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Taxes

Ministry of Finance to abolish immovable property acquisition tax

The Ministry of Finance has announced its intention to abolish the tax on immovable property acquisitions and at the same time cancel tax deductions for new mortgages.



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The ministry is planning to submit its proposal at a government's session in the week of 6 April. It proposes to abolish the immovable property acquisition tax and to cancel the possibility to deduct from the tax base interest on new mortgages pursuant to the Income Tax Act. Further changes in this area can also be expected.

At present, immovable property acquisition tax is paid by the buyer, amounting to 4% of the tax base, determined specifically according to the manner in which real property has been acquired, i.e. purchase, transfer, auction, or insolvency.

The cancellation of interest deductions should neither apply to contracts that have already been concluded nor to contracts that are new but have only been concluded to refinance existing mortgages.

Based on information from the Ministry of Finance, the bill should be effective retroactively, on the date it is approved by the government. More detailed information is not yet available. We are monitoring the situation and we will keep you informed about any developments in this respect.

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Taxes

Changes to compensation bonus for self-employed

The general public's response to the government-approved compensation bonus for the self-employed in connection with coronavirus-related emergency measures has been very negative, leading the government to revise the bill. The revised compensation bonus will continue to focus on self-employed persons who cannot fully or partly and beyond a reasonable extent perform their business activity due to a threat to health or due to the governmental emergency measures.



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The main change is the adjustment of the criteria for obtaining the compensation bonus. It will no longer be crucial how significant the decrease in the self-employed's income was in the three calendar months preceding the end of the bonus period compared with similar calendar months of the previous year. From now on, a crucial criterion will be that the self-employed could not have fully or partly performed their activity due to the governmental emergency measures, and that the self-employed must have performed their activities on the date the state of emergency was declared (i.e. 12 March 2020).

It remains to be discussed whether the compensation bonus should only apply to the self-employed who are the citizens of the EU, EEA and Switzerland.

The maximum compensation bonus amount remains at CZK 500 per one calendar day of the bonus period (from 12 March to 30 April 2020), i.e. CZK 25,000 in aggregate.

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. If the application is not filed within this deadline, the self-employed's entitlement to the compensation bonus extinguishes.

If, after carrying out procedures to remove doubt or a tax inspection, the tax administrator determines that conditions for the entitlement to a compensation bonus were not met or that the compensation bonus was assessed incorrectly, the tax administrator will assess additional tax equalling the difference between the amount originally assessed and the new amount. However, the duty to pay a penalty on the assessed tax amount will not arise.

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Taxes

No penalty for late payment of health insurance premium by employers for employees

Pursuant to an amendment to the Act on Public Health Insurance, until 21 September 2020, no penalties will be imposed for the late payment of health insurance premiums for employees for the period from March to August 2020.



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This sanction-free period has been intentionally set until 21 September 2020, as health insurance premiums for employees are payable from the first to the 20th day of the following calendar month (e.g. premiums for August are payable in September). **However, health insurance premiums for March to August 2020 must be paid by 21 September 2020 at the latest.**

This amendment has been adopted in connection with the governmental measures aiming to support the self-employed who cannot, fully or partly, perform their activity. However, legal provisions waiving penalties for the above period should also apply to premium payments made by employers for their employees.

This has also been confirmed by health insurance company VZP. Simultaneously, VZP points out that employers must still deliver their statements of health insurance premiums paid within standard deadlines. Premiums for February payable until 20 March 2020 must be paid on a standard basis and penalties for late payments will be charged as normal.

Importantly, the above waiver of penalties for the March-August 2020 period **only** applies to monthly premiums relating to health insurance and not social security insurance. An amendment concerning social security insurance, state unemployment policy contributions, and pension insurance passed in connection with the emergency measures does not contain such a provision.

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Coronavirus infection - work accident or occupational illness?

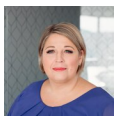
Pursuant to the Labour Code, employers must compensate their employees for any damage or non-pecuniary harm incurred through an accident at work when performing work-related tasks or in direct connection with it. The same applies to occupational diseases if, before their detection, the employee had been working at the employer under the conditions under which such diseases arise. Under the current extraordinary circumstances, it is often asked whether employees infected by COVID-19 can claim compensation for accidents at work or occupational diseases.



