KPMG Meijburg & Co Tax & Legal

Relief and recovery package for the economy and labor market (Emergency package 3.0)

The coronavirus has had an enormous impact on the labor market and the economy and the reality is that the consequences of this will continue to have an effect on society and the business sector. That is why on August 28, 2020 by letter to the Lower House of Parliament, the government presented a relief and recovery package for businesses and workers, which follows on from the two previous emergency packages (see for example our memorandum of May 26, 2020). The new package aims to provide perspective and clarity and is based on three pillars: (i) the continuance of relief, including liquidity relief and extending the Temporary emergency bridging measure to retain jobs *(Tijdelijke noodmaatregel overbrugging voor behoud van werkgelegenheid*; NOW), the Overhead Compensation SMEs (*Tegemoetkoming Vaste Lasten mkb*; TVL) and the Temporary emergency bridging measure for self-employed persons (*Tijdelijke overbruggingsregeling zelfstandig ondernemers*; TOZO) by nine months; (ii) stimulating and accelerating investments; and (iii) a supplementary social package. The extension of the relief measures will take place under a (phased) tightening of the conditions, so that these are more focused on the long-term. An important part of the new package concerns the phasing out of the more flexible special deferral of payment policy for tax debts, including a payment arrangement for the accrued tax debt, and changes to several related measures.

The relief and recovery package is discussed in more detail below.

1. Phasing out of deferral of payment for tax debts

On March 12, 2020 the government announced a temporary easing of the deferral of payment for tax debts. The deferral policy has since been amended, expanded and further eased several times. In order to prevent the payment arrears of businesses mounting up any more than necessary, the Deputy Minister of Finance intends to phase out the temporary deferral scheme. The main elements of this phasing out are: (i) the resumption of newly arisen payment obligations as of January 1, 2021 or, if the deferral ends before January 1, 2021, as soon as the deferral ends; and (ii) a payment arrangement of 24 months as of January 1, 2021 for the accrued tax debt.

Resumption of newly arisen payment obligations

As of January 1, 2021 businesses will again have to comply with the payment obligations arising on or after that date. This will be different if the special deferral of payment granted to a business ends before January 1, 2021. In that case, the payment obligations must be resumed after the date on which the granted deferral ends.

Repayment of accrued tax debt
The Deputy Minister wants to arrange a generous payment arrangement for the repayment of tax debts accrued in recent months. In short, this payment arrangement means that as of January 1, 2021 the accrued tax debt may be repaid in a maximum of 24 equal monthly installments, without the business having to provide security. Moreover, during the 24-month repayment period no crediting against any tax refunds will take place and additional conditions will not, in principle, be imposed. There is an exception to this and that is when the interests of the State are at stake.

If a business is unable to repay their accrued tax debt within the stipulated 24-month period, a customized solution will be sought, for example in the form of a longer deferral. This can be granted under current policy, which is accompanied with conditions. For example, an 'expert third party statement' must be submitted and the Dutch tax authorities would like to receive as much security as possible for the repayment of the tax debt. On the other hand, the Deputy Minister, together with colleagues from other departments and several large creditors, have promised to look into whether an expansion of the current debt rescheduling possibilities is necessary and desirable. This, for businesses that are only viable if their receivables are wholly or partly remitted.

Interest on tax due and late payment interest
In order to limit the interest expense associated with the outstanding tax debt, the reduction of the late payment interest rate to 0.01% will be extended through to December 31, 2021. By contrast, the rate for interest on tax due will again be increased as of October 1, 2020 from 0.01% to the original rate of 4%. The 4% rate also applies to corporate income tax through to December 31, 2021; this in deviation from the original 'pre-emergency package rate' of 8%.

Communication about phasing out and a roadmap
In the coming period, the Dutch tax authorities will contact businesses that have not requested an extension of the initial three-month deferral of payment and that do not meet their newly arisen payment obligations. It will be pointed out to them that they have until October 1, 2020 to request an extension of the deferral. If they do not take advantage of this possibility and also do not start paying the obligations arising after the granted deferral ends, then the collection of the new debt may commence. This also applies to businesses for which the deferral expires on January 1, 2021. These businesses can, after all, request an additional deferral under the normal applicable policy.

Businesses that have been granted a deferral of payment will shortly receive a letter with general information about the main features of the phasing out of the deferral scheme. A detailed letter will follow in December 2020 with a provisional payment arrangement of which the first installment expires at the end of January 2021, together with a provisional overview of the debt on which the payment arrangement is based. In March 2021 businesses will again receive a letter containing an updated overview of the accrued debt, including the remaining payment installments and the (adjusted) accompanying amounts.

According to the Deputy Minister, the phasing out scheme can be further reviewed if the development of the coronavirus gives cause for new or tightened measures.

