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Airbnb as an Accommodation Platform and Tax Aspects*

Airbnb jako platforma noclegowa a aspekty podatkowe

ABSTRACT

Airbnb has long been one of the leaders in providing accommodation worldwide, but there are still a few tax issues related to Airbnb without clear interpretation. The article aims to research, from the taxation point of view, the activity of providing temporary accommodation using the internet platform Airbnb. To evaluate such a taxation area, it is necessary to analyze the current legal regulation in the field of tax law with some possible legal recommendations *de lege ferenda*. For this article, the prime source of law is the Czech Republic tax law, but some of the research is also valid internationally, based on commonly used tax principles. The central point of the article, still relatively unclear in everyday practice, is the tax obligations (income tax and value-added tax) of accommodation providers using this platform. The article also includes some comparisons with foreign legislation. The author wants to point out possible facts that need to be considered when regulating Airbnb in the field of tax law.

Keywords: tax law; Airbnb; business; income tax; value-added tax

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INTRODUCTION

For some time now, Airbnb[1] has achieved significant popularity as an alternative accommodation option. Accommodation through Airbnb should be considered a sharing economy, but it has often become rather business-used; this is already more or less an established and socially accepted fact. The main aim of this article is to assess the tax implications of the income from such accommodation for the providers – natural persons.[2] The question to be answered is whether it is taxable income and, if it is not a business, whether it can be taxed by applying Section 10 (1) (a) ITA.[3] The secondary aim is related to the platform's income. Therefore, the goal is to evaluate the possibility that all income of Airbnb as the service provider should be subject to the "national" income tax where the service (accommodation) was provided.

This article also deals with VAT related to service charges, which are being paid by the accommodation providers to the Airbnb platform. There are some issues and questions connected with the obligation to pay VAT. I will try to assess all the related problems, including who should carry the obligation to declare and pay the tax.

One of the essential issues to be evaluated in this paper considers tourist taxes connected with Airbnb and its collection. There is a new legislative proposal[4] in the Czech Republic related to accommodation platforms, and it brings some significant changes to reach fair competition for the accommodation providers (hotels included). This proposal and its importance will also be evaluated in this paper.

For example, in the Czech Republic, two tourist taxes used to be applicable for Airbnb – the spa and recreation stay charge, while the housing capacity charge was not, as typical houses, flats, and apartments were not the facilities intended for temporary accommodation of guests. This dramatically contrasts with the principle of fair competition, as there is one temporary accommodation market, including Airbnb facilities and traditional hotels, hostels, etc. As the revenues from the tourist charges were significant, it was necessary to amend the legal regulation. The first

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[1] The same approach should be applied to other platforms such as booking and others. Collectively, the term "platform" will be applied for the purposes of this paper.

[2] Tax implications related to the legal entities providing the accommodation will take no place in this article, because there are not really complicated issues, since its always business activity of those entities.

[3] Act No. 586/1992 Coll., On Income Taxes (Collection of Laws, Czech Republic, Ministry of the Interior, 1992, no. 117, pp. 3473–3491).

[4] Proposal for an Act amending Act No. 159/1999 Coll., On certain conditions of business and the performance of certain activities in the field of tourism, transposing the Proposal for a Regulation of the European Parliament and of the Council on data collection and sharing relating to short-term accommodation rental services and amending Regulation (EU) 2018/1724, Brussels, 7.11.2022, COM(2022) 571 final.

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step suggested by some authors[5] was to replace two existing local tourist charges with only one. It happened already in 2020.[6] Although it is essential income for local budgets (especially in traditional tourist destinations), it will only be researched considering the new legislative proposal mentioned above.

METHODOLOGY AND LITERATURE BACKGROUND

To achieve the aim of this paper, it is necessary to describe and critically analyze taxation possibilities of the accommodation (related to natural persons providers) not only in the Czech Republic but also to compare with some of the foreign legal backgrounds. Thanks to the critical analysis, comparing and evaluating the practical experience of different countries should raise some conclusions and recommendations. The conclusion then contains the summaries of the findings and suggestions *de lege ferenda*. It brings suggestions for income taxation of the providers and for Airbnb as a non-residential platform providing services internationally.

Concerning the literature background, the state of scientific and legal literature in this area is quite good, but mostly only in the size of the shared economy, especially from the international point of view. Excellent and comprehensive research was done by Bibler et al. regarding the tax implications of Airbnb or house pricing in the US market.[7] The newest authors dealing with the topic of the sharing economy in the Czech Republic are Krajcik et al.,[8] or from the Slovakian point of view Vartašová et al.[9] There is the importance of Pichtr, who publishes regularly regarding this area.[10] Eckhardt and Bardhi are one of the most frequent authors dealing with the shared economy.[11] The digital economy, connected with the taxation of the online service provider, is very often

[5] See M. Radvan, Z. Kolářová, *Airbnb Taxation*, [in:] *The Financial Law Towards Challenges of the 21st Century: Conference Proceedings*, eds. P. Mrkývka et al., Brno 2020, p. 491.

