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Comité mixte sur la fiscalité  
de l'Association du Barreau canadien  
et de

Comptables professionnels agréés du Canada

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Le 5 février 2024

Monsieur Trevor McGowan  
Sous-ministre adjoint associé  
Direction de la politique de l'impôt  
Ministère des Finances du Canada  
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**Objet : Article proposé 67.7 de la Loi de l'impôt sur le revenu**

Monsieur,

Veillez trouver ci-joint un mémoire exposant le point de vue du Comité mixte sur la fiscalité de l'Association du Barreau canadien et de Comptables professionnels agréés du Canada (le « Comité mixte ») concernant l'article 67.7 qu'il est proposé d'ajouter à la *Loi de l'impôt sur le revenu* et qui porte sur la location à court terme.

Des membres du Comité mixte et d'autres experts en fiscalité ont pris part aux discussions ayant abouti au mémoire et ont contribué à sa rédaction, notamment :

- Ken Griffin – PwC Canada
- Kenneth Keung – Moodys Tax
- Rock Lapalme – Rock Lapalme CPA Professional Corp
- Hugh Neilson – KRP & Video Tax News
- John Oakey – CPA Canada
- Carmela Pallotto – KPMG Canada

Nous vous remercions d'avoir tenu une consultation officielle sur cette question et d'avoir ainsi donné au Comité mixte la possibilité de présenter ses commentaires.

Nous vous prions d'agréer, Monsieur, nos salutations distinguées.

*Carmela Pallotto*

Carmela Pallotto, CPA, CA  
Présidente, Comité sur la fiscalité  
Comptables professionnels agréés du Canada

Carrie Smit  
Présidente, Section du droit fiscal  
Association du Barreau canadien

c. c. : M. Robert Demeter, directeur général, Division de la législation de l'impôt, Direction de la politique de l'impôt, ministère des Finances

**Submission of the Joint Committee on Taxation of The Canadian Bar Association and Chartered  
Professional Accountants of Canada**  
**Proposed section 67.7 of the *Income Tax Act* regarding Short-Term Rentals**

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**Subsection 67.7(1) – Non-compliant amount**

**Formula approach**

We believe the use of a formula-based proration approach for calculating the non-compliant amount may produce imprecise results for a given taxation year, but we recognize that this approach reduces complexity and is likely reasonable in most circumstances.

**Outlays made or expenses incurred**

The non-compliant amount is determined by the formula  $A \times B \div C$ .

Part A of this formula is the total of all outlays made, or expenses incurred, in the taxation year in respect of the use of a residential property as a short-term rental in the taxation year.

The wording, “outlays made, or expenses incurred, in the taxation year” does not reflect the timing or amount of the deduction otherwise permitted under Part I of the *Income Tax Act* (ITA). As a result, provisions governing the deduction of various expenses, such as: prepaid expenses [ITA 18(9)], CCA [ITA 20(1)(a)], and financing expenses [20(1)(e)] may not be properly reflected in the formula.

**Bad debt expense**

All short-term rent is included into income regardless of its collection. It is typical to claim a bad debt expense for uncollectable rent. If this bad debt expense is considered an expense incurred in the taxation year, then it could form part of the non-compliant amount resulting in tax on uncollected rent. It would seem appropriate to either allow the bad debt expense to offset the short-term rental income or legislate an exception to the non-compliant amount for bad debt expense.

**Subsection 67.7(1) – Short-term rental**

**Residential property usage not tied to owner**

Short-term rental is defined as a residential property that is offered for rent for a period of less than 90 consecutive days. This definition focuses on the usage of the property and not the activities of a particular taxpayer. Residential properties that are subleased would have multiple rental activities operated by different taxpayers. As a result of the definition, the activities of one taxpayer offering the residential property for periods of less than 90 days could result in a non-compliant amount for the other taxpayer who is not renting for a period of less than 90 days. For example, the property’s owner rents the property to a tenant for periods of 90 days or more (compliant), but the tenant without the landlord’s knowledge or consent subleases the property for periods less than 90 days (non-compliant).

We recommend adding the words “by the taxpayer” to the definition as follows “means a residential property that is offered **by the taxpayer** for rent for a period of less than 90 consecutive days”.

Additional wording may be required to address persons or partnerships not dealing at arm’s length with the taxpayer and/or structured back-to-back arrangements.

**Period of less than 90 consecutive days**

We believe the 90 consecutive days used to define a short-term rental is not consistent with the number of days used by municipalities or provinces and could possibly cause confusion for taxpayers trying to understand the concept of short-term rental. Most, if not all, municipalities and provinces, that have established licences, regulations or restrictions for short-term rentals use 30 consecutive days.

We recommend the number of days used to define short-term rental in the ITA be closer aligned with the number of days used by municipalities and provinces to prevent confusion.

### **Subsection 67.7(3) – Deemed compliance**

#### **Non-calendar taxation year**

We appreciate this transitional rule which will allow non-compliant short-term rental operators approximately 12 months to become fully compliant without the application of subsection 67.7(2). This provision deems a person or partnership not to be a non-compliant short-term rental for the person or partnership's 2024 taxation year provided that two conditions are met. The second condition is that the short-term rental complies with all registration, licensing and permit requirements on December 31, 2024. This implies a calendar taxation year. However, some taxpayers may have a non-calendar taxation year.

We recommend changing the wording so that this deeming provision applies to both calendar and non-calendar taxation years. For example, the wording of the preamble could be as follows, "...a short-term rental of a person or partnership is deemed not to be a non-compliant short-term rental of the person or partnership **for each day in the 2024 calendar year** if...".

### **Subsection 67.7(4) - Reassessments**

#### **Normal reassessment period**

Subsection 67.7(4) provides the Minister with an indefinite period to make an assessment, reassessment or an additional assessment of tax, interest, and penalties to give effect to the non-deductibility of expenses for a short-term rental. We question why the normal reassessment period, or even an extended reassessment period, is insufficient to allow the Minister to make an assessment, reassessment or an additional assessment of tax, interest, and penalties.

#### **Exceptions contained in subsection 152(4)**

If it is determined that the Minister requires a period more than the normal reassessment period defined in subsection 152(3.1), then we recommend moving the exception contained in subsection 67.7(4) to subsection 152(4), so it resides with all other exceptions to the normal reassessment period.

### **Other considerations**

#### **Non-resident advantage**

Non-residents may have a tax advantage over Canadian residents regarding the taxation of non-compliant short-term rental activities. Non-compliant short-term rental income for non-residents would be taxed under Part XIII of the ITA limiting the tax exposure to a maximum of 25 per cent of gross rental income. Depending upon the amount of disallowed expenses and if the taxpayer is an individual, the amount of other income earned, a Canadian resident may be taxed at a higher tax rate.