

EuroGites Roundtable Berlin 2005

Is RT considered as business activity?

Austria

Austria has no specific statutory regulation for Rural Tourism, general tourism legislation applies and is then complemented by private (corporate) criteria, standards, and classification set up by the organisation “Urlaub am Bauernhof”.

Legal regulations apply generic to “rental of private rooms” (“*Privatzimmer-Vermietungs-Gesetz*”) regardless the ubication in rural or urban areas. There are 9 different regulations in the 9 *Bundesländer* but they vary little and have the following common elements:

- ❑ B&B with up to 10 beds are not considered as a business activity even if breakfast is offered. This is viewed as a “complementary activity of a normal household” (“*haushaltliche Nebentätigkeit*”) and not a bussiness activity. Regulations about the offer of meals may vary depending on the *Bundesland*.
- ❑ Similarly, a pure rental of holiday homes / apartments is not considered as business up to 3 units / about 12 bedplaces. The income from renting out the apartments is considered as an income from capital/real estate, not as a business income.

Even if a provider has 5 B&B rooms (no more than 10 beds) **and** 3 holiday apartments (up to 5 beds each) – the 10 beds B&B are regarded as above, the 3 appartements as renting out accommodation (like flats) – so the whole is still not considered as a business activity.

A problem appeared as the Ministry of Economics understood that the limit of 10 bedplaces should be applied to the total, adding B&B plus self-catering capacity; while practice was that both were considered separately (e.g. a provider could offer 10 bedplaces in B&B and additionally, up to 3 selfcatering units without being considered as a “business”). The farm holidays association managed to defend the wider interpretation of a non-business status for small providers that offer B&B plus selfcatering.

Food service (meals) can be provided in B&B establishments with not more than 10 beds in every province apart from Salzburg, where only breakfast is allowed.

Food service must not be provided to guests in self-catering apartments. Payed staff is not allowed – only family members may be involved. No extra services, like swimming pools can be offered. The rooms can be in an outbuilding of the main house.

The farmers in tourism business have to register with the local tourism association of accommodation providers, but no special licensing with any public authority exists. For construction of new buildings, a building permission as for private dwelling quarters is required from building authorities (as for any other private person). Most of land properties in rural areas are in the status of agricultural lands, it is not allowed to build business establishments (hotels, apartment complexes, etc). on such lands.

Those establishments, registered with the tourist board, pay the Tourism tax. If the rooms are rented out to someone for more than 3 months, this is not regarded as a tourism activity anymore and the is not more tourism tax to be paid for this person.

For B&B the VAT rate is 10%. Up to 5 beds are considered as farm activity (or complementary income to the main source of income) and thus, are not subject to VAT.

Out of the total 100% of income, 50% is generally considered (accepted) as costs in case there is no detailed accounting. The remaining 50% must be included in the annual income tax declaration. If there are more beds, business character applies according to the tax authorities, and income and VAT is registered as for a normal business.

Self-catering is generally exempt from VAT, as considered as a rental. Income is to be separately declared as income from property in one's personal tax declaration.

Social security

Apartements / self catering are not business activity and thus, are not affected / subject to the social security scheme.

B&B have to pay social security since 2004 even if the limit of 10 bedplaces is not exceeded, which is calculated as follows:

- From the total turnover, 3700EUR can be deducted
- If a farm has – for instance – direct selling of their farming produce as well, they may deduct another 3700 EUR for this source of income.
- 70% of the remaining turnover (including VAT – gross income) is considered as costs and can also be deducted.
- On the remaining amount, 23% social tax is applied.
- Example:
 - total turnover = 10000
 - Deduction 3700 => base for calculation = 6300
 - 70% deduction on 6300 = 4410
 - base for social security = (6300 – 4410) = 1890
 - 23% on 1890 = 434,70 to be paid as social security tax

The tax was imposed because there was not sufficient funds in the farmers' social insurance system.

Additional services, like guiding, can be provided. However, if these are related to any health or other risks (like climbing, massage, etc.) – the providers need to be licenced. A 20% VAT applies on such services.

No special licences or permits are required if the providers offer only breakfast; nor for other meals if the food is on the day's menu (there must not be a menu with meal options like in a restaurant service, but the food that is made like for the own household). It is allowed to sell agricultural produce, but special rules from agricultural authorities apply here.

France

No specific statutory legislation for Rural Tourism. General laws for the touristic sector apply.

No problem with self-catering, as long as only rental (without other services) is offered. Self-catering is classified as a financial capital administration, but not as a business activity.

In Chambre d'Hôtes (B&B), there is no definite line to differ business activities from non-business. If the establishment is not registered as a business, the VAT can not be returned (*this also applies in the rest of countries*).

