



CE Tax&Legal Highlights

Czech Republic

COVID-19: Stabilisation package II, an overview of the existing measures for taxpayers and COVID loan programme

The Government has published additional measures for taxpayers and businesses to mitigate the impacts of the coronavirus pandemic (the so called "stabilisation and liberalisation package II"). A part of the drafts is subject to approval by the Parliament that should consider the proposals in the state of legislative emergency. No key tax measures have been approved yet for large and medium-sized companies. Most amendments relate to the postponement of tax payment to 2021 or remission of various sanctions but in effect, no tax liability is to be remitted. Partial salary payment ("kurzarbeit") and provision of loans may be considered an effective aid for businesses. Individual amendments approved are outlined below.

Government proposal of 23 March 2020 contains the following reliefs. Amendments will be considered in the Parliament under the regime of legislative emergency on 24 March 2020.

Remission of June income tax prepayments

- The Ministry of Finance (MF) will issue a blanket decision on remission of personal and corporate income tax prepayments due on 15 June 2020. Please note, that the decision does not relate to prepayments due on 15 March 2020; however, there is an option to cancel these prepayments with retrospective effect.

Remission of other sanctions and fees

- In addition, the MF will apply a blanket remission of sanctions for late filing of tax returns on immovable property acquisition (also with retrospective effect) until 31 July 2020 and remission of other sanctions, such as those within the competence of the Customs Administration. The MF also promises to remit certain other administrative fees.

Possibility to apply a 2020 loss retrospectively

- The MF should prepare a draft on a retrospective effect of a tax loss, i.e. that a tax loss for 2020 may be utilised against a tax liability for 2018 and 2019 (probably through an additional tax return). This is a forward-looking measure that may have an impact on taxpayers' cash flows no sooner than in 2021.

Proposal to postpone electronic sales records

- The Government has approved the postponement of the obligation resulting from electronic sales records to three months after the end of the emergency situation.

Possible exemption from customs duty on the import of selected medical supplies

- The MF will ask the European Commission for an exception in order to exempt imports of medical supplies (exclusively intended for the COVID fight and measures) from the customs duty.

The Antivirus Programme (the so called kurzarbeit) – the existing regimes A and B were completed with regimes C, D and E

- **Regime A** – Quarantine ordered to employees. Wage or salary compensations will be paid to employees at 60% of their average assessment base. Employers will receive contributions in the full amount of the paid wage compensation.
- **Regime B** – Impossibility to assign work to employees due to the Government's extraordinary crisis measures. Employer are required to close their operations based on the Government resolution on the adoption of crisis measures relating to the COVID-19 infection. Full wage or salary compensations are paid to employees. Employers will receive contributions at 80% of the wage paid.

- **Regime C** – Impossibility to assign work to employees due to a significant portion of employees being quarantined or taking care of a child. The significant portion means namely 30% of employees of firms, establishments or other organisational units depending on an employer's operational situation. Full wage or salary compensations are paid to employees. Employers will receive contributions at 80% of the wage compensation paid.
- **Regime D** – Limited availability of inputs (raw materials, products, services) needed for an employer's activities as a result of quarantine measures (or general production failures) on the part of a supplier, including abroad. This includes, for example, agreements proving the origin of inputs, bans of events or taking other measures having a demonstrable impact on supplies to employers. Wage or salary compensations will be paid to employees at 80%. Employers will receive contributions at 50% of the wage compensation paid.
- **Regime E** – Reduction of demand for services, products and other articles of an employer as a result of quarantine measures taken in the location of the employer's supply (Czech Republic and abroad). Wage or salary compensation will be paid to employees at least at 60%. Employers will receive contributions at 50% of the wage compensation paid.

Proposal for remission of pension and health insurance payments for sole traders

- Up to the minimum payment amount and for six months (March to August). This relates to both primary and secondary activities. In total, this will account for about CZK 30,000 per self-employed person.

Proposed extension of a care-giver's allowance

- To be paid to employees also after the statutory nine days, over the entire period when schools and other childcare facilities are closed. Parents with children of up to 13 years will be entitled to the allowance over the period of extraordinary measures. The adjustment will be considered in the Parliament under the legislative emergency regime on 24 March 2020.

Financial contribution to self-employed persons

- To be paid to self-employed persons who stayed at home at present due to childcare. The State will pay CZK 424 per day, i.e. nearly CZK 14,000 per month, to all sole traders taking care of children between 6 and 13 years if the caregiver's allowance is not drawn by any other family member.

