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Formation of Economically Sound Tax Consequences on Purchase and Sale of Foreign Goods (Case Study on Customs Procedure of Customs Warehouse)

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ABSTRACT

The aim of the article is to develop a typology for purchase and sale of foreign goods under the customs procedure of the customs warehouse and to propose a mechanism for the formation of economically sound tax consequences of VAT based on this typology. **The subject** of the research is transactions with goods under the customs procedure of the customs warehouse and their taxation mechanism. **The methodological basis** was economic methods, a generalization method, and a comparison method to study the approaches in Russia and abroad to the formation of the institutional structure of the customs procedure of the customs warehouse. **The study results** are a typology of purchase and sale of foreign goods under the customs procedure of the customs warehouse, the base for economically sound tax consequences that comply with the principle of neutrality in determining the tax consequences of VAT. The author **concludes** that for taxpayers relied on economic rather than tax interests, it is necessary to create conditions in the tax and customs legislation of the Russian Federation that taxation was identical in identical operations. Thus, it is necessary to clarify the norms of Article 147 of the Tax Code of Russia, so that under the current regulation were no legal opportunities to reject Russian territory as a place of sale of goods located in the Russian customs warehouse when they undergo the customs procedure of the customs warehouse. **The directions for future research** are to develop a mechanism for introducing economically sound tax consequences that comply with the principle of neutrality in determining VAT for sale of foreign goods imported into the territory of the Russian Federation and placed under the customs procedure of the customs warehouse.

Keywords: customs procedure; customs warehouse; customs duties; contractual relationship models; purchase and sales transactions

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INTRODUCTION

The system for determining the tax consequences of foreign trade transactions is based on the economic category “customs procedure”. In total, the Customs Code of the Eurasian Economic Union (EAEU) includes 17 customs procedures that can be applied to imported and exported goods. The concept of the “customs procedure” is considered from a few standpoints: as a tax regulation tool and as a mechanism of government regulation.

Moreover, the legal procedure is clearly defined for each customs procedure, which indicates the existence of a clear institutional form for implementing the mechanism of state regulation of international trade.

In the composition of tax payments for international trade may arise duties determined by the peculiarity of the customs procedure for these goods. By placing the goods under separate customs procedures, the declarant can conduct many business transactions with them, but they do not lead to tax consequences. However, similar transactions conducted with goods of the Eurasian Economic Union would result in tax consequences. Therefore, the difference in treatment of a product that has the status of a foreign one, when determining tax consequences, leads to unjustified tax accruals. This violates the principle of neutrality, which states: “Business decisions should be motivated by economic rather than tax considerations. Taxpayers in similar situations carrying out similar transactions should be subject to similar levels of taxation”¹.

For the purposes of this study, this is interpreted to determine the economically justified tax consequences in terms of VAT as follows: decisions on the transaction and its implementation should be economically beneficial to the organization, while the tax aspects are not considered when developing contractual relationship. This postulate looks

obvious for market management, but in fact, this is not entirely true. Economists emphasize efficiency and effectiveness. Economic consequences are calculated for shareholders and government agencies, and their size may vary.

This is especially important for applying the customs procedure of the customs warehouse, since tax exemptions determine more favorable conditions for the taxpayer than under the release for domestic consumption customs procedure.

Thus, we can conclude that when determining the tax consequences, the status of the goods is important, as well as the chosen customs procedure.

The analysis of modern economic literature has led to the conclusion that few authors work on this issue: E. Yu. Sidorova [1–4], L. I. Goncharenko [5, 6], A. A. Artem'ev, M. R. Pinskaya [7, 8], Yu. V. Malkova [5] (scientific school of the Financial University), also certain aspects are present in the works by A. N. Kozyrina [9], M. V. Markina [10], I. E. Akopyan, O. V. Deryagin, V. N. Tovstonyshenko [11], S. S. Frolova, E. A. Khromova [12]. However, the authors do not consider the problem systematically and do not give practical recommendations for further use by state authorities.

SOLUTION

Within the framework of this study, we aim to solve two interrelated tasks:

First, to determine the typology of purchase and sales transactions of foreign goods placed under the customs procedure of the customs warehouse.

Second, to form economically sound tax consequences based on this typology.

We will consider a few economic aspects of the process under study, when purchase and sales transactions of foreign goods between different market entities can be conducted with the goods placed under the customs procedure of the customs warehouse. We will compose their typology (*Fig. 1*).

¹ Implementation Issues for Taxation of Electronic Commerce. URL: <https://www.oecd.org/tax/consumption/5594899.pdf> (accessed on 04.04.2020).

The main problem of this issue is that if selling goods when placing them under the customs warehouse procedure, provided that the procedure does not change, there is no obligation to pay VAT. This is stated in four letters of the Ministry of Finance of the Russian Federation².

We analyzed the letters of the Ministry of Finance of the Russian Federation and noted neither comprehensive understanding of complex contractual relationship models, nor consideration of the principle of neutrality of indirect taxation of international trade. Legally, the approach of the Ministry of Finance of the Russian Federation does not define the concept of “the beginning of shipment” used to determine the place of sale of goods (Clause 1, Article 147 of the Tax Code of Russia). Therefore, it can be formally assumed that, since the goods were originally shipped from a foreign state, the Russian Federation is not recognized as the place of sale of the foreign goods. However, the Ministry of Finance of the Russian Federation does not consider, first, that the customs warehouse is located on the territory of the Russian Federation, and second, that the customs procedure of the customs warehouse can be correlated not only with the release for domestic consumption customs procedure.

