

# Coronavirus newsletter April 2020

Outline of the Dutch support measures available to entrepreneurs

# Coronavirus newsletter

## **Coronavirus: considerations for entrepreneurs**

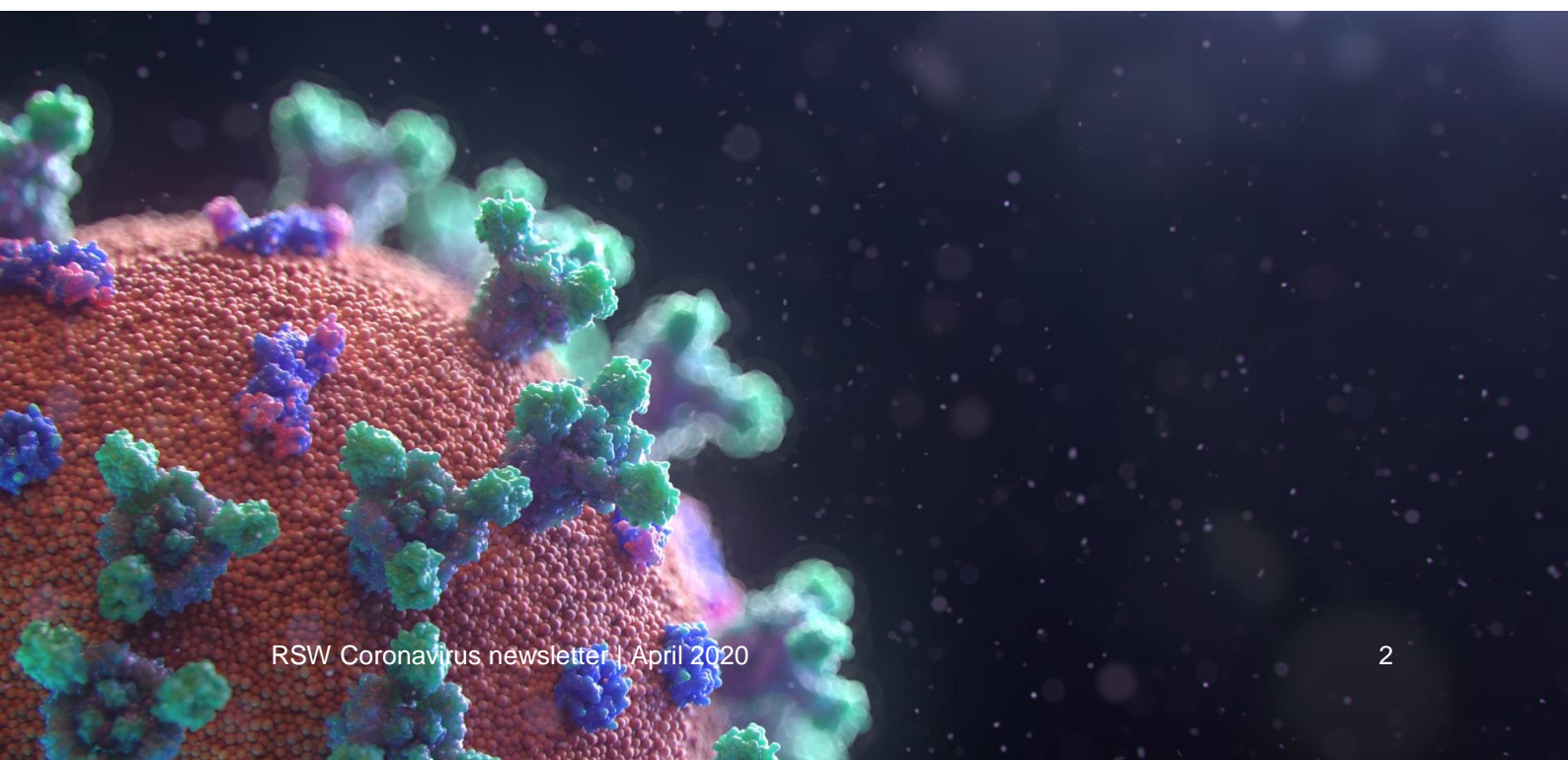
Besides the support measures introduced by the government, what else do entrepreneurs need to consider? You will find out in this newsletter. It also presents the latest news on the untaxed commuting allowance for employees, information about the group scheme, which the Lower House of the Dutch Parliament believes should be adapted (Article 10), and the relaxing of VAT rules for the healthcare sector.

