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Read the latest updates on the impacts of the coronavirus pandemic.

You can also follow the latest world news: KPMG Tax News Flash Covid-19 Tracker, KPMG Mobility News Flash Covid-19 Tracker or COVID-19 related webinars.

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Taxes

Tax liberation packages – practical recommendations

Keeping track of all tax-related measures published so far in connection with the coronavirus pandemic might be quite difficult. To help, below we are providing you with practical recommendations sorted by individual tax areas.



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Corporate income tax – taxpayers having to file their income tax returns within three months after the end of the taxable period

- It is possible to file corporate income tax returns and pay the relevant tax on 1 July 2020 based on a general waiver of penalties and default interest (applicable also for fiscal periods with filing deadlines of 1 May or 1 June 2020).
- Where taxpayers report a tax overpayment, they should file relevant income tax returns as soon as possible, as the deadline for refunding overpaid tax remains unchanged – within 30 days of the deadline for filing income tax returns or the date an income tax return was actually filed if filed after the deadline.
- Those who decide to opt for postponement must file a tax return and actually pay the tax on 1 July 2020 (the date on which the amount must be credited to the tax administrator's account). If tax returns are filed later, the general waiver of penalties will not apply, and penalties will be imposed retrospectively from April 2020; it will still be possible to apply for an individual waiver of penalties.

Corporate income tax – all taxpayers

- Taxpayers using the calendar year as their taxable period will neither have to pay an income tax prepayment due in June nor have to apply for this; other taxpayers (using fiscal year) may apply for an individual waiver of the income tax prepayment due in June, providing reasons for their reduction or waiver. This also applies to prepayments payable in other months. It is also possible to waive a prepayment retrospectively, i.e. if a prepayment is already payable or has already been paid, based on an individual application.
- Apart from as mentioned above, the standard 4/5-day sanction-free period applies to the filing of income tax returns/payment of tax. Where necessary, it is also possible to apply for the extension of the deadline for filing income tax returns for up to three months (taxpayers having to file their income tax returns within six months after the end of the taxable period even if the deadline is before 1 July 2020). Where income from abroad is concerned, it is possible to apply for deferment for another month (a maximum of 10 months from the end of the taxable period).
- If an income tax return is filed and the tax paid late, the taxpayer may file an application for a waiver of default interest: if the application is granted, a penalty for the late filing of a tax statement is waived automatically. The application is currently not subject to an administrative fee. However, we recommend filing an income tax return within the deadline (if possible) and applying for the payment of tax in instalments or at a later date (deferment of its due date). The related interest can be waived based on an application.
- The postponed filing deadline (the general waiver of penalties for late filings) also applies to the statement of income tax withheld, excepting the statement of income tax on employment withheld in form of

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prepayments, and to the payment of tax, while no underpayments should arise if the tax was withheld correctly during the period.

VAT

- Common sanction-free periods apply to the filing of VAT returns and the payment of VAT: a penalty for late filing does not arise if the default is no more than five working days; default interest accrues from the fifth working day.
- CZK 1,000 penalties for the late filing of VAT ledger statements between 1 March and 31 July 2020 will be waived automatically if the VAT ledger statement is filed earlier than called upon by the tax administrator. The financial administration has promised to call upon taxpayers no earlier than five to seven days after the statutory filing deadline. In practice this means that the five-day sanction-free period will also apply to VAT ledger statements.
- If any of the higher penalties for the failure to file a VAT ledger statement is imposed (e.g. for filing the statement after the taxpayer has been called upon by the tax administrator to do so), the taxpayer may apply for its waiver on an individual basis.
- If VAT is not paid (or a VAT return not filed) until the end of the sanction-free period, the related default interest can be waived based on an individual application. If the default interest is waived, a penalty for the late filing of a VAT return shall also be automatically waived. If default interest does not arise (e.g. as a result of an excess deduction), the penalty for the late filing of a VAT return will be waived if, simultaneously, the penalty for the late filing of a VAT ledger statement is waived and the tax return is filed together with the VAT ledger statement.
- Where an excess deduction arises, it is advisable to file a VAT return within the five-day sanction-free period to eliminate any potential negative impact.
- Similarly, when a tax liability arises, it is recommendable to file a VAT return and apply for the payment of VAT in instalments or at a later date. Any related interest could then be waived based on an individual application while proving the relation with the coronavirus pandemic.

Immovable property acquisition tax

- The Ministry of Finance announced its intention to cancel this tax – details should be discussed on Monday 30 March 2020.
- Immovable property acquisition tax returns with a filing deadline between 31 March and 31 July 2020 may be filed without any sanctions until 31 August 2020. The payment of tax or its prepayments may also be postponed until this date. Technically, the postponement is carried out through a general waiver of penalties for the late filing of returns and default interest.
- Those who decide to opt for postponement must file a tax return and actually pay the tax until 31 August 2020. If the tax return is filed later, the general waiver of penalties will not apply, and penalties will be imposed retrospectively from the original deadline. At the end of August, it will not therefore be possible to use a regular five-day tolerance period.

Road tax

The Ministry of Finance announced the postponement of deadlines for the payment of road tax prepayments payable in April and July until 15 October 2020, again in form of a general waiver of interest on the late payment of the tax.

Property and other taxes

So far, no measures have been adopted in relation to these taxes. However, it is possible to utilise options set by the Tax Procedure Code, especially:

- potential sanction-free period (4/5 working days for the payment of tax/filing of a tax return);
- option to apply for the payment of tax in instalments or for the payment of tax at a later date while subsequently applying for a waiver of default interest.

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Taxes

Summary of measures aimed at providing support and relief to businesses and employees

The government has adopted several measures to provide support to businesses and their employees during the coronavirus pandemic. Below, we offer you a summary of these measures.



