

PETERKA PARTNERS

THE CEE LAW FIRM

NEWSLETTER 02/2019

Czech Republic Slovakia Ukraine Bulgaria
Russia Poland Romania Belarus Hungary

NEWS

FROM PETERKA & PARTNERS



CHANGES IN MANAGEMENT OF PETERKA & PARTNERS

PETERKA & PARTNERS is very pleased to announce the continued successful growth of the firm and promotion of the following colleagues:



Lubomír Leško was appointed Partner and Director for Slovakia, **Natália Tunegová** became Senior Associate and Deputy Director for Slovakia. Lubomír and Natália will jointly manage the Slovak office.

Lubomír has been practicing law nearly for twenty years of which fifteen years in the Slovak office. Since 2015 he has been Deputy Director. Natália has been practicing law for seven years, of which the last three years at PETERKA & PARTNERS.



Galyna Melnyk was promoted Senior Associate and Deputy Director for Ukraine. Galyna has been practicing law for twelve years. Before joining our firm last year she worked as Tax Advisor in the top tier law firm. Under leadership of Taras Utralov, Partner and Director for Ukraine, Galyna will co-manage the Ukrainian office.

At the same time, we would like to announce that Andrea Butašová and Ján Makara, Partners and former Directors of the Slovak office will from now on dedicate their time only to clients.

We would like to thank Andrea and Jan, the former Directors of the Slovak office who managed it for several successful years, and we wish the new Director and Deputy Directors the best of luck in their new role!

PETERKA & PARTNERS SEMINARS

Our **Data Protection Practice** has prepared a series of successful seminars on the topic “GDPR after one year of implementation” held in our offices in various jurisdictions. In the near future, the Data Protection Practice will be continuing with seminars on the GDPR in the autumn. For more information, please contact us at: newsletter@peterkapartners.com or visit our website for updates on new seminars.

PETERKA & PARTNERS Moscow, an official partner of AEB Polish Euroreception 2019

The PETERKA & PARTNERS Moscow was one of the sponsors of the “AEB Polish Euroreception”, which took place at the beginning of June, at the Embassy of the Republic of Poland in Russia.

The event was organized by the Embassy of the Republic of Poland in Moscow, the Association of European Businesses, and the Polish Business Club in Moscow, and brought together Polish and other European companies operating on the Russian market.

Our dedicated Polish Desk is always ready to provide legal services to Polish companies operating in the CEE region and Russia, as well as to foreign companies wishing to enter the Polish market.

Feel free to contact the leader of the Polish Desk, Marcin Kryszko, at kryszko@peterkapartners.ru with any questions you may have.

LEGAL

NEWS



CZECH REPUBLIC

Unlawfulness of blocking undisputed amount of excess VAT

During a tax audit, the tax administration may block only the disputed (controlled) amount of VAT deduction. It is not possible for the tax administration to block a higher amount than is the subject of the audit. According to the Constitutional Court such procedures are unlawful.

Adaptation legislation to GDPR

The Personal Data Processing Act and a relevant accompanying act have come into effect. The adaptation legislation adjusts and refines some areas of the General Regulation on the Protection of Personal Data (GDPR). In particular, it clarified and, to some extent, simplified, the handling of personal data. It also states certain exceptions regarding, for example, work done by the media or scientists.

Balance between strengthening powers of law enforcement authorities and protection of personal data

In its decision dated 14 May 2019, the Constitutional Court explicitly identified the need to strike a balance between strengthening the powers of law enforcement authorities and the protection of personal data, while in previous years unilateral emphasis on the former prevailed.

Possibility to ban certain foreign investments

The Ministry of Industry and Trade submitted a draft law on foreign investment screening following to the entry into force of Regulation (EU) 2019/452 of the European Parliament and of the Council, which establishes a framework for the screening of foreign direct investment to the Union. The draft includes, among other possibilities, the banning of certain foreign investments in Czech companies in extreme cases.

Right to fine for breach of non-competition clause

The Constitutional Court recently disagreed with the Supreme Court on the purpose of the non-competition clause, which is to prevent employers from losing valuable information to competitors. According to the Constitutional Court, breaching the obligation to refrain from pursuing a competitive activity by a former employee

is essential for the employer's right to fine. The duration of such breach is not relevant. It is also not decisive whether the employee actually uses the protected information for the benefit of a competitor.

