

## **Update NOW: NOW 3, audit protocol and the ‘switch’**

In the past days, the Ministry of Social Affairs and Employment has provided new and important insights with regard to NOW 3, the interpretation of the auditor’s report for NOW 1 and the possibility of switching between the group scheme and the operating company scheme. This gives companies more guidance in the application of the NOW schemes. In many cases companies retain their entitlement to NOW subsidies, as the government has announced important relaxations of NOW 1 and 2.

## 1 NOW 3: a bridging arrangement for the longer term (9 months)

At the end of August, the Ministry of Social Affairs and Employment outlined the contours of the NOW 3 scheme. The aim of this scheme is to stabilize the economy and employment for the longer term and at the same time to allow employers the opportunity to achieve a workforce that suits the current reality. NOW 3 takes into consideration that employers are increasingly adapting their business organization to a new reality, where there should be room for reducing the wage bill without reducing the subsidy as a result. The exact details of this scheme will be announced at a later date. Please find below the main contours of the NOW 3.

- ▶ It is expected that the online desk for NOW 3 will open as per 16 November 2020.
- ▶ The NOW 3 will apply from 1 October 2020 and consists of three time periods:

TIME PERIOD	PERIOD	EXPECTED LOSS IN TURNOVER	SUBSIDY
1	1 October t/m 31 December 2020	minimum 20%	80% of the wage bill
2	1 January t/m 31 March 2021	minimum 30%	70% of the wage bill
3	1 April t/m 30 June 2021	minimum 30%	60% of the wage bill

- ▶ Employers can choose whether or not to apply for each time period. NOW 3 is also available for employers who did not use NOW 1 and/or NOW 2.
- ▶ An exemption percentage will be introduced, for which the wage bill can be reduced without a reduction of the subsidy itself. This percentage is 10% for the first time period, 15% for the second period and 20% for the third period. In consultation with employees (representation) the employer can determine how the wage bill will be reduced. However, a wage sacrifice can only take place voluntarily.
- ▶ The 'sanction/reduction' which was applicable in NOW 1 and 2 in the event of economic dismissals will no longer be in place.
- ▶ A part of the subsidy (10%) shall be used for training and job-to-job processes. The UWV will take this into account whilst paying out the subsidies. The Social Partners must support employees with transitions to other work and the reliance on social security benefits should be avoided as much as possible. How this budget will be filled in and to which extent the Social Partners will play a part in this, is still subject of discussion.
- ▶ The obligations related to training will remain to exist.
- ▶ The ban on dividend- and bonus payments will remain in place.
- ▶ The fixed surcharge remains to be 40%.
- ▶ The maximum wage to be reimbursed per employee in the first two time periods will still be equal to the NOW 1 and 2 schemes, i.e. 2x the maximum SV monthly wage (€ 9.538,- gross), but will be reduced to 1x the maximum SV monthly wage for the third time period.

## 2 Publication protocol audit statement NOW 1

The protocol for the audit statement has finally been published. This protocol makes clear what the exact role of the auditor is in the process of establishing the NOW subsidy and the criteria that need to be taken into account by the auditor. The protocol provides balance between customization and standardization. The protocol also takes into account whether or not an audit of the annual accounts is mandatory. The protocol has three different levels:

### 1. Companies that are not subject to the mandatory auditing

For the companies that received an advance payment of € 100.000 or a total subsidy of €125.000, but less than € 375.000, a declaration of composition from the auditor is sufficient. With such declaration of composition the company provides the financial data and the auditor compiles the financial overview. The auditor however does not provide certainty for the application for establishment. The auditor performs is to address the specific risks identified by the Ministry of Social Affairs and Employment. The aim is to bring the costs in proportion to the size of the organization and the application.

For amounts of subsidy exceeding €375.000, an auditor's report providing certainty is also required for non-audit companies. In view of the amount of the subsidy, a more intensive investigation is justified.

The auditor must issue a report with a so called limited degree of certainty. In such report, the auditor indicates that he has not identified any elements that might question the data in the application to determine the subsidy. A more intensive risk analysis is part of the auditor's work.