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TAX MEASURES RESULTING FROM THE GOVERNMENTAL TAX LIBERATION PACKAGES

Generally-applicable measures not requiring individual applications:

- Waiver of penalties for the late filing of **personal and corporate income tax returns** for the 2019 taxable period without the tax advisor's assistance and a waiver of **default interest** for the late payment of an income tax liability if the return is filed and the tax paid before 1 July 2020.
- Waiver of personal and corporate **income tax prepayments** payable on 15 June 2020 without having to apply for a waiver. This only applies to taxpayers using the calendar year as the taxable period.
- Suspension of electronic reporting of sales (**ERS**) until three months after the end of the state of emergency, declared on 12 March 2020 for 30 days and subsequently extended until 30 April 2020.
- Waiver of penalties for the late **filing of tax returns** where individual applications for the waiver of default interest or interest on the deferred sum for the late payment of tax in connection with these tax returns have been granted.
- Waiver of CZK 1,000 penalty for the late **filing of VAT ledger statements** between 1 March and 31 July 2020. These penalties are charged for the late filing of VAT ledger statements if the statement is submitted before the tax administrator's call on the taxpayer to do so.
- Waiver of penalties for the late **filing of VAT returns** where individual applications for the waiver of penalties for the late filing of VAT ledger statements have been granted (i.e. penalties other than basic ones of CZK 1,000 waived on a general basis), but only if the taxpayer submits a VAT return no later than on the date a late VAT ledger statement is filed.
- Waiver of penalties for the late **filing of immovable property acquisition tax returns** and related default interest for the late payment of tax or its prepayment. This applies to all tax returns with a filing deadline between 31 March and 31 July 2020.

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- Waiver of **administrative fees** for selected applications relating to taxes and customs filed before 31 July 2020.
- Waiver of default interest and interest on the deferred sum for the failure to pay **road tax** prepayments payable on 15 April and 15 July 2020 if these are paid before 15 October 2020.
- For **VAT payers**, a waiver of VAT on the gratuitous delivery of goods intended to fight the coronavirus pandemic or the gratuitous delivery of goods needed to produce such goods (e.g. selected medical supplies or devices, or protective supplies).

Measures requiring individual applications:

- On an individual basis, it is possible to apply for a waiver of default interest, interest on the deferred sum and other penalties for the late filing of VAT ledger statements if a causal relationship with the coronavirus can be sufficiently proven.
- A special application is required for tax deferral.
- Based on guidelines of the GDF of 15 April 2020, it is newly also possible to apply for deferral of advance payments with regard to personal income tax on dependent activities for the period from February to July 2020, and in the case of the withholding tax payable by 31 March at the latest, for deferral up to 31 August 2020, which was not possible under the previous guidelines. However, the deferral cannot go beyond 30 September 2020 and it is necessary to prove a causal relationship with the coronavirus pandemic.

Proposal to abolish immovable property acquisition tax

The Government has passed a proposal to abolish immovable property acquisition tax for transfers of property; the proposal will thus be further discussed by the Parliament. The proposal is related to an amendment to the Income Tax Act and includes the following conditions:

- abolition of the tax concerns transfers of immovable property where the deadline for filing a tax return expires on 31 March 2020 or later, i.e. transfers registered in the Land Registry after 30 November 2019;
- cancellation of the option for natural persons to deduct from the tax base interest on loans used for financing their housing needs, specifically for purchases effected after 1 January 2022;
- extension of the time test for exemption of income from the sale of immovable property not intended for the owner's own living, specifically from 5 years to 10 years (the original proposal suggested a 15-year test). This extension should apply to sales of immovable property carried out after 1 January 2021;
- the exemption will remain in effect if the seller uses the proceeds from the sale to satisfy his/her own housing needs.

SUPPORT FOR BUSINESSES THROUGH FULL OR PARTIAL COMPENSATION OF WAGE EXPENSES (ANTIVIRUS)

On 1 April 2020, the Government approved "Antivirus", a targeted programme to support employment, defining the rules for the provision of contributions for wage expenses to employers directly or indirectly affected by the governmental emergency measures. From 6 April 2020, employers may apply for contributions for March, i.e. for the period from 12 March to 31 March and subsequently for the months of April and May. Moreover, it is debated whether the programme should also include wage expenses of employers who managed to stay in business or are in the process of its renewal.

The Antivirus Programme distinguishes between Regime A and Regime B, varying in **the grounds on which the impediment to work arose** and in the provided contribution amount.

Regime A

- In the case of a quarantine order, employees will receive wage compensation equal to 60% of average reduced earnings (impediment on the employee's part);
- In the case of a closure of premises/operations due to the governmental resolution, employees will receive

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a 100% wage compensation (impediment on the employer's part).

Regime B

- Impediments to work on the employer's part due to a quarantine order or care for children involving a significant part of employees (30% and more) – employees will receive wage compensation equal to 100% of average earnings;
- Unavailability of inputs (raw materials, products, services) necessary for business activities – employees will receive wage compensation equal to 80% of average earnings;
- Restriction of demand for services, products and other deliveries –employees will receive wage compensation equal to 60% of average earnings.

Under **Regime A,** the state will provide employers with a contribution equal to 80% of the wage compensation paid to employees subject to quarantine order (i.e. 80% of the wage compensation determined as 60% of average earnings) and to employees of closed premises/operations (i.e. 80% of wage compensation determined as 100% of average earnings). The monthly wage compensation per employee amounts to a maximum of CZK 39,000.

Under **Regime B**, i.e. the restriction of production due to the lack of raw materials/materials, shortage of labour or the lack of demand, the state will provide employers with a contribution equal to 60% of the wage compensation paid to employees (wage compensation equalling 60% to 100% of average earnings). The monthly wage compensation per employee amounts to a maximum of CZK 29,000.

The amount of compensation/contributions provided to employers is derived from the average super-gross wage including mandatory payments (CZK 48,400): 80% and 60% of this amount under Regime A and Regime B, respectively.

