has been repeatedly amended. The latest version of the List was adopted on June 18, 2012. The List contains codes under the commodity classification for foreign economic activity of the Customs Union, and equipment descriptions. Most items on the List are included in commodity group 84 (Nuclear reactors, boilers, equipment and mechanical units; parts thereof); the List also includes separate items pertaining to commodity groups 85 (Electric machinery and equipment, parts thereof; sound recording and reproducing equipment, TV image and sound recording and reproducing equipment, parts and accessories thereof), 89 (Vessels, boats and floating structures) and 90 (Optical, photographic, cinematographic, measuring, inspection, precision measuring, medical and surgical instruments and apparatus, parts and accessories thereof).

Accordingly, when beginning to analyze the possible preferences applicable to certain equipment, an importer may check whether such production equipment is included in the List. Even if the equipment in question is not included, the List may be supplemented under certain conditions. The principle prerequisites for making addenda to the List and the inclusion therein of new types of production equipment are an absence of Russian analogs of such production equipment, the impossibility of manufacturing this type of production equipment in Russia, the novelty and innovative nature of the equipment, and the necessity to stimulate the import of such equipment in order to improve the performance indicators of Russian enterprises.

An applicant may submit materials and an application for making addenda to the List to the Ministry of Industry and Trade of the Russian Federation, a supervisory authority that will, within its competence, analyze the submitted documents, interact with other bodies, and draft the respective regulatory documents. The period from the submission of the application until the publication of addenda to the List (provided that a positive decision is taken by the authorities) may last several months. However, this mechanism makes it possible to significantly save the investor's resources at

CONTENTS

I. Exemption from Payment of VAT	Page 1
II. Guarantees of the Application of Reduced Rates of Import Customs Duty	Page 2
III. Application of Customs Duty Preferences	Page 3

the import stage, which is especially important when large-scale production projects are being implemented.

II. Guarantees of the Application of Reduced Rates of Import Customs Duty

The customs tariff of the Customs Union of Russia, Belorussia and Kazakhstan sets forth a comprehensive list of equipment that is subject to a preferential import duty (0 or 5% of the customs value).

When equipment is imported, issues may arise as to whether such equipment falls under a certain customs code, making it subject to a preferential rate of the import duty. Moreover, there is a risk that the customs authority may reclassify the equipment if it is imported into the territory of the Russian Federation in parts.

In order to avoid such risks, it is possible to obtain classification decisions from the Federal Customs Service (FCS) of the Russian Federation with respect to certain types of equipment, and in accordance with the importer's application. In general, the mechanism for obtaining a preliminary classification decision (to preclude the risk of equipment being classified under another commodity classification code) and a classification decision with respect to a multi-component product (to enable the import of a production line in parts) is as follows:

1. The importer submits an application to the authorized customs body.

To obtain preliminary classification decisions, the importer should submit an application to the Department of Commodity Classification of the FCS of Russia, which is located in Moscow, or to regional customs departments, depending on the types of commodity classification of the product group in question. To obtain classification decisions with respect to multi-component products, the importer should submit an application to the Department of Commodity Classification of the FCS of Russia only. Legislation establishes certain requirements for the form and contents of such applications. The application should contain the necessary materials (photographs, pictures, drawings, manufacturer's data report, product trial portions and samples, a list of product component parts (in the form of a table) with the component parts indicated, the number thereof and codes under the Commodity Classification for Foreign Economic Activity of the Customs Union, a technical description of the product and separate component parts thereof, and other documents).

2. The documents and information are considered by the customs authority.

Import of Production Equipment

As a general rule, a classification decision is taken within 90 calendar days of the submission of an application to the respective customs authority; should the customs authority request additional information, the period for making a preliminary decision shall be extended by the amount of time necessary for the applicant to provide the requested additional information.

When taking a decision, the customs authority must take into consideration any previously issued classification decisions registered in electronic databases (in the Russian Federation, the Customs Union, the WTO), any published and binding decisions and clarifications of the FCS concerning classification of certain types of products, and they must also take into consideration the documents submitted by the applicant, including the conclusions of expert organizations.

Classification decisions with respect to multi-component products are valid for a fixed period of time (up to 1 year from the import date of the first set of products). If there are objective reasons, due to which the period of validity of a decision cannot be observed, said period may be extended upon request of the importer (customs applicant), for not more than 3 years. If a classification decision expires before all the component parts have been imported, any imported component parts must be declared as independent products, subject to all applicable duties and taxes.

Unlike a classification decision applicable to multi-component products, a preliminary decision, as a general rule, is valid for 3 years. It can be changed if there are adequate grounds to do so, revoked if the applicant provided invalid information, or terminated in the event of the FCS having committed an error when making the decision, or in the event of the official recommendations or methods of the FCS being changed.

III. Application of Customs Duty Preferences where a Foreign Investor Imports Equipment as a Contribution to the Charter Capital

The legislation of the Customs Union does provide some tariff preferences. In particular, in accordance with Decision of the Commission of the Customs Union No. 130 dated November 27, 2009, tariff preferences may be granted with respect to products imported from third countries as a founder's contribution to the charter (share) capital (fund), within the period of time established by the founding documents for capital formation in accordance with the procedure stipulated by legislation of the member countries of the Customs Union. In accordance with Decree of the Government of the Russian Federation No. 883 dated July 23, 1996, customs duty exemptions shall be granted subject to the following additional conditions:

- the products are not excisable;
- the products pertain to fixed production assets.

Moreover, in accordance with the provision of the Customs Code of the Customs Union, if such a preference is granted, the imported products cannot be disposed of within at least 5 years of their conditional release on the territory of the Russian Federation.

Unfortunately, the practical application of the above mechanism is limited, as the customs authorities are entitled, subject to certain grounds determined by Federal Law No. 311-FZ "On Customs Regulation in the Russian Federation", to exercise strict control over the conditions for granting preferences. Moreover, the customs authorities are entitled to demand that payment of customs duties be secured by monetary funds (a deposit), a bank guarantee or a suretyship or pledge of property.

Author:

Anna Afanasyeva

Partner, tax and customs law

E-mail: Anna.Afanasyeva@bblaw.com

Telephone: +7 812 449 60 00



BEITEN BURKHARDT RECHTSANWÄLTE (ATTORNEYS-AT-LAW)

ST. PETERSBURG · MARATA STR. 47-49, LIT. A OFFICE 402 · 191002 ST. PETERSBURG · TEL.: +7 812 4496000 · FAX: +7 812 4496001

NATALIA WILKE · NATALIA.WILKE@BBLAW.COM

WWW.BEITENBURKHARDT.COM

BEITEN BURKHARDT