

## Only a Theoretical Possibility of the Ad Valorem Property Tax System – the Regulation on Immovable Property Taxes in Hungary

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The immovable property taxes have a long tradition in the modern tax system, as well in the Hungarian regulation. They are now an important revenues of the Hungarian municipalities, but this taxation is now primarily an area-based system. First of all, the traditions of the property taxation and the current regulation on property taxes will be reviewed by the article. A tax system of a modern democracy which is based on the rule of law requires the high quality of the tax administration. Therefore in the second part of the article the quality of the Hungarian tax system and the quality of the local taxation will be reviewed. In the third part of the article the main problems and the failed reform attempts of the Hungarian property taxation and the barriers to the implementation of the *ad valorem* system will be reviewed. Finally, the main findings of the review will be summarized.

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### Regulation

#### Brief Historical Overview

Property taxes have a long tradition in Hungary. The first taxes on cultivated land appeared in the 14<sup>th</sup> century<sup>1</sup>. Although the nobility was exempt from tax during the feudal age and the royal free towns were charged flat-rate taxes, a differenti-

<sup>1</sup> For details see Szabó, I, Az adómegeállapítás jogtörténeti kialakulása és fejlődése (The Legal Formation and Development of Tax Assessment), Pro Publico Bono Vol. 4. No. 1. 2017, p. 32–55.

ated customs and tax system has been evolved during the 15<sup>th</sup> and 16<sup>th</sup> century, which was partly remained during the Habsburg monarchy. The modern Hungarian tax system was born after 1867 when the Austrian Hungarian Monarchy was established. The Hungarian system was based on the former Austrian model, direct and indirect taxes were distinguished. Twelve direct taxes were institutionalised. The main direct taxes were the land tax and the house (building) tax, which were based on the property. The land tax was had a mixed nature: although it was based on the property, the tax was based on the estimat-

ed income of the given land.<sup>2</sup> The house (building tax) was a dual tax, partly it was practically an income tax, it was the tax of the rental income of the houses. Partly it was a property tax, which had a flat-rate. The rate was depended on the type of the municipality (rural or urban).<sup>3</sup>

Independent Hungary was established in 1918, and the tax system of the independent Hungary was practically based on the taxation of the Austrian-Hungarian Monarchy. Monetary reform was executed in 1924/25 (when the *pengő* was introduced), but the system of taxation was not been radically transformed.<sup>4</sup> The former tax system was transformed after the introduction of the Soviet System. Several flat-rate taxes of the – mainly – rural proprieties remained, but the taxation was strongly reduced during the Communist age. During the Democratic Transition of 1989/90 and the re-establishment of the local self-government in 1990 a new tax system was introduced. The propriety taxes belonged mainly to the municipal taxes, which were regulated by the Act C of 1990 on Local Taxes (**Local Tax Act**, hereinafter Hatv).

### An Open-List Local Taxation System: the Community Tax

Hungary has now an *open-list local taxation system*<sup>5</sup>: the major local taxes are defined by the Hatv, but the *community tax* has been institutionalized by the Hatv.

The *community tax* has been institutionalized by the section 1/A of the Hatv. Thus the municipalities may, within its area of jurisdiction, introduce community tax, community taxes by decree, which are not prohibited by any other act.

<sup>2</sup> Act VII of 1875 on Land Tax

<sup>3</sup> For details see Bartha, B, A magyar pénzügyi jog vázlata (Draft of the Hungarian Financial Law), Pozsony – Budapest: Stampfel Károly Kiadása, 1990. p. 96–104..

<sup>4</sup> Horváth, R, Az 1929–33-as magyar pénzügyi válság főbb monetáris jellegzetességei (Main Monetary Characteristics of the Great Crisis of 1929–33), Szeged: JATE 1994. 65–70.

<sup>5</sup> Kecső, G, A helyi önkormányzatok pénzügyi jogi jogállása (Financial Law Status of the Municipalities), Budapest: ELTE Eötvös 2016. 234.

The municipal government may levy community tax on any basis of assessment, provided that it is not covered by statutory public dues of any kind. Community tax may not be imposed as payable by the State, any municipal government or organization, or by entrepreneurs, acting as such. Thus it has an opportunity to introduce new types of wealth taxes which are not institutionalized by the central government and by which the principle of the ban of the double taxation is not violated. The Curia, the Supreme Court of Hungary has several guideline case and the ban of the double taxation was interpreted very strictly.<sup>6</sup> Thus the *community tax* is rather a theoretical opportunity in the field of wealth (*ad valorem*) taxes.

