

NAVIGATING THROUGH LEGISLATION

How freelancers (zp'ers) can prepare for the enforcement moratorium



Navigating through legislation

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PREFACE

Politics and the so-called Dutch polder model have been trying to create clear rules to determine when a self-employed person can be hired for the past ten years. This led to the abolition of the Declaration of Independent Contractor Status (VAR) in 2016 and the introduction of the Deregulation of Labor Relations Assessment Act (Wet DBA). This change caused unrest and uncertainty, leading to the suspension of the law's enforcement by means of a moratorium. Since then, the Dutch Tax Authority (Belastingdienst) has been cautious in enforcement, but this enforcement moratorium is now coming to an end after more than eight years, and there are still no new rules.

This raises several questions: What does the end of the enforcement moratorium mean in practice? How and whom will the Tax Authority monitor? What new legislation is being developed, and most importantly: can I continue working as a freelancer (zp'er) in the same way for clients?

As your reliable partner, we actively think along about the role of freelancers with clients. That's why we find it important to inform and advise you about this in a timely and comprehensive manner. This explanation is the first in a series in which we will discuss these issues. We are eager to continue the conversation with you because one thing is clear: employers need flexibility, and many professionals want to continue working through contracting or as freelancers.

Fortunately, there are still plenty of opportunities to meet this mutual need for flexibility.

Marion van Happen

CEO HeadFirst Group



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READING GUIDE

The Tax Authority will intensify its enforcement on false self-employment starting from January 1, 2025. To be well-prepared, it is advisable to take a number of measures now. In this document, we provide you with suggestions on how to go about it.

To get a better understanding of the matter, we'll first provide information on the legislation and the lifting of the enforcement moratorium. Additionally, we will offer more details on the legislative proposal Clarification of Employment Relationships and Legal Presumption (VBAR).

END OF THE ENFORCEMENT MORATORIUM

Before the Wet DBA (Assessment of Employment Relationships Act) came into effect, State Secretary Eric Wiebes of Finance announced that the Tax Authority would temporarily refrain from enforcing regulations on false self-employment. A moratorium on enforcement was introduced, pending new legislation, originally until January 1, 2018. The moratorium was extended multiple times and remains in effect until January 1, 2025. However, the hope that new legislation would be introduced to better define false self-employment has proven futile. One thing is certain on January 1, 2025: there will still be no new law.

Preparations

From the onset, the moratorium has been far from absolute. The House of Representatives passed a motion requiring enforcement against "evidently malicious companies." Currently, the Tax Authority is increasingly inspecting entrepreneurs for false self-employment. In cases where false self-employment is suspected, a warning is issued rather than an immediate fine. A client will only be fined if they do not comply with the warning. Typically, a client is given about three months to rectify the situation.

The Tax Authority has been preparing for two years for the lifting of the enforcement moratorium. According to the Perspective Note on Enforcement of Employment Relationships, this process is going according to plan. The normalization of enforcement on employment relationships includes, among other things, the hiring of eighty additional full-time employees and collaboration with market parties to restore "balance in working with freelancers" and encourage personal responsibility. HeadFirst Group, through its membership in Bovib (the industry association for intermediaries and brokers), maintains regular contact with the Tax Authority's market team and relevant policymakers.

PARLIAMENTARY LETTER WITH CABINET RESPONSE

On Friday, September 6, the Dutch Parliament was informed via a Parliamentary letter regarding the Cabinet's position on the lifting of the enforcement moratorium as of January 1, 2025. Key points from the letter include:

- No penalties in 2025 | In 2025, no penalties will be imposed on parties that can demonstrate they are actively working on their hiring policies. This gives organizations the opportunity to optimize their processes without immediate sanctions, if they show they are taking serious steps to address false self-employment.
- Discontinuation of model agreement reviews | The Tax Authorities will stop reviewing new model agreements. Previously approved agreements will remain valid until their expiration date (ultimately in 2029). The model agreement we use from Bovib remains valid until February 18, 2027.
- Nationwide public campaign | A nationwide public campaign is being developed and will launch at the end of September. A new webpage will contain all relevant information, and practical examples will be shared to help you implement the updated policy. Stay tuned to the official channels of Rijksoverheid for more information.

Deliveroo-criteria

When the Tax Authority begins enforcement on January 1, 2025, it will not be applied retroactively. The current situation will be assessed, and no backdated fines or additional tax assessments will be imposed.

The inspections will be based on court rulings (jurisprudence) concerning false self-employment, as translated into the "Relevant Elements in Assessing Employment Relationships" since 2018 and included in the Payroll Tax Manual from 2019 onwards.

