



# Daňovky

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news**

**Legal  
Taxes  
In brief**

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# Subsidies for rental fee

On 9 December 2020 entered into force the Act no. 349/2020 Coll. amending and supplementing Act no. 71/2013 Coll. on Granting Subsidies by the Slovak Ministry of Economy as amended „Amendment“).



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The aim of the Amendment is to mitigate the persistent negative consequences of restrictions related to adopted measures during the so-called second wave of the COVID-19 pandemic on the business entities in the SR.

## Changes

According to the Amendment, it is possible to provide a subsidy for rental fee originating from a rental agreement, on the basis of which the right to use the rented premises arose at the latest from **1 August 2020**.

The changes in the rental agreements made after **31 August 2020** will be disregarded. Also, during the payment of instalments the landlord or his legal successor cannot increase the rental fee if this increase was not agreed before **1 August 2020**.

The legal regulations in force until 30 November 2020 will apply on the landlord-tenant relationships regarding unpaid rent fee for the period of difficult use for which the subsidy was granted until 30 November 2020, as well as the landlord-tenant relationships concerning unpaid rent for the period of difficult use, if the landlord and the tenant did not agree on granting a rent discount until 30 November 2020.

Remaining regulation relating to the rental fee subsidies including the application procedure follows the regulation applicable during the so-called first wave of the pandemic (see our previous article entitled: [The Parliament approved subsidies for rent](#)).

# OECD guidance on the transfer pricing implications of the COVID-19 pandemic

OECD Guidance focuses on four priority issues where the additional practical challenges posed by COVID-19 are considered most significant and provides useful discussion of the various factors that should be considered in making arm's length pricing determinations under conditions impacted by COVID-19.



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The consequences of the coronavirus (COVID-19) pandemic concern most companies within MNE groups operating in Slovakia. The Organisation for Economic Co-operation and Development ("OECD") released guidance on the application of the arm's length principle in the context of the COVID-19 titled [Guidance on the transfer pricing implications of the COVID-19 pandemic](#) ("the Guidance") which offers practical guidance for companies affected by the COVID-19 in Slovakia as well.

The unique economic conditions arising from COVID-19 and government responses to it have resulted in challenges for the application of the arm's length principle. In order to enhance tax certainty in the face of such challenges, the Guidance attempts to clarify and illustrate the practical application of the arm's length principle in the context of COVID-19.

The Guidance emphasizes that the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017 ("OECD TP Guidelines") should continue to be relied upon when performing a transfer pricing analysis, including under the possibly unique circumstances introduced by the pandemic. Accordingly, the Guidance focuses on how the arm's length principle and the OECD TP Guidelines apply to issues that may arise or be exacerbated in the context of COVID-19, rather than on developing specialized guidance beyond what is currently addressed in the OECD TP Guidelines. The Guidance represents the consensus view of the 137 members of the Inclusive Framework.

The Guidance addresses many of the most challenging issues raised by COVID-19 for transfer pricing analyses. A common theme of the Guidance is that an appropriate arm's length response to any issue will depend upon the facts and circumstances of the transaction under consideration. Unsurprisingly, given the range of facts and circumstances encountered by taxpayers and the need for consensus from 137 countries, the Guidance provides general principles for evaluating the arm's length response without providing specific solutions. Nevertheless, the Guidance is seen by tax professionals as being helpful in that it provides useful discussion of the various factors that should be considered in making arm's length pricing determinations under conditions impacted by COVID-19. Additionally, the Guidance's encouragement of pragmatism and flexibility provides a welcome practicality to addressing some challenging transfer pricing issues. It remains to be seen how different tax authorities (including those in Slovakia) incorporate the suggestions in the Guidance in their dealings with taxpayers.

The Guidance focuses on four priority issues where the additional practical challenges posed by COVID-19 are considered most significant.

## 1. Comparability analysis

What sources of contemporaneous information may be used to support the performance of a comparability analysis applicable for 2020?

- Can budgeted financial information be used to support the setting of arm's length prices?

- Under what circumstances are timing issues most pronounced?
- What practical approaches may be available to address information deficiencies?
- Can data from other crises be used to support price setting?
- How might the period of data used to evaluate arm's length pricing be established to support a comparability analysis?
- Would price adjustment mechanisms be appropriate?
- What actions may be taken to evaluate the set of comparable companies or transactions used?
- Can loss-making comparables be used?

## **2. Losses and allocation of COVID-19-specific costs**

- Can entities operating under limited-risk arrangements incur losses?
- Under what circumstances may arrangements be modified to address the consequences of COVID-19?
- How should operational or exceptional costs arising from COVID-19 be allocated between related parties?
- How should exceptional costs arising from COVID-19 be taken into account in a comparability analysis?
- How may force majeure affect the allocation of losses derived from the COVID-19 pandemic?

