

# Gig Economy

2022



**PwC Legal**  
A multidisciplinary law firm



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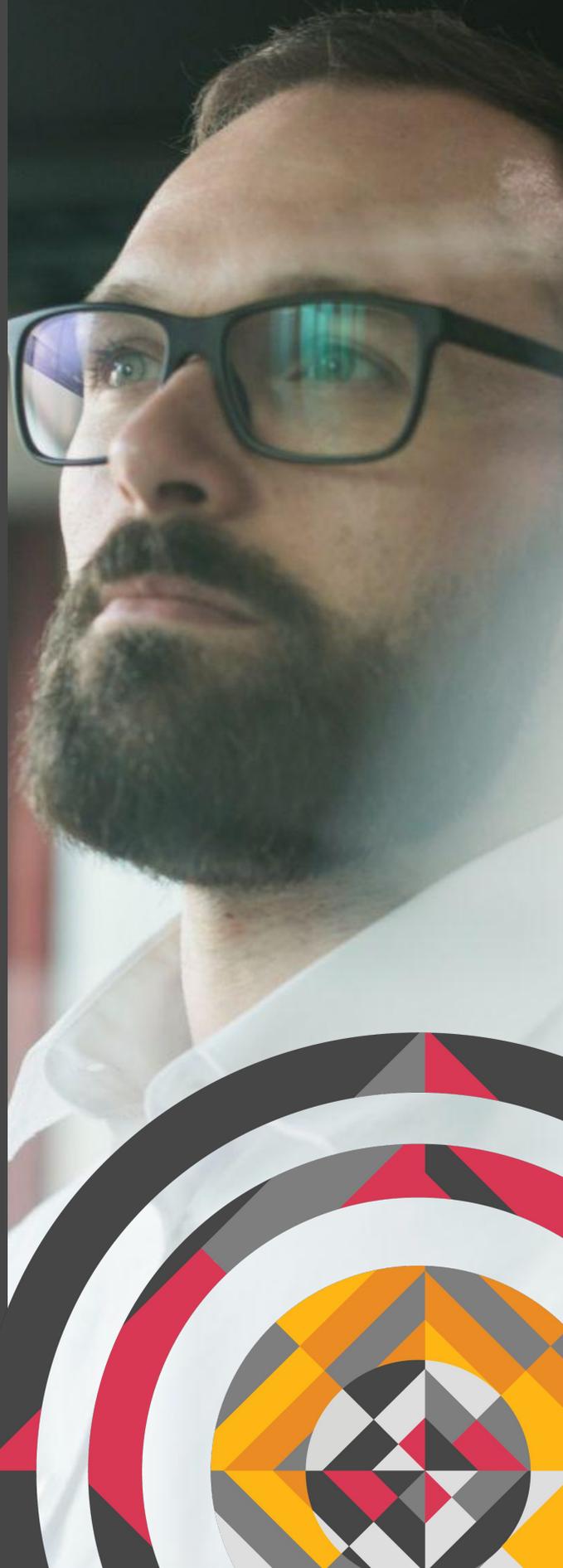


# Introduction

The balance between flexibility, autonomous working and social protection has been a long time discussion within the gig economy. In this years' report we are following up on the various legislative actions regarding the platform economy. Without a doubt the draft European Directive on Platform work is one of the most bespoken topics of this year. The draft Directive introduces various criteria which - if applicable - could result in a legal presumption of employment for the worker.

Even though these are still draft texts, we have seen that various countries follow the European example and introduce a similar approach in their national legislation; such as the draft texts of the labour deal in Belgium and the Rider Law in Spain. It is clear that if draft Directive enters into force, this will have a severe impact on the business model of the platforms. Even the UK, who in principle will not be bound by the Directive, will need to be mindful of the rules due to remote working contingent workers based in EU countries who may move from self-employed to employed status.

In our study, we provide again an overview of how workers in the gig economy are currently being classified in a number of prominent Member States of the European Union and in the United Kingdom. Additionally countries have been included in the scope, such as Greece, Ireland and Austria. Starting this year we have also questioned the tax treatment of gig workers in all countries. In the following report, you will find an overview of the most important highlights per country up until the date of publication.



# Executive summary

														
<b>Which and how many social statuses are there in your country?</b>	<i>Employee</i>	X	X	X	X	X	X	X	X	X	X	X	X	X
	<i>Self-employed</i>	X	X	X	X	X	X	X	X	X	X	X	X	X
	<i>Other(s)</i>	X		X				X		X	X			
<b>Which social status are gig workers currently attributed to in most cases?</b>	<i>Employee</i>	X										X		
	<i>Self-employed</i>		X		X	X	X	X						X
	<i>Other(s)</i>							X		X				
	<i>Unclear</i>			X				X		X			X	
<b>The tax treatment is directly linked to the gig worker's employment status</b>		X	X	X	X	X	X	X	X	X	X	X	X	X
<b>A tax exemption or more favourable tax regime has been introduced for gig workers</b>			X					X						



# Austria





# Austria

## – General Trend

### **How does the population of gig workers evolve in your region and what is the relative importance of the gig economy to your country's overall economy?**

In Austria there are many gig economy platforms (as Lieferando, Uber, etc.) and various discussions in media and most of all between employment law experts are held. The discussion in Austria relates especially to the classification of such gig workers under employment law as well as questions regarding employee representation, worker protection and social security and tax matters. According to the current discussion the number and importance of gig workers will even increase in the future.

No statistics or data regarding the importance of the gig economy to Austria's overall economy are currently available.





# Austria

## (1/2) – Social status

**Please describe the different types of employment status (i.e. employee, self-employed, or other) that exist in your national law and, where applicable, explain how they differ.**

Please find below a short overview concerning the common contract types in Austria (further differentiation like employee-like persons according to the Austrian General Social Security Act may apply). Kindly note that the differentiation is rather complex in Austria. Each individual case must be assessed based on the concrete circumstances.

### **(Genuine) Employee (“echter Arbeitnehmer”)**

- Employees perform their work in particular in personal dependence, which means that they are e.g. integrated within the operational organization, bound by operational regulations (e.g. regarding work clothing, no-smoking rules, formal requirements regarding reporting obligations, etc.), personally bound by instructions of the employer (e.g. regarding place of work, working time, behavior during work, which means the employee cannot decide when, where or how to carry out his work independently), subject to control / monitoring regarding the observance of operational regulations and personal instructions, disciplinary responsibility and duty to personally perform their work (no general right to delegate work to a substitute exists), in general the employees are economically dependent.
- Further employees are employed for a definite or indefinite period of time (continuing obligation; instead of owing just an outcome of work) and commit themselves only to offer their manpower (and no concrete outcome or result).

### **Independent contractor / Freelancer (“Freier Dienstnehmer”)**

- Independent contractors work in a particular personal independent manner, which means they are especially not integrated within the operational organization of the company and not bound by operational regulations from the employer. They are in particular not subject to control or monitoring regarding the observance of operational regulations and personal instructions and have in general no duty to personally perform their work (they are allowed to delegate their work to a substitute).
- Independent contractors in particular provide specific generally described work for a definite or indefinite period of time (continuing obligation).

### **Contractor / Self-employed (“Selbständiger/Werkvertragsnehmer”)**

- A contractor undertakes to perform a specific work (specified work) and does not offer its work for a definite or indefinite period of time. The contractor is responsible for the achievement of the agreed work. The contractor must provide a warranty for his work and may use subcontractors. The contract terminates with accomplishing the agreed work.
- The contractor is personally independent from the person who ordered the work.





# Austria

## (2/2) – Social status

### **In which category would gig workers typically be classified and on which basis (e.g. case law, statutory law, etc.)?**

A general classification of gig workers is not possible, as the classification depends on the individual contractual agreements, the organisation and the business model of the present platform. The assessment has to be done in a case-by-case evaluation and in particular personal dependence will be decisive, as the organisation and the business model from the platforms may vary.

The classification of such gig workers is discussed intensively in the legal literature and a conclusive, overall assessment is not possible currently. The question of how to classify such gig workers is therefore still pending and will depend primarily on the facts of the individual case.

However, in many cases, an assessment based on the standard criteria is in favor of classification as a "genuine employee". The classification will be based on the intensity of control of the employee by the employer. When performing work through such platforms, the employees are oftentimes controlled and evaluated, which may lead to disciplinary sanctions, such as refusal of further assignments. Gig workers mostly offer their work for an indefinite period of time. In most cases, the kind of work to be performed is specified in terms of time, in terms of content, and also in terms of location. Furthermore, some platforms even set the price for the assignment. In addition, this form of work is generally performed in severe personal dependency.

Therefore, based on the criteria of Austrian employment law, dependent employment relationships are assumed in most cases. However, as the criteria are rather complex a case-by-case assessment has to be conducted.

### **The EU Commission has published a proposal for a Directive governing the employment status of gig workers. In light of this proposal, what evolutions are expected in your region?**

The expected impacts of the Directive cannot be evaluated currently.

### **Are there any major developments ongoing or expected in relation to employment status in the context of the gig economy (e.g. in case law, national law, etc.)?**

No major developments are expected. Due to the increase of gig economy and the number of gig workers, an increase in case law is expected in Austria. Of course, we assume that the broad discussion in legal literature and publication will continue.

The Austrian government program 2020 - 2024 commits to reforming labor law, but without reference to the gig economy or gig workers. Further the government program 2020 - 2024 announces a simplification of the term "employee" within social security and tax understanding in order to provide for more legal certainty.

Further, due to the increasing necessity to protect bike-riding employees (e.g. food delivery services) a collective bargaining agreement for Blue-Collar Workers in the business field of transportation of goods with bicycles has been concluded in Austria.





# Austria

## (1/2) –Tax status

### What is the tax treatment of income generated through gig work?

#### A. From a personal income tax perspective, and

#### B. VAT-perspective

##### A. Personal Income Tax

There is no special rule applicable to gig workers as such. The tendency of tax authorities and the jurisdiction is the classification as an employee.

As such, the above described distinction between employees and self-employed individuals is also relevant for tax purposes.

Annual income tax rates are basically the same for each type of employment relationship, but different deductions and tax exempt are in place.

Income	2022
€ 11,000 and below	0%
over € 11,000 bis € 18,000	20%
over € 18,000 bis € 31,000	32,50%
over € 31,000 bis € 60,000	42%
over € 60,000 bis € 90,000	48%
over € 90,000 bis € 1,000,000	50%
over € 1,000,000	55%

Please note that the freelancer is a self employed person regarding taxes - employer must only send a notification if the annual income is above € 900, but within social sec. the contributions must be deducted by the employer via payroll.

##### Self employed and freelancer

- Contractors are subject to income tax obligation
- Submission of annual tax return and quarterly income tax advance payments

##### Employee

- Wage tax obligation
- Wage taxes withheld and remitted to the competent tax office by the employer (payroll)
- Social Security (different thresholds and ceiling amounts apply)
- Self employed (direct payment)
- Health insurance: 6.80 % plus Austrian Federal levy of 0.85 %
- Pension insurance: 18.50 %
- Accident insurance: € 121.08 per year
- Severance fund contribution under BMSVG: 1.53 %
- Unemployment insurance: optional

##### **B. VAT**

Real employment contracts would be outside the scope of VAT. Otherwise, the gig economy workers would be seen as taxable persons for VAT purposes and their services subject to VAT. A special VAT exemption exists for small undertakings with an annual turnover of less than € 35,000. This exemption may be waived and opted for normal taxation.



# Austria

## (2/2) – Tax status

### Is there withholding tax due in your country? Are there specific requirements concerning reporting in your country for the withholding tax (cf. DAC7)?

Depending on the type of contract:

For self-employed:

- Taxes are declared via personal income statement

For Freelancer (and some types of self employed):

- Income taxes are declared via personal income statement.

Employer must issue a notification of income to the tax office (form E 109 a). The notification may be omitted if the total (total) net remuneration paid in the calendar year, including any reimbursed travel expenses, does not exceed € 900, and the (total) net remuneration, including any reimbursed travel expenses, for each individual service does not exceed € 450. For the obligation to notify to be waived, both conditions must be met together.

For Employee: They must issue a wage tax notification form

### Are there VAT simplification rules that can be applied by Gig Economy workers to complexity and VAT compliance costs?

Real employment contracts would be outside the scope of VAT. Otherwise, the gig economy workers would be seen as taxable persons for VAT purposes and their services subject to VAT. A special VAT exemption exists for small undertakings with an annual turnover of less than € 35,000. This exemption may be waived and opted for normal taxation.

### Are there any major developments ongoing or expected in relation to the tax treatment of the gig economy (e.g. in case law, national law, etc)?

Currently no developments in regards to tax treatment (wage tax, income tax) . The wage tax law will follow when the labor law changes (if any) are in place.

# Belgium





# Belgium

## – General Trend

### How does the population of gig workers evolve in your region and what is the relative importance of the gig economy to your country's overall economy?

The gig economy has not yet reached its full potential in Belgium. Although they are very active, this workforce rarely appears in official statistics. We do not know exactly how many gig workers are currently active in Belgium. However, it is clear that the gig economy has also gained terrain in Belgium and is becoming increasingly more important for mainly entry level jobs.

Despite the fact that the gig economy and the number of gig workers remain fairly limited, the industry has become an important and hot topic in many societal and political debates in light of flexible working trends on the labour market. Most gig economy platforms in Belgium focus on entry level jobs, which are performed by either students or low-skilled workers. Especially with regards to the latter, the debate primarily focuses on the working conditions and social (security) status of the workers.

The increased importance was also shown by the fact that the item has been picked up by several Belgian media outlets and by the Belgian Federal Government.

The Federal Government launched an online forum in September 2021 where all relevant stakeholders (e.g. customer, courier, platform owner) in the economy are allowed to share their experiences, thoughts and comments on the gig economy. Several themes feed the debate, such as health and safety, entrepreneurship, determining the rules of the collaboration, etc. It was the Government's intention to use this forum as a sounding board and take legislative initiatives on the basis of the feedback received.

However, the Federal Government has in the meantime already taken legislative steps before having closed the forum (see page 15 and 16).





# Belgium

## (1/4) – Social Status

**Please describe the different types of employment status (i.e. employee, self-employed, or other) that exist in your national law and, where applicable, explain how they differ.**

In principle, the parties are free to give their contractual collaboration the classification they wish (employment agreement or service agreement). The chosen classification is only to be set aside when it appears that there are a number of facts (leaving socio-economic criteria out of consideration) that are incompatible with that classification. The nature of the relationship has to be assessed on the basis of:

- the intention of the parties
- the freedom in organising working time
- the freedom in organising the work
- the ability to exercise hierarchic control

In addition to the above general principles to assess the self-employed nature of a contractual relationship, specific criteria exist for a limited number of industries (i.e. construction, security, transportation, cleaning, agriculture and horticulture):

- lack of any financial and/or economic risk on the part of the one performing the activities
- lack of responsibility and decision-making powers with respect to the financial means of the company
- lack of decision-making powers with respect to the purchasing policy within the company
- lack of decision-making powers with respect to the pricing policy within the company

- absence of obligation of results with respect to the agreed activities
- guaranteed fixed remuneration, regardless of the company's results and/or the scope of the activities
- not being an employer yourself or not having the option to have you replaced for the performance of the agreed activities
- not presenting yourself as an independent company towards third parties, or working (almost) exclusively for one party
- working in spaces of which you are not the owner nor the lessee, or working with supplies that have been provided, financed or guaranteed by the other party.

Whenever the majority of these criteria are met, the contractual relationship is legally presumed to be an employment relationship. Where less than half of the criteria are met, the collaboration is legally presumed to be of a self-employed nature. Both legal presumptions can be refuted by means of any remedies available under the law.

These nine specific criteria can be further complemented or replaced by criteria agreed at sector level. At this time, industry-specific criteria exist for the following sectors: bus and/or coach companies, rental of vehicles with a chauffeur and of collective taxi services, road transportation and logistics for the account of a third party, security, construction, agriculture and horticulture.



