

Sixth progress letter ‘Working as a self-employed person’

On November 16, 2020 the sixth progress letter ‘Working as a self-employed person’ was published. In this letter, the Minister of Social Affairs and Employment and the Deputy Minister of Finance update the Lower House of Parliament on the status and follow-up steps with regard to the measures on self-employment.

As reported in the fifth progress letter (June 15, 2020), various proposed measures have been withdrawn, leaving only the web module as a measure regarding working as a self-employed person. The sixth letter elaborates on the web module, the pilot of the web module and the associated timeline. The pilot is expected to begin on January 11, 2021. The phasing-out of the current enforcement moratorium will not begin before October 1, 2021. Lastly, other broader, relevant measures on working as a self-employed person are dealt with in the sixth letter.

The progress letter is discussed in more detail below.

Background to the measures on working as a self-employed person

In their letter, the Minister and the Deputy Minister address the structural problems with regard to the functioning and structure of the labor market. For example, various reports show that working as a self-employed person or as an employee involves a poorly organized system of types of contracts and an unlevel playing field of tax, social security law and labor law. In combination with the limited enforcement, this makes it easy and attractive to have work performed by self-employed persons.

The corona crisis emphasizes yet again the vulnerability of many of the self-employed and the necessity of measures for the self-employed.

Web module

One of the measures on working as a self-employed person is the web module. This is a tool with which the government aims to provide principals with clarity and, where possible, certainty on the qualification of the employment relationship for the purposes of payroll tax and social security contributions. The distinction between qualifying as a self-employed person or as an employee is important, given the large difference in treatment between contractors and employees.

After the previous two test stages (see [our newsletter dated June 17, 2020](#)), the web module has been further examined and elaborated on. With some delay due to the corona crisis, the pilot of the web module is expected to begin on January 11, 2021. The pilot will last at least six months. The pilot is intended to provide insight into the functioning of the web module and the practical significance it can have for principals in clarifying the nature of the employment relationship and – where necessary – in structuring the employment relationship.

‘Contracting work’ and ‘intermediation’ questionnaires

The fifth progress letter dated June 15, 2020 stated that the questionnaires on ‘contracting work’ and ‘intermediation’ were not yet ready. The questionnaire for contracting work and the associated weighting is now ready and is part of the pilot, together with the previously published standard questionnaire. The intermediation

questionnaire is not yet ready; in the coming months it will be examined whether the intermediation situation can be included in the web module.

How the pilot web module works

As soon as the pilot is live, everyone will be able to complete the online standard questionnaire anonymously. No privacy-sensitive data (such as the IP address) will be registered and/or saved. This means that the completed web module will not be able to be traced back to a specific principal. It is therefore not possible to save the questionnaire part way through completing it.

After the pilot web module has been completed, the following outcomes are possible:

- Principal's statement: the assignment can be performed outside the employment relationship (for example by a self-employed person).
- Indication of an employment relationship: there are strong indications that there is a (deemed) employment relationship.
- No decision possible: based on the answers given it is not clear whether there is work that can take place outside the employment relationship or in an employment relationship.

During the pilot stage, these outcomes have no legal status. This means that principals cannot derive any certainty from them. During this stage, the web module thus only acts as an information tool for principals. In addition to the online explanation, a help desk will be available if principals have questions about the interpretation of the questions and answers in the web module.

Evaluation of the pilot

After a pilot period of (at least) six months, an evaluation will take place and a decision on the potential introduction of the web module can be taken.

The decision on whether to introduce the web module will take into consideration factors such as the outcome of the 'broad public dialog', the options in case of abuse and improper use and the options for enforcement.

In addition to the evaluation of the web module, after the pilot it will also be examined to what extent (phased) enforcement can begin. The phasing-out of the current enforcement moratorium will not begin before October 1, 2021. For the time being, the enforcement moratorium will therefore be extended. However, during the moratorium the Dutch tax authorities may make adjustments and/or impose penalties if there is malicious intent or if instructions (for example after an on-site visit) are not complied with within a reasonable period.

Other relevant measures for working as a self-employed person

Platform work

The letter also discusses a proposed measure to strengthen the legal position of platform workers. It concerns a legal presumption (of the existence of an employment

relationship) about platform workers. The government will elaborate on this and investigate its effectiveness and tenability under EU law. In addition, whether the legal presumption offers opportunities for other, specific groups of workers will be looked into.

Collective agreements

The letter also pays attention to the possibility of introducing, at the Collective Labor Agreement level, measures on working as a self-employed person. The Minister of Social Affairs and Employment will actively report on such collective agreements, such as the minimum rate for self-employed persons included in the 2020-2021 Collective Labor Agreement for Stage and Dance, which was declared universally binding by the Minister.

Occupational disability insurance for self-employed persons

Another measure mentioned in the letter is the statutory obligation to take out insurance for the occupational disability risk for self-employed persons. The government is working out how this part of the Pension Agreement can be converted into a feasible, explainable and affordable scheme. A framework letter on this is expected at the end of this year.

Reducing the differences between the self-employed and employees

The letter recognizes that the qualification of an employment relationship is under a lot of pressure, because there is an unlevel playing field. The government will therefore continue to focus on reducing the differences between the self-employed and employees.

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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