

LEGAL AND TAX ALERT

Update 29 May 2020 - Alert: additional Dutch relief measures for businesses, response to coronavirus

June 4, 2020

UPDATE 29 May 2020:

As discussed in previous alerts, one of the measures taken by the Dutch government to stimulate the Dutch economy was the so-called NOW measure. This NOW measure covers any consecutive period of three calendar months during the period from 1 March to 31 July 2020. On 20 May 2020, the Dutch government has published new amendments/relaxations to apply to this NOW measure (so-called first instalment of the NOW measure).

In addition, on 20 May 2020 the Dutch government also announced other new measures called 'Emergency package for jobs and the economy 2.0' (in Dutch: *Noodpakket voor banen en economie 2.0*, the "**Emergency Package 2.0**"). The measures set out in this Emergency Package 2.0 are in addition to the first emergency package of 17 March 2020 and various other emergency measures released thereafter. This Emergency Package 2.0 includes – among others – an extension of the NOW measure covering any consecutive period of three calendar months during the period from 1 June to 31 October 2020 (so-called second instalment of the NOW measure).

On 28 May 2020, the Dutch government further amended the Emergency Package 2.0. Among others, measures as set out in the Emergency Package 2.0 have been extended with one month and will now apply until 1 October 2020.

We will first set forth the new amendments/relaxations that apply to the first instalment of the NOW measure and thereafter the new measures set out in this Emergency Package 2.0.

NOW measure – amendments/relaxations first instalment of the NOW measure (1 March to 31 July 2020)

Briefly put, the first instalment of the NOW measure aims to provide employers who are confronted with (i) a decrease in revenue of at least 20%, (ii) for a consecutive period of three calendar months and (iii) during the period from 1 March to 31 July 2020, under certain conditions, with a subsidy, provided that the employees remain employed.

These amendments/relaxations include – among others – the following adjustments:

- In principle, the subsidy that is provided under the NOW measure is based on the total wage sum for the month of January 2020. Under circumstances this rule has been amended for business depended on e.g. seasonal work;
- The amount of the subsidy received under the NOW measure depends on the decrease in revenue and is in principle measured in comparison to 25% of the entire revenue of 2019. However, in certain situations (e.g. in case a business was not yet founded on 1 January 2019 or in case of merging businesses as of 1 January 2019) a different reference period and method may be used in order to measure the effective decrease in revenue more accurately;
- Upon determining the amount of the subsidy under the NOW measure, the Dutch government will 'filter out' additional amounts of salary, such as bonuses or a thirteenth month of salary, paid in the month of January 2020;

- The deadline to apply for the first instalment of the NOW measure is now 5 June 2020;
- From the end of June 2020 onwards, the Dutch government will publish information online about NOW applicants, including the subsidy these applicants have received.[\[1\]](#)

Mandatory auditor's report

As set out in previous alerts, for the first instalment of the NOW measure, the Dutch government in principle requires an auditor's report to determine the actual decrease in revenue and whether all obligations imposed on the employer in the context of the NOW measure have been complied with. In more detail:

- An auditor's report is required for a subsidy of EUR 125,000 or more or if the advance (80% of the actual subsidy) is more than EUR 100,000;
- The above amounts are based on the amount of subsidy that is allocated to a group of companies, or if there is no group of companies, the legal entity or natural person, and not the subsidy provided per wage tax number;
- Companies that make use of the option to determine the decrease in revenue at operating company level (instead of at Dutch group level) will always have to submit an auditor's report;
- In addition - if no auditor's report is required - a confirmation from a third party (e.g. an administration office, financial service provider, or industry organization) confirming the decrease in revenue is needed to the extent that the advance (80% of the actual subsidy) is more than EUR 20,000 or if the final amount of subsidy exceeds EUR 25,000.

