

## **Income from the transfer of real properties and of rights in immovables**

**2023**

In this Information Booklet you can read about the taxation of income from the sale and transfer of real property and rights in immovables. The assessment of such income and the related tax payable are covered in Sections 59-64 of Act CXVII of 1995 on Personal Income Tax (hereinafter: PIT Act).

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## 1. Definitions

### ***Real properties (immovable properties):***

These are typically the

- **arable land,**
- **landed property (land plot),**
- **structure and**
- **building.**

A real property **is any parcel of land and all other constituent parts of the land**, excluding all standing not harvested crops or produce sold without changing owners of the real property, such as for instance standing trees.<sup>1</sup>

Any asset having a componential relationship with the land is an asset **that cannot be removed from the land without damaging its condition**, and therefore not only a detached house, but also a lodge, constructed on a concrete base is also a real property. However, a lodge that can be dismantled, or a changing cabin cannot be deemed a real property.

### ***Arable land:***

Any land for agricultural and forestry use, defined in Act CXXII of 2013 on the transfer of agricultural land and lands of forestry is deemed arable land.<sup>2</sup>

Consequently, arable land includes any parcel of land, irrespective of its situation (incorporated area or unincorporated area)

- which is registered in the real estate register as **crop land, a vineyard, an orchard, a garden, a meadow or grassland (grass), a reed bank, a forest or wooded area**, as well as
- any area removed from agricultural production which is **registered** in the National Forest Database of the Real Estate Register with a **forest status**.

### ***Residential lot:***

'Residential lot' shall mean a building plot defined as such in Act LXXVIII of 1997 on the Formation and Protection of the Built Environment, if the land is zoned for residential building in the respective structural plan and/or in the local zoning ordinance.

- A parcel of land that is registered together with the residential suite, and
- the parcel of land on which the residential suite has dominant tenement

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<sup>1</sup> Point 29 of Section 3 of the PIT Act.

<sup>2</sup> Pursuant to Point 51 of Section 3 of PIT Act, land defined in Act CXXII of 2013 on the Transfer of Agricultural Land and Lands of Forestry.

must be considered a residential lot.<sup>3</sup>

***Residential suite:***

- Residential suite shall mean a constructed structure registered, or in the process of being registered in the real estate register as a **detached house or a residential suite**,
- a structure under construction shown as a **detached house in the building permit**, if the walls and the roof structure are completed,
- **any rural house standing on a parcel shown as a homestead** in the real estate register.<sup>4</sup>

***Rights in immovables:***

These are:

- **dominant tenement**, leasehold,
- **building right**,
- **usufruct** and use,
- **easement**, and
- lease rights.<sup>5</sup>

In addition to the items listed above rights in immovables, generally interpreted for everyday purposes, such as, e.g., a medical practice right, a time share right, or any usage right not associated with a real property (e.g., right to use a vehicle) or copyright do not belong here.

## **2. Tax exempt transfer**

The income from the transfer of real property and right in immovables is in whole or in part exempt from tax in the following cases.

Any income from the redemption by the spouse of real estate, or of rights in immovables, following the termination of **community property by marriage** is tax exempt.<sup>6</sup>

This rule in practice means that if either party waives their part of the ownership in the joint residential suite, in exchange for which the other party waives part of some other joint property (e.g., motor vehicle) which corresponds with the redeemed ownership part, then such real property transfer is exempt of tax. The exemption prevails even if the ownership part is redeemed from external funds and not from the joint property (e.g., one party takes a loan to redeem the ownership share of the other party).

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<sup>3</sup> Point 74 of Section 3 of the PIT Act.

<sup>4</sup> Point 73 of Section 3 of the PIT Act.

<sup>5</sup> Point 31 of Section 3 of the PIT Act. This concept has been supplemented by the building right as of 15 July 2023 by Section 25(a) of Act LIX of 2023 on the Contribution of Airlines and the Amendment of Certain Tax Laws.

<sup>6</sup> Point 7.6 of Annex 1 of the PIT Act.

Any income from the transfer of a real property or a right in immovables by a private individual under a **maintenance or life annuity contract or under contract of inheritance** concluded with another private individual is exempt of tax.<sup>7</sup>

The income received by a pensioner under a **maintenance or life annuity contract or under contract of inheritance** concluded with a central budgetary agency or a local self-government is also exempt of tax.

Compensation for relinquishing **tenancy rights in a residential suite** owned by a local government or by the state (including the amount of money paid to co-tenants leaving a rented apartment following a court decision, as compensation for tenancy rights), as well as the compensation paid by a local authority to the tenant instead of providing a substitute dwelling, in the case of the termination of forced tenancy<sup>8</sup>, as defined in Act LXXVIII of 1993 on Certain Regulations Relating to the Rental of Homes and Premises, and the Alienation Thereof also constitutes tax-exempt income.<sup>9</sup>

Income from the **sale of arable land** shall be exempted up to 200,000 forints per year

- if the private individual sells the arable land to a private individual who has a registration number and who undertakes the commitment to utilize the land as a private entrepreneur or a small-scale agricultural producer for at least 5 years, or
- if the arable land in question is transferred by the private entrepreneur to an employee of a registered agricultural business association who agrees to lease the land to the employer agricultural business association for at least ten years.

