FINANCIAL LAW QUESTIONS ON THE TRANSFER AND UTILISATION OF REAL ESTATE

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Abstract

In our article we analyze the transfer and utilization of real estate from a financial point of view. After the introduction we clarify the main elements of the theme. We overview the basic concepts of the following acts: personal income tax, act on duties, and on local taxes. Then we focus on the tax aspects of the transfer of real estate, especially on the definition of real estate and property rights in the Act on Personal Income Tax and to the determination of the income and profit from real estate transfer from the perspective of personal income tax, on the basis of personal income tax and on the tax rate. We examine the tax reliefs and exemptions for real estate transfers, historically, and under the effective law. In the second part of the article we deal with some issues of the real estate transfer from the aspect of duties, with the duty to be paid in case of the free transfer of the property and its antecedents. Secondly with the regulations of duties related to properties in case of onerous transfer of estates. The third main part is the tax law of short and long-term housing (Airbnb), the taxation of apartment and house rentals and finally taxation of short time apartment and holiday resort rentals.

Keywords: *taxation, real estate, apartment, market value, short and long time housing (airbnb).*

1. Introduction

We can approach the examination of financial legislation on real estate taxation from several sides, and there are many possibilities for regulation in financial law. The subject has been of eternal significance since the introduction of the Personal Income Tax Act of 1988, as we sell, rent, buy, lease and etc., land, property, apartments, and to these, different taxation and tax payment rules are to be applied.

We can examine the definition of the property, provisions on the transfer of immovable property, the provisions of income tax related to the sale of real estate, the tax provisions related to the immovable property acquisition and the tax regulations related to real estate utilization. When renting a property, it is important whether the activity is carried out as a business activity or not, and new opportunities have also emerged in housing utilization, such as the RBNB - short-term apartment renting, which is currently at its peak. This is due to the digital revolution, the spread of on-line programs at light speed, and the development of tourism.

The property can be a land, but also an apartment, a holiday home, a farm, or a garage, which may also have different regulations. It is also important that an

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individual or a legal entity is the seller or the user.

Thus, it can be seen that the financial issues of taxation of real estate provide numerous opportunities for investigating and exploring problems.

Property regulation is always at the center of interest nowadays - when it comes to the recovery and revival of the real estate market - it is very timely to review the key points of the regulations.

In this paper we summarize the tax and levy rules related to the transfer of property.

2. Clarification of concepts: Real estate, apartment, property rights, definition of the land

In the financial legal provisions, we can find the definition of property in several places, on one hand, Act CXVII of 1995 on Personal Income Tax[1]. (Hereinafter referred to as "Szja tv.") And on the other hand in the Act On Duties (Act XCIII of 1990)[2]. (Hereinafter: Itv.)

The definition of the Personal Income Tax Act.:

'Real property' shall mean 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 (e.g. standing trees).

'*Arable land*'[3] shall mean the landed areas used for agricultural and forestry purposes as defined in the Act on Transactions in Agricultural and Forestry Land[4].

'*Farmstead*'[5] shall mean a parcel of land located outside the limits of the settlement, not exceeding one hectare in size, consisting - apart from the land - of a residential and farm building or buildings for crop and animal production, and the related processing and storage of agricultural products, or any parcel of land registered in the real estate register as a farmstead;

'Estate'[6] shall mean all lands of the right-holder, whether under the title of ownership, usufruct or any other legitimate form of use;

'*Rights in immovables*'[7] shall mean incorporeal rights in property, such as dominant tenement, leasehold, usufruct, use, easement and lease rights.

'Residential suite'[8] 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, furthermore, a structure under construction shown as a detached house in the building permit if the walls and the roof structure are completed, furthermore, any rural house standing on a parcel shown as a homestead in the real estate register.

'Residential lot'[9] shall mean a building plot defined as such in the Act 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, also the parcel of land that is

[1] Act on Personal Income Tax Chapter III. Section 3, Concepts and interpretative provisions, point 29.
[2] Act XCIII. of 1990.
[3] Act on Personal Income Tax Chapter III. Section 3, Concepts and interpretative provisions, point 51.
[4] Act CXXII of 2013 on Transactions in Agricultural and Forestry Land.
[5] Act CXXII of 2013 on Transactions in Agricultural and Forestry Land Paragraph 5 point 25.
[6] Act CXXII of 2013 on Transactions in Agricultural and Forestry Land Paragraph 5 point 3.
[7] Act on Personal Income Tax, Chapter III., Concepts and Interpretative provisions, point 31.
[8] Act on Personal Income Tax, Chapter III., Concepts and Interpretative provisions, point 73
[9] Act on Personal Income Tax, Chapter III., Concepts and Interpretative provisions, point 73

registered together with the residential suite, and the parcel of land on which the residential suite has dominant tenement.

According to the Act on Duty (Itv.), the real estate concept is the same as in the Szja (Act on Personal Income Tax), but the ownership of the property has already been exerted in this case:

'*Real estate property'*[10] shall mean any parcel of land and all other constituent parts of the land.

