

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

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## SUBJECT

### **NEW YORK CITY COMMERCIAL RENT TAX AND POTENTIAL VOLUNTARY DISCLOSURE PROGRAM OPPORTUNITY**

## SUMMARY

New York City ("NYC") imposes a commercial rent tax ("CRT") on every business tenant, lessee, or sub-lessee whose annual base rent paid for a tax year is greater than or equal to \$200,000 with respect to any "taxable premises," subject to certain exceptions. A "taxable premise" is one located in the Borough of Manhattan south of the center line of 96th street and that is used for or intended to be used for a trade, business, vocation, profession, or commercial activity. Certain tenants may be exempt from this tax including religious, educational or charitable organizations, as well as tenants in the World Trade Center Area (also known as the Liberty Zone).

Recently, there has been a significant increase in the number of CRT notices and inquiries, as well as audits. Imposition of penalties for failure to report the CRT can be equal to 25% of the tax liability. In addition, NYC business income tax audits (both General Corporation Taxes ("GCT") and Unincorporated Business Taxes ("UBT")) are now expanded to include the CRT. During a recent GCT audit, the City identified the Company's failure to file the CRT. Although the GCT audit encompassed only the most recent 3 tax years, the City assessed CRT taxes for a 12 year period, plus interest and penalties. (See this [NYC UBT Audit Notice and CRT Audit Notice/Questionnaire](#)).

However, help is available with respect to outstanding CRT liabilities. There is the option to participate in a Voluntary Disclosure Agreement ("VDA"), which typically would limit the look-back period to 3 years and includes abatement of all penalties.

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## REFERENCE

[NYC CRT VDA Decision Tree](#)

[NYC UBT Audit Notice and CRT Audit Notice/Questionnaire](#)

## DETAILS

### ***What to Do:***

Given the above, companies should review the following:

1. Determine if your organization has any taxable premises, as defined above, that have annual rent of \$200,000 or greater;
2. Determine the historical CRT compliance, if any, with New York City (from the date that the taxable premises was rented- current)
3. Determine what records are available related to the taxable premises (i.e. leases, rent payments, etc.);
4. Determine eligibility to participate in a Voluntary Disclosure Program ("VDA") (see the [VDA decision tree](#)); and
5. Take action immediately where appropriate.

When preparing NYC income tax returns, it is important to keep in mind while preparing NYC income tax returns that NYC has added direct questions to both the GCT and UBT returns, where the taxpayer must answer whether it is subject to the CRT and if so, if the taxpayer is in compliance with the CRT.

For those that have received audit letters and even those that haven't yet, please contact BDO at your earliest convenience for best practices and steps you can take to mitigate the CRT liability, interest, and penalties if timely addressed.

## BDO EXPERIENCE

BDO has significant experience with the NYC Department of Finance Voluntary Disclosure and Compliance Program. BDO has successfully assisted numerous clients in the NYC CRT VDA program. Our success is largely attributable to BDO pre-approved review process and our relationships, and experience working with NYC. Additionally, please feel free to reach out to us with any questions, request for additional information, etc. We would be happy to address these for you while sharing best practices.

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