² Letter of the Ministry of Finance of Russia dated 01.17.2019 No. 03–07–08 / 1842 “On VAT-free trading of goods placed under the customs warehouse procedure”. Computer-based legal research system “Consultant Plus”. 2019. Questions and answers (“Finansist”). Letter of the Ministry of Finance of Russia dated 07.22.2011 No. 03–07–08 / 236 “On the application of VAT to sales transactions of foreign goods imported into Russia and placed under the customs warehouse procedure conducted by a foreign organization”. Computer-based legal research system “Consultant Plus”. 2019. Questions and answers (“Finansist”). Letter of the Ministry of Finance of Russia dated November 26, 2014 No. 03–07–08 / 60101 “On VAT taxation of sales transactions of goods from the customs warehouse until the completion of the customs warehouse procedure by placing goods under another customs procedure involving the import into the Russian Federation”. Computer-based legal research system “Consultant Plus”. 2019. Questions and answers (“Finansist”). Letter of the Ministry of Finance of Russia dated 06.30.2016 No. 03–07–08 / 38240 “On the application of VAT to the sale of foreign goods placed under the customs warehouse procedure”. Computer-based legal research system “Consultant Plus”. 2019. Questions and answers (“Finansist”).

The above approach may look controversial, since it is necessary to assess the tax consequences of the investigated operations based on their economic meaning and the previously described principles of indirect taxation of international trade. To develop a comprehensive methodological approach for determining the tax consequences of purchase and sales transactions of goods within the customs procedure of the customs warehouse, it is necessary to study two most frequent models of relations in the sales of goods stored in customs warehouses, namely:

Model 1. Import of goods into the customs territory of the EAEU, their placement under the customs procedure of the customs warehouse and subsequent sale by a foreign organization (the goods retain the status of foreign ones) in the EAEU member state (e.g., a Russian organization).

Model 2. Import of goods into the customs territory of the EAEU, their placement under the customs procedure of the customs warehouse and subsequent sale by a foreign party.

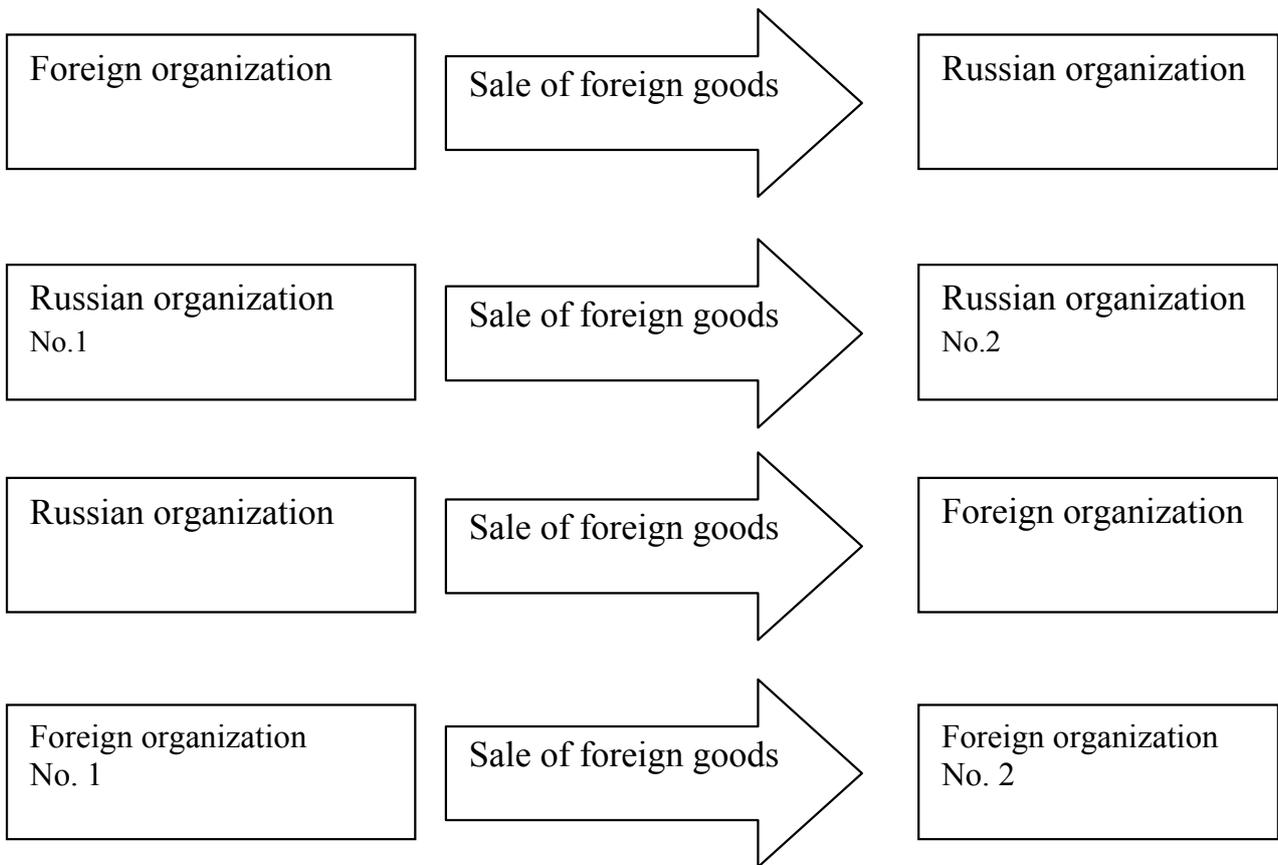
Let us have a closer look at the two models.

Model 1.

A foreign organization sells goods to a Russian organization under a purchase and sale contract or under an intermediary contract. Foreign goods are imported into the customs territory of the EAEU and then placed under the customs procedure of the customs warehouse. Moreover, goods can actually be placed in a warehouse that has the status of a warehouse. After the Russian organization the goods, it places them under the customs procedure of the customs warehouse, the importer starts looking for buyers and selling the goods. The goods can be sold in one lot or in several lots.

