Tax treatment of income arising from the provision of short-term accommodation

Part 04-01-20

Document created April 2018

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Introduction

The profits derived from the provision of accommodation are chargeable to tax under Schedule D. As to which Case of Schedule D may govern that charge is dependent on the facts and circumstances of a case. Of particular importance is whether or not the accommodation is provided under a landlord and tenant arrangement (or lessor/lessee arrangement). Where such an arrangement exists the profits are assessable under Case V.

However, in general, the provision of short-term accommodation will not create a landlord/tenant arrangement. Income from the provision of accommodation to persons, where the person does not enjoy the rights of a tenant, is subject to tax under Schedule D Case I or Case IV, depending on the circumstances of each case.

The purpose of this manual is to provide an overview of the tax treatment of income arising from the provision of accommodation in circumstances where a landlord/tenant relationship does not exist. Information on the taxation of rental income under Case V in relation to landlord/tenant arrangements is available on the revenue website. Similarly, rent-a-room-relief is not available in respect of a room or rooms used to provide short-term guest accommodation. Please refer to TDM Part 07-01-32 for information on rent-a-room relief.

1. Tenant or guest?

Whether a person occupies a property as a tenant / lessee or otherwise (for example, as a guest) is a question of fact having regard to the particular facts and circumstances of a case.

Although not determinative, a tenant / lessee is generally considered to be a person who is entitled to exclusive possession of the premises for a defined period in exchange for the payment of rent under what is generally known as a landlord and tenant arrangement. Under such an arrangement, an individual, in his or her capacity as a tenant / lessee, may have certain statutory protections under the Landlord and Tenants Acts, the Residential Tenancies Acts and the Housing (Standards for Rented Houses) Regulations.

A person who occupies a property as a guest however does not, in general, enjoy exclusive possession of the property and the owner continues to have the right to access the property. In legal terms, the arrangement is generally considered to be a licence as opposed to a lease. The guest/licensee is granted consent to access and use the property for the duration of the licence but does not have the right to exclude others from the property. For example, the owner may require unrestricted access to the room/property to provide services such as regular cleaning, removal of rubbish, changing of bed linen, providing meals etc. There are a number of different circumstances whereby persons may be considered to be licensees in relation to the property occupied by them including –

- persons staying in hotels, guesthouses, B&Bs, hostels, etc.,
- persons either sharing a property with the owner or occupying the whole property for a short period of stay (including where the person books the accommodation through an online accommodation booking site), or

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- persons occupying self-catering holiday accommodation for short periods.

2. Income Tax - Schedule D

Income from the provision of accommodation to persons, where the person does not enjoy the rights of a tenant, is subject to tax under Schedule D Case I or Case IV, depending on the circumstances of each case. In general, this includes lettings where the person occupies the property as a guest on a temporary basis and has the right to enter and use the property for the duration of the visit, for example, hotel, guesthouse or holiday home usage. Whether such income is taxable under Case I or Case IV will be dependent on whether or not the income arises in the course of a trade.

2.1. Charge to tax under Schedule D Case I

The correct tax treatment of income arising from the provision of guest accommodation is dependent on whether or not the income arises in the course of a trade. The profits or gains arising from the carrying on of a trade are chargeable to tax under Case I. Whether the profits or gains from the provision of accommodation arise in the course of a trade is a question of fact having regard to the particular facts and circumstances of each case and also having regard to the 'badges of trade' and case law.

2.1.1. Whether trading income

In determining whether a trade is being carried on, one of the determinative factors will generally be the frequency of which the property/room is available for occupancy and its usage by guests. In order for the income to be considered trading income, the property/room would be expected to be available for rent on a frequent and regular basis, rather than on a once-off or occasional basis.

Likewise for an activity to be trading, consideration needs to be given as to whether the owner is involved in actively letting out the property on a commercial basis with a view to the realisation of a profit. This may involve, for example, advertising the property online on accommodation booking websites, dealing with booking enquiries, reservations and payments, arranging for cleaning, laundry and maintenance during/between lets, providing meals, providing information to visitors about local tourist attractions, restaurants etc. or paying staff to provide such services.

