

COVID-19 Response: Netherlands

GOVERNMENT MEASURES FOR BUSINESSES

ELIGIBILITY

WHEN?

Finance / Loan Schemes

BMKB (*Borgstelling MKB-kredieten*) credit guarantee programme for SMEs

- ▶ Existing scheme extended whereby the Dutch government can guarantee up to 75% of company credit amounts
- ▶ The scheme will also be applicable to bridging loans and overdrafts and extended for a further two years

- ▶ Dutch SMEs being companies that meet the following criteria: (a) a maximum of 250 employees; and (b) an annual turnover of a maximum of €50 million or a balance sheet total of a maximum of €43 million

7 April

GO-C programme (*Garantie Ondernemingsfinanciering Corona*) for larger companies

- ▶ Financiers accredited for Go-C with *Rijksdienst voor Ondernemend Nederland* can apply for a state guarantee when providing financing to large companies for amounts between €1.5 million and €150 million
- ▶ The state guarantee applies for up to 80% of the financing for large companies and up to 90% of the financing for SMEs, provided they are affected by COVID-19. This translates into a guarantee of up to €120/130 million
- ▶ Available for various types of debt including term loans (up to eight years) and guarantee facilities

- ▶ Companies must have substantial business activities in the Netherlands
- ▶ Generally only applies to new loans (including certain refinancings) used to finance the borrower's own business
- ▶ Certain industries are excluded: (i) real estate other than development financing, (ii) the financial sector (where the borrower is in the banking, insurance or investment sector or private equity) other than with respect to intermediary and operational lease activities and (iii) healthcare insofar as the company is a healthcare provider that provides services as described in the Healthcare Insurance Act (*Zorgverzekeringswet*) and the AWBZ
- ▶ GO-C cannot be provided to an "undertaking in difficulty" on 31 December 2019 in accordance with the EC definition
- ▶ Companies must not have made extraordinary capital contributions (e.g., dividends) in the 12 month period prior to the date of application or granting of credit lines

28 April 2020 to 31 December 2020 (applications should be submitted prior to 15 December 2020)

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Tax

Corona-reserve

- ▶ Companies may form a so-called fiscal corona-reserve in their Dutch corporate income tax return for 2019 with respect to losses they expect to incur in 2020 in relation to COVID-19. As a result, such companies' 2019 taxable profit will be reduced by this reserve, resulting in a lower amount of corporate income tax due for 2019. By requesting a revised 2019 preliminary corporate income tax assessment, including such corona-reserve, taxpayers can, if applicable, obtain a tax refund for FY 2019. Note that the allocation to the corona-reserve may not be higher than (i) the FY 2019 taxable profit prior to forming the corona-reserve, and (ii) the expected loss relating to COVID-19 in 2020. The corona-reserve will be released in the 2020 Dutch corporate income tax return

- ▶ Companies subject to Dutch taxation with taxable profits in FY 2019 and expected losses in FY 2020 due to COVID-19

Live

Deferral of tax payments in case of acute payment problems, no payment default fines in certain cases and reduction of recovery and tax interest. The measures include:

- ▶ Upon request, the tax authorities will allow an unconditional three-month deferral of payment obligations for corporate income tax, personal income tax, wage tax and value added tax in case of payment problems as a result of the COVID-19 crisis. Further extensions are possible subject to certain conditions. In case of such deferral, it will apply for all these taxes. Taxpayers can request such deferral of payment obligations until 1 October 2020. If a deferral of tax payments was granted to a taxpayer before 1 October 2020, such taxpayer can apply for an additional deferral until 31 December 2020. As of 1 July 2021, taxpayers will have to remit the taxes for which they have been granted a deferral in respect thereof. The tax debts should in any event be fully remitted to the tax authorities by 1 July 2024
- ▶ Administrative penalties for the late payment of tax will be waived (applicable until 1 January 2021). No objection or formal action by the taxpayer is required
- ▶ Tax interest (belastingrente) is temporarily reduced from 8% (corporate income tax) and 4% (other taxes) to 0.01%. This reduction applied until 1 October 2020. From 1 October 2020 up to 31 December 2021, tax interest will be set at 4% (all taxes)
- ▶ Recovery interest (invorderingsrente) is temporarily reduced from 4% to 0.01%. The Dutch government announced that this measure will apply until 31 December 2021
- ▶ Taxpayers that expect a lower taxable profit for 2020 due to the COVID-19 impact can request a reduction in the 2020 preliminary corporate income tax assessment. The tax authorities will in principle grant such request

- ▶ Companies subject to Dutch taxation

Live

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WHEN?

