

Tackling the Black Economy: A Sharing Economy Reporting Regime

Submission



February 2019

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1. INTRODUCTION

Tourism Accommodation Australia (TAA), a division of the AHA, welcomes the opportunity to make a submission to Treasury’s consultation paper in response to the Black Economy Taskforce Final Report, focusing on creating a “sharing economy” reporting regime.

TAA represents the needs and interests of the major hotels, motels and serviced apartments in Australia’s accommodation sector. In 2016–17, GDP from tourism increased 6.1% (or \$3.2 billion), to reach a record of \$55.3 billion in nominal terms. The accommodation sector is a dominant player in the tourism industry and in terms of GVA \$8 billion was directly contributed and more than 88,800 people are directly employed and 101,900 indirectly employed in the sector.¹ This figure will continue to increase with the industry going through a rapid period of growth.

The Federal Government projections show that Accommodation and Food Services employment is projected to increase by 81,400 (9.1%) over the five years to May 2023.² This is supported by the growth in both restaurants and hotels and strength in both domestic and international tourism as a result of the low Australian dollar and an expanding middle class in Asia.

TAA believes a suitable reporting regime enforced by the Federal Government is a necessary step for regulating the – at present – *unregulated* short-term accommodation “sharing economy”. A reliable reporting regime will help to alleviate the following problems:

- Individuals who rent out their property/room(s) not paying correct income tax;
- Individuals who rent out their property/room(s) not paying correct capital gains tax; and
- Labour supply chain issues related to the accommodation “sharing economy”.

Alongside a Federal-level reporting regime, TAA recommends that a complementary registration system administered by the States/Territories be established, one that provides data on safety, building use, and insurance which would give all governments an understanding of the broader impacts of short-term letting.

It is critical that steps are taken to ensure residential properties and rooms let to guests in the “sharing economy” guarantee safety for guests and workers and have in place the proper protections. It is equally critical that there is recognition of the different types of short-term accommodation offering that operate in the “sharing economy” sector and that there are commensurate regulations between traditional and “sharing economy” accommodation.

2. THE “SHARING ECONOMY”

The “sharing economy” involves people and businesses who operate outside the tax and regulatory system or are known to authorities but do not necessarily report correctly their tax obligations.³ As TAA indicated in a previous submission to the Black Economy Taskforce,⁴ in the accommodation sector any avoidance of taxation and regulatory requirements exacerbates an already uneven playing field

¹ Australian Bureau of Statistics, 2017, *Tourism Satellite Account 2016-17* and AEC Group, 2017, *Economic Contribution of the Tourism Accommodation Sector in Australia*

² Department of Jobs and Small Business, *2018 Industry Employment Projections – five years to May 2023*, <http://lmip.gov.au/default.aspx?LMIP/EmploymentProjections>.

³ Treasury, *Black Economy Taskforce: Interim Report*, 2017, <http://www.treasury.gov.au/blackeconomy>.

⁴ Tourism Accommodation Australia, *Submission to the Black Economy Taskforce*, August 2017.

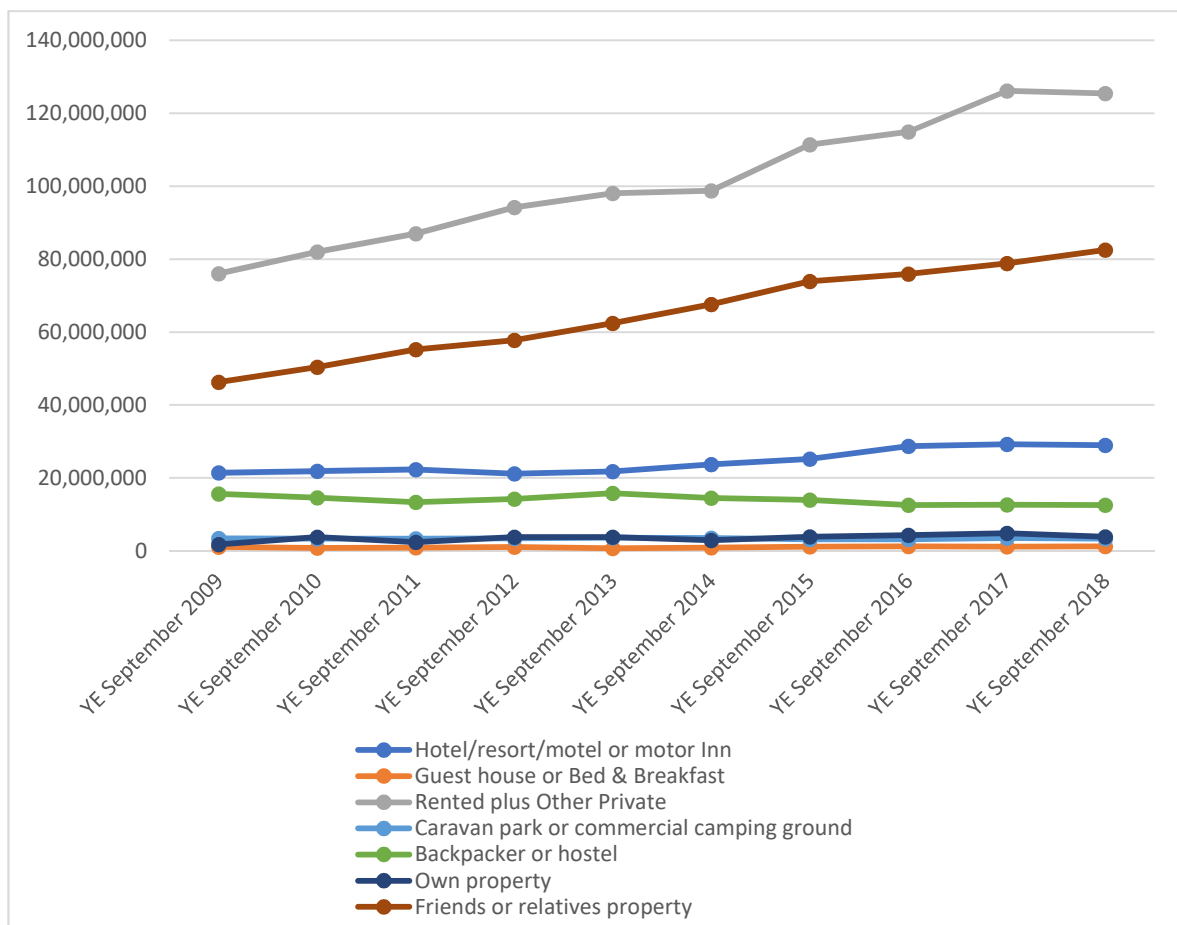
between traditional accommodation providers and commercial operators using online “sharing economy” platform providers (such as Airbnb and HomeAway) to offer residential properties for short-term accommodation.

