

Research Article

REDUCED VAT RATES ON HOUSING WITHIN SOCIAL POLICY AND LEGAL CERTAINTY: A COMPARATIVE ANALYSIS OF SLOVENIA AND SELECTED EUROPEAN JURISDICTIONS

Aleksandra Heinzer

ABSTRACT

Background: Article 98 and Annex III (10) of the EU's Directive 2006/112/EC permit reduced VAT rates for "the supply, construction, renovation and alteration of housing, as part of a social policy". While the provision grants Member States discretion, the Court of Justice of the European Union (CJEU) requires strict interpretation and compliance with the principles of legal certainty and proportionality. Slovenia applies a reduced VAT rate based almost exclusively on technical parameters such as maximum floor area, without income thresholds, formal certification or links to national housing policy. This raises questions about the coherence of the Slovenian regime with EU requirements and comparative practice.

Method: This article applies a doctrinal and comparative legal methodology. At the EU level, it examines Article 98 and Annex III (10) of the VAT Directive, as well as relevant CJEU case law, to determine the requirements of legal certainty, proportionality, and targeted social policy implementation.

DOI:

<https://doi.org/10.33327/AJEE-18-9.2-a000186>

Date of submission: 24 Nov 2025

Date of acceptance: 09 Feb 2026

Publication: 20 May 2026

Disclaimer:

The author declares that their opinion and views expressed in this manuscript are free of any impact of any organisations.

Copyright:

© 2026 Aleksandra Heinzer

At the national level, it analyses the Slovenian Value Added Tax Act and the Rules on the Implementation of the VAT Act. The comparative component covers twelve Member States and the United Kingdom, focusing on eligibility criteria, social targeting mechanisms, and administrative certification.

Results and Conclusions: *The analysis shows that Slovenia's technically elaborate reduced VAT regime lacks a coherent social policy focus. Undefined legal concepts, reliance on construction-law classifications, ambiguous treatment of appurtenant parts and leisure facilities, and the absence of income-based or certification mechanisms undermine legal certainty and targeting. In contrast, Member States such as France, Spain, Italy, Luxembourg, Portugal, and Romania employ income thresholds, administrative certification, value caps or claw-back mechanisms, while Slovenia and Hungary rely exclusively on technical parameters. Slovenia thus satisfies formal legal certainty but fails to meet the substantive requirements of proportionality and social targeting under the VAT Directive. This article recommends income-based eligibility criteria, administrative certification, clearer statutory definitions, and closer alignment with national housing policy objectives.*

1 INTRODUCTION

Value added tax (VAT) is the most important source of indirect tax revenue in the EU and a central pillar of national tax systems. In Slovenia, VAT accounted for more than one-third of total tax revenue in 2022.¹ While VAT is designed as a broadly neutral general consumption tax, concerns about its distributional impact reflect the long-standing view in the public-finance literature that consumption taxes may place a relatively heavier burden on lower-income households, raising questions of distributive fairness and social-policy design, a concern long recognised in the economic literature.² De la Feria has nevertheless emphasised that the widespread characterisation of VAT as inherently regressive is more nuanced than often assumed, and that policy responses based on reduced rates and exemptions are frequently poorly targeted instruments for achieving social objectives.³

A distinct question arises under EU law with regarding the principle of proportionality. In the VAT context, proportionality operates as a legal constraint on Member States' discretion and as a balancing tool in *CJEU* case law, alongside the structural principle of neutrality.⁴ The Court has repeatedly underlined that the discretion conferred by Article 98 of the Directive 2006/112/EC (VAT Directive) must be exercised consistently with the general

1 European Commission, *Taxation Trends in the European Union: Data for the EU Member States, Iceland and Norway* (Publications Office of the EU 2022) 25, doi:10.2778/259544.

2 Anthony B Atkinson and Joseph E Stiglitz, *Lectures on Public Economics* (McGraw-Hill, 1980); James A Mirrlees (ed), *Tax by Design: The Mirrlees Review* (OUP, 2011).

3 Rita de la Feria, 'Addressing VAT Regressivity' (2021) 132 *Revista Técnica Tributaria* 134-8.

4 Marco Greggi, 'Neutrality and Proportionality in VAT: Making Sense of an (Apparent) Conflict' (2020) 48(1) *Intertax* 123-5, doi:10.54648/taxi2020009.

principles of EU law, including legal certainty and proportionality. Against this background, and to mitigate the regressive tendencies of VAT, Article 98 of the VAT Directive allows Member States to apply reduced VAT rates to goods and services listed in Annex III, including, under point 10, “the supply, construction, renovation and alteration of housing, as part of a social policy”. This provision gives Member States the discretion to tailor VAT measures to social objectives, yet EU law simultaneously requires compliance with the principles of legal certainty and proportionality, as underscored by CJEU case law.⁵

Consumption taxes such as VAT are traditionally regarded as regressive because lower-income households allocate a larger share of their budget to consumption; however, recent empirical evidence suggests a more nuanced picture. Thomas, using household-level expenditure data across twenty-seven OECD countries, finds that when VAT is measured relative to consumption rather than income, the tax tends to be broadly proportional or even slightly progressive, largely due to the compensatory effect of social transfers that mitigate its regressivity.⁶ Nevertheless, this does not diminish concerns about the distributional burden of VAT, nor does it justify the widespread policy reliance on reduced rates and exemptions. As de la Feria demonstrates, an extensive body of legal and economic evidence shows that exclusions from the VAT base, introduced on equity grounds, are ineffective in achieving meaningful redistributive goals and persist primarily for political rather than economic reasons.⁷ Empirical microsimulation results for Croatia further confirm this view: Rubil finds that “socially motivated” reduced VAT rates benefit all consumers, including higher-income households, while redirecting the fiscal cost of these reduced rates into targeted social transfers produces superior outcomes, reducing poverty and post-fiscal income inequality despite the VAT becoming mechanically more regressive.⁸ Together, these findings indicate that equity concerns linked to VAT regressivity are best addressed not through reduced VAT rates, but through well-designed, targeted transfer mechanisms outside the VAT system.

The 2022 reform of the VAT Directive⁹ introduced Articles 105a and 105b, establishing specific, partly transitional derogation regimes within the general framework of Article 98 and

5 Case C-416/85 *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland* (CJEU, 21 June 1988) EU:C:1988:321; Case C-161/14 *European Commission v United Kingdom of Great Britain and Northern Ireland* (CJEU, 4 June 2015) EU:C:2015:355; Case C-278/24 *PK v Dyrektor Izby Administracji Skarbowej we Wroclawiu* (CJEU, 30 April 2025) EU:C:2025:299.

6 Alastair Thomas, *Reassessing the Regressivity of the VAT* (OECD Taxation Working Papers no 53, OECD Publishing 2020) 11, doi:10.1787/b76ced82-en.

7 De la Feria (n 3).

8 Ivica Rubil, ‘Distributivni učinci ukidanja “socijalno motiviranih” sniženih stopa PDV-a radi povećanja izdašnosti i obuhvata cilja’ (2022) 29(2) *Revija za socijalnu politiku* 129-30.

9 Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax [2006] OJ L 347/1, arts 98, 105a, 105b; Annex III pt 10; Directive (EU) 2022/542 of 5 April 2022 amending Directives 2006/112/EC and (EU) 2020/285 as Regards Rates of Value Added Tax [2022] OJ L 107/1.

Annex III. Article 105a lays down the conditions under which Member States may continue to apply super-reduced or zero rates and certain 'parking rates' that were in force on 1 January 2021, as well as the possibility to opt for derogations applied by other Member States. In contrast, Article 105b creates a transitional regime for transactions relating to housing that are not part of a social policy, allowing Member States to maintain reduced rates lawfully applied on 1 January 2021, even where those rates are below 12%, subject to the requirement that from 1 January 2042 onwards the applicable rate must not fall below 12%.

In other words, EU law permits derogations only for Member States that had already introduced them before 1 January 2021, under the specific conditions laid down in Articles 105a and 105b. Slovenia has not notified any derogation falling under Article 105b. Its reduced VAT rate on housing-related transactions operates within the ordinary framework of Article 98 in conjunction with point 10 of Annex III, which covers not only housing provided as part of a social policy but also renovation and repair services carried out on private dwellings, subject to national conditions.