Judging by the letters of the Ministry of Finance of the Russian Federation, we can conclude that a Russian organization imports the goods, places them in the customs warehouse and then resales them. To place under the customs procedure, to release for domestic consumption is only a special case. However,

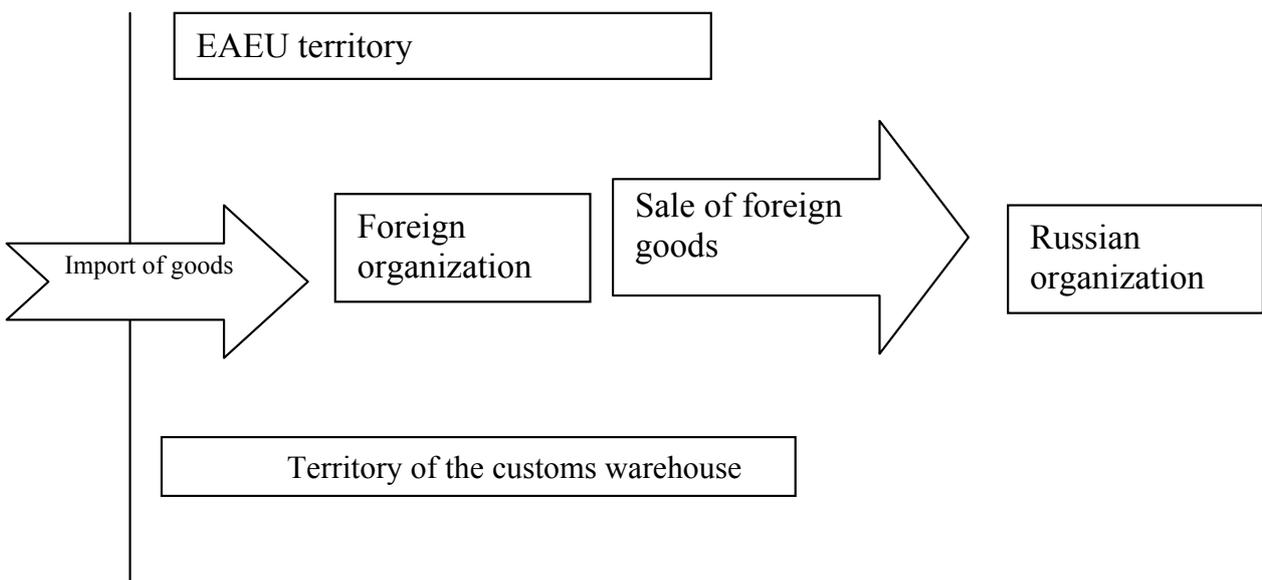
a) general concept of transactions:



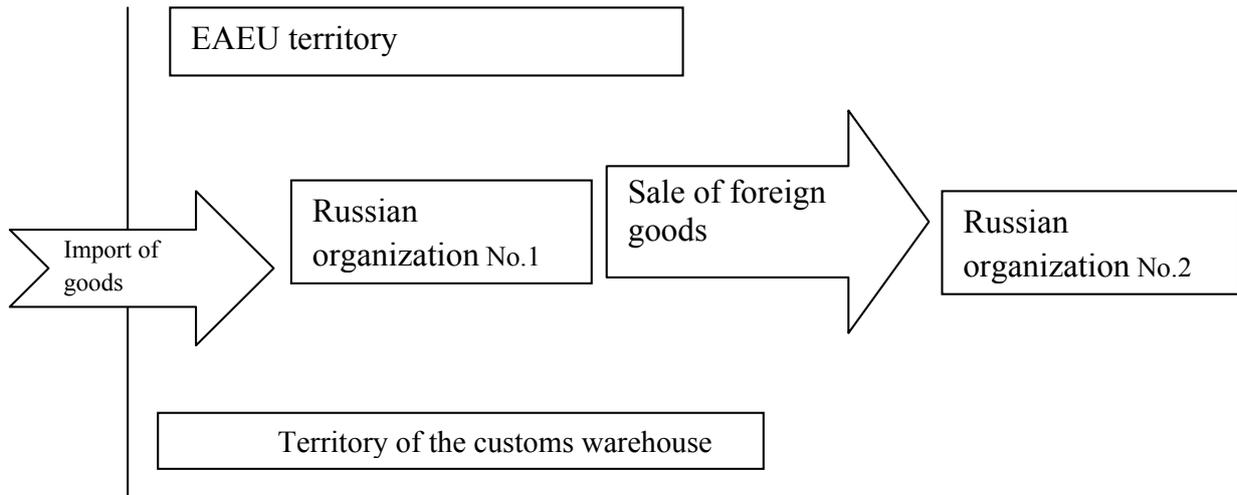
Note: the first three types of transactions are the most common.