[6] Effective since 1 January 2020 by the Act No. 278/2019 Coll., amending Act No. 565/1990 Coll., on Local Fees.

[7] See A.J. Bibler, K.F. Teltser, M.J. Tremblay, *Inferring Tax Compliance from Pass-Through: Evidence from Airbnb Tax Enforcement Agreements*, "The Review of Economics and Statistics" 2021, vol. 103(4).

[8] V. Krajcik, A. Kljucnikov, E. Rihova, *Innovative Sharing Economy's Business Models in Tourism: Case of Airbnb in Prague*, "Marketing and Management of Innovations" 2019, no. 2.

[9] A. Vartašová, K. Červená, O. Olexová, *Taxation of Accommodation Services Provided in the Framework of the Collaborative Economy in the Slovak Republic*, "Proceedings of the 5th International Conference on Tourism Research" 2022, vol. 15(1).

[10] See J. Pichrt, *Ekonomika sdílení tři roky poté*, [in:] *Sdílená ekonomika tři roky poté – závěry a perspektivy*, eds. J. Pichrt, R. Boháč, J. Morávek, Prague 2019; J. Pichtr, R. Boháč, J. Morávek, *Sdílená ekonomika – sdílený právní problém?*, Prague 2017; J. Pichtr, R. Boháč, D. Elischer, M. Kopecký, J. Morávek (eds.), *Sdílená ekonomika a delikty*, Prague 2018.

[11] G.M. Eckhardt, L. Bardhi, *The Sharing Economy Isn't About Sharing at All*, 28.1.2015, https://hbr.org/2015/01/the-sharing-economy-isnt-about-sharing-at-all (access: 7.12.2023).

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discussed in the works of Losada and Sojka et al.[12] Radvan very well researches the tax of Airbnb with Kolářová, considering all specifications for this area as such.[13] There are also a few fundamental legal aspects for the income tax based on the difference between accommodation and rental agreements pointed out by Janovec.[14]

Moreover, a few excellent research and definitions are published by the Ministry of Finance of the Czech Republic, the General Tax Directorate Authority of the Czech Republic, and the Tax and Customs Council of Estonia.

CLASSIFICATION OF ACCOMMODATION AIRBNB AS RENTAL OR ACCOMMODATION SERVICES

There are many ways, and therefore legal instruments, providing a flat or house for the other person's use. In using the Airbnb platform, the legal relationship between the provider, i.e. the accommodation provider, and the user, i.e. the person seeking temporary accommodation, is essential. In the spirit of autonomous freedom, private law offers several alternatives that enjoy different levels of legal protection, different rules, and different institutions. The answer to the question of what type of legal relationship is involved is decisive in determining tax obligations.

The rental agreement provision applies on the condition that it is for housing needs, which is certainly not the case with Airbnb, which could be classified as an accommodation service.[15] The Czech Tax Administration takes the same view, i.e., that Airbnb can be considered an accommodation service.[16]

It can be generalized that Airbnb is an accommodation service[17] that generates a certain income (profit). However, this does not mean it is a business unless the activity is carried out continuously, so assessing the revenue from the action is necessary.

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[12] See S.R. Losada, *In Pursuit of Fair Taxation of Digital Economy*, 2018, https://am.aals.org/wp-content/uploads/sites/4/2018/12/AM19RodriguezLosadaEuropeanLaw.pdf (access: 7.12.2023); V. Sojka et al., *Mezinárodní zdanění příjmů. Smlouvy o zamezení dvojího zdanění a zákon o daních z příjmů*, Prague 2017.

[13] See M. Radvan, Z. Kolářová, *op. cit*.

[14] M. Janovec, *To Accommodate as a Lodger or Tenant under the New Civil Code?*, "Recodification and Practice" 2014, vol. 4.

[15] *Ibidem*, pp. 2–5. In addition, the Ministry of Finance has published a practical guide distinguishing between business and rent. See Ministerstvo financí ČR, *Ubytování jako samostatná činnost nebo nájem nemovité věci*, https://www.financnisprava.cz/assets/cs/prilohy/d-placeni-dani/Ubytovani_nebo_najem_EET_verejnost.pdf (access: 7.12.2023). Cf. also judgment of the Municipal Court in Prague of 19 August 2021 in case 6 Af 20/2020-28.

[16] Generální finanční ředitelství, Informace k daňovému posouzení povinností poskytovatelů ubytovacích služeb (Airbnb a další), No. 90076/17/7100-20116-05070, 11.10.2017, https://www.financnisprava.cz/assets/cs/prilohy/d-placeni-dani/2017-10-11_Info_k_danovemu_posouzeni_povinnosti_poskytovatel.pdf (access: 7.12.2023).

[17] See also judgment of Municipal Court in Prague of 19 August 2021 in case 6 Af 20/2020-28.

