

Rent Deferrals - How They Affect GST/HST Obligations

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Many landlords are entering into rent deferral arrangements with their commercial tenants in light of recent COVID-19 pandemic-related matters. How such rental deferrals are structured will impact the GST/HST reporting elements for both the landlord and the tenant.

Under the Excise Tax Act (Canada) (the “ETA”), GST/HST on commercial rent is payable by the tenant (and collectible by the landlord) on the earlier of the day the rent is due under the lease and the day it is paid.

Many landlords are often caught off guard by this rule. A case in point is with commercial leases, where upon default by the tenant under the lease, rent acceleration is automatically initiated pursuant to a rent acceleration clause under the lease. If the tenant does not pay the accelerated rent, the landlord is nevertheless required to account for the GST/HST collectible thereon and remit such GST/HST to the Canada Revenue Agency (“CRA”). Relief is only effectively available at the time when the landlord writes the debt off in its books of account.

Landlords will be in the same position with respect to tenants who default on their rental payments due to COVID-19 pandemic-related matters.

So, what will happen with rent deferral arrangements?

Properly structured, a rent deferral arrangement will also postpone the day on which GST/HST is payable so that landlords who have agreed to defer collection of rent do not have to remit GST/HST that they do not collect. The proper structuring of the said arrangement requires a change to the due date that GST/HST is otherwise provided for under the lease. Care must be taken to ensure landlords do not give up any other important rights in agreeing to a change of due date. It should also be noted that if the date that rent is due is changed, tenants will also not be eligible to claim an input tax credit (“ITC”) for the GST/HST payable on such rent until the new due date.

In most cases, merely deferring the payment of rent due under the lease such as by agreeing that the tenant can pay the rent at a later date without penalty will not relieve the landlord of having to remit the GST/HST payable on the non-paid rent. Having to fund GST/HST payable by a tenant in an environment where cash flow is already significantly impaired makes a bad situation worse. Granted, the concern is much less for very short deferrals as landlords will not have to remit the GST/HST collectible in April until June 30th as a result of the relief announced by the CRA as part of its COVID-19 assistance measures. However, longer deferrals are not uncommon and one cannot truly predict how many deferrals will ultimately need to be agreed upon.

Unlike the situation in which the date on which rent due under a lease is changed, if payment is merely deferred, tenants are entitled to recover the GST/HST payable (even if it has not been paid) through the ITC mechanism. Tenants can be expected to claim their ITCs to alleviate their cash flow, particularly if the tenant will be in a net tax refund position. As a compromise to the GST/HST implications for a mere payment deferral, the landlord can require the tenant to pay the GST/HST at the time the rent is due under the lease (even if payment of the rent itself is deferred) or at least before June 30th (when the landlord is required to remit). Depending on the actual lease, there may be other ways to navigate the GST/HST implications for the landlord and the tenant arising from any rent deferral arrangement.

For further questions on rent deferrals and GST/HST obligations, please contact a member of our **Tax Group** or **Commercial Leasing Group**.

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