Employment

General

- ▶ The Emergency Bridge Fund for Employment (“NOW”) helps employers with the payment for wage costs if there is a sudden drop in turnover. NOW 3.0 builds on the NOW 1.0 and NOW 2.0 with several elements having been added or modified
- ▶ New applications can no longer be made for the NOW 1.0 and NOW 2.0. Employers can submit an application for the determination of the final aid for the NOW 1.0 via the UWV website
- ▶ From 1 October 2020, the NOW 3.0 provides for a subsidy scheme with three tranches (tranches 3, 4 and 5) of three months each. In these three tranches, aid will be gradually phased out. For each tranche, an employer may decide whether or not to apply. Even if an employer has not made use of the previous NOW schemes, an application can be made for (one or more tranches of) the NOW 3.0
- ▶ In order to qualify for the NOW 3.0, there must be a loss of turnover of at least 20% (tranche 3) and 30% respectively (tranche 4 and 5). The aid is determined by the percentage of loss of turnover of the employer or, where applicable, the group. The maximum compensation percentage differs per tranche (up to a maximum of 80% of the wage costs (capped) in tranche 3, up to a maximum of 70% of the wage costs (capped) in tranche 4 and up to a maximum of 60% of the wage costs (capped) in tranche 5). Employers must continue to pay the relevant employees’ salaries during the period they receive such aid

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Loss of turnover of at least 20% and 30% respectively

- ▶ For the NOW 3.0, the loss of turnover is determined by comparing one fourth of the turnover of 2019 (the reference period) with the turnover of a three-month period that is – in principle – to be chosen by the employer (the turnover period). This turnover period is different for each tranche
- ▶ Tranche 3: turnover period must fall within the period 1 October 2020 to 28 February 2021
- ▶ Tranche 4: turnover period must fall within the period 1 January 2021 to 31 May 2021
- ▶ Tranche 5: turnover period must fall within the period 1 April 2021 to 31 August 2021
- ▶ **Loss of turnover of group companies:** If the legal entity or company is part of a group, the loss of turnover of the group – as the group was composed on 1 October 2020 – is taken into account. As with the NOW 1.0 and the NOW 2.0, also for the purposes of the NOW 3.0, each parent-subsidiary-relationship is qualified as, and included in, the group concept
- ▶ **The group exception (Article 6 NOW 3.0):** If the loss of turnover of the group as a whole is less than 20% (for tranche 3) or 30% (for tranches 4 and 5) but is at least 20% (for tranche 3) or 30% (for tranches 4 and 5) respectively at the level of the operating company or at the level of part of the group, then aid can be applied for at that sub-group level (Article 6 NOW 3.0). Such application is subject to additional conditions and specific rules apply for the calculation of turnover at the level of an operating company or of part of the group

Application for tranche 3 can be filed from 16 November 2020 to 13 December 2020 inclusive

Application for tranche 4 can be filed from 15 February 2021 to 14 March 2021 inclusive

Application for tranche 5 can be filed from 17 May 2021 to 13 June 2021 inclusive

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Employment

General (continued)

- ▶ For all tranches, the aid is determined by the percentage of loss of turnover. For example in tranche 3:
 - ▶ 100% loss of turnover: aid equivalent to 80% of the overall wage bill;
 - ▶ 50% loss of turnover: aid equivalent to 40% of the overall wage bill;
 - ▶ 20% loss of turnover: aid equivalent to 16% of the overall wage bill; and
 - ▶ < 20% loss of turnover: no employment aid is available
- ▶ The employer to whom the aid is granted must fulfill several obligations
- ▶ If the request is granted, the UWV will pay an advance of 80% of the aid as calculated on the information supplied with the request regarding the anticipated loss of turnover. The advance will be paid in no more than three instalments. In practice, the aim is to pay the first instalment within two to four weeks of receipt of the complete application. The advance received may have to be repaid fully or in part if no entitlement existed, or if too much aid was received, or if the obligations of the employer are not fulfilled (see below)

