

# On the Distribution of Value-added Income of Homestead under the "Separation of Three Rights"

Cuicui Hu

*School of Law, Anhui University of Finance and Economics, Bengbu, Anhui, 233030, China*

**Abstract:** Under the policy of "separation of three rights" for homesteads, 33 pilot areas, such as Yiwu City, Deqing County, and Jinzhai County, have tried to solve the problem of the idle rural homestead and aboveground housing by transferring homestead use right in various ways, which also brings benefits to farmers, rural collective economic organizations, the government, and other related entities. However, combined with the reform documents issued locally and the pilot situation, it is not difficult to find that there are many problems in the distribution of the value-added income of homestead in many pilot areas, such as the restricted transfer objects of homestead use right, the controversial subjects of the right to the value-added income of homestead, and the distribution rules of the value-added income of homestead violate the principle of fairness. Based on this, it is recommended that the restrictive conditions for the transfer of homestead use rights to social entities should be relaxed and that the subjects of the right to increase the value-added income from homestead should be clearly defined as farmers, rural collective economic organizations, and the government. The income distribution rules should take into account the interests and benefits of the people.

**Keywords:** separation of three rights; homestead; value-added income

## 1. Introduction

With the increase of rural migrant workers, a large number of rural homesteads and houses have been left idle, and the use and property value of collective land resources have been consumed in vain. This phenomenon is closely related to the strict restrictions on the circulation of the rural homestead by China's laws and administrative policies. In recent years, China has continued to promote the reform of the "three rights of separation" of rural homestead in pilot areas and has made efforts to explore new forms of transferring homestead use rights, making it possible for farmers to obtain the value-added income from the homestead. In recent years, the academic community has focused more on the distribution of value-added income from rural collective management construction land, and not much attention has been paid to the distribution of value-added income from the homestead. Based on this, this paper focuses on the local regulatory documents published in the 33 pilot areas of the "separation of three rights" reform of homestead, analyzes the problems of the distribution of the value-added income from the homestead in the transfer of homestead use right, and puts forward some suggestions.

## 2. Policy background and current situation of the pilot project of the value-added income distribution of homestead under the "separation of three rights"

### 2.1. Policy background of the pilot project of the value-added income distribution of homestead under the "separation of three rights"

The issue of the distribution of the value-added income of homestead has arisen along with the continuous promotion of the pilot reform of the "separation of three rights" of the homestead. In 2018, the Central Government No. 1 document first proposed to "explore the 'separation of three rights' of the ownership, qualification and use rights of the homestead and appropriately release the use rights of homestead and farmers' houses." In combination with this policy and Article 10 of the Constitution of the People's Republic of China (hereinafter referred to as the Constitution) on the ownership of homestead land, it can be seen that rural collectives enjoy all the ownership rights and supervisory and management rights over homestead based on their status as the subject of ownership of collective land, while these rights are generally implemented by representatives of rural collective economic organizations. Accordingly, rural collective economic organizations have the right to take back rural

residents who improperly use or voluntarily withdraw from the homestead; Rural collective economic organizations have the right to obtain a certain proportion of income if idle homestead land is transferred to obtain property income. In addition, only those farmers who are members of rural collective economic organizations can enjoy the qualification right of the homestead, and moving the household registration to the village through marriage does not directly lead to the occurrence of the qualification right of homestead; while the homestead use right is generally obtained by the initial allocation of farmers who have the right to the qualification of the homestead, and farmers can reasonably use the homestead to build houses to solve the housing problem. In the context of the reform of "separation of three rights", the state encourages pilot areas to moderately liberalize the homestead use right, which not only gives rural residents partial rights of disposition and income, but also provides a legal basis for the transfer mode, scope, and transferee of the right to use homestead and its above-ground housing in pilot areas to be no longer limited to their own rural collective economic organizations. It has also created conditions for rural collectives and rural residents in the pilot areas to realize the income distribution right of the homestead.

To protect farmers' value-added income right of the homestead, in October 2019, the Ministry of Rural Agriculture emphasized in the Notice on Actively and Steadily Revitalizing and Utilizing Idle Rural Homestead and Idle Residential Buildings that the revitalization of homestead must take into account farmers' true wishes and fully mobilize farmers' enthusiasm to participate in the transfer of homestead use right and residential buildings, but farmers cannot be forced to have to transfer if they are unwilling to do so; if homestead use right and residence are transferred, the farmers are entitled to a certain percentage of the income generated. According to the spirit of this policy, the distribution proportion of the value-added income of the homestead should be determined through consultation between the rural collective economic organizations and the farmers, and the consultation process should fully respect the subjective will of the farmers, to ensure that the distribution of the value-added income of the homestead must adhere to the main position of the farmers. Farmers should obtain a larger proportion in the income distribution, while rural collective economic organizations should obtain a smaller proportion in the income distribution, at the same time, the proceeds shall belong to the common property of the members of the collective. The No. 1 central document issued in 2020 and 2021 again emphasized that pilot areas should pay attention to the "separation of three rights" pilot reform of rural homesteads, and strive to find a new way to revitalize the right to use homestead, to ensure that farmers can share the benefits of homestead activities for a long time.