SLOVAKIA

New Gambling Act

Under the new Gambling Act (effective as of 1 March 2019), all gambling licences (with the exception of some lotteries) are available to operators with their registered seats in EEA member states and the State will lose its monopoly on online gambling. The new act establishes a completely new regulator, sets up a new structure of licences to better reflect the structure of the market, and imposes duties in order to promote responsible gambling.

New Act on Unfair Conditions in the Food Trade

On 1 May 2019, a new act, the Act on Unfair Conditions in the Food Trade entered into force. It redefined core terms and enumerated about 40 unfair business practices to ensure more efficient protections for smaller suppliers, as the weaker party, in commercial relationships.

Retrials permissible also in proceedings relating to in family matters

An amendment to the Civil Non-Dispute Procedure Code entering into force as of 1 June 2019, expanded the applicability of actions for retrials. A retrial is now permissible where there is an enforceable ruling in matters of returning the minor to a foreign country if there has been unauthorized removal or detention.

New obligations for public joint stock companies

Amended provisions of the Commercial Code, entering into force as of 1 July 2019, introduce two significant changes for public joint stock companies: remuneration for members of bodies based on the adopted remuneration rules and provisions of significant commercial transactions.

UKRAINE

Cancellation of obligatory currency sale

Previously having been reduced to 30%, the obligatory sale of a part of one's currency income has now been cancelled by the National Bank of Ukraine within the framework of a currency liberalization policy. The changes are expected to simplify business relations between Ukrainian and foreign businesses.

Electronic system within bankruptcy proceedings

Provisions for an electronic auction system, within the new Bankruptcy Code, have become effective. From now on, auctions on the sale of the property of a debtor initiated by a liquidator must be conducted through the electronic auction system.

New Language Law

A new language law introduces certain rules on the use of the Ukrainian language as the only official language in Ukraine. Most of the changes concern only public use, but some also relate to business activities. E.g., a business that sells products/services in Ukraine and is registered in Ukraine must have a Ukrainian version of its website(s), which shall not be lesser in content than other language versions (this rule will come into force on 17 July 2022).

Penalties for cash flow violations abolished

The President of Ukraine has initiated the cancellation of penalties for violations of cash flow rules, which have been in effect since 1995. In particular, exceeding cash limits by companies and non-compliance with terms of use and reporting on cash given to individuals shall no longer be subject to penalties. This will give Ukrainian businesses more flexibility in establishing internal procedures for cash turnover. The cancellation will take effect after the order of the President is published (expected by the end of June 2019).

BULGARIA

Concessions Act

In March 2019, various amendments to the Concessions Act were adopted. The cases where a decision for a re-concession procedure can be adopted are explicitly listed. Parties to a concession contract can now agree on the

Arbitration procedure as well as on the specific terms of their joint liability. Minor changes aimed at transparency and publications of notices are now effective as well.

Law on Protection of Trade Secrets

The first ever Law on the Protection of Trade Secrets was promulgated in April 2019. It transposes the EU Trade Secrets Directive and, thus, establishes the criteria as to what qualifies as a trade secret. It further differentiates lawful from unlawful acquisition, use and disclosure of trade secrets and sets new rules relevant to trade secret infringement claims.

Personal Data Protection Act

The Personal Data Protection Act was finally amended so as to correspond to the requirements of the General Data Protection Regulation. The Act introduces inter alia some derogations from the GDPR, e.g., the minimum age of consent for the provision of some services and the limitation of personal data storage periods. Further, certain types of processing of personal documents is allowed only if so required by law.

New amendments to Measures Against Money Laundering Act (MAMLA)

Amendments to the MAMLA provide that internal AML guidelines no longer need to be approved by the supervisory authority. Further, when it comes to wholesalers as entities, obliged to apply AML measures, it was clarified that manufacturers are not considered as wholesalers when selling goods that they produced.

