

COVID-19: Considerations for landlords, tenants and their financiers

Continuity for landlords, tenants and financiers is emerging as a critical economic issue amid the unprecedented measures to contain the spread of COVID-19. We understand what is important to you and to help make sense of the issues and evolving situation we have created an easy to follow checklist, targeted towards strategic asset management and key portfolio considerations to protect your business and its assets. We have also set out a number of tax issues which will need to be carefully considered as part of managing the impacts of COVID-19.

For more information, including [emergency measures for commercial leases](#), please visit [our Hub](#) or contact us to discuss management issues and protection strategies.



To assist in the review of your assets, now and in the future:

- 1 Whether as a direct result of COVID-19 (as an infectious illness) or as result of government imposed restrictions or intervention - does a tenant have the right to terminate their lease, abate rent, cease trading from the premises or obtain some other form of relief?
- 2 What are the respective rights of a landlord or tenant if a tenant abandons, or ceases trading from, premises? Does it make a difference if the conduct is voluntary (for example, as a result of a change in market conditions) or involuntary (for example, due to a government mandated closure)?
- 3 If a landlord and tenant agree to temporary or permanent relief (for example, rent abatement), how should the parties structure and document that relief (including with a view to preserving rights as a creditor in the event of tenant insolvency)?
- 4 What rights does a landlord have to close or restrict buildings or premises in whole or in part? What rights does a tenant have in circumstances where that occurs?
- 5 What rights does a landlord or tenant have to conduct extensive cleaning or fumigation of premises or buildings? How can costs be recovered or allocated by the party undertaking that cleaning or fumigation?
- 6 What are the rights and obligations of a landlord or tenant under their policies of insurance? Does cover extend to business interruption, loss of rent and circumstances where a third party contracts COVID-19?
- 7 What consequences will new government legislation (for example, the *COVID-19 Legislation Amendment (Emergency Measures) Act 2020 No. 1* passed by the NSW Parliament) mean for landlords and tenants and are my existing relief arrangements consistent with them?
- 8 Recognising that a number of tax liabilities, including income tax and GST, are imposed on an accruals (rather than receipts) basis, how should tax and GST obligations be managed in the context of overdue rent that has not been abated or deferred? What deferral, adjustments and variations are available from tax authorities to help manage cash flow issues?
- 9 In the event a landlord has fully geared their real estate investment based on the prior year value of the property, will the current economic climate affect the landlord's capacity to claim debt deductions under the thin capitalisation rules?
- 10 If the impacts of COVID-19 result in a landlord seeking a government bailout or various forms of capital raising (including the conversion of existing instruments), how will those actions be characterised from a tax perspective and will any stamp duty consequences arise?
- 11 What rights does a landlord or tenant have to defer the payment of land tax and rates? Have any relevant rules or exemptions been introduced to provide relief from these charges and levies?