# Belgium

## (2/5) – Social Status

### **In which category would gig workers typically be classified and on which basis (e.g. case law, statutory law, etc.)?**

The classification of workers in Belgium should be done on a case-by-case basis, depending on the factual elements in relation to the previously mentioned questions. If the workers have sufficient freedom in organising their work and their working time, and are not subject to a hierarchic authority, the employees will have to be considered as self-employed.

Most companies that are active in the gig economy consider their workers as self-employed. In the past, decisions made by the Commission for Labour Relations and recent legislative initiatives tended to consider that the collaboration with gig workers showed more elements of an employment relationship. These decisions were always based on the specific criteria for specific sectors (as explained on the page 13).

In early 2022 the Federal Government announced a draft bill that would introduce a rebuttable presumption of an employment relationship for platform workers if a number of (other) specific criteria are met (see next question for more details).





# Belgium

## (3/5) – Social Status

**The EU Commission has published a proposal for a Directive governing the employment status of gig workers. In light of this proposal, what evolutions are expected in Belgium?**

Following the publication of the proposed Directive in December 2021, the Belgian Federal Government announced a labour market reform in February 2022. One of the many different topics mentioned in this draft bill was the social status of platform workers.

Similar to the European proposal, the Belgian draft bill introduced a legal presumption that the platform worker should be considered an employee of the platform. In the first instance the Belgian legislator had copied the 5 criteria that had already been proposed by the European Commission. Subsequently, 3 new criteria were added. The presumption of employment would have applied if 3 out of the 8 criteria had been met (or 2 of the 5 European criteria).

However after having asked the advice of the National Labour Council, the coalition of the Federal Government was not able to come to an agreement and had to renegotiate the entire labour market reform. On 17 June the Federal Government announced that they had reached a revised agreement.

In regards to the gig economy it is still unclear what the new agreement will entail. However, the Government already announced that the “Administrative Commission on the nature of the Employment Relation” will have a bigger role to play in the future.

It is expected that a new draft bill will be introduced and voted in Parliament before Belgium’s National Holiday (i.e. 21 July 2022).





# Belgium

## (4/5) – Social Status

### Are there any major developments ongoing or expected in relation to employment status in the context of the gig economy (e.g. in case law, national law, etc)?

In the fall of 2021 a long awaited judgment was issued by the French speaking Labour Court of Brussels in the Deliveroo case. After an investigation by the Public Prosecutor a judicial procedure was initiated to have several Deliveroo riders reclassified from self-employed to employee.

The court argued that even though the specific criteria for the transportation industry (see page 13) appointed towards an employed relationship, the relationship was in fact a self-employed collaboration on the basis of the 4 general criteria. According to the court the riders were not subject to any form of employer's authority.

This judgement created a lot of controversy amongst unions and left-wing politicians. The Public Prosecutor has already appealed against this judgement. It is expected that the case will be presented to the Brussels' Labour Court of Appeal in the course of 2022.

In addition, the Belgian Federal Government announced a labour market reform in early 2022.

Part of the proposal was also related to the social status of the platform workers in Belgium. As described in the previous pages, the proposal introduced a legal presumption that platform workers were to be considered employees if a number of specific criteria were met.

However, the Government (and the social partners) failed to reach an agreement on the entire labour market reform and the proposal was abandoned. It is currently unclear when the Government will present a new proposal and will be voted in Parliament.





# Belgium

## (5/5) – Social status

Finally, in a judgment of 16 January 2019 the French-speaking Commercial Court of Brussels incidentally ruled on the employment status of the Uber drivers and ruled that the drivers were in fact not to be considered as employees (although this court is in principle not competent for this category of disputes, which normally fall under the jurisdiction of the labour courts). This judgment, which is particularly questionable from a labour law perspective, was subject to an appeal and is now pending before the Brussels Court of Appeals. In an interlocutory judgment the Court has raised two prejudicial questions to the Constitutional Court with respect to the need for taxi licenses and whether this could constitute some form of discrimination. It is expected that the Constitutional Court will rule on the matter in the course of 2022.

In 2016, legislation came into effect that allowed platform workers, who were working for recognised platforms, to earn up to 6,000 EUR per year exempt from social security charges and personal income taxes. On 23 April 2020, the Belgian Constitutional Court considered this legislation to be unconstitutional, as it was in breach with the principle of equality (Articles 10 and 11 of the Belgian Constitution). However, the Court decided to maintain the validity of the invalidated Act until 31 December 2020.

As of 1 January 2021, a new (still beneficial) tax regime was (re-)introduced. The income earned through a recognised sharing or gig platform will in the future be subject to a flat rate of 10% (base rate of 20% minus lump sum deduction of 50%). An important condition however is that the yearly income remains below the threshold of 6,390 EUR (amount for 2021).

In 2022 a major labour market reform was announced by the Federal Government. This reform also included measures for the gig economy. We refer to page 15 for more details.





# Belgium

## (1/3) – Tax status

### What is the tax treatment of income generated through gig work?

#### A. From a personal income tax perspective, and

#### B. VAT-perspective

##### a) From a personal income tax perspective:

In 2016, legislation came into effect that exempted platform workers earning up to € 6,000 per year from personal income taxes if they worked for recognized platforms. The Belgian Constitutional Court ruled on 23 April 2020, that this Act was unconstitutional because it violated the norm of equality (Articles 10 and 11 of the Belgian Constitution). In this respect, the Court decided to keep the nullified Act in effect until 31 December 2020.

A favorable tax regime was (re-)introduced on 1 January 2021 (art. 90, 1st paragraph, 1°bis Belgium Income Tax Code). The income made through a recognized platform will be taxed at a flat rate of 10% (base rate of 20 % minus lump sum deduction of 50 %). It should be noted that this more favourable regime only applies to services rendered outside the professional activity of a gig worker and under the condition that the yearly income remains below the threshold of € 6,540 (i.e. amount for income year 2022) and is performed via intermediary of a recognized platform for an other individual.

However, if the gross amount of the income exceeds the fixed maximum amount of € 6,540 (i.e. amount for income year 2022), this income will be considered professional income. Besides that, the income that a gig worker renders through professional activity on a recognised platform will also be qualified as professional income. Professional income is subject to progressive income tax rates up to 50% plus communal taxes.

##### b) From a VAT-perspective:

The Belgian VAT treatment should be analysed on a case-by-case basis, depending on the factual elements, but generally the VAT treatment of the income generated through gig work will be depended on whether the economic activity of the gig worker is conducted 'independently' and 'regularly':

If the gig worker is bound to an employer by a contract of employment or by any other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employer's liability, the economic activity of the gig worker will not be conducted 'independently' and hence will not be in scope of Belgian VAT;

On the other hand if the gig worker on a regular basis independently carries out an economic activity, the gig worker will in principle be considered a taxable person for Belgian VAT purposes and will be obliged to register for VAT purposes in line with, the compensation received for the gig work will in that case qualify as a remuneration for a taxable service. The actual VAT treatment needs to be determined on a case-by case basis based on relevant parameters (e.g. nature of the service, etc.).

Note that a natural person can be exempt from the VAT registration obligation based on simplification measures in view of the sharing economy. This exemption is only possible if strict conditions are met e.g. services are provided exclusively to natural persons and are used for private use, services are provided exclusively in the context of agreements concluded via an electronic platform or directly between citizens, yearly remuneration needs to be below threshold, etc.



# Belgium

## (2/3) – Tax status

### Is there withholding tax due in your country? Are there specific requirements concerning reporting in your country for the withholding tax (cf. DAC7)?

Again, a distinction must be made as to whether the income is derived from a professional activity or not.

If it concerns income rendered outside the professional activity and under the above mentioned threshold, recognised platforms will have to withhold withholding tax on the income as of 1 February 2021. This withholding tax will amount to 10.70% of the gross amount of the income. This implies the amount actually paid or granted by the platform or through the platform's intermediary, plus all amounts withheld by the platform or through the platform's intermediary. The amount of withholding tax withheld must also be indicated on the fiscal form drawn up by the approved platforms and sent to the recipients of the income and to the tax authorities. The withholding tax must be reported on fiscal form 281.29. There are no other specific reporting obligations for withholding taxes in this situation.

If it concerns income rendered through professional activity or income above the mentioned threshold, a distinction must be made between two situations:

- Gig-worker is an employee: if this is the case, the withholding tax shall be calculated on the salary of the beneficiary (gig worker) increased by the non-exempt part of the remuneration paid by the employer. The amount of the withholding tax depends on a number of factors laid down in Annex III of the Royal Decree implementing the Belgian Income Tax Code 1992, which is published annually in the Belgian Official Gazette.

Afterwards, this withholding tax is settled in the tax declaration of the gig worker. The withholding tax must be declared under box 1286 in the annual income tax statement. The taxable income will have to be reported on fiscal form 281.10 (281.20 for company-directors).

- Gig-worker is self-employed: if this is the case then a different approach to withholding tax applies. No withholding tax is deducted from the amounts received by the self-employed gig worker through invoicing to his clients. In order to avoid a tax increase, advance payments can be made throughout the year. These so-called 'advance payments' are not obligatory. If they are not done, there is a risk in the form of a tax increase. The voluntary advance payments are an advance payment on the final tax that will be owed according to the assessment notice. They are similar to the withholding tax on employees' wages.

Furthermore, please be informed that the taxable income of the gig worker should be reported in his Belgian (non-)resident income tax return in the year following the income.





# Belgium

## (3/3) – Tax status

### Are there VAT simplification rules that can be applied by Gig Economy workers to complexity and VAT compliance costs?

Gig workers who are required to register for Belgian VAT purposes can opt to be exempt from Belgian VAT if their annual turnover (exclusive of VAT) is maximum € 25,000 per calendar year (VAT scheme for Small Businesses). In this case they will not be required to charge VAT to their customers, nor to submit periodic VAT returns.

On the other hand, if opted for the VAT exemption, the gig worker will not be allowed to deduct VAT incurred on purchases made. Moreover, gig workers will still be required to obtain a Belgian VAT number and may need to fulfill invoicing and some VAT bookkeeping and/or compliance obligations.

### Are there any major developments ongoing or expected in relation to the tax treatment of the gig economy (e.g. in case law, national law, etc)?

We note that the gig economy is not yet sufficiently integrated into the tax landscape and is in a grey zone. It therefore seems not unlikely that, partly due to the rapid growth of platforms such as Deliveroo for example, the Belgian tax authority will develop a separate legal framework for this.

We have already noted that there have been some legislative initiatives for digital platforms in Belgium (Law 20/12/2020). The Belgian legislation subjects the targeted digital platforms to (1) an information obligation towards the users on one hand and (2) a reporting obligation towards the tax administration on the other hand.

The platforms must inform their users of their tax and social security obligations and refer them to the websites of the public authorities where they can fulfil these obligations. Subsequently, the platforms must provide an annual transaction overview to the service providers that received amounts through services offered on the platform.

The platforms must also provide the tax administration with a summary of the transaction statements delivered to the users.

This new information and reporting obligation must be met for the first time by 31 March 2022 at the latest for income obtained as from 1 January 2021 (art. 321<sup>quater</sup> Belgian Income Tax Code). This means that the tax administration will have an overview of all services provided through the use of a digital platform, as well as the resulting income. It is considered as a new step towards additional transparency.

# Denmark





# Denmark

## – General Trend

**How does the population of gig workers evolve in your region and what is the relative importance of the gig economy to your country's overall economy?**

The population of gig workers have increased and is still increasing is our impression. However, to our knowledge there are no official numbers or estimates on how many people currently are providing services in the gig economy.





# Denmark

## (1/2) – Social status

**Please describe the different types of employment status (i.e. employee, self-employed, or other) that exist in your national law and, where applicable, explain how they differ.**

Professional statutes in Denmark can be roughly divided into four categories, the first three are considered as different forms of employee status and the fourth as non-employee.

1. Salaried employees (white collar workers) whose employment relationships are covered by the Salaried Employees Act, giving the employee a number of rights which may not be derogated from, as well as other protective legislation such as, for instance, the Holiday Act. Some white-collar work is also regulated by collective labour agreements.
2. Other wage earners (mainly blue-collar workers) whose employment relationships are mainly regulated by collective labour agreements as well as other protective legislation.
3. Executive managers registered with the Danish Business Authority, whose employment relationships are regulated by individual agreements (the only protective legislation in place concerns anti-discrimination legislation in relation to age).
4. Self-employed are usually referred to as consultants or freelancers and since they are not considered employees the contractual relation is not governed by protective legislation. The cooperation/service provided is regulated by the individual agreement setting out the terms and conditions.

The following criteria should be taken into account when assessing whether the individual is a self-employed worker or an employee:

- Does the individual bear the overall economic risk of his/her own business?
- Under which legal status does the individual operate? Personal services company, VAT registration, fee recipient etc.
- Is the person subject to the client's hierarchic authority? Does the client instruct the work and does the individual report to the client?
- Does the individual have several clients or does the individual in fact depend on only one client?
- Does the client put working tools at the individual's disposal? Laptop/mobile phone/office facilities/access to client's IT systems etc.
- Does the individual receive a fixed monthly fee or is there an hourly or daily fee?
- Which termination conditions have been agreed upon in the contract between the parties: e.g. same length as a notice period in an employment contract? Compensation in the event of termination?
- Is the person paid in case of illness? Is the individual entitled to paid leave or other similar, typical employee benefits?

**In which category would gig workers typically be classified and on which basis (e.g. case law, statutory law, etc.)?**

The classification of workers in the gig economy depends on the factual circumstances of their collaboration.



# Denmark

## (2/2) – Social status

**The EU Commission has published a proposal for a Directive governing the employment status of gig workers. In light of this proposal, what evolutions are expected in your region?**

In the event that the proposed directive is passed, Denmark will have to process adaptations to the Danish legislation regarding gig economy.

The proposed directive provides a list of criteria to determine if the platform is considered as employer, and therefore, the workers as employees who have the similar employment rights as a "normal" employee. The criteria stated in the proposed directive will result in many platform workers becoming employees in Denmark.

**Are there any major developments ongoing or expected in relation to employment status in the context of the gig economy (e.g. in case law, national law, etc)?**

No, there are no noticeable developments in relation thereto.





# Denmark

## (1/2) – Tax status

### What is the tax treatment of income generated through gig work?

#### A. From a personal income tax perspective, and

#### B. VAT-perspective

##### a) From a personal income tax perspective:

a gig worker would ordinarily be considered either an ordinary employee or an independent contractor (subcontractor, consultant, freelancer, etc.). Depending on the tax residency of the gig worker and the nature of the work performed, the Danish rules on the hiring out of labor might also apply. This is primarily a concern if there is a coordinating entity between the gig worker and the hiring company.

The formality of the agreement between the gig worker and the hiring company (i.e. whether it is formulated as an employment contract or a subcontractor contract) is less important than the reality of the relationship between the parties. A number of factors must be taken in to consideration when determining the personal tax status of the worker, including

1. nature of the work performed in relation to the hiring company's business activities,
2. the relationship between the hiring company and the gig worker
3. the nature of the gig workers overall business activities

The Danish Tax Authorities have some guidelines that can be used to determine the status of the gig worker, but it would always come down to a case-by-case assessment, and we would always recommend seeking advice on the tax implications before starting to hire gig workers.

##### b) From a VAT-perspective:

With reference to the categories indicated on page 22 (white- and blue-collar workers, and executive managers) these workers are generally not obliged to register for VAT, as they are paying taxes based on the payroll. However, the 4th category (self employed) are invoicing the fee as agreed upon in the individual agreement. They will become liable to register for VAT purposes when their taxable turnover for VAT exceeds DKK 50,000.