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The Labour Code stipulates that *"an accident at work shall mean the harm to health or death of an employee if it occurred independently of the employee's will due to the brief, sudden and forceful influence of external effects in the performance of working tasks or in direct connection therewith (...). An accident sustained by an employee due to performance of working tasks shall also be considered an accident at work. An accident sustained by an employee during the trip to work and back is not an accident at work. (...)".*

In our opinion, infections with the COVID-19 virus do not meet the definition of work-related accidents.

Less clear is whether the coronavirus illness may constitute an occupational disease. In our opinion, we cannot currently say with certainty that COVID-19 may be regarded as an occupational disease at least with respect to certain professions. Occupational diseases are specified in an appendix to a government decree and are defined as *"diseases resulting from adverse chemical, physical, biological or other harmful effects if these arose under the conditions specified in a list of occupational diseases"*. The government decree lists diseases whose origin can be attributed to a particular profession/occupation if the employee worked under the conditions under which the relevant disease may have arisen. COVID-19 is not mentioned in the list, but infectious and parasitic diseases as well diseases of the respiratory tract and lungs are. Simultaneously, the World Health Organisation's guidelines stipulate, among other things, the following: *"acknowledge the right to compensation, therapeutic and medical services where an employee is exposed to COVID-19 at the workplace, which is regarded as work-related exposure to an infection and should thus be treated as an occupational disease."* However, even if the coronavirus disease were acknowledged as an occupational disease, there is still the issue of proving that the disease occurred as a result of work performed for the employer.

The conclusion that the COVID-19 infection is not an accident at work is, in our and professional public's opinion, relatively unambiguous. Whether it involves an occupational disease will have to be decided by the appropriate bodies or courts, while the outcome may differ for specific professions. It will definitely be more plausible to claim

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compensation for an occupational disease for those working in the front line in the fight against the pandemic, such as health professionals, firefighters, police officers, and other first responders. If the COVID-19 virus infection is eventually acknowledged as an occupational disease, related damage should be compensated by the employer, using the employer's statutory liability insurance against damage associated with work-related accidents or diseases (i.e. Kooperativa liability insurance).

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Selected measures to mitigate coronavirus impact

Currently on their way to the chamber of deputies are government bills aiming to mitigate the impact of the coronavirus pandemic. The bills should help debtors subject to enforcement proceedings and lessees of non-residential premises, as well as deal with the running of time limits in court and administrative proceedings.



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On 7 April 2020, the deputies commenced a summary consideration of selected government bills aimed at mitigating the effect of the current pandemic. First, this concerns lex COVID, which in addition to changes to insolvency rules and some other issues associated with the decision-making of corporate entities also contains other changes.

Lex COVID should allow participants in court and other listed proceedings to apply for a waiver of **deadlines missed** as a result of the current pandemic, or for the restoration of time limits in criminal proceedings (deadline retrocession).

Within lex COVID, an amendment to the **Enforcement Procedure Code** proposes to allow bailiffs to suspend proceedings if in the last three years these did not result in the recovery of debt. The entitled party (i.e. creditor) may prevent such a suspension by depositing an additional advance for expenses or by just expressing disagreement with the suspension of enforcement if claims such as maintenance and support allowances for minor children or compensation of damage to health are concerned.

In addition to lex COVID, the government also approved a bill on certain measures to mitigate the pandemic effects on the **lessees of non-residential premises** (for business purposes). The bill prohibits lessors to terminate the leases for such premises over a protective period (until 31 March 2022) solely on the grounds of the lessee's failure to pay rent in the decisive period (from 12 March to 30 June 2020). Despite its complex wording, the bill actually gives lessees the possibility to spread the payment of rent for the decisive period over the following two years.

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COVID-19 – Legal FAQs and their answers

Please consider the following answers our general comments on the current situation. If you are interested in the legal analysis of a concrete contractual relationship, the effect of the current measures on your business, or any other related legal advice, please contact us



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COMMERCIAL LAW

Can the pandemic and related governmental measures be considered a force majeure? If so, what point in time shall be considered the onset of the force majeure – the declaration of the state of emergency? Is a withdrawal from a contract (e.g. for accommodation) due to concerns about the coronavirus valid if made before the state of emergency was declared and the prohibition of accommodation services imposed?

