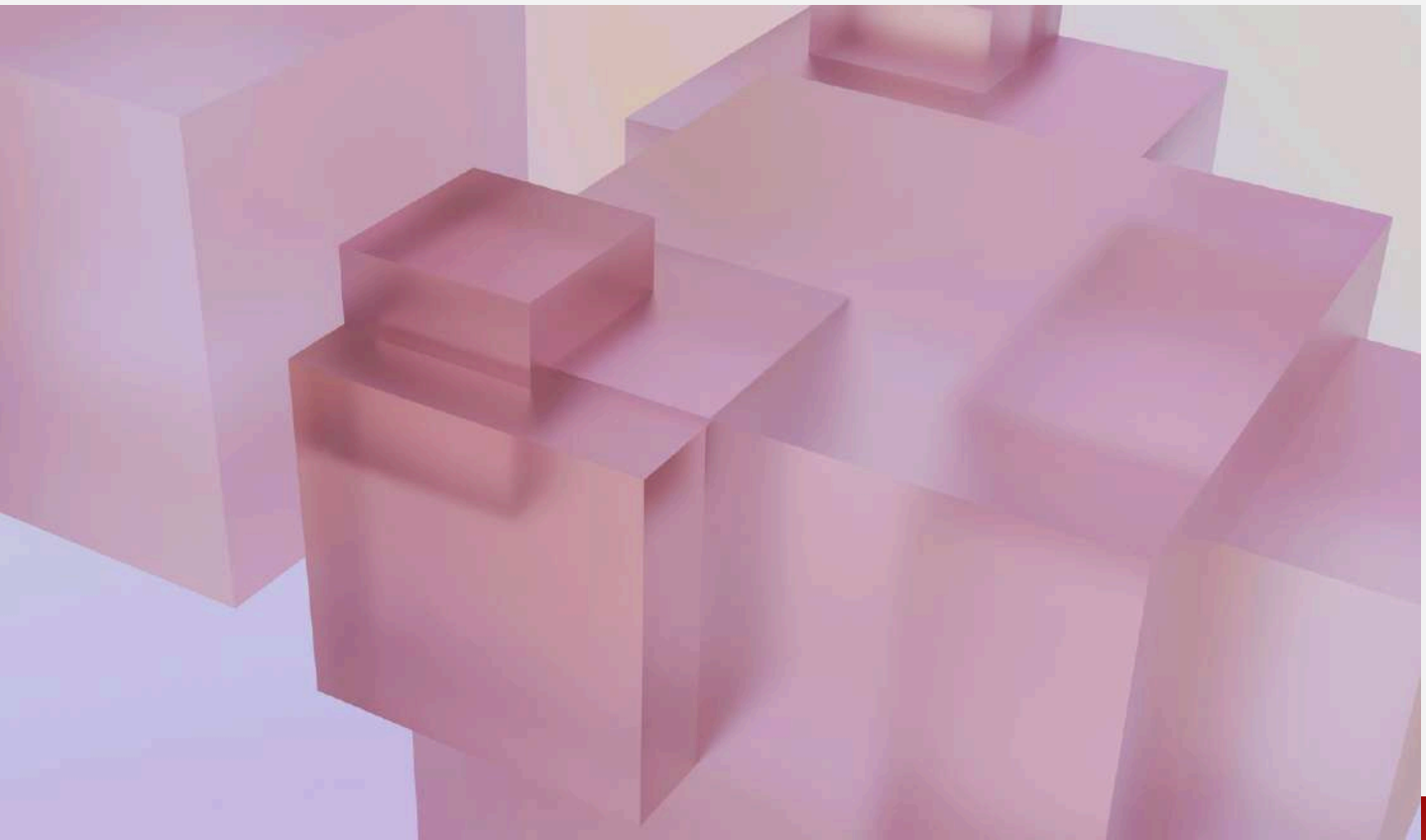


# LABOR CONTRACT OR PERSONAL CONSULTING SERVICE CONTRACT

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**Head Office:** Room 7.01, TMS Building, 172 Hai Ba Trung Str.,  
Tan Dinh Ward, Ho Chi Minh City, Vietnam.



