

**temper**

# Collaborate with independent contractors the compliant way

According to the guidelines of the Tax Authorities



# Intro

The Netherlands currently has over 1.3 million independent contractors. People who play a crucial role in the labour market and fulfil a wide range of different assignments. The vast majority of this group very consciously choose to be self-employed. This usually stems from the desire to gain more autonomy and control over their working lives, and thus decide where, when and for whom they work.

**Misconception: the Netherlands has many forced self-employed.**

**Only 7%** of independent contractors in the Netherlands say they became self-employed out of necessity.

There has been a lot going on in recent months about working with independent contractors. When is someone truly self-employed? And when should someone actually be employed? The answer is often nuanced, and depends on multiple factors. This means that, as an organisation, it is extra important to weigh up this thoroughly. This may sound difficult, but with the right support, it is doable.

## In this handout, we discuss:

1. The legal framework →
2. The Tax Authorities enforcement strategy →
3. Practical tools to be well-prepared →

Step 1: Template hiring policy →

Step 2: Template qualification employment relationship →

# 1. Legal framework

The Netherlands is currently subject to the DBA Act (Deregulating Beoordeling Arbeidsrelaties). This law gives criteria to determine whether someone works as an independent contractor or should be employed by a client. This law, which went into effect in 2016, replaced the old VAR declaration and aimed to combat false self-employment.

**Misconception: The Verduidelijking Beoordeling Arbeidsrelaties (VBAR) Act is already active and leading the qualification question.**

VBAR is in fact currently only a bill that is still before the Council of State at the time of writing (November 2024).

The law places particular emphasis on three criteria for making distinctions:

- 1 Personal labour:** Must the person do the work himself, without the possibility of subcontracting the work to others?
- 2 Wages:** Are they paid directly for work done and little freedom to set rates themselves?
- 3 Relationship of authority:** Is there authority or substantive direction from the client over the work?

## Deliveroo ruling

As with many other laws, the legal text alone does not provide sufficient guidance to properly answer the qualification question (is someone an independent contractor or an employee). Therefore, here too, case law (previous decisions by judges) is important to further fill in the framework of the law.

In the case of the DBA Act, the most important case law is the Deliveroo ruling. In this judgment, the Supreme Court defined **nine criteria** that help to correctly interpret the relationship between client and worker. More on this later!

## Enforcement moratorium

As previously mentioned, the DBA Act was introduced in 2016 with the aim of clarifying the relationship between clients and independent contractors and preventing false self-employment. However, this law immediately caused a lot of discussion in the market, as the criteria were seen as unclear. As a result, the DBA Act was fairly quickly labelled as 'unenforceable'.

The cabinet therefore introduced the enforcement moratorium soon after the introduction of the DBA Act. The idea here was not to enforce the DBA Act until there would be new and clearer legislation. The exact interpretation of this enforcement moratorium has changed over the years. But initially it meant that the Tax Authorities would not enforce the DBA Act. Over time, this approach has softened somewhat, with the current rule (November 2024) being that the Tax Authority does check, but can only proceed to impose correction obligations or possible fines in case of malicious intent. In addition, it is currently the case that the Tax Authority also has the option of issuing a so-called 'designation'. This means that in case of a violation, a client is first given the chance to reshape the relationship, or still include the worker as an employee in the payroll.

### **Misconception: The Tax Authorities will only start enforcing the DBA Act on 1-1-2025.**

In fact, the Tax and Customs Administration already monitors the DBA Act (and has already intensified these activities in 2024). **The biggest difference** is that on 1-1-2025, the instrument 'designation' will disappear.

In September, the cabinet announced that the enforcement moratorium will be lifted from 1 January 2025. This puts the DBA Act back in the spotlight. In concrete terms, this mainly means that the instrument 'designation' will be abolished, and that the Tax Authorities will again have the possibility to immediately impose a correction obligation in case of violations. **Note:** the Tax Authority can never go back further than 1-1-2025.



## 2. Risk-based enforcement strategy

From 1 January 2025, the enforcement moratorium will be lifted. As in 2016 (when the DBA Act was introduced), there has been a lot of unrest in the market. After all, the clear legislation is not there yet. And even though the Deliveroo ruling offers some guidance, a unified and clear framework that is easy to apply is lacking. There have therefore been calls from politicians in The Hague for a soft landing. A number of motions were therefore adopted, calling for a clear assessment framework and calling for risk-oriented enforcement only in the first instance.