Total income from **the sale of arable land** is exempt from tax if a private individual sells arable land to the persons mentioned above in such a manner that the transfer also results in the termination of some ownership share pursuant to Act II of 1992 on the entry into force of Act I of 1992 on Co-operatives and on the Transitional Rules transfer.<sup>10</sup>

The income from **the sale of arable land** is exempt from tax, if the private individual sells the arable land

- to a private individual who has a registration number and is engaged in animal husbandry, and who operates on an area as a private entrepreneur or a small-scale agricultural producer for at least 5 years for growing forage for the animal farm,
- to a private individual who leases the land to the agricultural business association where he is employed for supplying fodder to the animal farm for at least ten years.

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<sup>7</sup> Point 7.1 of Annex 1 of the PIT Act.

<sup>8</sup> Compulsory lease pursuant to Act LXXVIII of 1993 on Certain Rules relating to the Letting and Disposal of Flats and Premises.

<sup>9</sup> Point 2.2 of Annex 1 of the PIT Act.

<sup>10</sup> Pursuant to Act II of 1992 on Entering into Force of Act I of 1992 on Cooperatives and the Provisional Regulations thereof.

The law defines a period of 5 or 10 years of utilization as a precondition of tax exemption. **The starting day of the 5- or 10-year period is the day of taking possession**, or the last day of a twelve-month period following the date of contract at the latest. If the arable land is leased to a third party under contract, the starting day shall be 31 December following the time of expiry of the leasehold contract.

Income from **the sale of arable land** shall be exempted if the land in question is transferred to either of the co-owners if the sale pertains to land under undivided joint ownership.<sup>11</sup> This rule can be applied to revenues earned from 1 January 2019.<sup>12</sup>

The **transfer of arable land** is tax exempt if the land is transferred

- to private individuals for reasons of land consolidation, or
- to a local government in connection with a social land program, or
- to the National Land Reserves, or
- - undivided jointly owned land - to a co-owner.

**Land consolidation purpose** means, if, as a result of the transfer the arable land, owned by the buyer prior to the transaction and the arable land purchased in the transaction will become adjacent, irrespective of the administrative boundary of the town/village.

Adjacent arable lands are those parcels of land which are separated by a road or ditch or canal, registered under an individual topographic lot number, also constitute adjacent arable land.<sup>13</sup> The impact of the real property sale and purchase contracts concluded within one calendar year and submitted to the real estate authority within the same period must be reviewed on a consolidated basis.

**If the tax exemption of a transfer depends on the performance of the conditions set for the buyer**, then exemption can be applied only if no later than at the time of the submission of the declaration, the seller of land is in possession of a statement made by the buyer in front of a notary public or one that is countersigned by an attorney, which instrument is to contain the buyer's natural identification data, tax identification code and the buyer's commitment for compliance with the conditions for exemption. The seller must retain this statement of the buyer until the term of limitation of the right for tax assessment. The tax authority shall hold the buyer liable for any unpaid taxes, and the ensuing legal consequences resulting from any false information disclosed in the statement.<sup>14</sup>

The private individual **does not need to assess income** for the proceeds they acquired through the transfer of real estate or property rights, if the entirety of these proceeds were spent on the settlement of their debts based on an out-of-court debt settlement agreement, court debt settlement agreement or decision on repayment<sup>15</sup>.

In case the private individual uses only a part of those proceeds to settle their debts, the part of the income that arises from the difference of the entire proceeds and the proceeds spent on the settlement of debts must be assessed.<sup>16</sup>

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<sup>11</sup> Sub-point dd) of Point 9.5.1 of Annex 1 of the PIT Act.

<sup>12</sup> Subsection 5 of Section 98 of the PIT Act.

<sup>13</sup> Point 9.5.4. of Annex 1 of the PIT Act.

<sup>14</sup> Points 9.5.1-9.5.3. of Annex 1 of the PIT Act.

<sup>15</sup> In cases defined in Act CV of 2015 on the Debt Settlement of Natural Persons.

<sup>16</sup> Subsection 8 of Section 59 of the PIT Act.

### 3. Date of obtaining the income

Income from the transfer of real property or from the rights in immovables that must be recorded in the real estate register **shall be considered obtained on the date when the valid contract** (document, court or official decision) **pertaining to such transfer is filed** with the real estate authority (previous name: land registry office). In respect of the transfer of rights in immovables, which are not required to be recorded in the real estate register, the date of obtaining the income is the date of the underlying contract.<sup>17</sup>

The date of acquisition of income is therefore independent of when the individual receives the consideration, the income is generated when a valid contract for the transfer is concluded or submitted to the real estate authority.

### 4. Date of acquisition of a sold real property<sup>18</sup>

Pursuant to a general rule stated by the law, the date of acquisition is the date when the private individual **files the valid contract** (document, court or official decision) pertaining to such transaction **with the real estate authority**.

If a real property is acquired based on an **option contract**, the date of acquisition is the date when the buyer's declaration on the unilateral exercise of the purchase option is submitted to the real estate authority.