TAA accepts genuine sharing and hosted accommodation. These two categories diversify the product offering, increase competition in a historically competitive commercial environment, encourage innovation and lead to growth throughout the accommodation sector. TAA is primarily concerned with commercial operators using online platforms to offer un-hosted residential properties year-round for short-term accommodation, competing directly with hotels, motels and serviced apartments but operating outside the existing regulatory framework.

Recent data scraped from the Airbnb website by Inside Airbnb demonstrates that in Sydney, commercial operators offer unhosted accommodation in over 13,400 whole properties, totalling 35% of listings. In Melbourne, commercial operators offer unhosted accommodation in over 10,000 whole properties, totalling 44% of all listings. Nationwide, the proportion of commercial operators is 55% of all listings.

Graph 1 below shows the growth in short-term accommodation in whole residential properties from September 2009 to September 2018; international visitor nights in ‘Rented plus Other Private’ had a percentage increase of 64.9% from September 2009 to September 2018, while international visitor nights in hotels, motels and serviced apartments had a percentage increase of only 35.3%.

Graph 1: Growth in Residential Short-term Accommodation



Source: International Visitor Survey, Year Ending September 2018

Tourism Research Australia has advised TAA that unregulated accommodation (i.e. Airbnb-type rentals) is presently recorded in two categories: 'Rented house/apartment/flat or unit' and 'Other Private Accommodation.' Accordingly, these two categories have been combined below and labelled 'Rented plus Other Private'.

3. EXISTING ARRANGEMENTS

Taxation and Data Matching

ATO Data Matching

It is up to individuals to report their income derived from short-term letting of residential property/room(s). The ATO last year introduced data-matching to ensure the income from short-term letting attracts the correct level of tax. However, at this stage this program has been announced for only three years (the 2016-17 to 2019-20 financial years). Through the ATO's data-matching program, online platforms are required to collect and pass on data to the ATO to identify individuals that have engaged in providing accommodation services.

A robust reporting regime that incorporates the data included in the ATO's program (as well as additional data outlined later in this submission) would build on the capabilities of the ATO data-matching program.

Capital Gains Tax

If a primary residence produces assessable income, such as through short-term letting of residential property, that income is subject to tax. The capital gains tax is determined by the percentage of time a percentage of property was used to generate assessable income.

There is currently no mechanism to monitor capital gains tax liability on residential properties let as short-term accommodation because there are no records of residential properties offered as short-term lets, the frequency with which those properties are booked and the proportion of each property available for short-term let. This means there is no way of preventing income-tax avoidance by commercial-residential accommodation operators.

TAA supports a short-term letting reporting regime that shares host booking activity with Government. This will provide that, upon sale of that asset, the correct capital gains liability can be assessed.

Taxation and Labour

Labour supply chain

"Sharing economy" activity in labour supply impacts the accommodation sector because it provides non-compliant operators with the ability to dramatically reduce labour costs. With lower total operating expenses, non-compliant operators have more freedom to minimise prices offered to the consumer.

More importantly, the same standards that apply to hotels relating to the outsourcing of housekeepers needs to apply to short-term rental accommodation in residential properties and to the online platforms that offer that labour to the market, especially as housekeepers are frequently hired from the gig economy (e.g. Airtasker).

TAA supports measures to eliminate unfair and illegal labour hire practices from the entirety of the accommodation sector. It is important to ensure that workers hired through gig economy platforms

are employed under the appropriate awards and entitlements under the Fair Work regime and that employers and employees pay the correct amount of tax.

Taxable Payments Reporting Scheme

The Taxable Payments Reporting Scheme (TPRS) requires businesses in the construction industry to report the total payments made to each contractor each year. The Black Economy Taskforce Final Report stated that the TPRS should be extended to other high-risk sectors of the economy, and recommended the adoption of a reporting regime that incorporates data on the “sharing economy”, as well as the gig economy platform.⁵

TAA supports the expansion of the TPRS to accommodation providers in the “sharing economy” and to their contractors. It will ensure that income earned in these activities will be accurately and entirely reported to the ATO.

Single Touch Payroll

Single Touch Payroll (STP) requires employers with 20 or more employees to report salary and wage payments to the ATO. The Government has stated that it intends to extend STP to employers with less than 20 employees from 1 July 2019, but legislation is needed for this to happen. The Final Report recommended that a reporting regime could have links with STP reporting requirements,⁶ a move that TAA would welcome for hosts who employ staff for the maintenance of “sharing economy” accommodation.

Regulatory requirements

There is currently regulatory inequity between traditional accommodation and “sharing economy” accommodation. While taxation is one important area, other areas of regulatory inequity include planning and development applications, the provision of disability access rooms, fire safety, insurances, and a host of other operating and regulatory costs and measures. These are outlined in detail in Appendix 1.

4. THE INTERNATIONAL EXPERIENCE

International jurisdictions have been grappling with how best to regulate short-term letting of properties/rooms. Examples from overseas provide key learnings that could be incorporated into a reporting regime in Australia, one that encompasses not only taxation leakage but also health and safety requirements, as well as providing data for infrastructure and planning decisions. However, a model that is easily applicable to Australia’s federal political system has yet to be found.

San Francisco

San Francisco has strong regulations on short-term letting, including:

- a restriction of the letting of whole homes to 90 nights per year;
- guests must pay a 14% transient occupancy tax (the same as hotel rooms);⁷ and

⁵ Black Economy Taskforce Final Report, <https://static.treasury.gov.au/uploads/sites/1/2018/05/Black-Economy-Taskforce-Final-Report.pdf>, p.129-130.

⁶ Ibid.

⁷ City and County of San Francisco, Treasurer & Tax Collector, Tax on Transient Occupancy of Hotel Rooms, <https://sftreasurer.org/tax-transient-occupancy-hotel-rooms>.