Explanation of transaction concepts:

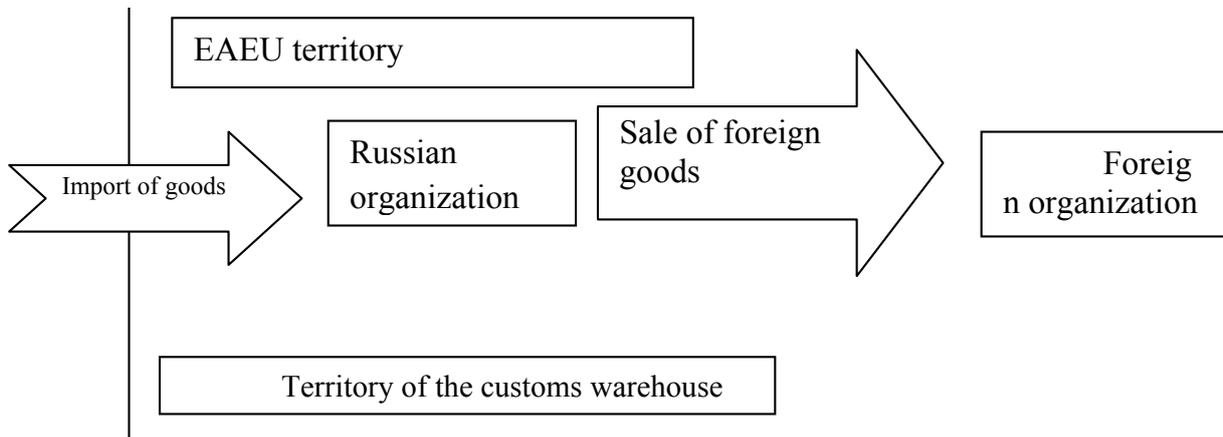
b) sale of goods inside the customs warehouse by a foreign organization to a Russian organization:



c) sale of goods inside the customs warehouse by Russian organization No. 1 to Russian organization No. 2:



d) sale of goods inside the customs warehouse by a Russian organization to a foreign organization:



e) sale of goods inside the customs warehouse by foreign organization No. 1 to foreign organization No. 2:

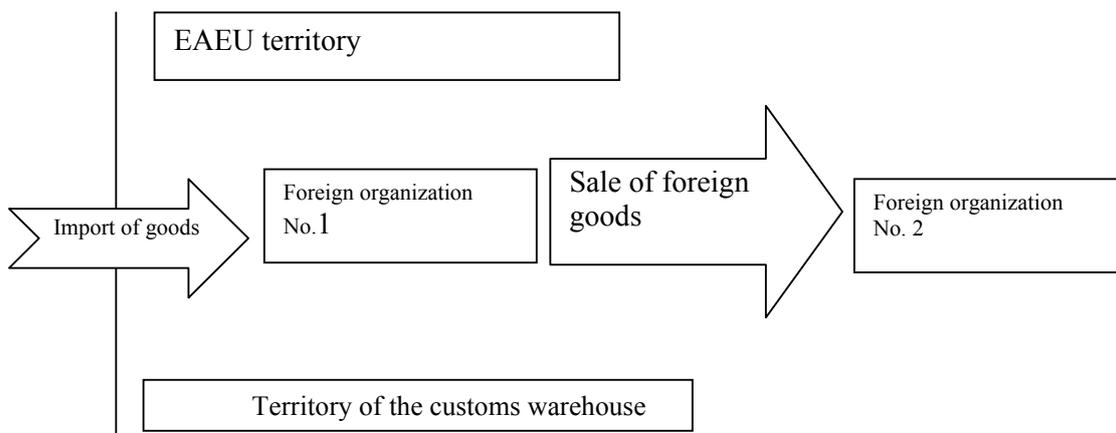


Fig. 1. Typology of purchase and sale transactions of foreign goods under the customs procedure of the customs warehouse

Source: compiled by the author.

the buyer can purchase the goods to import them into the EAEU territory and not change their status (the goods remain foreign), to sell the goods inside the warehouse without paying taxes and get economic benefits. Therefore, importing goods, a Russian organization can pursue two goals:

- to import goods to resell them inside the warehouse without being involved in a full-fledged economic turnover;
- to import goods to sell them and be involved in a full-fledged economic turnover.

It is important to understand that the customs warehouse is located on the territory of the Russian Federation, and the trade takes place on the territory of Russia. Despite the fact that the Russian organization or importer is actually an intermediary between the foreign organization and the real buyer (consumer of the goods), the real transaction took place when the goods had already been imported into the territory of the Russian Federation.

Thus, having examined the transaction mechanism in accordance with model 1, we can conclude that the conditions established by Article 147 of the Tax Code of Russia are met; the territory of the Russian Federation can be recognized as the place of sale of goods.

Model 2.

Foreign organization No. 1 purchases goods from foreign organization No. 2 (the transaction takes place on the territory of a foreign state) or moves its own goods outside any transaction to its own separate branch on the territory of the Russian Federation. Foreign organization No. 2 purchases the goods, then imports them into the EAEU territory, places them under the customs procedure of the customs warehouse and actually places them in the warehouse. After the organization finds buyers, the goods are sold inside the customs warehouse. Then, the buyer either resells the goods inside the warehouse, or releases them into real turnover (this is classified as placing the goods under the customs

procedure and release for domestic consumption). Thus, the place of sale of goods is the territory of the Russian Federation.

Foreign organization No. 2 has the same goals as the Russian organization in model 1.

The key message of the sale transaction of foreign goods within the customs procedure of the customs warehouse to determine the economically sound tax consequences is the fact that the place of sale is the territory of the Russian Federation. At the same time, in model 2, as in model 1, the sale of goods takes place on the territory of the Russian Federation due to the fact that the goods are actually imported into its territory, the requirements established by Article 147 of the Tax Code of Russia are met. To determine indirect taxes, the territory of the Russian Federation can be recognized as the place of sale of goods.

The principle of neutrality of VAT taxation at selling goods in international trade transactions states that the tax consequences should be similar for the transactions of similar economic nature. If, as in our study, the purchase and sale of goods takes place in the territory of the Russian Federation, it is necessary to pay VAT, and if the goods are excisable, then to pay excise as well.

