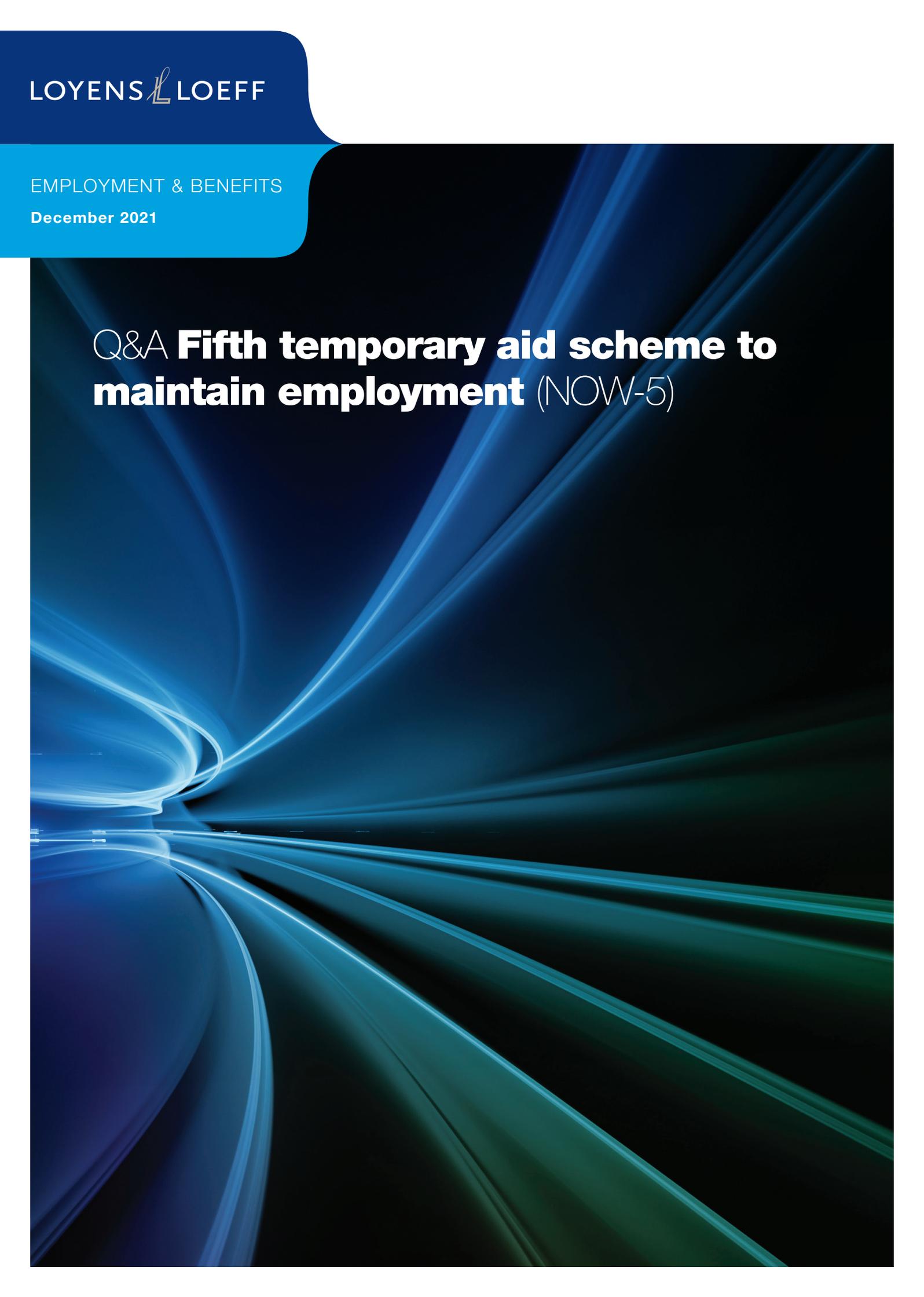


# Q&A **Fifth temporary aid scheme to maintain employment** (NOW-5)



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## Introduction

On 26 November 2021, the Dutch government announced the Fifth temporary aid scheme to maintain employment (NOW-5). The NOW-5 is a direct result of the (contact limiting) measures announced by the Dutch government on 26 November 2021. The NOW-5 was published in the *Staatscourant* on 10 December 2021. The NOW-5 provides for a two-month wage subsidy scheme from 1 November 2021 up to and including 31 December 2021. The NOW-5 can be applied for from 13 December 2021. Even if an employer did not make use of the earlier NOW schemes, an application for the NOW-5 can be made.