# Denmark

## (2/2) – Tax status

### **Is there withholding tax due in your country? Are there specific requirements concerning reporting in your country for the withholding tax (cf. DAC7)?**

Withholding requirements depend on the conclusions of the analysis on tax treatment as indicated before on page 24.

For workers who are to be considered employees, there is a withholding and reporting requirement for employer. Taxes must be withheld on ordinary salary and certain benefits. The applicable rate depends in the employee's personal preliminary tax assessment. If no preliminary Danish tax assessment exists, there is a withholding of up to approx. 59 %

If the gig worker will be considered an independent contractor, there will not be a withholding or reporting requirement from a tax perspective, however ordinary bookkeeping rules regarding documentation for invoices received from the gig worker etc. would still apply.

If the gig worker falls under the Danish rules on the hiring out of labor, there will be a reporting and withholding obligation for the employing entity. The withholding rate is 35,6 % of the gross salary.

Failure in complying with Danish withholding requirements will result in the hiring company being liable for tax payments that should have been made to the Danish Tax authorities. Failure to comply with reporting obligation may be subject to fines up to DKK 80,000 per. missing reporting depending on the size of the entity that failed to report.

### **Are there VAT simplification rules that can be applied by Gig Economy workers to complexity and VAT compliance costs?**

No, if the workers become liable to register for VAT, they will be obliged to file VAT returns either monthly/quarterly or half-yearly based on the turnover. No special simplifications are available.

### **Are there any major developments ongoing or expected in relation to the tax treatment of the gig economy (e.g. in case law, national law, etc)?**

No expected major changes in legislation relating to determining the personal tax treatment of gig workers.

In a case from the Danish Eastern High Court (SKM2021.221.ØLR) the Court states what kind of criteria must be met in order to operate as a self-employed/consultant. In the specific case the workers have acted as self-employed and have issued an invoice with Danish VAT. The Court however stated that the workers had an employment status. The company hiring the workers was ordered to pay personal taxes without right for VAT deduction of the fees received.



France





# France

## – General Trend

### **How does the population of gig workers evolve in your region and what is the relative importance of the gig economy to your country's overall economy?**

According to the latest published figures, there are currently 3.6 million self-employed workers declared to the authorities in France. Each year, this number increases on average by 3.3% since 2009.

Gig workers approximately represent 7% of the self-employed and 0.8% of the working population.

The gig economy embodies a new working model in full expansion, which has been growing significantly over the past few years, especially during the health crises.

As this economy was initially quite limited to transportation and food delivery services (e.g. Uber and Deliveroo), it is now expanding to more diverse areas of business.

In this context of development of the collaborative economy and digital commerce, the need was felt to secure the gig workers legal status.





# France

## (1/4) – Social status

**Please describe the different types of employment status (i.e. employee, self-employed, or other) that exist in your national law and, where applicable, explain how they differ.**

In France, two professional statuses exist: employee and self-employed. There is no intermediate regime between "an employee" and "a self-employed individual".

- An employment relationship is generally characterized by the following:
  - Detailed instructions/orders are given to the individual concerned (keeping in mind that even self-employed workers will need to be told what is expected of them).
  - The individual's activity, especially the time spent, is monitored.
  - The individual is liable to sanctions if he/she fails to apply the instructions given by the employer.
  - No risks are taken: the individual has a regular fixed remuneration; he/she does not bear any risk of non-payment or offsetting of payment due to poor performance.
  - The number of clients: a full-time employee is generally subject to an obligation of loyalty and exclusivity, whereas a self-employed person is supposed to have more than one client.
  - An employee cannot substitute him or herself whereas a self-employed individual is often free to engage another person to deliver the services and hence provide a substitute.
- An employee cannot refuse work, except under a limited number of conditions.
- An employee receives a monthly salary; a self-employed person will usually be paid for an individual assignment completed (i.e. generally at the end of the assignment, with possible payment of advances, not regular monthly payments).
- Being entitled to a fixed salary, an employee is generally not subject to variations in profit or loss: the self-employed person will suffer a loss if he/she underestimates the time it will take to complete the assignment or encounters unexpected difficulties that have not been provided for under the terms of the contract.
- An employee is generally provided equipment, or is reimbursed for its purchase.
- An employee is not responsible for his/her own professional liability insurance.





# France

## (2/4) – Social status

### In which category would gig workers typically be classified and on which basis (e.g. case law, statutory law, etc.)?

Whether the worker is classified as a self-employed worker or as an employee depends on the existence of a “hierarchical” link (as opposed to a merely “operational” link) between the platform and the individual.

Although there are no obligatory criteria to characterize a hierarchical relationship, the main elements that have been retained by the courts as exemplifying such a relationship are that an employer evaluates an employee directly to determine remuneration and career advancement, and can take disciplinary measures, including dismissal. A self-employed person, on the other hand, tends to carry out their activity in an independent manner.

An individual is generally considered to be independent when they are free to organize their time, activity and workload, bears financial responsibility for completing the work (i.e. payment is subject to completion of the work), and bears their own business expenses including the purchase of their own tools.

The fact that a person receives “operational” instructions does not in itself create an employment relationship as both self-employed and salaried workers typically receive operational instructions on what is expected of them, for instance which wall to decorate or which paint color and other materials to use. Therefore, in the case of a dispute, looking at a combination of factors, the courts will determine on a case-by-case basis. The factors taken into account are the same for social security tax and employment law purposes.

### The EU Commission has published a proposal for a Directive governing the employment status of gig workers. In light of this proposal, what evolutions are expected in your region?

The European Commission presented in December 2021 a draft Directive aimed at improving the working conditions of gig workers.

It provides that gig workers using a digital platform will be given the legal status corresponding to their actual working conditions.

- The draft Directive provides for a list of criteria aimed at determining whether the digital platform has control over the gig worker’s activity, who could then be considered as an employee.

The digital platform will be considered an “employer” if two of these criteria are met (for example, the platform determines the level of remuneration or sets ceilings, supervises the execution of work electronically, limits the possibility for the gig worker to control his/her working hours or absences).

However, this is a presumption that digital platforms will be able to rebut, by providing proof of the absence of an employment relationship.

- The draft Directive also introduces a new set of rights for people subject to algorithmic management in the context of work via a platform: necessary information about how their work and assignments are assigned and how their account is evaluated or can be terminated.
- Finally, the draft Directive requires digital work platforms to declare the work in the country where it is performed and to provide national authorities with information about the people working through them and their terms and conditions.

The French judge already examines several criteria to determine whether the employment relationship between a gig worker and a digital platform can be requalified as a salaried employment relationship.

In the past few years, case law has determined a set of indicators that allow to characterize the link of subordination leading to the reclassification into employment contract (Cass. Soc. November 28th, 2018, n°17-20.079, Take Eat Easy / Cass. Soc. March 4th, 2020, n°19-13-316, Uber). This reclassification currently solely depends on the judge's interpretation.

The establishment of clear criteria through this EU Directive would provide for a more secure and general legal framework, compared to the uncertainty resulting from case-by-case case law decisions.

This draft Directive can also influence the thinking of the French government, which was empowered by the legislator in February 2022 to reform the obligations of digital platforms in their relationship with the gig workers.

### **Are there any major developments ongoing or expected in relation to employment status in the context of the gig economy (e.g. in case law, national law, etc)?**

Individuals who have been declared as independent workers to the French social security authorities will be legally presumed to be self-employed (at least for social security tax purposes “non-salariat”). This being said, this presumption can be rebutted if the self-employed worker has a “hierarchical link” with the platform. This “hierarchical link” is characterized notably by the existence of the power of direction and control of the worker by the platform. The work conditions of self-employed workers working with digital platforms have been recently analyzed by the French courts.

On November 28th, 2018, the French Supreme Court (i.e. Cour de Cassation) published an important decision regarding the gig economy and notably the reclassification of a self-employed worker status to an employment relationship in the courier industry.

The French Supreme Court indicated (i) that the existence of an employment relationship does not depend on the intention expressed by the parties or on the denomination that they have given to their agreement (i.e. self-employment in the case at hand), but on the factual conditions under which the activity is carried out, and (ii) that the employment relationship is characterized by the performance of work under the authority of an employer who has the power to issue orders and directives, to supervise the performance of the work and to punish the failings of subordinates.

In the case at stake, the French Supreme Court found that the platform had a system of geolocation allowing it to monitor the real time spent by the courier, the number of kilometers traveled as well as the (geographical) position, and had a sanctioning power with regard to the courier.

The French Supreme Court decision has since been confirmed by French case law. Indeed, on January 10th, 2019, the Court of Appeal of Paris ruled that a platform worker was not to be considered as a self-employed worker but as an employee because the worker could not have his/her own clients and the prices were contractually fixed by the platform, which was also in a position to sanction the worker for misconduct.

On February 4th, 2020, the Employment Tribunal of Paris condemned a platform for undeclared work. It judged that the obligation for the courier to draw up a service agreement was aimed at avoiding the application of the French labour code.

On December 24th, 2019, the French Government attempted to restrain this reclassification trend by the French courts by legislating a presumption of self-employment for workers if the platform published a charter (which remains non-obligatory and is issued unilaterally) that determines the terms and conditions between the platform and individuals. However, this attempt has been nullified by the French Constitutional Council and thus did not enter into effect.

However, the French Government has clearly expressed its intention to enhance the rights of workers while avoiding reclassification into an employment relationship. In the meantime, French Courts are increasingly ruling against platforms for not drawing up employment contracts. On March 4th, 2020, the French Supreme Court published a decision confirming that, even if workers could choose their working days and hours, it did not exclude the fact that they could be in an employment relationship. In the case at hand, the worker did not have the possibility to freely choose his/her clients or fares, and Uber reserved the right to disconnect the driver. In this specific case and on the basis of these elements, the French Supreme Court considered that the position of the individual concerned as a self-employed worker was legally unfounded.

A report on digital platforms, commissioned by the French government, has been published on December 1st, 2020. The main goal of the report is to describe the legal relationship between platforms and their workers and to find a way to reinforce the social position of the latter, while maintaining as much flexibility as possible. The report recommends that, after being active on the platform for 6 to 12 months and once a certain income level has been reached, workers on ride sharing platforms and delivery platforms would then be engaged and employed by a third-party company as a regular employee ("Coopérative d'activité d'emploi" – CAE). The third-party company would then lend its workers and provide a service to the platforms. These third party companies should then engage the workers as regular employees for social security tax purposes.

Consequently the workers would benefit from full social coverage, while still being able to work as flexible as possible. Concerning the social dialogue, the report proposes a representation of workers based on elections within each platform, after a period of experimentation. The report also proposes the creation of a regulatory authority for platforms, the supervision of driving time and a minimum wage. For ride sharing platforms and other digital work platforms, the minimum wage would be set at 7 EUR per ride, with a minimum hourly rate of 15 EUR to 18 EUR, a similar calculation should be made for other types of gig work, such as deliveries.

In this regard, the French Government adopted on April 21st, 2021 an ordinance concerning the modalities of representation of self-employed workers using platforms for their activity and the conditions of exercise of this representation.

This ordinance mostly organizes the representation of gig workers from two sectors of activity: private drivers (Uber for example) and delivery drivers (delivery by bicycle, scooter or tricycle). Nationwide social elections where workers could elect trade union representatives will take place for the first time in 2022 (on December 31st, 2022 at the latest). It is important to note that gig workers will also be able to elect representatives who will then defend and advocate their interests directly with the platforms. These elections will be organized online, every four years under the supervision of a new "Authority for Social Relations of Employment Platforms" (Arpe).

This authority will also be in charge of regulating social relations between gig workers and digital platforms by organizing social dialogue.

A law of February 7th, 2022 ratified this ordinance and also empowered the government to complete the obligations of platforms towards gig workers. In particular, the government plans to reduce the number of indicators that could reveal the existence of a subordination link leading to the reclassification of the service provision contract into an employment contract. Changes in the status of gig economy workers are therefore still to be expected.



# France

## (1/3) – Tax status

### What is the tax treatment of income generated through gig work?

#### A. From a personal income tax perspective, and

#### B. VAT-perspective

##### a) From a personal income tax perspective:

The gig worker can choose to carry out their activity through the status of (i) self-employed or through a (ii) company status.

(i) If the worker earns less than €72,600 per year, they can benefit from the self-employed status and then be subject to “micro-BIC regime”. This regime is based on the determination of the taxable profit, by applying a flat-rate deduction (50% for 2022) to the amount of the turnover realized; which is supposed to cover all the costs and charges borne by the taxpayer.

It is possible to opt for a real taxation system. In such case, the tax is due on the net result after deduction of the expenses really encountered. The net result is taxed at the progressive income tax scale.

(ii) If the worker chooses to pursue their activity through a company status, the company is usually subjected to corporate income tax. The reduced corporate income tax rate of 15% could apply on the first €38,120. Otherwise, companies are subjected to the normal corporate income tax rate of 25%.

##### b) From a VAT-perspective:

The French Tax Code (FTC) provides that a person can benefit from a VAT exemption if their annual turnover does not exceed €34,400. They cannot claim a VAT deduction.

Beyond this threshold, or if they opt for it, they will be liable to pay VAT which also allows them to deduct VAT from purchases and costs.





# France

## (2/3) – Tax status

### Is there withholding tax due in your country? Are there specific requirements concerning reporting in your country for the withholding tax (cf. DAC7)?

The article 204 C of the FTC provides that independent workers must make advance payments for income tax. Therefore, in most of the cases the withholding tax applies under the form of advance payments for workers who perform their activities under the regime of Micro-BIC, or under a real taxation system.

Until 2022, the operators of platforms that put people in contact with each other at a distance, by electronic means, with a view to the sale of a good, the provision of a service or the exchange or sharing of a good or service have several obligations:

- provide users with fair, clear and transparent information on their tax and social security tax obligations at the time of each transaction (CGI art. 242 bis, 1°);
- send to users by January 31st of each year a document indicating the number and total gross amount of transactions carried out during the previous calendar year (CGI art. 242 bis, 2°);
- send to the tax authorities within the same period a document summarizing the same information (CGI art. 242 bis, 3°).

The obligation concerns users who are resident in France or who carry out sales or services in France.

#### Penalties:

- fixed fine of €50,000 in the event of non-compliance with the obligation to inform users of their tax and social security obligations (CGI art. 1731 ter); fine of 5% of the amounts not declared in the document sent to the user and to the administration (CGI art. 1736, III) and, in case of recidivism, possible publication of the platform's name on the list of non-cooperative platform operators (CGI art. 1740 D).

Start 1 January 2023 new provisions will apply regarding to a first automatic exchange of information between Member States from February 2024 (DAC7).

The Article 1649 ter A, I new of the FTC provides that operators who make available to users a device allowing to put people in touch with each other for the sale of goods, the provision of a service by natural persons, the rental of a mode of transport or the rental of real estate:

must provide information on the tax and social security obligations incumbent on persons who carry out commercial transactions through its intermediary;

have a new reporting obligation with automatic exchange of information between Member States, in order to ensure the transposition of the DAC 7 Directive (Directive 2021/514 of 22 March 2021).

Penalty: fixed fine of €50K maintained.





# France

## (3/3) – Tax status

### Are there VAT simplification rules that can be applied by Gig Economy workers to complexity and VAT compliance costs?

Most workers should benefit from the status of VAT exemption (“Franchise en base”) to perform their activities. Consequently, they will not be subject to French VAT (if they don’t exceed thresholds described above). Above this threshold they may be able to declare VAT on a quarterly or yearly basis with two down payments.

### Are there any major developments ongoing or expected in relation to the tax treatment of the gig economy (e.g. in case law, national law, etc)?

The article 32 of the Finance act of 2022 has created a new tax to be paid by the mobility platforms and allocated to the social protection of workers.

