

Update NOW modification: subsidy for operating companies if the group does not meet the loss of turnover-criteria.

On 1 May 2020 the new NOW rules for operating companies which expect at least 20% loss of turnover have been published ("NOW 2.0"). As of 5 May 2020, operating companies can apply for this NOW 2.0 subsidy.

1 Main criteria: decline in turnover of the group as a whole

- ▶ The loss of turnover must be at least 20% at the group level.
- ▶ Subsidiary companies should also be taken into account when determining the loss of turnover at a group level.
- ▶ The turnover of the non-Dutch subsidiaries within the group is also taken into account if the subsidiary pays social security wages in the Netherlands.
- ▶ Companies can apply for the NOW subsidy with a valid wage tax number.

2 Exception: NOW subsidy for an operating company within a group

- ▶ Even if the group expects less than 20% loss of turnover, the operating company in question can apply for the subsidy.
- ▶ The turnover of a particular operating company within a given group must decrease with minimally 20%.
- ▶ The operating company must have its own legal personality.
- ▶ Parts of legal entities, such as an autonomous participating interest or a business unit do not qualify for the subsidy.
- ▶ A part of a group within the meaning of Section 2:405 of the Dutch Civil Code (with a consolidated annual report) may also apply for the NOW 2.0.
- ▶ To apply for the NOW 2.0 subsidy the following additional conditions have to be met.

3 Condition 1: Application date

- ▶ As of 5 May 2020, operating companies can apply for the NOW 2.0 subsidy.
- ▶ Already submitted NOW applications (which have not yet been processed) have to be withdrawn and submitted as NOW 2.0 application again as soon as possible.

4 Condition 2: No personnel company

- ▶ There must be no "personnel company" within the group.
- ▶ A personnel company is defined as a legal entity which conducts for 50% or more of its business activities in the provision of labor within the group.
- ▶ Hence, operating companies with less than 50% hiring out of personnel activities and other (normal) activities are eligible for the NOW 2.0.

5 Condition 3: Employee retention agreement

- ▶ An operating company with 20 or more employees must conclude an agreement with trade unions or – in absence of trade unions concerned – an employee representative body on maintaining employment within the operating company in advance.
- ▶ Operating companies who employ less than 20 employees should conclude such agreement with an employee representative body in advance.

6 Condition 4: No dividends or bonuses

- ▶ Operating companies (as well as the parent company of the group) using the NOW scheme must declare that they will not pay any dividends or bonuses over the year 2020, nor may it buy its own shares.
- ▶ These obligations apply until the date at which the annual report of 2020 has been determined by the general meeting.
- ▶ If there is a statutory obligation to pay dividends or if this is an obligation based on a ruling with the Dutch tax authorities, then such dividends may still be paid to be eligible for the NOW 2.0.
- ▶ This so-called 'bonus ban' does not apply to 'regular' employees within the group who are (partly) remunerated variable. Hence, bonuses can still be paid to these employees.

7 Condition 5: Reallocation turnover

- ▶ The reallocation of orders in or after the measurement period or at a later date from the operating company requesting the subsidy to another entity within the group is prohibited.
- ▶ If this is the case, the turnover will be adjusted to the (fictitious) situation that the orders would not have been transferred.

8 Condition 6: Loss of turnover at the group level

- ▶ At the group level, the loss of turnover must be less than 20%. In the same measurement period, the operating company's loss of turnover must be at least 20%.
- ▶ If multiple operating companies within the same group apply for the subsidy, the measurement period must be the same for all NOW 2.0 applications.

9 Other obligations NOW 2.0

- ▶ Transfer pricing rules and the principles of devaluation and determination of results apply as applied in the latest annual report adopted prior to 1 March 2020.
- ▶ The loss of turnover must be corrected in the event of the deployment of personnel at other companies within the group during the period for which the subsidy is applied for.

10 Audit requirements

- ▶ The NOW 2.0 scheme contains stringent audit requirements.
- ▶ The auditor verifies whether all conditions of NOW 2.0 are adequately met and includes this in the final auditor's statement.

11 Other changes NOW scheme

- ▶ Besides the introduction of the NOW 2.0 the NOW scheme itself has also been amended.
- ▶ Bank account number: it is no longer necessary to provide a Dutch bank account number when applying for the NOW. Hence, it is sufficient to only have a foreign SEPA bank account number (of a country which falls under the scope of the EU-Regulation 260/2012).
- ▶ Employers who submit a NOW application are required to agree to the possible disclosure of certain information regarding the subsidy. This concerns the following information: the name and address of the employer, the sum of the granted advance payment and the final subsidy determined.
- ▶ The obligation to state a wage cost subsidy in the NOW application has been withdrawn. As a result, a wage cost subsidy received will no longer be deducted from the NOW subsidy.
- ▶ The subsidy will in any case be withdrawn if the loss of turnover in the measurement period turned out to be less than 20%, if the employer did not provide an auditor's statement or the conditions of the NOW 2.0 have not been met.
- ▶ Finally, the rules which will apply to the auditor's statement have not yet been finalized but these will be published soon.



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