Associated measures

Payment default penalties
The temporary easing of payment default penalties will end on January 1, 2021. Failure to remit, on time, payroll tax and social security contributions or VAT for which the payment deadline expires in 2021, for example the payment for the tax period December 2020, will then again be subject to the normal penalty policy.

Unblocking G account
In line with the phasing out of the more flexible deferral scheme, the expanded option to unblock the G account will also be phased out, which will definitely end on January 1, 2023.

Submission of 'clean' Statement of Payment History
During the term of the payment arrangement, the Dutch tax authorities will, upon request, issue a 'clean' Statement of Payment History, provided a business complies with its current payment obligations and regular repayment obligations.

Energy tax and surcharge for sustainable energy and climate transition
The Corona Crisis Emergency Measures Decree of June 16, 2020 had already approved that no energy tax and surcharge for sustainable energy and climate transition (*Opslag Duurzame Energie- en klimaattransitie*; ODE), as well as the VAT on this, would be payable on supplies of electricity and natural gas in the months April through September 2020. One of the conditions was that the energy supplier would not charge its customers any energy tax and ODE, or the VAT on this, on the invoice for those months, but would only do that in December 2020 at the latest. In this way, customers are in fact granted a deferral of payment for energy tax and ODE, increased by the VAT

on this. As the deferral policy will be withdrawn as of October 1, 2020, this approval will not be extended.

2. Extension of Temporary emergency bridging measure to retain jobs (NOW 3.0)

The government has decided to extend the Temporary emergency bridging measure to retain jobs (*Tijdelijke noodmaatregel overbrugging voor behoud van werkgelegenheid*; NOW) (see for example our memorandum of June 25, 2020) by three *periods* of three months as of October 1, 2020. After NOW 1.0, which ran from March 1, 2020 through to May 31, 2020, and NOW 2.0, which runs from June 1 through September 30, 2020, the announced tranched extension of NOW measures is referred to as NOW 3.0.

Decline in turnover

The minimum decline in turnover that businesses must experience to be eligible for NOW 3.0 will still be 20% in the first period and thus the same as in NOW 1.0 and 2.0. This condition will be tightened in the second and third period and NOW 3.0 will only be available to businesses with a loss of turnover of 30% or more.

Compensation percentage

The NOW relief will be gradually phased out, partly because the compensation percentage will decrease over time. In the first period, the compensation percentage will therefore be 80% (under NOW 1.0 and 2.0: 90%), in the second period 70% and in the third period 60%. In any case, the money that is released with the first 10 percentage point decrease in the first period will be used for retraining/training and from-work-to-work programs.

Payroll etc.

Emphatically different from NOW 1.0 and NOW 2.0 is that businesses that wish to use NOW 3.0 are allowed to adjust their business operations to the crisis and to have their payroll (partially) decline. This decline will result in a reduction of the final subsidy amount. The newly introduced exemption percentage for the payroll will increase from 10% in the first period, to 15% in the second and to 20% in the third period. In addition, the 5% reduction that is applied in NOW 2.0 at the time there is redundancy on economic grounds has been abandoned.

The maximum salary per employee to be taken into account for the subsidy will be reduced from EUR 9,358 per month (twice the applicable maximum daily wage per month) to approximately EUR 4,769 (once the applicable maximum daily wage per month) as of the *third* period of NOW 3.0. Under NOW 3.0, the fixed increment for employer expenses, such as vacation allowance and pension contributions, will remain at 40%.

Best efforts obligation and distribution prohibition
The best efforts obligation aimed at training and the prohibition to distribute dividends and award bonuses continue to apply in full under NOW 3.0.

Date from which requests under NOW 3.0 may be submitted
The Dutch Employee Insurance Agency (*Uitvoeringsinstituut Werknemersverzekeringen*; UWV) aims to make it possible to submit requests with regard to the first period of NOW 3.0 as of November 16, 2020. An employer can decide whether or not to submit a request for each period. Just as under NOW 1.0 and 2.0, after a request has been submitted an employer will receive an advance payment of 80% of the subsidy amount, with the remaining 20% being paid when the final subsidy is determined. The final determination of the subsidy will take place after the end of the three periods.

3. Extension of Overhead Compensation SMEs

The Overhead Compensation SMEs (*Tegemoetkoming Vaste Lasten mkb*; TVL) will also be extended by three periods of three months as of October 1, 2020. To better accommodate medium-sized and large SMEs, the maximum subsidy amount under the extended TVL will be increased from EUR 50,000 per four months to EUR 90,000 per *three* months. The current conditions will continue to apply to the first period, which means, among other things, that businesses with a loss of turnover of more than 30% will be eligible for the extended TVL. In the second and third periods, the minimum lost turnover percentage will be increased to 40% and 45% respectively. The other conditions for the TVL remain unchanged (these can be found in our Dutch memorandum of July 2, 2020).

