



January 29, 2024

Department of Finance

90 Elgin St

Ottawa, ON K1A 0G5

Via email: Consultation-Legislation@fin.gc.ca

Re: Consultation on draft legislative proposals related to Short-Term Rentals

The Conference for Advanced Life Underwriting (CALU) is a national professional membership association of leaders in the life insurance and financial advisory industry. Along with our partner organization, Advocis, we speak for more than 7,500 insurance and financial advisors in every part of Canada and, in turn, the interests of millions of Canadians.

We are writing to provide our comments on the draft legislative proposals relating to short-term rentals (the “draft short-term rental legislation”) released by your Department on December 20, 2023.

Background

The federal government’s 2023 Fall Economic Statement notes that some provinces, including Quebec and British Columbia, and municipalities such as Toronto, Montreal and Vancouver, have taken steps to either prevent short-term rentals or subject them to licensing, permitting or registration requirements. The federal government also announced plans to support these initiatives by denying income tax deductions for expenses incurred to earn short-term rental income where such rentals are prohibited or do not comply with applicable provincial or municipal requirements.

The government also announced plans to provide \$50 million over three years, starting in 2024-25, to support municipal enforcement of restrictions on short-term rentals. These measures are designed “to provide a strong incentive for operators of non-compliant short-term rentals to return these properties to the long-term housing market, while also supporting the work of the provinces and municipalities to ban or restrict the use of residential properties as short-term rentals.”

The short-term rental legislation contains the framework for denying income tax deductions for “non-compliant short-term rentals.”

CALU Commentary

CALU supports federal and provincial initiatives to expand the inventory of housing in Canada and make housing more affordable. We also believe it is important for provinces and municipalities to ensure the rental market for residential property remains affordable for those who do not wish to own their residence or cannot afford to purchase one. Federal funding for these types of initiatives is a critical component to improving access to affordable accommodations for Canadians.



However, we have the following concerns with the underlying premise and mechanics of the proposed legislation:

a) Consistent and Fair Treatment of Taxpayers

It is extremely important for Canadians to believe the federal tax system applies fairly and equitably to all taxpayers who earn income from similar business and investment activities. This is fundamental to a self-assessing tax system and reduces the need for more active government monitoring of tax compliance.

However, the legislation at hand may result in significantly different tax outcomes for taxpayers earning rental income, not based on a common set of principles established under the federal *Income Tax Act*, but on legislation and/or regulations enacted at the provincial or municipal level.

Under the proposed rules, the owners of rental property in one location may be subject to very different income tax results from owners of rental property who are just one street away. We also note that the rigour and scrutiny that applies to federal legislation to ensure it meets standards of accountability and acceptance by the public does not necessarily apply at the municipal level. To establish income tax rules that are reliant on the fairness of municipal regulations may further impact the perceived fairness of the federal legislation. **In these circumstances some affected taxpayers may react in non-optimal and contrary ways to those intended by this draft legislation, with the potential for significant unintended economic consequences.**

b) Compliance Burden on Taxpayers and the Canada Revenue Agency (CRA)

CALU also believes this legislation could impose an additional compliance burden not only on taxpayers who engage in short-term rentals in areas where they are prohibited, but on taxpayers who engage in the same activities in areas where short-term rentals are allowed.

For example, assume a retiree regularly vacations south in the winter and rents their home for two months. The following year this person files a tax return claiming the rental income and related deductions for expenses. The CRA could audit this person and while learning that the rental was for less than 90 days, ask for confirmation that the rental was not a “non-compliant” short-term rental. Presumably this will require the taxpayer to provide the CRA with information relating to the provincial/municipal rules governing short-term rentals in that specific location and may even require some form of official certification that their specific rental was “compliant.”

Similarly, the legislation at hand will create a compliance burden on the CRA whose staff will need to understand and apply the short term rental legislation and regulations from various government levels, and then determine if any specific property rental is in an area where short-term rentals are not permitted or subject to regulation.¹

¹ For example, the area commonly referred to as Collingwood, Ontario consists of the three towns of Collingwood, Blue Mountains and Wasaga Beach. Each town has identified regulated short-term rental zones and licensing requirements which apply to distinct residential areas that can be modified depending on representations to the three Town Councils.



Recommendations

CALU recommends that the federal government not proceed with the draft short-term rental legislation and instead focus on other ways to support the construction of affordable housing and rental accommodation in Canada.

Should the government proceed with this legislation, we recommend it be amended as follows for equity and compliance reasons:

- **Amend the definition of “short term rental”² to only include residential property offered for rent for a period of less than 30 days (rather than 90 days).** This better reflects the definition of “short-term rental” that provinces and municipalities use and eliminates the potential review of taxpayers who may rent their residence for longer periods during the year while occupying it for the remainder of the year.
- **Modify the current formula for determining the “non-compliant amount”³ to permit the deductibility of expenses incurred when the property was compliant with provincial and municipal regulations.** For example, if an individual renovates a property for short-term rental purposes, the full cost of that renovation should be deductible in the year (at least to the extent of rental revenues), assuming the property was compliant at the time the renovations were completed and rentals commenced.
- **The legislation should include a “due diligence” exception** relating to the expense denial where it can be demonstrated that the taxpayer took all reasonable steps to determine and/or comply with provincial and municipal requirements for short-term rentals in their specific location.

Summary

CALU supports federal and provincial initiatives designed to expand the inventory of housing in Canada and make housing more affordable. We also support government funding to municipalities to assist in the regulation of short-term rentals.

However, we recommend that the federal government not proceed with the draft short-term rental legislation and instead focus on other ways to support the construction of affordable housing and rental accommodation in Canada.

Alternatively, the legislation should be amended in the ways indicated above for both equity and compliance reasons. Thank you for considering our views.

Yours truly,

Robert McCullagh

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Chair of the Board of Directors

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cc. Trevor McGowan, Associate Assistant Deputy Minister (Legislation), Tax Policy Branch

² Defined in draft 67.7(1) of the draft short-term rental legislation.

³ Ibid.