

Changes in the legislation on foreign gratuitous aid

Decree of the President of the Republic of Belarus dated May 25, 2020 No. 3 “On Foreign Gratuitous Aid” is published.

This new regulation had long been expected by recipients of foreign gratuitous aid. The draft of the amended legislation on foreign gratuitous aid had repeatedly been discussed with representatives of the public (it was published on the website of the Department of Humanitarian Affairs, submitted for public discussion and meetings with representatives of non-profit organizations). In addition, when developing the amended legislation, it was repeatedly stated that the draft was aimed at clarifying the existing gaps and inaccuracies in the current legislation on foreign gratuitous aid, eliminating bureaucratic barriers in registering such aid.

What did we get in the end?

The Decree of the President of the Republic of Belarus dated May 25, 2020 No. 3 “On foreign gratuitous aid” is fundamentally different from the draft amended decree published on the website of the Department of Humanitarian Affairs and submitted for public discussion. This applies to the purposes of obtaining aid, the conceptual framework set forth in the decree, and the introduction of fees for registration of aid. In general, analyzing the norms of the new decree, we can conclude that it contains more stringent requirements for the purposes of foreign gratuitous aid, the registration procedure in comparison with the draft decree submitted for public discussion, but also in comparison with the existing norms.

Foreign gratuitous aid, its recipients and senders.

Foreign gratuitous aid includes money and goods (property) donated (provided) by senders to recipients into ownership, use, possession and (or) disposal, as well as goods (work, services) purchased (paid, performed, rendered) on the territory of the Republic of Belarus by recipients at the expense of the senders' money and donated (completed, provided) to the recipients, (secondary (subsequent) recipients) in the manner prescribed by the plan for the targeted use of aid. With this, as well as the current legislation, monetary means include funds allocated by foreign founders to finance the institutions created by them, contributions from foreign founders (members) of non-profit organizations, interest-free loans, with the exception of monetary means allocated by a foreign founder of the legal entity as a contribution (deposit) to the authorized capital, as well as interest received from the placement of monetary means in deposits in banks.

Like the current legislation, the new decree applies to senders of foreign gratuitous aid foreign states represented by their state bodies or diplomatic missions, international organizations, interstate entities, foreign organizations, citizens of the Republic of Belarus permanently residing outside the Republic of Belarus, foreign citizens and stateless persons who do not have a permit for permanent residence in the Republic of Belarus, as well as foreign anonymous donors.

In relation to beneficiaries, the new decree, in contrast to the current legislation, separated directly the beneficiaries and the secondary beneficiaries. At the same time, direct beneficiaries include legal entities of the Republic of Belarus and individual entrepreneurs registered in the Republic of Belarus who received aid from senders, as well as individuals who received aid from senders and applied for its registration (in case they apply for tax exemption of aid). Secondary recipients include individuals, individual entrepreneurs and legal entities that received aid from recipients (secondary recipients) in accordance with the plan for the targeted use of aid for the purpose of its use, as well as for further transfer of aid to individuals, individual entrepreneurs and legal entities for the purpose of its use.

Purposes of using foreign gratuitous aid.

The draft decree, submitted for public discussion, provided for a significant expansion of the goals of receiving and using foreign gratuitous aid. This also concerned environmental protection, employment promotion, cultural development, etc. The new decree not only did not provide for an expanded list of goals presented in the draft decree submitted for public discussion, it actually reduced the list of goals for which foreign gratuitous aid can be obtained in comparison with the current legislation. This way, the current legislation enshrines goals such as promoting the protection of historical and cultural heritage, developing library and museum science, cinematography, arts, conducting cultural events, developing and supporting folk art, folk crafts, environmental protection and the rational use of natural resources, training, etc., allowing to attract aid to a limited circle of non-profit organizations of cultural, sports, environmental, and other focus areas. Despite the seeming increase in the number of goals for receiving foreign gratuitous aid that the new decree introduces, it actually eliminates even more non-profit organizations from those who may be recipients of foreign gratuitous aid. So, more or less broad purposes of receiving foreign gratuitous aid in the field of culture provided for by the current legislation in the new decree changed for the purposes of creating and developing libraries, forming and processing library stocks, creating and developing museums, and acquiring museum funds. The goal of environmental protection and rational use of natural resources is also excluded. The new decree provides for only narrow goals in this area - the installation of treatment facilities, the creation of waste management facilities, facilities for waste decontamination and disposal, the introduction of alternative energy sources, facilities for prevention and elimination of natural and man-made emergencies, provision of fire, industrial, nuclear and radiation safety, and elimination of consequences of the Chernobyl disaster. In fact, the new decree (with rare exceptions) left for non-profit organizations the possibility of receiving foreign gratuitous aid only for the provision of social assistance and social services to low-income citizens, people with disabilities, pensioners, children, large and single-parent families, foster families, persons without a fixed residence, and also to persons (families) who find themselves in difficult life situations, including forced migration. Some goals of receiving and using foreign aid in the new decree apply exclusively to state institutions and state bodies: strengthening the material and technical base of state institutions (including state bodies), training and professional development of employees of state institutions (including state bodies), etc.