While Slovenian law thus applies reduced rates to both socially targeted housing measures and certain non-social renovation services,¹⁰ the present article focuses on the social-policy dimension. To understand Slovenia's implementation challenges in that respect, it is first necessary to situate its approach within the broader objectives of Directive (EU) 2022/542. This contextual bridge allows the analysis to move from EU-wide reforms to national application, ensuring that the specificities of Slovenian law are assessed within the wider legal and policy framework established at the EU level.

In Slovenia, the part of point 10 of Annex III relating to housing provided as part of a social policy is implemented primarily through technical eligibility thresholds based on dwelling size, namely a maximum floor area of 120 m² for apartments and 250 m² for single-family houses.¹¹ These criteria, embedded in the PZDDV, operate without reference to household income, social vulnerability, or formal certification mechanisms.¹² No cross-reference is made to the National Housing Programme 2015–2025 (ReNSP15-25) or to any administrative verification procedure.¹³ This approach has generated legal uncertainty, as taxpayers and administrators lack clear and predictable rules on the scope and purpose of

10 Law of the Republic of Slovenia no 1068-IV of 27 October 2006 'Value Added Tax Act (ZDDV-1)' [2006] Uradni list RS 117, Annex I pt 11, as amended [in Slovenian] <<https://pisrs.si/pregledPredpisa?id=ZAKO4701>> accessed 25 January 2026.

11 Rules on the Implementation of the Value Added Tax Act of 15 December 2006 (PZDDV) [2006] Uradni list RS 141, as amended [in Slovenian] <<https://pisrs.si/pregledPredpisa?id=PRAV7542>> accessed 25 January 2026.

12 Aleksandra Heinzer, 'Pregled DDV zakonodaje na področju uporabe znižane DDV stopnje za dobavo, gradnjo, obnovo in popravila stanovanj v Sloveniji' (*Davčno svetovalna zbornica Slovenije*, 1 March 2024) <https://www.dszs.si/mnenja_clanov> accessed 25 January 2026.

13 Resolution of the Ministry of the Environment and Spatial Planning no 0736-VII of 24 November 2015 'On the National Housing Programme 2015–2025 (ReNSP15-25)' [2015] Uradni list RS 92 [in Slovenian].

the reduced rate. As emphasised in the *OECD Economic Surveys: Slovenia 2024*, VAT design remains a central element in shaping housing affordability, yet poorly targeted reduced rates offer little distributive relief.¹⁴ In Slovenia, housing VAT relief is granted without any social criteria, leading to significant efficiency and equity concerns.

Comparative practice shows that several Member States, such as Spain, France, and Luxembourg, require certification, income-based eligibility or claw-back mechanisms to ensure that reduced rates apply only to social or affordable housing. By contrast, Slovenia's framework applies automatically to any dwelling within the prescribed size limits, regardless of social criteria. Against this background, this article addresses a single overarching research question:

How does Slovenia's reduced VAT rate on housing, adopted under Article 98 and Annex III (10) of the VAT Directive, compare with selected European jurisdictions in terms of legal certainty, proportionality and social-policy targeting?

This article contributes to the literature by providing a normative legal assessment of the compatibility of Slovenia's regime with EU law and by highlighting the implications of the absence of social criteria for legal certainty and fairness. The findings underline that Slovenia's current framework raises doubts about its compliance with EU principles and the social objectives underlying reduced VAT rates.

To answer this question, the article applies a doctrinal and comparative legal analysis of Slovenian and EU VAT rules, assessing how the Slovenian framework aligns with selected Member States and with the objectives of Article 98 and Annex III (10) to the VAT Directive.

2 EU AND NATIONAL FRAMEWORKS

2.1. Contextual Background and National Framework

This section examines the Slovenian legal framework governing the application of reduced VAT rates to housing. It outlines the relevant provisions of the Value Added Tax Act (ZDDV-1) and the Rules on its Implementation (PZDDV), together with the Construction Act (GZ-1), the Regulation on the Classification of Structures and the Technical Guideline TSG-V-006:2022, to identify how eligibility for the reduced rate is defined and whether these rules incorporate social-policy criteria or rely primarily on technical parameters.¹⁵

14 OECD, *OECD Economic Surveys: Slovenia 2024* (OECD Publishing 2024) 87, doi:10.1787/bc4a107b-en.

15 ZDDV-1 (n 10); PZDDV (n 11); Law of the Republic of Slovenia no 1961-VIII of 9 December 2021 'Construction Act (GZ-1)' [2021] Uradni list RS 199, as amended [in Slovenian] <<https://pisrs.si/pregledPredpisa?id=ZAKO8244>> accessed 25 January 2026; Technical guideline TSG-V-006: 2022: Classification of Objects [2021] Uradni list RS 199.

The analysis reveals several ambiguities: the undefined terms “permanent residence” and “investor”, the absence of income- or vulnerability-based eligibility criteria, and the lack of certification requirements.

Although Annex I, point 11 ZDDV-1 refers to housing “intended for permanent residence”, this phrase is not defined in Slovenian VAT law. The implementing regulation partially addresses this gap. Article 54(4) of the Rules on the Implementation of the VAT Act provides that the intended use of buildings must be determined by reference to the Regulation on the Classification of Structures adopted under construction law. This cross-reference to construction law suggests that classification as a residential building may be sufficient to qualify a dwelling as being “intended for permanent residence” for VAT purposes. However, this approach raises significant concerns from a social policy perspective. The Regulation on the Classification of Structures encompasses not only primary residences but also certain holiday homes that do not necessarily satisfy the “intended for permanent residence” criterion. As a result, eligibility for the reduced VAT rate may depend primarily on technical planning classifications rather than on substantive social-policy criteria such as household income, vulnerability, or effective long-term occupation.

This reliance on construction-law categories risks diluting the social-policy rationale underpinning point 10 of Annex III to the VAT Directive and may undermine the targeted character of the Slovenian regime.

Likewise, the requirement in Article 54(1) PZDDV that supplies be made “directly to the investor” draws on the definition of “investor” in the GZ-1, but this does not clarify how the concept applies when non-owners (such as tenants commissioning minor works) engage contractors.

A further ambiguity arises from Article 54(2) of the Rules on the Implementation of the VAT Act. That provision defines “appurtenant parts” of qualifying residential buildings as individual units and common areas, as well as structural elements, installations, equipment and fittings, if they are jointly used by residents for permanent living and owned by the apartment owners in the building.

In practice, however, this distinction is difficult to apply. The regulation does not specify how the boundary between residential appurtenances and “leisure” facilities is to be drawn, nor does it clarify the criteria for determining whether a given space is genuinely linked to permanent residence or primarily intended for recreation. Questions arise, for example, as to whether shared wellness areas, saunas, hobby rooms or multipurpose spaces within residential complexes fall inside or outside the scope of the reduced rate.

The absence of interpretative guidance on these notions further exacerbates legal uncertainty. It leaves both taxpayers and tax authorities with significant discretion, thereby undermining the predictability and targeted character of the Slovenian regime.

These gaps mirror concerns widely recognised in the literature on tax simplicity, clarity, and targeting. Poorly defined eligibility conditions increase the risk of misapplication, system abuse, and unintended beneficiaries. Engelschalk and Loeprick show that simplified or preferential regimes that rely on broad or vague criteria are prone to targeting failures and administrative inconsistency.¹⁶ The OECD likewise observes that Slovenia applies reduced VAT rates to housing without income thresholds, social-vulnerability criteria, or administrative certification, raising concerns about fairness and effective policy targeting.¹⁷ In the broader tax-equity literature, Cuyo and Morales argue that the design and application of VAT in Ecuador have regressive distributional effects, disproportionately burdening lower-income households and raising concerns about compliance with principles of equality and non-discrimination.¹⁸

Legal certainty is a fundamental principle of EU law that requires tax legislation to be clear, predictable, transparent, and non-retroactive, thereby protecting taxpayers from arbitrary or inconsistent fiscal measures. The CJEU has held that the principle of legal certainty aims to ensure the predictability of legal situations and requires that a taxable person's position regarding their rights and obligations vis-à-vis the tax authorities cannot be called into question indefinitely, thereby enabling taxpayers to foresee how the authorities may act.¹⁹ Recent scholarship highlights that legal certainty also depends on the predictability and internal coherence of judicial decision-making: Brzeziński and Franczak show that inconsistent interpretative shifts undermine transparency and weaken taxpayers' trust in the stability of tax law.²⁰

From a tax-policy perspective, legal certainty is closely linked to the principle of simplicity. Ryesky notes that excessive complexity, overlapping rules, and ambiguous statutory language increase compliance burdens, diminish comprehensibility for ordinary taxpayers, and heighten the risk of inconsistent administrative application.²¹ These theoretical insights underline that clarity, transparency, predictability, and simplicity jointly support the proper functioning of VAT and are essential to ensuring that reduced VAT rates achieve their intended social-policy objectives.