The above-mentioned policy reflects the two objectives of reforming the distribution of value-added income of homestead under the "separation of three rights": first, to protect that farmers enjoy the value-added income of homestead, and ensure that the income from transfer and operation is mainly enjoyed by farmers; second, to regulate the use and distribution of value-added income from the homestead of rural collective economic organizations, so that members of rural collective economic organizations can continuously share the value-added income from the homestead.

## 2.2. Current status of the pilot project on the distribution of value-added income of homestead under the "separation of three rights"

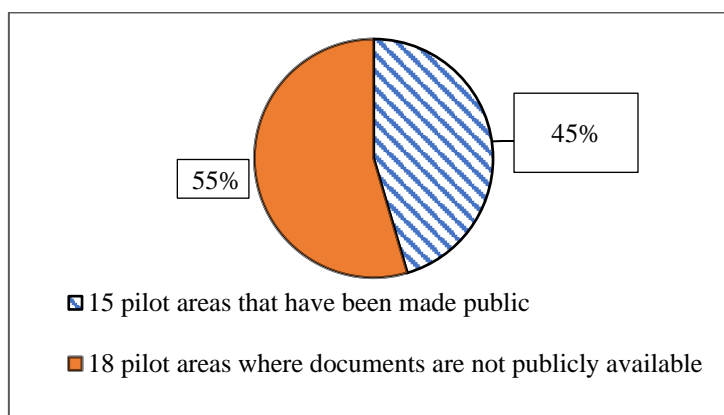


Figure 1: Disclosure of normative documents on the distribution of value-added income of homestead in 33 pilot areas

33 counties (cities and districts), including Yiwu City, Deqing County, and Jinzhai County, are among the first batch of regions in China to carry out the "separation of three rights" reform of rural homestead.

They are conducting long-term exploration and practice on how to revitalize idle homesteads and housing. As of May 31, 2022, as shown in Figure 1, 15 pilot areas have publicly released normative documents (based on the currently valid normative documents) on the transfer of homestead use rights and residences, and distribution of value-added income of homestead.

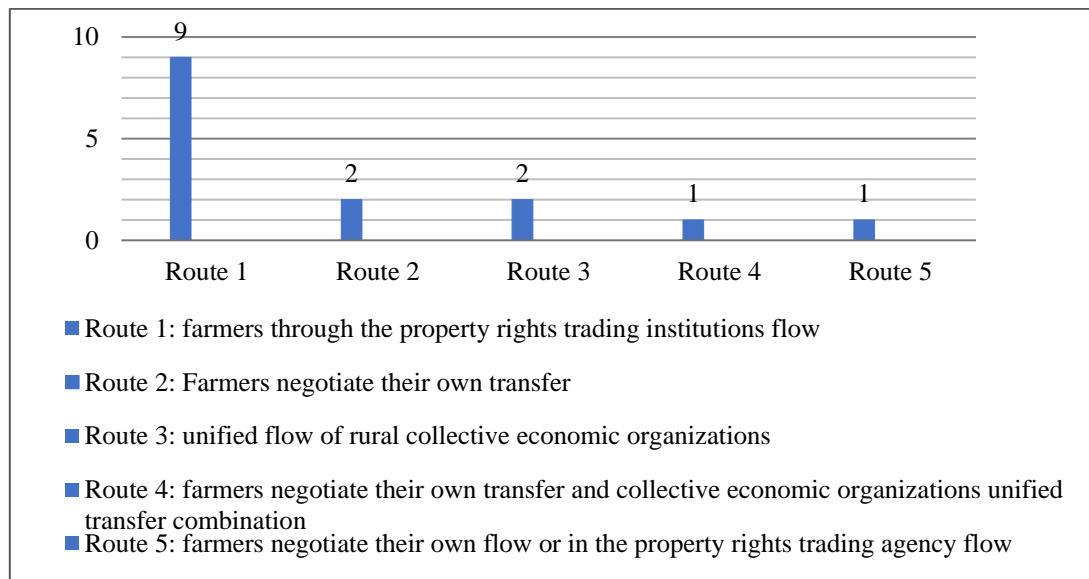


Figure 2: Pathways for the transfer of homestead use rights and Residences in the 15 pilot areas

