Turnover-based rent: who benefits from that?

In the case of commercial leases, it is customary to pay the rent in a fixed amount that is subject to indexation after a certain time. However, it is also possible to calculate the rent on the principle of turnover rent. The law does not prohibit the parties to a lease agreement from agreeing on different methods for calculating rent. For example, it is possible to agree that instead of the fixed rent, a percentage of the tenant's turnover will be calculated as rent. A combined calculation of the rent can also be used, where the turnover rent is applied as an additional component in addition to fixed rent.

The biggest difference in a turnover rent from a fixed rent is the variable amount of rent in each invoicing period. This makes rental income more difficult to predict and consequently, such a floating lease arrangement is not suitable for all lease relationships. The calculation of rent based on the financial results of the tenant assumes that continuous sales activities take place on the commercial lease premises, generating constant turnover. Retail premises are particularly suitable for the implementation of turnover rent.

In certain circumstances, the turnover-based rent is beneficial for both the tenant and the lessor. For example, in the tenant's view, turnover rent takes the changing economic climate better into account. The lessor is more motivated to support the tenant's activities as the lessor wins directly from the economic success of the tenant. It can even be argued that the turnover rent helps to keep the interests of the lessor and the tenant in a better balance in a long-term lease relationship.

Advantages of turnover-based rent

- In the case of an increase in turnover, the lessor also receives a share of the increase in the tenant's economic activity in the form of higher rent.

- If the tenant is struggling financially, the tenant will pay less rent to the lessor. This can help the tenant to survive financially during a difficult period.

- In the case of fixed rent, the critical amount of arrears, in which case the lessor has the right to extraordinarily cancel the agreement, reaches faster. In the case of turnover rent, however, both parties share the risks of the economic environment, which can help to survive the crisis and maintain lease relationships.

Drawbacks of turnover-based rent

- The rent calculation process is more complicated than when applying a fixed rent. Administrative obligations are added to both the tenant and the lessor (the tenant's accountability, the lessor's obligation to check the submitted documentation, and the audit obligation to verify the correctness of the data).

- The lessor shares the risk of the tenant's economic activity (as a result of the tenant's poor sales figures, the lessor loses the rental income, or it decreases).

- The tenant must share his success with the lessor.

- Sharing an economic indicator with a lessor may not be suitable for tenants for whom the turnover of a particular sales point/business entity is confidential information.

- There may be disagreements about the amount of rent. For example, if the lessor believes that the data provided by the tenant on the turnover figures are not complete or true.

- Credit institutions financing a lessor may not be comfortable with an unpredictable rental income forecast, as it might be considered insufficient to cover loan payments.

What to consider if you wish to use turnover-based rent in the agreement

- The terminology must be defined in the agreement. For example, sales revenue is usually based on the amount excluding VAT, i.e., net turnover.

- The terms and conditions for calculating the rent must be agreed upon. E.g., the volume, procedure, and deadlines for submitting sales reports to the lessor.

- If the rent consists of two parts - fixed and turnover rent, then the details of settlement and invoicing must be agreed upon. The turnover-based rent can be settled monthly or at a longer interval (quarterly or annually). The tenant then does not have to share their turnover data in a too detailed manner and can provide annual turnover instead of monthly turnover.

- Given the interests of the lessor, the rights to verify the documents and data submitted by the tenant must be agreed upon. In addition, an audit obligation may be provided, e.g., to obligate the tenant to submit an opinion of a sworn auditor to confirm the correctness of the tenant's economic indicators.

- The rights of the parties can be balanced by additional agreements. To protect both sides, you can mark the floor and ceiling of the rental price, from which the rent does not go down or upwards. In view of the interests of the lessor, it can be prescribed that in addition to the turnover rent, the tenant will pay a fixed base rent so that if the tenant's turnover decreases, the lease agreement does not become a contract for free use. In favor of the tenant, it may be agreed that the percentage of the turnover rent shall be calculated only if the turnover earned on the leased premises exceeds a certain agreed amount.