[C950131.DOC] Concerning the Procedure for Application of Value Added Tax and Excise Duties to Goods Which are Imported Into the Customs Territory of the Republic of Kazakhstan. Order N 131 of the Customs Committee Attached to the Cabinet of Ministers of the Republic of Kazakhstan. September 29, 1995.

In accordance with Edicts of the President of the Republic of Kazakhstan N 2235 which have force of Law «Concerning Taxes and Other Compulsory Payments to the Budget» dated April 24,1995 and N 2368, dated July 20, 1995 «Concerning Customs Business in the Republic of Kazakhstan» I order:

1) That Instructions concerning the procedure for application of value added tax and excise duties to goods which are imported into the customs territory of the Republic of Kazakhstan shall be approved in conjunction with the Main Tax Inspectorate and the Ministry of Finance of the Republic of Kazakhstan.

2) That the press service of the Customs Committee (A.O.Muratbaeva) shall provide for the coverage of provisions of this order in the mass information media.

3) That the supervision of the implementation of the order shall be delegated to the Deputy Chairman of the Customs Committee attached to the Cabinet of Ministers of the Republic of Kazakhstan R.K. Kuvatov, Chairman Derbisov.

I approve
Head of the Main Tax Inspectorate,
First Deputy Minister of Finance of
the Republic of Kazakstan
Dated September 29, 1995, N 44

I approve
The Chairman of the Customs Committee
attached to the Cabinet of Ministers of the
Republic of Kazakhstan
September 29, 1995, N 131

Order N 131

Instructions concerning the Procedure for Application of Value Added Tax and Excise Duties to Goods which are Imported into the Territory of the Republic of Kazakhstan

I. General Provisions

1.1. These Instructions have been elaborated on the basis of Edicts N 2368 which has force of Law of the President of the Republic of Kazakhstan, dated July 20, 1995 «Concerning the Customs Business in the Republic of Kazakhstan» and N 2235 which has force of Law of the President of the Republic of Kazakhstan, dated April 24, 1995 «Concerning Taxes and Ather Compulsory Payment to the Budget».

1.2. Value Added Tax (VAT) shall be applied to goods which are imported into the territory of the Republic of Kazakhstan except for the cases stipulated in these Instructions as well as goods the country of origin whereof is CIS member-state at the rate of twenty percent of the amount of taxable import. In respect of goods a country of origin whereof is a CIS member state but which are imported into the customs territory of the Republic of Kazakhstan from beyond the boundaries of CIS member states, the value added tax shall be levied in accordance with the established procedure.

1.3. Excise duties shall be applied to excisable goods which are imported into the customs territory of the Republic of Kazakhstan in accordance with the list indicated in the Paragraph 1.4 of these Instructions except for the cases stipulated in these Instructions, provisions of international treaties to which the Republic of Kazakhstan is a party as well as where the country of origin of excusable goods which are imported from the member state of CIS is a state which is a CIS member state. In respect of goods the country of origin whereofis a member state of CIS but which are imported to the customs territory of the Republic of Kazakhstan from beyond the boundaries of the CIS member states excise duties shall be levied in accordance with the established procedure.

1.4. The list of excisable goods which are imported into the territory of the Republic of Kazakhstan:

1) Ethyl alcohol consumable and ethyl alcohol purified, manufactured of food raw materials;

2) Vodka;

3) Liqueur and vodka items;

4) Fortified drinks, fortified juices and extracts;

5) Wines;

6) Cognacs;

7) Champagnes;

8) Beer;

9) Wine materials;

10) Tobacco items;

11) Other items which contain tabacco;

12) Sturgeon and salmon fish, caviar and raw of salmon, delicacies manufactured of sturgeon and salmon fish and raw;

13) Jewelry items made of gold, platinum and silver;

14) Tuned and untunned? fur fells (except for fells of mole, rabbit, dog, deer, sheep);

15) Items of natural fur including coats, short coats, jackets, pelerines, palatines, bow, skiff, head dress and collars, fur coats, plates (except for items made of fells of mole, rabbit, dog, deer, sheep);

16) The coasts, short coasts, jackets, pelerines, palatines, with the finish of fur (except for the fur of mole, rabbit, dog, deer, sheep);

17) Clothes made of natural leather;

18) Items made of crystal, crystal light devices;

19) Petrol (except for aviation petrol), diesel fuel;

20) Passenger cars;

21) Firearms and gas arms (except for that purchased for the need of the bodies of the State power.

