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Legal

Government okays increase in carer's allowance

On 17 April 2020, the government passed a proposal for a temporary increase in carer's allowance from the present 60% to 80% of the daily assessment base.



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The carer's allowance is to be increased retrospectively, from 1 April 2020, and shall pay 80% of the daily assessment base for the duration of the extraordinary measure prohibiting the attendance of children at schools, no longer, however, than until 30 June 2020. The beginning of the summer holidays should also be the latest day to which the period of care can be extended. The increase in the carer's allowance should also apply to carer's allowances provided on other grounds than schools being closed, or quarantine ordered, as long as the entitlement to the carer's allowance commenced after 1 April 2020. Carer's allowances for the period after 1 April that have already been paid in the original amount shall be topped up within 30 days of the act's effective date, without the need to file an additional application.

According to the Ministry of Labour and Social Affairs, the reason for increasing the carer's allowance is that currently many families face hardship because they need to take care of their children. According to a model example prepared by the ministry, the carer's allowance of parents usually earning gross monthly wages of CZK 25,000 shall increase from CZK 13,320 to CZK 17,760.

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Taxes

Extending compensation bonus period for the self-employed

The government has agreed on a bill extending the period for which self-employed persons may draw a compensation bonus in connection with the emergency measures. The bill still has to be passed by parliament and signed by the president.



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The period for which the self-employed may receive a compensation bonus shall be extended to the period from 1 May to 8 June 2020; the current bonus period had only been approved until the end of April 2020.

The amendment also introduces the possibility of further extending the bonus period via a governmental decree until 31 August 2020, should the emergency measures fully or partly restricting independent gainful activity in the Czech Republic continue.

Other conditions for the compensation bonus shall remain unchanged; the amount of the compensation bonus is CZK 500 per each calendar day of the bonus period.

The amount of the compensation bonus should be determined for the relevant bonus period, and the application for the compensation bonus shall thus be filed for the entire bonus period. The application for the compensation bonus must be filed no later than 60 days from the end of the bonus period, otherwise the entitlement to the compensation bonus expires.

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Deadline for VAT refund only extended from next year?

On 21 April 2020 the government approved a bill on the administration of tax deductions, which should ensure that excess deductions of VAT shall be refunded to VAT payers within the currently valid 30-day deadline. The bill intends to suspend the extension of the deadline for refunding the VAT deductions to 45 days, which was to be introduced by the amendment to the Tax Procedure Code presently being debated in parliament.



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An amendment to the Tax Procedure Code is currently awaiting approval by the Chamber of Deputies after having been returned to it by the Senate. The amendment, among other things, extends the deadline for refunding VAT: currently, excess deductions are generally refunded within 30 days from the deadline for filing VAT returns; the amendment extends this to 45 days from the deadline for filing the VAT return, while also introducing an advance for excess VAT deductions, to refund the 'undisputed' portion of the excess deduction.

Considering the present circumstances, the government has proposed preserving the current 30-day deadline for refunding excess VAT deductions and suspending the introduction of the advance for excess tax deductions. Since the amendment to the Tax Procedure Code is already in a very advanced stage of the legislative process, the decision was made to do this by a separate law with the same effective date as the effective date of the amendment to the Tax Procedure Code, i.e. the first day of the second calendar month following the date of the amendment's promulgation in the Collection of Laws.

The regulation under the Act on the Administration of Tax Deductions, which preserves the 30-day deadline for refunding excess VAT deductions, should apply on a temporary basis until the end of 2020. From 1 January 2021 the regulation under the amended Tax Procedure Code shall apply. The bill is yet to be debated by the parliament.

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Subsidies

COVID Prague – what's new in support in the form of guarantees

We are presenting new information on support to small and medium-sized business in Prague as well as on COVID Plus and COVID III guarantees.



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COVID Prague guarantees

Prague city council has approved a call to participate in the COVID Prague programme under Operational Programme Prague – Growth Pole of the Czech Republic. The call was announced on 20 April, with applications accepted starting on 21 April at 8 am, only to close again after less than 15 minutes, as capacities were depleted. The support was intended for entrepreneurs operating in the territory of Prague and was the first support open to Prague businesses, which explains the enormous response.

Within the COVID Prague programme, the Czech-Moravian Guarantee and Development Bank (ČMZRB) will provide guarantees for loans rendered by commercial banks and **contributions to interest payments** to **small and medium-sized businesses based in Prague**.

The total allocation has been set at CZK 600 million, and ČMZRB thus expects that loans of up to CZK 1.4 billion might be provided. The parameters of the guarantee are the same as for COVID II, i.e.:

- Businesses may obtain a guarantee for up to 80% of the commercial credit amount.
- The maximum amount of the credit covered by the guarantee is CZK 15 million.
- Guarantees will be provided for up to three years.
- Financial contributions towards interest payments will be limited to CZK 1 million.

