

LEGAL AND TAX ALERT

Update 2 April 2020 - Alert: Dutch relief measures for businesses, response to coronavirus (COVID-19)

April 2, 2020

UPDATE 2 April 2020: On 31 March 2020 the Dutch Minister for Social Affairs and Employment has given a press conference in respect of the so-called Crisis Measure for the Retention of Work (in Dutch: *Tijdelijke Noodmaatregel Overbrugging voor Behoud van Werkgelegenheid*, “NOW”). This NOW measure was published simultaneously.

Furthermore, on 27 March 2020 the Dutch State Secretary for Social Affairs and Employment has also given an update on the current state of affairs with regard to the announced Dutch relief measures.

Please note that hereunder we will set forth new information about the NOW measure and from the 27 March 2020 letter. In this regard, we refer to our previous correspondence on these subjects as set out beneath this update.

Crisis Measure for the Retention of Work (“NOW”)

Loss in Revenue

- Employers who are confronted with (i) a decrease in revenue of at least 20%, for (ii) a consecutive period of three calendar months and (iii) in the period from 1 March to 31 July 2020, may – under certain conditions – apply for the NOW measure;
- Employers may choose to calculate the decrease in revenue starting the measurement period on 1 March, 1 April or 1 May, 2020;
- The decrease in revenue is measured in comparison to the entire revenue from the previous calendar year (2019), which revenue then is divided by four;
- In this regard, if an employer has multiple business units (legal entities), i.e. a business group, the decrease in revenue for that employer should be measured on the basis of that entire group.

Financial Compensation

- As explained before, the amount of the financial compensation received under the NOW measure depends on the loss in revenue and amounts to a maximum of 90% of the total wage sum. For example: if the revenue decreases by 100%, the compensation amounts to 90% of the employer's total wage sum; if the revenue decreases by 50%, the compensation amounts to 45% of the employer's total wage sum.

Wage Sum

- The NOW measure covers both employees with a permanent contract and employees with a temporary contract insofar as they remain employed and receive wages from the employer during the period for which the financial compensation is provided. Please note that there are detailed rules regarding employees with flexible working hours;
- As set out above, upon receiving compensation under the NOW measure, the employer must continue to pay its employees their regular wage and may not file a request for the dismissal of an employee because of business reasons during the period that the compensation under the NOW measure is received.
- Failure to comply with the obligation to not file a request for the dismissal of employees because of business reasons, has consequences for the amount of financial compensation under the NOW

measure;

- All wages of employees that are socially insured in the Netherlands are eligible for financial compensation under the NOW measure;
- For the calculation of the financial compensation, the wage sum of individual employees is maximised at EUR 9,538 per month;
- Additional costs and expenses such as employer contributions and employee contributions to pension and the accrual of holiday allowance are also wage costs that are compensated. A flat-rate surcharge has been set for employers' costs at 30%, for all cases;
- In principle, the advance that is provided under the NOW measure is based on the total wage sum for the month of January 2020. If, however, the Dutch Employee Insurance Administration (“UWV”) does not have the January 2020 wage sum data, they shall use the November 2019 wage sum data instead. Should the UWV neither have the January 2020 nor the November 2019 wage sum data, no financial compensation under the NOW measure will be granted;
- Please note that, with regard to the above, the UWV stated that wage tax assessments should be timely filed, as they are necessary in order to apply for the NOW measure.

Application

- The official application period for the NOW measures runs from 14 April to 31 May, 2020. However, the UWV aims for the NOW measure to start at an earlier date, namely 6 April 2020.
- As soon as the application has been approved, financial compensation will be granted and an advance will be provided of 80% of the total granted financial compensation under the NOW measure, as calculated on the basis of the data supplied with the application;
- Formally, there is a decision period of 13 weeks after the receipt of the complete application. In practice, the aim is to realise the payment of the advance within 2 to 4 weeks after receipt of the complete application. Moreover, the advance will be paid in three instalments;
- Within 22 weeks after the end of the applicable period in which the decrease in revenue took place, the employer should request for the definitive financial compensation to be determined;
- Subsequently, on the basis of definitive information, the UWV will determine the actual decrease in turnover and whether all obligations imposed on the employer in the context of the NOW measure have been complied with. This will in principle require an auditor's report;
- The definitive financial compensation will be determined within 24 weeks of the receipt of the above application. Upon determining the definitive financial compensation, reduction and recovery of sums overpaid or supplementary payment may ensue.