16 Michael Engelschalk and Jan Loeprick, *MSME Taxation in Transition Economies: Country Experience on the Costs and Benefits of Introducing Special Tax Regimes* (Policy Research Working Paper 7449, World Bank Group 2015) doi:10.1596/1813-9450-7449.

17 OECD (n 14).

18 Jomayra Nicol Cuyo Caisaguano y Martha Alejandra Morales Navarrete, 'Análisis sobre el principio de igualdad y no discriminación en la aplicación del Impuesto al Valor Agregado en el Ecuador' (2024) 17(27) *Misión Jurídica: Revista de Derecho y Ciencias Sociales* 139-43, doi:10.25058/1794600X.2463.

19 Case C-615/21 *Napfény-Toll Kft v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága* (CJEU, 13 July 2023) ECLI:EU:C:2023:573, para 40.

20 Bogumił Brzeziński and Agnieszka Franczak, 'In Search of a Strategy for the Interpretation of Tax Law by Courts' (2024) 16(4) *Krytyka Prawa* 57-8, 74-5, doi:10.7206/kp.2080-1084.720.

21 Kenneth H Ryesky, 'Tax Simplification: So Necessary and So Elusive' (2004) 2(2) *Pierce Law Review* 93-6, 101-3.

Building on this literature, the following sections assess whether Slovenia's implementation of the reduced VAT rate for housing satisfies the requirements of legal certainty under EU law and how this framework compares with the approaches adopted in other Member States.

2.2. Legal and Theoretical Framework

This section sets out the EU law framework governing reduced VAT rates on housing, the theoretical concepts used in the analysis. Then it turns to the relevant CJEU case law and the broader economic and administrative law debates.

At the EU level, Member States' discretion to introduce reduced rates derives from Article 98 of the VAT Directive, but this discretion is legally constrained by the structural principles of the common VAT system and by the general principles of EU law. In interpreting VAT rules, the CJEU often faces the challenge of reconciling the principle of strict interpretation of exemptions with the need to preserve fiscal neutrality, creating a delicate balance between formal precision and economic fairness. As de la Feria et al. note (2015), this tension illustrates that legal certainty in taxation is not merely procedural but also substantive; it safeguards equality and prevents arbitrary administrative action.²²

The CJEU has consistently emphasised that derogations from the standard VAT rate must be interpreted strictly and apply only to clearly defined categories listed in Annex III to the VAT Directive. Compared with several other Member States, such as Spain, France, and Luxembourg, which operationalise reduced VAT rates for housing through certification, income thresholds, or clawback mechanisms, Slovenia relies almost exclusively on technical parameters.

Against that EU-law background, the limits of Member States' discretion are primarily shaped through judicial review, with proportionality emerging as the central doctrinal tool.

As Sauter notes, the proportionality principle in EU law serves as a key supervisory mechanism ensuring that the exercise of national discretion remains within the bounds of necessity and suitability for the stated objectives.²³ Similarly, Joosen interprets proportionality as an area of controlled national discretion, where Member States retain policy flexibility but within a framework that preserves coherence with EU law.²⁴

22 Rita de la Feria, *EU VAT Principles as Interpretative Aids to EU VAT Rules: The Inherent Paradox* (Working Paper 16/03, Oxford University Centre for Business Taxation 2016) 1-2, 25-6.

23 Wolf Sauter, 'Proportionality in EU Law: A Balancing Act?' (2013) 15(1) *Cambridge Yearbook of European Legal Studies* 440-1, 448, doi:10.5235/152888713809813611.

24 Bart PM Joosen, *The Principle of Proportionality as an Area of National Discretion* (Working Paper Series 151, EBI 2023) 12-5.

These general principles operate across the VAT system and strictly limit the scope for divergent national implementation.

In VAT matters, this balance is particularly visible in optional regimes such as VAT grouping under Article 11 of the VAT Directive, which allows Member States to treat legally independent persons who are closely bound by financial, economic and organisational links as a single taxable person. When exercising that option, national discretion remains conditioned by the structural principles of the common VAT system.²⁵ The sources suggest that deviation from EU directives is highly constrained, as implementation must strictly adhere to the general principles of EU law. Member States, therefore, enjoy only limited room for manoeuvre when transposing or applying directives. As Hartkamp et al. emphasise, the general principles of EU law have a constitutional nature and form part of primary law, subjecting all national implementation to strict judicial scrutiny.²⁶

This general understanding is reflected in CJEU case law. The principle of proportionality serves as a fundamental constraint on the legislative and administrative discretion of Member States when implementing the VAT Directive. It requires that national measures pursuing legitimate fiscal or social policy objectives be suitable for achieving those aims and not go beyond what is necessary. The CJEU established this three-step proportionality test in *Fedesa* (C-331/88), holding that any restrictive measure must be appropriate, necessary, and not disproportionate to the objectives pursued.²⁷ In parallel, the Court has clarified that the general principles of legal certainty and the protection of legitimate expectations must be respected when Member States modify or withdraw fiscal advantages. In *Plantanol* (C-201/08), although it concerned excise duties on biofuels rather than VAT, the CJEU held that the early repeal of a tax exemption was not contrary to EU law per se if the changes were clear and foreseeable and afforded adequate time for adaptation. The ruling reaffirmed that legal certainty requires both clarity and predictability in legislative measures, especially where financial burdens are imposed, and that legitimate expectations must be assessed in concrete terms regarding whether a prudent economic operator could reasonably foresee the legislative change.²⁸

As Mudrecki explains, proportionality serves a dual role in tax law: it protects taxpayers from excessive public intervention while preserving the effectiveness of tax collection. He further notes that this judicial approach limits Member States' discretion by requiring that

25 B Gryziak, 'VAT Groups and the Right of Deduction across the European Union: Review and Analysis' (2021) 32(4) *International VAT Monitor*. doi:10.59403/3299jar.

26 Arthur S. Hartkamp, 'The General Principles of EU Law and Private Law' (2011) 75 *Rechtszeitschrift für ausländisches und internationales Privatrecht* 241-3.

27 Case C-331/88 *The Queen v Ministry of Agriculture, Fisheries and Food, ex parte Fedesa and Others* (CJEU, 13 November 1990) EU:C:1990:391, para 13.

28 Case C-201/08 *Plantanol GmbH & Co. KG tegen Hauptzollamt Darmstadt* (CJEU, 10 September 2009) EU:C:2009:539, paras 43-46, 49-53, 57 and 68.

domestic VAT provisions respect both necessity and coherence with EU objectives.²⁹ In a broader review of tax jurisprudence, Beshi and Susuri confirm that proportionality now functions as a central benchmark in the CJEU's analysis of fiscal measures.³⁰

Recent legislative reforms have added a further layer to the EU framework governing reduced VAT rates. Directive (EU) 2022/542 introduced transitional arrangements allowing certain Member States to retain pre-existing reduced VAT rates that fall outside the ordinary system of Article 98 and Annex III of the VAT Directive. Such derogation-based regimes form a distinct category within EU VAT law, and the present analysis does not address them. Instead, it focuses on housing-related reduced VAT rates applied under the general system of Article 98 and Annex III (10) of the VAT Directive.

More generally, the taxation of housing under VAT has long generated extensive debate about the social role of housing, since taxing residential construction and sales without compensatory mechanisms may exacerbate inequality.³¹

From an economic perspective, Thomas concludes that reduced VAT rates are poorly targeted and administratively costly.³² Cnossen likewise criticises rate differentiation in the housing sector as distorting the neutrality of VAT and advocates a broader application of the standard rate within a reformed housing regime.³³ These perspectives form the theoretical basis for assessing whether technically defined housing regimes can fulfil the redistributive and legal-certainty objectives inherent in Article 98 and Annex III(10) of the VAT Directive.

Beyond VAT-specific doctrine, the limits of national discretion can also be illuminated by broader administrative law theory. As Ivanova notes, the balance between administrative discretion and judicial control constitutes a cornerstone of modern governance, ensuring that public decision-making remains aligned with legality, transparency and the rule of law.³⁴ Although developed primarily in the context of administrative courts, this conceptual framework provides a valuable analogy for interpreting national discretion under Article 98 of the VAT Directive. In both settings, discretion does not represent an autonomous sphere of freedom, but rather a delegated competence exercised within boundaries set by higher legal norms. Judicial review,

29 Artur Mudrecki, 'The Contemporary Significance of the Principle of Proportionality in Tax Law' (2021) 26(4) *Białostockie Studia Prawnicze* 37, 39-40, 44-5, doi:10.15290/bsp.2021.26.04.03.