On 18 December 2021, the Dutch government announced a lockdown. Due to the short time between the announcement and the implementation of the lockdown, entrepreneurs had little possibility of adjusting their business operations in time. Therefore, on 21 December 2021, the Dutch government announced that it would extend the economic support package for the fourth quarter of this year in order to provide additional support and security to working people and entrepreneurs. This extension also has implications for the NOW-5.<sup>1</sup>

This Q&A outlines the most important aspects of the NOW-5. This Q&A includes the extension as announced in the Parliamentary [Letter](#) of 21 December 2021. At the time of revising this Q&A, this extension had not yet been published in the *Staatscourant*.

## 1. What is the purpose of the NOW-5?

Article 3 NOW-5 sets out the purpose of the subsidy. The purpose of the NOW-5 is to help employers with the payment for wage costs if there is a sudden drop in turnover of at least 20% over the turnover period. The aim is, on the one hand, to prevent unemployment as much as possible and, on the other hand, to enable employers, together with their employees, to prepare for and adapt to the new economic situation. It is explicitly noted that no profits or bonuses may be distributed, or own shares may be purchased (for the year 2021, according to the explanatory notes to the scheme). Pursuant to Article 16 NOW-5, this obligation is limited to the board and the management of certain companies (see question 12).

We would like to point out that in practice we have noted that it may be the case that the payment of a bonus under the text of the bonus ban as laid down in the NOW should be possible, but that the bonus payment would, according to the accountant, be in conflict with the purpose of the regulation. This is also stated in the FAQ published on the NBA website.<sup>2</sup>

In addition, Article 19 NOW-5 states that the aid may be withdrawn or amended to the employer's detriment if at any time it appears that the employer has not acted or failed to act during or after the period for which he received aid in line with the purpose of the NOW-5.

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<sup>1</sup> The Dutch government has also announced that the NOW-6 can be applied for in January, February and March 2022. The precise conditions that will apply to the NOW-6 will be communicated by the Dutch government in January 2022.

<sup>2</sup> See [FAQ's bonussen, dividenduitkeringen en inkoop eigen aandelen \(art 6a NOW 1.0 en/of a\) \(nba.nl\)](#).

## 2. In respect of which employees may aid be requested?

Employers may request aid to compensate the wage costs for those employees (i) that are employed by the employer and (ii) that are compulsory insured under employee insurance policies (insured wages for national insurance contributions purposes, hereinafter referred to as **SV wages**). Thus, aid may also be requested in respect of employees on flexible contracts, provided they continue to be employed by the employer during the period in which aid is granted and continue to receive wages from the employer. Temporary work agencies and payroll employers may also request aid.

Foreign employers who employ employees that are insured under the Dutch national insurance system may also submit a request under the NOW-5. The NOW-5 does not apply in respect of employees that are seconded to the Netherlands but are insured under foreign national insurance systems.

Because the overall wage bill is determined on the basis of all employees who receive SV wages, the NOW-5 also applies in respect of employees that are - what is called - 'fictitiously employed', but not in respect of uninsured Directors-Owners (DGA's) or voluntarily insured persons.

## 3. How is the amount of aid calculated (percentage)?

To qualify for the NOW-5, there must be a loss of turnover of at least 20%. As in the NOW-4, in the NOW-5 the maximum percentage of loss of turnover that can be reported is limited. Under the NOW-5 the employer can claim a maximum of 90% loss of turnover (this was initially 80%). This means that if an employer has 100% loss of turnover, the employer can report 90% loss of turnover.

The aid is related to the percentage of loss of turnover of the employer or, if applicable, the group (see question 5). The subsidy is 85% of the percentage of the loss of turnover.

If the loss of turnover is less, the aid will also be proportionally less. Below is an example, noting that 100% loss of turnover is thus capped at 90% loss of turnover:

100 to 90% loss of turnover:	aid equivalent to (90% of 85% =) 76,5% of the overall wage bill;
50% loss of turnover:	aid equivalent to (50% of 85% =) 42,5% of the overall wage bill;
20% loss of turnover:	aid equivalent to (20% of 85% =) 17% of the overall wage bill; and
< 20% loss of turnover:	no aid.