- hosts must register with the City, which involves:
 - Applying with the Office of Short-Term Rentals and providing: full name, email address, phone number and how long they have resided at the address.
 - Hosts must provide basic listing information: the address, number of bedrooms, whether they rent or own, monthly rent (if applicable) and intended use (entire space, private room or shared space).
 - Hosts must provide three pieces of documentation: a Business Registration number, proof of payment for short-term rental application, and proof of address, which requires showing a photo ID and an additional verification document, such as a city-issued utility bill, vehicle insurance and proof of voter registration or homeowner's tax exemption form.⁸

Registration was initially unenforceable and roughly 20% of hosts registered. As a result, San Francisco's Board of Supervisors voted 10-0 to pass tougher legislation that would make short-term rental companies responsible for enforcing some of the cities rental laws.

The new legislation requires online sharing platforms to only list properties on their website that are in compliance and have a registration number. If they fail to do so, the city will fine those platforms up to USD 1,000 for every day that they maintain listings on their site that aren't registered properly.⁹ While Airbnb and HomeAway unsuccessfully attempted to sue the City over the decision on the basis of privacy concerns, the law was eventually amended to be mandatory. Platforms must regularly provide the City with data and must cancel reservations and deactivate listings if the City notifies them of an invalid registration. The registration requirements introduced in 2018 reportedly dropped the number of listings by close to half.¹⁰

Online platforms must inform hosts of their legal responsibilities to collect and remit hotel taxes, only list primary residences, have insurance coverage of a minimum USD 500,000, and a maximum un-hosted letting of 90 days per year. Airbnb has crafted a mandatory registration system to provide the city with: host names; host addresses; and guest length of stays. This system can block booking beyond the 90 day threshold, and quantify the conversion of long-term rentals into short-term rentals.

Airbnb has stated that the arrangement in San Francisco is one that should be adopted elsewhere.¹¹

Key Learnings

- Regulations not enforceable until short term rental companies were required to enforce the city rental laws by only listing properties that are in compliance and have a registration number.
- Online platforms must inform hosts of their legal responsibilities to collect and remit hotel taxes, only list primary residences, have insurance coverage of a minimum USD 500,000, and a maximum un-hosted letting limit of 90 days per year.

⁸ City and County of San Francisco, Business Registration, <http://sftreasurer.org/registration>.

⁹ Katie Benner, 'Airbnb settles Lawsuit with its hometown, San Francisco', The New York Times, <https://www.nytimes.com/2017/05/01/technology/airbnb-san-francisco-settle-registration-lawsuit.html>.

¹⁰ Ruth Reader, 'Airbnb regulation pain hits Chicago as city threatens to reject 1,200 hosts', Fast Company, <https://www.fastcompany.com/90218765/airbnb-regulation-pain-hits-chicago-as-city-threatens-to-reject-1200-hosts>.

¹¹ Noah Manskar, Patch, 'NYC Demands Details About 20K Airbnb Apartments', <https://patch.com/new-york/new-york-city/nyc-demands-details-20k-airbnb-apartments>.

- Penalties for online platforms are critical to ensuring compliance.

Paris

Rules in Paris forbid residents from subletting their property for more than 120 nights per year and require the written consent of landlords. To shore up enforcement of such rules, City hall passed a measure in October 2016 requiring Airbnb renters to secure a registration number for each listed property.

The deadline for compliance was December 1, 2017, but by mid-January 2018, roughly 80 percent of the platform's listings had failed to do so according to a study by Le Figaro.¹² Growing frustrated with the continued presence of unregistered listings on Airbnb, City hall filed suit in April against the platform and German rival Wimdu. An ELAN (Evolution of Housing, Development and the Internet) Bill was introduced, which sought the introduction of fines for platforms that fail to remove unregistered listings from their site.

In an effort to pre-empt the ELAN Bill, Airbnb agreed to implement an automated day-counter to block booking functionality when the 120 day annual threshold is reached. Fines of €25,000 apply to landlords who short-term let properties above this threshold without a licence.

France passed the ELAN Bill in 2018 which made companies such as Airbnb punishable by fines of €12,500 per illegal posting on their site. Paris is currently challenging Airbnb in court for publishing 1,000 illegal rentals adverts – Airbnb could be fined up to €12.5 million (\$20 million) for flouting rules.¹³

The French Government also passed a law requiring online platforms to transmit user data to the French tax authorities on a yearly basis, including gross income and number of transactions. The law comes into effect in January 2020 for revenues from 2019, so any transaction from 2019 onwards is to be transmitted to the tax authorities.

Key Learnings

- Registration of properties is not sufficient for compliance. Fines for platforms are required to ensure compliance.
- Legislation required to ensure platforms are compelled to provide host data direct to tax authorities.

Japan

The new Minpaku Law regulating the industry was introduced in June 2018 across Japan, meaning owners (housing accommodation business operators), managers and brokerage site operators:

- can rent out rooms up to 180-days;
- are required to confirm the identities of their guests;
- must submit proof that the owner is not mentally disturbed;
- register their rental properties for short-term stays with the relevant government authorities at a local level; and
- must undergo fire safety checks.

¹² Zachary Young, 'Paris leads efforts to puncture Airbnb', Politico, <https://www.politico.eu/article/airbnb-paris-france-leads-efforts-to-puncture/>.

¹³ Kate Jackson, 'City of love shows none as it stings Airbnb for \$20m', Accomnews, <https://www.accomnews.com.au/2019/02/city-of-love-shows-none-as-it-stings-airbnb-for-20m/>.

This is the first national legal framework for short-term room rentals in Asia.

Japan has long had a similar type of system called *minshuku*, which usually involves rooms in private homes that are offered as lodging. However, individuals who want to let rooms as *minshuku* must apply for a license which requires that the room be a certain size. Also, a management-type person must always be on the premises. These rules have never been strictly enforced, which is why Airbnb was able to gain a foothold in Japan even though, technically, such rentals are illegal.

With the new law, penalties of one million yen have been introduced and the government is authorised to inspect properties for illegal public housing. Local municipalities have the final authority to regulate minpaku rentals in their area and are allowed to place further restrictions on the 180-day national cap, as well as banning minpaku altogether or stipulating certain months or days when minpaku rentals are not allowed. Airbnb, which counted 62,000 listings, withdrew 80% of them due to the new law, though a number have since been revived. HomeAway also pulled some of the 10,000 listings on its site.

Key Learnings

- National legislation provides a solid framework focussed on the safety of guests only. Opportunity to be broadened to include collection of taxes and commensurate building code regulations.
- Introduction of penalties and registration more effective at ensuring compliance.
- Local government administration enabled to make further regulations suited to managing the impacts on housing and hotels.