**In the case of inheritance**, the date of acquisition is the day when the inheritance becomes available (date of the testator's death).

The date of acquisition of the real property acquired during the matrimonial community of property is the same for both spouses, even if the ownership title was registered in the name of only one of them at the time of acquisition. An exception to this rule is if the matrimonial property contract provides otherwise.<sup>19</sup>

The date of acquisition of **real estate property received in exchange due to redevelopment or expropriation** is the date of acquisition of the original real property.

In respect of any **rights in immovables**, which is **not required to be recorded in the real estate register**, the date of acquisition is the date of the underlying contract.

In **real estate leasing** contracts where the private individual has the option to buy the real estate property at the end of the term, the date of conclusion of the contract is recognized as the date of the acquisition.<sup>20</sup>

The law specifies a different rule from the above ones as regards the date of acquisition of a **building, building section**, constructed on the land.

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<sup>17</sup> Section 59 of the PIT Act.

<sup>18</sup> Section 60 of the PIT Act.

<sup>19</sup> Section 60 (1a) of the PIT Act.

<sup>20</sup> Point a) of Subsection 8 of Section 63 of the PIT Act.

- As regards **buildings constructed (rebuilt, detached or divided) until 31 December 2007** following obtaining ownership of the land as well as any part of the building, established through extension, the date of acquisition is the same as the date of obtaining ownership of the land.
  - If the sold real property was constructed (rebuilt, detached or divided) or enlarged **after 31 December 2007**,<sup>21</sup> then the private individual may choose from two methods to define the date of acquisition.
    - As per the **first method**, the date of acquisition is the effective date of the resolution containing the occupancy permit (continuation permit),
    - and – from 1 January 2016 –
      - the date of acknowledgment of occupancy and,
      - in the case of a building constructed on the basis of a simple notification, of the issue of an official certificate acknowledging the completion of the construction, after which no further construction or enlargement took place on the real property.
- It means that in such cases the acquisition date to be applied for the assessment of the tax liability is independent of when the land on which construction took place or the real property which was extended was acquired by the private individual.
- According to the **other method**, by way of dividing the costs from the income by the sum appropriated for expansion, implementation, increasing the floor space, as selected, the date of purchase established according to the general rule in connection with any income from
    - the land parcel (landed property), and the real property, and the building constructed before 1 January 2008 and, in connection with any income from the implementation of a new building or
    - the expansion or increasing the floor space of an existing one - separately on a case-to-case basis - the effective date of the resolution on the occupancy permit shall be treated as the date of acquisition.

### Example:

*A private individual sells a real property for HUF 60 million in 2023. The original real property was a building plot, which had been purchased for HUF 7 million in 2018. In 2019, a small house was constructed on the real property at the cost of HUF 16 million, which was extended in 2021, in relation to which the private individual holds invoices for HUF 17 million.*

*There are three acquisition dates for the real property: 2018, 2019 and 2021. A pro rata amount of the proceeds relate to each acquisition date.*

*The total acquisition values are as follows: 7 000 000+16 000 000+17 000 000=40 000 000  
The HUF 60 million proceeds in our example must be divided at the ratio of 7:16:17  
( $\frac{7}{40} : \frac{16}{40} : \frac{17}{40}$ ).*

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<sup>21</sup> Enlargement of the net floor space of a building by more than six square metres.

<i>Year of acquisition</i>	<i>Ratio</i>	<i>Calculation of the portion of the proceeds</i>	<i>Assessed portion of the proceeds</i>
2018	7	$60\,000\,000/40*7$	10 500 000
2019	16	$60\,000\,000/40*16$	24 000 000
2021	17	$60\,000\,000/40*17$	25 500 000

If a new or an extended real estate during the period of ownership or possession, **has not been granted an occupancy permit**, the year of actual occupancy

- if verified by reliable means or,
- if the year of actual occupancy cannot be verified by reliable means or it did not take place, the year when the transfer took place,

shall be treated as the year of acquisition.

## 5. Revenue<sup>22</sup>

The first step of establishing the proceeds is to assess the income from the transfer of the real property, and right in immovables.

All proceeds received by a private individual *in connection with the transfer* are considered as proceeds. This covers, in particular,

- the selling price,
- the fair market value, effective on the day of transfer, of an asset received in exchange, and also
- the value of the real estate or rights in immovables if it is furnished in the place of a capital contribution to a business association or other firm (contribution in kind) in the amount indicated in the memorandum of association or other similar document of the business association,
- any income of non-resident private individuals obtained through the transfer or withdrawal of participating interest held in a company falling under the scope of the Act on Corporate Income Tax and Dividend Tax<sup>23</sup>, with real estate holdings, for consideration, including the conveyance of such participating interest by way of lending arrangements constitutes income from the transfer of real property or right in immovables, with the exception that, by way of derogation from what is contained in Article 62 of the PIT Act, the provisions pertaining to income from securities lending arrangements, exchange rate gains income and income withdrawn from the business account shall apply.<sup>24</sup>

**Even if the buyer pays the purchase price in instalments, the total purchase price needs to be deemed income in the year of the sale** because the date of the income is the date when the sales contract is submitted to the real estate authority.

