

NETHERLANDS¹

INTRODUCTION

This country fiche provides a summarised overview of the national regulatory framework impacting upon short-term letting² services in the collaborative economy.³ While the collaborative economy model is now present in many different areas (e.g. car-sharing platforms like Uber in the transport sector or bike-sharing schemes in leisure), this report concentrates exclusively on the accommodation sector.

The document at hand focuses on the subjects of market access, liability and tax. As such, this country fiche describes the rules applicable to providers of short-term lettings (such as home owners) and platforms that offer a service enabling short term rentals through their website (for instance, Airbnb).

MARKET ACCESS AND LIABILITY LEGISLATION - PROVIDERS OF SHORT TERM LETTINGS IN THE COLLABORATIVE ECONOMY

NATIONAL LEVEL

There are currently no relevant authorisation, licence or registration requirements at national level, in the Netherlands that apply to short term letting in the collaborative economy.⁴ However, on 13 March 2019, the Minister for the Interior and Kingdom Relations published a letter setting out his intention to amend the 2014 Housing Act in order to “tackle the unwanted effects of tourist rentals”.⁵ More specifically, the Minister proposed three measures with which a municipality under the proposed amendment could regulate the rental of houses to tourists. Firstly, the municipality could introduce a one-off registration obligation whereby the provider must state the registration number with each offer. Secondly, the municipality could introduce a reporting obligation per offer. Finally, if there are serious negative effects of tourist rentals, the municipality could introduce a permit system. The relevant legislative proposal to amend the 2014 Housing Act was published for an online consultation from 15 March to 13 April.⁶

Until any legislative changes enter into force, municipalities have the competence to establish their own policies and rules with regard to authorisation, licence or registration requirements. Municipalities can, for instance, set rules to counter the scarcity of housing based on the 2014 Housing Act, or regulate tourist rentals via zoning plans.⁷ Moreover, as it is not always clear where the line between peers and professionals should be drawn, municipalities are responsible for providing clarity on this as well.⁸

¹ Country report last updated 13/06/2019.

² In this regard, we refer to short term rentals of one’s house, usually offered by the house owner on a daily or weekly basis.

³ For the purposes of this report, the collaborative economy is defined as the economy of sharing: a market place where consumers decide to co-use, rather than own certain goods and rely on each other to get the services they need. Cf: http://ec.europa.eu/growth/single-market/services/collaborative-economy_en.

⁴ As explained in a letter from the Minister of Economics to the House of Representatives, page 4-5 (<https://www.rijksoverheid.nl/documenten/kamerstukken/2015/12/18/kamerbrief-over-toekomstbestendige-wetgeving-digitale-platforms-en-de-deeleconomie-waaronder-particuliere-verhuur-aan-toeristen>).

⁵ <https://www.rijksoverheid.nl/documenten/kamerstukken/2019/03/12/kamerbrief-over-voornemen-tot-wet-toeristische-verhuur-van-woningen>.

⁶ <https://www.internetconsultatie.nl/verhuur>.

⁷ <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2017/02/23/kamerbrief-meldplicht-voor-toeristische-verhuur/kamerbrief-meldplicht-voor-toeristische-verhuur.pdf>.

⁸ As explained in a letter from the Minister of Economics to the House of Representatives, page 4-5 (<https://www.rijksoverheid.nl/documenten/kamerstukken/2015/12/18/kamerbrief-over-toekomstbestendige-wetgeving-digitale-platforms-en-de-deeleconomie-waaronder-particuliere-verhuur-aan-toeristen>).

In the absence of an applicable national legal system, several municipalities have rules in place with regard to short-term rentals.⁹ In the City of Amsterdam, short-term rentals can take place in the form of “holiday letting” (if you rent out your entire home and you are not present during the rental period)¹⁰, “bed and breakfast” (if you rent out part of your private home and you are always present during the rental period)¹¹ and “short-stay” (the rental of non-subsidised housing for periods from seven nights to six months)¹².