### **Please note:**

We are keen to ensure we provide up-to-date information. As we are writing, however, the Dutch Government is constantly announcing new additions or improvements to (new) schemes. The articles below are based on the information available as at 8.15 p.m. on Thursday, 16 April.

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## 1. Does the coronavirus support also apply to a director/major shareholder?

The government has introduced numerous measures to help companies affected by the coronavirus crisis to cover their costs. Which of these also apply to a director/major shareholder (DGA)?

### **Temporary Emergency Bridging Fund for Employment (NOW)**

Under the NOW scheme employers can apply for a contribution towards their payroll costs up to a maximum of 90%. The salary of a director/major shareholder only comes under this if he/she is compulsorily covered by employee insurance schemes. You should also bear in mind that the maximum salary for which a contribution can be obtained has been set at € 9,538 per month, including for you as a director/major shareholder.

### **Temporary Bridging Scheme for Independent Entrepreneurs (Tozo)**

Independent entrepreneurs who are affected by the coronavirus crisis can apply for additional income support via their local authority to help cover their living costs and/or working capital. Their income is then supplemented up to subsistence level.

To qualify for the contribution, entrepreneurs must satisfy a number of conditions. As a director/major shareholder, you are also required to devote at least 1,225 hours to your business.

It also seems that you need to hold at least 50% of the shares, either alone or together with any other directors working at the company. We will inform you straight away as soon as more is known about this.

### **Contribution of € 4,000 towards costs**

Entrepreneurs in sectors that have been particularly affected by the coronavirus crisis, such as catering, can apply for a net contribution of € 4,000 towards their costs. This is possible under the Contribution for Entrepreneurs in Sectors Affected by COVID-19 scheme (Tegemoetkoming Ondernemers Getroffen Sectoren COVID-19 (TOGS)), previously known as the Emergency Service Point (Noodloket). Companies are required to satisfy a number of different conditions, such as having one of the qualifying SBI codes. The scheme is therefore also open to private limited companies (BVs) that fulfil the conditions.

### **Deferment of tax payments**

Companies can apply online for a deferment of payments for a range of different taxes, including payroll tax and income tax. That means a company can apply to defer payment of the payroll tax due for a director/major shareholder and that, if you are a director/major shareholder, you can also do so yourself for the income tax you owe.

### **Customary salary for directors/major shareholders**

If the coronavirus crisis has a significant impact on the turnover and liquidity of your company, as a director/major shareholder you can temporarily agree on a lower monthly salary in 2020. At the end of the year you determine your customary annual salary for 2020 and enter this in your payroll tax return. As a result of the coronavirus crisis, you can therefore determine your customary salary retrospectively, as you then have a clearer picture of the consequences of the crisis. You are not permitted to reduce any salary already received with retroactive effect. The relevant changes can also be made in your provisional income tax and health insurance assessments.

### **Director/major shareholder in the medical sector**

If you are a director/major shareholder in the medical sector, your company can take advantage of support from health insurers if you have suffered a drop in turnover. The contribution is based on the loss of reimbursed turnover and is expected to amount to around 60 to 85% of the turnover that is normally reimbursed. This assistance is intended to apply to all care provided under basic and supplementary health insurance, with the exception of opticians and uncontracted hearing care professionals.