1.5. The rate of excise duties shall be approved by the Cabinet of Ministers of the Republic of Kazakhstan and they shell be established as percentage of the customs value or physical value in natural measurement of imported excisable goods.

1.6. Value added tax and excise duty shall be assessed and paid either in Tenge or in foreign currency, the rates whereof being quoted by the National Bank of the Republic of Kazakhstan.

Translation of the foreign currency into the currency of the Republic of Kazakhstan shall be carried out at the rate of the National Bank of the Republic of Kazakhstan which is current on the date of acceptance of the customs declaration.

Inclusion of taxes shall be carried out into deposit accounts of the customs body with subsequent transfer of amounts of tax to the Budget within the deadlines stipulated in the Paragraph 7.4 of these Instructions.

1.7. Customs bodies shall monthly before the fifth day of the month following the reporting month submit to the customs body information on assessed and received amounts of value added tax and excise duties to the budget for a reporting period.

Information on assessed and received amounts of value added tax and excise duties to the budget as well as deferred taxes shall be submitted by the province Tax Inspectorate and the Tax Inspectorate of the city of Almaty to the Main Tax Inspectorate of the Ministry of Finance of the Republic of Kazakhstan not later that the tenth day of the month following a reporting month.

II. Payers of Value Added Tax and Excise Duties.

2.1. The payers shall be all legal entities and physical persons which import goods. VAT and excise duty shall be paid by a declarer or any other person identified by the regulatory act concerning the customs business at the same time with the other customs payments, that is, prior or at the moment of acceptance of the customs declaration for customs processing.

In the case where delays are granted with respect to the payment of taxes the responsibility of its payment shall be borne by the contract holder.

In the case of revision of assessed taxes, including for reasons of adjustments of customs value, their collection shall be carried out with application of fines and interests on the entity which is in charge for payment of taxes on import.

III. Exemption from VAT and Excise Duty

3.1. The goods listed hereunder shall be exempted from payment of excise duty:

a) goods which are imported by physical person in accordance with quotas approved by the Cabinet of Minister of the Republic of Kazakhstan.

b) The goods which are required for operational transport vehicles which carry out international conveyance of freights, baggage and passengers during their travel in the places of intermediate stops as well as those purchased abroad for liquidation of accidents (breakdowns).

c) The goods which happen to be as a consequence to damage prior to the clearance through the customs boundary of the Republic of Kazakhstan, useless to application as items or materials;

d) The goods which are imported as a humanitarian aid in the procedure defined by the Cabinet of Ministers of the Republic of Kazakhstan;

e) Goods which are imported for a charity purposes in the line with the State, Government, international organisations including the rendering technical assistance;

f) Those confiscated, ownerless assets, as well as assets which are transferred to the the state under the right to inherit;

g) The goods which are imported for official use by foreign diplomatic representations and those equated to those, as well as for personal use by diplomatic and administrative and technical personnel of those representations including the family members who reside together with them and which are exempt in accordance with international treaties to which the Republic of Kazakhstan is a party;

h) The goods which are transferred to the customs boundary of the Republic of Kazakhstan which are exempt within the framework of customs regime established by the customs legislation of the Republic of Kazakhstan except for the regime of release of goods for free circulation (see Section 9 of these Instruction).

3.2. Value added tax shall not apply to the following:

- import of excisable goods by physical persons in accordance with the quotas established by the Cabinet of Ministers of the Republic of Kazakhstan;
- import of goods designated in subparagraphs from «b» to «h» of Paragraph 3.1 of these Instructions (irrespective of their being included in the list of excisable goods);
- the import of goods by physical persons in accordance with quotas corresponding to the quotas of duty free import of goods approved by the Cabinet of Ministers of the Republic of Kazakhstan.

IV. The Procedure for the Calculation of Excise Duty.

4.1. The customs value identified in accordance with the customs legislation or the physical volume in natural measurement shall be taxable item in the case of imported excusable goods. In respect of the goods which are subject to marking, the assessed amount of excise duty shall be subject to reduction by the value of the stamps of the excise duty based on the volume of imported goods.

