Airbnb as accommodation and tax aspects (iThenticate Similarity Report)

WORD COUNT	5029	TIME SUBMITTED	04-AUG-2023 12:09PM
		PAPER ID	101763436

UMCS
MARIA CURIE-SKLODOWSKA UNIVERSITY
Faculty of Law and Administration

STUDIA IURIDICA LUBLINENSIA

Airbnb as accommodation and tax aspects

ABSTRACT

Airbnb has been for long time one of the leaders for accommodation worldwide, but there are still a few tax issues related to Airbnb without clear interpretation. This article aims to analyze the activity of providing temporary accommodation using the Internet platform Airbnb to evaluate the current legal regulation in the field of tax law. The prime source of law, for the purpose of this article is the Czech Republic tax law, but most of the research is valid internationally, based on common used tax principles. The central point of the article, still relatively unclear in everyday practice, is the tax obligations (in particular income tax and VAT) 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

INTRODUCTION

For some time now, Airbnb[1] has achieved significant popularity as an alternative accommodation option. Accommodation through Airbnb is not a sharing economy; 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. 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) of Act No. 586/1992 on Income Taxes (hereinafter referred to as ITA). The secondary aim of this article is to confirm or dispute the hypothesis that all income of Airbnb as the service provider should be subject to the "local" income tax where the service (accommodation) was provided.

There is also an essential issue considering tourist taxes connected with Airbnb. For example, in the Czech Republic, regarding tourist taxes, *de lege lata* only the charge for spa and recreation stay is applicable, while the charge for housing capacity is not, as typical houses, flats, and apartments are not the facilities intended for temporary accommodation of guests. This 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

CORRESPONDENCE ADDRESS: xxx

[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.

tourist charges are significant, it is necessary to amend the legal regulation. The first step should be to replace two existing local tourist charges with one.[2] Although it could be basic income for local budgets (especially in traditional tourist destinations), it won't be researched in this article because it deserves the special attention of another independent report/article, where the international comparison of local taxes could be presented.

To achieve the aim of this article, it is necessary to describe income taxation connected with accommodation critically. Also, it is essential to summarize the taxation possibilities of non-business accommodation.

METHODOLOGY AND LITERATURE BACKGROUND

To achieve the aim of the contribution, it is necessary to describe and critically analyze taxation possibilities of the accommodation not only in the Czech Republic and try to compare with some of the foreign legal backgrounds. Also, the VAT analysis and the income tax of Airbnb (as the online service provider) will be done in the research part of the contribution. Thanks to the critical analysis and the comparison and evaluation of the practical experience of different countries might be defined in the conclusion. The conclusion then contains the summaries of the findings. It brings suggestions for income taxation of the owners of the properties and for Airbnb itself as a non-residential platform providing services internationally. Also, the de lege ferenda suggestions are included, especially connected with VAT for the service charges.

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. Pichtr (PICHTR, 2016, 2017), Gina Eckhardt, and Laura Bardhi (ECKHARDT, BARDHI 2017) are the most frequent authors dealing with the shared economy. The digital economy, connected with the taxation of the online service provider, is very active

[2] RADVAN, M., KOLÁŘOVÁ, Z. Airbnb Taxation. In MRKÝVKA, Petr, Jolanta GLINIECKA, Eva TOMÁŠKOVÁ, Edward JUCHNIEWICZ, Tomas SOWIŃSKI, Michal RADVAN (eds). *The financial law towards challenges of the XXI century*: (conference proceedings). 1. ed. Brno: Masaryk university, 2020. p. 491.

in Losada (LOSADA 2018) and Sojka (SOJKA 2017). Radvan very well researches the tax of Airbnb with Kolářová (RADVAN, KOLÁŘOVÁ, 2020), considering all specifications for this area as such.

There are a few fundamental legal aspects for the income tax based on the difference between accommodation and rental agreements pointed out by Janovec (JANOVEC 2014).