## 2. Reduction in rates of late payment and tax interest

The late payment interest that is generally charged after the deadline for tax payments has passed is being lowered temporarily from 4% to 0.01%. This applies to all tax debts and therefore also to those of directors/major shareholders. The rate of tax interest is also being temporarily reduced to 0.01%. This reduction will apply to all taxes subject to tax interest. The Tax and Customs Administration charges tax interest if you submit your tax return late, for example.

**Please note:**

If the Tax and Customs Administration refunds late payment interest, the rate of 4% is maintained.

A payment discount is granted for provisional income and corporation tax assessments that are settled in a single payment. In such cases the rate of late payment interest applicable at that time is taken as a basis. If, however, the temporary reduction in this rate means that hardly any discount is received, the discount based on a rate of 4% can be obtained by lodging an objection.

## 3. Travel allowance for homeworkers remains untaxed

As a result of the coronavirus crisis, people in the Netherlands are working from home wherever possible. However, it has recently been announced that a fixed travel allowance for commuting between home and work can continue to be paid untaxed in the normal way.

**Fixed travel allowance**

Because of the administrative burden, many employers opt to calculate travel expenses for commuting between home and work on the basis of a fixed method. In such a case, for employees who generally travel to a permanent place of work the allowance must be based on 214 working days a year. Holidays, absences due to sickness, etc. are already taken into account in this figure.

**Please note:**

You are allowed to apply this method if the employee is likely to travel to this permanent place of work for 36 weeks or more per year.

**Monthly calculation**

The fixed travel allowance is then calculated by multiplying the number of kilometres travelled from home to work and back by 214. A maximum of € 0.19/km may be reimbursed for this number of kilometres. You divide this amount by 12 to calculate the monthly amount.

**Please note:**

The allowance is applied on a pro-rata basis for part-time workers.

**At home due to coronavirus**

For an employee who is working from home due to the coronavirus, you can continue to pay the allowance untaxed in the normal way. This was recently confirmed in a decision of the Ministry of Finance.

**Please note:**

In the case of employees who live more than 75 kilometres from their place of work, the allowance paid must be recalculated after the end of the year based on the actual number of kilometres travelled. However, for the period during which he or she works from home you can continue to rely on the assumed facts on which the allowance was based.

**Not for travel expenses reimbursed on the basis of an itemised claim**

If you reimburse travel expenses on the basis of an itemised claim, the relaxation of the rules does not apply. The relaxation is only applicable to fixed travel allowances.

## 4. Can you terminate an employment contract under the NOW?

Can you terminate an employment contract with an employee if you take advantage of the Temporary Emergency Bridging Fund for Employment (NOW scheme) to obtain a contribution towards your payroll costs? What is permitted and what is not?

### **Safeguarding jobs**

The aim of the NOW, under which applications can be made from 6 April to 31 May 2020, is to safeguard jobs as much as possible. For you as an employer the NOW scheme is therefore subject to the following two conditions:

- you have a best-efforts obligation to keep your wage bill at the same level, as far as possible, and
- for the duration of the NOW scheme you are not permitted to submit any redundancy applications to the UWV on the basis of commercial reasons (so-called 'reason a').

### **Redundancy application already submitted?**

As you can see, the second condition concerns redundancy applications submitted to the UWV for commercial reasons ('reason a'). If you have already submitted redundancy applications on or after 18 April 2020, the UWV will give you 5 working days to withdraw them.

### **Penalty**

If you fail to do so and continue the procedure with the UWV, the calculation of your wage bill will be corrected by the salary of the employee concerned plus 50% (penalty). This correction will be applied for all redundancy applications submitted between 18 March and 31 May 2020 that are not withdrawn within the period set.

### **When can you terminate an employment relationship?**

The NOW scheme refers only to the submission of a redundancy application for commercial reasons. You are permitted to terminate an employment contract – without any consequences for the NOW scheme – for the following reasons and in the following situations:

- dismissal during a probationary period;
- non-extension of a fixed-term employment contract;
- dismissal due to unsatisfactory performance, imputable acts, an impaired working relationship or another reasonable ground for dismissal;
- termination by mutual consent (through conclusion of a settlement agreement).