RUSSIA

Product Returns Limited in Russia

According to a new federal law, Russian retailers do not have the opportunity to return perishable products to their manufacturers. Under the term "perishable products" are such products which have a shelf life not exceeding 30 calendar days.

"Sovereign Internet" Law

A "Sovereign Internet" Federal Law has recently been adopted in Russia. Its main purpose, according to lawmakers, is to ensure the independence of the Russian part of the Internet. However, the opinion of a number of

experts is that this law has been adopted solely for the purposes of censorship. The law becomes effective in November 2019.

New Preemptive Rights for Shareholders

According to amendments to the Federal Law “On Joint-Stock Companies”, it is now possible for shareholders of JSCs to exercise preemptive rights with regard to the purchase of shares of such types, something they did not possess before. This makes Russian legislation on JSCs more flexible.

Standard Form Charters

On 1 August 2019, Government Decree N 411 will come into force. According to this Decree, legal entities may be established in Russia without a customized charter: it will be enough to specify during the registration procedures that a company will act on the basis of a standard form charter.

POLAND

New regulations for simple joint-stock companies

The simple joint-stock company (“PSA”) is a new type of company which has been brought to life mainly due to the increasing number of start-ups. The PSA will have a minimum required share capital of only PLN 1, its registration can be completed electronically within 24 hours, the company will be able to adopt resolutions via email or via conference calls and supervisory board will not be mandatory. The new Act on the Simple Joint-Stock Company will enter into force on 1 March 2020.

Credit institutions will not be allowed to charge interest on interest

The Polish Civil Code allows interest in arrears from the due interest only from the moment of filing a suit and if the parties agreed to add the interest to the sum of the debt after the interest in arrears had become due. Until recently credit institutions were exempt from this rule, as it did not apply to long-term loans which were given by such institutions. The new law has removed this exception, aiming to protect the debtor against excessive financial burdens, which would lead to further delay in the payment of financial obligations.

Letters from post office in EU will be considered as duly served in Poland

The dispatching of a document from a post office in another EU member state (including Switzerland and EFTA member states) before the deadline to perform an action in administrative proceedings will be treated as having been timely and effectively dispatched in Poland. The new law was signed by the President on 6 June 2019, and will enter into force 14 days after its promulgation in the Journal of Laws.

ROMANIA

Limitation on NACE codes for freelancers

As of 18 March 2019, freelancers and sole proprietorships with more than 5 or 10 NACE codes, respectively, (the new maximum number provided for by law), will be automatically deregistered by the National Trade Registry Office.

Increased legal protection for trade secrets

Emergency Ordinance no. 25/2019, transposing Directive no. 943/2016 of the European Parliament and of the Council of the European Union into Romanian law, was published in the Official Gazette on 19 April 2019, and provides for increased protection for trade secrets.

News on daily workers

Emergency Ordinance no. 26/2019, amending the legal framework of the exercise of occasional activities performed by daily workers and amending the Labour Code (additional leave being introduced for employees undergoing an in vitro fertilization procedure) was published on 19 April 2019.

News on harassment and equal treatment of women and men

Government Decision no. 262/2019 was published on 2 May 2019. The new legal provisions set out certain obligations in order to prevent, combat and eliminate any behaviour defined as discrimination based on gender and in order to ensure equal opportunities and treatment under the law.

Draft Law: Professional liability insurance

The Draft Law on the Trade Registry is awaiting publication in the Official Gazette of Romania. Companies would be obliged to take out annual professional liability insurance to cover at least certain expenses (i.e., legal insolvency, dissolution, liquidation, etc).

BELARUS

Changes in regulation of foreign trade operations

There have been significant changes in the area of the regulation of foreign trade operations since March 2019 in Belarus. The number of currency transactions that were carried out by residents of Belarus on the basis of permits from the National Bank of Belarus can now be carried out using a simpler registration procedure.

New opportunities in settlements between residents and foreign companies

After 18 June 2019, foreign companies that provide services through electronic information systems for searching, selecting and paying for goods, works and (or) services (e.g., Uber, Booking.com, etc.) can withhold remuneration for their services from the amounts received from users in Belarus to pay for the orders (which was previously impossible).

