

Study on the Current Situation of Real Estate Tax System of China and Its Legislative Improvement

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Abstract

In China's current tax structure, a very serious problem among real estate tax law is that the tax burden is very heavy in the stage of real estate transaction, but lower in the stage of holding real estate. To solve such problem, it should be analyzed from three ways. The first, under the basic principle of tax reform of "equity, neutrality, efficiency and simplification", on thinking about the issue of how to design the tax system of real estate in a comprehensive consideration, the key point is to maintain the rationality and equilibrium on various of tax burdens of taxpayer. The second is that how to strengthen the levy of property tax. The third is that how to make the tax burden to be more reasonable and equal in the stage of real estate transaction and the stage of holding real estate. In this research report, I will give some suggestions on the system design of real estate tax in China.

Keyword: Real Estate Tax, Property Tax, Tax Burden

I . Awareness of the Issue

It is well known that the problem of “land finance”¹ has become a negative factor which shackled balanced, harmonious and sustainable development of Chinese economy. For this reason, the Chinese government has been trying to seek various measures and ways which can eliminate the negative effect of “land finance”. Among these ways and measures, that “to straighten out the relationship of financial distribution between levels of government, perfecting public finance system and improving the tax system, actively building the public finance and tax system which is conducive to change the economic development mode”² is an important way of consideration from the view of public finance and tax law.

The historical causes and the social relationships about the issue of “land finance” are quite complex in China, and the considerations and solutions for this problem from the view of public finance and tax law are involving many aspects, such as “how to divide the financial and administrative authorities between Central and Local governments; how to adjust the financial allocation relationship between Central and Local governments; how to establish a perfect and sophisticated local financial system; how to realize the reasonable and balanced tax burden which was distributed in various taxes under the principle of tax reform of “equity, neutrality, efficiency and simplification” etc.

I think that it could change the current status of indigent revenue sources of Chinese local government by strengthening the collection and administration of real estate tax. Meanwhile, it is also one of the practical ways to improve the situation of irrational economic structure caused by the problem of “land finance”. This is because that the real estate tax can become one of the stable and sustainable tax resource for local government, and also can become the strong financial support for primary local government on providing the public service and public product. The problem is that the design of current local tax system is not reasonable in China, such as real estate tax system. On the

1. Some local governments of China rely on transferring the right to the use of land to obtain the profit in order to maintain the local fiscal expenditures. It is one of serious problem leading to Irrational economic structure and tax structure, unbalanced distribution of benefits between Central and local governments etc.

2. See THE OUTLINE OF THE ELEVENTH FIVE-YEAR PLAN FOR NATIONAL ECONOMIC & SOCIAL DEVELOPMENT OF THE PEOPLE’S REPUBLIC OF CHINA PROFILE.

other hand, some significant local taxes have not been levied yet, such as inheritance tax and gift tax which can play very important role on adjusting the gap in the matter of property and income and ensuring to obtain stable local fiscal revenue.

In this article, I will offer some suggestions on the design of real estate tax system of China through analyzing and researching on the current status of Chinese real estate tax system and its existing problems.

II. Current Tax Policy on Real Estate in China and Its Existing Issues

A. Summary of Current Tax Policy on Real Estate

In general, as a property tax, the main function of real estate tax should be expressed in three aspects: (1) a source of revenue for local government; (2) adjusting the unbalanced distribution of social wealth, promoting the social equity; (3) optimizing the allocation of resources, promoting the use of land resource. In recent years in China, under the current real estate tax system, the general tax function is very weak, but on the other hand, it put too much emphasis on the policy-oriented tax function. This is because that China's current real estate prices are rising rapidly, the central government has made corresponding real estate tax policies, making every effort to achieve the purpose of adjusting and controlling real estate market by real estate tax, namely curbing the irrational demand for housing and the rapidly rising of real estate prices.

Since the market-oriented reform on real estate was made in 1998,³ the real estate tax policies that have been formulated and implemented could be separated into three stages.

3. State Council promulgated the "CIRCULAR OF THE STATE COUNCIL CONCERNING DEEPENING THE REFORM OF HOUSING SYSTEM AND SPEEDING UP HOUSING CONSTRUCTION" on July 3, 1998, promulgated the "CIRCULAR OF THE STATE COUNCIL ON PROMOTING THE CONTINUOUS AND HEALTHY DEVELOPMENT OF THE REAL ESTATE MARKETS" on August 12, 2003, according to above two documents, since 1998, cities and towns in China began to stop the welfare houses distribution, implementing the policy of housing monetization allocation; and since 2003, market-led reform of real estate had been implemented fully in China.