Force majeure generally means an extraordinary (meaning exceptional) and unforeseeable situation beyond the contractual parties' control that has a fundamental effect on their ability to meet their contractual obligations or exercise their rights. In contracts, its precise definition is often modified or its application limited to particular situations, and thus this has to be inspected first.

The exact point in time of the force majeure occurrence may differ in concrete situations. Generally (unless its application is excluded or otherwise regulated by the contract), the time of the force majeure will most likely be the time of a declaration of a state of emergency or the imposition of specific measures that make it impossible to meet obligations or exercise rights under contracts (such as restrictions prohibiting travel to certain destinations or orders to close premises rendering them useless for board or accommodation).

If, however, the relevant contract was concluded only after the pandemic started (though not necessarily after a state of emergency was declared), any related measures might no longer be viewed as force majeure, as they were no longer entirely unforeseeable.

Withdrawal from an accommodation contract when such accommodation was still possible will be hence subject to general contractual and statutory rules and may thus involve cancellation fees.

How should a supplier proceed if a customer notifies them that they are no longer interested in the goods they ordered and does not respond to any attempts to deliver the goods?

It is advisable to carefully analyse the underlying contract whether it contains any special regulation applicable to the situation, including if and under what conditions the goods can be refused. If the customer's obligation under the contract (in this case, the obligation to accept the goods and pay the price) still exists, you may insist on them meeting this obligation, and enforce it. In such a situation, it is primarily up to your business partner to enter into negotiations with you and attempt to settle the matter – otherwise they are in breach of contract.

The situation where one of the parties stops communicating and collaborating in performing the contract is regulated by law: the customer who was to accept the goods under the contract is in default, which means that the supplier who was willing to deliver the goods under the contract is not in default, even if they are unable to

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perform within the deadlines specified by the contract. The customer also bears the risk of damage to the goods even though they were not handed over. The supplier may also deposit the object of the performance (the goods) with the court, while the costs of court custody are also borne by the customer who refused to accept the goods.

If a lessee is unable to use leased property because of the current measures, what impediment does this constitute? Is it a force majeure, a subsequent impossibility of performance, or a substantial change in circumstances? What is the recommended procedure?

Unless the application of the mentioned statutory provisions (force majeure, a subsequent impossibility of performance, or a substantial change) has been explicitly excluded in the relevant contract, all of these concepts may generally apply to situations occurring as a result of the current pandemic, and they may even be combined (only if this is not contrary to the logic of the matter, such as the combination of a subsequent impossibility of performance and a substantial change of circumstances under which performance is still possible, albeit more difficult).

Apart from the above, lease contracts may also stipulate the lessee's rights to demand rent discounts, to renegotiate the terms of business, or to terminate the lease early.
In any case, it is advisable to inform the lessor without delay that you are being prevented from using the leased premises as a result of the governmental measures.

Section 2212(3) of the Civil Code 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 in time". The above provision and the right to claim rent reduction thus apply to cases where the lessee's right of use is limited or prevented by a third party (by reasons beyond the lessor's control); at the same time, the lessee has to notify the lessor of this in a timely manner, while the following applies:

- The law does not prescribe any special form for the above notice, meaning that the lessee may do so in any manner (in writing, orally, by phone, etc.). Nonetheless, in view of possible future disputes, and to prove that the duty to notify has been met by the lessee, it is advisable to notify the lessor at least by email.
- If the lessee fails to notify the lessor in a timely manner, they lose the entitlement to the rent reduction, but only for the time until the notification is given.

As a result of state authorities' measures preventing the operation of certain real property (such as accommodation facilities, selected shops), lessees have indeed been disturbed in the use of the leased premises. On the other hand, the restriction was by no means caused by the lessors, who had no control over it whatsoever. It therefore remains questionable whether the above provision would apply to leases of real property whose use is prevented or limited by the measures declared in connection with the pandemic. In this respect, the specific lease contracts must be carefully analysed, while in many cases, a final and conclusive answer will only be given by the courts.

In any case, timely and open communication is crucial. If you manage to renegotiate the contractual conditions or agree on a rent reduction with the lessor due to current circumstances, the effect will be immediate, and you may avoid future disputes with uncertain outcomes.

