



PETERKA PARTNERS

THE CEE LAW FIRM

The COVID-19 pandemic: force majeure and tax support measures for businesses in Russia



Moscow

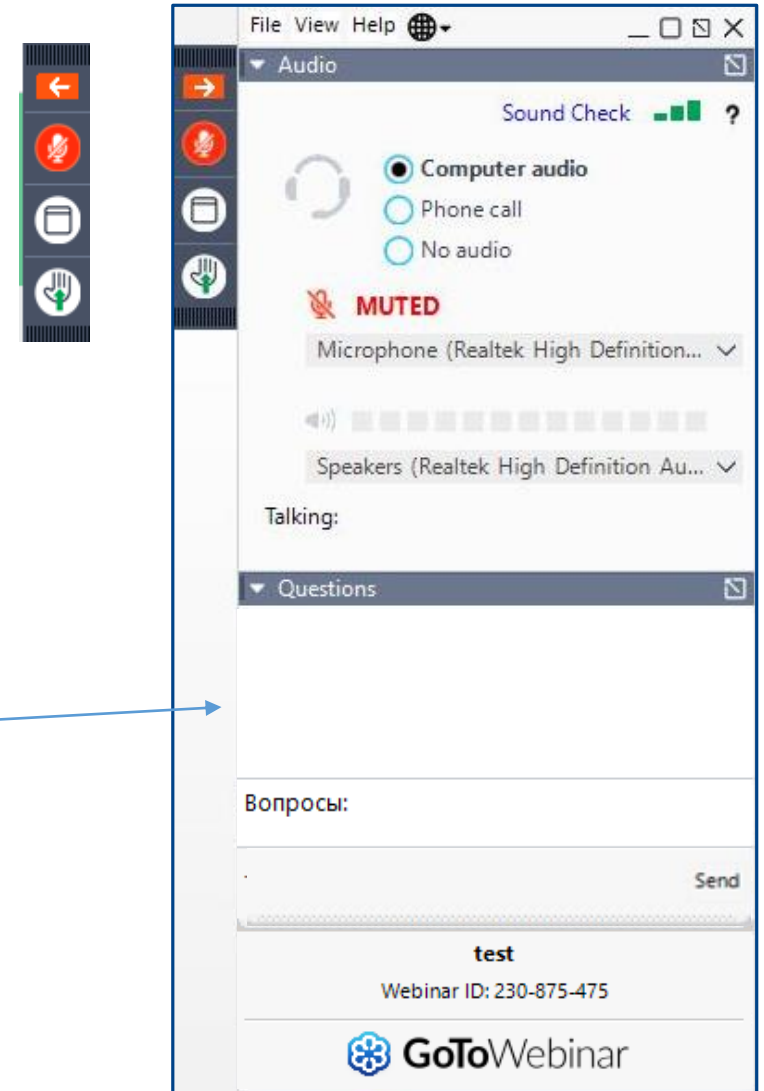
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Live broadcast

The webinar is a live broadcast. All attendees' microphones are muted.

Questions and feedback :

- To expand the control panel, please click on the arrow  .
- You can ask questions and comment by using the interface. Questions can be asked in the “Questions” section. 



COVID-19 Help desk

It is apparent that the extraordinary situation around the COVID-19 generates a number of various and quite often complex legal issues in a broad range of areas such as employment, contracts, damages, data protection, state aids etc.

PETERKA & PARTNERS is addressing this timely and adequately and therefore, we decided to create a COVID-19 Help desk, which could be used as a centralized and efficient tool for clients to cope with all legal matters arising in these special circumstances.

All local contacts in our offices throughout the Central and Eastern Europe remain fully available for assistance and, in addition, we are offering through the COVID-19 Help desk a central point of contact on all related matters.

The COVID-19 Help desk will include experts from all our offices and assistance may be provided under the law of the various jurisdictions in the CEE region where PETERKA & PARTNERS operates and we will further cover matters with cross-border implications or origin. Support will be provided in all languages usually used.

Please do not hesitate to contact our COVID-19 Help desk at
covidhelpdesk@peterkapartners.com.

