

STATE REAL ESTATE CADASTRE AND ITS ROLE IN REAL ESTATE TAXATION

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The role and the meaning of state registration of real estate objects for taxation are considered. The analysis of modern real estate registration systems is completed and are also given the directions of their development. The positive sides and the weaknesses of the Law "On State Real Estate Cadastre" are listed and the suggestions on possible reforms of the system of real estate registration are proposed.

Real estate has always remained one of the main sources of profit in market economy and it still is the basis for GDP despite the development of non-material services, new information and computer technologies. Moreover, in the developed countries the sector of real estate itself accounts for 20% of GDP.

Real estate and land (as property) are at the same time a part of the most widely accepted taxation objects. The vast majority of countries use real estate and land taxation as one of the key sources for regional budgets.

In Russia the aforementioned payments are also a part of the taxation system on a regional level (corporate real estate tax) and on local level (acre-shot and individual real estate tax) but their role and their regulative status are less significant than in the Western countries. This fact can be explained by a number of reasons: more than 50 years of state ownership of real estate objects, mostly extensive way of land use, low income level of the majority of the population, etc. Nevertheless, it seems more important to look at the perspective of real estate taxation development in Russia and identify the major difficulties in improving this kind of taxation.

In 1997 while the taxation reform and codification was underway there was a suggestion¹ to introduce on the territory of a constituent entity of the Russian Federation one and the only tax - real estate tax - instead of the three taxes in force. The practice of unified object taxation (of land and real estate located on this land) exists in some parts of Central Europe, in the USA and in Canada. To put this proposal into practice an experiment on real estate taxation was carried out in two regions (Tver and Velikiy Novgorod) from 1997 to 2005².

However, real estate payments differ from all other kinds of taxes by the extensive amount of preliminary work to be done before introducing such payment, namely: creation of taxable and non-taxable real estate registration system, formulation of taxation basis policy on such objects, working out the procedure of supplying the information necessary to calculate the total sum of the tax (both for government authorities and for individuals), establishing terms and procedures of reviewing the existing taxation basis and many other issues.

Correct real estate cadastre valuation and registry are the key components of taxation. In general, cadastre valuation, registry and taxation are the parts of a single mechanism that creates basis for the efficient functioning of all economic entities of all levels: enterprises, cities, regions of the country and the country itself; it also provides conditions for individuals to materialize their real estate interests. Coherence and coordination between the parts of this mechanism ensure its performance and the results of this coordination affect the amount of tax revenues and tax burden on individuals and economic entities.

It was exactly those measures on creating real estate registry and cadastre valuation system that were executed in Tver and Velikiy Novgorod, alongside with clarifying some issues connected with the procedure of transfer of some categories of people to real estate taxable groups, establishing tax discounts and taxation donations. The information on real estate objects was gathered and a computer database created, market analysis carried out and the procedure of cadastre valuation of commercial, industrial objects and residential buildings worked out. In 1997 a field study of all the real estate

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was carried out and the results of it were the basis for correcting relevant databases. The consequences of introducing the new tax were analyzed separately, several options of interest rates were considered, a forecast of tax revenues on different taxable groups was made and a sociological survey on the citizens' attitude to the experiment was carried out. 1 January, 2000 was the beginning of the practical part of the real estate taxation reform. It is necessary to say, though, that this tax was never introduced in Tver despite all the preliminary work having been completed. In Velikiy Novgorod the experiment has been completed and its results (both positive and negative) have become the basis for further improvement of real estate taxation concept (it applies both to unified real estate objects and land and real estate individually). For every option the starting point of real estate taxation is the registry system.

The peculiarity of Russian real estate taxation system lies in fundamental differences between real estate cadastre valuation and registration for enterprises and individuals. Besides there are additional principles of cadastre valuation and registration within those two groups. Firstly, it is about specific real estate like land, and secondly it is about specific kinds of organizations, for example, state-financed organization or foreign companies operating on the territory of the RF with no representative office.

