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:: Real Estate

THE AIRBNB CASE STUDY – RECENT DEVELOPMENTS

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The Airbnb success story

The Airbnb platform is a convincing example of the “sharing economy” success story; sharing, swapping and renting possessions has turned out to be quite lucrative. Airbnb is a two-sided marketplace, meaning that in every new market it attempts to enter, it endeavors to grow both the demand side (guests) and the supply side (hosts). One of Airbnb’s major advantages is the fact that it tends to be substantially cheaper — generally 30-80% lower than local hotels. On top of that, Airbnb offers the possibility to customize listings via social network applications; therefore, choosing accommodation becomes a more personal experience.

Setting the rules for short-term leases in Greece – legislative framework’s outline

Short-term leases pertaining to the sharing economy were firstly regulated in Greece by virtue of Art. 111 of Law 4446/2016 (Government Gazette A’ 240/22.12.2016) and has successively been amended by virtue

of Art. 36 of Law 4465/2017 (G.G. A’ 47/4.4.2017) and replaced by Art. 84 of Law 4472/2017 (G.G. A’ 74/19.5.2017). Such Law regulates the “real property short – term lease agreements, within the context of the sharing economy”.

(i) *Monitoring short-term leases*

Notions: According to Art. 111 of Law 4446/2016 (the ‘Law’) within the scope of “short-term leases” falls any lease contract entered into via an online platform, including Airbnb, for a term of less than a year.

“Sharing economy” is defined as “any model where digital platforms enable an open market for the temporary use of goods and services often provided by individuals” while “digital platforms” are defined as “electronic, bilateral or multilateral markets where two or more groups of users communicate via the internet and the platform administrator facilitates the transaction between them”.

The term “real property” refers to apartments, detached houses and individual rooms thereof, along with



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any other structurally and functionally independent building.

Registration formalities: Said short term leases have to be declared via an online application for tracking purposes.

As per Art. 111 of the Law, the duty to register the real property with the "Short-term Lease Property Registry" (the "SLPR"), kept with the Public Revenue Independent Authority (the "PRIA"), is conferred to the "Real Estate Administrator" (the "REA"). According to the relevant provision, the SLPR is to be launched by virtue of an administrative act (decision of the director of PRIA – its issuance pending until recently). As REA is considered any person or legal entity appointed as such – if not already owner of the real property that undertakes the registration process but also will be responsible for any issue arising from the short-term lease. REA can be any of the following persons: (a) the owner; (b) the usufructuary (*'epikarpotis' in Greek*); (c) the sub-lessor; (d) any other third party. Furthermore, Art. 111 para. 4 (a) of the Law lays down the obligation of the person who appoints a REA to declare said assignment with the tax authorities (via the online real estate lease declaration form of the "Taxis" system).

Each real property is separately registered with the SLPR and assigned with a unique registration number

which, in turn, is mandatorily referenced within every listing of the real property on the digital platforms.

The only exemption the Law affords to said rule of registration, is in relation to real estate assets with regard to which, an operation license has been granted by the Greek National Tourism Organization - GNTO (*'EOT'* as per its Greek initials).

Moreover, following the conclusion of an online short-lease agreement, the REA undertakes the obligation to proceed to the declaration of each separate short-term lease agreement via a digital application hosted online by PRIA, such application to be also launched according to the aforementioned decision of the director of PRIA. Consequently, there is no obligation for the owner or the REA to submit an online real estate lease declaration form (through the channels of the online real estate lease declaration form of the "Taxis" system).

Overall the Law establishes a co-operation between PRIA and the digital platforms, based on information exchange i.e. the right of PRIA to request the platform to provide data re the REA and the real estate properties listed therein.

Regional Restrictions (not yet implemented): The most important limitation regarding short-term leases is to be imposed by virtue of a joint



ministerial decision (*'koini ypourgiki apofasi'* or *KYA* as per its Greek initials) of the Minister of Economy & Development, the Minister of Finance and the Minister of Tourism; according to para 8, Art. 111 of the Law, said decision will define the particular geographical areas, whereby:

- a. each tax payer (Tax Identification Number) is eligible as short-term lessor of up to two (2) real estate properties;
- b. each real estate property cannot be leased for more than ninety (90) days per year or for more than sixty (60) days per year in case the real estate property lies on an island having less than 10.000 inhabitants.

The latter restriction (described under limb [b]) does not apply vis-à-vis tax payers with total income of less than €12.000 for the relevant fiscal year, arising from any real estate resources whatsoever.

Penalties: In case of breach of the REA's obligations: (a) to register the real estate property with the SLPR; or (b) to reference its unique registration number upon listing; or (c) to comply with the regional restrictions (when applicable), the REA shall be subject to a €5.000 administrative fine and liable to remedy such deficiency within a fifteen days' period. In case of relapse occurring within one year from the date of the penalty, the amount of the

fine is doubled and for every next recurring violation the initial amount is quadrupled.

