



PETERKA PARTNERS

THE CEE LAW FIRM

NEWSLETTER

CZECH REPUBLIC SLOVAKIA UKRAINE BULGARIA
RUSSIA POLAND ROMANIA BELARUS HUNGARY

**NEWS FROM
PETERKA & PARTNERS**

PETERKA & PARTNERS' S SUCCESS IN RANKINGS AGAIN

The prestigious legal international rankings – Chambers & Partners, Legal 500 and FLR1000 recommend our offices also in the year 2018. Most of our offices regain our rankings and strengthen our position in the CEE legal market.

Chambers & Partners

CZ – Employment

SK – Corporate/M&A and Employment

RU – Corporate/M&A: Mid-Market

Legal500

CZ – Banking & finance, Corporate and M&A, Dispute resolution, Employment, Real estate and construction, TMT

SK – Banking & finance, Corporate and M&A, Dispute resolution, Employment, Projects and energy, Real estate and construction

UA – Corporate and M&A, Employment

BG – Dispute resolution

RO – Corporate and M&A, Employment

BY – Corporate and M&A, Employment

IFLR1000

CZ – Banking & finance, Corporate and M&A, Restructuring and Insolvency

SK – Banking & finance, Corporate and M&A

UA – Corporate and M&A

BG – Banking & finance, Corporate and M&A, Project development

RU – Banking & finance, Corporate and M&A

BY – Finance and Corporate

Media Law International

CZ – Media law

RU – Media law

E-PRAVO – Law Firm of the Year

Law Firm of the Year is the regional prestige rankings for the Czech Republic and Slovakia.

The announcement for the Czech Republic will be at the beginning of November, however, it has already been announced that the Slovak office of PETERKA & PARTNERS has maintained its successful position from last year.

SK – Banking & finance, Commercial law, Criminal law, Employment, Intellectual Property, Mergers & Acquisitions, Public Procurement, Tax Law, Telecommunications and IT

LEGAL NEWS

CZECH REPUBLIC

Tightening of sanction for failure to publish Financial Statements

The Czech government has prepared a new amendment to the Act on Business Corporations which includes a tightening of the sanction for failure to publish Financial Statements in the Collection of Deeds of the Commercial Register. In extreme cases, companies may even be dissolved without liquidation.

Amendment to Act on the Acceleration of Transport and other Infrastructure

The Czech Parliament adopted an amendment to the Act on the Acceleration of Transport and other Infrastructure which aims to facilitate and accelerate the preparation of transport, energy and communication infrastructure. The Amendment contains a list of buildings for which the expropriation of land would be facilitated by means of an interim decision.

Next phases of Electronic Records of Cash Sales approved

Following the Constitutional Court's decision of December 2017, which stopped the fourth phase of the system of the electronic records of cash sales (abbreviated in Czech as "EET") and required several further changes to the Electronic Records of Cash Sales Act, the Government has approved the start of the next phase of the EET and the off-line option to register sales for the smallest of entrepreneurs.

Changes in procedure of Tax Offices during seizure of property

The Supreme Court ruled that if a court cancels a protective order before the tax is set, the tax office must return the seized property. The Supreme Court has clearly stated that the tax is legally established only after the termination of an appeal.

Czech Personal Data Protection Act

The Czech Republic has still not adopted the amendment to the Personal Data Protection Act reflecting EU legislation. However, it does not exclude or limit the application of the General Data Protection Regulation (GDPR) which is directly applicable to all members of the EU.

Signing employment contract with member of statutory body

The Supreme Court ruled that it is possible to sign an employment contract with a member of a statutory body. Such employment contract is then considered as an addendum to the agreement on the performance of the office. However, the relationship remains in the field of business law and not employment law. Thus, the imperative provisions of business law remain applicable.

SLOVAKIA

Adoption of new Act on Protection of Personal Data

In connection with adoption of the GDPR, the new Slovak Act on the Protection of Personal Data entered into force with effect from 25 May 2018. In particular, beyond the GDPR, this Act regulates the special situations for processing personal data, confidentiality, and the national supervisory body – the Office for Personal Data Protection of the Slovak Republic.

Amendment to Money Laundering Act

A new amendment to the Anti-Money Laundering Act, effective from 15 March 2018, has brought with it several significant changes; a change in the financial limit of cash transactions (to EUR 10,000), the obligation to identify the Ultimate Beneficial Owner of the company, and the obligation of the company to have an AML programme, among other changes.