4.2. Calculation of excise duties which are subject to payment when importing into the customs territory of the Republic of Kazakhstan excisable goods shall be carried out in the same currency in which the customs value of the goods is declared.

4.3. In respect of the goods which are subject to excise duties at rates in ECU per unit of goods, the basis for calculation shall be the physical volume in natural measurement.

4.4. Calculation of excise duty in respect of goods which are subject to excise duties at rate in ECU per unit of goods shall be carried out in accordance with the following formula:

AC1 =BT x A1,

where AC1 is the amount of excise duty, BT is quantity of goods and A1 is the rate of excise duty in ECU per unit of goods.

V. The Procedure for calculation of VAT

5.1. The value which includes the customs value of goods identified in accordance with the customs legislation of the Republic of Kazakhstan as well as amounts of the customs levy for customs processing, import customs duty, excise duties which are subject to payment when importing goods shall be the base for assessment of Value Added Tax on the goods which are imported into the territory of the Republic of Kazakhstan.

5.2. Amount of value added tax shall be calculated in accordance with the following formula:

a) on goods which are subject to customs duties and excise duty:

HC - (C + TC + P + AC) x H/100;

b) in respect of goods which are subject to customs duties but which are not subject to excise duties shall be calculated in accordance with the following formula:

HC - (C - TC + GP) x H/100;

c) in respect of the goods which are not subject to either customs duty or excise duty:

HC - (C + TC) x H/100,

where HC is the amount of VAT; C is the customs value, P is amount of customs duty; TC is amount of customs duties; AC is amount of excise duty; H is the of value added tax.

5.3. At discretion of physical persons amounts of taxable turnover may be identified on the basis of amount equivalent to the amount of assessed levies for customs processing, import customs duties and excise duties which are subject to payment in import. In that respect the amount of VAT on import shell be identified by the method of increasing the value of assessed levies, duties and taxes by the coefficient of 1.2. Thus, for instance, when importing a physical person is billed to pay customs duty in the amount of 1.200 Tenge, the levy for customs processing - 105 Tenge, excise duties (on excisable goods - 3.500, in total - 4805 Tenge. VAT in this case shall be 5.766 Tenge (8405 x 1.2).

VI. The Procedure for Completion of the Freight Customs Declaration.

6.1. Calculations of amount of excise duties which are subject to payment shall be carried out in the freight customs declaration (FCD) and additional sheets thereto:

- in currency in which the value of goods is declared where the goods are subject to rates in percentage;
- in ECU in processing of goods which are subject to excise duties at rates in ECU per unit of submitted physical amount.

Note.

In that respect in the Line B «Details of calculation» the information shall be shown on the actually paid amounts and the name of the currency in which the payment is made.

In the first column «The type» of Line 47, the code of the payment shall be shown: «30» when calculating excise duties, «31» when calculating excise duties in foreign currency the exchange rate whereof is quoted by the National Bank of the Republic of Kazakhstan.

The second column of Line «The basis of assessment» of Line 47 shall not be completed. Is that respect the basis for the calculation of excise duty shall be as follows:

- for goods which are subject to excise duties at the rate in percentage of the value - the customs value of goods indicated in Line 45;

- in respect of goods which are subject to excise duties at rates in ECU of the physical value submitted - the quantity of goods indicated in right lower subsection of Line 31.

In the third column «The rate» of Line 47, the established amount of excise duty rate shall be indicated.

In the fourth column of Line «Amount » of Line 47, the amount of the excise duty shall be indicated which is due.

In fifth column «CP» of Line 47 (Method of payment) the following shall be indicated: «BH» - bank transfer; «KT» payment of amount in physical cash; «YH» - conditional assessment of tax.

6.2. Completion of FCD and additional sheets thereto when processing marked goods shall be carried out in accordance with the procedure stipulated in Paragraph 6.1 of these Instructions.

6.3. Assessment of VAT shall be carried out in the currency in which the customs value of goods is declared.

Note.

In that respect in Line B «Details of calculation» the information shall be shown on actually paid amounts and the name of the currency in which the payment was made or on the delay granted with the respect of payment of the tax.

