

Checklist abolition VAR

As a result of the 'Wet DBA' (DBA legislation), the Declaration of Independent Contractor Status (Verklaring Arbeidsrelatie, VAR) has ceased to exist per 1 May 2016. What effect will this have on your business? We have compiled a handy checklist so that you can react to the changes. You have until 1 May 2017 to change your way of working. Make sure that you have adapted your business to the new legislation before that time.

What is changing?

As of 1 May 2016, all rules around the VAR have been abolished and the principal and the contractor must decide between them whether their relationship will be characterized as an employment contract or a fictitious agreement (in which case the principal must withhold wage tax on behalf of the contractor), or a situation in the contractor will pay the premiums and wage taxes.

The tax authorities assess the relationship based on the facts and circumstances, and will, if unjustly no wage tax has been withheld, demand a correction from the principal/ employer or impose an assessment for the wage taxes, potentially including a fine.

The principal/employer therefore becomes jointly responsible for the fiscal qualification of the relationship with the contractors they do business with.

Parties can use a model or example agreement already approved by the tax authorities, or submit their individual contract to the tax authorities for review. If parties work on the basis of (and act in accordance with with) a contract approved by the tax authorities, then it is no longer necessary to prove that there is a no employment contract.

An agreed upon contract however, does not give guarantees about the fiscal status of the contractor for income tax purposes.

Points to note for clients/employers

- As of 1 May 2016, the VAR has been abolished. Certainty about the duty to withhold premiums and wage taxes after this date can only be obtained if a general model agreement, an example agreement or an individual agreement pre-approved by the tax authorities is used.
- A transitional period applies until 1 May 2017, provided you are working to prepare your company operations to be in line with the new legislation.
- An exemption only applies if work is performed according to the contract. The actual duties performed ultimately determine the status of the relationship.



Step-by-step plan for your contract



1 Screen the contractor

Risks due to previous employment or other circumstances?



2 Identify

Register the details of the contractor hired. If that is a B.V. then usually one cannot request a copy of the passport of the employees deployed by that B.V.



3 Register the agreements in a contract.



4 Make sure the contract is in line with the actual situation

and that work is performed according to the contract.



5 Use the highlighted mandatory elements from the model agreement.



6 Refer to the reference number of the pre-approved contract.



7 Let the contractor send a specified invoice (including VAT, unless VAT exempt or VAT reversed). Only pay after receipt of the invoice.



8 Sort out the liability.

Note

Contractors who work at the principal's location, are subject to the duty of care that the principal has for ensuring the safety of the working environment for his own employees.

Note

In the case of duties performed out of a Dutch limited liability company (a 'BV'), you must check the supply chain liability and the Waadi (among others the registration in the trade register as a company for temporary workers).

Points to note for a contractor with a VAR 2014 or 2015

- The VAR has expired on 1 May 2016. Certainty about the duty to withhold premiums and wage taxes can only be obtained by working on the basis of a general model agreement, an example agreement or an individual agreement, pre-approved by the tax authorities.
- There's a transitional period until 1 May 2017, provided you are working to prepare your company operations to be in line with the new legislation.

Points to note for a contractor without a VAR, or with new work

- The VAR has expired on 1 May 2016. Certainty about the duty to withhold premiums and wage taxes can only be obtained by working on the basis of a general model agreement, an example agreement or an individual agreement, pre-approved by the tax authorities.
- There's a transitional period until 1 May 2017, provided you are working to prepare your company operations to be in line with the new legislation.

Note

The consequences of fictitious employment contracts (including a supervisory director) have not been covered here.

Contact

Would you like more information, or would you like to know what consequences the abolition of the VAR has in your specific situation, please contact your regular contact at Grant Thornton.

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