

## **Deregulation Assessment of Work Relationships Law (DBA): Successor to the VAR declaration**

The Deregulation Assessment of Work Relationships Law (DBA) is the successor to the Declaration of Independent Contractor Status (VAR). The Upper House of the Dutch Parliament has already assented to this law and the termination of the VAR is a fact. What is the law comprised of? What are the consequences for you in practical terms?

### **The VAR disappears**

In the current situation companies must ask contractors for a Declaration of Independent Contractor Status (VAR) so that the employer knows that no wage tax needs to be withheld and paid out. According to the government, this regulation might encourage pseudo self-employment: people who are working as independent contractors on paper but who are actually just employees. With this new law, the government wants to combat false constructions and that is why the VAR is disappearing.

### **What will the alternative be?**

The new law makes both the contractor and the employer responsible for the matter of whether or not an employment relationship exists. Contractor and employer come together in a contract which stipulates under which conditions work activities will take place. This will reveal if wage tax needs to be paid. Contractor and employer can use the model contracts compiled by the Dutch Tax Authority for this. It is also possible to have the Dutch Tax Authority assess your own contracts. If an approved (model) contract is used, both parties can count on a degree of certainty regarding the consequences of the wage taxes. There are some snags when it comes to using the model contracts. The certainty only applies if the **work is actually carried out according to the contract submitted**. The contents of a written contract and how it is actually carried out in practice is not always the same.

### **The agreement and the actual practice**

The Dutch Tax Authority solely assesses the contract on the elements that are relevant in determining whether the obligation exists to pay wage taxes. The Dutch Tax Authority does not provide a definitive answer regarding the existence or non-existence of a fictitious employment relationship. This means that the employer will not know for sure beforehand whether or not he must withhold wage taxes. If, in practice, the work is not, or not completely, carried out as according to the contract that was approved by the Dutch Tax Authority, the collaboration can still be qualified as a (fictitious) employment relationship upon which the Dutch Tax Authority may impose a correcting fee or correcting tax assessment.

## **Employers also run a risk**

Only if the employer and the contractor actually work according to the approved contract do neither party run the risk of being faced with corrective assessments and fines. As opposed to the VAR, this risk applies not only to the contractor, but to the employer as well. The employer plays a large role in the choice and realization of the contract and therefore also carries a large responsibility.

## **Start date 1 May 2016**

The law goes into effect on 1 May 2016. After this date the VAR disappears. The government has indicated that for the first year an “implementation phase” will apply during which the Dutch Tax Authority will not actively pursue investigations.

Does your company work with freelancers with a VAR? Do you know how you will formulate this collaboration in the future? Will you continue to hire freelancers?

We can offer you advice when it comes to your decision to hire freelancers and how to do so. For more information, please send an e-mail to [international@acconavm.nl](mailto:international@acconavm.nl).

Our lawyers and tax advisors would be more than happy help you evaluate your situation.

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