1. First phase: business restraining policy on adjustment of real estate (2003-2008)

In order to improve the living environment and housing conditions, China's government has adopted various measures to encourage the development of the real estate industry since 2003. As a result, the real estate development and real estate investment have been growing rapidly ever since and have brought along China's overall economic growth. It also had begun to appear signs of economic overheating from the period of 2003-2005. At the same time, the real estate price and other price of construction materials relative to real estate industry had been raised considerably. The problems of irrational structure of housing supply had been more pronounced, and real estate market had been disordered at that period.⁴ For this reason, ministries and commissions of State Council of China had enacted a series of policies forward to control the real estate market. For instance, in 2007, State Administration of Taxation released *Notice of the State Administration of Taxation on the Relevant Issues Concerning the Settlement Management of Land Value-added Tax on Real Estate Enterprises* for the purpose of further strengthening the settlement management of land value-added tax on real estate enterprises. In accordance with this notice, the tax burden was increased on real estate development companies and on the phase of real estate transactions.

2. Second phase: business loose policy on adjustments of real estate (2008- 2009)

In 2008, affected by the economic crisis triggered by the global financial crisis, China's economic policies tended to focus on the expansion of domestic demand. Against this background, the government departments of finance and tax had adjusted the tax policy on the aspect of transaction of individual housing, provided that since November 1, 2008, the deed tax rate had been reduced to 1% on person whose fist purchase of ordinary apartment was no bigger than 90 square meters; temporarily exempted the stamp tax on personal sailing or purchasing apartment; temporarily exempted the land value-added tax on personal sailing housing; local government could make policy

4. See Li Jing, *Research on tax policy of urban real estate tax in China*, 6 Social Science Journal 99-103 (2010).

relative to fee deduction or exemption in order to encourage the personal house consumption etc.⁵ At the same time, the State Council published several opinions, provided that “We shall apply business tax deduction or exemption temporarily to the assignment of housing within one year. The business tax exemption on an assignment of ordinary housing purchased by an individual at least five years ago shall be changed into business tax exemption on an assignment of ordinary housing purchased by an individual at least two years ago. The policy that the business tax is levied on the entire proceeds from an assignment of ordinary housing purchased by an individual less than two years ago shall be changed into that the business tax is levied on the difference between the assignment proceeds and the original purchase price.

The policy that the business tax is levied on the difference between the assignment proceeds and the original purchase price for an assignment of unordinary housing purchased by an individual at least five years ago shall be changed into that the business tax is levied on the difference between the assignment proceeds and the original purchase price for an assignment of unordinary housing purchased by an individual at least two years ago. In the case of assignment of unordinary housing purchased by an individual less than two years ago, the business tax shall be levied on the entire proceeds from the assignment.⁶ The purpose of above-mentioned preferential tax policy is to reduce the transaction cost of the real estate through reducing the tax burden on the transaction stage of real estate. Implementation of these policies really achieved a certain tax effects at that time.

3. Third phase: business restraining policy on adjustment of real estate (2009-2010)

As the Chinese economy has recovered gradually after global economy crisis, a large number of foreign capitals have poured into China’s real estate market. Meanwhile, the implementation of preferential policies for real estate transactions at the previous period began to make the real estate transac-

5. See MINISTRY OF FINANCE, THE NOTICE OF THE MINISTRY OF FINANCE AND THE STATE ADMINISTRATION OF TAXATION ON ADJUSTING THE TAX POLICIES ON REAL ESTATE TRANSACTIONS (No.137 [2008]).

6. See GENERAL OFFICE OF THE STATE COUNCIL, SEVERAL OPINIONS OF THE GENERAL OFFICE OF THE STATE COUNCIL ON PROMOTING THE HEALTHY DEVELOPMENT OF THE REAL ESTATE MARKET” (No.131 [2008]).

tions recover and develop rapidly, and to force the housing prices up, and also giving rise to social problems and the issue of overheated economy. To solve above problems, in line with the implementation of relevant financial policies, State Administration of Taxation promulgated the *Procedures for the Administration of Land Value-Added Tax Settlement* for the purpose of strengthening the administration of collection of land value-added tax (VAT) and regulating the settlement of land VAT, provided that “a taxpayer eligible for land VAT settlement, in accordance with provisions of tax laws, regulations and relevant policies on land VAT, calculates the payable amount of land VAT on real estate projects, fills out the declaration form of land VAT for Settlement, provides relevant materials to tax authorities, handles formalities for land VAT settlement and settles full land VAT payable on the real estate project”.⁷