Support can be obtained by employers who:

- have at least one employee under an employment relationship who participates in the sickness and pension insurance scheme
- fall under Regime A or Regime B criteria of the Antivirus Programme;
- have actually paid wages or wage compensation to their employees while also making relevant mandatory insurance payments.

On 2 April 2020, the Ministry of Industry and Social Affairs published a manual for employers containing detailed information on how to apply for contributions, clarifying who may not apply for contributions and specifying the programme's criteria in more detail. The manual has been prepared for informative purposes only and is being continuously updated by the ministry. Currently, the fourth version of the manual is valid.

The Antivirus Programme does not apply to the following situations:

- Salary compensation (state employees, etc.).
- Compensation of wages if these are covered by other public budgets – it must be proven that the employer is not drawing double support for a wage or its part for the same period (and separate records must be maintained). Companies receiving investment incentives or grants should therefore be extra careful!
- Reimbursement of expenses arising from agreements to complete a job or agreement to perform work.
- Employees who have been given a notice of termination of employment (excepting notices pursuant to Section 52 (g) and (h) of the Labour Code).

- Employers who have received other contributions for their employees from the Czech Labour Office.
- Applicants subject to liquidation/bankruptcy proceedings.
- Applicants on whom penalties for allowing the performance of illegal work (i.e. enabling foreign nationals not having residence permits to perform work) have been imposed over the last three years.
- The condition of non-existence of the applicants' debts towards public budgets was cancelled by an amendment to the law as of 14 April 2020. It is thus no longer necessary to prove the non-existence of debts; nonetheless, employers should honour their obligations towards public budgets.

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- Moreover, the entitlement does not cover members of the governing body, i.e. for example, executive directors and members of the board of directors. The Antivirus programme provides a partial refund of the employer's costs of the statutory compensation for salaries paid to employees during the existence of impediments to work, and therefore does not, as a rule, apply to the discharge of the office of director. The refund under the Antivirus programme may only be granted for directors who are simultaneously employed with the company under an employment contract. The manual clarifies that the Ministry of Labour and Social Affairs does not consider a contract signed by the same person on both sides (i.e. both for the employer and for the employee) to be a valid employment contract.
- Foreign employers are also entitled to support from the Antivirus programme according to the manual; this is provided that they have employees with contracts governed by the Czech laws and meet other conditions of the Antivirus programme. This is true even of employers without a Czech identification number, who are asked to give their social security number in the relevant on-line application instead. Foreign employers must, however, open an account with a Czech bank because the refund cannot be remitted to a foreign bank's account.

Cost eligibility period: **12 March to 31 May 2020.** Any other extension of the cost eligibility period is subject to approval by the Government and further development of the epidemiological and economic situation.

Acceptance of applications (from 6 April 2020):

Application submission

- Via a web application.
- With a local labour office based on the employer's registered office address.
- To file applications, employers must have a data box or an email address with a recognised electronic signature.

Documents supporting applications

- Document on the opening of the applicant's bank account to which the labour office will send funds.
- Document on the representation of an employer (by the authorised person) only if a person other than a person authorised to act on behalf of the applicant has been authorised to deal with the application and only if such a document has not already been submitted to the labour office in the past.

Concluding an agreement

- An agreement is generated automatically after an application is filled in.
- An agreement is concluded once it is signed by the labour office and send back to the applicant via a data box or an email with a recognised electronic signature.

Statement of compensated wages

- Employers shall perform a monthly payroll close and pay wage compensation and relevant mandatory payments to employees within a standard deadline.
- Subsequently, employers shall submit to the labour office the statement of compensated wages including mandatory payments.
- The statement must contain a list of employees for whom contributions are requested, with their birth certificate numbers or insured persons' registration numbers

Providing contributions

- Contributions will only be provided in respect of employees employed by the applicant after any relevant checks have been performed.

Inspections and sanctions

- The manual points out that the adherence to labour-law regulations and the fulfilment of criteria for the payment of contributions will be subject to inspections by the appropriate authorities, in particular the

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Labour Office of the Czech Republic in cooperation with the State Labour Inspectorate Office.

SUPPORT FOR THE SELF-EMPLOYED

- Filing of annual statements of income, expense and premiums paid for health insurance purposes has been postponed until 3 August 2020. The statutory deadline for filing annual statements for social security insurance purposes for 2019 has not been extended; however, the Czech Social Security Administration has declared a similar procedure with regard to premiums for social security.
- Health insurance underpayments will have to be settled in line with the new deadline for filing the statements; the same should apply to social security insurance underpayments, as declared by the Czech Social Security Administration.
- Monthly prepayments for health and social security insurance premiums for the period from March to August 2020 will not have to be paid.
- The annual social security premium for 2020 will be reduced by CZK 2,544 for a person's primary activity/CZK 1,018 for their secondary activity for each month between March and August in which the independent gainful activity was performed.
- Underpaid health insurance premiums, i.e. amounts exceeding the minimum monthly prepayments for the period from March to August 2020, will only have to be settled within 8 days of filing the statement for 2020.
- A carer's allowance of CZK 424 a day will be paid to the self-employed who since the implementation of the governmental emergency measures have had to take care of children younger than 13 years or dependent children up to 26 years old in need of the help of another person (at least Stage I dependence). Carer's allowances are provided to the self-employed based on the Ministry of Industry and Trade's programme called Carer's Allowances for Self-Employed Persons. Call I is currently open until 30 April with funds for allocation amounting to CZK 100 million. It is possible to apply for a carer's allowance via an application for a subsidy through the Ministry of Industry and Trade for the period from 12 March to 31 March 2020.
- Self-employed persons are entitled to a compensation bonus not exceeding CZK 500 per calendar day of the bonus period, which is from 12 March to 8 June 2020.
    - The compensation bonus applies to self-employed persons operating under the law governing pension insurance unless their activity results in participation of the given person in sickness insurance as an employee.
    - A crucial criterion is that the self-employed could not have fully or partly performed their activity due to a threat to health or the governmental emergency measures.
    - The self-employed must have performed their activities on the date the state of emergency was declared (i.e. 12 March 2020).
    - The compensation bonus will be considered income decisive for determining the entitlement to allowances paid pursuant to the Act on Assistance in Material Need and the Act on State Social Support.
    - Self-employed planning to draw the compensation bonus will not be entitled to unemployment benefits for any calendar day in which they receive the compensation bonus.
    - Self-employed receiving unemployment benefits during the bonus period will not be entitled to the compensation bonus for the calendar days in which they receive unemployment benefits.
    - Applications for the compensation bonus must be submitted within 60 days of the end of the bonus period.
    - Rules and form of the application for the compensation bonus (it is possible to also apply via e-mail).
- The self-employed may also apply for a special immediate emergency allowance provided by the Czech Labour Office to persons whose social and property circumstances do not allow them to overcome an unfavourable situation.