5. WHAT SHOULD A REPORTING REGIME FOR “SHARING ECONOMY” PLATFORMS LOOKS LIKE?

To alleviate problems regarding tax leakage and the labour supply chain, TAA believes that a reporting regime is needed for the short-term letting of residential properties/rooms.

In the process of setting up a reporting regime at the Federal level, this also offers a prime opportunity for States and Territories to establish registration systems. There are additional regulatory measures that TAA seeks for the accommodation “sharing economy” including safety, building use and insurance, and these would need to be administered at the State level. TAA notes that if Australia were to create such a holistic reporting and registration regime encompassing both Federal and State levels it would be a world leader.

The collection of Federal data through the ATO as well as State/Territory data will provide a holistic perspective of the impact that residential short-term letting has more broadly on Australia. These two complementary sets of data will be useful for a range of government departments, including the ATO, Treasury, planning and infrastructure, and will allow for the identification of private and commercial use of property, providing valuable information on Australia’s housing market. Any sharing of data between the Federal and States/Territories should be only as necessary and subject to strict data privacy laws.

Reporting by “sharing economy” platforms

Treasury’s consultation paper states that a “sharing economy” reporting regime should result in a level playing field, to create equalisation with traditional businesses that have existing reporting

obligations.¹⁴ This is a concept the TAA strongly supports for the accommodation sector, as hotels, motels and serviced apartments currently comply with a number of taxes and regulations (including e.g. fire safety plan, disability access) as well as paying requisite taxes (see Appendix 1), while unregulated short-term accommodation platforms and providers have a price advantage by operating beyond the scope of regulations and benefit from the lack of clarity around questions of correct tax application.

Regarding the two options presented in the consultation paper, the responsibility for a reporting regime through online platform providers is preferred over reporting by financial institutions. This is demonstrated from the overseas examples above, which show that data sharing, communication to hosts and enforcement by platforms is essential for compliance. The data-matching program currently in use allows the ATO to income match and pre-fill tax returns, ensuring greater accuracy for individual taxpayers who rent out residential property/room(s). However, financial institutions should also continue to provide relevant information as required for tax purposes to ensure compliance and prevent tax leakage. We support the French model outlined above, which comes into effect in January 2020 for revenues from 2019 which requires online platforms to automatically transmit data to French Tax Authorities.

We note the current issues with implementing an effective and comprehensive system of data collection. These include:

- i) the statement on p. 8 of the consultation paper that ‘the ATO cannot enforce the quality of data provided nor its format’;
- ii) the limitations of data collected through the TPRS; and
- iii) the need to broaden the data collection to ensure it covers areas such as capital gains tax, and GST where it is applicable.

Given these limitations, together with the requirements for compliance at State and Territory levels, we would recommend a system that incorporates the following:

1. Platforms provide automatic and systematic periodic reporting;
2. Platforms work with the ATO on a standardised format; and
3. To reduce the compliance burden on platforms, legislation be developed to enable relevant host data (subject to data privacy concerns) to be shared between nominated State/Territory bodies and relevant Federal agencies.

Please note that the above recommendations will mean additional reporting obligations of the platforms inclusive of:

- The number of rooms at the property (for assessing capital gains);
- The number of listings attributable to an individual.

Providing this additional data will lead to greater tax compliance.

Registration system for State/Territory

To provide a comprehensive understanding of the impact of short-term lets, it is important that each State/Territory puts in place a registration system that: enables the collection of host data; confirms

¹⁴ Treasury, *Tackling the black economy: A sharing economy reporting regime*, January 2019, p.7.

the correct insurances are in place; and monitors compliance with a Building Code of Conduct. A State/Territory registration system would therefore need to encompass the following:

- Evidence/declaration that suitable fire safety/evacuation plans are in place;
- Evidence/declaration that insurances are in place;
- Evidence that rates/property taxes have been paid i.e. compliance with appropriate planning law.

As the overseas examples indicate, two measures are required for an effective registration system: 1) data needs to be shared by the platforms to cross-check host data; and 2) there are penalties for both the host and platforms for non-compliance.

Funding for the registration system would come from registration costs from hosts short-term letting their homes. US cities San Francisco and Boston are just some of the jurisdictions that have a pricing system based on the nature of short-term letting. TAA proposes that a registration system in each State/Territory should be tiered, with 'entire home' attracting the highest cost, then 'private room', and 'shared room' attracting the lowest/nominal cost.

Compliance

An online platform provider's non-compliance in supplying data to the ATO should result in penalties. At present, failure to retain or produce declarations as required attracts 20 penalty units.¹⁵ A penalty unit on or after 1 July 2017 equates to \$210.¹⁶ 20 penalty units is a total of \$4,200, a low figure compared to penalties seen overseas for non-compliance (please refer Appendix 2). To ensure that compliance occurs, TAA suggests applying the 20 penalty units not as a one off fee but for each day that the data is overdue. This would provide a harsher penalty and encourage timely compliance.

Part of compliance would be online platforms having responsibility for removing non-compliant listings from their site and having automatic blocking to comply with limits on letting nights as per the State/Territory law.

For an individual making a false statement related to registration details penalties could follow State/Territory guidelines for non-compliance/false declarations.

6. EDUCATION AND AWARENESS INITIATIVES

Though online platform providers have a role to play in educating their hosts in complying with regulations and laws, they should not be relied upon to be the sole source of information in this capacity. Treasury's consultation paper recommends that the Government continue to raise awareness about tax obligations as related to the "sharing economy". The paper also recommends public engagement campaigns to encourage compliance with obligations through direct contact, social media, radio advertising and media releases.

TAA supports Treasury's recommendation of public awareness campaigns to encourage compliance through both government and the online platform providers' channels. We note that there should be emphasis on the aspects of tax obligation that may not be immediately obvious to individuals

¹⁵ ATO, Failure to meet other tax obligations, <https://www.ato.gov.au/general/interest-and-penalties/penalties/failure-to-meet-other-tax-obligations/>.

¹⁶ ATO, Penalties, <https://www.ato.gov.au/general/interest-and-penalties/penalties/>.

participating in short-term letting of residential property/room(s) (i.e. capital gains liability, payroll tax).

Hosts may also not be aware that their insurance policies do not necessarily cover short-term letting, and in some cases they void the insurance because it is considered a commercial use of property rather than private use. Hosts may also not be aware that insurance provided through online platforms is rarely comprehensive. For example, Airbnb's *Host Protection Insurance* applies to third-party claims of bodily injury or property damage. It does not apply to all liability.¹⁷ "Sharing economy" platforms mandating evidence of adequate insurance from their hosts would be an optimum setting.

