

A Study on Taxation Issues of Basements Attached to Second-hand House Transactions

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Abstract. In the second-hand housing transactions in China, the taxable items for residential basement depend on the different ownership and functions. For some residential basements that are considered as commercial properties, the taxable items are much more than pure residential ones, and taxpayers have different understandings of this. Through classification and policy analysis of residential basement, it is proposed to determine the feasibility of levying based on actual function classification.

Keywords: second-hand house, basement, taxation, discussion.

1 Introduction

To enrich the functional use, it is not uncommon for residential properties to be accompanied by a basement. Due to the differences in the location and ownership of the basement, there are significant differences in the taxable items during transactions, which often cause confusion for both buyers and sellers. Therefore, it is necessary to clarify the taxable issues in transactions involving residential properties with attached basements.

2 Types and Taxation Requirements of Residential Attached Basements

2.1 Underground basements with direct access from the first floor of multi-story buildings

Ground-level duplex apartments can be found in some residential properties like villas, stacked townhouses, mansions, and high-rise buildings. The characteristic feature of these basements is that they can be directly accessed from the interior of the first-floor unit without the need to pass through common areas such as corridors and stairs within the building. The tax authorities consider these basements to be part of the same residential unit as the above-ground dwelling. Some of these basements have separate property rights, and their area is included in the total area of the housing property certificate. Others are considered complementary parts of the residential unit and are not included in the property certificate area. For second-hand transactions involving these types of properties, the tax basis is based on the area documented in the housing property certificate, with the basement area not taxed separately.

2.2 Single-room basement without property rights separation

This type of basement is commonly found in some multi-story residential buildings, with each owner having one room, which usually ranges from a few to a dozen square meters. The location of this type of basement is such that each owner must descend the public staircase inside the building to the basement level and then walk through a public corridor to reach their own basement room. These basements are public buildings owned by all residents in the community, with no property rights separation done. Owners only have the right to use them, and the right to use them transfers with the transfer of residential ownership. The "planned use" column in the real estate ownership certificate for the residential property only records "complete sets of residential properties", and the "real estate floor plan" only includes the "household floor plan" (survey map) of the residential property, without marking the location or area of the basement. During the transaction and transfer of ownership, taxes and fees are levied based on the house area recorded in the real estate certificate, with the basement not included in the valuation and not subject to taxation.

2.3 Individual Basement Units with Divided Property Rights

The location, size, function, and way of entering the third type of basement are almost the same as those of the single-room basements without divided property rights mentioned above. The difference is that this type of basement has been registered with divided property rights, and the owner has property rights. Some basements have separate property certificates^[1]; others record both the residence and the basement in one real estate certificate, listing "complete residential unit, storage room" in the "planned use" column of the real estate ownership certificate^[2]. On the "real estate floor plan," not only is there a "housing partition diagram" (surveying map) for the residence but also a "housing partition diagram" for the basement. For those recorded in one real estate certificate at the same time, the tax authorities consider these types of basements and residences as "different immovable property units"^[3], and they are for non-residential use, requiring commercial taxes. During the sale of such second-hand properties, residential areas are taxed according to residential standards, while basements are taxed according to commercial standards.

The above three types of residential properties with basements, the first two types usually have no disputes between buyers and sellers regarding taxes when transferring ownership in the second-hand market. However, if it is the third type of basement property with independent property rights, and if both the residential property and the basement have separate property certificates, it is easier for both parties to understand and calculate taxes separately during the transaction. But if they are merged into one property certificate, taxes need to be calculated based on the two different types of properties, which often causes confusion among taxpayers.

3 Example of transfer and taxation of different basement properties

3.1 Example of transferring a single basement unit with divided property rights

The transfer of a residential property and its associated basement storage room is carried out. The "location of the real estate" column in the property ownership certificate records "Room

502, Building 7, Storage Room 09" in Dongfeng Community. The "planned use" column records "complete residential unit, storage room". The "remarks" column in the property ownership certificate records "residential area 100 square meters, storage room 09 with an area of 13.59 square meters". There are two survey maps on the real estate plan: one for the residential unit and one for the storage room. This storage room is accessed through a public staircase and is used to store the belongings of each homeowner.

During the second-hand housing transaction tax process, the tax authorities require separate pricing and separate taxation of the house and storage room. The house is taxed according to its residential nature, while the storage room attached to the house is taxed as a commercial property and requires a preliminary valuation. After being evaluated by a certain real estate land evaluation consulting company, the unit price of the storage room is 2115 yuan, the assessed value is 28,740 yuan, and the evaluation fee is 800 yuan. Based on this assessment report, the calculation of taxes and fees that should be paid separately is shown in Table 1.