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The provision of accommodation for profit should be subject to taxation in any economic model.[18] The only question is distinguishing between random activity and regular business accommodation provision.

TAXATION OF AIRBNB ACCOMMODATION PROVIDERS

It should be accepted that traditional tax law institutions may no longer succeed in a technological world. The principle that should be the expression of tax regulation is the principle of fairness since some economic activities, very similar to Airbnb, are taxed and judged by stricter rules (e.g. hotel services) that do not apply to accommodation providers through Airbnb.

Tax administrations should be more inclined to cooperate with platform operators and take advantage of the simplicity of using digital systems. Conversely, agreements that do not burden the platform more than necessary should be reached.

The coronavirus pandemic globally has significantly suppressed this income stream for many providers for some time. To some extent, many accommodation providers have abandoned this platform and started providing their flats/houses for long-term rentals. So, some providers started to use the Airbnb platform for rentals, i.e. long-term rentals.[19] Short-term accommodation is prevalent, and accommodation providers remain largely optimistic about their future with Airbnb.[20]

1. The income tax of the providers

Based on the relevant study of Bibler et al.,[21] it could be stated that only 24% of the accommodation providers fulfill their tax obligations related to such activity unless the platform itself collects it. This number is meager; thus, it helps if the platform does the taxation, or all providers might be required to register. This re-

[18] A. Vartašová, K. Červená, O. Olexová, *op. cit.*, p. 435.

[19] See L. Lane, *How Bad Are Covid-19 Pandemic Effects On Airbnb Guests, Hosts?*, 9.6.2020, https://www.forbes.com/sites/lealane/2020/06/09/how-bad-are-covid-19-pandemic-effects-on-airbnb-guests-hosts/?sh=59087bc67432 (access: 7.12.2023); S. Dolnicar, S. Zare, *COVID-19 and Airbnb – Disrupting the Disruptor*, "Annals of Tourism Research" 2020, vol. 83; L. Knežević Cvelbar, D. Vavpotič, S. Dolnicar, *Resident Satisfaction with the Growth of Airbnb in Ljubljana – Before, During and After COVID-19*, [in:] *Airbnb Before, During and After COVID-19*, ed. S. Dolnicar, Brisbane 202.

[20] About 74% of hosts expect their income from accommodation to recover. See S. Fairley, K. Babiak, S. MacInnes, S. Dolnicar, *Hosting and Co-hosting on Airbnb – Before, During and After COVID-19*, [in:] *Airbnb Before, During and After COVID-19*...

[21] A.J. Bibler, K.F. Teltser, M.J. Tremblay, *Is Sharing Caring? The Effect of Airbnb on Housing Prices and Foreclosures*, 2021, https://economics.ucr.edu/wp-content/uploads/2021/11/11-21-2021-Bibler.pdf (access: 7.12.2023), pp. 1–53.

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search supports the idea of tax collection by the platform to achieve higher income tax revenues.

If the accommodation provision is a business, it will be taxed according to Section 7 (1) (b) ITA, and this will be the case in most cases if the definitional features of a business are met. After that, the provider will be able to apply a flat-rate expenditure of 40% (or 60% if it procures a trade license)[22] but will be required to pay social security and state employment policy contributions (hereinafter also referred to as social and health insurance), among other things.

The real question is: how will the tax authority deal with those providers who do not fall within the scope of an entrepreneur? It is more than evident that there will be a significant minority of such providers, but attention should be paid to them as well. Such income could be classified as casual earnings under Section 10 ITA.[23] Under Section 10 ITA, income up to CZK 30,000 per taxable year is exempt from income tax, actual expenses are applied, and there are no obligations to pay social security and state employment policy contributions. Considering the material truth principle, which should express the actual situation, not all providers can be described as entrepreneurs.

The EU's concept,[24] which encourages Member States to distinguish whether it is a business or just a casual income, e.g. according to the frequency of activity, is a guideline. Other criteria for differentiation are also mentioned, such as minimum annual turnover or number of dwellings provided.[25] It encourages Member States to subject the taxation of "sharing economies" to similar tax obligations as activities with the same characteristics and nature.[26] Subjecting the "sharing economy" to existing tax obligations is perhaps a given. Still, the possibility of granting it certain derogations or specific advantages more suited to the digital economy model would be conceivable. For example, it is distinguishing between a provider and an entrepreneur based on annual turnover or number of dwellings.

The Ministry of Finance of the Czech Republic takes a standardized position in response to Airbnb's instruction[27] on information on the tax assessment of the obligations of Airbnb service providers. If the general characteristics of an entre-

[22] Cf. § 7 ITA.

[23] There is also the possibility to tax it under Section 10 ITA as an occasional short-term lease rather than an occasional activity. This terminology, however, evokes a certain consistency, in the same spirit the ITA chooses this term in § 56a and does not exempt short-term rentals from the ITA. Moreover, short-term rentals are rather understood as, e.g., the provision of space for piano lessons for a few hours every Monday.

