

Dutch economic measures relating to COVID-19

10 April 2020

1. INTRODUCTION

In response to the COVID-19 pandemic, the Dutch government has decided to take exceptional economic measures to limit the impact of the outbreak on the Dutch economy.

The aim is to protect jobs and the incomes of Dutch citizens and to cushion the impact for self-employed persons, SMEs and large companies. This overview includes the economic measures of the Dutch government, as initially announced on 17 March 2020, and the updates thereof up to 10 April 2020.

The Dutch government introduced the following measures to limit the economic impact of the COVID 19 pandemic:

- measures that ensure that companies can continue to pay their employees;
- financial support for self-employed persons to bridge these difficult times;
- measures that enable companies to retain funds through relaxed tax regimes; and
- extra credit opportunities.

To ensure that it is effective, the emergency package applies at least until 17 June 2020. However, the Dutch government has indicated that these measures may be extended after that date should the COVID-19 situation require it.

2. NATIONAL MEASURES

2.1 Establishment of a temporary scheme to subsidise wage costs (NOW-scheme)

On 31 March 2020, the Dutch government published a temporary scheme to subsidise wage costs (the **NOW-scheme**). The NOW-scheme, as well as the explanatory memorandum, can be found [here](#). The Ministry of Social Affairs and Employment has also published a [FAQ](#) and a letter has been sent to the House of Representatives with an [explanation](#).

The purpose of the NOW-scheme is to compensate employers for payment of wages if there is an acute turnover loss of at least 20% over a period of three consecutive months, which allows employers to keep their employees employed for the hours they worked before this relapse occurred.

Key characteristics of the NOW-scheme are:

- maximum subsidy of 90% of the wage bill, depending on the turnover loss;
- in place for a period of three months, with the possibility of extension (possibly under further conditions) by another three months (to be decided before 1 June 2020);

- the Employee Insurance Agency (the UWV) will provide an advance payment of 80% of the subsidy, which will enable companies to continue to pay their staff (both employees with permanent contracts as flexible contracts, such as on-call employees and temporary workers).
- the actual turnover loss will be determined retrospectively, which means that the final subsidy could lead to an adjustment (subsequent payment or reclamation by the UWV). When the subsidy is determined definitively, an adjustment will also be made if there has been a decrease in the wage bill. A higher wage bill will not lead to a higher determination of the subsidy.

A condition to the subsidy is that no staff may be dismissed for business economic reasons during the subsidy period.

The NOW-scheme will open for applications no later than 14 April 2020, although the government aims to commence by 6 April 2020. Employers can submit an application until 31 May 2020. Applications can be made electronically at www.uwv.nl, without e-identification or any other form of authentication or authorisation. This has been confirmed by the Chamber of Commerce.

The NOW-scheme works with an advance payment of 80% of the allocated amount based on:

1. the wage bill for January 2020 (based on the wage used to determine the wage tax / national insurance contributions, with some corrections), as evident from the payroll tax return that is used by the Dutch tax authorities; and
2. the expected net turnover loss during a period of three consecutive calendar months within the period from 1 March 2020 to 31 July 2020 compared to ¼ of the turnover for the calendar year 2019. Companies are entitled to set the start date of this three-month period on 1 March, 1 April or 1 May, creating flexibility to accommodate timing differences of the impact.

The amount of the subsidy grant is the result of the following formula:



$$A^* \times B^* \times 3 \times 1.3 \times 0.9$$

A* – stands for the percentage of expected net turnover loss over a period of three consecutive months between 1 March 2020 and 31 July 2020;

B* – stands for the wage bill based on the total wage bill of employees for whom the employer paid the wages in January 2020 (alternatively, November 2019), on the understanding that the wage to be taken into account per individual employee does not exceed EUR 9,538;

Factor 3 – calculation of B* is based on the wage bill for one month. However, the subsidy is granted for a period of three months, which is why B* is multiplied by factor 3;

Factor 1.3 – this factor is the flat-rate surcharge of 30% to correct the wage bill for the various costs incurred by the employer (such as pension contributions and holiday pay accrual; and

Factor 0.9 – this factor reflects 90% of the wage bill that is maximally compensated by the government.