Table 1. Underground Storage Room Tax Details Table (Unit: RMB ¥)

Item	Tax Type	Item Name	Payment Amount	Tax Rate	Payer
1	Personal Income Tax	House Transfer Income	862.20	0.03	
2	Land Value Added Tax	Land Value Added (not exceeding 50%)	303.28	0.3	
3	Business Tax	Selling Commercial Housing	1437.00	0.05	
4	City Maintenance and Construction Tax	Attached to Business Tax (Urban Area)	100.59	0.07	Seller
5	Education-Local Education Surcharge	Attached to Business Tax	43.11	0.03	
6	Stamp Tax	Property Transfer Documents	14.40	0.0005	
7	Deed Tax	House Sale and Purchase	1149.60	0.04	Buyer
8					
Total	8	-	3938.92	-	-

In this case, the residence and basement are recorded on the same property certificate; there are also some basements with separate property certificates, which are subject to taxation based on the above 8 tax items.

3.2 Example of trading a single basement room with undivided property rights

A residential unit and its attached underground storage room were traded in the second-hand housing market. The basement is a single basement room without property rights, with an area of approximately 15 square meters. The original owner rented it to a neighbor in the community as an e-commerce warehouse for an annual rent of ¥1,200. In the second-hand housing transaction, no taxes or fees need to be paid for the basement, and the right to use it was transferred to the buyer together with the upstairs residential unit. At the same time, the buyer and seller agreed that "the sale will not terminate the lease", and the basement will continue to be rented out, with the rental income after the transfer belonging to the new owner.

In the above two examples, the basement in Example 2.1 has no operational purpose, but because it has property rights and both "planned use" and "supplementary remarks" include "storage room", it needs to be taxed as "non-residential" and pay eight taxes and fees during the transaction. The basement in example 2.2 is also a household storage room, and generates operating income in essence, but since the basement only has a right to use and no property rights, no taxes or fees need to be paid during the transaction. Therefore, it can be seen that the current tax basis for taxing basements attached to residential units is based on the property rights category of the building and its location, rather than its actual use.

4 Taxpayers' confusion about Tax Differences

4.1 Taxation does not refer to the planning, design, and actual use of housing

Firstly, residential land in residential areas is generally sold as residential land with a usage period of 70 years. However, as an accessory basement in residential buildings, it is treated as commercial property, which does not comply with land planning and transfer nature. Secondly, the design purpose of the basement storage room attached to residential units is for storage purposes, not for production and commercial services. Thirdly, most residents do not actually use these spaces for business operations, so it is difficult for them to accept that they are assessed and taxed as commercial properties. Instead, some basements without property rights actually generate rental income but can be exempt from taxes during transactions, which raises doubts about the objectivity of taxation for taxpayers.

4.2 Basements are not regarded as commercial properties during ownership

On the one hand, property fees, electricity fees, and water fees for basement storage rooms are charged according to the standards of civil residential buildings. Why are they treated as commercial properties when it comes to taxation during transactions? On the other hand, if basements are taxed as commercial properties, should the residential units with basements be required to pay property tax as required by law ^[4]? Has the rental income generated by the joint use of the residential unit and basement been properly taxed and exempted according to the relevant conditions? Whether it is levied based on rent or value, property tax must be paid on time. Have tax authorities done their best to collect the taxes accordingly? Why are the basements during ownership and those during the transfer treated differently?

4.3 Different interpretations of "same real estate unit"

The tax authorities interpret the "same real estate unit" as a physically connected space; while taxpayers believe that the "same real estate unit" includes the above-ground residential property and underground storage room in a fixed location because they are written on the same property certificate and should belong to the same unit. According to Article 8 of the Provisional Regulations on Real Estate Registration in China, "Real estate is registered based on a real estate unit. Real estate units have a unique code. ^[5]" Since they are registered on one property certificate, it can be inferred that the house and the basement are one real estate unit, because if they were two real estate units, they would be two basic units and should be registered separately.

4.4 Resulted in housing discrimination and substantial tax evasion

Basements attached to residential properties are generally provided by the unit or developer as a gift during initial sales, some of which may not even be priced. The taxation of the attached basement is not based on its actual use function, but only according to its marked use and location. For basements that are taxed as commercial property, this type of collection creates housing discrimination, increases transaction costs and difficulty, and affects the liquidity of real estate. As for non-property rights basements, their functionality and tax responsibilities are completely disregarded during the transaction process. Due to significant differences in understanding, taxpayers generally have difficulties in accepting basement tax calculation rules.

5 Basis and Interpretation of Tax Collection by Tax Authorities

5.1 The items recorded on the real estate ownership certificate are the basis for taxation

The tax authorities determine the tax items based on the property and use of the house recorded in the real estate certificate. The registration and certification of real estate are managed by the national property management department. The tax authorities believe that the relevant provisions regarding why "storage room" rather than "residential" is recorded in the real estate certificate need to be understood from the department that issues property rights.

After consulting relevant laws and regulations, it was found that the basis for the land registration use determined by the land and resources department is the approved land use and the land transfer term. For example, 70 years for residential use and 40 years for commercial use. However, the Ministry of Housing and Urban-Rural Development determines the use of houses based on the functional use approved by the urban and rural planning department. For example, residential areas have residential buildings as well as community and property-use rooms, garages, storage rooms, and other non-residential facilities. This leads to different 'uses', which is also the core of taxpayers' understanding of the differences.

