

Progress on ‘working as a self-employed person’

On June 15, 2020, the fifth letter describing the progress made with respect to ‘working as a self-employed person’ was published. In this letter, the Minister of Social Affairs and Employment and the Deputy Minister of Finance inform the Lower House of Parliament of the developments and the follow-up steps with regard to the measures in the field of self-employment.

While the fourth letter (December 2019) introduced the ‘minimum rate’ and the ‘self-employed person’s statement’ as replacements for employment contracts with a low rate and opt-outs (high rate), the fifth letter now proposes to abolish these altogether. On balance, the web module will still have to be elaborated in more detail and a direct distinction is no longer made between high and low rates when determining whether a contractor is working on a self-employed basis.

We discuss the fifth letter in more detail below.

No further elaboration of minimum rate and self-employed person’s statement

It is proposed that neither the measure for the lower end of the labor market (the minimum rate) nor the measure for the upper end of the labor market (the self-employed person’s statement) should be elaborated in more detail. The reasons for this are the high administrative burden, lack of clarity, lack of support and the impracticability and unenforceability of the measures for the implementing bodies. Particularly the necessary calculation of the applicable hourly rate has proven to be too complicated to carry out efficiently in practice.

Second test phase of web module

The measures include a web module, an instrument designed to obtain advance certainty concerning the qualification given to the employment relationship between principal and contractor. If, on the basis of the answers filled in, it appears that there is no employment relationship, the web module will issue a principal’s statement. This statement gives the principal advance certainty that no payroll tax and social security contributions have to be withheld or remitted and that no employee insurance scheme contributions have to be paid. The principal’s statement is valid insofar as the web module was truthfully filled in and the work is carried out accordingly in practice.

There is no obligation to fill in the web module, but it can serve as an aid in the qualification of an employment relationship.

Following the first test phase, various amendments were made to the web module questionnaire. It was also decided to include a separate questionnaire for ‘contracting work’ and ‘intermediation’. The government will examine and elaborate on these questionnaires in more detail during the summer months.

As in the first test phase, in the second test phase a team of experts studied practical cases to determine whether these could be used to give an opinion on the nature of the employment relationship and what that opinion would be. A total of 84 cases were assessed in this second test phase. These are all cases where the principal has

completed the standard questionnaire. In order to produce an outcome with the web module, a number of points are awarded to the (combinations of) questions. The fewer points the answers to the questionnaire score, the more this indicates working outside the context of an employment relationship.

From the test results it appears that the web module indicated a principal's statement in 21 cases, an employment relationship in 40 cases and in 23 cases (27%) the module could not give an opinion. It is striking that the test results showed that in almost half of the cases in which a principal hires a self-employed person, the web module indicates a strong employment relationship. It is important to note that this opinion is based on the 84 assessed cases and that these do not include any self-employed persons selling products, nor is any work carried out for private individuals.

It also follows from the test results that there is a margin of error if the outcome of the web module is compared with the outcome based on the expert assessments. Of the 21 cases where the web module concludes a principal's statement, 57% very closely matched the expert statement, 29% matched the expert statement quite well and in 14% of the cases the experts had different opinions and these may have been incorrectly issued by the module.

Pilot study

Despite the margins of error found in the assessments made with the web module, these are, in the government's view, acceptable and it is clear from the fifth letter that the government will want to continue along the chosen path of the web module.

It is expected that the government will start a pilot study this autumn, which will not include contracting work or intermediation. In the pilot study phase, no certainty can yet be derived from the outcome of the web module, which in this phase serves as an information tool for principals to clarify the qualification of the employment relationship.

After the pilot study phase, the government intends to introduce the web module and, after the study has been running for six months, it will be examined to what extent (phased) enforcement can commence. As the current enforcement moratorium expires at the end of the year, a decision on its further extension will be taken in the autumn.

Should you have any questions about the above, Meijburg's advisors would be pleased to use their expertise to help you.

Meijburg & Co
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