Emergency Package 2.0

NOW measure – the second instalment of the NOW measure

The Dutch government is extending the NOW measure by four months (the second instalment). Under this extended NOW measure, employers can receive a subsidy for wage costs for the months of June, July, August and September 2020. The Dutch government aims to open the application for the second instalment as from 6 July 2020. Applications for the second instalment of the NOW measure can be made up to and including 31 August 2020 (on 28 May 2020 this deadline has been amended to 30 September 2020). In more detail:

- In principle, the amount of subsidy that is provided under the *second* instalment of the NOW measure is based on the total wage sum for the month of March 2020;
- Under the *first* instalment of 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. For the *second* instalment of the NOW measure, employers may choose to calculate the decrease in revenue starting the measurement period on 1 June, 1 July, 1 August or 1 September 2020. For applicants that appeal to the NOW measure for the second time, the measurement period for the second instalment must align with the measurement period of the first instalment;
- Additional costs and expenses such as employer and employee contributions to pension schemes and the accrual of holiday allowances are also part of the wage costs that are compensated. Initially a flat-rate surcharge of 30% was set for such employers' costs, for all cases. Under the *second* instalment, this flat-rate surcharge is increased to 40%;
- Failure to comply with the obligation not to dismiss employees has an impact on the amount of subsidy under the *first* instalment of the NOW measure (i.e. a repayment of part of the subsidy and a fine of 50%). This fine had been initially removed in the announcement of the Emergency Package 2.0 in respect of the subsidy to be granted under the *second* instalment.
- However, under the amendment of 28 May 2020, a fine may still be levied in certain cases: a fine of 5% will be levied in case of a dismissal of 20 (or more) employees unless the applicant for the NOW measure reaches an agreement with the relevant workers union or, for example, the works council.

- Businesses that apply for the second instalment of the NOW measure must in principle declare that they will not pay dividends or bonuses or repurchase their own shares in 2020 until and including the date of the shareholders' meeting in which the annual accounts for 2020 are adopted. Please note that neither dividends or bonuses may be paid to the board and management, e.g. directors and substantial interest ($\geq 5\%$ shareholdings) shareholders (*DGAs*) may have to rely on their minimum wage (*gebruikelijk loon*);
- An additional condition for the second instalment of the NOW measure is the obligation for employers to stimulate employees to take additional training or retraining. In support of this, the Dutch government will present an additional crisis package called “*NL leert door*” at a later stage;
- Subsidy under both the first and second instalment of the NOW measure will be considered revenue for Dutch profit tax purposes.

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

During the months of June, July, August and September 2020, SMEs that fall under the TOGS measure can – under circumstances – apply for the so-called ‘compensation for fixed costs for SMEs measure’:

- Depending on the size of the SME, the level of the fixed costs and the loss of revenue, these SMEs may receive a subsidy of up to EUR 20,000 (this maximum of EUR 20,000 has been increased to EUR 50,000 on 28 May 2020);
- The decrease of revenue must be at least 30% in order to apply;
- The sectors that fall under the current TOGS measure^[2] are eligible for this new compensation for fixed costs for SMEs;
- The compensation for fixed costs for SMEs measure will be considered revenue for Dutch profit tax purposes.

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;
- 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 will be extended until 31 August 2020 (on 28 May 2020 the duration of this measure has been extended until 1 October 2020).

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

- Under the SME Credit Guarantee, SMEs are provided relief through a Dutch state guarantee on loans. Under the GO measure, both SMEs and (medium) large companies that have difficulty obtaining bank loans and bank guarantees can acquire a guarantee from the Dutch government. Both measures will be extended;
- The application for the so-called Corona Bridging Loan facility, aimed at strengthening the liquidity position of innovative companies, will also be extended for an additional 3 months.

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 temporary arrangement for this deferral of payment of tax debts is extended until 1 September 2020 (on 28 May 2020 the duration of this measure has been 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;
- After three months, an extension of the deferral of the paying of tax debts is possible if the taxpayer makes it plausible that the payment problems are the result of the corona crisis and declares that he will not pay dividends and bonuses, nor buy back own shares. In this regard, the Dutch government indicated that the extended deferral period continues until the deferral period is withdrawn, which will not take place before 1 September 2020 (on 28 May 2020 this date has been amended to 1 October 2020).

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%;
- Both the reduction of the collection interest and tax interest will be extended to 1 October 2020.

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

Richard Smeding – smeding@wlp-law.com

Gerwin de Wilde – dewilde@wlp-law.com

29 May 2020

[1] A previous amendment to the NOW stipulated that employers agree to the disclosure of such data upon application for the NOW measure.

[2] We refer to our previous WLP-Law alerts.