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Government measures to boost employment

At its session on 19 March 2020, the government approved the first two measures aiming to provide support to employers, employees, and the self-employed affected by the COVID-19 pandemic. The measures further specify carer's allowances and an 'antivirus programme' to compensate wage expenses. The government is also planning to adopt other measures, such as the postponement or waiver of insurance contributions for the self-employed or the introduction of kurzarbeit (employees working shorter hours, with a portion of wages compensated by the state, and employers committing not to lay off any employees).



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Carer's allowance

The carer's allowance concept is currently regulated by the Act on Sickness Insurance. The government-approved amendment to this concept that should be discussed by the parliament in a state of legislative emergency on Tuesday, 24 March 2020, will directly affect this act. Once extraordinary circumstances subside, the original concept's effectiveness will be re-established. The proposed regulation introduces the following changes:

- Carer's allowances will be provided over the entire period of emergency measures associated with the pandemic, i.e. as long as schools and other children's facilities remain closed, extending the existing limit of nine or sixteen days and applying to parental care for children younger than 13 years.
- Carer's allowances will be paid by the Czech Social Security Administration over the entire duration of the current extraordinary circumstances, even if care facilities have been closed due to the pandemic based on a decision of a facility's incorporator.
- The entitlement to a carer's allowance also arises upon the closure of a facility caring for persons with disabilities, without the care recipient having to fulfil a certain age limit, but only if they live together with the carer in a household.
- Carer's allowances will also be paid retrospectively. Families that have been receiving this allowance will not have to apply again.

The provisions of the Act on Sickness Insurance remain in effect, in particular:

- The basis for the calculation of a carer's allowance are the average daily earnings for the reference period, usually the preceding twelve months, adjusted using three reduction thresholds to determine the reduced daily assessment base. The carer's allowance is paid for each calendar day and amounts to 60% of the reduced daily assessment base
- The carer's allowance pertains to one parent (or another beneficiary) only; parents (or other beneficiaries) may switch roles once during the time of providing care.

As for the self-employed, their loss of earnings due to having to care for their children will be compensated from the Ministry of Industry and Trade's programme; the compensation is expected to amount to approx. CZK 424 per day.

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Compensation for paid wages and salaries (Antivirus Programme)

Employers whose business activities are threatened by COVID-19 will be provided with contributions to fully or partially reimburse wage compensation payable to employees due to an impediment to work on the employee's part (a quarantine order) or on the employer's part (closure of premises due to a government decision) if it can be proven that the impediment to work occurred due to COVID-19. The basic structure of the proposed regulation is as follows:

- Funds will be provided under the Ministry of Labour and Social Affairs' programme, through labour offices.
- The amount and the period over which contributions are to be paid depend on the reason of the impediment to work, which will be assessed on a case-by-case basis for each individual employee.
- **Employees subject to a quarantine order** will receive wage compensation equal to 60% of the average assessment base, while their employers will receive a contribution equal to full wage compensation.
- **Where it is impossible to assign work to employees due to extraordinary governmental emergency measures,** i.e. when employers are ordered to close their premises, employees will receive 100% wage compensation and employers will receive a contribution equalling to 80% of paid wages.

According to the Ministry of Labour and Social Affairs, total expenses expected to be incurred in connection with these measures are CZK 1.2 billion. The exact terms and conditions should be published in the upcoming days, along with other programmes currently under way.

The government will also discuss other measures to boost business and employment, such as the postponement or waiver of insurance contributions for the self-employed or the introduction of *kurzarbeit* (employees working shorter hours, with a portion of wages compensated by the state); this scheme involves agreements between employers and the state: the state helps employers overcome difficult economic times, while employers contractually commit not to lay off any employees.

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Subsidies

Support for businesses hit by the coronavirus outbreak

The steps taken in response to the spread of the new coronavirus will have broad economic effects on business entities. We have prepared an overview of potential support and other key measures being negotiated by the government with business representatives.



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In cooperation with the Czech-Moravian Guarantee and Development Bank (ČMZRB), the Czech Ministry of Industry and Trade (MIT) has prepared an interest-free financing scheme, the **COVID Loan**, for sole traders and small and medium-sized businesses hit by the coronavirus. The loan is intended for firms whose business activities were restricted as a result of the coronavirus epidemic. Specifically, it should cover situations where applicants experience delays, suspensions or cancellations of performance obligations arising from business contracts.

The loan is free of interest and other fees and may be drawn in amounts ranging between CZK 0.5 million and CZK 15 million. It may be used to cover up to 90% of eligible costs, including the following categories of eligible costs:

- acquisition of low-value tangible and intangible assets (where these are recognised as expenses/expenditures – as opposed to fixed assets – by the support recipient);
- acquisition and financing of inventories;
- other operating expenses/expenditures (including receivables pre-financing) that can be supported by accounting documents (e.g. employee wages, energy costs, rental expenses, etc.).