With regard to “holiday letting,” each time a provider rents out a property to tourists, this must be reported to the municipality in advance. Moreover, a provider can rent out a home for a maximum of 30 nights per calendar year.¹³ There are several other requirements that providers need to comply with. The host needs to remain the main resident of the property (i.e. of the house which is being rented out).¹⁴ In fact, the Administrative Court of Amsterdam ruled¹⁵ that pursuant to the Dutch Housing Act and the Amsterdam Housing Regulation it is illegal to withdraw a residential ‘zoned’ property from the market by renting it out to tourists without a licence when the house is not the main residence of the host. Moreover, no more than four guests are allowed at once, compliance with fire safety rules needs to be ensured, and there should be no nuisance to neighbours or the authorities. Furthermore, providers need to pay tourist tax to the City (5%) and include all revenues on their income tax assessment (please find more information on this below).¹⁶ It is also prohibited in Amsterdam to rent out homes owned by public housing corporations.¹⁷ The distinction between professionals¹⁸ and peers¹⁹ is not specifically made with regard to these rules. However, taking into account the categorisation and description of “holiday letting” (i.e. renting out your entire home when you are not present during the rental period), they seem to mainly envisage letting by peers. The provider does not require a “hotel” licence as far as he/she complies with the restrictions set for holiday letting.

Moreover, even though there is no specific ban on subletting (i.e. leasing the property by a tenant to a subtenant), civil law - more specifically, the law on residential letting - provides that a tenant needs the approval of the owner before subletting any part of the rented property, unless the provider remains the main resident.²⁰ In this regard, the City of Amsterdam specifies that permission is needed from a landlord or owner-occupier’s association for private holiday lets.²¹

If providers do not comply with the applicable rules for short-stay touristic rentals, a municipality can close a property down, impose an administrative fine to the provider,²² impose an administrative enforcement order,²³ or impose an order subject to penalty on the provider.²⁴ Moreover, two new Acts - the Approach to Residential Nuisance Act and the Housing “Sweep” Act - offer additional possibilities to impose measures against persons causing nuisance, and to impose an administrative fine if a new owner does not undo the illegal conversion or

⁹ For example, in the Hague (<https://denhaag.raadsinformatie.nl/document/5348246/2/RIS297048%20Vakantieverhuur%20en%20tijdelijk%20verblijf>; <https://www.denhaag.nl/nl/in-de-stad/wonen-en-bouwen/verhuur-van-woning-tijdens-vakantie.htm>), and in Utrecht (<https://www.utrecht.nl/fileadmin/uploads/documenten/wonen-en-leven/wonen/2018-05-Beleidskader-particuliere-vakantieverhuur-woning.pdf>).

¹⁰ <https://www.amsterdam.nl/en/housing/holiday-rentals-b-b/>.

¹¹ <https://www.amsterdam.nl/en/housing/holiday-rentals-b-b/>.

¹² <https://www.iamsterdam.com/en/living/everyday-essentials/housing/rental-property/shortstay>.

¹³ <https://www.amsterdam.nl/wonen-leefomgeving/wonen/particuliere/>.

¹⁴ <https://www.amsterdam.nl/en/housing/holiday-rentals-b-b/>.

¹⁵ Decision of Rechtbank (District Court) Amsterdam of 29 September 2016 (ECLI:NL:RBAMS:2016:6187).

¹⁶ <https://www.amsterdam.nl/en/housing/holiday-rentals-b-b/>.

¹⁷ https://www.amsterdam.nl/veelgevraagd/?productid=%7B6DDBA95B-F95C-460F-917B-08B34CBEC384%7D#case_%7B08819CEA-3D9F-4B04-B6A7-87564671F574%7D.

¹⁸ Defined for the purposes of this study as an individual acting in a professional capacity.

¹⁹ Private individual offering services on an occasional basis, according to the Commission Communication *A European agenda for the collaborative economy*, Brussels, 02.06.2016, COM(2016) 356 final.

²⁰ Burgerlijk Wetboek (Civil Code), Article 7:244.

²¹ <https://www.iamsterdam.com/en/living/everyday-essentials/housing/holiday-rentals-in-amsterdam>.

²² Algemene wet bestuursrecht (General Administrative Law Act), Article 5:40.

²³ Algemene wet bestuursrecht (General Administrative Law Act), Article 5:21.