There are also a few excellent research and definitions 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, to implement the transfer of immovable property for 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 provision on the rental of a dwelling applies on condition that it is for the provision of housing needs, which is certainly not the case with Airbnb, which could be classified as an accommodation service.[3] The Czech Tax Administration takes the same view, i.e., that Airbnb can be considered an accommodation service.[4]

[3] Janovec, M. To accommodate as a lodger or as a tenant under the New Civil Code? In: *Recodification and Practice*. 2014, vol. 4, pp. 2-5. ISSN 2533-4239.
In addition, the Ministry of Finance has published a practical guide distinguishing between business and rent. Available online at https://www.financnisprava.cz/assets/cs/prilohy/d-placeni-dani/Ubytov_nebo_najem_EET_verejnost.pdf.
Cf. also the Judgment of the Municipal Court in Prague of 19.8.2021 No.6 Af 20/2020-28.
[4] General Financial Directorate. *Information on tax assessment of the obligations of accommodation service providers (Airbnb and others)* [online]. no. 90076/17/7100-20116-05070. Prague: 2017. Available from: https://www.financnisprava.cz/cs/dane/novinky/2017/Info-k-danovemu-posouzeni-povinnosti-poskytovatelu-ubytovacich-sluzeb-8796

It can be generalized that Airbnb is an accommodation service that generates a certain income, but this does not mean that it is a business unless the activity is carried out continuously, which is why assessing the revenue from the action is necessary.

TAXATION OF AIRBNB ACCOMMODATION

It must 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 (for example, 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 real estate for long-term living. So some providers started to use the Airbnb platform for rentals, i.e., long-term housing. Nowadays, short-term accommodation is again prevalent, but providers' approach is much more moderate and prudent, as they are aware that the travel restrictions of the pandemic may come again.

Income tax

If it is a business, it will be taxed according to Section 7(1)(b) of 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)[5] 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.

But the 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

[5] Cf. § 7 of the ITA.

classified as casual earnings under Section 10 of the Income Tax Act.[6] Under Section 10 of the Income Tax Act, 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,[7] which encourages Member States to distinguish whether it is a business or just a casual income, for example, 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.[8] It encourages Member States to subject the taxation of 'sharing economies' to similar tax obligations as activities with the same characteristics and nature.[9] 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 in its instruction[10] on information on the tax assessment of the obligations of Airbnb service providers. If the general characteristics of an entrepreneur are met, we are within Section 7 of the 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 of the ITA.

The application of Section 7 of the ITA to all accommodation providers would be contrary to the meaning and purpose of the Act, 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 of the ITA state that

[6] There is also the possibility to tax it under Section 10 of the 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.
[7] European Union. European Commission. COM/2016/0356 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions [online]. A *European Agenda for the Sharing Economy*. Brussels, 2016. Available from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A356%3AFIN
[8] European Union. European Commission. COM/2016/0356 final, 2016, s. 5.
[9] European Union. European Commission. COM/2016/0356 final, 2016, s. 13.
[10] General Financial Directorate. no. 90076/17/7100-20116-05070, 2017,.

taxable income is income that results in an increase in wealth, which will also be the case for casual and occasional providers.[11] Thus, it is likely to be the case that occasional provision of accommodation takes place within a week, a few times a year, etc. It should be pointed out that the limit for exemption from tax under Section 10 of the ITA of CZK 30 000 is too high and that incidental earnings will certainly not exceed this limit; therefore, it is possible to reduce this limit, for example, by half. One of the purposes of taxes is also a particular principle of solidarity between those who do not have or cannot have. Therefore most of the income, regardless of its amount, should just partly go to the public budgets in the form of taxation.