The term of the interest-free loan has been set for a period of up to two years from concluding the agreement, with an option to postpone repayment for up to one year. In accordance with the set criteria, applicants must file an application for support together with all required appendices (the most important being a document proving that the business entity got into difficulties in connection with the coronavirus). The receipt of applications was launched on Monday 16 March 2020, 14 days earlier than originally planned. For details and conditions of the scheme, please visit ČMZRB's website.

In addition, businesses may take advantage of ČMZRB's continued offer of previously published and approved tools. These include guarantees for commercial loans for small and medium-sized businesses (the *M-Záruka* and *EXPANZE* programmes), and special loans under the *EXPANZE* loans programme. For details, visit ČMZRB's website.

On 19 March the government decided to increase the funds available for the COVID Loan programme to CZK 5 billion. This amount will be provided through ČMZRB. An additional CZK 5 billion will be earmarked for guarantees for commercial banks that will provide loans under similar conditions.

In addition to the above, the MIT is looking into the possibility of reallocating funds from EU operational programmes as currently required. The MIT has also extended by 30 days the deadline for applications under the currently open invitations of the Enterprise and Innovations for Competitiveness Operational Programme. This

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change applies to all invitations for which the receipt of applications was originally supposed to end no later than 30 April 2020 (and was not ended by 17 March 2020).

In connection with the COVID19 outbreak, the Czech Chamber of Commerce is negotiating with representatives of employers, unions and the government regarding the parameters of a new programme to reimburse wage compensations paid by employers to employees in the event of impediments to work. The programme is being proposed by the Ministry of Labour and Social Affairs. We have already informed you about the initial outcome of the negotiations.

We are continuously monitoring the situation. If you have any questions, please feel free to contact us.

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CNB's measures and their implications

The Czech National Bank (CNB) has opted to decrease basic interest rates effective from 17 March 2020. From a tax perspective, the most important decrease is the lowering of the repo rate by 50 basis points to 1.75%. This rate is decisive for setting interest under the Tax Procedure Code, arising from relationships between taxpayers and the tax administrator.



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Implications for the Tax Procedure Code

The amount of default interest corresponds to the annual repo rate set by the CNB valid for the first day of the calendar half-year, increased by 14 percentage points. The repo rate as at 1 January 2020 was 2%. Interest determined pursuant to the Tax Procedure Code is calculated as the repo rate (2%) + 14%.

If the current repo rate were to remain in effect until 1 July 2020, the default interest for the second half of this year under the Tax Procedure Code would be calculated as the repo rate of 1.75% + 14%.

However, the calculation of default interest will be affected by an amendment to the Tax Procedure Code, which will harmonise the system of default interest with the Civil Code, setting default interest at the repo rate + 8%. The amendment will also repeal the calculation mechanism using the rate effective at the beginning of a given half-year. The new default interest amount will start to apply from the date the amendment enters into effect, i.e. on the fifteenth day of its promulgation in the Collection of Laws.

The amendment is currently awaiting its approval in the Chamber of Deputies after being discussed by the Senate on 18 March and referred back to the chamber with amending proposals. It can be expected that deputies will re-confirm the version they passed originally in their April session, and that it will be promulgated in the Collection of Laws after being signed by the president.

CNB's view on commercial issues

Considering the current situation, the CNB expects that banks will refrain from paying out dividends until the pandemic's imminent and long-term aftermaths subside.

Generally, the CNB does not set rules for commercial banks on how to recover and manage their loans. However, it highlights that where temporary failures to pay debt occur as a result of the coronavirus and any related measures, the deferral of instalments is the right method to ensure the repayment of the entire outstanding amounts in the future.

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Taxes

COVID-19: tax package

The government approved a package of liberating tax measures to mitigate the impact of coronavirus pandemic.



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Guidance for taxpayers on how to make use of these measures has been published by the financial administration.

General waiver of penalties and default interest in respect of income tax

The financial administration chose to waive, on a general basis, any penalties for the late submission of personal and corporate income tax returns and default interest for the late payment of tax until 1 July 2020. From a Tax Procedure Code perspective, this still involves the late filing of a tax return, but without sanctions.

The waiver only applies to tax returns for the 2019 taxable period whose original filing deadline is 1 April 2020. Corporations with taxable periods other than the calendar year may not make use of the general waiver and must apply for a waiver individually (see below).