The provision of traditional short-term guest accommodation in hotels, guesthouses, B&Bs and hostels will generally constitute a trade. Persons who provide short-term guest accommodation, either in their home or in another property owned by them, will only be trading to the extent the activity is sufficiently frequent and regular and is carried on a commercial basis and with a view to the realisation of profit.

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In general, persons who provide guest accommodation on a once-off or occasional basis will not be regarded as carrying on sufficient activity so as to constitute a trade. This is the position regardless of whether additional services are provided alongside the letting of the room/property.

In the vast majority of cases, there will be no doubt about whether a person is carrying on a trade.

2.1.2. Case I Deductions

2.1.2.1. Capital Allowances

Section 284(1) TCA 1997 provides for an annual wear & tear allowance for plant and machinery used for the purposes of a trade. Capital expenditure incurred on plant and machinery (fixtures and fittings) in use for the purposes of the trade can be written off at 12.5% per annum over 8 years.

The plant and machinery must belong to the person and must be in use for the purposes of the trade at the end of the basis period for the year in which the expenditure was incurred in order for the allowances to be available. Section 300(1) TCA 1997 provides that these allowances are made in taxing the individual's trade.

2.1.2.2. Deductible expenses

When arriving at the profits assessable to tax under Case I a deduction will be available for expenses which have been wholly and exclusively laid out or expended for the purposes of the trade.

2.1.2.3. Pre-trading expenditure

Under the provisions of section 82 TCA 1997, pre-trading expenditure incurred up to 3 years prior to the date of commencement of a trade is deductible where the expenditure would be deductible if it had been incurred after the trade commenced. Therefore, for example, the cost of repainting a bedroom or purchasing bed linen in advance of the guest accommodation first being made available for use, would be deductible for tax purposes.

2.2. Charge to tax under Schedule D Case IV

The profits or gains chargeable to tax under Case IV are those profits or gains that are not chargeable to tax under any other Case of Schedule D or under any other Schedule. The profits or gains arising from the provision of accommodation that are not chargeable to tax under Case V or under Case I are chargeable to tax under Case IV.

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2.2.1. Occasional Income

On a practical level, a charge to tax under Case IV is likely to arise on the profits or gains arising from the provision of accommodation on a once-off, casual or occasional basis and where such provision does not amount to the exercise of a trade nor falls within a landlord and tenant (or lessor and lessee) arrangement. This is the position regardless of whether additional services are provided alongside the provision of accommodation.

In considering whether an activity is being carried on on an "occasional" basis, the term should be given its ordinary meaning, for example, "taking place from time to time" or "not frequent or regular". There is no specified threshold or limit as respects the number of times a room/property is occupied for guest accommodation, below which the income will be considered to arise from an occasional activity. It will be a question of fact, based on the particular facts and circumstances of the case, as to whether the income or gains arising are taxable under Case IV.

2.2.2. Case IV Deductions

2.2.2.1. Capital allowances

Capital allowances are not available against the profits or gains from the provision of accommodation that are chargeable to tax under Case IV.

2.2.2.2. Deductible expenses

In assessing income under Case IV, where the provision of accommodation does not have the characteristics of a trade, there is no specific provision in the tax code setting out allowable or disallowable costs. However, in determining the profit element of any such income it is long standing Revenue practice to allow a deduction for incidental costs directly associated with the provision of any such service. Therefore, expenditure incurred directly in the provision of the guest accommodation, for example commission paid to online accommodation booking sites, cleaning fees, the cost of breakfast provided to the guests, as well as a reasonable apportionment of electricity, gas, heating etc. utilised by guests, should be allowable.

However, annual costs associated with a property, such as insurance costs, TV licence, general maintenance costs etc., are not costs directly borne in relation to the accommodation service provided – they are costs to be borne irrespective of whether a service is provided and, accordingly, a deduction would not be permitted for these costs.