Note also that on 1 April 2020, the government passed a bill allowing lessees to unilaterally postpone the due date of more than three months' rent for commercial premises over the next two years. The bill is to be voted on by the chamber of deputies this week.

Is it necessary to adjust contracts or our general terms of business due to the pandemic?

The question has two dimensions: on one hand, it may be asking about the amending of contracts already concluded, where parties may, e.g., agree or represent that the declared state of emergency has no effect on the performance already in progress; on the other hand, the question may concern contracts yet to be concluded.

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The suitability of any adjustments always must be viewed in the context of a specific contract and business relationship.

Generally, some provisions of laws regulating, e.g., force majeure, a subsequent impossibility of performance, or a substantial change in circumstances may be excluded or modified by a contract. It is therefore necessary to strictly differentiate between two situations:

1. We may consider changing the conditions of an existing contract; in such cases, the parties may (or may not), by an amendment to a contract, exclude the applicability of some legal concepts that would otherwise cover the situation (force majeure, a subsequent impossibility of performance, etc.), by agreeing or simply representing that the current circumstances do not constitute an impediment to the due and timely performance of the contract.
2. A different situation is the conclusion of a new contract during the state of emergency. Once a state of emergency has been declared (even some time before, when its declaration or the imposition of certain measures can be expected, rendering them no longer unforeseeable), it can no longer be viewed as force majeure, a subsequent impossibility of performance, or a substantial change in circumstances. The above will apply without any specific contractual provision to that effect, although the parties may, again, make a representation in the contract or adjust individual contractual conditions in view of any expected future development.

It is also necessary to keep in mind the boundaries set by laws for contractual arrangements in general. If any contractual stipulations result in a waiver of rights by the consumer, they constitute a prohibited clause and shall be disregarded. Similarly, any contractual provision derogating from the law shall not be to the detriment of a consumer or the weaker party, which may even be an entrepreneur. In some regulated sectors or in the public procurement area, further restrictions apply.

May I demand compensation from the state for damage incurred as a result of having to close my operations/premises? Has anything changed in this respect after the measures were declared by the Ministry of Health, effective 24 March 2020?

Generally, two regimes govern damage compensation by the state:

1. under Act No. 240/2000 Coll. (the Crisis Act), containing a special provision to this effect in Section 36, and
2. under Act No. 82/1998 Coll., on Liability for Damage Caused in the Exercise of Public Authority by a Decision or an Incorrect Official Procedure (the State Liability Act).

The state of emergency was declared by the government on 12 March 2020 for 30 days. Based on this, governmental regulations were issued imposing, among other measures, restrictions on the free movement of persons and the closing of some shops (an action for annulment of these measures has already been filed, as well as a constitutional complaint). On 23 March 2020 (effective 24 March 2020), the government cancelled the previously declared emergency measures, replacing them with extraordinary measures ordered by the Ministry of Health, with a substantially identical content.

The government might have made this change in an attempt to avoid damage compensation under the Crisis Act. However, as the state of emergency is currently still in place, the possibility to apply the Crisis Act also to the extraordinary measures of the Ministry of Health cannot be excluded. Legal opinions on this issue differ so far.

Nonetheless, it can be expected that the ministries will be unwilling to pay damages (such as loss of earnings) on a blanket basis to all who have in some manner been affected by the imposed measures (such as the ban of retail sale). If the state authority against whom the damage compensation is first claimed refuses to comply, it is still possible to claim damages in court. Final and conclusive decisions on the application of the Crisis Act and the granting of damage compensation (and its extent) will be up to the courts.

Quantifying the damages and supporting them, especially as regard losses of earnings, poses another pitfall. Even under the Crisis Act, only damage incurred in direct connection with the governmental measures and not the

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pandemic as such should be compensated. This means that common prior period earnings cannot be taken as a basis , while it will be necessary to consider in the calculation also the change in circumstances brought on by the pandemic itself (e.g. a decrease in sales that would have occurred even without the state's emergency measures). Steps undertaken by the entrepreneurs to prevent or reduce the damage will also have to be considered.

May a customer demand a refund of fees paid for suspended training courses, memberships in sport clubs, fitness centres, etc?