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What is force majeure?

Force-majeure (*vis maior*) is an excuse for breach of the contract. In order to be qualified as force majeure, the event shall be:

- ✓ Extraordinary - it must go beyond the ordinary course of events and could not have been foreseen till its occurrence;
- ✓ Inevitable - under the given conditions any reasonable business entity could not have avoided or prevented the occurrence of this event or its consequences;
- ✓ Impossible to overcome - overcoming the current situation is very difficult for the debtor and negates the economic benefits of the transaction.

What is force majeure?

Examples of events, which do not qualify as force majeure:

- ✓ lack of the necessary funds;
- ✓ lack of goods on the market necessary to perform the contract;
- ✓ breach of obligations by the party's contractors;
- ✓ unlawful actions of party's representatives.

How does it work?

As a rule, party which has not fulfilled an obligation or has performed it improperly shall be liable in case of fault, in B2B relations it may be liable for breach of contract regardless its fault.

Force majeure as set out in Art. 401 point 3 of Russian Civil Code is a tool allowing to release the debtor from liability for non-performance or late performance of the contract. It does not, however, allow for not performing contracts in general terms.

Force-majeure:

- ✓ releases the debtor from liability (compensation for losses, payment of penalties, etc.);
- ✓ does not prevent the creditor from using other remedies in response to the breach;
- ✓ does not automatically terminate the contract.

Force majeure contractual clause

Russian law allows parties to amend the scope of force majeure by including respective clause (e.g. that force majeure are only certain events as agreed by the parties). **Thus, in any case it crucial to firstly verify whether contract contains force majeure clause and how does it affect general rules.**



Is COVID-19 pandemic force majeure?

- ✓ It is within powers of the court to decide in particular case whether force majeure occurred or not and whether it was relevant for particular contractual relationship;
- ✓ In case of dispute each case will be assessed individually, based on the particular circumstances and provisions of the contract;
- ✓ It appears that in many cases COVID-19 pandemic as such will not be qualified as force majeure event releasing counterparty from liability for breach of the contract.



Role of Commerce Chambers

- ✓ Russian Chamber of Commerce and Industry (**RCCI**) is an authorized state body entitled to issue certificates which evidence that force majeure took place;
- ✓ Usually certificate is necessary in cases provided by the contract;
- ✓ RCCI certificate is an evidence which strengthen party's position in the dispute.

RCCI comments and position of state bodies towards COVID-19 pandemic

Decree of the Mayor of Moscow - <https://www.mos.ru/upload/documents/docs/20-YM.pdf> named COVID-19 pandemic as force majeure.

On March 26, 2020 RCCI provided following comments with respect to the pandemic:

- ✓ If the obligation was to be fulfilled on a business trip abroad, then force-majeure circumstance occurs in this situation as a consequence of the international travel bans;
- ✓ An empty office and all employees working remotely do not allow the tenant to apply force-majeure rules for rent payments;
- ✓ If a company is an exporter of goods that were banned to be sold abroad, a force-majeure takes place with the respect to the fail of supply;
- ✓ Mass entertainment companies whose obligations to customers were not performed due to the ban on mass events have the right to use force-majeure circumstances as an excuse for the breach;
- ✓ A significant decrease in the customers flow is not a force-majeure;
- ✓ Breach of obligations on the part of counterparties, absence in sale of goods needed for performance of obligations and simple lack of money are not considered as a force-majeure.

Material change of circumstances

Under Art. 451 of Russian Civil Code, a material change of circumstances is a ground for amending or termination of the contract. A change in circumstances is considered material when circumstances have changed so much that if the parties could reasonably foresee the change, the contract would not have been concluded at all or would have been concluded on significantly different conditions

It is similar but not equal to force majeure, which is retrospective i.e. applies to breach of contract, which already took place. If parties cannot reach agreement on the new arrangements, the court may amend contractual relationship or terminate the contract.

- ✓ It is rather unlikely that material change of circumstances will be applied in cases of COVID-19 pandemic;
- ✓ In any case, courts are more likely to terminate the contract rather than amend it.

