

PETERKA & PARTNERS

The CEE Law Firm

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Countries covered

Czech Republic | Slovakia | Poland | Hungary | Romania | Bulgaria | Serbia | Belarus | Ukraine | Russia |

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Intended changes to Income Taxes

The Czech Ministry of Finance has submitted for external comments significant amendments to legislation with expected effectiveness from 2014. Partly, the amendments are connected to the expected entry into force of the new Civil Code. The proposal also moves forward the effectiveness of certain provisions of the already approved Act no. 458/2011 Coll., on the Single Collection Point. These changes include:

- Dividend exemptions from income tax for Czech, EU, EEC and Swiss tax residents who are individuals;
- Significant extension of the period for exemption from individual income tax on the sale of securities, from 6 months to 3 years;
- Reduction of the limit for deducting interest on mortgage loans and building loans from CZK 300,000 to CZK 80,000 per household;
- Cancelling the right to a deduction of the basic individual income tax credit for persons with yearly income exceeding 48 times the average wage;
- Abolishing the super-gross wage and consequently increasing the individual income tax rate to 19 %.

However, other amendments concerning the single collection point will remain effective from 2015.

Information from GFD regarding Proof of Tax Residency

The General Financial Directorate (GFD) has published information on the required proof of tax residency in relation to the new 35 % withholding tax on income (such as from services, royalties, dividends, and interest) applicable to tax residents of non-EU or non-EEA countries or countries which have not concluded a double tax treaty or information exchange treaty with the Czech Republic. Identity cards, certificates of incorporation, affidavits and internal database information can all serve as proof of tax residency. If the taxpayer does not prove tax residence in an EU or EEA member or another contracting state, payment will be subject to withholding tax of 35 %.

Proposal for a Council directive on Financial Transaction Tax

The European Commission has adopted a proposal for a Council Directive on a financial transaction tax (FTT) with enhanced cooperation. The Directive will implement a FTT in the 11 participating member states, i.e. Slovakia, Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal and Slovenia. The FTT will be a significant burden on financial institutions. The proposed scope includes all financial transaction with some exceptions, namely day-to-day financial activities of ordinary citizens and businesses, mortgages and business lending. It should apply to all financial transactions on condition that at least one party to the transaction is established in a participating Member State. Additionally, financial instruments issued in the 11 participating member states will be taxed when traded, even if the participating parties are not established in an FTT member state. The FTT rate will be set by each individual member state, but a minimum rate of 0.1 % should apply generally to financial transactions and 0.01 % as a special rate for derivatives. The Directive should enter into effect on 1 January 2014 in the participating member states.

Amendment to the Public Procurement Act

From 18 February 2013 public procurement has been simplified. Bidders may demonstrate the fulfillment of conditions for participation by an affidavit; only a successful bidder need present original documents. If a bidder fails to meet the conditions, a contract can be concluded with the second or third bidder. The review procedure has also been simplified. A ban from participation in public procurement for three years will be imposed on bidders who commit fraud in demonstrating the fulfillment of conditions for participation.

Companies face fines for not filing Annual Financial Statements with the Tax Office

Under new measures proposed by the Ministry of Finance, companies that do not file a copy of their annual financial statement with the Tax Office will be fined. Penalties will be based on the minimum wage. This new system is designed to reinforce compliance with the requirement to file financial statements with both the National Court Register and the Tax Office, as currently only 50 percent of companies fulfill this obligation.

Vendors to be liable for Product Advertisements

New legislation being prepared by the Government will make vendors liable for products failing to meet advertised claims, though they may be able to avert liability if the failure is down to previous vendors or producers. The new measures are aimed at transposing the provisions of Directive 2011/83/EU into Polish law.

More Formalities in Public Tenders

A new regulation, prepared as an implementing act to new legislation on public procurement, will increase the number of documents required within the framework of public tenders. Companies competing in a tender will have to be able to produce all contracts they have performed in the previous five years (in construction) or three years (provision of products or services). Currently, only contracts relevant to the given tender must be produced. The measures aim to give a more complete picture of competing companies, but have been criticized by some commentators as unnecessarily burdensome.

