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Master's Paper

# VAT Refunds

Prepared by the LLM 2<sup>nd</sup> year student

Mary Badalyan

Instructor

Emil Babayan

Yerevan, Republic of Armenia

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# INTRODUCTION

This paper explores the implication of a distinctive feature of the value added tax (VAT) refunds that is stressed by practitioners but partially ignored by theorists. The most attention is paid to the questions when, where and why the VAT payments are exceeded the required amount by law. Consequently, later there is a need for refund. Before the detection of the above mentioned questions and identification of VAT refunds, we should describe the definition of the VAT and set the transactions which shall be subject to VAT taxation.

Generally, in many countries around the world value added tax is a consumer sales tax levied on delivery, consumption and import of goods and rendering of services.

According to Armenian law value added tax is an indirect tax which in compliance with this law shall be paid (levied) to the State budget for imported goods at all stages of their production and turnover, as well as for the rendering services on the territory of the Republic of Armenia<sup>1</sup>.

The level of VAT varies from country to country depending on their legislation, calculated as a percentage of the net value of the goods and services. This tax adds between 5 to 25% to the total invoice amount. VAT is recognized in different countries under different titles such as IVA (Impuesto al Valor Agregado in Spanish), GST (Goods and services tax), MWST (Mehrwertsteuer in German), TVA (Taxe sur la Valeur Ajoutée in French), and MOMS (Meromsætningsafgift in Danish).

The main actors of VAT taxation and refund procedures are the taxpayers and governmental tax authorities. Taxpayers in all countries almost are the same: physical persons and legal entities, institutions, local government bodies. As would be expected, the diversity of situations faced by the taxpayers and tax authorities around the world, the specific details of the rights and obligations vary by country. However, there are a number of

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<sup>1</sup> Article 1, Section I, The Law of the Republic of Armenia on Value Added Tax, 14.05.1997.

common features that can be classified and in the base of this classification is the harmonization of the interests.

In any democratic society there are special policies of expectable interests both the taxpayers and tax authorities. According to “Taxpayers’ rights and obligations – A survey of the legal situation in OECD countries” of Committee of Fiscal Affairs of Organization for Economic Cooperation and Development (OECD)<sup>2</sup>, the taxpayers and tax authorities have a number of basic rights as well as obligations corresponding with their interests. The survey found that the following basic rights of taxpayers are present in all systems: the right to be informed, assisted and heard; the right of appeal; the right to pay no more than the correct amount of tax; the right to certainty; the right to privacy; the right to confidentiality and secrecy. There are also legal requirements of taxpayers’ behavior by tax authorities: the obligation to be honest, co-operative, to provide accurate information and documents on time, to keep records, to pay taxes on time. Among the above mentioned provisions the most interconnected provision with the VAT refunds is the taxpayers right to pay no more than the correct amount of tax. It is the real policy.

Taxpayers should pay the exact amount of tax that they are required to for particular transaction and no less or more. This is the most vital underlying public policy of the whole tax system. This policy typically is illustrated in the refund procedures. The significance of the refund policy is directly linked to the core interests of both tax authorities and taxpayers. Accordingly, the social implication of those interests is that no extra money should be in budget and for growth of economy no money of taxpayers should be kept in the budget and left unused.

The economic policies of various countries witness the importance of the VAT refunds. In any memorandum concerning the economy growth reforms there is a special provision which is stated that the government undertook to enact the legislation to prevent further

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<sup>2</sup> “Taxpayers’ rights and obligations – A survey of the legal situation in OECD countries”, OECD’s Committee of Fiscal Affairs In 1990 Working Party Number 8, 3-5

accumulation of VAT refund arrears. Therefore, VAT refund is the one of the key features for economy growth. It is generally accepted fact that the economy growth of the state is connected with the development and extension of the small and medium enterprises. Thus, creating the certainty and flexibility in tax, particularly in VAT, refunds' procedures and measurements the public will be beneficially impacted.

The further analysis of the VAT refunds procedures, measurements and significance in Republic of Armenia and international best practice will illustrate the profound social implication of this transaction. The analysis also will show the need of fundamental reforms in obtaining of VAT refunds and collecting of VAT.

