

How controversial is the new Land Use Charge Law in Lagos?



Kenneth Erikume

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Introduction

Since the Land Use Charge Law 2018 was passed into law, social media has been agog with commentary. It has become one of the most topical issues and other issues such as the Champions League and Big Brother Africa have taken a back seat. Land Use Charge (“LUC”) discussions are standing shoulder to shoulder with Black Panther in terms of intrigue and entertainment. Here are some of the topical areas in the law:

How do the rates and basis of assessment compare to other countries?

There are 2 contentious issues that have been highlighted on social media being (1) the rates and (2) the tax base being market value. Below is a comparison of the LUC rates and tax base in some selected countries:

	Lagos ¹	Ireland	Canada ²	Brazil ³	Chile	Egypt ⁵	Greece	Jamaica
Base	Property Value	Property value	Property value	Property value	Fiscal value ⁴	Rental value	Property net-worth	Land value
Low rate	0.0456%	0.18%	0.255%	0.60%	1%	1.36%	0%	0.25%
High rate	0.4560%	0.25%	1.649%+	0.60%	2%	1.40%	2%	1.30%

1. Rates determined after applying general relief of 40% but ignoring depreciation rate relief
2. This does not include commercial property with higher rates
3. Applicable on Urban real estate, but varies according to Municipal
4. Fiscal Value in Chile is significantly lower than market value
5. Rates determined as 10% is levied every 5 years after taking a 30 to 32% deduction for maintenance

Analysis by Kenneth Erikume, based on public information. The analysis excludes exemptions where certain types of property below a particular amount or for charitable or religious purposes are exempt.

Using market value for LUC is not unique to Lagos State. Some other jurisdictions may however use land value alone, or could adopt fiscal value (which is at the discretion of the tax authority) or market rental value. However, when they do so, the rate of property tax is usually higher than where the charge is based on market value. Based on the resultant tax payable, the Lagos State LUC does not appear to be inordinate when compared with other

countries. In fact, for a city that has a huge infrastructure deficit estimated at over US\$50b, it is not difficult to see the need for a review of the LUC. In the absence of 'vibranium', Lagos has to resort to taxes to achieve an economy similar to the fictional Wakanda. However, it would be ideal for Lagos to further consolidate the various property taxes into one single council tax rather than charge separately for waste disposal, business premises levy, etc.

What are the misconceptions and controversies about the rates?

The LUC annual rates are:

Classification	Old rate	New rate
Pensioner's property	0.000%	0.000%
Lagos State Government properties	N/A	0.000%
Owner occupied residential property	0.150%	0.076%
Vacant properties and open empty land	0.000%	0.076%
Industrial premises of manufacturing concerns	0.500%	0.256%
Residential property occupied by owner and 3rd party	Unclear	0.256%
Residential property not occupied by owner	0.650%	0.760%
Commercial property (used for business purposes)	1.750%	0.760%
Family compounds	0.000%	Any rate above

Some reports state that LUC rates have increased by 200% to 500%. This is not exactly correct in all cases, based on the rates alone. In some critical economic and social areas, rates have dropped as shown in the table above. Despite the drop in rates, there may still be an increase in the LUC since the assessments are now based on market value. Some commentary have stated that a N50m property would have to pay N38,000/annum (if owner occupied) or N380,000/annum (if rented out). It appears that some property owners have received assessments which did not consider the annual reliefs (e.g. general relief of 40%) and depreciation rates (e.g. for 0 to 5 years, 1%). It is the responsibility of the property owners to claim these reliefs if the assessors have not granted them.

Using the theoretical N50m property assumed to have been in use for 5 years, the assessable value should be $N50m * (1-40%) * (1-[5*1%]) *$

0.076%. This would give rise to LUC of N21,600/annum if owner occupied or N216,000/annum if rented out or for business purposes.

The formula in the law may not have made this very apparent and could have led to complexity by the assessors in computing the reliefs. For example, rather than give a pensioner 100% relief, multiplying by 100% to arrive at the LUC (which is what the formula seems to suggest) would give no relief at all.

It is important for the State to clarify and simplify the computation so that an average property owner can compute it without any external assistance. Giving taxpayers the option for self-assessment would also reduce controversy. It seems that it is still too complicated even for the assessors.