## **3. Government assistance programs**

- Is the receipt of government assistance an economically relevant characteristic?
- Is guidance on other local market features relevant when analyzing the transfer pricing implications of government assistance?
- Does the receipt of government assistance affect the price of controlled transactions?
- Does the receipt of government assistance modify the allocation of risk in a controlled transaction?
- Does the receipt of government assistance affect the comparability analysis?

## **4. Advance pricing agreements (APAs)**

- What impact does COVID-19 have on APAs under negotiation?
- What impact does COVID-19 have on existing APAs?
- Are taxpayers and tax administrations still bound by existing APAs in light of the changes in economic conditions?
- Does the change in economic conditions constitute a breach of a critical assumption?
- How should tax administrations respond to the failure to meet critical assumptions?
- When should taxpayers notify tax administrations of the failure to meet critical assumptions?
- How should taxpayers document the failure to meet critical assumptions?
- How should tax administrations respond to non-compliance with an existing APA?

The application of the Guidance and the practical implications of the COVID-19 pandemic on the transfer pricing of individual companies need to be considered on a case-by-case basis, and we therefore recommend analyzing the economic relationships and controlled transactions individually.

**If you are interested in further information, please do not hesitate to contact us.**

# Temporary Protection of Entrepreneurs in Financial Difficulties

Who can apply for temporary protection, for how long this protection can be granted, what are the legal effects and duties for the applicant and what does the application process look like? You will find the answers to all these questions below.



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The ongoing pandemic situation has caused considerable financial difficulties for many entrepreneurs, and the legislator seeks to provide protection through the institute of temporary protection provided for by the new Act no. 421/2020 Coll. (SR) on Temporary Protection of Entrepreneurs in Financial Difficulties („Act no. 421/2020 Coll.“). The Act no. 421/2020 Coll. entered into force on 1 January 2021 and follows up on the time-limited legal regulation of temporary protection of entrepreneurs adopted during the first wave of the pandemic in Act no. 62/2020 Coll. on Certain Emergency Measures in Connection to the Spread of the Dangerous Contagious Human Disease COVID-19 and in the Judiciary amending certain laws.

The aim of temporary protection according to Section 1 of the Act no. 421/2020 Coll. is the creation of a time-limited framework for protection against creditors and instruments to support entrepreneurs in financial difficulties, which should enable them to continue their business and thus prevent, in particular, job losses, know-how and a higher level of satisfaction of creditors' claims.

In our article, we have prepared for you a summary of the new legal regulation, focusing in particular on the beneficiaries of the temporary protection, its duration, legal effects and the rights and duties of entrepreneurs under the temporary protection.

## Entitled Applicant

An entrepreneur who has his registered office or place of business in the territory of the Slovak Republic is entitled to apply for the temporary protection. In comparison with the previous legal regulation, the law does not stipulate other qualitative preconditions of the applicant (e.g. the commencement date of a trade license).

## Duration of Temporary Protection and its Extension

Temporary protection is granted for a period of three months, while the entrepreneur can apply for an extension of temporary protection for another three months.

## Legal Effects of Temporary Protection of Entrepreneurs

Temporary protection provides the entrepreneur with the following benefits:

- it is not possible to initiate insolvency proceeding against entrepreneur due to his insolvency, i.e. the so-called creditor's petition for the insolvency proceeding;
- entrepreneur is not obliged to file the so-called debtor's petition for the insolvency proceeding (including other obligors);
- it is not possible to seize his business, thing, right or other asset for receivable incurred before temporary protection;
- the exercise of a security right (collateral) relating to the enterprise, thing, right or other asset belonging to the enterprise cannot be commenced against entrepreneur; nor to exercise such a security right (this also applies to a third party who is not a creditor);

- it is not possible to set off related receivable against entrepreneur incurred before temporary protection towards receivable incurred after the temporary protection was granted;
- the other contracting party may not withdraw from the contract or refuse performance under the contract, due to the delay of the entrepreneur under temporary protection, incurred before the temporary protection was granted; and
- periods for exercise of the right against entrepreneur are suspended during the temporary protection, including the periods for exercise of claims from the opposed legal acts.

### **Duties of the Entrepreneur under Temporary Protection**

The entrepreneur under the temporary protection has in particular following duties:

- is obliged to be registered in the register of public sector partners;
- is obliged to pay liabilities directly related to the common business activity and to performances necessary to maintain the operation of the enterprise, incurred after the temporary protection was granted, prior the previously due liabilities and preferably to non-related creditors;
- is obliged to give priority to the common interest of creditors over its own interests or those of others; in particular, the entrepreneur may not distribute profits, other own resources or repay a loan or similar performance which corresponds economically to the loan to which it has committed itself to a related party before the temporary protection was granted;
- must refrain from disposing of the assets of the enterprise and of assets which may belong to it, if there would be a substantial change in the composition, use or destination of these assets, or their non-negligible reduction, or if it is an act outside the common business activity;
- must pursue the above duties also in the persons controlled by the entrepreneur; and
- the above duties also apply to the statutory representatives from the moment, the entrepreneur has begun negotiations with creditors to agree to grant temporary protection.