From an economic point of view, the above contractual relationship models are almost identical to standard internal purchase and sales transactions. These transactions suggest that:

- a foreign purchase and sales transaction takes place between foreign and Russian organizations;
- goods are imported into the customs territory of the EAEU, customs payments, including VAT, are paid, which involves placing goods under the customs procedure and release for domestic consumption, and acceptance by the Russian organization of the amount of VAT paid as part of customs payments for deduction;
- goods are sold in the domestic market and the amount of VAT presented by the buyer

for purchase and sales transactions is classified as tax deductions in the domestic market³.

Model 1 implies that goods are imported by a Russian organization, while:

- a foreign purchase and sales transaction takes place between a foreign organization and a Russian organization;

- goods are imported into the customs territory of the EAEU, then they are placed under the customs procedure of the customs warehouse and are actually placed in the customs warehouse, while customs payments, including VAT, are not paid;

- goods are sold on the EAEU domestic market and the amounts of VAT presented to the buyer can be classified as VAT tax deductions on the EAEU domestic market⁴;

- goods are exported from the territory of the customs warehouse, then the customs procedure of the customs warehouse is changed to the release for domestic consumption procedure, which involves the payment of customs payments, including VAT, the buyer's acceptance of VAT (customs payments) for deduction, then the goods are exported from territory of the customs warehouse.

Model 2 implies that the goods are imported by a foreign organization under the following conditions:

- a foreign organization has decided to import goods into the territory of the EAEU and transfer them to its separate branch in the territory of the Russian Federation;

- goods are imported into the customs territory of the EAEU, then they are placed under the customs procedure of the customs warehouse, the goods are actually placed in the customs warehouse, while customs payments, including VAT, are not paid;

- goods are sold on the domestic market of the Russian Federation and the amount of VAT presented to the buyer can be classified as VAT tax deductions on the domestic market of the country;⁵

- goods are exported from the territory of the customs warehouse, then the customs procedure of the customs warehouse is changed to the release for domestic consumption procedure, which involves the payment of customs payments, including VAT, the buyer's acceptance of VAT (customs payments) for deduction, then the goods are exported from territory of the customs warehouse.

We can conclude that in the two models similar actions are implemented in the same sequence, so the tax consequences should be the same. Thus, the work proved the need to observe the principle of neutrality in determining the tax consequences of indirect taxes.

Therefore, we can develop proposals aimed at the formation of economically sound tax consequences when conducting transactions with goods placed under the customs procedure of the customs warehouse.

Based on the typology and the considered models of relations, most common for transactions with goods stored in customs warehouses and placed under the customs procedures of the customs warehouse, shown in *Fig. 1*, we will develop proposals aimed at the formation of economically sound tax consequences (*Fig. 2*).

We will now consider the above-mentioned transactions with goods placed under the customs procedure of the customs warehouse from the point of view of the formation of economically sound tax consequences.

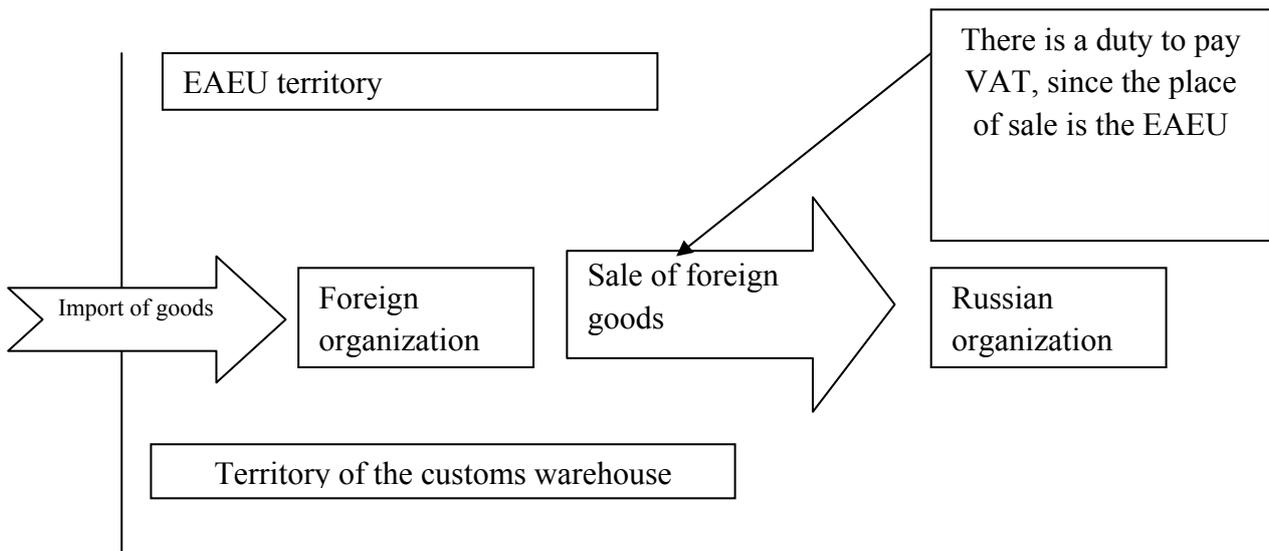
Fig. 2a presents a case when goods are imported into the EAEU territory by a foreign organization and are placed under the customs procedure of the customs warehouse. Then, the goods inside the warehouse are sold to a Russian organization. At the same time, VAT should be paid, since the place of sale is the EAEU territory. Below are the updates of the norms of Article 147 of the Tax Code of Russia. These updates exclude legal opportunities for non-recognition the territory of Russia as the place of sale of goods, since the actual sale of goods takes place when they are under the customs procedure of the customs warehouse

³ Articles 171 and 172 of the Tax Code of Russia.