The maximum reimbursement rate under the NOW is therefore 76,5%.

The answer to question 8 explains how the wage bill should be calculated.

## 4. How is the loss of turnover calculated?

Article 1(2) NOW-5 defines the term 'turnover'. For the definition of turnover, as in the previous NOW schemes, the definition of turnover in accounting law has been followed. The net turnover is taken as basis, i.e. the income from the supply of goods and services by the relevant legal entity's business after deducting discounts and the like from the tax charged on the turnover.

Paragraph 4 explicitly states that the subsidy the employer receives under the NOW schemes does not count as turnover. Also, the Reimbursement Fixed Costs (*Tegemoetkoming Vaste Kosten*, **TVL**) is excluded from the concept of turnover under NOW-5 (and under NOW-3 and 4). Paragraph 5 provides that unemployment benefits that the employer receives on behalf of employees under the Working Time Reduction Scheme (*Werktijdsverkortingsregeling*, **WTV**), which has been reopened since 1 October 2021 for non-corona related applications, count as turnover for the purposes of NOW-5.

Also for the NOW-5, the decrease in turnover is determined by comparing the turnover with the turnover of 2019. The decrease in turnover is determined by comparing one sixth of the turnover of 2019 (the **reference turnover**) with the turnover of a period of two months, namely November and December 2021 (the **turnover period**). Unlike the previous NOW schemes, under the NOW-5 an employer cannot choose over which months to have the loss of turnover calculated.

For some specific situations, the reference turnover is calculated differently. For recently started companies, see the following schedule:

Company has started	Reference turnover period
Before 1 January 2019	Turnover 1 January 2019 up to and including 31 December 2019 divided by 6
From 2 January 2019 but not later than 1 February 2020	Turnover from the first full calendar month up to and including 29 February 2020 divided by the number of full months times 2
From 2 February 2020 but not later than 1 July 2021	Turnover 1 July 2021 up to and including 31 October 2021 divided by 2
From 2 July 2021 but not later than 30 September 2021	Turnover from the first full calendar month up to and including 31 October 2021 divided by the number of full months times 2
After 30 September 2021	No entitlement to NOW

A different reference turnover may also apply to companies that have acquired (part of) a company (see Article 6(6) NOW-5). See the following schedule:

Acquisition has taken place	Optional reference turnover period <sup>3</sup>
From 2 January 2019 but not later than 1 February 2020	Turnover from the first full calendar month after acquisition up to and including 29 February 2020 divided by the number of full months times 2
From 2 February 2020 but not later than 1 July 2021	Turnover 1 July 2021 up to and including 31 October 2021 divided by 2
From 2 July 2021 but not later than 1 October 2021	Turnover from the first full calendar month after acquisition up to and including 31 October 2021 divided by the number of full months times 2

## 5. My company forms part of a group. How will the loss of turnover be calculated in that case (Article 6 lid 9 NOW-5)?

If the legal entity or company is part of a group, the loss of turnover of the group - as the group was composed on 1 November 2021 - is assumed. A group is an economic unit in which legal entities and companies are organizationally interconnected. As with the previous NOW schemes, also for the purposes of the NOW-5 each parent-subsidary-relationship is qualified as a group.

If a parent company has several subsidiaries, the turnover of the parent company and its various subsidiaries must therefore be jointly determined. This also applies if a private equity firm is the majority shareholder of one or more top-holding companies in the portfolios in which it holds an interest. In those cases, there is a parent-subsidary relationship and all such portfolios will jointly be treated as a group.

<sup>3</sup> The explanatory notes explicitly state that in all cases, as in the previous NOW tranches, the acquired entity's turnover achieved before acquisition may not be included in the determination of the reference turnover.

This also applies to a private equity firm that is the majority shareholder of one or more top holding companies of the portfolios in which it participates. In those cases, there is a parent-subsidiary relationship and all the portfolios concerned will be treated together as if they were a group.