The tax is codified in Article 300 bis of the FTC and applies to all services offered with a view to providing services, including the transport of passengers by means of a chauffeur-driven car (VTC) or a delivery of goods by means of a two- or three-wheel vehicle by an independent worker. Also, the operator of the connecting service shall determine the characteristics and price of the economic or transport operation.

The rate of the tax, which would be set each year by ministerial order, could not exceed 0.5%.

The tax base is determined by the difference between the amounts collected during the calendar year by the platform operators and those that they return during the same period to users of the matchmaking service.

The tax would be collected and controlled according to the same procedures and under the same penalties, guarantees, securities and privileges as turnover taxes.



# Germany





# Germany

## – General Trend

### How does the population of gig workers evolve in your region and what is the relative importance of the gig economy to your country's overall economy?

It is generally expected that platform activities will continue to increase and that this increase could occur very rapidly. Platforms are also seen as having the potential to fundamentally change the way contracts are initiated and concluded. This is also reflected in the current situation around COVID-19. This development could be due to a higher number of persons experiencing unemployment. As a result of the COVID-19 crisis, individuals may also increasingly seek employment opportunities in online work, as it is possible to maintain physical distance from others here.

The German Federal Ministry of Labor and Social Affairs (BMAS) is closely monitoring developments in the platform economy in Germany intensively. The reason for this are reports about positive employment effects, but also reports about precarious working conditions and inadequate wages and social security for mostly solo self-employed platform workers.





# Germany

## (1/3) – Social status

**Please describe the different types of employment status (i.e. employee, self-employed, or other) that exist in your national law and, where applicable, explain how they differ.**

German law recognizes only two basic categories of employment and work relationships, i.e. employment or self-employed activity.

According to German law, specifically Section 611a of the German Civil Code (BGB), an employee is a person who performs work in personal dependence on instructions and under the control of others. Based on this general definition classification is not always unproblematic, as demarcation criteria are lacking.

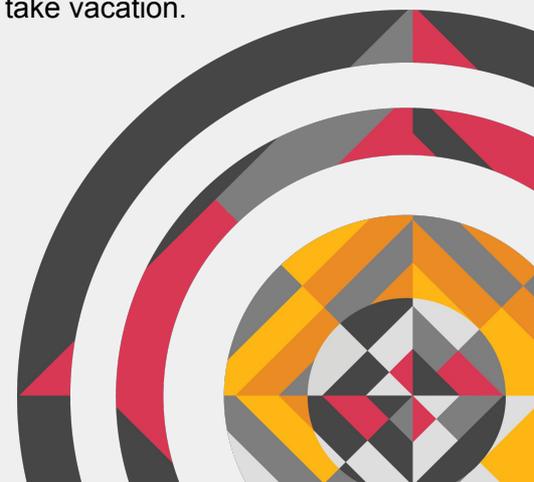
According to Section 7 (1) of the German Social Security Code, Book IV (SGB IV) and the case law of the Federal Social Court (BSG), the decisive factor in distinguishing self-employment from employment is the personal dependence of the employee on the employer.

Employment within the meaning of Section 7 (1) of the German Social Code, Book IV (SGB IV) "is non-independent work, in particular in an employment relationship. Indications for employment are instructed activities and an integration into the organization of the employer.

According to the supreme court case law of the BSG, the actual circumstances of the employment/activity are decisive in this regard and not primarily the contractual agreements.

In order to be able to correctly answer the question of personal dependence (non-independence), the following characteristics must be taken into account and used as a basis for the overall assessment:

- Being bound by instructions.
- Integration into the company.
- The employment relationship is characterized by the fact that the employee is not able to dispose of his or her own labor; the activity is determined by others.
- No own place of business.
- No essentially freely arranged work activity. The characteristics of the free organization of the activity are found in Section 84 (1) sentence 2 of the German Commercial Code (HGB) for the concept of commercial agent: "A person is self-employed if he is essentially free to organize his activity and determine his working hours." The case law of the BSG has interpreted the standardized criteria for the HGB as a general legal concept for the demarcation between dependent employment and self-employment.
- No bearing of entrepreneurial risk. An entrepreneurial risk is borne by a person who uses his or her own capital or labor with the risk of loss.
- Economic dependence.
- Agreement to have payroll deductions made.
- Agreement to take vacation.





# Germany

## (2/3) – Social status

### **In which category would gig workers typically be classified and on which basis (e.g. case law, statutory law, etc.)?**

Usually, platform workers are not employees under German law due to the lack of a right to issue instructions and operational integration into the structures of the platform and the client. However, it is not possible to make any general statements since this will always need to be decided on an individual basis in accordance with the above-mentioned criteria of the German Civil Code and case law.

The borderline with sham self-employment is easily crossed. This can have serious consequences in Germany.

### **The EU Commission has published a proposal for a Directive governing the employment status of gig workers. In light of this proposal, what evolutions are expected in your region?**

The coalition agreement of the new German government also refers to the great importance of digital platforms for the world of business and work. However, the coalition agreement does not mention any planned legislation. It merely emphasizes that the EU Commission's initiative will be "constructively supported" and that good and fair working conditions are important. The German government is likely to wait for the EU directive to come into force - or at least for further discussion about it - before taking legislative action itself.





# Germany

## (3/3) – Social status

**Are there any major developments ongoing or expected in relation to employment status in the context of the gig economy (e.g. in case law, national law, etc)?**

The BMAS is currently working on proposals for the platform economy. Among other things, the question is whether so-called digital integration takes place through integration on a platform and the monitoring of the platform worker by a quality management system including price specifications, control mechanisms, evaluation of work results, and customer satisfaction assessment.





# Germany

## (1/2) – Tax status

### What is the tax treatment of income generated through gig work?

#### A. From a personal income tax perspective, and

#### B. VAT-perspective

The difficulties in taxation and social security tax for platform workers are partly due to their complicated employment status. In most, but not all cases, platform workers are considered to be self-employed contractors.

#### A. Personal Income Tax

Self-employed persons are subject to income tax. Income tax is linked to the amount of income. The income corresponds to the profit that remains after deducting the costs from the turnover.

The higher the profit, the higher the tax rate (progressive rate). Up to an income of € 9,984 the income remains tax-free for one calendar year (2022). Above € 9,985 the tax rate increases from 14% up to 42%. The 42% tax rate applies to annual incomes between € 58,597 and € 277,826. Annual incomes of € 277,826 or more per year are taxed at 45%.

#### B. VAT

In case the person is seen as a self-employed person under income tax purposes, in general the person would also be seen as a taxable person for VAT. However, in special cases, exemptions might be possible. VAT Taxable persons have to register for VAT. Furthermore the person (if located in Germany) has to pay and invoice VAT for services taxable in Germany.

However, there is one major exception, the so-called small business regulation. The VAT exemption applies as long as the annual turnover is less than € 22,000 and does not exceed the limit of € 50,000 in the following year. For all others, the following applies: When invoicing, you must add a certain percentage to the net value of your product. VAT taxable persons can also waive the exception if desired.

#### DAC7 - New reporting obligations

DAC7 is another addition to the already existing Directive 2011/16/EU on administrative cooperation in the field of taxation. It introduces new reporting obligations that will apply to Digital Platforms Operators that make their platform available to Reportable Sellers. Member States shall implement DAC7 by 31 December 2022 and apply their transposing DAC7 legislation as of 1 January 2023. Digital Platform Operators will then be required to report on the year 2023 for the first time in 2024.

The reported data is to be used for both income tax and VAT purposes. Digital Platform Operators that make their platform available to Reportable Sellers in order to carry out commercial activities fall, in principle, under the scope of DAC7. The commercial activities in scope are broadly formulated, and include the rental of immovable property, personal services, the sale of goods, the rental of any mode of transport and investing.





# Germany

## (2/2) – Tax status

**Is there withholding tax due in your country? Are there specific requirements concerning reporting in your country for the withholding tax (cf. DAC7)?**

### **Self-employment gig worker**

If the gig-worker is considered a self-employed person, there is generally no obligation for payroll tax and social security contributions.

An exception shall apply for self-employed persons subject to limited tax liability in Germany who earn income from artistic, sporting, performing, entertaining or similar performances carried out in Germany, Sec. 50a para. 1 no. 1 GITA. In these cases income tax is levied by way of tax deduction at a flat rate of 15 percent. If a Double Tax Treaty stipulates that the income subject to deduction may not be taxed or may only be taxed at a lower rate that deviates from the German income tax law, the remuneration debtor may only refrain from deducting tax or may only deduct tax at the lower rate if the Federal Central Tax Office (BZSt) has issued a corresponding certificate.

### **Gig worker as an employee**

If the gig worker is considered as an employee, payroll taxes have to be withheld and paid to the German tax authorities if the salary is paid by a domestic employer, Sec. 38 para. 1 GITA. Employees subject to limited tax liability might only be taxable with salary received for work performed in Germany, Sec. 49 para. 1 No. 4a GITA.

In cross-border cases regulations in applicable Double Tax Treaties have to be considered. A wage tax withholding obligation only comes into consideration if the right of taxation is also assigned to Germany according to the Double Tax Treaty. If salary should be considered tax-free within the payroll (based on the Double Tax Treaty) this might require a certificate of exemption issued by the German tax office.

Withholding tax needs to be reported via a (monthly) payroll tax return to the German tax office. At year end or once the employment is terminated the employer must provide an income tax certificate to the employee and the tax office which summarizes the salary earned and remitted wage tax and solidarity surcharge as well as church tax - if applicable. These requirements are not specific to gig-workers, but to all employees.

**Are there VAT simplification rules that can be applied by Gig Economy workers to complexity and VAT compliance costs?**

If the gig worker falls under the small business regulation, he benefits from a VAT exemption. The VAT exemption applies as long as the annual turnover is less than € 22,000 and does not exceed the limit of € 50,000 in the following year.

**Are there any major developments ongoing or expected in relation to the tax treatment of the gig economy (e.g. in case law, national law, etc)?**

Not to our knowledge.



# Greece





# Greece

## – General Trend

### **How does the population of gig workers evolve in your region and what is the relative importance of the gig economy to your country's overall economy?**

In Greece, despite the proven presence of platform workers, there is very little data on this new phenomenon.

The only studies that have been conducted show that the gig economy is still at the stage of its development in Greece while in other European countries, this economy is already well established. But it is undeniable that the Covid-19 pandemic has contributed to the development of this economy.

In addition, the platform economy has been widely discussed in the media regarding the nature of the employment relationship. Indeed, one of the largest delivery companies in Greece has formed the intention to terminate the employment contract of these employees and switch to a freelance status. This led to a strike of more than 1000 delivery couriers. The couriers were finally able to keep their employee status. This shows that the platform economy in Greece is definitely a hot topic.





# Greece

## (1/3) – Social status

**Please describe the different types of employment status (i.e. employee, self-employed, or other) that exist in your national law and, where applicable, explain how they differ.**

In Greece, two types of service provisions are predominant in the gig economy: the provision of services via an employment agreement or via an independent services/project contract agreement.

Regarding the service agreement, it is mainly characterized by the lack of dependency of the contractor from the principal/client, since the contractor has the initiative during the performance of the project, to determine the time, manner and means of the implementation of the project within the contractual deadlines, without being obliged to comply with the instructions of the principal/client or being subject to its control by being. however, he is liable for the final outcome of the project, until the time of its delivery (as arising from article 698 GCC). In a project contract, the contracting parties are aiming for the end result of the project, not the work itself that will be done during the project.

Regarding the employment agreement, it should be highlighted that the dependency element has not been explicitly accommodated under the applicable Greek labour legislation.

However, in accordance with the applicable Greek case law, the dependency comprises a qualitative and not a quantitative element, which is each time assessed (by the competent Greek Courts) on the overall merits and indications of each particular case, depending also on the type and nature of the requested work. In general, during an employment relationship, the employer, in exercise of his managerial right, is entitled to define the manner, place, and time of the work to be rendered.

In this effect, case law provides certain judicial criteria for the characterization of a project contract as an employment one, as follows:

- Extensive duration of the agreement primary (or exclusive) cooperation of the individual with the employer/principal;

It should be noted that law (L 3846 2010 has adopted a presumption that an independent service contract between a company and an independent contractor is deemed as an employment contract, if the independent contractor has been providing services, exclusively or mainly, for the Company, continuously for the last 9 months

- Control over the individual and exercise of the managerial right
- Dependency of the individual from the employer/principal
- Fixed amount payments although not a stand alone factor, the payment of fixed amounts over fixed intervals towards a freelancer could potentially lead, alongside with the fulfilment of other criteria, to the characterization of a freelancer as an “employee”(Greek Supreme Court Decision Nos 1435 2006 and 124 2007
- The granting towards the individuals of certain entitlements, usually encountered only in the context of dependent employment relationships
- The occupation of a working position within the employer’s organizational structure.





# Greece

## (2/3) – Social status

### In which category would gig workers typically be classified and on which basis (e.g. case law, statutory law, etc.)?

The characterization of a contract/relationship between a company and a gig worker might be deemed as an employment or an independent one upon evaluation of the overall status of the services provision and in no case of a single one behaviour/action.

In this regard, certain characteristics of a dependent employment (e.g potential consecutive monitoring of the gig workers' performance and location via GPS devices, exercise of managerial rights, explicit directions regarding the way of working, participation of the employees into the company's communication channels e.g viber application etc.) might be applicable at this type of services' provision.

In addition, in case that an issue related to the provision of the delivery services arose and the gig worker might be required to liaise directly with the employer's managers in order to fix it, being thus, at some extent, part of the employer's organisational structure, could reinforce the employee status of such individual.

Recently, the art. 69 L.4808/2021 has introduced a number of additional requirements, according to which, the contract between the digital platform and the service provider is presumed to be non-dependent, provided that the service provider is entitled, under its contract, cumulatively:

- A. To use subcontractors or substitutes to provide the services s/he has undertaken to offer
- B. To select the various projects that the digital platform proposes to undertake or to set unilaterally the maximum number of such projects that s/he will undertake in each case, which can be changed, provided that it is always determined unilaterally by him.
- C. To provide his/her independent services to any third party or to perform projects for any third party, including competitors of the digital platform.
- D. To determine the time of provision of his/her services, within given time frames, adapting it to his/her personal needs and not based on the interests of the digital platform.

### The EU Commission has published a proposal for a Directive governing the employment status of gig workers. In light of this proposal, what evolutions are expected in your region?

Currently, no specific legislative actions are expected to be implemented with regard to the respective field. However, in June 2021, L. 4808/2021 was implemented, ensuring a minimum protection to gig workers. More specifically, articles 68,69, 70, 71 and 72 include a series of protective provisions with regard to the criteria of a non-dependent relationship with a gig service provider, collective entitlements, including the right to strike, minimum legal requirements with respect to the health and safety conditions applicable to gig workers, as well as the obligation of gig platforms to inform their contractors/gig workers about their rights.



# Greece

## (3/3) – Social status

**Are there any major developments ongoing or expected in relation to employment status in the context of the gig economy (e.g. in case law, national law, etc)?**

Apart from the aforementioned legislation, no major developments are expected in Greece in relation to the employment status for gig workers.





# Greece

## (1/2) – Tax status

### What is the tax treatment of income generated through gig work?

#### A. From a personal income tax perspective, and

#### B. VAT-perspective

From a personal tax and VAT perspective, the tax treatment depends on whether the gig workers are self-employed persons or employees of the platform.

A) From an income tax perspective, the distinction between self-employed persons and employees is relevant for payroll tax and social security tax purposes. Particularly, if the gig-worker is a self-employed person, there is no obligation for payroll tax and social security tax contributions by the employer. If the gig-worker is an employee of the platform, payroll taxes and social security tax contributions have to be withheld and paid to the Greek tax and social security tax authorities by the employer.

From a Greek tax law perspective, apart from the cases where an employment relationship exists, an employment relationship also exists for income tax purposes, should an individual provide his/her services via contract of services to up to three individuals or legal entities or, should this not be the case, at least 75% of the individual's gross income derives from one individual or legal entity as long as such individual does not have a commercial status and does not maintain a place of business other than his home.