### **Please note:**

Your wage bill will fall as a result of a redundancy or dismissal. This can affect the amount of the subsidy you ultimately receive. After all, if you do not hire any new employees, there will be fewer people who you need to continue paying, which means the contribution you receive will also drop and you may even have to pay back a certain amount retrospectively.

### **Best-efforts obligation to keep wage bill at same level**

You have a best-efforts obligation to keep your wage bill at the same level, as far as possible. If that is not possible, however, as you are unable to offer employees a permanent contract due to a lack of future prospects, there is no further penalty attached to this. After all, a best-efforts obligation is not the same as an obligation of result.



## 5. Customer with financial problems? Still submit your invoice promptly

A number of your customers may be experiencing financial difficulties as a result of the coronavirus crisis. Nevertheless, you should still submit your invoices to them promptly, as otherwise you could run into problems with the tax authorities.

### **Invoicing obligation**

If you supply goods or services to other businesses, for example, you are in principle obliged to submit an invoice. This must be done by no later than the 15<sup>th</sup> day of the month following that in which you supplied the good or service.

### **Colleague in difficulties**

As a result of the coronavirus crisis, you may have supplied goods or services to colleagues who now find themselves in financial difficulties. You should still submit your invoices to them promptly too, as otherwise you could run into problems yourself with the tax authorities.

### **Deferment of payments**

You have the option of granting your colleagues extra supplier credit, if you wish, by offering them a payment term of two months instead of one month, for example. Of course, it is important that you do not end up in financial difficulties yourself as a result, as your own financial obligations will presumably still have to be met as normal.

### **Tax authorities grant 'free' deferment**

The fact that your invoice will not be paid until later does not affect your VAT return, assuming that you apply the accrual accounting system. You therefore include the amount of the supply as normal in the tax period during which the invoice is sent.

The VAT included does not have to be paid immediately, as, if necessary, you can apply for a three-month deferment of payments as a result of the coronavirus crisis. This has to be done online using your DigiD code. The interest payable is only 0.01% on an annual basis.

### **Your invoice is not paid. What happens now?**

If you have submitted an invoice and it looks like this will not be paid, you can claim back the VAT as soon as it is certain that your claim (or part of your claim) will not be paid. The tax authorities deem this to be the case if the invoice has not been paid within one year at the latest following the expiry of the payment deadline you agreed with your customer.

#### **Please note:**

If no payment term has been set, the statutory payment term of 30 days from the moment your customer received the invoice applies.

### **How do you claim back VAT?**

The amount of the refund should be included in the return for the period during which the amount became uncollectable or the period of one year expired. You should enter the amount you are claiming back as negative turnover and negative VAT under question 1a or question 1b of your VAT return.

### **What if the invoice is subsequently paid?**

If the invoice is paid after you have reclaimed the VAT, you must enter the amount of turnover and VAT again in your next VAT return.

### **Be aware if converting the amount to a loan**

If your customer is unable to pay the invoice and asks you to convert the amount into a loan, you still need to pay the VAT in the normal way. Please therefore bear this in mind!

## 6. Can an employee perform alternative work temporarily?

It is possible that, due to the coronavirus crisis, there will be less work for employees to do in their own roles. How can you deal with this situation? In other words, can you ask your employees to perform alternative work temporarily if you are receiving a contribution under the NOW scheme? Do you need to amend their employment contract in such a case?

### **Right to issue instructions**

You have the option of asking your employees to perform alternative work temporarily. After all, as an employer you have the right to issue instructions. That means you can give your employees instructions and directions with regard to work to be performed. In connection with the coronavirus crisis you can also ask your employees to carry out work on a temporary basis that differs from the agreed activities.

