

Flexible employment relationships



Is your flexible workforce future-proof?

The world of flexible work is constantly evolving. Recent case law and upcoming legislative amendments regarding flexible employment relationships bring significant changes that require your attention. The end of the enforcement moratorium by the tax authorities on January 1, 2025, means that it's crucial to reassess your collaboration with self-employed individuals (ZZP-ers). If an audit reveals that your employment relationships do not meet legal standards, the consequences can be substantial. Your company not only risks (potential) fines, back taxes, or labor law risks, but also reputational damage, which could seriously impact your business.

The calm before the storm?

Since 2016 the Dutch tax authorities have largely suspended its monitoring of pseudo-self employment, with the exception of cases where there is an act of bad faith. This situation is now coming to an end. Starting January 1, 2025, the Tax Authorities will fully resume enforcement on pseudo-self employment. The Tax Authorities have already allocated the necessary resources to effectively ensure compliance with the regulations surrounding self-employment. This underscores the importance the Dutch Tax Authorities place on this issue and the potential impact it could have on your business operations.

Time for action!

During the last few years - when actively monitoring employment relationships with self-employed persons has been placed on the back-burner - many organizations did not consider the reviewing and optimizing of agreements with self-employed persons to be a priority. With the resumption of enforcement as of January 1, 2025 and the increased chance of rigorous audits, the necessity to review your flexible workforce has again become a top priority.

Now that the number of self-employed persons has also increased sharply in recent years, the scale of this task has become even bigger. Therefore, take action on time and avoid unnecessary problems.



From theory (case law) to practice

The distinction between an employee and a self-employed worker (ZZP'er) is often difficult to make. In recent rulings, judges increasingly weigh small differences that can have significant consequences.

Whether this concerns a meal delivery driver, construction worker, carpenter, IT-specialist or manager, sometimes one small detail can be decisive.

For example, participation in company events or performance reviews, or the degree to which a worker can accept assignments independently, can determine the classification. Even how a contractor presents themselves can influence whether they are seen as an employee or self-employed.

Correctly classifying employment relationships is essential to comply with legislation and avoid potential penalties.

All the facts and circumstances should be included in the analysis. We have listed several key indicators for you.

Self-employed person or employee?

Indicators of employee status

- The employer has the power to give instructions about the manner in which the worker must carry out the activities and the worker is obliged to follow those instructions.
- Activities are performed alongside employees performing similar activities.
- The activities have a permanent character within the organization.

Indicators of activities as self-employed person/entrepreneurship:

- The financial risks and results of the activities are borne by the worker.
- The assignment is of short duration and/or the worker works a limited number of hours per week.
- The worker acts independently during the performance of the activities.
- The worker uses their own tools / resources.
- The worker works for more than one contracting party per year.
- The worker has made quite substantial investments in their business.
- The worker spends time and/or money on acquiring a reputation and finding new clients or contracting parties



Looking ahead to the VBAR

Although the Assessment of Employment Relationships and Legal Presumption (Clarification) Act will not officially take effect until 2026, it would also be wise to prepare for it from this perspective. Not only will you avoid future legal complications, supplementary tax assessments and potential penalties, but clearly delineating the responsibilities and rights of both self-employed persons and employees will promote transparency and fairness within your organization.

By taking action now you will be able to easily comply with the new rules once the VBAR Act is introduced.

Assessment of Employment Relationships and Legal Presumption (Clarification) Act

The (expected) introduction of the VBAR Act on January 1, 2026, marks a significant shift in the assessment of employment relationships in the Netherlands. This legislation follows a year of enforcement without full legal support, which may pose challenges for organizations that rely on flexible labor.

The draft 'Bill to Clarify the Assessment of Employment Relationships and Legal Presumption' is aimed at combating pseudo-self employment in the labor market and introduces several interesting legal changes to achieve this goal.

Obviously, it is of great importance for your company to be aware of these changes and, where necessary, to act as quickly as possible. To facilitate this, we have outlined the relevant changes for you.

- **Clarification of the concept 'working under the authority of':** Under current legislation, the conditions of (i) labor, (ii) wages, and (iii) authority must be met. The draft bill outlines two main elements by which the criterion of 'authority' should be assessed:
 1. Is there job-related or organizational supervision by the employer?
 2. Does the (potentially) self-employed worker operate at their own risk and expense?
- **Legal presumption with a low hourly rate:** A legal presumption is also introduced for workers earning less than € 33 per hour. At such a low rate, it is assumed that an employment contract exists, unless the employer can prove otherwise.
- **End of model agreements and stricter enforcement:** The model employment agreements previously approved by the Dutch Tax Authorities will not be extended (further). Additionally, from 2025 onwards, enforcement against pseudo-self employment will be significantly tightened. Enforcement in the first year will be risk-based, focusing on forced self-employment, underpayment, and evident pseudo-self employment. Additionally, a lenient approach will initially be taken towards those who are unknowingly competent as self-employed, and for this category of clients and contractors, fines will not be imposed immediately. In this context, the aim is to publish a clear enforcement framework by November 1, 2024.

How can we help you?

It is important that you have a clear overview of your current flexible workforce. What type of employment relationships are there in this (flexible) workforce, which activities are performed and how does this relate to current and new rules?

In order to carry out this process effectively and efficiently, we can assist you with collecting the relevant data but also by performing a high-level assessment, which provides you with insight but also enables us to determine which risks you are running and the steps you need to take to be compliant with impending legislation and regulations.

In doing so, the size of your flexible workforce doesn't matter. We can also analyze individual cases and advise you per employment relationship. We can of course also help you in other ways, for example, we offer interactive workshops and training sessions to help improve the expertise of your HR, finance or procurement professionals.

Interested? Feel free to contact one of the professionals in our People Services team!

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Jelmer Post

Senior Tax Manager
post.jelmer@kpmg.com



Esther Hoppenbrouwers

Director
hoppenbrouwers.esther@kpmg.com



Tamara van Mourik

Senior Tax Manager
vanmourik.tamara@kpmg.com



Nick Theunissen

Senior Tax Manager
theunissen.nick@kpmg.com



Erick ten Cate

Senior Tax Manager
tencate.erick@kpmg.com