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ADDITIONAL DUTCH COVID-19 SUPPORT MEASURES

On May 20, 2020 the Dutch government sent a letter to Dutch parliament with details on a second COVID-19 support package. The measures from this letter are aimed to provide continuous support to companies and employees that are economically impacted from the restrictive measures meant to limit the spread of the virus. Most of these measures known from the first support package are now extended with some amendments but some new measures have also been announced. In addition, the Dutch Minister of Social affairs and employment informed Dutch parliament on May 20, 2020 on some changes that will be made to the temporary arrangement compensation labor costs rules ("NOW"). In this alert we inform you about some of the elements of the second support package and the changes to the NOW.

NOW

In short, the goal of the NOW is to enable employers that are confronted with a decrease in revenue of at least 20% to maintain as much employees as possible. For this purpose a reimbursement of the labor costs that is related to the loss in turn over can be applied for with a maximum of 90% of the total wages. This will remain unchanged.

NOW 2.0

The following changes to the NOW have been announced in the second support package (NOW 2.0.):

- The NOW is extended and will also apply to the wages for the period of June, July and August 2020.
- The reference period for the wages will be changed from January 2020 to March 2020.
- To determine whether there is a qualifying loss in turnover a three months period applies that starts on June 1, July 1, or August 1, 2020. When the NOW has previously been applied for the reference period that is used for the second application needs to start where the reference period for the first application ends.
- The 'penalty' for firing employees for economic reasons when the NOW was applied for will be abolished for the

period June 1, 2020 – August 31, 2020. When the final NOW calculation is made a correction for 100% will be made instead of 150%.

- Under the NOW 2.0. it is not allowed to pay a bonus to the Dutch board of directors and management or to make a dividend distribution. It is also not allowed to buy back own shares. These rules apply to companies that receive the NOW for which an audit from a certified accountant is required. Additional guidance on this is yet to be published but this requirement will apply in 2020 and 2021 until the shareholders meeting where the financials for 2020 are adopted.
- In the calculation of the NOW compensation a mark up is applied to account for fixed costs. This mark up will be increased from 30% to 40%.
- It is expected that the NOW compensation for the second period can be applied for per July 6, 2020 until August 31, 2020.

Changes to the existing NOW rules (NOW 1.0.)

The Minister of social affairs and employment announced several changes to the existing NOW rules in a separate letter dated May 20, 2020. These changes are addressed below.

Calculation wages for seasonal fluctuations

An adjusted calculation will be introduced for companies with a nil salary base in January 2020 or that paid no wages January 2020 and November 2019. If the wages in the period from March 2020 until May 2020 is three times higher than the wages paid in January 2020, the increase in the wages is taken into account when calculating the NOW compensation. The wages in April 2020 and May 2020 is capped at the wages paid in March 2020. The prepayment remains unchanged which means that the additional compensation that follows from the revised calculation method will be paid when the final compensation is calculated. As a result the additional compensation will be paid after September 7, 2020.

Companies that were excluded from NOW benefits as a result of seasonal fluctuations will be informed by the 'Executive Institute for Employee's Insurances' ("UWV") on whether they are eligible for NOW benefits when the new calculation method is applied.

Determination relevant wages and turnover for changing situations

In order to get to a more representative situation in terms of the comparison of revenue and wages in the reference period and the period of compensation changes will be made for some specific situations. The rules that apply to determine the loss in revenue for starting companies can be applied to situations whereby one company just took over another company. This means that for the comparison the revenue generated as from the first calendar month after the day of the acquisition for all calendar months in 2019 until February 29, 2020 can be used for the 3 month reference period. As a result it is more straightforward to consider the actual loss in revenue of companies that have done an acquisition before applying for the NOW. Similar to starting companies the condition applies to companies that have done an acquisition, albeit that the acquisition should have been finalized one month before February 29, 2020.

For the determination of the wages the rules for companies that have seasonal fluctuations can be applied.

Wages January 2020 will be adjusted for additional salary payments

The payment of additional salary in January 2020 such as the payment of an additional month of salary can have an adverse impact on the calculation of the NOW compensation. The UWV will now filter such additional payments from the reference month.

Application period extended

To allow companies to take into consideration the changes to the NOW when filing a request for support it has been decided to extend the application period until June 5, 2020. From May 20, 2020 it is possible to make use of the announced changes. Applications that have been filed already can't be adjusted.

Mandatory audit certified accountant

An audit report is required when the NOW is applied for when:

- The amount that is to be advanced exceeds EUR 100,000
- The NOW benefit has been calculated at EUR 125,000 or more
- The qualifying revenue test is primarily applied to the entity and not the group.