### The System of the Wealth Taxes in Hungary

Although the Hungarian local taxation system can be interpreted as an open list system, the main municipal taxes are defined by the Hatv. Two types of the wealth taxes are institutionalized by the Hatv: the building tax and the property tax. The introduction of these local taxes depends on the decision of the municipalities: their introduction is not required (however the introduction of the main local tax, the local business tax is indirectly required by the state aid system of the Hungarian municipalities: there is a principle of expected revenue and the amount of the state aid depends on the tax power of the municipalities based on the local business tax revenues). But the wealth taxes can be freely introduced or not introduced.

### Building tax

After the Hatv structures located in the area of jurisdiction of a local government, dwelling places, buildings and building sections not used for housing purposes (hereinafter jointly referred to as 'buildings') shall be subject to tax liability. Tax liability shall apply to all *rooms and spaces of the*

<sup>6</sup> See *ibid.* 235.

Table 1 Introduction of building tax by Hungarian municipalities in 2018

| Number of Hungarian (local, first tier) municipalities (in 2019) | Number of municipalities with more than 2000 inhabitants | Building tax introduced by municipalities |            |                 |            | Billboards |
|--|--|---|------------|-----------------|------------|------------|
|  |  | Flats and houses                          |            | Other buildings |            |            |
|  |  | Flat rate                                 | Ad valorem | Flat rate       | Ad valorem |            |
| 3156   | 735  | 905                                       | 3          | 797             | 7          | 456        |

Source: Hungarian Central Statistical Office, www.ksh.hu.

building, regardless of their purpose and utilization. Other objects of the building tax are public advertisements (eg. billboards): advertising media provided for in the Act on Townscape Preservation, deployed on any real estate property located in the area of jurisdiction of any municipal government shall be taxable.

The beginning of the tax liability begins – in principle – on the first day of the year following the year when the occupancy or continuation permit became final or definitive or when occupancy was acknowledged, or when the official certificate on the completion of a building subject to simple notification requirements is made out. For buildings built or occupied without a permit, tax liability shall commence on the first day of the year following the year when the building was occupied.

The person subject to tax liability is the person who is the owner of the building as of the first day of the calendar year (hereinafter referred to as 'year'). If there is more than one owner, the owners shall be subject to taxation in the percentage of their respective ownership share in the property. If there is any incorporeal right registered on the building in the real estate register, the person registered as the holder of such right shall be subject to tax liability. (The owner and the holder of right shall be hereinafter jointly referred to as 'owner'.) A written agreement signed by all owners and submitted to the tax authority may designate a single owner vested with powers in connection with the rights and obligations stemming from their tax liability. In respect of condominium buildings, garages and resorts the owners shall be subject to tax liability independently, while the said association shall be subject

to taxation in respect of commonly used premises. The person liable for the tax of (public) advertisements shall be the person recognized under the Civil Code as the owner of record of the advertising media on the first day of the year. Several buildings – defined by the section 13 of the Hatv – are exempt from tax.

The building tax has a *dual nature*. The basis for tax, depending upon the decision of the local government, shall be: 1. the net floor space of the building expressed in square meters, or 2. the adjusted market value of the building. Thus it can be a tax which is based on the net floor space and the measure of it is not depending on the value of the building or it can be an *ad valorem tax* (the adjusted market value is interpreted as 50% of the market value determined under the provisions of the Duties Act). The maximum rate of the tax per annum is 1100 HUF/m<sup>2</sup> (approx. 3 EUR<sup>7</sup>) if the tax is based on the net floor space and 3,6% of the adjusted market value (actually 1,8% of the market value) if the tax is an *ad valorem tax*.

The business tax was introduced by about 25% of the Hungarian municipalities, which are mainly those<sup>8</sup> municipalities which have real tax power. But this tax could be actually just *theoreti-*

<sup>7</sup> In August 2019 1 EUR is approximately 330 HUF.

<sup>8</sup> Hungary has a very fragmented municipal system. It has 3154 first tier municipalities and the majority of them have less than 1000 inhabitants. Only 24,1% of them have more than 2000 inhabitants. See: Szigeti, E, A közigazgatás területi változásai (Territorial Transformation of the Public Administration), in: Horváth, M. T., Kilengések. Közszolgáltatási változások (Fluctuations. Changes of Public Services), Budapest – Pécs: Dialóg Campus, 2013, pp.281–283. Thus a municipality with 2000 inhabitant could be interpreted in Hungary, that they have real tax power.

Table 2 Introduction of land tax by Hungarian municipalities in 2018

| Number of Hungarian (local, first tier) municipalities (in 2019) | Number of municipalities with more than 2000 inhabitants | Land tax introduced by municipalities |            |
|--|--|---------------------------------------|------------|
|  |  | Flat rate                             | Ad valorem |
| 3156   | 735  | 515                                   | 0          |

Source: Hungarian Central Statistical Office, www.ksh.hu.

cally an *ad valorem* tax: only 3 municipalities introduced the tax which rate is based on the adjusted market value (see Table 1).

