

ДОГОВОР СОВМЕСТНОЙ ДЕЯТЕЛЬНОСТИ КАК ОСНОВА ХОЗЯЙСТВЕННЫХ ОТНОШЕНИЙ МЕЖДУ УЧАСТНИКАМИ: УЧЕТНО-ПРАВОВОЙ ПОДХОД

AGREEMENT ON JOINT ARRANGEMENT AS THE BASIS OF ECONOMIC RELATIONS BETWEEN PARTIES: ACCOUNTING AND LEGAL APPROACH

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Abstract. The essence, role and significance of the agreement on joint arrangement as the basic document establishing legal relations between parties are determined in the article. Distinctive features are outlined and structural elements of the agreement on joint arrangement are indicated. Fundamental principles of conducting accounting and taxation under the agreement on joint arrangement are provided.

Keywords: joint arrangement, agreement on joint arrangement, operator, parties, taxation, accounting.

JEL Classifications: M41

Introduction

Modern conditions of developing economics in Ukraine induce the emergence of new forms of conducting entrepreneurial arrangement, among which there is joint arrangement. To effectively conduct joint arrangement, the study of legal fundamentals acquires a significant importance. The main organizational and legal form of accomplishing joint arrangement is an agreement which significance and role lies in the fact that it is the only one document regulating economic relations between parties. The analysis of current legislation gives reasons to affirm the existence of drawbacks in legal regulation of agreements on joint arrangement.

Accounting and legal essence of joint arrangement has been researched by a great range of scholars, mainly Blazhivska O. Ye., Dmytrenko A. V., Kuryshko L. A., Pryvalova N. Ye., Rieznikova V. V., Shesterniak M. M., Yurkevych M. Yu., Yurovska H. V., etc. However, there appears necessity of a comprehensive research of essence and structure of the agreement on joint arrangement.

Aim of the article – to explore characteristics of the agreement on joint arrangement from legal, accounting and taxation perspective.

Basic Content of the Paper. Under part 4 article 176 of the Commercial Code of Ukraine [1], economic entities are entitled to conduct entrepreneurial arrangement together in order to achieve their shared goal without formation of a joint economic entity under conditions defined by the agreement on joint arrangement. If parties of the agreement on joint arrangement entrust governance of joint arrangement to one of the parties, he/she cannot be responsible for conducting joint affairs. Such a party exercises organizational and managerial powers on the basis of delegation signed by other parties.

The agreement on joint arrangement can be defined as an economic and legal agreement concluded mainly between economic entities with joint entrepreneurial (commercial and/or non-commercial) purpose for which they are obliged to act in cooperation during a certain period of time under conditions defined by the agreement [2, p. 249].

Yurkevych M. Yu., researching a legal basis of the agreement on joint arrangement, states that legally directed (aimed) in the system of contractual obligations the agreement on joint arrangement belongs to joint-target agreements and is of a mutually-interested and fiducial nature [3, p. 137].

In Kuryshko L. A. opinion, the agreement on joint arrangement should be understood only as a document; on the other hand, the scholar thinks that a term 'joint arrangement without formation of a legal entity' should be used to the form of cooperation [4, p. 157].

Joint arrangement without formation of a legal entity is conducted by its parties under the agreement by combining property and efforts to achieve entrepreneurial and other aims. According to article 1130 of the Civil Code of Ukraine [5] concerning the agreement on joint arrangement, parties undertake a commitment to act jointly without formation of a legal entity to reach a certain goal which does not contradict the law. Joint arrangement can be performed either by merging parties' shares (unincorporated joint venture) or without merging. Thus, under the agreement of an unincorporated joint venture, parties undertake a commitment to merge their shares and act jointly to achieve profit or obtain other goal. It should be mentioned that the agreement on joint arrangement is concluded exclusively in a written form.

There is no unanimous opinion in research literature concerning characteristics of the agreement of joint arrangement. According to Rieznikova V. V., characteristics of the agreement on joint entrepreneurial arrangement are as following: peculiar object and aim of the agreement; opportunity to join not only private but also public interests; limited parties; specific normative and legal regulation; complicated procedure of concluding; long-term nature of action; presence in the content of the agreement of its peculiar conditions [6, p. 39].

Blazhivska O. Ye. states that the agreement on joint arrangement has a range of features which distinguish it from other juridical acts and stipulate its certain place within the system of civil-legal agreements, among which are the following: features of a juridical act not only of a multilateral agreement but also those of obligatory relation; each party of the agreement simultaneously appears to be both a creditor and a debtor but, in fact, they are none; obligations of counterparts in a bilateral agreement are mutual, i.e. each party has rights and responsibilities [7, p. 6].

