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REAL ESTATE UNDER THE VALUE ADDED TAX SYSTEM

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Theses of the doctoral dissertation

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1. BASIC PRINCIPLES, BRIEF SUMMARY OF THE RESEARCH TASK

I have been dealing with taxation for about ten years now. During this period, I had the opportunity to gain practical experience in many aspects of taxation, initially as a trainee lawyer and then as a lawyer. Although I do not have any relevant statements, in my view the majority of legal interpretation issues and disputes arising in connection with taxation concern real estate in some form. This circumstance inevitably led me to focus on immovable property as a specific legal and economic factor and on the tax rules applicable to immovable property.

1.1. THE IMPORTANCE OF VAT, DIRECTIONS FOR THE REVISION OF REGULATION

According to Eurostat, VAT is one of the main sources of revenue in all EU Member States.¹ To illustrate this, annual VAT revenue in Hungary is estimated at about 10% of gross domestic product (GDP).² VAT is also a key source of financing for the EU budget, as 0.3% of VAT collected at national level is transferred to the European Union as own resources, representing 12% of the total EU budget.³

The VAT regulation as a whole has undergone several substantial changes in recent years. Nevertheless, the VAT rules still leave much to be desired. The regulation is too complex, difficult to follow and interpret, and thus difficult to apply in practice. Amendments made over the last ten years due to the introduction of new directives have made it difficult, not easier, to use and interpret the law. Legislation that is complex, difficult to interpret and difficult to apply in practice entails questions of interpretation. As a consequence, we can conclude that this is the type of tax that has been the subject of the most scrutiny by the European Court of Justice.⁴

Despite the fact that VAT plays a key role in shaping fiscal policy, the VAT system is hampered by sub-optimal tax collection and control methods, which also entail excessive burdens and compliance costs. The revision of tax legislation is therefore becoming increasingly topical.

¹ https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Tax_revenue_statistics

² According to the chapter on direct revenues and expenditures of the 2023 budget, the VAT revenue planned for 2023 is HUF 7,099,683.7 million, which is approximately 10.4% of gross domestic product (GDP). Budapest, 14 June 2022.

³ Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules fit for the digital age. COM(2022) 701 final

⁴ ÉVA ERDŐS : *Legal bases and possible development directions of value added tax*. Curia Administrative and Labour Division Jurisprudence Analysis Group summary opinion. 2014.El. II.JGY.1/2.

In view of the above, the European Commission periodically elaborates proposals and tax action plans⁵ in order to renew and simplify the EU VAT system. The latest legislative package (VAT in the Digital Age), presented (and adopted since then) in 2022, aims to modernise the functioning of the common VAT system and reduce VAT fraud.⁶ In addition, the aim is to reduce administrative burdens and costs for businesses, individuals and national tax administrations by standardising and standardising individual tax liabilities at EU level.⁷

The European Commission's reform package has three main objectives:

- (i) modernising VAT reporting requirements: introducing digital reporting requirements that standardise the information that taxpayers are required to submit to tax authorities in electronic format on each transaction. At the same time, they require the use of e-invoicing for cross-border transactions;
- (ii) addressing the challenges posed by the platform economy: updating VAT rules applicable to the platform economy to address the issue of equal treatment, clarifying the rules applicable to such transactions relating to the place of supply of services, and strengthening the role of platforms in tax collection where they facilitate the provision of short-term accommodation rental services or passenger transport services; as well as
- (iii) avoiding the need for multiple registrations as a taxable person within the European Union and improving the functioning of the instrument for declaration and payment of VAT 14 for distance sales by introducing single registration as a taxable person. This means improving and expanding the existing one-stop-shop/import administration system and the reverse charge mechanism in order to minimise the number of cases in which a taxpayer has to register in another Member State.⁸

It should also be noted that financial transactions and insurance services, which are also treated as tax-exempt in principle – similarly to transactions related to real estate –⁹ can also be encountered in many respects in relation to real estate, and the European Commission is also dealing with the revision and renewal of EU legislation on these types of transactions. Most recently, following an impact assessment carried out in 2020¹⁰, the European Commission

⁵ Value added tax (VAT)

⁶ Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules fit for the digital age. COM(2022) 701 final

⁷ Melinda RÁKOSA: Áfa a digitális korban – az Európai Bizottság új adócsomagja. *Adó szaklap*, 2023/2.