Risk-oriented enforcement means that problem cases such as forced self-employment, underpayment, obvious false self-employment or labour migration constructions will be looked at in particular. "There really won't be a tax inspector behind every tree soon," says the Tax Administration. Indeed, the team dealing with enforcement on the DBA Act will remain the same size as in 2024.

### **Misconception: Tax authorities will be on every independent contractor's doorstep in January to investigate.**

The Tax Authorities will start risk-based enforcement, and the team dedicated to this is the same size as in 2024.



## Layering model

The Tax Authorities have indicated that they will work according to the layering model. This means that if an organisation can demonstrate during an initial inspection that it is actively working to counter false self-employment within the organisation, the Tax Authorities will not investigate further (will not 'pierce through' to the next layer).

It is therefore important to set up this first layer in the best possible way.

You can do this using the following **two steps**:

**Step 1: Define how the hiring process works** in your organisation (in clear policies) and specify working relationships;



**Step 2: Qualify those employment relationships** using the nine points of view from the Deliveroo judgment and the DBA Act.



## 3. Practical tools to be well-prepared

To execute these two steps effectively, we have included templates and tools in this document:



**Hiring policy template [Step 1]**



**Employment relationship qualification template [Step 2]**



These tools are designed to help you approach the hiring of independent contractors thoughtfully, in accordance with the guidelines of the Dutch Tax Authority, and to be optimally prepared for potential audits from the Tax Authority.

# Step 1: Document how hiring is managed within the organisation.

This is step 1/2 according to the Tax Authority's layering model. The recommendation is to establish clear policies. To support you with this, we've included a template that you can use.

# Template hiring policy [organisation]

## Organisation details

Organisation name: \_\_\_\_\_

Chamber of Commerce number: \_\_\_\_\_

Policy maker: \_\_\_\_\_ Name and position of person in charge

Policy date: \_\_\_\_\_

Last revision: \_\_\_\_\_ Date last updated

## 1. Objective and scope of the policy

### Objective

This policy aims to provide clear guidelines for qualifying different employment relationships. The aim is to always apply the right form of contract and thus minimise the risks of false self-employment.

Complete

### Scope

This policy applies to all hiring of staff,  
both on a temporary and self-employed basis, within \_\_\_\_\_ Name of organisation

## 2. Employment relationships and deployment criteria

### 2.1 Permanent employment contracts

► **Description:** Salaried employees on permanent contracts.

► **Deployment criteria:** Used for long-term positions that are part of the core activities of the organisation and require structural direction and authority.

Complete



► Examples of features:

Complete

## 2.2 Temporary Services (Temporary Contracts)

► **Description:** Employees employed for a limited period through a temporary contract.

► **Deployment criteria:** Used for temporary positions or projects where temporary reinforcement is needed. There is a relationship of authority, but the work is temporary.

Complete

► Examples of features:

Complete

## 2.3 Temporary workers

► **Description:** Employees hired through an employment agency for an agreed period of time. Organisation itself is therefore not a legal employer.

► **Deployment criteria:** Used for temporary positions or projects where temporary reinforcement is needed. There is a relationship of authority, legal employer status lies with the employment agency.

Complete

► Examples of features:

Complete

## 2.4 Independent contractors (Zelfstandigen Zonder Personeel)

- **Description:** Hiring independent professionals on a contract basis.
- **Deployment criteria:** Used for assignments where additional support or expertise is needed. These assignments are not structural in nature (short-term), and the independent contractors has a higher degree of autonomy (e.g. in determining working hours or execution of work) than own employees. Deployment is tested against [the nine Deliveroo criteria](#).

Complete

- Examples of features:

Complete

## 3. Hiring process and monitoring

### 3.1 Control and monitoring

Guidelines for deployment of self-employed workers [fill in/in]:

- Independent contractors cannot be used for assignments lasting longer than \_\_\_\_\_
- Independent contractors must always earn at least \_\_\_\_\_ % above the prevailing CLA wage
- Independent contractors always have the right to have themselves freely replaced
- Independent contractors enter into an assignment contract directly and have a say in how that contract is fleshed out
- Independent contractors are not invited to company parties and are not entitled to benefits (Christmas package, free lunch) to which employees are entitled

Complete

### Evaluation of individual working relationships:

For each role (and, if necessary, for each individual worker), the Deliveroo criteria are used to determine whether the work constitutes an employment relationship or self-employment. See the attachment for this evaluation (step 2).

Complete

### 3.2 Accountability and Verification

**Internal Evaluation:** Contracts and practices are regularly evaluated to ensure that the employment relationship still meets the conditions of the DBA Act and that there is no false self-employment.