2.2.2.3. Pre-trading expenditure

There is no provision, in computing income chargeable to tax under Case IV, for allowing deductions in respect of expenditure incurred in advance of a property/room being made available for guest accommodation.

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3. Capital Gains Tax (CGT)

3.1. CGT implications where Case I applies

Section 604(6) TCA 1997 provides that any portion of a gain that accrues on the disposal of a house or apartment which relates to a part of the house or apartment used exclusively for the purposes of a trade, business or profession, does not qualify for CGT principal private residence relief. For example, where a room in a house or apartment is used exclusively for business purposes, the relief is restricted. An example of this would be the exclusive use, by a medical practitioner, of a room in his/her house as a GP surgery.

Section 604(7) TCA 1997 provides that where there are changes made as regards the use or structure of the house or apartment during the period of ownership, the relief is adjusted in such manner as the individual concerned and the inspector may agree. If there is no agreement, there is a right of appeal to the Tax Appeals Commissioners who may give such relief as they consider just and reasonable.

Therefore, in the case of short-term lettings, unless a particular room or part of a residential property was used exclusively for business purposes i.e. the provision of short-term accommodation, it is unlikely that there would be any restriction to principal private residence relief.

3.2. CGT implications where Case IV or Case V applies

In the case of income assessable under Case IV or Case V, principal private residence relief may apply where the property is the main residence of the owner. However, as is the case of income assessable under Case I, the exemption does not extend to a part of a dwelling-house which is exclusively let so that the income is assessable under Case IV or Case V.

4. Value Added Tax (VAT)

VAT is a tax on consumer spending and is collected by VAT registered businesses on their supplies of goods and services. VAT is only levied on goods and services provided in the course of an economic activity by a taxable person. Whether a person is carrying out an economic activity or a business depends on the facts and circumstances of a case; it is an objective test. It is usually clear whether or not a person is carrying out an economic activity, that person would normally be making supplies on a continuous basis.

Where a taxable person is carrying out an economic activity or business, they are obliged to register and account for VAT on their supplies if they exceed the relevant threshold (i.e. they are considered an accountable person). They may also deduct VAT incurred on their business costs in the normal way. This will apply to the cases that come within the charge to tax under Schedule D Case I.

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4.1. What VAT rate applies to short-term accommodation?

In general, the letting of immovable goods is exempt from VAT unless the letting relates to short-term accommodation, and other short term guest / holiday accommodation.

Short term accommodation is generally subject to VAT at a reduced rate (9%), and applies to activities such as:

- Letting of a room(s) in a hotel or guesthouse.
- Short term lettings of all or part of a house, apartment or similar building.[1]
- Letting of a part of a caravan park or similar place.
- Letting of a part of a camping site or similar place.
- Provision of any other holiday accommodation.

However, the provision of student accommodation is exempt from VAT.

4.1.1. Short term lettings

A short term letting is a letting of all or part of a house, apartment or other similar establishment:

- to a tourist, holidaymaker or other visitor
- for a period which does not exceed or is unlikely to exceed 8 consecutive weeks

A letting of emergency accommodation is excluded from this definition.

4.2. Registration requirements

A business which provides short-term accommodation must register for VAT if their income exceeds or is likely to exceed €37,500 per annum. A business can also elect to register for VAT if they are below the threshold. However, where these cases arise a case by case approach should be applied before registration is accepted. Every below the limit case should be considered on its own particular and specific merits as to whether there is a continuous economic activity or business, and where it is found that the case is not carrying on a continuous economic activity or business, that case should be regarded as an 'negligible income' case for VAT purposes and therefore would not qualify to register.

Further information on registering for VAT.

[1] See 4.1.1

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4.3. VAT deductibility

A VAT registered business providing taxable short-term accommodation may reclaim Value-Added Tax (VAT) incurred on their business costs under the normal VAT rules.

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