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Research Article

PREVENTION OF LABOR DISPUTES AT THE LEVEL OF APPLICATION OF ACCOUNTING TOOLS AND CONTROL OF THE TAXATION PROCESS

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The article presents an analysis of the problems and approaches to their solution in terms of the taxation process, control work of tax authorities in establishing the fact of substitution of labor relations with civil law that are combined organically with legal technique of an instrumental and operational nature. For this purpose, the labor and tax codes of the Republic of Belarus and the Russian Federation, judicial practice were analyzed. The main research methods were a systemic and comprehensive analysis of sources of legal regulation and comparative law. Individual methods are proposed for overcoming the identified contradictions that in the future will ensure appropriate forms for protecting the rights and legitimate interests of employees. This approach fits logically into the judgment on the need to consolidate at the level of the Constitutional Court definition and the Supreme Court Plenum resolution.

Keywords: *legal technique, standard of good faith behavior, inspection, check, income tax, retraining, labor dispute commission*

ПРЕВЕНЦИЯ ТРУДОВЫХ СПОРОВ НА УРОВНЕ ПРИМЕНЕНИЯ ИНСТРУМЕНТАРИЯ УЧЕТА И КОНТРОЛЯ ПРОЦЕССА НАЛОГООБЛОЖЕНИЯ

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В статье представлен анализ проблем и подходы к их решению в части процесса налогообложения, контрольной работы налоговых органов при установлении

факта подмены трудовых отношений гражданско-правовыми, которые органически сочетаются с юридической техникой инструментального и операционного характера. С этой целью анализировались трудовые и налоговые кодексы Республики Беларусь и Российской Федерации, судебная практика. Основными методами исследования стали системный и комплексный анализ источников правового регулирования и сравнительное правоведение. Предложены отдельные способы преодоления выявленных противоречий, которые в перспективе позволят обеспечить надлежащие формы защиты прав и законных интересов работников. Данный подход логически вписывается в суждение о необходимости закрепления положений на уровне определения Конституционного суда Республики Беларусь и постановления Пленума Верховного суда Республики Беларусь.

Ключевые слова: *юридическая техника, стандарт добросовестного поведения, инспекция, проверка, налог на прибыль, переквалификация, комиссия по трудовым спорам*

Introduction

This topic needs more attention due to the fact that when conducting a tax audit because of substitution of labor relations, the main issue included in the subject of proof is the question of who initiated the registration of an individual as an individual entrepreneur. If it is established that this initiative came from the employer, other circumstances will not be significant. When performing work under a civil contract, the guarantees established by labor legislation do not apply. In the case of unjustified transfer of labor relations to a civil legal framework, social guarantees provided for full-time employees are not established for citizens, incentive and compensation payments are not made. A citizen who has entered into such an agreement may, under certain circumstances, be held administratively liable for illegal business activities.

Materials and methods

The essence of an employment contract is reduced to Art. 1 of the Republic of Belarus Labor Code dated July 26, 1999 No. 296-Z (as amended on July 8, 2024 No. 25-Z) (hereinafter 'LC'), according to which an employment contract is an agreement between an employee and an employer, according to which the employee undertakes to perform work in one or more specific positions of employees (worker professions) of the appropriate qualifications according to the staffing schedule and to comply with the internal work schedule, and the employer undertakes to provide the employee with the work stipulated by the employment contract, ensure working conditions stipulated by labor legislation, local legal acts and the agreement of the parties, and pay wages to the employee in a timely manner. In accordance with the current legislation standards, when paying wages and other income to an employee, the employer is obliged to withhold income tax from the employee's income and pay it to the budget. If an employer revises an employee's work duties for the sole purpose of subsequently entering into a civil law contract with him, including duties excluded from the list of labor duties, this will be perceived by inspectors as a substitution of labor relations for civil law relations.

With the advent of clause 4 of Art. 33 of the Republic of Belarus Tax Code dated December 19, 2002 No. 166-Z (as amended on December 13, 2024 No. 47-Z) (hereinafter the 'TC'), this system has become one of the riskiest. The relationship between an employer and an employee is possible in several options: classic labor relations (with entering into an employment contract); a civil law contract with an individual; a civil law contract with

an individual entrepreneur. The first two cases are of no interest to regulatory authorities, since when entering into a civil law contract with an individual, the legal entity is obligated to pay income tax and insurance premiums.

