The Improvement of Conceptual and Categorical Framework for the Classification of Objects of Cadastral Registration

A A Kharitonov¹, Natalia V Ershova¹ and Sergei S. Vikin¹

¹Land Cadastre Department, Voronezh State Agrarian University named after Emperor Peter the Great, ul. Michurina 1, Voronezh, 394087, Russia

E-mail: i.ershova@mail.ru

Abstract. The analysis of the current legislation concerning the State Real Estate Cadastre shows that in practice the technical inventory system still exists in parallel to the State cadastral registration system. Moreover, the procedures of technical inventory and State cadastral registration are carried out in declarative order, which does not allow a timely replenishment of the tax base, in consequence of which a substantial sum of money is drained annually from the State treasury. As part of research the authors reveal that one of the major legislative lacunae is the absence of clear concepts and classification features of objects of cadastral registration, which should be completely identical to the objects of taxation. The authors propose a conceptual and categorical framework for classifying the objects in order to avoid the confusion of concepts concerning the objects of cadastral registration from the point of view of their category of importance or solidity, and eventually to form a unified approach to registration and subsequent taxation of such objects. The paper presents the suggestions on taking the real estate inventory, which due to information exchange will allow creating and updating the database of the State Real Estate Cadastre and the taxable base, by extension.

1. Introduction
The maintenance of the real estate cadastre historically includes the procedures for inventory, registration, description and appraisal of land. The essence of such processes depends first of all on the current state of land relations. At the same time, most countries of the world have come to the creation of a multi-purpose cadaster that combines, in the first place, the legal and fiscal functions. The main and primary object of all cadastral systems is the land plot, which is characterized by a set of certain parameters.

In the Russian Federation the land cadastre acquired its actual meaning in the 1990s in connection with the introduction of a variety of forms of ownership. The Federal Law No. 28-FZ “On State Land Cadastre” (SLC) dated January 2, 2000 [1] was the first to introduce the definition of state cadastral registration of land plots. According to this regulatory act, the object of registration is a land plot, i.e. “a part of the land surface (including the surface soil layer), the boundaries of which are described and certified in accordance with the established procedure by the authorized state body, as well as everything that is above and below the surface of the land plot”. The data on land plots as objects of cadastral registration was kept in the Unified State Register of Land (EGRZ). At the same time, this Register had no information about other real estate objects, therefore it can be said that the fiscal function of the SLC with respect to real estate objects was only partially fulfilled.
The Order of the Government of the Russian Federation No. 1301 “On State Registration of Housing Stock in the Russian Federation” dated October 13, 1997 and the Order of the Government of the Russian Federation “On State Technical Registration and Technical Inventory of Capital Construction Objects in the Russian Federation” dated December 4, 2000 established the procedure for state technical registration and technical inventory of capital construction objects [2]. One of the tasks of this procedure was to ensure the completeness and reliability of information on the tax base. The objects of technical inventory were residential and non-residential buildings, structures, premises and construction in progress. The attempts to define certain types of objects can be found in isolated regulatory acts of that time. A certain concept of residential property is given in the Recommended Practices for the Protection of Rights of Participants of Reconstruction of Residential Houses of Various Forms of Ownership (approved and came into force by the Order No. 8 of the State Committee for Construction of Russia dated November 10, 1998) [4]. A definition of a residential and non-residential building can be found in the Order No. 37 of the Ministry of Construction, Housing and Utilities of the Russian Federation “On Approval of Instructions on Registration of Housing Stock in the Russian Federation” dated August 4, 1998 [5]. Various SNiPs, for example, SNiP 10-01-94 “System of Normative Documents in Construction. Basic Principles”, as well as technical regulations (Federal Law No. 384-FZ “Technical Regulations for Safety of Buildings and Structures” dated December 30, 2009) treat the essence of the concept of a construction in different ways [6], [7].

Therefore, it must be admitted that the civil, land and town planning legislations contain no such separate concepts as “building”, “structure”, and “construction”, while the rules of law clearly indicate that buildings and constructions belong to immovable things. This fact was noted by many real estate researchers. Back in their time such researchers as I.D. Kuzmina and V.V. Vitryanskiy proposed to define a building and a construction based on the results of analysis of features characteristic for buildings and constructions [8], [9].

Some researchers (for instance, M.N. Surovtseva) directly point to the necessity of introducing precise definitions of real estate into the Civil Code of the Russian Federation [10].