### Property tax (lot and land tax)

The second type of the local wealth taxes is the *property (land) tax*. Lands situated in incorporated areas within the area of jurisdiction of a municipal government shall be subject to taxation. The person subject to tax liability shall be the owner of the land parcel on the first day of the year. If there is any incorporeal right registered on the property or if there is more than one owner, the provisions of the building tax on this topic shall apply.

The 'landlot' is defined by the Hatv: it means any undeveloped parcel of land containing no building or building section, other than: 1. any arable land situated in an incorporated area, provided that it is in fact used for agricultural purposes, 2. any arable land situated in an unincorporated area, 3. small farms, 4. land used for public roads, 5. railway lines, landed areas comprising part of railway lines, 6. landed areas covered by the definition of cemetery in the Act on Cemeteries and on Funeral Services, 7. land used for reservoirs, quarry ponds by definition of the Act on the Protection and Management of Fishery Resources, 8. forests, 9. landed areas shown in the real estate register as marshland.

Similarly several exemption from the tax is defined by the Hatv, as well. The following shall be exempt from tax: 1. a part of the land on which the building or building section stands, of the same size as the net floor space; 2. incorporated land used for agricultural purposes; 3. 50 per cent of the land parcels subject to building prohi-

bition, 4. the safety-protection area (zone) of the taxpayer's production facility, as defined by law or by decree of the competent authority, provided that at least 50 per cent of the taxpayer's annualized net revenue for the tax year preceding the given tax year originates from the sale of products manufactured on own account.

The basis of the tax is defined similarly like the business tax: it can be based on actual are of the land (maximum 200 HUF/year – about 0,6 EUR/year) and on the adjusted market value of it (maximum 3% of the adjusted market value, thus maximum 1,5% of the market value).

The land tax has been introduced by fewer municipalities than the building tax: about the one-sixth of the municipalities – 515 municipalities – introduced this type of local wealth tax. But the *ad valorem nature* of this tax is really a theoretical possibility: all municipalities introduced this tax based on the land area and the *ad valorem* solution has not been chosen by the local governments (see Table 2).

### Duties on the acquisition of the property: *ad valorem* tax of the central budget?

A *communis opinio* of the Hungarian tax law literature, that the main *ad valorem* taxes are not the building tax and the land tax – which are considered as municipal taxes – but the duties on the acquisition of property, which are institutionalized by the Act XCIII of 1990 on the duties<sup>9</sup> (hereinafter: Itv). There are two type of these duties: the duty on inheritance and gifts (Chapter II of

<sup>9</sup> Az illetékekről szóló 1990. évi XCIII. törvény

the Itv) and duties on quid pro quo transfer of property (Chapter III of Itv).

Section 7 of the Itv states that “[a]ccession of wealth upon the death of the testator or by way of gift shall constitute the subject matter of inheritance and gift duty”. The acquisition of real estate property, movable property defined by the Itv as well as rights for consideration or by any other means under exemption from inheritance or gift duty shall be subject to a duty on quid pro quo transfer of property (*duties on quid pro quo transfer of property*). This duty has *partly an ad valorem nature*: the duties on the acquisition of rights and property in real estates is based on the net worth of the real estate.

Although the majority of the Hungarian tax lawyers considers these taxes as a special type of property tax, but these taxes are connected to the turnover of the properties: inheritance, gifts and (quid pro quo) acquisitions of property. Therefore these taxes could be interpreted as a special type of turnover (purchase) tax, because they are connected to the turnover of these properties.<sup>10</sup>

## Quality

### Method of Tax Law Regulation

The quality of (not only) tax law is *conditio sine qua non* for fair tax administration. Like in other countries, it must be taken into account that the tax law has really very specific method of regulation.

In Hungary – like in the other Visegrád countries with a German type administrative and financial model – tax law is related to financial law and administrative law by the method of legal regulation used. Based on its characterization according to the criteria for being considered an

independent branch of law, administrative law is distinguished by the application of a type of public law method, which is the administrative law regulation method. This method is based on the effect of public authorities on the recipients of public authority (*imperium*), in particular by means of the norms enforceable by public authorities and contained in normative administrative acts, i.e. bylaws and ordinances issued by public authorities authorized in and for the implementation of the law and within the limits stipulated by law (sub-statutory regulations), as well as by means of individual administrative acts. The method applied in financial law is based on this approach. The difference is, that the financial acts are based on the statutory and sub-statutory regulations of financial law. Similarly to the other Visegrád countries, the role of the Acts of Parliament is more important in the financial law than the administrative law. Public administration authorities apply economic instruments to a greater extent in this area to affect recipients (central bank interest rates, mandatory deposit in a state of emergency, etc.). The financial law is strongly influenced by the private law, as well, especially the regulation on the financial sector of the economy and the regulation on the state aids. For example, several state aid decisions are defined by the Act on Governance of the Budget as contracts governed by the private law.<sup>11</sup>