Support to businesses through advantage loans and subsidies

- Following the great demand for interest-free and free operating loans provided by ČMZRB (the COVID loan), the application collection of which has already been closed, the Government approved additional support to small and mid-sized business and sole traders in the form of guarantees for loans from commercial banks and contributions to interest payments. CZK 5 billion is allocated to the guarantee programme (COVID II), which anticipates CZK 30-35 billion of loans granted to businesses by commercial banks. A guaranteed loan could be used for the payment of operating expenses, such as wages, rental, energy, supplier-customer invoices, material, inventory, etc. Collection of applications is expected to be announced within two weeks (i.e. early April 2020). The minimum loan amount is expected to be CZK 10,000; a guarantee for a loan at 80% of the commercial loan over a three-year period is considered for loans from CZK 500,000 to CZK 15 million. Detailed terms and conditions of the guarantees will be published on ČMZRB's sites.
- The Government made a new announcement on 23 March 2020 that it was going to prepare a programme for further guarantees to be provided by EGAP and intended also for "larger" businesses. This anticipates additional CZK 330 billion of loans granted using the guarantees. Details will be published in the following days.
- The Government has already announced that it may allocate a direct support of up to CZK 100 billion and an additional volume of guarantees for loans in the amount allowing for granting loans of up to CZK 900 billion.
- At the same time, the Government has approved a CZK 200 million subsidy for investment projects intended for the production of medical supplies for the fight with the coronavirus and an additional CZK 300 million for projects focusing on the development of medical tools, technologies and equipment relating to the coronavirus.
- Last but not least, ministries and their agencies opened a number of subsidy programmes (both national and from the EU funds) before the coronavirus outbreak, which are focused on projects in research, development, IT, energy savings, marketing, waste management, etc. The subsidies are intended for both operating and investment costs in the amount of 25-70% depending on the programme type.

Please note **that within [package I](#), the Government has already approved the following:**

- Blanket remission of fines for late filing of the personal and corporate income tax returns and default interest until 1 July 2020. Please note that the deadline as such was not postponed as it is sometimes interpreted, which may have an impact on various other areas.
- Remission of fines for delayed tax statement in all cases when the taxpayer individually requests remission of default interest or tax deferment and demonstrates reasons related in any way to the coronavirus, including remission of the sanctions in line with the Decree of the General Financial Directorate D-44.

- Blanket remission of fines for delayed filing of the local sales/purchases report of CZK 1,000 arising between 1 March and 31 July 2020 and individual remission of fines for failure to file the local sales/purchases report for periods from 1 March to 31 July if a connection to the coronavirus is demonstrated.
- Blanket remission of administrative fees (for the request for remission or deferment)
- Tolerance in the imposition of fines regarding the introduction of the third and fourth wave of electronic sales records from 1 May 2020

We also remind you of additional options that may contribute to an effective solution of current problems (as currently offered by the Tax Code):

- Decrease in tax liability prepayments, including complete cancellation (including with retrospective effect)
- Extension of the deadline for filing the tax return, thereby extending the tax due date (by as much as three months, or ten months from the end of the taxation period if the subject of the tax includes income taxed abroad)
- Tax deferment request, or deferment of due date or set-up of a payment schedule (with a positive impact on reduction of interest from 14% plus repo to 7% plus repo, which may additionally be remitted)
- The provisions regarding social security and health insurance also include certain options
- Possibilities of remission based on the current guidelines, whereby extraordinary reasons may usually lead to reduction of potential sanctions (including remission beyond the scope of the guidelines)

Tax authorities should proceed with maximum helpfulness and tolerance in situations when the decision depends on an administrative consideration.

Please note that for a successful remission, **a number of conditions specified in remission terms must often be met** for a successful remission (e.g. lack of arrears, good tax discipline in the past).

For the sake of completeness, we add that it is possible to ask for compensation of damage arising from the measures adopted. The request has to be filed within six months of the origination of the damage. In this respect, the damage and causes have to be demonstrated and it remains to be seen how the state or courts will approach such requests.

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CJEU: No Requirement to Offset Prior Tax Losses After Transfer of Tax Residence

The Court of Justice of the European Union (CJEU) issued its decision on 27 February 2020 in the AURES case (C-405/18) referred by the Czech Supreme Administrative Court in 2018, concluding that tax losses incurred in another EU member state should not be taken into account by the host state after a company transferred its place of management to that state.

Background

The taxpayer in the case was a Dutch tax resident company that incurred a loss of EUR 2.7 million in the Netherlands in tax year 2007. In 2008, it set up a branch (permanent establishment (PE)) in the Czech Republic. In 2009, the taxpayer transferred its place of effective management to the address of the Czech branch, and subsequently also transferred its tax residence to the Czech Republic. The taxpayer retained both its registered seat and entry in the commercial registry in the Netherlands.