Results

Based on the practice of regulatory authorities, the following blocks of signs can be identified, according to which it is possible to apply the tools that reveal the substitution of labor relations for civil law relations:

the first is mainly of an instrumental legal technique nature [Smirnov, 2024: 7] – registering individuals as individual entrepreneurs at the request of the employer or as a condition of employment; entering into civil law contracts immediately after the registration of an individual as an individual entrepreneur, while terminating employment contracts with certain individuals the day before; entering into contracts with an individual entrepreneur not for the performance of a specific job (provision of a service), but for a calendar year (with an extension for the next year); personal performance of work (provision of services), without the involvement of hired workers and/or subcontractors; opening current accounts of an individual entrepreneur in one bank; using the same IP address frequently; transferring funds of an individual entrepreneur in the form of regular payments that is typical for labor relations; absence of facts of work performed by an individual entrepreneur for other business entities during the period of relations with the organization;

the second is of a clearly expressed operational nature, describes individual operations and their sequence in implementing legal activities, these may include the fact that after the termination of contractual relations with the organization, in most cases, there is no further entrepreneurial activity (or liquidation of the individual entrepreneur); in some cases, establishing the facts of the presence of employees in the organization's staff in positions that provide for the performance of work similar to the activities of an individual entrepreneur; the absence of expenses for an individual entrepreneur; indicating as the subject of the contracts entered into the process of performing work over a long period that is typical for labor relations; transfer of communication facilities, resources of the organization (mobile phone, vehicle, computer, office) to the individual entrepreneur; establishing payment for services rendered based on the number of hours worked and/or another system typical for labor relations; subordination of an individual entrepreneur to local legal acts of the organization.

Discussion

During inspections, regulatory authorities often reclassify civil law contracts with individual entrepreneurs as employment contracts. On this issue, Professor Manfred Weiss notes that in the context of changing labor relations, it is necessary to highlight several areas of adaptation of labor law, to focus on the prospects for expanding the scope of labor law, especially in the context of the spread of self-employment. The professor notes that it has become very difficult to draw a demarcation line between employment and self-employment. More and more often, there are people who call themselves self-employed, but are in fact hired workers. They must be included in the scope of labor legislation application, even if it is difficult to determine their status accurately. Therefore, in many countries, a special category has been invented for economically dependent self-employed persons: for example, in Germany they are called 'employee-like persons'. Therefore, he recommends establishing basic principles that apply to such 'employee-like persons'. This

will make it possible to develop individual protection models that take into full account the specific situation of this group [Novikov, Nogaylieva, 2024: 268].

The contact between the *fact of substitution of labor relations by civil law relations and the category of standards for assessing good faith behavior*, which can give rise to labor disputes, can be shown by referring to the opinion of I. B. Novitsky that good conscience (bona fides, Treu und Glauben, etc.), according to the etymological meaning, contains such elements as: knowledge of another, of their interests; knowledge associated with a certain goodwill; an element of trust, confidence that the moral foundations of turnover are taken into account, that everyone bases their behavior on them [Novitsky, 1916: 5].

The contact of the *principle of good faith with the category of standards for assessing behavior* can be shown by an attempt to bring them closer together, but not *identify them through abuse of rights* – this is such an implementation of the subjective and objective right of good faith behavior that is carried out contrary to the original purpose of granting this right as intended by the legislator [Golovina, Lyutov, 2022: 56]. When an abuse of rights is discovered, the courts make decisions to refuse to satisfy the employee's demand, taking into account only those violations that prevent the employee from fulfilling their work duties.

Here, indirectly, through a court decision, legal impact is exerted on labor and closely related relations [Yasinskaya-Kazachenko, 2023: 105]. The Labor Code does not provide for provisions on good faith behavior, and does not disclose the legal consequences when they are discovered. There is no review of practice at the level of a of the Supreme Court Plenum resolution. In this regard, it is necessary to consider the possibility of vesting the Labor Dispute Commission with *additional functions for resolving disputes about interests and to analyze the objectively existing standard for assessing the good faith of behavior*, while such disputes are not under the jurisdiction of the Labor Dispute Commission. The Labor Dispute Commission considers disputes of employees related to the application of labor legislation, collective agreements, agreements and other local legal acts, employment contracts. In addition to the specified disputes, the Labor Dispute Commission may also consider other labor disputes. On its own initiative or on the initiative of the employer, the Labor Dispute Commission does not have the right to consider labor disputes. Consideration of the dispute first in the CTC, that is, in the organization, simplifies the procedure for collecting evidence and reduces the time frame for considering the dispute.

