

Q&A on the Dutch Temporary Emergency Bridging Measure to Preserve Employment (NOW measure)



April 14 2020

1. Decline in turnover

Q: Over which period is the decline in turnover calculated? For example, can 1 April 2020 be taken as the starting date?

A: Yes, that is possible. The employer may select a period of three consecutive months falling within the period from March to July 2020 inclusive, for example, the period from April to June 2020 inclusive.

Q: How is the decline in turnover measured? In comparison to which period?

A: The decline in turnover over the selected three-month period in 2020 is compared with the turnover over the whole of 2019 divided by 4.

Q: How is a (international) group of companies treated? For example, can you apply for subsidy for standalone business units or entities?

A: No, in determining the decline in turnover, the turnover of the entire group must be considered. However, a separate application must be submitted for each withholding tax number. In other words, each employer must make a separate application.

Q: Are foreign group members also to be counted in determining the decline in turnover?

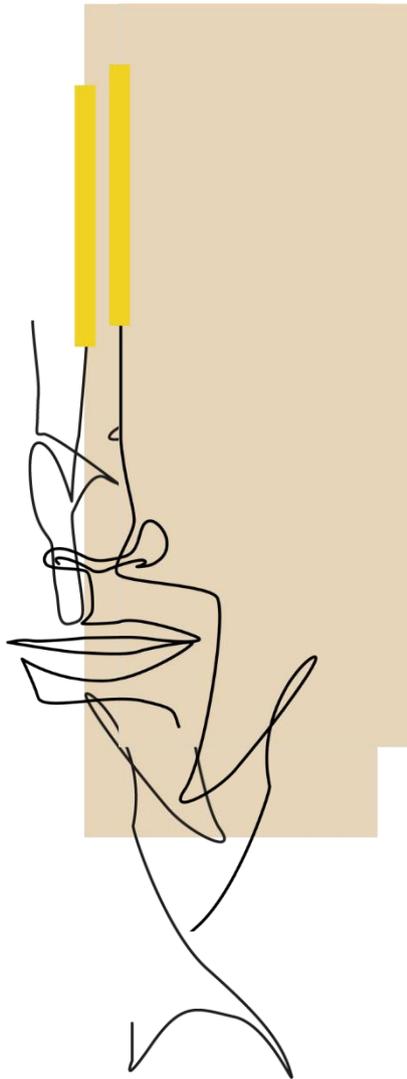
A: Only foreign companies and legal entities which have one or more employees for whom salary is paid in the Netherlands are included. Among the implications of this is that the employer pays national insurance contributions in the Netherlands.

Q: Can employees be transferred to other companies to avoid certain members from being included in the turnover?

A: No, according to the government, the reference date for determining the relevant group members is 1 March 2020.

Q: How must the turnover be determined in the case of non-profit organizations such as cultural and healthcare institutions? Are institutional subsidies included, for example?

A: All income, revenue and other advantages, such as distributions, subsidies, gifts and healthcare insurer claims, are considered as turnover. Where one-year or multi-annual subsidy (or any other form of revenue) exists, this income is divided pro rata over the three-month period.



Q: What kind of documentation must be provided?

A: The period over which the employer expects a decline in turnover of at least 20%, as well as the expected decline in turnover (as a percentage), must be stated in the first application (on the basis of which UWV may grant an advance). An estimate is sufficient here. In the application for the definitive determination of the subsidy, the definitive details of the decline in turnover must be provided and an audit opinion included.

Q: Is a demonstration of the link between the decline in turnover and the coronavirus required?

A: No, this is not required.

2. Assumed wage bill

Q: Which wage costs count for the subsidy?

A: The 'SV wage' (the wage for the purposes of national insurance contributions, as stated on the payroll tax form), which is already known to the government. From a tax perspective, this is the wage from present employment ("SV-loon uit tegenwoordige dienstbetrekking"). Apart from fixed salary, this includes e.g. allowances, additional tax liability for lease cars, bonuses including Christmas bonuses, etc. Pension premiums, expenses allowances and *accrual* of holiday pay are not part of the SV wage (but see further below).

Q: Are the employer's contributions (employee insurance contributions, pension premiums) also paid?