In 2012, the taxpayer put in an application to the Czech tax authorities to deduct its 2007 Dutch tax losses from its Czech corporation tax base. The Czech tax authorities denied the deduction. Under Czech domestic law, only losses incurred in the Czech Republic may be carried forward and offset in a future tax year; the law generally does not allow the import of losses from another EU member state.

Following domestic court proceedings, the Czech Supreme Administrative Court asked the CJEU for a preliminary ruling on whether:

1. The freedom of establishment principle in article 49 of the Treaty on the Functioning of the European Union (TFEU) covers the transfer of a company's place of management from one member state to another; and
2. If so, whether a company can rely on that provision to claim a tax loss incurred in its member state of origin.

Decision of the CJEU

On the first question, the CJEU ruled that a transfer of a company's place of management to another EU member state, without that transfer affecting the company's status as a company incorporated under Dutch law, falls within the scope of the freedom of establishment principle.

As to the second question, the CJEU noted that the possibility to deduct a loss from taxable profits in subsequent tax years constitutes a tax advantage. Therefore, legislation of a member state (Czech Republic) that denies a company that transferred its place of management the right to use losses incurred while it was a resident in another EU member state in a previous year leads to different treatment of that company and a company that has always been a resident in the Czech Republic, and is able to deduct losses incurred in a previous year. Such rules may deter companies from transferring their place of effective management to another EU member state and, therefore, may be in violation of the freedom of establishment unless they relate to cases that are not objectively comparable or the rules can be justified by an overriding reason in the public interest. The CJEU decided that the freedom of establishment was not breached in the case at hand because the situation of companies that incurred losses in another EU member state is not comparable to the situation of companies without any activity in another member state.

The CJEU's opinion is that since the host member state (the Czech Republic in this case) does not have tax jurisdiction over the tax year in which the losses outside that member state arose, the position of a company that transferred its place of effective management to the host state is not comparable to that of a company whose profits are subject to the tax jurisdiction of the host member state in the tax year in which the losses arose. In addition, the Czech rules could be justified by the objective to prevent the double deduction of losses.

The court concluded that the freedom of establishment does not require a host member state to take into account tax losses incurred by a company before the company transfers its tax residence to that state.

The CJEU confirmed that, in general, the TFEU offers no guarantee to companies that transferring their place of management from one EU member state to another EU member state will be tax neutral.

The complete ruling in the [AURES case](#) (C-405/18) is available on the CJEU's website.

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Amendments to Digital Tax Act: 7% Tax Rate Possibly to Decrease

The legislative process of passing the Digital Tax Act has not yet come to an end. At present, the act is being considered by the parliamentary Committee on the Budget that is preparing its motions to amend. What are the developments of the digital tax? What changes have been made to the bill in question? What changes may be expected in the coming months?

Following the comment procedure, a change was made in the conditions for companies to become a person liable to digital tax. The required level of consolidated revenues of a company remained the same (EUR 750 million); nevertheless, the amount for providing taxable services in the Czech Republic increased from CZK 50 million to CZK 100 million. Furthermore, an additional condition has been introduced: the tax will not apply to companies whose income from digital services accounts for less than 10% of their total income. The Ministry of Finance thereby seeks to eliminate companies for which income from digital services is not the substance of their business.

Furthermore, new limits have been added with respect to individual taxable digital services.

A company will be subject to digital tax if:

- The income received from a targeted advertising campaign is at least CZK 5 million;
- It provides digital mediation services and the number of users in the Czech Republic exceeds 200,000; and
- It sells user data and the income generated in the Czech Republic is at least CZK 5 million for a period.

What may be expected in the future?

After the first reading at the Chamber of Deputies, the bill has been referred to the Committee on the Budget for consideration. Motions to amend are being prepared and further consideration will be possible from 23 March 2020. Motions to amend most often involve decreasing the tax rate from 7% to 5%, or even 3%, as well as postponing the effective date at least to 1 January 2021. The amount of the tax rate seems to be the most intensely debated issue at present. The 7% tax rate proposed in the Czech Republic is substantially higher than that of other European countries, such as the UK and France where the digital tax amounts to 2% and 3%, respectively. Although the digital tax is considerably lower in France, it drew a highly negative response from the USA, followed by customs duties levied on French production. This restrictive measure by the USA may certainly be imposed on the Czech Republic as well; its potential consequences have been analysed in detail in a study by David Marek, Deloitte Chief Economist. We will keep you informed about further developments.

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