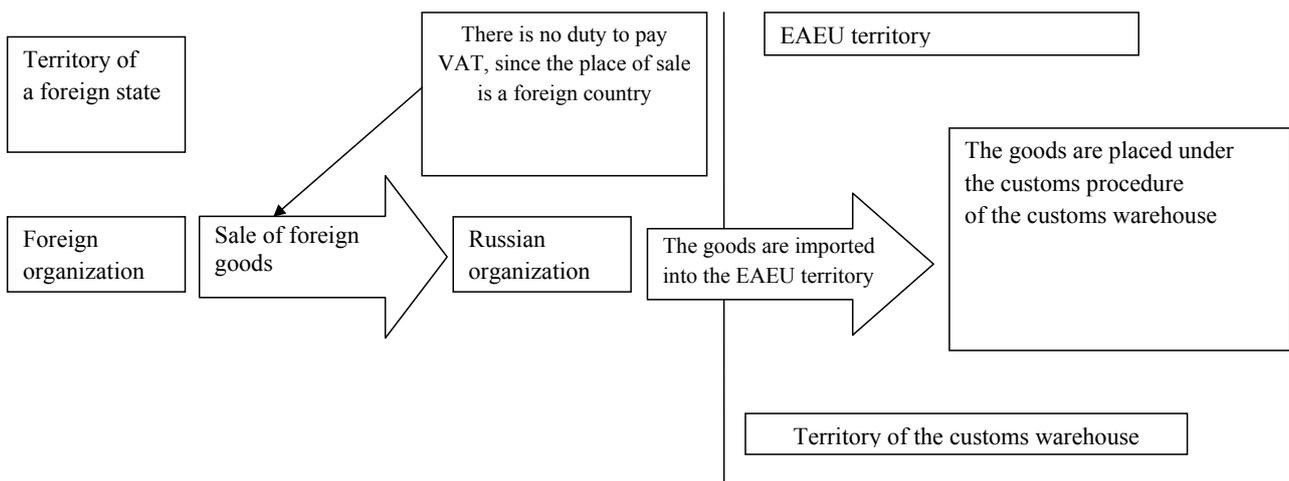
⁴ The same.

⁵ The same.

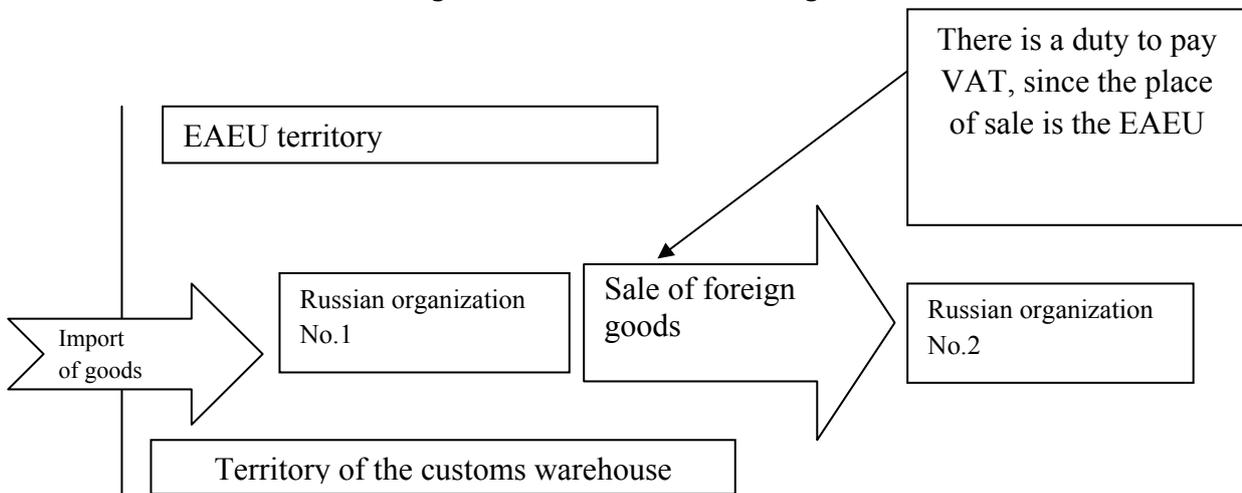
a) Situation 1. Sale of goods inside the customs warehouse by a foreign organization to a Russian organization:



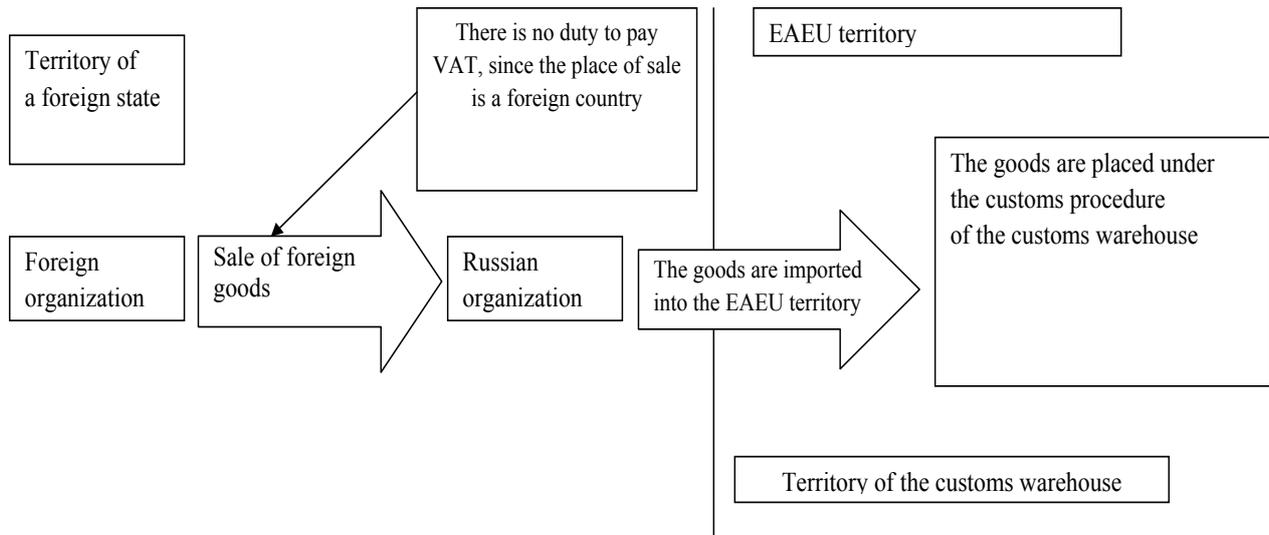
b) Situation 2. Sale of goods inside the customs warehouse by a foreign organization to a Russian organization:



c) sale of goods inside the customs warehouse of Russian organization No. 1 to Russian organization No. 2:



**d) sale of goods inside the customs warehouse
by a Russian organization to a foreign organization:**



**e) sale of goods inside the customs warehouse
by foreign organization No. 1 to foreign organization No. 2:**

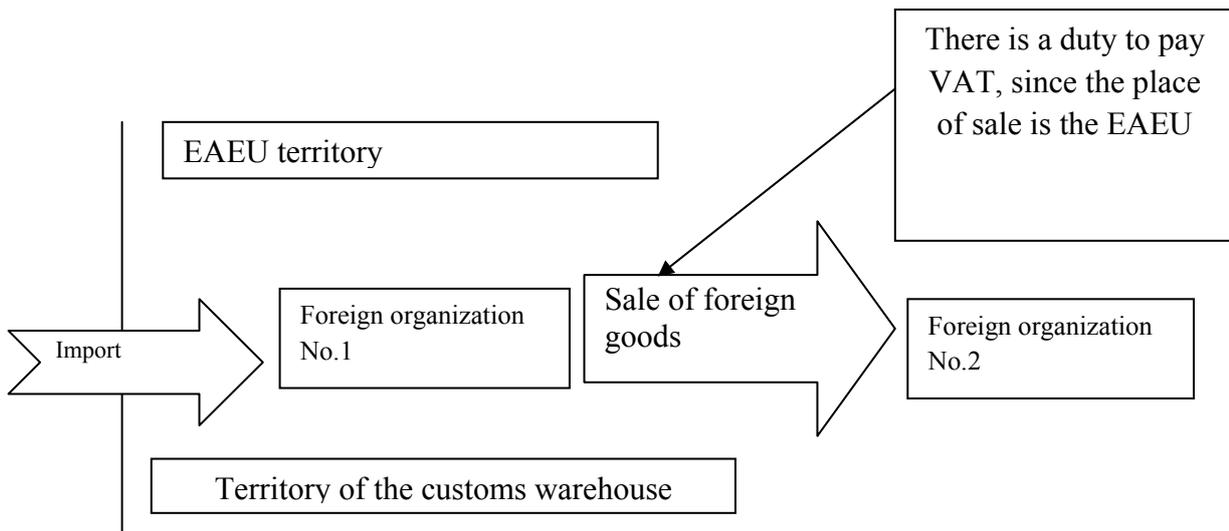


Fig. 2. Economically sound tax consequences of purchase and sale of foreign goods under the customs procedure of the customs warehouse

Source: compiled by the author.

and, accordingly, stored in the Russian customs warehouse.

Fig. 2b presents a similar, though a different case, since the place of sale is the territory of a foreign state. A foreign organization makes an agreement with a Russian organization, the sale takes place on the territory of a foreign state and the goods are imported into the EAEU territory and placed under the customs procedure of the customs warehouse. There-

fore, to create economically justified tax consequences for transactions with goods placed under the customs procedure of the customs warehouse, it can be assumed that there is no duty to pay VAT on the EAEU territory, since the foreign state is by law the territory for the sale of these goods.

Fig. 1 presents a case when goods are imported into the EAEU territory by Russian organization No. 1 and are placed under the

customs procedure of the customs warehouse. Then, the goods inside the warehouse are sold to Russian organization No. 2, and VAT should be paid, since the place of sale is the EAEU territory.

Fig. 2d presents a case when goods are imported into the EAEU territory by a Russian organization and are placed under the customs procedure of the customs warehouse. Then, the goods inside the warehouse are sold to a foreign organization, while the buyer should pay VAT, since the place of sale is the EAEU territory.

Fig. 2e presents a case when goods are imported into the territory of foreign organization No. 1 and are placed under the customs procedure of the customs warehouse. Then, the goods inside the warehouse are sold to foreign organization No. 2. At the same time, VAT should be paid, since the place of sale is the EAEU territory.

In the case of several resales within the warehouse, tax consequences arise in each case, as does the right to a tax deduction.

STUDY RESULTS

The following developments represent a uniform system for the sale of goods within the customs procedure of the customs warehouse:

- a typology of transactions for purchase and sale of foreign goods placed under the customs procedure of the customs warehouse;
- a mechanism for determining economically justified tax consequences of purchase and sale of foreign goods placed under the customs procedure of the customs warehouse;
- updates of the tax legislation of the Russian Federation for the implementation of scientific developments.

As practical recommendations for improving the mechanism of indirect taxation regarding the application of the customs procedure of the customs warehouse, we propose to finalize the provisions of Article 147 Tax Code of Russia. In this case, we must consider that the customs procedure of the customs warehouse applied to complex contractual relationship

models is used to optimize the supply chains of goods to foreign countries.