Media Law in Hungary

Attention to this topic was given in the May issue of PETERKA & PARTNERS' newsletter, and the topic has recently come to fore again. The Hungarian government's official website states that the Media Act will be amended as the Council of Europe has approved the government's proposal on issues regarding the President of the National Media and Infocommunications Authority and the President of the Media Council. The Council of Europe has said that these two offices should be separate and held by two separate individuals, to be regularly elected by Parliament. The amendment was put before Parliament in February and is expected to become law in the spring. The changes should reflect the media authorities' position and will list the requirements for candidates for offices, which will include an education in law, social sciences or economics and at least ten years leading experience in media, press or infocommunications services.

Informal discussion on Insolvency and Data Protection Legislation

In January an informal meeting of EU member states' Justice and Home Affairs Ministers was held in Dublin, at which insolvency and data protection legislation were discussed. Hungary's inability to offer insolvent companies an alternative to liquidation, as the country has no reorganisation procedures available, was addressed. Data protection issues were discussed especially in connection with social networks and the division of powers between national and European authorities on who should impose fines for breaches of data protection law.

New Civil Proceedings Code applicable from 15 February 2013

Following an official statement of the Ministry of Justice of 22 January 2013, concerning the postponement of the entry into force of the New Civil Proceedings Code, which was initially delayed to 1 July 2013, the Romanian Government has issued Emergency Ordinance 4/2013, shortening the delay to 15 February. However, transitory measures concerning appeals will be applied until 2016, when all the Code's provisions will be enforced.

The form in which the Code enters force has been revised in accordance with Decision no. 967/2012 of the Constitutional Court with regard to appeals in litigation concerning claims of less than RON 2000. Appeals in these claims will still be possible under the repealed Civil Proceedings Code.

A new procedure has been introduced, namely the written phase of proceedings, which is essentially correspondence between the court and the parties, designed to discipline the parties through additional procedural rigour. It gives the opportunity to the parties and the court to have a complete view of the claims and defences in advance, in order to speed up negotiations. Other measures for accelerating court proceedings include a more severe sanction for a party which does not submit a defence within the deadline, though the sanction will not cause a separate trial concerning the claim. Additionally, the party in default no longer has the right to bring a counterclaim.

Regulations on the Application of the Public-Private Partnership Act (PPPA) recently adopted

Public-Private Partnership (PPP) is based on financing and developing, managing and maintaining facilities for technical and social infrastructure and green system. The partnership requires the division of the risk between the public and the private partners.

A private partner is a capital company with no bearer shares. The legislation implementing the PPPA provides that the public partner is involved in PPP by providing financial support to the private partner through one of the following forms: payments to the private partner; granting rights over real estate or parts of real estate; granting rights to additional business or to provide additional services outside the public interest. Payments to a private partner are to be used to recover the investment and operational expenses for management and maintenance.

The Operational Plan for the PPP and the Program for the implementing a municipal development plan, regulated by the PPPA, include projects for state and municipal PPP, the deadlines and resources needed for their implementation, as well as the amount and the type of financial support. PPP projects not included in either the Operational plan or the Program should not be implemented. The current regulation states the possibility for a private partner to propose the implementation of PPP, accompanied by financial and economic analyses.

Relevant information on a PPP will be available in the Register of PPPs, supported by the Ministry of Finance. Access to the register will be free of charge through the Ministry of Finance's website.

Amendments to the Excise Duty Act

Recent changes to the Excise Duty Act were adopted introducing a general progressive increase of excise duties between 2013 and 2016 and regulating excise duty refunds applicable to certain industries. Thus for instance, end users of oil derivatives and additives may benefit from partial or total excise duty refunds when the oil derivatives were bought from importers directly. The amendments also foresee for instance for an excise duty exemption on LPG until December 31st 2014. In general though, excise duties levied on oil derivatives and additives (including leaded and unleaded petrol, gas oils and kerosene) will gradually increase. Similarly, a minimal excise duty was set for tobacco and tobacco products, and excise duties will considerably increase until 2016: for instance, excise duties on smoking tobacco will increase from 37% in 2013 to 43% in 2016.