VAT

The distinction between rental and accommodation services will also be 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. [12]

A taxable person is a natural or legal person who independently carries out economic activities (Section 5 of the ITA).[13] 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.[14] It is therefore relevant that it is not appropriate to classify some providers as entrepreneurs, as this will also impact whether or not they will be taxable. We 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

[11] Cf. § 10(3) of the ITA
[12] Cf. § 51 of Act No. 235/2004 Coll., on Value Added Tax, hereinafter also referred to as "VAT Act."
[13] Cf. Section 5(3) of the ITA, which explicitly associates economic activity with the concept of regular income.
[14] Karfíková, M. [in:] Bakeš, M. et al. *Financial Law*. 5th edition. Czech Republic: C. H. Beck, 2009, ISSN 978-80-7400-801-6. In: ASPI [legal information system]. Wolters Kluwer ČR. Available from: https://www.beck-online.cz/bo/document-view.seam?documentId=nnptembqhfpxa5jyguxgwyjrgm3q

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),[15] as a result of which 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 a determined person. However, if we proceed from the premise that economic activity coincides with the concept of business, [16][17] 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.[18] 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 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.

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

[15] General Financial Directorate. no. 90076/17/7100-20116-05070, 2017
[16] Karfíková, 2009
[17] Cf. Section 5(3) of the ITA, which provides that an economic activity is an activity carried out for the purpose of obtaining regular income.
[18] General Financial Directorate. no. 90076/17/7100-20116-05070, 2017, p. 5.

the CJEU,[19] 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?).[20] 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 solution is to subject Airbnb to VAT in all cases, and using the Mini One Stop Shop rule should not lead to prohibitive administrative costs for the company within the EU.

AIRBNB PLATFORM AS A NON-RESIDENT TAXPAYER

A problematic issue is the tax obligations of Airbnb 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). To do so, the non-resident taxpayer must have a permanent establishment in the Czech Republic.[21] A permanent establishment is a somewhat outdated criterion as it does not respond to new digital business forms.[22] Unfortunately, one

[19] See e.g. Judgment of the Court of Justice of 1 March 2012 [online]. Case C-280/10. Available from: http://curia.europa.eu/juris/liste.jsf?num=C-280/10&language=CS
[20] For example, it might be considered to adopt the time of advertising as a distinguishing criterion. I.e. providers who advertise for more than 20 days would 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.
[21] Bartošová, M. and Sojka, V. at al. *International Income Taxation. Double Taxation Treaties and the Income Tax Act*. 4th ed. Prague: Wolters Kluwer ČR, 2017, p. 56. ISBN 978-80-7552-688-5.
[22] Bartošová, 2017,p. 57.

cannot ignore that a completely digitalized service does not meet these criteria because the notion of a permanent establishment evoking a particular physical element fails in this case. That is why the OECD has also launched a plan to deal with the sharing economy in this respect.[23] 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.[24] Therefore, rules that exclude only ancillary and preparatory activities from the concept of permanent establishment 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.[25]

Signs that point to the fact that Airbnb meets the concept of the new digital permanent establishment 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[26] or newly according to the EU draft directive of 2018,[27] 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.

Comparison

States take different positions on legal regulation. Some opt 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

[23] Losada, Soraya. In pursuit of fair taxation of digital economy [online]. In: *THE 2019 AALS PROGRAM, Section on European Law*, 2018, Issue 6, p. 2 Available from: https://am.aals.org/wp-content/uploads/sites/4/2018/12/AM19RodriguezLosadaE u ropeanLaw.pdf
[24] Losada, 2018. p. 10.
[25] Losada, 2018.,p. 12.
[26] Losada, 2018, p. 20.
[27] Proposal for a Directive of 21 Mar 2018 laying down rules on corporate taxation in the event of a significant digital presence. [online]. 2018/0072(CNS). Available from: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52018PC0147

the Italian tax administration and pays the rest to the provider.[28] This is one of the ways to relieve the provider from some tax obligations.

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, for example, interest tax, which is paid by the banks 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 [29] where this option has been chosen concerning tourist or local accommodation tax.