## **ARMENIAN LEGAL FRAMEWORK AND IMPLICATION**

Armenian legal structure provides two main laws for regulation of the VAT refunds: The Law of Republic of Armenia on Tax 14.04.1997 (the Law on Tax) with the Appendix 1 “The terms and the conditions of offset and (or) refund of taxes” 12.12.2007 (Appendix 1 of the Tax Law) and The Law of Republic of Armenia on Value Added Tax 14.05.1997 (the Law on VAT).

Exploring transaction of this paper is VAT refund, but what amount must be subject to refund. The amount subject to refund is the reminder of overpayment or amount other than overpayment (overpaid tax) which firstly must be offset for other tax liabilities and only then refunded upon a request of a taxpayer. Chapter 5 “Procedure on refunding the amounts paid to the budget in excess of tax liabilities to the taxpayer” of the Law on Tax contains some general provisions of refunding process of all type of taxes. According to this law “amounts paid in excess of the determined tax liabilities shall be credited on account of the calculated fines, penalties, and then amounts of taxes of the taxpayer only after this shall be calculated by the Tax Inspectorate on account of other tax liabilities of the taxpayer or shall be subject

to refund...”<sup>3</sup>. From this general clause of tax refund can be implied that the VAT is refunded from the VAT revenues of the State budget.

The Law on VAT provides several types of transactions where the VAT is refunded if there was overpayment of VAT. First of all it is delivery of goods - a transaction that is implemented by transferring the ownership right of goods (including output and real estate) to other person for compensation, in which the disposition of personal property of individuals, with the exception of cases defined by this law, shall not be considered as the delivery of goods; the next is rendering of services - a transaction other than the delivery of goods, conducted for any form of compensation, including the sales (transfer) of intangible assets, the lease of goods and real estate shall be also considered the rendering of services; the third one is free or partially free consumption - free delivery of goods or the provision of services performed by VAT payers pursuant to the procedure defined by law to specified or other persons, or delivery of goods and provision of services at significantly lower prices than charged for such transactions, with the exception of cases provided by law or other decrees; and finally, the last one is importing goods by "Importing for Free Turnover" customs regime, with the exception of cases specified by law. For goods imported into the territory of the RA the VAT is calculated and collected on the border by customs officials, with the exception of goods included in the list defined by law for which the customs duty for import is defined as 0 percent and which are not subject to excise tax<sup>4</sup>.

Since the scope of the VAT refund is so large the exploring subject of this working paper is VAT refund for the goods imported into the territory of the RA for which the VAT is calculated and collected on the border by customs officials. There are many problems with the VAT refunds in Armenia; however the most outstanding one is offset or refund of the VAT paid for importing goods in customs. Since the adoption of the Law on Tax the debates between tax authorities and taxpayers concerning the part 4 article 6 do not discontinue.

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<sup>3</sup> Article 33, Chapter 5, the Law on Tax 14.04.1997

<sup>4</sup> Article 6, Section I, The Law of the Republic of Armenia on Value Added Tax, 14.05.1997.

In support of better understanding the real situation of VAT refund for importing goods two actors of opposite sides have been interviewed. One of them represents the public sector and the other the private sector. The person who represents the public sector is Gurgen Gevorgyan, the head of the supervision department of Shengavit local office of state tax inspectorate of the Republic of Armenia. The next interviewer is Volodia Makaryan, the chief accountant of “H.K.SHIK” CJSC. According to the first interviewer there are problems in VAT refunds in Armenia, however these problems are procedural ones, not in legal acts. The procedural problems are unqualified specialists of the private sector and high compliance cost of having the professional accountant, customs broker or other specialist. He added that there is no conflict that the customs and the tax authorities cooperate in case of import of the goods, because the ultimate result was the same: the paid taxes destination is the State budget. The only disadvantage of this operation is that the tax authorities have to take control on the report of the customs authorities both for offset and refund of VAT and the customs tariffs<sup>5</sup>. Mr. Makaryan however states that among the various problems in VAT refunds the most central and significant one is VAT refund or offset after the VAT payment in customs for import of goods. The real problem here is inadequacy of the VAT in the customs<sup>6</sup>.