Significant changes to Cadastral Act

Notable changes to the Cadastral Act will apply from 1 October 2018, accelerating and improving the registration of real estate. Within this wide package of changes are included changes applicable to the registration procedure as well as a new e-service "tracking changes in the real estate cadastre" in order to increase the protection of rights to real estate.

UKRAINE

New currency legislation

A new Law, establishing the freedom of currency transactions and the list of transactions that are expressly allowed to be settled in foreign currency becomes effective on 7 February 2019. However, temporary restrictive measures will still be applied until canceled by the NBU (National Bank of Ukraine).

Transplantation legislation improvings

The improving touched upon the legal procedure for obtaining "clearly expressed consent" of a donor and established the presumption of disagreement regarding posthumous donation, as well as regulations on production of bioimplants, and on application of xenoimplants.

Establishment of supreme Anti-Corruption Court

The Anti-Corruption Court will become a new specialized court with an exclusive competence to consider criminal offences related to corruption. The candidates for the judges' positions will be elected jointly with the international organization's advisors.

Extension of the sanctions list

The sanctions list was extended to 1,748 individuals and 756 companies, the updated list includes among others: WebMoney Europe Ltd., WebMoney RU, WebMoney UA, WM Transfer Ltd. The activities of the sanctioned entities in Ukraine are restricted for 3 years.

BULGARIA

Amendments to Commerce Act

Numerous amendments to the Commerce Act entered into force in 2018. Notable are changes to bankruptcy proceedings aimed at the protection of employees. Now all employees' remuneration takings shall be entered to the list of takings while unpaid remunerations to at least one-third of the employees is a prerequisite for bankruptcy proceedings.

Amendments to Public Procurement Act

In June 2018, amendments to the Public Procurement Act were adopted to restrict abuse of rights. Inter alia the legislation explicitly provides that claims against decision(s) of the contracting entity shall contain an exhaustive and explicit list of all grounds for challenge. Further, claimants shall provide evidence that they are entitled to file a claim (where applicable).

New Measures Against Money Laundering Act

The new Measures Against Money Laundering Act was promulgated in March 2018 (implementing Directive EU 2015/849). Amongst the main novelties is the requirement for registration of the beneficial owner. Guidance to the specific procedures and documents could be expected, hopefully, by November 2018.

RUSSIA

PGIs to be adopted in Russia

Protected Geographical Indications, which have not been governed by Russian law for quite some time, are going to be implemented into the Russian Civil Code. The respective amendments were approved by the Russian Parliament and the next step towards implementation of the respective provisions shall take place in Autumn 2018.

Arbitrability of disputes arising from procurement conducted according to 223-FZ

Disputes arising from procurement issues (the Federal Law N 223 – provides regulations for the procurement procedures of particular legal entities, e.g., state-owned corporations/companies etc.) are allowed to be made subject to arbitration in the Russian Federation. This follows from the recent interpretation of Russian law provided by the Supreme Court of Russia.

Public procurement applications subject to collateral

Since 1 July 2018, entities intending to apply for participation in public procurement procedures shall provide collateral specified by a “public” client with their applications if the respective contract price exceeds RUB 1,000,000 (approximately EUR 13,687).

Escrow agreements

A new chapter of the Russian Civil Code was adopted. It governs escrow agreements to be concluded when the parties to a contract intend to assign a third party as a guarantor of fulfilment of the transaction’s terms and conditions (escrow agent), who shall retain the transaction’s subject matter until particular terms and conditions are fulfilled and then transfer it to an entitled counterparty.

New authorizations – Federal Bailiffs Service

On 17 July 2018, the State Duma passed a bill authorizing court bailiffs to conduct administrative investigations into debt recovery companies. If the respective amendments are approved, the Federal Bailiffs Service will be authorized to investigate offences made by collectors, as well as to receive evidence on such violations from other companies (e.g., from mobile communications providers).

POLAND

“GDPR-Rationality” – New ministerial programme

Due to overall confusion related to the new data protection law (GDPR), the Ministry of Investment and Economic Development has launched the “GDPR – Rationality” programme, which envisages a series of consultations with representatives from the Ministry, with the objective of clarifying certain issues and debunking the most common myths associated with the new regulation.