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.[30] 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.[31] Another attractive inspiration is the example **of Spain, where**, for example, 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

[28] Studio Legale Metta. *Italian Airbnb Tax* [online]. 2019. Available from: https://www.studiolegalemetta.com/en/italian-airbnb-tax/

[29] In Europe, these include France, Germany, Italy, Switzerland, the Netherlands, Portugal and Slovakia. Then there is also the whole of the USA.

[30] Tax and Customs Council. *Estonia and Airbnb sign unique agreement on host income tax* [online]. Available from: https://www.emta.ee/eng/estonia-and-airbnb-sign-unique-agreement-host-income-tax

[31] Frühwirt beraten unternehmen Steuern. *Was habe ich bei der AirBnB Vermietung mit der Steuer zu tun?* [online]. Available from: https://www.fruehwirt.at/was-habe-ich-bei-der-airbnb-vermietung-mit-der-steuer-zu-tun/

excludes 95% of the places offered in Madrid; the licensing principle also applies in Valencia, Barcelona, the whole of Andalusia and other destinations.

DISCUSSION AND CONCLUSIONS

Czech legislation responds to the digital economic activity of providing temporary accommodation through Airbnb in a more or less 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 takes 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 of the 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) of the ITA as taxable and incidental income. Therefore, consequently, 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 this goal has been achieved. 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.

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

As already indicated, the distinction between entrepreneur and non-entrepreneur is very impractical in the case of Airbnb. **As an ideal solution, it can be recommended to transfer the tax obligations to Airbnb** (in the form of withholding tax) instead of all providers, following 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. **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 Mini One Stop Shop, 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. [32]

[32] Cf. § 38d of Act No. 586/1992 Coll., on Income Tax.

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.

The secondary aim of this article, confirm or dispute whether the hypothesis could be evaluated with the clear statement that the hypothesis was confirmed. The main reason for approving the hypothesis is 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. Therefore, the virtual permanent establishment 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.

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 - issuing an interpretative opinion of the local Ministry of Finance, according to which the existence of a virtual establishment and the **need to tax Airbnb's income in any country will** be inferred. Undoubtedly, this will not substantially burden the platform itself administratively or perhaps discourage the provision of services (not only) in the Czech Republic, but the services themselves also will not become more expensive, and the business environment will be straightened out. It will also bring additional revenue to public budgets, including local ones.

REFERENCES

LITERATURE

BOOKS AND MONOGRAPHS

Lasák, J. *§ 420 Entrepreneur*. In: LAVICKÝ P. et al. *Civil Code I. General part (§ 1-654). Commentary*. Prague: C. H. Beck, 2014. ISBN 978-80-7400-529-9.

Pichtr, J., et al. The *sharing economy and torts*. Prague: Wolters Kluwer ČR, 2018. ISBN: 978-80-7598-235-3.

Pichtr, J.; Boháč, R.; Morávek J. *Shared economy - shared legal problem*. Prague: Wolters Kluwer, 2017. ISBN 978-80-7552-874-2.

Sojka, V. at al. *International Income Taxation. Double Taxation Treaties and the Income Tax Act*. 4th ed. Prague: Wolters Kluwer ČR, 2017. ISBN 978-80-7552-688-5.

ARTICLES

Janovec, M., To accommodate as a lodger or tenant under the new civil code? [in:] *Recodification and Practice*. 2014, vol. 4, pp. 2-5. ISSN 2533-4239.

Radvan, M., Kolářová, Z., Airbnb Taxation. [in:] Mrkývka, Petr, Jolanta Gliniecka, Eva Tomášková, Edward Juchniewicz, Tomas Sowiński, Michal Radvan (eds). *The financial law towards challenges of the XXI century*: (conference proceedings). 1. ed. Brno: Masaryk university, 2020. p. 481-494, 14p.