In the first column «Type» of Line 47 , the code of payment shall be shown: «32» - when calculating VAT in Tenge; «33» - when calculating VAT in foreign currency the exchange rate whereof is quoted by the National Bank of the Republic of Kazakhstan.

The second column «Assessment Basis» shall not be completed.

In the third column «The rate» of Line 47, the established amount of value added tax rate shall be shown.

In the fourth column «The amount» of Line 47, the amount of value added tax which is due shall be shown.

The basis for assessment of amount of VAT shall be the customs value of goods as indicated in Line 45 to which the amount of customs levy for customs processing shall be added, the amount of import customs duty and amount of excise duty calculated in accordance with that declaration.

When calculating VAT which is subject to payment by physical persons in accordance with Paragraph 4.3 of these Instructions, the basis for VAT assessment shall be the amount of assessed levy for customs processing, import customs duty and

excise duty. In this case in the third column «The rate» of Line 47, the coefficient of 1.2 shall be indicated.

In fifth column «CP» of Line 47 (Method of payment) the following shall be indicated: «BH» - bank transfer; «KT» - payment of amount of tax in physical cash; «OP» - delay is granted for payment of the tax; «YH» -conditional assessment of tax.

7. The Procedure and Deadlines for Payment

7.1. A copy of the payment document with the note of the bank on acceptance for payment confirming the made payment and extract from the bank from the personal account of the organisation with the recording of made payment, confirmed by the signature of the first manager of the organisation, its chief accountant and the seal of the organisation for banking and financial documents shall be attached as a confirmation of payment of VAT and excise duty to the completed freight customs declaration. When importing excisable duties which are subject to marking, the processing of goods shall be carried out after the actual receipt of monetary resources into the deposit account of the customs body.

7.2. Amounts of VAT and excise duty shall be included into the deposit account of the customs body. The customs body shall supervise the receipt into the deposit account in accordance with extracts of the bank. In the case of non-receipt of resources into the deposit account within fourteen calendar days from the date of the payment order, the customs body shall pass the proposal for collection of those taxes by the bodies of the tax service. Amounts of taxes collected by the bodies of the tax service in pursuance of the proposal of the customs body shall be subject to including into deposit accounts of the customs bodies.

7.3. Delays with regard to payment of excise duties shall not be granted.

Delays in respect of payment of value added tax shall be granted by the Heads of Tax Inspectorate in the cases which are stipulated in Article 70 and 152 of Edict of the President of the Republic of Kazakhstan «Concerning Taxes and other Compulsory Payments to Budget» N 2235, dated the 24th of April, 1995. The supervision of the collection of deferred payments in respect of value added tax shall be delegated to the bodies of the tax service.

7.4. Amounts of value added tax and excise duties on imported goods in amounts established by legislation of the Republic of Kazakhstan received into deposit account of the customs body from the first till fifth day inclusive shall be transferred to the budget on the eight day;

amounts received from sixth till tenth days shall be transferred on the thirteenth day;

amounts received from eleventh till fifteenth days shall be transferred on the eighteenth day;

amounts received from sixteen till twentieth days shall be transferred on the twenty third day;

amounts received from the twenty first until the twenty fifth day shall be transferred on the twenty eighth day;

amounts received from twenty sixth till twenty eighth day shall be transferred on the last day of the reporting month;

amounts received from twenty ninth day until thirty first day shall be transferred on the third day of the month which is following the reporting month into the Section 1, Paragraph 2, symbol 010 (value added tax), into Section 3, Paragraph 16(excise duties).

8. The Procedure for Refund of Amounts of VAT and Excise Duties Paid Earlier

In relation to adjustment of the customs value in accordance with the written application of the payer submitted to the customs body, the customs bodies shall carry out refund of amounts of value added tax paid in excess and excise duties not later than twenty days from the date of submission of the application. Amounts of value added tax and excise duties paid in relation of requirements of the customs regimes which stipulate the refund of VAT and excise duties shall be refunded by the customs bodies in accordance with the term of those customs regimes.