'*Residential property'*[11] shall mean a real estate property built for residential purposes and registered, or in the progress of being registered in the real estate register as a detached house or a residential suite, together with the parcel of land on which it stands. A building structure under construction shown as a detached house in the building permit if the walls and the roof structure are completed shall also qualify as a residential suite. If there is a residential building on a piece of land registered in the real estate register as a homestead, such building shall be regarded as residential property together with the developed parcel on which it stands. Any structure built on the land of a residential building, which is not essential for the residential suite shall not qualify as residential property even if adjoining the residential building (garage, workshop, shop, farm building, etc.), furthermore, any buildings entered in the real estate register as detached houses (residential suites), which have been employed for other purposes for at least five years prior to the time when the duty became chargeable;

'*Right as an object of property'*[12] shall mean dominant tenement, beneficial use or right of use - including the right of use of a holiday resort and the right to use accommodation on a timeshare basis -, asset management, right of operation, and claims in connection with gratuitous rights;

'*Arable land'*[13] means a parcel of land which is situated outside the limits of a settlement (unincorporated) and is registered in the real estate register as cropland, vineyard, orchard, garden, permanent pasture and meadow (grassland), reed bank or forest or woodland or as a fish pond, including any parcel of land registered as taken out of production and that is shown in the Országos Erdőállomány Adattár (National Register of Forests) noted under the legal concept of land registered as forest, and used for either of the purposes listed, excluding any building erected on the land for any reason;

'*Market value'*[14] shall mean the value expressed in monetary terms which can generally be achieved by the sale of an asset as the price thereof, with regard to its condition at the date when the duty becomes chargeable, without taking into consideration any liabilities in connection with the asset and, in respect of real estate properties, without a lease right being terminated at the time of sale on behalf of the party acquiring the property.

According to the Act C of 1990 on Local Taxes:

'*Building*'[15] means structurally detached construction works as defined in the Act on the Formation and Protection of the Built Environment, or a part of a building

[10] Act on Duties Section 102 Paragraph 1 point b.
[11] Act on Duties Section 102 Paragraph 1 point f.
[12] Act on Duties Section 102 Paragraph 1 point d.
[13] Act on Duties Section 102 Paragraph 1 point m.
[14] Act on Duties Section 102 Paragraph 1 point e.
[15] Act C of 1990 on Local Taxes Section 52, point 5.

structure consisting of man-made structures, which is partially or wholly separate from the exterior area, hence providing a confined area for shelter, for long-term, temporary or periodical inhabitance, including any independent structure that is situated, in part or in whole, below the adjacent ground level;

'Building section'[16] means a part of a building consisting of one or more rooms and/or areas with its own function and that is technically separated and has its own entrance from outside or inside the building, and that - according to Points 8, 20, 45 and 47 - is treated as a residential suite, holiday home, commercial establishment or other non-residential building, by virtue of the fact that it is not registered in the real estate register as an independent real estate property;

'Residential suite'[17] means the constructed structures defined as such under Points 1-6 of Section 91/A of Act LXXVIII of 1993 on the Rules Applicable to the Tenement and Alienation of Housing Units and other Premises, and registered, or in the process of being registered in the real estate register as a detached house, residential building, residential suite, castle, estate or mansion;

'Auxiliary area'[18] means any attic or basement area of a residential suite or holiday home, that is designed and intended to function as storage space only, not including garage spaces;

'*Non-residential building'*[19] shall mean a building, building section that is not recognized as a residential suite provided for in Point 8;

'Arable land'[20] means a parcel of land shown in the real estate register as cropland, vineyard, orchard, garden, permanent pasture and meadow (grassland), reed bank or forest or woodland or as a fish pond;

'Holiday home'[21] means the construction works registered, or in the process of being registered in the real estate register as a holiday home (resort building, weekend house, apartment, vacation home, boat house, etc.).

It can be seen from the diversity of the provisions that there is a also a lot of use of terms, which makes the interpretation complicated in itself, but the problem is also that different laws use different terms with different content, which makes it even more difficult to apply uniform law. It would be useful if the concepts were to be explained in more detail in the Act on Personal Income Tax and Act on Fiscal Charges, and should not be clarified by separate references in the interest of the correct application of law.

3. Tax aspects of real estate transfer

The title of the post-tax of real estate transfer in case of onerous transfer can be sale, exchange, adverse possession, and free, in cases of gifting and inheritance. In the case of a property transfer, the seller may be liable for payment of personal income tax, while the acquisition of the property - through the acquisition of pecuniary assets - creates a duty payable by the buyer. The transfer of a property is therefore a transaction where both parties of the legal relationship, the seller and the buyer, are liable for payment for the same transaction

[16] Act C of 1990 on Local Taxes Section 52, point 6.
[17] Act C of 1990 on Local Taxes Section 52, point 8.
[18] Act C of 1990 on Local Taxes Section 52, point 10.
[19] Act C of 1990 on Local Taxes Section 52, point 11.
[20] Act C of 1990 on Local Taxes Section 52, point 17.
[21] Act C of 1990 on Local Taxes Section 52, point 20.

against the state. However, the seller pays tax only if his property generates profit from the transfer of the property, so it is worth clarifying the most important definitions that differ from those used in tax law and other branches of law.[22]

3.1. The definition of real estate and property rights in the Act on Personal Income Tax

As amended several times, in the Act CXVII. on Personal Income Tax of 1995. (hereinafter referred to as "Szja tv.") 'Rights in immovables' shall mean incorporeal rights in property, such as dominant tenement, leasehold, usufruct, use, easement and lease rights.[23] 'Movable property item' shall mean all articles other than real property, with the exception of payment instruments, securities, and all standing (not harvested) crops or produce sold without changing owners of the land (e.g. standing trees).