There is no legislation for B&B. Providers with more than 5 rooms / 15 bedplaces have to comply with regulations like a small hotel / restaurant business. Providers offering up to 5 rooms / accommodating up to 15 persons are not subject to this requirement, they may offer food service but only if the guest rooms are in the same building with the provider quarters. Kitchen equipment regulations is an issue to be discussed and negotiated with authorities, so far it is a "grey zone".

If guest accommodation by rooms is in a separate building, neither breakfast nor other meals can be offered. In self-catering establishments no food service is allowed, even if the self-catering unit is located in the provider's own house.

Accommodation on farms is considered as agricultural units. Normally income from those are so small that taxation and control does not take place.

The VAT does not represent a problem. Self-catering is exempt, at B&B the providers who pay VAT, can regain it as tax returns to supported VAT, and considerable exemption (franchise) exists per bedplace.

Social security is more of a problem, as there were complaints from the hotels. Officially the situation is similar to Spain (high basic minimum sum, if actual rules were applied). Discussions are going on for 10 years about if and how to apply social security taxes to B &B – so far no decision is taken, and owner do not pay. It should be calculated from income, not as a lump sum.

Hungary

There is no specific law on tourism. A Government decree on commercial accommodation stipulates that only establishments with more than 5 rooms and 10 beds are considered as business enterprises. Breakfast service can be provided only to those guests that are accommodated in the provider's house.

Income deriving from rural tourism in Hungary is considered as complementary income and activity, up to the abovementioned limit of 5 rooms / 10 bedplaces. As a non-entrepreneurial activity it is subject to the conditions of personal income taxation. Special terms : flat rate taxation, tax break can be applied by private hosts (tax exemption limit for private hosts up until income of HUF 700.000 approx. 2800 EUR). This is an obstacle to acquire reliable statistics, in surveys – surprisingly – most owners have an annual income from RT of exactly HUF 699.999

Meals and programmes without accommodation are considered as an entrepreneurial activity subject to the conditions of entrepreneurial taxation like all commercial accommodations.

It is not allowed to set up several tourism establishments within one farm, if it is considered as a non entrepreneurial activity.

Social security: Since this activity means additional income, there is no accepted regulation on social security. In most cases it is not this activity which attracts obligation for social insurance. The Association of Rural Tourism has yet to encounter any problems in this field.

Regarding the size of the establishment – it is necessary to define what is a “bedplace”. Orientation - in Spain the number of extra bed should not be more than 50% of the permanent bedplaces.

Spain (Andalusia)

Rural Tourism is defined by specific statutory regulations (normally, at the level of Decree) by the 17 autonomous regions. Each region has own legal regulations, which can differ considerably (17 regions, more than 50 different terms and names and definitions within Spain).

In **Andalusia**, all Rural Tourism is regulated by a special Decree, which includes special regulations for accommodations with up to 20 bed places. Initially all rural accommodations, from hotels down to a single bedroom, were considered as full tourism business establishments. The registration process and requirements as “public” service was too complicated for small accommodations and, as a result, illegal (unregistered) offers developed specially in the field of self-catering.

At present, the Decree in force since 2002 defines a special regulation for small accommodation which do only offer accommodation, but no other service like food or activities (even breakfast as self-service is in a “grey zone”). For those accommodations, the activity is understood as a simple rental of rooms or of the complete houses. Registration is done through a simple declaration to the Tourism Authorities. They are not classified as public establishments, which avoids to be subjected to regulations for public swimming pools, food service, and similar.

Accommodation providing only room- (or house-) rent can take bank loans as private persons. Revenue is classified as private person’s income from property administration. Support to such providers from EU funds is available on the condition that they register their tourism activity which has been developed using the EU funds to the Tourism Authorities through this simplified method.

VAT: if only accommodation is provided, without extra services, this is considered as (room- or house-) rental exempt from VAT. Exception: if the client is a business company that needs an official invoice, in this case VAT is added at 16% (“rental” not “touristic service”), the provider keeps the basic price without VAT and has to make VAT payment to the Tax Authorities himself. Nevertheless, this VAT payment is not really controlled up to a sum of 3000 EUR p.a. invoiced to the same client.

Providers registered as business (= with more than 20 bedplaces, or if they offer other services than only accommodation) are VAT payers. VAT for touristic services has a reduced rate at 7%, and report to authorities every 3 months. All providers – registered either as room rentals or business activity – pay income tax but the concept varies (income from rental *versus* income from business activity), the latter allows more deductions of costs and depreciation.

Social Security: Providers that register as tourism business (p.e. because they offer serviced accommodations with food ect.), must pay a social security fee at 230 EUR/month unless they already are self-employed. This is too high for small providers, in practice providers do not pay, do not offer these services in their publicity (but still provide them), or simply stay illegal because in case of registering with the Tourism Authorities, information is likely to be passed to the Social Security and Tax Authorities.

This too high amount of the minimum social insurance fee for small rural tourism providers was one of the reasons to define the abovementioned simple legal figure that limits the allowed activity to “rental”, which is not considered as tourism business operations and does not oblige to pay Social Security.

