



Tax & Legal

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Special Edition

Editorial

The EU member states have been working to help Ukraine, which is resisting the Russian invasion, and to support Ukrainian citizens seeking safety west of their home. The Czech government is also responding to the serious situation. Please read on for an overview of the most important changes.

Income tax view on 2022 donations to Ukraine

In connection with the armed conflict in Ukraine, the Ministry of Finance has prepared a bill on tax measures, indirectly amending the Income Tax Act and extending tax support for taxpayers' charitable activities.



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The bill was approved by the government on Wednesday 9 March 2022 but has yet to go through the legislative process. The proposed changes should apply to both natural and legal persons who made donations in 2022, even before the law takes effect.

- It will now be possible to deduct from the tax base the value of **donations made directly to the State of Ukraine** (e.g., through the Ukrainian Embassy) or to its territorial self-government units, as well as donations made to legal and natural persons who have their registered offices or places of residence in Ukraine if the donation recipient meets the existing conditions under which the donation value can be deducted (i.e., in particular humanitarian, charitable and similar purposes).
- Beyond the current wording of the law, it will also be possible to deduct **donations made to support Ukraine's defence efforts** (e.g., provision of military equipment).
- The possibility to deduct the value of donations from the tax base shall be extended to **natural persons who are tax residents of Ukraine** and whose taxable income from the Czech Republic amounts to at least 90% of their total taxable income. Under the legislation currently in effect, only Czech, EU or EEA tax residents can deduct the value of donations.
- The amendment also **extends the applicability of the increased 30% limits on the maximum value of donations** that taxpayers may deduct from the tax base: individuals will continue to apply these limits also in the 2022 taxable period, legal entities in the taxable periods ended between 1 March 2022 and 28 February 2023. The increased limits shall be used for all donations.
- **For gratuitous non-monetary supplies** provided in 2022 to help Ukraine, natural persons who claim actual expenses and legal entities may decide whether to claim the non-monetary donation either as an item

deductible from the tax base (allowance), or as a tax-deductible expense. In the latter case, it is not necessary to meet the condition of the eligible recipient, but it should be sufficient to meet the purpose of the gratuitous supply. If the value of the gratuitous supply is not fully claimed in the taxable period in which the supply was provided, the remaining value shall be claimed using the tax loss regime without limitation as regards the amount of the tax base. If the taxpayer chooses to claim the non-monetary donation as a tax-deductible expense, they will no longer be able to claim it as a donation deductible from the tax base.

- Currently, **donation recipients** may exempt from income tax contributions for humanitarian or charitable purposes or from public fundraisers. The new regulation will also allow tax exemption for donations received by the taxpayer in support of the defence of Ukraine. By exempting such income from income tax, it will not be necessary for taxpayers to pay withholding tax on such income in the Czech Republic when making a donation.
- The amendment allows for an **all-around payroll tax exemption** of an employee's income in the form of accommodation provided by the employer in 2022 to an employee and their family members residing in the territory of Ukraine who left the country in connection with an armed conflict.
- Where an employee receives **a monetary donation from their employer** for the purpose of providing help in a difficult life situation connected with the armed conflict, the donation may also be exempt from income tax as a gratuitous supply received for humanitarian or charitable reasons.

The act will only come into force during 2022, which means that employers may have already withheld advances for income tax on the above-mentioned supplies for first months of 2022. They will thus be able to correct their monthly payroll records by the deadline for the annual settlement of personal income tax for the 2022 taxable period and refund any difference to the employee.

Temporary protection and free access to labour market for Ukrainian citizens approved by Czech deputies

Responding to the Ukrainian emigration wave, on 9 March 2022 the Czech Government and subsequently also the chamber of deputies approved several bills. In this article, we will mainly focus on the bills that aim to implement EU Directive 2001/55/EC of 20 July 2001 responding to the conflict in the former Yugoslavia and presenting basic starting points and solutions for similar situations, specifically concerning the residence of Ukrainian citizens and their access to the labour market.