Thus, according to the Act on Personal Income Tax, the building, the apartment, the residential house, the edifice, the plot and the soil is considered a real estate.[24]

Letters b.) and f.) of Section 102 The Act XCIII of 1990 on Duties (in the following Itv.) offer a different definition of property and of real estate and establishes a more punctual definition of the apartment than the Szja tv. (Act on Personal Income Tax). Property in the meaning of Itv: land and all things connected with land, real estate: real estate registered with the name of a dwelling house or flat or to be listed as such with the corresponding land part. The apartment must be in a state of structural construction license. This rule applies eg. To the roof structure built on it. Apartment - Itv. - the farm, too, if there is a dwelling house, but the property is listed as a farmstead.

In such a case, the dwelling part of the dwelling is considered to be the flat. According to Itv however, a room (garage, workshop, shop, business building), which is not necessary for the proper use of the dwelling, is not classified as a dwelling on the land part of the residential building, even if it is integrated with the dwelling house. A building registered as a dwelling (dwelling) in the real estate register as a dwelling property which has been used for another purpose for at least 5 years prior to the date on which the dues obligation arises shall not be regarded as home ownership.

From the comparison of the definition of the flat, it follows that Szja tv. however, treats the interpretation of the concept in a narrower way, so Itv. can be used to help the referenced interpretation.

3.2. Determining income and profit from real estate transfer from the aspect of personal income tax

In case of a property transfer, the sales price received by the seller will be revenue. The basis for the personal income tax on the transfer of the property will be the income. From the use of concepts, it can be seen that there is a difference between income and profit, therefore it matters what the tax base is: income or profit!

According to the Act on Personal Income Tax, the revenue is generally determined from the income, in three ways[25]:

[22] See for instance Sections 11-13. of the Act CXLI. of 1997.

[23] Section 3, Point 29. of the Szja tv.

[24] Although it should be noted that the Szja Act consistently uses the concept of real estate as a transfer of property and property rights, as well as the concept of a building and housing registered as such. (see Paragraph 6. of Section 62. of Act CXVII. of 1995).

[25] Paragraph 1-2 of Section 4. of the Szja tv.

- profit might mean the whole of the income, so in this case, there is no opportunity to subtract costs (in this instance income equals profit),
- profit can be the part of income reduced by costs, (that is, profit equals the income minus costs),
- profit might be a certain percentage of the income, that is, definite percent of the income determined by law (profit equals certain % of the income)

Revenue is a property value acquired by an individual in any form and by law - money and non-money - under the Szja tv. Income from the sale of real estate is any income that an individual acquires in the context of a transfer. Revenue should be taken into account in accordance with the selling price (the purchase price indicated in the contract) or the exchange value.

In case of exchange, the normal market value of the thing received in exchange will be the revenue. It is important to know if the sales price indicated in the contract or the exchange value at the time of signing the contract exceed the normal market value, since the difference is already considered as other income[26], and in this case, however, this value does not have to be considered as revenue. According to the Szja tv., the exchange of real estate is subject to the judgment of the exchange partners. In this case, the revenue is considered to be the normal market value of the thing received in exchange at the time the income was earned. If the exchange contract does not include the value of the exchanged property, the turnover value on which the fee is based shall be considered as revenue.

The income must be determined by deducting the expenditure from the revenue(costs) incurred by the seller in connection with the sale of the property. Thus, as described above, the income will be a part of the revenue-reduced, and this is the basis of the tax, so the exact determination of income is a very significant issue.

Thus, when determining the income from the transfer of real estate, it is necessary to start from the revenue and deduct the following expenses from the purchase price:

- the amount spent on the acquisition of the property (the turnover value of the property at the time of acquisition, that is to say, the value of the property or the market value of the property at the time of the acquisition, for example in the case of inheritance), and the related costs (eg. the tax paid in the time of acquisition),
- the amount of the value added investment on the property (only that which is permitted by the Szja tv.)[27],
- expenses related to the transfer (such as advertising fee, lawyer's fee, commission of a real estate agent). Also, the duty paid at the time of purchase.

Applying the decrease of the listed expenses, it can be seen that when the property is transferred, the income is generated only if the seller sells the property for more than the price he has purchased, bought it, or as he or she understood when he inherited it for. Thus, the income is not equal to the selling price; the state levies the possible profit, the value increase, as income.

In the case of acquisition of property by inheritance or donation, the amount of property used for the sale of the property is the amount taken into account when determining the tax. The amount spent on acquisition must be determined by the manner in which it was acquired by the

[26] Surányi Imréné: Az ingatlan és a vagyoni értékű jog átruházásából származó jövedelem adózása, Adó XX. évfolyam Issue 2006/6. p. 2.

[27] See Point 32. of Section 3. of the Szja tv.

individual. In case of acquisition by sale purchase price stated on the contract with the property when purchasing the property it, must be regarded as a reverse acquisition amount. If the seller has purchased the property as a municipal tenant, the amount spent on the acquisition will be the actual purchase price included in the sales contract with the municipality.

The date of receipt of the income is the date on which the property transfer contract was submitted to the Land Registry. If the validity of the contract is subject to official approval, the date of receipt of the income will be the day on which the official permit of the authority was submitted to the Land Registry.

3.3. Determining income in another way, the basis of personal income tax, the tax rate

If it is not possible to determine the amount of the property (purchase price of the property at the time of acquisition or the value of the turnover), then the income is, as per the provisions of Szja tv., determined according to the third method described above, that is to say, the statutory rate of income will be profit, ie. the profit will be 25% of the income. In this case, the seller does not have to justify to the Tax Authority any possible expenses incurred during the verification, but the seller can automatically calculate the tax base and amount: 25% of the revenue (sales price, purchase price) is an income, and it will also be the tax base, and 15% of it will be the tax payable. The deductible cost ratio in this case is therefore 75% of the revenue dictated by law, that is, the overhead rate is 75%.