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CARER´S ALLOWANCE FOR EMPLOYEES

- Carer's allowances will be paid in respect of children younger than 13 years over the period of school (and other children's facilities) closures, until 30 June 2020 at the latest, and dependent persons with disabilities (at least Stage I dependence) without an age limit, over the period of closure of certain social service facilities for persons with disabilities.
- Carer's allowances will be paid monthly and will equal 60% of the reduced assessment base for the period ending on 31 March and 80% of the reduced assessment base for the period from 1 April.
- Carer's allowances are claimed via prescribed forms. Employees may apply for carer's allowances through their employers, based on confirmations issued by schools or other children's facilities.
- New rules enable parents to switch in caring for their children repeatedly.
- Parents who cannot send their child back to school or kindergarten for objective reasons after these facilities reopen are also entitled to the carer's allowance. These reasons include health risks if the child is especially susceptible to illness or lives in a common household with someone belonging to a high-risk group. Account was also taken of the insufficient capacity and short opening hours of school groups.

Persons working based on an agreement to perform work or an agreement to complete a job are also entitled to the carer's allowance during the term of his/her agreement (but only until 30 June 2020) if the respective agreement was executed before 11 March 2020 and the relevant premium for sickness insurance was paid for the month in which the need for care arose or for the month of February (if the applicant applies for the carer's allowance with effect from March 2020). It is possible to apply for the carer's allowance retroactively as from the time when the extraordinary measures came into effect.

REDUCTION OF PENALTIES FOR LATE PAYMENT OF SOCIAL SECURITY PREMIUMS BY EMPLOYERS

- Reduction of penalties for employers for late payment of premiums for social security and contributions towards the State employment policy in the amount of 24.8% of the employees' salaries (premiums paid by the employer);
- concerns premiums for the calendar months of May, June and July 2020, payable in each case by the 20th day of the following month;
- if the due premium is paid not later than by 20 October 2020, the employer will be required to pay only 20% of the standard penalty for late payment stipulated by the Insurance Premiums Act. The reduced penalty will thus correspond to approx. 4% interest rate per annum;
- to obtain the reduction, the employer must properly pay the social security premiums levied for employees by the 20th day of the following calendar month;
- no proof of a link to COVID-19 is required;
- any outstanding premiums and penalties in the period between 21 June and 20 October 2020 will not be considered arrears in premiums and penalties for the purposes of confirming the employer's good standing.

COMPESATION BONUS FOR SHAREHOLDERS OF LIMITED LIABILITY COMPANIES WITH NO EMPLOYEES AND FAMILY COMPANIES

- Any natural person can apply for a compensation bonus if, as of 12 March 2020, he/she was a shareholder of a limited liability company founded with a view to generating profit, which has:
    - no more than 2 shareholders who are natural persons and whose shares are not in the form of share certificates, or
    - only shareholders who are members of one family (i.e. direct relatives, siblings and spouses, or partners under the law on registered partnership) and whose shares are not in the form of share certificates.

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- The shareholder's activity may not result in his/her sickness insurance as an employee, except for employment in the limited liability company where he/she is a shareholder; simultaneously, he/she must be considered a Czech tax resident, or a tax resident of another Member State of the EU/EEA, as of 12 March 2020 provided that at least 90% of his/her total income in 2020 comes from sources located in the territory of the Czech Republic.
- The limited liability company must not be insolvent or in liquidation and must not be considered an unreliable payer for the purposes of VAT during the decisive period (i.e. in the period from 12 March to 8 June 2020, or to 31 August 2020 if the bonus period is extended).
- The company's turnover (under the Accounting Act) for the completed corporate income tax period immediately preceding the bonus period must exceed CZK 180,000, or the company must presume that its turnover for the first uncompleted corporate income tax period during which the company performed its activity will exceed CZK 180,000.
- As of 12 March 2020, the company must be a tax resident of the Czech Republic or a tax resident of another Member State of the EU/EEA provided that it gained a majority of its income in the above period from sources located in the territory of the Czech Republic.
- The amount of the compensation bonus is CZK 500 for each day of the decisive period for which the shareholder of a limited liability company did not receive any other compensation of the restriction of his/her gainful activity due to COVID-19 or related emergency measures. If the applicant is a shareholder in several limited liability companies and meets the above conditions, he/she is entitled to only one bonus for each calendar day.
- Applications for the compensation bonus must be submitted within 60 days of the end of the decisive period.

LOANS AND OTHER SUPPORT

COVID III loans

- Unlike its predecessors, COVID III will provide support not only for small and medium-sized enterprises but also for big companies with up to 500 employees (the number of employees must be proved separately for each applicant).
- This time, the programme will have countrywide scope and will thus also help businesses seated in Prague.
- The application procedure – the company must pre-negotiate the loan with its own bank, which will then complete the application with the Czech-Moravian Guarantee and Development Bank (CMZRB).
- The Government will provide 30% guarantees in an aggregate amount of CZK 150 billion, which makes it possible to support loans in a volume of up to CZK 500 billion.
- The specific parameters then depend on the size of the business. While for businesses with up to 250 employees, the State guarantee will cover 90% of the principal amount of an individual loan, for companies with up to 500 employees, this ratio will be 80%. In both cases, the maximum amount of the loan is CZK 50 million and the duration of the guarantee will not exceed three years.
- The programme is aimed at covering operating expenses, such as salaries, rents, payments for utilities, supplier-customer invoices and procurement of inventories and materials.