⁸ Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules fit for the digital age. COM(2022) 701 final

⁹ See Article 135(1)(a) to (e) of Council Directive 2006/112/EC on the common system of value added tax ('VAT Directive').

¹⁰ Ref. Ares(2020)5770956 - 22/10/2020

launched a consultation in this regard in 2021, arguing that the current VAT rules for financial and insurance services are considered too complex, difficult to comply with and outdated given the development of the sector and the emergence of new services.¹¹ Although the proposal on this topic has not yet been published following the consultation, and according to the information provided by the European Commission, the review process has been suspended¹² (i.e. it has not yet produced any substantive results), it can be stated that the issue is being dealt with by the European Commission from time to time.

Based on the above, it can currently be seen that although a wide-ranging review of the VAT system is underway, the revision of the regulation concerning real estate is not on the agenda of the European Union. The focus is much more on the achievements of the digital age and the formulation of legislative responses to it. However, as outlined in the present doctoral thesis, there is a need to review the regulation of real estate in several respects.

Here it is necessary to address possible regulatory directions in the literature (not only in the EU, but also outside the EU). Several authors (Conrad, Grozav,¹³ Ebrill,¹⁴ Millar¹⁵) mention that non-standard tax treatment always increases the complexity of the tax system and can lead to unnecessary shifts, possibly leading to a breach of the principle of tax neutrality. In view of this, some authors draw attention to the fact that the application of the exemption is in principle inappropriate.

In the literature, the most typical proposals are the so-called full taxation models. Conrad proposes to develop tax regulations that would treat real estate uniformly with all other products and services. In the case of the solution proposed by Conrad and Grozav¹⁶, the VAT regulation on real estate would differ only in that all persons and organizations selling real estate would become taxable persons. If the person purchasing the property is a taxable person anyway, then according to the proposal, this person is immediately entitled to a refund of the VAT related to the purchase of the property. In the event that the person buying the property is otherwise not a

¹¹ See https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12671-A-penzugyi-es-biztositasi-szolgaltatasokra-vonatkozo-afaszabalyok-felulvizsgalat_hu

¹² Taxud.c.1(2023)2230750

¹³ Robert CONRAD, Anca GROZAV: *Real Property and VAT*. Richard Krever (ed.): VAT in Africa. Pretoria University Law Press, 2008.

¹⁴ Liam EBRILL, Michael KEEN, Victoria J. PERRY: *The Modern VAT*. International Monetary Fund, 2001.

¹⁵ Rebecca MILLAR: VAT and Immovable Property: Full Taxation Models and the Treatment of Capital Gains on Owner-Occupied Residences. *Legal Studies Research Paper*, No. 13/50, Sydney Law School.

¹⁶ Robert CONRAD, Anca GROZAV op. cit.

taxable person, he would only be entitled to a refund of VAT when he resells the property, but in the latter case the amount of VAT refunded to him would be adjusted for inflation (i.e. the deterioration of money between the purchase and resale would be taken into account). In addition, according to the proposal, there would be no distinction between immovable property, and all properties would be treated uniformly, regardless of whether they are new or old.

Millar is also in favour of a full taxation model. At the same time, Poddar draws¹⁷ attention to the difficulties of this concept, highlighting, for example, the technical problems related to the definition and implementation of tax treatment in the case of existing properties (built and purchased before the introduction of a new taxation system), as well as possible social and political aspects. Poddar therefore argues for the introduction of various mixed solutions.

It can be seen, therefore, that the individual concepts typically point in the direction of simplifying or unifying regulations in the field of real estate. Moreover, this is not unprecedented: the above-mentioned impact assessment carried out by the European Commission on financial and insurance services¹⁸ also aimed at standardising the rules and eliminating (or applying to a narrower extent) the tax exemption.

1.2. THE SPECIFIC ROLE OF REAL ESTATE

The specific legal and economic role of real estate is due to several factors. On the one hand, it should be emphasized that properties typically have a long service life, they are not consumed or used within a short time after purchase. On the other hand, unlike other things that surround us in everyday life, the value of real estate typically increases over time. Thirdly, real estate can play a continuously changing role throughout its lifetime, with the result that it is linked to production or consumption in varying ways from time to time, so that due to the transformation of a building, it may serve initially as an office and then as a hotel, while a plot of land may be built or unbuilt – or these qualifications may vary for the same plot of land – thus possibly serving different economic activities. In addition, almost all businesses are involved in real estate transactions in their operations, be it the rental of office space serving as their headquarters or the sale and purchase of real estate.