### **Jurisdiction**

Jurisdiction to grant the temporary protection is determined by the registered office or place of business of the entrepreneur at the time of submitting the application for temporary protection.

The following courts have jurisdiction in the temporary protection judicial proceeding:

- District court Trnava for the district of Regional court in Trnava and for the district of Regional Court in Bratislava;
- District court Žilina for the district of Regional court in Žilina and for the district of Regional court in Trenčín;
- District court Banská Bystrica for the district of Regional court in Banská Bystrica and for the district of Regional court in Nitra; and
- District court Prešov for the district of Regional court in Prešov and for the district of Regional court in Košice.

### **Application Process**

An entitled applicant may apply for the temporary protection through the electronic form sent to the electronic mailbox of the competent court.

The following compulsory annexes must be attached to the application:

- written consent of creditors not older than 30 days before the application is submitted;
- a list of the entrepreneur's property together with the designation of the burdens on such property;
- a list of the entrepreneur's liabilities together with the designation of the creditors of related receivables and the designation of the secured creditors;
- list of related persons of the entrepreneur; and
- interim financial statements.

In this application, the entrepreneur is obliged to declare that:

- it is entitled to submit an application and pursues the purpose set out in Section 1 of the Act no. 421/2020 Coll.
- over one half of its creditors agree with temporary protection;
- it is not aware of the reasons for his cancellation, if the applicant is a legal entity;
- it is not obliged to file petition for initiation of insolvency proceeding;
- it is not affected by the effects of the commencement of insolvency proceedings, the declaration of bankruptcy, the commencement of restructuring proceeding or the authorization of restructuring proceeding;

- there are no enforcement proceedings (exekučné konanie) or similar enforcement proceedings ordered or commenced for satisfaction of the claim incurred from the operation of the enterprise;
- the exercise of the lien has not commenced in relation to its enterprise, thing, right or other asset belonging to the enterprise;
- it has not distributed a profit or other own resources in the last 12 months prior to the application;
- it has not taken measures to threaten the financial stability of his business in the last 12 months prior to the application;
- it keeps proper accounting;
- it has not been under temporary protection for the last 48 months; and
- it is registered in the register of public sector partners, if the applicant is a legal entity.

### **Revocation of Temporary Protection**

The court which has decided to grant temporary protection may, on its own initiative or on the basis of qualified petition, decide to revoke the temporary protection.

A qualified petition can be filed by anyone (e.g. a creditor), if there were no preconditions for granting of temporary protection, the preconditions for its granting have ceased or the entrepreneur under temporary protection has breached the duties arising from temporary protection.

### **Termination of Temporary Protection**

The legal effects of the temporary protection of entrepreneurs terminate on the day following the day of publication of the information on its termination in the Commercial Gazette.

# Amendments in the Act on stay of foreigners as at 1 January 2021

After Brexit, the residence rights of UK citizens change.



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As at 1 January 2021 various amendments of the Act No. 404/2011 Coll. on stay of foreigners and on change and supplementation of certain acts as amended became effective. The amendments are applicable specifically to citizens of The United Kingdom and Northern Ireland (further "UK") and their family members.

Amendments of the Act mainly describe the residency rights of the UK citizens after the withdrawal of the UK from the European Union (Brexit) in case of already having registered stay in the territory of the Slovak Republic. In case the UK citizens already have their residency registered in the Slovak Republic, they have the right to obtain the long term residency permit for 5 years. In case the UK citizens already have the permanent residency permit in Slovakia, their right to permanent residency remains unchanged. We have reviewed the changes in the UK citizens residency permit rights in detail in our [previous article](#).

New information is the possibility for UK citizens, who remained within the territory of the Slovak Republic before the 1 January 2021, to register their residency permit for 5 years, provided they credibly prove that they have fulfilled the conditions for EU national registration in Slovakia before 1 January 2021.

Act on stay of foreigners further reviews the conditions of issuance and validity of residency cards for the UK citizens. We would like to point out, that the validity of EU nationals residency cards of the UK citizens expires not later than **on 30 June 2021**. Until this date, it is required to apply for issuance of new residency card at respective foreign police department.



# Deadline for filing the motor vehicle tax return has changed

Amendment to the Motor Vehicle Tax Act changes the deadline for filing of the tax return.



## **Daňové a právne oddelenie**

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Taxpayers are obliged to file motor vehicle tax return for the tax periods starting on 1 January 2020 and ending on 28 February 2021 at the latest within 31 March 2021. The tax return form has also been changed.

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