Changes to Civil Code

In February 2019, some norms of the Civil Code were changed. Now a text document signed with the use of communication or other technical means, computer programs, information systems or information networks will be considered written forms. The key point is the ability to identify the person who signed the document.

Innovations in public procurement create conditions for combating corruption and simplifying public procurement procedures

A new version of the Law “On the Public Procurement of Goods (Works, Services)” comes into effect on 1 July 2019. Almost all stages of this process will be transferred to an electronic format, which corresponds to world trends in this area. The terms for preparing and submitting proposals are also significantly reduced (by almost double).

Belarus preparing to register first online casinos

In April 2019, new legislation for the gambling industry entered into force; online casinos were legalized and the age for participation in gambling was increased. The website of a virtual gambling establishment must comply with special requirements, e.g., the domain name of the website must have the country code top-level domain “.by” or “.bel”.

HUNGARY

Setting up of Hungarian Administration Courts postponed

The Prime Minister’s Chief of Staff announced recently that the Hungarian government is suspending the introduction of Administration Courts in Hungary for an indefinite time.

Changes to Labour Code

The Hungarian Labour Code (referred to as “Mt.” in Hungarian) has been amended several times recently. The major changes are concerned with working and rest time regulations (hence the derogatory name, the “Slave Act”); the changes were followed by the amendment of Mt. to ensure compliance with the General Data Protection Regulation (GDPR).

New type of foundations in business life

The Hungarian Parliament adopted a new act on special trusts which formed a new type of legal entity in Hungarian business life, a similar one to a “trust” in the common law system or a “Stiftung” in the German legal system. The purpose of this new type of entity is the management of assets and their utilization for certain goals. The minimum asset worth upon establishment shall be approximately EUR 2,000,000.

Important banking deadline

Companies shall make a declaration regarding their ultimate beneficial owners by 26 June 2019 to their banks and other financial institutions. If this final date is missed, the financial institutions will freeze the accounts concerned.



TAX NEWS

CZECH REPUBLIC

Maximum lump sum amounts for expenses of self-employed increased already for 2019

Self-employment and lease income benefits have very low taxation rates in the Czech Republic. The increased maximum amount of expenses that may be claimed as a percentage of income is, for instance, CZK 800,000 (€31,000) for some independent activities, including lawyers and tax advisors, and CZK 1,200,000 (€47,000) for IT consultants and accountants.

ATAD Directive implemented in Czech Republic

The tax package implemented the EU Anti-Tax Avoidance Directive (ATAD) in the Czech Republic, including the anti-avoidance rules, CFC rules, exit taxation and neutralizing of hybrid mismatch effects. The restricted tax deductibility of borrowing costs will affect only several of the biggest companies, if any at all, as the ATAD rules apply only to taxpayers that record over CZK 80 billion (€3.1 million) of excess borrowing costs in one tax period.

DAC6 Directive – reporting of mandatory disclosures in Czech Republic

The implementation of DAC 6 and the introduction of reporting duties relating to selected cross-border transactions is currently being debated within professional chambers, in particular as relates to the obligation of confidentiality. The characteristic features (hallmarks), the main benefit test, the reporting subjects, reported information, and penalties for violation of duties are being discussed at the governmental level prior to being submitted to Parliament. As per DAC 6, the new reporting duty will apply retrospectively to all arrangements whose first implementation steps were taken after 25 June 2018.

SLOVAKIA

E-Cash Register at end of September

A major project “eKasa” (e-Cash Register) aimed at exchanging all fiscal cash registers for their modern equivalents is fully up and running in Slovakia. A transitional period for choosing one of the online operating options has already started. Following complaints, the Slovak government has recently decided

to postpone sanctions until October for not meeting the end-of-June deadline.

Levy on supermarket chains cancelled

The relatively new law imposing a levy from the net turnover of supermarket chains in Slovakia has already been revoked with effect of 9 April 2019.

Notable changes to income tax law being prepared

A draft amendment to the Slovak Income Tax Act, reportedly bringing some decrease in the administrative burden, was introduced at the end of April 2019. Many of the proposed changes, such as the category of micro tax payers, different rules for advance payments, tax loss, tax registration, and asset borrowing, should take effect in 2020.