The Ministry of Labour and Social Affairs has not yet issued any analogical guidance waiving sanctions for the late submission of statements of income and expense for social security and health insurance purposes and for the late payment of social security and health insurance contributions by the self-employed. The deadlines here depend on the regular deadline for filing tax returns. However, the ministry expects to adopt such measures soon.

Based on information available to us, so far only the VZP health insurance company has disclosed on its website a notification allowing the self-employed to submit the statement for 2019 until 3 August 2020. Any underpayment for 2019 is payable within 8 days of the date the statement is filed, i.e. no later than on 11 August 2020. Any overpayment will be automatically refunded by VZP based on the filed statement.

Generally, the deadline for filing an income tax return can be postponed without any sanctions by granting a power of attorney to a tax advisor. The present extension of the deadline in a form of waiver of penalties, however, does not affect the refunding of an overpayment by the tax authority, as the overpayment is refunded within a standard time limit of 30 days of the statutory filing deadline or the date a tax return was actually filed if after the statutory deadline. Therefore, if you are entitled to an overpayment refund, it is worth filing an income tax return within the statutory deadline.

The waiver of penalties for late submissions also applies to the statement of income tax withheld, excepting the statement of income tax on employment withheld in form of prepayments.

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Individual waiver of penalties for the late payment of tax and related penalties for the late filing of returns in respect of all taxes

On a case-by-case basis, the financial administration will also allow applying for a waiver of default interest for late payments of tax, or for the payment of tax in instalments, if taxpayers can prove that their troubles have been caused by the coronavirus pandemic. Typically, this may involve the illness or quarantine of a company's accountant or other key personnel resulting in the entity's failure to fulfil its tax duties.

If the application is at least partially accommodated, the penalty for the late filing of a tax assertion (tax return, tax statement, etc.) will also be waived. This measure applies to all taxes (including withholding taxes and value added tax) and is not limited to the 2019 taxable period only.

Since the waiver of penalties for the late filing of a tax return is linked with the waiver of default interest, this does not involve situations in which tax returns show overpayments or excess deductions, not giving rise to default interest.

Waiver of default interest for the late payment of tax (including prepayments)

If a taxpayer applies for the waiver of default interest or tax deferment and reliably proves that default in the payment of tax had been caused as a result of extraordinary circumstances associated with the coronavirus, the entire default interest amount will be waived.

According to the tax liberation package, such extraordinary circumstances include, for example, effects of quarantine measures; illness; caring for a household member; cancelled trips, air tickets or events; comparison of current vs prior period occupancy rates and sales; production outages for obstacles on the side of suppliers as a result of coronavirus-related extraordinary measures; etc.

This should also apply to tax prepayments; but the tax or its prepayment must actually be paid to claim the waiver of default interest.

It is also possible to apply for assessing tax prepayments in another manner or for an exception from the duty to pay tax prepayments, even for the entire taxable period. The law does not exclude the possibility to apply for this retrospectively, i.e. in relation to prepayments payable on 15 March and unsettled as a result of extraordinary circumstances.

General waiver of penalties for the late filing of VAT ledger statements

On a general basis, the financial administration will waive penalties of CZK 1,000 for the late filing of VAT ledger statements between 1 March and 31 July 2020. This penalty is usually charged where the taxpayer files a VAT ledger statement later than within the statutory deadline but earlier than called upon by the tax administrator. The question therefore is when the tax administration will challenge taxpayers to file their VAT ledger statements.

Based on preliminary information from the financial administration, calls will be sent around five days after the statutory deadline. Consequently, it is appropriate to submit VAT ledger statements as soon as possible. If the VAT ledger statement is not filed before the respective call is received, it will be possible to apply for the waiver of other penalties (CZK 10,000 or CZK 50,000) for the late filing of VAT ledger statements between 1 March and 31 July 2020. Applications will only be accommodated if it can be proven that the late submission was caused by extraordinary measures associated with the coronavirus.

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General waiver of administrative fees

On a general basis, the financial administration will waive administrative fees for the filing of applications regarding the above matters submitted before 31 July 2020. It is expected that the Ministry of Finance and the Ministry of Labour and Social Affairs will adopt further measures to help out entrepreneurs with their businesses.

In addition to opportunities given by the tax liberation package, the Tax Procedure Code offers other procedural options aiming to boost cash flows:

- **Application for the release from an obligation to pay corporate income tax prepayments:** If a decline in income is expected, it is possible to apply for the cancellation of a duty to pay tax prepayments, covering also a prepayment payable on 16 March that has already been paid.
- **Application for tax deferment (in form of a postponement of the tax due date or the division of tax into instalments):** In our experience, the tax administrator can allow the deferment of a specific tax liability amount (e.g. VAT, income tax). It is appropriate to file the application together with the tax liability calculation or the relevant tax return. The tax liberation package then allows for the waiver of interest on the deferred sum.
- **Extension of the deadline for filing corporate income tax returns (including fiscal years):** It is possible to apply for the extension of the statutory deadline for up to three months, or ten months where income from abroad is also involved. If the tax administrator agrees with the extension, the due date for the payment of tax will also be postponed.

