

## Income Tax

IMP. 12-2/R3                      Establishment of a corporation that leases an immovable situated in  
Québec

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Reference(s):                      *Taxation Act* (CQLR, c. I-3), ss. 12, 22, 27 and 771  
*Regulation respecting the Taxation Act* (CQLR, c. I-3, r. 1), ss. 771R4, 771R7,  
771R42 and 771R43

*This version of interpretation bulletin IMP. 12-2 replaces the version of August 31, 2005. The bulletin was revised to ensure that it is still pertinent and up to date. A section concerning the calculation of the proportion of business carried on in Québec was added.*

The purpose of this bulletin is to explain under what authority a corporate landlord of an immovable situated in Québec may be considered to have an establishment in Québec.

### APPLICATION OF THE ACT

1. The establishment of a taxpayer means, in accordance with the first paragraph of section 12 of the *Taxation Act* (TA), a fixed place where the taxpayer carries on the taxpayer's business or, if there is no such place, the taxpayer's principal place of business. In this regard, see the current version of bulletin IMP. 12-1.
2. For taxation years ending after May 14, 1992, the second paragraph of section 12 of the TA provides that, without restricting the generality of the first paragraph, a corporation has an establishment in each province of Canada in which an immovable owned by the corporation and used principally for the purpose of earning or producing gross revenue that is rent is situated. In accordance with the definition of "province" in section 1 of the TA, a province of Canada includes the Northwest Territories, the Yukon Territory and Nunavut.
3. The first paragraph of section 22 of the TA provides that every person that is a corporation having an establishment in Québec at any time in a taxation year must pay a tax on its taxable income for that taxation year.
4. Moreover, the first paragraph of section 27 of the TA specifies that any corporation that is not contemplated in section 22 of the TA, is not resident in Canada and disposes in a taxation year of taxable Québec property must pay a tax at the rate established in subsection 1 of section 771 of the TA on the amounts described in paragraphs *d*, *e*, *f*, *h* and *l* of section 1089 of the TA that are

applicable thereto and on the amount by which the aggregate of its taxable capital gains exceeds the aggregate of its allowable capital losses from the disposition of such property. The expression “such property” refers to taxable Québec property. An immovable situated in Québec or an interest therein is taxable Québec property under paragraph a of section 1094 of the TA.

## **INTERPRETATION**

### **First paragraph of section 12 of the TA**

5. Under the first paragraph of section 12 of the TA, a corporation whose sole activity is renting out an immovable situated in Québec under a long term lease is carrying on a business since this activity constitutes its business, even if the lease limits the corporation’s responsibilities as lessor and the lessee undertakes to pay all costs related to the operation of the immovable, such as repairs, taxes and insurance.

### **Second paragraph of section 12 of the TA**

6. Under the second paragraph of 12 of the TA, where renting out an immovable situated in Québec does not constitute the principal activity of a corporation, the corporation has an establishment in Québec if it owns the immovable and the immovable is used principally for the purpose of earning or producing gross revenue that is rent.

7. The word “principally” means “chiefly” or “mainly” and thus reflects a preponderance that, in percentage terms, is understood to be “more than 50%”.

8. The concept of “use” under the second paragraph of section 12 of the TA translates as the use made of a thing, as opposed to its purpose or the reasons for which it was acquired. For example, a rental building that is left vacant or a building acquired by a taxpayer for the sole purpose of renting it out does not, at this stage, constitute property used principally for the purpose of earning or producing gross revenue that is rent.

9. If the property was used, it is necessary to determine whether it was used principally for the purpose of earning or producing gross revenue that is rent. The expression “used principally” requires that a particular use of the immovable outweigh all other uses.

10. Lastly, the expression “gross revenue that is rent” simply means gross revenue derived from a contract of lease and not another type of contract. Whether the gross revenue is, from a fiscal standpoint, “gross income from a business or property” or “gross income from an eligible business” is of no import.

## **CALCULATION OF THE PROPORTION OF BUSINESS CARRIED ON IN QUÉBEC**

11. When a corporation covered by section 22 of the TA has an establishment outside Québec, the income tax otherwise payable on its taxable income is weighted according to what the proportion of its business carried on in Québec is to its total business carried on in Canada or Québec and elsewhere, in order to take into account the activities of the corporation’s establishments outside Québec (second paragraph of section 27 of the TA and paragraph (2) of section 771 of the TA).

**12.** The legislation for the determination of the proportion of business includes special rules for foreign corporations. Under sections 771R42 and 771R43 of the *Regulation respecting the Taxation Act* (RTA), the proportion of a foreign corporation's business carried on in Québec is calculated by taking into account only the business attributable to its establishments in Canada as though the business conducted by the corporation in Canada were a distinct business carried on by a distinct person.

**13.** The general formula for calculating a corporation's proportion of business for a taxation year is one half of the aggregate of the proportion that its gross revenue for the year reasonably attributable to an establishment in Québec is of its total gross revenue for the year and the proportion that the salaries and wages paid by the corporation in the year to the employees of the establishment in Québec is of the total salaries and wages paid in the year by the corporation. To that end, section 771R7 of the RTA states that gross revenue does not include, among other things, rentals from property that is not used in connection with the principal activity of the corporation.