The turnover loss is based on the turnover loss of the natural person or legal entity. It is not possible for groups to use the expected turnover loss per legal entity as the basis for the subsidy. If the legal entity is part of a group (according to article 2:24b of the Dutch Civil Code), the turnover loss of the group as it existed on 1 March 2020 is used. If the employer is a subsidiary of another legal entity (according to article 2:24a of the Dutch Civil Code), the subsidiary and the legal entity will be treated as if they were a group for the operation of the NOW-scheme. The application is made per legal entity – or if one legal entity has multiple payroll tax numbers: per payroll tax number. This means that each application must have the same expected turnover loss (of the group) and the same measurement period as the other group entities.

The period for deciding on the subsidy application is thirteen weeks after receipt of the complete application. In practice, the aim is to decide on the subsidy application (and to pay-out the advance payment) within two to four weeks after receipt of the complete application. The advance payment will be paid in a maximum of three instalments.

The above is only a brief description of the key characteristics of the NOW-scheme. For further information, please see our [blog on the NOW-scheme](#). A more detailed explanatory note is also available on request.

2.2 Extra support for self-employed persons (the Tozo)

On 27 March 2020, the Dutch government published a temporary support scheme for self-employed persons (the **Tozo**). The Ministry of Social Affairs and Employment has published a [FAQ](#) on the Tozo and a letter has been sent to the House of Representatives with an [explanation](#).

The purpose of the Tozo is to provide in the maintenance of self-employed persons when their income falls below the social minimum due to the COVID-19 pandemic, and secondly to address liquidity problems arising from the COVID-19 pandemic.

Municipalities will carry out the Tozo. The following requirements apply for eligibility under the Tozo:

- established self-employed person, from the age of 18 up to retirement age;
- residing and lawfully resident in the Netherlands;
- Dutch nationality or equivalent;
- the company or independent profession is conducted in the Netherlands;
- meets the legal requirements for running his/her own business, including registration in the Trade Register of the Chamber of Commerce;
- started the business before 18:45 on 17 March 2020 and fulfills the hours criterion, i.e. working at least 1,225 hours per year in his/her own company or independent profession; and
- living in the municipality, where additional income support is requested.

Municipalities must be able to check whether self-employed persons are entitled to the temporary support. Self-employed persons may for example be asked for a copy of their registration with the Chamber of Commerce and a valid ID-document. Municipalities also need information about the composition of a self-employed person's household (e.g. whether a self-employed person has a partner and/or children living at home). Information will probably also be requested about the self-employed person's company, e.g. in which sector he/she is working and whether he/she has employees.

Under the Tozo, self-employed persons can receive supplementary maintenance payments for a period of three months, via an accelerated procedure. An application under the Tozo can be submitted until 31 May 2020. Such application has retroactive effect to 1 March 2020.

The Tozo supplements self-employed persons' income up to the social minimum (up to a maximum of EUR1.5k net per month) and does not have to be repaid by the recipient. There is no partner income test or means/assets test in the Tozo, however, entrepreneurs who do not need the additional support are strongly urged not to resort to the Tozo.

Support under the Tozo is also possible in the form of a loan for working capital (up to a maximum of EUR10,157), at a reduced interest rate. When granting such loan, a possibility to defer the repayment obligation will be included.

2.3 Relaxation of tax deferrals and reduction of fines

In order to ensure that businesses have more flexibility in dealing with financial problems, the Dutch government has introduced a possibility to request extraordinary deferral of payment of income tax, corporate income tax, turnover tax and payroll tax. Upon written request, the Tax Authorities can grant a deferral of payment. The request should address the reasons why COVID-19 has resulted in financial problems for the taxpayer. The Dutch Tax authorities [announced on 19 March 2020](#) that a statement from a third party expert such as an accountant, tax adviser or bank is no longer necessary). As soon as the Tax Authorities have received the request for the deferral, they will put the collection of taxes on hold for three months. The Tax Authorities may later reconsider the validity of the request. If a longer extension is needed, the tax payer can file a (further) request which must be accompanied with more detailed information in order to allow the tax authorities to get a better view of the financial position.

As part of the package, no penalties are due if a taxpayer fails to pay its taxes in time for the coming period.

Late filing or late payment of taxes normally also results in interest becoming due (*belastingrente* and/or *invorderingsrente*). The general rate is 4%, but an 8% rate applies specifically in relation to corporate income tax. These interest rates have been temporarily reduced to 0.01%.

Finally, many taxpayers already pay taxes on a preliminary tax assessment during the tax year. This preliminary tax assessment may have been too high if it is expected that COVID-19 will have a significant impact on the amount of tax due within the relevant period. As was already the case, a taxpayer can file a request to reduce his preliminary tax assessment thus already taking into account the effects of the crisis on its tax position. Should this impact be lower than expected, the fact that the interest rates are reduced to 0.01% has a marginal effect compared to the 4% or 8% rates that would have been due.