The tax rate is 15% of the calculated income, ie. the tax base.

3.4. Tax reliefs and exemptions for real estate transfers, historically, and under the effective law

The income from the transfer of real estate, and thus the tax base, can be further reduced, depending on the time elapsed between the acquisition and sale of the property. The longer this time is, the less tax is payable on income from the transfer of real estate.

As a rule, before 2010, the tax-exempt and tax-deductible income from real estate and home ownership was separated, the income from the sale of the property acquired or purchased over five years had to be reduced as a function of the acquisition time. If the individual sold the property after six years from the purchase, the income, and thus the tax base, had to be reduced by 10%, and then the percentage of the reduction increased by 10% every year. Accordingly, the income had to be reduced by 20% if the property was acquired 7 years before the sale, 30% if 8 years, 40% if 9 years, 50% if 10 years, 60% with 11 years, 70% if 12 years, 80%, if 13 years, 90%, if 14 years, and 100% if they were 15 years before the sale. This meant that in the case of real estate - with the exception of the apartment - it was no longer necessary to pay tax on income after 15 years, as 100% of the income was deducted due to the reduction of the tax base.

This rule could not be applied to property rights, but in the case of the alienation of a property right acquired before 1982, there is no need to pay tax, it will be tax-free.

In 2010, housing discounts were as follows.

In the case of a dwelling or apartment building, the income and income were determined in the same way as for other properties, ie the expenses, the value of the property at the time of acquisition and other named expenses could be deducted from the income. Thus, the income was a part of the

revenue reduced or, if the value of the property was not known at the time of acquisition, 25% of the income was calculated as income.

Until 2008, the acquisition of housing was known, but after 2008, the family or home purchase allowance was abolished, which could be applied by the seller if the income from the transfer of the dwelling (dwelling house) - or a part of it - within a specified period of time before the income was earned. Within 12 months, or within 60 months of the sale, it was used for home use by you or your close relative or former spouse. Thus, if the seller had turned the sale of the apartment into a new home, in that case it was not necessary to pay the tax after the use of the home income or to reclaim the tax already paid.

The purchase of the dwelling, the acquisition of ownership of the dwelling houses, if it was built within the required time, the increase of the dwelling space of the dwelling with at least one dwelling room, or the acquisition of the right to rent the dwelling, were considered as residential use. According to the Civil Code, close relatives, spouses, close relatives, adopted children, stepchildren, foster parents and foster parents and siblings counted.

It was an important rule that the use of the dwelling for the home could only concern the acquisition of a home owned home. This clause - that it was only possible to use income for domestic purposes and not in any Member State of the European Union - was in breach of European Union law, infringed the right of EU citizens to work and reside freely, and thus the provision constituted a form of discrimination.[28]

The flat-rate home purchase discount was discontinued in 2008 with the introduction of a transitional rule. However, the transitional rule allowed those who had already earned their income from the transfer of real estate before 1 January 2008 to apply the flat-rate allowance for home ownership that year.

The provision of a flat-rate home or home purchase discount in violation of the above-mentioned European Union law has been refined in the course of the amendment of the text of Szja tv..[29] According to this, the tax on the income from the transfer of any real estate or property rights does not have to be paid or recovered if the individual in the year of the transfer or within the next two years, for himself, his close relative or partner in the home of the disabled, in the home of disabled persons, or in other similar nursing homes for the purpose of obtaining housing provided in any Member State of the European Union.[30] It can be seen that in this case the legislator has already restricted the right to use the income for the purpose of home use[31], but incorporated it into the text of the law, in conformity with European Union law, that "home use", ie the elderly, can take place not only in Hungary but also in any Member State of the European Union. You can also buy a place in your home or in a nursing home - subject to the above conditions and time limits - without income tax.

Thus, on the one hand, the discount on housing and tax relief has become limited on the one hand, but in the case of the reduction

[28] See Case C-345/05 Commission of the European Communities v Portuguese Republic. See Dr. Kolozs Borbála: A portugálok, svédek, a magyarok és az adórendszer egységességének elve, a Pénzügyi Jogot Oktatók Konferenciái 2006-2009, Miskolc, Novotni Kiadó, 2010, p. 98.-106.

[29] We understand here the Personal Income Tax Act in force in 2010.

[30] Paragraph 2 of Section 63. of the Szja tv, 2010.

[31] We understand here that you can only use the income tax free to obtain the listed properties, such as for the purpose of housing in a home for the elderly or in a nursing home.

of income depending on the acquisition time - in the case of a dwelling, - it has become more favorable.

According to today's rules - in 2019 - income and income from the sale of real estate and dwellings will be taxed only if five years are not passed between the acquisition of real estate / apartment and the sale. If five or more years elapse between the year of acquisition and the sale, no tax will be payable on the proceeds from the sale. In the years between the acquisition of real estate and the sale, part of the income is exempt from tax, according to the tax relief rule.

