

LICENSE PAYMENTS FOR THE USE OF INTELLECTUAL PROPERTY OBJECTS IN THE STRUCTURE OF CUSTOMS VALUE

License and other payments for intellectual property currently play an important role in world trade and significantly affect the customs value of many goods. In this work, we have studied the aspects of determining the value structure and conditions for including payments in this structure. As a result, the huge role of all subjects in monitoring compliance with legislation was revealed.

Violations of intellectual property rights in trade between countries and organizations are not uncommon today. Many economic subjects do not know about the need to pay for such objects therefore they are often brought to administrative and criminal responsibility for non-payment of taxes and other payments. Based on this, many researches aim to instill a legal culture, as well as to talk about the impact of licensing and other payments on economic relations.

Customs authorities are of great importance in regulating the intellectual property market in the field of cross-border movement of goods, and also carry out control of such objects after the release of goods. According to the Customs Code of the Eurasian Economic Union (hereinafter referred to as the EAEU TC), customs authorities are endowed with the function of securing intellectual property rights, and also monitor the error-free structure of the customs value [1].

License fees – payment by the licensee (buyer) to the licensor (seller) for the right to engage in a certain type of activity; payment by an individual or legal entity to the owner of intellectual property or the creator of something (a trademark, a work of art, etc.) for the right to use this property for commercial purposes.

There are several types of royalties:

1. Royalty is a type of deduction to the licensor from the licensee for granting the right to use an intellectual property object. The amount and the royalty rate are determined by the contract concluded between the parties. The basis for accrual is sales volumes, profits, etc. The rate, as a rule, is set as a percentage and is at the level of 3-5%.

2. Lump sum payment is the amount determined by the license agreement, which is due to the licensor and is paid in whole or in parts. The lump sum payment does not depend on the company's profit indicators, but is calculated in advance by specialists.

3. Profit sharing – payment to the licensor in the amount of part of the profit from the use of the license (most often 10% (non-exclusive license) or 30% (exclusive license)).

4. Participation in ownership – transfer of shares to the license holder [2].

According to Article 40 of the EAEU Customs Code, licensing and other similar payments, such as royalties, payments for patents, copyrights, etc., subject to the conditions, must be included in the customs value of goods imported into the territory of the Union, in the amount that is payable or has been paid for such objects.

The conditions for including royalties in the customs value are as follows:

1. Royalties relate to goods that are imported into the EAEU countries.

2. The Licensee is obliged to pay such payments, since they are conditions for the subsequent sale of imported goods.

3. Payments were not included in the price of the goods earlier [3]

The payer (importer of goods) has several options for including license and other payments for the use of intellectual property objects in the structure of customs value. The licensee has the right to divide the total amount of royalties for each item in proportion to their actual value. Also, the importer retains the right to include the total amount of such payments in the value of the batch with the highest level of taxation according to the Unified Customs Tariff of the EAEU and the Tax Code of the Republic of Belarus. The right to choose the inclusion method belongs to the payer.

If the amount of royalties is not determined or depends on the profit (for example, royalties), the customs authorities allow the use of the procedure of deferred determination of customs value. The provisions and the procedure for application are regulated by the Decision of the Board of the Eurasian Economic Commission 103 dated 19.06.2018 "On Approval of the Procedure for Deferred Determination of the Customs Value of Goods" [1].

The customs aspect of royalties has often been the subject of lawsuits and proceedings between foreign trade entities and customs control departments. Contracts that regulate this type of legal relationship (license agreement, commercial concession agreement, etc.) are concluded on different terms and may contain a different procedure for including royalties. The fact of the existence of this type of payments is not a circumstance for their inclusion in the customs value, since there is a possibility that such payments are already contained in the value of the goods [4].

Cases where the exporter of goods and the licensor are not one legal entity are becoming increasingly common. This creates many problems for understanding the essence of foreign trade relations for subjects and leads to the fact that they do not associate licenses with imported goods and, as a result, do not pay the necessary payments [1].

Thus, the correct inclusion of license and other similar payments is a complex, multi-level process that must be controlled by both customs authorities and business entities. The largest role here is assigned to the participants of foreign economic transactions, since they have all the information about the nature of the transaction. Nevertheless, the customs authorities have sufficient capacity to carry out inspections at the stage after the release of goods.

1. [] - : <https://pervadmin.gov.by/tamozhennaya-stoimost-i-licenzionnyie-platezhi> - : 26.01.2022.
2. [] - : <http://1-fin.ru/?id=281&t=1046> - : 02.02.2022.
3. " (. 29.05.2019) (N 1) [] - : http://www.consultant.ru/document/cons_doc_LAW_215315/ - : 06.02. 2022.
4. : [] - : <https://www.tks.ru/columns/ionicheva/2011/09/15/0001> - : 27.02.2022.

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