This may be necessary if other colleagues are absent due to illness, for example. Naturally, it must be work that the employee can reasonably be asked to perform. If necessary, you will need to give your employees explicit instructions relating to these new activities.

### **Safe work environment**

Under occupational health and safety legislation it is important that you continue to provide a safe and healthy workplace. In concrete terms this means that you must provide your employees with the necessary protective equipment – e.g. a plastic screen if they have contact with customers – and, if necessary, must give them instructions on how they should use this protective equipment. You must also make your employees aware of any risks associated with the work.

#### **Tip:**

You can also use the period during which there is less work available to offer your employees training, to ensure they are completely up to date once the coronavirus crisis is over. Perhaps you also have some jobs that had been put aside and can now be picked up again, such as the redesign of your website or administrative tasks.

### **Change to employment contract required?**

If the work assigned is completely different from the agreed activities, it may constitute a change to the employment contract. An important aspect in such a case is whether you have agreed on a unilateral changes clause.

However, you can only make use of such a unilateral changes clause if you have a compelling interest that, in accordance with the standards of reasonableness and fairness, outweighs the interests of the employee that are affected by the change. Commercial or organisational circumstances are generally regarded as such a compelling interest.

### **Weighing up the interests of the employer and a group of employees**

In such cases it is therefore necessary to weigh up the interests of the employer in changing the employment conditions, on the one hand, and the interests of the employee that are affected by the change, on the other. A unilateral changes clause is frequently used for collective changes that an employer wants to introduce for a group of or all employees. This may relate to the withdrawal of collective transport for itinerant employees, for example.

### **Appropriate work for one employee**

If it is a case of appropriate alternative work for just one employee, the principles of good employment practice and of being a good employee come into the equation. That means it is necessary to consider reasonableness and fairness, with both parties bearing some responsibility in this regard.

Imagine a small company that has little room to manoeuvre financially and whose continued existence is under threat. In such a case a rather more flexible attitude may be expected of an employee, especially as the changes in question are temporary.

## 7. Homeworking: what can you reimburse free of tax?

As a result of the coronavirus crisis, your staff are working from home where possible. This results in costs, so the question is whether and to what extent you can reimburse these free of tax.

### Home workplace

It is generally not possible to grant untaxed allowances for a home workplace. A different situation only applies if the workplace is self-contained, which means it needs to have its own entrance and sanitary facilities and you then have to rent the workplace from the employee. Only in such cases can untaxed allowances be granted, e.g. for energy costs, and can a desk be made available free of tax, for example.

### PC, mobile communication equipment and internet

Computer equipment, such as laptops, printers, etc., and mobile communication equipment, such as a smartphone, can be reimbursed or supplied free of tax if, in your opinion, the employee needs it to perform his or her role properly from home. An internet contract also falls under the above.

#### Please note:

In the case of a contract covering various services, such as TV, you need to reasonably estimate the costs that can be allocated to the internet connection. Only this portion may be reimbursed free of tax.

### Essential?

For employees who are obliged to work from home there will generally be little argument about whether a laptop, etc. is essential. Non-essential aids are also exempted if 90% or more of their use by the employee is for business purposes.

### If not exempted, charge to fixed budget

If you reimburse the cost of or make available a non-essential item, in principle this is taxable for your employee. However, you can also include it under the work-related expenses scheme, which means it will remain untaxed. As an employer, you will only pay a final levy of 80% if you exceed the fixed budget for this year.

#### Please note:

The fixed budget this year has been increased to 1.7% of the wage bill up to € 400,000 and 1.2% on the excess amount.

### And when the crisis is over?

If your employees no longer need to work from home after the coronavirus crisis, they will have to return to you the PCs, etc. that have been made available or acquire them as their own private property and pay you reasonable compensation for them.





## 8. As an employer, can you cancel a request for leave?

The coronavirus crisis is also giving rise to all kinds of questions relating to taking holiday. Can an employee withdraw his or her request for leave? As an employer, can you cancel a request for leave?