Thus, the income derived by service providers/contractors in the context of services contracts could still - under certain conditions - be treated for income tax purposes as employment income and taxed accordingly. This, however, does not affect the legal characterization of the relationship between the contracting parties and does not give rise to payroll withholding obligations for the company.

B) From a VAT perspective, no VAT is levied on employment contracts whereas in case the gig workers offer their services as freelancers, their services should be subject to VAT 24%.

### Is there withholding tax due in your country? Are there specific requirements concerning reporting in your country for the withholding tax (cf. DAC7)?

The legal entity which performs payments in cash to its employees is liable to withhold tax on relevant payments. Payroll tax is withheld upon the payment of salary on a monthly basis, upon the conversion of the monthly salary on an annual basis (considering 14 monthly salaries). To this end, a monthly payroll return should be filed before the tax authorities (through the online system of the Ministry of Finance -taxisnet). It is noted that said withholding tax shall be rendered to the Greek State until the end of the second month following the date of the payment of the relevant employment income which is subject to the WHT.

More particularly, the payroll withholdings are based on the below progressive income tax scales:

Income in Euros	Tax rate (%)
0-10,000	9%
10,001-20,000	22%
20,001-30,000	28%
30,001-40,000	36%
40,001 -	44%

It is further mentioned that an additional tax, the so called special solidarity contribution, also applies in employment income. This is to note that respective contribution has been abolished for employment income received in FY22 with no further reference for the next years i.e. FY23 onwards and thus respective contribution may be imposed again for FY23 onwards.



# Greece

## (2/2) – Tax status

The employer is liable to withhold this additional tax based on the below progressive income tax scales:

Income in Euros	Tax rate (%)
0-12,000	0%
12,001 - 20,000	2,20%
20,001 - 30,000	5,00%
30,001 - 40,000	6,50%
40,001 - 65,000	7,50%
65,001 - 220,000	9,00%
>220,000	10,00%

On the other hand, payments made to individuals/freelancers for the provision of their services under service contracts are, in principle, subject to 20% withholding tax, except for some specific type of services which fall outside the scope of respective withholding tax provisions. Courier services are included among those payments to which no withholding tax applies. However, in order for such withholding tax exemption to apply, the individual providing the services should have the commercial status of providing courier services and this service category should have been declared to the authorities as his/her business activity. Otherwise, 20% withholding tax will apply on respective payments received for the provision of such services.

### Are there VAT simplification rules that can be applied by Gig Economy workers to complexity and VAT compliance costs?

According to the Greek Legislation, there are no specific VAT simplification rules for gig workers. Nevertheless, an exemption is provided for the freelancers delivering goods or services with an annual income up to € 10,000 being exempt from the obligation to file a VAT return and remit the corresponding tax.

### Are there any major developments ongoing or expected in relation to the tax treatment of the gig economy (e.g. in case law, national law, etc)?

No major developments are expected in relation to the tax treatment of the gig economy for the time being.

# Ireland





# Ireland

## – General Trend

### **How does the population of gig workers evolve in your region and what is the relative importance of the gig economy to your country's overall economy?**

It is believed that the population of gig workers in Ireland has been steadily increasing and that the Covid-19 pandemic has further escalated this growth. However, it is difficult to determine a value of the gig economy in relation to the overall economy of Ireland. Indicative numbers from November 2020 suggest that there are 15,000 intermediary companies in Ireland, and investigations into certain sectors suggest that up to 25 % of workers in some workplaces could be wrongly classified as self-employed.

Studies would suggest that the numbers of Self-employed as percentage of all in employment, has remained relatively steady at ~16%, while the number who are Self-employed (with no paid employees) as a percentage of all self employed individuals in Ireland has been trending upwards. While not an indication that workers are misclassified, it is estimated that approximately 12% of Ireland's workforce is classified as self employed without employees.





# Ireland

## (1/2) – Social status

**Please describe the different types of employment status (i.e. employee, self-employed, or other) that exist in your national law and, where applicable, explain how they differ.**

A binary approach to employment status exists in Ireland in that a worker is typically categorised as either an employee or self-employed. There is no single, clear legal definition of the terms 'employed' or 'self-employed' in Irish law. In order to determine a person's employment status, both the written or oral contract and the reality behind the contract must be taken into consideration. In determining employment status the five key factors or "legal tests" to be considered are:

1. Mutuality of obligation;
2. Substitution;
3. The enterprise test;
4. Integration;
5. Control.

Typical characteristics of employees include the following:

- Is under the control of another person who directs them as to how, when and where the work is to be carried out - Receives a fixed hourly/weekly/monthly wage;
- Does not assume any responsibility for investment and management in the business
- Works set hours or a given number of hours per week or month

Typical characteristics of self-employment include the following:

- Owns their own business
- Is exposed to financial risk by having to bear the cost of making good faulty or substandard work carried out under the contract
- Can provide the same services to more than one person or business at the same time
- Is not obliged to take on specific work offered to them.

It is important to note that not one characteristic alone is enough to identify an individual as an employee or self-employed, each case must be determined on its own merits.





# Ireland

## (2/2) – Social status

### **In which category would gig workers typically be classified and on which basis (e.g. case law, statutory law, etc.)?**

There is no specific classification of gig workers in Irish law at this time. There are different statutory bodies in place that make determinations on the employment status of a person for the purpose of social security, tax and employment rights.

The decisions of these bodies are not binding on each other. In order to determine a person's employment status, both the written or oral contract and the reality behind the contract must be taken into consideration.

Although the intention of the parties and any written agreement is given due consideration, they do not on their own determine the employment status.

### **The EU Commission has published a proposal for a Directive governing the employment status of gig workers. In light of this proposal, what evolutions are expected in your region?**

Currently, there are no particular legislative changes expected in Ireland. However, with the EU taking the lead with the directive, it is likely that Ireland will stay close to developments.

The current Irish position is already largely similar to the EU in determining employment status based on the facts relating to the work rather than purely on the contractual arrangement.

### **Are there any major developments ongoing or expected in relation to employment status in the context of the gig economy (e.g. in case law, national law, etc.)?**

Similar to the above, no major developments are expected in Ireland in relation to the employment status for gig workers. The expectation is that the position will continue to evolve through case law.





# Ireland

## (1/1) – Tax status

### What is the tax treatment of income generated through gig work?

#### A. From a personal income tax perspective, and

#### B. VAT-perspective

A) From a personal tax perspective, the tax treatment depends on whether the gig workers are self-employed persons or employees. If the gig workers are considered self-employed persons, the income will be taxed as self-employed income (requiring registration as self-assessed with Revenue, with obligations to file under the self-assessed tax system). If they are considered employees of the platform, the income will be taxed as employment income. The distinction between self-employed persons and employees is relevant for payroll tax and social security. If the gig-worker is a self-employed person, there is no obligation to withhold payroll tax and social security. If the gig-worker is an employee of the platform, payroll taxes have to be withheld and paid to the Irish tax authorities.

B) See below (VAT treatment where considered self-employed). If considered employee, there are no VAT implications.

### Is there withholding tax due in your country? Are there specific requirements concerning reporting in your country for the withholding tax (cf. DAC7)?

Withholding tax may apply to gig workers, but only if they are considered as employees. If an individual is considered an employee, their employer is obliged to withhold tax. In this scenario, the treatment of withholding tax is similar to a traditional worker employed under the PAYE (payroll withholding) system. If an individual is considered self-employed, their income is not subject to Irish withholding tax.

"Relevant activities" occurring on or after 1 January 2023, are within scope for DAC7 reporting by in-scope digital platform operators, with the first reporting obligation due on 31 January 2024. Relevant activities includes personal services carried out for consideration, and examples include transportation and delivery services, manual labour as well as clerical, legal or accounting tasks.

Given the Directive will have 'direct effect' in Ireland, Ireland will need to ensure that its reporting follows EU guidelines and standards elsewhere in Europe. There is no indication that the Irish government is seeking to expand the requirements beyond those included in the Directive.

### Are there VAT simplification rules that can be applied by Gig Economy workers to complexity and VAT compliance costs?

There are no specific VAT rules for gig workers, however persons supplying services in Ireland who have an annual turnover less than €37,500 are not required to register for VAT. This would mean that there would be no requirement to issue invoices, or submit VAT returns, however any VAT incurred would be a cost to the gig worker. Voluntary registration is possible to allow VAT recovery, however this would mean that the gig worker would need to charge VAT on services, issue invoices and submit periodic VAT returns.

### Are there any major developments ongoing or expected in relation to the tax treatment of the gig economy (e.g. in case law, national law, etc)?

At this time, no specific developments relating to the tax treatment of gig workers are expected.

Italy





# Italy

## – General Trend

### How does the population of gig workers evolve in your region and what is the relative importance of the gig economy to your country's overall economy?

According to the report of the Italian National Institute for Social Security (e.g. "INPS"), about 700,000 people work in the gig economy in Italy, and this category includes all the digital platform workers, who are not just riders but all individuals who carry out "a heterogeneous set of activities ranging from delivering packages or meals to performing online tasks (translations, computer programmes, image recognition)".

Based on the same report, the volume of the sector has a significant impact on the Italian economy, as value ranges between 0.7 and 1.3% of Italian GDP.

The main sector in the gig economy is certainly the one of the restaurant/food delivery industry which in recent years has been impacted by a radical transformation: ordering via apps and home delivery are growing steadily. Indeed this is an evolution of a phenomenon that already took place in the past with more traditional home delivery.

Since the beginning of this economy, it has been controversial which should be the regulatory framework applicable to these categories of employees. Recently, by Law no. 128 of 2019, the Italian legislator has provided for a regime of minimum protection applicable to all the professionals involved in this type of work, with the aim of granting them with a minimum level of social security protection. Due to the recent COVID-19 pandemic, the need of social security protection has been accentuated as the many lockdowns have increased the demand of food delivery exponentially and it is expected that the Italian government will intervene further on this matter.



**Please describe the different types of employment status (i.e. employee, self-employed, or other) that exist in your national law and, where applicable, explain how they differ.**

Individuals who provide their services can be part of one of the following main groups: subordinated employees (that is the "ordinary" kind of employment relationship) and self-employed (i.e. individual contractors with VAT status; coordinated and continuative collaborators, mainly of a freelance nature, autonomous workers).

The legal qualification of the working relationship is important because it determines what kind of rights the worker enjoys (e.g., certain important legal rights only apply to employees).

An employee is generally defined as a person in the service of another person or company under a private law contract, where the employer has the right to control and direct the employee's performance of work.

Therefore, the main criteria for determining if a subordinate employment relationship exists is the employer's right of direction, especially regarding the time of work, place of work and tasks to be performed by the employee. Another criterion that can be used is the worker's integration into the employer's business organization and use of company facilities such as rooms, tools and other working material.

When determining whether a person qualifies as an employee, one must take into account not only the wording of the employment agreement but also the actual circumstances under which the relationship is carried out.

Self-employment is regulated by the Italian Civil Code and Law 81/2017, which apply whenever a person undertakes to carry out work or a service mainly with his/her resources, and upon the payment of compensation. While employees are subject to the employer's right of direction, self-employed individuals are not integrated into the company and are free to determine their working hours. Most of the legal rules for the protection of employees are not applicable to self-employment.

With the aim of clamping down on the frequent abuse of freelance working relationships as a means to avoid obligations deriving from employment, the Job Acts Reform provided that, from 1 January 2016, work which is (i) organized by the client/employer (in particular, regarding the working time and place of work), and (ii) personally rendered by the self-employed in a continual and routine manner, is subject to the rules governing the subordinate employment relationships, except in specific statutorily provided cases (e.g. self-employment relationships specifically regulated by NLCAs, relationships entered into with registered professionals who are enrolled with a bar or professional association, self-employed individuals of non-profit sports associations, members of boards of directors or other governing or supervising company boards).

### **In which category would gig workers typically be classified and on which basis (e.g. case law, statutory law, etc.)?**

According to Italian law, those who work in the gig economy can be classified under different employment statuses:

- subordinate employees;
- self-employed workers;
- workers with contracts of coordinated and continuous collaboration (so-called "co.co.co.")

Law no. 128 of 2019 has established that the category of the subordinate employment relationship applies when the worker uses digital platforms and their performance:

- has a predominantly personal nature;
- is of a continuous nature;
- has ways of execution that are organized by the client.

However, nowadays most gig workers are engaged through a contract of self-employment. In fact, they carry out their activities with their own means and can choose whether or not to accept the job order for the client for whom they work.

### **The EU Commission has published a proposal for a Directive governing the employment status of gig workers. In light of this proposal, what evolutions are expected in your region?**

The Italian law already provides for a protection of Gig economy workers: indeed, art. 2, paragraph 1 of Legislative Decree 81/2015 states that in case of conclusion of a contract "co.co.co" the category of the employment relationship is applicable to those collaborations that result in the performance of work having a predominantly personal nature, which are continuous (i.e. repeated in a given period of time) and which way of execution are organized by the client, being de facto "hetero-organized".

Nonetheless, the proposal of the EU Directive contains clear parameters to make riders subordinate employees, with minimum wage, paid holidays and pension contributions, and to introduce human control of the algorithms and finally reverse the burden of proof of the autonomy of the employment relationship (which will be on the platform).

The assumptions and conditions laid down in the Directive regarding the legal presumption are very close to the criteria of hetero-organisation, so there is certainly ample room for our legal system to transpose it quickly.

Once the EU Directive is implemented, the Italian Government - shall have to adapt its legal framework on gig economy workers accordingly, unless the current Italian legal framework itself is already more beneficial for the employees.



# Italy

## (3/3) – Social status

### **Are there any major developments ongoing or expected in relation to employment status in the context of the gig economy (e.g. in case law, national law, etc)?**

The Italian legislator has repeatedly addressed the issue of digital platform workers, and has even gone so far as to recognise and ensure the protection typically of employment relationships for self-employed gig economy workers (even though they remain, formally, self-employed).

The first step in this process was the introduction of Article 2, par. 1, of Legislative Decree 81/2015, which states that the protection provided for the employment relationship also applies to collaborative relationships that take the form of exclusively personal, continuous work which manner of performance is organised by the principal, also with reference to the time and place of work, and also where the manner of performance is organised through digital platforms.

On this point, numerous judgments have established the subordination of gig workers and, specifically, of riders.

In ruling 3570/2020, the Court of Palermo stated that riders must be qualified as subordinate workers if their service is entirely organised by the algorithm. And again, by order of 28 March 2021, the Court of Milan extended the procedure for anti-union conduct provided for subordinate employment to 'shoppers', digital workers classified as self-employed.

It is also necessary to mention the judgment of 23 November 2021 of the Court of Florence, which provided for the application of the rules on collective redundancies for terminations announced to delivery personnel with collaborative relationships.





## What is the tax treatment of income generated through gig work?

### A. From a personal income tax perspective, and

### B. VAT-perspective

Gig economy workers can be treated as: 1. subordinate workers/employees; 2. self-employed workers, or 3. Co.co.co, although the tax status of the latter only differs minimally from the treatment of employees. The definition relates to different scenarios from both personal income tax perspective and VAT treatment:

1. The establishment of a subordinate employment relationship. Such relationship determines the obligation to pay: retirement contributions approximately equal to 38%, partially – i.e. 28,81% - borne by the company and partially – i.e. 9,19% - borne by the employee (both paid by the company, the part in charge of the employer withheld from the wage), insurance premium and severance pay in the hands of the company only, and individual taxes applied through a withholding tax mechanism. (For a detail of the withholding tax percentages please see the next question). Remuneration is not subject to VAT.