B. The Issue of Real Estate Tax Policy

1. The issue of rationality and equilibrium on the distribution of tax burden

With China’s economic development and rise in national income, the signs that reflected the level of national wealth are more and more tightly integrated with real estate. Especially since the house system reform in 2003, real estate has not only been getting to be the main trends of expenditures from general inhabitant income, but also to be the guarantee of one’s prospective consumption expenditure and an important component of family wealth. But the current real estate tax policies only attach great importance to control the transaction process of real estate without taking into account the result of real estate transactions (namely the stage of holding real estate); only focuses on the distribution of tax burden on income and consumption without paying attention to the distribution of tax burden on personal property. As a result, the gap of property income has widened gradually on Chinese society. As the current real estate tax policies tend to limit speculation and curb real estate prices, but did not take any measures to increase the cost of holding property, so that the tax policy not only failed to achieve the desired result, but ac-

7. See STATE ADMINISTRATION OF TAXATION, PROCEDURES FOR THE ADMINISTRATION OF LAND VALUE-ADDED TAX SETTLEMENT”(No.91[2009]).

celerated the transferring from income gap to property gap. In addition, the orientation of current real estate tax policies does not have stability, thus, the government has taken too loose real estate tax policy in order to stimulate the personal purchasing demand of real estate in the period of recession, or in the period of real estate market downturn; on the other hand, taking too tight real estate tax policy to increase the tax burden on real estate transactions in the period of overheated economy.

I think the basic reason of above-mentioned problems is that, in addition to some commodity attributes, real estate also has public attributes and social security attributes on the basis of the scarcity of nature resource and social resource, but these attributes were not appreciated sufficiently.⁸ In view of basic national conditions that China has a huge population, little arable land, comparatively inadequate per-capita share of natural resources, the stable real estate tax policy should be made firstly in order to meet the people's primary housing needs, meanwhile to protect and develop land resources and rationally utilize the land.

2. The issue of division of financial authorities

Many Chinese scholars believe that the current macro-control tax policy on real estate failed to produce a desired result, one of the most important reason is lack of executive faculty which relate to the game of beneficial distribution between Central and Local governments, also believe that in the process of policy control, the controlling objective of Central and Local governments have gone wrong because of obstruction coming from the economic benefit of local government.⁹ The role of local government has a ternary character, namely the policy executor, the supplier of land market and the stakeholder of the housing market. For the purpose of governmental achievements and of pursuing higher GDP growth rate (increasing the real estate investment can help local government to push up the GDP index), and of seeking practical benefits (local government can obtain huge amounts of land grand fees from

8. See Zhang Yan Yan & Zhu Fang Ming, *Rational thinking on China's current real estate market*, 5 Journal of Southwest University for Nationalities Humanities and Social Science 148-151 (2011); Zhang Xin, *To see the tax adjustment policy of real estate market from the view of analyzing the nature house*, 6 Li Lun Can kao 10-11(2010).

9. See Li Hong Lin & Peng Li Qiang, *Review on effects of the regulatory policies to the real estate market*, 8 East China Economic Management 118-121 (2011).

the high price of land and housing), local government tend to behave more negative in the implementation of real estate control policy.¹⁰

In the matter of fiscal decentralization, since China's government has pushed for the tax-sharing reform in 1994, tax legislative power has been concentrated in the State. In contrast, the local tax legislative power is quite small. With the Chinese rapid economic development, local government's routine authorities have been expanding constantly. However, the local tax system (especially real estate tax) could not play its fiscal role, being unable to meet the growing demand for local government's financial expenditures. Although "urban land use tax" and "house tax" which are levied currently on the local level have been fixed as a local independent financial sources under china's tax law system, but in fact, it could not ensure to get a stable and effective local independent financial sources. It is because that there are some deficiencies in the system design and system structure of real estate tax. In addition, although the local government has certain powers (accordance with *Interim Regulations of the People's Republic of China on City and Town Land Use Tax*)¹¹ like determining the appropriate tax rate range for the district, but the local legislative power on tax is very limited. As a consequence, it is hard for local government to strengthen the acquisition of independent revenue sources by means of local legislation. Therefore, the local govern-

10. See Guo Qing Ran, *Investigating the improvement of strategy on real estate Control policies in China*, 8 *Commercial Times* 107-108 (2009); Chen Ying Geng & Ma Yi Hua, *Research on the issue of real estate tax reform in China*, 7 *Statistical Education* 57-59 (2007).