In order to refund amounts of VAT and excise duties it shall be necessary to submit to the customs bodies the following documents:

applications of the payer to refund amounts paid and collected amounts of VAT and excise duties;

completed and formulated by the customs body freight customs declaration in accordance wherewith the payments were assessed and collected;

the payment document for payment of due amounts of VAT and excise duties with the stamp of the bank on the acceptance for payment to confirm the made payment and extract from the bank from the personal account of the organisation with the recording of made payment, confirmed by the signature of the first Manager of the organisation, its chief accountant and the seal of the organisation for banking and financial documents;

goods accompanying documents with the note of the border-line customs house on the actual crossing of the border.

In order to refund amounts assessed in excess and in the cases of incorrect assessment of amounts of tax and excise duties it shall be necessary to additionally submit documents which confirm that the amount paid or collected are in excess or assessed inaccurately.

9. The Special Considerations in Applying Value Added Tax and Excise Duties Under Various Customs Regimes

Release for Free Circulation

The goods which are exported into the territory of the Republic of Kazakhstan for free circulation (import), except for the cases stipulated in Paragraph 3.1. and 3.2. of these Instructions shall be subject to VAT and excise duties in accordance with the procedure established by legislation of the Republic of Kazakhstan and these Instructions. When any other customs regime is changed for the regime of release for free customs circulation, the mechanism of taxation shall apply which is current at the date of the change of the customs regime.

Re-Import of Goods

Under re-import of Kazakhstani goods which were previously exported from the territory of the Republic of Kazakhstan within three years from the moment of export and in the same condition in which they were at the moment of export, except for changes as consequential to natural wear or loss under normal conditions of transportation and storage and in any other cases stipulated by the Customs Committee, VAT and excise duties shall not be levied.

When re-importing goods from beyond the boundaries of the CIS member states, the entity which transfers the goods shall refund amount received as payments to it as a result of any other privileges granted in the export of the goods.

Aside from such amounts, the interests shall be levied on them at the official interests rate of refinance as established by the National Bank of the Republic of Kazakhstan.

Transit of Goods

Value added tax and excise duties in the transit of goods shall not be levied, VAT and excise duties which are paid in transit of excisable goods into the deposit account as a security for payment in accordance with the regulatory documents of the Customs Committee shall be refunded during the actual export of goods beyond the customs territory of the Republic of Kazakhstan. In the cases of a failure to deliver goods to the customs body of destination the submitted amounts of VAT and excise duties shall be transferred to the Republic budget as in the case of release for free circulation, provided the goods are not destroyed, irretrievably lost as a consequence to an accident or acts of force majeure or the loss took place by virtue of natural wear or loss under normal conditions of transportation and storage or the goods were disposed of as a consequence of acts which are illegal in accordance with legislation of the Republic of Kazakhstan by official persons of a foreign state when submitting the appropriate documents. Transit of goods shall be carried out under the responsibility of the carrier.

Customs Warehouses

When imported goods are placed to customs warehouses value added tax and excise duties shall not be levied. Levy of value added tax and excise duties shall take place in the release of goods from the warehouse for free circulation in the procedure established by the customs legislation and under any other customs regimes in accordance with those regimes.

The responsibility for payment of value added tax and excise duties in respect of goods which circulate through the customs warehouse shall be borne by the owner of the customs warehouse. With the consent of the Customs Committee the responsibility for payment of VAT and excise duties may be delegated to the person which place the goods for storage to the customs warehouse. In the case where the customs warehouse is in the authority of the customs body of the Republic of Kazakhstan the responsibility for payment of value added tax and excise duties shall be borne by the entity which place the goods for storage into the customs warehouse.

Duty Free Trade Shops

At the duty free trade shops value added tax and excise duties shall not be levied. The responsibility for payment of VAT and excise duties shall be born by the owner of the duty free trade shop.

Processing of goods in the customs territory

When goods are imported from beyond the boundaries of the member states of CIS which are intended for processing in the customs territory, VAT and excise duties shall be levied in accordance with the procedure stipulated in the tax legislation as in the case of release for free circulation. In the case of exporting products of processing beyond the boundaries of the CIS member states, the paid VAT and excise duties shall be subject to refund from the deposit account of the customs body, provided the provisions are complied with of the customs legislation and where products of processing are exported not later than two years after the date of transfer of the goods through the customs boundary of the Republic of Kazakhstan.