Yurovska H. V. indicates that the agreement of unincorporated joint venture has features which are not demanded by the law to be agreed on by parties and which are not directly regarded as conditions of this agreement but without which the agreement of unincorporated joint venture is not possible. These features are the following: 1) voluntary nature of incorporation and 2) incorporation is valid without creation of a separate party of civil relations (legal entity) [8, p. 11].

Taking into account the above mentioned, there can be singled out such characteristics of the agreement on joint arrangement as:

- period of agreement validity to conduct short-term and long-term projects;
- presence of two or more parties as both legal and individual entities (including foreign investors);
- conclusion of the agreement and conduction of joint arrangement on the basis of merging parties' shares (unincorporated joint venture) or without merging.

The agreement on joint arrangement defines a person entitled to conduct joint arrangement and, according to point 4.6 of The procedure for accounting for taxpayers and fees [9], such an agreement must be registered in State Fiscal Service of Ukraine of that party who is responsible for keeping records of the results of joint arrangement. The base for registration of the agreement on joint arrangement is a decision to register it as a VAT payer made by a controlling unit. Therefore, agreements on joint arrangement between legal entities and/or individual entities-entrepreneurs are recorded by controlling units provided that characteristics of tax accounting and taxation of arrangement are spread on them and a person authorized under this agreement is registered as a VAT payer.

It should be indicated that the structure of the agreement on joint arrangement in Ukraine is voluntary. According to point 2 article 1131 of the Civil Code of Ukraine, essential terms of the agreement on joint arrangement (unincorporated joint venture) are as following: coordination of joint actions of parties or conducting their joint business; legal status of property allocated for joint arrangement; covering of parties' expenses and losses; participation of parties in the results of joint actions.

It should also be stressed that the abovementioned norm does not provide a limiting list of necessary conditions of the agreement. Consequently, all conditions which, to parties' mind, are related to regulation of their relations can be defined by them as being essential and included into the agreement.

In our opinion, for accounting and taxation reasons the agreement on joint arrangement should have the indication of unambiguous information about:

1. Parties' shares. According to part 1 article 1133 of the Civil Code of Ukraine, a party share is everything he/she contributes to joint arrangement (joint property) including money, other property, professional and other knowledge, skills and abilities, and also business reputation and business ties. Parties' shares are considered to be equal in value if the other does not stem from the agreement of an unincorporated joint venture or actual circumstances. Monetary valuation of parties' shares is conducted upon consultation between parties.

Hereby, legislation provides parties of joint arrangement with the right to voluntarily set a sum of money each of them contributes, form and value of property contribution.

Except monetary valuation of shares, while concluding the agreement parties need to define legal status of contributed and received in the result of carrying out property joint arrangement. According to article 1134 of the Civil Code of Ukraine, if the agreement or law does not designate the other then all the property contributed by parties in the form of contributions to joint arrangement and received as a result of joint arrangement are defined to be parties' joint shared property. It means that each party's share is equal to his/her contribution to joint arrangement.

It must be indicated that joint shared property does not expand to property introduced as a contribution which at first was not contributor's property. Such property is used for the benefits of all parties and is their joint property.

Party of the agreement on joint arrangement does not have the right to dispose a share in joint property without approval of other parties except that part of profit of such arrangement which comes in disposal of each party under the agreement. Property incorporated by parties of joint arrangement is accounted on a separate balance in that party which is responsible for conducting joint business under the agreement (under power of attorney). Thus, agreements on joint arrangement must have such distinctive features as:

- from pre-incorporation contract on establishing a legal entity – establishment of a legal entity cannot be the result of joint arrangement (there can only be establishment of separate entities without powers of a legal unit);
- from sale contracts, supply agreements, barter agreements – joint arrangement does not envisage conveyance of real estate from one party to another, only creation of joint shared property based on the results of joint arrangement or parties' contributions is possible;
- from leasing agreements – while conducting joint arrangement its party cannot receive and use property of the other party in his/her own economic arrangement not connected to their joint arrangement.

For taxation purposes economic relations between parties of joint arrangement are equaled to relations based on separate civil-legal agreements. As a result, disposal of property from one party of joint arrangement to the other causes tax consequences similar to purchase and sale of disposal of shares on the balance of joint arrangement [10]. According to the terminology of the Tax Code of Ukraine [11], such transactions are defined as “delivery” and are VAT object of taxation.