30 Simeana Beshi and Driola Susuri, 'Proportionality Principle in the CJEU Judgments on Tax Cases' (2023) 9(4) *Lex Portus* 28, doi:10.26886/2524-101X.9.4.2023.3.

31 Satya N Poddar, 'Taxation of Housing Under a VAT' (2010) 63 *Tax Law Review* 901.

32 Alastair Thomas, *VAT Rate Structures in Theory and Practice* (Policy Research Working Paper 10677, World Bank Group 2024) 2-3, doi:10.1596/1813-9450-10677.

33 Sijbren Cnossen, 'A Proposal to Improve the VAT Treatment of Housing in the European Union' (2011) 32(4) *Fiscal Studies* 457.

34 Roksolana Ivanova, 'Growing Influence of Judicial Control of Administrative Courts on Public Administration Bodies' (2023) 9 *Economics, Finances and Law* 82, doi:10.37634/efp.2023.9.19.

therefore, functions as a corrective mechanism, ensuring that discretionary measures, whether administrative or fiscal, remain proportionate, transparent and consistent with the objectives of the governing legal framework. In the VAT context, this is reflected in the CJEU's role in delineating the limits of Member States' discretion to apply reduced rates, thereby safeguarding the coherence and uniformity of the common VAT system.

Building on this discussion of proportionality and the general principles of EU law, it is also necessary to distinguish between the formal and substantive dimensions of legal certainty, which play a central role in the interpretation and application of VAT provisions.

These two dimensions differ fundamentally in their approach to predictability and the acceptability of legal decision-making. Formal legal certainty concerns the predictability of legal norms, requiring VAT provisions to be clear, stable, and intelligible so that taxpayers can accurately anticipate the legal consequences of their actions. In contrast, substantive legal certainty extends beyond mere predictability, focusing on the rational acceptability of legal decisions within the tax community and their coherence with the underlying principles of justice.³⁵

In the VAT context, this distinction manifests as a tension between strict procedural compliance and the protection of substantive rights. As Barth et al. observe, the non-fulfilment of certain formal requirements does not necessarily invalidate a taxpayer's substantive entitlement, particularly where the underlying transaction remains genuine and properly documented. Substantive legal certainty, therefore, allows for a more purposive and economically realistic interpretation of VAT law, prioritising the true substance of the transaction over rigid procedural formalism.³⁶

Lifante-Vidal et al. further emphasise that legal certainty cannot be completely detached from substantive justice, as formal rules must always be interpreted within a broader normative and contextual framework. In VAT law, this interplay between formal and substantive dimensions underscores the need for balanced interpretation, one that preserves predictability for taxpayers while ensuring outcomes that remain fair, rational, and consistent with the objectives of the common VAT system.³⁷

Against this theoretical and doctrinal background, this article does not contend that Slovenia has failed formally to transpose the VAT Directive. The Slovenian reduced rate on housing is, in principle, anchored in Article 98 of the VAT Directive and point 10 of Annex

35 Elina Paunio, 'Beyond Predictability: Reflections on Legal Certainty and the Discourse Theory of Law in the EU Legal Order' (2009) 10(11) *German Law Journal* 1469, doi:10.1017/S2071832200018332.

36 Fabian Barth, 'CJEU Case Law on Exercising Rights Under EU VAT: Is There a Golden Thread in the Distinction Between Substantive and Formal Conditions?' (2022) 31(6) *EC Tax Review* 341, doi:10.54648/ecta2022033.

37 Isabel Lifante-Vidal, 'Is Legal Certainty a Formal Value?' (2020) 11(3) *Jurisprudence* 456, doi:10.1080/20403313.2020.1778289.

III, and therefore falls within the discretion accorded to Member States. The core of the critique developed in this study concerns the way discretion has been exercised at the national level, in particular through reliance on purely technical eligibility criteria, the absence of income- or vulnerability-based conditions and certification mechanisms, and the resulting lack of legal certainty and social targeting.

The analysis further demonstrates that these weaknesses become especially visible when Slovenia's model is placed in a comparative perspective. Several Member States operating under the same legal framework have complemented reduced rates for housing with administrative controls or social-policy criteria designed to confine the benefit to genuinely social housing. The Slovenian framework does not appear to breach EU law *per se*, but rather illustrates a minimalist use of the discretion left by the VAT Directive, combined with drafting choices that generate uncertainty and weaken the social-policy rationale of the measure. It is this combination, rather than a simple failure of transposition, that forms the central focus of the present research.

3 METHODOLOGY

3.1. Analytical Approach

This study applies a doctrinal and comparative legal methodology to examine the coherence of Slovenia's reduced VAT rate on housing with the objectives and principles of EU law. The doctrinal component entails the systematic location, interpretation and synthesis of legal sources, including legislation, case law and scholarly writings, to clarify the content of the law, analyse the relationships between legal rules and principles, identify internal inconsistencies and develop normative arguments concerning the proper interpretation and application of the legal framework.³⁸ This understanding of doctrinal legal research also draws on accounts which describe doctrinal research as a process of identifying legal problems, analysing authoritative sources and producing reasoned conclusions and recommendations.³⁹

At the EU level, the research examines the legal basis and interpretation of reduced VAT rates, drawing on key CJEU judgments. In particular, the Court has stressed that reduced rates constitute an exception to the standard rate and may be applied only within the strict conditions laid down in Article 98 and Annex III.⁴⁰ More generally, CJEU case law also

38 Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17(1) *Deakin Law Review* 83, doi:10.21153/dlr2012vol17no1art70.

39 Nasir Majeed, Amjad Hilal and Arshad Nawaz Khan, 'Doctrinal Research in Law: Meaning, Scope and Methodology' (2023) 12(4) *Bulletin of Business and Economics* 559, doi:10.61506/01.00167.

40 Case C-161/14 (n 5) paras 22–25.

highlights the need for uniform interpretation of EU VAT concepts and the principle that discretionary choices must remain bounded by higher-order legal norms.⁴¹

At the national level, the analysis focuses on the ZDDV-1, specifically Article 41 and Annex I, point 11, and the PZDDV, notably, Articles 54 and 54.a. These provisions are examined together with the GZ-1 and the Regulation on the Classification of Structures, to determine how eligibility for the reduced VAT rate is defined and whether it incorporates elements of social policy or only technical criteria.

This study relies on a doctrinal and comparative legal methodology. It does not attempt to measure the price effects of reduced VAT rates or their distributive impact across income groups. Nor does it systematically analyse administrative practice beyond published guidance and official reports. The qualitative and normative character of the analysis reflects the legal nature of the research question: rather than engaging in econometric modelling or statistical evaluation, the article assesses the design of VAT rules against EU-law standards such as legal certainty, proportionality and social-policy targeting through interpretative reasoning and doctrinal evaluation.⁴²

3.2. Comparative Scope and Criteria

The comparative component examines twelve EU jurisdictions: Spain, Portugal, France, Italy, Luxembourg, Romania, Austria, Croatia, Malta, the Netherlands, and Hungary, and the United Kingdom. This selection represents diverse legal traditions and policy approaches, ranging from socially targeted systems (Spain, France, Luxembourg, Portugal, and Italy) to formally neutral or technical models (Austria, Malta, the Netherlands, Hungary, and Slovenia). Romania was included to represent an additional Central and Eastern European jurisdiction, combining objective eligibility criteria with a limited form of targeting based on value and size thresholds. The comparison follows three analytical criteria:

- Existence of explicit social or administrative eligibility requirements (e.g. income thresholds, certification of social housing, claw-back provisions);
- Integration of technical or legal definitions within the VAT framework (e.g. references to construction standards, classification codes, or residence criteria); and
- Extent of alignment with CJEU principles on legal certainty and proportionality.

The study relies exclusively on legal and documentary sources, including EU and national VAT legislation, government regulations, and authoritative commentaries. It adopts a qualitative, normative approach rather than empirical or econometric analysis. Its objective

41 Case C-331/88 (n 27) paras 12–17 ; Case C-497/01 *Zita Modes Sàrl v Administration de l'enregistrement et des domaines* (CJEU, 27 November 2003) EU :C:2003:644, paras 31–32, 39–41.