The need for careful and comprehensive accounting of real estate items for taxation purposes predetermined the transition from the SLC system to the system of State Real Estate Cadastre. In addition to the abovementioned facts, it should be noted that until 2008 in Russia there were two similar information systems: the system of State Real Estate Cadastre that formed the Unified State Register of Land (EGRZ) and the system of state registration of rights to real estate objects and transactions with them, which formed the Unified State Register of Rights (EGRP). The main problem of existence of these two systems was the duality of their interaction and, as a result, duplication of information. This led to the implementation of the Federal Law No. 221-FZ “On State Real Estate Cadastre” dated July 24, 2007 [11]. This law assumed replacing the existing disaggregated cadastres with a unified system for the registration of real estate items. From the norms of this law it follows that the objects of cadastral registration are land plots, buildings, constructions, premises, and capital construction in progress. Some kind of definition of the term “premises” was provided in the Federal Law No. 72-FZ “On Partnerships of Homeowners” dated June 15, 1996, but at present this document is repealed [12]. The definition of capital construction items, including construction in progress, is given in the Town Planning Code of the Russian Federation No. 190-FZ dated December 29, 2004 [13]. Due to the entry into force of the Federal Law No. 218-FZ “On State Registration of Real Estate” the list of objects of cadastral registration was complemented with vehicle parking space, single real estate complex, and enterprise as a single real estate complex [14]. Capital construction in progress items were changed to construction in progress.

The Civil Code of the Russian Federation (Part I) No. 51-FZ dated November 30, 1994 contains the notions of enterprise as an object of rights, and single real estate complex as an immovable thing [15]. From the norms of the Town Planning Code of the Russian Federation the notion of vehicle parking space can be derived.

At the same time, we believe that the discrepancy between the concepts and types of real estate objects, cadastral registration objects and taxation objects contained in the codifying acts of the
Russian Federation leads to significant difficulties (confusion and litigations). As already mentioned above, the main function of the State Real Estate Cadastre is the fiscal function. Now consider the Tax Code of the Russian Federation [16], in which Article 401 lists the objects of taxation as follows:

1) residential house;
2) apartment, room;
3) garage, vehicle parking space;
4) single real estate complex;
5) construction in progress;
6) other building, structure, construction, or premises.

The most controversial point is Item 2 of this Article, in which the category of residential houses includes houses and residential buildings located on land plots provided for private plot activities, dachas, gardening, horticulture, and individual housing construction.

This was done in order to simplify the mechanism for determining the tax rate (Article 406 of the Tax Code of the Russian Federation). The Tax Code of the Russian Federation also distinguishes such objects as “economic-purpose structure” and “economic-purpose construction”, but does not define them.

The term “structure” is used as a general concept of buildings and constructions. At present the term “structure” is used mainly within the terminological series of “building, structure, construction” or as an equivalent term to “building”, or in order to emphasize a secondary importance: e.g. “residential and economic-purpose structures located on garden and dacha plots”, economic-purpose structures for keeping domestic animals, auxiliary structures, outbuilding structures of secondary importance on the land plot in relation to the main building, and consumer structures (dacha houses, garden houses, garages) [17].

Now consider the Official Letter No. 03-05-04-01/29325 of the Ministry of Finance of Russia dated May 16, 2017, according to which real estate objects that were built on land provided for private plot activities, dachas, gardening, horticulture, or individual housing construction and that are not houses, residential structures, or garages can be considered as economic-purpose structures or constructions for the purposes of tax computation [18].

Moreover, when identifying the economic-purpose structures and constructions for the application of Chapter 32 of the Tax Code of the Russian Federation, the Ministry of Finance of Russia considers it necessary to take into account that the state cadastral registration and registration of rights to such objects can be performed either with the indication of specific names of auxiliary objects (e.g. bath house, barn, summer kitchen, etc.) or without naming them (e.g. an economic-purpose structure). Despite the different execution of cadastral documents for such objects, they are in fact economic-purpose structures and constructions.

In consideration of the foregoing, we believe that real estate objects that were built on land plots provided for private plot activities, dachas, gardening, horticulture, or individual housing construction and that are not houses or residential structures can be regarded as economic-purpose structures and constructions.

At the same time, it is reported that Chapter 32 of the Tax Code of the Russian Federation identifies garages as an independent object of taxation other than economic-purpose structures and constructions.

Based on the foregoing, it can be concluded that for taxation purposes the tax legislation regards all objects built on the land plot as real estate objects. However, some objects (e.g. a barn, etc.) are difficult to be regarded as real estate objects, since one of the main criteria for classifying the objects as real estate is determining their solidity and the impossibility of moving without damage.

The most general definition of real estate objects as immovable things is given in Article 130 of the Civil Code of the Russian Federation (Part I) No. 51-FZ dated November 30, 1994, which relegates to them all land plots, subsoil blocks and everything that is firmly connected with the land, i.e. the objects that cannot be moved without incommensurate damage to their purpose (these include buildings, constructions, and construction in progress).
Item 7 of Article 1 of the Federal Law No. 218-FZ “On State Registration of Real Estate” introduces a more specific notion of real estate objects and indicates that “state cadastral registration is performed in relation to land plots, buildings, constructions, premises, vehicle parking spaces, construction in progress, and single real estate complexes, and to the extent permitted by the Federal Law – to other objects that are firmly connected with the land, that is, objects whose movement without incommensurate damage to the purpose thereof is impossible”.

As it was already noted, the problem of modern legislation consists in the lack of clear notions of real estate objects and immovable things that should be enshrined in the civil and town planning legislation. The use of the All-Russian Classification of Fixed Assets OK 013-2014 causes an even greater confusion in the classification of objects [19].