Another issue is that there are still no sufficiently clear and generally accepted criteria for reclassifying civil law relations into labor relations, forms, methods, conditions, with the help of which the actual implementation of the rights and freedoms of employers and employees as participants in labor and closely related relations is ensured.

At the same time, the question arises whether an employee, when applying to the court with a statement of claim for reclassifying a civil law contract into a labor contract, can demand that the employer be obliged to enter into such an employment contract with him, if a civil law contract has already been entered into? It seems that, based on the Labor Code provisions, a person can demand an employment contract be entered into in the event of reclassifying a civil law contract into a labor contract. When considering and resolving disputes on determining the industry nature of a legal relationship, that is, if an employee asks the court to recognize the relationship as labor, formalize it and grant them all rights and obligations in accordance with labor legislation, the court may point out that the lower courts have not studied the process sufficiently and the degree of participation by the plaintiff in the life of the employing organization.

Among other things, the court may find out: whether the employee retained the position of an independent business entity; whether the employee was integrated into the organizational process; whether the employee obeyed the internal labor regulations and

local legal acts of the employer; whether he had access to information resources along with other employees of the employer; what were the remuneration features, including the frequency and amount of receipts, the calculation mechanism[1]. We believe that the labor dispute commission is able to provide answers to these questions.

D. A. Smirnov notes some contradiction between the Russian Federation Labor Code provisions of December 30, 2001, No. 197-FZ (as amended on December 28, 2024 No 541-FZ) (hereinafter 'Russian Federation Labor Code') to wit, on the one hand, Art. 19.1 mentions only the court as a jurisdictional body recognizing relations arising on the basis of a civil law contract as labor relations. At the same time, Art. 391 of the Russian Federation Labor Code that contains a list of disputes directly considered in courts, does not mention disputes on recognizing relations arising on the basis of a civil law contract as labor relations. Despite the fact that these disputes arise on the basis of a civil law contract, they fall under the definition of an individual labor dispute provided for in Art. 381 of the Russian Federation Labor Code. Accordingly, the question arises whether a dispute on recognizing relations arising from a civil law contract as labor relations can be considered and resolved by the Labor Dispute Commission? We support and share the author's position that the conflict between Art. 19.1 and 391 of the Russian Federation Labor Code should be resolved in favor of the former. This is due to both the general rules of interpretation, when in the event of a conflict between regulations of equal legal force, the special regulation or the regulation adopted later in time has priority, and considerations of expediency [Smirnov, 2024: 237–238].

The Russian Federation Ministry of Labor and Social Protection (hereinafter the 'Ministry of Labor') has put forward an initiative to expand the list of grounds on which regulatory authorities can appoint on-site inspections of companies to ensure compliance with labor legislation. Currently, a risk-oriented approach is in effect for business inspections that assumes that on-site inspections of companies occur if these companies have risk indicators in the field of labor law. The indicator itself is not a violation, but it indicates to the regulatory authority the high probability of a violation, which is why they come there for an inspection. The Ministry of Labor believes that risk indicators should be expanded by the *following item*: receipt by regulatory authorities of a protocol of the interdepartmental commission for combating illegal employment that contains information on the signs of such employment in the company (for example, failure to formalize an employment contract or the execution of a civil law contract that actually regulates labor relations) – provided that the controlled person or their representative failed to appear at meetings of the interdepartmental commission two or more times within six months (Bulletin of the Center for Monitoring and Analysis of Social and Labor Conflicts W – 09 – 2025, February 24 – March 02 (week 09) 2025)).

In the most general sense, a remote worker is a person who has an employment contract for remote work with a company, the second category is people who work under civil law contracts. Accordingly, the legislator had difficulties in developing criteria in which cases and which contracts to tax.

In this regard, the services that were rendered using domain names and network addresses located in the Republic of Belarus and the Russian Federation, the national domain system, or with the help of information systems of technical means that are located on the territory of the Republic of Belarus or the Russian Federation, or a set of software and hardware located on the territory of one of the states. This means that the servers must be located in one of the states in order to understand whether the income of a remote

[1] Labor disputes five most typical situations // URL: https://ilex.by/trudovye-spory-pyat-naibolee-tipichnyh-situatsij/ (accessed: 25.03.2025).

worker will be taxed or not, and then if at least one of the three conditions is met *(domain name, network address and a set of software and hardware located on the territory of one of the states)*, then comes the second level of conditions – an individual is a tax resident of the Republic of Belarus or the Russian Federation and (or) the income was received on an account in a national bank. And the third condition is the source of income payments – a national organization, an individual entrepreneur. In this regard, the legislator made special changes and additions to Art. 83 of the Russian Federation Tax Code of July 31, 1998 No. 146-FZ (as amended on November 29, 2024 No. 418-FZ), in which it provided for the obligation of such foreign companies to register with Russian tax authorities.

