

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 16 April 2021. Changes compared to the previous version of this document, that of 29 January 2021, 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. A major pillar of the government stimulus is a reimbursement-programme for labour costs of effectively superfluous employees, the so called 'Tijdelijke Noodmaatregel Overbrugging voor Werkbehoud', or NOW. The original NOW started in March 2020. The NOW 3.0 *is applied in three tranches, the so called third tranche, fourth tranche and the fifth tranche, as successors of the NOW 1.0 and 2.0. The third tranche covered the labour costs of Q4 2020. The fourth tranche covered Q1 2021. From 17 May until 13 June 2021 companies can apply (retroactively where necessary) for the fifth tranche of NOW 3.0 which covers the labour costs for the months April, May and June 2021.* The core of (the fifth tranche of the) NOW 3.0 arrangement is the same as under its predecessors: under NOW 3.0 companies can request a substantial reimbursement of the labour costs associated to lost revenue.

5. Companies can request the NOW 3.0 if they experience a downfall of revenue of 20% or more. The estimated loss is determined by comparing the expected revenue in the relevant time period with the revenue generated in 2019.
6. The amount of the reimbursement under the NOW 3.0 depends upon the downfall in revenue. Under NOW 3.0, 85% of the labour costs associated to the lost revenue can be reimbursed. Hence, if a company loses 50% of its revenue, up to 42,5% 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 payments. The first payment is distributed as quickly as possible after the application, the second payment follows roughly two months later.
7. To apply for NOW 3.0, it is not required 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.
8. 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. *Which exact entities qualify as members of a group of companies for the calculation of NOW-entitlements is still debated.*
9. Companies that use the NOW 3.0-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. Companies should also inform their employees if an application for the NOW is granted.

10. When applying for NOW 3.0, companies agree to have published online the name of their organization, place of domicile, the amount of the advance and the definitive compensation. Registers of companies receiving such support, including the amounts, for NOW 1.0 and 2.0 have been published online. Around 60% of these companies that have received support under NOW 1.0 will have to return part of their received subsidies. Some of these companies were better able to reduce their labour costs than originally anticipated, others experienced a smaller loss of revenue than expected.
11. Under *the fifth tranche of the NOW 3.0*, as was the case under the third and fourth tranche of NOW 3.0, companies have to provide an opinion of their accountant regarding the actually incurred loss of revenue, on the basis of which the final settlement was made if the received compensation exceeds EUR 100,000. In case of an advance exceeding EUR 20,000 or an final disbursement exceeding 25,000, a statement of a third party – not necessarily an accountant - is required.
12. Staff that works in a payroll-arrangement or through an employment agency can also be covered under the NOW 3.0. The employment agency or payroll organization will then have to apply.
13. The NOW 3.0 shall not affect rights that dismissed employees have on the basis of the Dutch unemployment act.
14. Companies are allowed to gradually lower their loan sum, e.g. by dismissing or not replacing retiring staff, without affecting their reimbursement. The exemption rate is 10% of the total loan sum during the entire period of NOW 3.0, meaning that a company can lower its loan sum with up to 10%, whilst still remaining the same reimbursement. Further reductions will affect the NOW-subsidies.

III. Fiscal measures

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

Extension of payments

16. Since March 2020 all businesses are able to get an extension of payment of their taxes. The extension not only covers tax debts current at the time, but also debts incurred within three months of such extension being granted. The original extension, which was set to elapse on 1 April, has been extended to 1 July this year. Companies already enjoying an extension must request to have their extension extended. *Current policy is that from 1 July 2021, companies should start paying their taxes as they fall due in accordance with the regular rules. The accrued delayed taxes should be paid from 1 October onwards.* The tax collector has announced it will reach out to companies *before 1 October 2021* with a proposal for a payment arrangement to pay the tax debt accrued during the Covid-period in no more than three years . *Further tax measures beyond 1 July are currently in consideration, and have not been published as of 16 April 2021.*
17. The taxes that are extended include income taxes, corporate income taxes, VAT, taxes over wages, gambling taxes, excise duties, consumption taxes, insurance taxes, landlord levies, energy taxes and other environmental taxes. The tax authorities suspend collection measures during the extensions, and no penalties are incurred for untimely payment.

Adjustment of preliminary assessments

18. Companies 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 the profit to be made in 2020. This directly lowers the taxes currently due.

No interest

19. Usually due and payable tax claims incur interest of 4%. This rate has been lowered to 0,01% for tax debts which arose or will arise between March 2020 and 31 December 2021.

20. The interest for taxes that are assessed late is also lowered. Usually this is 8% for corporate income taxes and 4% for other taxes. The rate for corporate income taxes has been lowered to 4%; the rate for other taxes was previously temporarily lowered to 0,01%. From 1 October 2020, until 31 December 2021, for both types of taxes this rate is set at 4%.