Companies that have received an advance of less than EUR 100,000 (80% NOW compensation) are responsible themselves to estimate whether the final subsidy is higher than EUR 125,000 which would mean that an audit report is required. An online tool will be made available to assist companies with this.

When an audit report is missing from the application package, the filing company will be informed that the report needs to be provided within 14 days. If the report is not provided on time the NOW benefits will be denied.

The thresholds for the need of an audit report apply to the group as a whole or, when the applicant is not part of a group, per entity or individual and not the subsidy granted per wage tax number.

The content and guidelines for audits will be determined together with the Dutch association of accountants.

In addition, when no audit report is required, there is an obligation to have an expert opinion on the loss of revenue when the advance exceeds EUR 20,000 or when the final NOW compensation is more than EUR 25,000. Such an opinion can be issued by an accounting firm, financial service provider or branch organization.

Filing request for final NOW compensation

Requests for the calculation of the final NOW compensation can be filed as from September 7, 2020 instead of June 1, 2020. The application term of 24 weeks after the applied reference period for the revenue is not adjusted. When an audit from an accountant is necessary the application term for the determination of the final compensation is adjusted to 38 weeks after the applied reference period for the revenue.

Publication NOW information

The publication of the NOW records will start as from the end of June on the website of the UWV.

Compensation fixed costs small and midsize business

For companies that are hit the hardest by the COVID-19 crisis, such as restaurants, bars, gyms and theaters funds will be made available to compensate part of the fixed expenses. The compensation will be subject to the size of the company, the level of costs and the loss in turnover. The maximum compensation is EUR 20,000 for 3 months.

In order to qualify for this compensation a loss in turnover of at least 30% is required and the company needs to be active in a certain qualifying sector.

Temporary arrangement self-employed entrepreneurs ('TOZO')

Via the TOZO entrepreneurs receive aid to support their livelihood and/or are able to get a loan to fund business assets.

The TOZO will end on May 31, 2020. The government has decided to extend the TOZO with 3 more month which means that the arrangement ends on August 31, 2020. The new TOZO will also evaluate the income of the partner of the entrepreneur. Households with an income above the social minimum will no longer be eligible for support with the cost of living. When applying for the new TOZO a declaration needs to be made that the household income is below the social minimum as a result of the COVID-19 crisis.

For loans to fund business assets the maximum amount remains at EUR 10,157. However, when a loan has been applied for in the past for a lower amount it is possible to apply for an additional loan as long as the total loan does not exceed EUR 10,157. The applicant needs to declare that there is no suspension of payment or bankruptcy.

Startups

Under the first COVID-19 support package startups and innovative companies were able to apply for the Corona arrangement ('COL'). With the second support package an additional EUR 150 million is made available for this arrangement. In addition, generic liquidity support is available for startups via corona warranty instruments. The guaranty instruments will be increased with the second support package. We refer to our website for additional funding possibilities for startups.

Deferral of payment tax payments

The Dutch tax authorities grant deferral of payment to entrepreneurs with liquidity issues as a result of the COVID-19 crisis. This arrangement applies to, amongst others, income tax, VAT and corporate income tax. Upon requests a 3 month period of deferral will be granted automatically. In this respect it is important to note that the 3 month period starts from the moment of the first deferral. After the 3 month period the tax authorities can collect any outstanding amount including the deferral that relates to the last month. The second support package extends the period for which deferral can be applied for from June 19, 2020 to September 1, 2020.

It is also possible to request deferral for a longer period. To qualify for this additional deferral, the entrepreneur has to be able to show that the liquidity problems are a result of the COVID-19 crisis. In addition, under the second support package, it is also required that the entrepreneur declares not to make a dividend, to pay a bonus or to redeem its own shares. The extended deferral of longer than 3 months will have effect until at least September 1, 2020 and can be revoked by the tax authorities after this date. When the tax authorities revoke the deferral, a reasonable payment arrangement will be proposed.

In addition to the above entrepreneurs can apply for deferral of custom duties.

Other tax related measures

Several other COVID-19 related measures will be extended to September 1, 2020 such as the VAT-exemption for medical supplies and the use of medical personnel, the relaxation of the hour criterium for entrepreneurs and the rules for deferral of mortgage payments and the qualification of the debt.

For additional information we refer to our [coronacrisis website](#).

More information?

If you need more information please reach out to your trusted RSM advisor or send an e-mail to: maatregelencorona@rsmnl.nl.