### **Can an employee withdraw a request for leave?**

Can an employee ask to withdraw a planned holiday and take this later in the year? The starting point for leave is that it is determined based on the employee's wishes. An employee is naturally allowed to ask his or her employer to withdraw a planned holiday. However, it is up to the employer to decide whether this request is granted. An employer is not obliged to agree to it. If an employer has a lot of work at that particular time, agreeing to withdraw the allocated leave will present few problems. However, the decision is a matter for the employer.

It is worth bearing in mind that withdrawing leave may result in too few staff being available later in the year, as everyone then takes their holiday at the same time.

### **Can an employer cancel a request for leave?**

Provided that he or she has compelling reasons for doing so (high volume of work, colleagues absent due to illness, etc.), an employer can cancel the leave, following consultation with the employee. However, in this situation the employer has to compensate the employee for any losses he or she suffers as a result of the timing of his or her holiday changing. These may include cancellation costs, for example.

An employer must not be too hasty in cancelling a request for leave. He or she must first see if there are any other ways to deal with the sudden increase in the workload, such as engaging on-call workers.

If, following the cancellation of the request for leave, the employee has no further opportunity to take any outstanding statutory holiday days for 2019 before 1 July 2020, this statutory holiday does not lapse. The employee must be given the opportunity to take this holiday at another time.

### **Summary**

As indicated above, the time when holiday is taken is guided by the employee. An employer cannot oblige an employee to take leave. Of course, an employer can ask an employee to do so, but the employee does not have to agree to this.

#### **Please note:**

The legislation governing holidays does not apply to time in lieu ('ADV' hours). It is therefore important to check what has been agreed in writing with regard to 'ADV' hours. It may have been stipulated in writing that the employer is entitled to schedule when 'ADV' hours are taken.



## 9. VAT rules in the healthcare sector relaxed due to coronavirus

As a result of the coronavirus crisis, personnel are currently being hired in and loaned out on a regular basis within the healthcare sector. Medical aids are also frequently being supplied free of charge. To ensure that VAT rules do not present an obstacle to the above, the Ministry of Finance has introduced two changes.

### **Hiring in and loaning out of healthcare personnel**

Under certain conditions the loaning out of healthcare personnel is exempt from VAT. One requirement here is that the healthcare institution is itself exempt from VAT. In addition, only the gross payroll costs may be charged, plus expenses of no more than 5%. The loaning out of personnel must also not generate a profit or have a profit-making objective.

#### **Please note:**

This measure does not affect the deduction of input tax by the supplier. That means, for example, that a supplier of personnel who normally provides services that are subject to VAT and is therefore able to deduct the input tax can continue to do so.

### **Healthcare products supplied free of charge**

The VAT on medical aids and medical equipment supplied free of charge to healthcare institutions can be deducted under certain conditions. The products in question must feature on a list and be connected with the coronavirus.

#### **Conditions**

One condition is that the costs form part of the entrepreneur's general expenses. The deduction of VAT for this entrepreneur is determined on the basis of the total turnover, not including the products supplied free of charge. Lastly, it must be stated on the invoice that use is being made of the exemption and the details relating to the exemption must be retained in the company's accounting records.

#### **Retroactive effect**

The approvals by the Ministry apply with retroactive effect from 16 March 2020 and will remain in force until 16 June 2020.

## 10. Lower House: further support for businesses

The Lower House of the Dutch Parliament is keen to introduce further support measures for businesses affected by the coronavirus crisis. In a number of motions passed during the coronavirus debates on Thursday, 16 April the government is being asked to take numerous measures or expand existing schemes.

### **Temporary Bridging Scheme for Independent Entrepreneurs (Tozo)**

The Lower House also wants to adapt the Tozo scheme. Under this scheme entrepreneurs experiencing financial difficulties can receive a payment supplementing their income up to the level of the minimum social income and/or working capital loans. The request has been made that activities dating from before March this year that were invoiced in March this year be left out of consideration, as they distort the picture of the loss of income suffered.