The provisions of law regulating a subsequent impossibility of performance cannot be applied here, as the performance will be possible later, once the restrictions are lifted. Therefore, suspending classes and resuming them after the measures end is a lawful solution, and a rather common one in the market.

Depending on the specific conditions under which the course attendance or membership was arranged, customers may have the right to terminate the contract or withdraw from it. This must always be assessed on a case-by-case basis.

I have booked a vacation that will probably not take place under the circumstances. What shall I do?

First, it must be clarified what is meant by the term 'vacation'. Please note that a package tour (typically, a vacation ordered with a travel agency) and accommodation (such as a stay in a hotel) are two different types of contracts, each with a specific regulation in the Civil Code; more precisely, a contract on accommodation is a special type of short-term lease.

Apart from this, it is necessary to also consider the time when the planned vacation is to take place. Situations where travel is to take place now (i.e. under the declared state of emergency) may be viewed differently from vacations planned for summer holidays (although it may be expected that cross-border travel will still be restricted then).

Generally, under the law, a customer may always withdraw from a contract before the commencement of a package tour, while they must bear the costs incurred as a result. These costs are usually covered by a lump-sum compensation (referred to as a cancellation fee), which must be reasonable, and the customer may demand its amount to be supported.

Therefore, if you decide to withdraw from a package tour contract well ahead, when it is not yet clear whether it will be possible for the tour to take place, the tour organiser may demand a reasonable cancellation fee.

Contrariwise, if a tour really cannot take place due to a restriction imposed, the customer may withdraw from the contract without paying any cancellation fee, on the grounds of "unavoidable and extraordinary circumstances occurring in the destination of the trip or stay or its immediate surroundings and significantly affecting the tour performance or the transport of persons to the destination of the trip or stay", to cite the law. On the same grounds, the trip may also be cancelled by the tour organiser, who must return all payments to the customer.

The mentioned unavoidable and extraordinary circumstances constitute a force majeure, which has been described under another question above. In this case as well, situations may occur when it is disputable to determine its exact timing or necessary intensity; this may involve situations closely preceding or following restrictive measures imposed by individual states, when it is disputable whether the tour could or could not have been effected.

The situation is slightly different if you have only booked a hotel room. A prior booking does not necessarily constitute an accommodation contract, but the conditions for its cancellation are basically the same. The customer may terminate the contract, while they must compensate the provider of the accommodation for costs incurred in connection with this; again, generally referred to as cancellation fees. Here as well, such fees must be adequate to the situation. Remember also that a contract on accommodation in a hotel abroad and any applicable cancellation fees are governed by the laws of the foreign country.

As in other situations, mutual agreement, e.g. on postponing the vacation, may be the best solution. As travel

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agencies are covered by obligatory insurance, you should not lose your money even if the agency should go bankrupt.

LABOUR LAW

As a result of the current quarantine measures, has it become necessary to make changes to employment contracts of employees who cannot perform their usual work, are working from home, or may only perform administrative activities?

If an employer cannot assign employees their usual work at their workplace because of the COVID-19 pandemic and related extraordinary measures imposed by public health protection authorities, it is first necessary to check how broadly their employment contracts define the type and place of work.

If the new activity (e.g. administrative tasks) and the new place of work (the employee's home) can be subsumed under the contracted type and place of work, no changes to the employment contract are necessary. Even then, however, we recommend checking whether the employee's home is suitable for the performance of work, and whether the employer's internal policies regulate the conditions of work from home. If not, the employer should issue such internal policies or individually agree on the conditions of work from home with the employee.

If the new activity and/or place of work cannot be subsumed under the contracted type and place of work, the employee does not have to perform the new activity or work from home; the situation will thus fall under the impediment to work on the part of an employer, where the employee is entitled to wage compensation in the amount stipulated by law. If the employee agrees to perform the work, the employment contract must be amended by mutual agreement.

We also recommend checking whether the employee is fit for such work in terms of their qualification and state of health.

Must impediments to work on the side of the employer, such as shorter working hours (kurzarbeit) or downtime be applied to a company as a whole, or is it possible to apply them just to specific employees or teams?

In our opinion, it is possible to apply the impediments to work on the side of the employer (such as kurzarbeit) to specific employees or teams; they do not have to be applied company-wide.

