

# NEWSLETTER

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ITEM 2.23, ON 6% VAT ON URBAN  
REGENERATION:  
A NEW LAW PROPOSAL AND A RECENT  
CAAD DECISION

VAT on urban regeneration has been a major topic of discussion in legal and tax circles, as well as in public and political debates.

Far from coming to an end, the debate has recently taken on new dimensions.

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Advisory Team

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## BACKGROUND

VAT on urban regeneration has come to occupy a considerable place in legal and tax discussions, as well as in public and political debate. Like any reduced rate of this tax, the rate applicable to urban regeneration works – now specifically to the regeneration of buildings – has been the subject of heated debate between taxpayers and the tax authorities, partly due to regulations whose wording is not, at first glance, clear.

Regarding the previous wording of this provision, set out in [List I annexed to the VAT Code](#), there has been a wealth of case law, particularly in arbitration, though without any clear consensus on its interpretation.

RFF Lawyers has already produced several guides and articles on the subject, where you can consult the full history of the provision in question, its interpretation in case law and the amendments introduced by the 'Mais Habitação' Law, which you can find here: [tax guide to urban regeneration](#), [VAT on urban regeneration](#), [amendments to the 'Mais Habitação' Law](#).

It was against this backdrop that, in March 2025, [Judgment No. 0430/16 of the Plenary Session of the Tax Litigation Section of the Supreme Administrative Court](#) was [handed down, in the context of an Appeal for the Standardisation of Case-Law](#), which established the interpretation to be followed by the courts on one of the main points of contention – namely, whether or not an approved Urban Regeneration Scheme (ORU) is required as a condition for eligibility for the reduced rate. We reported on this judgement in a previous newsletter.

It so happens that, following this standardisation, the debate – far from coming to an end – has taken on new dimensions. On the one hand, arbitral case-law – in particular the CAAD (administrative arbitration centre) award handed down in Case No. 23/2026-T – has, on the basis of European Union law, set aside the requirement for an ORU in certain circumstances; on the other hand, a draft bill has been tabled seeking an authentic interpretation of the provision, to the effect that the designation of an Urban Regeneration Area (ARU) is sufficient for the reduced rate to apply. It is these subsequent developments – and the tension they create with the restrictive interpretation of the STA (Supreme Administrative Court) – that justify this update, which we analyse below.

## THE STA JUDGMENT ON THE STANDARDISATION OF CASE LAW

As mentioned in our previous *update* on this subject, the Judgment was handed down in an appeal against a final decision lodged by a taxpayer against an [arbitral award](#). In that decision, the Arbitral Tribunal had ruled that the reduced VAT rate could only be applied to a construction contract where, in addition to the property being part of an approved ARU, the work was carried out within the context of an ORU that had also been approved.

The STA, in this judgement on the harmonisation of case law handed down on 26 March 2025, ruled, in essence, that:

- ✓ “only *urban regeneration works* benefit from the 6% VAT rate provided for, jointly, in Article 18(a) and Item 2.23 of List I annexed to the VAT *Code*”
- ✓ “classification as an ‘*urban regeneration project*’ presupposes the existence of a contract and its execution within an Urban Regeneration Area for which an Urban Regeneration Operation has been previously approved.”

## RECENT DEVELOPMENTS: ARBITRAL CASE LAW AND LEGISLATIVE INITIATIVES

The history of the previous wording of Item 2.23 of List I annexed to the CIVA did not end with the STA’s Unification Judgment. On the contrary, the more restrictive interpretation upheld in that judgment – by requiring, in practice, the cumulative verification of both an Urban Regeneration Area (ARU) and an Urban Regeneration Operation (ORU) – triggered significant reactions both in arbitral case law and at the legislative level.

On the one hand, the Collective Arbitral Tribunal at the CAAD, in [Case No. 23/2026-T](#), handed down a judgment that refocuses the debate from the perspective of European Union law. At issue were additional VAT assessments issued following the application of the standard rate of 23 per cent to urban regeneration works carried out on properties located in urban regeneration areas (ARU) for which no ORU had been approved.