For the calculation of the loss of turnover, the starting point is the consolidated net turnover of the group (adjusted for a change in projects in progress accounted for in the profit and loss account). From this, the consolidated net turnover of the foreign entities without SV wages in the Netherlands is deducted.

## 6. An operating company has a loss of turnover of more than 20%, but the loss of turnover of the group as a whole is less than 20%. Can the NOW-5 be applied for on the basis of the loss of turnover of the operating company or part of the group (Article 7 NOW-5)?

Article 7 NOW-5 stipulates that if the loss of turnover of the group as a whole is less than 20% but is at least 20% at the level of the operating company or at the level of part of the group concerned, the aid may be claimed on the basis of the loss of turnover of the operating company or part of the group when applying for the determination of the aid (the operating company exception).

Such application is subject to several additional conditions, which are discussed under question 13. For the calculation of turnover at the level of the operating company or at the level of part of the group: i) turnover must be adjusted upwards if during the period of aid employees are seconded to another employer; ii) the same transfer pricing rules and principles of valuation and determination of results must be applied whereby the 2019 annual accounts adopted by 1 November 2021 at the latest shall be guiding (insofar as the calendar year 2019 is decisive for the calculation of the reference turnover); iii) movements in inventories must be allocated to turnover; and iv) turnover must be adjusted if other companies within the group have carried out assignments or projects at the expense of the company for which the aid is granted within the group.

## 7. How long will aid be provided?

The NOW-5 provides for a subsidy scheme of two months (1 November 2021 up to and including 31 December 2021).

## 8. How is the amount of aid calculated?

As discussed in question 3, the amount of aid depends on the loss of turnover compared to 2019 and amounts per month to a maximum of 76,5% of the wage bill over a period of two months (see the calculation in the answer to question 3). The aid is calculated on the basis of the SV wages paid to employees employed in the month of September 2021. The holiday allowance paid by the employer is not included in the wage bill. The same applies to an 'extra period of salary' that is paid in such month in addition to the regular salary and holiday allowance as a result of an agreement in the individual employment contract or collective bargaining agreement. Please note that it only concerns an extra period of salary that is not dependent on company results or the employee's qualitative or quantitative performance. As an example of an extra period of salary the 13th month is mentioned.

The wage bill consists of the aggregated wages paid to all employees under the relevant employer's withholding tax number (*loonheffingnummer*). The wage of each individual employee in respect of whom aid may be requested is also capped in the NOW-5; twice the maximum daily wage per month. This means that no aid is given in respect of gross monthly wages in excess of EUR 9,812.30.

Additional charges and costs, such as employer's and employee's contributions to pension schemes and the accrual of holiday allowance will also be compensated; it was also decided in the NOW-5 to set the employer's charges at a fixed percentage of 40%.

In other words, the overall wage bill on which the aid is calculated will be equal to two times (the SV wages in September 2021 + 40%). For an employer with 100% decline in turnover, the decline in turnover is set at 90%. In principle, this employer therefore receives  $0.9 \times \text{SV wages February 2021} \times 2 \times 1.4 \times 0.85$  in aid. However, if the actual wage sum is lower during the subsidy period, for example because employees are no longer employed or because of a wage offer, this can have consequences for the amount of aid. As under the NOW-3 and 4, a reduction in the wage bill during the subsidy period has no immediate consequences for the aid. For the NOW-5, 15% reduction in the wage bill is exempt from consequences.

If the wage bill has decreased by more than the exemption percentage, the aid will be set at the part that has decreased too much. This means that if the wage bill has decreased by 20%, the wage bill has decreased by 5% too much and the aid is set at a lower level over that 5%. For every euro that the wage bill was reduced too much, the employer will receive 85 cents less aid.

## 9. When does the UWV pay an advance, and will it be paid as a lump sum?

The UWV has a decision period of 13 weeks after receipt of the complete application. With the decision to grant aid, the UWV provides the employer with an advance payment of 80% of the aid, as calculated on the basis of the information provided with the application about the expected loss of turnover. The advance payment shall in principle be paid in one instalment. In practice, the aim is to pay the first instalment within 2 to 4 weeks of receipt of the complete application.

As mentioned in the answer to question 3, the employer could initially report a maximum of 80% loss of turnover.

On 21 December 2021 this percentage was increased to 90%. Because the subsidy period, and therefore the payment of the advances for the NOW-5, has already started, the new percentage will only be taken into account when the final aid is determined.

