

Q&A **Third temporary aid scheme to maintain employment** (NOW 3.0)

Update of 17 March 2021

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Introduction

On 9 October 2020 the [NOW 3.0](#) was published in the *Staatscourant*. The NOW 3.0 provides, from 1 October 2020, for a subsidy scheme with three tranches (tranches 3, 4 and 5) of three months each. A number of changes have since been made. Under the original scheme, the aid would be phased out in these three tranches. By [Parliamentary letter](#) of 9 December 2020, it was announced that the Dutch government had decided not to phase out the NOW 3.0 in tranche 4 any further. By [Parliamentary letter](#) of 21 January 2021, it was subsequently announced that the reimbursement percentage in NOW 3.0, tranche 4 would be increased. On 29 January 2021, the [amendment regulation](#) NOW 3.0 in connection with the adjustment of percentages of the fourth tranche and a change in the compulsory alignment of turnover periods of successive tranches and some other amendments to NOW 1.0, NOW 2.0 and NOW 3.0 was published.¹ With the government measures still in place for the time being, it was decided not to phase out the aid in tranche 5 either. Within this context, on 12 March 2021, the [amendment regulation](#) NOW 3.0 was published in the *Staatscourant* to adjust the percentages in the 5th tranche and the amendments to the opening of the application periods for the determination of the final aid.² The NOW 3 tranche 5 can be applied for from 17 May 2021.

With the extension of the NOW, the government wants to offer employers and their employees certainty for a longer period about the compensation for wage costs, with the aim of preserving employment as much as possible. At the same time, within the NOW 3.0 there is more room for employers to adapt their business operations to the new economic situation.

For each tranche, an employer may decide whether or not to apply. Even if an employer has not made use of the previous NOW schemes, an application can be made for (one or more tranches of) the NOW 3.0.

In this Q&A the principal elements of the NOW 3.0 are discussed.

1. What is the purpose of NOW 3.0?

The purpose of the NOW 3.0 is to help employers with the payment for wage costs if there is a sudden drop in turnover, to the extent that the turnover is thereby reduced by (at least) 20%. 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 it is not the intention to pay out profits or bonuses or to purchase own shares in the year in which NOW 3.0 is received. Pursuant to Article 14 NOW 3.0, this obligation is limited to the board and the management of certain companies (see question 12).

¹ As a result of the 'Regulation of the Minister of Social Affairs and Employment of 29 January 2021, no. 2021000003918, amending the Third Temporary Emergency Measures for the Maintenance of Employment in connection with the adjustment of percentages of the fourth tranche and a change in the compulsory reconciliation of turnover periods of successive tranches and some other amendments to the First, Second and Third Temporary Emergency Measures for the Maintenance of Employment', this Q&A has been revised on some points.

² Regulation of the Minister of Social Affairs and Employment of 8 March 2021, 2021-0000034896, amending the Third Temporary Emergency Measures for the Maintenance of Employment in connection with the adjustment of percentages of the fifth tranche and some other amendments to the First, Second and Third Temporary Emergency Measures for the Maintenance of Employment in connection with, inter alia, amendments to the opening of the application periods for the determination of the final aid.

However, we have noted that although the payment of a bonus under the bonus ban as laid down in Article 14 NOW 3.0 should be possible, the auditor still does not want to issue approval because the bonus payment would be in conflict with the purpose of the scheme. This can also be found in the FAQ on the NBA website.³

We would like to point out that Article 26 NOW 3.0 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 NOW 3.0.

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 3.0. The NOW 3.0 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 3.0 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)?

In order to qualify for the NOW 3.0, there must be a loss of turnover of at least 20%. The aid is related to the percentage-wise loss of turnover of the employer or, where applicable, the group (see question 5). In the NOW 3.0, the maximum compensation percentage in tranches 4 and 5 is higher than in tranche 3.

Tranche	Minimum percentage loss of turnover to qualify for NOW 3.0	Maximum compensation percentage in the event of 100% loss of turnover
Tranche 3	20%	80%
Tranche 4	20% (initially 30%)	85% (initially 70%)
Tranche 5	20% (initially 30%)	85% (initially 60%)

For all tranches, if the loss of turnover is less, the aid will also be proportionally less. Below is an example for tranche 3:

100% loss of turnover: aid equivalent to 80% of the overall wage bill;

50% loss of turnover: aid equivalent to (50% of 80% =) 40% of the overall wage bill;

20% loss of turnover: aid equivalent to (20% of 80% =) 16% of the overall wage bill; and

< 20% loss of turnover: no aid.

Question 8. explains how the wage bill should be calculated.

³ Please see FAQ's bonussen, dividenduitkeringen en inkoop eigen aandelen (art 6a NOW 1.0 en/of a) (nba.nl).

4. How is the loss of turnover calculated?

The term turnover has the meaning given in accounting law. 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.