First of all, regarding the transfer of homestead use rights and residences, as shown in Figure 2, there are five main transfer routes in the 15 pilot areas. Among them, the majority of pilot areas (including nine areas such as Daxing District, Dingzhou City, Wujin District, Deqing County, Jinzhai County, etc.) conduct transactions of homestead use right and residences through intermediaries such as online property rights trading platforms or offline property rights exchanges; compared with areas where farmers negotiate their own transfer (such as Yujiang District and Wenchang City), the whole process of farmers' transfer of homestead use right and housing through intermediaries in the above nine areas will be monitored, including whether the transfer object meets the conditions and whether the transaction price is fair and reasonable, which can timely prevent farmers' property interests from being violated; compared with areas where the rural collective economic organizations unified the transfer (e.g. Jinjiang City and Luxian County), the way of transfer through intermediaries is more flexible and convenient, and farmers can freely decide the time of transfer. In addition, there are areas (such as Jutai District and Yiwu City) where the simultaneous implementation of the two routes has further improved the efficiency and level of transfer of homestead use rights and housing.

Although the 15 pilot areas differ greatly in the ways of transferring homestead use rights and housing, there is little difference in the specific transfer methods. At present, the transfer methods in the pilot areas can be divided into paid and unpaid transfer methods according to whether the transferee pays the consideration, among which, paid transfer methods mainly include sale, exchange, lease, mortgage, joint construction and sharing, investment in shares, etc.; unpaid transfer methods mainly include gift and inheritance. Idle homesteads and idle residences have been revitalized under diversified transfer modes and have created huge property income for the pilot areas. For example, since the new round of homestead reform in Deqing County from September 2020 to October 2021, 6,817 idle rural homesteads and 1.29 million square meters of idle dwellings have been revitalized through paid transfers such as leasing and cooperative operation, creating an average annual growth rate of 24.3% in operating income for rural collective economic organizations.<sup>0</sup> Yiwu City mainly revitalizes idle homesteads and dwellings through conveyance and mortgage, and as of October 2020, 4,901 homesteads have been successfully transferred, and 23,056 housing mortgages and 11.742 billion yuan of loans have been realized.<sup>0</sup> Jinzhai County mainly revitalized rural residential property rights utilizing mortgage loans, realizing 30 housing mortgages and issuing loans amounting to 14.72 million yuan in 2021.<sup>0</sup>

Secondly, concerning the distribution of value-added income of homesteads, from the normative documents published in the 15 pilot areas, no consensus has been reached on whether the distribution of value-added income generated by the transfer of homestead use rights and residence is distributed. Among them, the pilot areas that believe that the value-added income of homestead should be enjoyed by one party alone account for 40%, for example, Caiyu Town of Daxing District advocates that the

value-added income generated from the transfer of farmers' houses and homestead use right should be fully owned by the transferor, namely, the farmers; However, 60% of the pilot areas believe that the value-added income of homestead should be distributed among multiple subjects. For example, in Deqing County, in response to the value-added income generated from the conveyance and lease of homestead use rights, it advocates that it be distributed between the farmers and the village share economic cooperation and that the government also receive the proceeds by collecting the deed tax from the assignee of the conveyance contract.

In general, 33 pilot areas, including Deqing County, Yiwu City, and Jinzhai County, are still at the initial stage of exploration in terms of the pilot work on the distribution of value-added income of homestead. Through sorting out the local normative documents that have been published in 15 pilot areas on the distribution of value-added income of homestead, although these areas have standardized the circulation of homestead use rights, the subject of the right to the value-added income of homestead, and the distribution rules of value-added income of homestead, on the whole, there are obvious differences and many problems in local regulations.

### 3. Problems in the Pilot Practice of the Distribution of Value-added Income of Homestead under the "Separation of Three Rights "

#### 3.1. Too narrow transfer object of homestead use right

Revenue is a prerequisite for distribution, and the transfer of homestead use rights is an important source for the formation of value-added revenue from the homestead. Generally speaking, diversified ways of transferring homestead use right for compensation are important means to form the value-added income of homestead, and the transfer object of homestead use rights is not strictly restricted to create more value-added income of homestead to a greater extent.