42 Majeed, Hilal and Khan (n 39) 559–61.

is to provide a coherent legal assessment of the Slovenian model within the wider European framework, identifying how design differences affect compliance with EU principles and the effectiveness of social targeting.

Neighbouring jurisdictions are included on methodological grounds commonly recognised in comparative legal scholarship, according to which the choice of legal systems must be guided primarily by the research aims and questions, as well as by historically, institutionally and socio-economically relevant contexts. Comparative methodology emphasises that legal systems should not be selected arbitrarily but based on criteria that make functional and structural comparison meaningful, including shared legal traditions, similar institutional frameworks or historically contingent developments. In this sense, the comparison of geographically proximate systems may be particularly informative where proximity coincides with such contextual commonalities, while remaining attentive to the risk that apparently similar solutions may conceal deeper doctrinal or cultural divergences.⁴³

3.3. Selection of Jurisdictions

The selection of jurisdictions for this comparative analysis is guided by both geographic and methodological considerations. Neighbouring countries such as Austria, Croatia, Italy, and Hungary were included due to their geographic proximity and shared legal-historical context with Slovenia, enabling meaningful regional comparisons within Central and Southern Europe. Additional Member States, such as France, Spain, Portugal, Luxembourg, the Netherlands, and Malta, were chosen to represent a diversity of legal and administrative approaches to implementing reduced VAT rates on housing, ranging from socially targeted systems to formally neutral frameworks. The inclusion of the United Kingdom, although no longer an EU Member State, is justified by its long-standing participation in the EU VAT system and its significant influence on the evolution of EU case law, including several judgments discussed in this article. Collectively, this selection enables a balanced examination of both continental and common law perspectives, thereby enhancing the generalisability and doctrinal depth of the comparative findings.

4 ANALYSIS AND RESULTS

4.1. Legal Uncertainty in the Slovenian Framework

In Slovenia, the legal analysis identifies three principal sources of uncertainty in the application of the reduced VAT rate on housing. First, phrases such as “permanent residence” and “investor” are not legally defined for VAT purposes, leaving their interpretation to administrative discretion. Second, the framework references external

43 Mark Van Hoecke, 'Methodology of Comparative Legal Research' [2015] Law and Method 4-6, doi:10.5553/REM/.000010.

technical standards (e.g., building codes and the Slovenian Classification of Structures) without fully integrating them into the VAT law, which creates instability when those standards change. Third, proportionality mechanisms are absent: all dwellings within the size limits qualify, regardless of buyer status or property value.

CJEU case law requires a strict interpretation of derogations from the standard VAT rate. Applied to Slovenia, these rulings suggest that floor-area criteria, without social targeting, do not sufficiently reflect the rationale of Article 98 of the VAT Directive.

4.2. Comparative Analysis of Selected Member States

The comparative analysis of twelve jurisdictions shows that Slovenia's model is atypically narrow in its reliance on technical thresholds. Other Member States introduce explicit social or administrative conditions:

1. **Spain** applies a 4% reduced VAT rate to dwellings that are officially classified as “social housing” (Viviendas de Protección Oficial) under a special or public promotion regime. Eligibility requires prior administrative designation by the competent regional authority and applies only to first supplies made by the developer.⁴⁴
2. **Portugal** applies a 6% reduced rate only to specific construction and renovation works linked to social or controlled-cost housing and urban rehabilitation. This includes projects certified by the housing authority (IHRU), rehabilitation works in officially designated urban areas, and renovation of dwellings where incorporated materials do not exceed 20% of the contract value. The reduction thus targets affordable and socially oriented housing initiatives rather than the housing market in general.⁴⁵
3. **France** applies reduced VAT rates of 5.5% and 10% only to operations relating to social housing and certain social homeownership or urban renewal projects, subject to strict administrative certification. These rates cover the construction, acquisition, or improvement of dwellings financed through regulated social housing loans, as well as accession-to-ownership schemes and renovations in priority urban areas. The reduced rates thus target projects serving public housing and social cohesion objectives, while ordinary residential construction or market-rate housing remains subject to the standard 20% rate.⁴⁶

44 Law of the Kingdom of Spain no 37/1992 of 28 December 1992 ‘On Value Added Tax’ [1992] BOE 312, art 91, as amended [in Spanish] <<https://www.boe.es/buscar/act.php?id=BOE-A-1992-28740>> accessed 25 January 2026.

45 Decree-Law of the Portuguese Republic no 394-B/84 of 26 December 1984 ‘Value Added Tax Code’ [2008] Diário da República 102, Annex I, as amended [in Portuguese] <<https://diariodarepublica.pt/dr/legislacao-consolidada/decreto-lei/2008-34500675>> accessed 25 January 2026.

46 French General Tax Code, art 278 sexies A <<https://french-business-law.com/french-legislation-art/article-278-sexies-a-of-the-french-general-tax-code/>> accessed 25 January 2026.

4. **Italy** links reduced VAT rates to non-luxury and socially classified housing as defined by the Ministerial Decree of 22 April 2008. The decree defines *alloggio sociale* as housing provided for permanent rental to address social needs and ensure access for households unable to obtain accommodation on the free market. Reduced rates (typically 4% or 10%) apply to the supply and construction of such dwellings when they meet the criteria for social housing or non-luxury residential use, as certified under the relevant national and regional housing programmes.⁴⁷
5. **Luxembourg** applies a super-reduced VAT rate of 3% to the supply, construction, and renovation of dwellings intended as the purchaser's principal residence. The measure is subject to a maximum eligible amount per dwelling and to prior certification by the tax administration. If the property ceases to be used as the principal residence within a prescribed period, the benefit is partially clawed back.⁴⁸
6. **United Kingdom** structures housing related VAT relief through two regimes. The construction and first sale of new dwellings, as well as buildings intended for relevant residential or charitable purposes, are zero-rated (0%), provided that statutory planning consent exists and each dwelling constitutes a self-contained residential unit. A reduced rate of 5% applies to renovation or conversion works, notably the conversion of non-residential buildings into dwellings and the renovation of homes that have been vacant for at least two years.⁴⁹
7. **Austria** taxes the construction and sale of dwellings at the standard rate of 20%, as no reduced rate applies to housing construction.⁵⁰
8. **Croatia** does not apply a reduced rate, but instead regulates housing affordability through the POS scheme, which sets clear income, age, and residency conditions.⁵¹ Although the POS scheme significantly contributes to housing affordability in Croatia, it operates entirely outside the VAT system and, therefore, does not constitute a social-policy mechanism within the meaning of Article 98 and Annex III (10) of the VAT Directive; its relevance in this analysis lies in demonstrating that social targeting can be achieved through instruments other than reduced VAT rates.

47 Decree of the Ministry of Infrastructure of the Italian Republic of 22 April 2008 'Definition of social housing for the purposes of exemption from the obligation to notify State aid, pursuant to Articles 87 and 88 of the Treaty establishing the European Community' [2008] *Gazzetta Ufficiale* 146 [in Italian].

48 Law of the Grand Duchy of Luxembourg of 12 February 1979 'Concerning Value Added Tax' [1979] *Journal Officiel* A 23, art 40(2), as amended [in French].

49 UK Value Added Tax Act 1994, Sch 8, Sch 7A <<https://www.legislation.gov.uk/ukpga/1994/23/contents>> accessed 25 January 2026.

50 Federal Law of the Republic of Austria 'Value Added Tax Act 1994 (UStG 1994)' [1994] BGBl I 663, § 10(2), as amended [in German] <https://360.lexisnexis.at/d/rechtsnorm-ris/ustg_umsatzsteuergesetz_1994/L-10004873-P0> accessed 25 January 2026.

51 Law of the Republic of Croatia no 01-081-01-3773/2 of 6 December 2001 'On Socially Supported Housing Construction' [2001] NN 109, as amended [in Croatian] <<https://www.zakon.hr/z/371/zakon-o-drustveno-poticanoj-stanogradnji>> accessed 25 January 2026.

