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THE NOW-4 (SIXTH APPLICATION PERIOD) IN OUTLINE

May 27, 2021, the government announced to continue supporting the economy during the corona crisis. To this end, a fourth emergency package has now come into effect. Part of this emergency package is the Fourth Emergency Temporary Transitional Measure for Maintaining Employment, or NOW-4 for short. In this newsletter we describe the main features of NOW-4.

Objective of NOW-4

The objective of the NOW-4 is to provide relief to employers facing an acute decline in sales to enable them to keep paying wage costs. This follows on from the previous schemes known as NOW-1, NOW-2, NOW-3.1 and NOW-3.2 and NOW-3.3. However, the government also recognizes that as the crisis continues, not all employment can be maintained. Therefore, the choice was made, even under NOW-4, not to focus entirely on job preservation, but to make it possible for employers to work with their employees to prepare for and adapt to the new economic realities.

The NOW-4 at a glance

The NOW-4 looks at an allowance for wage costs for the period July 1, 2021 through September 30, 2021. Applications for this sixth tranche can be submitted from July 26, 2021 through September 30, 2021.

The system and conditions regarding the calculation and amount of the grant remain largely the same under NOW-4 as under NOW-3.3. The amount of this subsidy is calculated on the basis of the decrease in turnover and the (actual) wage costs.

As far as the decrease in turnover is concerned, the same line is again taken as under the previous schemes. In short, the decrease in turnover in the chosen three-month period must be compared with the turnover achieved in 2019 divided by four. In principle, the employer may choose the three-month

period. For the NOW-4 this is a three-month period which begins on 1 July, 1 August or 1 September. If, however, the employer has previously made use of the NOW-3.3, then the period of NOW-4 must follow this period; the employer then has no free choice.

The application is of course based on the estimated decrease in turnover in the chosen period. On this basis the UWV will pay an advance of 80% (which is paid in a maximum of three instalments). The advance will be based by the UWV on the wage bill February 2021. At the end of the period and when requesting the final determination of the subsidy, the UWV will of course take into account the actual decrease in turnover as well as the wage bill for the period July - September 2021.

What are the main changes taking place under the NOW-4 ?

1. Assuming a maximum loss of turnover of 100%, the maximum compensation of wage costs will be $85\% \times 80\%$. The maximum percentage of turnover loss is capped at 80%;
2. To the extent that the loss of turnover exceeds 20%, one is eligible for the NOW-4;
3. The maximum amount that can be considered as wages for NOW per employee remains twice the maximum daily wage (€9,812.30 per month);
4. If an employer applies for TVL, the TVL subsidy obtained retroactively from NOW-3 no longer counts as turnover for the NOW;

5. There is an additional condition regarding the payment of bonuses and dividends for the employer who has an advance or determination of at least €125,000: the employer is required to enter into a written agreement with a representation of employees regarding the bonus and dividend policy prior to the determination;
6. The third party declaration is required retroactively from NOW-3 if there is an advance/final determination of at least € 40,000 (this was: an advance of € 20,000 c.q. determination of € 25,000);
7. The auditor's report is required with retrospective effect from NOW-3 if there is an advance/final amount of at least € 125,000 (this was: an advance of € 20,000 or a determination of € 125,000).

The ability to adjust the business operations for employers is broadened within the regulations of NOW-4. The background to this is that the corona crisis is lasting longer, which in some cases will force employers to take structural measures. Specifically:

- The previous obligation to maintain the wage bill as much as possible during the subsidy period has been partially relieved, as with NOW 3.3, in the sense that under NOW-4 an employer is allowed to decrease its wage bill by 10%, without directly affecting the amount of the subsidy.
- The so-called severance penalty on the subsidy that applied under the previous schemes, of 100% (NOW-2) and 150% (NOW-1) respectively, has been removed entirely. This penalty was applicable if the employer acted contrary to the condition not to request dismissal for economic reasons from the UWV during the subsidy period.
- In addition, the 5% discount on the entire subsidy amount applicable under NOW-2 if the employer requested dismissal from the UWV for 20 or more employees and did not reach an agreement with the trade unions was removed.

Under NOW-4, the employer is obliged to make an effort to contribute to counselling towards other work for employees whose employment contract ends or whose employment contract he intends to terminate or not continue. If, during the subsidy period, the employer requests permission to terminate the employment contract of one or more employees for economic reasons, he is obliged to contact the UWV during this period for support in guidance to other work. If the employer does not comply with this obligation, the final subsidy will be reduced by 5%.

The group concept and dividend ban

Under the NOW-4, the main rule with respect to determining the decrease in turnover remains unchanged. If an employer is part of a group, the decrease in turnover will initially have to 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. Despite the fact that the group turnover is leading, it will still be the individual employer within the group who will ultimately have to submit the application. In fact, if an employer has multiple payroll tax numbers, an application will have to be submitted for each number.

For each employer within the group, the turnover decrease percentage of the entire group is leading. If the turnover decrease at the group level is less than 20%, an individual employer may still be eligible for the wage subsidy. The so-called operating company approach will then have to be invoked. However, this is subject to additional and stricter requirements, which are in line with the previous regulations.

Furthermore, the regulations regarding the bonus and dividend ban (including the ban on purchasing shares and/or similar actions) remain largely unchanged. If an employer uses the aforementioned operating company approach, the prohibitions apply by definition. In other cases it will have to be assessed to what extent the prohibitions apply. It has become clearer that the legislator considers the non-payment of dividends and/or bonuses to be an important point, as from NOW-3 these prohibitions have also been specifically included in the objective of the scheme. For the sake of completeness, for NOW-4 the mentioned prohibition applies to the year 2021.

More information?

Would you like more information about NOW-4? Please contact your trusted RSM advisor or send an email to: maatregelencorona@rsm.nl.