

# Renewal of the Dutch DBA law: introduction of a web module to assess the existence of an employment relationship with self-employed persons

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Under the Deregulation Act (in Dutch: “Wet Deregulerend Beoordeling Arbeidsrelaties” (DBA Law)), companies and self-employed persons are jointly responsible for the labor relationship they enter into. They must ensure that their legal relationship is clear and prevent it eventually being considered a paid employment relationship.

For both tax and civil law purposes the requirements for paid employment are currently as follows:

- i. The labor is performed personally;
- ii. There is a relationship of authority (hierarchy), where the employer determines how the work must be performed and the employee has to comply with the employer's directions;
- iii. The employee receives a remuneration for the work that exceeds an expense allowance.

If any of these requirements are not met, there is no employer-employee relationship and therefore no wage tax/employee insurance obligations for the employer.

On November 6, 2020, the Dutch Supreme Court ruled that the material work relation between parties is key and that the intention of the parties prior to the performance of labour is of no importance. This ruling is now more aligned with the interpretation of employment for tax purposes, where substance over form is mostly key.

In case of doubt, the parties could make use of model agreements provided by the Dutch tax authorities to qualify their relationship (i.e. (sub) contractor or employee). However, in practice these model agreements did not remove the uncertainty for companies making use of (sub) contractors due to the variety of sectors and types of labor performed on the one hand, and the limited number of model agreements on the other hand.

Therefore, the Dutch government decided to renew the DBA Law. As per **yesterday**, the amended DBA Law entered into force. The main change is a **pilot** with a web module containing an online questionnaire to provide an indication of the relationship between the company and the self-employed person. The pilot will probably last six months.

Under the pilot scheme, contractors and the company hiring the contractor can obtain more clarity about whether an assignment may be carried out “outside an employment relationship” with an online questionnaire. If the assignment does fall outside an employment relationship, a contractor's statement will be issued. Parties hiring a contractor then have the certainty that the employment agreement does not exist from a civil law perspective and that they do not have wage tax and employee insurance obligations, on the assumption that the questionnaire on the web module has been completed truthfully.

In the meantime, at least until October 2021, the Dutch tax authorities will not levy additional assessments or fines if, in an uncertain case, the (sub)contractor is later qualified as an employee. Obvious cases will be monitored by the tax authorities and they will levy assessments and fines there in cases of wilful misconduct.

To be fully prepared for re-enforcement of the DBA Law by the Dutch tax authorities, we recommend closely reviewing your contracts with self-employed persons. Due to the uncertainty about the qualification we expect this can be

challenging. We will be happy to assist in that process and make a qualification of the relationships with self-employed persons together with you. Please also feel free to reach out to us if you have any questions.

## Your Key Contacts



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