

Full Length Research Paper

The Lagos State Land Use Charge Law of 2001 is assessed by an estate valuer

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Increasing demand for provision of urban and rural infrastructures and other expenditures have dictated governments at all levels and world over to raise funds through taxation. In Nigeria, Lagos State Government passed into law land use charge on properties within its territory to increase internally generated funds. This paper assessed the provisions of the law and determined the effects on stakeholders. In doing so, a process of inferences, interviews and evaluation of the law were carried out. The study found great disadvantages of the law, and recommended appropriate basis to determine fair and equitable charge.

Key words: Landlord, land use charge, property tax, property value, tax law, tenant, Lagos state.

INTRODUCTION

The responsibility of Governments at all levels in providing infrastructure is enormous. Such infrastructure may be rural and urban referring to roads, sewers, or utility lines, and may include hospitals, schools, emergency services like fire fighters and police, sidewalks, or ponds to hold storm- water. Collins (2003) states that the infrastructure of a country, society, or organization consists of basic facilities such as transport, communications, power supplies, and buildings which make the town or city function. According to Tesfay (2008), existence of a solid infrastructure is required for national development, which cannot be achieved without good infrastructure that affects all sectors. By implication, infrastructure is important for the functioning of communities (which may be cities, town or society), individuals and companies.

Nigerian cities like Lagos, Abuja, and Port Harcourt face the challenges of increasing population that makes use of available infrastructures, which have not experienced addition to cater for concomitant increase in demand; while funds or budget allocations are far from being enough for managing them. With rapid population growth and decrease in available funds from the Federal, States and Local governments, the standard of maintenance of roads, water resources, bridges, electricity, and others have reduced to the lowest and disappointing level. There have been concerted efforts by all tiers of governments in Nigeria to increase revenue base through various forms

of taxes and payers are often confronted with paying multiple taxes. This problem is most pronounced in Lagos State and has probably dictated government's action to eliminate multiple **taxes** imposed on residents, **and** increase provisions of infrastructure through enactment of Land Use Charge Law. The main objective of the law as proffered repeatedly by the Lagos State Government is to generate additional revenue needed to develop the state that has been facing growing population without corresponding increase and improvements in physical and social infrastructure (Oserogho, 2002).

According to Affe (2008), the objective was also to devise a model that is fair to the citizens and enables government discharge its responsibilities to the people and give meaningful life to the citizens. This underscores the point why Land Use Charge was introduced by Lagos State Government to raise revenue for maintaining existing infrastructure and provide new ones. It is in line with this that this paper is set to evaluate the effectiveness of the law and come up with recommendations to assist Government and tax-payers.

THE LAND USE CHARGE LAW

The Land Use Charge Law 2001 came into force on 22nd June, 2001 and has twenty-four sections. The law, which

is now being enforced established that a land-based charge is payable on real properties situate in Lagos State, Nigeria with each local government area empowered to levy and collect the charge for its area of jurisdiction as collecting authority. Each collecting authority may delegate to the State, by written agreement, its functions with respect to collection of rates and the assessment of privately-owned houses or tenement for purpose of levying the rate.

The Commissioner of Finance is by law empowered to undertake or cause to be undertaken an assessment of chargeable properties in such areas as may be designated, and appoint property identification officers, qualified assessors and other persons considered necessary. The assessment which is to consist of inspection of a property, collection of documents and information, and taking of photographs expected to be carried out between the hours of 7.00 a.m. and 5.00 p.m. The payment of the Land Use Charge which is to be based on annual capital sum is to be paid by the owner. According to Section 5 (1) of the law, the formula for determining the annual amount payable is:

$$LUC = M \times \{(LA \times LV) + (BA \times BV \times PCR)\} \quad (1)$$

Where,

LUC = annual amount of land use charge in Naira

M = the annual charge rate expressed as a percentage of the assessed value of the property. The assessed value in this case may vary between owner-occupied residential and commercial properties at the discretion of the State Government. Commercial property refers to those that are revenue-generating.