Regarding employment of housekeepers in the accommodation "sharing economy", reliable communication in this area from both the platforms and the ATO and Fair Work Commission to the hosts will ensure they meet their tax responsibilities and standard work entitlements.

7. CONCLUSION

At present, the advent of the "sharing economy" in the accommodation sector has created an uneven playing field. It has also led to additional tax obligations for individuals who rent out their residential property/room(s), and created labour supply chain issues through use of the gig economy.

The establishment of a reporting regime would alleviate current problems related to taxation regulation. Creating an obligation for online "sharing economy" platform providers to provide data will enable more accurate payment of taxes and will help clamp down on any unfair gig economy practices. A complementary registration system administered by the States/Territories which provides data on safety, building use, and insurance would deliver further information to provide a clearer picture of the wider impacts of short-term letting.

A robust reporting regime means that the regulations traditional accommodation providers meet will be extended to unregulated short-term residential lets as appropriate. It is vitally important that there are commensurate regulations between traditional and "sharing economy" accommodation. This will assist with improving the visitor experience, ensuring guest safety and improve host and platform understanding of their obligations.

¹⁷ Airbnb, Host Protection Insurance, <https://www.airbnb.com.au/host-protection-insurance>.

Appendix 1

Regulatory Environment for Hotels

A lack of regulatory clarity in this accommodation sector has created two vastly different regulatory regimes for ostensibly the same accommodation product; i.e. short-term accommodation provided by commercial operators is subject to two vastly different regulatory regimes depending on whether it is in a Class 1a/Class 2 or Class 3 building.

In the accommodation sector, the apparent purpose of regulation is to protect guests, workers and operators. This principle ought to apply equally, regardless of whether the accommodation is in a Class 1a, Class 2 or Class 3 building.

1. Food Safety

Food businesses in Victoria, including restaurants and cafes in hotels, are required under the Food Act 1984 and the Australian New Zealand Food Standards Code to register with the local council, comply with the Food Standards Code and are subject to regular council inspections.

Commercial-residential accommodation, which may provide food for guests as part of the product offering, is not subject to the same regulations in the Food Act.

2. Fire Safety

Traditional accommodation (hotels, motels and serviced apartments) in Class 3 buildings is subject to extensive fire safety requirements prescribed by the Building Code of Australia. Additionally, hotels are subject to regular council fire safety inspections, often including requirements for emergency lighting, exit signs, fire doors, fire hydrant systems, sprinklers. Class 3 buildings have stringent requirements for smoke alarms.

These controls are more relaxed for commercial-residential accommodation in Class 2 buildings (apartment blocks), despite the fire risks being greater in Class 2 buildings. Each lot has its own kitchen (unlike a hotel room), and unlike most hotel rooms smoking on balconies and inside apartments is permitted.

3. Disability Access

In hotels, common areas must be accessible for guests with a disability. Additionally, the *Disability (Access to Premises – Buildings) Standards 2010* dictates the proportion of rooms that must cater to guests with a disability. The cost of constructing or renovating an accessible room has a 30% premium over a standard room, and delivers a weaker return on investment than a standard room.

Commercial-residential accommodation is not required to offer accessible rooms because the accessible room ratio requirements do not apply in Class 2 buildings.

Total Rooms Available	Accessible Rooms Required
1 to 10 rooms	1 accessible room
11 to 40 rooms	2 accessible rooms
41 to 60 rooms	3 accessible rooms
61 to 80 rooms	4 accessible rooms
81 to 100 rooms	5 accessible rooms
101 to 200 rooms	5 accessible rooms plus 1 for every 25 rooms or part thereof in excess of 100
201 to 500 rooms	9 accessible rooms plus 1 for every 30 rooms or part thereof in excess of 200
More than 500 rooms	19 accessible rooms plus 1 for every 50 rooms or part thereof in excess of 500

4. Liquor Licensing

Under State legislation, hotels serving alcohol are required to maintain a valid liquor license and are subject to oversight from Police, local councils and the Departmental compliance divisions of State Governments.

Obtaining a liquor licence is an essential requirement for virtually all four and five star hotel operators. Urbis notes that the process of obtaining a liquor licence is generally “relatively small but overly complex”, and that “modest bars situated within hotels represent a very low risk development which is not reflected in the approval requirements.”

Commercial-residential accommodation, which may supply alcohol for guests as part of the product offering, is not subject to the same burdensome regulatory control or enforcement to which accommodation hotels are subjected.

5. Development Applications

Commercial-residential accommodation occurs in contravention of local planning instruments and the zoning restrictions established by local councils, without any barriers to entry.

By contrast, hotels undertake exhaustive, protracted and expensive development applications. In Melbourne, for example, a 300 room four star CBD hotel development takes about 35 weeks to secure approval, and has direct regulatory costs (including development application fees, building fees and construction certificates) of over \$100,000. Average total regulatory costs in Melbourne are in excess of \$200,000. Site holding costs in Melbourne average in excess of \$500,000.

As noted in the Urbis report, various representation to Austrade by the tourism industry have suggested that the planning environment in Australia is discouraging and even hostile to efficient hotel investments, and that there is a risk that efficient commercial investment will be delayed or even deterred by inappropriate and lengthy regulatory processes.

Commercial-residential accommodation can enter and exit the market without any comparable development-related regulatory costs or site holding costs.

6. Employment in Hotels

The traditional, regulated accommodation sector employs tens of thousands of Australians, directly and indirectly, through extensive value-chains. At a minimum, workers are employed under the Hospitality Industry (General) Award 2010 which guarantees a rate of remuneration, working conditions and ensures compliance with Fair Work principles. In addition to this, employers make significant investment in workforce training and development, and maintain appropriate workers compensation insurances.

Commercial-residential accommodation does not make a comparable contribution to direct employment. In fact, the Laane Report (2015) estimated that if Los Angeles' 11,400 entire house/apartment Airbnb listings had been hotel, motel or serviced apartment rooms an additional 7,400 workers would have been employed. The Laane Report also found that, at best, Airbnb listings create 80% less employment than comparable hotels.¹⁸ A decrease in direct employment in the accommodation sector adversely impacts State governments' payroll receipts and Commonwealth income tax receipts.

7. Taxation

Current guidance from the ATO is that income generated by renting out a residential house or apartment is exempt from remitting GST. Commercial-residential operators are included in this exemption. Conversely, traditional short-term accommodation providers pay GST on all transactions.