How shall we deal with the recommendation to keep a two-metre distance at the workplace if we cannot fully comply with this in our plant, due to the nature of our operation?

In Government Resolution No. 215 (of 15 March 2020), and in the subsequent extraordinary measures by the Ministry of Health (of 23 March 2020), this was only given as a recommendation. Furthermore, it targets the movement of persons in public, not at their workplace, where (mostly) only the employees or the employer's contractual partners are present. Of course, we recommend keeping the distance, but only if practicable under the circumstances.

Our answers are based on Czech laws (and cannot be applied for instance to contracts governed by other than Czech law). Furthermore, even in the Czech legal environment, the answers may not be universally valid, especially where special legal regulations apply (public procurement, regulated sectors, etc.)

Some of the questions have been edited.

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Approval of financial statements of joint-stock companies and limited liability companies during the pandemic

Under the current circumstances, when the right to assemble has been restricted due to the spread of COVID-19, it remains to be discussed how corporations should fulfil their corporate duties, especially in connection with holding general meetings. The current legislation offers some options; new ones will be introduced by lex COVID.



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According to current legislation, general meetings of joint-stock companies and limited liability companies must still discuss their ordinary financial statements within six months from the end of the prior accounting period. The Corporations Act contains legal concepts that may help corporations fulfil their duties even under the current circumstances while ensuring an effective and safe decision-making process.

Decision-making outside general meetings (*per rollam*) is carried out in writing between the concerned parties sending one another proposed resolutions and opinions, etc. The basic rules are regulated by law; more detailed conditions can then be stipulated by the acts whereby corporate entities are founded (such as memoranda/articles of association).

Limited liability companies may decide *per rollam* unless their memoranda of association exclude this possibility; joint-stock companies, on the other hand, may only do so if their articles of association explicitly permit it.

The Corporations Act also provides for the option to use technical tools (e.g. teleconferencing or communication via Skype), but with respect to limited liability and joint-stock companies, this is only possible if explicitly allowed by their memoranda/articles of association.

The government bill on certain measures to mitigate the effects of the SARS CoV-2 pandemic (lex COVID) brings certain hope to companies that would like to use the above legal concepts under the current circumstances but are limited in doing so. The bill proposes to allow bodies of corporate entities to decide *per rollam* even if their relevant founding acts do not explicitly say so. The right to proceed pursuant to this special measure would only apply in the duration of the imposed emergency measures.

Lex COVID might also introduce a change to the approval of ordinary financial statements, postponing the statutory deadline for their approval where the time limit for doing so would expire earlier than three months after the end of the extraordinary measure. The new deadline would be three months after the end of the extraordinary measure, but no later than on 31 December 2020.

Lex COVID would thus make the life of joint-stock and limited liability companies easier. However, it remains to be seen what the bill will look like after the legislative process.

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COVID-19 and transfer pricing

While liberation packages may mitigate the immediate effects of the COVID 19 pandemic on businesses' financial performance, sooner or later, enterprises that are part of multinational chains (MNEs) will have to deal with the crisis' consequences for transfer pricing.



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Many enterprises are now facing issues as regards ensuring necessary funding for their operations, covering additional expenses of staff layoffs, or allocating profits and losses incurred as a result of the coronavirus crisis.

Many MNEs operate a business model where companies performing certain activities within the limited functions assigned to them, such as limited risk distributors (LRDs), contract manufactures (CMs) or contract service providers, are gathered around a key entrepreneurial entity. These companies are generally expected to report stable profitability, such as EBIT margins for LRDs or mark-ups for CMs between e.g. three and seven percent.

In the Czech Republic, many companies operate precisely in this regime – as limited risk entities. Is it realistic to request from them the same profitability as under standard economic circumstances?

To answer the question about the "right" profitability of entities with limited functions and risks in the times of crisis, especially the following must be considered:

- **How would uncontrolled entities behave?** Numerous examples of uncontrolled relationships can be found in the market, for instance in the automotive sector, which allow reduced or zero margins during an economic downturn.
- **What is the contractual arrangement?** Many contracts contain a force majeure clause, limiting the parties' obligations in situations beyond their prediction or control. Will this clause apply to indemnity for losses incurred as a result of the COVID-19 pandemic?
- **Which negative impacts will be compensated?** It is necessary to identify the individual factors contributing to the occurrence of a loss or decrease in profit, so that only those actually connected with the crisis are considered.
- **Does the pre-crisis transfer pricing setup support the group's requirement to share the current loss?** The question must be viewed both from the perspective of the group's principal and of the limited entity; the existence of advance pricing agreements (APAs) with national fiscal authorities may further complicate the situation.

