

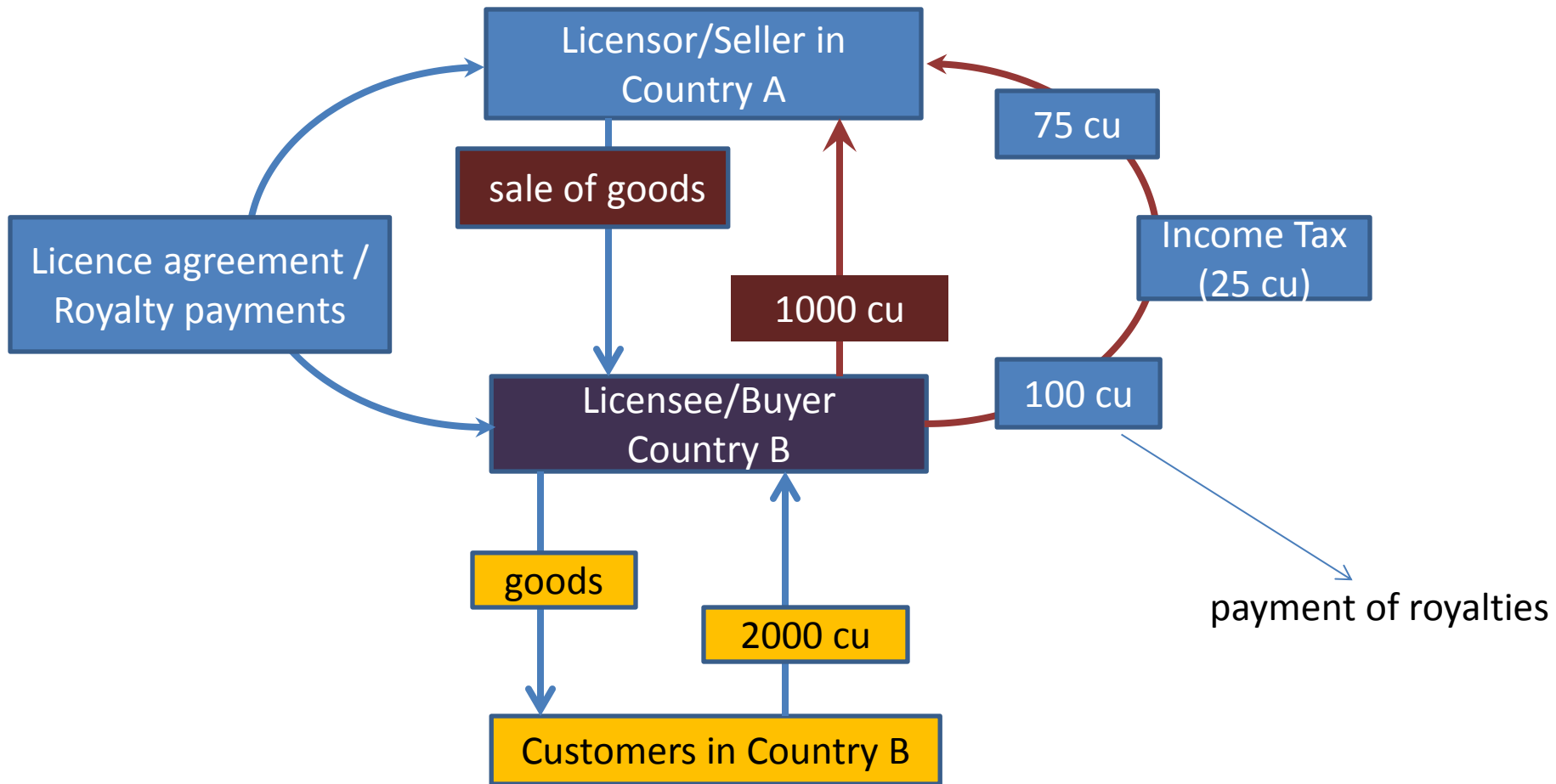
Royalties and licence fees under Article 8.1(c) of the Agreement

Treatment of withholding tax applied on royalties in the country of importation

Treatment of withholding tax applied on royalties in the country of importation

- Importer B of country of importation I enters into a licence agreement with supplier S of country of exportation X for use of a trademark. As part of this arrangement the parties also agree that the royalty payable by B to S for the commercial use of the trademark licensed in the agreement will be calculated by applying a rate of five per cent (5%) of the net sale price in the country of importation of the trademarked goods.
- Subsequently, S and B enter into a contract for the international sale of product P at a price of one thousand (1 000) currency units. Under the contract, product P has to be marketed bearing the aforementioned trademark, such that the corresponding royalty may be considered to be related to the goods. In addition, the price does not include the royalty, which is paid as a condition of sale of the goods..
- Given that the net sale price of product P in country I is two thousand (2 000) currency units, the licence fee which B owes S for use of the trademark is one hundred (100) currency units.
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- In accordance with the domestic tax rules in force in country of importation I, the one hundred (100) currency units paid by way of royalty for use of the trademark are subject to a special tax on this type of income, the amount of which is derived by applying a nominal rate of twenty-five per cent (25%) of the total sum payable. The importer B pays this income tax of twenty-five (25) currency units on behalf of seller S under a requirement to withhold tax at source.
- However, none of the clauses in the licence agreement refers to payment by B of the tax prescribed in the domestic legislation of country I, on income derived from the royalty for use of the trademark.
- Accordingly, B pays out a total of one thousand one hundred (1 100) currency units: one thousand (1 000) currency units corresponding to the price of product P, and one hundred (100) currency units by way of royalty for use of the trademark. However, S receives only one thousand and seventy-five (1 075) currency units as B transfers to him seventy-five (75) currency units for the royalty and, in parallel, a receipt for twenty-five (25) currency units to confirm payment of the income tax in country of importation I.

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- Royalties payable contracted as a condition of the sale , is related to the imported goods and not included in the PaPP.
- This tax is not the one of the type referred to in paragraph 3 of the Interpretative Note to Article 1 of the Agreement.

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Question

- Is the withholding tax paid to the tax authorities part of the Customs value under Article 8.1(c)?