Local taxes

21. Many local authorities, such as the municipalities of Amsterdam, Utrecht, The Hague and Rotterdam, have granted a suspension of payments of (some of) their taxes and temporarily lowered the rate of the interest of due and payable tax claims from 4% to 0,01%.

IV. Emergency funds

Additional guarantees for large financing

22. 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%.
23. On 28 April 2020, 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. Applications for such guarantees should be submitted before 30 June 2021.
24. 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

25. 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.
26. 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. Requests under this expanded programme should be submitted before 30 June 2021.
27. 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.
28. The specific surety program for entrepreneurs in the agricultural sector will also be expanded.

New credit lines for companies without bank financing

29. 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.
30. This program will be extended until 30 June 2021.

Support of closed and near-closed businesses

31. A specific support program that was originally set up to cover fixed costs for closed small businesses has been expanded to cover larger businesses as well. This is the Compensation Fixed Costs (*Tegemoetkoming Vaste Lasten or TVL*). Since January 2021, companies that have a projected loss of more than 30% of their net turnover during the first quarter of 2021 in comparison with 2019, can receive *85% of the fixed costs associated to the projected loss up to a maximum of EUR 550,000 (SMEs) or EUR 600,000 (non-SMEs)* in total, covering a period of three months, to pay their fixed costs (excluding wage costs) such as rent. *The TVL however is not based on the actual fixed costs, but uses a sector specific average of fixed costs.*
32. With a loss of revenue under 30%, no TVL support is available. Companies applying to the TVL should have at least EUR 1.500 in fixed costs (not including wage costs). The TVL is in addition to the NOW, which covers labour costs. *However the TVL can have an impact on the amount of NOW-subsidy that is granted, because the TVL counts as revenue in assessing the fall in revenue under a NOW-application.*
33. *For Q2 2021 the TVL will cover 100% of the total (standardized) fixed costs. Also the maximum amount of TVL per company per three months remains EUR 550,000 (SMEs) or EUR 600,000 (non-SMEs).*
34. The TVL is extended until 30 June 2021 (TVL 3). Companies need to apply separately for TVL in Q1 and Q2. *The TVL for Q1 2021 can be applied for until 5:00 PM at 30 April 2021.*
35. For start-up companies that do not meet the conditions to apply for the TVL because they did not have a turnover in 2019 that can serve as comparison, a separate program fairly similar to the TVL will be introduced in April/May (the start up arrangement or 'Startersregeling'). This allows start-up companies to request for compensation for their fixed costs over the period January-June 2021.

36. In addition to the foregoing, *the TVL has additional reimbursements for specific sectors*. Retail companies can get an extra reimbursement to compensate for loss of stock due to closures (*Opslag Voorraad Gesloten Detailhandel or VGD*). This extra reimbursement takes the form of *an increase in the fixed cost with 21% for Q1 2021 or 5,6% of the subsidy for Q4 2020. The fixed cost will then be reimbursed for 85% in Q1 2021 or up to 75% in Q4 2020, with a maximum reimbursement of EUR 20,160 in Q4 2020 and EUR 300,000 in Q1 2021. Companies in the travel industry can get an extra nonrecurring reimbursement to compensate for costs of cancellations of travels (Opslag Annuleringskosten Reizen or AR). This extra reimbursement takes the form of a one time increase of 3,4% of the fixed costs in Q1 2021 with a maximum increase of EUR 130,000. Agricultural and horticultural companies can get an extra nonrecurring reimbursement for special and ongoing costs for agriculture and horticulture (e.g. nutrition costs for animal or plants or (plant)care and crop protection) (Opslag voor speciale kosten land- en tuinbouw). This extra reimbursement takes the form of a one time increase of 21% of the fixed costs with a maximum increase of EUR 225,000. These additional reimbursements are only open to companies to which the TVL is open, i.e. to companies with a loss of revenue over 30% in comparison to 2019.*

Other small business measures

37. In addition to the programs mentioned above, self-employed can get extra income support in two ways under the TOZO (*Tijdelijke Overbruggingsregeling Zelfstandig Ondernemers*).
38. 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.
39. In addition, self-employed can request a loan for working capital with a maximum amount of EUR 10.517. The interest rate is 2%.
40. The TOZO-facility will be extended until 30 June 2021.

