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News in brief, 22. 6. 2020

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Certain aspects of Antivirus' Regime C

The chamber of deputies passed a bill on the waiver of social security premiums for the second time, after the senate had returned the bill back for discussion among deputies. The amendment extends the Antivirus programme by long-awaited Regime C, partially waiving social security payments made by employers. Below we draw attention to certain requirements that will have to be met by employers to apply for support under Regime C.



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Support under Regime C involves the waiver of part of social security premiums and state unemployment policy contributions that are mandatorily paid by employers (i.e. 24.8% of the aggregate income of their employees) for June to August 2020, which in practice means that the amount of premiums paid on behalf of employees does not change. Under Regime C, employers may reduce their aggregate assessment base; however, there are two exceptions: it is not possible to deduct an assessment base higher than CZK 52,253 per employee, i.e. more than 1.5multiple of the average wage set for social security purposes for 2020, or to deduct an assessment base for an employee to whom the employer has given notice of termination of employment for organisational reasons under 52(a) to (c) of the Labour Code. Moreover, the entitlement for the waiver of part of social security premiums under other conditions specified below does not apply to employers from the public sector, certain providers of health services and employers who were not tax residents of the CR, EU or EEA on 1 June 2020.

Other conditions that are to be met by employers to claim the waiver under Regime C are as follows:

- on the last day of the calendar month, the employer employs a maximum of 50 employees that are under employment relationship and participate in the sickness insurance scheme. The maximum number of employees also includes employees that are under employment relationship but do not work, for example, due to maternity/parental leave, unpaid leave or other impediments to work as well as employees who have been given notice of termination of employment. The number of employees under employment relationship is determined at the end of each calendar month to which Regime C applies (i.e. June to August) and may not decrease by more than 10% compared with the number of employees at 31 March and, simultaneously, the aggregate of assessment bases of employees under employment relationship for an individual month to which Regime C applies may not decrease by more than 10% compared with the aggregate of assessment bases of such employees for March 2020;
- the employer must pay premiums on behalf of employees (equalling 6.5% of assessment bases) for the relevant calendar months in a due and timely manner (by the 20th day of the following month) and in the amount specified in a statement for a relevant month;
- in the calendar month to which the waiver under Regime C applies, the employer may not draw any other partial wage compensation under Regime A and Regime B of the Antivirus programme. But even those employers who have been granted the waiver under the above conditions may claim the entitlement to reduce penalties relating social security premiums in accordance with relevant law.

In practice, employers themselves will assess whether they meet the criteria for claiming the waiver of social security premiums and will calculate the premium amount they will have to pay. Subsequently, the waiver will be claimed via the 'Statement of premiums' form sent to the appropriate District Social Security Administration office. Similarly as in the case of other COVID-related aid, employers communicate with the office solely in an

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electronic form.

The waiver cannot be claimed retrospectively: employers may not additionally claim the waiver of premiums where they have already filed their statements of premiums for June to August and such a waiver has not been claimed within the filed statement, and where they learn later on that they may have deducted a higher assessment base for a particular employee. In contrast, if after filing the statement the employer learns that the assessment base of an employee by which the employer reduced the aggregate of assessment bases was higher than claimed in such a month, a new statement of premiums for a particular month must be filed.

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Taxes

Determining super-gross wage to claim support under Antivirus Regime C

New Regime C of the Antivirus programme, waiving part of social security premiums and state unemployment policy contributions mandatorily paid by employers (i.e. 24.8% of the aggregate income of their employees) for June to August 2020, gives rise to the question of an impact of this new regulation on income tax on employment.



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At present, the tax base for the calculation of prepayments of income tax on employment comprises gross income accounted by the employer for an employee for a particular calendar month plus related social security and health insurance premiums paid by the employer (i.e. super-gross wage). Since Antivirus C allows for the waiver of part of employer-paid social security premiums and state unemployment policy contributions (programme criteria are discussed in the article here), it is necessary to clarify how the super-gross wages of employees will be determined for particular calendar months.

After the amendment's approval by the senate, the General Financial Directorate (GFD) issued information drawing attention of employers (taxpayers) to the fact that the amendment to the Act on Social Security Premiums and State Unemployment Policy Contributions will not have an effect on determining the tax base for the calculation of prepayments of income tax on employment (the super-gross wage). Employers (taxpayers) to which the programme applies will continue to increase the income of employees for the tax base determination purposes, usually by 33.8%. To determine the super-gross wage amount, taxpayers will thus have to additionally calculate social security premiums and state unemployment policy contributions despite the fact that the actual premiums for particular months might amount to zero.

According to GFD, the Income Tax Act deals with situations when mandatory insurance payments are reduced by other amounts, i.e. as a result of an actual decrease of the employer's assessment base and not as a result of a formal reduction of the payment itself.

The waiver of premiums should not also affect the method of completing a certificate of the taxable incomes from dependent activity, the withheld tax prepayments and tax credits for 2020 in which in line 6 the employer should state the aggregate of mandatory insurance payments deriving from incomes stated in line 2 (i.e. the aggregate of additionally calculated insurance premiums for the purpose of determining the super-gross wage). The same approach will be applied when completing a certificate of the taxable incomes from dependent activity and the tax withheld using a special tax rate.

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In brief

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Tax and legal news in a few sentences.



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- The chamber of deputies re-passed a bill on the waiver of employer-paid social security premiums, i.e. Regime C of the Antivirus programme. Deputies voted on the bill for the second time, since the senate referred the bill back to the chamber with amending proposals. The senate proposed, among other things, to increase the maximum number of employees under employment relationship from 50 to 150 or reduce the aggregate of assessment bases of employees under employment relationship for a calendar month from 90% to 80% compared with March 2020. The law has already been signed by the president and will enter into effect on the date it is promulgated in the Collection of Laws.
- The government bill abolishing the immovable property acquisition tax passed the second reading in the chamber of deputies.
- The governmental anti-crisis tax package, referred back to deputies by the senate and including, among other things, the tax loss carry back, the reduction of certain VAT rates or the option to postpone the deadline for fulfilling reporting duties regarding cross-border arrangements (DAC 6) via a governmental decree, was approved by the chamber of deputies and signed by the president. It will become effective on the date following the date the package is published in the Collection of Laws.
- The GFD issued up-to-date information on a new reporting duty regarding selected cross-border arrangements (DAC 6). The GFD expects that the law implementing this reporting duty into Czech legislation (currently awaiting its discussion in the senate) will not become effective earlier than during the course of September. According to the GFD, if COVID-19 DAC currently in preparation is approved and transposed via the above governmental decree, the reporting duty should be met in respect of the following relations:
    - cross-border arrangements whose first step was taken in the period from 25 June 2018 to 30 June 2020 (incl.), no later than on 28 February 2021;
    - cross-border arrangements to which access was provided or which were ready to be implemented or whose first step was taken in the period from 1 July 2020 to 31 December 2020 (incl.), no later than on 30 January 2021;
    - cross-border arrangements to which access was provided or which were ready to be implemented or whose first step was taken in the period from 1 January 2021, no later than within 30 days of such a decisive fact.

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