

Expansion of group approach in the NOW and easing of several other measures

By letter dated April 22, 2020 the Minister of Social Affairs and Employment announced an important expansion of the group approach in the 'Temporary emergency bridging measure to retain jobs' (*Tijdelijke noodmaatregel overbrugging voor behoud van werkgelegenheid*; NOW). This expansion is briefly discussed below. We also discuss the announced easing of the unemployment insurance contributions differentiation and the imposition of penalties in respect of highly skilled migrants.

Expansion of NOW group approach

To date, the NOW can only be used if the decline in turnover of the entire group during the reference period amounts to at least 20% (see also [our previous memorandum](#)). The individual situation of group companies is thus irrelevant. This was a deliberate choice when drafting the measure to ensure that it remained simple, feasible and to avoid manipulation. However, this approach may mean that the NOW cannot be applied if an individual operating company experiences a decline in turnover of at least 20%, but the entire group stays under this percentage. This could lead to the individual operating company applying for redundancy for its employees.

The Minister has now responded to the widely expressed practical wish, and a motion from the Lower House of Parliament, to ease the group approach as follows.

- If the decline in turnover at the group level is less than 20%, then the decline in turnover of an individual operating company may be used (and that operating company can, in principle, apply for the NOW if there is a decline of turnover at that level of at least 20%)
- The operating company must be a legal entity; the easing therefore does not apply to business units, branches, permanent establishments etc.
- If the decline in turnover at the group level is at least 20%, then this easing does not apply and only the group's decline in turnover will apply for the purposes of the NOW (and only the group can apply for the NOW).

The amendment of this measure is expected to be published in the week beginning April 27, 2020. NOW applications based on this easing can be filed as of the date the amendment takes effect.

The following additional conditions apply to NOW applications based on the decline in turnover of an individual operating company:

- a) The *group* to which the applicant operating company belongs must state that it will not distribute any dividends and/or award any bonuses for the year 2020,

nor will it redeem any own shares through to the date of the shareholders' meeting in which the financial statements for 2020 are approved.

- b) The operating company must reach agreement with a representative employee body about job retention at this operating company.
- c) The eased group approach cannot be used if there is a personnel company (*personeels-bv*); the decline in turnover at the group level must therefore always be used.

Re a) It is among other things unclear whether this condition (only) means that the group at the top level may not distribute dividends, or whether this requirement also applies to companies at the lower level of the group structure. In the latter case, this condition could complicate the intra-group financing of underperforming 'branches'.

To avoid strategic behavior, the Minister has proposed the following audit safeguards, which must become part of the generally accepted auditing standards.

1. Moving assignments and projects within the group, which would normally be performed by the applicant operating company (and differ from what the other entity would normally do) is not permitted.
2. The operating company's decline in turnover must be reduced by the (theoretical) turnover of personnel of that company who perform activities at another group company during the subsidy period.
3. The transfer pricing system of, in short, 2019 must also be applied in the 2020 reference period.
4. Movements in inventories of finished products during the reference period must be allocated to the turnover.

Overtime and contribution differentiation

As of January 1, 2020, a low contribution for open-ended employment contracts (not on-call contracts) and a high contribution for flexible contracts applies for the purposes of determining the amount of the unemployment insurance contribution. If the low contribution applies, but during a calendar year 30% more hours are remunerated than were contractually agreed (overtime), the application of the low contribution must be revised.

The corona crisis is currently leading to a lot of overtime in certain sectors. Instead of rendering the revised measure sectorally inoperative, as previously proposed, the Minister has now opted for a generic exception. In 2020, employers will not have to correct the low contribution for 'overtime'. This only applies to 2020.

Reduced working hours and highly skilled migrants

A limited number of employers have applied for, and obtained, reduced working hours for their employees as a result of the corona crisis. This measure means that employees will work less hours and receive an unemployment benefit for the difference. Because in these situations an employee's salary is actually reduced, this may mean that employees with a highly skilled migrant permit no longer meet the applicable salary requirements and in fact can therefore no longer rely on this permit. As a result of this, there may be illegal employment which is normally subject to high penalties.

The Minister is now temporarily allowing non-compliance with the law and also no penalties will be imposed in such situations. Employers are however advised to notify the Immigration and Naturalisation Service in good time about the temporary non-compliance with the salary requirement.

Additional safety net for casual workers; seasonal employment

- The government is searching for solutions for an additional safety net for casual workers. It is exploring the possibilities for this and will inform the Lower House of Parliament about these soon.
- The government is also searching for solutions for seasonal employment given that the NOW measure can offer little or no relief. It will inform the Lower House of Parliament about this as soon as possible.

Possible extension of the NOW

Lastly, we would like to point out that on April 22, 2020 the Lower House of Parliament unanimously adopted a motion requesting the government that if the NOW is extended, it include, if possible, a condition stipulating that companies using the NOW measure must not distribute any dividends, award any bonuses or redeem any own shares in 2020 and 2021. The motion also asked the government to look at, for example, an SME threshold. During the corona debate on April 22, 2020, Prime Minister Rutte stated, when asked, that he thinks that any extension of the NOW should obviously include a general dividend, bonus and redemption condition.

If the NOW were to be extended, the aforementioned motion also asks the government to look at a better balance, whereby companies that receive government assistance in hard times make a greater contribution in good times, for example by looking at tax arrangements.

Should you have any questions about the above, Meijburg's advisors would be pleased to use their expertise to help you minimize the tax and financial consequences of the corona crisis. We will of course keep you informed of any additional tax measures.

Meijburg & Co
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