## 10. What are the principal obligations the employer must fulfil who receives aid?

Article 14 of the NOW-5 sums up several obligations the employer must fulfil. Failure to comply may have consequences for the grant, or the amount of aid to be received. The obligations are:

- the employer is obliged to use the aid exclusively for the purpose for which it was granted (payment of its wage costs);
- the employer must inform the Works Council or Employee representative body (*PVT*), or if none exists, the employees directly, about the aid;
- the employer is obliged to make efforts to encourage employees to participate in a course to further develop or training course. The Dutch government offers support to training activities with the crisis package *Nederland leert door*;
- the employer is obliged to make efforts to contribute to the guidance to other work for employees whose employment contract ends or whose employment contract is not continued. This general effort obligation applies to all employees whose employment contract may end, regardless of the reason, except in the case of retirement of employees;
- if the employer, from 27 November 2021 up to and including 31 December 2021 requests permission to terminate the employment contract of one or more employees for business economic reasons, he is obliged to contact the UWV telephone NOW during the period 13 December 2021 up to and including 31 January 2022 for support in finding alternative employment;
- the employer must keep verifiable records to ensure that all information relevant for calculating the aid may be inspected and must allow inspection of these records upon request for up to five years after the date on which aid was granted;
- the employer must submit its payroll tax forms on the prescribed dates;
- the employer must notify the Minister immediately in writing of any circumstances that may be relevant to a decision to revise, withdraw, or determine the aid;
- after the period during which aid was received the employer must submit a final statement of the loss of turnover; and
- the employer must cooperate with any audit carried out by or on behalf of the Minister during a period of five years after the date on which aid was granted, for instance by providing all necessary information, data and records and documents, aimed at providing the Minister with information that may be important for taking the decision on whether or not to grant aid, determining whether it was justified, or for the development of the policy adopted by the Minister.

Articles 15 and 16 of the NOW-5 contain additional obligations. These obligations do however not apply to all employers who make use of NOW-5. Please see question 11 and 12 in this respect.

## 11. When does the obligation to provide an auditor's report apply?

An auditor's report is required for companies that receive an advance payment of EUR 125,000 or more. If a (too low) advance payment is received, after which, when the aid is determined, it turns out that the company is entitled to a final aid of EUR 125,000 or more, then there is also an obligation to provide an auditor's report (Article 15 NOW-5). These amounts are based on the amount of aid awarded to the entire group (within the meaning of NOW-5) or, if there is no group, to the legal or natural person.

Companies applying for aid under Article 7 NOW-5 (see question 6), on the basis of the operating company exception, must always provide an auditor's report.

The auditor's report must be submitted with the application for the determination of the final aid.

Furthermore, if no auditor's report has to be submitted and the advance payment exceeds EUR 40,000 or if the final aid is higher than EUR 40,000, a statement from a third party (e.g. an administrative office, a financial services provider or a trade association) confirming the decrease in turnover will have to be submitted.

## 12. Which employers are subject to the obligation not to pay dividends and bonuses?

Article 16(1) NOW-5 stipulates that the entity applying for aid and that is required by Article 15 NOW-5 to provide an auditor's report (see question 11), may not pay any dividend to shareholders in 2021. In addition, this entity may not pay bonuses to directors of the topholding company and of the entity in question.<sup>4</sup> Nor may these entities repurchase their own shares. Other profit distributions to third parties are deemed equivalent to dividends for this purpose. Please note that if there is a statutory obligation to pay dividends or an obligation that exists on the basis of a settlement agreement with the Dutch tax authorities, this remains permitted.

The term 'directors' includes not only the directors under the articles of association, but also other persons who determine the company's policy (temporarily or otherwise). This obligation therefore does not apply to other 'regular' employees within the company.

If on the basis of Article 7 NOW-5 the possibility is used to determine the loss of turnover at the level of the operating company or part of the group (see question 6), the ban on dividend payments and repurchase of shares applies to the entire group, including the topholding company. This means that none of the entities within the group may pay dividends or repurchase its own shares. The prohibition on the payment of bonuses applies only to the directors of the topholding company and the entity applying for aid.

