

TRADITIONAL RENTAL vs TOURISTIC RENTAL

Legal requirements and tax implications

In a tax point a view, the difference between short accommodation (AL) and rental is significant. While the touristic rental, for short periods, known as AL, just 35% of the income is taxable, subject to incidence of VAT, the long-term rental, known as traditional, 100% of the income is considered, for taxation purposes.

1. Long-Term Rental (traditional)

By law any rental contracts, regardless of their duration, have to be celebrated in writing, in order to be valid. The rental contracts have to identify the parties involved, and the property to be rented. The contract has to be communicated to the Tax Authority, through the government website *e-arrendamento*, until the end of the following month of the beginning of the lease. Any alterations to the initial contract should be produced in writing and should be reported through the referred website.

When the rental contract is communicated, a tax bill is issued. The landlord has to pay 10% of the monthly rent under the contract, of the stamp duty tax. This means that, if it is performed a contract with a duration of one year, the landlord will have to pay the stamp duty, only one time. But, if in one year are signed, for example, three different contracts, the stamp duty will be due for each contract. The lack of communication in time means that the Tax Authority can issue a fine, which can be assessed from €100 to 2.500€. On the other hand, when the landlord fails his duty to issue a rent receipt, the law predicts a fine, whose value can be assessed from €150 to €3.750.

Verónica Pisco - Responsabilidade Limitada

Avenida Cidade de Loulé (antiga Estrada Vale de Lobo), Caixa Postal 530-A, Ferrarias, 8135-018 Almancil.
Rua José Pinheiro e Rosa, Urb. Horta da Fábrica, Lt 12, R/C Dt, Fracção "A", 8800-676 Tavira.
Tlf./Fax: 0351 289 358 382 TLM.: 0351 968 919 049 veronica.pisco-offi@sapo.pt www.veronicapisco-lawoffice.com

On IRS (individual tax income), the income of long-term rental contracts is taxed under the rules of the category F – Income from Property.

In the event of not choosing for income aggregation, when submitting your tax return, the income from other categories won't be taxed with the income from the category F, which will be subject to a separate tax rate of 28%.

It should also be noted that the option for aggregation creates, in the legal sphere of the landlord, a tax advantage, which consists in deducting, over the next 5 years, the losses incurred in the fiscal year. This means that if, for example, the landlord performs works, with higher values than the incomes earned we will have a tax loss, and may deduct these same losses in the subsequent 5 years.

Besides that, it may be retained, from the landlords, the amount of 25% of the rental income, when the tenant has organized accounts.

2. Tourist Lease or Local Accommodation - AL

The register of the local accommodation is done at the competent municipalities, and they are subject to **prior communication**, through the website *bde.portaldocidadao.pt*, the survey costs, as well as documentation to be presented are set by each municipality. And the property's owner commits to comply with a certain number of requirements when submitting the registration.

It is predicted a fine amounting from €2.500 to 3.740,98€, for situations of local accommodation working without previous registration at the competent Town Hall, in case of individuals, or from €25.000 to €35.000, in case of companies or similar entities.

If the AL business is owed by an individual, he must register it with the Tax Authority, the activity of providing accommodation services (Category B), before starting, presenting the Beginning of Activity Statement (“Declaração de Início de Actividade”). For that, you need to sign that Declaration, and provide the bank account details.

Verónica Pisco - Responsabilidade Limitada

Avenida Cidade de Loulé (antiga Estrada Vale de Lobo), Caixa Postal 530-A, Ferrarias, 8135-018 Almancil.
Rua José Pinheiro e Rosa, Urb. Horta da Fábrica, Lt 12, R/C Dt, Fracção “A”, 8800-676 Tavira.
Tlf./Fax: 0351 289 358 382 TLM.: 0351 968 919 049 veronica.pisco-offi@sapo.pt www.veronicapisco-lawoffice.com

The local accommodation business owners may choose between the organized accounts or the IRS simplified regime. In either option, it is mandatory to issue invoices.

In case of non-compliance with legal standards, including having violation of the duty to declare the income resulting from the local accommodation, the tax fine imposed may vary between 375€ and 22.500€.

Regarding the VAT payment, shall be issued an invoice or equivalent document for the services provided (article 36, CIVA), being charged VAT at the reduced rate of 6%, in the general regime. If at the beginning of the activity, it is estimated a business volume lower than 10.000€, there will be place for exemption of VAT, applying the special tax regime provided in the article 53rd of CIRS. But, as soon as the amount of 10.000€ during the fiscal year, is exceeded, it will be necessary to communicate the fact to the Tax Authority, by a Statement of Changes and then, the invoices will include VAT, at the reduced rate of 6%.

