News Flash
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Legislative regulation of outsourcing and personnel leasing in Ukraine
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The norm in world practice is to provide services in form of "outsourcing" and "out staffing." In Ukraine, these services are not so common so their legal regulation at present is inadequate and imperfect.

The legislation does not clearly define the term "personnel leasing", however, art.39 of the Law of Ukraine "On Employment", defines the following type of activity: "activities of business entities which employ workers for the further performance of work in Ukraine for another employer", which is identical to the concept of personnel leasing. Moreover, 14.1.183 of The Tax Code of Ukraine contains the definition of services for the provision of personnel: economic or civil agreement, according to which the person providing the service (resident or non-resident), directs the disposal of another person (resident or nonresident) one or more individuals to perform certain functions of the agreement.

In its turn definition of outsourcing is given in Sec. 4 of the National Classifier of Ukraine "Classification of Economic Activities" State qualifier 009: 2010: "outsourcing" is an agreement under which the customer requests the contractor to perform certain tasks, in particular, part of the production process and complete production process, providing recruitment services, support functions. Thus, outsourcing is a transfer by one company of specific business processes, functions or specific tasks to be performed by another company (outsourcer), specializing in the field.

Besides, internal resources are released during outsourcing / personnel leasing and the customer receives additional benefits in the form:

- Reduction of the taxes because it is not necessary to keep workers in the staff and pay taxes;
- You can "leave the status of a small business," when many workers can "work" for the company out of state;
- Avoiding labor risks with employees (work-related injuries, personnel records, holidays, etc.);
- Avoiding additional grounds to be reviewed by the Service of Labor;
- Simplifying the accounting process, etc.

As noted above, the difference between the terms lies in the fact that the outsourcing envisages performance of works or and certain business process, while personnel leasing envisages that one company provides employees to another company to perform the work, including for a certain period, so it's supposed to transfer professionals and eventual outcome.

Under the outsourcing agreement, employees perform work on their territory, and the remuneration is paid upon work performed / services rendered. During taxation of outsourcing, it is important that the services received by the customer can be included to the expenditure and to the tax credit on VAT (§ 198.1 - 198.3 TCU) in its entirety, in its turn executor is responsible for providing these services (works), including to comply with the quality, timing and other conditions that the parties have fixed in the contract.

According to the contract about personnel leasing, leasing company provides its qualified employees into temporary "use" of
the customer. These workers are subject to the working schedule of the customer to have their workplaces at the customer premises, but receive a monthly salary from the leasing company. Sometimes there are cases when the customer dismisses his employees and provider of personnel leasing enrolls them in his staff, so employees continue to perform their normal duties, while being employed by the leasing company.

As of the taxation, the personnel leasing contract is interesting because it allows to the provider of personnel leasing to carry out accounting obligations (records management, calculation and payment of taxes, payroll, registration of labor books, etc.) and to optimize the tax costs of the company, as well as in outsourcing.

Prerequisite for the parties is to settle the issue of creating appropriate conditions for workers, limits liability for injury to health worker for leave and sick leave, conditions etc. As workers enter into an employment contract with the company-provider of personnel leasing, it is logical that the last carries all risks and is responsible for being complied with labor laws and other employer obligations. But the parties should agree among to resolve all contentious issues on compensation to the provider of personnel leasing of all losses, for example, injury of personnel, as a result of inadequate working conditions, payment of annual leave and sick leave: they also should agree on duties and check of the skills of workers, on compensation for damage to property of the customer and other relevant working conditions.

According to Art.39 of the Law of Ukraine “On Employment”, personnel leasing activities should be carried on the basis of authorization by the central executive agency that implements the public policy in the field of employment and labor migration. The procedure for issuing permits is governed by the relevant decision of the Cabinet of Ministers № 359 “About the procedure for obtaining a permit for the hiring of workers for the further performance of work with another employer in Ukraine”.

In addition, it should be noted that in accordance with Part.3 Art. 36 of the Law of Ukraine "On Employment", the Cabinet of Ministers of Ukraine (resolution No 400 on 05.06.2013) approved the "Procedure for the formation and maintenance of a list of business entities that provide mediation services in employment and business entities that carry out the hiring of workers for the further implementation of work on another employer in Ukraine. According to the Part 5 of the Procedure, to be included to the list, the intermediaries submit an application to the State Employment service by a registered mail with return receipt registered (in the form prescribed by Ministry of Social Policy).

Thus, business entities providing outstaffing services are obliged to submit to the State employment service the application in the form established by the Ministry of Social Policy to be included in the List. We would like to note that in accordance with Part. 3 Art. 53 of the Law of Ukraine "On Employment", a penalty of twenty-fold of the minimum wage will be prescribe in case of the absence of authorization with respect to employment outstaffing.

It is interesting that research on the demand and quality of outsourcing services have been hold in Ukraine. According to the research, 36% of respondents outsource production various business processes, including:
- IT-services - 40.5%
- Logistics - 35.1%
- Procurement process - 27%
- Marketing business processes - 21.6%
- Recruitment - 18.9%
- Accounting - 13.5%
- Payroll - 13.5%
- Processing and systematization of information; 8.1%
- Outsourcing of medical representatives - 8.1%
- Staff paperwork and administration - 5.4%
- Various administrative tasks - 2.7%

In addition, 31% of respondents said that they use the services of the involved personnel, including 48.4% - for short-term projects, 35.5% - for long-term projects, 29% - outstaffing.

The survey showed that 41.2% of respondents who use outsourcing, have saved of their own resources, 37.6% have optimized and accelerated their own business processes; 32.9% - have increased efficiency, 14.1% - have improved the quality and monitoring of working processes.

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