¹⁷ Satya PODDAR: Taxation of Housing Under a VAT. *Tax Law Review*, Vol 63.

¹⁸ See https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12671-A-penzugyi-es-biztositasi-szolgaltatasokra-vonatkozo-afaszabalyok-felulvizsgalat_hu

The social role of real estate is also undeniably outstanding, they play a central role in our lives. Access to well-located and poorly located and quality housing shapes people's social lives and access to healthcare, education, job opportunities and leisure activities.¹⁹

1.3. VAT REGULATIONS ON REAL ESTATE IN GENERAL

There is broad agreement that value added tax should not distort market conditions and consumer choices, in particular as a consequence of the principle of fiscal neutrality, which is the cornerstone of value added tax. This objective is best served by the fact that value added tax is levied by each State on the widest possible range of goods and services consumed.²⁰ Certain exemptions, which are exceptions to the general rule, are of limited application²¹ because they infringe the logic and functionality of value added tax.²²

From the basic assumption set out in the previous paragraph, it might reasonably be assumed that transactions involving immovable property are also subject to value added tax and that the exemptions can only be applied to a limited extent at most (especially considering that expenditure on immovable property transactions is perhaps one of the most significant elements of consumer expenditure).²³ At the same time, the characteristics of real estate, given the specific nature of the properties mentioned above, shade this picture, especially since the taxation of real estate and taxes on real estate transactions are always sensitive areas, and reforms are influenced by a number of social and political circumstances.²⁴

The specific role of real estate leads to the fact that the regulations governing real estate transactions are not only specific, but also complex.²⁵ This is the conclusion of renowned Stanford professor Charles E. McLure, jr.,²⁶ who says that the treatment of real estate

¹⁹ OECD (2022), Housing Taxation in OECD Countries, OECD Tax Policy Studies, No. 29, OECD Publishing, Paris

²⁰ Sijbren CNOSSEN: *Improving the VAT treatment of exempt immovable property in the European Union*. Oxford University Centre For Business Taxation, WP 10/19.

²¹ See Case C-472/03, Arthur Andersen [ECLI:EU:C:2005:135]

²² Liam EBRILL, Michael KEEN, Victoria J. PERRY: *The Modern VAT*. International Monetary Fund, 2001.

²³ Satya PODDAR: Taxation of Housing Under a VAT. *Tax Law Review*, vol 63.

²⁴ Hansjörg BLÖCHLIGER, Reforming the Tax on Immovable Property: Taking Care of the Unloved, *OECD Economics Department Working Papers*, No. 1205, OECD Publishing, Paris, 2015.

²⁵ Ben TERRA, Julie KAJUS: *A Guide to the European VAT Directives 2007*. Volume 1, IBFD.

²⁶ Sijbren CNOSSEN, VAT Treatment of Immovable Property, In: V. THURONYI, *Tax Law Design and Drafting* Ch. 7, IMF, 1996.

transactions for value added tax purposes is one of the most complex issues in the field of taxation.²⁷

If we look at the OECD countries' VAT or equivalent consumption tax rules on real estate, we can see that, with the exception of certain South American states (where the sale or rental of real estate is fully taxed),²⁸ there is no tax liability for all types of real estate, as tax exemption has been introduced for certain real estate transactions on a narrower or wider scale²⁹ (examples of the latter are the Czech Republic, Portugal, Ghana, China). It should be noted that in these latter cases an alternative form of taxation is typically used.³⁰

The value added tax systems of OECD countries generally distinguish between two types of real estate: residential and other real estate, the latter of which include commercial property.³¹ Immovable property other than residential immovable property is generally subject to VAT in principle,³² while residential immovable property is generally subject to additional special or detailed rules (allowing tax exemption in certain areas).³³ Compared to this general trend, the EU value added tax (or value added tax in EU legal terminology) system differs somewhat³⁴, in which, due to fundamentally historical factors, both residential and other (commercial) real estate supplies can in principle be regarded as exempt supplies.³⁵ In order to ensure that undertakings nevertheless have the right of deduction in respect of those transactions, it should be possible to opt for the taxable treatment of the transaction in question under the general rules and thus exercise the right of deduction. However, there is a lot of criticism of this solution in the literature,³⁶ as solutions vary from one Member State to another.³⁷

²⁷ The original English text reads: "Housing is one of the most difficult items to handle under a value-added tax."

