

Corona-related measures to support businesses in the Netherlands

I. Introduction

1. This memorandum provides a short overview of measures taken in the Netherlands to support businesses struggling with the effects of Corona and other measures taken by the government to combat Corona that may be relevant in dealing with financial distress.
2. This situation develops continuously. The information below is up to date as of 17 July 2020. Changes compared to the previous version of this document, that of 5 June, are *typeset cursive*.
3. Should you require any further information, please contact Niels Pannevis at Niels.Pannevis@resor.nl. Also, at the end below you will find references to websites with further details.

II. Government reimbursement for labour costs

4. An existing facility of the government for shortening work hours (*werktijdverkorting*) has been replaced by a new but similar arrangement (*Tijdelijke Noodmaatregel Overbrugging voor Werkbehoud, or NOW*). This has subsequently been amended to NOW 2.0, which currently applies. Under NOW 2.0 companies can request a substantial reimbursement for the wages of their employees if they experience a downfall in revenue.
5. Companies can request application of this arrangement if they experience a downfall of at least 20% in revenue and they commit not to dismiss employees for economic reasons during the period in which the reimbursement is received. It is not a requirement that employees currently have nothing to do. Also, there is no requirement as to the sector the applying company operates in. Salaries over EUR 9.538 per month cannot be compensated for the part that exceeds this amount.

6. The key factor is an (estimated) loss of revenue of 20% or more. This is determined by comparing the expected revenue over a four month period in 2020 starting after June 1st with a third of the revenue generated in 2019. Special provisions exist for exceptionally seasonal companies.
7. For groups of companies the loss of revenue is calculated on a consolidated basis. For international groups the revenue is calculated by consolidating all Dutch entities and entities that pay wages in the Netherlands. Individual parts of company groups that on a consolidated basis do not have a loss of revenue of 20%, but individually do have such a loss of revenue, may also apply for this arrangement.
8. Under the NOW, the employer continues to pay the full salaries of his workers. In principle companies using NOW 2.0 should not dismiss any employees. However, the penalty on dismissals, that was part of the original NOW has been abolished under NOW 2.0. Under the current arrangement companies that dismiss over 20 employees without having reached an agreement with the labor unions must pay back 5% of the total amount of subsidy that they received under this facility. If fewer than 20 employees are dismissed, the full received amount related to the dismissed employees must be returned.
9. *Companies that use the NOW 2.0-facility cannot distribute dividends or bonuses to shareholders or the board. Also, they may not buy back stock if the advance under the NOW exceeds EUR 100.000, or if the definitive compensation exceeds EUR 125.000. Moreover, employers are obliged to stimulate the employability of their employees, e.g. by providing possibilities for (re)training.*
10. *When applying for NOW 2.0, companies agree to have published online the name of their organization, place of domicile, the amount of the advance and the definitive compensation. A register of companies receiving such support, including the amounts, for NOW 1.0 has already been published online.*

11. The amount of the reimbursement under the NOW 2.0 depends upon the downfall in revenue; the maximum amount is 90% of the total wage bill relating to the loss in revenue. Hence, if a company loses 50% of its revenue, up to 45% of the total wage bill can be reimbursed. The support covers wages, but also includes a 40% surcharge to cover employer costs for pensions, employer contributions to social benefits and holiday pay. *The first payment is distributed as quickly as possible after the application, the second payment follows roughly two months later.*
12. Companies that have received support under the original NOW will be required to provide an opinion from their accountant regarding the actually incurred loss of revenue, on the basis of which the final settlement will be made. No penalties were incurred for mistakes in the initial estimate of the loss of revenue. Under NOW 2.0 companies have to provide an opinion of their accountant if the compensation will exceed EUR 100.000. In case of an advance exceeding EUR 20.000 or a final disbursement exceeding 25.000, a statement of a third party is required.
13. Staff that works in a payroll-arrangement or through an employment agency can also be covered under the NOW 2.0. The employment agency or payroll organization will then have to apply.
14. The NOW 2.0 shall not affect rights that dismissed employees have on the basis of the Dutch unemployment act.
15. The original NOW applied with retroactive effect back to 1 March 2020 and up until 1 June. The current NOW 2.0 applies from June up to and including September. *Companies can apply for NOW 2.0 until 31 August 2020, including those companies that had not applied for the original NOW. The companies that already applied for the original NOW, have to apply separately for NOW 2.0.*