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Temporary protection

Last week, some previously established rules on the entry of Ukrainian citizens into the territory of EU member states were relaxed, allowing Ukrainians to benefit from visa-free travel between EU member states and Ukraine without the need for a biometric passport or a special long-term tolerance visa to stay in the Czech Republic.

The government's Bill on Certain Measures Connected with the Armed Conflict in Ukraine Caused by the Invasion of Russian Troops establishes the conditions for granting temporary protection to foreigners, i.e., a concept designed to smoothly and automatically replace the currently used special long-term visas and special rules for the provision of health services.

In addition to Ukrainian citizens, temporary protection should also apply to persons who were permanent residents of Ukraine before the outbreak of the conflict and whose departure to their country of origin is now impossible. Persons who had only temporary residence permits in Ukraine (e.g., students) will therefore not be eligible for temporary protection in the Czech Republic. However, these persons can still make use of standard concepts like the international protection concept. Also, foreigners who have applied for or who have been granted temporary protection in another EU member state cannot apply for temporary protection in the Czech Republic.

- For the purposes of the Act on the Residence of Foreigners, a person granted temporary protection is considered to hold a visa for residence longer than 90 days for the purpose of their stay being tolerated in the territory of the Czech Republic.
- The foreigner shall submit a valid travel document and a photograph, upon request, along with the application for temporary protection.
- The granting of temporary protection will usually be indicated by a label put in the foreigner's travel document. If this is not possible, a mere record can be made temporarily, even outside the travel document.
- Foreigners granted temporary protection will be covered by public health insurance for up to 30 days retroactively.
- Foreigners who were granted a tolerance visa prior to the act's effective date will be treated as foreigners

granted temporary protection from the act's effective date.

Free access to the labour market

According to the Bill on Employment and Social Security Measures Connected with the Armed Conflict in Ukraine Caused by the Invasion of Russian Troops, foreigners granted temporary protection should be allowed free access to the labour market. For the purposes of the Employment Act, these foreigners will be considered foreigners with permanent residence permits under the Act on the Residence of Foreigners in the CR.

In this regard, please note that until this law comes into force, foreigners who have been granted a tolerance visa can only start working after being granted a work permit. Employers are still obliged to report vacancies but no longer need to pass a labour market test. At present, some labour offices issue work permits within two days.

Similarly, employers must not neglect their **registration and information obligation** towards labour offices with respect to these employees. The Ministry of Labour and Social Affairs has announced that the labour offices will monitor whether the respective obligations are being complied with.

The law also entitles foreigners to **a humanitarian allowance of CZK 5,000**, which can be paid repeatedly to those who prove their inability to provide for their living needs.

Waiver of administrative fees

We would also like to draw your attention to a bill amending Act No. 586/1992 Coll., as amended, in connection with the support of Ukraine, which authorises the administrative authorities to waive administrative fees levied on natural persons entering or staying in the territory of the Czech Republic because of the armed conflict in Ukraine caused by the invasion of Russian troops.

If the administrative authority has not collected the administrative fee by the effective date of the act, this is to be regarded as a waiver of the administrative fee. If the administrative authority has already collected the fee, it shall be empowered to refund it.

The above means that those granted temporary protection or tolerance visas would not have to pay administrative fees, for example in relation to residence or work permits.

Compulsory schooling

Under the Education Act from 2004, compulsory schooling extending to at least nine school years is mandatory in the Czech Republic. This obligation applies both to Czech citizens and to foreigners staying in the CR based on a residence permit or a visa for more than 90 days. These also include the above special visa; hence, obtaining such a visa imposes the obligation on the holder to start school from the visa's starting date. The Ministry of Education, Youth and Sports has confirmed that this obligation will not be enforced immediately, as it is important to ensure that incoming children are thoroughly adapted and ready to integrate into their new communities. An equally important obstacle to the start of compulsory schooling is the limited capacity of school facilities. The Ministry of Education addresses both aspects in the law.

All the above legislation will take effect on the date of promulgation in the Collection of Laws and should be in force **until 31 March 2023**. Deputies discussed it in a state of legislative emergency last Friday. The senate should discuss it this Wednesday. We will keep you updated on further developments in future issues of Tax and Legal Update.

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