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## THE KEY ELEMENTS OF NOW 3.0 AND THE CHANGES COMPARED TO NOW 1.0 AND NOW 2.0?

**Update December 14th 2020** – On 9 December 2020, the Ministry of Economic Affairs and Climate announced adjustments to the economic support and recovery package. These adjustments mean that under NOW 3.0 the previously proposed reductions will be frozen. In this newsletter, we describe the key elements of NOW 3.0 and also give an overview of the main differences with NOW 1.0 and NOW 2.0, taking into account the adjustments announced on 9 December 2020.

### Objective of NOW 3.0

The objective of NOW 3.0 is to assist employers faced with an acute decrease in turnover in paying their wage costs. This is a continuation of the previous schemes, known as NOW 1.0 and NOW 2.0. However, the government also recognises that, as the crisis continues, not all employment can be maintained. Therefore, it has been decided not to focus entirely on maintaining employment under NOW 3.0, but to enable employers, together with their employees, to prepare and adapt to the new economic realities.

### NOW 3.0 in a nutshell

NOW 3.0 actually consists of three periods of three months each; the so-called third, fourth and fifth tranches. Each tranche has its own application period and conditions. The three tranches relate to the following periods:


- the **third tranche** provides for an allowance for wage costs for the period 1 October 2020 to 31 December 2020. Applications for this third tranche (NOW 3.1) could initially be submitted from 16 November 2020 to 13 December 2020. Due to the lockdown of December 2020, the submission period was extended until 27 December 2020.
- The **fourth tranche** provides for an allowance for wage costs for the period 1 January 2021 to 31 March 2021. Applications for this fourth tranche (NOW 3.2) can be submitted from 15 February 2021 to 14 March 2021.

- The **fifth tranche** provides for an allowance for wage costs for the period 1 April 2021 to 30 June 2021. Applications for this fifth tranche (NOW 3.3) can be submitted from 17 May 2021 to 14 March 2021.

The system and conditions for the calculation and amount of the subsidy remain largely the same under the NOW 3.0. The amount of this subsidy is calculated on the basis of the decrease in turnover and the (actual) wage costs.

With respect to the decrease in turnover, the same approach is adopted as under the previous schemes. In short, the decrease in turnover in the chosen three-month period must be compared with the turnover realised in 2019, divided by four. This applies to NOW 3.1, 3.2 and 3.3. In principle, the employer may choose the three-month period. In the case of NOW 3.1, for example, it concerns a period of three months commencing on 1 October, 1 November or 1 December. However, if the employer has previously applied NOW 2.0, the period of NOW 3.1 must be a continuation of this period, in which case the employer is not free to choose.

Obviously, the application is based on the estimated decrease in turnover in the chosen period. On this basis, the government agency handling the subsidy, UWV, pays out an advance of 80% (which is paid in a maximum of three instalments). For all three tranches, the UWV will base the



advance payment on the wage bill for June 2020. At the end of the period and when requesting to determine the definitive amount of the subsidy, the UWV will obviously take into account the actual decrease in turnover, as well as the wage bill for the period corresponding to the relevant tranche.

### What are the main changes under NOW 3.0?

In view of the development of the corona crisis and the associated uncertainty among companies and workers, the previously proposed phasing out will be frozen. Following the adjustment announced on 9 December 2020, the details of the scheme are as follows:

1. Based on a maximum loss of turnover of 100%, the maximum allowance for wage costs is 80% (NOW 3.1 and 3.2). Under NOW 1 and NOW 2, the maximum percentage was 90%. The allowance percentage for NOW 3.3 (April up to and including June 2021) has not yet been determined and will partly depend on further developments of the corona crisis.
2. Where the decrease in turnover exceeds 20%, one qualifies for NOW 3.1. According to the announcement of 9 December 2020, the percentage of the required decrease in turnover for NOW 3.2 also remains at 20%. Thus, this percentage will not be increased to 30%, as previously proposed.
3. The maximum amount that may be considered as wages under NOW is twice the maximum daily wage (i.e. € 9,691 per month) per employee. Under NOW 3.3, this would be reduced to once the maximum daily wage, but at the moment the question remains as to whether this reduction will be adopted.

In addition to these reductions, there will be more room for employers to adapt their business operations under NOW 3.0. The underlying reasoning is that the corona crisis will continue, as a result of which employers will be forced to implement structural measures in some cases. This means that the restrictions that applied under the previous schemes with respect to dismissal of employees for commercial reasons will be relaxed.

### SPECIFICALLY:

- The previous obligation to maintain the wage bill as much as possible during the subsidy period will be partly abolished, in the sense that an employer may reduce his wage bill by 10% under NOW 3.1, without this directly affecting the amount of the subsidy. This exemption percentage would increase to 15% under NOW 3.2 and to 20% under NOW 3.3. Under NOW 3.2, however, the exemption percentage remains at 10% and the percentage under NOW 3.3 is not known yet. If the wage bill reduces by more than the said percentages, the excess will be deducted directly from the subsidy amount.
- The so-called dismissal penalty of 100% (NOW 2.0) and 150% (NOW 1.0) of the subsidy, which applied under the previous schemes, will be entirely cancelled. This fine was applicable if the employer acted contrary to the condition not to apply for dismissal from the UWV for commercial reasons during the subsidy period.
- Moreover, the reduction of 5% on the full subsidy amount applicable under NOW 2.0 will lapse if the employer applies for dismissal of 20 or more employees with the UWV and has failed to reach agreement with the trade unions.

However, under the NOW 3.0, the employer is obliged to make every effort to contribute to job-to-job accompaniment for employees whose employment contract ends or whose employment contract it intends to terminate or not to continue. If, during the subsidy period, the employer submits a request for permission to terminate the employment contract of one or more employees for commercial reasons, it is obliged to contact the UWV during that period for support with job-to-job accompaniment. If the employer fails to comply with this obligation, the final subsidy will be reduced by 5%.

### The group concept and ban on dividends

Under NOW 3.0, the main rule for determining the decrease in turnover remains unchanged. If an employer is part of a group, the decrease in turnover must initially be calculated

at this group level. If this decrease in turnover is at least 20%, then an employer in that group is eligible for the subsidy. Even though the group turnover is decisive, the individual employer within the group must still ultimately submit the application. Indeed, if an employer has more than one payroll tax number, an application must be submitted for each number. For each employer within the group, the turnover decrease percentage of the entire group is decisive. If the decrease in turnover at group level is less than 20%, an individual employer may still be eligible for the wage cost subsidy. In that case, the so-called operating company approach must be relied on. However, this is subject to additional and stricter requirements, which are in line with the previous schemes.

Furthermore, the scheme remains largely unchanged with respect to the bonus and ban on dividends (including not being allowed to repurchase shares and/or similar actions). If an employer takes advantage of the aforementioned operating company approach, the bans apply by definition. In other cases, the extent to which the bans apply will need to be assessed. In addition, it must also be broadly assessed which companies exactly are subject to the bans, if they are part of a group. Companies that have not applied for NOW may also be affected by the ban. However, it has become more apparent that the legislator considers non-payment of dividends and/or bonuses to be an important issue, since from NOW 3.0 onwards these bans are also specifically included in the objective of the scheme.

#### More information?

For more detailed information and questions please contact your trusted RSM advisor or send an email to [maatregelencorona@rsmnl.nl](mailto:maatregelencorona@rsmnl.nl).

