

Moscow to give shopping center owners city budget grants to pay property and land tax

May 2020

On May 13, 2020, the Moscow Government adopted Resolution No. 574-PP (**Resolution 574**) which introduces city budget **grants** for owners of shopping centers, food service and consumer services facilities and hotels located in Moscow. **The grants will be used to pay property and land tax (or land rent).**

This resolution was adopted **as part of the city's third package of business support measures** that was approved by Moscow Government Resolution No. 212-PP of March 24, 2020 (amended by Resolution No. 405-PP of April 15, 2020).

Resolution 574 introduces the procedure for issuing the grants, including: the requirements for property owners, who is eligible for the grant, how to calculate the grant amount, and how the Moscow Government will monitor compliance.

We would like to highlight some of what we believe are the most interesting aspects relating to **shopping centers**:

1. Resolution 574 provides a detailed formula to calculate the grant amount.
2. Corporate owners of shopping centers are eligible for a grant if they have reduced the rent for **all tenants by the greater of two values**: (i) double the corporate property tax and land tax amount (rent for the land plot) relating to the leasable area of the retail facility; or (ii) 50% of the effective rental rate. The rent reduction is available from the first day of the month of shutdown to the last day of the month in which the shutdown ended, but **not earlier than July 1, 2020**.
3. The **list of documents** the owner must submit with the grant application includes: copies of lease agreements with tenants and addenda, discount offers sent to tenants, and confirmations that the offers were delivered to tenants and that tenants declined a discount. Apparently, in practice, a shopping center owner will have to attach to its grant application copies of all lease agreements and addenda setting forth a discount given in the amount mentioned in item 2 above. Therefore, Resolution 574 requires that all tenants be given a discount. The question is what will happen if an addendum wasn't signed with one out of 100 tenants? Presumably, the owner will have to prove that it notified the tenant of the available discount but an addendum was not signed for reasons beyond the owner's control.
4. The grant is available not only for companies that own real estate, but also for **management companies of closed-end investment funds** whose holdings include real estate.
5. The following are **not eligible** for a grant: (i) a foreign company that directly owns a property; and (ii) a Russian company that is more than 50% owned by a foreign legal entity if that shareholder is registered in a jurisdiction that is on the Finance Ministry's "black list" of tax havens (e.g., BVI, Lichtenstein, Guernsey). Interpreted literally, this means that if a shopping center's owner is a Cypriot company, for example (Cyprus is currently not on the Finance Ministry's "black list"), the owner is not eligible for a grant. However, if the shopping center is owned by a Russian company

that is wholly owned by a Cyprus company, that shopping center owner is entitled to receive a grant.

6. The property must have been totally or partially shut down as per the Mayor of Moscow's Decree No. 12-UM of March 5, 2020. There must also be no record of administrative action having been taken against the owner or its tenants for violating restrictions imposed as a result of instituting the state of high alert. This provision literally implies that the owner of a shopping center should totally control all tenants' compliance with restrictions, otherwise it is no longer eligible for a grant.
7. As at March 1, 2020, at least **80% of space in the property** must have been used to house retail facilities, food service and consumer services facilities (including the common areas associated with those facilities). Many questions arise. For example, how to calculate the percentage of space in the shopping center. Will movie theaters, fitness centers and entertainment centers in the shopping center be included?
8. The property must be an authorized construction and the permitted use of the land plot should provide for siting a shopping center.
9. The competent authority may ask random tenants of the property to confirm that the shopping center's owner has fulfilled the obligation to provide rent discounts. It isn't clear how this provision will work in practice or what will happen if a tenant says it hasn't been given a discount.

The above shows that shopping center owners must meet many requirements to receive a grant. Consequently, they run the risk of not being entirely certain they will ultimately receive a grant even if they have given all or most of their tenants a discount. So, it is worth asking whether a shopping center owner can stipulate that the discount provision of an addendum is contingent on receiving a Moscow Government grant.

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