

Germany**Germany's Pursuit of Tax Evaders With Airbnb May Spread in Europe**

By Jabeen Bhatti

German tax officials want Airbnb Inc. to surrender all data on its German users to track down tax evaders, and have asked Irish authorities to help, a spokesperson from the Berlin Administration of Finance told Bloomberg Tax in a May 17 email.

"Hamburg has turned to Airbnb Ireland after Berlin had decided that Airbnb Berlin was not responsible," for the information, the spokesperson said, referring to the European headquarters of the American company. "Hamburg has now tried in coordination with Berlin and the other federal states to find another way and addressed a request for information."

"The expected delivery of data and information will then be made available to all of the federal states," the spokesperson added.

It's a symbolic move by German tax authorities, tax attorneys said: Authorities expect Airbnb to issue a settlement for users' unpaid income and value-added tax rather than subject them to audits by German authorities, which will help protect its image and business model within the country and Europe.

Such a workaround, however, will likely have a ripple effect across Europe, attorneys said. With Germany leading the charge against such platforms to recover back taxes, the move could spark similar pushes by countries like Italy and Spain to go after Airbnb and other firms operating in the sharing economy.

"This will affect all sharing platforms," Istvan Cocron, a founding partner with CLLB law firm in Munich, told Bloomberg Tax May 9. "Often it's that Germany takes the first legal steps in a new direction and other countries follow. There are definitely other countries with more financial tax problems than Germany has, such as Spain and Italy, for example, where more people book Airbnb for their holidays."

Ongoing Debate

Airbnb and other sharing-economy platforms like Uber Technologies Inc. have been at the center of various legal fights in Germany over the years, particularly regarding platforms' disruption of regulations in traditional sectors like hospitality, housing and transportation.

Airbnb in particular has faced ire from German authorities for its alleged role in inflating housing shortages in urban centers such as Berlin and Hamburg, and for the failure of its users to declare and pay VAT on the extra income they earn over the platform, Thomas Eigenthaler, the president of Germany's Federal Taxpayers' Association, told Bloomberg Tax May 11.

In Berlin, for example, Airbnb's activities have been severely constrained. Since 2014, the rental of entire apartments in Berlin over Airbnb is only allowed if the apartment is registered with the relevant authorities in order to prevent such entrepreneurial endeavors from eating up the housing market.

"In a tight housing market like Berlin, the topic of apartments is important. On the other hand, it falls into the overall complex nature of the digital economy, which should not be permitted to escape taxation," the spokesperson from the Berlin Administration of Finance told Bloomberg Tax.

In Pursuit of Tech Companies

German tax authorities are attempting to mobilize a calculated audit against serial offenders so as to identify patterns of tax evasion over Airbnb, while also getting a better grasp of the scale of the issue, Eigenthaler said.

"These are the most relevant questions, but it all depends on how Airbnb responds," he said, adding it would "most definitely damage Airbnb's image if there's a perception that they're taking part in tax evasion in Germany."

The effort is in line with Germany's quest to get tech companies to pay the taxes they are liable for in domestic jurisdictions, even though they may not have a physical presence there, a spokesperson from Germany's Federal Ministry of Finance told Bloomberg Tax in a May 9 email.

"Should companies do a significant part of their business in a jurisdiction, the absence of a physical presence in that jurisdiction should not result in the profits accrued by them there not being taxable there. Digital platforms and markets should report relevant information to the relevant tax authorities, and this information should be shared between tax jurisdictions in accordance with international tax law," the spokesperson said.

Snapshot

- Expected delivery of data and information to be available to all federal states
- Part of Germany's pursuit of tech companies

"International efforts to clarify and standardize legal and technical standards on tax treatment and information sharing are ongoing," the spokesperson added.

The effort is welcomed across the political spectrum in Germany.

"If there is a real suspicion that taxes have not been paid in Germany, then it is right to ask for more information in Ireland," Lisa Paus, a Green party lawmaker in the Bundestag, the lower house of Parliament, told Bloomberg Tax in a May 17 email. "Income, whether from leases or other sources, must not be concealed from the tax office."

"I assume that Ireland will collect the requested information from Airbnb and exchange it with Germany, she added. "Should the request fail, the information exchange rules should be urgently reviewed and adjusted."

When asked about the request by German authorities to Ireland, a spokesperson from Airbnb told Bloomberg Tax in a May 11 email that it "frequently reminds hosts to check and follow tax rules, send email reminders and have downloadable transaction histories for hosts."

Airbnb hasn't received formal notice of the request, the spokesperson added.

Airbnb has entered into tax agreements with some 370 jurisdictions around the world and collected and remitted more than \$592 million in hotel and tourist taxes.

Refusal Could Mean Lawsuit

Should Airbnb refuse to surrender its user data, it could face a lawsuit by Germany demanding back taxes, Cocron said.

It likely won't go that far, however, seeing as how Airbnb's international status makes for a difficult and expensive legal battle, he added, and that the company dragging its feet could hurt business.

Rather, the authority's goal is ultimately that Airbnb settles the matter outside of court with a lump sum so they can continue to operate in Germany, all the while drumming up anxiety among the platforms' users to pay taxes on the income they make, Cocron said.

"These companies make billions, and now the authorities are saying that they've found a way to get taxes," Cocron said. "If they try to target the users directly, and Airbnb actually cares about its users, maybe we'll get a solution with Airbnb directly."

"The most important thing is to show Airbnb that the authorities have them and their users on their radar," he added.

Perceptions Altered

Meanwhile, the outcome of Germany's legal pursuit will ultimately have an effect on how emerging sharing-economy platforms perceive their status in Germany and Europe in the future, Eigenthaler said.

"Airbnb will act in a pioneering role," he said, adding that if Airbnb shares its information, "then everybody has to get into the boat."

If a settlement does result from the action, however, it will open the door for other tax jurisdictions in Europe more affected by Airbnb's practices, such as Italy and Spain, to demand similar means of remuneration, Cocron said.

"There are hundreds of Airbnb apartments being rented there. And if their tax authorities see that the Germans have already sued Airbnb, they'll say that they can band together with all European countries, for example, and tell Airbnb that now they have problems with all the European countries."

"If this one works, all sharing platforms and startups working now should be planning for this to happen in the future," he added.

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