[24] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European agenda for the collaborative economy, Brussels, 2.6.2016, COM(2016) 356 final.

[25] *Ibidem*, p. 5.

[26] *Ibidem*, p. 13.

[27] Generální finanční ředitelství, *op. cit*.

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preneur are met, we are within Section 7 ITA. This guidance no longer mentions how to deal with those who are not entrepreneurs, so I believe it is appropriate to proceed under Section 10 ITA.

The application of Section 7 ITA to all accommodation providers would be contrary to the meaning and purpose of the ITA, especially regarding obligations related to social and health insurance. Understandably, the Czech Tax Administration does not explicitly address how it will treat those who are not entrepreneurs and whose income it probably does not intend to be subject to tax. However, the provisions of Section 10 ITA state that taxable income is income that results in an increase in wealth, which will also be the case for casual and occasional providers.[28] Thus, it is likely to be the case that occasional provision of accommodation takes place within a week, a few times a year, etc. The limit for exemption from tax under Section 10 ITA of CZK 30,000 is too high, and incidental earnings will certainly not exceed this limit; therefore, it is possible to reduce this limit, e.g. by half.[29] One of the purposes of taxes is also a particular principle of solidarity between those who do not have or cannot have. Therefore, regardless of the amount, most of the income should just partly go to the public budgets in the form of taxation.

2. VAT regarding the service charges

The distinction between rental and accommodation services is also crucial from a VAT point of view, as they are subject to different VAT regimes. Rentals are exempt from VAT unless the taxpayer voluntarily decides otherwise or the rental is short-term.[30]

A taxable person is a natural or legal person who independently carries out economic activities (Section 5 ITA).[31] This means, among other things, the activity of persons providing services or using intangible assets to obtain regular income. Economic activity can be considered synonymous with entrepreneurial activity.[32]

It should be pointed out the difference with the tax law of Slovakia considering the definition of a taxable person. In the Czech Republic, a taxable person is connected with economic activity continuously (concept of regular income). The Slovakian Tax Code[33] does not require the acquisition of income continuously,[34] and thus, the

[28] Cf. § 10 (1) ITA.

[29] Based on the author's opinion.

[30] Cf. § 51 of the Act No. 235/2004 Coll., On Value-Added Tax (Collection of Laws, Czech Republic, Ministry of the Interior, 2004, no. 78, pp. 4946–5010, hereinafter: the VAT Act.

[31] Cf. Section 5 (3) ITA, which explicitly associates economic activity with the concept of regular income.

[32] M. Karfíková, [in:] M. Bakeš et al., *Finanční právo*, Praha 2009.

[33] Section 4 of the Act No. 222/2004 Coll., On Value-Added Tax.

[34] See A. Vartašová, K. Červená, O. Olexová, *op. cit.*, p. 436.

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treatment of the analyzed VAT duties might not be the same. In the Czech Republic, the occasional accommodation provider does not fall within the taxable person.[35]

Classifying all providers as entrepreneurs is inappropriate, as this will also impact whether or not they will be taxable. I have stated above that Airbnb can be classified as an accommodation service, so a reduced tax rate of 15% will apply.

Furthermore, suppose the providers are not VAT payers. In that case, they will always be identified persons (according to Section 6g of the VAT Act) who are non-taxpayers who purchase services in the Czech Republic from another Member State. These services use an online platform (the so-called service fee), which, in addition to business income from Airbnb, is also subject to VAT.

The service fee represents the consideration for using Airbnb's services of facilitating and arranging the listing. According to the ITA, the service fee is a service received from a person not established in the country, and it is obliged to subject this service to VAT without any financial limits. In its guidance, the tax administration considers that the provider will always be a taxable person (i.e. VAT payer or identified person),[36] although no taxable person definition is fulfilled. It means the obligation to pay VAT on the service provided passes to the provider, and at the same time, the VAT payer becomes entitled to deduct the VAT (but not the identified person). If he is an entrepreneur (but not a VAT payer), he must register as an identified person. However, if we proceed from the premise that economic activity coincides with the concept of business,[37] non-business providers cannot be considered taxable persons. However, the tax administration does not consider this and leaves the obligation to pay VAT to the providers regardless of whether they are entrepreneurs. This raises the question of how to proceed if an intermediary (Airbnb) provides a service to an accommodation provider who is not liable for VAT (i.e. a provider – non-entrepreneur) and, therefore, does not become responsible for VAT under the ITA. If the service recipient is non-taxable, the person providing the service (i.e. the Airbnb platform) should be liable for VAT under the ITA.[38] The latter would then have to pay tax in all EU Member States according to the residence of the provider and would be offered the possibility to take advantage of the so-called Mini One Stop Shop (MOSS) rule, which allows a person who provides services and is not domiciled in the country to set up a special one-stop shop regime and file only one tax return for the tax period in the country where it will be registered, while the tax administration of that country will then deal with the other countries.