Prior to the application for the determination of the final aid, the operating company must have a written declaration from the topholding company that the obligation not to pay dividends and bonuses has been complied with.

In the case of a split financial year, the obligation shall apply to the financial year for which the aid is granted (Article 16(7) NOW-5).

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<sup>4</sup> According to FAQ B10, the other group companies and shareholder may also not pay any bonus to the management of the NOW applicant entity, see [FAQ's bonussen, dividenduitkeringen en inkoop eigen aandelen \(nba.nl\)](#) - in Dutch only.

Like the NOW-4, the NOW-5 has an additional obligation (Article 16(2)). Employers who apply for the NOW-5 are obliged to enter into an agreement with at least one interested association of employees, in which written agreements on the bonus and dividend policy are laid down. If there is no association of employees or the employer has fewer than 20 employees, the agreement is concluded with another representation of employees, such as the Works Council or PVT. The obligation only applies to employers where the total advance payment or the total final aid (under the NOW-5) is EUR 125,000.<sup>5</sup> The employer must submit this agreement when applying for the final determination of the aid. The agreement is without specific formalities. This subsidy obligation is therefore in addition to the obligation not to pay out bonuses and dividends which is already in place.

The explanatory notes to the NOW-5 state that if employers have already entered into an agreement on job retention (see answer to question 13) and bonus and dividend policy under the NOW-4, this agreement is also sufficient for NOW-5.

If no compliance with Article 16 NOW-5 is observed, the aid will be set at nil and there is a repayment obligation for aid that has already been paid.

### 13. What additional conditions apply if the NOW-5 is applied for on the basis of the operating company exception?

In addition to the obligations laid down in Articles 14, 15 and 16 of the NOW-5 (as discussed in question 10, 11 and 12), the following additional conditions apply to the operating company or part of a group for which aid under Article 7(1) NOW-5 is applied for:

- the operating company is no personnel company (i.e. a company which mainly secondes employees to other group companies);
- the operating company (employer) acts in accordance with a dated job retention agreement, concluded prior to the application for the determination of the final aid with at least one trade union concerned or, in the absence thereof, a representation of employees, such as the Works Council, PVT or staff meeting. In the case of an operating company with less than 20 employees, the agreement of an employee representative body, such as the Works Council, PVT or staff meeting, will suffice;
- orders or projects of the operating company may not be transferred to other entities within the group; and
- in the turnover period the group's loss of turnover is less than 20%.

Furthermore, operating companies that invoke Article 7 NOW-5 always must provide an auditor's report when applying for aid (Article 15(2) NOW-5). Also, in this case the obligation not to pay dividends and bonuses always applies. See in this context question 11 and 12.

### 14. Can an employer under the NOW-5 dismiss employees during the period of aid without this having any financial consequences for the amount of aid?

Also the NOW-5 offers employers room for restructuring. An employer who, from 27 November 2021 until and including 31 December 2021, submits a request for dismissal to the UWV for business economic reasons for one or more employees will, in principle, not be subject to financial cutbacks. However, this employer is obliged to contact the UWV telephone NOW during the period from 13 December 2021 up to and including 31 January 2022 for the support of guidance to other work.

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<sup>5</sup> Also if the NOW-5 is applied for on the basis of the operating company exception, this financial threshold applies according to the explanation on p. 39. However, it could also be inferred from the explanation on p. 20 that this agreement is always required if an auditor's report is required. This would mean that if the application is made on the basis of the operating company exception, an agreement on the bonus and dividend policy would always have to be concluded irrespective of the amount of the total subsidy.

When determining the aid, the UWV checks whether the employer submitted an application for dismissal for business economic reasons during the aforementioned period and whether the employer contacted the UWV via the UWV telephone NOW. If it is established that the employer has not fulfilled this obligation, the total amount of aid will (still) be reduced by 5%.

## 15. How and when may a request for aid be submitted?

The employer can apply for a subsidy from 13 December 2021 up to and including 31 January 2022 using the form made available on the [UWV](#) website. This time, the application window is also open after the subsidy period.

The employer can submit one application for each withholding tax number. This means that if aid is refused, the employer may not submit another application for the same withholding tax number.