A: Yes, a fixed surcharge of 30% applies here. In other words, the wage bill is multiplied by 1.3. This is intended to cover, among other things, employee insurance contributions, pension premiums and accrual of holiday pay (holiday pay reservation).

Q: Are actual wage costs during the subsidy period (March to May 2020 inclusive) considered in the definitive determination of the subsidy?

A: Yes, and if the wage costs are actually lower, the subsidy will also be lower and the difference must be repaid to the Employee Insurance Agency (UWV) following the definitive determination. No adjustment is made subsequently if the wage costs turn out to be higher.

Q: Are on-call employee wages also compensated? If so, how much?

A: Yes, the wages of employees with flexible working hours are also included in the wage bill used. This is the salary that was paid during the reference period (in principle, January 2020).

How is the wage bill set in the definitive determination of the subsidy?

A: In definitively determining the subsidy, the wage bill for January 2020 will function (in principle) as a guide, though apart from an adjustment for maximum salary (EUR 9,538 gross per month), there will also be a further adjustment for

- (1) any UWV benefits received (in connection with sick employees making claims under their no-risk policies or employees taking leave under the Work and Care Act (Wazo),
- (2) holiday pay accrued or paid and
- (3) any applications for dismissal submitted to UWV in the period between 18 March and 31 May 2020 inclusive.

A further final adjustment may then be made if the actual wage bill for March / April / May 2020 is lower than 3 times the adjusted wage bill for (in principle) January 2020. This does not take into account the percentage decline in turnover. For every euro less in wage costs, the employer receives 90 cents less subsidy without this being adjusted by the percentage decline in turnover. See the example calculation below.

Q: The wage bill in the period March/April/May 2020 is lower than that for January. To what extent does this influence the definitive subsidy amount?

A: As stated, for every euro less in wage costs, the employer receives 90 cents less subsidy, without this being adjusted by the percentage decline in turnover. The government has provided the following example calculation:

Q: The employer has suffered a 50% decline in turnover. Therefore, the employer receives a subsidy of 90% over 50% of its wage bill. In January, it had a wage bill of € 1,000,000. The expected subsidy calculated over this is $(0.5 \times € 1,000,000 \times 3 \times 1.3 \times 0.9) = € 1,755,000$ in total. The employer receives an advance on this of 80%, i.e. € 1,404,000.

A: Suppose that the employer's wage bill for the period March to May is reduced by € 600,000. Under this measure, this equates to $(€ 600,000 \times 1.3) = € 780,000$ in wage costs. When multiplied by the subsidy percentage of 90%, that amounts to $(€ 780,000 \times 0.9)$

= € 702,000 in subsidy. Consequently, the subsidy is reduced by € 702,000. The final subsidy amount is therefore (€ 1,755,000 – € 702,000) = € 1,053,000.

The factor 1.3 in the formula represents the fixed surcharge of 30% in connection with employer's contributions.

Q: Applications for dismissal were submitted for a number of employees in the period between 18 March and 31 May 2020. To what extent does this influence the definitive subsidy amount?

A: Applications for dismissal in this period will result in a strong reduction in subsidy. The government has provided the following example calculation:

The employer has suffered a 50% decline in turnover. Therefore, the employer receives a subsidy of 90% over 50% of its wage bill. In January, it had a wage bill of € 1,000,000. The expected subsidy calculated over this is $(0.5 \times € 1,000,000 \times 3 \times 1.3 \times 0.9) = € 1,755,000$ in total. The employer receives an advance on this of 80%, i.e. € 1,404,000.

The employer applies for the dismissal of a number of employees in April 2020 on commercial grounds. These employees jointly earned € 200,000 in January. This amount is multiplied by 1.5, and then by 3, because the subsidy applies to three months, and then by the usual factors 1.3 and 0.9. The subsidy is therefore reduced by $(€ 200,000 \times 1.5 \times 3 \times 1.3 \times 0.9) = € 1,053,000$. The final subsidy amount is therefore $(€ 1,755,000 - € 1,053,000) = € 702,000$.

The factor 1.3 in the formula represents the fixed surcharge of 30% in connection with employer's contributions.

3. Obligations in respect of subsidy received

Q: Does the decision to apply for subsidy first have to be submitted to the works council for its opinion or approval?