The loan must be used to reimburse operating expenses such as wages, rent, utilities, settlement of suppliers' invoices, pre-financing of receivables, or the acquisition of fixed assets, inventories and other low-value assets.

Please note that before filing an application, once the allocation is topped-up and the call reopened, it will be necessary to obtain a commercial bank's confirmation of its commitment to grant a loan, similarly as under the COVID II programme. Therefore, if you are interested in COVID Prague, it is necessary to first contact your commercial bank and start loan negotiations.

COVID Plus guarantees

On 17 April 2020, the Senate passed a support programme in the form of guarantees for loans provided to export-oriented enterprises with more than 250 employees. The support shall be provided by the Export Guarantee and Insurance Corporation (EGAP) as the COVID Plus guarantee programme. The relevant act has already been signed by the president. More detailed information on granting the support will be provided in the governmental regulation expected soon.

COVID III guarantees

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The Ministry of Finance has prepared a support programme in form of a **portfolio guarantee**. Credit and risk assessment under the programme will no longer be carried out by the ČMZRB, but directly by individual commercial banks, making the lending process substantially faster and more efficient compared to the COVID and COVID II programmes. The guarantees will be negotiated with ČMZRB directly by the respective commercial bank, and it will be up to them which loans they submit to ČMZRB to obtain a guarantee. An important change from the COVID and COVID II programmes is that guarantees under COVID III may also be obtained by **large enterprises** (up to 500 employees) and by **businesses based in Prague**.

The state guarantee shall amount to up to CZK 150 billion, meaning that new loans totalling CZK 600 billion are expected to be granted. The maximum loan amount supported by the guarantee is CZK 50 million, and it must be used for operational financing.

Guarantees will be provided in the following amount:

- 90% of the principal amount of the guaranteed loan for a small and medium-sized business with less than 250 employees; the maximum amount of the guarantee is thus CZK 45 million.
- 80% of the principal amount of the guaranteed loan for businesses with 250 to 500 employees; the maximum amount of the guarantee is CZK 40 million.

To ensure the commercial banks' proper risk management, ČMZRB's guarantees in favour of each specific bank shall be limited to 25% of their overall credit portfolio.

This form of support now **awaits approval by the Chamber of Deputies**.

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Applying for support under the Antivirus programme – practical experience

The Ministry of Labour and Social Affairs has launched the Antivirus programme through which employers may apply for a contribution for wage compensations paid to their employees. Applications can be submitted remotely through the Czech Labour Office's web application. Below we summarise the challenges faced by both employers and the Labour Office in the first weeks of the programme period.



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Since launching the Antivirus programme, the Labour Office has received more than 32 thousand applications. In many cases, application forms were not completed correctly. Applications that were returned to employers may still be corrected – the application being returned does not mean that it has been dismissed with final effect. According to the Labour Office, **employers most frequently fail to fill in all required essentials in the application form**. This we see as the first weakness of the application process: the current version of the web application allows for the submission of incomplete application forms.

Employees also often fail to send all required files at once. Please note that with a properly completed application form, employers must also send:

- a system-generated **agreement on the provision of a contribution**
- a **document proving the opening of a bank account** – a recent account statement does not suffice
- a **power of attorney**, if the application is filed by proxy, i.e. when the employer has authorised another entity to execute and administer the agreement, or when employers are sending the application form from another entity's data box. The power of attorney must contain all legally stipulated essentials, including specifications of the act or set of acts for which the power of attorney is granted and of the parties to the power of attorney, and an acceptance confirmation. Please note that the Labour Office's web application does not allow the identification of a corporate entity as an authorised representative. Therefore, according to information provided by the Labour Office, if a corporate entity is being authorised, it is necessary to provide the identification data of the statutory representative of the corporate entity being authorised and state an appointed employee as the corporate entity's contact person. Subsequently, it is necessary to provide the Labour Office with documents proving both the authorisation of the corporate entity, and the appointment of the corporate entity's employee.

Documents generated by the system **must not be renamed**, as each generated document name is linked to the specific applicant in the system.

Another question we have come across in our practice concerns **the entitlement to the contribution from the**

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Antivirus programme of foreign employers based in another EU member state employing Czech workers in that EU member state, or of Czech companies employing workers abroad. While the manual to the Antivirus programme generally states that the aim of the programme is to mitigate the negative effect of the pandemic on employment in the Czech Republic, according to the detailed conditions given in the manual, the only criterion relevant for the entitlement to the contribution is that the employees be employed under Czech law and covered by Czech pension and sickness insurance. In our opinion, if these conditions are met, the contribution should also be available to foreign employers, or to Czech employers with workers abroad. This interpretation has also been confirmed to us by the Labour Office.