Termination due to act of state authority

In accordance with Art. 417 of Russian Civil Code, if due to act of a public authority or local government, the fulfillment of an obligation becomes impossible in whole or in part, the obligation shall be terminated in whole or in part respectively.

- ✓ It is different from force majeure, which is retrospective i.e. applies to breach of contract, which already took place;
- ✓ It does not release from liability for non-performance or non-timely performance;
- ✓ It terminates the obligation automatically – no intervention of the court is necessary;
- ✓ Party, which incurred damage due to the act of state of authority may demand compensation only, if the act was illegal and declared invalid. Thus, Russian law does not allow for compensation solely based on the fact that the act was issued and affected contractual relationship/rights of the parties.

Key takeaways

- ✓ Review your contracts and check whether they contain force majeure clauses;
- ✓ Notify your party on possible non-fulfilment or delay in the fulfilment of obligations under the contract along with justification;
- ✓ Reduce/minimize damages that both parties may suffer;
- ✓ Collect or create evidences that you have breached the contract due to COVID-19 pandemic;
- ✓ Maintain dialogue with your partner and try to agree on amending contractual arrangements.

General tax administrative measures

- ✓ Moratorium for the field tax audits until May 1, 2020 - suspension of ongoing field tax audits, ban for appointment of the new field tax audits
- ✓ Arrangement of the communication between the taxpayers and the tax authorities via telecommunications and videoconference channels
- ✓ No tax control measures requiring direct contact with the taxpayers (examination, seizure of documents)
- ✓ Moratorium for the initiation and carrying the audit of the cash register equipment, currency legislation until May 1, 2020 (unless the limitation periods for the institution of administrative proceedings expired up to June 1, 2020)

Order of the Federal tax services as of 20.03.2020 № ЕД-7-2/181@

- ✓ State Duma approved draft law on providing the Government with the powers to provide extension of the deadlines for tax and social contributions payments as well as to extend the deadlines for submission of the tax returns and other documents and specifying the additional grounds for tax deferral of tax payments etc.

(<https://sozd.duma.gov.ru/bill/862653-7>)

Who is entitled for special tax support measures?

- Small and medium-sized enterprises included into the Register: identification of the status of the company
 - ✓ Certain criteria and thresholds for recognition as small and medium-sized enterprises are provided by law (i.e group structure limitations, annual income amount and number of employees (250 people); for micro enterprises – up to 15 people, annual income up to 120 million rubles).
 - ✓ Register is kept automatically based on the information contained in the submitted tax returns.
 - ✓ You may check whether your company is included into the Register at: <https://rmsp.nalog.ru/>
 - ✓ If your company is not included into the Register you may clarify the reasons by submission of relevant on-line application at: <https://rmsp.nalog.ru/appeal-create.htm>

- Companies of certain industries most negatively affected by the current economic situation
 - ✓ air and auto transportation, airport activity
 - ✓ sport and culture
 - ✓ touristic and hotel business
 - ✓ catering etc.
 - ✓ exhibitions and conference arrangement.
 - ✓ consumer services (repair, dry-cleaning, salons).

<https://www.economy.gov.ru/material/file/be6cf04db17a6caed6bfa9fd97684d7b/26032020.pdf>

Some announced support measures other than tax-tailored

- Extension of the terms for holding annual general meetings in Russian companies (LLCs and JSCs) (Draft law <https://sozd.duma.gov.ru/bill/771509-7>).
- Moratorium for bankruptcy (<https://sozd.duma.gov.ru/bill/931192-7>).
 - ✓ Terms of the moratorium is to be established by the Government;
 - ✓ Courts shall refuse to accept any bankruptcy claims during the moratorium;
 - ✓ The debtor is not relieved from debts, but rather its bankruptcy is “frozen”
 - ✓ Any foreclosure of the property of a debtor is prohibited and “frozen”;
 - ✓ Enforcement procedures against debtors initiated before the moratorium gets “paused” (however, seizure of property is not lifted);
- All scheduled inspections (not only tax) of small and medium-sized enterprises are cancelled till the end of 2020 (<https://sozd.duma.gov.ru/bill/931192-7>).
 - ✓ However, such inspection is possible if it is grounded by protection of health and life safety;

