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Judgment of the Court in Case C-83/21 | Airbnb Ireland and Airbnb Payments UK

Short-term property rentals: EU law does not preclude the requirement to collect information or to withhold tax under a national tax regime

However, the obligation to appoint a tax representative constitutes a disproportionate restriction on the freedom to provide services

Airbnb is a global group which operates the eponymous property intermediation platform on the internet, facilitating the connection, on the one hand, of lessors who have accommodation and, on the other hand, persons seeking that type of accommodation, Airbnb collects the payment for the provision of the accommodation from the customer before the start of the rental and transfers that payment to the lessor, if there has been no challenge on the part of the lessee.

A 2017 Italian law establishes a new tax regime for short-term property rentals outside a commercial activity. That law applies to contracts for the rental of residential property by natural persons outside a commercial activity for a maximum period of 30 days, whether concluded directly with the lessees or through the involvement of property intermediaries, which include persons who, like Airbnb, operate online platforms. As from 1 June 2017, income from such rental contracts is – where the owners concerned have opted for that preferential rate – subject to a withholding tax at a rate of 21% owed to the Treasury and data relating to the rental agreements must be transmitted to the tax authority. When they receive rents, or take part in their collection, persons who act as property intermediaries must, as tax collectors, withhold 21% of the amount of the rents and pay it to the Treasury. Non-resident persons who do not have a permanent establishment in Italy are obliged to appoint, in their capacity as persons liable to pay the tax, a tax representative.

Airbnb Ireland UC and Airbnb Payments UK Ltd, which belong to the global Airbnb group, brought an action seeking the annulment of the decision of the Director of the Tax Authority implementing the new tax regime. Seised of the appeal brought by Airbnb against the ruling dismissing that action, the Consiglio di Stato (Council of State, Italy) asked the Court to interpret several provisions of EU law in the light of the obligations imposed by national law on intermediaries facilitating the short-term rental of immovable property.

In today's judgment, the Court holds that the three obligations introduced in 2017 into Italian law fall within the field of taxation and are therefore excluded from the scope of certain directives relied on by Airbnb. **Thus, the Court examines the lawfulness of the three measures solely in the light of the prohibition on restrictions to the freedom to provide services within the Union laid down in Article 56 TFEU.**

In the first place, it observes that **the obligation to collect and communicate to the tax authorities data** relating to rental contracts concluded following property intermediation applies to all third parties, whether they are natural or legal persons, whether or not they are resident or established in that territory, and whether they act via digital means or via other means of putting the parties in contact. The Court infers, in accordance with the case-law,¹ that

¹ Judgment of 27 April 2022, *Airbnb Ireland*, C-674/20 (see PR 66/22)

such an obligation **does not contravene the prohibition laid down in Article 56 TFEU** since it is applicable to all operators exercising their activity on the national territory.

In the second place, **the obligation to withhold tax at source** is also incumbent both on providers of property intermediation services established in a Member State other than Italy and on undertakings which have an establishment in Italy. The Court **therefore rules out that that obligation may be regarded as prohibiting, impeding or rendering less attractive the exercise of the freedom to provide services.**

In the third place, **the obligation to appoint a tax representative in Italy applies** however, for its part, **only to certain providers of property intermediation services without a permanent establishment in Italy.** Since that obligation requires them to take steps but also to bear the cost of paying that representative, such constraints cause, for those operators, **a hindrance of such a kind as to deter them** from providing property intermediation services in Italy, in any event in the manner they wish to do so. That obligation must thus be regarded as a restriction on the freedom to provide services prohibited, in principle, by Article 56 TFEU. Although that tax measure pursues the legitimate objective of ensuring the effective collection of tax, which may be capable of justifying a restriction on the freedom to provide services, it nevertheless exceeds what is necessary to achieve that objective. That measure applies without distinction to all providers of property intermediation services without a permanent establishment in Italy who have chosen, in the context of providing their services, to collect rents or consideration relating to the contracts covered by the 2017 tax regime, or to intervene in the collection of those rents or consideration. However, that measure makes no distinction based on, for example, the volume of tax revenue collected or liable to be collected annually on behalf of the Treasury by those providers. Moreover, the fact that the tax authority has already received information concerning the taxpayers is such as to facilitate its supervision and, therefore, contributes to the disproportionate nature of the obligation to appoint a tax representative. It follows that the obligation to appoint a tax representative **is contrary to Article 56 TFEU.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and the abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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