11. For example, Article 5 of in the URBAN AND TOWNS LAND USE TAX provided that "the people's governments of the provinces, autonomous regions and municipalities directly under the Central Government shall determine the range of tax amounts applicable to the areas under their respective jurisdiction, within the range of tax amounts specified in Article 4 of these Regulations and in light of the urban construction, economic development and other conditions. The people's governments of cities and counties, in light of the actual conditions, shall classify land under their respective jurisdiction into different grades, determine the appropriate applicable amounts of tax within the range of tax amounts specified by the people's governments of the provinces, autonomous regions and municipalities directly under the Central Government and submit the applicable amounts to the aforesaid people's governments for approval before putting them into effect. Upon approval by the people's governments of the provinces, autonomous regions, or municipalities directly under the Central Government, the amounts of tax to be applied to the economically under-developed areas may appropriately be lowered. Nevertheless, the amount lowered shall not exceed 30% of the minimum amount of tax as specified in Article 4 of these Regulations. The amounts of tax to be applied to the economically developed areas may be appropriately raised, which, however, is subject to the approval by the Ministry of Finance".

ment had to solve the problem of local fiscal expenditure by changing the way of getting financial resources (to increase the local financial revenue through strengthening the collection of land grand fees, this is leading to produce the issue of “land finance”). As a result, land grand fees and rents account for a strikingly high proportion in local independent financial sources, leading the house tax burden to be too heavy in the stage of real estate transaction, directly causing a sharp upward movement in property prices. Meanwhile the original function of real estate tax has been reduced.

III. China’s Current Real Estate Tax System and Its Issues

A. Developing History of China’s Real Estate Tax System

There are three items of tax involving real estate tax in China’s current real estate tax system, including farmland occupation tax, city and town land use tax and house tax. The first two taxes are related to land tax system, and the latter is related to property tax system. The historical development of Chinese real estate tax system is summarized as follows:

1. Start-up stage and weaken stage from 1949 to 1978¹²

In 1950, the Government Administration Council promulgated the *Code of Conduct Concerning the Implementation of National tax administration*, according to this regulation, total of 14 kinds of taxes¹³ had been established at that time, among them, house tax and land tax had been levied firstly in the whole country. In 1951, *Interim Regulation Governing the Urban Real Estate Tax* had been promulgated and implemented by Government Administration Council, according to this provision, the house tax and the land tax was

12. See 2 Reform, 125-126 (2011).

13. Including excise taxes, business taxes (including sales tax and income tax in two parts), salt tax, customs duties, salary tax, deposit interest income tax, stamp duty, inheritance tax, transaction tax, slaughter tax, house tax, land tax, special consumption tax and the use of license tax. See CODE OF CONDUCT CONCERNING THE IMPLEMENTATION OF NATIONAL TAX ADMINISTRATION.

merged into urban real estate tax. In 1973, in order to simplify the tax system, the government conducted a large-scale tax reform during the Cultural Revolution in China, merged four items of tax including urban real estate tax into one type of so called “commercial and industrial tax”.¹⁴

2. Recovery stage and developing stage from 1978 to now

Since China’s reform and opening in 1978, for the purpose of speeding up the economic system reform and carrying on overall industrial and commercial tax system reform, China’s State Council decide to implement the reform of “replacement of profit by tax” and all round tax system reform in 1984, resumed to levy *Urban Real Estate Tax* on enterprises. However, the users of land do not have ownership of the land due to the fact that city and town’s land owned by the State under constitution law of China. Therefore, urban land use tax at that time had been divided into two items of tax, one was the house tax considered as having the attribute of property tax, and other one was the urban land use tax considered as having the attribute of resource tax.

On September 15, 1986, *Provisional Regulations of the People’s Republic of China on House Tax* (hereinafter referred to as the “*House Tax Regulations*”) was promulgated by the State Council, provided that house will be levied on domestic enterprise in cities, county towns, state designated townships and industrial and mining areas, meanwhile, continually levied urban real estate tax on foreigners and foreign enterprises who own or use house within Chinese territory. Thus the separated real estate tax system had been practiced for domestic and foreign-funded enterprises and individuals from that time.

In April, 1987, *Interim Regulations of the People’s Republic of China on Farmland Occupation Tax* (hereinafter referred to as the “*Farmland Occupation Tax Regulations*”) was promulgated by the State Council, provided that any organization or individual that occupies any farmland to build a house or engage in non-agricultural construction is a taxpayer of farmland occupation tax and shall pay such tax.

In Sept, 1988, *Interim Regulations of the People’s Republic of China on*

14. Divided into two situations, first, merging the cities real estate tax levied on enterprises into the industrial and commercial tax; second, continually levying cities real estate tax on domestic and foreign individuals who owned the house.

City and Town Land Use Tax (hereinafter referred to as the “*City and Town Land Use Tax Regulations*”) was promulgated by the State Council, provided that organization and individual using land within the scope of cities, counties, administrative towns, industrial and mining areas shall be payers of city and town land use tax and shall pay the land use tax; the land use tax shall be calculated on the basis of areas of land actually occupied by the taxpayers and shall be collected in accordance with the specified amount of tax.¹⁵

In 2008, the *Order No.546 [2008]* of the State council on abolishing the *Urban Real Estate Tax* (from January.1, 2009) was published, provided that foreign-funded enterprise, foreign enterprise and foreign individuals and organizations shall pay house tax in accordance with the *House Tax Regulations*. At this point, the unified real estate tax system between domestic and foreign individual and enterprise has been established and applied to until now.