Extension

- The possibility of extending the NOW measure by three months is consciously taken into consideration and will be decided upon before 1 June 2020;

Compensation for Entrepreneurs in Affected Sectors by COVID-19 (in Dutch: *Tegemoetkoming Ondernemers Getroffen Sectoren COVID-19, “TOGS”*)

- The government's COVID-19 measures have had direct consequences on the income of entrepreneurs in a number of specific sectors. For example, food and beverages outlets (such as restaurants, cafés, bars, etc.), cinemas, travel agencies and more. In this regard, the sectors that have been selected fall into a number of so-called SBI codes: that stands for *Standaard Bedrijfs Identificatie*, or Standard Business Identification, as stated in the Dutch Chamber of Commerce Registry;
- In order to compensate these entrepreneurs, as of 30 March 2020, entrepreneurs can apply for the TOGS measure, which concerns a one-off lump sum payment of EUR 4,000;
- In order to apply for the TOGS measure, among others, the following criteria need to be met:
 - the entrepreneur needs to have a qualifying SBI code;
 - the entrepreneur needs to realise a loss of revenue of at least EUR 4,000; and

- have at least EUR 4,000 in fixed expenses, even after using other Dutch government support measures related to the corona crisis;
- Please note that other detailed criteria also need to be met.

Temporary support for self-employed professional (In Dutch: *Tijdelijke overbruggingsregeling zelfstandig ondernemers*, “Tozo”)

- The Tozo measure is temporary and is applicable for three months only (March, April and May 2020);
- An application can be submitted until 31 May 2020. Furthermore, an application for the Tozo measure can also be applied for retroactively up to and including 1 March 2020;
- A number of conditions must be met in order to qualify for the Tozo measure;
- A director and substantial interest ($\geq 5\%$) shareholder (in Dutch: *directeur-groootaandeelhouder*, “DGA”) might possibly also apply for the Tozo measure provided that the DGA meets the applicable conditions. Moreover, the DGA must also truthfully declare and demonstrate that his or her B.V. is not able to pay any salary;
- For more information on the Tozo measure we refer to the Alert of March 2020 as included in this Alert, below.

UPDATE 20 MARCH 2020: on March 19, 2020 the Dutch State Secretary of Finance has announced that the conditions for applying for deferral of tax payment have been further relaxed.

- The Dutch tax authorities will, upon receipt of the request, suspend any tax collection measures (Dutch personal income tax, corporate income tax, VAT and wage tax). The actual assessment of the deferral of tax payment request will take place at a later time. In principle, the deferral of tax payment should apply automatically for a period of three months;
- Taxpayers that face liquidity problems due to the coronavirus are no longer required to provide an expert's statement (e.g. from an external auditor, consultant or financier) for the first three months of the deferred tax payment;
- In respect of any request for deferred tax payments lasting longer than three months, additional information is required (may include an expert's statement) to assess whether the financial problems were mainly caused by the corona crisis;
- The Dutch government is still investigating which information will be required and how that information can be provided as straightforward as possible.

Introduction

On 17 March 2020, the Dutch government has announced new measures in a letter to the lower house of the parliament in addition to the tax and non-tax measures announced by the Dutch Ministers for Finance and Social Affairs and Employment on 12 March 2020, to help mitigate the economic effects of the coronavirus (COVID-19) outbreak.

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 personal income tax, corporate income tax, VAT and wage tax is in effect;
- The taxpayer should request the deferral of payment in writing and state that it 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. The actual assessment of the deferral of payment request will take place at a later time;

- In respect of any request for deferred tax payments lasting longer than three months, additional information is required (this may include an expert's statement) to assess whether the financial problems were mainly caused by the corona crisis;
- The coming period, the Dutch tax authorities will not impose or reverse an administrative fine in cases of non- or late payment.

Dutch tax relief measures – Provisional tax assessments

- Taxpayers who also pay tax based on provisional 2020 (corporate or personal) income tax assessments, and expect that their taxable income will be lower due to the corona crisis, may request the Dutch tax authorities to issue them with a lower provisional tax assessment;
- If a loss for the 2020 financial year is expected, it may be helpful to file a corporate income tax return immediately after the end of the 2020 financial year and request that this loss is provisionally set off against the profit for 2019. Consequently, the tax payable or paid for the 2019 financial year may then be either partly or fully reduced or refunded.