New regulations on enterprise secrets protection

New regulations regarding trade (enterprise) secrets and know-how protection came into force as of 4 September 2018. The new law is expected to provide greater protection for firms, by further specifying and expanding the scope and substance of trade secrets, providing more legal measures for their protection, as well as introducing criminal liability for violations.

ROMANIA

New conditions for nullity of administrative offence minutes

According to Law 203/2018, as of 24 August 2018, administrative offence minutes will be considered null if the personal number of the offender, if she/he has such number, is missing from them. Nullity in this case can also be acknowledged ex officio.

New data protection rules for employers

According to Law 190/2018, employers may monitor their employees by video, including their conversations, only when such monitoring is important for the employer and only after such measure has been discussed in advance with the trade union or representatives of the employees.

Rules for processing of personal data by political parties and NGOs

According to the same piece of legislation, political parties and NGOs will not need the express consent of the data subject for the processing of personal data. However, the afore-mentioned entities will have to inform the data subject of such data processing.

Contracts with interns

According to Law 176/2018, the host organization is obliged to conclude a written agreement with interns. A breach of this obligation may lead to fines of up to RON 20,000 (approximately EUR 4,444). The maximum term for such agreement is for six months, with a work-load of a maximum of 720 hours.

Mandatory compensation of work of interns

The same piece of legislation established that interns must receive compensation of at least 50% of the minimum gross salary (currently, the minimum gross salary is EUR 407.86), on a pro rata basis with the work actually provided. A breach of this obligation may lead to fines between RON 2,000 and 4,000 (EUR 444 to 888).

BELARUS

Information Analysis System of Public Procurement Management

On 1 July 2018, the Information Analysis System of Public Procurement Management came into effect in Belarus. This system interacts with all state information resources, including tax authorities, exchange and trading platforms. The filing of complaints is also done electronically.

Amendments regarding registration of real estate

On 22 July 2018, amendments regarding the registration of real estate, rights to it and transactions with it entered into force. The amendments provide for the establishment of the institution of authorized intermediaries and the opportunity to use an "electronic copy of the document" in procedures related to the registration of real estate, rights to it and transactions with it.

Changes in procedure for opening and operation of representative offices

According to recent amendments regarding the procedure for opening and operation of representative offices of foreign organizations in the Republic of Belarus, the main powers were transferred from the Ministry of Foreign Affairs to the Regional Executive Committees and the Minsk City Executive Committee. The terms for issuing and extending permits for opening a representative office have been increased (from 10 to 30 days). The deadline for submitting reports on the activity of the representative office for the year has been extended to 1 March.

New procedure for foreign exchange

In April 2018, a uniform procedure for foreign exchange for legal entities and individual entrepreneurs came into being. The restrictions on targeted currency purchases were lifted.

Progressive instruments of banks in dealing with difficult debts

Belarusian banks were delegated more authority in dealing with difficult debts and participation in the financial rehabilitation of organizations. The banks were provided a number of new instruments for debt restructuring of business entities including the opportunity to acquire stakes in the authorized fund and shares of business entities.

Amendments to antimonopoly legislation

On 3 August 2018, new amendments to antimonopoly legislation entered into force. The amendments specify the criteria for dominant position on the market, define a new procedure and time limits for dealing with violations of antimonopoly legislation, and establish antimonopoly requirements for the procurement of goods.

HUNGARY

Amendment to rules for simplified voluntary dissolution

Significant changes were made to the Hungarian Company Procedure Act as voluntary dissolution is also now available for limited liability companies and joint-stock companies from 1 July 2018, if auditing of the company is not mandatory and the simplified process will end within 150 days.

Deletion of resigned executive officer from registry

If a company does not provide a plea to the Companies Court for the deletion of a resigned executive officer from the registry, and there is no longer an executive officer left in the company, then the resigned officer has the right to request the members of the company to provide the plea to the Companies Court directly.

Executive officer without representation rights

A novelty in the law is that companies can register an executive officer without representation rights. This novelty is mainly applicable in cases when an administrative body governs the company and only one sole member represents the company independently or just a few executive officers do so jointly.

TAX NEWS

CZECH REPUBLIC

Amendment to agreement between Czech Republic and Japan on social security

The protocol amending the agreement came into force on 1 August 2018. Based on that, employees posted from Japan who have concluded an employment contract directly with a Czech receiving company are entitled to be exempt from Czech social security and health insurance for up to 5 years, subject to conditions.