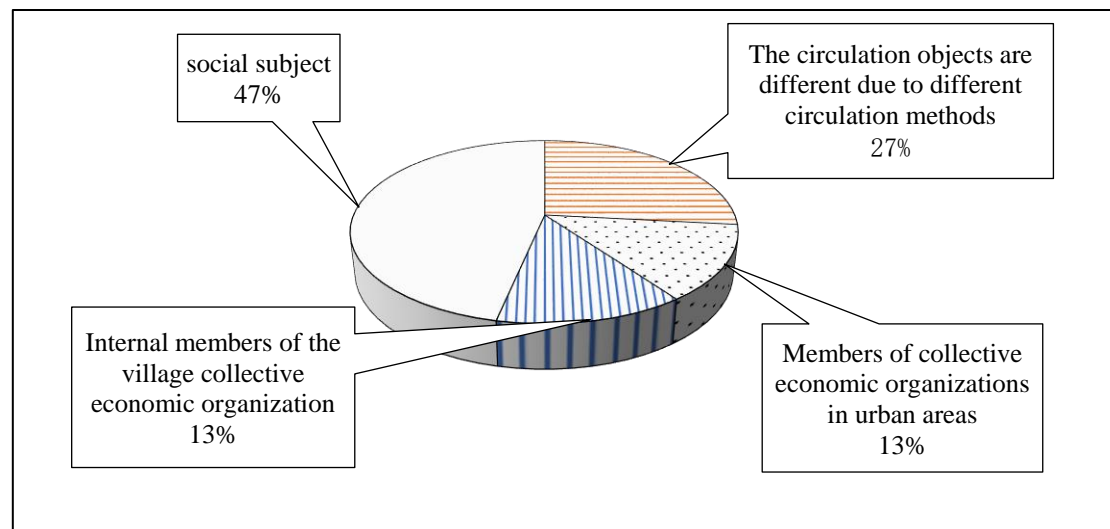


Figure 3: Transfer objects of homestead use rights and residence in 15 pilot areas

At present, all 15 pilot areas allow homestead use rights to be transferred in various ways. As shown in Figure 3, among them, 47% of the pilot areas, including seven areas such as Deqing County, Daxing District, and Yicheng City, have directly abolished the restrictions on the transfer objects of homestead use right to the level of social subjects for farmers to obtain long-term and stable income from the value-added of homesteads. It can be seen from the practice of various regions that allowing the transfer of homestead use rights and residences to anyone other than the members of the collective can improve the market competitiveness of idle rural homesteads.

However, in addition to the aforementioned pilot areas, 53% of the pilot areas still have different degrees of restrictive regulations on the objects of transferring homestead use rights.

Firstly, there are strict restrictions on the objects of transfer under individual transfer methods. For example, Article 3 of the Interim Measures for the Management of the Transfer of Rural Homestead Use Rights in Jiutai District (for Trial Implementation) requires that if the transfer of homestead use right in Jiutai District is carried out in one of the three ways of conveyance, replacement or mortgage, the

transferee must have the internal members of the collective economic organization. Another example is the Measures for the Paid Use, Withdrawal, and Transfer of Homestead Use Rights in Yujiang District, which requires that the transfer of Homestead Use Rights in Yujiang District by way of conveyance or lease, the act of transfer must be carried out within the members of the collective economic organization to be valid. Also, for example, the Implementation Plan for the Reform of the Rural Homestead System in Jinzhai County stipulates that except for the transfer of homestead use right by way of conveyance or lease, the object of transfer must be the members of the rural collective economic organization within this county, the object of transfer of other transfer methods is not restricted, that is, it can be oriented to social subjects.

Secondly, the objects of transfer are restricted to the members of collective economic organizations within the scope of the municipality. For example, Article 8 of the Measures for the Transfer of Rural Homestead Use Rights in Liuyang City (for Trial Implementation) allows farmers within Liuyang City and the rural collective economic organization where the homestead is located to be the object of transferring homestead use rights.

Third, the object of transfer is strictly limited to the collective economic organization, and such restrictive regulations are the most stringent. For example, Article 32 of the Measures for the Pilot Management of Rural Homestead in Wenchang City (Revised 2021) (hereinafter referred to as "Wenchang City Measures") requires that the objects of transferring the homestead use right in whatever way can only be the members within the collective economic organization of the village. Accordingly, farmers in the pilot area violate the local restrictive regulations to members of other collective economic organizations, persons with urban residence, and close relatives of villagers in the village to transfer homestead use right does not take effect, and the transferee cannot become a legitimate transferee, lessee, etc. In reality, one of the important reasons for the idleness of homesteads and residences is the serious problem of "hollowing out" in the countryside. If the transfer of homesteads continues to be limited to the collective economic organization, it will not only fail to solve the problem of idleness of homesteads and residences but also limit the space for the improvement of the property value of homestead and residences. As a result, farmers will not be able to obtain more property benefits through the usufructuary right to homesteads and ownership of residences.