²⁸ Robert CONRAD, Anca GROZAV op. cit.

²⁹ Robert CONRAD: Comments on VAT and Housing. *Tax Law Review*, vol 63.

³⁰ Robert CONRAD, Anca GROZAV op. cit.

³¹ Rita de la FERIA, Richard KREVER: Ending VAT exemptions: Towards a Post-Modern VAT. Wolters Kluwer, 2013.

³² Satya PODDAR, op. cit.

³³ Rebecca MILLAR: VAT and Immovable Property: Full Taxation Models and the Treatment of Capital Gains on Owner-Occupied Residences. *Legal Studies Research Paper*, No. 13/50, Sydney Law School.

³⁴ VAT denotes the type of tax at EU level, while the specific implementation of this in the Member States is described by VAT – i.e. in Hungarian EU terminology, a distinction was also made between EU and Member State concepts at the level of designations. Márta Fischer: *Eurolects, The influence of the European Union on languages, especially legal language*. Academic Publishing House, 2023.

³⁵ Sijbren CNOSSEN: *VAT Treatment of Immovable Property*. In: V. THURONYI, *Tax Law Design and Drafting*, Ch. 7, IMF, 1996.

³⁶ Dagmar HALABRINOVÁ, Karel BRYCHTA: Taxonomy of EU Member States from the View of VAT Imposed on Immovable Property (year 2017). *European Financial Systems 2017 - Proceedings of the 14th International Scientific Conference (Part I)*.

³⁷ Sijbren CNOSSEN: A proposal to improve the VAT treatment of housing in the European Union. *Fiscal Studies*, vol 32.

1.4. DESIGNATION, SUMMARY AND TOPICALITY OF THE TOPIC

Based on the above principles, it can be summarized that the VAT regulation for real estate is extremely complex and multifaceted, and questions of legal interpretation related to this regulation often arise. Basically, these two factors (complexity and frequency) led me to choose the role of real estate in the value added tax system as the topic of my doctoral research and then my doctoral dissertation. In my view, these two factors ensure, on the one hand, the challenge, which should be the basic condition of a doctoral research topic, and, on the other hand, the usefulness for the legal research (or simply interested in the topic) audience, which is an important characteristic of doctoral research. In my view, doctoral research and doctoral dissertations should be an indispensable objective of preparing a work that primarily promotes the application of law and, where appropriate, supports legislation.

As regards the topicality of the choice of topic, we can clearly state that the system of rules concerning value added tax, as well as the practice of courts and tax authorities, has undergone dynamic development in recent decades, which changes have obviously not left or leave untouched transactions involving real estate either. Accordingly, the range of issues related to regulation is also expanding and changing year by year. Adapting the case-law of recent years (and clarifying the uncertainties of the application of the law so far), Implementing Regulation (EU) No 1042/2013 defined immovable property for VAT purposes, which remained without a statutory definition in both EU law and domestic law for decades. In addition, the regulation of services related to real estate was clarified, explicitly specifying services (such as legal services related to the establishment or transfer of rights in immovable property or in relation to immovable property) whose tax treatment has raised a number of questions of legal interpretation in recent years. The creation and entry into force of the decree is also emphasized because it did not require transposition into domestic law, i.e. the provisions of the decree are binding when applying the rules concerning domestic value added tax. The amendments also affected certain rules set out in the VAT Act in recent years³⁸, highlighting the expansion of the concept of new real estate in this regard.

The choice of topic is also topical because the definition of value added tax treatment of real estate – primarily by applying a reduced tax rate – has been a recurring tax policy tool in recent

³⁸ Act CXXVII of 2007 on Value Added Tax (hereinafter: VAT Act)

years to encourage the construction and sale of new real estate in Hungary. In recent years, a significant part of the valuations issued concerning value added tax has been related to questions and interpretations related to the applicability of the 5% tax rate introduced for the sale of new homes. At the time of writing, i.e. in December 2024, the question arises as to how long and under what rules the above-mentioned reduced 5% tax rate will be applied in the future.

2. OBJECTIVES AND HYPOTHESES OF DOCTORAL RESEARCH AND DOCTORAL DISSERTATION

During my doctoral research, I tried to explore the legal provisions, literature, judicial and official practice related to the management of real estate value added tax as fully as possible.