Cadastre valuation and registry of immovable real estate and of other capital funds (movable property) is done by the organization itself in compliance with the regulations on accounting (mainly SFAS 6-01), while land is in the competence of corresponding state authorities (Federal Real Estate Cadastre Agency - Rosnedvizhimost). State authorities (organizations responsible for technical inventory) register and evaluate individual real estate and the real estate of foreign companies operating on the territory of the RF with no representative office.

Cadastre occupies the key position in the system of real estate objects turnover and land turnover and until recently there were several independent systems of registry of such objects. The first cadastre included capital construction objects i.e. real estate objects and on the most part of the territory of RF it was constituted by technical inventory organizations (former BTI) but on the federal level there was a

federal state unitary enterprise "Rostechinventarizatsiya" that operated in the sphere of state owned property. The second cadastre was made up by the federal agency "Rosnedvizhimost" that was responsible for centralized registry of land while cadastre works in this sector were largely performed by independent, mostly non-governmental land surveying organizations.

It will be true to say that a third constituent part here, although not named "cadastre", was the system of registration rights on land plots and real estate objects on them, performed by "Rosregistratsiya" on the basis of the documentation supplied by the aforementioned authorities and organizations. This system is responsible for the registration of both original ownership rights on real estate objects and further transfer of those rights or their limitations.

Each of the above mentioned systems has a series of major gaps, including systemic ones, and the very existence of several databases on similar (identical or interrelated) objects does not encourage the formation of a single information space on real estate objects and land plots thus hindering significantly the economic turnover of those objects. For example, the rights on a large part of land plots and structures have not yet been registered as long as these objects are included in the General State Rights Register (GSRR) only upon the settlement of real estate transaction concluded by the owner of the real estate object; all the information about real estate objects purchased before 1998 is missing; there are no legal regulations on state registration or termination of real estate objects rights. The question of state registration of uniform real estate objects rights is still legally unresolved.

What is more, a huge amount of data made up through all the stages of real estate existence require more sophisticated means of technology and information technology that are able to store maximum of information on a particular object necessary for taxation and other aims. It is not only about static information (i.e. the established fact of land, real estate, property, transportation means ownership etc.) but also about dynamic one (profit tax, inheritance duty, capital gain tax in case of owner change and profit tax, personal income tax in case of property rent, etc.). The currently functioning systems have different technological platforms, different levels of itemiza-

tion, low levels of integration and different possibilities of external use.

Modern requirements to tax administration and control show that for the taxation authorities in order to execute their duties well it is not enough just to get some data from various information systems; it is necessary to have such a way of information supply that a single inquiry allows to have consolidated data from several sources and perform its complex analysis. Absence of a unified picture that shows all the spheres of real estate ownership and usage and discrepancies between some parts of data do not allow inland revenue inspection to use the existing information for analysis and planning and sometimes even prohibit it issuing a well-grounded letter of advice on property tax.

A new step in regulation of the mentioned sphere is the introduction on 1 March, 2008 of the Federal Law № 221-FZ of 24 July, 2007 "On State Real Estate Cadastre". This document is supposed to make up the basis for creating a unified information space on real estate objects (real estate and land). The essence of the law is to centralize the registration of objects of real estate and implies the integration of a uniform State Register of Capital Construction Objects, State Real Estate Cadastre and uniform General State Rights Register on electronic media.

It is important to point out the step-by-step character of creation and integration of those databases in the constituent entities of Russian Federation. Since 1 July, 2007 the Federal Real Estate Cadastre Agency and its local authorities have begun the creation of General State Register of Capital Construction Objects (GSRCCO) on the territory of three constituent entities of Russian Federation - Kemerovo, Samara and Tver regions. Kaluga, Kaliningrad, Nizhniy Novgorod, Irkutsk, Rostov regions, Krasnodar and Krasnoyarsk Territories, Tartar and Bashkir Republics have introduced GSRCCO on 1 July, 2008 and in July 2009 the majority of constituent entities of Russian Federation will join the process.

