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Memorandum

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Re **English translation scope of application of the Minimum Wage and Minimum Holiday Allowance Act as of 1 January 2018**

1. INTRODUCTION

As of 1 January 2018 the Minimum Wage and Minimum Holiday Allowance Act (*Wet minimumloon en minimumvakantiebijslag*, hereinafter referred to as "**WML**") will be amended. One of the amendments concerns the type of workers which is in scope of the WML. In an effort to reduce the exploitation of workers who are working under the pretence of being contractors the Dutch government has expanded the scope of 'workers' to whom the WML applies.

What follows is a short overview of the upcoming amendments.

2. WML ARTICLES

Article 2 of the WML defines the employment relationships to which the WML applies. The new amendment aims to bring certain contractors within the scope of the WML. Contractors that actually perform services in the course of their profession or business will still be excluded from the scope of the WML.

As of 1 January 2018 the scope of application of the WML will read as follows:

Article 2

1. For purposes of application of the provisions by or pursuant to this act, 'employment' will be understood as the employment pursuant to an employment agreement under civil law.

2. 'Employment' will also be understood as the employment relationship of an individual who, pursuant to a services agreements with another party and against payment:

a. regularly provides intermediary services for the conclusion of agreements of that other party, or any of that other party's clients, with third parties, provided that they only provide such intermediary services for that other party; the provision of such intermediary services is not an ancillary service for that individual; and they are generally not assisted by more than two other individuals; or

b. performs work, unless such agreement has been entered into in the independent exercise of a profession or business.

3. By or pursuant to a governmental order , rules may be laid down by virtue of which the employment relationship of the individual performing work against payment and whose employment relationship is not already regarded as employment by virtue of the first or second paragraph, but may be considered socially as equal, will also be understood as employment.

Article 3

1. 'Employment' as referred to in article 2 will not be understood as the employment relationship of an individual who has, by or on behalf of the government or the competent body of a province, municipality, water authority, peat authority or peat polder, been employed under an employment agreement under civil law.

2. If the special nature of the employment relationship or special circumstances give rise thereto, it may be provided for by a governmental order that the employment relationship of individuals falling under a specific category is not understood as employment as referred to in article 2.

Article 4

1. For purposes of application of the provisions by or pursuant to this act, 'employee' will be understood as a private individual who is under an employment agreement in accordance with the provisions pursuant to articles 2 or 3.

2. An individual who does not fulfil their employment within the Netherlands will only be regarded as an employee if they reside within the Netherlands and their employer is also residing or based within the Netherlands. To the extent that an employer has a permanent establishment within the Netherlands for the exercise of their business or profession, or has a permanent representative residing or based within the Netherlands, they will, for purposes of application of the foregoing sentence, be considered as an employer based within the Netherlands.

3. By or pursuant to a governmental order , it may be provided that individuals not residing within the Netherlands may also be regarded as employees, to the extent that they perform their employment outside the Netherlands.

4. For purposes of application of the foregoing paragraphs, vessels and aircraft having their home port within the Netherlands will, towards the employer and the crew, be regarded as part of the Netherlands.

Article 5

1. For purposes of application of the provisions by or pursuant to this act, ‘employer’ will be understood as the (legal) person employing an employee.

2. In the case referred to in article 2, paragraph 2, ‘employer’ will be understood as the (legal) person with whom the agreement for services has been entered into.

3. In the event of application of article 2, paragraph 3, it will also be provided by or pursuant to a governmental order who will be regarded as an employer in those circumstances.