Taxation of some investment funds to change

A brief amendment to the income tax act introduces new conditions that must be met by investment funds whose shares were accepted for trading on an EU-regulated market. The rules for unit funds and investment funds remain unchanged. If they qualify as basic investment funds, they are taxed at a corporate income tax rate of 5%.

MLI ratification in Czech Republic

The Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent BEPS entered into force on 1 July 2018. The Czech Republic signed the MLI on 7 June 2017, but the MLI had not yet been ratified. The Czech Republic adopted the MLI only to the minimum standard.

2019 VAT Amendment

The proposed amendment to the VAT Act includes some real estate-related changes (re invoicing of lease-related services, VAT deduction on repairs, option to tax real estate leases) and in the field of credit notes and taxation of executive directors.

2019 ITA amendment

The proposed amendment to the Income Tax Act includes the abolishment of the super gross wage (the tax base includes the employer's social security and health insurance contributions) and the ATAD implementation, in particular limiting the deductibility of exceeding borrowing costs, CFC rules and exit taxation.

SLOVAKIA

Introduction of insurance tax

From 1 January 2019, non-life insurance is subject to a new tax with a rate of 8% which applies to a taxpayer who is a domestic, foreign or EU member state insurance company and other persons under conditions defined by the new act. The tax base is calculated along with specific provisions. An increase in insurance prices is expected.

Taxation of selling virtual currencies

According to a new guideline from the Slovak Ministry of Finance, from March 2018, income from selling of a virtual currency is considered to be subject to income tax under the Act on Income Tax. Such income can be reduced by the incurred expenses up to the amount of the achieved income. Where legal entities are concerned, income is considered as the income from the financial property.

Taxation of digital platforms

Under an Amendment to the Act on Income Tax, companies providing services in the area of accommodation and transport using digital platforms, fulfilling conditions defined by the law, have the obligation to register permanent establishment in Slovakia. The income of these companies from these business activities is subject to income tax.

Tax exemption for recipients of regional investment aid

The new Act on Regional Investment Aid changes the manner for calculation of the tax exemption for recipients of regional investment aid. New rules apply for recipients receiving regional investment aid after 1 April 2018.

Electronic communication with Tax Office

In addition to companies, all other entrepreneurs registered as taxpayers are also obliged to deliver all of their submissions to the Tax Office exclusively in an electronic form from 1 July 2018.

UKRAINE

Bulgaria excluded from list of transfer pricing jurisdictions

The Cabinet of Ministers of Ukraine by its Resolution of 11 April 2018, No. 295 (effective as of 25 April 2018), excluded Bulgaria from the list of jurisdictions operations with which are considered as controlled transactions subject to the transfer pricing rules of Ukraine (which impose a number of restrictions).

Quarterly planning of tax revisions replaced with annual planning

Amendments were introduced by the Resolution of the Cabinet of Ministers of Ukraine of 6 December 2017 No. 1109, which came into effect on 12 April 2018. These changes are aimed at making the revision process more predictable for taxpayers, who will be able to see the annual revision plan on a government website.

Renewed form of VAT return

As of 1 June 2018, a renewed form of VAT return came into effect (amendments introduced by the Order of the Ministry of Finance of 23 March 2018 No. 381). The amendments concern annexes Nos. 1, 5, and 9 of the VAT return.

Decision of Supreme Court in favour of taxpayer

In its Decision of 12 April 2018, in case No. 804/2100/17, the Supreme Court ruled that erroneous indication of the budgetary classification code (an essential payment detail for paying taxes, which frequently and unpredictably changes) cannot be considered as sufficient evidence of tax underpayment and tax debt.

BULGARIA

Administrative burden on small enterprises reduced

Amendments to the Accountancy Act stipulate that the annual financial statements of micro and small enterprises shall only consist of a limited number of documents. To be defined as a micro or small enterprise, a company should not exceed certain criteria related to the book value of assets, net sales revenue and average number of employees.

New regulations on supplementary voluntary insurance

New regulations specify that when paying supplementary voluntary insurance contributions for its employees or persons with whom contracts for management and control have been concluded, the employer may apply a waiting period of up to six months from the date of occurrence of the legal relationship before proceeding with payment.

Supplement to VAT Act regarding supplies in stages

Until recently, upon a supply of a service where delivery in stages has been agreed upon, the completion of each stage was considered to be a separate supply and the chargeable event for it shall occur on the date of completion of the relevant stage. Recent amendments to the VAT Act clarified that this applies for both services and goods.