Special tax support measures

- Decrease of the cumulative social contribution rate from 30% to 15% for small and medium-sized enterprises ([Draft law https://sozd.duma.gov.ru/bill/862653-7](https://sozd.duma.gov.ru/bill/862653-7))
 - ✓ Decreased rate is relevant to the remuneration exceeding minimum wage (approx. 12 thousands rubles): 10% to the Pension Fund and 5% medical insurance fund since April 2020
- Special tax support measures for business in the mostly negatively effected industries (https://www.nalog.ru/rn78/news/activities_fts/9704633/)
 - ✓ Extension of the deadlines for all tax payments (except for VAT and personal income tax) for 6 months for small and medium-sized enterprises (included into Register)
 - ✓ Extension of the deadlines for social contribution payment for micro-enterprise for 6 months
 - ✓ Extension of the deadlines for all tax payments (except for VAT and personal income tax) for 3 months for other business not included into Register.
- Both for small and medium-sized enterprises and business involved in negatively affected industries (Letter of the Federal Tax Service as of March 25, 2020 № ЕД-20-8/32@):
 - ✓ Suspension of the disciplinary measures until May 1, 2020 (no tax payment demand is available)
 - ✓ Postponement of suspension of the bank account transaction for secure of the tax payments for small and medium enterprises (no block of the bank account is available) (<https://www.nalog.ru/rn77/business-support-2020/>)

Draft of the Government Resolution

Accretion of powers of the Russian Government regarding the provision of deferral of the tax payments;

- Extension of the deadlines: (1) for submission of the tax returns and accounting statements for three months – in May instead of March; (2) for provision of the documents or other information requested from March 1 until May 1 – 20 working days;
- Extension of the deadlines for tax and social contributions payments for 6 months (for certain industries):
 - ✓ for the small and medium enterprise : for tax payments for 2019: corporate tax, simplified unified tax, unified agricultural tax; for 1Q 2020: all taxes (except for VAT). Advance property and land tax payment for 1Q 2020 not latter than October 30, 2020, for 2 Q not latter than December 30, 2020
 - ✓ For micro enterprises: for 6 months for remuneration paid in the period from March to May, for 4 months for the remuneration paid in June-July.
- Moratorium for tax audits until June 1 (relevant to the field tax audit and transfer pricing audit between the affiliated parties): no appointment of the new tax audit and suspension of the appointed tax audits).
- Absence of penalties: No penalties for failure to provide documents or information in the period from March until July. No late payment interests for tax and social contribution underpayments for the period from March 1 to June 1 2020 for certain companies.
- Additional grounds for deferral of the tax payments:
 - ✓ for strategic and systematic companies involved into the negatively affected industries (list of such companies is approved by the Government)
 - ✓ with regard to tax (advance payments) and social contribution payments to be paid in 2020 (except for excise and mineral tax) as well as relevant late payment interests
 - ✓ available only in case any of the conditions are observed: decrease of income (10%), losses in 2020 (provided that there was no loss in 2019), for small and medium enterprises applying simplified tax system etc.

Nota bene: Please note that in order to apply extension of payment deadlines micro, small and medium enterprise should be included into the Register as of March 1, 2020 and be involved in the negatively affected industries.

Tax sources for accumulation funds - potential affect to existing Double-Tax Treaties

- ✓ Planned increase of withholding tax relevant to distribution of dividends from Russia up to 15% were declared (instead of the current 5% provided that contribution to the company's capital is not less than 100000 EURO).
- ✓ Amendments to the Double Tax Treaties are planned to be negotiated and introduced, otherwise Russia is ready to withdraw from the relevant Double Tax Treaties
- ✓ Currently certain list of the Double Tax Treaties is not approved yet, however it is announced to be applicable to the jurisdictions used for off-shore structuring (Cyprus).

Thank you for attention!

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