A similar situation prevails in tax law. Sub-statutory regulations have limited role in tax law, because of the constitutional rules on the regulation on fundamental rights and obligation. It is required by the Hungarian constitution, by the Fundamental Law of Hungary (published April 25<sup>th</sup> 2011) that “[t]he rules relating to fundamental rights and obligations shall be laid down in an act of Parliament”. As it will be analyzed later, the taxation is interpreted by the Hungarian constitutional law as a (constitutional) obligation it shall be regulated primarily by the Acts of Par-

<sup>10</sup> Kecsó, G, Az arányos helyi közteherviselés a területalapú vagyonszámlák körében (Proportionate local tax burden in the field of area-based property taxes), in: Menyhárd, A & Varga, I (eds.) 350 éves az Eötvös Loránd Tudományegyetem Állam- és Jogtudományi Kara II. (350 Years of the Eötvös Loránd University, Faculty of Law, Vol. 2.), Budapest: ELTE Eötvös 2018. pp. 1546–1547.

<sup>11</sup> For example the contract on regional development aids. See Hoffman, I, Bevezetés a területfejlesztési jogba (Introduction to the Regional Development Law), Budapest: ELTE Eötvös, 2018, pp. 118–119.

liaments. There are several sub-statutory regulations on the detailed procedural regulations of the taxation, as executive decrees passed by the Government of Hungary. These instruments generally include technical rules on the procedure of taxation, for example regulation on the accounts of the tax authorities and detailed regulation on the forms of the applications for tax procedures.<sup>12</sup> Government decrees have an important role in the field of budgeting of the administrative bodies and in the field of the state aids. The detailed regulation of them is regulated by such legal norms and by the decrees of the ministers (especially by the decrees of the Minister of Finance). Another main field of the sub-statutory regulation is the *municipal taxation*.

What is the most specific to tax law, however, is a principle known as *self-application*, but there are certain exceptions. In principle the taxpayer applies tax law norms to itself by determining the tax base using its own knowledge, uses the relevant tax rate for itself, and applies the corrective elements for itself.<sup>13</sup>

In Hungary, the major exception to the principle of self-application is the *municipal taxes*. The municipal taxes are made by the decisions of the local tax authorities, thus the tax is levied by the local tax administrators which are the municipal clerks (*jegyző*). Therefore in municipal taxes – to which the wealth taxes (building tax, land tax) belongs – are similar to the general acts of the administrative bodies, and the approach of the administrative law is used.

### Constitutional principles

To ensure the tax law norms are having the characteristics defined above, there are several princi-

ples of tax law. The taxpayer's rights are not regulated by a "taxpayer's bill", but they are regulated by the Fundamental Law. The regulations of the Fundamental Law are interpreted by the Constitutional Court of Hungary. First of all, the tax liability of the legal and natural persons and other institutions in Hungary are defined by the Fundamental Law, as a fundamental (constitutional) obligation. The Art. XXX (5) states that "[e]very person shall contribute, according to their capacity or to the extent of involvement in the economy, to financing the needs of the community." The legitimacy of the taxation is therefore to provide the needs of the community. Therefore the natural and – after the rules of Art. I(4) – the legal persons and other institutes are obliged to pay taxes, contributions, fees and another type of public revenues.

The principle of *legality* (*nullum tributum sine lege*) is defined by the above mentioned Art. I(3), states that "[t]he rules relating to fundamental rights and obligations shall be laid down in an act of Parliament. A fundamental right may only be restricted in order to enforce another fundamental right or to protect a constitutional value, to the extent that is absolutely necessary and proportionate to the objective pursued, and with respect to the essential content of the relevant fundamental right."

Other principles are very often mentioned, namely the principles of transparency, accessibility and unambiguousness when handling the sources of law, the general prohibition of retroactivity, the requirement of unambiguousness and predictability, legal certainty, the protection of legitimate expectations, the prohibition of excessive formalism, the protection of confidence in law, and the protection of the acquired rights, and the principle of proportionality. The majority of them have been derived from the *principle of rule of law*, which is stated by the Art. B(1) of the Fundamental Law. The principle of rule of law has been interpreted by the Constitutional Court thus these principles have been derived by the Constitutional Court.<sup>14</sup>

<sup>14</sup> See Somody, B, Szabó, M, D, Vissy, B & Dojcsák, D, Alapjogi tanok I. (Fundamental Rights Doctrines Vol. 1.), Budapest: HVG-Orac, 2018, pp. 15–27.