When reducing the income from the transfer of housing and real estate, it should be taken into account how many years have elapsed between the acquisition and the transfer of the apartment. The more time it takes to acquire and transfer the apartment, the less tax you will have to pay, or you may not have to pay any tax at all. If more than 5 years elapse between the acquisition and sale of the apartment, the dwelling house or the property, the exchange, transfer, the income from the transfer of the property is completely exempt from tax. In case of transfer within 5 years, the income from the transfer of the apartment and other real estate can be reduced as follows:

- In the year of the acquisition of property and the following year, the income will be 100%,
- in the second year after the year of acquisition, the income will be 90%,
- in the third year following the year of acquisition, the income will be 60%,
- in the fourth year following the year of acquisition of the property, the income is 30%, and
- in the fifth year following the year of acquisition of the property and in subsequent years, the tax base will be 0%.

Accordingly, in the fifth year after the year of acquisition, the tax base disappears in the sense of a discount, so the tax allowance is 10% of the income in the second year after the year of acquisition of the property; - in the fourth year after the year of acquisition, and the tax benefit is 100% of the income in the fifth year after the year of acquisition.

It can be summarized that a flat-rate discount involving the acquisition and sale time difference has been replaced by a flat-rate discount, which does not replace the old house purchase allowance, but in any case reflects the objectives of the legislator's concession for housing.

We can also sum up that there is a big change in the other real estate (garage, holiday home, farm, agricultural land) as the 15-year tax exemption period has also changed for 5 years for these other properties outside the apartment, which is much shorter. The introduction of this new rule for the uniform management of real estate makes it considerably easier not only for the law enforcement officer but also for the taxation of income from the transfer of private property.

4. Some issues of the real estate transfer from the aspect of duties

Together with real estate transfer there is also an obligation of duty payment from the party gaining the estate, thus I will briefly review the regulations considering this.

4.1. The duty to be paid in case of the free transfer of the property, the antecedents of the free property acquisition duty

According to the older regulation, in case of the free transfer of the property party gaining the estate had to pay inheritance or

gift duty, depending on the level of relationship with the legator or the donating party.

The regulation of the Tax on Duties in 2010 categorized the relatives and other persons in three ways:

I. level of relationship: the child of the deceased or the donor, adopted, stepped and raised child, spouse, parent, adoptive, step-parent parent, grandchild
II. level of relationship: granddaughter, grandparent, brother who is not in group I
III. level of relationship: every other inheritor or beneficiary.

The further the relationship between the parties was, the higher the duty payable. In the framework of the older regulations, the straight-line descendants and the ancestors belonged to the first group, but the September 2010 amendment removed them from this circle and established for them a fairer regulation, and even relative relief in certain cases. In the case of inheritance duty, an exemption limit of HUF 20 million was applied to the heirs of the first group.

From 2013, a new rule in the duty law is that straight-line relatives are exempt from the inheritance duty or a gift in the event of any amount, whether it is real estate or movable property or gift.[32] Even the surviving spouse became exempt from the inheritance duty and gift duty at that time, regardless of the amount. Exemptions for children, the spouse and other straight-line relatives established by the legislators have long been awaited by the people affected.

From 2013, the inheritance acquired by a stepchild and stepchildren, or step parents is not entirely exempt, only up to an amount of HUF 20,000,000.[33]

There is also an exemption to pay duty for the plot which is built in within 4 years by any heir or gifted.

In addition, inheritance and gifting of the apartment have also been included in the circle of tax benefit in the past, as distant relatives or heirs have to pay a reduced duty.

In 2019, in the case of the free acquisition of property and connected property rights instead of a general 18% rate of duty, the inheritance and gift duties rate are half of the general rate, that is 9%.

Thus, according to the rules in force today, the exemption from the payment of inheritance and gift duty includes the property of the direct relatives and spouses for all types of properties consisting in property of any value.

We can conclude that the regulation of payment obligation of the duty of free property acquisition became softer and that the preferential payment regulations or exemptions for the apartments - similar to Szja - appeared in the Act on Duties as well.

4.2. Regulations of duties related to properties in case of onerous transfer of estates

Acquisition of a property can be done on several grounds, but we consider buying and replacing and replacing exchange as the primary transaction. The duty is to be paid by the buyer, who however has paid the price of the property from an after-tax income; still, the buyer must pay a duty after the gain of estate.

Even in the case of transfer duty on property, a distinction must be made between the acquisition of home ownership and the acquisition of any other property.

The general rate of the transferable property transfer duty is 4% of the value of

[32] Point i.) of Paragraph 1 of Section 16 and Point p.) of Section 17. of the Act XCIII. of 1990. on Duties (Itv).
[33] Point c.) of Paragraph 1 of Section 16 of the Itv. (applicable from 2013 and today as well).

the property in the event of acquisition of the property. It is important to mention that the value of the turnover, that is, the basis of the duty, is always determined by the state tax authority, so the purchase price indicated in the contract is not relevant in this manner. More specifically, the purchase price is irrelevant for the determination of the duty, but later the purchase price indicated in the contract, at the time of the sale of the property and the calculation of the personal income tax payable thereafter may be of significance. In the case of the sale of the purchased property, only the amount of the purchase price (Szja revenue) received at the time of sale can be deducted from the purchase price included in the purchase contract, which is what was actually paid.

Assuming, while not allowing that the purchase tax be reduced, the reduced purchase price is included in the property purchase contract and not the amount actually paid, this can count a lot later when the buyer wants to sell the property and can therefore deduct less money. In addition, there is no reason for such help, as the basis of the duty is determined by the state tax authority in every instance based on serious market evaluation and comparing.

There are also preferential rules considering properties in the Itv, for instance in the case of an exchange of properties. In the case of an exchange of properties, the base of the duty is the market price of the gained property, while in case of exchange of apartments, the amount of the difference between the market prices of the exchanged apartments gives the base of duty. If more than two apartments change their owners, then the base of the duty will be the amount of difference between the apartment of the highest market value and the lowest.