As for the wording of the agreement on the provision of a contribution which the employer concludes with the Labour Office, attention should be paid in particular to its **settlement provisions**: by executing the agreement, the employer represents that all their claims against the Czech Republic arising from the compensation of damage caused by emergency and extraordinary measures are hereby settled, and **waives the right to claim damages in court**. A more detailed article on these agreements is now being prepared.

The Labour Office has also published a list of employers' FAQ on the Antivirus programme, and a list of applicants' most frequent errors.

Please note in particular the following:

- The Antivirus programme compensates employers for wage compensation paid to employees; a contribution cannot be provided for employees who are paid wages, carer's allowances, or vacation compensation; applications for contributions to cover these expenses will thus be denied.
- With a properly filled-in application, it is possible to apply for the contribution under the Antivirus programme even before the closing of the monthly payroll process. If conditions are met, an agreement on the provision of a contribution will be executed, while the contribution itself will be provided once the monthly statement has been sent.
- The Labour Office has confirmed that the maximum amount of contribution per one employee for the month of March, when the impediments to work only occurred after the declaration of a state of emergency on 12 March 2020, shall not be proportionately reduced.

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Personal data processing during a pandemic – the Office for Personal Data Protection's perspective

During a declared state of emergency, there is always the danger that public authorities may excessively infringe on citizens' rights and freedoms – and this also applies to the protection of their personal data. The Office for Personal Data Protection (OPDP) has therefore been monitoring the current situation and continues to comment on individual problematic aspects.



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Informing the citizens

Shortly after the state of emergency had been declared, the Office for Personal Data Protection commented on the processing of data on a person's state of health, which also includes information about any infectious diseases. Such data is mainly processed by the public health protection authorities, i.e. regional hygienic stations and ministries authorised to take appropriate measures to limit the further spreading of infectious diseases. Such measures may also include informing the population, e.g. by issuing warnings or calls via text messages. According to the vice-president of the office, the legal basis for such data processing is the urgent public interest of health protection, and personal data may be processed and transferred for these purposes within the limits of applicable legislation and extraordinary governmental measures.

Smart Quarantine

The office also opined on the 'Smart Quarantine' programme, ordering mobile operators and banks to process data on the movement and behaviour of persons infected with the coronavirus. The basis for personal data processing is the extraordinary measure of the Ministry of Health and the procedures stipulated in the Public Health Protection Act. The processing must only cover the necessary operations, which must be carried out within the defined purpose, i.e. to determine an infection's possible source and prevent its further spreading. Data gathered must only be kept for the shortest time necessary; according to the office, for non-anonymised data, this means a maximum of six hours. After that, the data must be deleted or fully anonymised, to prevent its abuse. The office has also called upon the data controllers (namely the Ministry of Health and the emergency committee) to properly inform the public to dispel any fears of possible breaches of privacy.

Rules and recommendations for working from home

The office has also summarised basic rules and recommendations as regards personal data protection when working from home. It has warned against fraudulent emails containing attachments or links that may appear to be important information about the new coronavirus. The office has also pointed out that personal data should not be transferred through public Wi-Fi networks, and that transfers using mobile data or VPN are safer. To

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employees, the office recommends using passwords responsibly, including hard disk encryption; employers, on the other hand, should develop specific procedures to address any security incidents in a quick and efficient manner. Even during a pandemic, employers still have the duty to report any breaches of personal data protection to the office within 72 hours.

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Tax loss carry back

The Ministry of Finance has proposed an amendment to the Income Tax Act introducing the option to utilise tax losses retrospectively for up to two years, or prospectively for up to six years. This would not be just a temporary solution, as the concept should become permanent.



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Tax loss carry back

Under the proposed amendment, tax payers will have the option to claim a tax loss or its part against their personal and corporate income tax bases in taxable periods, or periods for which a tax return is being filed, that commenced within two years before the beginning of the period for which the tax loss has been assessed, or within six years after the end of this period.

Taxpayers using a calendar year as a taxable period may claim their tax loss for 2020 in the taxable periods that commenced on or after 1 January 2018.

A tax loss may first be claimed retrospectively by taxpayers using the fiscal year from 1 July 2019 to 30 June 2020 as a taxable period, for periods that commenced after 1 July 2017.

To carry back the loss, an additional tax return will have to be filed for the relevant years, together with an application for a refund of an overpayment.

Tax loss carry forward

A tax loss may also be claimed in taxable periods, or periods for which a tax return is being filed, that commenced within six years after the end of the period for which the tax loss has been ascertained. The six-year deadline shall end on the elapse of the last day of the sixth year; this is different from the counting of time under Section 33 of the Tax Procedure Code, which stipulates that deadlines shall begin on the day that follows the day when the fact determining the beginning of the deadline took place.

If the calendar year 2020 is used as a taxable period, the six-year deadline to claim the loss assessed for the current year shall elapse on 31 December 2026, meaning that the tax loss may be last claimed in the taxable period of the year 2026.