[35] On the other hand, it is not in practice very important, because the Czech tax administration considers that all the providers will always be a taxable person.

[36] Generální finanční ředitelství, *op. cit*.

[37] M. Karfíková, *op. cit*. Cf. Section 5 (3) ITA, which provides that an economic activity is an activity carried out for the purpose of obtaining regular income.

[38] Generální finanční ředitelství, *op. cit.*, p. 5.

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The service charge is minimal, and the identified persons required to file a tax return will be most providers and will not be entitled to a deduction as non-payers of VAT. This even leads to a violation of the principle of neutrality of VAT, which is enshrined in the case law of the Court of Justice,[39] whereby the principle of neutrality consists of the right to claim the tax on output if it is also on input.

The appropriate solution is to favor providers not subject to VAT by not requiring the service charge to be taxed, at least for those not entrepreneurs, and the service charge should be collected directly from Airbnb. According to the VAT Act, only taxable persons are required to pay VAT. One can understand the movements of the tax administration to consider all providers as persons liable to pay VAT on the service fee, as in practice, the above-proposed division of obligations would bring more complications than benefits (e.g. how would Airbnb know for which persons it is liable to pay VAT?).[40] However, this does not change the fact that the current legislation is set up so that it leads to precisely these impractical situations.

However, in the context of VAT, the best and easiest solution is to subject Airbnb to VAT in all cases. Using the MOSS rule should not lead to prohibitive administrative costs for the company within the EU.

INCOME TAX FOR THE AIRBNB PLATFORM AS A NON-RESIDENT TAXPAYER

A problematic issue is the tax obligations of Airbnb itself as an intermediary. It is necessary to distinguish whether it will be tax resident or non-resident. Suppose we classify it as a non-resident tax. In that case, the platform will pay tax in the Czech Republic on commission income derived from the Czech Republic unless an international treaty provides otherwise. So, the question arises whether Airbnb in the Czech Republic has to tax its revenue from the Czech Republic (in the form of commissions). The non-resident taxpayer must have a permanent establishment (PE) in the Czech Republic to do so.[41] A PE is a somewhat outdated criterion as it does not respond to new digital business forms.[42] Unfortunately, one cannot ignore that a completely digitalized service does not meet these criteria because the notion of a PE evoking a particular physical element fails in this case. That is

[39] See, e.g., the judgment of the Court of Justice of 1 March 2012, case C-280/10, ECLI:EU:C:2012:107.

[40] For example, it might be considered to adopt the time of advertising as a distinguishing criterion. Providers who advertise for more than 20 days would then be obliged to pay VAT on the service fee as they would be taxable persons by virtue of their continuous economic activity. For others, the platform itself would pay it.

[41] V. Sojka et al., *op. cit.*, p. 56.

[42] *Ibidem*, p. 57.

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why the OECD has also launched a plan to deal with the sharing economy in this respect.[43] The problem can be formulated so that business corporations are taxed at the national level, but their scope of operation is rather global, thanks to the Internet.[44] Therefore, rules that exclude only ancillary and preparatory activities from the concept of PE should be adopted and extended to activities related to significant economic activity. International double taxation treaties would include the permanent virtual establishment or significant digital presence.[45]

Signs that point to the fact that Airbnb meets the concept of the new digital (PE) introduced by the OECD and the EU include commission received from the Czech Republic, digital factors such as a website in the Czech language, Czech domain, and currency of payment, number of users[46] or newly according to the EU draft directive of 2018,[47] which introduces income tax in the context of digital services and determines the place of taxation according to the domicile or residence of the user or the business where the relevant economic activity takes place, which is not yet the case for Airbnb.

1. Comparison

Different states take different positions on legal regulation regarding income tax especially. There are calls for a complete re-regulation of the "sharing economy" phenomenon, or at least what is sometimes referred to as the sharing economy.

Italy is an example of a country that has not applied existing legislation but has introduced new legislation exclusively for "sharing economy" activities. In 2017, a new so-called tax on short-term rentals (accommodation for a maximum of 30 days) was introduced and was subject to a reduced tax rate of 21% (compared to a traditional business). In practice, it works because after receiving payment from the user, the Airbnb platform transfers 21% to the Italian tax administration and pays the rest to the provider.[48] This is one of the ways to relieve the provider from some tax obligations, and all the income is effectively taxed.

An alternative option that would save providers from complex tax obligations is to delegate them to the Airbnb platform itself. Against the argument of high administrative costs on the part of Airbnb for such a withholding tax, there is an inspiration in the withholding of, e.g., interest tax, which is paid by the banks

[43] S.R. Losada, *op. cit.*, p. 2.

[44] *Ibidem*, p. 10.

[45] *Ibidem*, p. 12.

[46] *Ibidem*, p. 20.