In the case of acquisition of an apartment ownership in exchange to a municipal maisonette, the base of the duty is the 50% of the market price of the apartment.

In the case of a private individual, the home purchase benefit applies to the onerous estate transfer, similar to the older regulation of the personal income tax. If a private individual buys home ownership and sells his / her other home within one year before the purchase, the basis for the payable property transfer duty will be the difference in the sales value of the home purchased and sold.[34] Before, even in the case of a negative price difference, there was an obligation of duty payment, however, according to the applicable regulation in its current form, and, in case the base of the duty is negative, there is no such obligation to pay. In the event of someone selling his or her apartment and buying an apartment of a smaller price, the base of the duty will be negative, thus, there will be no duty payment obligation arising from such transaction.[35]

A preferential rule with regard to the exemption of straight-line relatives is also applicable, similarly to the preferential regulation considering the succession and donation duty. Exemptions from the duty of onerous transaction in case are applicable if:

- the acquisition of property originates from the transfer of assets between the direct relatives,the estate transaction is concluded between spouses, or
- if it is originating from the dissolution of the marital property community. [36]

First purchase of real estate by young people under 35 years is connected with a benefit, in this instance, the 50% of the general duty to be paid has to be paid in the event of acquiring a full or partial ownership

[34] Point b.) of Paragraph 2 of Section 21 of Itv.

[35] Point y.) of Paragraph 1 of Section 26. of Itv - tax exemption for apartments with a lower turnover value.

[36] Point z.) of Paragraph 1 of Section 26. of Itv.

of the real estate, if the market price of the given real estate does not exceed HUF 15,000,000.[37]

It is also preferable to acquire the ownership of a new apartment built by the entrepreneur for sale at a maximum market value of HUF 15 million. When buying such a new home, the amount of the state subsidy reduces the tax base, so when using the Family Home Benefit (CSOK), the amount of the tax base for the purchase of the newly built apartment must be reduced by the amount of non-refundable housing aid. Those who can use a HUF 10 million CSOK, are able to buy a new apartment worth HUF 25 million free of duty.[38]

From 2018, the land duty exemption changed. Between the cessation of the right to property and the termination of the right, the fee is differentiated by the law, whereas the abolition of the right to property results in a duty on the owner, the cessation of the right does not create a duty. In connection with the acquisition of land by farmers, the use of land is exempt from duty - both from the donation duty and from the transfer duty.[39] The farmer does not have to pay a surcharge as from 2018, if his farmland is in the five-year cultivation period let in at least 25% to the agricultural association owned by him or her and at least 25% to the agricultural association owned by his or her close relative. The association must undertake to utilize the arable land for agricultural and forestry purposes during the five-year cultivation period and the ownership of the farmer – together with the relatives - must not fall below 25% of the shares. If the commitment fails, the farmer has to pay 8% surcharge.

The listed benefits and exemptions unify duty law, are very welcome, and are also aimed at encouraging the mood of real estate purchase. The real estate market is on one hand affected by many economical aspects, mainly the loan terms and purchasing power, and also by the market price, but we can still conclude that the tax and duty payment obligations are also dominant factors. For this reason it is not all the same what kind of burden is taken on by the person buying or actually purchasing the real estate. From the change of the regulation it can be seen that a positive tendency has begun, which will hopefully result in further benefits, exemptions or even cuts in the future.

From the above ascertainments it can also be stated that there is a tight connection between the personal income tax payment and the duty payment obligation in case of purchase of real estate, even if, in certain transactions, the payers are separated from each other. In the acquisition and sale of real estate, the state only wants to tax the newly generated income, which is acceptable and fair from a tax point of view.

However, the same cannot be said about the duty to be paid, because in this case the purchase is made from the income already taxed, and in the case of the acquisition of property, our wealth increases with the purchase of the property, but our income after tax is reduced by the same amount. So here, it is not about the taxation of the newly generated value, but the re-taxation of the taxed revenue, which in principle is hardly able to comply with the basic principle of a just taxation.

[37] Paragraph 6 of Section 26. of Itv.

[38] Point f.) of Paragraph 1 of Section 26. of Itv.; see also Magyarázat az Illetéktörvény évközi és 2018. Január 1-jétől hatályos változásaihoz Adó-kódex Adó- és Pénzügyi szaklap 2017/13-14. p. 170.

[39] Adó Kódex Issue 2017/13.-14., XXVI. p.169. According to Act CXXII of 2013 on Transactions in Agricultural and Forestry Land the acquiring of land use if free of charge.

5. Tax law of short and long-term housing (Airbnb)

Together with the emergence of digitalism and online transactions, certain short term apartment leasing methods appeared which are hard to control, which are on one hand rather profitable from the side of the landlord, on the other hand they provide a much cheaper possibility than the costs of hotel rooms from the side of the tenant.

These apartment leasing methods are named Airbnb. Airbnb is such an online marketplace, through which there is a possibility of renting and booking accommodation on the internet, even for only a few days.[40] Its name originates from "bed and breakfast" and the guest bed "airbed" words, named "Airbed and breakfast"; it is the official name of the accommodation provided via an online booking system. The exchange of private apartments, the rental of apartments or rooms have many advantages, and has become a very fashionable and liked method of seeking accommodation, so Airbnb is becoming more and more widespread in the online space.

Airbnb is a France-based online platform and online hotel reservation company that collects commissions for accommodation booked on its site. Through this, it is possible to book only one room or to book even a whole apartment.

