

LEGAL AND TAX ALERT

Alert: additional Dutch relief measures for businesses, response to coronavirus (COVID-19)

Sept. 16, 2020

UPDATE 16 September 2020:

On 28 August 2020 the Dutch government announced a third extension of the support measures for businesses to help them cope with the corona crisis until the summer of 2021. The measures set out in this announcement are in addition to the second package of support measures of 28 May 2020 and the first package of support measures of 17 March 2020 and various other emergency measures released thereafter. These support measures include – among others – the third instalment of the NOW measure which is expected to open for applications on 16 November 2020 (so-called NOW 3.0). The NOW 3.0 may have a nine-month term (from 1 October 2020 up to and including 30 June 2021)

NOW measure – third instalment of the NOW measure

Briefly put, the NOW 3.0 aims to provide a subsidy (which in principle does not have to be refunded) to employers who are confronted with:

- i. a decrease in revenue of at least 20% (which will be increased to 30% per 1 January 2021 for the second and third 3-month periods of this NOW 3.0); and
- ii. of a consecutive period of three calendar months; and
- iii. during the period from 1 October to 30 June 2021.

The conditions to apply for NOW 3.0 differ from the conditions applicable for NOW 1.0 and 2.0 and include:

- To apply for the first period (1 October 2020 until 31 December 2020) of NOW 3.0, employers must have a revenue loss of 20% or more. This percentage will be increased to 30% per 1 January 2021 for the second and third 3-month periods;
- Employers will need to apply for NOW 3.0 every 3 months: 1 October 2020, 1 January and/or 1 April 2021;
- The compensation in wage costs will gradually be reduced: from a maximum of 80% in the first 3 months (October - December 2020), to a maximum of 70% in the second period (January - March 2021), and a maximum of 60% in the third period of 3 months (April - June 2021);
- Under the NOW 3.0 it is possible to gradually reduce the total wage sum by 10, 15 and 20% respectively. In this regard, businesses can decide how to reduce the wage sum;
- If employees are dismissed due to economic reasons, this will no longer lead to a reduction in the NOW compensation sum that is received.

Conditions for employers to claim NOW 3.0

In addition to the above conditions, the following conditions will have to be met:

- Business groups with Dutch and foreign subsidiaries may not count a loss in revenue from subsidiaries that do not pay Dutch social insurance contributions on wages;
- The wage costs reference month is March 2020;

- As discussed above, employers had to keep the total amount of wage costs unchanged as much as possible for NOW 2.0 and NOW 1.0. However, for NOW 3.0 employers may gradually (i.e. per period) reduce the total amount of the wage sum with 10%, 15% and 20% respectively;
- Employers must pay employees in full (100%);
- The NOW 3.0 must be utilized to pay for wage costs;
- The surcharge for the accrual of – among others – holiday allowance, pension contributions and other employer’s contributions will be 40%;
- Employers must inform employees or works council if they have been granted this NOW 3.0 subsidy;
- If employers want to dismiss 20 employees or more on economic grounds (collective dismissal), employers must have reached an agreement with the unions or other staff representation. If employers cannot reach an agreement, employers must have made an application for mediation through a (to be founded) Labour Foundation committee;
- Employers are obliged to stimulate employees to take retraining or reskilling courses. A subsidy scheme called ‘NL Leert Door’ has been launched at the beginning of August 2020 through which anyone from 18 years up to retirement age can request development advice or receive training. For more information, employers can find initiatives to exchange employees, offer or find jobs and services and more on the Dutch-language website ‘NLWerktDoor!’ (‘NL keeps on working!’);
- Employers are not allowed to pay out bonuses or dividend and employers may not buy (back) their shares;
- Employers have to keep verifiable records of all information of relevance. Employers must be able to make these records available until 5 years after this compensation has been granted.
- The employer must submit a payroll tax return under the 1964 Wage Tax Act at the prescribed times;
- Employers must notify the Employee Insurance Agency (*Uitvoeringsinstituut Werknemersverzekeringen*, “UWV”) of anything that happens that may affect a decision to change, repeal or determine the NOW 3.0 compensation;
- After the subsidy period, employers must report the final loss in revenue, accompanied by an auditor's report;
- If employers want to apply for NOW 3.0 it makes no difference whether or not employers applied for previous NOW subsidies;
- If employers receive a wage subsidy other than NOW 3.0, employers must notify the municipality that provides this wage subsidy (other than NOW 3.0) that the employer is granted NOW 3.0 as well;
- Employers will need to submit a statement from an auditor for claims that exceed €125,000 and for advances that exceed €100,000;
- UWV will publish names, granted advances and the determined compensation on their website.

How much compensation for wages can employers claim?