If a change to the transfer pricing model is made to the detriment of the limited entity, will the new model bring sufficient post-crisis profits to the company? Any contemplated changes to transfer pricing should be balanced. We can imagine that it should be possible to explain to the state authorities the need to respond to the emergency, e.g., by sharing the loss of the entire chain; however, this should be compensated by a corresponding increase in rewards once the situation is over. The OECD's Transfer Pricing Guidelines assume that low risk entities shall achieve stable margins under standard economic circumstances. A global economic crisis can hardly be subsumed under such a standard, but the practical application of this premise by individual states in the context of the coronavirus crisis is only to be formed in the months and years to come.

In the Czech Republic, we may draw on our experience from the aftermath of the 2007 financial crisis. At that time,

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the Czech authorities generally required limited entities to report profitability corresponding to their limited risks, while considering the specific circumstances of the transaction and entity. Some of the tax audits focusing on the period following the financial crisis are still pending; hence, there is currently no clear precedent to help entities find the right approach quickly.

Considering the above, it is necessary not to postpone the preparation of transfer pricing documentation, but to consistently and as soon as possible document the application or deviation from the chosen transfer pricing model during the crisis and immediately after, and to include economic grounds for the applied approaches.

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New calls in the fight against COVID-19

On 2 April 2020, the Ministry of Industry and Trade (MIT) announced new calls to participate in The Country for the Future and Czech Rise Up Programmes, focusing on support to fight COVID-19.



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Call to participate in the Czech Rise Up Programme, or 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. MIT 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 expand the production capacities for protective supplies and devices or to introduce the production of new protective supplies and devices.

- 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.

Call to participate in the 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.

Should you consider the above subsidy options interesting for your company, we will be happy to discuss with you the details of your project and any further criteria applicable to the individual calls.

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European Commission's steps to fight coronavirus repercussions

Below we summarise certain steps adopted by the European Commission to fight the spread of COVID-19, primarily focusing on providing economic (material) assistance and loosening some regulations.



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Loosening of state aid rules

On 19 March 2020, the European Commission adopted a temporary framework to enable member states to use the full flexibility foreseen under state aid rules to support the economy in the context of the COVID-19 outbreak. This framework is based on Article 107(3)(b) of the Treaty on the Functioning of the European Union and enables member states to ensure that sufficient liquidity remains available to businesses of all types and to preserve the continuity of economic activity, while limiting negative consequences to the level playing field in the European Single Market.

The temporary framework enables member states to:

- set up schemes to grant up to EUR 800,000 to a company to address its urgent liquidity needs
- provide state guarantees to ensure banks keep providing loans to customers
- grant loans with favourable interest rates to companies
- use banks' existing lending capacities as a channel for support to businesses – in particular to small and medium-sized companies (the framework makes clear that such aid is considered direct aid to the banks' customers, not to the banks themselves)
- introduce additional flexibility so that short-term export credit insurance can be provided where needed.

EUR 37 billion to fight the coronavirus

The European Parliament passed the EC's proposal to release EUR 37 billion to mitigate the pandemic's economic aftermath. These involve unused funds from structural funds that will be put into a new investment fund available for healthcare and other most-affected segments. The Czech Republic will receive almost EUR 1.2 billion from this package.

Temporary closure of EU borders

On 17 March 2020, the European Commission decided to close the outer border of the Schengen area for 30 days, and accepted, with certain limitations, the gradual closure of borders initiated by member states.

Set of rules to screen foreign investment

On 26 March 2020, the European Commission issued guidance for member states on how to screen direct foreign investments from non-EU countries, especially relating to medical research, biotechnology and infrastructure, as these are crucial assets for safety and public order. It is highly desirable that member states adopt restrictive measures towards foreign investors to prevent any take-overs of control over European companies in these

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sensitive areas.

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