Traditional short-term accommodation providers pay council rates and charges set at business levels, whereas commercial-residential accommodation – despite operating as a business – attracts a much lower residential council rate.

¹⁸ Laane, 2015, *Airbnb, Rising Rent and the Housing Crisis in Los Angeles*, p17. Available at <http://www.laane.org/wp-content/uploads/2015/03/AirBnB-Final.pdf>.

	Appendix 2
Jurisdiction	Regulations
<p>New York BANNED (spare rooms are not banned) PRIMARY-RESIDENCE ONLY</p>	<p>Short-term letting for stays less than thirty days is illegal. Advertising properties for stays of less than thirty days is also illegal.</p> <p>Officials approved on August 6 2018 disclosure requirements for Airbnb to beef up its enforcement of a state law that bans rentals of less than 30 days, spurring the site to sue the city.</p> <p>Landlords in violation of these restrictions are liable for a USD7500 fine. Short-term letting is estimated to have reduced the affordable housing stock by 10%, accelerated gentrification to the detriment of working-class communities and increased rents.</p> <p>New York City’s council passed a bill requiring home-sharing companies – read: Airbnb – to hand over the names and addresses of their hosts or face fines of USD 1,500 per listing. Airbnb has fought the measure, claiming it violates hosts’ privacy. In early 2019, the law was blocked by a federal judge.</p>
<p>San Francisco REGISTRATION (publicly available register) 90 DAYS PRIMARY-RESIDENCE ONLY</p>	<p>Hosts are required to register with the City before letting their property and the register is publicly available. Airbnb has crafted a mandatory registration system to provide the city with hosts’ names, addresses and guests’ length of stays. This system can block booking beyond the 90 day threshold, and quantify the conversion of long-term rentals into short-term rentals. Registration requirements introduced in San Francisco this year (2018) have reportedly dropped the number of listings by close to half.</p> <p>Short-term letting platforms must inform hosts of their legal responsibilities to collect & remit hotel taxes, only list primary residences, have insurance coverage of a minimum USD500,000, and a maximum un-hosted letting of 90 days per year. Guests must pay a 14% transient occupancy tax. Penalty for unregistered homes on sites is USD 1,000 a day. Companies must regularly provide the City with data and must cancel reservations and deactivate listings if the City notifies them of an invalid registration.</p> <p>Airbnb states to have been applying a “One Host, One Home” policy in San Francisco since April 2016 to limit un-hosted short-term letting to primary residences only.</p>
<p>Washington LICENCE 90 DAYS PRIMARY-RESIDENCE ONLY</p>	<p>Laws passed in late 2018 that block property owners from using Airbnb and similar companies to rent second homes on a short-term basis. Licences are required and an agency is being established to enforce them. It limits homeowners to renting out their primary residence to 90 days in a calendar year when the host is absent.</p> <p>There would be no limit on short-term rentals of space in one's residence - such as a spare bedroom or basement - when the host is present.</p>

<p>New Orleans LICENCE 90 DAYS PRIMARY RESIDENCE ONLY</p>	<p>Un-hosted short-term letting is limited to 90 days per year. No more whole-home listings are allowed in historic residential neighbourhoods, and none at all in the Garden District and the French Quarter.</p> <p>New Orleans attempted to have a policy of automatic property listing triggering a registration process – however, Airbnb removed this. Short-term letting platforms collect taxes on behalf of the city, which fund an enforcement bureau. However, HomeAway does not pay these taxes. It is meant to provide the city with data on short-term rental hosts, the locations of the listings and host contact information.</p>
<p>Miami PRIMARY RESIDENCE 90 DAYS REGISTRATION</p>	<p>Short-term letting has been banned in a substantial portion of Miami. In neighbourhoods where short-term letting is legal, strict conditions have been introduced. Hosts who register can only rent out their homes for 90 days and they must live at the listed property for at least 275 days per year.</p> <p>Rentals for less than six months and one day are prohibited in the city unless the property is in a legally permissible zone, such as most of tourist-dense South Beach. Short-term rentals are largely illegal in the residential areas of the city. In legal areas, hosts are required to apply for a certificate of compliance at a cost of \$250. The application form for short-term letting requires copies of the property’s deed, proof of a business tax receipt from the city and Miami-Dade County, a Florida Department of Revenue Certificate of Registration for taxation purposes and a Transient Lodging License with the Florida Department of Business.</p> <p>Operating a vacation rental without a Certificate of Use is a violation of the County Code: 1st Offense = \$100; 2nd Offense within 24 months of 1st offense = \$1,000; 3rd Offense within 24 months of most recent of the preceding offenses as well as subsequent offenses = \$2,500.</p> <p>Short-term rental listings would be required to display a city-issued business tax receipt number and the resort tax certificate number. Stiff fines for illegal short-term rentals start at \$20,000 for the first violation.</p>
<p>Boston, Massachusetts PARTIAL BAN - PRIMARY RESIDENCE ONLY 120 DAYS REGISTRATION</p>	<p>Boston's City Council passed regulations in June 2018. Hosts must own and live on the property. Rentals are broken down into three categories:</p> <p>"Limited Share Unit": a spare room or space in a residence. \$25 annual fee.</p> <p>"Home Share Unit": an entire primary residence. \$200 annual fee.</p> <p>"Owner-Adjacent Unit": a unit in a two or three-family building. Can be rented up to 120 nights a year. \$200 annual fee.</p> <p>Property owners who want to do short-term rentals outside the scope of the proposed ordinance can apply to get their property categorized for commercial use instead of residential use.</p> <p>A new state law for all of Massachusetts, set to take effect July 1 2019, brings in state-wide registration, a 5.7% tax on short-term housing rentals (same as hotels), and cities/towns can bring in additional regulations, including more taxes or outright bans if they wish.</p>