## 4. Responsibilities and Contact

### Responsible Department/Contact person

Name: \_\_\_\_\_ Responsible person or department name

Contact information: \_\_\_\_\_ Email and phone number

\_\_\_\_\_

This policy is reviewed annually and, if necessary, adapted to current legislation and internal needs.

## Step 2: Qualify these employment relationships according to the 9 criteria from the Deliveroo ruling.

This is step 2/2 according to the Tax Authority's layering model. The recommendation is to qualify these employment relationships per job category (e.g., retail, hospitality, or logistics). You can use [our template](#) for this. Our convenient [scorecard](#) can also serve as a helpful tool.

# Qualification of employment relationships [job category]

Using the 9 criteria used by the tax authorities in assessing false self-employment, explain how you deal with self-employed workers within the organisation. Consult our useful scorecard for this. You will also find it in this document.

**1. Nature and duration of work**

Do the independent contractors perform short assignments and specialist work, for example?

Complete

**2. Mode of operations and working hours determined**

For example, is there complete freedom to decide where, when and for whom a worker works?

Complete

**3. Embedding of the work and the person performing the work in the organisation and its operations**

For example, are independent contractors treated like outsiders (no participation in company outings, training sessions, team meetings etc.)?

Complete

**4. Obligation to perform the work personally**

Is replacement of the independent contractor allowed without limit?

Complete

**5. Manner in which the contractual arrangement of the parties' relationship was established**

For example, is space given to workers to shape the agreement themselves?

Complete

**6. Method of determining and paying remuneration**

For example, is there room for negotiation and payment by invoice?

Complete

**7. Amount of these rewards**

For example, is there a higher hourly rate than prescribed in the collective agreement?

Complete

**8. Commercial risk**

For example, are they paid only for services rendered and therefore not for sickness and leave?

Complete

**9. Economic entrepreneurship**

For example, is there also work with other clients and there is no competition clause?

Complete

Thus, when documenting the above policies, it is relevant and desirable to put the employment relationships along the yardstick of the 9 criteria from the Deliveroo ruling. For this, consult our handy scorecard. You can find it on the next page.









# [1/2] Scorecard: Employment vs. Self-Employment

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It's crucial to properly determine the working relationship between you and the contractor. The Dutch Tax Authority considers the nine different criteria outlined in the Deliveroo ruling to assess whether someone is classified as an employee or an independent contractor. They always evaluate the full context—no single criterion is decisive on its own. Everything is assessed collectively.

Below, we've listed the **nine criteria** to help you check whether the working relationship has been correctly classified.




Evaluate whether there is:

Criteria	Indication of employment Does it involve:	Independence indication Does it involve:	What Temper does
 Nature and duration of work	<ul style="list-style-type: none"> <li>Simple work that <b>does not</b> require specific knowledge or experience.</li> <li><b>Long-term</b> assignments or commitment to multiple services.</li> </ul>	<ul style="list-style-type: none"> <li>Specialised work <b>requiring</b> knowledge and experience.</li> <li><b>Short</b> assignments (individual services).</li> </ul>	<ul style="list-style-type: none"> <li>Via the platform assignments should be defined with <b>clear requirements and qualifications</b>.</li> <li>Assignments are <b>limited</b> to a single shift (average shift duration on the platform is 6.5 hours).</li> </ul>
 How the working hours and the way of working are determined	<ul style="list-style-type: none"> <li><b>Deviate</b> from pre-agreed order, oblige worker to undertake other activities for the employer.</li> <li>Substantive direction during the execution of the assignment, <b>imposition</b> of proprietary methods and rules.</li> <li><b>Restrictions on workers' freedom</b> to refuse assignments or work for other clients</li> </ul>	<ul style="list-style-type: none"> <li>Clear mandate with responsibility for outcome, <b>possibility for workers to refuse requests</b></li> <li>Complete freedom in the execution of the assignment (outside the work instruction).</li> <li><b>Complete freedom</b> to decide where, when and for whom a working gets to work.</li> </ul>	<ul style="list-style-type: none"> <li>On the platform, assignments and requirements are clearly <b>defined in advance</b>.</li> <li>Through the platform, workers have <b>complete freedom</b> in where, when and if they work.</li> </ul>
 Embedding of the work and the person performing the work in the organisation and its operations	<ul style="list-style-type: none"> <li>Making workers <b>part of the organisation</b> (e.g. participation in company outings, training courses, Christmas package).</li> <li><b>Long-term</b> or (mandatory) consecutive assignments.</li> <li>Assignment in line with company's main activity (proprietary work).</li> </ul>	<ul style="list-style-type: none"> <li><b>Treating people as externals</b> (no participation in company outings, trainings, etc.).</li> <li><b>Short</b> assignments that can be accepted individually.</li> <li>Assignment outside main activity of the company (no proprietary work).</li> </ul>	<ul style="list-style-type: none"> <li>Through Temper, workers are encouraged to work for <b>multiple clients</b>. Working full-time for one client is not possible (limit of 660 hours per year).</li> </ul>
 Obligation to perform the work personally	<ul style="list-style-type: none"> <li>Require workers to perform the work <b>personally</b>.</li> <li><b>Restrict</b> substitution (e.g. in job description).</li> </ul>	<ul style="list-style-type: none"> <li>Treating workers as <b>'contractors'</b>.</li> <li>Allow <b>unlimited substitution</b> (both via platform and beyond)</li> </ul>	<ul style="list-style-type: none"> <li>Workers are <b>completely free</b> to be replaced via and outside the platform without needing prior permission from Temper or the client.</li> </ul>
 Manner in which the contractual arrangement of the parties' relationship was established	<ul style="list-style-type: none"> <li>Prescribe <b>fixed agreement</b> (with no room for negotiating rate or cancellation period, for example) to worker.</li> </ul>	<ul style="list-style-type: none"> <li>Giving workers the freedom to shape the agreement themselves (model agreement through the platform is dynamic).</li> </ul>	<ul style="list-style-type: none"> <li>Through Temper, a model agreement is provided, which is dynamically filled in according to the outcome of the <b>negotiation between client and worker</b>.</li> </ul>
 Method of determining and paying remuneration	<ul style="list-style-type: none"> <li><b>Never</b> accept negotiated proposals from workers regarding tariff or otherwise restrict the possibility.</li> <li>Payments <b>without</b> an invoice or not based on actual services rendered.</li> </ul>	<ul style="list-style-type: none"> <li>Give workers the <b>freedom to negotiate</b>, and actually go along with this.</li> <li><b>Payment by invoice only</b>, including VAT (or with KOR exemption), based on services actually rendered.</li> </ul>	<ul style="list-style-type: none"> <li>Temper allows workers to <b>negotiate their rates</b>.</li> <li>Through Temper, workers can <b>automatically send full invoices</b> for their services rendered</li> </ul>

## [2/2] Scorecard: Employment vs. Self-Employment

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Evaluate whether there is:

Criteria	Indication of employment	Independence indication	What Temper does
	Does it involve:	Does it involve:	
 Amount of these rewards	<ul style="list-style-type: none"> <li>Paying workers <b>little to no more</b> than what is prescribed in the collective labor agreement (CAO) or the Minimum Wage Act.</li> </ul>	<ul style="list-style-type: none"> <li>Pay workers significantly (&gt;150%) more than required by the collective agreement (or Minimum Wage Act).</li> </ul>	<ul style="list-style-type: none"> <li>Through Temper, you can <b>never</b> contract for hourly rates <b>below the Minimum Wage Act</b>.</li> <li>Average pay is 150% above prevailing collective agreement wages (market forces).</li> </ul>
 Commercial risk	<ul style="list-style-type: none"> <li><b>Guaranteed payments</b> for workers without commercial risk (including when work is cancelled, or sick).</li> <li>Impose restrictions regarding other commercial activities.</li> </ul>	<ul style="list-style-type: none"> <li>Workers only pay for services actually rendered, <b>without guarantees</b> in advance.</li> <li>Full commercial freedom.</li> </ul>	<ul style="list-style-type: none"> <li>Through Temper, workers basically always bear a commercial risk. They have the (commercial) <b>choice to buy off that risk</b> by transferring their claim to a factoring company</li> </ul>
 Economic entrepreneurship	<ul style="list-style-type: none"> <li><b>Restricting workers' freedom</b> to work for competitors or other clients.</li> </ul>	<ul style="list-style-type: none"> <li>Leave workers <b>completely free</b> to engage in activities outside the assignment relationship.</li> </ul>	<ul style="list-style-type: none"> <li>Contractors working through Temper have several <b>entrepreneurial characteristics</b> (e.g. VAT number, Chamber of Commerce registration)</li> <li>Through Temper, employees work for <b>8 different clients</b> on average.</li> <li>Temper <b>does not impose any restrictions</b> to build its own reputation. This is evidenced, for example, by the fact that they continue relationships they establish through the platforms outside the platform.</li> </ul>

## Want to know more?

Do you have any questions based on this information or need assistance with filling out the templates? Feel free to [contact our team](#); they can help you further.

If you want to learn more about the DBA Act and changes regarding the use of freelancers in 2025, [read more here](#).

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