Basically, my research had two levels, the domestic and international (typically EU) scene, taking into account that the VAT regulation affecting real estate is also located on two levels. In the course of my research, in addition to the literature, I paid special attention to exploring and interpreting the positions, guides and articles issued by the tax authority and the Ministry of Finance (Ministry for National Economy) in connection with the given topic, bearing in mind that knowledge and familiarity with these sources is essential in tax matters in the assessment of a particular legal issue. It should be emphasized that in many cases we can see that the interpretation of the Hungarian authorities and courts differs from EU practice in certain respects, therefore during my research I tried to reveal the contradictions between the two levels, and to highlight their cause and nature.

The backbone of my doctoral research was the literature concerning taxation in the classical sense and the jurisprudence of authorities and courts. In addition, I consider it necessary to highlight – in line with Szabolcs Szuromi Anselm³⁹'s book *Methodology of Canon Law* – the importance of auxiliary sciences (i.e. sciences that provide additional, external data for work in a specific field of science).⁴⁰ In my opinion, taxation and related research work should pay attention to the analysis of auxiliary sciences, since taxation and tax law are located at the border between law, economics and other disciplines (e.g. sociology, social policy). During my research on my doctoral thesis and the preparation of my doctoral dissertation, I tried to take these aspects fully into account.

³⁹ Szabolcs SZUROMI Anselm O.Praem: *Egyházjogi metodológia*. Szent István Társulat, Budapest 2011, p. 66.

⁴⁰ István KÁLLAY: *Történelem segédtudományai*. Eötvös Loránd Tudományegyetem, 1986.

In line with the above, during the preparation of my doctoral dissertation, it was a fundamental objective to provide a comprehensive picture of the value added tax regulation, practice, literature interpretations and related challenges related to real estate, and based on the above, to formulate a proposal(s) that could help future law application and legislation. Furthermore, my aim was to ensure that the doctoral thesis serves not only scientific purposes, but also provides useful guidance for lawyers interested in the topic or dealing with tax issues related to real estate transactions in the course of their work.

In connection with my doctoral research and doctoral thesis, I put forward the following hypotheses:

- (i) Tax regulation on immovable property is an instrument of social policy, but its effectiveness is doubtful in the case of reduced rates for new dwellings.
- (ii) Due to the special nature, role and significance of real estate, a special set of rules has been established for real estate transactions from a VAT point of view.
- (iii) VAT rules on immovable property vary from one Member State to another in many respects, leading to a lack of uniformity in the VAT treatment of individual real estate transactions across Member States.
- (iv) The specific VAT regulation developed in relation to real estate is extremely diverse and complex, which makes compliance with the law difficult for the application of the law from case to case and results in significant tax risks. A review of the regulation is necessary with a view to simplification or uniformity.

3. SUMMARY REGARDING THE HYPOTHESES OF THE DOCTORAL THESIS

In the introduction of my doctoral dissertation, I formulated four hypotheses regarding the role and location of real estate in the VAT system.

The first hypothesis is that tax regulation on immovable property is an instrument of social policy, but the effectiveness of this instrument is doubtful in the case of reduced rates for new dwellings. This issue is discussed in detail in Part II, Chapter 1. We have seen that the concept of social policy plays a prominent role in the field of taxation. Its relevance from a real estate point of view is given by the fact that, in accordance with the VAT Directive, the Hungarian legislator decided to introduce a reduced tax rate of 5% compared to the standard tax rate for new residential properties meeting certain conditions for social policy reasons and in order to achieve such objectives. At the same time, following the introduction of the VAT reduction from 2016, no price decrease was detectable in the case of residential properties, moreover, the general trend of recent years has been the increase in the price of residential real estate. It is questionable or doubtful whether the reduced tax rate introduced for new housing can be regarded as a social policy step, especially if social policy can be regarded as a step aimed at preserving and improving people's everyday life, living conditions, quality of life and life chances, in short: their well-being. In these circumstances, too, it is doubtful whether the legislation would pass the social policy test of the European Court of Justice. I also see my first hypothesis as justified in this regard.