9. **Malta** exempts housing universally, without social targeting.⁵²
10. **Netherlands** applies a 9% rate to renovation labour for dwellings older than two years, without socio-economic criteria.⁵³
11. **Hungary** applies a 5% reduced VAT rate to the sale and construction of newly built dwellings. The measure covers apartments of up to 150 m² and single-family houses of up to 300 m². The reduction applies automatically if the property meets the technical definition of a residential dwelling and qualifies as newly built. There are no income limits, social criteria, or administrative certification procedures. The relief is therefore available to all buyers within the size limits, regardless of their economic situation.⁵⁴
12. **Romania** applies a reduced VAT rate of 11% to the supply of new dwellings meeting specific value and size thresholds. The reduced rate covers the delivery of dwellings with a usable area not exceeding 120 m², excluding annexes, and a total value (including land) not exceeding RON 600,000, excluding VAT. Eligibility is limited to natural persons, who may benefit from the reduced rate only once, whether individually or jointly with another individual. The dwelling must be fit for use as a residence at the time of delivery, as defined by Law No. 114/1996 on housing and Law No. 50/1991 on construction works. The reduced rate applies only to new constructions, not to renovation or alteration works. Romania's approach combines technical criteria (size, value limits) with a one-time personal eligibility condition, thereby ensuring a minimum level of targeting toward middle-income households. However, no income-based or social-vulnerability criteria are applied, and there is no administrative certification comparable to those in France or Spain. The measure thus reflects a semi-targeted model, more restrictive than the Slovenian and Hungarian systems, yet still primarily based on objective technical thresholds rather than explicit social-policy mechanisms.⁵⁵

In comparative perspective, Slovenia belongs to the group of Member States that rely exclusively on technical criteria, together with Hungary, while most other jurisdictions

52 Law of the Republic of Malta 'Value Added Tax Act', ch 406, art 5 <<https://legislation.mt/eli/cap/406/eng/pdf>> accessed 25 January 2026.

53 Law of Netherlands 'Turnover Tax Act 1968', art 9(2a), table I [in Dutch] <<https://wetten.overheid.nl/BWBR0002629/2026-01-01>> accessed 25 January 2026.

54 National Tax and Customs Administration of Hungary, 'Tax Rate on the Sale of New Dwellings, Residential Properties: Relevant Rules in force from 1 January 2021' (NTCA, 15 February 2021) <<https://nav.gov.hu/en/main-tiles/important-information/20211.-tax-issue---tax-rate-on-the-sale-of-new-dwellings-residential-properties>> accessed 25 January 2026.

55 Law of Romania no 227/2015 'On the Fiscal Code' [2015] Monitorul Oficial 688, title VII, arts 291(3)(c), 292(2)(f), as amended [in Romanian] <https://static.anaf.ro/static/10/Anaf/legislatie/Cod_fiscal_norme_2023.htm> accessed 25 January 2026; Law of Romania no 50/1991 'On Construction Works' [2004] Monitorul Oficial 933 [in Romanian]; Law of Romania no 114/1996 'On Housing' [1997] Monitorul Oficial 393 [in Romanian].

supplement technical thresholds with substantive social policy mechanisms. Countries such as France, Spain, Portugal, and Luxembourg require administrative certification, income-based eligibility, value caps or claw-back provisions, thereby ensuring that the reduced rate benefits households for whom housing affordability represents a genuine social concern. Italy and Romania represent intermediate approaches: although they preserve certain technical parameters, they introduce personal eligibility limits, statutory definitions of social housing, or value thresholds that provide a minimum level of targeting. Compared with these models, Slovenia's framework is formally clear but substantively untargeted, which raises concerns about proportionality and the social-policy rationale required under Article 98 and Annex III (10). The comparative evidence suggests that reforms aligned with certification-based or income-based models would provide greater legal certainty, transparency, and coherence with EU law. To structure these comparative findings more clearly, the examined jurisdictions can be grouped into three distinct regulatory models, each reflecting a different balance between technical criteria and social policy targeting. Within this typology, the approaches adopted in France, Spain, Luxembourg, and Portugal offer particularly instructive models for potential reform of the Slovenian framework, as they combine clear eligibility rules with verifiable social-policy safeguards.

Table 1. Typology of Reduced VAT Rate Models for Housing in Selected Jurisdictions

Model	Jurisdictions	Core features
A - Socially certified	France, Spain, Luxembourg, Portugal	Certification, income thresholds, claw-back, strong targeting
B - Hybrid	Italy, Romania	Size/value limits + social filters
C - Technical	Slovenia, Hungary	Purely technical criteria, no social-policy mechanism

As summarised in Table 1, three regulatory models can be identified. These comparative differences are not merely descriptive. Certification-based models provide transparent, predictable and verifiable eligibility conditions, thereby enhancing legal certainty and ensuring that the reduced VAT rate remains proportionate to its stated social-policy objective. In contrast, Slovenia's reliance solely on floor-area thresholds produces a formally clear but substantively untargeted framework, in which the absence of income-based or administrative criteria weakens the proportionality link required under Article 98 and Annex III (10) of the VAT Directive. The comparative evidence suggests that reforms aligned with certification-based or income-based models would provide greater legal certainty, transparency and coherence with EU law.

In contrast, systems based solely on technical or physical parameters, as in Slovenia and Hungary, lack a substantive social test. In these countries, eligibility for the reduced rate is automatically determined by floor area or construction characteristics, without verification

of social need or income-based targeting. This approach increases the risk of unequal or arbitrary application. It limits the redistributive potential of VAT relief, while ensuring a high level of legal certainty and administrative simplicity.

A comparable pattern can also be observed in Romania, where eligibility for the reduced 11% VAT rate likewise depends on objective parameters, specifically, a maximum usable area of 120 m² and a total property value not exceeding RON 600,000. However, Romania introduces a one-time eligibility condition for individual purchasers, which slightly narrows the scope of relief compared with Slovenia and Hungary. While this restriction does not amount to a genuine social-policy test, it nevertheless imposes a moderate targeting effect by excluding high-value transactions. Thus, within the group of technically defined regimes, Romania represents a semi-targeted model that enhances proportionality without introducing income-based or administrative certification mechanisms.

In addition to the standard reduced-rate frameworks analysed above, certain Member States continue to apply special derogations authorised under Articles 105a and 105b of the VAT Directive. These derogations were introduced by Directive (EU) 2022/542 of 5 April 2022, amending Directive 2006/112/EC as regards VAT rates and allow countries to retain pre-existing reduced rates outside Annex III, including, in the case of Article 105b, for “non-social housing”. According to the European Commission’s 2025 Report on VAT Rate Derogations⁵⁶, only a limited number of Member States currently rely on such derogations, with Italy being the only one maintaining a reduced rate for non-social housing. Slovenia has no such historical derogation and applies its reduced rate exclusively under Article 98 in conjunction with point 10 of Annex III.

Therefore, the presence of clear administrative and substantive criteria reinforces the principle of legal certainty by defining the eligible scope of social policy in a predictable, transparent, and uniform manner. The OECD’s comparative analysis reveals that several EU Member States, such as France, Portugal, and Luxembourg, condition reduced VAT rates on formal social housing certification, thereby aligning the legal framework with redistributive aims, whereas the technical eligibility models of Slovenia and Hungary lack these safeguards.

4.3. Discussion

The Hungarian experience illustrates that technically defined VAT reductions may stimulate construction activity and contribute to price stabilisation, without in themselves demonstrating that such measures effectively achieve social policy objectives under EU law. Koroseczné Pavlin and Koponicsné Györke show that the 5% VAT rate in Hungary increased building activity and stabilised housing prices, but their analysis

56 European Commission, *Report from the Commission to the Council in accordance with Article 105a(6) of Council Directive 2006/112/EC on VAT rate derogations* (COM(2025) 585 final, 2 October 2025) 12.

focuses on aggregate market effects rather than on the distribution of benefits across income groups. This highlights the need to distinguish between economic effectiveness and social policy targeting when assessing compliance with the concept of “housing as part of a social policy”.⁵⁷

Broader international research confirms that reduced VAT rates are a poorly targeted mechanism for achieving redistributive aims. Thomas finds that, both theoretically and empirically, reduced VAT rates fail to support low-income households effectively, and that targeted cash transfers provide superior redistributive outcomes. This reinforces the argument that VAT measures relying solely on technical parameters, such as those in Slovenia and Hungary, lack substantive alignment with the social-policy rationale required under EU law.⁵⁸

The conceptual debate on VAT neutrality, as emphasised by Cnossen, highlights that exemptions and reduced rates distort the functioning of VAT and are poorly targeted instruments for pursuing social objectives. Cnossen advocates extending the VAT base to increases in the value of exempt housing at the time of sale to enhance neutrality, rather than relying on transfer taxes.⁵⁹ Subsequent scholarship, such as Thomas, shifts the focus towards the distributive inadequacy of reduced rates, thereby illustrating the persistent tension between fiscal efficiency and social targeting in housing VAT policy.⁶⁰

The combined legal and comparative findings reveal a structural misalignment between the design of Slovenia’s reduced VAT rate on housing and the objectives pursued under EU law and national housing policy. Although the Slovenian framework is formally predictable and administratively simple, its exclusive reliance on technical parameters fails to ensure that the measure is directed towards households facing genuine affordability constraints. Undefined concepts such as “permanent residence” and “investor”, the dependence on CC-SI classifications capable of encompassing holiday homes and secondary residences, and the ambiguous treatment of appurtenant parts of residential buildings, including the boundary between residential and leisure facilities, the reliance on external technical standards, and the absence of objective social-eligibility criteria weaken legal certainty and dilute the proportionality link required under Article 98 and Annex III (10) of the VAT Directive.

