COMMERCIAL LANDLORDS AND PROPERTY MANAGERS---BEWARE THE RENT DEFERRAL TAX TRAP! *

Clearly a lot of our Landlord/Property Manager members are receiving all sorts of requests for rental abatements or deferrals. But we all know the old saying… “No good deed goes unpunished”. In the event you as Landlord in good faith accede to any request for a deferral, you might just be putting yourself in a worse position than you realize.

This is because pursuant to the Excise Tax Act the GST/HST is payable on the earlier of the date it is payable under the lease, or the date it is actually paid. The Landlords obligation to collect and pay is governed by this also. As a result, if the Landlord agrees to a rent deferral and nothing is paid to the Landlord for GST/HST prior to, or as of the due date for the Rent, then the Landlord will nonetheless have to pay the GST/HST collectible to CRA without itself having collected it from the Tenant. While there is some interim COVID-19 relief for these payments presently offered by CRA in that the GST/HST for the months of April to June of 2020 may be paid in June 2020, this is a short term measure that has to be weighed in this decision process.

I would suggest that in the event any of our members are entering into deferral agreements, they take steps to ensure that their agreements deal with this issue. This may, depending on the Lease provisions, include requiring the Tenant as a condition of any deferral, to pay the GST/HST amount payable on the rent due date, failing which the deferral is void.

RANDALL ROTHBART

*This information is provided for general information purposes only and does not constitute legal or professional advice. No reader should rely on this information or any part thereof without obtaining legal or professional advice specific to their situation.