



TPA Newsletter, Special Edition 11/2020

1. Acts adjusting commercial space and flat leases

On 27th April 2020, both Acts concerning the relationship between tenants and landlords, about which we had previously informed you in the 9th Edition of our special newsletter, were made public in the Collection of Laws.

These are:

6 Act No. 209/2020 Coll., on certain measures to alleviate the impacts of the SARS CoV-2 coronavirus epidemic on housing space tenants, on beneficiaries of credit provided by the Governmental Housing Development Fund and in connection with the carrying out of transactions connected with usage of flats and commercial spaces in an apartment building, and
6 Act No. 210/2020 Coll., on certain measures to alleviate the impacts of the CoV-2 coronavirus epidemic for commercial space tenants.

Both of these Acts took effect on the day they were declared.

We would like to return to this topic and remind you of certain basic regulations from the newly-passed texts of the Acts.

The fundamental content of both Acts is to prevent landlords from unilaterally terminating a lease solely due to a delay on the tenant's part in paying the rent, the maturity date of which having emerged during the so-called material time, i.e. from 12. 3. 2020 to 30. 6. 2020.

Another condition is that the tenant proves to the landlord, within fifteen days from the date when the first delay in payment occurred during the material time, that such a delay occurred primarily due to restrictions stemming from the exceptional measures which

- a) prevented or substantially hindered the commercial space tenant from performing their business activity;
- b) prevented or substantially burdened a flat tenant in terms of due rent payment.

Among commercial space tenants, presentation of documents confirming this serves as proof of this fact for the landlords. Flat tenants present confirmation from the pertinent Employment Office of the Czech Republic, to whom they have to present documentation.

The ban on unilateral termination of lease applies as of the taking effect of the Act until 31. 12. 2020 (the so-called protected period). If the tenant has not paid the due rent by 31. 12. 2020, the landlord has the right to terminate the flat lease without a notice period, and a commercial space lease with a notice period of five days. Likewise, these provisions do not limit the right of the landlord to terminate the lease for other reasons.

If the lease expires before the expiry of the protected period, the tenant is obliged to pay all rental debts which were due during the material time, within 30 days from the expiry or end of the lease.

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Further, it has to be noted that:

- the above-mentioned exception does not apply to delay in payment of service charges connected with usage of the spaces, i.e. if the tenant has not paid, during the material time, service charges connected with usage of the spaces, the landlord is for this reason authorized to terminate the lease in accordance with the lease agreement;
- the tenant will, in connection with due rent payments, yet be obliged to pay the landlord default interest and other penalties connected with late payment pursuant to the lease agreement (see Section 3, para. 2 of both Acts in identical terms);
- if the tenant is in delay with rent payment for the period before 12. 3. 2020 and the landlord has for this reason terminated the lease in accordance with the lease agreement prior to the taking of effect of this Act, the effect of such termination of the tenant will not be affected by this Act.

2. Commercial solutions of the epidemic impacts on leases

According to our experience, numerous commercial negotiations between landlords and tenants have in practice been taking place and had been underway yet prior to the taking of effect of the above described Acts. In this regard, we have prepared for you a brief overview of variants which we have observed. We comment on the variants from the perspective of value added tax (“**VAT**”) and corporate income tax (“**CIT**”).

2.1. Postponement of rent maturity date

A simple postponement of rent maturity date has the same tax impacts on the landlord as the above-mentioned Act. What varies, however, are the legal impacts, which could be viewed as an advantage: the possibility to enforce penalties, the uncertainty of proving the connection to the epidemic or the uncertainty as to whether the given Act will successfully be contested in Czech courts.

VAT: No change; the landlord pays VAT in the same manner and terms as until now.

CIT: No change; the landlord continues to account for and tax revenues from letting services.

2.2. Provision of rent free / rent discounts

If the landlord decides to support the tenant by providing (partial or 100%) rent discounts, it should do so formally by a change in the lease agreement (e.g. an addendum). Rent-free period can also be provided retrospectively for a period which has already been accounted for.

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In practice, we have also encountered the variant where provision of rent-free was conditioned by the fulfilment of certain conditions on the tenant's part (e.g. if the tenant pays a certain part of the rent, the other part is pardoned). The tax aspects are in such a case principally the same.

VAT: The landlord issues an invoice with a lower tax base, from which it pays VAT. If the discount is provided with retrospective effect, the landlord compiles a credit note. The provision of the discount is implemented into regular VAT returns, for it is an adjustment of business conditions.

CIT: Provision of rent-free is implemented into a reduction of taxable revenues and a lower tax base of the landlord; the volume of the impact will vary in connection with the accounting entry, to which we recommend paying attention.

2.3. Shifting rent-free/rent discounts

A landlord can also decide to support a tenant by **shifting** the agreed rent discounts, where this rent rent-free was to take place in the future, but the parties have agreed to shift this period to the present. Here too we recommend proceeding with a formal change of the lease agreement (e.g. an addendum).

VAT: The landlord issues an invoice with a lower tax base, from which it pays VAT. If the discount is provided with retrospective effect, the landlord issues a credit note. The provision of the discount is implemented into regular VAT returns, for it is an adjustment of business conditions.

CIT: Provision of rent-free is implemented into possible changes of taxable revenues and a lower tax base of the landlord; the pertinent impact will vary in connection with the accounting entry, to which we recommend paying attention.

2.4. Change of the invoicing period

If letting services are defined in an agreement as partial supply the VAT perspective, it is possible – with an amendment to the agreement – to change the arranged partial supply and thus also to change the invoicing period, e.g. from monthly to quarterly. This is therefore not a *ceteris paribus*, a reduction of rent, but an instrument to shift its maturity date or, more precisely, to change the frequency thereof.

VAT: With the change of partial supply of lease service there comes a change of the moment to declare tax, thus to a postponement VAT payment obligations. But take note of the limitation of the VAT Act, which states that where supplies provided over a period of more than 12 months are concerned, they are realized by the latest on the last day of the calendar year, i.e. if an adjustment of a lease which has hitherto not been invoiced even for a part of 2020 is at issue, the rent has to be invoiced at the latest by the end of 2020, and VAT has to be declared in the December tax return.



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CIT: Nothing has changed; proceeds will be taxed in the period with which they are connected in time and substance.

2.5. Suspension of invoicing

If the landlord only suspends invoicing and no factual and proved interruption of letting services has occurred, this action has the following impacts:

VAT: Nothing has changed as regards obligation to pay VAT, but late invoicing elicits additional administration as regards preparation of VAT control statements.

CIT: Revenues (albeit not invoiced) will be taxed in the period with which they are connected in time and substance.



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Kind regards

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