2.4 Energy Tax

The levy of energy tax (*energiebelasting*) and renewable energy surcharge (*heffing Opslag Duurzame Energie*) will temporarily be deferred for companies that use substantial amounts of electricity or gas, such as the agricultural and horticultural industry. The government will work out the details of this measure in consultation with the relevant stakeholders, including the energy-companies that (on)charge these levies to their end-users.

2.5 Corporate Finance Guarantee (Garantie Ondernemingsfinanciering) (GO)

Current GO-scheme

Under the GO-scheme, the Dutch State guarantees half of any new funds which banks make available to Dutch borrowers.

In 2009, the Ministry of Economic Affairs and the Dutch banks joined forces to fight the negative effects of the credit crisis. One of the measures they implemented was the *Garantie Ondernemingsfinanciering* (GO) (Corporate Finance Guarantee), an arrangement designed for large and medium sized businesses affected by the crisis.

The GO-scheme is still in force and in light of COVID-19, the Dutch government announced extending the scope of the Corporate Finance Guarantee in its [letter of 17 March 2020](#) (in Dutch only). This extension is effective as of 28 March 2020.

The key changes to the existing rules are:

- the government budget has been increased from EUR400m to EUR1.5bn; and
- the 50% state guarantee on loans up to EUR50m has been increased to a 50% state guarantee on loans up to EUR150m.

Other key characteristics of the arrangement are:

- it applies to euro loans with a term no longer than 8 years;
- the companies that benefit under it must have substantial business activities in the Netherlands;
- generally only applies to new loans (including refinancings);
- certain industries are excluded: agriculture, fisheries and aquaculture (with the exception of supplies and services), real estate for speculative purposes, the financial sector where the borrower is in the banking, insurance or investment sector or has a private equity firm and health care (with certain exceptions);
- the GO-scheme is also available for guarantee facilities; and
- to benefit from the GO-scheme, banks must on-pay to the Dutch State part of the interest margin which the banks charge to the borrower.

For further details, please refer to the information [published by the government](#) (in Dutch only, requires updating).

Submissions for the GO-scheme must be made by 31 May 2020.

Allen & Overy has extensive experience in implementing GO facilities, both on a bilateral basis and as part of syndicated credit facilities. Typically GO facilities are used for liquidity purposes in existing banking relations (by adding a new GO-supported credit line).

[Corona Module / GO-C](#)

Under the European state aid laws, the Dutch government can adopt additional support measures. The European Commission has published a Temporary Framework (updated on 3 April 2020) describing measures that EU member states can adopt with the aim of ensuring access to liquidity for undertakings facing a sudden shortage due to COVID-19. These measures include: (i) direct grants, repayable advances or tax advantages; (ii) aid in the form of loan guarantees up to 90% of the loan; or (iii) aid in the form of subsidised interest rates for loans. For more information on the Temporary Framework, please refer to [this note on our blog](#).

With regards to aid in the form of loan guarantees the Temporary Framework provides for the following:

- Minimum guarantee premium (but variations and flat premia are possible, e.g. a lower coverage could allow for a lower premium):

	year 1	years 2-3	years 4-6
SME*	25bps	50bps	100bps
large enterprises	50bps	100bps	200bps

* (<250 employees (FTE) and ≤EUR50m revenue or ≤EUR43m balance sheet total)

- The public guarantee is granted 31 December 2020 at the latest;
- For loans which mature >31/12/2020 the following maximum amounts shall apply:
 - twice the annual wage bill;
 - 25% of 2019 turnover; and
 - when there is appropriate justification, a higher amount to cover liquidity needs for the coming 12 months for large enterprises and 18 months for SMEs;
- For loans which mature ≤31/12/2020 the maximum amount may be higher, but with appropriate justification (i.e. proportionality of the aid remains assured);
- The public guarantee may not exceed:
 - 90% for pro rata loss sharing by the bank and the Dutch State; and
 - 35% where losses are first attributed to the Dutch State and only then to the credit institutions ("first loss guarantee").

- The guarantee shall relate to investment and/or working capital loans; and
- The guarantee may not be granted to undertakings that were already "in difficulty" on 31 December 2020 (see for more information Article 2(18) of the Commission Regulation (EU) No 651/2014 of 17 June 2014, the requirements include a book debt to equity ratio ≤ 7.5 and EBITDA to interest coverage ratio ≥ 1.0).