**3.2. Disputes exist on the subject of the right to the value-added income of homestead**

As can be seen from the series of documents on the reform of the "separation of three rights" of homestead in the pilot areas, there are ambiguities in the identification of the subjects of the value-added income rights of the homestead. As shown in Figure 4, there are mainly five types of subjects of value-added income right of homestead in the 15 pilot areas. The specific analysis is as follows:

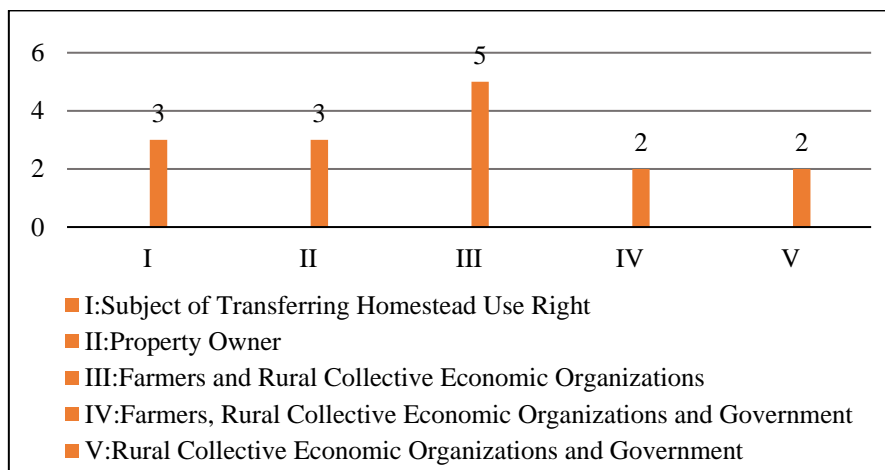


Figure 4: Subjects of value-added income right of homestead in 15 pilot areas

Firstly, 20% of the pilot areas consider the subject of the value-added income right of the homestead to be the subject of the transfer. For example, Yicheng City requires that the price obtained from the transaction with the house ownership or homestead use right be owned by the transferor. Although this protects the integrity of the farmers' income rights when they are the subject of the transfer, it will infringe on other collective members' income right in the village. When farmers transfer their houses, they cannot transfer their house ownership or use rights separately from the homestead use right, and the homestead

use right cannot be transferred separately from the houses on the ground. While the homestead belongs to the farmer collective, if farmers transfer their homestead use rights to generate income, the village collective members have the right to share the income.

Secondly, 20% of the pilot areas consider the property owner as the subject of the value-added income right of the homestead. For example, Yiwu City requires that if homestead use right is transferred, the proceeds are enjoyed by the rural collective economic organization alone. This requirement does protect the property interests of homestead owners, but it directly deprives farmers of their status as subjects of value-added income rights of the homestead. In the reform of the "separation of three rights", village collectives encourage farmers to transfer their homestead by assigning part of the right of disposition of the homestead. Accordingly, in addition to the village collective's right to enjoy the proceeds, the farmers are also entitled to a portion of the income based on their status as homestead owners.

Thirdly, 33.3% of the pilot districts consider both rural collective economic organizations and farmers as the subjects of the right to value-added income from homesteads. For example, Yujiang District divides the income obtained from the conveyance or lease of the homestead into two: the proceeds obtained from the houses are fully enjoyed by the farmers, that is, the house owners, while the proceeds obtained from the homestead use right is distributed between the farmer and the rural collective economic organization. This view has received more support in the pilot, and it is more reasonable to take into account the interests of both the owner and the user of the homestead, but it ignores the legitimate interests of the government.

Fourth, 26.7% of the pilot areas recognize the government as one of the subjects of the right to value-added income from homesteads, but there are differences in the way of recognition. For example, Pidu District explicitly requires that the value-added income generated by farmers' transfer of homestead use right be shared among the three interests of farmers, property rights owners, i.e., rural collective economic organizations, and the government. Among them, the government's income mainly comes from the adjustment fund directly paid by the transferee. Unlike Pidu District, the income of the Jinjiang local government mainly comes from the consideration paid by the transferee to the transferor for obtaining the homestead use right, without any additional payment from the transferee to the government. Specifically, Jinjiang City stipulates that homesteads can be adjusted by rural collective economic organizations to enter the market, and the income after entering the market will be directly distributed between the rural collective economic organizations and the government. Although the specific methods are slightly different in different regions, compared with the first three types of subjects of homestead value-added income rights, this view fully takes into account the interests of the government and meets the interest needs of each subject.

In a word, when identifying the subjects of the right to the value-added income of homesteads, some of the pilot areas tend to protect farmers' income rights, and some tend to protect rural collective economic organizations' income rights. Thus, it is highly likely to ignore the interest needs of subjects other than the interest subjects they are trying to protect. It is also for this reason that there are significant differences in the rules for the distribution of the value-added income from homesteads in each pilot area.

### ***3.3. The distribution rules of value-added income of homestead are unfair***

The distribution rules of value-added income of homestead are directly linked to the interests of farmers, and the unfairness of the distribution rules will directly damage the property interests of farmers, which is also the most concerning problem for farmers. Up to now, only 15 of the 33 pilot regions have made explicit provisions on the income distribution rules, but the income distribution rules in the 15 pilot regions are different in terms of classification standards, and the income distribution rules in individual regions may also violate the principle of fairness.