[47] Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence, Brussels, 21.3.2018, COM(2018) 0147 final.

[48] Studio Legale Metta, *Italian Airbnb Tax*, 8.6.2022, https://www.studiolegalemetta.com/en/italian-airbnb-tax (access: 7.12.2023).

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themselves on behalf of the taxpayers. It is a question of setting up an information system that calculates everything, generates the tax return, and then pays the tax, i.e. there may be no increased administrative costs. There are already several countries[49] where this option has been chosen concerning tourist or local accommodation tax.

Tax enforcement agreements between state and local governments and Airbnb can substantially increase tax compliance, as at least 76% of transactions evade taxation pre-enforcement.[50]

For example, the Estonian tax administration, which has a highly digitized tax system, has agreed with Airbnb that delegates the obligation to tax the providers' income to the provider itself.[51] It is not a direct delegation in the strict sense of the word. Still, the idea is that Airbnb provides information on the amount of income it sends to the tax administration, and an electronic tax return is generated automatically. This certainly implies a certain level of digitalization of the tax administration. In Austria, it is convenient to distinguish between accommodation services and rentals, whereby a different VAT rate applies (the rate is lower for rentals). For VAT, as in the Czech Republic, an annual turnover is set, and if it is exceeded, the providers become VAT payers. Still, unlike in our legislation, the taxpayers are not obligated to tax the service fee, as the platform sends it to the tax authorities.[52] Another attractive inspiration is the example of Spain, where, e.g., new rules are in force in Madrid. Suppose someone provides accommodation in the city center in a residential building for more than 90 days a year. In that case, they must have a special license granted by the city and, among other things, provide a separate entrance and lift for the residents, which effectively excludes 95% of the places offered in Madrid; the licensing principle also applies in Valencia, Barcelona, the whole of Andalusia and other destinations. In Berlin, for example, a license is always needed for the business accommodation provision. Still, it is also required for short-term accommodation, which is provided (on an occasional basis). The licensing is used mainly for regulating accommodation (protection of affordable housing in the city) but also helps with tax collection. On the other hand, Bosma

[49] In Europe, these include France, Germany, Italy, Switzerland, the Netherlands, Portugal and Slovakia. Then there is also the USA, where 38 of 61 jurisdictions have an agreement with Airbnb to pay taxes directly to the user on the platform, and 23 of which do not have such an agreement. See A.J. Bibler, K.F. Teltser, M.J. Tremblay, *Is Sharing Caring*..., pp. 1–53.

[50] *Ibidem*.

[51] Estonian Tax and Customs Board, *Estonia and Airbnb Sign Unique Agreement on Host Income Tax*, 5.12.2018, https://www.emta.ee/eng/estonia-and-airbnb-sign-unique-agreement-host-income-tax (access: 7.12.2023).

[52] A. Mensing, *Steuern für Airbnb's in Österreich: Das müssen Sie zahlen*, 19.4.2023, https://www.lodgify.com/blog/de/airbnb-steuer-oesterreich (access: 7.12.2023).

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and van Doorn[53] state that the effectiveness of the Berlin regulations is questionable, as more than 90% of listings on the Airbnb platform lacked registration numbers, and enforcement of the regulations remains very problematic.

2. Accommodation register

The new legislative approach and proposal in the Czech Republic comes with some provider register duties. For the first side, it is primarily administrative duty connected with the accommodation, but it is associated with tax collection.

The main objective of the draft legislation is to transpose into the Czech legal system the newly emerging Regulation (EU) of the European Parliament and the Council on the collection and sharing of data relating to short-term rental (STR) and accommodation services and amend Regulation (EU) 2018/1724 and to supplement the provisions concerning the register of accommodation establishments, short--term accommodation units and persons accommodated (hereinafter: the register) called "eTourist".

The register will thus fully replace the registration book[54] (which is necessary for collecting the local fees – registration of the stay) and the house register[55] (necessary for the foreigners' records). By entering a foreigner in the register, the obligation to notify the foreigner's accommodation[56] would also be deemed fulfilled. Through the register, the accommodation provider would also fulfill its obligations towards the Czech Statistical Office and the Trade Licensing Office regarding the commencement or termination of the trade. The accommodation provider will also conduct its duties to the Czech Statistical Office and the Trade Licensing Office regarding the commencement or termination of the business. Finally, it also provides a registration overview for the tax authorities, especially concerning income tax related to accommodation providers. Thus, it won't be easy for any provider to avoid tax duties regarding income tax. But is there any real impact in this area, or is it another registration and administrative burden for the accommodation providers?

The forthcoming EU Regulation (mentioned above) thus provides opportunities for countries that use it to convert this grey part of the economy into a legal business.[57]

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[53] J.R. Bosma, N. van Doorn, *The Gentrification of Airbnb: Closing Rent Gaps Through the Professionalization of Hosting*, "Space and Culture" 2022, p. 13.