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Effect of emergency measures on business relationships

The series of governmental resolutions adopted in response to the coronavirus epidemy has a substantial effect on all aspects of business. Below we summarise the main legal aspects of business obligations/relationships that may be relevant in the current situation.



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Agreements must be kept, even if their performance becomes more onerous for one of the parties. However, there are exceptions. When analysing the effect of emergency measures on contracts, it is necessary to review, on an individual basis, specific clauses (if any) concerning the subsequent impossibility of performance or substantial change in circumstances. When concluding new contracts or amending them, it is recommendable to carefully consider using these clauses, while keeping in mind that the current state of emergency can no longer be considered an unforeseeable circumstance.

It is also important to keep in mind that the success in a dispute regarding the interpretation of a contractual clause or damage compensation usually comes late and may not save your business. On the other hand, timely and open communication with business partners and renegotiations of contractual conditions may have immediate effect. Another aspect of concluding contracts that becomes very relevant under present circumstances is concluding distance contracts (a separate text on this issue is being prepared).

Substantial change in circumstances (Sect. 1764 et seq. of the Civil Code)

If a substantial change in circumstances creates a gross disproportion in the rights and duties of the parties, the affected party may demand renegotiation of the contract, within two months – first from the other party and, if unsuccessful, even in court.

However, the application of the legal provision on a substantial change in circumstances has often been excluded by contracting parties in their contracts, thereby in effect assuming on themselves the risk of any changes in circumstances.

Force majeure

Another relevant legal concept is force majeure. In the event of force majeure, which the current situation surely is, the Civil Code allows, for instance, to withdraw from a contract in some cases. Similarly, a force majeure event may suspend the running of a limitation period, and it is also relevant for assessing claims for damage compensation.

Subsequent impossibility of performance (Sect. 2006 et seq. of the Civil Code)

If it becomes impossible to perform/discharge a debt, the contractual obligation as such is extinguished by operation of law. However, this only applies if performance is not even possible under more difficult conditions, at higher costs, with the help of another person, or after a determined period. The impossibility of performance must

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be proven by the party unable to perform, which also has to notify the other party of this without undue delay, otherwise it shall be liable to them for the damage caused by the default. If the impossibility to perform is only partial, it is necessary to consider whether partial performance would be of any value for the creditor.

When the contract is silent...

All of the above concepts only apply unless the parties to the contract have regulated their position differently from the law or have simply excluded the application of any of these provisions of the law in the contract. It is therefore necessary to carefully analyse each specific contractual arrangement.

Attention must also be paid to clauses (if any) regarding sanctions, such as contractual penalties or special arrangements concerning damage compensation.

Changing the contract

If the provision of law regulating a substantial change in circumstances is applied, the party adversely affected by the change may demand a change to their obligation. If an agreement is not reached, the claim may be asserted in court. Yet, the court will not be bound by the parties' proposals in its decision-making and has considerable discretion – obligations may thus be changed, or even cancelled altogether.

Of course, if the parties agree, it is always possible to amend the content of the contract to fit the changed circumstances – within the boundaries of law.

Damage compensation

If any damage is incurred, we recommend first remembering that it may be covered by insurance. If there is no such coverage, consider claiming damage compensation from the other party, or even from the state.

There is also a special case of force majeure, whereby the person that has inflicted a damage may be released from the duty to provide compensation if they prove that they were temporarily or permanently prevented from fulfilling their contractual duty due to an extraordinary, unforeseeable and insurmountable obstacle created independently of their will. As regards the supply/performance itself, it is still necessary to consider its (im)possibility.

Thus, if a contractual supplier is in default in direct connection with the state of emergency and related measures, it is possible that none of the parties will be liable for any resulting damage.

Under the Crisis Act (No. 240/2000 Coll.), the state must compensate corporate entities and individuals for damage caused in causal connection with emergency measures adopted.

The claim must be made in writing, within six months. So far, the general application of this provisions remains questionable. Making the claims, and, above all, supporting them, will certainly be a challenge, as each claim will most likely have to be reviewed in detail, and possibly asserted in court. However, it is also possible that the state will offer some ad hoc compensatory measures.

Recommendations

If your business has been affected, a recommendable approach may generally be summarised as follows:

- analyse the situation without delay, including a review of contracts concluded and identification of immediate risks

- take all necessary and possible steps to prevent damage

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- communicate adequately with your contractual partners
- document all the above steps sufficiently.

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