From a doctrinal and EU-law perspective, these features confirm a disconnect between formal clarity and substantive policy objectives, including those articulated in the National Housing Programme 2015–2025, which explicitly prioritises access to adequate and

57 Rita Koroseczné Pavlin and Diána Koponicsné Györke, ‘The Effect of VAT Reductions on Newly Built Properties and Constructions in Hungary’ (2024) 23(1) *Acta Scientiarum Polonorum Administratio Locorum* 91, doi:10.31648/aspal.9001.

58 Thomas (n 32) 2-3, 18-9.

59 Cnossen (n 33) 457-8, 471-4.

60 Thomas (n 32) 2-3, 18-9.

affordable housing for socially vulnerable groups. At the same time, the comparative analysis suggests that these shortcomings are not solely the result of national design choices but also reflect broader structural ambiguities within the EU VAT framework itself. The concept of “housing as part of a social policy” in Article 98 and Annex III (10) remains insufficiently defined at the EU level, leaving Member States with wide discretion and contributing to divergent national approaches. Clearer EU level guidance, whether through interpretative instruments, minimum eligibility standards or more precise definitional criteria, would enhance uniformity, strengthen proportionality and support a more consistent operationalisation of social-policy objectives in VAT systems.

4.4. Policy Implications

The findings support several policy reforms aimed at improving both the legal coherence and the social targeting of Slovenia’s reduced VAT rate on housing:

- Introduce more targeted relief, including income-based thresholds and, where administratively feasible, certification mechanisms, in line with the OECD’s 2024 recommendations.⁶¹
- Establish a formal certification process through housing authorities to ensure that the reduced rate applies only to projects serving clearly identified social objectives.
- Clarify key statutory definitions and align the VAT framework more explicitly with the National Housing Programme 2015–2025.
- Regularly assess distributive and economic impacts using empirical evaluation frameworks developed in OECD countries.
- Clarify the VAT relevance of construction law classifications and exclude holiday homes or secondary residences from social policy relief unless additional substantive criteria are satisfied.
- Issue binding guidance on the treatment of appurtenant parts of residential buildings and on the boundary between residential and leisure facilities, to enhance legal certainty and limit administrative discretion.
- Clarify the position of non-owners (such as tenants) commissioning works, so that the notion of “investor” better reflects contemporary housing arrangements.

61 OECD (n 14) 145-8.

5 CONCLUSIONS

This article assessed whether Slovenia's reduced VAT rate on housing meets the requirements of legal certainty, proportionality and social targeting under EU law. The findings show that although the Slovenian framework is formally clear and administratively simple, its exclusive reliance on technical floor-area thresholds does not ensure that the reduced rate is directed towards households with genuine housing needs. As a result, the measure satisfies the formal dimension of legal certainty but falls short of the substantive social-policy rationale underlying Article 98 and point 10 of Annex III of the VAT Directive.

The comparative analysis reinforces this conclusion. Certification-based systems in countries such as France, Spain, Luxembourg, and Portugal align most closely with EU law requirements by linking reduced VAT rates to administrative designation or income-based eligibility. Italy and Romania illustrate intermediate approaches that combine technical parameters with additional targeting mechanisms, while Slovenia and Hungary rely predominantly on technical criteria. These patterns indicate that models grounded in verifiable social-policy conditions provide the most coherent and proportionate implementation of Article 98 and Annex III (10) of the VAT Directive.

To strengthen legal certainty, proportionality and social effectiveness, several targeted legislative adjustments could be considered for the Slovenian framework. These include introducing income-based or vulnerability-based eligibility criteria, establishing an administrative certification mechanism for dwellings supplied as part of social or affordable housing programmes, and clarifying statutory definitions of key terms such as "investor" and "permanent residence". In addition, closer alignment of VAT provisions with the National Housing Programme and related housing policy instruments would improve coherence between fiscal measures and broader social objectives.

Finally, at the EU level, a more precise definition of "housing as part of a social policy", through interpretative guidance, Commission communications or minimum eligibility standards, could enhance the uniform application of the Directive and reduce divergences among Member States. Such clarification would support both legal certainty and the equitable distribution of fiscal benefits across the Union, while preserving the discretion conferred on Member States by Article 98.

REFERENCES

1. Atkinson AB and Stiglitz JE, *Lectures on Public Economics* (McGraw-Hill 1980)
2. Barth F, 'CJEU Case Law on Exercising Rights Under EU VAT: Is There a Golden Thread in the Distinction Between Substantive and Formal Conditions?' (2022) 31(6) EC Tax Review 341, doi:10.54648/ecta2022033
3. Beshi S and Susuri D, 'Proportionality Principle in the CJEU Judgments on Tax Cases' (2023) 9(4) Lex Portus 28, doi:10.26886/2524-101X.9.4.2023.3

4. Brzeziński B and Franczak A, 'In Search of a Strategy for the Interpretation of Tax Law by Courts' (2024) 16(4) *Krytyka Prawa* 57, doi:10.7206/kp.2080-1084.720
5. Cnossen S, 'A Proposal to Improve the VAT Treatment of Housing in the European Union' (2011) 32(4) *Fiscal Studies* 455
6. Cuyo Caisaguano JN and Morales Navarrete MA, 'Análisis sobre el principio de igualdad y no discriminación en la aplicación del Impuesto al Valor Agregado en el Ecuador' (2024) 17(27) *Misión Jurídica: Revista de Derecho y Ciencias Sociales* 139, doi:10.25058/1794600X.2463
7. De la Feria R, 'Addressing VAT Regressivity' (2021) 132 *Revista Técnica Tributaria* 131
8. De la Feria R, *EU VAT Principles as Interpretative Aids to EU VAT Rules: The Inherent Paradox* (Working Paper 16/03, Oxford University Centre for Business Taxation 2016)
9. Engelschalk M and Loepnick J, *MSME Taxation in Transition Economies: Country Experience on the Costs and Benefits of Introducing Special Tax Regimes* (Policy Research Working Paper 7449, World Bank Group 2015) doi:10.1596/1813-9450-7449
10. Greggi M, 'Neutrality and Proportionality in VAT: Making Sense of an (Apparent) Conflict' (2020) 48(1) *Intertax* 122, doi:10.54648/taxi2020009
11. Gryziak B, 'VAT Groups and the Right of Deduction across the European Union: Review and Analysis' (2021) 32(4) *International VAT Monitor*. doi:10.59403/3299jar
12. Hartkamp AS, 'The General Principles of EU Law and Private Law' (2011) 75 *Rechtszeitschrift für ausländisches und internationales Privatrecht* 241
13. Heinzer A, 'Pregled DDV zakonodaje na področju uporabe znižane DDV stopnje za dobavo, gradnjo, obnovo in popravila stanovanj v Sloveniji' (*Davčno svetovalna zbornica Slovenije*, 1 March 2024) <https://www.dszs.si/mnenja_clanov> accessed 25 January 2026
14. Hutchinson T and Duncan N, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17(1) *Deakin Law Review* 83, doi:10.21153/dlr2012vol17no1art70
15. Ivanova R, 'Growing Influence of Judicial Control of Administrative Courts on Public Administration Bodies' (2023) 9 *Economics, Finances and Law* 82, doi:10.37634/efp.2023.9.19
16. Joosen BPM, *The Principle of Proportionality as an Area of National Discretion* (Working Paper Series 151, EBI 2023)
17. Koroseczné Pavlin R and Koponicsné Györke D, 'The Effect of VAT Reductions on Newly Built Properties and Constructions in Hungary' (2024) 23(1) *Acta Scientiarum Polonorum Administratio Locorum* 91, doi:10.31648/aspal.9001
18. Lasiński-Sulecki K, 'Legal Certainty in Tax and Customs Judgments of the Court of Justice' (2024) 33(2) *EC Tax Review* 68, doi:10.54648/ecta2024008