The term turnover in the NOW 3.0 is the same as in the NOW 2.0. This means, among other things, that subsidies and other compensations are part of the turnover calculations, including subsidies that are increased or provided to compensate companies in the context of the COVID-19 coronavirus outbreak. An employer should be aware of this when reporting the loss of turnover. However, the aid that the employer receives under the NOW does not constitute turnover. For the NOW 3.0, the loss of turnover is determined by comparing one fourth of the turnover of 2019 (the **reference period**) with the turnover of a three-month period that is to be chosen by the employer (the **turnover period**). This turnover period is different for each tranche.

Tranche	Turnover period: consecutive period of three calendar months chosen by the employer
Tranche 3	Turnover period must fall within the period 1 October 2020 up to and including 28 February 2021
Tranche 4	Turnover period must fall within the period 1 January 2021 up to and including 31 May 2021
Tranche 5	Turnover period must fall within the period 1 April 2021 up to and including 31 August 2021

The choice for the turnover period must be made at the time of application. Please note that if an employer has submitted an application for the NOW 2.0 and aid has been granted, the employer cannot make a choice for the turnover period in the application for the NOW 3.0. The period of loss of turnover for the NOW 3.0 must then immediately follow the period of loss of turnover for which aid was applied for in the NOW 2.0. This also applies to the situation where the employer has been granted aid for tranche 3 or 4. The aid for the subsequent tranche must then be in line with the three consecutive calendar months specified by the employer for tranche 3 or 4, respectively, unless a timely⁴ withdrawal of the aid for the previous tranche has been requested.

For some specific situations, such as, for example, companies that only started after 1 January 2019 or companies facing a transfer of undertaking after 1 January 2019, the reference period shall be calculated in a different manner.

5. My company forms part of a group. How will the loss of turnover be calculated in my instance (Article 5 lid 7 NOW 3.0)?

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 October 2020 - is assumed. A group is an economic unit in which legal entities and companies are organizationally interconnected. As with the NOW 1.0 and the NOW 2.0, also for the purposes of the NOW 3.0 each parent-subsidiary-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 topolding companies in the portfolios in which it holds an interest. In those cases, there is a parent-subsidiary relationship and all such portfolios will jointly be treated as 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.

⁴ With the amendment regulation of 29 January 2021, the possibility for withdrawal requests for the third and fourth tranche grant decision has been limited in time: by 15 February 2021, the employer must have requested the withdrawal of the grant decision under the third tranche, or by 1 April 2021, the employer must have requested the withdrawal of the grant decision under the fourth tranche.

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 3.0 be applied for at the level of the operating company or part of the group (Article 6 NOW 3.0)?

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, the aid can be applied for at that level (Article 6 NOW 3.0).

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 as in the most recently adopted annual accounts; 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 3.0 provides for a subsidy scheme with three tranches (tranches 3, 4 and 5) of three months each from 1 October 2020.

Tranche	Duration of the aid
Tranche 3	1 October 2020 up to and including 31 December 2020
Tranche 4	1 January 2021 up to and including 31 March 2021
Tranche 5	1 April 2021 up to and including 30 June 2021

8. How to calculate the amount of aid?

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 80% (tranche 3) or 85% (tranches 4 and 5) respectively of the wage bill during the three months period. In all tranches the aid is calculated, in principle, on the basis of the SV wages paid to employees employed in the month of June 2020. 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.

If wage details for the month of June 2020 are not available, the wages for the month of April 2020 are taken as basis. 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 3.0. In all tranches the cap is now twice the maximum daily wage per month. This means that in tranches 3, 4 and 5 no aid is given in respect of gross monthly wages in excess of EUR 9,691 (tranche 3) / EUR 9.719,90 (tranches 4 and 5) no aid is given in respect of gross monthly wages in excess of EUR 4,858,95 (which amounts are indexed as of 1 January 2021).

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 has been decided to set the employer's charges at a fixed percentage of 40% for all instances in all tranches.

In other words, the overall wage bill on which the aid is calculated will be equal to three times (the SV wages in June 2020 + 40%). An employer with a 100% loss of turnover will therefore, in principle, receive 80% of 3x (SV wage June 2020 + 40%) 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. Unlike under the NOW 1.0

and NOW 2.0, a reduction in the wage bill in the subsidy period does not directly affect the aid. The following applies to all tranches: 10% of reduction in the wage bill is exempt from consequences. Please be referred to the overview below (also including the initial exemption percentages).

Tranche	Exemption percentage
Tranche 3	10%
Tranche 4	10% (initially 15%)
Tranche 5	10% (initially 20%)

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 10% too much and the aid is set at a lower level over that 10%. For every euro that the wage bill was reduced too much, the employer will receive 80 or 85 cents respectively less aid, depending on the tranche.