The maximum amount of compensation employers can claim depends on the loss in revenue. For NOW 3.0 the compensation will be gradually reduced every 3-month period: from 80%, to 70% and to 60% of the total wage sum.

For example:

- If the loss in revenue is 100%, the compensation will amount to 80, 70 and finally 60% of wages;
- If the loss in revenue is 50%, the compensation will amount to 40, 35 and finally 30% of wages;
- If the loss in revenue is 25%, the compensation will amount to 20% for October 2020 through December 2020. From 1 January 2021 the loss in revenue limit is 30% and thus employers will receive no compensation if the loss in revenue of the employer is e.g. 25%.

Based on the application, the UWV will pay employers an advance of the expected NOW 3.0 subsidy. The actual loss in revenue will be determined afterwards. When determining the definitive NOW 3.0 subsidy, a correction can be made if there has been a reduction of the total wage sum (with exception of

the aforementioned reduction in the total wage sum with 10%, 15% and 20% respectively).

How to apply?

It is expected that, as from mid-November 2020, employers can apply for NOW 3.0 for the first 3-month period, which starts on 1 October 2020.

Please note that employers will have to apply for each of every 3-month period of the NOW 3.0.

Temporary support for self-employed professionals (in Dutch: *Tijdelijke overbruggingsregeling zelfstandige ondernemers*, “Tozo”)

- Under these measures, self-employed professionals can receive – among others – additional income support for a period of three months through an accelerated procedure. These measures supplement the income for self-employed professionals to the Dutch social minimum norm and does not have to be paid back;
- The Tozo measure will be extended until 30 June 2021;
- From 1 October 2020 self-employed professionals may not apply for the Tozo measure to the extent they possess more than EUR 46,250 in readily available liquidities (e.g. cash, the balance from bank and savings accounts, shares, options and obligations).

Compensation for fixed costs for small and medium-sized enterprises (“SMEs”) (in Dutch: *Tegemoetkoming Vaste Lasten MKB*)

SMEs with (i) no more than 250 employees that (ii) suffer more than 30% in loss of revenue per 3 months due to the corona crisis, may apply for the continued ‘Compensation for fixed costs for SMEs’, after 1 October 2020. SMEs can apply for this compensation for a period of 3 months at a time, until 30 June 2021. To be eligible, SMEs need to meet a set of conditions. This set of conditions has been revised since the first instalment of the Compensation for fixed costs for SMEs, and may be revised every 3-month period.

The main differences between the first and second instalments of the Compensation for fixed costs for SMEs are:

- After 1 October 2020, the applicant will be able to claim up to €90,000 per 3 months;
- The minimum loss in revenue required to apply is currently 30%. This percentage will increase to 40% for the 3-month period January - March 2021, and to 45% for the 3-month period April - June 2021;
- Businesses can apply every 3 months, so in total 3 times until 31 June 2021.

Extension of financial instruments (in Dutch: *BMKB, GO en KKC regelingen*)

The following credit guarantee schemes for businesses will remain available after 1 October 2020:

- Credit Guarantee scheme for SMEs BMKB (until 1 April 2021);
- Business Loan Guarantee scheme GO (until 31 December 2020);
- Bridging loans for small companies KKC (until 31 December 2020).

Dutch tax relief measures – Deferral of tax payment

- In order to head-off any liquidity problems businesses may face, an exceptional deferral for the payment of Dutch taxes is in effect;
- The application date for this deferral of payment of tax debts is extended until 1 October 2020;

- The taxpayer should request the deferral of tax payment in writing and state that the deferral is being sought as a result of problems caused by the corona crisis. The Dutch tax authorities will, upon receipt of the request, suspend any tax collection measures for three months;
- Businesses will have to start paying any deferred tax as from January 2021 (but sooner if that business was granted the deferral at an earlier date than 1 October 2020). In this regard, businesses will be given 2 years to pay the full amount.

Dutch tax relief measures – Collection and tax interest temporarily at 0.01%

- If a Dutch tax assessment is not paid in due time, typically so-called collection interest of 4% must be paid from the moment the payment term has expired. The Dutch government has temporarily reduced the collection interest rate as from 23 March 2020, from 4% down to 0.01%. This reduction applies to all Dutch tax debts and will remain to apply until 31 December 2021;
- In addition to collection interest, taxpayers may also be confronted with so-called tax interest, which is applicable when a too small amount of taxes is paid. The current tax interest rate is 8% for Dutch corporate income tax and 4% for other Dutch taxes. The Dutch government has also temporarily reduced these Dutch tax interest rates to 0.01%. However, the tax interest will be restored to its original level from 1 October 2020 onwards.

Should employers have any questions on how these relief measures in response to the corona virus may benefit employersr business, please do not hesitate to contact us.

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