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The Netherlands – Law Amends Tax Rules for Independent Contractors, Board Members

by Jurgen Stormmesand,
Meijburg & Co., Amsterdam
(Meijburg & Co. in the
Netherlands is a KPMG
International member firm)

New legislation has been enacted in the Netherlands which may impact independent contractors and the companies (their “clients”) that engage their services in respect of their tax treatment. Additionally, the legislation has consequences for supervisory board members.

Why This Matters

Independent contractors working for clients generally hold a self-employed statement (in Dutch, *Verklaring ArbeidsRelatie*, or “VAR”). All VARs in circulation will lose their validity as of 1 May 2016, and it will no longer be possible to apply for a new one. There will be, instead, a system of pre-approved agreements that apply for companies and their independent contractors. Such companies will have to make arrangements to secure this agreement and obtain the approval of the Dutch tax authorities. Failure to conform to the new rules could subject the companies to an income tax withholding obligation and social security contributions, with interest and penalties assessed.

As of 1 January 2017, supervisory board members are no longer considered deemed employees. Companies may refrain from withholding income tax and social security contributions on supervisory board fees as of 1 May 2016, if agreed between the company and the supervisory board member¹.

As of 1 January 2017, supervisory board members who benefit from the Dutch expatriate concession (30% ruling) must elect this deemed employment status in order to retain this benefit. Conditions apply to make this election.

New Legislation and Its Consequences

On 2 February 2016, the Assessment of Employment Relationships Deregulation Act (*Wet deregulerend beoordeling arbeidsrelatie*, “DBA Act”) was passed by the Dutch Upper House. The DBA Act, which replaces the current practice of VAR, will enter into force on 1 May 2016.

Withholding for Principals/Clients of Independent Contractors

Currently, the obligation to withhold Dutch income tax and social security contributions does not apply to the client of an independent contractor who holds a qualifying VAR and who meets certain conditions.

As of 1 May 2016, all VARs in circulation will lose their validity and new VARs can no longer be applied for. Instead, a system of pre-approved agreements will apply. The income tax withholding obligation is only waived if an agreement is in place that has been approved by the Dutch tax authorities and the activities performed by the independent contractor are done so in accordance with the agreement. If either one of the conditions is not fulfilled, the client of an independent contractor has to operate withholding of income and social security contributions on payments to the independent

contractor. Non-compliance may result in additional assessments (with interest and penalties assessed), retroactively up to a maximum five years starting from 1 May 2016.

Ramifications for Supervisory Board Members: Withholdings of Income Tax and Social Contributions, Recourse to 30% Ruling

Under current law, supervisory board members are deemed to be employed by the entity under their supervision. Provided the supervisory board member has a valid VAR, no payroll tax and social security contributions have to be withheld on the board member's remuneration and no employer contributions under the Healthcare Insurance Act are required.

As of 1 January 2017, supervisory board members are no longer considered deemed employees. Companies may refrain from withholding income tax and social security contributions on supervisory board fees as of 1 May 2016, if agreed between the company and the supervisory board member.

This might have consequences for the tax position of the nonresident supervisory board member (which would include, the application of the 30% ruling). The position as of 1 May 2016 and/or 1 January, 2017, should be considered carefully by companies in consultation with their qualified tax advisors.

Footnote:

1 See (in Dutch): <https://zoek.officielebekendmakingen.nl/stcrt-2016-14756.html> .

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For more details, see "Introduction of Assessment of Employment Relationships Deregulation Act Amends Tax Rules on Supervisory Board Members," published by the KPMG member firm in the Netherlands: <https://www.meijburg.com/news/introduction-of-assessment-of-employment-relationships-deregulation-act-amends-tax-rules-on-supervisory-board-members> .

The information contained in this newsletter was submitted by the KPMG International member firm in the Netherlands.

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