The fraction of the income received in compensation for the transfer that is in excess of the known fair market value prevailing at the time of the transaction shall be deemed

<sup>22</sup> Subsection 1 of Section 61 of the PIT Act.

<sup>23</sup> Act LXXXI of 1996.

<sup>24</sup> Subsection 3 of Section 61 of the PIT Act.



*other income* of the private individual, and it shall not comprise a part of the above-specified income.<sup>25</sup>

**Voluntary land exchange for the purpose of land consolidation shall not be construed as transfer (sale)**<sup>26</sup>. If value compensation is also involved in connection with such exchange, the amount of cash or other valuable consideration received on such grounds shall be applied as other income for the recipient private individual.<sup>27</sup>

## **6. Expense**<sup>28</sup>

The following expenses may be deducted from the income received from the transfer of real property and/or right in immovables:

- the cost of acquisition and other expenses related thereto;
- value-increasing investments;
- expenditures incurred in connection with the transfer, including any sums paid as substantiated based on a commitment to the state in connection with the property in question.

**No expenses can be deducted from the revenue** which the private individual deducted as an expense from his self-employment income.

*Example: if the private individual sells a real property which had been leased earlier and depreciation was accounted on the building in relation to his activity, then the amount accounted as depreciation cannot be claimed as an expense from the proceeds.*

All expenses must be substantiated with invoices and documents!

### **6. 1. The amount used for the acquisition**<sup>29</sup>

The amount used for the acquisition is

- a) the value specified in the contract of transfer (document, court or official decision);
- b) the value specified in the exchange contract in respect of the real property or right in immovables received in exchange;
- c) in respect of arable land and forest land acquired by exercising the purchase option governed by indemnity laws, the amount indicated as the purchase price shall be regarded as the amount of acquisition;
- d) in the case of a private individual purchasing a residential suite from a local self-government, the actual purchase price indicated in the contract;
- e) the sums spent on the construction, expansion, implementation, or increasing the floor space of a building until the effective date of the occupancy permit

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<sup>25</sup> Subsection 2 of Section 61 of the PIT Act.

<sup>26</sup> Exchange of land as defined in Act CXXII of 2013 on the Transfer of Agricultural Land and Lands of Forestry.

<sup>27</sup> Subsection 4 of Section 61 of the PIT Act.

<sup>28</sup> Subsection 1 of Section 62 of the PIT Act.

<sup>29</sup> Subsection 2 of Section 62 of the PIT Act.

(continuation permit) or up to the deadline for compliance with the conditions specified in the occupancy permit (continuation permit), or the time of actual occupancy or, failing this, the sum shown on the invoice made out to the name of the private individual, or his spouse, on whose behalf the work is performed, or at least the value of materials used;

- f) the value taken into consideration for dutiable purposes if
  - fa) the acquisition value cannot be determined in the cases under Paragraphs a)-d),
  - fb) the real estate property or right in immovables, which must be registered in the real estate register, was inherited or received as a gift, where, if the duty is not levied by the deadline for meeting the tax liability in respect of the income from the given transaction, in the event of inheritance the value indicated in the estate inventory, or the value shown as the value of the real estate property during the probate proceedings, or 50 per cent of the profit on the transaction in other cases shall be taken into consideration, and the tax liability established thereby may be modified on the basis of the duty levied by way of self-audit;
- g) if, in the case mentioned in sub-paragraph fb), the authority in charge of duties did not levy any duty:
  - ga) if the real estate property was inherited, the value indicated in the estate inventory, or the value shown as the value of the real estate property during the probate proceedings,
  - gb) if the real estate property was received as a gift, 75 per cent of the profit on the transaction, where no other expenses may be claimed as costs and deducted from the income.

In connection with any expansion, implementation, or increasing the floor space of a building received as a gift,

  - the sum remaining after deducting the above-specified acquisition value shall be treated as applicable to the last time of acquisition,

or

  - the value from the income from the transfer, specified in paragraph e), and the costs associated with the expansion, implementation, or increasing the floor space and the cost of the transaction may be deducted from the transaction income, if their combined total exceed 75 per cent of the income from the transaction, taking into consideration that from the full amount calculated as per the above (from the sum remaining from the profit), the sums pertaining to the date(s) of acquisition relating to the expansion, implementation, or increasing the floor space of the building, and to the date when received as a gift shall be determined in proportion of the acquisition value(s) pertaining to the above-mentioned date(s) of acquisition, where the market value defined by the Duties Act shall be applied as the acquisition value for the date when received as a gift.
- h) the value on which the tax is based, if a tax has been paid on taxable income at the time of acquisition of the property.
- i) The principal of the lease fees paid by the private individual, the amount paid for assuming the lessee's position, and the amount paid by the lessee at the end of the

tenor for exercising the call option qualify as the expenses of the acquisition of a real property acquired through real estate leasing. Any prepayment also constitutes other expenses related to the acquisition.<sup>30</sup>

If the amount of acquisition of the real property or right in immovables cannot be established according to the procedures described above, 75 per cent of the income shall be deducted.<sup>31</sup> Where this provision applies, no other expenses may be claimed as costs and deducted from the income. It is important to know that the “75 per cent” rule can only actually be applied if the acquisition amount cannot be determined as described above.