Controversy about exemption for religious organisations

The law retains the full exemption for property owned and occupied by religious bodies and used exclusively as a place of worship or religious education. In terms of leading practices on property tax, this is quite common in other jurisdictions.

It could be argued that religious organisations put more strain on the government than private residences. For example, LASTMA is not required in front of my residence to direct traffic as they are required in some religious establishments. Similarly, it can be argued that the site of the religious organisations may not have any 'charitable' use if it is not used to shelter the homeless, orphanages etc. While a private residence actually makes provision for parents to provide homes for their children and their elderly. There is still some justification to provide some exemption for properties that the general public consider to be their places of worship. Majority of Lagosians may still favour this exemption. In any event, the law also provides that where the property is used for business purposes or other commercial purposes (e.g. for paid wedding receptions), LUC would accrue proportionately for every day that the property was used for business.

Stakeholders engagement

In the age of social media, physical stakeholders engagement is never enough. In January 2018, it was in the news that the Lagos State Government held a stakeholders engagement on the Bill. Most of the concern at the time was around a perception that the exemption for religious bodies was removed. Maybe this was the focus of stakeholders at that engagement session.

Lagos State should begin to consider social media engagements for the enactment of future laws. Technology has made it possible to carry out surveys on Facebook, Twitter, Google+, etc. It will still be impossible to pass a law that will

be 100% acceptable to the general public, but these options for engagement have to be explored as many other big cities and municipalities already use this to reach out to the younger generation.

How would it impact on property rentals?

The easiest assumption, without any data or understanding of economics, is to assume that landlords will pass the cost to tenants through increase in rent. This would be the obvious result for a finite number of properties with high occupancy rates.

But commercial rent is dependent on willing buyers and willing sellers. Economics dictates that if a landlord could charge x amount on top of his current rent today, he would have already done so. A tenant in Banana Island probably has enough resources to own his own home in Lekki Phase 1 and a tenant in Lekki Phase 1 can opt to live in Agungi or Osapa London if the rent is increased. One of my mentors told me some years ago "Anybody who can rent a 4 bedroom terrace can actually pay the mortgage to acquire their own home". The way the rates are skewed in favour of residential property may lead to more encouragement for personal home acquisitions.

Introduction of LUC on vacant properties in the new law (which was not there previously) would encourage the use of the land since nobody would want to pay LUC without getting any commercial benefit on the land. This could lead to more supply of property for rentals and a tenant's market.

It is therefore unclear whether the new law would lead to increase, decrease or stability. The only certainty is that rent would depend on market forces and the wiser landlords would be cautious in passing on the LUC to tenants.

Situation of pensioners may not be very clear

In the old law and new law, pensioners are tax exempt. However, the new law introduces a definition of “pensioner” as a person who retires from a pensionable office in the State (Lagos State of Nigeria). There are 2 interpretations of this, depending on what is considered as ‘pensionable office’. It could either mean that the pensioners that get the exemption must have retired as workers in the government of Lagos State or that the pensioners must have retired as workers in Lagos State. The first interpretation would be very discriminatory and it is doubtful whether this was the intention of the drafters. The second interpretation would be logical as Lagos State is at liberty to grant an exemption only to those who have contributed to its economy during their more active days in terms of taxes and driving the economy.

Conclusion

The law is not as controversial or adverse as may have been painted. It means more payment to government for most people but for someone

who is able to acquire a N50m property, paying N21,600 every year is not exactly exorbitant. Poor people do not have this luxury and they would not be averse to the new LUC since government would be collecting from the rich to provide general infrastructure for everyone.

However, the state needs to encourage a culture where people are more informed on their tax obligations. To this end, the State should invest more in taxpayer education on the various taxes in the State, how they work and how they are computed. Taxpayers should understand that if they are aggrieved with assessments, social media does not provide any reprieve. The people who are able to secure benefits are those who take their time to study the law and take advantage of reliefs or those who are able to afford a good consultant to advise them on optimization strategies. The law also provides for an LUC Assessment Appeal Tribunal to deal with objections against LUC assessments, as long as they are lodged within 30 days.

The bigger issues are whether we are able to hold our governments accountable after paying our LUC and also whether the government would be efficient in collecting from even the powerful in society so that the middle class do not continue to carry the tax burden of the State.

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