

# IMPLICATIONS OF THE CORONAVIRUS FOR LANDLORDS

2020/21

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PROPERTY

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## **Implications of the Coronavirus for Landlords**

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## About Jennifer Adams

Jennifer Adams is a property tax specialist with a flair for helping clients structure their financial affairs in a tax-efficient manner. She appreciates the tax problems of property owners having a property portfolio herself. Jennifer writes for many leading publishers and can be relied upon for simple, straightforward advice. She runs her own accounting practice and her advice and specialist knowledge enables all of her clients to pay the least amount of tax that is legally possible.

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## About this Guide

Although much attention has rightly focused on tenants over the coronavirus outbreak period, the crisis may just as likely to be having a large impact on landlords.

Many tenants are struggling to pay their rent because work has stopped or income reduced and as a result many landlords are struggling because they rely on that rental income to fund their own income. Many commercial landlords are receiving thousands of pounds less in rent and service charge payments than they are legally entitled to.

The main provisions relating to private rental in The Coronavirus Act 2020 are that tenants are allowed to ask landlords for a reduction or deferral of rent (initially for three months extended to six to 30 September 2020). A landlord's ability to forfeit a lease and seek repossession for whatever reason during the period to 30 September has been suspended. The government has shut down the courts and has effectively given tenants an eviction amnesty which could result in some landlords waiting many months to eventually get their properties back. Meanwhile the government has retained the option to extend the 30 September date and the three month notice period.

Many tenants have taken advantage of these measures and have either withheld or reduced their rental payments, the landlord not having much choice but to agree. Even though the Act does not prevent rent or other sums due under a lease from accruing it still means less or no income for landlords. The rent remains the liability of the tenant, not a waiver of the tenant's liability to pay, so the Act merely gives tenants a breathing space.

Landlords do retain the right to charge interest on the arrears at a rate specified in the lease, to bring debt recovery proceedings against tenants, to draw on rent deposits or other forms of security for payments if deferred payments have not been settled in full by the time the lease expires.

Statutory guideline for landlords and tenants covering payment of rent, mortgage payments and repossession proceedings are to be found here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/888843/Updated\\_Landlord\\_and\\_Tenant\\_Guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/888843/Updated_Landlord_and_Tenant_Guidance.pdf)

No government grants have been made available to private landlords however, landlords are able to apply to their mortgage providers to defer mortgage payments for up to six months as are all other mortgagees (see chapter 10 for detail of the measures that are available to landlords). Meanwhile, landlords also have expenses to meet and some may be facing the same challenges as tenants of being furloughed, unemployed or on reduced work. The vast majority of private landlords (85-90%) own one or two properties, many with mortgages, and some may rely heavily on their rental income.

As the country emerges from forced 'lockdown' this guide considers the effect that the coronavirus has had on the tax position of landlords and advises on what can be done to mitigate the effect.

# 1

## Property Tax Basics

All profits from UK land and property are treated for UK tax purposes as arising from a business carried on by the registered owner of the property even if an agent is employed to carry on the business for them. Profits are broadly calculated using the same principles as for a trade, although the property business is not treated by HMRC as a trading business. It was this restriction that meant that landlords could not claim under the government's Self Employed Income Support Scheme.

If a landlord benefits from different sources of income from land and property (i.e. commercial or residential lets, furnished or unfurnished) in the UK, then they are all treated as being part of a single business, such that it is not necessary to maintain separate records for each property (although in practice this might be a good idea to ascertain the profitability of each property). However, should the landlord also receive income from furnished holiday lets (FHL) then that source of income is treated as a separate business as is income from property situated outside of the UK.

An important consideration for landlords for this year, 2020/21, is the impact of loss relief. Unfortunately although the profit on a property business is calculated using similar rules as a trading business the treatment of loss relief is more restrictive. How reduced, late or non-payments impact on the tax calculations for landlords depends on whether the rental business uses the cash basis or the accruals basis of calculation. See Chapter 7 for detail on losses.

### 1.1 The Cash Basis

The cash basis is the default basis for all landlords whose total gross income from property is less than £150,000 (so long as all other eligible conditions are met). The availability of the cash basis is not limited to UK property businesses but is also available to overseas property businesses and FHL again subject to the eligibility criteria.

#### Practical Tip:

Should a landlord apply the cash basis but an agent collects the rent then the income will be recognised when it is paid to the agent and not when the agent transfers the money to the landlord. If the agent fails to pass on any payments, then the income must still be recognised at the date of payment to the agent.

The cash basis is available to unincorporated businesses only; partnerships have the choice between the cash basis (assuming that the level of total income is not above the threshold) and the accruals basis so long as the partnership comprises only of individuals. Companies must use the accruals basis to calculate their profits so it follows that those partnerships with one or more corporate partners are excluded from being able to use the cash basis, as are limited liability partnerships.

#### Practical Tip:

Partnerships with a controlling partner who has another trade must add the partnership income to the income of the trade to ascertain whether the partnership as a whole can use the cash basis. If the resulting amount

is higher than the £150,000 limit then the partnership as whole cannot elect for the cash basis to apply.

Landlords under the default cash basis can 'opt out' (see section 1.4 for further detail) and instead use the 'accruals' basis of calculation (also termed the 'earnings' basis) which follows the ordinary accounting rules should it be beneficial to do so. Larger unincorporated property businesses whose receipts are greater than £150,000 have no choice; their default is the accruals basis (see section 1.3 for further detail).

## 1.2 Impact Of The Coronavirus

The Government has advised landlords to be 'sympathetic' to tenants who cannot pay their rent due to coronavirus. Tenants are therefore requesting rent holidays, rent reductions, monthly as opposed to quarterly rent payment schedules, declining to pay rent or certain items of a service charge, and in some cases may try to exit their lease altogether.

Leases (except where rent is entirely calculated by turnover) usually do not contain provisions allowing reductions in rent. Normally rent can only be reduced or delayed by agreement and if a landlord is prepared to negotiate a change to the tenant's rent payment obligations then this arrangement should be documented.

In most leases the obligation to pay the rent is only suspended, or the amount of rent reduced, where there has been 'damage' to or 'destruction' of the premises by an insured risk or, in some cases, an uninsured risk. Coronavirus itself does not cause physical damage to or destruction of premises, so these provisions are unlikely to be relied upon so the right of a landlord to demand rent at some time still applies.

The cash basis aligns readily with the actual income position. Rental payments are usually paid in advance such that if, for example, the tenant took the opportunity under the coronavirus rules to defer the March 2020 rent payment until after 5 April 2020 then only 11 months' worth of rent would have been received in the 2019/20 tax year instead of the usual 12 months and as such only 11 months of income would be taxable. However, should the tenant make up the payment in the 2020/21 year then the landlord could find that this produces a higher tax bill in comparison with 2019/20 as 13 payments would have been made rather than the usual 12 payments.

## 1.3 The Accrual Basis

The difference between the two basis is that under the cash basis the income is recognised only when it is actually received into a bank account and relief for expenditure is not given until the payment has been made or incurred, whereas under the accruals basis, a landlord has to recognise income earned and expenditure incurred during a period. Accounts using the accruals basis show the amount of income that was due to be received during the tax year after deducting any expenses relating to the tax year, including any which may have been invoiced but remained unpaid as at 5 April. This means that under the cash basis no adjustments are needed for debtors or creditors, whereas under the 'accruals' basis it is necessary to take account of money owed (debtors) and money owing (creditors) and also prepayments and accruals.

This basis of calculation is relevant should rental income exceed the cash