*For example, if the individual has lost the contract of sale, or it has been destroyed, this is not a reason to apply the special rule, as the acquisition amount may be determined in accordance with point a), because the contract can be obtained from the real estate authority.*

## 6. 2. Value-increasing investment

Value-increasing investment is any investment made to increase the fair market value of a real property.

This includes any verified expenses made

- in connection with real property within a 24-month period before the transfer
- at a value of more than 5 per cent of the income indicated in the contract of transfer
- to preserve the condition of the property.<sup>32</sup>

If the work is performed in house, the value of the own work cannot be expensed.

## 7. Assessment of the income

### 7.1. The calculated amount

The calculated amount must be established by subtracting the expenses from the revenue, but expenses may be claimed only up to the revenue. Consequently, the lowest calculated amount may be zero.

### 7. 2. Economic activity

If the sale of a real property - except if the private individual obtains such income within the framework of his private entrepreneurial activities - takes place within the framework of an economic activity, the **calculated amount shall be treated as income** that qualifies as income from self-employment.<sup>33</sup>

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<sup>30</sup> Points b)-c) of Subsection 8 of Section 63 of the PIT Act.

<sup>31</sup> Subsection 3 of Section 62 of the PIT Act.

<sup>32</sup> Point 32 of Section 3 of the PIT Act.

<sup>33</sup> Subsection 3a of Section 62 of the PIT Act.

**Economic activity** means any business activity carried out independently on a regular or continuing basis for the purposes of obtaining income, or that results in obtaining income.<sup>34</sup>

### 7. 3. Consideration of ownership

The calculated amount may be reduced under the conditions and at the rate specified by law. The rate of reduction is the same for all real estates (for example: residential suite, apartment, holiday home, farmland, building plot, etc.). In connection with the transfer of a real property in 2023 as well as of any rights in immovables (usufruct), of the calculated amount, depending on the date of acquisition, the sum calculated as follows shall be regarded as income:<sup>35</sup>

Year of acquisition	Of the calculated amount, income in percentage
2023 (0 <sup>th</sup> year)	100
2022 (1 <sup>st</sup> year)	100
2021 (2 <sup>nd</sup> year)	90
2020 (3 <sup>rd</sup> year)	60
2019 (4 <sup>th</sup> year)	30
2018 (5 <sup>th</sup> year)	0

If a real property, acquired as a residential suite in 2018 or prior to that is sold in 2023, it does not generate any taxable income.

*Example: In 2023, a private individual sells his/her house, originally bought for HUF 16 million in 2019, for HUF 24 million. Pursuant to the sale and purchase contract, the buyer hands over HUF 14 million of the purchase price to the seller when the contract is concluded and pays the outstanding HUF 10 million in instalments during the subsequent four years, in view of which, he pays HUF 1 million interest as well. The interest payment is regulated in the sale and purchase contract.*

*The seller replaced the external doors and windows and insulated the house. The expenses of the work, substantiated with invoices, amounted to HUF 3.5 million.*

*In 2022, the residential suite was painted and the work is substantiated with an invoice for HUF 500,000. (That work constitutes maintenance, but it cannot be claimed as an expense because it is lower than 5 per cent of the proceeds [HUF 1,250,000].)*

*The expenses related to the transfer and substantiated with invoices amounted to HUF 500,000.*

<sup>34</sup> Point 46 of Section 3 of the PIT Act.

<sup>35</sup> Subsection 4 of Section 62 of the PIT Act.

<i>Sales price of the real property (HUF)</i>	<i>24 000 000</i>
<i>Default interest paid by the buyer (HUF)</i>	<i>1 000 000</i>
<b><i>Total revenues (HUF)</i></b>	<b><i>25 000 000</i></b>
<i>Acquisition cost of the real property (HUF)</i>	<i>16 000 000</i>
<i>Value adding investments (HUF)</i>	<i>3 500 000</i>
<i>Total expenses of the transfer (HUF)</i>	<i>500 000</i>
<b><i>Total expenses (HUF)</i></b>	<b><i>20 000 000</i></b>
<b><i>Calculated amount (Revenues-Expenses) (HUF)</i></b>	<b><i>5 000 000</i></b>
<b><i>30% of the calculated amount is the taxable income (HUF)</i></b>	<b><i>1 500 000</i></b>

#### 7.4. Sale of a real property, rezoned from arable land<sup>36</sup>

A special rule applies to the transfer of real property re-zoned from arable land. In this case, it needs to be analysed whether the income with the expenses deducted (that is, the yield) is greater than the regular yield calculated for the period of ownership of the property.

**Regular yield** means 0.3 per cent of the deductible expenses multiplied by the number of calendar days of ownership (expenses \* 0.003\*number of days).

**The period of ownership of the property (number of days)** equals the period between the date of acquisition and the date of the contract on the transfer with the proviso that the dates of the documents on the acquisition and the transfer must also be included.