Increase of Tax Rate on Income realized in Serbia by Non-Resident Legal Entities from Jurisdictions with Preferential Tax Systems

The 2013 list including 51 jurisdictions considered as applying a preferential tax system (generally considered as “off-shore”) was adopted; income realized in Serbia by legal entities registered in these jurisdictions from royalties, interests, lease payments or service performances will be subjected to a 25% withholding tax to be paid by resident tax payers.

Amendments to Company Registration and Liquidation Orders

A decree dated 24 January 2013, No 2, incorporates a number of amendments to company registration and liquidation orders, implementing new regulations on company establishment and company liquidation. From 1 May 2013 unitary enterprises (similar to LLCs established by a single shareholder) established by companies may not use the word “private” in their corporate names. Articles of Association must be amended by 30 April 2014 to reflect this change. The Decree allows the possibility for companies to provide authorised capital within 12 months of state registration (previously capital had to be provided before state registration).

As before, the law does not impose a minimum amount of authorised capital for most companies. The Decree imposes limitation terms on individuals who want to establish companies depending on their business history. If a company (or sole trader) has been declared insolvent, its founders and directors may not establish a new company for one year. If debts cannot be satisfied the term is three years. Founders, directors or sole traders are also prohibited from setting up a new company until current liquidation proceedings have been terminated.

The Decree expressly allows a liquidator or founder to be held liable if a company is liquidated without following proper procedure. From 1 January 2013 new amendments to company registration became effective following recent amendments to the Tax Code.

The state fee for company registration was reduced from BYR 500,000 to BYR 300,000 (€26). For on-line registration the state fee is abolished.

Updated List of Certified Products

On 1 February 2013, Order of the Ukrainian Ministry of Economic Development and Trade No. 1526 of 29 December 2012 came into force. The Order introduces changes to the list of products which are subject to mandatory certification in Ukraine, in particular, excluding the following products: (i) communication facilities, (ii) steel, iron and enamel tableware, (iii) cotton and mixed fabrics for baby underwear; (iv) pyrotechnics.

New Corporate Profit Tax

From 1 January 2013 the corporate profit tax rate is cut from 23 percent to 19 percent, and will be effective until 31 December 2013.

Tax Benefits for IT-Industry

Under Act No. 5091-VI of 5 July 2012, from 1 January 2013 companies involved in the software products industry (and which meet certain legal requirements) are subject to 5 percent corporate profit tax rate and exempt from VAT.

Tax Benefits for Companies Involved in Investment Projects

Under Act No. 5205-VI of 6 September 2012, from 1 January 2013 to 31 December 2017, company profit earned from certain investment projects is subject to 0 percent corporate profit tax rate.

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State Duma Committee on Civil, Criminal, Arbitration and Procedural Law comments on New Order on Registering Leases

The State Duma Committee on Civil, Criminal, Arbitration and Procedural law issued an official letter (No. 3.3-6/94 of 22 January 2013) which states that in accordance with new amendments to the civil code, from 1 March 2013 the procedure for registering leases contracts concluded for one year or more is cancelled. Despite this the **committee deemed that it is still obligatory to register the right of lease as this should be considered as an encumbrance of real estate.**

Supreme Commercial Court agrees to consider Surety-disputes with Individuals

The Russian Supreme Commercial Court issued a decision of 13 November 2012, No. 9007/12, which states that disputes which arise from the suretyship contracts concluded with an individual as guarantor should be heard by the Arbitration Court if the individual person is the sole shareholder in the debtor company.

Obligatory Registration of Medical Goods

The Russian government passed the Regulation No. 1416 of 27 December 2012 which establishes a new order for registering medical goods. **It states that all medical products and other goods which can be used for medical purposes, including software, must be registered by the Federal Service on Surveillance in Healthcare (ROSZDRAVNADZOR).** The decision on registration should be based on the results of technical tests, toxicology studies, clinical trials and other research provided by the Regulation. After the registration the applicant should receive a certificate with indefinite validity.

PETERKA & PARTNERS is a leading independent business law practice dedicated to serving clients across the region of Central and Eastern Europe, delivering a combination of legal excellence, industry insight and business acumen.



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