Determining the place of sale of goods has long been worked out in the current tax regulation, namely, in Article 147 Tax Code of Russia. Regarding tax consequences of standard purchase and sale transactions, the norms of Article 147 of the Tax Code of Russia, as a rule, make it possible to unambiguously determine the presence or absence of a place of sale and, accordingly, the object of VAT taxation in the Russian Federation. When the taxpayer uses more complex contractual relationship models in economic activities, in particular, import and storage of goods in a customs warehouse, placement under the appropriate customs procedure, further sale of goods inside the warehouse without changing the customs procedure, the problem to determine the place of sale of goods arises and it acquires special significance.

We find it necessary to note the lack of transparency in determining the place of sale of goods. Even if foreign goods cross the EAEU customs border in terms of international trade, and this fact is documented, it does not provide a clear understanding of the place of sale.

International documents on the indirect taxation methodology do not pay due attention to “place of sale of goods”. This problem is typical of the tax legislation of the EAEU and the Russian Federation.

The Organization for Economic Cooperation and Development (OECD) on VAT taxation of international trade transactions do not consider this issue either [13]⁶. At the same time, the chapter in this document⁷, which deals specifically with the methodology for determining this category, is devoted to determining the place of sale for work, services and property rights.

⁶ Guide on Customs Valuation and Transfer Pricing. URL: <http://www.wcoomd.org/en/topics/key-issues/revenue-package/~media/36DE1A4DC54B47109514FFCD0AAE6B0A.ashx> (accessed on 04.04.2020).

⁷ The same.

The analysis of tax legislation allows us to conclude that the methodology for determining the place of sale of goods is not sufficiently developed and does not consider all possible nuances in the sale of goods, including those noted above. All this, first of all, creates risks of negative impact on the amount of tax revenues on indirect taxes when taxing transactions with goods, as well as violations of the essential international principles of indirect taxation of international trade operations, including the principle of neutrality.

For taxpayers to rely on economic rather than tax interests, it is necessary to accommodate the tax and customs legislation of the Russian Federation so that the tax level is identical for similar transactions.

The norms of Article 147 of the Tax Code of Russia should be clarified so that under the current regulation were no legal opportunities to reject Russian territory as a place of sale of goods located and stored in the Russian customs warehouse when they undergo the customs procedure of the customs warehouse.

The suggested clarifications are as follows. Article 147. The place of sale of goods⁸

For the purposes of this Chapter the place of sale of goods shall be deemed to be the territory of the Russian Federation if any one or more of the following circumstances exist: (by reference to specific features established by paragraph 2 of this article)⁹:

1) the goods are situated in the territory of the Russian Federation and other territories under its jurisdiction, including in the customs warehouse, have the appropriate status and placed under the customs procedure of the customs warehouse, and are not shipped or transported¹⁰;

2) at the time of the commencement of shipment or transportation, the goods are

situated in the territory of the Russian Federation and other territories under its jurisdiction, including in the customs warehouse, have the appropriate status and placed under the customs procedure of the customs warehouse¹¹.

An empirical basis for these updates can be the following. The principle of neutrality of indirect taxation is not considered when forming the tax consequences of purchase and sale transactions of foreign goods placed under the customs procedure of the customs warehouse. The OECD and then the states that ratified the Kyoto Convention made a systemic mistake that can be eliminated by changing the category “place of sale of goods” [14, 15].

With the customs procedure of the customs warehouse applied, the changes regarding the “place of sale of goods” category will create a mechanism for the formation of reasonable tax consequences for VAT, which will increase stability for the state (in terms of VAT receipts) and for the business unit (transparency of VAT calculation). It is the most effective way to solve this problem.

There is also another way — institutional changes in the customs procedure of the customs warehouse — which, however, will not help achieve the best efficiency.

According to famous economist I. Adizes [16, p. 124], decisions must be both effective and efficient, which is implied in the suggested solution.

We should also bear in mind the restrictions imposed by the ratification of the Kyoto Convention. Thus, in relation to the WTO, the system of national regulation must comply with the WTO requirements enshrined in the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto, 18.05.1973, revised — protocol of 26.06.1999 in Annex D — “customs warehouses and free zones”). The proposed changes do not violate this provision.

⁸ Article 147 of the Tax Code of Russia.

⁹ The same.

¹⁰ The same.

¹¹ The same.

Within the application of the customs procedure of the customs warehouse, the proposed changes will have a positive impact on the state and business entities and increase their stability. This will help achieve:

The growth of tax revenues to the budget of the Russian Federation, which is associated with additional charges in terms of indirect taxes (VAT and excise).

Lower state expenditures on control measures in terms of indirect taxes.

Lower tax risk:

- for the state — evasion of indirect taxes to the budget of the Russian Federation;
- in terms of additional charges of indirect taxes as a result of control measures, as well as penalties and fines for violation of tax legislation, a more efficient scheme for reimbursing VAT tax deductions for the sale of goods, as well as the lack of verification of VAT reimbursement for international trade transactions.

Definitions of unambiguous tax consequences of a typical purchase and sale transaction and the application of the principle of neutrality in terms of indirect taxes.

CONCLUSIONS

Thus, in compliance with Article 158 p. 1 of the Customs Code of the EAEU, we proposed a typology of purchase and sale transactions of foreign goods placed under the customs procedure of the customs warehouse (Fig. 1). We also applied the generalization method to systematize scientific knowledge. We formed economically sound tax consequences (Fig. 2) (by the economic method), which comply with the principle of neutrality in determining the tax consequences of VAT.

The paper analyzes the approaches to the formation of the institutional structure of the customs procedure of the customs warehouse by comparing the studies in Russian and foreign practice.

As practical recommendations, we proposed to clarify the norms of Article 147 of the Tax Code of Russia, so that under the current regulation were no legal opportunities to reject Russian territory as a place of sale of goods located and stored in the Russian customs warehouse when they undergo the customs procedure of the customs warehouse.

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