2. Self-employed workers: From a tax perspective, self-employed worker could choose for different regimes:

A. Occasional workers: work activity is characterized by the occasional work performance within the wage limit of Euro 5.000 per year. The income is determined as the difference between the wage received and its expenses specifically related. Remuneration is subject to a withholding tax rate of 20%. No additional personal income tax is due, unless worker holds other incomes. Occasional performances are excluded from VAT application. Social security tax contributions are not due.

B. Flat tax regime, so called "Regime forfettari per gli autonomi": the regime is applicable to turnover within € 65,000 per year. Further conditions have to be respected in order to choose for the regime. From an income tax perspective, the regime provides a favorable substitutive tax of 15% (5% for the first 5 years). Taxes and contributions have to be paid directly by the worker. No withholding tax is applied by the client. The flat tax regime triggers the non-application of VAT. Social security tax contributions range from 25% up to 33% of the income and are deductible from the income tax base.

C. Ordinary Regime: the regime is the "natural" one, for choice or mandatory applied to those who cannot elect for a flat tax regime (for example, in case of a turnover higher than € 65,000). Firstly, the law provides a withholding tax application of 20% as advance payment for individual taxes applied by the company. Annual Taxes will be determined, through the tax return, to be filed in the following fiscal year. The rates applicable depend on the amount of taxable income (revenues less expenses related to the business): until € 15,000 23%; from € 15,000 to € 28,000 25%; from € 28,000 to € 50,000 35% and over € 50,000 43%, plus municipal and regional tax with rates up to approximately 2%. The amount is reduced by the withholding tax preliminary applied. Ordinary VAT rate (22%) is applied and workers can deduct VAT paid for expenses related to business. Social security tax contributions range from 25% up to 33% of the income and are deductible from the income tax base.



# Italy

## (2/2) – Tax status

**Is there withholding tax due in your country? Are there specific requirements concerning reporting in your country for the withholding tax (cf. DAC7)?**

1. Subordinate workers: withholding tax is aligned to individual tax rate. Until € 15,000 is 23%; from €15,000 to € 28,000 is 25%; from € 28,000 to € 50,000 is 35% and over € 50,000 is 43%. In addition, contributions in the hands of workers (1/3) are subject to withholding tax of 9,19%.
2. Self-employed workers
  - A. Occasional self-employment: 20% withholding tax.
  - B. Flat tax regime c.d. "Regime forfettari per gli autonomi": no withholding taxes are due.
  - C. Ordinary Regime: 20% withholding tax.

Withholding tax is paid by the 16th day of the month following the one in which the self-employment invoice payment was carried out. Moreover, withholding tax substitute must fill the c.d. "Certificazione Unica" Form and the c.d. "770 " Form in order to certify the withholding tax applied and paid during the year.

**Are there VAT simplification rules that can be applied by Gig Economy workers to complexity and VAT compliance costs?**

For the VAT treatment, we refer to page 59. Please consider that for both flat tax regime and occasional workers, not being subject to VAT, relative fulfilments such as VAT annual return and quarterly VAT communication are not due. Additionally, at the moment, e-invoice for these regimes is not mandatory differently for self-employed workers in ordinary regime.

**Are there any major developments ongoing or expected in relation to the tax treatment of the gig economy (e.g. in case law, national law, etc)?**

Public discussion and judgments are focusing on the social status of gig workers.



# Norway





# Norway

## – General Trend

### How does the population of gig workers evolve in your region and what is the relative importance of the gig economy to your country's overall economy?

Overall, the gig economy should still be considered to be in its start phase in Norway, as it is still of small importance to Norway's overall economy. In a Government study from 2017, the gig economy is estimated to amount to 0,02% of Norway's GDP.

The population of gig workers has steadily increased in Norway. To our knowledge, there are no official numbers or estimates on how many people are currently providing services in various sectors of the gig and sharing economy. However, it is presumed that gig-economy workers make up a relatively small percentage of the norwegian workforce.

During the covid-19 pandemic, the Norwegian market has seen a significant increase in workers in food-delivering services, and personal transport services which are linked to the gig-economy (e.g. Uber, Bolt, Ryde, Wolt and Foodora).

While the COVID-19 crisis has reinforced our demand for these types of services, this economy has become more and more visible, which in return has attracted more and more workers and customers, but also critics. The question of the status of these workers, in particular Uber drivers or Wolt couriers, has become an important issue in Norway. The topics of health and safety and in general the working conditions of the gig economy workers were emphasized by those critics and have been put at the forefront of the discussion.

While no specific law has been proposed or considered, the Norwegian government has signaled that it will consider whether personal transport services (providing taxi-like services), such as Uber and Bolt, should be more strictly regulated.





# Norway

## (1/3) – Social status

**Please describe the different types of employment status (i.e. employee, self-employed, or other) that exist in your national law and, where applicable, explain how they differ.**

Generally, there are mainly two statuses in this relation, where one is an employee/employer relationship, and the other being regarded as self-employment (e.g. in a sole proprietorship). This being said, the category of "self employment" does however also consist of a category called "freelancers". A "freelancer" typically works on various assignments without being regarded as an employee (i.e. not an employee/employer relationship).

From a tax perspective - depending on the circumstances at hand - the freelancer can either be regarded as a "wage earner"/"salary worker" (without being regarded as an employee), and can also be regarded as a "self-employed person" who has his/her own sole proprietorship. A "freelancer" do also hold a particular status in relation to the National Insurance Act, in relation to e.g. social rights. There are e.g. particular rules for "freelancers" in terms of entitlement to sick pay, and "freelancers" may also be entitled to daily unemployment benefits.

According to case law and the text of the preparatory works leading to the Working Environment Act ("WEA"), some of the decisive factors to determine the nature of the collaboration are:

- Who is responsible/carries the risk for the final work result?
- How many job suppliers does the person who claims to be self-employed have? If there is only one, this is a factor that may indicate that there is in reality an employer and not a work supplier relationship.

- How long has the work relationship lasted?
- Who pays taxes and insurance premiums?
- Who instructs how the work is to be carried out? If the person concerned is obliged to submit to the employer's management and control of the work, this may indicate that the relationship between the parties in reality is an employment relationship.
- Who owns the equipment used to perform the work?
- Is the relationship between the parties stable, and can the relationship between the parties be terminated with a specific notice period?
- Is it possible for the person concerned to use assistants/helpers at their own expense?

The conclusion in terms of whether or not the set-up should be considered as an employment relationship is made on the basis of an overall assessment of the concrete circumstances of the relationship between the parties. It is the legislator's intention that those in need of the protection provided by the WEA, the Holiday Act etc. should be protected by those acts, and the definition of an employment relationship must therefore be given a broad interpretation.





# Norway

## (2/3) – Social status

### **In which category would gig workers typically be classified and on which basis (e.g. case law, statutory law, etc.)?**

The classification must be made on a case-by-case basis. Workers in the gig economy can be classified as either employees, freelancers or self-employed workers, depending on an overall assessment of the factual realities of the case.

### **The EU Commission has published a proposal for a Directive governing the employment status of gig workers. In light of this proposal, what evolutions are expected in your region?**

The draft of the EU Commission focuses on applying the correct qualification to the worker of the gig economy by introducing a set of criteria that help to determine the correct qualification.

No doubt that many platforms will fulfil those criteria. This will result in many platform workers who are currently considered self-employed individuals to be employees. By excluding the creation of a third worker category more specific to the platform workers, they will have to fully adhere to the status of employee with the advantages and disadvantages that this represents.

Norwegian legislation already has similar criteria to determine whether an individual qualifies as an employee or a self-employed individual. However, the fact that the directive proposes a legal presumption for an employment relationship if two of the abovementioned criteria are met, poses the question if national legislation could be adapted to further interalign with the European criteria.

A Norwegian public committee has in fact already recommended a legal presumption corresponding to the abovementioned regulation in the proposed EU Directive. The Ministry is currently reviewing the recommendation from the committee.

If the proposed Directive is passed as EU-law, Norwegian law will most likely have to be altered in order to stay in accordance with EU law.



# Norway

## (3/3) – Social status

**Are there any major developments ongoing or expected in relation to employment status in the context of the gig economy (e.g. in case law, national law, etc)?**

As mentioned above, a Norwegian Public Committee has recommended a legal presumption corresponding to the presumption in the proposed Directive. The recommendation is under review in the Ministry.

Furthermore, it is currently (March 2022) proposed to amend some of the provisions in Norwegian legislation relating to hiring out of employees from e.g. temporary work agencies. Depending on how the platform work is organized, the proposed amendments may have an impact on the employment status of workers active in the gig economy.





# Norway

## (1/3) – Tax status

### What is the tax treatment of income generated through gig work?

#### A. From a personal income tax perspective, and

#### B. VAT-perspective

##### A. Personal income tax

If the gig worker is regarded as an employee who receives salary, the National Insurance contributions from the employee are as a main rule 8 %, and the employer's National Insurance contributions are between 0 % - 14,1 % (depending e.g. on the Zone/area). The tax rate for personal income tax is progressive. On a high-level basis, the marginal tax rate is:

NOK 0	64,650	0,00 %
NOK 64,651	95,074	25,00%
NOK 95,075	107,870	8,00%
NOK 107,871	190,350	19,88%
NOK 190,351	239,022	21,58%
NOK 239,023	267,900	31,70%
NOK 267,901	643,800	34,00%
NOK 643,801	969,200	43,40%
NOK 969,201	2,000,000	46,40%
NOK 2,000,001	→	47,40%

If the gig worker is regarded as an independent contractor/self employed person:

The the marginal tax is as a main rule calculated on the total income, both from the enterprise and any other income. As a main rule, the tax rate will be somewhere between 33,2 % and 50,6 %.

The tax will be somewhat higher for business income than for the corresponding salary income. The reason why is because the tax on business income includes a higher National Insurance rate (the rate for salaried employees is 8,0%, while the rate for business income is 11,2 %). Tax must be calculated on all profits. Thus, there are no separate threshold amounts which must be passed before the obligation to pay tax is triggered. Even if the holder works for the enterprise, the withdrawal or transfer of money to the holder will as a main rule not be considered as salary. Employer's National Insurance contributions do as a main rule not have to be calculated. Payments made to the holder should not be deducted in the enterprise's accounts in the same way as salary payments to employees, and will as a main rule not affect the taxable profit.





# Norway

## (2/3) – Tax status

### What is the tax treatment of income generated through gig work?

#### A. From a personal income tax perspective, and

#### B. VAT-perspective

##### B. VAT

As a main rule businesses and public enterprises (taxable persons) are liable to register for Norwegian VAT when the amount of taxable supplies of goods and services comprised by the scope of the Norwegian VAT Act exceeds NOK 50,000 during a twelve-month period. If the gig worker is self-employed, the question becomes if the criterias of being regarded as a standalone business are fulfilled (under self-instruction, having the economic and legal responsibility for the provision of the goods and services in question etc.). If the criteras are fulfilled, the income/gross revenue generated from the gig work is subject to Norwegian VAT. The applicable VAT rate to be applied may depend on what type of service the gig worker provides (standard VAT rate 25 %, reduced VAT rate 12 %, 0 VAT % rate). However, should the gig worker be considered as an employee, the revenue will not be subject to VAT.





# Norway

## (3/3) – Tax status

**Is there withholding tax due in your country? Are there specific requirements concerning reporting in your country for the withholding tax (cf. DAC7)?**

**If the gig worker is regarded as an employee:**

If the gig worker is regarded as an employee, then as a main rule the employer is obligated to withhold tax and employer's National Insurance contributions from the salary payments. Payments of withholding tax deductions and employer's National Insurance contributions are made six times a year.

**If the gig worker is regarded as an independent contractor/self employed person:**

Some gig workers could be regarded as independent contractors who register a sole proprietorship. In the case of sole proprietorships, it is the holder (owner) who is personally liable for the obligations that the enterprise assumes. These enterprises are not a separate tax entity, and the holder will be personally liable for paying the enterprise's taxes. Profits/deficits are reported annually through the holders ordinary tax return for income and wealth tax and any attachments. As of the income year 2021, a new tax return for businesses has been introduced. The holder can either submit the tax return directly via skatteetaten.no, or through its accounting system or annual settlement program. The holder must pay tax in advance. The holder will not be sent a tax invoice automatically, and must therefore report any changes in income in order to have the advance tax calculated. This is done by submitting form "RF-1102 Amend tax deduction card/advance tax".

**Classification**

For the sake of good order, we inform that the courts and authorities can make their own assessments in terms of whether a relationship should be regarded as an employment relationship or as a sale of a service/an independent contractor. The determination will be made as an overall assessment based on the underlying facts of the relationship, i.e. not only on what is stated in the contract between the respective parties. For the elements taken into consideration, please see page 64.

**Are there VAT simplification rules that can be applied by Gig Economy workers to complexity and VAT compliance costs?**

Such rules do not exist under Swedish legislation.

**Are there any major developments ongoing or expected in relation to the tax treatment of the gig economy (e.g. in case law, national law, etc)?**

Not to our knowledge.



# United Kingdom





# United Kingdom

## – General Trend

### **How does the population of gig workers evolve in your region and what is the relative importance of the gig economy to your country's overall economy?**

The ongoing growth of the gig economy has resulted in significant changes to case law on employment status and legislation in the UK over recent years. This area continues to develop at pace, with courts seeking to catch up on new ways of working and new legislation is being proposed to protect workers who are perceived as vulnerable.

The gig worker population within the UK has continued to grow year on year, with the pandemic seeing delivery and online gig work increase in certain sectors. Recent research conducted in 2021 saw the number of people working for gig economy platforms nearly tripling in England and Wales over the past five years. Rough data suggests that around 4.4 million people in England and Wales were working for gig economy platforms at least once a week.

The gig economy is therefore a substantial part of the UK's workforce, with individuals being attracted to such work due to the benefits of flexibility. Calls are increasingly being made to the government to allow gig workers to have greater trade union and individual rights. This is an area of contention that will likely continue in the next few years.





# United Kingdom

## (1/3) – Social status

**Please describe the different types of employment status (i.e. employee, self-employed, or other) that exist in your national law and, where applicable, explain how they differ.**

In the UK, an individual doing paid work falls into one of three categories: employee, self-employed and an intermediate category called “worker”. An employee enjoys the full range of employment rights whereas someone who is self-employed enjoys only very limited rights. A “worker” is entitled to statutory paid holiday (5.6 weeks per year), National Minimum Wage and pension contributions from the engaging entity.

In determining the status of an individual, it is necessary to look at a whole range of factors and not merely at any written contract that may be in place between the parties.

There are three main factors:

**Mutuality of obligation:** is the engaging entity obliged to offer, and is the individual obliged to accept, any work? This is an important factor in distinguishing an employee from a worker or someone who is self-employed.

**Personal service:** is the individual obliged to perform services personally, or do they have an unlimited right to provide a substitute? The obligation of personal service must exist for worker or employee status to exist.

**Control:** what level of control is exercised by the engaging entity over the performance of the services?

In addition to the above, other relevant factors that are taken into account include the level of financial risk taken on by the individual in providing the services; the degree to which the individual is integrated into the engaging entity’s organisation; and whether the individual provides their own equipment.

**In which category would gig workers typically be classified and on which basis (e.g. case law, statutory law, etc.)?**

An individual in the gig economy can fall into any of these three categories depending on the circumstances of their engagement. There are no special rules for the gig economy in determining employment status. Over the past 12 months, there has continued to be a number of cases in the UK where individuals who have been labelled by the parties as self-employed have been found to be “workers” in reality. In many of these cases, the lack of mutuality of obligation between the parties has meant that individuals have failed to demonstrate that they are employees, but they have been held to be “workers” on the basis of the personal service/control tests.





# United Kingdom

## (2/3) – Social status

**The EU Commission has published a proposal for a Directive governing the employment status of gig workers. In light of this proposal, what evolutions are expected in your region?**

The UK is not obliged to implement the terms of this Directive. However, UK based organisations must be mindful of the new rules. Organisations may have exposure due to remote working contingent workers based in EU countries who may move from self-employed to employed status and organisations may also need to reconsider their international supply chains, along with implementing procedures to comply with the new algorithmic management requirements.