In conclusion, current Chinese real estate tax system can be summarized two items of tax, city and town land use tax and house tax levied on enterprise who use the land and own house property, or levied on enterprise and individual who profit rent from leasing real estate, but not yet levying house tax on individual who own house property,¹⁶ and also not levying any land tax and house tax on using rural land or possessing rural house. In recent years, real estate tax reform has been widely discussed in China and implemented in some provinces a pilot program of the levying house tax. It actually do not mean the establishment of a new kind of tax, but just to start levying house tax on individual of city and town who own house property under the existing real estate tax system.¹⁷

B. The Structure of China’s Current Real Estate Tax System

15. On December 12, 2006, State Council promulgated the “DECISION OF THE STATE COUNCIL ON AMENDING THE INTERIM REGULATIONS OF THE PEOPLE’S REPUBLIC OF CHINA ON CITY AND TOWN LAND USE TAX”(No.483[2006] of State Council), in accordance with this provision, the taxable object had been expanded to foreign capital enterprises and foreign companies.

16. See Jin Dong Sheng, *Cause and effect of real estate*, 5 *Financial View* 52-54 (2010).

17. For example, the government of ShangHai promulgated the “DETAILED RULES FOR THE IMPLEMENTATION OF HOUSE TAX” on January 28, 2011; the government of ChongQing promulgated the “DETAILED RULES FOR THE IMPLEMENTATION OF CHONGQING ON THE ADMINISTRATION OF HOUSE TAX COLLECTION” on January 28, 2011.

Although there are different structures of real estate tax system in different countries, but from a theoretical perspective, the construction of real estate tax system usually consists of two parts, namely the tax on land holders and the tax on house holders (Collectively referred to as the real estate holders). Meanwhile, both land and house should have the legal sense of ownership (in other words is to have the “property rights”). On this basis, real estate tax should be having the nature of asset tax (or nature of a property tax).¹⁸

In this sense, I believe that, under China’s current real estate tax system, the land tax levied on enterprises and individuals does not have the nature of asset tax, but only have the nature of resource tax or the nature of rent. On the other hand, although the house tax was levied on house holders, however the tax base is too narrow, only taxing enterprises of urban areas but not levying on individuals of urban areas, and also not applying to rural area. Therefore, we can say that the real estate tax system has not been formed yet under the current legal environment in China.

1. The structure of land tax system and its character analysis

a. The structure of city and town land use tax system and its character analysis

In order to rationally utilize land in cities and towns, regulating the different proceeds from different grades of land, increasing the efficiency of land use and strengthen the administration of land, in 1988, the urban and town land tax have been levied on land users apart from foreign-investment enterprise, foreign enterprise and foreign individuals and organizations. As mentioned above, land use tax does not have the nature of asset tax, but only have the nature of resource tax. Existing city and town land use tax are implemented in accordance with *City and Town Land Use Tax Regulations* (2006 revision).

The range of taxpayer was provided that organizations and individuals using land within the scope of cities, counties, administrative towns, industrial and mining areas shall be payers of urban and town land use tax, among

18. The nature of a property tax is considered as “since the property owners has obtained the protection or convenience from the public services provided by local administrative units, they should pay the property tax for these benefits”. See KaNeKo HiLoShi, *The nature of real estate and its issues*, in THE COLLECTION OF RELEVANT REAL ESTATE THESIS (2008).

this, the term “organizations” mentioned in the preceding paragraph includes state-owned enterprises, collective enterprises, private enterprises, joint-stock enterprises, foreign-invested enterprises, foreign enterprises and other enterprises, as well as institutions, public organizations, state organs, military forces and other organizations; and the term “individuals” mentioned in the preceding paragraph includes individual industrial and commercial households and other individuals. Tax basis was provided that the land use tax shall be calculated on the basis of the areas of land actually occupied by the taxpayers and shall be collected in accordance with the specified amount of tax. The annual amount of land use tax per square meter is as follows: (1) 1.5 to 30 Yuan in large cities; (2) 1.2 to 24 Yuan in medium cities; (3) 0.9 to 18 Yuan in small cities; and (4) 0.6 to 12 Yuan in county seats, administrative towns, industrial and mining areas. Meanwhile, different district could determine different range of tax amounts applicable to the areas under their respective jurisdiction.¹⁹