Covid Plus – loans for companies with more than 250 employees

- This programme provides guaranteed loans for large businesses with at least 20% of their total annual revenue from sales coming from export.
- Guarantees should be provided only to enterprises:
    - having more than 250 employees (even if seated in Prague);
    - whose share of exports in the total annual revenues from the sale of products, provision of services and sale of goods reached at least 20% in the last accounting period; a manufacturing or trading

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company may prove its share of export indirectly through the exporter's share of export;
    - not benefiting from any other State aid in the form of loan guarantees in connection with the COVID-19 pandemic;
    - which have submitted an affirmation declaring, in particular, that the enterprise has experienced a sudden lack of liquidity, was not insolvent before 12 March and has no overdue liabilities towards the State.
- The applicants must meet mainly the following conditions:
    - To pay liabilities towards suppliers properly and in due time;
    - To pay wages to employees properly and in due time;
    - Limitation of payment of dividends or other shares of profits, prohibition of sale of equity interests and sale of any tangible and intangible fixed assets or their encumbrance by third-party rights without the consent of the financing bank during the term of the guarantee.
- The maximum amount of the loan for which the guarantee will be provided may not exceed 25% of the borrower's total annual sales in 2019. The minimum amount of the loan is set at CZK five million.
- When applying for the COVID plus support, the company must first contact its bank and arrange the loan conditions with the bank.
- As such, the provision of the guarantee depends on evaluation by EGAP in each case. That means that EGAP's internal rating of the individual applicants is an important parameter. Companies rated above B- will obtain a guarantee of up to 80% from EGAP. For B-, the maximum guarantee will be 70%. Applications of businesses rated lower than B- will be denied.
- The loans and guarantees will be provided for a maximum of 3 years for operating loans and loans financing working capital and maintenance of business activities, and for a maximum of 5 years for investment loans, where the loan margin of the financing bank cannot exceed the following numbers for the duration of the loan:
    - 1.5% p.a. on loans provided for up to 1 year;
    - 2.5% p.a. on loans provided for up to 3 years;
    - 3.5% p.a on loans provided for up to 5 years;
- The list of annexes necessary for filing applications is available here.

Call to participate in the COVID 19 Technology Programme

- Support for the manufacture of medical devices necessary to fight the coronavirus (subsidies for the purchase of machines and equipment necessary for the businesses to launch the production).
- The call was announced on 15 April 2020.
- The subsidy is intended only for small and medium-size businesses.
- The total allocation equals CZK 300 million; one project may receive support from CZK 250 thousand to CZK 20 million.
- As a percentage, a subsidy of 50% of eligible costs.
- Applications will be accepted from 27 April to 29 May 2020.
- The projects may be implemented by the end of 2020.
- Only expenses incurred from 1 February 2020 will be eligible.

Rise Up – Smart Measures against COVID-19

The programme supports companies in their own initiatives to fight COVID-19 and is also intended for larger entities.

Rather than reimbursing research and development costs, this programme aims to compensate companies for expenses incurred in the implementation of new solutions. The Ministry of Industry and Trade provides examples of supported activities: 3D printing of respirators, new lung ventilators, applications facilitating logistics activities, etc. In specific cases, the programme will also support operating expenses relating to projects aiming to

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expand the production capacities for protective supplies and devices or to introduce the production of new protective supplies and devices. The above applies on condition that the new solutions are placed on the market.

- A subsidy per project should amount to at least CZK 500 thousand and shall be provided up to the de minimis limit (i.e. a maximum of EUR 200 thousand per one applicant over a period of three years).
- As a percentage, a subsidy should amount to 50–90% of eligible costs, depending on the activity type.
- Applications are accepted from 2 April 2020.
- More than one application can be submitted per one identification number; the applicant's only limit is de minimis subsidy amount.

Country for the Future Programme

Within this programme designed for small and medium-size companies it is possible to apply for support for putting innovative solutions into operation, including innovative procedures (installation of new or enhanced production technologies) and organisational innovations (innovated logistics methods, navigation systems, etc.).

- A subsidy per project of up to CZK 25 million.
- As a percentage, a subsidy of 50% of eligible costs.
- Applications are accepted from 3 April to 15 May 2020.
- Two applications per one applicant (identification number) can be filed.

COVID - RENT Programme

- The programme is primarily targeted at entrepreneurs operating a retail business or providing services to customers on premises leased or subleased before 12 March 2020.
- These businesses will be able to request support amounting up to CZK 10 million per business, applicable to rents payable from 1 April to 30 June 2020.
- A key precondition for obtaining the support, covering 50% of the rent, is that the landlord provides a discount in the amount of 30% from the rent.
- This programme is waiting for approval by the European Commission.

Suspension of repayment of loans and mortgages contracted before 26 March 2020

Statutatory moratorium on repayment of loans and mortgages is binding for all banks and non-banking companies.

- It is possible to suspend the repayment of both **consumer and business loans including mortgages for a period of three or six months**, **without the debtors being charged any fees.**
- The moratorium applies to loans and mortgages **contracted and drawn (or even only approved , in case of mortgages) before 26 March 2020**.

Conditions:

- Notifying the creditor of the suspension of repayments.
- Declaring that this is due to the negative economic effect of the coronavirus pandemic.
- **These reasons will not have to be supported in any way.**

The period over which a loan and related interest will be repaid will be adequately extended by the period of repayment suspension. Corporate entities may only utilise the option to suspend the repayment of principal, but related interest must be paid over the entire period of the repayment suspension.