<sup>12</sup> See for example Government Decree No. 465/2017 (published 28<sup>th</sup> December) on the detailed regulation of the tax administration procedures.

<sup>13</sup> See Radvan, M. Tax Law as an Independent Branch of Law in Central and Eastern European Countries. *Lex Localis – Journal of Local Self-Government*, 2014, vol. 12, no. 4, pp. 813–827. ISSN 1581-5374. doi:10.4335/12.4.813-827(2014). WoS: 000343688000004.

There another principle protecting the taxpayer in the application process: the *principle of courts' protection*, which is guaranteed by the Art. 28 of the Fundamental Law, thus it is a constitutionally guaranteed principle.

The principles applicable for the tax law are included in the international law. This applies e.g. for the European Convention on Human Rights including property protection, fair trial, no punishment without law, respect for private and family life, home and correspondence, freedom of movement, *ne bis in idem* principle, etc. The Czech Republic as the EU Member State is bound by the EU law.

### General Tax Law and Tax Procedures Principles

In Hungary the taxation has a procedural approach. The main principles of taxation are linked to the principles of tax procedures, as well. Thus the General Tax Law Principles and the Tax Procedures Principles are defined by the two major Acts on the tax Procedures, by the Act CL of 2017 on the Rules of Taxation (hereinafter: Art.) and by the Act CLI of 2017 on Tax Administration and the Regulation of Tax Administration (hereinafter: Air.).

First of all, it shall be stated, that the *nullum tributum sine lege* and the main principles which can be derived from the principle of rule of law, several tax principles are defined by the Acts of Parliament on the general rules of taxation. The principle of legality is guaranteed for the municipal taxes, as well, because the main framework of the local taxes are defined by the Hatv., as I have mentioned above. The Hatv. cannot be offended by the municipal decrees.

The most important principle is the principle of legality, the *nullum tributum sine lege* principle, which are defined by the Art 1 of Air. This rule is expressed by the principle of the *prohibition of confiscation*. The tax law norms must not be retroactive as it is obvious from the *principle of non-retroactivity*. These principles can be derived from the principle of rule of law, and they

are partly regulated by the Act CXXX of 2010 on the Legislation (hereinafter: Jat).

The main requirements, rights and obligations of the tax authorities and partly of the taxpayers are regulated by the Art. The Art. states that in taxation relationships, *rights shall be exercised according to their intended purpose*. Another requirements are linked to this obligations, thus in its procedures, the tax authority shall qualify contracts or similar transactions according to their actual content. Similarly, the the requirement of qualification of transaction according to their economic result and requirement of qualification of contracts between related undertakings are defined by the Art.

Another important principle is the *principle of prohibition of discrimination and "favouritism"* stating that the tax authority shall be obliged to proceed and take measures in every case in good faith, without discrimination and in compliance with the rules of law. It is secured by the *principle of equitable legal process*, which states that "[t]he tax authority shall be obliged to proceed in an equitable manner, and if the conditions determined by law exist, it shall moderate the tax debt and/or grant payment facilities." However the ban of discrimination is defined by the Air., the *individual treatment* is a principle, as well. Thus the tax authority shall consider the facts related to the case concerned in the procedure. It shall assess all evidence according to its weight, and it shall found its decision on the veracity of facts.

These rights are guaranteed by another principles: thus the Air states that there is an *obligation to provide information, facilitating the exercise of the rights of taxpayers*. The taxpayers' rights are similarly defended by the *principle of clarity*. The taxpayer's main obligation is the *requirement of procedure in good faith and the principle of obligation to cooperate*. The Art 8(2) of the Air states that "[t]he good faith of the taxpayers and other participants of the procedure shall be presumed in the procedure."

The primal procedural principle in tax law is the principle of *self-application* generally discussed above. The main exceptions to the principle of self-application are the local (municipal) taxes.

There are many other principles in the tax procedure typical for fair trials like right to be heard, right of defence, equality of arms, right to a fair trial and prohibition of double jeopardy as the right not to be tried twice for the same cause (*ne bis vexari*). These principles have been derived mainly by the landmark cases of the Kúria, the Supreme Court of Hungary

There are several more principles to be applied in the tax procedure mentioned in the Act CL of 2016 on the General Rules of the Administrative Procedure (hereinafter: Ákr).