In the event that the REA fails to declare said short-term lease agreement with PRIA's digital application, a fine amounting to the double of the rent will be imposed. Another fine of €100 is imposed for any declaration submitted after the lapse of the time period for declaring short-term lease agreements.

(ii) Tax treatment

The tax treatment of the income from the short-term lease of real property through a sharing economy online platform, as defined under Art. 111 of the Law, depends on (a) whether such income is earned by individuals or companies and legal entities and (b) on the nature of the services provided.

On one hand, if (a) such income is earned by individuals; and (b) no other services apart from accommodation and supply of furniture and bed linen are provided, then such income is characterized as rental income. Therefore, the income is subject to personal income tax from real property (currently at rates ranging between 15% and 45%) and special solidarity contribution (*eisfora allileggyis* in Greek - currently at rates ranging between 0% and 10%). The leasing fees corresponding to such rental income are exempt from VAT.



On the other hand, if such income is earned by (a) companies and legal entities; or (b) individuals who provide services apart from accommodation and the supply of furniture and bed linen, then any income arising therefrom is subject to (a) corporate income tax (currently at a 29% rate) or (b) personal income tax from business activities (currently at rates ranging between 22% and 45%) and special solidarity contribution (currently at rates ranging between 0% and 10%), respectively. Other taxes, duties or levies (and/or tax registration formalities) may be applicable, depending on the particularities of each case.

[Developments introduced by the circular POL. 1187/23.11.2017 – key issues](#)

This circular POL. 1187/23.11.2017 (the “Circular”), was issued on the basis of the authorization of Art. 111 of the Law, regarding the launch of the SLPR and the online application for declaring short-term leases. It was published on December 4th, 2017 and introduces the following:

Digital platform-definition:

The Circular further defines the term “digital platform” as any platform which is equipped with on-line tools for the conclusion of the short-term lease agreement and does not purely aim at advertising said asset.

Real Estate Administrator-Third Party:

According to para. 1 of Art. 111 of the Law, the REA is defined as the “individual or legal entity (...) undertaking the process and the logistics of listing the real property on digital platforms with the purpose of short – term leasing. The administrator may either be the owner or (...) or any other *third party*”.

In line with the above, the Circular outlines in more detail, the persons that are eligible to be considered as “third parties”, on the basis of their special “link” with the asset: (a) curator of vacant inheritance (*kidemonas scholazousas klironomias*); (b) inheritance liquidator (*ekkatharistis klironomias*); (c) testamentary executor (*ektelestis diathikis*); (d) bankruptcy trustee (*syndikos ptochefseos*); (e) temporary liquidator (*prosorinos diacheiristis*); (f) sequestrator (*meseggyouchos*); or (g) procurator (*epitropos*), guardian (*kidemonas*), judicial assistant (*dikastikos symparastatis*) or parent.

Income Beneficiary-term:

Furthermore, the Circular introduces the term of the “Income Beneficiary”, which is subject to taxation, this being any Real Estate Administrator, other than the above described “third parties”. It is a matter of commercial understanding between owners/usufructuaries and the REA,



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whether the first ones will be held as Income Beneficiaries or not.

If, for any reason whatsoever, the REA is released from their duties, the unique registration number already granted is no longer valid and the real estate property should be re-registered with a new REA.

Required data upon registration with the SLPR:

Further to the above, upon registration of the real estate property with the SLPR, the REA fills in a declaration including, inter alia, the following information: (a) his personal data; (b) the data of the Income Beneficiary(ies); and (c) cadastral identification number of the real estate property (Art. 3 of the Circular). Said declaration is treated by law as a solemn affidavit, the regulatory / supervisory authority (PRIA) being entitled to inspect the accuracy of any information contained therein and to request all supporting documentation (e.g. land titles, lease agreement, etc.).

Deadline and relevant requirements for the registration are further laid down in the afore-mentioned Circular.

Minimum content of the declaration:

The minimum content of the short-term lease agreement declaration is defined in article 6 of the Circular: (a) unique registration number of the real

estate property; (b) overall lease amount or the forfeited amount in case of cancellation; (c) the trade name of the digital platform (e.g. Booking, Airbnb, etc.); (d) data relating to the lessee; (e) the date of entry into force and lapse of the lease; and (f) the method of payment of the rent.

In case of change of (a) the accommodation period; or (b) the short-term lease rent amount; or, in case of cancellation of the reservation; or, in case of non-accuracy of the data already registered, a revised declaration is submitted.

The deadline for the submission of the declaration is set at the next day from the date of check out or cancellation.



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Conclusions

In light of the above, the scope of the new legislation seems to be mainly tax oriented, in simpler terms, to ensure that income derived from such activities is properly taxed.

The set-up of a centralized data base (the “Short-term Lease Property Registry”) addresses inconsistencies spotted to-date and in particular deficiencies in tracking and reporting income earned via short-term leases.

Finally, the main advantage of the newly introduced legal framework is that it can effectively compensate term restrictions introduced by short-term lease laws currently in place, i.e. relating to equipped touristic villas or residences.



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