A: No. However, the employer is obliged to inform the works council or, where there is none, the employee representative body or staff of the granting of the subsidy.

Q: Does the rule that nobody may be made redundant for economic reasons also apply to settlement agreements?

A: No, not according to the strict wording of the measure. The measure only provides that no applications for dismissal may be submitted to UWV for economic reasons. However, the employer is obliged under the measure “*to maintain a steady wage bill to the greatest possible extent*”. The subsidy may also be withdrawn or reduced if the employer fails to meet the objective of the measure. Put briefly, that objective is to keep employees in service to the greatest extent possible. The possibility of this disfavours an employer may not therefore be ruled out. However, we think the chance of that is really very small, and only present where the employer dismisses large numbers of employees. Moreover, redundancies for reasons other than economic ones remain, of course, permitted. However, it should be noted that the dismissal of employees could have an impact on the definitive subsidy amount, given that the wage bill over the subsidy period may be reduced as a result.

Q: Are dismissals due to restructuring that is already ongoing also prohibited?

A: Only applications which are submitted in the period 18 March to 31 May 2020 inclusive are not permitted under the measure, and result in a reduction of the subsidy. Applications submitted to UWV prior to that date may go ahead without further consequences. Here too, it should be noted that the dismissal of employees may have an impact on the definitive subsidy amount if the wage bill over the subsidy period is reduced as a consequence.

Q: How should I deal with on-call workers? Must I continue calling them up?

A: That is not obligatory under the letter of the measure, but does reflect its spirit. An employer receives a contribution for the wage paid to the on-call worker during the reference period (in principle January 2020). It is also of importance that, if the on-call worker is called up less or not at all during the subsidy period (March to May 2020 inclusive), the subsidy may ultimately be lower as a result, because the wage bill for this period may consequently decline. In general, a higher wage bill does not lead to a higher subsidy. To this extent, therefore, it does not ‘pay’ to call up an on-call worker more often than was done in the reference period.

Q: Am I obliged to extend an expiring fixed-term contract?

A: No, that is not obligatory. However, failing to extend it may lead to a situation where the wage bill declines and the subsidy must be adjusted downwards retrospectively.

Q: Am I obliged to keep on paying the wages of employees who earn more than twice the maximum daily wage (EUR 9,538 gross per month)?

A: Yes. This is also the case where these employees work less or do not work at all. According to the government, the consequences of the coronavirus crisis are not at the employee's expense (as defined in Section 628(1) of Book 7 of the Dutch Civil Code). However, arrangements can of course be made with these employees concerning the temporary relinquishing of part of the salary.

4. Practical questions

Q: Until when may I submit an application?

A: This is possible up to and including 31 May 2020. Nonetheless, the application must always concern subsidy over the period March to May 2020 inclusive.

Q: What do I have to do if I have already applied for a license for a reduction of working hours previously?

A: This previous application will automatically be designated as an application for subsidy on the basis of the NOW measure. UWV will approach the employer to provide additional information. The application will be treated in the same way as applications made under the NOW measure. The same decision-making period of 13 weeks (maximum) will also apply here.

If you have any more questions about the Dutch Temporary Emergency Bridging Measure please do not hesitate to contact:



**Ruud
Schepers**

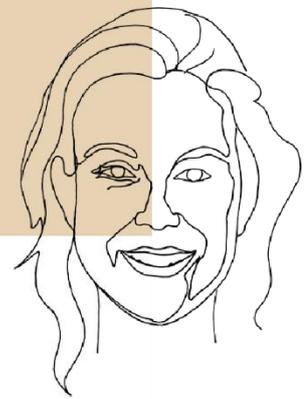
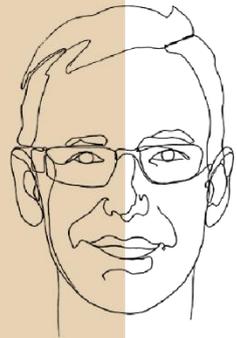
ruud.schepers@kvdl.com
+31 20 5506 867

**Eylard van
Fenema**

eylard.van.fenema@kvdl.com
+31 20 5506 828

**Marieke
Opdam**

marieke.opdam@kvdl.com
+31 20 5506 654



www.kvdl.com