However, there are several rules for taxing an individual who is renting a room or an apartment through Airbnb.

If a private individual does not carry out his / her activity as a housing contractor as a sole entrepreneur, he / she can basically choose between two tax methods. He or she can choose in one of the tax methods if he or she will be taxed according to the tax rules of the income derived from the self-employed income to be consolidated, or according to the other method, will pay tax according to the 'flat-rate tax of a private individual engaged in a private-sector income' tax category.

One of the most common forms of residential use is renting a flat or short-term housing (house, apartment), especially for tourists, which the Act on Personal Income Tax calls accommodation (pay-hospitality).[41]

5.1. Taxation of apartment, house rentals

Let us look at renting the apartment for a longer period.

The Act on Personal Income Tax does not establish the definition of real estate rental, however the Act provides us the definition of the activity of paying hospitality, and by this, it makes a distinction between long-term apartment rental and short-term rental.

Basically, in connection with apartment rentals, the provisions of the Act V of 2013 on the Civil Code have to be taken into account. Thus, we speak about apartment rental if the private individual lets the use of the real estate for a longer period of time – months, years – for counter value.

In this case, the tenant not only uses the apartment, but also keeps it clean, restores its condition, and carries out smaller maintenance tasks as well.[42]

In the case of renting an apartment or holiday home, the taxation of the income from the renting of the dwelling is considered to be the income to be

[40] https://hu.wikipedia.org/wiki/Airbnb (08.03.2019).

[41] See Section 57/A. of Szja tv.

[42] Kopányiné Mészáros Edda: Lakóingatlan hasznosítása Adó, Adó –és Pénzügyi Szaklap, Wolters Kluwer Kiadó, Year XXXII. Issue 2018/11. p. 17.

consolidated, it will form part of the consolidated tax base and the income will be included in the income from the independent activity. Income to be consolidated means that the income from the letting of the property must be calculated first, and the income thus calculated must be added to the other income of this type, or the income of the non-autonomous activity, such as income from employment. Accordingly, the income must be determined from the revenue, which is possible in two ways.

The rental is the actual rent of the rental, without any overhead paid by the tenant to the lessor.[43] According to the Szja tv[44] self-employment income shall comprise all income earned by a private individual in connection with such activities or in consequence of any legal relationship underlying such activities.

The calculation of profit from the income that is the rental fee happens according to the choice of the taxpayer, being either:

a) the 90% of the income qualifies as profit, that is in this instance the law automatically lets 10% to be subtracted as an expense ratio from the income (rental fee) without certification (invoices, vouchers, or other documents) or
b) from the income gained, the landlord might subtract all expenses that have arisen in connection with the rental which are duly justified, or accounted based on the Annex of the Act on Personal Income Tax. In this case, against the income, the private individual landlord might apply itemized cost accounting; the profit will be a result of income minus expenses.

Thus, the method of calculating income from revenue can be done in two ways, either the 10% cost ratio, that is, using the dictated rate or with the itemized cost accounting.

In the case of the rental of an apartment of holiday resort, the private individual landlord might subtract from the income of the rental:

a) the rental fee paid in the same year for rented dwellings in other settlement
b) on the condition that also the duration of both rentals exceeds ninety days,
c) and that the private individual claims no expenses in connection with the rented residential suite from his income from other activities or that the he did not receive any compensation for the rental fee paid as verified.[45]

To compensate the rental fee of the let apartment with the rental fee of the rented real estate these three legal conditions must be met. Rental fee paid by the landlord can also be accounted as an expense against the rental fee of the domestically let apartment. It is significant to note that this subtraction does not qualify as cost accounting, that is, by choosing any of the cost accounting methods, the landlord might deduct the rental fee of rented apartment from the income.[46]

Cost accounting can be applied to the extent of the income from activity of landlord:

- in the interest of continuing the activity, the acknowledged expenses according to the Annex 3 of Szja tv; for example a purchase of tangible fixed assets (refrigerator, furniture) to the extent of value HUF 200,000, that is, in case its total purchase value does not exceed HUF 200,000

[43] Paragraph (3a) of Section 17. of the Szja.
[44] Paragraph 3 of Section 16. of the Szja.
[45] Paragraph 5 of Section 17 of the Szja.
[46] Kopányiné (2018) p. 20.

- according to the Annex 11 of Szja tv, the depreciation and renovation costs of tangible assets used exclusively for the purpose of leasing can be deducted, which is 2% of the purchase price of the property as a building with a long lifetime. For long-lifetime buildings, the annual depreciation rate is 2%. However, no depreciation can be charged on the land and plot belonging to the building.

In a simple example: In the case of an apartment with a purchase value of HUF 10,000,000 is means HUF 200,000 deduction.[47]

Other costs, other actual expenses proven by invoice and incurred in connection with the particular activity of the lessor or may be deducted as costs.

After deducting the costs, the amount remaining from the proceeds will be the profit, which should therefore be added to the consolidated tax base and the tax will be 15%.

Private individual landlords do not have the opportunity to transfer the loss of the tax year (when the expenses exceed the income) to the next year. The tax is payable in the form of a tax advance during the year, and if the rental fee is not received from a company, the tax advance must be paid by the 12th day of the month following the payment.[48]

It is important to note that when choosing individual taxation, an individual can choose only one or only the other taxation method for more than one lease, that is either the itemized cost accounting or the deduction of the 10% cost ratio. This rule also applies if an individual has different types of incomes (e.g. commission) from several independent activities.