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Wage costs

- ▶ Employers may request aid to compensate the wage costs for those workers (i) that are employed by the employer and (ii) that are compulsory insured under worker insurance policies (insured wages for national insurance contributions purposes, or SV wages). The aid is calculated, in principle, on the basis of the SV wages paid to workers employed in the month of June 2020. The wage bill is the aggregated wages paid to all workers under the relevant employer's withholding tax number (loonheffingnummer). Any holiday allowance paid by the employer is not included in the wage bill. In addition, any 'extra period of salary' paid by the employer that is not dependent on company results or the employee's qualitative or quantitative performance is also not included in the wage bill (i.e., payments as a result of an agreement in the individual employee's employment contract or collective bargaining agreement)
- ▶ The wage of each individual employee in respect of whom aid may be requested is also capped in the NOW 3.0. In tranche 3 and 4 the cap is twice the maximum daily wage per month and in tranche 5 the cap is once the maximum daily wage per month. This means that in tranches 3 and 4 no aid is given in respect of gross monthly wages in excess of €9,691 and in tranche 5 no aid is given in respect of gross monthly wages in excess of €4,845 (which amounts will be indexed as of 1 January 2021)
- ▶ Additional charges and costs, such as employer's and employee's contributions to pension schemes and the accrual of holiday allowance will also be compensated; it has been decided to set the employer's charges at a fixed percentage of 40% for all instances. In other words, the overall wage bill on which the aid is calculated will be equal to four times the SV wages in June 2020 + 40%

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Employer must fulfill several obligations:

- ▶ the employer may only use the aid to pay its wage costs;
- ▶ the employer must inform the Works Council or PVT, or if none exists, the employees directly, about the aid;
- ▶ the employer is obliged to make efforts to encourage employees to participate in development or training courses;
- ▶ the employer is obliged to make efforts to contribute to the guidance to other work for employees whose employment contract ends or whose employment contract is not continued. This general effort obligation applies to all employees whose employment contract may end, regardless of the reason, except in the case of retirement of employees;
- ▶ if the employer, during the subsidy period of a tranche for which it has applied for aid, requests permission to terminate the employment contract of one or more employees for business economic reasons, it will be obliged to contact the UWV during that subsidy period for support in finding alternative employment;
- ▶ the employer must keep verifiable records to ensure that all information relevant for calculating the aid may be inspected and must allow inspection of these records upon request for up to five years after the date on which aid was granted;

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Wage costs (continued)

- ▶ If the actual wage sum is lower during the subsidy period, for example because employees are no longer employed or because of a wage offer, this can have consequences for the amount of aid. Unlike under the NOW 1.0 and NOW 2.0, a reduction in the wage bill in the subsidy period does not directly affect the aid. A certain percentage of reduction, depending on the tranche, is exempt from consequences
 - **Tranche 3:** 10% exemption percentage
 - **Tranche 4:** 15% exemption percentage
 - **Tranche 5:** 20% exemption percentage
- ▶ If the wage bill is reduced more than permitted, this has consequences for the amount of aid; for every euro that the wage bill was reduced too much, the employer will receive 80, 70 or 60 cents respectively less aid, depending on the tranche

Duration of the aid

Tranche 3: 1 October 2020 to 31 December 2020

Tranche 4: 1 January 2021 to 31 March 2021

Tranche 5: 1 April 2021 to 30 June 2021

Employer must fulfill several obligations (Continued):

- ▶ the employer must submit its payroll tax forms on prescribed dates;
- ▶ the employer must notify the Minister immediately in writing of any circumstances that may give reason to revise, withdraw, or amend the aid;
- ▶ after the period during which aid was received the employer must submit a final statement of the loss of turnover; and
- ▶ the employer must cooperate with any audit carried out by or on behalf of the Minister during a period of five years after the date on which aid was granted, for instance by providing all necessary information, data and records and documents, aimed at providing the Minister with information that may be important for taking the decision on whether or not to grant aid, determining whether it was justified, or for the development of the policy adopted by the Minister