- Interest will remain in the contractually-agreed amount.

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- However, for consumers, interest may amount to up to the statutory default interest amount equal to the repo rate increased by eight percentage points.

The moratorium does not apply to credit cards, overdrafts, revolving loans, operating leases, loans associated with trading in capital markets, and loans whose debtors were in default for more than 30 days as at 26 March 2020.

Deferral of rent for entrepreneurs

- The law prohibits landlords to terminate unilaterally a lease only on the grounds to the tenant's default in payments of rent.
- In contrast to the original Government proposal, the tenant will be obliged to pay for utilities and other services.
- The following conditions must be met to qualify for the deferral of rent:
    - The rent is payable for the period from 12 March 2020 to 30 June 2020.
    - The tenant must prove that his/her inability to pay the rent has been caused by the coronavirus pandemic, which prevents or significantly limits his/her activities.
- Instalments on rent will be deferred until the end of 2020 (the deadline originally suggested by the Government was as late as 31 March 2022). If the tenant does not pay the instalments even by the new deadline, the landlord will be entitled to terminate the lease after 5 days.
- These provisions do not prevent the landlord from terminating the lease on other grounds.

Note: updated on 25 May 2020

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COVID 19-related support for businesses

The government has announced another wave of support provided to businesses and the self-employed hit by the coronavirus outbreak. The COVID II programme aims to support operational financing. The COVID 19 Technology programme and the new Czech Rise Up programme currently under preparation are intended for producers of medical supplies and devices. Below we comment on the new developments in this area.



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COVID II – guaranteed operating loans

Following the successful COVID Loan programme, the Czech-Moravian Guarantee and Development Bank (ČMZRB) in cooperation with the Czech Ministry of Industry and Trade (MIT) is preparing another programme for the self-employed and small and medium-size companies to boost their operational financing - **COVID II**. Unlike the COVID Loan programme, this will not involve interest-free loans but **guaranteed operating loans rendered by commercial banks with a ČMZRB subsidy for the payment of interest.**

Businesses whose economic activities have been restricted due to the coronavirus pandemic and related preventative measures will be provided by ČMZRB with guarantees of up to three years for operating loans from commercial banks, drawn in amounts ranging between CZK 10 thousand and CZK 15 million. In addition to guarantees, ČMZRB will also provide subsidies for the payment of interest. The COVID II programme will have CZK 5 billion for allocation and, thanks to the involvement of commercial banks and their resources, the self-employed and small and medium-size businesses will be able to draw operating loans totalling up to CZK 30 billion from commercial banks. The guarantee provided by ČMZRB should cover up to 80% of the commercial credit amount, while applicants may also utilise financial subsidies of up to CZK 1 million to pay related interest. The loans will have to be used for a specific purpose, i.e. to reimburse operating expenses such as wages, energy, rent, material purchases, etc.

It is expected that applications may be submitted starting on 2 April 2020. The programme's specific criteria are yet to be disclosed.

Call to participate in the COVID 19 Technology programme

Within the Enterprise and Innovations for Competitiveness Operational Programme, the Ministry of Industry and Trade is preparing a new call within the Technology programme designated as *COVID 19 Technology*, aimed to provide **support for the production of medical supplies and devices and the development and launch of new technologies to fight the coronavirus pandemic**. Total funds for allocation should amount to at least CZK 300 million, with a subsidy of up to CZK 20 million per project. According to the information currently available, only **small and medium-size businesses will be able to apply** for support under this programme.

Specific criteria and more detailed information will be included in a call that is to be announced on 14 April 2020.

Czech Rise Up – Smart Measures against COVID-19

A new programme, **Czech Rise Up – Smart Measures against COVID-19**, should also be announced. This should also

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be aimed at large businesses. Support shall be provided for the implementation of new solutions helping to fight COVID-19, including measures to mitigate the effects of any further spreading of the coronavirus. Subsidises will be provided for expenses incurred to purchase materials to produce protective and medical supplies and devices, and the wage expenses of employees involved in such a production. Funds will also be available for technological solutions and entirely new innovative solutions, and the completion of solutions whose development is already in progress. The subsidy per one project may amount to up to CZK 5 million. More detailed information will be published on the announcement of a call to participate, which is expected to occur in the upcoming days.

We are monitoring the developments regarding potential subsidies very closely. We will inform you about any new developments in the next issue of Tax and Legal Update.

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State compensation of damage caused by pandemic

From a legal perspective, the state's response to the coronavirus pandemic can be described in several significant milestones: (1) declaration of state of emergency by government; (2) adoption of emergency measures by government; and (3) replacement of governmental emergency measures with extraordinary measures by Ministry of Health. But more importantly, may businesses ask the state for compensation of damage incurred in connection with the above measures?



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According to the strict interpretation of the Constitutional Act on the Safety of the Czech Republic, Government Resolution on Declaring the State of Emergency of 12 March 2020 should have specified what rights guaranteed by the Charter of Fundamental Rights and Freedoms are being restricted, and to what extent, and what duties are being imposed, and to what extent. But the resolution does not make this specification; these essentials were only included in subsequent government resolutions on emergency measures adopted later on the same date. Among other things, these successive measures simultaneously restrict the freedoms guaranteed by the Constitution, i.e. the freedom of movement, the freedom to conduct a business, and the freedom to peacefully assemble. Consequently, the lawfulness of the state of emergency's declaration and of subsequent measures may appear controversial, to say the least. Effective from 24 March 2020, the governmental emergency measures were replaced with the Ministry of Health's extraordinary measures issued pursuant to the Act on Protection of Public Health. Although this change may seem small and unimportant, it affects potential damage compensation claims in a substantial manner.