The basis for refund of the paid amounts of VAT and excise duties shall be the following documents submitted to the customs body:

- a written application of the payer containing the request to refund with indication of the banking details of the payer where the monitory resources are to be refunded;
- freight customs declaration formulated when importing goods for processing in accordance with which VAT and excise duties were assessed and levied;
- a copy of the payment documents to confirm the payment of VAT and excise duties with the note of the authorised bank on the execution;
- permission for processing of goods in the customs territory of the Republic and extract from the bank from the personal account of the organisation with the recording of made payment certified with the signature of the first manager of the organisation, its chief accountant and the seal of the organisation for the banking and financial documents.

When payment of services associated with processing was carried out with part of goods imported for processing then those goods shall be subject to VAT and excise duties in the general procedure current with respect to the regime of release for free circulation.

Where payment of services associated with processing was carried out by compensatin goods, then value added tax and excise duties shall apply to that part of goods which are imported for processing out of which those compensation goods were made, that is, in importing products of processing amounts of VAT and excise duties paid in import of goods for processing shall be subject to refund except for amounts of VAT and excise duties assessed on the volume intended for payment of services associated with processing.

Processing of Goods Under the Customs Supervision

When goods are imported for processing under the customs supervision VAT and excise duties shall not be levied:

Temporary import and temporary export;

Uunder temporary import VAT and excise duties shall not be levied except for the cases defined by the Cabinet of Ministers of the Republic of Kazakhstan.

Free Customs Zones and Free Whorehouses

In the case of import of foreign and Kazakhstani goods into the territory of free customs zones or in the case of placement of those into the free whorehouses VAT and excise duties shall not be levied.

When importing goods from the territory of free customs zones and from free warehouses into the rest of the customs territory of the Republic of Kazakhstan VAT and excise duties shall be levied.

When Kazakhstani goods which are intended for export beyond the boundaries of the Republic of Kazakhstan in accordance with the customs regime of export are imported into the territory of free customs zones or when they are placed into free warehouses, the exemption shall be carried out or refund of paid amounts of VAT and excise duties, provided such exemption or refund are stipulated in the actual export of goods. The actual export of such goods must be performed not later than six month after the date of refund of amounts of VAT and excise duties or exemption from those. When the goods which are subject to export beyond the boundaries of the Republic of Kazakhstan are transferred from the territory of free customs zones and free warehouses into the rest of the customs territory of the Republic of Kazakhstan or in the case of a failure to carry out actual export within the established deadlines, VAT and excise duties shall be paid in the general procedure to the tax bodies and also interest on them in accordance with the official interest rate of refinancing as established by the National Bank of the Republic of Kazakhstan.

Processing of Goods Outside the Customs Territory

When goods are exported from the customs territory of the Republic of Kazakhstan for processing, VAT and excise duties paid earlier to the budget shall not be subject to refund. When exporting products of processing, VAT and excise duties shall not be levied, if those products are declared for free circulation by the entity which obtained the decision for processing of goods outside the customs territory or its customs broker.

Export of Goods

The goods which are exported beyond the boundaries of CIF member states shall be exempted from payment of excise duties and are taxed at the zero rate with regard to value added tax in accordance with the tax legislation.

Re-export of Goods

In the import into the customs territory of the Republic of Kazakhstan of foreign goods which are declared to the customs body of the Republic of Kazakhstan as those which are intended directly or exclusively for re-export, VAT and excise duties shall

not be collected. The actual re-export of such goods must be performed not later than six months after the date of acceptance of the customs declaration.

When goods in import were not directly declared as goods for re-export or they were declared in such quality but were not re-exported actually within six months, then VAT and excise duties as well as the interests on them in accordance with the official interest rate of refinancing as established by the National Bank of the Republic of Kazakhstan shall be subject to payment to the customs bodies of tax bodies.

When exporting re-export goods the amounts of VAT and excise duties which were paid shall be subject to refund by the customs bodies or tax bodies provided:

- the re-exported goods are in the same conditions in which there were at the moment of import except for changes consequential to natural wear or loss under the normal conditions of transportation and storage;
- the re-export of goods takes place within two years from the moment of import;
- re-exported goods are not used for the purposes of extracting income.

Distruction of Goods. Repudiation For the Benefit of the State

When destroying goods or repudiating goods for the benefit of the state, value added tax and excise duties shall not be levied.