As it has been mentioned the amount subject to refund is the remainder of overpaid taxes which must be offset for other tax liabilities if any and only then refunded not later than in 30 days after receiving the application of the taxpayer on the refund. The refund or/and simultaneously the refund and the offset of the overpaid tax is implemented only upon the request of the taxpayer. However, the only request of taxpayer is not enough to repossess the overpaid tax. The tax authorities should give their consent that the request is substantiated and can be offset or refunded in requested size.

Tax authorities make a report or checking act and decide the size of the offset and refunded amount implemented without the examinations and checks; with cameral

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<sup>5</sup> Gevorgyan, Gurgen, Personal Interview, 10.05.2008

<sup>6</sup> Makaryan, Volodya, Personal Interview, 02.07.2008

examination or examination and check of offset or refund. The report or checking act states all the bases and normative acts according which the refund is substantiated or unsubstantiated. In accordance with the Law on Tax, the taxpayers should provide a set of documents to the tax authorities or examining or checking persons to consider the refund and the size of refund as substantiated. This set of documents includes: any documents that confirm the payment, it can be the payment orders, receipt of bank account; account balances of value added tax; declarations, all the contracts with the suppliers and the consumers; documents concerning the implementation of the contracts; accounting documents of the suppliers (invoices, tax accountings, etc.); customs declarations of importing goods; other accounting documents, etc. If the provided documents to the tax authorities are not enough to consider the refund substantiated, the size of the refund is determined upon the examination.

The Law on Tax gives an opportunity to get the refund without examination if the overpaid tax has been made in absence of any liability; if the amount of overpaid tax is not exceeded 100000 (hundred thousand) dram and the examination or check is more appropriate to do later<sup>7</sup>.

Thus, if there is no other claims on the overpaid tax and all possible examinations and checks are applied the tax local office of the taxpayer makes a report that the overpaid amount is unencumbered. This report is sent to the tax head office not later than the third day after making the report. The tax head office will check and recheck the request of taxpayer stated in report again comparing it with the law. Consequently, in the fifth day after receiving the report from the tax local office the tax head office sends the taxpayers request with its own report to the Ministry of Finance and Economy of the Republic of Armenia. Not later than in the tenth working day after receiving the report the Ministry of Finance and Economy gives its approval to refund the overpaid tax sending the approval to the State Treasury Department. Finally, State Treasury Department taking into account the approval of the Ministry of Finance and Economy remits money to the taxpayer bank account.

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<sup>7</sup> Article 9-16, Appendix 1 12.12.2007, the Law on Tax 14.04.1997

Even the representative of the tax authority states that the real problem with the refunds is procedural; the above mentioned step-by-step analysis of law illustrates the whole chain of the complicated refund processes provided by law.

## **INTERNATIONAL BEST PRACTICE**

“As with business, economies are in competition with each other. Governments cannot be wedded to tax structures without considering their effect on their economy’s competitiveness internationally. Our analysis demonstrates that in a number of tax areas, we are not competitive and it is impacting upon issues that go to the continuing success of Australia’s economy” identifies the need of tax reforms Hugh Morgan, Business Council of Australia’s Tax Action Plan President<sup>8</sup>.

Taking account this policy the Australian government started a huge reformation process of tax system since the end of 90s. In that time the other members of the OECD (Organization for Economic Cooperation and Development) had GST/VAT and Australia did not. Australia would not be allowed into the club unless it complied with all standards especially in business and that includes tax legislation. The international aspect of Australian GST is its influences on imports, exports, balance of payments and tourism.

Possibly the most important, and certainly the most talked about measure of recent times in Australia was the introduction of goods and services tax (GST). After a several wave of reforms in tax system on 1 July 2000 was adopted «The Law on Goods and Services Tax». GST is essentially a value added indirect tax (VAT), and imposed at a rate of 10%. Within the Australia any business with annual turnover of more than 50,000 Australians dollars

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<sup>8</sup> BCA Home - News Room - News Room Archive - News Releases - 2005 News Releases - Governments Must Target Tax System for Fundamental Reform, 11 April 2005. 2008 Business Council of Australia. <<http://www.bca.com.au/Content.aspx?ContentID=97954>>, 05.06.2008

(AUD) must be registered for GST. The initial suggestion for making reforms was that business doers would register only to report monthly or quarterly. Interestingly, even this was considered excessively complex for many small businesses.