<p>Plymouth, Massachusetts TAX REGISTRATION</p>	<p>At the end of 2018 a bill was signed to impose a 5.7 percent state tax on Airbnb and other short-term rentals and to allow municipalities to tax this industry up to 6 additional percent. Owners who rent their rooms or property for more than 14 days must also register with the state and carry insurance.</p>
<p>Charleston LICENCE/ REGISTRATION BAN ON WHOLE HOME RENTALS PRIMARY RESIDENCE ONLY</p>	<p>In April 2018 Charleston City Council finalised a new set of rules that bans whole-home rentals and requires property owners to stay home whenever they host guests. Operators must obtain a special licence and list the registration number on all online advertisements and will have to present site plans to identify where guests would stay and park their cars. Operators must also own and live on the property full time. They must pay licence fees and accommodations taxes. Fines have been issued for hosts breaking the rules, usually approximately US\$1087. They also have a Short-Term Rental Task Force. There continues to be debate on the rules.</p>
<p>London REGISTRATION 90 DAYS</p>	<p>London has an annual threshold of 90 days for which a property can provide un-hosted short-term letting. Beyond this threshold, planning permission is required. Airbnb enforces a day-counter in London, which blocks booking functionality on listings that have reached the 90 day limit. There is concern that Airbnb is not enforcing the day-counter.</p>
<p>Paris REGISTRATION 120 DAYS</p>	<p>Properties can be short-term let for 120 days per year and require the written consent of landlords. Above this threshold a special licence is required. Fines of €25,000 apply to landlords who short-term let properties above this threshold without a licence. Registration is required of properties used for short-term letting. Airbnb has agreed to implement an automated day-counter to block booking functionality once the 120 day annual threshold has been reached. France passed a law in 2018 which makes companies such as Airbnb punishable by fines of 12,500 euros per illegal posting on their site. Paris is currently challenging Airbnb in court for publishing 1,000 illegal rentals adverts (costs of more than 12.5 million euros/14 million USD).</p>
<p>Amsterdam REGISTRATION 30 DAYS (IN 2019, CURRENTLY AT 60 DAYS)</p>	<p>Airbnb agreed to a short-term letting annual limit of 60 days. It also agreed to enforce this limit through its own automated day-counter. From October 2017, Amsterdam has begun requiring hosts to report booked dates of their guests ahead of time. This is in response to concerns that Airbnb was not enforcing the automated day-counter, and that hosts were moving across multiple short-term letting platforms to circumvent the day-limit. Fines for non-compliance are up to €20,500. Amsterdam will reduce the limit to 30 days per year from 2019.</p>

<p>Ireland LAW PASSED 90 DAYS REGISTRATION PRIMARY RESIDENCE ONLY – change of permitted use required for second properties</p>	<p>New laws will come into effect June 2019. Owners of second properties in 'high housing demand areas' (i.e. Dublin) – buy-to-lets or holiday homes - will have to apply for consent and owner occupiers will face no further restrictions in letting individual rooms. However, owner-occupiers will have to abide by a 90-day maximum number of bookings in a year if they let their entire home.</p> <p>Where a person owns a second property and intends to rent it out in a short-term capacity, they will no longer be allowed to do so unless the property is already permitted to be used for tourism or short-term letting purposes and they complete registration. They are eligible to apply for a change of permitted use, but where demand for long-term lettings is high they are unlikely to get permission.</p>
<p>Vancouver REGISTRATION LICENCE 90 DAYS PRIMARY RESIDENCE ONLY</p>	<p>Short-term letting is banned apart from primary residences. Renters must have approval from a landlord while homeowners that are part of a strata must ensure that short-term rentals are allowed under the strata bylaws. All hosts are required to register with the City, and have business licences displayed on their accommodation listing (which cost CAD49 a year) – the penalty for violating the law is up to CAD1,000.</p> <p>The primary residence qualification means that properties cannot be short-term let for more than 90 days per year. An official licence is required for renters who are operating on Airbnb and a business licence number must be included in listings on websites.</p>
<p>Montreal REGISTRATION 90 DAYS</p>	<p>Quebec law requires owners who frequently short-term let their properties (more than 90 days annually) to obtain the same certifications as hotels and bed & breakfast operators. Fines are up to CAD100,000.</p>
<p>Toronto *POSTPONED* REGISTRATION 90 DAYS LICENCING PRIMARY RESIDENCE ONLY</p>	<p>Toronto is finalising its response to short-term letting. An appeal of new rules has been postponed to August 26 2019, meaning home-sharing companies are continuing to operate without regulation.</p> <p>The proposed rules included requiring all short-term letting hosts to register with the City and post their registration number in all advertisements. Short-term letting platforms are required to be licenced and only list registered properties. Short-term letting is only allowed in primary residences (based around a 90 day annual threshold). Short-term letting platforms must share booking, owner and property data with the city to enable enforcement.</p>

<p>Los Angeles REGISTRATION 120 DAYS PRIMARY RESIDENCE ONLY</p>	<p>Hosts will have to register with the city planning department and pay an \$89 fee each year. Only a primary residence can be rented out, defined as the place where a host lives for at least six months per year.</p> <p>Renters can't home-share without prior written approval of their landlord. Stabilized (aka "rent-controlled") units are not eligible for home-sharing, even if you own your own RSO unit. Hosts may not register for or operate more than one home-sharing rental unit at a time in the city.</p> <p>Hosts cannot home-share for more than 120 days, unless they have registered with the city for "extended home-sharing." The "extended home-sharing" option allows hosts an unlimited number of days. To get approval from the city, hosts have to pay an \$850 fee. To qualify, they'll have to have been registered for at least six months or hosted for at least 60 days. Hosts who have received a citation in the past three years will be disqualified, unless they pay an \$8,500 fee to have their case reviewed.</p> <p>Non-residential buildings and temporary structures are not eligible for home-sharing; that includes vehicles parked on the property, storage sheds, trailers, and tents.</p> <p>Previously the city had an ordinance with Airbnb that the company would pay hotel taxes on behalf of its hosts under a three year agreement.</p>
<p>Madrid 90 DAYS LICENCE REGISTRATION</p>	<p>New regulations prohibit flats being rented out for more than 90 days per year. To get a holiday rental licence homeowners will have to prove their property has a separate entrance from the rest of the building—a condition that is in most cases impossible to fulfil. Madrid city hall in January 2018 stopped issuing new licences for tourist apartments, and only plans to resume licensing once the new system is in place.</p> <p>Registration has been required since 2014.</p>
<p>Portugal LICENCING & REGISTRATION FINES</p>	<p>Rules came into effect 1 July 2017 that make it mandatory to show the official rental licence number of any property when advertised online.</p> <p>Further laws have been proposed in the Portuguese Parliament which add restrictions to private rentals. Complainers must demonstrate how the movement of tourists 'disturbs' normal property users and if half of the home owners in an apartment are against an apartment being letted for holiday guests it will not be allowed.</p> <p>Town Halls are able to create 'areas of containment' by limiting the number of licences issued in a neighbourhood and a single owner cannot hold more than 7 licences. Any new licence must be filed with the local mayor and an inspection will occur within 30 days to verify that the property conforms to existing requirements. Fines for non-compliance with laws and regulations have also been increased to 4,000 euros for private individuals and 40,000 euros for companies.</p>

