

Conditions published for the extension of the NOW scheme (NOW-2)

On May 20, 2020, the government announced its intention to extend the NOW-1 (see [our previous memorandum](#)). The substantive details of this extension were published, on June 25, 2020, by Decree of June 22, 2020 under the name: Second temporary emergency bridging measure to retain jobs (*Tweede tijdelijke noodmaatregel overbrugging voor behoud van werkgelegenheid*, abbreviated to: NOW-2). In this memorandum, we discuss the NOW-2 in more detail.

1. General

The vast majority of the NOW-2 corresponds with the most recent version of the NOW-1. Nevertheless, there are a number of essential differences, as a result of which the government has opted to publish a completely new scheme, which improves the clarity and transparency of the NOW-2. Below we will in particular discuss the essential differences between NOW-1 and NOW-2. For the NOW-1, we would like to refer you to, for example, [this earlier memorandum](#).

2. Adjusted subsidy and turnover periods

- The subsidy period in the NOW-2 is one month longer (four months) and runs from June 1, 2020 through September 30, 2020.
- The period for which the decline in turnover must be calculated covers four months in the NOW-2. There must be a decline in turnover of 20% or more during an uninterrupted period optionally commencing on June 1, July 1 or August 1, where:
 - the turnover in this period should be compared with the average turnover for four months in 2019 (reference turnover); and
 - the turnover period of the NOW-2 directly follows after that of the NOW-1 if the subsidy has also been granted on the basis of NOW-1.
- Under the NOW-2, the decline in turnover should also in principle be calculated within the group. For the NOW-2 this concerns the composition of the group existing on June 1, 2020. This means, for example, that if a group company is sold before June 1, 2020, the turnover of that company does not count towards the reference turnover.
- If a company is not purchased or sold, but a business is transferred or disposed of, then a different period may (transfer) or must (disposal) be taken into account for the determination of the reference turnover.
 - In the event of a transfer of an economic entity as of January 2, 2019, the reference turnover may – in a manner comparable to the methodology under

the NOW-1 – be calculated as a four-month average calculated over the period running from the first full calendar month after the transfer until February 29, 2020. A similar (but mandatory) arrangement applies to the situation where business operations commenced after January 1, 2019.

- In the NOW-2 a new rule is added for situations in which a business unit or an activity is disposed of during the period from January 2, 2019 through February 1, 2020. In those situations, it is mandatory to calculate the reference turnover over four months on the basis of the average turnover during the period from the first full calendar month as of the (final) disposal through February 29, 2020.

3. Amount of the payroll and subsidy reductions

- In the NOW-2, the surcharge for additional expenses, such as employer and employee pension contributions, accrual of vacation allowance and other employee-related expenses, is increased from 30% to 40%.
- The NOW-2 concerns the payroll for March 2020. This is the payroll for the third tax return period in 2020, increased by 8.33% in the case of a four-week tax return period. Unlike the NOW-1, the NOW-2 does not take seasonal influences into account and the subsidy will not increase if the actual payroll during the period from June 1 through September 30, 2020 is higher than the payroll in March 2020 (multiplied by 4).
- In the NOW-1, the subsidy reduction will be higher if the employer files a request for redundancy on economic grounds during the subsidy period. The subsidy will then be reduced by 150% of the payroll for the employees made redundant. In the NOW-2, this higher reduction no longer applies and 100% of the payroll of the employees for whom redundancy was applied for is adjusted against the subsidy. It is also important that the payroll is adjusted for **three** months instead of **four** in order to avoid duplication.
- The NOW-2 introduces a discount, i.e. a reduction of the subsidy, of 5% if during the period from May 30, 2020 through September 30, 2020 one or more notifications are made by the employer within the scope of the Collective Redundancy Notification Act (*Wet Melding Collectief Ontslag*; WMCO) and redundancy is applied for on economic grounds for 20 or more employees within the sphere of operation of the WMCO. This discount will cease to apply if, for example, agreement has been reached with trade unions or employee representative bodies on the WMCO redundancies.

4. Redemption of own shares, distribution of dividends and award of bonuses prohibited

- The NOW-1 prohibited the redemption of own shares, the distribution of dividends and the award of bonuses. However, this prohibition under NOW-1 only applies if a subsidy application is based on the special arrangement for operating companies. This special arrangement may, subject to conditions, be applied if the group suffers a decline in turnover of less than 20%, but an individual operating company has a decline in turnover of 20% or more.
- Under the NOW-2, no own shares may be redeemed and no bonuses may be awarded **to** the management board or the board of directors of the group and the legal entity or company. Dividends may not be distributed to shareholders either. The following applies in this respect:
 - according to the explanatory notes, the terms 'management board' and 'board of directors' must be understood broadly and include board members, directors and members of the management who determine the policy;
 - the prohibition applies to the 2020 calendar year through to the date of the meeting, in 2021, at which the financial statements for 2020 are adopted.

Please note:

- Only the company that actually applies for NOW subsidy is now subject to the general prohibition in the NOW-2!
- The prohibition on redemptions of own shares, distributions of dividends and awards of bonuses also applies to the group or the parent company if a subsidy application is made on the basis of the special arrangement for operating companies.
- The general prohibition does not apply if the employer, or the group collectively, receives an advance subsidy payment of less than EUR 100,000 or a final subsidy of less than EUR 125,000.

5. Miscellaneous

- The application period for NOW-2 runs from July 6 through August 31, 2020.
- Whereas the NOW-1 was paid in three installments, the NOW-2 will be paid in no more than two installments.
- The determination of the subsidy must be applied for within 24 weeks of the end of the chosen turnover period. The period will only commence on November 15, 2020.
- The period of 24 weeks will be extended to 38 weeks if an auditor's statement has to be provided.

- As was the case under the NOW-1 (see [our previous memorandum](#)), under the NOW-2, an auditor's statement or a statement from an expert third party must in principle be provided.
- In order to receive the NOW-2, the employer must, should the aforementioned WMCO apply, consult with trade unions or other employee representative bodies for a maximum period of four weeks.
- Employers will be subject to a best-efforts obligation in respect of training. They must encourage employees to apply for career development advice or to participate in training courses.

Should you have any questions about the above, Meijburg's advisors would be pleased to use their expertise to help you. We will, of course, keep you informed of developments.

Meijburg & Co
June 25, 2020

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