



International Assessment of *Local Lodging* Income

Many non-residents buy holiday properties overseas. To help cover expenses, owners frequently engage in short-term letting to holidaymakers, referred to as *Local Lodging* in Portugal. How should this income be reported and where should tax be paid? To answer these questions, one must first refer to the Double Taxation Treaty (“DTA”). In our analysis, we refer to the treaty between Portugal and the UK. DTA’s with other countries are similar or identical.

Business Profits

When a business activity (“enterprise”) is in Portugal, the first obligation is to report and pay here. Portuguese fiscal law sees *Local Lodging* as a commercial tourist activity, not as rental income from *immovable property*. Like any commercial business activity, the taxation of this enterprise is determined by n° 1 of Article n° 7, “*Business Profits*”, of the Double Taxation Agreement between Portugal and the United Kingdom: “*Commercial profits of an enterprise of a Contracting State shall be taxable only in that State.*” In this case, read Portugal.

The property in question is considered to be the *permanent establishment* of the commercial activity, not the object of immovable property rental. The term *permanent establishment* refers to “*a fixed place of business in which the business of the enterprise is wholly or partly carried on*”. (n° 1 of Article n° 5 of the DTA)

According to the applicable Portuguese legislation, (*Decree-Law 128/2014*), a *Local Lodging Establishment* is considered to be a business enterprise, providing for remuneration temporary furnished housing services to tourists. These services must include cleaning and reception, be for a period of less than 30 days and be offered to the general public. *Local Lodging* is a modality of general tourist services, as are hotels and resorts, which are also defined and regulated under the same legislation.



Income from Immovable Property

Income from Immovable Property is different in nature. In Portugal, income from rental property customarily refers “*bear walls*” rentals, where the landlord cedes the residential rights of the space in question to the tenant. The renter is expected to provide furnishings, fittings, utilities, etc. The contractual agreement is for a period greater than 30 days and less than 30 years. A written rental contract is required for periods exceeding six months.

According to nº 1 of Article nº 6 of the same treaty, “Income from immovable property may be taxed in the Contracting State in which such property is situated”. This means that both the source jurisdiction and the country of residence have assessment rights, with double taxation being eliminated at source via the international tax credit method. This possible hybrid tax situation explains HMRC’s interest in potentially classifying the income as being from *Immovable Property*.

However, according to nº 2 of Article nº 6 of the same treaty, the term *immovable property* “shall be defined in accordance with the law of the Contracting State in which the property in question is situated”. In other words, in the case at hand, it is the “DTA” and Portuguese Law that have the final word on what is to be taxed and where assessment should be made.

Conclusion

Following these guidelines from the Double Taxation Agreement, UK tax residents with *Local Lodging* income arising in Portugal should be assessed only at source (Portugal) and not in the jurisdiction of fiscal residence (UK). As income from commercial services, classified as “business profits”, *Local Lodging* income should be exclusively taxable in Portugal.