

NOW scheme amended for third time (first installment: NOW for the period through to June 1, 2020)

By letter to the Lower House of Parliament dated May 20, 2020, the Minister of Social Affairs and Employment announced that the Temporary emergency bridging measure to retain jobs (*Tijdelijke noodmaatregel overbrugging voor behoud van werkgelegenheid*; NOW) as it applies to the period March through May 2020 would be amended for a third time. The last update was discussed in [our previous memorandum](#). In the present memorandum we discuss the changes which relate to the first installment of the NOW, i.e. the compensation for the payroll costs for the months March through May 2020. We will inform you separately about the second installment of the NOW (NOW 2.0), which was also announced on May 20, 2020.

1. Determination of payroll for seasonal businesses

Under the current scheme, the payroll for the month January 2020 is decisive for determining the amount of the NOW subsidy. To accommodate seasonal businesses, an alternative calculation method has been announced in which the payroll for the month March 2020 will be decisive. This is subject to the condition that the payroll for the period March through May 2020 exceeds three times the payroll for January 2020. The payroll for the months April and May 2020 is thereby set at a maximum of the payroll for March 2020.

Based on this calculation, businesses that had a nil payroll in January 2020 or no payroll in January 2020 and November 2019, but that do have a payroll for the months March through May 2020, may also be eligible for the NOW. Applicants that for this reason received a negative decision, will be approached by the Dutch Employee Insurance Agency (*Uitvoeringsinstituut Werknemersverzekeringen*; UWV). The correction will take place when the *final subsidy is determined* after the subsidy period (see below) and *not* by means of an adjustment to the decision setting the advance payment.

The aforementioned change will have retroactive effect to May 20, 2020.

2. Determination of relevant payroll and turnover in situations where a company is transferred

The NOW rules on the determination of the payroll and turnover do not always match the specific situation of a company. The following measures have thus been proposed:

- i. With regard to companies that have acquired (part of) another company, the method for calculating the turnover of companies that did not yet exist on January 1, 2019 will be used to determine the payroll and turnover. Start-up

companies can base the reference period for the turnover on the full calendar months as of the first calendar month after the day on which the company commenced its operations in 2019 through to February 2020. This turnover will be translated to a three-month period.

Likewise, for companies that acquire part of another company, the turnover comparison can take place *as of the first calendar month after the day of the transfer*, for all full calendar months in 2019 through February 2020, translated to a three-month period.

- ii. It has been proposed to also apply the determination of the payroll as it applies to seasonal businesses (see point 1 above) to companies that have acquired another company and thus do not have a representative payroll for January 2020 or November 2019. By allowing them to use the payroll for the month March 2020, this effect will be mitigated as much as possible.

The letter of May 20, 2020 acknowledges that these changes do not offer a solution in all cases.

The aforementioned changes will have retroactive effect to May 20, 2020.

3. 13th month salary payment removed from payroll

If a 13th month salary payment was made in January 2020, this will distort the representativeness of that month as reference month for determining the payroll. The scheme will be amended on this point. When *determining the final subsidy*, the UWV will remove any additional periodic salaries from the payroll. This change will prevent employers from having to repay the NOW subsidy solely due to a 13th salary month payment having been made in January 2020.

4. Extension of application period

As a result of the changes referred to under points 1 and 2, the period for applying for the NOW subsidy for the period March through May 2020 will be extended to June 5, 2020.

5. Threshold for providing an auditor's statement

Until now it had not yet been made clear in which cases an auditor's statement must be provided when relying on the NOW subsidy. The letter to the Lower House of Parliament dated May 20, 2020 now indicates that an auditor's statement is obligatory for companies that have received an *advance* subsidy payment of EUR 100,000 or

more. An auditor's statement is also required for subsidies *determined at a final amount* of EUR 125,000 or more.

Companies that received an advance payment of less than EUR 100,000 are themselves responsible for estimating whether the final subsidy will be determined at at least EUR 125,000 and an auditor's statement will thus have to be provided. It was announced that an online tool will be made available, which can be used to make a reasonable estimate. If an auditor's statement does not accompany the application, although the employer is obliged to do so, it will be given 14 weeks to provide the statement.

The subsidy amounts referred to concern subsidy amounts that can be allocated to the group (or the legal entity or natural person if there is no group) and *not* the subsidy paid to each withholding tax number. Companies applying the eased group approach (where an individual operating company can apply for the NOW, see [our previous memorandum](#)) must always provide an auditor's statement.

Checks and third party statement

In cases where no auditor's statement has to be provided, the employer is (also) responsible for the information that it provides for the purposes of the application and the determination of the final subsidy. In these cases, the UWV will randomly check the requests for the determination of the final subsidy. In situations where the advance subsidy payment exceeds EUR 20,000 or the final subsidy is determined at more than EUR 25,000, a statement from a third party (for example, an accountancy office, financial service provider or branch organization) confirming the decline in turnover must be provided.

6. Opening date for applications to determine the final subsidy

To avoid the subsidy application and subsidy determination procedures overlapping, it has been decided that instead of allowing applications to *determine the final subsidy* to be filed as of June 1, 2020, they will not be allowed to be filed until September 7, 2020. The application period for applications to determine the final subsidy which require an auditor's statement will be extended to 38 weeks (this would normally be 24 weeks after the end of the opted turnover period).

7. Publication

As of the end of June 2020, the UWV will publish information about NOW subsidy applicants on its website. This concerns the applicant's name, the advance payments made and the final subsidy.

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
May 25, 2020

The information contained in this memorandum is of a general nature and does not address the specific circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.