According to the second hypothesis, due to the specific nature, role and significance of real estate, a special set of rules for real estate transactions has been developed for VAT purposes. We have seen that real estate undoubtedly plays a specific role in economic life. They typically have a long lifespan, are not consumed or used within a short time after purchase, their value typically increases over time, and properties can play a constantly changing role during their lifetime, resulting in them being linked to production and consumption in varying ways from time to time. As a result of these specific factors, we can find a very diverse, case-by-case regulation of real estate at global and even EU level. Reviewing the regulations of the 77 states in Annex 2 of the doctoral dissertation, one can hardly find any state that contains the same tax treatment for transactions involving individual real estate. This is also true based on the overview of the EU spectrum according to Annex 1 of the doctoral dissertation, we can find different regulations from one Member State to another, either regarding tax exemption, tax

liability or even the tax rate applied. Although an overview of these rules shows that there are many similarities (the sale of residential real estate is typically subject to tax exemption), the regulation is extremely diverse. Accordingly, I see the first hypothesis confirmed, repeating and confirming the quote of Stanford professor Charles E. McLure, jr., already referred to in the introduction, according to which the treatment of real estate transactions for value added tax purposes is one of the most complex issues.

I also see the third hypothesis that VAT rules on immovable property differ in many respects from one Member State to another and that this leads to uneven regulation, are also justified in my view. We have seen that this current situation stems primarily from the fact that the VAT Directive leaves Member States considerable leeway in defining certain concepts relating to immovable property (e.g. building land, residential property) and certain rules (e.g. exercise of the right of deduction). In my view, this concept of current regulation is advantageous on the one hand, as it allows individual Member States to adapt their regulations to specific (domestic) needs. However, I doubt in my opinion to what extent it is consistent with the idea of a single EU VAT system and with the principle of fiscal neutrality, which forms an integral part thereof, when such a specific area is regulated considerably differently from one Member State to another.

According to the fourth hypothesis, the specific VAT regulation developed for real estate is extremely diverse, which in many cases makes it difficult for the enforcement of the law to comply with the law. We have seen that the EU legislator has taken a significant step towards unifying EU legislation by defining a single concept of real estate and a related place of supply applicable from 2017. In doing so, the legislator has made it possible not to apply national rules on the definition of immovable property, which have been consistent with national rules which have differed from one Member State to another, and significant progress has been made in defining the scope of services related to immovable property. Nevertheless, we can still see that both the VAT Directive and the VAT Act distinguish between several different categories of real estate (unbuilt-up real estate, building plot, residential property) and assign different tax treatment to them, thus creating an extremely diverse system that necessarily makes compliance with the law more difficult. In my opinion, along the lines of the concepts referred to above, simplifying or unifying regulation is an objective that should also be considered in the future in the case of VAT regulations on real estate. Such a direction would certainly facilitate compliance and facilitate both the application of the law. For my part, as a possible direction of

simplification, I would not consider it advisable to apply the so-called full taxation model referred to above, or possibly to introduce a completely tax-free model, but rather to maintain a mixed solution.

4. LIST OF PUBLICATIONS ON THE TOPIC

I. Case-law on the assessment of the consequences of direct application or of the wrong application of reverse charge mechanism

Published: IUSTUM AEQUUM SALUTARE 2021/3.

In view of the differentiation of regulations, improper handling of the transaction from a VAT point of view poses an outstanding risk in connection with real estate transactions. If the parties involved do not properly classify the transaction, the tax authorities may determine a tax shortfall on the supplier or purchaser and impose other adverse legal consequences. When examining the exercise of the right of deduction, the European Court of Justice focuses on compliance with substantive requirements, while the right to deduct can only be restricted to a very limited extent in the event of a breach of formal requirements. However, if the transaction is subject to reverse charge rather than outright taxation, it is not contrary to EU law for the tax authority to deny the purchaser the right to deduct, and the purchaser must recover from the tax authority any excess tax wrongly paid by the customer. The study summarises the rulings of the European Court of Justice in examining the above legal issues, the principles laid down in these decisions and the main considerations related to them.

II. Issues of the definition of building land in the field of value added tax

Published: PÁZMÁNY LAW WORKING PAPERS 2022/3.

In the field of value added tax, the supply of building land is subject to a significantly different regulatory regime from other supplies of immovable property, yet in practice there are a significant number of cases where the definition of building land (including, in particular, the demarcation of building land from unbuilt property which is not building land) and thus the determination of the correct tax consequences of the transaction poses

problems for taxpayers. Interpretation is made more difficult by the fact that EU law gives the Hungarian legislature a free hand – within certain limits – and therefore the rulings of the European Court of Justice contain few criteria regarding certain elements of the concept of building land under the Value Added Tax Act. The aim of the study is to present the concept of building land in EU law and domestic law, as well as the administrative and judicial jurisprudence developed in connection with certain conceptual elements of decisive importance, including problems related to interpretation and possible directions of interpretation.