The Dutch government has announced that it will add a "Corona module" to the existing Go-scheme on the basis of the Temporary Framework (the "GO-C"). The GO-C is still to be implemented and pending approval from the European Commission, but the following details have been disclosed:

- Further increase of the government budget from EUR1.5bn to EUR10bn;
- Increase of the state guarantee from 50% to 80% for large enterprises and 90% for SMEs;
- Decrease of the maximum term of the loans to three years, where the Temporary Framework allows for loans up to 6 years (or even longer if certain conditions are met);
- The Go-C may also be applied to eligible loans with retro-active effect from 24 March 2020; and
- Minimum (EUR1.5) and maximum (EUR150m) amounts of the loans will not change.

Although the GO-C is not yet implemented, the lending market is anticipating on the GO-C becoming effective in the next few days. Allen & Overy is currently acting for a variety of borrowers and lenders on transactions where at least one facility is to be made available with GO-C support.

2.6 SME guarantee scheme (Borgstelling MKB Kredieten, BMKB)

This SME-scheme enables small and medium enterprises in the Netherlands (<250 employees (FTE) and <EUR50m revenue or <EUR43m balance sheet total and incorporated three < years) to attract financing in amounts which would otherwise not be possible.

The Dutch government has announced that measures will be taken to support SMEs [by letter of 12 March 2020](#) (in Dutch only). According to the [letter of 16 March 2020](#) (in Dutch only) and the letter of 7 April 2020, the key characteristics of the SME-scheme as of 7 April 2020 are:

- The BMKB government budget is increased from EUR765m to EUR1.5bn;
- Accreditation becomes available to financiers other than banks to enable them to finance their clients using this extended BMKB scheme;
- up to 75% of the credit needs can be financed by the government under the SME-scheme, which is subject to a 90% cover by the government;
- the BMKB interest percentage is lowered from 3.9% to 2%;
- credit arrangements up to EUR1.5m are covered;
- SME-scheme remains in force until at least 30 June 2022; and
- there is an anticipated expansion of credit availability for SMEs of EUR300m as a result of the SME-scheme.

2.7 Interest rebate for small entrepreneurs on microcredits "Qredits"

The microcredit provider Qredits finances and coaches a large group of small companies and start-ups that find it difficult to obtain financing up to EUR250k. In light of COVID-19, the Dutch government has [by letter of 17 March 2020](#) announced that it will support Qredits with an amount up to EUR6m to allow for Qredits to extend credits by up to six months and to decrease its interest rates to 2% during such extension period.

2.8 Suretyship agriculture (Borgstellingskrediet voor de Landbouw) (BL)

The BL-scheme enables agricultural companies to attract financing in amounts that would otherwise not be possible.

The Dutch government has announced that bridge financing will become available under the BL-scheme [by letter of 17 March 2020](#) (Dutch only) and publication of the legislation on 19 March 2020 (with retro-active effect). Key characteristics of the BL-scheme are (effective as of 18 March 2020):

- up to EUR2.8m of bridge financing may be provided;
- term of the bridge financing is up to two years;
- bridge financing can be amortising or bullet loan;
- upfront fee of 3% is payable (1% for start-ups);
- subject to a 70% government cover; and
- applications must be received before 1 April 2021.

For further details, please refer to [this information](#) published by the government (in Dutch only, requires updating).

2.9 Consultation on tourism tax culture sector

The Dutch government is in discussion with the Association of Netherlands Municipalities (the VNG) to see whether local municipalities can stop (provisional) local assessments on businesses and withdraw assessments that have already been made. This relates in particular to tourism tax. The government is also consulting the cultural sector on further measures.

2.10 Compensation scheme for sectors affected

The Dutch government's health measures have enormous consequences for income in a number of sectors for example, the (compulsory) closure of eating and drinking establishments and cancellations in the travel sector. Moreover, these revenues are difficult to recoup when the COVID-19 pandemic is over. Therefore, the Dutch government has created and implemented the compensation scheme *Tegemoetkoming Ondernemers Getroffen Sectoren* (or the **TOGS**). Under the TOGS, an affected company can receive an one-off contribution of EUR4k to pay for its fixed costs. Applications for the TOGS compensation scheme can be submitted between 27 March 2020 and 26 June 2020. A detailed overview of the branches and sectors can be found in [this list](#) published by the Dutch government.

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