TaylorWessing

B2B Contractors

Cooperation with B2B Contractors

How to make it secure?

What is B2B contractual cooperation?

Business-to-business (B2B) cooperation is cooperation between two or more economic entities, regardless of their organisational and legal form. For example, there may be a large company on one side and a sole trader on the other. This type of cooperation is becoming increasingly common, especially for highly skilled individuals providing specialised services. The mutual rights and obligations of the parties to such cooperation arise from the contract between them and the relevant legal provisions. However, labour law does not apply and neither party is more protected. Although in practice the company is in a stronger position, legally the parties are considered equal and independent.

Working together in a B2B model brings a number of benefits to both parties, including the possibility of higher net pay compared to traditional employment. For the company, there is also the benefit of not having to manage HR and payroll or being a tax and social security remitter.

Is it safe to cooperate in a B2B model?

The B2B cooperation model is widespread in the market. However, it may carry the risk of reclassification, i.e. the recognition of the B2B relationship as an employment relationship if it is established that fictitious self-employment is taking place. In the event of such reclassification, both the company and the entrepreneur may suffer significant financial consequences - in particular, underpayment of taxes (PIT, CIT, VAT) and underpayment of social security contributions. In the practice of the authorities, cases of reclassification have not been found very often.

However, the recent negative decision of the Head of the National Fiscal Administration of 12 June 2024 (Information on refusal to issue a tax clearance certificate No DKP3.8082.10.2023) may be important in changing the authorities' approach to cooperation based on the B2B model. The decision shows that the widespread use of B2B contracts in realities corresponding to an employment relationship can be treated not only as tax avoidance but also as fictitious self-employment.

What can be done to minimise the risks?

A key issue for the safe use of the B2B cooperation model is the correct formulation of the contractual provisions and ensuring that they are actually implemented, so that both the contractual provisions and the practice of their implementation show that the cooperation between the parties does not have the characteristics of an employment relationship.

If a B2B cooperation model is already in use in a company, it is recommended to perform a legal and tax audit, which includes a thorough analysis of the existing contract templates as well as the implementation practice of the parties. As a result of such an audit, it may be possible to recommend changes to the contracts and to reformulate the practical cooperation between the parties.

How can we help you?

We offer comprehensive support in carrying out a legal and tax audit of your company's B2B model, in particular:

- analysis of B2B contract templates,
- review and assessment of the practice of execution of B2B contracts,
- preparation of an opinion pointing out areas for improvement in the contract templates and in the practice of executing B2B contracts in order to reduce the risk of reclassification.

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