UKRAINE

Taxation of the sale and purchase of shares between non-residents

The State Fiscal Service of Ukraine issued the tax ruling clarifying that capital gains from the sale of shares in a Ukrainian company by one non-resident to another are to be taxed in the following way: (i) if the seller has the permanent establishment (PE) in Ukraine, capital gains are taxed at the hands of such PE; (ii) if the seller has no PE in Ukraine, capital gains are not taxed in Ukraine.

Proofs of transportation expenses for customs clearance purposes

The Supreme Court ruled that Ukrainian law does not specify the exhaustive list of proofs of transportation expenses required to determine the customs value of goods. Consequently, the expenses may be proved by financial and accounting documents or any documents depending upon exact circumstances, including written explanations of the taxpayer.

Decisions of the State Fiscal Service on appealed tax notifications may not be challenged in court

The Supreme Court has reapproved its position regarding the fact that not all the decisions of the State Fiscal Service may be subject to appeal in court. In particular, the tax notification may be appealed in administrative order to

the higher body of Fiscal Service or in court. However, the decision of a higher body of the State Fiscal Service on the administratively appealed tax notification may not be appealed; accordingly, the subject of court appeal is the tax notification.

BULGARIA

Draft for VAT tax rate reduction for certain products

A draft for amendments to the VAT Act stipulate a reduction in the VAT tax rate on meat, milk, eggs, flour and products made from flour – from 20% to 5%. In addition, the VAT tax rate for medicines is planned to be reduced from 20% to 9%. The new rates are intended to apply as of 1 January 2020.

New requirements to declare online shops

A person planning to sell goods/services through an online shop must notify the National Revenue Agency about such fact. The NRA shall keep a public register of online shops. Online shops will also have the possibility to issue an electronic cash receipt to be sent to the customer by e-mail.

New International Financial Reporting Standards (IFRS)

IFRS 16 has been in force since 1 January 2019. As a result, lessees must include in their balance almost all lease agreements. The new standard shall also affect key financial indexes such as financial autonomy (level of debt) and EBITDA (earnings before interest, taxes, depreciation and amortization).

RUSSIA

Deduction of VAT on export services

Since July 1, 2019 taxpayers providing works and services outside Russia (where Russia is not regarded as the place of supply) are allowed to offset relevant input VAT. Currently amount of such input VAT may only be deducted for profit tax purposes.

Relief from filing from filing transport and land tax returns

Companies are relieved from filing transport and land tax returns for the year 2020 and further tax periods.

Cap for late payment interests

Late payment interest amount accrued on the tax underpaid amount may not exceed the amount of the latter.

Amendments to the unified agricultural tax regime for agricultural producers

Since 1 January 2019 agricultural producers paying unified agricultural tax shall pay VAT. VAT exemption is available for unified agricultural taxpayers subject to compliance with certain thresholds to the revenues from sale of agricultural goods (Approx. 1,250 thousands EUR in 2019 with further decrease to approx. 836 thousands EUR since 2022). VAT exemption is optional and may be applied by the taxpayer based on the relevant notification submitted to the tax authorities. Regional authorities are entitled to decrease 6% unified agricultural tax rate to 0%.

POLAND

Upcoming important changes to VAT Act from September

On 1 September 2019, significant changes to the VAT Act will be implemented. The amendments will modify the previously applied principles of split payment and reverse charge. Taxpayers who are currently subject to a reverse charge in VAT, will be subject to split payment starting from 1 September. The above rule will apply to payments above PLN 15,000 (approx. EUR 3,500) and only to certain groups of goods and services, for instance: steel, electronic devices, gold, fuels and certain others.

Changes in collection of withholding tax from July

On 1 July 2019, the provisions regarding the new model of withholding tax will enter into force. The new model of withholding tax will apply if the amount of payments made by the payer to the taxpayer exceeds two million PLN (approx. EUR 469,200) in a given tax year. A payer who exceeds this amount will, in principle, be required to calculate, collect and pay tax to the competent tax authority using the rates provided for in the Act on Corporate Income Tax or the Personal Income Tax Act (20% or 19%). After the payment is made, the payer will be able to apply for a tax refund through a special procedure.