First of all, the pilot regions that advocate the distribution of proceeds among farmers, rural collective economic organizations, and the government differ slightly in the specific division criteria, but none of them violate the principle of fairness. For example, Article 44 and Article 45 of the Measures for the Administration of Rural Homestead in Deqing County (for Trial Implementation) specify that 1% - 3% of the income from the conveyance and lease of the homestead use right and the residence in Deqing County shall be enjoyed by the village shares economic cooperation, and the rest of the income shall be fully enjoyed by farmers. In the case of the conveyance of the homestead use right, the government also has the right to obtain a certain proportion of the income, but this part of the income comes from the deed tax paid by the transferee according to law. Articles 16 and 17 of the Interim Measures for the Administration of Rural Housing and Homestead Transfer in Pidu District of Chengdu (for Trial

Implementation) propose the distribution standard of the value-added income of homestead, following the "income from the paid use of the homestead = homestead use area (square meters) \* homestead benchmark land price (per square meter) \* 1% \* transfer period" to calculate the rural Collective economic organization gains, the remaining proceeds go to farmers. Among them, the government has the right to charge the transferee 1% of the value-added income by way of assignment.

The income distribution rules in the above areas ensure that farmers enjoy most of the income rights, while rural collective economic organizations and the government only enjoy a small proportion of the income, which fully demonstrates that Deqing County and Pidu District always adhere to the dominant position of farmers in income distribution.

Secondly, the pilot areas that advocate the distribution of proceeds between farmers and rural collective economic organizations have obvious differences in the division criteria, and individual areas violate the principle of fairness. For example, Article 35 of the Wenchang City Measures for the proceeds generated by the two methods of assignment and rental proposes that 10% of the transaction price be obtained by the rural collective economic organization. Compared with the provision that 4% of the contract price should be obtained by the rural collective economic organization in Paragraph 2 of Article 4 of the Interim Measures for the Administration of the Transfer of Rural Homestead in Dingzhou (Draft for Comments), without considering other external factors, the actual income of Wenchang farmers from the transfer of homesteads with similar levels of economic development and the same size of land area in their place of residence is obviously lower than that of Dingzhou farmers. The difference in regional norms leads to unreasonable treatment of farmers, which is not conducive to the realization of social justice. Another example is that Article 25 of the Measures for the Administration of Rural Property Rights Transactions in Wujin District, Changzhou City (for trial implementation) requires that the proceeds from the homestead use right shall be obtained by the rural collective economic organization, and the housing proceeds shall be obtained by the farmers only. This article affirms that farmers enjoy all the house proceeds based on the identity of house owners, but denies that farmers, as owners of the homestead use right, should also enjoy part of the homestead use right proceeds, which finally produces the result of uneven distribution of benefits. Also, for example, Article 12 of the Interim Measures for the Management of the Transfer of the Rural Homestead Use Right in Jiutai District (for Trial Implementation) requires that if farmers in Jiutai District transfer their homestead use right and residence by way of lease or shareholding, the proceeds shall be fully obtained by the farmers; if the rural collective economic organization transfers them in the above way, the proceeds shall be fully enjoyed by the rural collective economic organization. This provision also fails to fully balance the interests of all parties, because the farmers' transfer is the result of the rural collective giving away part of its dispositive power without compensation, but the village collective still retains a certain amount of dispositive power. Therefore, according to the principle of equal value and compensation, farmers should take out part of the proceeds to share with the village collective, otherwise, it is an infringement on the legitimate rights and interests of other collective members.

#### **4. My Opinion on the Solution of the Problem of the Distribution of the Value-added Income of Homestead**

##### ***4.1. Moderately expand the transfer object of the homestead use right***

To fully revitalize the idle homesteads and residential buildings on the ground, it is not only required to broaden the way to transfer homestead use rights with compensation but also to expand the transfer object moderately. As for the extent of the expansion, there are different voices in academia. Some scholars suggest that "the scope of transfer should be expanded to the county or municipal area, but it should be clear that the transferee should be the rural collective members"<sup>0</sup>. This view breaks through the traditional concept that the transferee of homestead use rights is limited to the villagers of the village, and grasps the principle of appropriateness, which helps maintain the stability of the rural social structure. However, collective members have already obtained homestead use rights without compensation in the location of this collective economic organization, and generally do not have a strong demand for homestead use rights in other villages. In practice, members of village collectives in the county or municipal areas become the target of circulation mostly because of the existence of kinship and marriage relationships, and they often obtain the right to occupy and use homesteads as well as the ownership of houses without compensation through gifts and inheritance. Although the homestead use right has been transferred, it does not increase the income for the farmers in the village. Therefore, the restriction of rural collective membership is likely to prevent farmers from obtaining the proceeds of land transfer.