²⁴ Algemene wet bestuursrecht (General Administrative Law Act), Article 5:32.

withdrawal of a living space.²⁵ In Amsterdam, moreover, the non-reporting of the holiday letting of a property can be fined 6000 EUR or more.²⁶

MARKET ACCESS AND LIABILITY LEGISLATION - COLLABORATIVE ECONOMY PLATFORMS

NATIONAL LEVEL

Dutch legislation does not include a special regime for digital platforms in general or for those active in the accommodation sector specifically.

The liability rules applicable in NL to short-term rental services in the collaborative economy are unclear.²⁷ In a 2015 judgment, however, the Dutch Supreme Court drew a distinction between “active intermediaries” and “bulletin boards”.²⁸ It described active intermediaries as those which assist in/facilitate the conclusion of a contract, but the accommodation provider and the accommodation seeker cannot contact each other directly. By contrast, the bulletin board only facilitates the exchange of necessary contact details of both parties, and the platform has no further involvement. The Court went on to hold that the hosting exemption (i.e. a host is not liable for information in the case it removes such information, or makes access to it impossible, as soon as it becomes aware of the illegal character of the information²⁹) only applies to passive bulletin boards.³⁰ In practice, however, it is not always easy to identify the line between a bulletin board and an active intermediary.

Nonetheless, under the proposed amendment of the 2014 Housing Act, a municipality could introduce a one-off registration obligation whereby the provider must state the registration number with each offer. Moreover, the Municipality of Amsterdam, for example, has already agreed with a number of platforms that an advertisement can no longer be booked after the maximum number of permitted overnight stays has been reached.³¹

TAXATION RULES - SHORT TERM LETTINGS IN THE COLLABORATIVE ECONOMY

NATIONAL LEVEL

NL has not introduced specific tax rules applicable to the collaborative economy at national level. However, the Dutch Tax Authority provides guidance on its website regarding the rules applicable to short-term letting.³²

The Dutch Income Tax Act applies to collaborative economy providers.³³ According to this Act, whenever a main residence is rented out for a short period of time, the ‘own residence rule’ applies and 70% of the rental profits will need to be declared. Any expenses directly incurred from renting out a residence may be deducted. In case the short-term letting is combined with other services, like breakfast or dinner, the rental profits can qualify as ‘benefits from miscellaneous activities’ or even ‘business profits’. In this case, 100% of the rental profits will need

²⁵ Wet aanpak woonoverlast (Approach to Residential Nuisance Act), <https://wetten.overheid.nl/BWBR0039275/2017-07-01>; Veegwet wonen (“Sweeping” Act Housing), <https://wetten.overheid.nl/BWBR0039169/2018-06-13>.

²⁶ <https://www.amsterdam.nl/en/housing/holiday-rentals-b-b/>.

²⁷ S. Ranchordás, Regels voor de digitale deeleconomie, oftewel ‘uber-regulering’ (Rules for the digital sharing economy, or rather ‘uber-regulation’), Magazine ‘Regelmaat’ 2016 (2), page 110.

²⁸ Decision of the Hoge Raad (Dutch Supreme Court) of 16 October 2015 (ECLI:NL:HR:2015:3099).

²⁹ Burgerlijk Wetboek (Civil Code), Article 6:196c(4).

³⁰ Decision of Gerechtshof (Court of Appeal) Leeuwarden of 22 May 2012 (ECLI:NL:GHLEE:2012:BW6296).

³¹ <https://www.rijksoverheid.nl/documenten/kamerstukken/2018/09/25/kamerbrief-over-voortgang-aanpak-woningmarkt>;

<https://www.rijksoverheid.nl/documenten/kamerstukken/2018/04/03/kamerbrief-inzake-toeristische-verhuur>.

³²

https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/prive/werk_en_inkomen/interneteconomie/interneteconomie-deeleconomie

³³ Wet inkomstenbelasting 2001 (Income Tax Act 2001).



to be declared. Moreover, in some cases providers will need to pay VAT (depending on e.g. whether exemptions apply).

Lastly, as mentioned above, providers may – depending on the municipality - have to pay a tourist tax on the income from holiday rentals.