[54] Pursuant to Section 3g of the Act No. 565/1990 Coll., On local fees.

[55] Pursuant to Section 101 of the Act No. 326/1999 Coll., On the residence of foreigners.

[56] Pursuant to Section 102 of the Act No. 326/1999 Coll., On the residence of foreigners.

[57] For example, in 2018, the European Commission estimated that up to 70% of short-term rentals/accommodation in some European cities may be illegal and therefore in the grey economy. Similarly, a 2019 study conducted by PwC in Australia estimated that up to 38% of the country's total short-term rental/accommodation market is in the grey economy. Studies conducted by government organisations and non-profits such as the Global Alliance of Resilient Communities and Airbnb

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In the income tax of the providers, there is a significant shift already, as the new rules under DAC 7[58] require online platforms (Airbnb included) to report certain information about the income earned by those provided through them. This information will only be shared with the tax authorities of the relevant Member States, unless otherwise required by other legislation, on an annual basis. In any case, we can no longer talk about the benefits of adopting the regulation, as the tax authorities will already have the necessary data.

The real help regarding the tax implications goes to the municipalities. Typically, residence fees. Here, registration and data sharing could play a positive role, as municipalities that collect these fees today cannot effectively monitor their collection. The solution provided by DAC 7 will not help them in this respect, as the tax authorities cannot share this information. In a simplified model calculation, if we take the situation in 2019 when the revenue from tourist taxes totaled CZK 732 million, the revenue from tourist taxes would be CZK 732 million. Assuming that STRs account for 15% of the market, half of this number is in the grey economy segment. Municipalities lost approximately CZK 54.9 million in unremitted fees that year.[59]

Given that some municipalities do not collect residence fees precisely because they cannot effectively control them, a tool for at least partial control could incentivize them to introduce or increase the fee. At the same time, the possibility of doubling the current fee cap is being discussed in the legislation, which would again increase the benefits of introducing registration. In traditional accommodation establishments (hotels), slipping into the grey economy is often more difficult due to the frequency of checks and the relative ease of traceability. So, this should be an effective tool to straighten out the business environment in the accommodation area.

CONCLUSIONS

Czech legislation responds to the digital economic activity of providing temporary accommodation through Airbnb in a flexible manner. It has placed these activities under the traditional tax law institutes. However, it cannot be overlooked that the approach of the Czech Tax Administration, which considers many providers to be entrepreneurs, might not correspond to the legal principle of substantive fairness. This is also related to the vague notion of an entrepreneur, the definition of which tax law

Citizen estimate the share of the informal economy related to short-term rentals/accommodation at 50%. See Ministry of Regional Development, Final Report on the Regulatory Impact Assessment (RIA) of the draft Act amending Act No. 159/1999 Coll., On certain conditions of business and on the performance of certain activities in the field of tourism, as amended.

[58] Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (OJ L 104/1, 25.3.2021).

[59] Ministry of Regional Development, *op. cit*.

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took from private law. The *ad hoc* distinction between who is an entrepreneur and who is not regulated under the Civil Code does not bring much certainty to the legal system, and it would be helpful to supplement this definition with some criterion for tax purposes (e.g. annual turnover, number of flats or rooms, etc.). It follows that Section 7 ITA cannot be applied without exception, and although the Financial Administration of the Czech Republic does not explicitly address the taxation of non-entrepreneurs and incidental income will probably not be subject to tax, it is not possible to subject all accommodation providers to the ITA on service charges. Hence, it also follows that the income of non-entrepreneurs in the context of income tax is more likely to be subjected to the provisions of Section 10 (1) (a) ITA as taxable and incidental income. Therefore, in the context of the ITA and the issue of service charges, it is not possible, following the current legislation in the Czech Republic, to burden accommodation providers with the obligation to pay this tax again without exception, without contradicting the purpose and intent of the ITA.

The assessment of the tax implications of the income from providing Airbnb accommodation was the primary goal of this article, and the research of this article has achieved this goal. Concerning income tax, it would be most appropriate if the obligation to pay income tax were transferred to the platform (Airbnb) itself and all income was taxed indiscriminately. At the very least, this will avoid any controversy about who should pay tax and when, and at the same time, avoid the fact that many of those concerned do not tax such income, which then burdens the tax authorities in enforcing such obligations. As regards social security and health insurance payments, which only entrepreneurs are obliged to make, this would, of course, remain the responsibility of individual providers on an individual basis. In other words, I see it as the best solution to transfer income tax obligations to the Airbnb platform and additional local/city fees and taxes. At the same time, social and health insurance must remain among the commitments of individual providers.

However, if the Financial Administration of the Czech Republic wants to burden the provider, it is necessary to justify better the obligation to be an identified person.

As an ideal solution, it can be recommended to transfer all the tax obligations to Airbnb (in the form of withholding tax) instead of all providers, following the USA model of agreement with Airbnb or the Italian model, using an electronic system while setting appropriate rules, e.g. the tax rate or tax exemption. There would be no burden on the tax administration or the providers, who would no longer have to deal with whether they are entrepreneurs and would only receive the payment already withheld for tax from Airbnb.