Under the proposed Directive, member states must have in place appropriate procedures to ensure the correct determination of “workers” which are “guided primarily by the facts relating to the actual performance of work, taking into account the use of algorithms in the organisation of platform work, irrespective of how the relationship is classified in any contractual arrangement that may have been agreed between the parties”. This mirrors the position in the UK. However, the distinction between these proposed rules and the current UK tests on status is significant. As mentioned above, control is an important factor in the UK although the EU could be seen as going further on what is meant by this term. The UK also takes into account other factors not mentioned in the Directive, such as the obligation to provide personal service (and the unfettered right of substitution) and mutuality of obligation. Therefore, it appears that the UK and the EU may be taking a significantly different approach in terms of status.





# United Kingdom

## (3/3) – Social status

### Are there any major developments ongoing or expected in relation to employment status in the context of the gig economy (e.g. in case law, national law, etc)?

There have been a number of cases in the UK courts in relation to employment status and the gig economy and we are seeing more status cases progress through the courts.

A recent Court of Appeal decision held that in order for an individual to fall within the category of “worker”, there is no requirement for the contract between the parties to contain an “irreducible minimum of obligation” between them. This case is consistent with the Supreme Court’s 2021 decision in Uber. In that case, drivers had no overarching contract but a worker contract was created when they logged into the app. This decision reiterates that contractual provisions seeking to show a lack of obligation to provide/accept work will not prevent worker status and demonstrates that mutuality of obligation is a key differentiator between a worker and an employee.

Employment status in the gig economy was one of the key areas looked at in the Taylor Review in 2017. The Review recommended that the definition of “worker” should be clearer and more consistent, and that “workers” who are not employees should be renamed in the legislation as “dependent contractors”. In response, the UK Government said it would legislate to improve the clarity of the employment status tests in order to reflect the reality of modern working relationships. There has been little update about the Government’s strategy since then. On determining status, the Review said that the factor of control should have greater prominence. So the UK will, at the very least, be looking at the EU’s new platform working regime to decide the extent (if any) to which it should act as a roadmap for the future of contingent work here.

The Government has confirmed that it will be launching a new enforcement body, intended to protect a number of key employment rights for “workers”. The new enforcement body will have a wide remit to investigate and enforce employment rights (including national minimum wage and holiday pay) and this will have an impact on key business focus areas. The intention is that the new enforcement body will focus not just on employee populations, but also those who work under employment agencies and umbrella company arrangements, in order to regulate those arrangements more effectively. The Government has not said when the body will come into force, although it has committed to introduce legislation at the earliest possible opportunity.





# United Kingdom

## (1/3) – Tax status

### What is the tax treatment of income generated through gig work?

#### A. From a personal income tax perspective, and

#### B. VAT-perspective

The tax treatment is dependent on the following factors, which we will cover in turn below.:

1. The engagement model of workers
2. The employment status of workers
3. The amount paid

#### Employee

Where gig economy workers provide services as an employee of an organisation (under a employment contract), all income paid is liable to UK PAYE (income tax) and National Insurance (social security tax). All income paid is processed through the UK payroll to collect the withholdings due. The value of tax due is dependent on the amount paid to an employee. Where earnings fall below the UK personal allowance threshold (tax allowance), no income tax will ultimately be payable.

Typically, UK VAT will be payable by a company for any income generated by an employee.

#### Self-employed

Where an organisation engages a self-employed worker, the personal income tax treatment is based on the employment status of the individual. An end user must typically assess whether a self-employed engagement is viewed as that of an employment relationship, by undertaking an employment status review (considering the main pillars of employment status to form a judgement on whether the individual is indeed genuinely self-employed). Where it is determined that they are considered an employee, PAYE and NIC must be withheld on all payments made. In addition, the end user of the worker considered an employee will be liable for National Insurance, Apprenticeship Levy and the UK Health and Social Care Levy (from April 2022) on the amount paid.

If a worker is considered self-employed, no income tax withholdings are required by an end user and there is no additional cost to the user of the worker other than the payment of fees to the worker (i.e. no employer National Insurance etc). The worker must instead declare any income on their personal UK self-assessment tax return, under which they will pay income tax personally to HMRC and settle a different class of social security for self-employed workers.

Where a self-employed worker is provided via an agency (or similar third party intermediary), the agency must determine whether the agency rules apply. This focuses on the presence of supervision, direction and control in an engagement with an end user. Where it is found that SDC applies, the agency must withhold PAYE and NIC on all payments made to the worker and account for employer costs including National Insurance, Apprenticeship Levy and the UK Health and Social Care Levy (from April 2022) on the amount paid.

Typically, UK VAT will be payable by a company for any income generated by a self-employed worker. Where a self-employed worker is registered for VAT, they will typically charge the end user organisation VAT on services provided. A review would be required to ascertain whether this is recoverable.

#### Personal service company (PSC)

In the same way as self-employed engagements, the personal income tax treatment is based on the employment status of such individual. An end user must typically assess whether a PSC engagement is viewed as that of an employment relationship, by undertaking an employment status review. Where it is determined that the worker providing services via a PSC is considered a 'deemed employee', PAYE and NIC must be withheld on all payments made by the fee payer, along with accounting for the additional cost of National Insurance, Apprenticeship Levy and the UK Health and Social Care Levy (from April 2022) on the amount paid. This may either be the end user, or another entity in the contractual chain.



# United Kingdom

## (2/3) – Tax status

If a worker is not considered a deemed employee, no income tax withholdings are required by the fee payer. The PSC must instead declare any income on their corporation tax return and pay any tax due to HMRC.

However, a concession is available for certain organisations that meet the conditions of the 'small companies exemption' whereby they are not required to operate the IR35 rules (<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10006>).

Typically, UK VAT will be payable by a company for any income generated by a PSC worker. Where a self-employed worker is registered for VAT, they will typically charge the end user organisation VAT on services provided. A review would be required to ascertain whether this is recoverable.

### **Outsourced service**

Where an engagement is a genuine outsourced service, no personal income tax is withheld or payable.

### **Office Holders/Statutory Directors**

Where a statutory director is engaged "off-payroll" in a contractor capacity, they will always be deemed to be an office holder and subject to PAYE and NIC on all income paid to them (regardless of the engagement model adopted).

### **Is there withholding tax due in your country? Are there specific requirements concerning reporting in your country for the withholding tax (cf. DAC7)?**

Please see the comments above. Withholding tax is dependent on the engagement model and employment status of workers engaged.

### **Reporting**

Alongside the payroll reporting required, an organisation may also need to consider the intermediary reporting requirements, where they make arrangements for an individual to work for a third party, and do not operate PAYE on the worker's payments. This typically applies where an organisation engages with a self-employed or PSC worker and arranges for them to perform duties for another organisation.

Where this applies, intermediaries must send a report to HMRC at least once every 3 months to disclose all payments made to workers where PAYE is not operated.



# United Kingdom

## (3/3) – Tax status

### Are there VAT simplification rules that can be applied by Gig Economy workers to complexity and VAT compliance costs?

The threshold for VAT registration in the UK is £85,000/annum and so it is envisioned that the number of workers who would need to register for VAT and submit VAT returns is low. For those that do reach the threshold, the VAT Flat Rate scheme is available up to a limit of £150,000 turnover/annum. Under the flat rate scheme, businesses have to pay a set percentage of their turnover to HMRC as VAT and is unable to reclaim their input VAT. The rate applicable varies depending on the classification of the business.

### Are there any major developments ongoing or expected in relation to the tax treatment of the gig economy (e.g. in case law, national law, etc)?

The gig-economy and the workers within it are regularly subject to ongoing litigation and court cases, which is helping to form relevant case law on which organisations must abide by.

Recent cases have decided that gig-economy workers may be seen as 'workers' and not 'self-employed' for the purposes of UK law and tax. Where this is the case, workers may be entitled to National Minimum Wage (NMW), holiday pay and other statutory rights typically only given to employees.

Currently, there is a discrepancy between the definition of a 'worker' from a tax and legal perspective, but it is expected that further cases may look to close the gap and form a more consistent judgement across both.

Gig economy workers is also something HMRC have an invested interest in given the perceived tax avoidance and exploitation of workers (who are perceived to be self-employed), so are likely to initiate further reviews and investigations going forward.

# Spain





# Spain

## – General Trend

### **How does the population of gig workers evolve in your region and what is the relative importance of the gig economy to your country's overall economy?**

Nowadays the gig economy in Spain is experiencing challenges such as recent legislation specifically targeted at the workers of delivery platforms commonly known as “riders”. The newly introduced rule has reset pathways on the ground to harmonize relationships between the specific market needs, business firms and workers.

Companies have adapted their business models due to diverse reasons, recent case law and labor legislation, the potential growth during Covid-19 pandemic, and the increasing sales and extended remote work year on year in the country. An example of this, would be the approval of the first Collective Bargaining Agreement negotiated by the main Union Associations within this sector (i.e., Just Eat) the establishment of new companies hiring all workers under labor indefinite contracts, or offering employees independence on work schedule (i.e. Glovo).

Despite court debates being held on the nature of of the collaboration, new legislation has introduced the first algorithmic regulation in the platform economy, which would restructure relationships between all parties involved, adding an artificial intelligence element to reconfigure the working conditions.





# Spain

## (1/3) – Social status

**Please describe the different types of employment status (i.e. employee, self-employed, or other) that exist in your national law and, where applicable, explain how they differ.**

In Spain, there is no law that governs the type of work performed in the gig economy; as a result of which there is currently legal uncertainty regarding this topic, with the exemption of workers whose activity is the distribution and delivery of goods (the so-called “Riders Law”, see page 81). There is however a draft law to further regulate the situation.

For the time being, our labour courts must decide on the nature of the relationship on the basis of historic laws (Workers' Statute that rules employment relationships and Act 20/2007 on self-employed work) and case law on the matter.

That is to say, in view of the circumstances and the presence of the characteristics of an employment relationship (dependence and subordination), the courts will have to determine, whether the relationship with the worker is a labour relationship or a business relationship, and in the latter case, whether the employee is a common self-employee or a TRADE (self-employed economically dependent).

The basic principles to define whether the nature of a relationship is a labour relationship or a business relationship are:

1. there is a presumption ‘juris tantum’ that the relationship is a labour relationship if the worker receives remuneration under the organization and direction of the company;
2. according to case law, there is a labour relationship if: the individual renders services regularly on behalf of the company; earns a steady income; has to follow the instructions of staff of the company; has to comply with certain standards set by the company; does not reject services and can be identified as related to the company (e.g. through logos or publicity); and
3. no matter the name that the parties have given to the contract as, in the event of a dispute, the relationship will be considered a labour relationship if there is evidence of dependence and alienation.

In view of the above, there are two main groups: The Worker’s Statute, which regulates the rights and duties of employees, and the Self-Employed Workers' Statute Law, which regulates the rights and duties of self-employed workers.

### **The main differences are:**

- A. Dependency. An employee is dependent on his or her employer, whereas a self-employed person is not.
- B. Subordination. An employee is subordinate to his employer, whereas a self-employed person is not.
- C. Personal. In the case of employees, the worker must carry out the work himself, while the self-employed can delegate the functions.

In practice the main differences between both types of workers is that employees fall within the scope of the Workers Statute whereas self-employee’s conditions and rights are governed by the autonomy of the parties



# Spain

## (2/3) – Social status

### In which category would gig workers typically be classified and on which basis (e.g. case law, statutory law, etc.)?

Generally gig workers will be legally presumed to be employees, which is also enforced by recent case law. However, not all gig workers can be considered employees per se. In order to determine the exact employment status, the exact circumstances of the provision of services must still be taken into account.

In order to determine the status as an employer in a “sensu contrario” (and to consider its riders as employees), it will be necessary to look primarily at 4 regulatory resources:

1. Workers' Statute (WS) - Article 1.1 (An employee is a person who provides paid services under the organization and management of another person, whether natural or legal, known as an employer.)
2. Self-employment Statute - Article 1.1 (Persons who habitually, personally, directly, for their own account and outside the scope of the management and organization of another person, carry on an economic or professional activity for gain, whether or not they employ employees)
3. Law 12/2021 also known as the "rider law", on the relationship delivery drivers and digital platforms.
4. Spanish Case-Law on this specific matter.

From the above sources, the following general indicators that determine the consideration of the digital platform as an employer (and the deliverers as an employees) can be listed:

1. Existence on the digital platform of an algorithm that controls the activity of the deliverers and organizes it. This is a legal presumption, so anytime it occurs, the direct consequence will be that the platform will be considered as an employer, unless the platform can prove that they were real independent professionals.

2. The deliverer assumes no liability if the service is not provided properly, the responsibility is assumed by the platform.
3. It is the platform who receives the payment for the service from the establishments or end customers.
4. The deliverer cannot select the customers with which he/she wants to work.
5. It is the platform which sets the prices for the services and chooses the customers, so it is an indispensable intermediary for the activity.
6. The most important production means for the performance of the services are owned by the platform (App and the brand). Whether the deliverer uses his own means of transport or even his own terminal is not relevant for this purpose.
7. The platform gives orders to the deliverer on how to carry out the activity (best way to deliver, how to treat customers, etc.).
8. The platform even has the possibility of disciplinary actions if the deliverer has not followed the service instructions given, by refusing delivery orders.





# Spain

## (3/3) – Social status

**The EU Commission has published a proposal for a Directive governing the employment status of gig workers. In light of this proposal, what evolutions are expected in your region?**

From a Spanish perspective, this proposed directive would not have a substantial change in Spanish law. Since the rebuttable presumption of the employment status of workers whose activity is the distribution and delivery of goods, currently already exists in the Spanish "Rider law" (see next question for more information).

The most important changes that the directive would imply in terms of Spanish law would be the introduction of the following criteria to assess the employment status of the gig worker::

1. The platform effectively determines the remuneration of workers or establishes maximum limits to this remuneration;
2. Workers are required to respect specific and binding rules regarding appearance, conduct towards the recipient of the service or the performance of the work;
3. The platform monitors the performance of the work or assesses the quality of its results, including by electronic means;
4. The platform effectively restricts, including through sanctions, the freedom to organise one's own work, in particular working time and the ability to accept or refuse tasks or to use subcontractors or substitutes,
5. The ability of the worker to create a client base or to carry out work for a third party is effectively restricted.

**Are there any major developments ongoing or expected in relation to employment status in the context of the gig economy (e.g. in case law, national law, etc)?**

Considering the legislative steps already taken by the Spanish legislator over the past few years, we do not expect any further and substantial changes.

Following the publication of Law 12/2021 also known as the "Rider law", there is a presumption of employment for workers whose activity is the distribution and delivery of goods, this presumption of employment however admits proof to the contrary.

This legislation also includes an amendment on the right of information of workers' representatives to be informed by the company on the parameters, rules and instructions on which algorithms or artificial intelligence systems are based that affect decision-making that may have an impact on working conditions, access to and maintenance of employment, including profiling. For the time being, no further regulatory developments are planned in this matter.

The evolution of gig economy platforms may lead to new regulatory needs that could be adapted in the coming years. In this regard, some platforms such as "Just Eat" are considering the development of their own collective bargaining agreement. This could incite state regulation in this sector.





# Spain

## (1/2) – Tax status

### What is the tax treatment of income generated through gig work?

A. From a personal income tax perspective, and

B. VAT-perspective

In line with what was previously stated, the income generated through gig work is generally considered an employment income therefore and will therefore not be subject to VAT.

From a personal income tax (PIT) perspective, the individuals who performed gig work will be considered employees, so any income received from this activity must be considered as an employment income.

A progressive tax scale is applied to employment income. The progressive tax rates vary between 19% and 47% (these rates may vary according to the Autonomous Community (CCAA) of residence).