Let us look at typical violations in terms of substituting labor relations with civil law relations.

The first example is the Gortop case[1]. *As follows from the court decision, the Federal Tax Service Inspectorate for the Dzerzhinsky District of Volgograd (hereinafter the 'Inspectorate') conducted an on-site tax audit of the Gortop Joint -Stock Company (hereinafter the 'Company') for 2019–2021. As the Inspectorate established, the Company included in the expenses for the purpose of calculating income tax the amounts of bonuses paid to an individual (hereinafter the 'Individual') and their spouse (hereinafter jointly the 'Individuals'). During the audited period, the Individuals were employees and shareholders of the Company, namely: the Individual held the positions of CEO of the Company, Head of Sales and Business Consultant, and was also a majority shareholder in the Company (78.80 % of shares in 2019, 78.89 % of shares in 2020–2021, 83.65 % in 2022). The Individual's spouse held the positions of Economic Consultant and Development Specialist in the Company, and was also a minority shareholder of the Company (1.48 % of shares in 2019 and 1.62 % of shares in 2020–2022).*

For 2019–2021, the Individual received income from the Company in the amount of RUB130,242,629.72 in the form of wages for the performance of official duties of the CEO, head of the sales department, business consultant, including RUB116,891,000 in the form of bonuses based on the results of the successful work of the enterprise and high-performance indicators of the commercial department. Thus, the bonuses amounted to 90 % of the total income of the Individual and exceeded their salary in 2019 by 3 times, in 2020 by 7 times and in 2021 by 17 times. The spouse of the Individual also received income from the Company, of which bonuses based on the results of work for 2019–2021 amounted to RUB6,599,630. The Inspectorate qualified the amounts of bonuses paid to the Individuals as dividends and refused the Company to include the corresponding amounts in the composition of expenses for the purposes of the Company's income tax, and also recalculated the insurance premiums paid by the Company. The Company did not agree with the Inspectorate's position and believed that the reclassification of bonuses into dividends was unjustified, since the Inspectorate was not granted the right to verify the assessment of labor relations. The Company referred to the fact that during the period under review, the liquidity of shares and their potential profitability increased, based on the increase in the Company's revenue and the acquisition of fixed assets. The court supported the Inspectorate's position.

Second example. *During the audit of LLC G, it was established that in the period from 2018 through 2023, the company was provided with management services by individual entrepreneur B, who was the director of LLC G until 2018. At the same time, the monthly remuneration of individual entrepreneur B was several times higher than his salary as the director of the company and many times higher than the average monthly salary per employee of LLC G that was established during this period. Based on the totality of facts collected during the audit, it was established that the main purpose for carrying out business*

[1] Development of judicial practice on issues of reclassification of bonuses paid to employees as dividends // URL: https://russiantaxandcustoms.com/news/rossiyskoe-nalogooblozhenie/razvitie-sudebnoy-praktiki-po-voprosam-perekvalifikatsii-premiy-vyplachennykh-rabotnikam-v-dividendy/ (accessed: 23.03.2025).

transactions to provide management services by individual entrepreneur B to LLC G is the incomplete payment of taxes, including income tax due to the unjustified overstatement of costs taken into account for taxation, which entailed, among other things, a distortion of information about the facts of business transactions.

Third example. *Following an unscheduled inspection, the financial investigation department recognized the LLC as a tax agent obliged to withhold income tax from income transferred to the bank accounts of twenty-five individual entrepreneurs as remuneration under contracts for the provision of paid services. The auditors considered that in the relationship between the LLC and individual entrepreneurs (25 people) on practical training in driving a mechanical vehicle, knowledge testing and exams, there was a substitution of labor relations for civil law relations, and the income transferred to individual entrepreneurs was actually wages for the performance of labor duties.*

In accordance with clause 4 of Art. 33 of the Tax Code, the LLC adjusted the tax base and additionally charged income tax for 6 years. The body of evidence included interrogation reports of the founder and director of the LLC, as well as the individual entrepreneurs themselves, about the circumstances for entering into the contracts. These individuals actually continued to perform the functions stipulated by the employment contracts drawn up for rates. Moreover, before employment, everyone registered as individual entrepreneurs, performed the same duties, worked with the same clients in the LLC cars assigned to the employees. The individual entrepreneurs did not have any other customers. There were no costs associated with entrepreneurial activity that usually ceased immediately after dismissal.