The cooperation between the tax administrator and the Airbnb platform, which has already begun earlier, seems very appropriate and is gradually being joined by individual countries, including the Czech Republic. This could shed light on the administration of this tax while, on the one hand, removing some of the obligations of accommodation providers and, in addition, in today's modern world of digitalization,

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bringing greater transparency and efficiency in tax administration. Again, however, this is a less appropriate solution than delegating all tax obligations to Airbnb.

The register of the accommodated persons (eTourist) strengthens the cooperation (tax administration – Airbnb) based on data collection to enforce the tax duties more effectively. It helps the municipalities because for the local fees, there is accurate data (of accommodated persons) not available yet, and thus, many municipalities might give up the local fee collection. Once such a registry is effectively operational, municipalities can effectively enforce the fee obligation. The only issue related to this register needs to be solved. It's the administration's burden for the providers. It must be user-friendly because otherwise, some providers might quit providing the accommodation or switch to the grey economy. The register is still not in use, so we need to wait for the final version of it.

On the Airbnb platform, following the Austrian model, it would be appropriate to pass on the obligation to pay VAT on service charges using the so-called MOSS, which would also require some agreement with Airbnb in the case of entrepreneurs. The undeniable advantage of this solution is the reduction of tax evasion. This option will undoubtedly bring significantly higher revenues for public budgets and save a lot of administrative costs in checking the tax compliance of individual providers – similarly, the obligation for banks to withhold income from capital assets.[60]

Equally important is the outdated concept of non-resident taxpayers and double taxation treaties, where instead of taxing the intermediary's commissions, it relies on the idea of a permanent establishment, which has no support in the digital world. Therefore, adequate regulation in this respect will also contribute to an efficient allocation of resources between countries in the context of tax collection.

A secondary objective of this article, the evaluation of Airbnb income, has been subjected to extensive research. The result of this research is linked to digital tax. The existence of the digital world where services are provided globally but still connected to one country, where the service is used and paid for, should lead us to only one possibility for taxation. The virtual PE is the most relevant connection between the place of income (where the service was provided) and the local place where the income tax should be paid. The income tax of Airbnb itself should be paid where the accommodation was provided.

There are already some activities in the EU to create digital taxation of those online providers performing globally. There is a possibility of modifying the double taxation treaty and enshrining the concept of a permanent virtual establishment, or even better – new tax legislation reflecting the existence of digital platforms, like in Slovakia reflecting the PE. The performance of an activity with a PE in the territory of the Slovak Republic shall be deemed to include the repeated intermediation of transport and accommodation services, including via a digital platform. Thus, since

[60] Cf. § 38d of the Act No. 586/1992 Coll., On Income Tax.

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1 January 2018, the income of platform operators intermediating accommodation has also been taxed. A PE is subject to registration; if this obligation is not complied with, the PE is registered *ex officio* by the tax administrator, and the income payer (i.e. the provider of accommodation) is obliged to withhold tax at the rate of 19% or 35% (in the case of a so-called non-contracting state for tax purposes) on the payment for the services of using the intermediary platform.[61]

Undoubtedly, this will not substantially burden the platform administratively or perhaps discourage the provision of services (in the Czech Republic). However, the services will not become more expensive, and the business environment will be straightened. It will also bring additional revenue to public budgets, including local ones.

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ABSTRAKT

Airbnb od dawna jest jedną z czołowych platform wynajmu krótkoterminowego na świecie. Nadal istnieje jednak kilka kwestii podatkowych związanych z Airbnb pozbawionych jasnej interpretacji. Celem niniejszego artykułu jest zbadanie z podatkowego punktu widzenia działalności polegającej na krótkoterminowym świadczeniu usługi noclegowej za pomocą platformy internetowej Airbnb. Aby dokonać oceny tej dziedziny opodatkowania, należy przeanalizować obecną regulację prawnopodatkową z pewnymi ewentualnymi postulatami *de lege ferenda*. Zasadniczą podstawą prawną niniejszego opracowania jest czeskie prawo podatkowe, ale część badania ma również znaczenie w kontekście międzynarodowym, w zakresie powszechnie stosowanych zasad podatkowych. Głównym punktem, wciąż stosunkowo niejasnym w codziennej praktyce, są obowiązki podatkowe (podatek dochodowy i VAT) podmiotów świadczących usługę zakwaterowania korzystających z tej platformy. Artykuł zawiera również pewne porównania z przepisami prawa zagranicznego. Autor chce zwrócić uwagę na możliwe fakty, które należy wziąć pod uwagę przy prawnopodatkowej regulacji Airbnb.

Słowa kluczowe: prawo podatkowe; Airbnb; działalność gospodarcza; podatek dochodowy; VAT