

LEGAL UPDATE

New developments tackling false self-employment

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On 1 November 2024, the Tax Authority published the [Explanatory Memorandum on Assessment of Employment Relationships](#) (in Dutch). This decision and consideration framework is important now that the Tax and Customs Administration is lifting the enforcement moratorium from 1 January 2025 and will therefore start enforcing the existence of false self-employment.

The Tax Office made it clear on 1 November that they will apply the same holistic test that the Supreme Court mentioned in the Deliveroo ruling. No single fact or circumstance will be decisive. The Tax Office will assess all the facts and circumstances in their interrelationship and, on that basis, give an opinion on whether someone is working as an employee or as a self-employed person. The Deliveroo judgment shows that the following points of view are important:

- the nature and duration of the work
- the way work and working hours are determined
- the extent to which the work and the contractor are part of the client's organisation
- obligation or no obligation to carry out the work personally
- the way agreements were reached
- the way remuneration is determined and paid out
- the level of remuneration
- the degree of commercial risk incurred by the contractor in the contract
- The extent to which the contractor behaves or can behave as an entrepreneur, e.g. what does the contractor do to get orders and a good reputation, how does the tax authority treat the contractor, what is the number of clients and how long does the contractor usually work for a client?

The Tax Authorities will therefore base checks for false self-employment on the legal principles and case law as they apply on 1 November 2024. Future case law or a legislative change may change this.

Law Vbar

The Bill 'Clarifying Assessment of Employment Relationships and Legal Presumption Act' (Vbar) could potentially lead to such a legislative change. However, its entry into force is not expected before 1 January 2026. In the coming year, therefore, clients will have to make do with the aforementioned framework.

We already discussed the draft Vbar bill in the Legal Update '[Internet consultation launched on clarification of self-employed work](#)'. After much criticism of the draft bill, the legislator has now submitted an amended version to the Council of State. The main change concerns the way in which it is tested whether the authority criterion has been met: there will be a 'formula' with main elements W and Z. The main element W stands for "work-related direction" and the main element Z stands for "working for own account and risk". The legislator has named five indications for both main elements and will elaborate them in lower regulations. Based on these indications, the employment relationship can be assessed. If there is predominantly work-related direction, this indicates an employment contract. If there is a predominance of working for own account and risk, this indicates a service contract. If there is not a preponderance of one or the other, the entrepreneurship of the person outside the company will also be taken into account (the "OP" factor). Relevant circumstances are for example whether the worker is registered in the trade register and acquires other clients.

The draft bill is unchanged in terms of the legal presumption for the existence of an employment contract. However, the amount has been indexed to now €33.00 excluding VAT.

The continuation of the legislative process

The new draft bill is currently with the Council of State, which will advise the legislature on it.

Do you have questions about the Explanatory Memorandum on the assessment of labour relations, working with self-employed persons as of 1 January 2025 or the draft bill? Then contact one of our specialists from the Labour & Pensions team.

This is a Legal Update by Pieter Mantel.

For more information:

Pieter Mantel
+31 30 25 95 560
pietermantel@vbk.nl