III. Fiscal measures

16. The tax authorities are taking several measures to keep companies from going into financial distress.

Extension of payments

17. Since March all businesses can get an extension of payment of their taxes. It can be filed for through an online form. Such request is automatically granted. The extension not only covers current tax debts, but also debts that will be incurred in the next three months. For all taxes, this policy applies until *1 October 2020*. *When the extension of payment is revoked, companies are offered a payment arrangement.*
18. Companies can request extension of payments for income taxes, corporate income taxes, VAT and taxes over wages. The tax authorities will suspend any collection measures. Also no penalties will be incurred for untimely payment.
19. In addition to the taxes mentioned above, the extension can also cover gambling taxes, excise duties, consumption taxes, insurance taxes, landlord levies, energy taxes and other environmental taxes. For companies with high energy use, the energy supplier will no longer invoice the taxes.
20. A request for extension of tax payments needs to be filed in writing, explaining how the Corona-outbreak has incurred financial distress. Contrary to earlier information, this request does not need to be supplemented by an opinion of an independent expert.
21. Other usual conditions for an extension of payments apply. These include the past behavior of the taxable company. If insufficient funds were reserved for the taxes that were to be expected, no extension is granted.
22. If three months' extension is not sufficient, a company can request for further extension *under the condition that it does not distribute bonuses or dividends and does not buy back stock*. Tax authorities are still determining which information will be required for such an extension-request. There is a simplified process for companies with less than EUR 20,000 in tax-debt.

Special tax reserve

23. The Dutch government has adapted existing legislation on tax-deductible loss. Loss compensation with the preceding year is, in principle, only possible when the tax return for the loss year is filed and the final tax assessment for the profit year has been issued. The Dutch government has announced that taxpayers are now allowed to take into account the expected 2020 loss (which loss must relate to the coronavirus) in their tax return for 2019 through the creation of a tax reserve with a maximum of the 2019 taxable profit excluding this "corona tax reserve".

Adjustment of preliminary assessments

24. Companies currently paying income or company taxes based on a preliminary tax assessment which is in turn based on last year's profit, can request to lower that preliminary assessment of this year's profit. This directly lowers the taxes currently due.

No interest

25. Usually due and payable tax claims incur interest of 4%. Starting 23 March 2020, this rate will be lowered to 0,01%.
26. The interest for taxes that are assessed late is also lowered. Usually this is 8% for corporate income taxes and 4% for other taxes. This rate will be lowered to 0,01% starting 1 June 2020.

Local taxes

27. The government endeavors to suspend the collection of local taxes, particularly tourism taxes. Discussions with local authorities on this topic are ongoing. Some local authorities, such as the municipality of Amsterdam, have granted a suspension of payments of (some of) their taxes.

IV. Emergency funds

Additional guarantees for large financing

28. Under an existing program the government guarantees medium and large sized loans made by financial institutions to large companies (*Garantie Ondernemingsfinanciering, GO*). Loans between EUR 1,5 million and EUR 150 million qualify. The maximum duration is eight years. They can be guaranteed for up to 50%.
29. On 28 April, this program was expanded by introducing a separate facility for enterprises with financing liquidity needs for working capital and investment costs arising as a result of the coronavirus (*GO-C*). The maximum guarantee has been raised to 80%, and 90% for SME loans. The maximum duration of the guarantee is six years. This program only covers unsubordinated loans to enterprises which were not in financial difficulties on 31 December 2019.
30. Interested companies should address their bank. A list of participating banks can be found under the links listed further below.

Additional sureties for SME-loans

31. Under an existing program, the government acts as a surety (*borg*) for (part of) loans to small and medium sized enterprises (*Borgstelling Midden- en Klein Bedrijf, or BMKB*). To qualify as a small or medium sized enterprise (SME) a company can have no more than 250 employees (fte's), a turnover of EUR 50 million or a balance sheet total of EUR 43 million.
32. This existing program is expanded. Under the new rules the government will act as surety (*borg*) for more loans and for up to 75% of the loan. It is intended for bridge loans or extension of existing loans for up to *two years*. The personal surety of entrepreneurs will be lowered from 25% to 10%. The maximum credit for this program is EUR 1,5 million.
33. To request such surety, companies should address their own bank. The premium to take part in this arrangement has been lowered from 3,9% to 2% (*with a duration up to two years*) and to 3% (*with a duration up to four years*). The repayment term has been extended from two to four years.