### Problems – the regulation on *ad valorem* taxes in Hungary

Immovable property tax in Hungary is one of the oldest and most traditional taxes. Despite criticism it has its place in every tax system all over the world. There are many advantages of this tax: it is very simple to identify the property and the taxpayer, it is difficult to hide the property and avoid taxation, the concept of tax is relatively

simple, etc. However, the greatest benefit of this tax is the fact that the exclusive beneficiaries of the immovable property tax are municipalities. Thus, the main function of the immovable property tax is its fiscal function as it ensures a regular income for municipal budgets.

### Immovable Property Tax Revenue

As stated above, the main function of the immovable property tax is to ensure income for municipal budgets. However, the immovable property tax revenue in the Hungary is not very significant, but it has a prominent role among the local taxes. Although these taxes have been introduced only approximately by ¼ of the municipalities it is the second most significant local tax revenue in Hungary (in 2017 17,39% of the local tax revenues were the revenues from property taxes – see Table 3). However it is a relatively significant tax revenue, but their role is only supportive, because the main local tax revenues are from the business tax in Hungary (in 2017 638,731 billion HUF, which was 75,50% of the local tax revenues).

Table 3: Immovable property tax revenue performance in the Czech Republic

| Year   | 2015      | 2016      | 2017      |
|--|-----------|-----------|-----------|
| All revenues at national level (in billion HUF)                    | 11826,113 | 12480,417 | 13178,416 |
| Tax revenues at national level (in billion HUF)                    | 8077,263  | 8403,204  | 9127,031  |
| All revenues at regional and local level (in billion HUF)          | 2745,138  | 2240,787  | 2437,439  |
| All tax revenues at regional and local level (in billion HUF)      | 770,375   | 805,446   | 845,975   |
| Immovable property tax revenue (in billion HUF)                    | 131,091   | 139,641   | 147,156   |
| Immovable property tax revenue as % of all state revenues          | 1,11      | 1,12      | 1,12      |
| Immovable property tax revenue as % of all local revenues          | 4,78      | 6,23      | 6,04      |
| Immovable property tax revenue as % of tax revenues at local level | 17,02     | 17,34     | 17,39     |

Source: Hungarian Central Statistical Office (www.czso.cz), 30.5.2019.

Table 4: Business tax revenues and property tax revenues

| Year   | 2015     | 2016     | 2017     |
|--|----------|----------|----------|
| All revenues at regional and local level (in billion HUF)          | 2745,138 | 2240,787 | 2437,439 |
| All tax revenues at regional and local level (in billion HUF)      | 770,375  | 805,446  | 845,975  |
| Business tax revenue (in billion HUF)                              | 523,125  | 584,380  | 638,731  |
| Immovable property tax revenue (in billion HUF)                    | 131,091  | 139,641  | 147,156  |
| Business tax revenue as % of all local revenues                    | 19,05    | 26,08    | 26,20    |
| Immovable property tax revenue as % of all local revenues          | 4,78     | 6,23     | 6,04     |
| Business tax revenue as % of tax revenues at local level           | 67,90    | 72,55    | 72,50    |
| Immovable property tax revenue as % of tax revenues at local level | 17,02    | 17,34    | 17,39    |

Source: Hungarian Central Statistical Office (www.czso.cz), 30.5.2019.



### (Failed) Reform attempts

One of the possible ways to increase the immovable property tax revenue might be the implementation of *ad valorem* approach. As I have mentioned earlier the property (wealth) taxes are practically area based taxes in Hungary. Although the taxation based on the value of immovable is possible, but less than 1% of the municipalities by which the tax has been introduced has chosen this method (see Table 1 and 2) and the low number of these municipalities is practically constant. Therefore the legislation had several reform attempts on strengthening the *ad valorem taxation in Hungary*. In 2006 an *ad valorem* nature tax was introduced by the Act CXXI of 2005 on the Luxury Tax. This tax was an unbundled central tax (thus the tax was institutionalized by the central legislation, but the tax was municipal revenue). The subject of the tax were the residential properties which have a value of more than 100 million HUF (then about 400 000 EUR). The value of the residential buildings (flats and houses) was defined by an estimation based on the regulation of the Act. Thus practically the Annex of the Act has a nation-wide “value map” of the immovable. The rate of the tax was 0,5% of the value over 100 million HUF of the residential buildings. This Act was annulled by the Constitutional Court. The Res. No. 155/2008. (published on 17<sup>th</sup> December). The resolution was based on the discriminative nature of the act and on the violation of rule of law. It was highlighted by the Constitutional Court that the ‘estimation’ of the Annex of the Act – which was practically an irrefutable presumption on the value of the properties – has a discriminative nature and it is the violation of the principle of individual and fair treatment.