The owner of the property shall ensure that the AL business he is going to start meet all legal requirements.

This year, the tax law is including the possibility of deducting the costs with commissions paid to AL websites, such as *Airbnb*, *Booking*, *myhomeaway*, etc.

3. Conclusion

In a tax point a view, the property owner should understand what it is more efficient for him to do. So, let's see:

Long-Term Rental		Local Accommodation Simplified Regime < 10.000€	Local Accommodation Simplified Regime > 10.000€
IS (Stamp duty)	10%	Not applicable	Not applicable

Verónica Pisco - Responsabilidade Limitada

Avenida Cidade de Loulé (antiga Estrada Vale de Lobo), Caixa Postal 530-A, Ferrarias, 8135-018 Almancil.
Rua José Pinheiro e Rosa, Urb. Horta da Fábrica, Lt 12, R/C Dt, Fracção "A", 8800-676 Tavira.
Tlf./Fax: 0351 289 358 382 TLM.: 0351 968 919 049 veronica.pisco-offi@sapo.pt www.veronicapisco-lawoffice.com

Taxable	100%	35%	35%
Category	F – from Property	B - Entrepreneur	B - Entrepreneur
IRS (taxes)	28% (Autonomous taxation) or from 14,50% to 48% (aggregation)	from to 14,50% a 48%	from to 14,50% a 48%
+Surcharge IRS	3,5% (if aggregates)	3,5% (if aggregates)	3,5% (if aggregates)
+Additional Tax	2,5 to 5% (when superior to 80.000€)	2,5 to 5% (when superior to 80.000€)	2,5 to 5% (when superior to 80.000€)
withholding	25%	0%	0%
VAT	0%	0%	6%
Deductible expenses	Maintenance and conservation; IMI, IS, condominium and homeowner's insurance	Comissions with AL websites	Comissions with AL websites

With the new rules for the simplified regime, in force since 2018, and specially the earnings get equal or superior to 27000€, it is worth to ask for invoices with the tax number of the tax payer, so it can be achieved the maximum allowance, ie, the 65%.

Example:

When an individual, whether resident or non-resident, received in 2018, the amount of € 10,000, from property lease, located in Portugal, we can verify the difference in the tax treatment of two types of rental:

a) Long-term rental (traditional)

$10.000€ \times 28\% \text{ (TA)} = 2800€ \text{ (tax to be paid)}$

b) Touristic rental or Local Accommodation

$10.000€ \times 35\% \text{ (taxable)} = 3500€ \times 14,50\% = 507,50€ \text{ (tax to be paid)}$

Verónica Pisco - Responsabilidade Limitada

Avenida Cidade de Loulé (antiga Estrada Vale de Lobo), Caixa Postal 530-A, Ferrarias, 8135-018 Almancil.
Rua José Pinheiro e Rosa, Urb. Horta da Fábrica, Lt 12, R/C Dt, Fracção "A", 8800-676 Tavira.
Tlf./Fax: 0351 289 358 382 TLM.: 0351 968 919 049 veronica.pisco-offi@sapo.pt www.veronicapisco-lawoffice.com

4. Social Security

The submission of the declaration of “Início de Actividade” at the Tax Authority will consequently transmit the communication to the Social Security Institute that a new taxpayer for AL business is registered.

With the new Social Security Law, in force since the 1st January 2019, self-employed individuals, registered for AL purposes are automatically exempted of paying social security.

Verónica Pisco

20/03/2019

(Lawyer and post-graduated in Taxation)

Note: All content on this site is protected by Copyright and Related Rights and Industrial Property Rights under the Portuguese and European Union laws, international conventions and other laws and may not be used without consent of Verónica Pisco - Law Office. Therefore, the content in this site may not be copied, altered or distributed except with express permission.

Verónica Pisco - Responsabilidade Limitada

Avenida Cidade de Loulé (antiga Estrada Vale de Lobo), Caixa Postal 530-A, Ferrarias, 8135-018 Almancil.
Rua José Pinheiro e Rosa, Urb. Horta da Fábrica, Lt 12, R/C Dt, Fracção “A”, 8800-676 Tavira.
Tlf./Fax: 0351 289 358 382 TLM.: 0351 968 919 049 veronica.pisco-offi@sapo.pt www.veronicapisco-lawoffice.com