CASE LAW

1. Judgement of the Supreme Court of 22 April 2008, Case No. 22 Cdo 679/2007. In: ASPI [legal information system]. Wolters Kluwer ČR.
2. Judgement of the Municipal Court in Prague of 19.8.2021 No.6 Af 20/2020-28.
3. Judgement of the Court of Justice of 1 March 2012 [online]. Case C-280/10. Available from: http://curia.europa.eu/juris/liste.jsf?num=C-280/10&language=CS

ONLINE SOURCES

4. Benda, M. In: *Finanční a ekonomické INFORMACE Dokumentační bulletin MF*. Prague: Ministry of Finance, Department of ICT Development, Information Support and Library Division, 2016. Available from: https://www.mfcr.cz/assets/cs/media/Bulletin-knihovny-MF_2016-c-06_Financni-a-ekonomicke-informace-62016.pdf
5. Tax and Customs Council. *Estonia and Airbnb sign unique agreement on host income tax* [online]. Available from: https://www.emta.ee/eng/estonia-and-airbnb-sign-unique-agreement-host-income-tax
6. Eckhardt, G., Bardhi, L. The sharing economy isn't about sharing at all. *Harvard business review* [online]. Published 2015. Available from: https://hbr.org/2015/01/the-sharing-economy-isnt-about-sharing-at-all
7. European Union. *Literature review on taxation, entrepreneurship and collaborative economy*. Luxembourg: Publications Office of the European Union, 2017. ISSN 978-92-79-74016-9. Available from: https://ec.europa.eu/taxation_customs/sites/taxation/files/taxation_paper_70.pdf
8. Frühwirt beraten unternehmen Steuern. *Was habe ich bei der AirBnB Vermietung mit der Steuer zu tun?* [online]. Available from: https://www.fruehwirt.at/was-habe-ich-bei-der-airbnb-vermietung-mit-der-steuer-zu-tun/
9. General Financial Directorate. *Information on tax assessment of the obligations of accommodation service providers (Airbnb and others)* [online]. No. 90076/17/7100-20116-05070. Prague: 2017. Available from: https://www.financnisprava.cz/cs/dane/novinky/2017/Info-k-danovemu-posouzeni-cinnosti-poskytovatelu-ubytovacich-sluzeb-8796
10. Ministry of Finance of the Czech Republic. Accommodation or rent. [online] Available from https://www.financnisprava.cz/assets/cs/prilohy/d-placeni-dani/Ubytovani_nebo_najem_EET_verejnost.pdf.

11. Karfíková, M. In: Bakeš, M. et al. *Financial Law*. 5th edition. Czech Republic: C. H. Beck, 2009, ISSN 978-80-7400-801-6. In: ASPI [legal information system]. Wolters Kluwer ČR. Available from: https://www.beck-online.cz/bo/document-view.seam?documentId=nnptembqhfpxa5jyguxgwyjrgm3q

12. Losada, S. In pursuit of fair taxation of digital economy [online]. In: *THE 2019 AALS PROGRAM, Section on European Law*, 2018, Issue 6. Available from: https://am.aals.org/wp-content/uploads/sites/4/2018/12/AM19RodriguezLosadaEuropeanLaw.pdf

13. Sailer, E. *The impact of the sharing economy on a city: the case of Airbnb in Vienna* [online]. Master Thesis. IMC Fachhochschule Krems (University of Applied Sciences), 2016. Available from: https://www.wavv.at/files/download intern/Master%20Thesis_Sailer_20160421.pdf

14. Studio Legale Metta. *Italian Airbnb Tax* [online]. 2019. Available from: https://www.studiolegalemetta.com/en/italian-airbnb-tax/

15. ÚŠELA, Jan; ELČIC, Sandro. Uber and Airbnb users who do not pay their taxes face daily late fees, says a representative of the tax administration [online]—interview *with Jiří Fojtík, Director of the Tax Methodology and Enforcement Section of the GFD*. Hospodarske noviny, 2018. Available from: https://www.financnisprava.cz/cs/financni-sprava/pro-media/FS-v-mediich/lide-2018/neplaticum-dani-z-rad-uberu-airbnb-nabihaji-pokuty-rozhovor-fojtik-9345

16. RODRIGUEZ-PIÑ Gloria. Madrid adopts rules that will shut down over 10,000 holiday apartments [online]. Available from: https://elpais.com/elpais/2019/03/27/inenglish/1553702152_849878.html

LEGAL ACTS

17. Act No. 89/2012 Coll., Civil Code. In. Czech Republic: Ministry of the Interior, 2012, No. 33, pp. 1326-1365. ISSN 1211-1244.