34. The specific surety program for entrepreneurs in the agricultural sector will also be expanded.

New credit lines for companies without bank financing

35. New credit lines will be opened for companies that have no existing bank financing, particularly innovative companies, start-ups and scale-ups (*Corona-Overbruggingslening, COL*). This new financing will be supplied through the regional development societies (*Regionale Ontwikkelingsmaatschappijen, or ROMs*). The central government will supply EUR 200 million for the ROMs to arrange these loans. The loans themselves will be between EUR 50,000 and EUR 2 million. For larger loans, between EUR 2 million and EUR 5 million, a similar facility is set up by the national investment fund InvestNL.
36. As of 29 April, the COL 1.0 was open for applications. Since 20 May the COL 2.0 applies. *Applications between 20 May and 1 October shall be weighed against each other in a tender. The tender will take place in three time periods: 20 May – 1 July, 1 July – 16 August and 16 August – 1 October.* Contrary to COL 1.0, third parties can act as co-financer if existing shareholders cannot act as co-financer or if there are no external shareholders.

Support of closed and near-closed businesses

37. A specific support program has been set up for businesses that were forced to close under the Corona-measures, such as hairdresses, event-organizers, etc. It has been expanded to other businesses that are heavily impacted, although not necessarily forced to close. This is known as the TOGS (*Tegemoetkoming Ondernemers Getroffen Sectoren*).

38. Under this facility entrepreneurs can quickly receive a fixed amount of EUR 4.000 per business, not per establishment. Conditions for this facility include: (i) the company (or self-employed) must be in one of the designated heavily impacted sectors, (ii) the company can have no more than 250 employees, (iii) the company has not filed for suspension of payments or been declared insolvent, (iv) the company expects to suffer at least EUR 4.000 in revenue between 16 March and 15 June 2020, (v) the company will incur at least EUR 4.000 fixed costs in the same time. Applications for this facility are possible as of March 27th, although the website has been experiencing downtime due to the high number of applications.
39. On April 7th this arrangement has been expanded to cover further sectors. Since 28 April, companies that operate in a heavily impacted sector with their secondary activities (nevenactiviteiten) can also apply for this facility for these activities.
40. The government has announced that the TOGS will be replaced by a new but similar facility, called Compensation Fixed Costs Small and Medium Enterprises (*Tegemoetkoming Vaste Lasten or TVL*). The TVL applies from 30 June until 1 October. SMEs with a maximum of 250 employees that have lost more than 30% of their net turnover can receive a maximum amount of EUR 50.000 for a period of three months to pay their fixed costs (excluding wage costs). *Companies applying to the TVL should have at least EUR 4.000 in fixed costs (not including wage costs). The TVL is in addition to the NOW.*

Other small business measures

41. In addition to the program mentioned above, self-employed can get extra income support in two ways under the TOZO (*Tijdelijke Overbruggingsregeling Zelfstandig Ondernemers*).
42. Self-employed with a low income can get extra income support under the social benefits program for up to three months, without having to first use up their savings.
43. In addition, self-employed can request a loan for working capital with a maximum amount of EUR 10.517. *The interest rate is 2%.*

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44. The government has indicated that the TOZO will be extended until 1 October, albeit that once again, as before Corona hit, the income of the partner of any applicant will be considered before granting income support.
45. Also, small businesses financed through governmental finance provider Qredits will get an extension of payments of six months and their interest rates will be lowered to 2%.
46. Small companies that have attracted public investment through the early stage financing (*Vroege Fase Financiering*) or through innovation credit (*Innovatiekrediet*), can get a suspension of payments on these loans of half a year.

Re-insurance for credit insurance companies

47. The government is working on a re-insurance scheme for credit insurance companies. The aim is to allow the credit insurance companies not to lower their limits in the short term. The government has stated that it will guarantee supplier credit up to EUR 12 billion, covering deliveries as of 1 January 2020. This is currently pending approval by the European Commission.

Support by banks

48. Dutch banks have indicated that SME's with loans up to EUR 2,5 million can get an extension of payments for half a year.
49. For larger financings bespoke measures are being taken by the banks. Some banks are granting all larger customers suspension of interest payments, others are even suspending down payments on existing financing for larger customers.

Other suspensions of payment obligations

50. Pension funds are suspending payment obligations for affected companies. Currently this is done per individual company, broader guidelines are being developed.

51. The organisation of professional landlords and tenants of corporate real estate have agreed on a number of (non-binding) guidelines, such as the extension of rental obligations of three months. Some large individual landlords did already grant extensions. In the case law courts are granting adjustments of rent for tenants that have had to close their businesses due to Corona-measures.

Measures for specific sectors

52. Health insurance companies have promised to pay out health care providers a percentage of their normal turnover from insured care (the estimated percentage varies between 60 and 85 %).
53. The government has indicated that it will support the cultural sector with an additional EUR 300 million. This will be dispersed through the regular channels by which the government subsidizes the cultural sector.
54. Also, specific funds of EUR 650 million for agriculture were announced. This focuses on floriculture and the food industry.

