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The Joint Committee on Taxation of
The Canadian Bar Association
and

Chartered Professional Accountants of Canada

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February 5, 2024

Trevor McGowan
Associate Assistant Deputy Minister
Tax Policy Branch
Department of Finance Canada
90 Elgin Street
Ottawa, ON K1A 0G5

Email: Trevor.McGowan@fin.gc.ca

Dear Trevor:

Subject: Proposed section 67.7 of the *Income Tax Act*

This submission sets out comments of the Joint Committee on Taxation of the Canadian Bar Association and Chartered Professional Accountants of Canada (“Joint Committee”) with respect to the proposed section 67.7 of the *Income Tax Act* regarding Short-Term Rentals.

Members of the Joint Committee and others in the tax community that participated in the discussion concerning this submission and contributed to its preparation include:

- 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

Thank you for providing the formal consultation period allowing the Joint Committee an opportunity to provide comments related to proposed section 67.7 of the *Income Tax Act*.

Yours truly,

Carmela Pallotto

Carmela Pallotto, CPA, CA
Chair, Taxation Committee
Chartered Professional Accountants of Canada

Carrie Smit
Chair, Taxation Section
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Cc: Robert Demeter, Director General of Tax Legislation Division, Tax Policy Branch, Finance

**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

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 licenses, 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.