

Transferring a visitor's apartment located in business premises with visitors' apartments and on commercial land

Visitor's apartment means an accommodation establishment that is rented out entirely (**subsection 8 of § 18 of the Tourism Act**).

A visitor's apartment/holiday apartment is used for commercial purposes and therefore it is not exempt from income tax. The Law of Obligations Act distinguishes dwellings from business premises and practically rules out the possibility to use dwellings as business premises, and vice versa. Within the meaning of the Law of Obligations Act, a dwelling is a residential building or apartment that is used for permanent habitation. Business premises are premises used in economic or professional activities (**§ 272 of the Law of Obligations Act**).

The Supreme Court has agreed in its judgement that it is reasonable to assume that a building will be used for the purposes specified in the detailed spatial plan or building permit. At the same time, it is important to know that the classification of purpose for use of construction works which distinguishes residential buildings from non-residential buildings in construction law differs from the classification between dwellings and business premises within the meaning of subsection 1 of § 272 of the Law of Obligations Act. Thus, the legislative or regulatory provisions of construction law do not forbid the usage of residential building or an apartment that is located in a residential building for temporary residence. Likewise, an apartment that is located in a residential building may be used for providing accommodation services, i.e. in economic activity (**RKHK 3-3-1-47-15**, in Estonian).

Unlike ordinary apartments that are meant for use as places of residence, the purpose for use of holiday apartments is business activity. If a taxpayer has really been using a holiday apartment as his or her place of residence until its transfer and it is proven, the application for tax exemption to the sale of such an apartment may be justified in exceptional cases.

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