Fourth example. *The employees of the tax inspectorate conducted an unscheduled inspection of the OJSC for the period from January 1, 2017 through June 31, 2024. During the inspection, they discovered an overstatement of expenses taken into account for tax purposes by the amount of paid services under contracts with three business entities for the transfer of powers of the sole executive body of the management organization. According to the inspectors, the contracts were entered into for a formality. Primary accounting documents did not confirm the fact of provision of services and did not substantiate their necessity. The judicial authorities agreed with the findings of the inspectorate, the expenses of the OJSC on payment of remuneration to the management organization during the audited period were not economically justified expenses, as required by the version of Art. 130 of the Tax Code in effect at that time. The testimony of the OJSC employees and a number of other pieces of evidence confirmed: duplication of functions under the management agreement and job responsibilities of the executive director; actual use by the OJSC and the management organization of the same premises, IP addresses for filing tax reports, the same administrative personnel; the impossibility of reliably establishing the content of the business transaction on the basis of the submitted documents - the specific types and volume of management work performed; interdependence of persons. As a result, the OJSC was charged additional taxes.*

The arguments that the implementation of management functions on the basis of a civil law contract is not prohibited by law, the activities of an individual entrepreneur as a manager comply with the provisions of civil legislation and are an independent type of entrepreneurial activity are not considered a convincing argument in court. It is difficult to prove that the replacement of full-time managers with managers is economically justified by something other than the desire to save on taxes. Especially if the individual entrepreneur (management organization) and the previous manager are the same person performing the same functions, the remuneration of the former is several times greater than the previous salary of the latter, and the results of the enterprise do not improve. Based on the definition of salary in Art. 57 of the Labor Code, the courts conclude that

the amounts of money paid to individual entrepreneurs should be attributed to expenses taken into account for taxation in an economically justified amount (payment to employees in cash and (or) in kind for the performance of work duties).

Conclusion

In this regard, it is proposed to: introduce specific restrictions into the labor legislation in terms of entering into civil contracts with citizens, while developing criteria under which work under contracts is possible; develop a pre-trial mechanism for protecting violated rights and legitimate interests of citizens of this category, the provisions of such an article will be applied, including when regulatory authorities establish facts of substitution of labor relations with civil relations. A study of the practice by regulatory authorities made it possible to look at the facts of substitution of labor relations with civil relations through the prism of legal technique: *instrumental* and *operational* in nature that allows us to highlight several areas of adaptation of labor law to modern conditions, especially in the context of the spread of self-employment. Practice at the level of the standard for assessing good faith behavior and the principle of inadmissibility of abuse of rights and the priority of facts in the form of a Constitutional Court definition and a Supreme Court Plenum resolution, and Labor Code standards needs to be consolidated.

In agreement with the opinion of Professor Manfred Weiss regarding 'employee-like persons', it is necessary to establish the basic principles that apply to such persons, which will allow developing individual models of protection that fully take into account the specifics of the situation of this group. With such a model of proceedings, it can be concluded that the system gravitates toward a single legal nature of quasi-judicial institutions, including self-similar institutions applicable in the consideration and resolution of labor disputes. In this regard, the LC is able to *demonstrate standards for assessing good faith behavior as a form of protecting the rights and legitimate interests of employees*, consider and resolve disputes about interests, and provide an analysis of objectively related standards for assessing good faith behavior. In this case, there is a certain contradiction between the provisions of the Labor Code in that the list of disputes included in Part 2 of Art. 236 of the Labor Code and those subordinate to the LC does not include disputes on recognizing relations that arose on the basis of a civil law contract as labor relations. But these disputes, despite the fact that they arise on the basis of a civil law contract, fall under the general definition of an individual labor dispute, provided for in Art. 233 of the Labor Code, and accordingly can be considered and resolved by the Labor Dispute Commission.

It is necessary to pay attention to the issue of reclassifying a civil law contract into an employment contract that in the structure of labor relations is rather not only empirical, applied, but also fundamental and academic in nature. Since no clear and generally accepted criteria have been developed for determining what constitutes the concept of 'reclassifying a civil law contract into an employment contract'.

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