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Regulation of Airbnb by the Provincial Government

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The wave of online platforms offering lodging for rent, such as *Airbnb*[1] which allow private individuals to rent all or part of their home as vacation accommodation, is attracting more and more fans throughout the world. Quebec is no exception to this trend.

In Quebec, hotels and other operators that qualify as «accommodation establishments» within the meaning of the *Act respecting tourist accommodation establishments*[2] (hereinafter the «Act») and the *Regulation respecting tourist accommodation establishments*[3] (hereinafter the «Regulation») are required to collect a tax on lodging[4] under the *Act respecting the Québec sales tax*,[5] which is not required of operators using platforms such as *Airbnb*. The arrival on the market of these platforms is therefore likely to create unfairness in the tax system.

With the aim of correcting this situation, last October 22 and November 4, the Quebec government presented, respectively, Bill 67, *An Act mainly to improve the regulation of tourist accommodation*, and the draft Regulation to amend the *Regulation respecting tourist accommodation establishments*.

THE ACT AND REGULATION CURRENTLY IN FORCE

At the present time, the Act applies to establishments providing accommodation for tourists in return for payment. It requires any person operating a «tourist accommodation establishment» to hold a classification certificate.

To obtain such a certificate, the operator must apply to the clerk, secretary-treasurer, secretary or any other officer of his local municipality designated for that purpose, for a certificate attesting that the establishment violates no municipal urban planning by-law regarding uses.

Any person operating an accommodation establishment without a classification certificate is committing an offence.

A «tourist accommodation establishment» within the meaning of the Regulation is «any establishment operated by a person who offers for rent to tourists, in return for payment, at least one accommodation unit for periods not exceeding 31 days».

An accommodation unit is defined, among other things, as a room, bed, suite, apartment, house, cottage, camp, etc.

We note that the Regulation expressly excludes accommodation units rented on an *occasional basis* from the definition of «tourist accommodation establishment». However, the Regulation does not define what constitutes renting on an «occasional basis».

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Thus, for the time being, the only existing guidelines in this regard have been defined by the case law.[6] For example, the renting of a cottage for a few weeks during the summer is not subject to the obligation to hold a classification certificate.

BILL 67: ADDITION OF THE NOTION OF «TOURIST»

Bill 67 defines the term «tourist» as «a person who takes a leisure or business trip, or a trip to carry out remunerated work, of not less than one night nor more than one year outside the municipality where the person's place of residence is located and who uses private or commercial accommodation services.»

Until now, the notion of «tourist» was never previously defined. The effect of this new definition is that all individuals or businesses who rent out an accommodation unit (i.e. a bed, room, apartment, etc.) to a resident of another municipality, even if only for one night during the year, will be considered to be operators of accommodation establishments, notwithstanding that they do not hold themselves out as such.

Accordingly, they will be obligated to obtain a classification certificate and collect the tax on lodging.

Furthermore, to obtain such a certificate, it is henceforth the Minister who will request the local municipality to send him a notice respecting compliance with the municipal urban planning bylaw. The municipality will be required to inform the Minister within 45 days of the non-compliance of the intended use. When the intended use does not comply with the municipal urban planning bylaw, the Minister will be obliged to refuse to issue the certificate.

In addition, certain provisions of Bill 67 will facilitate penal prosecutions in the event of a breach of the law, in addition to considerably increasing the fines provided for in the Act for persons who contravene the statutory requirements. While the Act provides that any person contravening the Act is liable to a fine of $750 to $2,500, Bill 67 provides for a fine of $2,500 to $25,000 for natural persons, and $5,000 to $50,000 in other cases.

DRAFT REGULATION: AMENDMENT TO THE DEFINITION OF «TOURIST ACCOMMODATION ESTABLISHMENT»

As for the Draft Regulation, it amends the definition of «tourist accommodation establishment» as follows: «any establishment in which at least 1 accommodation unit is offered for rent to tourists, in return for payment, for a period not exceeding 31 days, on a regular basis [...]».

Therefore, if a person or business offers an accommodation unit on a regular basis, particularly through a platform such as *Airbnb*, it will qualify as an accommodation establishment even if it in actual fact only provides lodging for one tourist for a single night during the year.

As of the date of publication of this newsletter, bills and draft regulations are being discussed. If the Bill and Regulation are adopted in the end, it is likely that they will be amended following specific consultation sessions. It is only at the time of their adoption that their final contents and the dates they come into force will be known.

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[1] *Airbnb* is a community platform for the rental and reservation of the lodgings of private individuals founded in 2008 by two Americans, Brian Chesky and Joe Gebbia.
[2] CQLR, c. E-14.2.
[3] CQLR, c. E-14.2, r 1.
[4] This tax represents an amount of $2 to $3.50 per night for each unit or a percentage of 3.5% of the value of the consideration for the night, depending on the class of tourist region in which they are located.
[5] CQLR, c. T-0.1.
[6] *Boucher* c. *Pohénégamook* (Ville de), 2012 QCCS 2362.

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