After the annulation of the luxury tax, a general wealth (property) tax was introduced. The introduction of this tax was linked to the economic stabilization package of Hungary after the economic crisis in 2008/2009. The regulation was based on the model of the former luxury tax, but a 10% possibility of deviation was allowed. This deviation could be defined by the municipalities,

thus the local governments have a narrow competence to define the tax base. This tax was annulled by the Constitutional Court, as well. The resolution was based on the violation of the rule of law, because the possibility of the deviation gave not a real remedy against the estimation, thus the principles of individual treatment and fair administrative procedure were offended by this regulation.

### Confiscatory taxes – and the practice of the Kúria (Supreme Court of Hungary)

Thus the property taxes are mainly area based taxes. As I have mentioned earlier, in the first part of the article, the maximum of the tax rate is defined by the Hatv. It is 1100UF/m<sup>2</sup> (based on the net area of the building) if the tax is based on the area of the building and practically 1,8% of the value of the building if it is an *ad valorem* tax. In land tax the maximum rate of the area based tax is 200HUF/m<sup>2</sup>, and practically 1,5% of the value of the land(lot) if it is an *ad valorem* tax. By this maximum rate approach the municipalities are allowed to define a lower tax rate as well. This maximum rate gives a possibility to the municipalities to define a tax rate which is adapted to the conditions of the municipality (especially to the values of the immovable). But this maximum rate could give an opportunity to violate the *principle of proportionality*. The main cases were linked to large immovable, which have had lower market value. Thus the proportionality of these taxes were interpreted by the Constitutional Court of Hungary and by the Kúria, by the Supreme Court of Hungary.

The new local tax system was introduced in 1991. In 1993 the first landmark case of the Constitutional Court was made. A land tax was introduced by the municipal decree of Municipality of Csoma (Somogy County in Southwestern Hungary). The tax rate was the maximum rate allowed by the Hatv. In the year 1991 it resulted a tax liability of 24,5 million HUF for a given taxpayers. The estimated value of the given land was 6,12 mil-

lion HUF (based on the estimation of a real estate expert). The Constitutional Court stated that a property tax can be interpreted as an unlawful, confiscatory tax if the actual tax rate exceeds 20% of the actual value of the property. This principle was based on the regulation on the general depreciation rate defined by the Accounting Act [Res. No. 1531/B/1991 (published on July 22<sup>nd</sup> 1993) of the Constitutional Court]. The 20% principle was later interpreted as a guiding rule and the proportionality of the local taxes were examined individually by the Constitutional Court. The practice of the Constitutional Court was later transformed by the new constitution, by the Fundamental Law. The practice following the entry into force of the Fundamental Law is based on the capacity of the taxpayer. If the capacity (ability) to pay taxes have not been impossible by the tax, the local property tax could be considered as lawful [Res. No. 3047/2016. (published on March 22<sup>nd</sup>) of the Constitutional Court].<sup>15</sup>

Before the entry into force of the Fundamental Law of Hungary the legality and constitutionality could be examined only by the Constitutional Court. This regulation have been transformed by the Fundamental Law: the legality of the local decrees are primarily examined by the court, by the Municipal Chamber of the Kúria (the Supreme Court of Hungary).<sup>16</sup> Because the principle of the proportionality can be derived from the Art 6 point c) of the Hatv. Therefore the Municipal Chamber of the Kúria have the right to review the legality of the local tax decrees. The first landmark case of the Kúria was the Res. No. Köf.5.081/2012/4. which stated that the local decree on the land tax is unlawful, because the actual tax liability was 70% of the market value of the given immovable. This tax rate was interpreted as a confiscatory one and the decree was annulled. Another case stated that the tax decree could not

applied in a given tax procedure, but the decree was not annulled. The main reason of the decision was that the tax liability of the given taxpayer was nearly 70% of the market value, therefore it has been a confiscatory one in the given case. But for the smaller immovable in the centre of the given municipality has effectively a lower tax rate (Res. No. Köf.5.038/2015/4.). It should be highlighted that the lower tax rate which was interpreted as a confiscatory one in the practice of the Kúria was 64%. Thus the Kúria had a clear practice, which was based on the local specialties, the financial situation of the given municipality and on the capacity of the taxpayers. This practice is transforming now, because the Hatv. has been amended and the art. 7 point g) states, that “[t]he local governments’ right to levy taxes shall be limited as follows ... the type of tax, the tax rate, exemption by ordinance and tax allowance may be decreed in such a way to ensure that on the whole such taxes shall remain consistent with local characteristics, the municipal government’s management requirements and the *financial ability of a broad community of taxpayers to bear it*”. Thus the approach of the capacity (financial ability) of the taxpayer has been transformed by the amendment of the Hatv. Formerly it was based on the principle of individual treatment, but now it is a less individualized one, because it is based on the capacity of a broad community. This amendment was strongly criticized by the experts, because the principle of individual treatment can be derived from the constitutional regulations, and therefore it is unclear whether it is in accordance with constitutional provisions.<sup>17</sup>

### Tax administrator

The immovable property tax revenue goes into the local budgets, depending on the location of the immovable property. Therefore the immovable property tax is administered by the local tax authorities, which are the municipal clerks, the professional heads of the municipal offices

<sup>15</sup> See Kecsó, supra note 12 at pp. 1550–1552.