In January 2005 the administration of Prime Minister John Howard said it was planning a major simplification of the country's tax code. Under the changes, the present approach to combating tax avoidance through the introduction of new legislation to close ambiguity. This was the third wave of the tax reforms. The principle of these reforms to the GST regime aimed at reducing the compliance burden for small businesses, by allowing firms to register for GST voluntarily and to report and pay GST annually, instead of quarterly or monthly. According to Australian Treasurer Peter Costello "...these measures benefit around 740,000 small businesses and 30,000 non-profit organizations that are voluntarily registered and currently pay on a monthly or quarterly basis..."<sup>9</sup>

As it has been mentioned the scope of the VAT refund is too large and for exploring the GST refunds for Australia the subject is the same: GST refund for the imported goods for which the GST is calculated and collected on the border by customs officials. Of course in Australia the taxpayer has this right to get refund in case of overpaid tax<sup>10</sup>. Nevertheless, three waves of reforms of Australian tax system make a mechanism of tax paying so simple that Australia has not crisis with tax arrears concerning the overpaid tax. Accordingly the purpose of this paper is not just to state the step-by-step analyses of the GST (VAT) refund in the Australia as an international best practice, but instead of this to show how the mechanism can be simple and effective not to burden the business and taxpayers to pay more for refunding or offsetting later. Simplicity: that in Armenian tax system is absent.

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<sup>9</sup> Australia Information: Low-Tax and Incentive Regimes - Recent and Proposed Australian Tax Reforms by Caroline Maxwell, London. Lowtax.Net 1999 To 2007.

<[http://www.Lowtax.Net/Lowtax/Html/Offon/Australia/Aus\\_Reform.Html](http://www.Lowtax.Net/Lowtax/Html/Offon/Australia/Aus_Reform.Html)>, 25.06.2008

<sup>10</sup> "Goods and services tax – how to complete your activity statement" Instructions for businesses with a GST obligation October 2006, NAT 7392. Australian Government, Australian Taxation Office, Canberra, 2006. [www.ato.gov.au](http://www.ato.gov.au)

Generally, GST is payable on most goods imported into Australia and is paid by the importer at the same time, at the same place, and in the same manner as customs duty is payable or would be payable if the goods were subject to customs duty. Thus, GST is generally payable before the goods are released by Customs. As it has been mentioned GST is 10% of the value of a taxable importation. The value of a taxable importation is the sum of: the customs value of the goods; any customs duty payable; the amount paid or payable to transport the goods; the insurance cost for that transport<sup>11</sup>. GST is payable by businesses, organizations and private individuals, whether they are registered for GST or not. However, if the taxpayer is a GST-registered business or organization and imports goods, so the taxpayer may be able to claim the deferral of the GST payment in the customs.

The deferral option is the best practice for the countries where the VAT/GST is paid in the customs. It means that the taxpayer has an opportunity to pay on the customs only customs tariffs if s/he complies with the criteria of the GST deferral (DGST) scheme. First of all the taxpayer must be an importer who is registered for GST and may be able to defer the payment of GST on imported goods by participating in the deferred GST scheme. The importers need to apply to the tax office for approval to defer GST payments on the imported goods. For getting the approval the taxpayer shall comply with the following simple 7 steps.

The first step is that taxpayer must have an Australian business number (ABN) to participate in the DGST scheme; the next step is that the taxpayer must be registered for GST; in the third step the taxpayer must be eligible to contact and provide the activity statements online; in the fourth step the taxpayer choose to provide the activity statement monthly, quarterly or annually, if the taxpayer currently provides quarterly, s/he can elect to provide monthly or annually; however, this election will not take effect until the start of the next quarter. This means the taxpayer will not be eligible to defer GST on imports until the

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<sup>11</sup> “GST and imported goods” January 2006, NAT 3124. Australian Government, Australian Taxation Office, Canberra, 2006.

start of the next quarter; the fifth steps requirement is that the taxpayer must not have any outstanding tax-related returns or payments; the next to last step states if the taxpayer want to defer the GST s/he must make payments electronically; the last seventh step states that the taxpayer may not be eligible to participate in the DGST scheme if, in the last three years, s/he or any persons relevant to the application have been convicted or penalized by a court for offences in relation to: taxation requirements, customs requirements, trade practices, fair trading, or defrauding the Australian Government.

