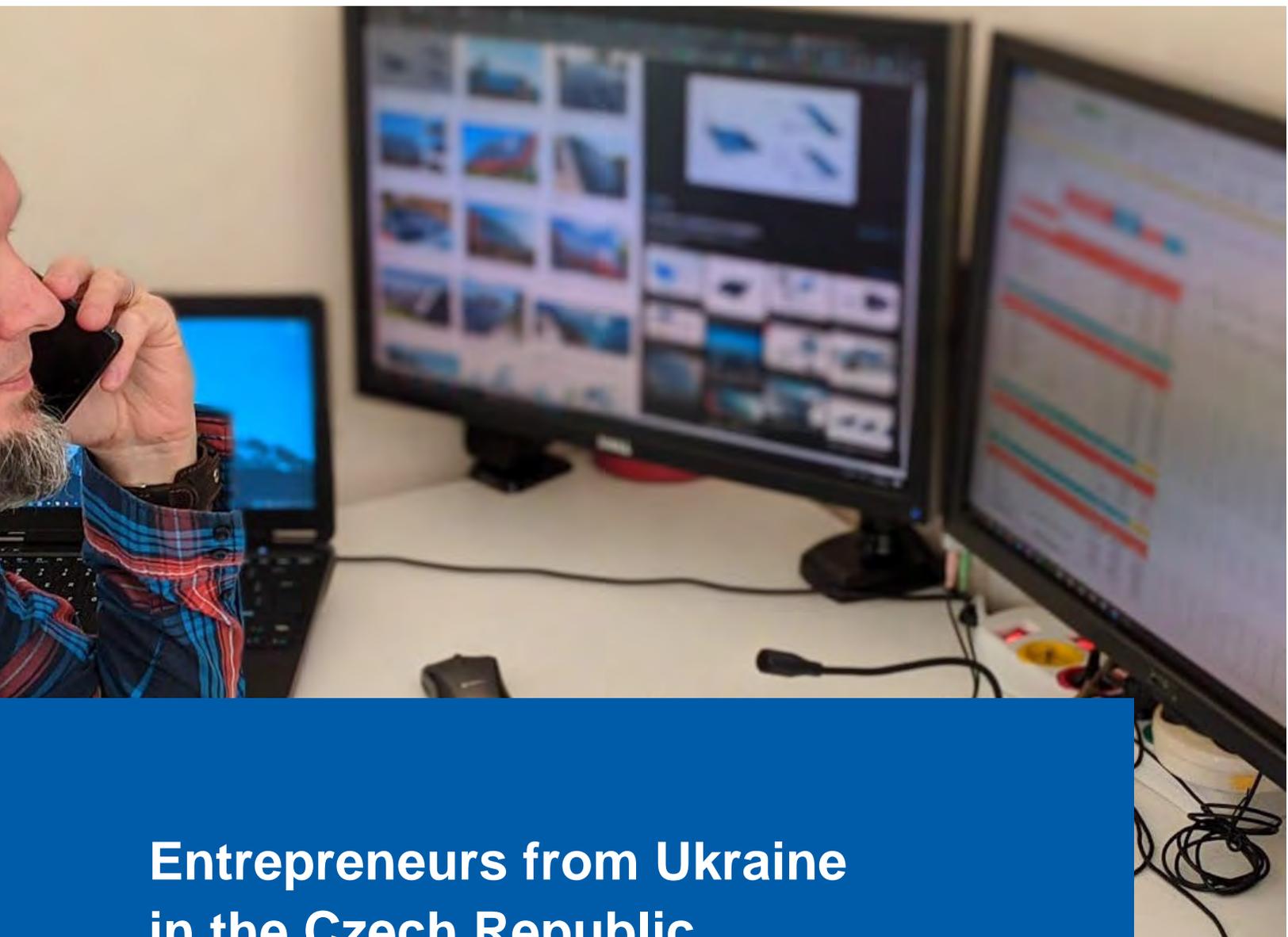


News Flash

June 2024



**Entrepreneurs from Ukraine
in the Czech Republic**

Entrepreneurs from Ukraine in the Czech Republic

With the arrival of entrepreneurs from Ukraine in the Czech Republic, the question arose as to whether these persons must have a trade license in the Czech Republic if they have a similar license in Ukraine and continue to provide their services remotely only to persons from Ukraine. These persons are staying in the Czech Republic under temporary protection and do not intend to offer their services in the country. They must also determine how to meet their tax and insurance obligations in the Czech Republic.

What if a third-country foreigner is in the Czech Republic but has a business license from another country?

We have frequently encountered the issue of whether our clients need a trade license if they reside in the Czech Republic but do not intend to conduct business within the country.

These are typically **persons with temporary protection** who came to the Czech Republic due to the war in Ukraine but continue to **work remotely for their clients in Ukraine**. They have the appropriate Ukrainian business license for this activity.

Often, for example, these are IT specialists who simply do not need to offer their services here. All they need is their existing clients and remote work. Such a situation can be relevant also in the case of the so-called "**nomads**" who can stay in the Czech Republic for a longer period, but still provide remote services only to their country of origin.