In this case, the Court deemed these additional VAT assessments to be unlawful, on the grounds that the requirement for a formally approved ORU, as a condition for access to the reduced rate of 6% provided for in item 2.23 of List I annexed to the CIVA (in the version prior to Law No. 56/2023 of 6 October), violates fundamental principles of the common VAT system, such as the principles of fiscal neutrality and the prohibition of distortion of competition, equality, the primacy of substance over form, and proportionality, as interpreted by the Court and as have been affirmed by the Court of Justice of the European Union.

This constitutes a novel ground of appeal in relation to what was discussed before the STA. The arbitral award does not call into question the uniformity of case-law regarding the interpretation of domestic law, but addresses a separate question: whether it is compatible with European Union law to make access to a reduced VAT rate subject to an administrative formality (the prior approval of an ORU), which adds little or nothing, in substantive terms, to the urban regeneration strategy already underpinning the delimitation of the ARU. The negative answer paves the way for the annulment of additional VAT assessments in situations where ARUs have been designated, even in the absence of an approved ORU, provided that the works in question substantially pursue the objectives of urban regeneration.

On the other hand, this same interpretative tension has been reflected at the legislative level. Draft Law No. 642/XVII/1st, now before the Assembly of the Republic, proposes an authentic interpretation of item 2.23 of List I annexed to the VAT Code, as amended by Law No. 64-A/2008 of 31 December.

According to the Explanatory Memorandum, the aim is to clarify that the reduced rate of 6% has always applied to urban regeneration works “carried out on properties or public spaces located in urban regeneration areas defined in accordance with the law, irrespective of whether an urban regeneration project has been approved”. Article 2 of the draft bill expressly enshrines this interpretation, whilst Article 3 provides that it shall take effect from the entry into force of Law No. 64-A/2008.

If it is approved as presented, this draft bill aims to bring the text of the law into line with the rationale of tax incentives for urban regeneration and with a less formalistic interpretation of paragraph 2.23, that is, one closer to that which has been advocated by legal scholarship and also by arbitral case law, thereby simultaneously mitigating the effects produced by the STA’s Unification Judgment.

We would emphasise that, whilst the intention underlying the bill is positive — namely, to refocus the scheme on its purpose of incentivising urban regeneration — the approach chosen does give rise to some reservations. Indeed, tax law should not, as a rule, be subject to so-called ‘authentic’ interpretations so many years after its drafting, lest, in seeking to resolve a dispute definitively, it ends up creating legal uncertainty regarding past situations. The fact that the bill refers, moreover, to a version of paragraph 2.23 that no longer corresponds to the one currently in force only accentuates this difficulty.

Furthermore, the effects of any authentic interpretation in light of the case-law subsequently standardised by the STA — particularly with regard to cases already decided or pending — will still need to be carefully analysed, as the relationship between a supervening interpretative rule and a standardising judgment that established a contrary interpretation is not straightforward.

As for the STA’s judgment, we believe, with all due respect, that the STA opted for a formalistic and bureaucratic interpretation, based on assumptions that do not expressly follow from the wording of paragraph 2.23. This approach makes the application of the tax relief dependent on a municipal process that is not always swift or predictable — and which is entirely beyond the taxpayer’s control — thereby significantly restricting the scope of the reduced rate and distancing it from the logic of encouraging urban regeneration that underpinned the enactment of the provision. It prioritises form over substance, penalising the taxpayer for an administrative omission for which they are not responsible.

This standardisation therefore has a significant impact, leading to an increase in (contextual) costs for the construction and regeneration of properties within an ARU for which, for reasons beyond the taxpayer’s control, an ORU has not yet been approved. In many cases, taxable persons find themselves faced with additional VAT assessments that do not stem from any material change in their business activity, but solely from the absence of a municipal administrative act over which they have no control. We shall see how the new line of interpretation adopted by the Arbitration Tribunal in the CAAD, and in particular the developments brought about by the aforementioned draft bill, will shape the ongoing and truly legal adventure surrounding this reduced VAT rate provision.

In short, following an ‘outcome contrary to its principles’, the previous wording of clause 2.23 continues to give rise to significant developments, both in the courts and in the Assembly of the Republic, and taxpayers should carefully analyse the impact of these *updates* on their specific business activities.

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