As the above stated facts illustrate this is the core of the Australians reforms, but the Australian legislator made deeper reforms than it can be seen. For the fourth requirement of the deferral mechanism has been made special forms. There are governmental approved guidelines for implementing and educating the taxpayers to make reports and to pay in time and in correct way. These guidelines also provide a range of information concerning the advantages and disadvantages of choosing the mechanisms.

Therefore, the taxpayer has an opportunity to choose the reporting and payment period from the following:

- report and pay GST monthly;
- quarterly:
  - report and pay GST quarterly,
  - pay GST quarterly and report annually,
  - partially pay GST in each quarter and report annually;
- report and pay GST annually<sup>12</sup>.

Even the taxpayer has a right of “honest” mistake. It means if the taxpayer made a mistake in report or just s/he wants to make changes, s/he is allowed to make it. It calls

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<sup>12</sup> “Easy steps to the deferred GST scheme” Helps you to work out if you are eligible to use the deferred GST scheme when importing taxable goods into Australia, December 2006, JS 5454. Australian Government, Australian Taxation Office, Canberra, 2006.

adjustments. The taxpayer may have an adjustment if: an event occurs that has the effect of changing the price of a purchase; a taxable purchase for which the taxpayer is entitled to a GST defer, is cancelled; the taxpayer write off a bad debt or recover a previously written-off bad debt,.

Thus taking account the above mentioned Australian reform of the tax system the significant difference between the Australian GST system and Armenian VAT systems is the way of accumulation of not tax itself but the tax arrears. The comparison of two systems shows that in Armenia the burden of the possibility of tax avoidance is on the taxpayers. Of course it is very essential to have measures to minimize the tax avoidance, but in case of Armenia the cost is high. The pressure of tax collection is directly damages domestically the business and internationally the competitiveness of the Armenia as a market.

Unfortunately, the deferral option of the Australian tax system can not be directly and fully implemented into the Armenian tax system. There is no doubt, if it is possible, the corruption will be decreased to the surprising percentages but Armenian business doers are not ready to use the advance technologies making easier their actions statement.

## **REFORM**

Initially this paper's intent was to make recommendation for reformation of VAT refund system absolutely favorable to the taxpayer. As a result of that recommendation the taxpayers would pay only the customs tariffs and the VAT they would pay only after reselling the goods. This version of the recommendation would benefit only the taxpayer; however as an adverse impact the taxpayers would have a room for tax avoidance, even tax evasion. They would sell the goods and would not report this in their accounting balance. Consequently, tax authorities would hire more officers for checking the real time of the purchase and the resell. In that case the administrative cost would unreasonably go higher.

This reform would develop the business, because the taxpayers would have time and opportunity to use the money instead of paying the taxes. However, this reform would be critical for other infrastructure of the state, because of the lack of money in the budget.

Nevertheless, the current VAT refund system makes just opposite impact on the business and on the state as a whole. As it has been mentioned in the previous chapters the existing situation hints the development of the economy in general and business particularly. Hence there is a need for reformation through the mixing the beneficial parts of hypothetical and current situations. In any case the recommended reform will be based not on the simplification of the refund procedures in Armenian legislation but on creation of the mechanism to reduce the possibility of value added tax arrears in budget. As a consequence, if the mechanism is favorable both for state and private sectors, there is no need to overpaid tax for offsetting or refunding later.

After exploring the Australian tax systems with recent reforms, it would be the best recommendation to state that Australian deferral scheme of GST will improve Armenian VAT refund system. However, unfortunately, the mechanism of GST deferral with its seven requirements will not incorporate in Armenian tax system thoroughly. For that reason the recommendations for improving the VAT refund system will be partially based on the basic principles of Australian GST deferral reforms and on the new criteria.

There is no need to change the policy of the tax system itself for making reforms, but the implementation of the policy must be changed. The recommended reform will be comprehensively complied with the policy “that taxpayers should pay the exact amount of tax that they are required to for particular transaction and no less or more”.