<p>Hong Kong 28 DAYS LICENCING</p>	<p>Under Hong Kong law, letting property as short-term lodgings for a period less than 28 days without a licence is illegal. The government bill proposes maximum fines be increased from HK\$200,000 to HK\$500,000 and prison terms lengthened from two to three years. The city’s Hotel and Guesthouse Accommodation Authority would also be empowered to apply for search warrants to break into and raid flats suspected of being unlicensed holiday rentals.</p>
<p>Barcelona LICENCED/REGISTERED TAXATION HEAVY ENFORCEMENT & FINES</p>	<p>A city-approved license is required, or face a court case potentially leading to a substantial fine. Short term rental in high tourist areas is not permitted under this licence. The city has stopped issuing licences and many existing licences in the most heavily toured areas will not be renewed when they expire. In Barcelona, it used to cost €250 (£221) for a short-term rental permit. Now that such permits are no longer being issued, they change hands for up to €80,000. On June 1, Airbnb and the city launched a new agreement that gives Barcelona officials access to data about what’s being listed around town. Barcelona has also built a 100-man enforcement squad to track down unregistered Airbnb hosts, and fined Airbnb €600,000 last year. Last year, the city’s new tourism plan stipulated that vacation apartments must pay the highest rate of property tax. And since last summer, investigations by the city have already led to 1,500 unlicensed apartments being de-listed.</p>
<p>Berlin 90 DAYS LICENCING/ REGISTRATION</p>	<p>Berlin, which all but banned the service in 2016, reopened its market in March with a 90-day annual cap on short-term rentals. Landlords will be able to apply for permits to rent a primary residence for unlimited periods and second homes for 90 days. Landlords seeking to rent out their home will only be allowed to do so if they get a general permit from their borough, even if they intend only to rent their property out for occasional short stays. Maximum penalty for breaking the rules has been multiplied by five, to a potential fine of €500,000 (\$617,000).</p>
<p>Greece REGISTRATION TAXATION</p>	<p>Greece has launched an Independent Authority for Public Revenue (AADE), an electronic registry for property owners leasing their homes for short-term accommodation purposes via online sharing platforms (www.aade.gr). Properties/separate rooms must be listed and declared individually. By law, operators must enrol on the registry. A new law passed by Parliament in late December requires that property owners who use digital platforms to lease accommodation to tourists for short periods pay up to 45 percent in tax on their income, with the purpose of boosting state funds</p>

<p>Japan 180 DAYS REGISTRATION LICENCING</p>	<p>A law regulating the industry was introduced in June 2018, meaning owners (housing accommodation business operators), managers and brokerage site operators can rent out rooms up to 180-days, and are required to confirm the identities of their guests, submit proof that the owner is not mentally disturbed, register their rental properties for short-term stays with the relevant government authorities and undergo fire safety checks. This is the first national legal framework for short-term room rentals in Asia. Licensing is administered at a local level. The penalty for breaking the law is one million yen and the government is authorised to inspect properties for illegal public housing. Some municipalities impose further restrictions, such as only allowing home-sharing on the weekends or during seasons.</p>
<p>San Diego *REPEALED, UNDER DEBATE* 30 DAYS LICENCING</p>	<p>The City Council brought in short-term rental regulations which would restrict short-term rentals to a primary residence only (up to 6 months a year, and requiring an annual permit costing \$949) and outlaw the rental of second homes for stays under 30 days. Three-night minimum stays were also introduced for saturated coastal areas and downtown. However, these restrictions were repealed in October and the Council continues to debate who can rent out homes for periods of less than 30 days.</p>
<p>Las Vegas, Nevada REGISTRATION</p>	<p>Hosts must register with the city (and those with five-or-more-bedroom homes have to pay a \$1,000 registration fee and owners must also keep a licensed security company on call to tackle complaints), overnight guests are limited to 12 or fewer per home or apartment, and no new Airbnb can pop up within 660 feet of any existing listing.</p>
<p>Columbus LICENCING</p>	<p>Council passed an ordinance requiring short-term property hosts to: complete licensing and background checks; list emergency contacts for neighbours; have proper insurance, smoke detectors, fire extinguishers and an exit escape plan; purchase a business licence which must be renewed annually; and pay additional taxes and fees for administration of licences, background checks, as well as gross receipts tax. Violation of any codes results in a \$500 fine in the first instance, \$750 for a second, and \$1000 for a third violation within the preceding months 12 months.</p>
<p>South Portland, Maine BANNED (spare rooms are not banned, & up to 14 days while on vacation is allowed) PRIMARY RESIDENCE ONLY LICENCING</p>	<p>New rules require that all short-term rentals are inspected, insured and licensed by the city. There is a ban on un-hosted or non-owner-occupied rentals. There is a requirement that owners live in the homes that they rent to short-term visitors. However, single-family homeowners are limited to renting their homes for up to 14 days a year while they are on vacation. These regulations were approved by a public referendum of South Portland residents. The vote was 6,375 to 5,378.</p>
<p>Norway *PROPOSED* 90 DAYS</p>	<p>Norway wants to limit owners to renting out their apartments through services like Airbnb for 90 days.</p>

<p>Reykjavik REGISTRATION 90 DAYS (operating licence needed for longer than this period)</p>	<p>A person can rent out their property for up to 90 days a year without needing an operation license from the state. At the same time, the gross income from renting out their property cannot exceed 1 million ISK. This effectively means that AirBnB operators cannot charge more than 11,111 ISK per night.</p> <p>Prospective renters need to register their property with the county seat every year, at a cost of 8,000 ISK. The property in question also needs to be an established residential property, and fulfil all necessary health and safety requirements as such. If the rules are broken, the county seat may opt to de-register the property's permit to operate as an AirBnB. Fines for offenses can range from anywhere from 10,000 ISK up to 1 million ISK.</p>
<p>Malaysia REGISTRATION</p>	<p>Amendments to the Tourism Industry Act mean that Airbnb hosts must register their properties with municipal authorities to avoid legal action.</p>
<p>Denmark 60 DAYS</p>	<p>Danish tax officials and Airbnb have an agreement that ensures that short-term rental income in Denmark will be automatically reported to authorities. The amount of days that one can rent out their home will be capped at 70 per year.</p>