18. Act No. 586/1992 Coll., on Income Taxes. In: *Collection of Laws: Czech Republic*. Prague: Ministry of the Interior, 1992, No 117, pp. 3473-3491. ISSN 1211-1244.

19. Act No. 235/2004 Coll., on value-added tax. In. Prague: Ministry of the Interior, 2004, No 78, pp. 4946-5010. ISSN 1211-1244.

EU LEGISLATION

20. European Union. European Commission. COM/2016/0356 final, Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions [online]. A European Agenda for the Sharing Economy. Brussels, 2016. Available from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A356%3AFIN

21. Proposal for a Directive of 21 March 201 laying down rules concerning corporate taxation in the event of a significant digital presence [online]. 2018/0072(CNS). Available from: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52018PC0147

Airbnb as accommodation and tax aspects (iThenticate Similarity Report)

ORIGINALITY REPORT

22%
SIMILARITY INDEX

PRIMARY SOURCES

1	is.muni.cz Internet	437 words — 7%
2	www.law.muni.cz Internet	179 words — 3%
3	www.researchgate.net Internet	162 words — 3%
4	www.akjanovec.cz Internet	148 words — 2%
5	kar.kent.ac.uk Internet	68 words — 1%
6	czasopisma.bg.ug.edu.pl Internet	64 words — 1%
7	"Transfer Pricing in V4 Countries", Brno University of Technology, 2020 Crossref	59 words — 1%
8	hdl.handle.net Internet	44 words — 1%
9	Michael Feldek. "Guarantee for the value added tax", Financial Law Review, 2020	33 words — 1%

Crossref

10	prawoiwiez.edu.pl Internet	26 words — < 1%
11	Christof Pforr, Michael Volgger, Sara Cavalcanti Marques, Aji Cahya Nusantara. "Understanding and Managing the Impact of Airbnb", Springer Science and Business Media LLC, 2021 Crossref	24 words — < 1%
12	www.brightlms.eu Internet	24 words — < 1%
13	www.vedeckekonference.cz Internet	16 words — < 1%
14	www.just.ee Internet	14 words — < 1%
15	mnje.com Internet	13 words — < 1%
16	Břetislav Andrlík, Jana Vrtalová. "Loss in Public Budget from Sportsmen's Employment in the Czech Republic", Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis, 2014 Crossref	12 words — < 1%
17	"Trends and Advances in Information Systems and Technologies", Springer Nature, 2018 Crossref	11 words — < 1%
18	www.doosanskodapower.com Internet	11 words — < 1%
19	www.dreport.cz Internet	10 words — < 1%

20	www.ottodiy.com Internet	10 words — < 1%
21	Sean Brodie, Gabrielle Dillon. "Value Added Tax, Finance Act 2010 June 2010", 978-1-84260-221-8, June 2010 Publications	9 words — < 1%
22	investiga.upo.es Internet	9 words — < 1%
23	Thierry Rayna, Ludmila Striukova. "Involving Consumers: The Role of Digital Technologies in Promoting 'Prosumption' and User Innovation", Journal of the Knowledge Economy, 2016 Crossref	8 words — < 1%
24	acta.mendelu.cz Internet	8 words — < 1%
25	David Sehnálek. "The European Perspective on the Notion of Precedent – are EU and Czech Court Decisions Source of Law?", European Studies, 2020 Crossref	7 words — < 1%

EXCLUDE QUOTES	OFF	EXCLUDE SOURCES	OFF
EXCLUDE BIBLIOGRAPHY	OFF	EXCLUDE MATCHES	OFF