As under the NOW 2.0, the NOW 3.0 does also not have an alternative regime for seasonal companies.

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

The UWW has a decision period of 13 weeks after receipt of the complete application. With the decision to grant aid, the UWW 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 will be paid in no more than three instalments. In practice, the aim is to pay the first instalment within 2 to 4 weeks of receipt of the complete application.

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

Article 12 of the NOW 3.0 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 new obligations in comparison with the NOW 2.0 are shown in italics):

- 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, during the subsidy period of a tranche for which he has applied for aid, requests permission to terminate the employment contract of one or more employees for business economic reasons, he is obliged to contact the UWW telephone NOW during that subsidy period 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 13 and 14 of the NOW 3.0 contain two additional obligations. These obligations do however not apply to all employers who make use of NOW 3.0. 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 100,000 or more per tranche. 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 13 NOW 3.0). These amounts are based on the amount of aid awarded to the entire group (within the meaning of NOW 3.0) or, if there is no group, to the legal or natural person.

Companies applying for subsidies at operating company level on the basis of Article 6 NOW 3.0 must always submit 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 20,000 or if the final aid is higher than EUR 25,000, 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. The employer must determine for each tranche whether to provide an auditor's report or a third party's statement.

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

Article 14(1) NOW 3.0 stipulates that the entity applying for aid and required by Article 13 NOW 3.0 to provide an auditor's report (see question 11), may not pay any dividend to shareholders in 2020 (tranche 3), 2021 respectively (tranche 4 and 5). In addition, this entity may not pay bonuses to directors of the topholding company and of the entity in question. 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 6 NOW 3.0 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 or years covered by the tranche in respect of which the aid is awarded (Article 14(6) NOW 3.0).

If no compliance with Article 14 NOW 3.0 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 NOW 3.0 is requested at the level of operating company or part of a group?

In addition to the obligations laid down in Articles 12, 13 and 14 of the NOW 3.0 (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 6(1) NOW 3.0 is applied for:

- the operating company is no personnel company (i.e. a company which mainly seconded 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 concerned⁵ 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 6 NOW 3.0 always must provide an auditor's report when applying for aid (Article 13(2) NOW 3.0). 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 3.0 dismiss employees during the period of aid without this having any financial consequences for the amount of aid?

The NOW 3.0 offers employers room for restructuring. An employer who submits a request for dismissal to the UWV for business economic reasons for one or more employees during the aid period will, in principle, no longer be subject to financial cutbacks. However, this employer is now obliged to contact the UWV telephone NOW during the subsidy period for the support of guidance to other work. When determining the aid, the UWV checks whether the employer submitted an application for dismissal for business economic reasons during the period of aid 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 subsidy amount will (still) be reduced by 5%.

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

The employer can apply for aid using the form made available on the UWV website. Below is indicated when the application can be submitted for each tranche.

Tranche	Period during which the application for aid may be submitted:
Tranche 3	from 16 November 2020 up to and including 27 December 2020
Tranche 4	from 15 February 2021 up to and including 14 March 2021
Tranche 5	from 17 May 2021 up to and including 13 June 2021

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

⁵ The original regulation referred to "the associations of employees concerned", this has been changed to "at least one association of employees concerned" with the amendment regulation dated 29 January 2021. This change also applies to NOW 1.0 and NOW 2.0.

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 (percentage);
- b. the turnover period chosen by the employer;
- c. the employer's withholding tax number (*loonheffingnummer*);
- d. the bank account number on which the employer receives payments in respect of taxes and national insurance contributions from the Tax Authorities; and
- e. whether Article 5(4) is invoked.

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 UWW](#) where employers may find exactly what information is needed to apply for the NOW 3.0.

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?

The opening of the application periods for the determination of the final aid has been changed for all NOW schemes by the amendment regulation of 8 March 2021.

	Time period of the determination of the final aid ⁶
NOW 1	employer must apply for determination of the final aid by 31 October 2021 at the latest
NOW 2	employer can apply for determination of the final aid from 15 March 2021 to 5 January 2022 at the latest
NOW 3	employer can apply for determination of the final aid tranche 3 from 4 October 2021 to 26 June 2022 at the latest. From 31 January 2022 to 23 October 2022 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.

The employer must apply for the final aid for the tranches for which he has been granted aid by means of a form made available on the UWW 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 12 and 14 NOW 3.0 have been met. Additional requirements apply to companies applying for aid at operating company level on the basis of Article 6 NOW 3.0.

The Minister will determine the final aid within 52 weeks of receiving the application for determination of the final aid.

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

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

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 12, 13 or 14 NOW 3.0 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 3.0 during the period in which he received the aid, see 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 the 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.

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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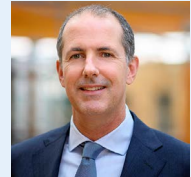


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