V. Amendments in statutory insolvency and company law

55. As of yet no amendments have been made to Dutch statutory insolvency law. In comparison to other countries it is important to note that Dutch law has no strict statutory obligation to file for insolvency proceedings, so in that regard amendments were not as urgent as elsewhere.
56. The act on the conformation of out-of-court arrangements (the WHOA), a new tool similar to the Scheme of Arrangement, has been adopted by the lower house of Parliament on the 26th of May. It is expected that the WHOA will soon be adopted by the Senate.

57. A special, temporary act on the suspension of seizures of assets and insolvency petitions is in preparation. Under this act, the *Temporary Payment Deferment Act or Tijdelijke Betalingsuitstelwet*, a debtor can request the court to suspend the ability of a specific creditor to file for insolvency proceedings of the debtor, or seize his assets for recourse. Such a request can be granted if (i) the debtor is in a liquidity-crisis due to the measures to combat Corona, (ii) the debtor is expected to be able to meet his obligations after a term set by the court, and (iii) the addressed creditor is not disproportionately affected by this. A preliminary draft of this act has been published, but it has not been submitted to Parliament yet.
58. New legislation has been enacted allowing the boards of companies to plan general meetings up to four months later than otherwise allowed or to conduct them through video- or audioconference. Under this legislation, director's liability risks that would normally be incurred due to late publishing of the annual accounts are also mitigated, if the delay can be attributed to COVID-19 circumstances. Some of these provisions have retroactive effect back to 23 March 2020.
59. Also, under the same legislation the meetings normally required for the execution of notarial deeds can be conducted through video- or audioconference.

VI. Measures to combat the virus

Courts

60. During the peak of infections in March and April Courts have been closed for all non-urgent matters. Some court proceedings have been conducted by audio- or videoconference. Since 11 May, the courts have gradually started having live hearings again.
61. In the meantime, filings for the opening of insolvency proceedings are considered urgent and therefore still handled, albeit mostly by phone. The Enterprise Chamber of the Amsterdam court of appeal also remains open.
62. Whether summary proceedings (*kort gedingen*) qualify as urgent matters is assessed on a case-by-case basis.

Close-contact businesses

63. Specific businesses for which close contact is unavoidable, such as beauty salons and hair dressers, have temporarily been shut down. As of May 11th these businesses are gradually allowed to open up, abiding by strict protocols.
64. Other businesses can remain open, although all personnel that can work from home should do so.
65. Stores can remain open, but must take measures to ensure customers keep 1,5m (5 feet) distance. Stores that do not do so can incur fines of up to EUR 4.000 and ultimately be closed by the local mayor.

Gradual downscaling of the measures

66. On May 6th the government announced a contingent roadmap for gradual loosening of the measures aimed at combatting the spread of the virus in between now and September 1st. Significant steps have been taken on June 1st and July 1st, further steps are planned for and September 1st. Some measures are expected to remain in force beyond September 2020, particularly the requirement of social distancing.

VII. Links

Government reimbursement for labor costs (NOW)

- Central government website (in Dutch)
- Business.gov on NOW (in English, shorter version)

Fiscal measures

- Tax authorities (in Dutch)
- Business.gov on fiscal measures (in English, under 'Tax options')
- Form to request extension of payments (In Dutch)

Emergency funds

- Business.gov on sureties for larger companies (in English)
- Central government website on sureties for larger companies (in Dutch)
- Business.gov on extra sureties for SME-loans (in English)
- Further information by central government on SME-sureties (in Dutch)
- Dutch banking association on extension of six months for SME's (both in Dutch and English)
- List of governmental credits and guarantees (in English)
- Temporary bridging scheme for self-employed entrepreneurs (TOZO) (in Dutch)
- Further information on TOZO (in Dutch)
- Further information on TOZO (in Dutch)
- Further on TvL (in Dutch)
- Business.gov on TOZO (in English)
- Reimbursement for entrepreneurs in affected sectors (TOGS) (in Dutch)
- Business.gov on TOGS (in English)
- Further information on COL (in Dutch)
- Further information on COL (in English)
- Participating banks in GO-C facility (in Dutch)
- Participating banks in Go-C facility (in English)
- Further information on ROMs (in Dutch)
- Further information on ROMs (in English)
- Further information on Tijdelijke betalingsuitstelwet (in Dutch)

Closure of courts and specific businesses

- The Courts (in Dutch)
- Policy of courts as of 23 April 2020 (in Dutch)
- Central government on closure of specific businesses and measures for stores (in Dutch)
- Factsheet "Gradual downscaling of the measures" (in Dutch)

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