As for registration of land plots the situation is largely similar. Administrative requirements⁴ of State Real Estate Cadastre Agency have been in force since 1 July, 2008 on the territories of Kaluga, Kaliningrad, Moscow, Nizhniy Novgorod, Rostov regions, Tartar and Bashkir Republics and the city of Moscow, and on 1

July, 2009 they will come into force on the territories of 29 other constituent entities of Russian Federation. On 1 July 2010 the requirements will be in force on the entire territory of the RF.

For the period of the necessary preliminary works "Rosnedvizhimost" will be responsible for keeping cadastre registers, buildings and structures measurements will be done by BTI. Only on 1 January, 2010 "Rosnedvizhimost" will be solely responsible for dealing with the aforementioned with the help of cadastre engineers (who have been performing cadastre activities on land plots on equal rights with the Land Committee since March 2008).

Registration of real estate objects will still be executed in registration chambers, but on 1 January, 2012 General State Rights Register on electronic media becomes a part of uniform federal information system that unites General State Rights Register on electronic media and State Real Estate Cadastre on electronic media. The procedure of cooperation between a corresponding authority executing state registration of rights and a cadastre registration authority is supposed to be defined by the Government of Russian Federation.⁵ Further integration of registration authorities into the system of State Real Estate Cadastre Agency seems quite plausible although there is no existing legislation that might suggest such a possibility.

The measures listed above are undoubtedly a new move in the development of property relations (including tax-related ones) and they are bound to have positive effects on real estate objects registration and turnover. However some of their regulations might require additional consideration and redefining.

At first, there is no mentioning of hierarchic structure of the State Cadastre under construction. There are several approaches to information resources integration (IR), e.g. transfer of all existing systems into a single technological platform with the possibility of creating a single uniform database or maintaining the existing systems untouched and creating a brand new database that will accumulate information of the currently existing sources. Russian system of real estate objects registration chose the mixed path of forming up a new information space by way of creating a single unified database on the basis of one information source (IR of "Rosnedvizhimost") that also includes some

data from other sources (“Rosregistracia”, technical registration organizations - BTI, etc.)

However, it is necessary to take into account the fact that the currently existing information sources have different levels of accuracy and completeness of data on real estate objects and it is the system of land plots and real estate objects rights registration that has got the most accurate information. This IR must be the basis for State Cadastre. Besides, it is often impossible to perform automated integration of separate components, the information on the objects coming from different authorities is bound to be copied and sometimes have discrepancies, which leads to high cost of a new resource.

Finally, creating a full-size database must not mean creating a centralized database on all the objects of real estate and their properties on the territory of Russian Federation. World practice shows that the efforts to create a supercentralised database and monopolize information activities were more of a failure. Inter-system database function best when the process of gathering, analysis and storage of information is organized by specialist authorities on the lower level which ensures accuracy, completeness and reliability of information and speeds up its preparation. Creating a full electronic database on separate properties of the object must be just a part of total informatization of property relations.

We can fully agree that methodology on which the cadastre is based has limited development prospects and thus will hardly be able to meet the all-growing variety of market needs⁶. That is why the newly created State Cadastre must have every possibility for integration, extended analysis and information exchange with other IRs, first of all with those on constituting real estate object value and with projects of city reconstruction and development, etc. This system can be the core, but not the only component of information support for real estate objects turnover.

We believe that the task of informatization can be completed by way of a uniform information platform on the regional level (on the basis of “Rosregistraciya”). This technical-software complex must ensure unified terminological basis for all the existing information sources, its unified interpretation and accurate comparison; it must also ensure transfer of separate (of prin-

cipal importance) data from the given information sources; finally, it must provide special service (information sources access adapter) that ensures accurate access and extraction of data from the IR to fulfil external inquiries (services).

On the state level it is necessary just to create an additional technical-software level over the area distributed resources (a meta-system) that will allow to unite and analyze the data from the regional information platforms (e.g. getting consolidated information from several electronic sources on one single enquiry).