ROMANIA

Procedure regarding the Register of entities

Order no. 819/2019 was published on 22.03.2019. As of 1 April 2019, companies that award sponsorships will be able to benefit from tax deductions on the condition that the beneficiary is a non-profit organization.

Amendment and completion of certain normative acts

Emergency Ordinance no. 19/2019 was published on 29.03.2019. The method of calculating the tax is no longer correlated with the ROBOR level. The application of the ceiling was delayed by one month, i.e., from May 1, 2019.

VAT treatment of value coupons

Law no. 60/2019 transposing European Union Directive 2016/1065 was published on 17.04.2019. Starting with 20.04.2019, the provisions regarding the VAT treatment of value coupons were transposed into Romanian legislation.

Reduction of VAT to 5% on mountain, organic and traditional foods

Emergency Ordinance no. 31/2019 was published on 23.05.2019. Starting 1 June 2019, the VAT rate is reduced from 9% to 5% for the supply of high-value food, namely mountain, bio and traditional products.

BELARUS

New version of Tax Code

A new Tax Code recently came into force in Belarus. Many tax approaches have changed, including, but not limited to, specifying who pays tax arrears for foreign companies operating through permanent establishment in Belarus, expanding the list of interdependent organizations for tax purposes, a change to the group of transactions subject to transfer pricing control, etc.

New rules on monitoring of illegal minimization of tax liabilities

Presidential Decree No. 488 on the illegal minimization of tax liabilities has been repealed. Earlier the inclusion of a company in a special register under the decree could have a number of negative tax consequences. Under the new Tax Code, the tax authorities will monitor specific business

transactions the main purpose of which is not profit but minimization of tax liabilities.

Special taxation regime for Orshansky region

A special programme for the development of the Orshansky region for the period up to 2023 has entered into force. Both for new and for already-operating business entities in the region a special taxation regime has been established (e.g., some exemptions from paying VAT for the importing of technological equipment, some reduced tax rates and deductions for pension insurance, etc.).

HUNGARY

Decreasing advertising tax rate

The tax amendments planned to come into force this summer suspend the linear tax rate and set the rate of advertising tax at 0% for the period from 1 July 2019 to 31 December 2022 (as a result of a procedure conducted by the Court of Justice of the European Union).

Changing regulations on VAT of bad debts

The tax amendments planned to come into force this summer would allow VAT subject taxpayers, from 1 January 2020, to reduce their tax base retrospectively for their outstanding claims for more than 12 months. The tax base can be reduced for transactions completed after 31 December 2015 by way of “self-auditing” under strict requirements.

Taxation on divestments and asset/activity transfer

The tax amendments planned to come into force this summer would make taxable the case where a company’s tax residence is transferred to another country, from 1 January 2020, as well as when the assets or activities of a foreign undertaking’s Hungarian branch are relocated to another country.

DAC 6 Implementation in Hungary

The Ministry of Finance submitted bill no. T/6349 to the Hungarian Parliament. This bill is aimed at amending several tax regulations, and in particular it addresses the implementation of the DAC 6 Directive (Council Directive 2018/822/EU of 25 May 2018). A debate on the bill was scheduled for 17-21 June 2019, and Hungary has until 31 December 2019 to fully comply.

CONTACT

PETERKA & PARTNERS is an independent full-service law firm with a special commitment to the region of Central and Eastern Europe. The only truly Central Eastern European law firm that has built its own strong regional presence in key markets, PETERKA & PARTNERS offers a pan-regional legal and tax competency and dynamic alternative to the top law firms, both international and purely local, on these markets.

Operating nine fully-owned offices across the region, in the Czech Republic, Slovakia, Poland, Hungary, Romania, Bulgaria, Belarus, Ukraine and Russia, PETERKA & PARTNERS is organized and acts as “one firm” and leverages its unique integrated infrastructure, legal excellence, industry insight and deep local expertise to deliver complex legal solutions with exceptional commercial value to its clients.

For further information on any of the issues discussed in this edition of the Newsletter, or if you should have any other enquiries, please contact us through the contacts listed below or visit our website at www.peterkapartners.com.

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