### Is there withholding tax due in your country? Are there specific requirements concerning reporting in your country for the withholding tax (cf. DAC7)?

In general terms, according to article 99 of Personal Income Tax Law in Spain, entities who pay or satisfy salaries to their employees being subject to personal income tax in Spain, shall need to process withholding taxes on the employment income of the employees and remit them to the Spanish Tax Authorities.

Based on the above, there would be an obligation for the company to make withholding payments from the worldwide remuneration paid to them. In this regard, the withholdings made by the employers should be deposited before the Spanish Tax Authorities on the following basis:

- a) Form 111: It is submitted monthly/quarterly basis before the 20th of the month following the reporting period;
- b) Form 190: This is the annual summary of the different forms 111 that have been submitted on a monthly/quarterly basis during the year. It may be submitted between 1 and 31 January of the following fiscal year.





# Spain

## (2/2) – Tax status

**Are there VAT simplification rules that can be applied by Gig Economy workers to complexity and VAT compliance costs?**

Taking into account gig work is a labor relationship, there are no VAT implications.

**Are there any major developments ongoing or expected in relation to the tax treatment of the gig economy (e.g. in case law, national law, etc)?**

There are no specific tax developments ongoing.



# Sweden





# Sweden

## – General Trend

**How does the population of gig workers evolve in your region and what is the relative importance of the gig economy to your country's overall economy?**

There is huge evolution of the gig economy in Sweden, where there are both platform companies that engage gig workers, as well as companies that engage self-employed gig workers. There are however no official statistics available.





# Sweden

## (1/2) – Social status

**Please describe the different types of employment status (i.e. employee, self-employed, or other) that exist in your national law and, where applicable, explain how they differ.**

According to case law and the text of the preparatory works leading to the Swedish Employment Protection Act some of the decisive factors to determine the nature of the collaboration are:

- Who is responsible/carries the risk for the final work result?
- How many job suppliers does the person who claims to be self-employed have? If there is only one, this is a factor that may indicate that there is in reality an employer and not a work supplier relationship.
- How long has the work relationship lasted?
- Who pays taxes and insurance premiums? And who carries the financial risk and the liability insurance?
- Who instructs how the work is to be carried out? If the person concerned is obliged to submit to the employer's management and control of the work, this may indicate that the relationship between the parties in reality is an employment relationship.
- Who owns the equipment used to perform the work?
- Is the relationship between the parties stable, and can the relationship between the parties be terminated with a specific notice period?
- Is it possible for the person concerned to use assistants/helpers at their own expense?

The conclusion in terms of whether or not the set-up should be considered as an employment relationship is made on the basis of an overall assessment of the concrete circumstances of the relationship between the parties. It is the legislator's intention that those in need of the protection provided by the Swedish Employment Protection Act, the Annual Leave Act etc. should be protected by those acts, and the definition of employee/employment relationship must therefore be given a broad interpretation.

**In which category would gig workers typically be classified and on which basis (e.g. case law, statutory law, etc.)?**

The classification must be made on a case-by-case basis. Workers in the gig or sharing economy can be classified as either employees or self-employed workers (freelancers), depending on an overall assessment of the factual reality of the case.





# Sweden

## (2/2) – Social status

**The EU Commission has published a proposal for a Directive governing the employment status of gig workers. In light of this proposal, what evolutions are expected in your region?**

The proposal of the EU Commission focuses on applying the correct qualification to the worker of the gig economy.

Many platforms in Sweden will most probably have to reclassify their gig workers, currently working as self-employed individuals, into employees. By excluding the creation of a third worker category more specific to the platform workers, they will have to fully adhere to the status of employee with the advantages and disadvantages that this represents.

Today, Swedish legislation and Swedish case law already provide for a number of specific criteria and conditions to determine whether an individual is working as an employee or as a self-employed individual. It is however expected that these criteria will have to be altered once the new EU Directive would enter into force.

If the proposed Directive is passed as EU-law, Swedish law will most likely have to be altered in order to stay in accordance with EU law and to include the specific criteria for the legal presumption.

**Are there any major developments ongoing or expected in relation to employment status in the context of the gig economy (e.g. in case law, national law, etc)?**

There is an ongoing debate regarding the definition of "employer" and if the EC Directive will enter in force, the Swedish legislation will be updated accordingly.





# Sweden

## (1/1) – Tax status

### What is the tax treatment of income generated through gig work?

#### A. From a personal income tax perspective, and

#### B. VAT-perspective

##### Personal income tax perspective

a) the tax treatment depends on whether the gig-worker qualifies as a i) self employed, or ii) an employee.

The Swedish tax system is complex, with a progressive income tax on earnings on salary and on business income (if sole trader). If treated as employee, the income is progressively taxed at a rate of 30-57 %. Moreover, social contributions of 31.42% on the remuneration are paid by the employer, which is why a reclassification to an employment relationship will have a financial impact on the situation.

b) If self-employed, and sole trader; depending on type the service provided. Commonly 25% VAT is added.

### Is there withholding tax due in your country? Are there specific requirements concerning reporting in your country for the withholding tax (cf. DAC7)?

Whether withholding taxes are due will depend on the employment status of the employee.

### Are there VAT simplification rules that can be applied by Gig Economy workers?

Commonly a rate of 25 % VAT will apply if the gig worker performs services in a normal and regular economic activity, but if the turnover is lower than the threshold of SEK 30,000 there is no VAT due.

### Are there any major developments ongoing or expected in relation to the tax treatment of the gig economy (e.g. in case law, national law, etc)?

As in many other countries, there is a debate ongoing on whether gig workers should be considered as employees or as self-employed individuals.

In the context of this debate a reclassification from a self-employed status to an employment has already occurred in number of cases. This trend is expected to persist.

Further, there is increased pressure to have platform economies conclude collective bargaining agreements.



# The Netherlands



# The Netherlands

## – General Trend



### How does the population of gig workers evolve in your region and what is the relative importance of the gig economy to your country's overall economy?

The most recently available figures show that the population of gig workers comprises a total of 0.9 per cent of the working population. There are about 125 work platforms active in the Netherlands. The impact of the platform economy is considerable. For example, platforms stimulate the adjustment of business non-platform companies and can, as a result of competition, have a major impact on the position of other workers in a sector. The COVID-19 crisis underlines the vulnerable position of the platform worker who often works as a self-employed person and therefore has no protection in case of reduced work, dismissal and illness.

In addition, platform work is an important topic because various court cases have shown that platform work is often to be an employment relationship instead of a contract for services. In addition, a new directive to improve the working conditions of platform workers is on the way, introducing a legal presumption for platform work if certain conditions are met. Change is also afoot at the national level. Taken together, these conditions mean that platforms will have to adapt their business models.

The development of the number of platforms and platform workers depends to a large extent on the ability of platforms to adapt to changing legislation bringing increased regulation (i.e. presumption of an employment contract for platform work).





**Please describe the different types of employment status (i.e. employee, self-employed, or other) that exist in your national law and, where applicable, explain how they differ.**

In general the working relationship is either an employment contract or a contract for services. The definition of the employment contract is key in correctly qualifying the working relationship (Article 7:610, paragraph 1 of the Dutch Civil Code).

This legal definition of the employment contract consists of four criteria:

1. The obligation of the employee to perform work during a certain period of time;
2. The obligation of the employee to perform work personally;
3. The obligation of the employer to reward the work; and
4. The power of the employer to exercise authority over the work of the employee.

This last criterion is the most distinguishing for the difference between the employment contract and the contract for services. This refers to the subordination that exists between the employer and the employee. This involves whether the employee performs work in the service of, or according to the instructions of, the employer.

Provided that all four criteria are met, an employment contract is present (and not a contract for services) irrespective of the type of contract that the parties may have concluded. The most important consideration is whether, on the basis of the actual performance of the contract, it can be concluded that there is an employment contract.

The definition of the contract for services implies that there is a contract whereby the contractor (self-employed worker) undertakes to perform work for the principal (Article 7:400, paragraph 1 of the Dutch Civil Code).

As mentioned, the most significant difference between the employment contract and the contract for services is the relationship of authority. In a contract for services, the principal is allowed to give instructions on how the assignment should be carried out. However, these instructions may not be too restrictive in such a way that a relationship of authority can be deduced from these instructions. In that case, a self-employed worker may claim that he or she is working on the basis of an employment contract instead of a contract for services.

For a contract for services to exist, the self-employed worker must have sufficient freedom to give substance to the way in which he or she carries out the services. This freedom of the self-employed worker is in fact the essence of the contract for services, also known as an element of entrepreneurship, and is opposed to the employee with an employment contract who is under the authority of the employer.



### **In which category would gig workers typically be classified and on which basis (e.g. case law, statutory law, etc.)?**

A large number of platforms work with self-employed workers. This is the most cost-effective for the platforms. Case law shows that various platforms in fact have an employment relationship with their workers instead of a contracts for services (e.g. Uber, Deliveroo). These cases are still subject to appeal. In addition, many platforms will be qualified as employers if the proposed directive for improving the working conditions of platform workers is introduced.

### **The EU Commission has published a proposal for a Directive governing the employment status of gig workers. In light of this proposal, what evolutions are expected in your region?**

When the proposed directive is introduced, many platforms will likely qualify as employers.

The Minister of Social Affairs and Employment indicates that she will ensure that the European proposal for the Directive to improve the working conditions of platform workers is shaped and implemented in such a way that the Netherlands can effectively benefit from it.

According to the Minister, the rebuttable legal presumption will strengthen the position of the more vulnerable people on the labour market. It must counteract false self-employment. The Minister also wants to involve the self-employed workers in this. It should be carefully examined what the Directive means for each type of self-employed worker and what it can also mean for people who do not fall under a platform but are self-employed.

The Minister also has some concerns about the proposed Directive, including the formulation of the criteria for determining the legal presumption: these criteria must be clear and sharp enough for employees, monitoring and enforcement. This is important to give effect to the legal presumption of an employment contract. Very open standards are not suitable for this, because they offer too little certainty, but a too narrow approach is not desirable either, because in that case unwilling platforms can circumvent the legal presumption.

In labour law, a number of things must be changed to implement the Directive. First of all, the rebuttable legal presumption must be included in the Dutch Civil Code. Next, a new law should be introduced, specifically for platform workers. In addition, this will be supplemented with a number of rights for platform workers, also concerning the use of algorithms. There are also information obligations for platforms, for example, to indicate how many workers are being engaged.

In further discussions, it should be determined how the rebuttable legal presumption works, who can invoke it, how it applies and how strict or broad the criteria are. The Minister does not believe that all people who work on platforms are by definition employees, because there will also be groups of platform workers who want to work as self-employed workers.





# The Netherlands

## (3/3) – Social status

**Are there any major developments ongoing or expected in relation to employment status in the context of the gig economy (e.g. in case law, national law, etc)?**

As described in the previous question, it is expected that the government will start addressing platform labour in the form of new regulations and/or enforcement. In addition, there are various platform cases pending for appeal or cassation (Uber, Deliveroo). There has not yet been a platform case at the highest court in the Netherlands on the status of a platform worker.



### What is the tax treatment of income generated through gig work?

#### A. From a personal income tax perspective, and

#### B. VAT-perspective

a) The tax treatment depends whether the gig workers are self-employed persons or employees of the platform. If the gig workers are considered self-employed persons, the income will be taxed with income tax in 'box 1' as business income. If they are employees of the platform, the income will be taxed with income tax in 'box 1' as income from employment.

The distinction between self-employed persons and employees is relevant for payroll tax and social security. If the gig-worker is a self-employed person, there is no obligation to Payroll tax and social security obligation. If the gig-worker is an employee of the platform, payroll taxes have to be withheld and paid to the Dutch tax authorities

b) From a VAT-perspective:

The tax treatment of income generated through gig work is depending on whether the gig worker is working as a self-employed. Activities carried out under an employment relation, or any other legal relationship where subordination is involved, cannot be qualified as independent. On the basis of concrete circumstances it should be decided whether or not a gig worker is working as a self-employed. In order to be considered a self-employed the gig worker should act on his own behalf, on his own account and for his own responsibility. Besides that, the gig worker should be bearing the economic risk of the activities. While assessing these criteria the legal as well as the actual context should be taken into account. The gig worker should in any case be considered to bear economic risk when he or she has a significant impact on its income and expenditures.

If from the facts and circumstances it follows the gig worker is self-employed, the gig worker is in principle required to register for VAT purposes in the Netherlands (please see below exception). Please note that the actual VAT treatment of the activities carried out by the gig worker should be determined on a case-by-case basis depending on the actual nature of the activity carried out.

If the gig worker is not performing the economic activity as a self-employed, the income should be attributed to the entity he is working for. In that case the gig worker is not liable for VAT itself (and not required to register for Dutch VAT).

### Is there withholding tax due in your country? Are there specific requirements concerning reporting in your country for the withholding tax (cf. DAC7)?

The tax treatment of withholding tax depends whether the gig workers are self-employed persons or employees (of the platform). If the gig workers are considered self-employed persons, the income is not subject to Dutch withholding tax (called: 'loonheffingen'). The income is then subject to income tax in 'box 1' as 'business income'. The income must be reported in the yearly income tax return of the self-employed person where it is taxed against a maximum (progressive) rate of 49,5% which consists of income tax and premiums social security.

If the gig-worker is an employee (of the platform) then the employer is obliged to withhold and pay the withholding tax (wage tax and premiums social security) to the Dutch tax authorities. The employer will submit monthly or in a period of 4 weeks a wage tax return and pay the withheld amount to the Dutch tax authorities. The employee then receives net salary. This withholding tax will in principle amount to a maximum of 49,5% of the gross amount of the salary. The amount of withholding tax and the gross income are indicated in the yearly tax return of the employee. The amount of tax already paid will reduce of course the amount of income tax to be paid in a year.



### Are there VAT simplification rules that can be applied by Gig Economy workers to complexity and VAT compliance costs?

In case the gig worker is performing the economic activities as a self-employed and is therefore liable for VAT, he can make use of the special scheme for small businesses (so-called 'kleineondernemersregeling') in the Netherlands. This is an exemption from VAT, which can be applied for as long as the gig worker has a yearly revenue of less than € 20,000 per year (excluding VAT). To apply for the special scheme the gig worker should fill in and send an application form to the Dutch tax authorities. If the Dutch tax authorities accept the application, the gig worker should no longer charge VAT and no longer has the right to deduct input VAT.

Once the Dutch tax authorities grant the special scheme for small businesses, the gig worker will in principle not be able to unsubscribe from the special scheme for a period of three years. As an exception to this rule the gig worker will be obliged to unsubscribe from the special scheme as soon as its revenue exceeds the threshold of € 20,000 per year (excluding VAT). Every transaction performed after exceeding the threshold and the transaction causing the exceedance will fall outside the exemption of the special scheme for small businesses. After unsubscribing from the special scheme, the gig worker will not be able to apply for the scheme again for a period of three years.

### Are there any major developments ongoing or expected in relation to the tax treatment of the gig economy (e.g. in case law, national law, etc)?

There is an ongoing discussion whether gig workers are considered self-employed persons or employees of the platform. Although some court decisions have already been made from a labour law perspective, there is still no answer regarding the qualification of the relationship between platforms and their workers for Payroll tax and social security.

At this moment (February 2022) the enforcement regarding self-employed persons is limited. From 1 January 2020, the Dutch Tax Authorities are able to enforce the moratorium if clients do not (or insufficiently) comply with the Dutch Tax Authorities' instructions within a reasonable period of time.

The Dutch government has announced that they want to prevent false self-employment situations as well as unfair competition on employment conditions between employees and self-employed persons in the future. The Dutch government is also working on legislation based on a legal presumption that gig workers are employees when there are indications of the exercise of authority over the gig-worker. No details are announced yet in this respect.



# Thank you!

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