

## Recipients and vicarious liability

Contracting parties that outsource activities and insource personnel would do well to realize that there are (financial) risks associated with this. If the contracted party or the supplier of personnel fails to pay payroll tax and social security contributions and, possibly, VAT on the services provided to the contracting party, its recipients and vicarious liability can mean that it will be forced to pay the unpaid taxes and social security contributions to the Dutch tax authorities. This can turn out to be very expensive!

### When are you liable?

When a contracting party insources personnel or outsources work as a contractor/self-constructor, it will receive an invoice from the outsourcer/sub-contractor. The invoice covers, for example, the payroll costs of the employee(s), a mark-up for costs and profit and VAT (in the case of insourced personnel). The outsourcer/sub-contractor must remit payroll tax and social security contributions and VAT to the Dutch tax authorities.

Where the outsourcer/sub-contractor fails to meet its tax remittance obligation, the Dutch tax authorities will first impose additional payroll tax and social security contributions assessments (and VAT assessments) on the outsourcer/sub-contractor. If they do not pay the additional assessments, the Dutch tax authorities can hold the contracting party liable for the unpaid payroll tax and social security contributions (and VAT) payable by the outsourcer/sub-contractor for the service provided.

### What are you liable for?

The Dutch tax authorities can hold the contracting party liable for the unremitted payroll tax, social security contributions, income-related contributions under the Healthcare Act and employee insurance contributions. In exceptional circumstances the liability can also cover the interest and costs imposed on the outsourcer/sub-contractor. The client is not liable for any tax penalties imposed.

In the case of the insourcing of personnel, the Dutch tax authorities can also hold the contracting party liable for the VAT payable by the outsourcer in respect of the insourced staff.

### Indemnification measures

A contracting party can partly or fully limit the liability claim by:

1. depositing part of the invoice from the outsourcer/sub-contractor in the G account of the outsourcer/sub-contractor. This involves making an estimate of the amount that needs to be deposited to cover taxes and social security contributions. Indemnification will only be given for this part if stringent conditions (invoice, payment, and accounts and records) are met;
2. insourcing personnel via an employment agency. A general indemnification can apply here if the following conditions are met:
  - The employment agency from which the personnel was insourced meets the NEN 4400-1 or NEN 4400-2 standard and is entered in the register of the Labor Standards Foundation (Stichting Normering Arbeid; SNA).
  - The client must transfer 25% of the invoiced amount (including VAT) to the G account of the employment agency entered in the SNA register. If the VAT falls under the reverse-charge mechanism, then 20% of the invoiced amount must be deposited. Other rules apply to employment agencies listed on the stock exchange.
  - The payment to the G account meets the stringent conditions (invoice, payment and accounts and records) for indemnification payments.
  - The contracting party must be able to prove the identity of the insourced personnel and – if necessary – that the employees have a valid residence and work permit.

## **In conclusion**

In addition to recipients and vicarious liability, other risks also need to be taken into account when outsourcing activities or insourcing personnel, such as the Placement of Personnel by Intermediaries Act (penalty risk), the Employment Conditions of Seconded Employees in the European Union Act (penalty risk) and the Labor Market Fraud (Bogus Schemes) Act (vicarious liability for wages).

If, as a contracting party, you insource personnel and/or are involved with contracted assignments, we recommend that you take a critical look at the tax aspects of this and check whether you have taken adequate measures to limit as much as possible the risks associated with recipients and vicarious liability as well as other risks. If you have questions about recipients and vicarious liability or other risks, please feel free to contact one of our tax specialists, who will advise you accordingly.

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