If the profit is lower than the fair profit, then the income must be calculated with the general rules. Otherwise the income (tax base) needs to be calculated with the following equation:

$$\text{fair profit} + (\text{profit} - \text{fair profit}) * 3 = \text{tax base}$$

In this case, no further reduction can be applied in view of the years of ownership.

This provision does not need to be applied, if

- the private individual has inherited the rezoned arable land,
- the sale takes place after the 5th year from the rezoning of the arable land,
- the real property **was owned** by the private individual for at least 5 years prior to the rezoning.

#### 8. The tax rate and the fulfilment of the tax liability

The rate of **personal income tax** on the transfer of real property or rights in immovables in 2023 is **15 per cent** (foundation with recourse, final transfer, termination and termination of a right in immovables and definite waiver of such rights).<sup>37</sup>

<sup>36</sup> Section 62/A of the PIT Act.

<sup>37</sup> Subsection 1 of Section 63 of the PIT Act.

The income from the transfer of real property or right in immovables must be declared or by complementing and filing of the pre-populated tax return (draft tax return) prepared by NTCA and the tax needs to be paid by 20 May 2024 on form no. 23SZJA.

**The proceeds from the transfer of a real property or right in immovables do not need to be declared if they are tax exempt or no income is generated.**

It is important to know that all contracts, certificates and documents must be kept and be presented in a tax audit by NTCA by the statutory limitation deadline of tax assessment<sup>38</sup> – 31 December 2029 if the real property or right in immovables is sold in 2023.

## **9. Use of income from the transfer of real property and right in immovables**

Where a private individual uses the income from the transfer of a real property or a right (or any part of such income), before the prescribed deadline within which the income must be declared, for purchasing an accommodation in

- a home for the elderly or
- a residential home for the handicapped,
- or in a similar (e.g. nursing) institution

(in any EEA Member State) without repurchase and resale rights for himself, for a close relative or for his domestic partner (including where the prepayment of accommodation charges is required), and the private individual indicates this fact in his tax return, the tax assessed and declared for the income from the transfer of a real property or right in immovables (or the part of this tax applicable to the amount of the income used for this purpose) need not be paid.

If the income is used for the purpose indicated above, the accommodation may also be obtained by paying the respective fee in one lump sum in advance. However, the allowance associated with the use of the income cannot be claimed if the private individual acquires the accommodation with a right to repurchase or resell it.<sup>39</sup>

If the income generated in 2023 is used after the submission of the declaration, in the first or second tax year following the transfer, then the private individual can claim back the tax paid by certifying the use of the income.<sup>40</sup>

If the income from the transfer of real estate or from rights in immovables has been used for the purpose specified above after the submission of the tax return, the individual may claim back the amount of the tax paid - simultaneously with proof of the use - equal to the tax on the income used until the end of the second tax year following the transfer of the real estate or right in immovables.

Use of the income for the specified purpose may be verified by

- a document in proof of acquisition of accommodation
- a document in proof of use of the sum in question,

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<sup>38</sup> Subsection 1 of Section 202 of Act CL of 2017 on the Rules of Taxation (hereinafter Taxation Act).

<sup>39</sup> Subsection 2 of Section 63 of the PIT Act.

<sup>40</sup> Subsection 3 of Section 63 of the PIT Act. Amended by Act LXXVII of 2017. In force from 19 July 2017, but also applicable to tax liabilities arising from 1 January 2017 on the basis of a transitional rule.

- an authentic instrument in proof of relation,
- or a private document with full probative force to verify life companionship.

Documents must be kept until the statutory limitation deadline of tax assessment.<sup>41</sup>

## 10. Leniency application<sup>42</sup>

NTCA may reduce or cancel the tax

- upon the request of a private individual liable to pay the tax assessed,
- taking into account the private individual's income, financial and social circumstances, and
- in view of the conditions under which the income is used.

In terms of the use of the income, it is an especially equitable condition if the private individual plans to use the income from the sale of the real property or right in immovables for covering the housing needs of the private individual himself, a close relative, life companion, or previous spouse.

## 11. Allowance applicable to the sale of arable land, acquired in a restitution procedure<sup>43</sup>

If a private individual, who is the original beneficiary on the basis of the laws on indemnity<sup>44</sup>

- sells arable land or forest land acquired in a restitution procedure (by exercising his purchase option, or a voucher) and
- uses the total income from the sale to acquire the ownership of agricultural arable land in any unincorporated area within the domestic territory or in any Member State of the European Union within one year from the transfer, then no tax is payable on the proceeds.

If the ownership is acquired by the date of submission of the tax declaration, then the allowance can be claimed in the **tax declaration** based on prior substantiation. If the land is purchased after the tax declaration has been submitted, then the paid tax can be reclaimed by reporting to the tax authority the acquisition of the ownership title with an appropriate certificate. The acquisition of the ownership title must be certified with a registered contract, submitted to the real estate authority.

The favourable provision described above may be applied also to the transfer of arable land or forest land of a private individual who qualifies as a part-owner of land which was issued to such private individual as an independent real property.<sup>45</sup>

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<sup>41</sup> Subsection 6 of Section 63 of the PIT Act.