Since 2018, court rulings on false self-employment have been incorporated into the Payroll Tax Manual. These rulings include indicators and counter-indicators for employment relationships. The most recent relevant ruling is from the Dutch Supreme Court in the Deliveroo case. Although this company is no longer active in the Netherlands and meal delivery work is very different from, for example, IT professionals, this ruling is highly relevant to the broader discussion about the use of freelancers.

This ruling contains criteria for determining whether someone is an employee or an independent contractor:

- Nature and duration of the work;
- Method of determining tasks and working hours;
- Integration of the work and the person performing the work into the organization and its operations;
- Obligation for personal execution;
- Contractual arrangement of the relationship between the parties;
- Method of payment (price, rate) and disbursement;
- Level of remuneration;
- Entrepreneurial criteria: Does the contractor bear commercial risk?
- Can the contractor present themselves as an entrepreneur in the marketplace, for example, through client acquisition, tax matters, average number of clients, and average duration of assignments?

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The Supreme Court (Raad van State) emphasizes that these criteria should be considered in conjunction with one another and may vary depending on the situation. This does not provide absolute clarity.

These criteria are broadly outlined in the Tax Authority's Payroll Tax Manual and the web module, as well as in the draft VBAR law, which is structured around the criteria of 'work-related supervision,' 'integration,' and 'entrepreneurship.' Although the worker's entrepreneurship is a factor, having a private limited company (BV) does not guarantee independent contractor status, although the threshold to be classified as an employee is higher than for sole proprietors (IB-entrepreneurs).

LAW ON CLARIFYING THE ASSESSMENT OF EMPLOYMENT RELATIONSHIPS AND LEGAL PRESUMPTION (VBAR)

The Law on Clarifying the Assessment of Employment Relationships and Legal Presumption (VBAR) is a legislative proposal by former Minister Van Gennip (Social Affairs and Employment). The proposal has two main objectives: reducing false self-employment and providing a clear assessment framework for workers and employers to better understand their legal position.

The standard 'working under authority' (control) is structured around three main elements:

- A.** Work-related supervision;
- B.** Organizational integration;
- C.** Working at one's own expense and risk (a counter-indication for the existence of an employment contract).

These main elements are further elaborated with various indicators to clarify when work can be performed outside of an employment relationship. Additionally, it is assessed whether the worker generally behaves as an entrepreneur in the marketplace. This includes examining the number of clients the worker has on an annual basis and whether they are entitled to tax benefits associated with entrepreneurship.

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The public consultation for this legislative proposal closed on November 10, 2023, and received 1,111 public responses. Various industry associations and freelancer organizations responded critically, particularly regarding the integration criterion, the role of entrepreneurial criteria in assessing the employment relationship, and the weighting of the different elements. These issues will be the subject of intense political debate later this year. The new cabinet will need to make a decision on this matter. However, in the Coalition Agreement, there is a stated desire to continue developing this legislative proposal.

At the time of writing, the VBAR has not yet been submitted to the House of Representatives. Former Minister Karien van Gennip, has sent the draft VBAR law to the Council of State for expert advice. Implementation, if all goes well, is currently planned for January 1, 2026.

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CONCLUSION, CONSEQUENCES & PREPARATION

A few key conclusions:

- The Tax Authority will intensify enforcement starting January 1, 2025.
- By that time, there will still be no new law clarifying the criteria for working with freelancers.
- There are still plenty of opportunities to work actively as a freelancer for clients.
- Pay attention to the criteria from the Dutch Supreme Court's Deliveroo ruling (see page 7).
- The actual situation is decisive, not what is documented on paper. In legal jargon, this is referred to as “substance over form.”



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As stated before, it's still very much possible to work as a freelancer for clients in 2025. Regardless, we advise you to take the following steps:

- Carefully read the job description: ensure that the assignment you take on is clearly defined as a project and not a temporary position. This should include a clear job description. Discuss this thoroughly with the client to avoid misunderstandings.
- Clients are currently assessing whether assignments are suitable to be carried out by freelancers. At HeadFirst Group, we use the following scoring system:
 - **Green:** assignments that can proceed without issues for the time being;
 - **Orange:** assignments where there is doubt about whether they can be carried out by a freelancer. Conditions may need to be adjusted;
 - **Red:** there is a high likelihood that this assignment must be performed by an employee under a contract of employment.

HeadFirst Group offers options for alternative contract forms. In consultation, we can implement this in an appropriate manner.

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Pay particular attention to the following situations:

- The nature and duration of the assignment: There is no maximum duration or weekly commitment for an assignment. However, the longer an assignment is, the more it adds to the likelihood that an employment contract exists.
- Authority as an indicator: Critically assess with the client how the tasks are determined: there can be no work-related management.

Support from HeadFirst Group

HeadFirst Group provides you with tools and supports you in developing your own checklist, allowing you to ultimately make the decision and implement the checklist within your organization. Furthermore, we help to map the current situation and advise on what to do with orange or red assignments.





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