

GMS Flash Alert

2021-259 | October 14, 2021



Czech Republic – AirBnB Short-Term Leases Considered ‘Business Activity’ Income

The Municipal Court in Prague confirmed that the provision of short-term leases via AirBnB meets the criteria of a “business activity.” Consequently, income from this activity shall be included in a tax base as income from a “self-entrepreneurial activity,” rather than income from leases¹.

WHY THIS MATTERS

The decision significantly affects not only personal income tax but also other areas, such as social security and health insurance and VAT, because, unlike income from leases, income from self-entrepreneurial activity is liable to insurance premiums/contributions and VAT.

Case Background and Details

The tax authority requested an individual to file a personal income tax return on the grounds that income from a lease contract generated by this taxpayer in the 2017 taxable period should have been included in his tax base for the taxation of income from self-entrepreneurial activity concerning the provision of accommodation services. The individual did not agree with the tax authority and included this income in a separate tax base for the taxation of income from leases arguing that the lease at issue only involved the provision of a “bare” lease, without any ancillary services.

The tax authority maintained its position claiming that the substance of hosting via AirBnB consists in the provision of short-term accommodation including services such as the provision of soap, towels, bed-linens, etc., which by its nature meets the criteria of an entrepreneurial/business activity. The tax authority further argued that since the individual received payments once every two days on average, the lease could not have been long-term but rather involved the provision of accommodation services even if no ancillary services were rendered.

The court took into account the nature of entrepreneurial/business activities and the definition of business in the Civil Code and the Trade Licensing Act, while also applying available foreign case law wherein the activity's short-term nature is a typical feature of leases for business purposes.

The court noted that an entrepreneur is a person who independently performs gainful activity, on his/her own account and responsibility as a trade or in any similar manner, with the intention to do so consistently for profit.

The court also pointed out that the purpose of a lease should be the provision of housing needs. In contrast, hosting provided via Airbnb does not satisfy anyone's housing needs but only the need for temporary accommodation and, consequently, must be treated as an accommodation service. Other features typical for accommodation services are, e.g., the provision of ancillary services such as cleaning, ensuring regular maintenance, or setting of a price for short periods of time. According to the court, it is not essential whether the lease is defined as a "bare" lease (i.e., without any ancillary services), but in what manner the activity is carried out. The court therefore concluded that in this case, the individual's income was generated from an activity showing all signs of a business activity and not of a lease.

KPMG NOTE

The court's decision confirmed the tax administrators' existing practice. The decision may certainly be applied to similar short-term leases, whether or not offered via other Internet accommodations platforms. The taxpayer filed a complaint against this decision to the Supreme Administrative Court.

FOOTNOTE:

1 See decision of Municipal Court in Prague No. 6 Af 20/2020 – 28 as of 19 August 2021 (in Czech).

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Contact us

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