<sup>42</sup> Subsection 7 of Section 63 of the PIT Act.

<sup>43</sup> Section 64 of the PIT Act.

<sup>44</sup> The individual obtaining the compensation vouchers as the original beneficiary of restitution.

<sup>45</sup> As per Act on the Enactment of Act I of 1992 on Cooperatives and on Transitional Provisions.

## 12. Income from the failure of real estate leasing

The rules on the taxation of income from the transfer of real property must also be applied to the income of private individuals other than private entrepreneurs from the failure of their real estate leasing transactions.

The **income** must be established pursuant to the contract for the deal, based on the revenue, due (paid, credited) to the private individual due to the failure with a five-year lapsing rule applicable to a failed residential leasing.

The revenue will constitute the amount, **calculated for the lapse of time**, while the year of acquisition of the real property will be the year of conclusion of the contract on the deal.

If, for example, a residential leasing fails in the fifth year after the conclusion of the contract, then the amount due to the private individual will no longer be taxable.

If a private individual has any taxable income due to the failure of any real estate leasing, the allowance described in point 9 can still be claimed.

## 13. Rules of VAT liability

As a general rule<sup>46</sup>, a taxable person is any person or organization having the capacity to perform legal acts who (that), in its own name, carries out in any place any economic activity, whatever the purpose or results of that activity.

The general rules of the VAT Act on taxable persons also apply to real estate sales. That is, as a rule, a natural person not subject to VAT who sells his real estate is not liable to pay VAT, nor is a natural person who sells real estate that is not in any way connected with his economic activity and therefore does not act as a taxable person when selling it. With regard to the supply of immovable property, however, the following special concepts of economic activity and taxable person in the VAT Act must also be taken into account.

### 13.1. Special taxable status based on the sale, in a series of transactions, of a property under construction, or a constructed new building and building plot and rules of tax payment

For the purposes of the VAT Act, it is an economic activity generating a VAT taxable status<sup>47</sup> if a person or organisation, otherwise not proceeding as a taxable person, sells a real property in a series of transactions.

The sale of real properties satisfying the conditions below may result in a sale in a series of transactions:

- o **a building (or parts of a building) and of the land on which the building stands**, provided that

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<sup>46</sup> Subsection 1 of Section 5 of Act CXXVII of 2007 on Value Added Tax (hereinafter: VAT Act).

<sup>47</sup> Point b)-c) of Subsection 4 of Section 6 of the VAT Act.



- it is supplied before first occupation, or
- the period elapsing, after first occupation, between the operative date of the occupancy permit, or the date of acknowledgement of occupancy and the date of supply is less than 2 years, or
- its building realized on the basis of simple announcement according to the *Act on Formation and Protection of the Built Environment*, and it hasn't passed 2 years between the issuing of the official certificate confirming that the residential building has been constructed and the sale
- its first occupation for its intended purpose took place, but its intended purpose as a single unit or the number of units has been changed and less than 2 years have elapsed between the issue of the official certificate confirming this and the sale (in line with the definitions of the VAT Act, such properties are hereinafter referred to as building under construction or developed new building),
- **building plot** (part of a building plot)<sup>48</sup>.

A series of transactions means

- the fourth and any subsequent sale of building land (parts of a building land) and/or building under construction or developed new property within 2 calendar years, and
- any additional building land (parts of a building land) and/or building under construction or developed building sold within the following 3 calendar years,
- however, any building land (parts of a building land) and/or building under construction or developed new property, that is subject to be expropriated, or that was subject to any inheritance duty payable by the seller in accordance with the Act XCIII of 1990 on Duties, shall be included in the quantity limit specified in points i) and ii), however, it shall not be recognized to comprise a part of the series of transactions in itself,
- furthermore, any building land (parts of a building land) - zoned residential - that was subdivided from a single building land (part of a building land) is to be taken into account - irrespective of the number of parcels - as a single building land (part of a building land) for the purposes of the quantities aforementioned.<sup>49</sup>

*Based on the above definition, for example, it does not constitute a taxable status, in view of the sale of a real property in a series of transactions, if four real properties are sold within two calendar years that formed the subject matter of probate proceedings or an expropriation procedure.*

*A sale in a series of transactions, can neither be concluded, and therefore, no taxable status is generated, when, e.g., within 2 calendar years two inherited real properties are sold or two or more residentially zoned building plots are sold that were formed through the distribution of land from the same construction land (parcel of land).*

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<sup>48</sup> Point 7 of Section 259 of the VAT Act.

<sup>49</sup> Section 259 point 18. of the VAT Act.

*However, if, for example, three inherited real properties and one purchased (or received) real property are sold within 2 calendar years, then the series of transactions prevail and the sale of the fourth property triggers a tax liability. (Naturally, only the new real properties and building plots defined above can be taken into account in that respect. The three types of real properties - building land, building under construction and developed new property – shall be taken into account in a mixed way, that is, we speak of a series of real estate sales not only when four building plots are sold, but also when, for example, two building plots and two developed new properties are the subject of the sale.)*

It is important to stress that when the issue of VAT tax status is assessed, primarily the main rule must be applied<sup>50</sup>. That is, when a building plot, or a new building under construction or a developed new property is sold in the course of an economic activity (e.g., having acquired a huge parcel of land, and reclassified it into a building plot, with public utilities, parcelled or as one plot), then the VAT taxable status already prevails given the economic activity,<sup>51</sup> and whether or not the sale took place in a series does not even need to be examined in this case.

