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公司实务

疫情期间的租金减免

RENTAL REDUCTION & EXEMPTION DURING THE COVID

2022 年 3 月以来发生在上海的疫情封控已持续近 2 个月。疫情封控期间，几乎所有上海地区的公司都处于停工停产状态，很多公司都希望了解，公司还是否需要支付在此期间的租金，或者可以要求减免。就此问题，我们根据上海市人民政府及相关司法机关发布相关规定，就实际中可能遇到的典型问题做出分析如下：

The lockdown in Shanghai since March 2022 has last for almost 2 months. During the lockdown, almost all companies in Shanghai are in the status of suspension in its operation. Many companies want to understand if they still need to pay the rental for the period of lockdown, and if any chance such rental can be reduced/exempted. In this regard, we would like to analyze some typical questions arising in accordance with the regulations promulgated by the Shanghai government and judicial bodies.

I. **我听说如果我们公司租赁的是国有企业的房屋，能享受租金免除优惠，这项政策是针对所有承租方的吗？**

I heard that if the property our company has leased belongs to a state-owned company, we can enjoy rental exemption. Is this policy for all lessees?

不是的。根据《上海市国有企业减免小微企业和个体工商户房屋租金实施细则》的规定，相关租金免除政策的适用对象为从事生产经营活动的小微企业和个体工商户。小微企业，判断标准主要是按照从业人员数量和营业收入予以确定，不同行业有不同标准。具体可参照上述规定。以餐饮业为例，如果从业人数在 100 人以下，且营业收入在 2000 万元以下的，可视为小微企业，享有上述租金免除优惠政策。

No. In accordance with the Implementation Rules for Reducing and Exempting rental by Shanghai State-owned Enterprises for Small and Micro-Enterprises and Individual Business, the rental exemption is available for small and micro-enterprises and individual business. Small and micro-enterprises shall be defined according to the headcount and business revenue of the enterprise, and the criteria varies for different industries. For instance, in

catering industry, any company with headcount less than 100 and business revenue less than 20 million RMB shall be deemed as small/micro-enterprise, and is eligible for rental exemption.

此外，根据上海市政府的最新通知，该项租金免除政策可同时适用于承租国有房屋、运营困难的民办非企业单位。

In addition, according to the latest notice by the Shanghai government, this policy also applies to private-run non-enterprise units who lease property belonging to state-owned enterprises and encounter business difficulty.

所以，作为承租方，首先需要确认的是自身是否符合享受政策的主体资格。

Therefore, for the lessee, the first step is to check if it is eligible for rental exemption.

II. 不清楚我们公司所承租房屋是否是国有企业的房屋，如何才能确认呢？

Not sure if the property our company leases is the one belonging to state-owned company. How can we find out?

首先需要确认的是房屋的产权人是谁。房屋产权人和出租方在很多情况下是不一致的，特别是存在房屋转租的情况下。如果出租方/转租方是国有企业但是房屋产权人并非国有企业，则将不符合政策规定。

The first step is to find out who is the owner of the property. Sometimes, the landlord may not be the owner of the property, in particular in the event the property is subleased. If the landlord or the sub-lessor is a state-owned company while the owner of the property is not a state-owned company, then the rental exemption is not available.

如果您已经知道房屋产权人，但是无法确认该产权人是否属于国有企业，您可以登录上海市国有资产监督管理委员会网站 https://www.gzw.sh.gov.cn/shgzw_gqzc/index.html 进行查询，也可以拨打电话 021-54186103 进行确认。

If you have known the owner of the property, but not sure if it is a state-owned company, you can visit and search the website of Shanghai State-owned Assets Supervision and Administration Commission https://www.gzw.sh.gov.cn/shgzw_gqzc/index.html, or call the hotline 021-54186103 for checking.

III. 我听说租赁国有企业的房屋可以享受三个月的租金免除。如果符合条件的，还可再额外申请 3 个月的租金免除。我们公司今年损失巨大，需要提交什么材料才可以享受总计 6 个月的租金免除呢？

I heard that 3 months rental exemption is available if the property is owned by a state-owned company, and additional 3 months rental exemption can be granted if the required conditions are met. Our company suffers big loss this year, and what documents are required if we want total 6 months rental exemption?

根据上海市人民政府的最新通知，租赁国有房屋的小微企业、个体工商户和运营困难的民办非企业单位，2022年免除6个月的房屋租金。该通知简化了申请租金免除的程序，无需再提交相关证明材料。但是，如果2022年的租期不满12个月的，则应按照租期按比例享受租金免除。

According to the latest notice by the Shanghai government, total 6 months rental exemption is available to small and micro-enterprises, individual business and private-run non-enterprises units who lease property belonging to state-owned companies. This notice simplifies the formality relating to application for rental exemption, and no proof material is required any more. However, if the term of lease in 2022 is less than 12 months, the rental exemption shall be granted on pro-rata basis.

IV. 我们公司租赁的房屋是非国有企业的，我们能要求减免租金吗？

If the property our company leases belongs to a non-state-owned company, can we ask for rental exemption?