The new decree supports the negative trend that has long been rooted in Belarusian legislation: the introduction of lists of persons to receive any benefits, preferences determined by by-laws. The new decree determines that foreign aid can be received to pay general business expenses related to the maintenance of the management apparatus of a legal entity, an individual entrepreneur and the provision of their activities, according to the list determined by the Office of the President of the Republic of Belarus.

For other purposes not mentioned in the decree, foreign aid can be obtained only if these purposes are agreed upon with the Interdepartmental Commission on Gratuitous Foreign Aid Issues (a new entity stipulated by the new decree).

The new decree introduces the concept of misuse of foreign gratuitous aid - the use of aid for the purpose and (or) in amounts not provided for in the plan for the targeted use of aid, as well as the transfer (issue), transfer of aid to secondary (subsequent) recipients not provided for in such a plan.

Fee for registration of foreign gratuitous assistance.

Unlike the draft decree submitted for public discussion, as well as the current legislation, the new decree contains the introduction of a fee for registering foreign gratuitous aid.

For the registration of aid by recipients (legal entities and individual entrepreneurs) the new decree stipulates a fee of 0.5 percent of the amount (cost) of the aid not exempted from taxes, fees (duties). For the registration of the aid exempted from taxes, fees (duties) in full, no fee is charged.

The decree establishes that the aid allocated for the payment of general business expenses is not exempted from taxes, fees (duties). Given that, in accordance with the explanation of the Department of Humanitarian Affairs, general business expenses include a wide range of expenses, including expenses for the

remuneration of executives, management staff, employees servicing organizations and property of a general economic purpose, rent and utility bills services, expenses for consulting, information, audit and other services of third parties, etc. and the current practice, that almost all incoming funds for the implementation of projects are not partially exempted from taxes, many recipient organizations will have to pay the registration fee for aid.

The specific aspect relevant for this is that the interest charged, including the one from the labor costs of managers and specialists of recipient organizations, is directed, inter alia, to the labor cost of employees of the Department who work with applications for aid registration.

Aid tax exemption.

The only positive provision of the new decree is that, in comparison with the current legislation, it specifies a list of taxes and fees from which foreign gratuitous aid can be exempted. At the same time, not only aid will be exempted from taxation, but also goods (work, services) purchased (performed, rendered) in the country at the expense of such aid.

Despite the fact that the new decree was developed, inter alia, to eliminate bureaucratic delays, and the creation of the Interdepartmental Commission on Foreign Gratuitous Aid, it provides that decisions on the exemption of aid from taxes, fees (duties) are made by the Office of the President of the Republic of Belarus (if the aid is allocated to the purposes stipulated by the decree), by the Interdepartmental Commission (if the aid is allocated to other purposes) if there is a conclusion of the competent authority on the usefulness of such exemption. However, for a number of state bodies and organizations there is no need for such a conclusion.

The entry into force of the decree and bringing the legislation in line with it.

The decree comes into force three months after its official publication.

The Council of Ministers of the Republic of Belarus, together with the National Bank and the Office of the President of the Republic of Belarus, within three months must ensure that legislative acts are brought into conformity with this Decree and take other measures to implement it.

Key initial findings:

1. The new decree, like the current legislation, provided for the need to register foreign aid, regardless of its size, received both from foreign legal entities and from citizens who do not permanently reside in the territory of the Republic of Belarus. Compared to the changes of the legislation under discussion, the new decree did not eliminate the need to register contributions of foreign founders (members) of non-profit organizations, nor did it establish the possibility of registering long-term programs and projects, keeping the need to register incoming funds. Thus, the decree did not provide for the basic minimum wishes of non-profit organizations as recipients of gratuitous aid: introducing the amount of aid received from individuals that does not require registration, as well as the possibility of registering not every tranche within the framework of the received project, but the entire project.

2. The new decree, despite some positive expectations of non-profit organizations - recipients of aid, further complicates their position as recipients of foreign gratuitous aid. In fact, the new decree even more than the current legislation creates the conditions for state bodies and organizations as recipients of foreign gratuitous aid. The introduction of specification of the purposes of receiving foreign gratuitous aid, the actual reduction of their list, the focus of the purposes on state bodies and organizations, the creation of a list of organizations with which aid can be received to pay for general business expenses related to the maintenance of the management apparatus and ensuring their activities, actually displace non-governmental non-profit organizations from among the recipients of aid, giving this opportunity with rare exceptions only to social organizations that provide support to limited target groups.