According to Article 1 of the Civil Code of the Russian Federation, capital construction objects are buildings, structures, constructions, and objects of uncompleted construction, excluding temporary installations, kiosks, canopies and other similar installations.

This means that in order to erect these objects it is necessary to obtain construction permits, otherwise they will be regarded as unauthorized structures.

According to Article 51 of the Civil Code of the Russian Federation, a construction permit is not required in the following cases:

1) building a garage on a land plot granted to an individual for the purposes unrelated to the performance of entrepreneurial activity, or building on a land plot provided for dacha or gardening;

2) building or reconstruction of objects that are not capital construction objects (kiosks, canopies, etc.);

3) building of auxiliary structures and constructions on a land plot.

In accordance with the document titled “SP 113.13330.2016. Code of Practice. Parking. Revised Edition of SNiP 21-02-99**”, a garage is a “building and construction, a space for parking (storage), maintenance and repair of cars, motorcycles and other vehicles; it can be a part of a residential house (integrated-attached garages) or a separate structure ...” [20].

Obviously, in this case all temporary installations, kiosks, canopies and other similar installations, as well as auxiliary structures and constructions can be recognized as non-capital construction objects.

According to the Ministry of Regional Development of Russia, auxiliary structures and constructions should include the constructions with a reduced level of responsibility. This norm is provided in GOST 27751-88 “Reliability of Constructions and Foundations” [21]. Such constructions include hotbeds, greenhouses, summer pavilions, small warehouses and similar constructions. In addition, another criterion for classifying the structures as auxiliary is the presence of the main building on the considered land plot and the execution of an auxiliary or serving function by the new structure or construction in relation to the main one [22].

Based on the foregoing, we believe that in order to ensure the fiscal function of the Unified State Register of Real Estate it is necessary to enshrine the following criteria for classifying the objects as real estate or immovable things:

- firm connection with the land and the impossibility of movement of the object without the incommensurate damage to its purpose, a significant worsening of its technical condition, or loss in its value;
- the presence of a foundation in the object and fixed communications connected to it;
- compliance of the permitted use of land with the type of object located on it;
- the presence of necessary documentation (development plan for the land plot, construction permit, technical certificate, etc.);
- obligatory cadastral inventory and state registration of rights to the relevant object (according to the Federal Law No. 218-FZ “On State Registration of Real Estate” dated July 13, 2015).

We believe that in order to fulfill the abovementioned point 4 it is necessary to revive the procedure for inventory check of real estate objects and the role of architectural and town planning authorities in the preparation of the development plan for the land plot. These documents will
determine the category of importance and solidity of the object and its attribution to real estate objects or immovable things.

Clarifications and updates to the conceptual and categorical framework of real estate objects will lead to the following amendments to regulatory acts:

- Clarification of the notion of “land plot” in the Land Code of the Russian Federation [23]. The revised notion proposed by the authors is as follows: “A land plot is an immovable thing that is a part of land surface, the boundaries of which are described and certified and the right to ownership or other rights to which envisaged by the Land Code of the Russian Federation are registered”;

- Clarification to the Civil Code of the Russian Federation concerning the classification of objects as immovable things: «Immovable things (immovable property, or real estate) include the land plots, subsoil blocks and everything that is firmly connected with the land, that is, the capital construction objects, whose movement without incommensurate damage to the purpose and (or) technical condition thereof is impossible, including buildings, constructions, and construction in progress”;

- Clarifications to the conceptual and categorical framework of an immovable thing will obviously lead to the fact that some objects of taxation that do not meet the criteria will fall out of the scope of regulation of FZ-218 “On State Registration of Real Estate”. Therefore, we consider it necessary to clarify Item 2 of Article 1 of this law as follows: “The Unified State Register of Real Estate is a collection of reliable and systematical data on immovable property and other taxation objects registered in accordance with the Federal Law”.

2. Conclusion
The proposed conceptual and categorical framework and the classification of objects based thereon will help to avoid the confusion of concepts of cadastral inventory objects in terms of their category of importance or solidity and ultimately to form a unified approach to registration and subsequent taxation of such objects. Amending the Federal Law No. 218-FZ will allow defining an exhaustive list of objects of cadastral registration, thereby solving one of the main tasks of creating a real estate cadastre system, i.e. providing complete and reliable information about the objects of taxation.

3. References
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[13] Town Planning Code of the Russian Federation No. 190-FZ dated December 29, 2004 (revised on April 23, 2018) Legislation Bulletin of the Russian Federation 1 (Part I) Article 16

[14] Federal Law No. 218-FZ “On State Registration of Real Estate” (revised on April 3, 2018) Legislation Bulletin of the Russian Federation 29 (Part I) Article 4344

[15] Civil Code of the Russian Federation (Part I) No. 51-FZ dated November 30, 1994 (revised on December 29, 2017) Legislation Bulletin of the Russian Federation 32 Article 3301

[16] Tax Code of the Russian Federation (Part I) No. 146-FZ dated July 31, 1998 (revised on February 19, 2018) Legislation Bulletin of the Russian Federation 31 Article 3824

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