Given the special rules of the VAT Act, the sale of a real property, in a series of transactions, by an individual, who is already a VAT taxable person (e.g., private entrepreneur) not performed in his/her taxable person's status (e.g., sale, in a series, of the real properties of a private entrepreneur that are not included in the business as a private individual) **will not generate a new taxable status** (new reporting obligation and new tax number). The VAT taxable person will then pay the tax liability for the sale of the real property in a series of transactions within the scope of the existing taxable person status (through self-assessment).

In relation to the above mentioned real-estate property and the special tax liability that may be established on the basis of the series of transactions, there is no choice between tax exemption and tax liability with regard to the specified real properties, because any sale of a person or individual based on the series of transactions will make them taxable persons,<sup>52</sup> and no reversed taxation<sup>53</sup> can be applied to such sales either, i.e., the seller must pay the VAT.

Any taxpayer becoming a VAT taxable person in view of the sale of the real property in a series of transactions must report the sale of the fourth (or the next within the subsequent 3 years) real property, triggering the taxable status by using form TSI\_B of the tax authority designed for such purposes.

In that **report required for the tax assessment**,

- o the data necessary for assessing the tax payable for the sale needs to be reported (performance date, consideration, charged VAT, etc.), and
- o the data of the purchases related to the particular property, as required for establishing the charged and deductible tax.

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<sup>50</sup> Subsection 1 of Section 5 of the VAT Act.

<sup>51</sup> Subsection 1 of Section 5 and Subsection 1 of Section 6 of the VAT Act.

<sup>52</sup> Points ja), jb) and jc) as well as point k) of Subsection 1 of Section 86 of the VAT Act.

<sup>53</sup> Section 142 of the VAT Act.

The notification must be made by 31 January 2019 in the case of a supply of goods in the calendar year of 2018, whereas in the case of a supply of goods made after 31 December 2018, the notification shall be made within 30 days of the date of delivery.<sup>54</sup>

If a real property is sold in a series of transactions, the taxable person has not only a tax liability, but also the right to deduct tax in respect of the acquisition in connection with a taxable supply, to the extent that the acquisition is for the purposes of the taxable supply.<sup>55</sup> The deductible tax cannot be higher than the tax charged (payable) for the sale of the real property, i.e., the deductible tax cannot be higher than the payable tax amount.<sup>56</sup> The right to deduct tax arises at the same time as the tax liability. The right to deduct tax is subject to the presentation of an invoice in the name of the taxable person certifying the performance of the transaction or the payment of the advance.<sup>57</sup> The right to a tax deduction may also be based on an invoice<sup>58</sup> – which otherwise entitles the taxpayer to a tax deduction – that was drawn up before the origin of their taxable status and made out to the name of seller of the real property (certified owner) or to the name of the predecessor, as substantiated.

Given that the sale of real estate of a serial nature results in economic activity and gives rise to tax liability, the **seller is obliged to issue an invoice**, from which the VAT Act does not exempt the taxable person.<sup>59</sup>

Where the taxable person's VAT liability is based solely on a series of supplies of immovable property, **VAT shall be levied by NTCA through administrative decision (Tax is levied).**<sup>60</sup> **The tax is not levied in relation to individuals who are already taxable persons for other reasons**, that is, a private entrepreneur indicates the sale of the real properties not included in the business in the tax declaration.

In relation to the sale of a real property in a series of transactions, the **23T101** registration and change reporting form must be used, which is otherwise required for registration as a taxable person.

In 2023, the **TSL\_B** report form for the *“Assessment of the VAT liability on the sale of real property in a series of transactions”* has to be submitted for the tax assessment.

### **If a private individual sells real properties in his/her own name**

If the private individual sells real estate in his/her own name in the context of an activity falling within the definition of economic activity in the VAT Act<sup>61</sup>, the person becomes a VAT taxable person pursuant to Subsection 1 of Section 5 and Subsection 1 of Section 6

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<sup>54</sup> Section 257/H of the VAT Act.

<sup>55</sup> Section 122 of the VAT Act.

<sup>56</sup> Subsection 4 of Section 127 of the VAT Act.

<sup>57</sup> Subsection 1 of Section 127 of the VAT Act.

<sup>58</sup> Subsection 3 of Section 127 of the VAT Act.

<sup>59</sup> Subsection 1 of Section 159 and Subsection 2 of Section 165 of the VAT Act.

<sup>60</sup> Subsection 1 of Section 154 of the VAT Act and Point b) of Subsection 1 of Section 141 of the Taxation Act.

<sup>61</sup> Subsection 1 of Section 6 of the VAT Act.

of the VAT Act, and therefore, does not have a tax liability according to the provisions of Subsection 4 of Section 6 applicable to the sale in a series of transactions.

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