Although these individuals do not offer their services to clients in the Czech Republic, they are still physically present in the country and conduct their business activities here. The assessment of this situation under Act No. 455/1991 Coll., on Trade Licensing (Trade Licensing Act) is not entirely clear. It is not clear from the Trade Licensing Act whether these persons must have a trade licence under the Trade Licensing Act or not.

According to Section 2 of the Trade Licensing Act, a trade is considered to be: "**a continuous activity carried out independently, in one's own name, on one's own responsibility, for the**

purpose of making a profit and under the conditions set out in this Act."

Section 5(5) of the Trade Licensing Act further states that: "*a foreign natural person who intends to **carry on a trade in the Czech Republic** and who is obliged to have a permit for residence in the Czech Republic under a special law must submit a document proving the granting of a visa for a stay of over 90 days or a long-term residence permit to the registration of the trade and to the application for a concession.*"

It follows from the above provisions that a trade licence will be required for a foreign person who:

- performs activities that **are considered to be trades** under the Trade Licensing Act; and
- intends to carry out the **trade in the Czech Republic**.

From the definition, it is no longer clear what exactly is meant by the term "*intends to carry on a trade in the territory of the Czech Republic*". The question is whether a person who resides in the Czech Republic but provides services exclusively to the country of origin according to local business rules, falls under the Trade Licensing Act, and thus the obligation to have a trade license. That is, a person who does not intend to do business here in the sense of offering their services in the territory.

Statement of the Ministry of Industry and Trade

With a request for an interpretation of the term "*to carry on a trade in the territory of the Czech Republic*" referred to in Section 5(5) of the Trade Licensing Act, we turned to the Ministry of Industry and Trade (MIT). The Ministry of Industry and Trade states that if a foreign national from a third country resides in the Czech Republic and

continues their business activities connected only to their country of origin, **they must still have a registered trade license under the Czech Trade Licensing Act.**

According to the MIT, such activity fulfils the characteristic of *continuity*. If a foreigner resides in the territory of the Czech Republic and carries out business activities to such an extent that the sign of systematic activity is met, he/she should have a trade licence according to the Trade Licensing Act, pursuant to the statement of the Ministry of Industry and Trade.

From our point of view, this is a rather strict interpretation, as we see no reason why an activity that is performed by a foreign entity for foreign entities should be regulated by Czech legislation just because a foreign person with a computer is physically present in the Czech Republic. However, out of caution, we recommend applying for a trade license in the Czech Republic. The process is not very much complicated. If necessary, we will be happy to help you with it.

Under what circumstances can third-country nationals do business in the Czech Republic?

For those who, based on the above, decide to obtain a business license under the Trade Licensing Act, we provide a brief summary of the necessary requirements below.

If a foreign national from a third country resides in the Czech Republic, he/she can conduct business in the Czech Republic under similar conditions as citizens of the Czech Republic:

- Register a free trade at any trade licensing office (in this article we deal only with free trade)
- Pay the administrative fee
- Present a valid residence permit
- Submit an extract from the criminal record of the country of origin (must not be older than 3 months)
- Submit a proof of registered office

For third-country nationals, it is not necessary to have a special type of residence such as a long-

term visa for business purposes in order to obtain a business license. They can also apply for a business permit with other forms of long-term residence, e.g. permanent residence or an employee card, while the original purpose of the stay, such as study or employment, must be observed. The key point is that **the foreigner must have a long-term residence permit in the Czech Republic.**

We recommend deciding in advance which fields of free [trade](#) you will carry out and report only these, rather than declaring all of them.

Extract from the criminal record of persons under temporary protection

Generally, the criminal record must be issued by the country of which the foreign national is a citizen. The statement **must not be older than 3 months**. It must be duly **certified** and **translated** by an official translator. Verification generally means superlegalisation. If the country in question is a signatory to the Hague Convention, an apostille is sufficient. The Czech Republic has a bilateral agreement with some countries, which may stipulate that special verification is not necessary at all.

However, for persons under temporary protection, different rules apply to proof of good conduct than for other persons from third countries. Although some trade licensing offices may not be informed of this, **persons with temporary protection do not have to provide an extract from the Ukrainian criminal record.**

The reason for this is Section 32 of Act No. 221/2003 Coll., on the Temporary Protection of Foreign Nationals, according to which a foreigner enjoying temporary protection is **considered to be** – for the purposes of self-employment – **a foreigner with a permanent residence permit** under the Act on the Residence of Foreign Nationals in the Territory of the Czech Republic.

According to Section 6 (3) of the Trade Licensing Act, a clean criminal record is proven in the same way for persons with permanent residence in the Czech Republic as for citizens of the Czech Republic. In the case of citizens of the Czech

Republic, a clean criminal record is proven only by an extract from the Czech Criminal Register. The Trade Licensing Office is entitled to request an extract from the Czech Criminal Register itself.

It follows from the above that persons with temporary protection should not be forced to submit an extract from the criminal record from their country of origin to trade licensing offices.