19. Lifante-Vidal I, 'Is Legal Certainty a Formal Value?' (2020) 11(3) *Jurisprudence* 456, doi:10.1080/20403313.2020.1778289
20. Majeed N, Hilal A and Khan AN, 'Doctrinal Research in Law: Meaning, Scope and Methodology' (2023) 12(4) *Bulletin of Business and Economics* 559, doi:10.61506/01.00167
21. Mirrlees JA (ed), *Tax by Design: The Mirrlees Review* (OUP 2011)
22. Mudrecki A, 'The Contemporary Significance of the Principle of Proportionality in Tax Law' (2021) 26(4) *Białostockie Studia Prawnicze* 37, doi:10.15290/bsp.2021.26.04.03
23. Paunio E, 'Beyond Predictability: Reflections on Legal Certainty and the Discourse Theory of Law in the EU Legal Order' (2009) 10(11) *German Law Journal* 1469, doi:10.1017/S2071832200018332
24. Poddar SN, 'Taxation of Housing Under a VAT' (2010) 63 *Tax Law Review* 901
25. Rubil I, 'Distributivni učinci ukidanja "socijalno motiviranih" sniženih stopa PDV-a radi povećanja izdašnosti i obuhvata cilja' (2022) 29(2) *Revija za socijalnu politiku* 129
26. Ryesky KH, 'Tax Simplification: So Necessary and So Elusive' (2004) 2(2) *Pierce Law Review* 93-96, 101-103
27. Sauter W, 'Proportionality in EU Law: A Balancing Act?' (2013) 15(1) *Cambridge Yearbook of European Legal Studies* 439, doi:10.5235/152888713809813611
28. Thomas A, *Reassessing the Regressivity of the VAT* (OECD Taxation Working Papers no 53, OECD Publishing 2020) 11, doi:10.1787/b76ced82-en
29. Thomas A, *VAT Rate Structures in Theory and Practice* (Policy Research Working Paper 10677, World Bank Group 2024) doi:10.1596/1813-9450-10677
30. Van Hoecke M, 'Methodology of Comparative Legal Research' [2015] *Law and Method* 1, doi:10.5553/REM/.000010

AUTHORS INFORMATION

Aleksandra Heinzer

PhD Student, University of Ljubljana, Faculty of Public Administration, Slovenia; Faculty of Economics and Business, University of Rijeka, Croatia

ah29608@student.uni-lj.si

<https://orcid.org/0009-0001-1486-3187>

Corresponding author, solely responsible for preparation of the manuscript.

Competing interests: No competing interests were disclosed.

Disclaimer: The author declares that their opinion and views expressed in this manuscript are free of any impact of any organisations.

RIGHTS AND PERMISSIONS

Copyright: © 2026 Aleksandra Heinzer. This is an open access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

EDITORS

Managing editor – Mag. Yuliia Hartman. **English Editor** – Robert Reddin.

Ukrainian language Editor – Mag. Liliia Hartman.

ABOUT THIS ARTICLE

Cite this article

Heinzer A, 'Reduced VAT Rates on Housing within Social Policy and Legal Certainty: A Comparative Analysis of Slovenia and Selected European Jurisdictions' (2026) 9(2) Access to Justice in Eastern Europe 356-82 <<https://doi.org/10.33327/AJEE-18-9.2-a000186>>

DOI: <https://doi.org/10.33327/AJEE-18-9.2-a000186>

Summary: 1. Introduction. – 2. EU and National Frameworks. – 2.1. *Contextual Background and National Framework.* – 2.2. *Legal and Theoretical Framework.* – 3. Methodology. – 3.1. *Analytical Approach.* – 3.2. *Comparative Scope and Criteria.* – 3.3. *Selection of Jurisdictions.* – 4. Analysis and Results. – 4.1. *Legal Uncertainty in the Slovenian Framework.* – 4.2. *Comparative Analysis of Selected Member States.* – 4.3. *Discussion.* – 5. Conclusions.

Keywords: *EU tax harmonisation; social policy targeting; proportionality principle; VAT design; social housing policy.*

ACKNOWLEDGEMENT

The publication of this article was supported by the *Support for Early Career Researchers (ECR) Program* of the Access to Justice in Eastern Europe (AJEE) journal. Under this program, the article was published free of charge through a 100% publication fee waiver granted to eligible early career researchers.

ADDITIONAL INFORMATION

No external funding was received for this research.

DETAILS FOR PUBLICATION

Date of submission: 24 Nov 2025

Date of acceptance: 09 Feb 2026

Publication: 20 May 2026

Was the manuscript fast tracked? - No

Number of reviewer report submitted in first round: 2 reports

Number of revision rounds: 1 round with minor revisions

Technical tools were used in the editorial process:

Plagiarism checks - Turnitin from iThenticate

<https://www.turnitin.com/products/ithenticate/>

Scholastica for Peer Review

<https://scholasticahq.com/law-reviews>

<https://ajee-journal.com/responsible-use-of-ai-tools-in-publishing-with-ajee>

AI DISCLOSURE STATEMENT

The manuscript was prepared by the author. AI tools were employed exclusively for spelling, grammar, and stylistic refinement. No generative AI was used to produce original content, research ideas, or analysis.

АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ЗНИЖЕНІ СТАВКИ ПДВ НА ЖИТЛО В МЕЖАХ СОЦІАЛЬНОЇ ПОЛІТИКИ
ТА ПРАВОВОЇ ВИЗНАЧЕНОСТІ:

ПОРІВНЯЛЬНИЙ АНАЛІЗ СЛОВЕНІЇ ТА ОКРЕМИХ ЄВРОПЕЙСЬКИХ ЮРИСДИКЦІЙ

Александра Хайнцер

АНОТАЦІЯ

Вступ. Стаття 98 та Додаток III (10) Директиви ЄС 2006/112/ЄС дозволяють знижені ставки ПДВ на «постачання, будівництво, реконструкцію та переобладнання житла в межах соціальної політики». Хоча це положення надає державам-членам дискреційні повноваження, Суд Європейського Союзу (Суд ЄС) вимагає суворого тлумачення та

дотримання принципів правової визначеності та пропорційності. Словенія застосовує знижену ставку ПДВ, яка базується виключно на технічних параметрах, таких як максимальна площа, без порогів на дохід, офіційної сертифікації або зв'язків з національною житловою політикою. Це піднімає питання щодо відповідності словенської системи вимогам ЄС та порівняльній практиці.

Методи. У цій статті застосовується доктринальна та порівняльно-правова методологія. На рівні ЄС досліджується Стаття 98 та Додаток III (10) Директиви про ПДВ, а також відповідна судова практика Суду ЄС, щоб визначити вимоги щодо правової визначеності, пропорційності та цілеспрямованої реалізації соціальної політики. На національному рівні аналізується Закон Словенії про податок на додану вартість та Правила імплементації Закону про ПДВ. Порівняльний компонент охоплює дванадцять держав-членів та Велику Британію, зосереджуючись на критеріях прийнятності, механізмах соціального цільового спрямування та адміністративній сертифікації.

Результати та висновки. Аналіз показує, що технічно досконала система зниження ПДВ у Словенії не має чіткої соціальної спрямованості. Невизначені правові концепції, опора на класифікації будівельного права, неоднозначне трактування належних частин та об'єктів для відпочинку, а також відсутність механізмів, що ґрунтуються на доходи, або механізмів сертифікації, підривають правову визначеність та цільове спрямування. Натомість, такі держави-члени, як Франція, Іспанія, Італія, Люксембург, Португалія та Румунія, використовують пороги на дохід, адміністративну сертифікацію, обмеження вартості або механізми повернення коштів, тоді як Словенія та Угорщина покладаються виключно на технічні параметри. Таким чином, Словенія задовольняє формальну правову визначеність, але не відповідає суттєвим вимогам пропорційності та соціальному цільовому спрямуванню згідно з Директивою про ПДВ. У цій статті рекомендуються критерії відповідності на основі доходу та адміністративної сертифікації, чіткіші законодавчі визначення та більша відповідність цілям національної житлової політики.

Ключові слова. Гармонізація податків ЄС; цільове спрямування соціальної політики; принципи пропорційності; структура ПДВ; політика соціального житла.