At the same time, the rule stipulated by the General Financial Directorate's Instruction D-22 shall no longer apply under which shorter periods, i.e. periods for which a tax return is being filed, were not to be included in the five taxable periods in which a tax loss could be claimed. The six-year deadline will thus remain the same, whether the taxpayer claims the loss in a standard or shorter taxable period.

Tax loss upon business transformations

The proposed wording does not allow to carry back losses taken over upon business transformations and transfers of a business establishment. According to the explanatory report, however, it is assumed that a regulation allowing for tax loss carry back upon transformations will be adopted in the future.

Tax loss cannot also be claimed (or carried back) if there was a substantial change in the persons directly

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participating in the taxpayer's capital or control; this shall not apply if the taxpayer proves that at least 80% of revenues after such substantial change have been generated from the same activity.

Tax loss of investment incentives' recipients

For investment incentives' recipients, there will be a special (in our opinion rather ambiguous) regulation of loss carry back. Taxpayers claiming tax relief on the grounds of granted incentives will have to meet special conditions: they will have the duty to claim items reducing the tax base in the form of tax loss in the nearest period for which a taxable profit is reported, unless these had been claimed in the preceding taxable periods.

The explanatory report implies that if an investment incentives' recipient has reported a tax loss, they may carry it back but are not obliged under the law to do so. As for the loss carry forward, the duty to claim the loss in the maximum possible amount remains.

Investment incentives' recipients should therefore decide whether to carry back their losses or not. When making this decision, it is also advisable to consider the possible effect on the S2 comparative tax base, to make sure that the recipient draws the investment incentive in the maximum amount possible; under certain circumstances, the S2 comparative tax base may also be reduced additionally.

Deadline for tax assessment

According to the Tax Procedure Code, the basic deadline for assessing tax is three years. The deadline for assessing tax as regards periods in which tax loss was assessed is calculated in a specific manner: it ends with the deadline for assessing tax for the last period in which the tax loss or its part could be claimed.

The extended deadline will also apply to periods in which a tax loss was claimed retrospectively. However, unlike for tax loss carry forward, the extension of the deadline shall not apply to prior periods if the taxpayer decides not to carry back the loss.

The final wording of the amendment to the Income Tax Act may yet change as the bill goes through the legislative process.

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Subsidies

What's new in COVID-19 subsidy programmes

We are presenting new information on grant programmes aiming to support activities connected with fighting COVID-19.



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COVID-19 Innovation Vouchers programme

On 16 April 2020 the Ministry of Industry and Trade announced a call to participate in the COVID-19 Innovation Vouchers scheme. Applications are being accepted from **17 April** until 31 December 2020. The call aims to support **the development of communication and the sharing of knowledge and know-how between the business and research spheres to fight the coronavirus pandemic**. The call is only open to **small and medium-sized businesses, except for those based in Prague**.

The support limit is up to 85% or 50% of a project's eligible costs, while the 50% limit will apply to projects with eligible costs between CZK 500 thousand and CZK 1,999,999. One applicant may apply for support for up to three projects. The planned allocation is CZK 50 million. More information is provided further in this article.

COVID-19 Technology programme

A call under the COVID-19 Technology programme was announced on 15 April 2020. Applications for support will be accepted from **10 am on 27 April 2020** to 10 am on 29 May 2020.

Eligible costs include investments in **tangible fixed assets to produce materials, technologies and products comprising medical supplies, personal protection devices, or means for the liquidation of infectious waste to fight the further spreading of coronavirus**. The supplies whose production is to be supported are listed in Annex No. 3 to the call (these include, for instance, respirators, surgical gloves, protective suits and goggles, single-use covers and hats).

The call is only open to **small and medium-sized businesses, except for those based in Prague**; applicants may apply for one project only. Total funds for allocation amount to CZK 300 million; the support will be provided for 50% of the eligible costs, with support per one project ranging from CZK 250 thousand to CZK 20 million.

Increased support for projects under the TRIO programme

For the existing projects under the TRIO programme (a programme supporting industrial research and experimental development aiming to draw upon and further develop potential in the area of key technologies), the Ministry of Industry and Trade decided to **allow applications for an increase in support, and for an extension of the scope of existing projects** to include also activities focusing on fighting COVID-19 or similar future health threats, mitigating their effects, or improving their prevention. These do not have to be projects concerning medical technology and other medical applications but can also be projects focusing on the development of applied results leading to a reduction of risks arising from infectious diseases for the population.

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Applications to extend a project's scope and increase the volume of support **shall be filed by 30 June 2020 at the latest** and must contain a clear explanation of the link between the newly proposed activities and the fight against COVID-19 or another health threat. A standard prescribed form for making changes to project applications shall be used.

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