## 2. Companies that are subject to the mandatory auditing

These companies are familiar with the audit of the annual accounts by the auditors. For these companies, a more intensive audit is expected. This however is not the same audit as the audit of the annual accounts. Furthermore, the amount of subsidy has been taken into consideration for the conditions.

For these companies that received an advance payment of €100.000 or a total subsidy of €125.000, but less than €375.000, an assurance report with limited certainty is sufficient, with a more intensive risk analysis (equal to the group of companies that do not meet the criteria for the mandatory auditing and received more than €375.000).

For amounts of subsidy exceeding €375.000 audit-obligatory organizations are expected to exercise extra care in their administrative processes and internal procedures, given the amount of the subsidy and the size of the company. Especially since these companies are regularly audited by an auditor. An assurance report is required with the same degree of certainty as a regular annual account audit, focused on an audit of the NOW subsidy.

## 3. Companies that have applied for a subsidy under the operating company scheme

In view of the additional risks, an assurance report with a reasonable degree of certainty is always required from employers who have applied for the operating company scheme under the NOW.

The overview of this differentiation in the type of assignment is as follows:

Type of organization Amount of subsidy	Organization that does not meet the criteria for the mandatory auditing	Organization that does meet the criteria for mandatory auditing
< €20.000,- advance payment or €25.000,- subsidy	No statement ( (random check)	
= > €25.000,- subsidy < €125.000,- subsidy	Third party statement (random check)	
< €375.000	I. An assurance related assignment, including additional work ("NVCOS Standaard 4415N")	III. Assurance-assignment with limited certainty, including additional work ("NVCOS Standaard 3900N")
> = €375.000	II. Assurance-assignment with limited certainty, including additional work ("NVCOS Standaard 3900N")	IV. Assurance-assignment with reasonable degree of certainty ("NVCOS Standaard 3900N")
Application on the level of the operating company (article 6a NOW 1)	IVa. Assurance-assignment with reasonable degree of certainty ("NVCOS Standaard 3900N")	

### 3 Relaxation switch between the NOW regulations (concern en operating company)

The Ministry of Social Affairs and Employment announced that the following relaxations in the NOW 1 and 2 will be implemented:

- ▶ Employers only have to choose between the group scheme or company scheme when requesting for the establishment of the definitive subsidy, provided that the applicable conditions are met. It will therefore be possible to switch between the concern scheme and the operating company scheme under NOW 1 and 2, in the event the loss in turnover turns out to be higher or lower than estimated at forehand.
- ▶ Therefore, the requirement under NOW 1 that the operating company scheme can only be applied for as per May 5, 2020, will expire.
- ▶ The above means however, that the employer who still wants to apply for the operating company scheme because on group level the threshold of at least 20% loss in turnover has not been met, is required to provide a statement regarding the bonus- and dividend policy as well as an agreement on work retention in the application for the definitive establishment of the subsidy. This must be done within 24 or 38 weeks after 6 October 2020 for NOW 1 and within 24 of 38 weeks after 15 November 2020 for NOW 2 (the amount of weeks is depending on the type of statement).
- ▶ Employers may also be allowed to adjust the chosen reference period afterwards, but the Ministry of Social Affairs and Employment will provide more clarity about this at a later stage.

#### What HVG Law can do for you

The corona crisis has a major impact on the Netherlands. We are available to help you through these challenging times. We understand what you are going through and can support you with practical advice and solutions from a legal perspective.

#### COVID-19 helpdesk

Our helpdesk is available via [info@hvglaw.nl](mailto:info@hvglaw.nl) and at our special website you will find more information regarding (a.o.) the NOW-regulation: <https://www.hvglaw.nl/corona/>



**Huub van Osch**  
**Attorney Labor & Employment**  
E: [huub.van.osch@hvglaw.nl](mailto:huub.van.osch@hvglaw.nl)  
T: +31 6 55 44 20 48



**Emilie Boot**  
**Attorney Labor & Employment**  
E: [emilie.boot@hvglaw.nl](mailto:emilie.boot@hvglaw.nl)  
T: +31 6 29 08 48 56

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