**Branch Office:** 330 Nguyen Van Troi, Thu Dau Mot Ward,  
Thu Dau Mot City, Binh Duong Province



**Transaction Office:** 101/20 Street 11, Thu Duc Ward,  
Ho Chi Minh City, Vietnam.



info@cdlaf.vn



+84 (28) 3636 5486



cdlaf.vn



/cdlaflawfirm

# LABOR CONTRACT OR PERSONAL CONSULTING SERVICE CONTRACT

Currently, almost all enterprises understand that the law has no restrictions or regulations prohibiting enterprises and individuals from establishing service contracts, and this also has no restrictions on Vietnamese people or foreigners. So perhaps many enterprises are currently entering into Personal Service Contracts with foreigners, instead of establishing Labor Contracts accompanied with Work Permit procedures. Is this understanding and application by some enterprises considered in accordance with the law and approved by competent authorities?

The article below will help enterprises understand more about this issue.

## 1. UNDERSTANDING LABOR CONTRACTS AND PERSONAL CONSULTING SERVICE CONTRACTS

**A labor contract** is simply understood as a document recording an agreement between an enterprise and an employee regarding work, salary, rights and obligations between the parties, etc. Previously, to hide the labor relationship, some enterprises have established working agreements with different names. However, according to current labor law, the existence of a labor relationship will not depend on the document name.

**A personal consulting service contract** is understood as a civil transaction recording an agreement between the parties. This understanding makes no difference between a Vietnamese person or a foreigner. However, for foreigners operating in Vietnam, for convenience in management, the law regulates that the presence of foreigners in Vietnam to perform services shall be associated with certain legal documents. Typically, when a foreigner works in Vietnam, receives wages, and is under the management of an enterprise, the foreigner will need a work permit or document confirming exemption from a work permit. In contrast, in cases of participation as investors, foreigners will need documents related to investment projects in Vietnam.

## 2. CAN FOREIGNERS PROVIDE SERVICES IN VIETNAM?

The nature of service provision as prescribed in Clause 9, Article 3 of the Commercial Law is understood as follows: "Service provision is a commercial activity, whereby one party has the obligation to perform a service for another party and receive payments;

The service user is obliged to pay the service provider and use the service according to the agreement”

Thus, a service provision contract between an enterprise and an individual is understood as a commercial relationship between the parties to **carry out commercial activities**. The Commercial Law also regulates that trader carrying out commercial activities must register their business, except for some special cases which are not required to register their business. These cases are understood as “individuals who daily carry out one or several or all of the activities permitted by law on buying and selling goods, providing services and other activities for the purpose of profit which are not subject to business registration according to the regulations of the law on business registration and are not called “traders” according to the regulations of the Commercial Law” such as street vendors and snack trading, car repair, shoe polishing, etc.

Therefore, the law only considers this as a commercial relationship, if the individual providing the service carries out business registration, the case of non-business registration will be considered an employment relationship. Therefore, in this case, the competent authorities often require the enterprise to provide legal documents related to foreign workers such as work permits and to fulfill obligations prescribed by labor law.

Currently, there are many enterprises enter into service contracts with Vietnamese people as well as foreigners and fulfill tax obligations. This leads to a misunderstanding from the enterprises that taxes are declared and paid in full and without any other requirements from the tax authority, the default is that this service relationship is considered in accordance with regulations. However, enterprises should understand that, for tax obligations, enterprises and individuals will have to self-declare and take responsibility for themselves. Tax authority’s receipt does not confirm that the enterprise is complying with the law, nor does it determine that the relationship between the parties is legal.

To be clear, we cite tax authorities’ opinions in a written response to enterprises in Vietnam:

*“Based on the above instructions, in case Hanoi French Hospital Co., Ltd. enters into a contract with foreign doctors to perform medical examination and treatment for patients at Hanoi French Hospital or other facilities designated by the Hospital. Contract between the Hospital and foreign doctors regulates a weekly salary payment mechanism that is not based on the volume of medical examination and treatment services of foreign doctors. The hospital is responsible for occupational risks, provides working facilities, controls and is responsible for working locations for foreign doctors. On the other hand, **foreign doctors are not individuals with business registration**.*

*Thus, the income that foreign doctors receive from the Hospital is income from salaries and wages. Determination of personal income tax obligations of non-resident individuals with income from salaries and wages shall comply with Article 18 of Circular No. 111/2013/TT-BTC dated August 15, 2013 of the Ministry of Finance."*

The fact that many enterprises apply does not mean that this method is recognized by law. Therefore, to avoid risks that may arise in the future when there is a dispute, enterprises need to review the contracts with foreigners to make timely adjustments.

**The article contains general information which is of reference value, in case you want to receive legal opinions on issues you need clarification on, please get in touch with our Lawyer at [info@cdlaf.vn](mailto:info@cdlaf.vn)**

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