Of course, some scholars have proposed that the transfer objects of homesteads should not be restricted by identity, and the transfer of homesteads should be open to social subjects.<sup>0</sup>That is, farmers, urban residents, enterprises, and institutions across provinces and cities can participate in the utilization of homesteads. Unlike the previous view, this view further expands the scope of the transfer of homestead use rights and has certain rationality. Because of the reform practice in the pilot areas in recent years, there are already social subjects become transfer objects, to a large extent, revitalizing the idle homesteads and idle houses in rural areas. But because the object of transfer is oriented to social subjects, it will inevitably impact the inherent social structure of the countryside, and it is also likely to increase the difficulty of rural management. Therefore, it is necessary to put forward clear restrictions or prohibitions on the transfer period of the homestead, the purpose of the homestead, and the credit status of social subjects at the same time.

#### ***4.2. Clarify the subject of the right to the value-added income of homestead***

To clarify the subjects who enjoy the right to the value-added income of homesteads are a prerequisite for income distribution. One view is that farmers and rural collective economic organizations enjoy the right to the value-added income of homesteads.<sup>0</sup>The other view is that besides the above subjects, the government can also enjoy the right to the value-added income of homesteads by collecting land value-added tax.<sup>0</sup>The two views have their shortcomings.

First of all, rural collective economic organizations qualify for the subject of the right of value-added income of homesteads. Generally speaking, rural homesteads are the land owned by rural collectives, and rural collective economic organizations, as the representative bodies of rural collectives, exercise the disposition and management rights over the homesteads. When a rural collective economic organization obtains the value-added income of the homestead under its status as a transferring subject, the collective members are entitled to share the income. When farmers obtain the value-added income of homesteads as the subject of transfer, rural collective economic organizations and their members are also entitled to share the income, the reason is that the purpose of rural collective economic organizations is to make homesteads available to farmers free of charge is to ensure that farmers have a home for their households, and farmers only enjoy the use right; Under the policy of appropriately liberalizing the homestead use right, farmers were only given partial disposal and income rights, which transferred some rights of rural collective economic organizations. Moreover, farmers cannot leave the supervision of rural collective economic organizations when they transfer their homesteads. Therefore, rural collective economic organizations and their members also have the right to distribute the value-added income of homestead obtained by farmers.

Secondly, farmers are qualified as subjects of the value-added income right of the homestead. When rural collective economic organizations unify the flow of homesteads by the mortgage, investment shares, sale, lease, etc., it is the disposal of collective land. Farmers who qualify for collective membership certainly request the distribution of the collective land transfer proceeds. When farmers transfer their houses in the same way, according to the principle of "the land follows the house", homestead use right is transferred to the opposite party together with the house. Based on the triple identity of the house owner, the owner of the qualification right of the homestead, and the owner of homestead use right, the farmers are entitled to the proceeds from the transfer of houses and part of the proceeds from the transfer of homestead use right. Therefore, it is justified to consider farmers as the subject of the value-added income right of the homestead.

In addition, by analyzing the nature of homestead use right, we can see that homestead use right belongs to usufructuary right, and generally speaking, the usufructuary right holder enjoys income right according to law. Although Article 362 of the Civil Code of the People's Republic of China does not stipulate that farmers enjoy benefit rights to homesteads, it is a trend that farmers enjoy benefit rights with the promotion of the reform practice of "separation of three rights" of homestead in pilot areas.

Finally, the local government enjoys the value-added income right of homestead based on tax jurisdiction, but not in the form of land value-added tax. Land value-added tax is levied by taxation authorities and is only applicable to the situation where there is a change of ownership of state-owned land use rights and the houses attached to the land. In contrast, rural homesteads should be classified as collective land in terms of attributes, and collective land does not belong to the subject of land value-added taxation. Although the houses on the homesteads have changed ownership due to assignment, they belong to the houses on collective land, and making the subject of assignment pay land value-added tax violates the legal principle of taxation. According to the current tax laws and regulations, the transfer of homestead use rights by farmers as the transfer subject mainly involves value-added tax, personal income



tax, etc; When rural collective economic organizations become the main body of circulation, it mainly involves the payment of value-added tax and enterprise income tax. Taking farmers as the main body of circulation as an example, different types of paid transfer of homestead use rights have different types of taxes levied by the tax authorities, and the objects of the collection are also different. The specific analysis is as follows:

First, if the homestead use right is transferred by selling the house, the house ownership is fundamentally changed, but the homestead ownership is not transferred, and the government taxation department shall levy value-added tax ("VAT") and personal income tax ("PIT") on the property income obtained by the seller according to the taxation laws and regulations, and the individual or unit bearing the house shall pay the deed tax according to the price of the house. Secondly, if the homestead use right is transferred by renting out the house, the ownership of both the homestead and the house is not changed, the lessor shall pay VAT and PIT following the law while receiving the income from real estate leasing, and the lessee is not required to pay the deed tax. Thirdly, if the investor invests in shares with the homestead use right and above-ground houses, the house owner is changed (except for the investment in my sole proprietorship), the taxation department shall levy VAT and PIT on the property income obtained by the investor under the law, while the individual or unit bearing the house shall pay the deed tax according to the assessed market price of the house (if the investor transfers the residence to his sole proprietorship by way of shareholding (Because the ownership of the residence has not been transferred, there is no need to pay the deed tax). Fourth, if the homestead use right and buildings on the ground are mortgaged, and the ownership of the houses is changed after the mortgage period, the mortgagee of the homestead use right and the buildings on the ground shall have the legal priority to be paid for the auction price of the houses, and the transferee of the homestead use right and the houses shall pay the deed tax based on the auction price of the houses. Fifthly, if the homestead use right is transferred in the way of common construction and sharing, the two parties shall share the house in common, and if the completed house is for self-use, the two parties shall negotiate to determine their respective shares to pay the arable land occupation tax; if the completed house is used for sale, lease, shareholding, etc., the tax can be levied about the situations listed before.

#### ***4.3. Formulate reasonable income distribution rules according to local conditions***

To judge whether a revenue allocation rule is reasonable or not, the first thing to look at is whether it strictly follows the principle of allocating the value-added income of the homestead. However, there are two advocates in the academic circle on the choice of allocation principles. The first one insists on the principle of "giving benefits to the people"<sup>0</sup> and "determining the distribution of benefits to individual farmers"<sup>0</sup>, and the rural collective economic organizations appropriately withdraw the value-added income from homesteads. The second one insists on the principle of "taking into account the interests and promoting development"<sup>0</sup>, and advocates that the distribution of the value-added proceeds from homestead should take into account the interests of the homestead owners, homestead users, and the government, to achieve balanced protection of the interests of the state, the collective and the individuals. Through comparative analysis, the first view aims to increase the property income of farmers and adheres to the people-centered approach, which is in line with the policy purpose of the state, but it does not take into account the interests of the state, and the government has the right to obtain the proceeds on behalf of the state. The second view emphasizes that the government enjoys the right to obtain proceeds through taxation, but it does not focus on highlighting that farmers are the main subjects who enjoy the right to proceeds. Therefore, the principle of revenue distribution should be to take into account the interests of the people, but also to benefit the people, to achieve common development. The specific analysis is as follows:

First, if farmers as the subjects of the transfer obtain the value-added income of homestead, the contract price will be used as the tax basis for farmers' taxation, and the taxation department of the county government will determine the specific tax rate according to the taxation scope of personal income tax and value-added tax involved in the transfer of homestead use right and collect the tax from farmers. Combined with the practice in the pilot areas, it is appropriate for the rural collective economic organizations to withdraw 5% or less (including 5%) of the after-tax proceeds for infrastructure construction, public management, and dividends in their villages. The rest of the after-tax proceeds are fully enjoyed by the farmers. In addition, the farmers have the right to claim their share of the tax paid by the collective economic organization based on the proportion of the proceeds obtained by the collective economic organization. Secondly, if the rural collective economic organization is the main body of the transfer, after paying a certain proportion of income adjustment funds, VAT, and enterprise income tax to the government department, the collective economic organization shall withdraw a certain

proportion of the after-tax proceeds for public management purposes, and the rest of the value-added proceeds of the homestead shall be reasonably distributed among the collective members, but the specific proportion of the value-added proceeds of the homestead shall be determined by public voting through villagers' meetings and other means. If the house bearer is involved in paying the deed tax, the contract price will be used as the basis for calculation.

Secondly, whether the income distribution rules are reasonable and appropriate to local conditions is the key. Given the differences in humanities, geography, and economic development in different places, it can be inferred that there is almost no possibility of formulating nationwide unified distribution rules for the value-added proceeds of the homestead. Therefore, under the premise of fully implementing the aforementioned distribution principles, localities can formulate distribution plans that are satisfactory to farmers through democratic consultation and villagers' meetings, etc., taking into account the situation of their own, to realize reasonable and fair rules for the distribution of proceeds.

## 5. Conclusion

The "separation of three rights" reform of homestead is to solve the problem of rural homestead idleness while allowing farmers to obtain income. Therefore, when transferring the homestead, we should always implement the people-centered idea, and let the homestead enter the market and fully realize the economic value of the homestead on the premise of ensuring that "households have their own homes". For the value-added income obtained from the transfer of homestead, all localities must ensure that farmers are the main subject of the value-added income right of the homestead and distribute the income on this basis.

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