41. For households that have suffered a drop in income, a new program *has been* introduced as of 1 February 2021. This is the *Tijdelijke Ondersteuning Noodzakelijke Kosten, or TONK*. The TONK can be requested (retroactively) for the period of 1 January 2021 until 30 June 2021. The precise form will be decided upon by the municipalities, who will also execute this program. The national government is providing EUR 130 million for this program.
42. 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%.
43. 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

44. The government has provided 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.

Support by banks

45. In March 2020 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. This overall-extension approach has since elapsed. Although the European Banking Authority has provided banks with room to grant further extensions, no announcements have been made on broad extension programs as before.
46. 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

47. Pension funds are suspending payment obligations for affected companies. Currently this is done per individual company, broader guidelines are being developed.
48. The organisations 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 case law the courts are granting adjustments of rent for tenants that have had to close their businesses due to Corona-measures or to tenants that demonstrated a significant loss of revenue due to Corona-measures that cannot be accommodated with the TVL. *The courts tend to spread the 'pain' evenly between the tenants and the landlords, lowering rents by 50% where Covid-measures have completely eradicated turnover.*

Measures for specific sectors

49. 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%).
50. 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. In September the government announced additional support of EUR 482 million for the cultural sector.
51. Also, specific funds of EUR 650 million for agriculture were announced. This focuses on floriculture and the food industry.
52. In December 2020 the introduction of a so-called 'voucherfund' was announced. This is essentially a program to finance travel companies to allow them to pay the outstanding travel vouchers. The budget for this voucherfund will lie around EUR 400 million. *The voucherfund has been approved by the European Commission on 30 March 2021 and has started to finance payment of vouchers.*

53. For event-organizers, a facility called 'Evenementenbranchemodule' will be set up in addition to the TVL. Given their seasonality, event organizers are not able to apply for the TVL during Q4 2020 and Q1 2021. The Evenementenbranchemodule is fairly similar to the TVL, but allows for a different way to calculate the loss of revenue. In addition, the government intends to set up a guarantee fund of at least EUR 300 million, allowing event organizers to start planning events beyond the expected wind down of measures, which may be planned for 1 July, whilst also covering the risk should such events still be canceled.
54. *The government also indicated that it will support amateur sports with a total amount of EUR 240 million through various forms of allowances, including an allowance for amateur sports organizations (tegemoetkoming Amateursportorganisaties), an allowance for landlords for sports facilities (Tegemoetkoming Verhuurders Sportaccommodaties) and specific allowances for ice-skating rinks and swimming pools.*

V. Amendments in statutory insolvency and company law

55. 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. Courts have been applying extra scrutiny to requests for the opening of insolvency proceedings by creditors, in some cases dismissing such requests due to the special circumstances.
56. Coronavirus has sped up the adoption of the act on the conformation of out-of-court arrangements (the WHOA). This law has introduced a new restructuring tool similar to the Scheme of Arrangement as of 1 January 2021. It allows for a quick and effective procedure, which includes voting in classes, a cross-class cram down, the ability to bind secured creditors, and the possible appointment of a 'restructuring expert'. Please be referred to our website for more information on the WHOA (also in English).

57. In order to further facilitate companies in restructuring their debts, the government has set up a time-out arrangement (TOA), consisting of measures to support restructurings. This includes guidelines for restructurings developed by the Chamber of Commerce, a positive outlook on restructuring by the tax receiver, and a specific program to finance restructurings of SME-companies. The existing credit provider Qredits will grant subordinated loans to finance restructurings for amounts of around EUR 90,000 on average, with a total budget of up to EUR 200 million.
58. In addition, a special, temporary act on the suspension of seizures of assets and insolvency petitions has been adopted by Parliament. It has entered into force on 1 January 2021 and applies until *1 August 2021 at least*, but it may be extended. Under this act, the Temporary Payment Deferment Act (*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 the suspension.
59. 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. Also, under the same legislation the meetings normally required for the execution of notarial deeds can be conducted through video- or audioconference. *The planned expiration of this legislation has been postponed to 1 June 2021.*

VI. Measures to combat the virus

'Hard' lock-down

60. *At the time of writing, 16 April 2021, much of public life is open albeit in a limited fashion. Non-essential shops open only by appointment and in limited numbers. Contact professions (e.g. hairdressers, physiotherapist and masseuses) are operational with some restrictions. Schools are open in a limited manner. Only shops selling essential items such as food and drugs are fully open, and medical professionals such as physical therapists. Cafés, bars and restaurants have been closed since 13 October 2020. All workers able to do so should work from home. Also non-essential travel abroad is strongly discouraged until at least mid-May. As of 23 January a curfew has been introduced, compelling everyone to stay inside between 10 PM and 4:30 AM, with minimal exceptions.*

Courts

61. The courts are operating under strict Covid protocols, which highly limit the number of attendees, and many court proceedings are conducted by audio- or videoconference. Under these protocols, the courts remain open during the lock-down.

VII. Links

Government reimbursement for labour costs (NOW)

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

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 (GO) (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 information on TONK (in Dutch)
- Further information on TONK (in English)
- Further information on Qredits (in Dutch)
- Further information on Qredits (in English)
- Further information on VGD (in Dutch)
- Further information on VGD (in English)
- Further information on AR (in Dutch)
- Further information on extra reimbursement for agricultural and horticultural sector (in Dutch)
- Further on TvL (in Dutch)
- Further on TVL (in English)
- Business.gov on TOZO (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)
- Further information on TOA (in Dutch)
- Further information on TOA (in English)