For full-time agriculture that offer RT accommodation, by Agriculture legislation this is considered as part of the agricultural activity if total income from it is below 50% of total revenue. Tax authorities have a different interpretation – “grey zone” so far.

If extra tourist activities or services are incorporated in a package to the own clients, no special licences are required. If such activities (services) are offered to the general public (= not only clients at the accommodation, but also external), special licences are required and a different taxation applies.

Greece.

All accommodation providers are considered as businesses. A complete licence is required even if only breakfast or a snack bar is offered. Most owners cannot afford this due to excess of regulation and taxation consequences.

For meal services, the same regulations as to restaurants apply. There are efforts to achieve more favourable conditions for rural tourism operations.

Switzerland

Food can be served „at the providers table” and there are only simple regulations to be complied with.

It is not allowed to construct new buildings on agricultural lands. Even renovation is limited if the buildings would be used for different purposes than agriculture.

If the annual turnover reaches 45.000EUR, VAT applies at 4,5% (income from tourist accommodation and food service). This is not normally reached by individual businesses, but in the CH association all members pay VAT through the centralized booking, even if the turnover is not reached individually, in order to prevent objections from the restaurant sector.

Ukraine

A law on rural tourism is under negotiation. Small accommodation in private rural homes will not be considered as a business activity, but will be subject to certain minimum standards.

Romania

Up to 2000, rural tourism was not considered as business. Now, only in mountain regions this is not considered as a business activity.

The VAT is 17%, there is a proposed change to 9%.

The establishments that are registered, undergo inspections, that's why black market develops. Social insurance is paid together with employee salary.

Resume

- 1) Rural Tourism accommodation is not equally regulated in Europe, neither from the administrative nor from the taxation side. In countries with long RT tradition, they are subject to the generic touristic legislation; while where RT is new, a tendency exists to create a specific legal framework for it
- 2) The consideration of RT accommodation as “business” or not, is a critical aspect not only from the perspective of touristic registration. Above all, it affects because of the implications regarding the application (or not) of VAT, Social Security, and technical/sanitary standards or requirements for “public” establishments.
- 3) Activities related to pure accommodation **rental** – *complete units or rooms but without providing any other service* – seem to generally find little problems. They are neither considered as “business” activity nor as a “public establishment”, at least up to reasonable size (15-20 bedplaces seems the most frequent limit). Where they are considered as business, “black market” is strong.
- 4) The status of tourist accommodation offered by rooms depends on the size (AT, FR, ES) and on the type of services offered. Services like B&B within the provider’s own house and up to 10-15 bedplaces, are not considered as business in many countries (AT, FR, CH; as well in DE and UK). This includes in some countries the possibility to offer meals (but only at a simple level – no restaurant service with menu choice).
- 5) In countries where consideration as full business applies to B&B from the first bed onwards, high level of “black market” can be observed, due to impossible burdens (taxes, technical requirements, social security).
- 6) In some countries (GR, LV, HU), all activities in rural tourism are regarded as a business, even pure rental – which contradicts EU norms. Nevertheless, in some of the (LV, HU) “workarounds” similar to AT or FR are defined.
- 7) In countries of point (4) above, VAT does not apply to the services that are below the capacity limit. This activity is considered as complementary income, or income from room rental, but not as a business activity.
- 8) Regarding Social Insurance, the situation is not clearly defined. Generally, no obligation exists if there is no business activity (= case of rental of units or rooms without any other service). If more services are provided (breakfast, meals, ...) and no exemption is defined by maximum capacity, the theoretical obligation is frequently ignored in practice.

Conclusions

- ❑ **A lobby is required in EU, supporting the concept that only big business operations should be limited with big regulations. Practice proves that simple and feasible solutions for small or part-time accommodation do not endanger consumer protection, nor do they increase risks of any other kind.**
- ❑ **The regionally, local, or home-made products and services are not to be controlled the same way as large businesses or industrial productions. Otherwise, they would lose their character and/or will simply disappear, together with the important social and cultural heritage that they represent.**
- ❑ **A similar framework of simplified rules and approaches should thus be applied to rural tourism all over Europe, in order to protect and maintain a unique offer of great importance for the sustainability of rural areas, and to enable it for fair competition in an open market.**
- ❑ **Simplification does not mean exemption: all providers must be subject to minimum standards, and declare income from RT at the end of a year. In pure rentals, and in serviced accommodation up to reasonable limits (to be suggested around 10-15 bedplaces), this income should be considered as from property administration, not as business activity.**
- ❑ **Establishments which have been registered with authorities, frequently receive inspections and penalties, but no compensation by adequate positive support. This favours the development of uncontrolled services, as unregistered establishments get neither of those problems. *(in Spain, 9 out of 10 offered self-catering places in the touristic sector are not registered)***