5.2 The Basis of "Same Real Estate Unit"

Article 5 of the Implementation Rules of the Interim Regulations on Real Estate Registration stipulates that the real estate unit referred to in Article 8 of the Regulations refers to a closed space with independent use value and ownership boundary. The term "housing" mentioned in the preceding paragraph includes independently built, closed spaces with ownership boundaries, as well as spaces that can be independently used and have ownership boundaries, such as suites, floors, and rooms^[6]. According to the provisions of these Implementation Rules, the underground "room" is a closed space with independent use and ownership boundary, which is not considered as the same real estate unit as the suite on the upper floor. As it is not a residential property, when trading it, eight taxes and fees must be paid, including personal income tax, land appreciation tax, business tax, urban maintenance and construction tax, education surcharge, local education surcharge, stamp duty, and deed tax. Among them, the buyer bears the deed tax, while the stamp duty is shared, and the remaining six taxes and fees are borne by the seller^[7].

5.3 Basis for Deed Tax

After the implementation of the "Deed Tax Law of the People's Republic of China" on September 1, 2021, the "Announcement of the Ministry of Finance and the State Administration of Taxation on Implementing Certain Matters Concerning the Implementation of the Deed Tax Law" (Ministry of Finance and State Administration of Taxation Announcement No. 23 of 2021) pointed out that if the ancillary facilities of a house (including parking spaces, motor vehicle garages, non-motor vehicle garages, top-floor lofts, storage rooms, and other ancillary facilities of a house) are part of the same real estate unit as the house, the basis for taxation shall be the total price payable by the transferee, and the same tax rate as that for the house shall apply. If the ancillary facilities of a house are different from the house as separate real estate units, the basis for taxation shall be the transaction price determined in the transfer contract, and the applicable tax rate determined locally shall apply^[8].

The basis before the implementation of the "Deed Tax Law" was the "Reply of the Ministry of Finance and the State Administration of Taxation on the Deed Tax Policy Regarding Ancillary Facilities of Houses" (Cai Shui [2004] No. 126): For acts related to ownership or land use rights of ancillary facilities (including parking spaces, garages, bicycle sheds, top-floor lofts, and storage rooms, the same below) related to houses, deed tax shall be levied in accordance with the provisions of laws and regulations on deed tax. For those that do not involve changes in land use rights and the transfer of house ownership, no deed tax shall be levied. If the ownership of the acquired ancillary facilities of the house is priced separately, deed tax shall be levied at the applicable tax rate determined locally; if it is priced together with the house, the same deed tax rate as that for the house shall apply^[9].

6 Discussion and Suggestions

6.1 Real estate registration should be standardized uniformly

Currently, there is no unified registration standard for the basement of residential properties in different regions. For example, Shanghai stipulates that "the property rights certificate of the parking spaces and storage rooms purchased by the owners and other ancillary facilities will not be issued separately but can be recorded in the owner's real estate certificate"^[11]. The Notice on Further Regulating the Registration of Real Estate in Suzhou City in 2017 requires that "for real estate such as underground garages and storage rooms that can be registered and certified separately within residential communities, the use shall be determined according to the following situations during the first real estate registration, except for those used as commercial supporting services on mixed commercial and residential land: (1) if the Construction Engineering Planning Permit clearly indicates that it is an underground garage or storage room, the land use registration shall be urban residential land and the house use shall be registered as a residential property with a note in the footnote column indicating that the real estate is an underground garage or storage room. (2) If the Construction Engineering Planning Permit clearly indicates that it is a residential property, the land-use registration shall be urban residential land and the house use shall be registered as a residential property with a note in the footnote column indicating that the real estate is an underground space."^[10]. For the underground basements in (1), they are taxed as non-residential buildings, and for the ones in (2), they are taxed as residential properties.

By comparison, Suzhou's real estate registration regulations fully consider pre-requirements such as land planning and construction project planning, which effectively solve the problem of classification attribution of underground basements affiliated with residential properties. This makes it easier for tax authorities to formulate accurate taxation rules and for taxpayers to understand. This policy can be promoted nationwide.

6.2 Taxation based on certificate type and actual use

Firstly, for underground basements that are separately certified and stated to be used as storage rooms, they will be taxed as commercial properties.

Secondly, for those properties which are recorded on the real estate certificate as both residential and storage rooms, further verification of the purpose of the storage room should be conducted. According to the principle of "Declaration of property owners, confirmation of property management, self-responsibility, and strict punishment for violations", the owner must declare the purpose of the storage room, provide payment receipts for utilities and property management fees, and submit a statement from the property management company stating that there is no business activity taking place in the storage room. Based on this information, the underground space attached to the residential property will be taxed separately, and the total area and value will be combined with the above-ground property. If the above materials cannot be provided, the property will be taxed as non-residential.

7 Conclusions

The tax items related to residential basement in second-hand housing transactions often confuse taxpayers, due to differences in the classification of property rights in the basement. Therefore, it is necessary to fully consider the pre-regulations such as land planning, land use category, and construction project planning, and unify the real estate registration according to the law. On this basis, transaction taxes and fees are determined based on the type and actual use of the property certificate. The practice in Suzhou City has a high reference and reference value.

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