RUSSIA

VAT tax rate increase

A new law, effective from 1 January 2019, provides for an increase in the VAT tax rate from 18% to 20%. The reduced VAT rates (10% and 0%) for socially important goods and services will not be amended.

Amendments to transfer pricing regulation

New minimum thresholds were introduced for controlled transactions, in particular for transactions between Russian parties and their foreign affiliates and for transactions between Russian affiliates. Due to an increase in the thresholds starting from 1 January 2019, taxpayers will be relieved from reporting certain transactions.

Russian internal off-shores in Kaliningrad and Primorskyi regions

A new law has introduced tax benefits, including decreased tax rates for dividends, for firms having the status of international holding companies. The new law specifies the relevant requirements in order to obtain such status.

Freeze of current rate of contributions to Pension Fund

A new law, No. 306-FZ, effective from 1 January 2019, freezes the current rate of contributions to the Pension Fund at the rate 22% for an indefinite period, instead of an increase to 26% starting from 2021 as provided for by current legislation.

POLAND

Tax authorities' control at request

Intended amendments to the tax law allow firms to apply for the tax authorities' control of a single transaction, which is aimed at ridding uncertainty with regard to tax consequences. Experts, however, are sceptical, pointing out that the authorities would be entitled to question the results of such control, even after several years, generating additional costs for firms.

ROMANIA

New level of tax for work on buildings in protected areas

As of 16 August 2018, Order 2515/2018 establishes that the tax for issuing a building approval in order to perform work on buildings located in a protected area of historic monuments will be 3 lei (EUR 0.66)/m², but without exceeding RON 15,000 (EUR 67,500) regardless of the location of the real estate.

New requirements for distributors and traders of excise goods

According to Order 1960/2018, all companies that distribute and wholesale excise goods (fuels, alcohol, and processed tobacco) are under the obligation to use and register warehouses. Companies have 90 days, as of 10 August 2018, to apply for registration with the competent authorities.

Mandatory form for tax consultants and tax consultancy firms

According to Decision 6/2018, starting 1 September 2018, tax consultants and tax consulting firms will be able to prove that they are the representatives of their clients only if they hold a special power of attorney from their clients, in the form approved by the mentioned piece of legislation.

Mandatory insurance for foreign or stateless employees

According to Law 177/2018, as of 22 July 2018, foreign or stateless employees working for Romanian employers outside Romania are insured for work accidents according to Romanian law. The previous provisions of the law provided as a condition for such insurance only work carried out in Romania.

BELARUS

Chamber of Tax Consultants

On 24 April 2018, the Chamber of Tax Consultants was registered. Personal liability exists for errors by tax consultants when carrying out their duties and for damages to the client. A tax consultant with a qualifying certificate insures his/her professional responsibility and is responsible for addressed tax claims.

Inspection system – tax authorities

As of 1 July 2018, all cash registers in Belarus are now equipped with an inspection system connected to the tax authorities.

Amendments to Tax Code

The Tax Code of the Republic of Belarus has been under review for several months. A draft of a new version of the General Part of the Tax Code has been prepared. The Special Part is now being considered. Public discussions of the forthcoming amendments are also being held.

Sole Preparation of Primary Accounting Documents

Despite the Decision of the Ministry of Finance of the Republic of Belarus "On the Sole Preparation of Primary Accounting Documents" entering into force, Belarusian companies, when working with foreign counterparts, still need to have signed, on behalf of both sides, agreements confirming the provision of services and the performance of work.

Amendments to list of innovative products

According to recent amendments, the list of innovative products of Belarus includes thirteen new items (devices for spacecraft, a new generation of wood harvesters, etc.). The producers of the said goods may have income tax advantages for three years.

HUNGARY

Change in online invoicing

From 1 July, all Hungarian VAT registered entities that issue invoices with a VAT sum above 100,000 HUF (approximately EUR 320) to another VAT registered entity in Hungary are obliged to report these invoices to the Hungarian Tax Authority (NAV). Failure to report online may incur a penalty of up to 500,000 HUF (EUR 1,700) per invoice.

New regulation on e-archiving

The long-awaited new e-archiving regulation (Decree No. 1/2018. (VI. 29.) ITM) has finally been adopted. The new regulation is a milestone in the Hungarian tax digitalization process. The new regulations construct a simpler system as it accepts more methods for e-archiving than the outdated one.

PETERKA PARTNERS

THE CEE LAW FIRM

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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