This approach will allow creating an integral information space with clearly distributed authorities on entering, changing and destroying information within the limits of respective structures without making any significant changes in the procedures of working with the distributed resources in registration, valuation and other authorities. Plus to it this will simultaneously provide fast actualization and bigger accuracy of data, lower the costs and increase cooperation between various structures of the state.

General State Rights Register must become the basis for the new information platform as it combines the owner and the real estate object which is a crucial condition for taxation. Taking into account that the state itself creates the mentioned information space mostly for fiscal purposes, the efficiency of the platform will be largely determined by its fast introduction for taxation purposes. All the rest IRs will be integrated into the register, giving additional and extended data on the object and the owner (the number of objects that this owner possesses, the times of possession, etc.). It was pointed out before that there were serious discrepancies between the data in the IRs and the actual data which was proved during the experiment on introduction of the real estate tax in Russia. There were a lot of unregistered real estate objects (like garages, outhouses, houses etc.) found and the total share of these objects was about 40% of the total number of this kind of objects.

It is obvious that the current registration and tax legislation is seriously unfinished. It is true that the modern mechanism of corporate property taxation claims real estate objects non-taxable until the necessary documents are fed for state registration or until the object is not registered as a part of the organization’s capi-

tal funds. Taxation of individuals is such that the taxation starts only a year after the real estate object registration, i.e. if you register your house in January you can use it for almost a year absolutely tax-free which does not comply with the principles of justice. Moreover, the current legislation does not set any limitations on the terms of document feed for real estate objects registration⁷.

That is why many companies and individuals are currently deliberately unwilling to accept real estate objects as their property although in practice they use (or may use) them, with the purpose of decreasing tax basis for the property tax. Thus taxpayers have got an opportunity to pay a lesser sum into the budget (or not pay at all).

The solution to this problem in relation to companies exists in the form of numerous court orders and respective letters (clarifications) of the Ministry of Finance and Federal Inland Revenue Service. However, the inconsistency of the first and the lack of legal powers of the latter (according to the Tax Code, letters, clarifications etc. can not change or be considered as amendments to the tax legislation⁸) require further clarification of the regulations on corporate capital funds registration for taxation purposes.

At present the rules of accounting give the companies right to decide for themselves when to transfer, and, respectively, when to include unfinished construction objects in the property tax database from the Account 08 "Investment into noncurrent assets" to the Account 01 "Fixed assets" - from the moment of registration or from the moment of document feed. It is known that on those real estate objects that need no more capital investment, have the necessary preliminary registration documents on acceptance of constructional work completed, have the documents for state registration fed and that are not in exploitation can be considered under amortization according to the general rules from the 1st day of the month, following the month of putting this object into exploitation. These real estate objects are acceptable for accounting as fixed assets on a separate sub account⁹. The most important thing in this case is that the registration procedure must comply with the registration policy.

However, further explanations of the state authorities¹⁰ mention that state registration of

real estate objects is mandatory but it has a declarational character. That is why a real estate object registered on the Account 08 the rights for which have not been registered for a long time but which is used by the company de facto (for production, services or management purposes) is subject to corporate property tax. Moreover, the letter of Ministry of Finance № 03-05-06-01/33 of 18 April, 2007 states that the real estate object is acceptable for accounting as a fixed asset and is, respectively, included in the database for company's corporate tax as soon as this object is in proper condition for usage, i.e. irrelevant of its putting into exploitation. Besides, corporate profit tax (amortization on the mentioned objects) can only comply with the procedure described in item 52 of Methodology Recommendations № 91n.

It seems necessary to establish a unified approach to the registration of such objects for property and profit taxation purposes and include it in the Tax Code, i.e. regard the fact of registration documents feed for the registration of real estate object rights as the basis for calculating the amortization. The presence of such document - the receipt of the registration authority on the document feed for registration - is the basis for including the object in the amortization group and for calculating the amortization, according to the Department of Federal Inland Revenue Service of the city of Moscow¹¹. It fully complies with the content of item 258 of the Tax Code of RF. Thus it seems logical to apply this item to corporate property tax.