<sup>16</sup> See Rozsnyai, K, §43 Geschichte der Verwaltungsgerechtigbarkeit in Ungarn, in: Sommermann, K-P & Schaffarik, B (eds), Handbuch der Geschichte der Verwaltungsgerechtigbarkeit in Deutschland und in Europa, Cham: Springer, pp. 1578–1581.

<sup>17</sup> See Kecsó, supra note 12 at pp. 1553–1554.

(and the joint municipal offices). Thus local taxes and charges in Hungary are always administered within the transferred jurisdiction, i.e. by the municipal office (and not by the municipality itself). It means that both the mayor and the city council are not participating in the tax administration at all. Moreover, because of the principle of secrecy, they cannot get any information about the taxpayers and their taxes, about the tax debtors, etc. Thus these cases are managed locally, but the remedies against the decisions of the (local) municipal clerks are reviewed by the County Government Offices which are the regional agencies of the central government.

The other obstacle to change the state tax office for the municipal office to administer the immovable property tax is the lack of competence of municipal employees. It must be remembered that there are more than 3000 municipalities in Hungary and many of them are extremely small with a very low number of inhabitants. However, the municipal administration was concentrated by the establishment of the joint municipal offices for the villages with less than 2000 inhabitants, but the number of municipal offices and joint municipal offices is now more than (in 2014 it was 1270).<sup>18</sup> It is really very difficult and many times even impossible to find any person capable for the tax administration in these small units.

### Conclusions – the main characteristics of the regulation in Hungary

The immovable property tax is a benefit tax and a good tax,<sup>19</sup> which has an important role in the Hungarian municipal revenue system: more than

6% of the local revenues are from these taxes, and it is the second most important local taxes. Therefore this revenue is important to finance the local expenditures, especially the local public services. It is more than certain the majority of the Hungarian municipalities are spending more money on the local public services than they receive by the local tax revenue. It is common in the European countries, that the majority of the municipal revenues are state aids.<sup>20</sup> Experts states, that the difference can serve as an argument for introducing one of the factors increasing the property tax, especially the local coefficient.<sup>21</sup>

Although the local property tax in Hungary is not based on the principle of self-application but on the administrative decisions of the local authorities (municipal and joint municipal offices), but the high quality tax law norms is demanded by the accountability and transparency of the tax administration. Because of restitutions issues and number of property-rich but income-poor people, it is necessary to consider introducing certain parameters and limits for the maximum extent of taxation.

The most problematic issue regarding immovable property taxation in Hungary is the are based nature of the taxes, by which the principle of proportionality can be violated in some cases. Therefore the requirement for a real *ad valorem* tax became a political issue in the last decades. After several failed reform attempts, and the shift of the taxation paradigm after 2010 – which is now based on the value added taxes and on local level on the local business tax – the politicians do not want to change the recent system, although a real *ad valorem* system of immovable proper-

<sup>20</sup> Kecső, supra note 5 at pp. 22–24.

<sup>21</sup> Radvan, M. How to Get Taxpayers to Pay Local Charges, in Radvan, M., Gliniecka, J., Sowiński, T., Mrkvyka, P. (eds.). The Financial Law towards Challenges in the XXI Century. Brno: Masaryk University, 2017. Pp. 340–348. Pp. 347–348. Radvan, M. Municipal Charges on Communal Waste: Do They Compete with the Immovable Property Tax? Journal of Financial Management of Property and Construction, vol. 24, no. 1, pp. 1–19. ISSN 1366-4387. doi:10.1108/JFMPC-02-2018-0007. p. 16.

<sup>18</sup> See Hoffman, I, Fazekas, J & Rozsnyai, K, Concentrating or Centralising Public Services? The Changing Roles of the Hungarian Inter-municipal Associations in the Last Decades. Lex Localis – Journal of Local Self-Government, 2016, vol. 14, no. 3, pp. 464–465. ISSN 1581-5374. 2016. doi:10.4335/14.3.453-473(2016).

<sup>19</sup> Youngman, J.M. A Good Tax. Boston: Lincoln Institute of Land Policy, 2016.

ty taxation would also bring some benefits, especially a proportional system can evolve. Therefore I recommend to consider the introduce not

only the theoretical possibility of the *ad valorem* property tax approach but a real *ad valorem* property tax in Hungary.

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