2. Conduction of joint affairs. The Civil Code of Ukraine indicates three forms of conducting joint affairs by parties of joint arrangement: 1) affairs are conducted by one party; 2) affairs are conducted by all parties; 3) each party conducts affairs separately. On a practical level the most usual is conduction of joint affairs done by one party of the agreement which acts within powers defined in the agreement on joint arrangement (unincorporated joint venture). According to part 2 article 1134 of the Civil Code of Ukraine, accounting of parties' joint property can be entrusted by them to one of the parties which, under point 3 of Provision (standard) of accounting 12 “Financial investments” [12], is defined as an operator of joint arrangement. Point 19 of this Provision states that an operator of joint arrangement maintains accounting records of joint arrangement without establishment of a legal entity separately from results of his/her own economic arrangement and creates a separate balance and corresponding forms of financial records of joint arrangement without establishing a legal entity.

It should be taken into account that besides agreement conditions regarding imposing of conducting joint affairs on one of the parties, other parties are obliged to issue a power of attorney for representation before third parties.

3. Reimbursement of expenses and losses, distribution of the received profit. To avoid possible disputes in the future while concluding the agreement on joint arrangement (unincorporated joint venture), the procedure of reimbursement of potential expenses and losses and also distribution of the received profit must be accurately defined. Legislation allows parties to define the procedure of reimbursement of expenses and losses related to conduction of joint arrangement (article 1137 of the Civil Code of Ukraine) and distribute the received profit by themselves (article 1139 of the Civil Code of Ukraine); if there is no such consensus, each party bears responsibility in proportion to his/her contribution to joint property. At the same time it is forbidden to include into the agreement the condition under which one of the parties is completely free from reimbursement of joint expenses, losses and distribution of profit.

Joint arrangement is not a separate income taxpayer since from 01.01.2015 the Tax Code of Ukraine does not define a special procedure of taxation. Nowadays each party under f.2 of the Financial Results Statement (Statement of Total Income) estimates his/her share in profits and losses of joint arrangement. Thereby, estimated financial result before taxation and correspondingly income tax include results of joint arrangement without establishing a legal entity and results of individual economic arrangement of a party.

4. Liabilities of the parties. Article 1138 of the Civil Code of Ukraine defines cases and types of liability of the agreement on joint arrangement (unincorporated joint venture) depending on the fact whether liability appears due to conduction of entrepreneurial arrangement or not.

If the agreement has been concluded in order to conduct entrepreneurial arrangement, its parties are liable for all joint obligations jointly regardless of basis of their occurrence. According to point 1 article 543 of the Civil Code of Ukraine, a creditor of created venture has the right to demand fulfillment of joint liability from all debtors together as well as each of them. This means that a creditor has a right to choose the party who is the most financially reliable and can quickly and fully satisfy his/her requirements. Herewith, the party who has satisfied such creditor's requirements on behalf of all parties of the agreement on joint arrangement (unincorporated joint venture) has a right of regressive requirement as to reimbursement of his expenses by other parties proportionally to the value of their shares.

If the agreement is not related to entrepreneurial arrangement, liabilities of the third parties are proportional to made contributions (partial responsibility). If there is not enough amount of joint property to pay the debts, necessary sum of money is reimbursed from personal parties' property in the same proportion contributions made to joint arrangement. Concerning general liabilities not related to the agreement on joint arrangement, parties bear joint responsibility.

5. Duration and termination of the agreement. Duration of the agreement (more/less than 1 year) considerably influences formation of information in accounting while receiving parties' contributions.

The list of circumstances when the agreement of an unincorporated joint venture is terminated is stated by article 1141 of the Civil Code of Ukraine:

- 1) recognition of a party as legally incapable, being untraced, having limited civil capacity;
- 2) announcing a party bankrupt;
- 3) death of a physical entity-party or liquidation of a legal entity-party of the agreement of an unincorporated joint venture;
- 4) refusal of a party to continue his/her participation in the agreement of an unincorporated joint venture or termination of the agreement on request of one of the parties;
- 5) expiry of the agreement of an unincorporated joint venture;
- 6) allocation of party's share on creditor's request;

7) achieving the goal of the venue or occurrence of circumstances when the goal cannot be achieved. The mentioned list is not limited, consequently, while concluding the agreement of an unincorporated joint venture as agreed by all parties there can be other cases of termination of the agreement.

Conclusions

While conducting the research there has been determined that for accounting and taxation purposes in the agreement on joint arrangement the following conditions must be stated: shares of the parties, conduction of joint affairs, reimbursement of expenses and losses, distribution of the received profit, liabilities of the parties, duration and termination of the agreement.

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