The core of the reform in broadly sense is VAT deferral. Nonetheless, as it has been mentioned for improving the Armenian VAT refund system it is not enough to adopt just the seven steps of Australian GST reform. The first two steps are neutral and not basically important for implementing them in Armenian tax system. In Armenia VAT payers for imported goods are legal entities and all of them instead of business number have tax

numbers. Also there is no need in Armenia to be registered for VAT. The Armenian Law on VAT provides the list of VAT taxpayers. Nevertheless, there will be obstacles to implement the third and the sixth steps of GST deferral reform. In these steps the legislator requires to inform about the activity and to pay VAT online. Not all business doers in Armenia can comply with these requirements, even if banking system will provide the access to the bank account electronically. But these obstacles are the question of time. Changes in advance technologies are implemented faster than reforms in legal system. Therefore, as core steps, the recommended reform will be based on the fourth, fifth and the last seventh steps of Australian's GST deferral system. These steps are opportunity to choose when to report about the activity (reselling the goods); not to have any outstanding tax liabilities; and the taxpayer must not be convicted or penalized for the tax-related offences in the last three years.

According to the Australian law the opportunity to choose when to report about the activity includes several possibilities: report and pay GST monthly; report and pay GST quarterly, pay GST quarterly and report annually, partially pay GST in each quarter and report annually; report and pay GST annually. This option should be completely implemented into the Armenian tax system but not in the voluntary bases of choosing the period of reporting and payment as it is in Australia. The taxpayers will consider it as a fantastic opportunity to defer the VAT payment as long as the law requires. In this case the best and long period to defer for them is to report and pay annually. Predictably in the end of the reporting year each legal entity in Armenia will have a millions of drams of tax arrears<sup>13</sup>. Therefore there is a need to create provision in the law, which provides eligibility criteria not for the company test but the imported product test. It means that there shall be created a list of products with monthly, quarterly and annually reporting and VAT paying period divisions. Actually, even there is no need to make research and create a new list of products which are imported to or exported from Armenia. This kind of list exists for customs tariffs. The criteria of the goods for division the reporting and paying periods will depends on the intended use of

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<sup>13</sup> Makaryan, Voladya, Personal Interview, 02.07.2008

the goods. For instance if it is a food or any food ingredients the period of the reporting and payment will be monthly, in case of furniture - quarterly and for the huge equipments and lines - annually. Implementing this reform the tax authorities will not increase the administrative cost and the taxpayers will not have to be liable for unrealized goods.

The fifth step, which requires the taxpayer must not have any outstanding tax liabilities, is a good enforcement mechanism. The taxpayer knows if s/he wants to be eligible to import the goods with VAT deferral mechanism in future also, s/he have to report about the activity and pay the required VAT in compliance with the deferral period of the imported goods. Otherwise the taxpayer will loss this opportunity the next three years.

The last provision is the best illustration of the importance to include in the requirements also the seventh step. This step requires that the taxpayer must not be convict or penalized for the tax-related offences in the last three years for being eligible to import the goods with the VAT deferral mechanism. Here the question is by whom, by the court or by the tax authorities? In Australia the taxpayers must be convicted or penalized by court. For reform of Armenian tax system it will be best choice both by court and by tax authorities. The fact of not paying the VAT after the required period is enough to state breach of tax liabilities. However, if the case is more complicated the decision should be made only by court.

This recommendation of reform is the best choice for Armenia, therefore for the implementation of this reforms the main decision-maker must be National Assembly. The VAT refund system needs fundamental changes and these changes must be illustrated in the law not in the administrative decisions. The legislator body should make amendments to the part 4 article 6 of the Law on the VAT. After the words “for goods imported into the territory of the RA the VAT is calculated and collected on the border by customs officials” must be added “unless the importer is complied with the all requirements of the VAT deferral mechanism”. And in the same law shall be created new article for detailed description of the VAT deferral options and requirements.

The above mentioned recommendation of reform of Armenian VAT refund system needs to be implemented in the near future for giving opportunity the business to develop and the economy to be competitive one in the international market and in the region particularly.

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