## 16. What information must the employer provide with the request for aid?

The employer must in any case submit the following information:

- a) the anticipated loss of turnover (as a whole percentage);
- b) the employer's withholding tax number (*loonheffingnummer*);
- c) the bank account number on which the employer receives payments in respect of taxes and national insurance contributions from the Tax Authorities; and
- d) whether a request as referred to in Article 6(6) NOW-5 is made.

If the employer is part of a group or has multiple withholding tax numbers, multiple requests for aid must be submitted. The request of each legal entity and company (and each withholding tax number respectively) forming part of the group, must state the same percentage and the same turnover period.

We would like to refer to the checklist on the [website UWV](#) where employers may find exactly what information is needed to apply for the NOW-5.

By submitting the application, the employer agrees to disclose the name and location of the employer, the advance payment made and the final amount of aid.

## 17. Should the Works Council's advice or consent be asked?

No, but the employer is obliged to inform the Works Council or PVT of the request for aid. If the employer has no Works Council or PVT, the employees must be informed directly.

## 18. When should the final application be submitted?

Below is an overview per NOW scheme showing when the application for the final aid can be submitted.

Time period of the determination of the final aid <sup>6</sup>	
NOW-1	Employer must apply for determination of the final aid by 31 October 2021 at the latest. <sup>7</sup>
NOW-2	Employer can apply for determination of the final aid from 15 March 2021 to 31 March 2022 at the latest.
NOW-3	Employer can apply for determination of the final aid tranche 3 from 4 October 2021 to 22 February 2023 at the latest. From 31 January 2022 to 22 February 2023 at the latest, the determination of the final aid for tranches 4 and 5 can be requested. Determination of the final aid should be applied for per tranche.
NOW-4	Employers can in any case apply for determination of the final aid from 1 June 2022 to 22 February 2023. The exact date on which the application for determination of the final aid can be made at the earliest will be announced on a later date on the UWV website.
NOW-5	Employers can in any case apply for determination of the final aid from 1 June 2022 to 22 February 2023. The exact date on which the application for determination of the final aid can be made at the earliest will be announced on a later date on the UWV website.

The employer must apply for the final aid by means of a form made available on the UWV website.

When applying for the determination of the aid, the employer must also provide certain information, including the definitive data on the loss of turnover, a report from the auditor or third party (if required) and a declaration that a number of the obligations laid down in Article 14 and 16 NOW-5 have been met. Additional requirements apply to companies applying for aid under Article 7 NOW-5 on the basis of the operating company exception.

The Minister will determine the final aid within 52 weeks of receiving the application for determination of the final aid. Objection and appeal may be lodged against the decision.

## 19. May advance payments be repaid or can the amount of aid be recalculated?

Article 18 NOW-5 states that the advance received may have to be repaid fully or in part if no entitlement existed, or if too much was received, or if the obligations referred to in Articles 14, 15 or 16 NOW-5 are not fulfilled (see question 10, 11 and 12).

The Minister may also withdraw or recalculate the aid to the detriment of the employer if it is at any time established that the employer has acted contrary to the purposes of the NOW-5 during or after the period in which he received the aid (Article 19 NOW-5), see the answer to question 1.

## 20. Will abuse/inappropriate use of the NOW be sanctioned?

The employer is responsible for the information he supplies with his request. The information supplied by the employer will be verified on the basis of information exchanged between the Tax Authorities and UWV. This exchange will first of all focus on the name and the account numbers supplied by the employers. The UWV may also suspend payment of the advance if there is a strong suspicion that the conditions for receiving aid are not being met.

<sup>6</sup> These deadlines now apply to all employers; there is no longer a distinction between employers with and without an auditor's report.

<sup>7</sup> When submitting the application for the determination of the final aid, a postponement could be obtained for submitting the auditor's report. Employers who had not submitted an application by 31 October 2021 at the latest, received a formal last reminder from the UWV and were thus given another opportunity to submit the application for the determination of the final aid until and including 9 January 2022 (for more details, see the [Parliamentary Letter](#) on the state of affairs regarding the determination of the NOW-1 subsidy after the (digital) portal had closed on 1 November 2021 - in Dutch only).

If, when deciding on the request for aid, there is a reasonable suspicion of a criminal offence the UWV may report this suspicion to the public prosecutor's office. The public prosecutor's office may subsequently decide to start a criminal investigation and bring charges.

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