III. Issues relating to the definition of immovable property in the field of value added tax

Published: In: Gyula Bándi - Anett Pogácsás (ed.): Permanence and adaptation. Selected doctoral studies. Pázmány Press, Budapest, 2023.

From 2017, a new, uniform VAT-related real estate concept was introduced in EU and domestic law. The definition ushered in a new era in the interpretation of the concept of real estate for VAT purposes. In view of the broad definition of real estate, when analysing individual transactions, special attention should be paid to whether real estate is involved, especially since this concept may also apply for VAT purposes to cases that do not qualify as real estate in the ordinary sense of the word (which typically considers land and the buildings standing on it as real estate) or in the case of other domestic taxes. In addition, transactions that are not legally covered by this regulation may also be subject to VAT regulations. In the study, I dealt with the introduction of the concept of real estate, the jurisprudence developed in this regard, and the difficulties of interpretation.

IV. Reducing VAT rates on residential property sales – a tool of social policy?

Published: IUSTUM AEQUUM SALUTARE 2024/3.

The definition of value added tax treatment of real estate – primarily by applying a reduced tax rate to new residential properties – has been a recurring tax policy tool in Hungary in recent years. From 2010 onwards, an important tax policy objective was to increase the emphasis on consumption-type taxes in taxes over taxes on income, and to

reform the complex and over-regulated tax and tax collection system, including the system of VAT payment and collection. Recently, a significant part of the papers published concerning value added tax have been questions and interpretations related to the applicability of the 5% tax rate introduced for the sale of new homes. In this context, it should be pointed out that the regulation will continue to apply until the end of 2024 (or, under certain conditions, until the end of 2028) and that its extension for further years cannot be ruled out, taking into account trends in recent years. In the study, I analysed to what extent it is fair to determine the reduced tax rate for a sector that plays a prominent role in the economy, such as residential real estate sales, and whether the reduction of the tax rate can serve social policy purposes, as is clear from the legal justification.

V. Reducing VAT rates on residential property sales – a tool of social policy?

Published: In: Balázs Horváthy, László Knapp (eds.): Twenty years in the European Union: Membership experiences and visions for enlargement, Széchenyi István University, Ferenc Deák Faculty of Law, Centre for European Studies, Győr, Hungary, 2024.

In the study, I examined the effects of introducing a reduced tax rate related to residential real estate from a slightly different approach. The peculiarity of the study is that it is the only material written in a language other than Hungarian so far.

VI. VAT treatment of real estate leasing

Published: PÁZMÁNY LAW WORKING PAPERS 2025/1.

Real estate leasing – besides real estate sales – is one of the most frequently occurring types of transactions in economic life. The VAT Act contains a separate concept in relation to leasing (or renting). According to this concept, in addition to a legal relationship based on a lease agreement, any other legal relationship during which the creditor reimburses or is obliged to reimburse the debtor for all or most of the consideration for the temporary use of the product is also considered to be leasing. It follows from that definition that, in addition to classic letting, any construction in respect of which consideration is payable for the temporary use of the immovable property is regarded as letting, that is to say, it is

not governed by the classification under civil law. The study analyses tax treatment related to real estate leasing and VAT issues arising in connection with certain specific cases of real estate leasing (in particular: accommodation services, leasing of properties serving to ensure the placement and parking of means of transport).

VII. Issues of determining built-up real estate in value added tax regulation

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The range of built-up properties cannot be considered homogeneous for VAT purposes. We distinguish between built-up real estate under construction (according to the terminology used in some sources and tax authority resolutions), new and old (used) built-up property. This further breakdown or grouping is also related to the fact that the legal regulation contains different VAT implications for each type of property. In view of the fact that the criteria to be taken into account are quite complex, it is necessary to pay special attention to whether real estate is involved in the analysis of individual transactions. If so, further investigation is necessary to determine whether the given property qualifies as built-up real estate for VAT purposes and to which type of property it belongs within this category. That classification has a significant influence on the correct VAT classification of transactions relating to a given property. In view of the above mentioned circumstances, the study reviewed the conceptual elements and demarcation aspects of each type of built property, including the principles reflected in the decisions of the relevant European Court of Justice and the interpretations of domestic authorities and courts.