因为疫情影响导致房屋无法正常使用的，承租人可以首先与出租方沟通协商减免封控期限内的租金，如果协商不成，也可以根据双方协议的约定，提交法院或仲裁机构要求减免租金，一般情况下，我们认为该等诉求能够得到合理的支持。

If the property cannot be used as usual due to the impact of pandemic, the lessee can first of all negotiate with the landlord for rental reduction/exemption for the lockdown period, and if the negotiation is not successful, the lessee can file to the court or arbitration commission according to the lease contract and claim for rental reduction. Generally speaking, such claim can be reasonably supported.

此外，如果与出租方签署的是长期租赁合同，而且公司业务因为疫情持续受到影响的导致没有营业收入或者收入明显减少的，继续按照租赁合同约定的租金标准支付对承租方明显不公平的，承租方可以要求与出租方协商减少租金。如果协商不成的，可以根据租赁合同约定，提交法院或仲裁机构要求对合同租金进行变更。减少租金的请求将可能获得支持。

In addition, if the lease contract is a long-term contract, the business of the lessee has been affected by the pandemic, which results in no revenue or material reduction of revenue, while payment of original agreed rental seems not fair to the lessee, the lessee is allowed to negotiate with the landlord for reduction of the rental. However, if the no agreement can be reached, the lessee is entitled to file to the court or arbitration commission according to the lease contract and ask for change to the rental rate. The claim for reduction of rental can be probably supported.

V. 我们公司为员工租赁居住房屋，疫情封控期间是否有租金的减免机会？

Our company leases apartment for the employee. Is there any chance to request for rental reduction/exemption for the period of lockdown?

如果疫情期间员工仍然使用了公司为其租赁的房屋，一般不能要求减免租金。

If the apartment has been used by the employee during the period of lockdown, generally speaking the request for rental reduction/exemption is not feasible.

但是，如果因为疫情防控原因，导致员工实际无法使用房屋的，则公司有权要求出租方减免租金。如果出租方不同意的，可以通过法院途径要求减免。

However, if the apartment cannot be used by the employee due to the lockdown, the company is entitled to rental reduction/exemption. If the lessor does not agree, the lessee can file to the court.

VI. 我们公司比较小，使用的是共享办公场地，我们可以要求租金减免吗？

We are a small company and use shared office, and can we ask for rental reduction/exemption?

类似使用共享办公场地的情况，有时候签署的是服务合同，而非租赁合同，因此，即使房屋产权人是国有企业，上述有关租金免除的政策也不能自动适用。

Sometimes the contract relating to shared office is a kind of service contract, instead of lease contract. Thus, even if the property belongs to a state-owned company, the rental exemption policy does not automatically apply.

但是，因为封控期间，共享办公的服务提供方事实上无法提供正常服务，我们认为公司可以服务提供方没有提供正常服务作为理由要求减少或免除服务费用。这种要求在法律上是站得住脚的。

However, as service provider of the shared office is not able to provide usual service during period of lockdown, you can request for reduction/exemption of service fee on the ground of no service is provided for the period of lockdown, which in our opinion is reasonable from the legal perspective.

VII. 因为疫情影响，公司经营收入受到很大影响，无法按时支付租金。现在房东要求我们支付逾期违约金，并提出解除租赁合同。房东有权这样做吗？

Due to the impact of the pandemic, our company business is affected seriously, and we are not able to pay the rental in time. Now the landlord is asking for penalty for the late payment, and terminates the lease contract. Is the landlord entitled to do so?

通常情况下，租赁合同都会对承租方逾期支付租金设定违约金，并且在逾期支付达到一定时间后给予出租方单方解除合同的权利。但是，如果出租方以疫情封控期间承租方未及时支付租金要求违约金或单方解除合同的，一般情况下法院不会支持。

Usually a lease contract may include penalty clauses relating to late payment of rental by the lessee, and grant the landlord right to terminate the contract unilaterally if the rental is not paid within certain period. However, if the landlord intends to ask for penalty or terminate the contract on the ground of late payment of rental by the lessee during the period of

lockdown, such claim will not be supported by the court.

VIII. 我们公司的业务受疫情影响太大，公司打算结束在上海的经营活动。在这种情况下，我们是否可以要求提前解除与房东的租赁合同？

Our company business is affected too much by the pandemic and we are going to close the operation in Shanghai. Under such circumstances, can we terminate the lease contract with the landlord early?

目前法律并未赋予承租方在疫情情况下单方解除租赁合同的权利，因此，承租方是否可以提前解除租赁合同，应该以签署的租赁合同条款为准。此外，承租方也可以与出租方协商如何提前解除租赁合同。

Currently the law does not grant the lessee any right to terminate the lease contract unilaterally under the pandemic. Thus, the terms of the lease contract shall prevail in terms of early termination. In addition, the lessee can negotiate with the lessor how to terminate the lease contract early.

但是，如果疫情给承租方的公司业务带来重大影响，继续按照原有租赁合同的租金标准执行对承租方明显不公平，且承租方经与出租方协商未能达成一致意见，承租人可以根据租赁合同约定，要求法院或仲裁机构解除合同。

However, if the pandemic brings material impact to the business of the lessee, and it is unfair to the lessee to continue the lease contract with the original rental condition, and after negotiation with the lessor which is not successful, the lessee can file to the court or arbitration commission according to the lease contract and request for termination of the lease contract.

如您对本文有任何问题，请联系：

If you have any questions about this article, please contact us via:



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