4. Extension of Temporary emergency bridging measure for self-employed persons (TOZO 3.0)

Besides the NOW and TVL, the government is also extending the Temporary emergency bridging measure for self-employed persons (*Tijdelijke overbruggingsregeling zelfstandig ondernemers*; TOZO) with three periods of three months as of October 1, 2020 (TOZO 3.0). This extension is also accompanied by a phased tightening of the conditions.

For example, as of the first period (thus as of October 1, 2020), TOZO 3.0 will contain a limited assets test (a partner income test had already been introduced, see our memoranda of May 26, 2020 and May 28, 2020). This limited assets test covers available funds and is designed in such a way that self-employed persons are not forced to liquidate parts of their business or their professional occupation. The test means that entrepreneurs with more than EUR 46,520 of directly available funds (such as cash, bank and savings accounts, and shares, bonds and debentures and options) will not be eligible for TOZO 3.0. Other assets, including the owner-occupied home, protected pension, business premises, machinery, business equipment and inventory, are disregarded. To apply this limited assets test, the request must be accompanied by a statement from the self-employed person. The accuracy of this statement will be checked afterwards at random and/or because it has been 'tagged'.

As of the second period (January 1, 2021) a following stage will commence within TOZO 3.0. During this stage, the government will, where necessary, support self-employed persons in preparing for a new future, either as a self-employed person or as a salaried employee. Municipalities will work together with self-employed persons to identify whether and what support the self-employed person needs. For example, coaching, advice, refresher courses, retraining and reorientation. After the end of the third period (thus as of July 1, 2021) the normal regime of the Social Assistance (Self-Employed Persons) Decree 2004 (*Besluit bijstandverlening zelfstandigen 2004*; BBZ) will apply.

With regard to the provision of working capital, there are no changes compared to TOZO 2.0 (we again refer to our memoranda of May 26, 2020 and May 28, 2020).

5. Other tax measures

Travel deduction
For personal income tax purposes, a travel deduction is available for commuting with public transport, without a reimbursement having been received from the employer for this. Because, in certain cases, the costs of a public transport pass continue without an end date, the government will, for the year 2020, apply the travel deduction for personal income tax purposes as if the employee continued their travel pattern from before the corona crisis, provided the employee's travel costs have not changed. The measure will be included in the Corona Crisis Emergency Measures Decree.

Mortgage interest deduction
The measure aimed at retaining the entitlement to the mortgage interest deduction when mortgage repayments are deferred will also be extended until January 1, 2021. Because at the same time it has become apparent that the current maximum period of six months for a payment break is not sufficient in all cases, this period will be extended once by another six months, so that the total payment break can last a maximum of 12 months.

VAT exemptions and easing of administrative obligations for payroll tax and social security contributions
It also appears from the letter to the Lower House of Parliament that the VAT exemptions for medical relief supplies, face masks and the outsourcing of healthcare workers will be extended through to December 31, 2020. The same extension applies to the Dutch tax authorities' more flexible policy on employers who do not, do not fully, or do not comply on time with administrative obligations in respect of new employees, such as the duty to provide proof of identity.

6. Sectoral relief, guarantees and guarantee funds

The government is making additional funds available for the cultural and creative sector, national public broadcasting, zoos, the events industry, the travel sector, and mink farming.

The (other) measures that can provide businesses with liquidity will also remain available. For example, the corona module of the Government-guaranteed scheme for loans to small and medium-sized enterprises (*Borgstelling MKB*; BMKB-C) runs until April 1, 2021 and the corona module of the Business Loan Guarantee Scheme (*Garantie Ondernemingsfinanciering*; GO-C) and the Small Corona Loans scheme (*Klein Krediet Corona*; KKC) run until January 1, 2021. Remaining funds from the subsidy to Qredits from the first emergency package will be used for the additional deferral of repayment obligations, with an interest rate reduction of six months for businesses in the current client database for whom this is necessary.

7. Supplementary social package

The supplementary social package focuses on offering assistance to people who have lost or are at risk of losing their job, helping people to update their knowledge and skills or retrain for other work, tackling youth unemployment through assistance to further education or work and providing additional support to people with problematic debts.

8. Investments – WBSO

The package of measures aimed at investments includes bringing forward planned public investments. An investment fund is also being developed. In addition, the government will present several measures on Budget Day to encourage and stimulate private investment. To stimulate innovation, there will, for example, be an incidental rate increase in the first bracket of the Promotion of Research and Development Act

(*Wet bevordering speur- en ontwikkelingswerk*; WBSO) for start-up and non-start up companies. The details of this will be presented on Budget Day.

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 tax developments.

Meijburg & Co
September 2, 2020