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## THE KEY ELEMENTS OF NOW 3.2 (4<sup>TH</sup> APPLICATION PERIOD)

At the end of August, the government announced it would continue to support the economy in the time of the Corona crisis. To this end, a third emergency package has come into force. Part of this emergency package is the Third temporary emergency bridging measure for maintaining employment, fourth tranche, abbreviated as NOW 3.2.

In this newsletter we describe the key elements of NOW 3.2. It also includes the most recent changes of 29 January 2021<sup>1</sup>.

### Objective of NOW 3.2

The objective of NOW 3.2 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, NOW 2.0 and NOW 3.1. 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 3.2, but to enable employers, together with their employees, to prepare and adapt to the new economic realities.

### NOW 3.2 in a nutshell

NOW 3.2 provides for an allowance for wage costs for the period 1 January 2021 to 31 March 2021. Applications for this fourth tranche can be submitted from 15 February 2021 to 14 March 2021.

The system and conditions for the calculation and the amount of the subsidy under NOW 3.2 remain largely the same as under NOW 3.1. 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. In principle, the employer may choose the three-month period. In the case of NOW 3.2 it concerns a period of three months commencing on 1 January, 1 February or 1 March 2021. However, if the employer has previously applied NOW 3.1, the three-month period of NOW 3.2 must be a continuation of the three-month period used under NOW 3.1, in which case the employer is not free to choose.

The application is based on the estimated decrease in turnover in the chosen period. On this basis, the UWV pays out an advance of 80% (which is paid in a maximum of three instalments). 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 January to March 2021.

<sup>1</sup> Regulation of the Minister of Social Affairs and Employment of 29 January 2021, no. 202100003918

### What are the main changes under NOW 3.2?

In fact, from NOW 3.2 onwards a reduction was to take place. However, the Government has chosen to forego the announced reduction, at least with respect to NOW 3.2. The key elements of NOW 3.2 include:

1. Based on a maximum loss of turnover of 100%, the maximum allowance for wage costs is 85%;
2. Where the decrease in turnover exceeds 20%, one qualifies for NOW 3.2;
3. The maximum amount to be considered as wages for the NOW remains twice the maximum daily wage (i.e. € 9,718 per month) per employee.

NOW 3.2 still provides for room for employers to adjust their business operations. 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 applicable under the previous schemes with respect to dismissal of employees for commercial reasons have been relaxed. Specifically:

- The previous obligation to maintain the wage bill wherever possible during the subsidy period will be partly abolished, in the sense that an employer may reduce his wage bill by 10% under NOW 3.2, without this directly affecting the amount of the subsidy.
- The so-called dismissal penalty of 100% (NOW 2.0) and 150% (NOW 1.0) of the subsidy, which applied under the previous schemes, has ceased entirely. This fine was applicable if the employer acted contrary to the condition not to apply for dismissal with the UWV for commercial reasons during the subsidy period.
- Moreover, the reduction of 5% on the full subsidy amount applicable under NOW 2.0 if the employer applies for dismissal of 20 or more employees with the UWV and has failed to reach agreement with the trade unions, has lapsed.

However, under NOW 3.2, 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. Failure by the employer to comply with this obligation will result in a reduction of the final subsidy by 5%.

### The group concept and ban on dividends

Under NOW 3.2 the main rule with respect to determining the decrease in turnover remains unchanged. If an employer is part of a so-called group, the decrease in turnover must initially be calculated at this group level. If this decrease in turnover is at least 20%, 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 (where the decrease in turnover is determined at operating company level) must be considered. 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 shall apply by definition. In other cases, the extent to which the bans apply will need to be assessed. It has become clearer, however, that the legislator considers non-payment of dividends and/or bonuses to be an important issue, since from NOW 3.1 onwards these bans are also specifically included in the objective of the scheme. For the sake of completeness: with respect to NOW 3.2 the ban applies to the year 2021.

### More information?

If you would like more information about the above, please contact your trusted RSM advisor or send an email to: [maatregelencorona@rsm.nl](mailto:maatregelencorona@rsm.nl).