As seen from foregoing provision, we could know that current land tax obviously have the nature of differential land rents. The existing problems of city and town land use tax are that, since the land tax was still collected based on fixed amount collection in accordance with land areas occupied, not imposed based on land valuation price, therefore, the land tax accounted for the proportion of local revenue is extremely minimal. Thus the adjustment function on the wealth gap arising from holding assets did not fully exert. In addition, the tax range is confined to cities and towns, not applying to non-agricultural construction land of rural area (for example, the land used by township enterprises and rural house site). Therefore, with the rapid development of urban-rural integration, the wealth gap between urban and rural areas or between different rural areas will be increasingly significant, and making it easy for more enterprises or individuals to use preferential terms of rural land tax for tax avoidance.

b. The structure of farmland occupation tax system and its character analysis

In April.1987, the State Council promulgated the *Farmland Occupation Tax Regulations* which was considered as a kind of policy tax system. Farm-

19. See INTERIM REGULATIONS OF THE PEOPLE’S REPUBLIC OF CHINA ON URBAN AND TOWN LAND USE TAX (2006) Article 2-3.

land occupation tax is levied for the purpose of reasonably utilizing land resources, intensifying land administration and protecting farmland. As mentioned above, farmland occupation tax does not have the nature of asset tax, but only have the nature of resource tax or one-off rent. Farmland means the land utilized for planting crops. Any organization or individual that occupies any farmland to build a house or engage in non-agricultural construction is a taxpayer of farmland occupation tax, and the farmland occupation tax shall be levied once at the applicable tax rate on the basis of the actually occupied area by a taxpayer as stipulated. The rates of farmland occupation tax are specified as follows: (1) 10-50 Yuan per square meter, for the regions (based on the administrative area at the county level, the same below) where the per capita farmland is less than one mu; (2) 8-40 Yuan per square meter, for the regions where the per capita farmland is between one mu and two mu; (3) 6-30 Yuan per square meter, for the regions where the per capita farmland is between two mu and three mu; or (4) 5-25 Yuan per square meter, for the regions where the per capita farmland is more than three Mu.²⁰

2. The structure of house tax system and its character analysis

The range of house tax is defined as cities, counties, administrative towns, industrial and mining areas, and the owner of house shall be liable for the payment of house tax. Where the housing is subject to a mortgage, the mortgagee shall be liable for payment. Where the owner and the mortgagee are not present at the locality in which the property is situated, where ownership of the house has not been established or where disputes in connection with the tenancy and mortgage of the house have not been resolved, the tax shall be paid by the custodian or the user of the house on behalf of the owner or mortgagee. House tax shall be assessed according to residual value deducted from 10%-30% of original value, or according to the rent. The house tax rate is divided into two types: in the case of taxing on residual value, the tax rate is 1.2%; in another case of taxing on rent, the tax rate is 12%.²¹

C. Existing Issue of China's Current Real Tax System

20. See "INTERIM REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA ON FARMLAND OCCUPATION TAX" (2008).

21. See "PROVISIONAL REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA ON HOUSE TAX".

1. The Issue of Land Ownership Relating to Real Estate Tax System

Real estate is a legal concept. Considering its legal ownership relations, legal subjects such as individuals and enterprises were recognized to own property right on the land in most countries in the world. However, since the establishment of the P. R. C in 1949, according to the provisions of *Land Administration Law*, “China practices socialist public ownership of land, namely, ownership by the whole people and collective ownership by the working people. Land in the urban areas is owned by the State; Land in rural and suburban areas is owned by peasant collectives, except for those portions of land which belong to the State as provided for by law; House sites and private plots of cropland and hilly land are owned by peasant collectives; Any organizations or individuals do not have right of disposition on the land to illegally transfer the land through buying, selling or other means”.²² Meanwhile, according to the *Provisions of Interim Regulations of the People’s Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas*, State-owned land and land owned by peasant collectives may be lawfully determined to be used by organizations or individuals who obtain the right to the use of the land and engage in land development, utilization and management, and the right to the use of land may be transferred by law.

In accordance with relevant theories of *Tax Incidence*,²³ the ultimate tax bearer should be considered as the actual owner of the land (namely State or peasant collectives). Therefore, since State is the tax collector, thus the problem is that, how could State levy land tax on itself as a taxpayer? When levying land tax on the tax bearer who does not has the right of land, but only has the right to the use of land, how to interpret the problem involved property right? These issues should be defined and resolved in tax law theory.