Two additional employer obligations:

- ▶ An auditor's report is required for companies that receive an advance payment of €100,000 or more or final aid of €125,000 or more. Companies applying for aid at operating company level based on Article 6 NOW 3.0 must always submit an auditor's report
- ▶ Article 14(1) NOW 3.0 stipulates that the entity applying for aid and which is required by Article 13 NOW 3.0 to provide an auditor's report, may not pay any dividend to shareholders in 2020 (for tranche 3) or 2021 (for tranches 4 and 5). In addition, the entity applying for aid and its top holding company may not pay bonuses to their directors. Further, these entities may not repurchase their own shares. For companies applying for aid at operating company level based on Article 6 NOW 3.0, the obligation to not pay out bonuses/dividend applies irrespective of the amount of the advance payment or the amount of the final aid

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Additional obligations (in addition to the employer obligations described above) **if NOW 3.0 is requested at the level of the operating company or part of the group (Article 6 NOW 3.0):**

- ▶ the operating company may not be a personnel company (i.e., a company which mainly seconds employees to other group companies);
- ▶ the operating company (employer) must act in accordance with a dated job retention agreement, concluded prior to the application for the determination of the final aid with the trade unions concerned or, in the absence thereof, a representative of employees, such as the Works Council, Employee representative body (PVT) or staff meeting. In the case of an operating company with less than 20 employees, the agreement of an employee representative body, such as the Works Council, PVT or staff meeting, will suffice;
- ▶ orders or projects of the operating company may not be transferred to other entities within the group;
- ▶ in the turnover period the group's loss of turnover must be less than 20% in the third tranche and less than 30% in the fourth and fifth tranche; and
- ▶ prior to the application for the determination of the final aid, the operating company or part of the group must have a written declaration from its top holding company confirming that the obligation to not pay dividends and/or bonuses has been complied with

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Dismissal: The NOW 3.0 offers employers room for restructuring. An employer who submits a request for dismissal to the UWV for business economic reasons for one or more employees during the aid period will, in principle, no longer be subject to financial cutbacks. However, this employer is now obliged to contact the UWV during the subsidy period for the support of guidance to other work. When determining the final aid, the UWV checks whether the employer submitted an application for dismissal for business economic reasons during the period of aid and whether the employer contacted the UWV. If it is established that the employer has not fulfilled this obligation, the total subsidy amount will (still) be reduced by 5%

Final application: Within 24 weeks from 1 September 2021, the employer must apply for the final aid for the tranches for which he has been granted aid by means of a form made available on the UWV website. For employers who are required to provide an auditor's report, the 24 week period is extended to 38 weeks. When applying for the determination of the final aid, the employer must also provide certain information including the definitive data on the loss of turnover, a report from the auditor or third party (if required) and a declaration that a number of the obligations laid down in Article 12 and 14 NOW 3.0 have been met. Additional requirements apply to companies applying for aid at operating company level on the basis of Article 6 NOW 3.0

Current developments: Now that the number of COVID-19 infections in the Netherlands is rising sharply, the government may be forced to introduce more restrictive measures and therefore it may be that the emergency package will be supplemented or changed later. Relevant update to be provided in due course

▶ See above

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▶ See above

COVID-19 Response: Netherlands (Continued)

Other

- ▶ In addition, the European Central Bank (ECB) and De Nederlandsche Bank (DNB) have taken measures that could result in increased bank borrowings
 - The DNB has lowered the buffer requirements for Dutch banks (see below)
 - The ECB is contributing an additional €750 billion (quantitative easing) into the European economy
- ▶ By temporarily imposing less stringent requirements on banks' capital buffers, banks are asked to provide loans to companies in the Netherlands, even if this would result in increasing losses for banks. Due to the intervention of the DNB, €8 billion in capital has been released, which means that up to €200 billion in extra credit could become available
- ▶ Legislation in place to temporarily facilitate virtual AGMs for Dutch listed companies (extended until 1 December 2020, although further extensions may be made)

Note:

- ▶ This document only summarizes key measures implemented to benefit businesses operating in Netherlands.
- ▶ The measures described above were in place as of **28 October 2020**. Updates and additional government measures are expected.