



Tax and Legal News

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Tax impact of COVID-19 on Landlords (Part 1)

Rental represents one of the most significant monthly fixed expenses and cash outflow for some large corporates, SMMEs and individuals. As a result, it is anticipated that one of the industries that will be hit particularly hard during this lockdown period is the property industry.

Where the nationwide lockdown prevents tenants from earning income, or where income is significantly curtailed or where tenants cannot carry on their trade, these tenants may not be in a position to meet their monthly rental obligations. In order to aid tenants, landlords may provide relief by waiving tenants' outstanding lease payments, reducing tenants' monthly installments for a period of time, postponing payment of lease installments until a future date or even re-negotiating the terms of lease agreements in totality. Landlords may even agree with their tenants to receive rental income in a form other than cash. (Click [here](#) for link to Tax and Legal News Flash regarding Shares as consideration for rental.)

What are the tax implications for landlords when considering changing payment terms of their lease agreements?

Negotiations around changing the payment terms of lease agreements will look different for each landlord. The tax implications of any relief provided to tenants will depend on the specific agreement, the specific circumstances and must therefore be considered on a case by case basis. The formal agreement reached and the proposed changes to the agreement should be carefully reviewed to determine the true intention, and practical

implications, of the amended terms for both the landlord and tenant. In this news flash we will focus on the considerations for the landlord.

The following income tax implications may arise for landlords from tenants not being in a position to pay or from amended lease payment terms:

— Provision for doubtful debts and bad debts written off

A deduction in terms of bad debts may be available to landlords on rental income that is considered gross income, as defined in section 1 of the Income Tax Act, which becomes irrecoverable.

Section 11(j) of the Income Tax Act provides for a tax allowance in respect of a portion of the landlord's debts receivable that is regarded as doubtful in terms of recovery. The section 11(j) allowance is currently between 25% and 40% but may be as high as 85% in certain circumstances following an application to SARS.

— Waiver of, or postponement of payment of rental income

Where the payment of rent is postponed by a landlord, it is important to determine whether the unconditional right to receive such rental income by the landlord remains intact.

Any scenario where the rental income still accrues to the landlord may give rise to cash flow constraints if the rental income is not received before the tax liability on the rental income becomes payable or in circumstances where the accrual and postponement does not take place in the same tax year of assessment.

In addition to the above, any waiver needs to be evaluated from both a tax deduction and capital gains tax perspective.

Other considerations

Apart from the matters highlighted it is important to consider:

— The VAT implications of the above scenarios

— Whether there are any aspects to consider from a Corporate Law perspective

— The timing of any amendments to agreements

— Determining timing of receipt/accrual of rental income appropriately to ensure provisional tax payments are not underestimated.

We will address some of these considerations in further publications.

How can we help?

We are able to assist you with determining the preferred approach and appropriate tax consequences based on your specific circumstances.

[Contact us](#)



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