It must be pointed out that the date of putting the real estate object into exploitation can be changed for taxation purposes (for an earlier one) in case there are proven records of this object being in exploitation (e.g. rent, operational equipment in an unregistered building or construction, etc.).

As for individual property it is necessary to change the procedure of including the object in the property tax database to start taking the tax from the month following the month of registration documents feed into a state authority. Suggestions¹² about including in the land tax database objects of unfinished construction located on the land plots and regarded as improvements to the land plots do not seem logical enough and they do not reflect the economic essence of real

estate object, capable of bringing profit (potentially or factually) during a long period of time. On analogy with the company's amortization payments an individual has no legal right to claim the refund on personal income tax for the real estate object that is not properly registered; in the majority of cases the unfinished object cannot be used on its primary purpose. Moreover, in case of selling an unfinished real estate object the individual cannot deliberately lower the income from selling the object for the sum of the expenses as long as they have no documents that might prove the real estate object property rights¹³. At the same time the date of registration can be changed for taxation purposes (for an earlier one) in case if:

- ◆ a taxpayer puts in a written request for property reduction on personal income tax about the expenses on new construction on acquisition of housing (it is necessary to include this regulation in the item 220 of the Tax Code of RF);

- ◆ there was factual connection some of the utilities systems (e.g. gas supply, water drainage system, etc.) with the exclusion to electricity;

- ◆ the owner de facto uses this object or the degree of completeness of the object is higher than 80% (only as an option) of project documentation.

Оценка указанного объекта должна осуществляться на основании методик и сведений, предусмотренных для данного типа объектов недвижимого имущества с учетом поправок на степень готовности объекта.

In conclusion it is necessary to say that the completed information space of real estate objects can be used not only for making up the real estate objects tax database but sometimes can serve for other, more global purposes. As an example of this we can give the systems used in city development and reconstruction projects (e.g. information on a specific series of houses that need reconstruction or demolition) or serving as

the basis for rent calculation depending on the type of real estate object and its location.

¹ Item 14 of the Tax Code of RF, in force until 1 January, 2005 (from here on the information taken from "Garant" reference system).

² The legal basis was the Federal Law of 20 July, 1997 110-FZ "On the Experimental Taxation in Tver and Velikiy Novgorod" (changed and amended).

³ Order of the Ministry of Economic Development of Russia № 146 of 26 April, 2007. "On Administrative Order of Execution by the State Real Estate Cadastre Agency of the Function "Introduction of State Technical Registration of Capital Construction Objects".

⁴ Order of the Ministry of Economic Development of Russia № 235 of 12 July, 2007. "On approval of Administrative Order of Execution by the State Real Estate Cadastre Agency of the Function of "Introducing State Real Estate Cadastre".

⁵ Item 12 of the Federal Law of 13 May, 2008. № 66-FZ in the operational from 1 January, 2012

⁶ Davlyatov G.V. Model of Real Estate Objects Registration. On the basis of some principles of modern accounting theory // Financial and accounting consult. 2008. № 2.

⁷ Item 164, 223 of the Civil Code of RF, item 13 of the Federal Law "On State Real Estate Rights Registration and Real Estate Transactions" of 21 July, 1997 № 122-FZ.

⁸ Item 4 of the Tax Code of RF.

⁹ Article 52 of the Order of the Ministry of Finance of RF "On the Approval of Methods of Capital Funds Accounting" № 91n of 13 October, 2003.

¹⁰ See, e.g., the letters of the Ministry of Finance of RF № 03-06-01-04/154 of 9 August, 2006; № 03-06-01-02/35 of 6 September, 2006; № 03-06-01-02/28 of 27 June, 2006.

¹¹ The letter of the Department of Inland Revenue Service of the city of Moscow of 15 February, 2007 № 09-14/014328.

¹² Explanatory note to the project of Federal Law № 51763-4 "On addition of changes in the Part Two Of the Tax Code of RF and Some Other Legislative Acts in RF" (local real estate tax).

¹³ Note 2 article 1, item 220 of the Tax Code of RF.