Residence in the Czech Republic for the purpose of doing business

Finally, we would like to emphasize the connection between the foreigner's residence and their business in the Czech Republic. As far as residency is concerned, a business can serve as one of the purposes for which a long-term residence permit or visa is issued. Foreigners typically first apply for a long-term visa for the purpose of doing business at an embassy. This visa is issued for a maximum period of one year. Before its end, foreigners can apply for a long-term residence permit in the Czech Republic for the same purpose.

In general, however, obtaining long-term visas for business purposes is **problematic**. Not only does it require careful **documentation of the purpose of stay**, but embassies often **set quotas** for the

number of applications received per year, which can make it impossible in practice to submit the application itself.

Tax and insurance obligations in the Czech Republic

The extent of the tax liability affects **tax residency**. A tax resident taxes his/her worldwide income in the relevant country (or applies a method of avoiding double taxation), a tax non-resident only income from sources in the given country. In any case, an activity performed physically from the Czech Republic on the basis of a trade license is considered to be income from self-employment taxable and insurable in the Czech Republic. As part of the process of obtaining a trade license, it is also possible to make the relevant registrations/notifications of the commencement of business activities to the relevant institutions.

Income from self-employment is then taxed on an annual basis through personal income tax returns and insurance statements. Alternatively, the taxpayer can opt for a flat-rate tax regime. If the business is the main source of income for the payer, it is obliged to pay advances on insurance premiums in the minimum amount from the start of the business.

Conclusion

The issue of persons with temporary protection, such as entrepreneurs from Ukraine in the Czech Republic doing business remotely to the country of origin raises questions about the need for a Czech trade license. The interpretation of the Ministry of Industry and Trade implies a strict statement on the requirement of a trade licence for business activities carried out in the Czech Republic, even if they are focused exclusively on the foreigner's country of origin. This is also associated with the obligation to register and pay taxes and insurance premiums in the Czech Republic.

We recommend that foreigners from third countries, not only with temporary protection, who continue to conduct business remotely with their country of origin, consider obtaining a trade license in the Czech Republic. If necessary, we are happy to assist you with analysing your situation, arranging a trade license, and settling tax and insurance obligations.

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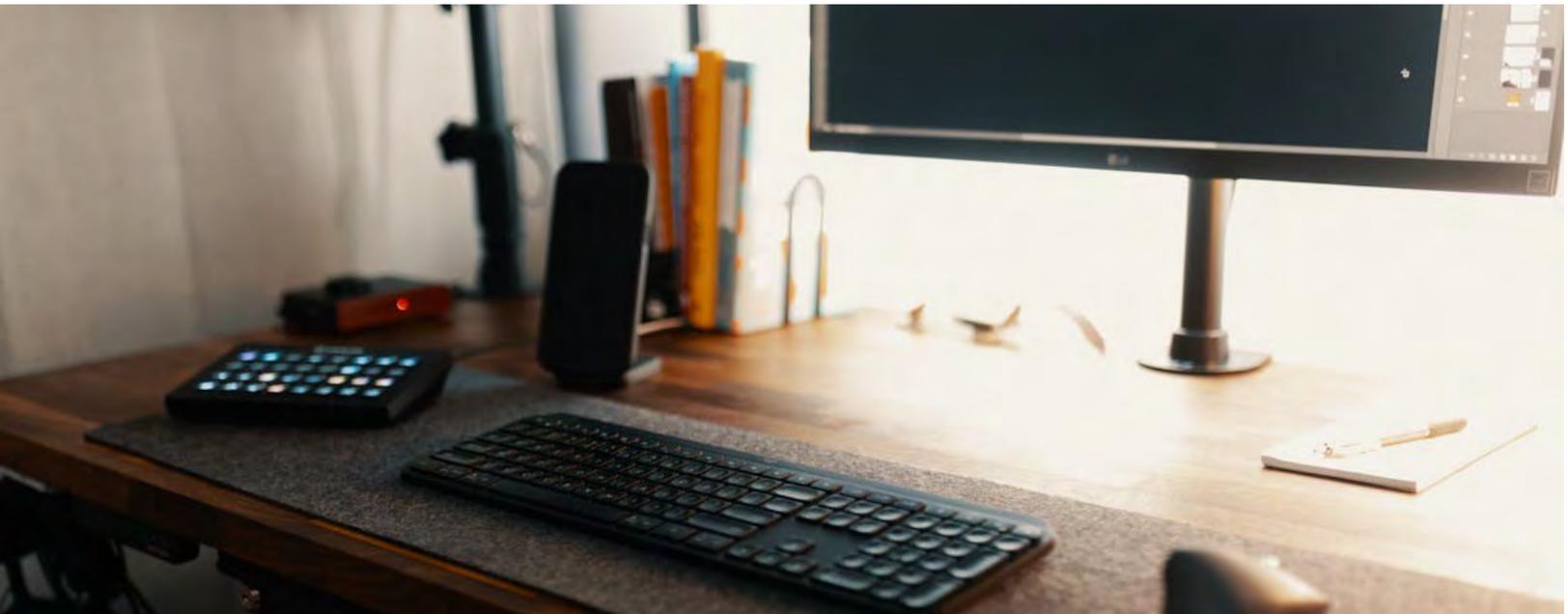
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