

Supervisory board members and payroll tax

PEOPLE SERVICES

Deemed employment of supervisory board members

Under legislation that applied before 2017, supervisory board members were regarded as being in the deemed employment of the entity they were charged with overseeing. This meant that payroll tax and social security contributions were to be withheld and remitted and that employer contributions under the Healthcare Insurance Act were payable. However, if the supervisory board member had a valid VAR-wuo (Declaration of Independent Contractor Status: profits from business activities) or VAR-dga (Declaration of Independent Contractor Status: director-major shareholder) no payroll tax and social security contributions had to be withheld and no employer contributions under the Healthcare Insurance Act were payable.

Another way to avoid the withholding and remittance of payroll tax and social security contributions was via the Continued Payment of Wages rules. These rules are intended for supervisory board members who perform their supervisory activities at an entity on the basis of an employment contract with their own private limited liability company (commissaris-bv) (as main employer). The supervisory activities at the entity must then fall within the tasks prescribed by the commissaris-bv. If that was the case, the supervisory board member, the commissaris-bv and the entity involved could jointly request the Dutch tax authorities to transfer the withholding obligation to the commissaris-bv.

Before January 1, 2017 the following thus applied: If no VAR-wuo, VAR-dga or Continued Payment of Wages rules applied, payroll tax and social security contributions had to be withheld and the employer contributions under the Healthcare Insurance Act were payable by virtue of the deemed employment of the supervisory board member. Supervisory board members did not have to pay any employee insurance contributions.

DBA Act and the rescinding of the deemed employment of supervisory board members

The implementation of the Assessment of Employment Relationships Deregulation Act (Wet deregulerend beoordelen arbeidsrelaties; DBA Act)

as of May 1, 2016 rescinded the VAR. This meant that, in principle, payroll tax and social security contributions must always be withheld and remitted.

However, in a policy statement issued by the Deputy Minister of Finance, approval was given to disregard the application of deemed employment for the period May 1, 2016 through January 1, 2017. This was optional and only possible if the particular entity and the supervisory board member requested this. As a consequence of this setting aside of deemed employment, supervisory board members no longer fall under the Payroll Tax Act and therefore no payroll tax and social security contributions and employer contributions under the Healthcare Insurance Act are payable on their remuneration. In that case, supervisory board members must pay their own personal income tax and the income-related contributions under the Healthcare Insurance Act. Supervisory board members no longer have to be included in the payroll records.

As of January 1, 2017 deemed employment has been permanently rescinded. Supervisory board members thus no longer fall under the Payroll Tax Act and must pay personal income tax and the income-related contributions under the Healthcare Insurance Act themselves. Supervisory board members no longer have to be included in the payroll records. As of January 1, 2017 it is no longer necessary to apply the Continued Payment of Wages rules in order to achieve the desired effect of not having to withhold payroll tax and social security contributions on the remuneration paid to supervisory board members.

Opt-in rule

Despite the fact that deemed employment of supervisory board members has been permanently rescinded, it is still possible for them to continue to fall under the Payroll Tax Act. By opting to be an employee, a supervisory board member will voluntarily fall under the Payroll Tax Act. This opt-in rule as constituted by law means that employment that does not qualify as 'real' or 'deemed' employment for tax purposes is nevertheless still regarded as employment.

The consequence of opting-in is that the supervisory board member is regarded as an employee and therefore, in principle, all the provisions of the Payroll Tax Act, including the 30% ruling, will apply to them. The supervisory board member must again be included in the payroll records.

The opt-in rule can be beneficial for the application of the 30% ruling, as supervisory board members can no longer apply it unless they 'opt-in'. If the income of the supervisory board member qualifies as taxable profit for the purposes of personal income tax, then the opt-in rule cannot be applied.

It is only possible to take advantage of the opt-in rule through a joint request by the supervisory board member and the entity. This request can be made via the 'Payroll tax and social security contributions Statement on Opting-In' form on the website of the Dutch tax authorities.

Because the situation for each (foreign) supervisory board member differs, we recommend examining the advantages of opting-in on a case-by-case basis.

IB 47 form

We recommend that supervisory board members who do not work via their own company or commissaris-bv and who are not included in the payroll records of the relevant entity (the opt-in rule is thus not applied) complete an IB 47 form each year. This is a type of annual income statement for individuals who do not work for an entity in the capacity of an employee/entrepreneur.

The IB 47 form can be submitted to the Dutch tax authorities and a copy must be provided to the individual who does not work for the relevant entity in the capacity of an employee/entrepreneur. The IB 47 form can be found on the website of the Dutch tax authorities.

Personal income tax obligation for supervisory board members

As payroll tax and social security contributions and the income-related contributions under the Healthcare Insurance Tax no longer have to be withheld, supervisory board members must report their income in a personal income tax return.

Supervisory board members and VAT

The VAT obligation in respect of the remuneration of supervisory board members is not affected by the rescinding of deemed employment. As of January 1, 2013, each supervisory board membership must be assessed separately to determine whether it can be regarded as a VAT taxable person.

In most cases a supervisory board member will be a VAT taxable person and VAT will thus have to be paid on their supervisory board remuneration. In exceptional cases, a supervisory board member may not qualify as a VAT taxable person. However, this has to be assessed on a case-by-case basis.

We would be pleased to help you with the tax implications of the above changes for supervisory board members.

Contact

For more information, please approach your regular contact person at Meijburg & Co or call the following number and you will be transferred to the relevant contact person: +88 909 91129.

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