

PRESS RELEASE

5% VAT ON NEW HOMES – DETAILS ONLY FEW CONSIDER

Budapest, 24 February 2016 – The reduction of the VAT on new houses to 5% stands out from among the tax changes in 2016 from more than one point of view. Both the construction industry players and those interested in new homes welcome the decision. However, there are quite a few questions about the new regulation: what is considered, under the law, a "residential property", what is the legal situation of that part of an apartment which is over 150 square meters, what regulation applies to offices converted into residential properties and to what extent is the present tax cut unique compared to the countries of the region.

On the basis of the survey of the Wolf Theiss law firm network extending to the Central European region, **the preferential VAT rate** in force in Hungary in 2016, applicable to the sale of new residential properties, **can be found in several Central European countries, too**. Thus, similarly to the Hungarian regulation, a preferential tax rate is applied to new residential properties in countries such as **Poland and the Czech Republic, although the preferential tax rates are somewhat higher in these countries** than in Hungary. In the same way as in the Hungarian regulation, the VAT rate is 5 percent in Romania, although this allowance can be used by individuals and families only when purchasing smaller residential properties. The application of the preferential tax rates is permitted by EU regulations for social housing and the construction of houses for social purposes.

"The five percent VAT applicable in the case of the sale of new apartments of an area not exceeding 150 square meters and of other residential properties of an area not exceeding 300 square meters can be regarded as favourable in the Central European region. The new VAT regulation may be suitable for stimulating the construction industry and the housing market, and for supporting the purpose of homemaking, but it also raises practical issues which are yet to be clarified"- says Dr. János Pásztor, Head of the Tax Group of Faludi Wolf Theiss Attorneys at Law.

While the new VAT rules may have a positive impact on the construction industry and the housing market, a number of issues concerning legal interpretation arise in relation to the regulation, which should be reviewed in detail. First, premises not required for the intended use of residential properties should be examined. It may be deduced from the definition of residential property set out in the VAT Act that **the preferential 5 percent VAT rate will not be applicable** in the case of premises not required for the intended use of residential properties. Thus, in the case of **garages, workshops, shops and farm buildings** built together or forming part of a residential building, **the 27 percent VAT rate should be applied**.

In the case of a number of other premises, such as storages, cellars, swimming pools, saunas, terraces and stairs, however, it remains questionable whether they are to be considered as required for the intended use of the houses and also whether they belong to their useful floor area, and as such whether the 5 percent or the 27 percent VAT apply to them.

In addition to the above, it is also questionable under the current law whether, **in the event that an apartment (residential property) is in excess of an area of 150 square meters (300 square meters), the preferential tax rate can be applied to such part as is not in excess of the statutory floor area limit or the whole property is subject to the 27 percent VAT rate.**

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It is also doubtful whether, in the event that **a property formerly built as an office is converted into a residential property, the preferential VAT can be applied if the newly established apartments are sold.** The situation is similar in the case of **new properties established by requalification and the splitting of former properties.**

The above questions and other issues that may arise in the future are expected to be clarified by the relevant statements of the ministry and the tax authority, but until then it is advisable to consult a tax specialist to mitigate any possible risks.

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