

THE IMPACT OF CORONAVIRUS – UPDATE ON NOW: COMPENSATION FOR EMPLOYERS IN THE NETHERLANDS IN THE EVENT OF A QUALIFYING DECLINE IN BUSINESS ACTIVITIES

Unprecedented measures have been announced by the Dutch government to help companies in the Netherlands to continue their business whilst the markets may deteriorate and uncertainties continue.

Dutch government measures

On 12 March 2020 the Dutch government, alongside other governments throughout the EU, has announced a number of economic measures to enhance the prospects of Dutch companies surviving the financial consequences of the Coronavirus. In [our earlier client briefing](#) we have explained these measures further. On 17 March 2020 an unprecedented additional set of measures was announced, as described in [our update briefing](#). In this client briefing we provide an update on the temporary emergency measure aimed at the retention of work, as announced on 31 March 2020.

Employment

Further details on new compensation scheme for employers in the event of a qualifying decline in business activities now published

In our [earlier client briefing](#) we reported that if a company anticipates having less work for its employees in the Netherlands because of the coronavirus, it may be eligible for a short time working (*werktijdverkorting*) permit. This arrangement has now been replaced with a temporary arrangement for the compensation of labour costs. The temporary emergency measure aimed at the retention of work (*Tijdelijke Noodmaatregel Overbrugging voor Werkbehoud, NOW*) will be shortly available to companies that expect a loss in turnover of at least 20% to be calculated over a three-month period.

Pursuant to the NOW, companies can apply with the Dutch Employment Insurance Agency (*UWV*) for a compensation of labour costs provided they do not dismiss employees for business economic reasons (via the regular UWV dismissal permit process) during the compensated period. The compensation amounts to maximum 90% of the company's total wages (*loonsom*, being the wages registered under one and the same withholding tax number, *loonheffingenummer*), depending on the degree of the loss in turnover (see below for a few examples). UWV will provide an advance

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payment of 80% of the requested amount of compensation for the company to be able to continue the payments to their workers, both permanent staff as well as workers on flexible contracts. The NOW will be open for a period of three months until 31 May 2020. Before 1 June 2020, it will be decided whether applications can be filed also after this period. An extension of the NOW may be subject to additional conditions.

The compensation will be determined based on the decline in turnover over a three-month period, as follows:

- If there is a loss of 100% of turnover, the compensation will amount to 90% of a company's total wages;
- If there is a loss of 50% of turnover, the compensation will amount to 45% of a company's total wages;
- If there is a loss of 25% of turnover, the compensation will amount to 22,5% of a company's total wages.

It was announced yesterday, 31 March 2020, that it is expected that applications under the NOW can be filed as of Monday 6 April whereby a decline in turnover over a three-month period as of 1 March 2020 will be considered for compensation. Advance payments will be made in maximum three instalments, whereby the first instalment is expected to be payable within 3-4 weeks after the filing of the application provided the application is considered complete.

Further details:

Application forms will be made available that will need to be submitted to UWV electronically. The NOW provides that these can be submitted ultimately on 14 April 2020, although it is expected that applications can be filed as of 6 April 2020.

The decline in turnover will need to be established over an uninterrupted period of three months, either starting on 1 March, 1 April or 1 May 2020. For this period, the decline in turnover is to be compared with the turnover in 2019 whereby the 2019 reference period is to be established by dividing the 2019 turnover numbers by four. For companies that have started their business activities after 1 January 2019, the '2019' turnover figure needs to be based on the reference period from the company's start date up to and including February 2020 calculated down to a three-month period.

For groups of companies, the decline in turnover must be considered at a consolidated level. Only if there is a qualifying decline in turnover at group level, individual employers (per withholding tax number) within the group, can apply for the compensation. If there are more employers within a group of companies, the decline in turnover should be considered over the same three-month period. The group for this purpose will be limited to legal entities and companies incorporated under Dutch law, as well as non-Dutch legal entities and companies that pay wages in The Netherlands.

For the company's total wages, the amount of an employee's individual salary that exceeds € 9,538 gross per one-month period will not be considered. The employer is, however, held to continue to pay 100% of the workforce's salary. If there is a qualifying decline in turnover, the

compensation is calculated over the company's total wages in January 2020, or if this information is not available, over the company's total wages in November 2019.

In order to establish the actual decline in turnover, the applicant will have to provide further information within 24 weeks after lapse of the three-month period for which the compensation was requested. For this purpose, specific forms will be made available. These will need to be supported by an auditor's report, although possibly such auditor's report is not required if the compensation amount does not exceed a certain threshold amount (to be determined). Corrections may be made afterwards based on the actual decline in turnover, or a decline in the company's total wages during the three-month period for which compensation is requested.

One of the conditions for compensation in the event of a qualifying decline in turnover is that no employees will be dismissed for business economic reasons (via the regular UWV dismissal permit process) in the three-month period to which the application sees. In practice this means that no dismissal permit applications have been filed after 18 March 2020. Other conditions include (but are not limited to) the obligation to inform the works council, employee representative body, or in the absence thereof, the employees of the compensation granted, and that the compensation is being used for the continuation of payments to the company's workforce.

The short time working regime (*werktijdverkorting*) has been revoked: applications that have been filed for a short time working permit will be automatically converted into applications under the NOW. For this purpose, additional information will need to be provided by relevant applicants. Short time working permits already granted will be continued until the end of the permit's term (no extension possible).

Conclusion

This series of client briefings describe the updated and unprecedented additional measures, aimed at relief for companies in respect of employment costs, tax, and the ability to attract necessary financing. Also, the financial sector is closely monitored. It is possible that the Dutch government will announce further measures, depending on the developments of the Coronavirus and the impact on the Dutch economy, or that further details on these measures will be published. If so, we will issue another update of this client briefing to inform our clients accordingly.

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