Some Chinese scholars believe that the taxable object of real estate tax should only be limited to house, but does not include land. This is mainly because the real estate tax is a kind of property tax, and the taxpayer of prop-

22. See “LAND ADMINISTRATION LAW OF THE PEOPLE’S REPUBLIC OF CHINA” Article 2.

23. See Zhong Da Neng, *A research on residence tax in tax incidence analysis's point*, 3 *Taxation and Economy* 91-95 (2009); Han Ming Qin, *The imputed theory on the tax burden of property tax*, 4 *Taxation and Economy* 27-30 (1997).

erty tax should be the owner of property in the sense of property law.²⁴ Since China's constitution law expressly provided that China's land system is "public ownership of land" and "private right to the use of land", this is the biggest difference compared with other countries in the world where the land system is private ownership. For this reason, the taxable object could only be house; otherwise, the real estate tax system will conflict with the constitution law.²⁵

In addition, some scholars have advocated abolishing the existing urban land use tax. They believed that firstly, since the system of compensated use of State-owned land had been established in China, from the perspective of jurisprudence, land use right is a kind of superficies right, superfiary must pay the agreed rent on time to landowners (that has been defined as "land grand fee" in China); secondly, from an economic perspective, land is usually considered as a production factor to enter the market, and the State come into the market as a main body on landownership, land grand fee is precisely a embodiment of landownership in economic, namely the market value of landownership. Since the land users have already paid the land grand fee to gain the right to the use of land, thus they should not pay the urban land tax which has the nature of rent.²⁶

However many Chinese scholars hold the different views,²⁷ advocating that the right to the use of land has the obvious character of real right, including the right possession, utilization, usufruct and disposition of his property on the right to use of land; it shows concretely as follows: inheritance, transference, lease and sublease, profiting from, settlement of mortgage, creation of pledge, pawning, trust etc. on the right to use of land; therefore, the right to use of land is a kind of derived right from real right, having the nature of long-term stabilization; in according with relevant laws and regulations, the maximum term with respect to the assigned right to the use of the land shall be determined 70 years for residential purposes, 50 years for industrial purposes, 50 years for the purposes of education, science, culture, public health and physical education, 40 years for commercial, tourist and recreational

24. See Wang Hai Yang & Wu Xiang Cheng, *Research on the fundamental issues of real estate*, 7 Legal System and Society 23-24 (2010).

25. See "CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA" (2004) Article10.

26. See Qian Kai, *Research on the real estate tax reform of China*, 7 Review of Economic Research 42-47 (2005).

27. See Xi Wei Hua, *On the influence of China's current land system to the real estate tax*, 26(1) Journal of Beijing Institute of Economic Management 40-43.

purposes, and 50 years for comprehensive utilization or other purposes; on the basis of above-mentioned viewpoint, thus the user of land should be the taxpayer of urban land tax.²⁸

2. The issue of tax burden relating to house tax system

At present, there are many problems involving tax burden which is unbalanced and unfair due to the unreasonable design of current house tax system.

Firstly, the applying range of house tax is very narrow, only levying on cities and towns, imposing no levies on rural house; taxable object is limited to the holding house of enterprise, not including individual; therefore, the tax burden is much concentrated in urban enterprise; however, with the commercialized development of individual housing and parts of China's rural economic development, large numbers of urban luxury house has been owned by individuals, on the other hand, there are also many rural wealthy classes appeared in rural areas, thus they really have strong tax-bearing capacity on house tax; however, due to lack of coping mechanism on these issues in existing house tax system, it lead to the problems of inequitable division of tax burden.²⁹

Secondly, it is because that the basis of tax assessment shall be assessed according to residual value deducted from 10%-30% of original value, as a result, it is also making tax burden unbalanced and unfair. This is because the acquisition value or book value of house could fluctuate according to the changing of market economy environment and to the changing of economic policy, thus it make the acquisition value of house unable to reflect the real value of house, it cause the unbalanced tax burden on house owner (since the purchasing price of house is different, thus the same condition of house bear the different tax burden due to acquisition value). Actually, it also narrowed the house tax base considerably due to this basis of tax assessment.³⁰ In addition, in China's current tax structure, a very serious problem among

28. See the "INTERIM REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA CONCERNING THE ASSIGNMENT AND TRANSFER OF THE RIGHT TO THE USE OF THE STATE-OWNED LAND IN THE URBAN AREA", Article 12.

29. See Ma Ke He, *The basic idea of perfecting the current real estate tax system of our country*, 6 *Journal of Central University of Finance & Economics* 11-13 (2004).