Unlike the above, special rules apply to the letting of the flat to the municipality, which is already included in the taxable income and under the statutory conditions, such as the flat-rate housing expenditure must be fixed and must exceed 36 months.[49]

In the case of a land lease, the Szja tv. provides special rules of separately taxed incomes,[50] it falls among the mixed incomes, the taxation of it is the task of the municipal tax authority, the rate of tax is 15%.

5.2. Taxation of short time apartment and holiday resort rentals

Taxation of the short time Airbnb rental is as follows. Airbnb - in the case of short-term home letting via the online platform or other - short-term accommodation service provided by the accommodation service provider, or the private individual in case he or she does not let his or her apartment as an individual entrepreneur to tourists for less than 90 days - and possibly provides other services to his or her guests, such as cleaning and breakfast. The rental of a room, a whole apartment or a house might happen.

The private individual providing accommodation service (Airbnb activity) can let his or her apartment in the framework of an individual entrepreneur, but where it is not the case and he or she chooses to let the apartment as a private individual, he or she can choose from two types of taxation:

a) flat-rate tax of a private person performing pay-hospitality activities, or
b) under the above-mentioned merger, according to the rules of independent activity. He or she here can also choose between two methods of taxation, the individual can choose to deduct the 10%

[47] See the detailed example Kopányiné (2018) p. 20.
[48] Kopányiné (2018) p. 21.
[49] Section 74/A of Szja tv.
[50] Revenue earned by land rental – Section 73. of Szja tv.

unadjusted cost from his income, or choose itemized cost accounting that is duly supported by invoices and documents.

The regulation, considering itemized cost accounting according to the Szja tv. lists to the Chapter X, where we can find the entrepreneurial income tax of the individual entrepreneur, the flat-rate taxation, and the rules of itemized flat-rate taxation. It has to be made clear, however, that the person exerting the paying hospitality activity does not qualify as a private entrepreneur, so the thematic listing must not mystify anyone!

The conditions concerning accommodation service providing are established by another law,[51] but Szja tv. also provides some conditions.

According to the Szja tv. the definition of the private accommodation[52] is: Private individuals providing private accommodation shall mean the provision of accommodation - not in the capacity of private entrepreneurs - within the framework of accommodation service activities in accordance with the government decree on the conditions for the pursuit of accommodation service activities and the procedures for authorization of accommodation service activities, to the same person, for less than ninety days in any tax year.

Thus, its conditions are:

- the private individuals must not provide the service in the capacity of private entrepreneurs,
- the apartment is leased to the same person for a period not exceeding ninety days in any tax year,
- the activity is carried out in maximum 3 apartments or holiday resorts – that do not qualify as professional accommodation service places, and
- a flat-rate taxation is chosen.
- In this case also, the private person landlord is subject to the invoice or receipt obligation.

The *yearly amount* of itemized flat-rate tax is HUF 38,400 per rooms. The yearly flat-rate tax has to be paid in equal portions after every quarter until the 12th day of the following month. In case of termination of activity, after the quarter year of the termination, until the 15th day of following month of the quarter year of termination, the flat-rate tax is due. In case of itemized flat-rate tax, if the conditions change, and the service provider no longer complies with the provisions of private accommodation, then the private individual has to pay his or her tax according to the individual activity.

Because of the carrying out of a business activity, the *commercial accommodation service* qualifies as real estate rental according to the Act on Value Added Tax, and, although the leasing of apartment is primarily a tax-free activity, this tax exemption does not cover the use of real estate for tourist purposes that is the commercial accommodation service. The commercial accommodation service is a taxable activity according to the Act on VAT, according to which the preferential tax rate of 18% is to be applied. In case of the realization of legal conditions, - for example up to HUF 12,000,000 income – the taxpayer might choose subjective tax exemption, in this case, there is no need to pay VAT after the commercial accommodation service.[53]

In the case of private accommodation activities, the private individual lessor is also

[51] Government Regulation 239/2009. (X.20.).

[52] Paragraph 1 and 2 of Section 57/A. of Szja tv.

[53] Taxation of accommodation service provided through NAV Online booking system https://www.nav.gov.hu/prit/ado/afa080101_hatlyos/Online_szallashely_szolgaltatas.html (date of download: 2019-03-08).

subject to the invoice or receipt obligation, and must keep all documents as required by the Szja tv.

6. Summary findings

When reviewing the tax and duty payment rules on the use of real estate, we can conclude that the regulations contain both negative and positive elements.

As a positive point, Airbnb, as a recently adopted concept, is subject to taxation and is known by the regulations, which is a positive merit of the legislature. The regulation is clear: the choice of suitable taxation is the right of the landlord.

However, as a negative point, it can be stated that the placement of private accommodation activities in the Chapter X is thematically disturbing, which is basically about the taxation of sole proprietors.

In addition, we believe that accommodation service provided through the online booking system should also be mentioned as a definition, the short-term rental, and the fact that this is Airbnb accommodation service activity. The conditions are understandable still, logically, it would be easier to identify the concept in the chapter named 'Definitions' in the beginning of the Act.

Overall, it can also be seen that the taxation of real estate shows a not very transparent regulation, many times the definitions are different, there are many cross-references in the law, the definitions (real estate, apartment, land) are present in more places in the Szja tv., and it is a negative fact. We can mention as a positive fact however, that – among real estate – the apartment is present at an emphasized place, and is both preferential from the aspects of both tax and duty paying.

The law is rapidly changing, and coherence could develop as well.

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