Damage as a result of the governmental emergency measures is compensated by the state

Pursuant to Section 36 of the Crisis Act, the state is liable for and must compensate any damage incurred by individuals or legal entities in a causal relationship with the emergency measures. The state may be relieved of this obligation only if the injured caused the damage themselves. Damage is understood to be both the actual damage and the loss of earnings. The injured may claim both types of damage while quantifying both and simultaneously proving that the damage was incurred as a result of the emergency measures. The loss of earnings is relatively hard to prove and quantify even under standard conditions, much more under the current ones. It will probably not be feasible to use standard operation in comparable periods as an argument, since consumer behaviour during pandemics is different. However, the question remains whether Section 36 of the Crisis Act targets situations such as this one and whether compensation of damage may be claimed under the current conditions.

Importantly, the Ministry of Health published its extraordinary measures pursuant to the Act on the Protection of Public Health, which lacks a provision similar to Section 36 of the Crisis Act. The issue of the state's liability for damage incurred in connected with the Ministry of Health's measures will then be much more complicated.

How to proceed?

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Businesses planning to claim damages from the state should immediately start to carefully document all losses and damage to secure the maximum compensation possible, despite all the current uncertainty. Currently, it is not even clear what body will decide on these claims. To be procedurally prudent, it is advisable to assert claims with several bodies at the same time, substantiating them with any relevant legislation. In any case, should a government/state body dismiss a raised claim, it should be possible to subsequently seek justice before a court.

It is now subject to judicial review whether the state of emergency was declared correctly from a formal perspective. Should this review be positive, then claims shall be asserted pursuant to the above-mentioned Crisis Act at least with respect to the first twelve days of the state of emergency. If the review is negative, it should nonetheless be possible to claim damages from the state pursuant to the Act on liability for damage caused in the exercise of a public authority by a decision or an incorrect official procedure. The injured would have to claim and prove that damage was caused by unlawful governmental emergency measures and unlawful extraordinary measures by the Ministry of Health.

The deadlines within which relevant claims must be asserted vary in the individual regulations. The shortest deadline is six months and starts to run from the moment the injured ascertained that damage had been incurred. The state's approach to such liability for damage is uncertain, and it is impossible estimate whether claims asserted will be acknowledged. The only certainty is that the economic impact of the pandemic will be extensive and a vast number of claims can be expected whose legitimacy will only be resolved before the courts. We are closely monitoring the situation and we will keep you informed about any new developments in this respect.

In the meantime, to mitigate the current impacts of the pandemic, we recommend using the COVID II Loan Programme offered by the Czech-Moravian Guarantee and Development Bank (ČMZRB) in cooperation with the Ministry of Industry and Trade and the governmental Antivirus Programme setting the criteria for providing the compensation of wage expenses to employers.

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Prevention of COVID-19 at the workplace and personal data processing

Under the current stressful conditions, most businesses struggle with the most critical issues such as the restriction of demand and the protection of the health of their employees. But even during difficult times, they must not forget their personal data protection duties.



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Personal data relating to employee health protection

To create safe and healthy working conditions for employees is one of the basic duties of each employer. Right now, they above all must adopt appropriate measures to prevent the spread of the infection at the workplace and ensure the provision of sufficient information about the potential risks to all their employees.

From the personal data processing perspective, preventive measures involving, e.g., the determination of an employee's state of health such as measuring the temperature of employees entering the employer's premises or the determination of an employee's movement in the preceding days and weeks may be quite problematic. Such information represents personal data not previously processed by employers.

On the commencement of any new personal data processing, it is always necessary to perform a standard evaluation, i.e., to determine the objective of processing (which is the protection of the health of employees, in this case). Considering the personal data minimisation principle, it is also necessary to determine the necessary processing scope, the period over which the data will be stored, and the most suitable legal title based on which the data will be processed.

Information about employees' state of health belongs to a special personal data category -sensitive personal data - to which stricter processing rules apply. In addition to an employer's legitimate interest, the legal basis for processing such personal data can also currently be the fulfilment of legal obligations (i.e. the above-mentioned employees' safety and health protection) or the public interest in the protection of public health. Moreover, this legal title relating to anti-epidemic measures is directly stated in the preamble to the GDPR. However, we recommend that employers proceed as much as possible in cooperation with competent public health protection bodies.

Employers must inform their employees about any new personal data processing actions and reflect them in their records of processing activities pursuant to Article 30 of the GDPR.

Personal data of clients and other persons

In compliance with the government's recommendations, many employees are currently on a home office regime. The issue of personal data protection is even more urgent where employees at home do not use company equipment and tools provided and secured by the employer (such as computers and mobile phones) but use their own devices for work (a BYOD regime).

It is advisable to set work rules in a manner to be able to distinguish when a device is used for business and when

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for private purposes. For example, a device's security setting should also enable the saving of files on various disks to prevent any abuse of personal data. However, the constant monitoring of such devices is not a solution, as it would unreasonably interfere with the employees' privacy.

We recommend that employers implement adequate security rules and prepare an internal guideline explaining these rules to their employees in a comprehensible manner. They should also assess the impact of these rules on the protection of personal data. Concrete employee duties should be specified in an agreement on the performance of work from home.

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Ban on retail and options for lessees

The coronavirus pandemic and the subsequent declaration of a state of emergency have restricted life in the Czech Republic in many ways. Among other things leading to the closure of retail outlets, excepting only essential points-of-sale, such as grocery stores or pharmacies. Such restrictions may have fatal repercussions for the outlets' operators. We thus expect that lessees will turn to their lessors and ask for a waiver of rent or for a reduction of rental expenses, potentially also for an adjustment to their contractual terms and conditions. Does the Civil Code provide the affected lessees with any rights in relation to their lessors?



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The Civil Code gives lessees the right to a reduction of rental expenses, especially where lessors themselves have violated their statutory duties or where restrictions to and the disturbance of the use of a thing were caused by the lessor or are directly attributable to the lessor. Section 2212 (3) of the Civil Code further stipulates that "If the lessee is disturbed in the use of a thing or otherwise affected by the conduct of a third person, they are entitled to a reasonable reduction of the rent, provided that they notified the lessor of such conduct of the third person without delay." According to the above provision, a lessee has the right to ask for a discount on rental expenses where the lessee's right to use a thing has been restricted or rendered impossible as a result of the behaviour of a third person (i.e. for reasons beyond the lessor's control) and the lessee notifies the lessor of this without delay.