30. See Jia Kang, *Real estate reform-the U.S. model and the choice of China*, 1 *People's Tribune* 58-61 (2011).

real estate tax law is that the tax burden is very heavy in the stage of real estate transaction, but lower in the stage of holding real estate. The current tax burden on real estate mainly include the land grand fee, sales tax, educational surtax, city maintenance and construction tax, land value added tax, enterprise or individual income tax, stamp tax, farmland occupation tax, deed tax etc. These taxes and fees will be transferred to real estate buyers as a part of the operating costs of real estate development companies by increasing the real estate prices. Therefore, it increases the tax burden of house owner due to the existing basis of tax assessment.³¹

IV. The Direction of Real Estate Tax System Reform in China

A. The Consideration about Real Estate Tax System Design

1. The incidence of object of taxation

As the reform of real estate and land system further develops in China, I think that the current house tax, land value added tax and land grand fee should be combined into real estate tax for resolving the problem of the narrow levy range on house and land, and the focal point and the trend of real estate reform shall be on strengthening the tax collection of personal holding house in the near future, and also expanding incidence of object of taxation to combination area of city and country and rural area in the future.³²

2. The Tax Base

For the purpose of ensuring a rich, stable sources of revenue and of effectively promoting the efficient use of land resources to fulfill the function of resource allocation of property tax, it should adopt the of reasonable fair

31. See Zhang Jing Dong, *Analyzing the tax burden on the stage of house holding*, 4 China Real Estate Finance 43-45 (2009).

32. See Ma Ke He, *The basic idea of perfecting the current real estate tax system of our country*, 6 Journal of Central University of Finance & Economics 11-13 (2004).

market evaluation value as the basis of assessment.³³

3. The tax rate

Since simplifying the tax system is the direction of tax reform in the world, therefore, in order to enhance the rationality of taxation and to increase the efficiency of collection and management on the real estate tax, in the design of real estate tax rate, the adjustment direction should be changing from a multiple, complex rate to a single, low tax rate. In view of the fact that China's current tax collection technological means and related measures are not perfect yet, I think we should adopt the uniform model of proportional tax rate. At the national legislative level, the State shall formulate a unified tax rate range, and giving local governments a certain degree of discretion, allowing local governments to determine the specific tax rate by themselves within the prescribed tax rate scope of the state in light of the local financial and economic situation.³⁴

B. The Improvement of Other Systems Related to Real Estate Tax

In addition to improving real estate tax system itself, the other necessary complementary measures must also be adjusted simultaneously. It should be establishing the real estate evaluation system, real estate registration system and real estate information sharing system that can suit the real estate tax system reform.

1. The real estate evaluation system

Assessment of real estate is the core mechanism in real estate tax system, it not only reflects the actual value of real estate, but it is also an important basis for fair taxation. Therefore, we should set up an authoritative and impar-

33. See Chen Shao Ying, *Revelation and reference—on the perspective of the System of real estate keeping tax law in developed countries and regions*, 1 *Journal of Henan Administrative Institute of Politics and Law* 51-58 (2011).

34. See Li Ming Hui & Cui Hui Yu, *The discussion on establishment of real estate taxation system*, 6 *Taxation Research* 42-45 (2007).

tial special assessment agency to evaluate the house and land value at regular intervals (at least 3 to 5 years).³⁵

2. The real estate registration system

Real estate registration system is the basis to determine revenue sources, the tax authorities can fully and actually grasp the overall changing situation related to taxpayer's land and house through real estate registration, and can effectively supervise and advise the taxpayer to declare tax on time. Real estate registration system includes the establishment of land book account system and housing registration of property right system. Basis on these systems, tax authorities shall establish a more comprehensive database of real estate registration, not only including the existing housing and land registry information (such as identification number of the taxpayer, structure, use, built years and land floor area ratio of the real estate or other data), but also including the information of various stages from land transfer to transaction, such as exploitation, acquisition and transfer of real estate.

3. The real estate information sharing system

The existing problem is that the information sharing platform related to land and house has not yet been established between departments of real estate transaction and registration and other administrative management departments. While, although various levels of government administrative departments have gradually established an internal information administration system, however, due to the different standard between these departments, it cannot share the tax information related to real estate. Therefore, it will become the key technical obstacle which needs to be addressed and overcome on how to coordinate various government administrative departments to share related real estate information and establish a unified standard of electronic data.

35. Cui Zhi Kun, *The direction of the establishment of real estate tax system in China*, 12 Public Finance Research 50-52 (2010).

V. Conclusion

With the rapid economic development of China and the further promotion of land and housing system reform, considering the existing problems of real estate tax system above-mentioned, I believe that the real estate tax should be amend in some respects: merging current the house tax, land value added tax, land grand fee into uniform real estate tax; expanding the range of tax to rural area and expanding the taxable object to house ownership of individuals; adopting the of reasonable fair market evaluation value as the basis of assessment; meanwhile, establishing the real estate evaluation system, real estate registration system and real estate information sharing system to suits the real estate tax system reform.

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