DLK ADVISORY

TAX IMPLICATIONS OF DEFERRED RENT

If you run a business from rented premises, there may be tax consequences when rent is either waived, deferred or varied under commercial terms due to various circumstances. The tax consequences differ depending on whether the waiver, release or variation is for a past or future occupancy as well as other factors.

In instances where your business owes rent for a past occupancy period which is later waived or released by the landlord, including under bankruptcy or insolvency law, if you have already claimed a deduction for the rent on the business tax return, you will still be entitled to that deduction. However, the unpaid amount will be considered to be a debt forgiveness. This means that the amount will not need to be included in the assessable income of the business but may be offset against amounts that could otherwise be claimed as deductions.

For businesses that have already paid rent for a past occupancy period and claimed a deduction, any amounts waived or refunded will need to be included as assessable income.

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Where your landlord waives rent related to a future period of occupancy, the business will not be entitled to a deduction for the amount of rent that would have been paid. The only amount that can be claimed is the amount of rent that the business is required to pay. For example, if a landlord reduces the amount of rent payable from $500 per week to $25 per week, the business is only entitled to claim $25; if the rent payable is reduced to nil, the business is not entitled to a deduction.

For businesses that account for GST on an accruals basis, a waiver or variation of rent payable may lead to GST consequences. If the business has already claimed a GST credit for the rent which is waived or refunded, an increasing adjustment will need to be raised to pay back the credit that was claimed. This will need to be done in the BAS period in which the business becomes aware of the waiver or receives a refund.

Deferrals, however, generally do not need any GST adjustment. Businesses do need to be aware that if their landlord has changed the rental agreement, including timing or amount of scheduled payments, the GST credit that can be claimed will be based on the new agreement. In addition, if your business had claimed a GST credit for a deferred amount which the landlord later writes off as a bad debt, an increasing adjustment may be required.

Businesses that account for GST on a cash basis need not worry about adjustments as they can only claim GST on the basis of actual rent paid as shown on a tax invoice (ie GST credits cannot be claimed for deferred rent until the rent is actually paid).

Besides the income tax and GST consequences, rental concessions, whether it be a waiver or a deferral given by your landlord, may also have CGT consequences for your business. This may occur if, for example, your landlord has changed the rental agreement for payment or other consideration from the business or has created a new or additional agreement. Where that has not occurred (ie the landlord has given the rental concession on an existing lease without any consideration, payment or new agreement), there will be no CGT consequences.

CONTACT

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