Relevant law interpretations and commentaries stipulate that:

(i) No special form has been prescribed for the above notification: the lessee may do so in writing, orally, by phone, etc. However, we recommend notifying the lessor at least by email to be ready for any potential disputes. Lessees should also be able to support their argument.

(ii) If the lessee does not notify the lessor in time, they lose their right to a reduction of rental expenses for the period before the notification.

While lessors neither caused nor could have affected in any way the governmental decree/the Ministry of Health's measures prohibiting retail sale, lessees nonetheless and without any doubt were disturbed or restricted in the use of premises. Consequently, the above provision might apply to the current situation. Since the effective date of the Civil Code, no similar general ban on retail sales has ever been imposed and, consequently, there is no relevant case law. Hence, we cannot exclude the risk that the courts may decide on the matter differently.

Lessees may use the following rights embodied in the Civil Code (Sections 1765 and 1766). If circumstances change substantially enough to create a gross disproportion in the rights and duties of the parties by disadvantaging one of them either by disproportionately increasing the cost of performance or disproportionately reducing the value of the subject of performance, the affected party has the right to ask for the renegotiation of the contract with the other party (unless the affected party has assumed a risk of changes of circumstances itself) if it is proven that the affected party could neither have expected nor affected the change, and that the change occurred only after the conclusion of the contract or that the party became aware of the change only after the conclusion of the contract.

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Asserting this right does not entitle the affected party to suspend the performance (i.e. the affected party must continue to perform under the conditions originally agreed). Upon failure to reach agreement within a reasonable time limit, a court may, on the application of either of them, decide to change the contractual obligation by restoring the balance of rights and duties of the parties or to extinguish it as of the date and under the conditions specified in the decision. A court shall dismiss an application to change an obligation if the affected party fails to assert the right to renew contract negotiations within a reasonable time after it ascertained or could have ascertained the change in circumstances; this time limit is presumed to be two months.

If the lessee displays interest in the renegotiation of the contract, they must assert their right as soon as possible but no later than within two months after the date the relevant government decree was issued.

Please note that contracts for the lease of premises for business purposes usually exclude the application of the above directory (non-mandatory) provision of the Civil Code. It is therefore first necessary to carefully study relevant lease contracts. Where business premises have been fully closed as a result of the governmental decree/the Ministry of Health's measures, we recommend - regardless of such an analysis - notifying lessors as soon as possible of the fact that the lessee has been disturbed in the use of premises and therefore is asking for a reduction of the rent and/or intends to renegotiate the contract. Speed is of vital importance, as a delay in asserting the right may weaken or even destroy such a right. We also recommend delivering notifications to lessors without delay even if it is later proven that relevant provisions of the Civil Code have been excluded, or delivering them even if you already know that they have been excluded, as despite this, lessors may be cooperative towards their lessees to maintain long-term lease relationships.

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Coronavirus and due managerial care

Due managerial care requires that the members of a corporation's statutory body perform their offices with necessary loyalty, knowledge and care. It is not possible to be relieved of this requirement nor can any liability for its non-fulfilment be restricted. The question of how to satisfy the due managerial care obligation seems even more urgent in the current extraordinary circumstances.



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The due managerial care standard must be adhered to by the statutory body members over the entire period of their offices but, in a crisis, it becomes even more important, considering the growing need for essential loyalty. This can be demonstrated, for example, by the duty to compensate any harm caused to a corporation by one's withdrawal from an office in an unsuitable time, if assessed by a court as such.

How to respond to the current situation? First, statutory body members must fulfil their duty of prevention: damage identification, prevention and mitigation. To identify damage in time, they must show increased interest in the corporation's management, governance and financial performance on a continuous basis as well as higher control over the fulfilment of the duties of the other statutory body members and other persons to which the statutory body's powers have been delegated (such as bookkeeping). To prevent damage, statutory body members must use all their knowledge and skills; this involves education (especially of an economic and legal kind) and experience in crisis management. If they do not have them, they are obligated to arrange for the adequate assistance of an expert, for example, to prepare in cooperation with a legal advisor a draft plan to resolve their company's temporary inability to fulfil obligations towards business partners.

The internal delegation of powers of a statutory body seems like a suitable measure to enhance the effectiveness of making decisions in emergency situations. The individual crisis management areas shall be distributed to individual members to allow them to make decisions separately. This will not affect the rules of representation of a corporation externally (according to a record in the Commercial Register) but may accelerate the process of adopting decisions within a collective body.

Members of statutory bodies of joint stock companies and limited liability companies may also ask the general meeting for guidance on business management (involving the continuous administration of a corporation or its business establishment). Nevertheless, this request must be worded with due managerial care; no question on how to proceed in the current situation may be put forward. Such questions may only be discussed with professional advisors. The members must prepare concrete and balanced draft solutions (including the assessment of their implications) that will be presented to general meetings and subject to a binding vote. Currently, however, the importance of individual decisions may easily exceed the level of business management. Even though strategic management belongs to the powers of a corporation's statutory body, members of limited liability companies or shareholders of joint stock companies may intervene through general meetings. This may even be highly desirable when making decisions on important changes to a corporation's business focus.

With respect to the unpredictability of current developments and considering the severe consequences of the violation of due managerial care (compensation of damage, among other things), we recommend that all

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important decisions of a statutory body be properly documented. It can also be expected that these requirements will further gradate, as the time for approving financial statements and related profit distribution approaches. It will be the responsibility of the statutory body members to evaluate whether to pay out profit in the amount approved by the general meeting while taking into account the rules embodied in the Corporations Act.

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