



ISSUES RELATING TO COMMERCIAL LEASING

SLOVAKIA Cechova & Partners

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1. Describe [National][state][territorial][provincial] or local transfer taxes payable on creation or assignment of a lease.

There is no specific tax or stamp duty payable on creation or assignment of a lease. Rent as such however forms a taxable income under the income tax of natural or legal person (landlord) (19 %). In general, the rent is not subject to VAT; however, the landlord may decide that the rent will be subject to VAT in cases where the tenant is also a VAT tax payer.

2. Describe any legal restrictions limiting the maximum term of a lease (including renewals).

The maximum period of the lease is not regulated in the Slovak Republic. In practice, also leases for a period of 99 years or similar occur (especially in cases of leases of real property from the state or municipal bodies).

3. Describe any laws requiring landlords to allow a tenant to renew its lease.

There are no specific statutory provisions on entitlement of the tenant to renew the lease. The lease agreements frequently contain a clause on automatic renewal or renewal upon the option of both (any of) the parties to a lease agreement for the same period or shorter period.

However, in case that tenant uses the leased premises after termination of the respective lease agreement and the landlord does not object such use at the court, the lease agreement is automatically prolonged for a period for which it had been concluded, however not exceeding one year.

4. Describe any restrictions on rent that may be charged for to a tenant.

There are no restrictions on a level of the rent and its actual amount is only subject to a contractual agreement of the parties to the lease agreement.

5. Describe any laws permitting tenants to terminate a lease prior to its stated expiration date.

In general, a lease agreement concluded for a definite period of time may be terminated upon notice only if it is agreed in the lease agreement. The tenant may terminate an agreement on a lease of non – residential premises concluded for a definite period of time for the following reasons:

- the landlord has substantially violated his obligation to maintain, at his own cost, the subject matter of the lease in a condition suitable for use for purposes agreed in agreement on a lease of non–residential premises,
- the tenant is no longer entitled to perform the activities for which the subject matter of the lease was leased,
- the subject matter of the lease becomes unsuitable for the agreed use without the tenant’s involvement.

6. Describe any laws allowing tenants to assign or sublease without landlord’s consent.

In general, unless otherwise agreed, a leased real estate may be subleased by the tenant to a third party. In case of the lease of non-residential premises, they may be subleased by the tenant to a third party (sub-lease) only with prior written approval of the landlord, unless otherwise agreed. There are no statutory provisions allowing in general such sublease or assignment without landlord’s consent.

7. Describe any laws allowing landlord to restrict assignments or subleases by tenants.

In general, according to applicable statutory regulation, the tenant may sublease non-residential premises only with a consent of the landlord. The lease agreement may contain provisions on restriction of assignment or sublease right by the tenant or a requirement for obtaining of consent of the landlord to be granted under fulfilment of specified conditions; it is also possible to absolutely prohibit assignment or sublease by the tenant.

8. What is the common form of eviction proceeding? What is the customary length of time for that proceeding?

The landlord shall apply for eviction of the tenant through court and subsequently through executor (bailiff). It may also cease to provide services related to use of the premises (utilities, etc.) in accordance with terms agreed in the lease agreement or separate agreements on supply of utilities. The length of eviction proceeding may in general vary from 2 - 6

months depending on the level of cooperation of the court and the executor.

9. Are there any legal restrictions on pledging a leasehold interest as security for a financing?

There are no legal limitations on pledge of leasehold interest. However, limitations may arise from the lease agreement itself.

10. Describe any requirements for landlords to hold security deposits in separate accounts and, if such requirements exist, describe if there can be one separate account for all tenant security deposits or whether each security deposit must be held in its own separate security deposit.

There are no legal restrictions on holding security deposits. Specific conditions on holding and use of security deposits may be contained in the respective lease agreement.

11. Describe any required statutory or other legal disclosures to be made to all tenants.

There are no statutory duties of the landlords towards tenants regarding any specific disclosures.

12. Describe all taxes on rent or other taxes that landlord are required to collect from tenants.

There are no taxes to be collected from tenants on the basis of statutory regulation. Real estate ownership tax payable by the landlord is commonly re-charged to the tenants in case of long-term leases of office, shopping or industrial premises as a part of service charges under the conditions agreed in the lease agreement. In general, the rent is not subject to VAT (19 %); however, the landlord may decide that the rent will be subject to VAT in cases where the tenant is also a VAT tax payer.

13. Describe any limitations on the ability of landlords to exercise self-help.

The landlord may not exercise self-help in cases of eviction or similar cases.

There is a statutory pledge on movable assets of the tenant located in the leased estate as a security for payment of the rent, which the landlord may execute in accordance with the law (i.e. after failure of the tenant to pay the rent and issuance of respective execution order by a court).

14. Describe whether remedies such as acceleration of rent must be expressly stated or whether they are implied.

Acceleration of the rent (or other remedies) must be expressly provided for in the lease agreement.

15. Describe whether there are any expedited remedies for tenant default and, if so, what lease provisions (such as waiver of jury trial, for example) would be required for a landlord to seek expedited remedies.

There are no statutory regulated expedited remedies in the Slovak Republic. In principle, any expedited remedies may be agreed in the lease agreement.

16. Describe any formal requirements for the execution of a lease.

The lease agreement concerning non-residential premises must be concluded in written form and contain provisions on subject and purpose of the lease, amount and maturity of the rent, and also term of the lease in cases of leases for definite period of time. Failure to meet above mentioned statutory requirements results in absolute invalidity of the lease agreement.

17. Describe whether a memorandum of lease or other document would need to be recorded for the lease to be enforceable against third parties.

Leases are generally not recorded in the Slovak Republic; only lease agreements on land, which are concluded for at least 5 years, must be registered in the respective real estate cadastre. Failure to comply with such a registration duty has no effect on the validity of such a lease agreement or its enforceability against third parties.

18. Describe any restrictions on the transfer of ownership of real properties subject to a lease. Does such a transfer affect the tenant's rights or obligations?

If the ownership to the real estate (which is subject to lease) is changed, the transferee automatically accedes to the legal relation with the tenant and becomes the new landlord. Such change is effective toward the tenant as soon as it is notified to him by the former landlord or evidenced by the new one. However, the tenant shall have right to terminate the lease agreement (even concluded for definite period) due to this reason even if it is not agreed in the lease agreement; the new landlord does not have such right. It is questionable whether the lease agreement may restrict such tenant's right. However, it is usual that lease agreements for non-residential premises (such as industrial parks etc.) contain such restrictions.