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 will temporarily reduce the collection interest rate as from March 23, 2020, from 4% down to 0.01%. This reduction will apply to all Dutch tax debts;
- 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 will also temporarily reduce these Dutch tax interest rates to 0.01%;
- For technical reasons, the temporary reduction of the percentage of the tax interest rate will take effect from 1 June, 2020. The only exception to this is the temporary reduction of the percentage of the tax rate in the personal income tax, which will take effect from 1 July, 2020.

Dutch general relief measures – Crisis measure for the retention of work

- The so-called regulation on a reduction of working hours for employees has been suspended due to an unprecedented number of requests for this regulation. Currently, the Dutch government is actively working to introduce a new temporary crisis measure, the so-called crisis measure for the retention of work (*noodmaatregel overbrugging voor werkbehoud*, NOW);
- Employers who are faced with at least a 20% expected loss of revenue can apply to the Dutch government for a compensation of up to 90% of the wage sum related to the loss of turnover, for a period of 3 months. In this regard, employers still need to continue to pay 100% of the wages to the employees involved;
- Below are some examples in which the relationship between the decrease in revenue and the amount of the compensation has been set out:
 - If the revenue decreases by 100%, the compensation amounts to 90% of the total wage sum of an employer.
 - If the revenue decreases by 50%, the compensation amounts to 45% of the total wage sum of an employer.
 - If the revenue decreases by 25%, the allowance amounts to 22.5% of the total wage sum of an employer.
 - The Dutch government will provide an advance for the request (in any case 80% of the amount requested, e.g. 80% of 90% or 80% of 50%) based on the application. Subsequently, it is retrospectively determined what the actual loss in revenue was. Please note that an audit report is required for large applications;
 - The 3-month period may be extended once, by another 3 months, and is applicable to decreases in revenue as of 1 March 2020.

Dutch general relief measures – Additional crisis provisions

- There will be an additional crisis provision in the form of a payment to entrepreneurs who have been directly affected by Dutch government measures to combat the corona crisis and who see their revenue diminish wholly or largely as a result (e.g. restaurants, bars, etc.);
- The sectors that have been selected fall into a number of so-called SBI codes: that stands for *Standaard Bedrijfs Identificatie*, or Standard Business Identification, as stated in the Dutch Chamber of Commerce Registry;
- In order to compensate these entrepreneurs, as of March 30, 2020, entrepreneurs can apply for the TOGS measure, which concerns a one-off lump sum payment of EUR 4,000;
- In order to apply for the TOGS measure, among others, the following criteria need to be met:
 - the entrepreneur needs to have a qualifying SBI code;
 - the entrepreneur needs to realise a loss of revenue of at least EUR 4,000; and
 - have at least EUR 4,000 in fixed expenses, even after using other Dutch government support measures related to the corona crisis.
- Please note that other detailed criteria also need to be met.

Dutch general relief measures – Temporary support for self-employed professionals (ZZP) (In Dutch: *Tijdelijke overbruggingsregeling zelfstandig ondernemers*, “Tozo”).

- The Dutch government is instituting temporary measures that shall be carried out by municipalities. 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;
- Under these temporary measures, support is also possible in the form of a working capital loan (at a maximum of EUR 10,157), at a reduced interest rate;
- The Tozo measure is temporary and is applicable for three months only (March, April and May 2020);
- An application can be submitted until May 31, 2020. Furthermore, an application for the Tozo measure can also be applied for retroactively up to and including March 1, 2020;
- A number of conditions must be met in order to qualify for the Tozo measure;
- A director and substantial interest shareholder (in Dutch: *directeur-groootaandeelhouder*, “DGA”) might possibly also apply for the Tozo measure if the DGA meets the applicable conditions. Moreover, the DGA must also truthfully declare and demonstrate that his or her B.V. is not able to pay any salary.

Dutch general relief measures – Expansion of the Small and Medium sized Enterprises (“SME”) Credit Guarantee

- Under the SME Credit Guarantee, SME companies are provided relief by providing a Dutch state guarantee on loans. Currently, this guarantee is maximized at 50% of the loan. Under a temporary measure (until 1 April 2021), this percentage will be raised to 75%.

Dutch general relief measures – Go measure

- Companies that may have problems obtaining bank loans and/or bank guarantees have been able to use the so-called GO measure since 2009;
- Under the GO measure, both SMEs and (medium) large companies with a 50% guarantee on bank loans and bank guarantees, from EUR 1.5 million to (currently) a maximum of EUR 50 million per company.

Should you have any questions on how these relief measures in response to the corona virus will affect your business, please do not hesitate to contact us.

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