Special attention is also being requested for flexiworkers. In some cases, for various reasons, they find themselves in a position where they have lost their job and also do not qualify for the Tozo scheme.

### **Contribution for Entrepreneurs in Sectors Affected by COVID-19 scheme (TOGS)**

The Lower House is also keen to expand the TOGS scheme. Under this scheme affected companies can qualify for an untaxed contribution of € 4,000. Whether a company is eligible depends, amongst other things, on the SBI code of its principal activity. The Lower House is asking the government to look into whether the SBI code of a secondary activity could also be taken as a basis in certain cases. In such cases the secondary activities would have to be linked to the company's principal activity.

### **Offsetting of losses expanded**

Subject to certain restrictions, companies are permitted to offset losses against profits generated in previous and future years. In recent years the offsetting of losses has been restricted in the area of corporation tax in particular. A loss can now only be carried back by one year, for example. In the light of the anticipated negative impact that the coronavirus crisis is expected to have on profits for this year, the Lower House is requesting that the options for offsetting losses be expanded. In addition, it is asking for companies to be allowed to offset losses from this year with their 2019 profit on the basis of an estimate.

#### **Please note:**

It is now up to the government to examine the content of the motions and translate them into regulations where possible. The government is not obliged to implement a motion that has been passed, although it generally does so. It is therefore not yet known when the amended regulations will enter into force.

## 11. NOW scheme expanded for groups

The NOW scheme is being expanded for groups. Operating companies whose turnover drops by more than 20% as a result of the coronavirus crisis, but are part of a group that does not meet this condition, can now apply under the NOW scheme, subject to certain conditions. This was announced by Minister Wouter Koolmees from the Ministry of Social Security and Employment on Wednesday, 22 April.

### **NOW scheme**

Employers who experience a drop in turnover of at least 20% will have up to 90% of their payroll costs reimbursed via the NOW scheme. The drop in turnover is determined by taking 25% of the turnover for 2019 as a reference. This has to be compared with the turnover generated from March to May 2020. However, employers can also take a period starting one or two months later as a basis for determining their drop in turnover.

### **Problem with calculating drop in turnover for groups**

In the case of groups the turnover for the whole group is taken as a basis. One problem that results from this is that groups within which staff from one company cannot be deployed in other companies (or only to a limited extent) will in some cases not receive any compensation due to the decline in turnover being calculated on a per-group basis. This would be the case, for example, if one group company loses all of its turnover, but the drop in turnover for the group as a whole is less than 20%. This problem has now been resolved by the expansion of the NOW scheme.

### **Expansion**

The expansion means that independent legal entities, e.g. private limited companies, within a group will from now on be able to apply under the NOW themselves. This is subject to the conditions outlined below.

### **Conditions**

- No dividends or bonuses: groups with a company that takes advantage of the scheme must declare that they will not be paying out any dividends or bonuses for 2020 or buying back their own shares.
- No redundancies: the company in question must have an agreement with the trade union on job retention at the company. Companies with fewer than 20 employees can conclude an agreement with an employee representation body.
- No intra-group secondment operating company within the group: groups with an intra-group secondment operating company ('personeel-bv') must always take the drop in turnover at group level as a basis.

### **Additional safeguards**

A number of additional safeguards are also being incorporated into the NOW scheme to prevent fraud. During the period over which the drop in turnover is measured no orders may be transferred from a company that is taking advantage of the NOW to another company within the group. In addition, changes in inventories will be allocated to turnover. These safeguards are currently being worked out in more detail.

### **When does it enter into force?**

The amendment will be published in the course of next week (27 April – 3 May). This will also indicate when the scheme will enter into force.

### **Disclaimer**

*We have endeavoured to compile these texts as reliably and as carefully as possible. Our organisation cannot be held liable for any inaccuracies they may contain or the consequences thereof.*