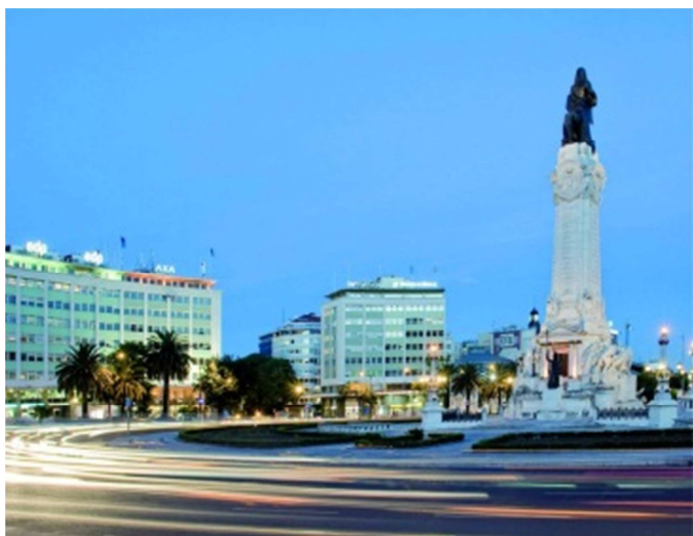


LOCAL ACCOMMODATION ESTABLISHMENTS IN PORTUGAL: AN ATTRACTIVE TAX REGIME



TAX & BUSINESS



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I. HIGHLIGHTS OF THE LEGAL REGIME

In force since 2014, the Decree-Law n.º 128/2014 of the 29th of August frames the managing system of local accommodation establishments, which modifies the former regime, thus impacting the tax environment surrounding this activity.

Indeed, the new regime defines exploitation of local accommodation establishments as the exercise of an accommodation services activity by an individual or a collective person, while, at the same time, establishing the presumption that an exploitation or intermediation activity exists when a building or a fraction of it:

- i) is presented, made available or is subject to any intermediation, namely by travel or tourism agencies, or website, as an accommodation intended for tourists or short term rentals; or
- ii) is furnished and equipped, and the building offers, in addition to the accommodations, complementary services, such as cleaning or a reception desk, for periods of less than 30 days.

This presumption may be rebutted by providing proof of existence of an urban

lease contract duly registered with the tax authorities.

II. THE NEW TAX FRAMEWORK IN DETAIL

The tax framework applicable to the exercise of this activity depends on the rebuttal of the presumption and will especially impact the individual taxpayer, as explained below:

- If the presumption is not rebutted

If the activity is exercised as a service, the income arising from it will be considered business and professional income (category B). However, if this activity does not generate an annual income higher than € 200.000,00, determined through simplified procedure, which implies less costly accounting requirements, only 15% of the income in question is subject to taxation, under general PIT rates.

These rates are progressive and may be as high as 48% for taxable income above € 80.000,00, with a surcharge of 2,5% to taxable income higher to € 80.000,00 and up to € 250.000,00 and of 5% for income above € 250.000,00 and, also, a surcharge of 3,5%.

Therefore, instead of the maximum PIT rate (56,5%), the total income is subject to a maximum effective rate of 8,48%.

The option for the 'organized accounting regime' may prove more advantageous than the application of the simplified procedure in case the amount of the expenses incurred exceeds 85% of the income earned in each year.

If this activity is carried on by a company whose taxable income is determined through the simplified procedure, only 4% of the income derived from services rendered in connection with hotel and similar activities will be subject to taxation at 23% rate.

For VAT purposes, this activity will be classified as a provision of accommodation services in accordance with the hotel business or other with a similar function provision, and consequently subject to a 6% tax rate.

- If the presumption is rebutted

If the individual taxpayer rebuts the presumption by submitting a duly registered lease contract, the income earned will be considered income from real estate (category F) and shall be subject to a 28% rate. However, the

taxpayer has the option to aggregate this income to the remaining income that is earned in the concerned fiscal year, in which case such income shall be subject to the above-mentioned general progressive PIT rates, with a maximum tax rate of 56,5%.

Regardless of the applicability of the organized accounting or simplified procedure, the taxpayer may deduct maintenance and conservation costs, insofar as these are proved through documents, as well as tax paid concerning the ownership of real estate (IMI) and stamp duties focusing on the value of buildings whose income is taxed in that fiscal year.

Moreover, it is possible to deduct expenses regarding conservation works and maintenance of the building that were incurred and paid for in the 24 months prior to the beginning of the lease regarding, provided that the property has not been used for another purpose.

Regarding CIT, income derived by a company and arising from rental of immovable property, will be considered at 95% rate if the taxable income of the company can be determined under the simplified scheme. This income will be subject to a tax rate of 21%.

Payment of stamp duties are also due by the landlord, at a 10% tax rate on rental income or its regular increase.

CONCLUSION

In case the activity in question is carried on by a company that does not meet the conditions to qualify for the simplified scheme in corporate income tax it will be more advantageous for the operation in question to be carried out directly by the individual taxpayer. The income earned by the individual taxpayer in such circumstance (category B), ideally determined under the simplified scheme, would it will be more advantageous for the operation in question to be carried out directly by the individual taxpayer, and the obtained income taxed under category B and ideally under the simplified scheme, being, in this case, only 15% of such income subject to taxation to the general PIT rates.

Alternatively, the income earned by the non-qualifying company will be subject to a tax rate of 23% CIT that will have to be added to the rate of 28% PIT, in dividends distribution to its shareholders.

Nevertheless, a case-by-case analysis is necessary in order to determine the applicable tax treatment and, where



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ROGÉRIO FERNANDES FERREIRA
& ASSOCIADOS

possible, to optimize the performance of
that activity.

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Rogério M. Fernandes Ferreira
Jorge Lopes de Sousa
José Pinto Santos