LA = the area of the land parcel in square metres

LV = the average value of a land parcel in the neighborhood, per square metre in Naira

BA = the total developed floor area of building on the plot of land in square metres, or the total floor area of apartment unit in a building where apartment has a separate ownership title

BV = the average value of medium quality buildings in the neighborhood, per square metre in Naira

PCR = the property code rate for the building and which accounts for the building being of higher or lower value than the average buildings in the neighborhood and which also accounts for the degree of completion of construction of the building.

$$(LA \times LV) + (BA \times BV \times PCR) = \text{the assessed value of the property} \quad (2)$$

The law also provides that the annual charge rate for each financial year will be set by the Commissioner for Finance and published in Official Gazette and widely-read newspapers in the State, and the value of property code rate set and be revised by the Commissioner with the approval of the House of Assembly.

However, the law exempted some properties from payment of Land Use Charge, such properties are: those owned and occupied by religious bodies and used exclusively for public worship or religious education; cemeteries and burial grounds; recognized and registered institution or educational institute certified by the Commissioner for Finance to be non-profit making; those used as public library; those specifically exempted by the Executive Governor by notice published in the State Government Official Gazette; palaces of recognized Obas and Chiefs in the State.

In addition, partial relief may be granted to a property that is: occupied by a non-profit making organization and used solely for community games, sports, athletics or recreation for the benefit of the general public; and those that are used for charitable or benevolent purpose for the benefit of the general public and owned by the State, Local and Federal Governments or non-profit making organization. However, exempted or partly exempted property will become liable for Land Use Charge if the use of the property changes to one that does not qualify for exemption or where the occupier changes to one that does not qualify for an exemption. It is provided that if land use charge status of a property changes, a land use charge imposed in respect of that property will be prorated such that the charge is payable only for the part of the year in which the property or part of it is not exempted.

Apart from these, Sections 10 and 11 state that the collecting authority, that is, the local government area, may declare any person including occupier of chargeable property to be the agent of the property owner and such person will become liable for payment of the charge on behalf of the owner from moneys due by him or becomes due by him for payment to the owner. The payment of the charge will become recoverable from the agent where the owner defaults in payment. Section 11 states that the agent will be indemnified against the owner for such payment made by him.

The law envisages that disputes may arise from its implementation and so provisions were made for Assessment Appeal Tribunal which consists of at least fifteen members with three members constituting panel of the Tribunal to hear appeal in respect of amount that the appellant is liable to pay, impose fines and penalty including attachment of persons' goods. The law stated further that the charge payable would be increased by 25% if the charge is not paid within 75 calendar days after demand notice has been served, it will increase by 50% if not paid within 105 days, and by 100% within 135 days, and if it remains unpaid after 135 days, the property would be liable to receivership by the Lagos State Government or appointed agent until all outstanding taxes, penalties and administrative charges are paid.

Essentially, the law states that with effect from date that land use charge is levied on a property, all other laws that impose tax on properties (the assessment, land rate,

neighbourhood improvement charge and tenement rate laws) would cease to apply to such property. A supplement to the law, known as Supplement to the Lagos State of Nigeria Official Gazette Extra-ordinary No. 41, Vol. 34 of 13th December, 2001 Part B was enacted. The supplement stated the annual land use charge rates payable on assessed value of a property as follows - Owner-occupied residential property - 0.5%; owner-occupied pensioner's property - exempted from land use charge; industrial premises of manufacturing concerns - 0.5%; residential property/commercial - 0.65%; commercial property used by occupier for business purposes 1.75%; and family compounds – exempted from land use charge. In case of non-compliance, obstruction of the law enforcement officials, and damage of property identification plaques, defaulters will be liable to penalties of up to One hundred thousand Naira (N100,000) or three months imprisonment; while properties exempted from land use charge will be liable to other rates or charges under other existing laws.

THEORETICAL FRAMEWORK

Land use charge is a form of taxation, the objective of which is to finance public spending and an analysis of taxes can be viewed within the framework of economic objectives of government. The basic criteria by which a tax is judged relative to another tax or hypothetical neutral tax are effects on the supply and allocation of resources, whether it is equitable, whether it is a good stabilizer, and whether it is costly from an administration point of view (Newell, 1977).

Land use charge is a form of property tax, according to Havey (2000), "it is usual for local property taxes to be levied *ad valorem* and bases of assessment may be net annual value (NAV), capital value or site-value". When net annual value is the basis of assessment, it is likely to be determined as follows: Gross annual value - the yearly rent that the property might reasonably be expected to be let on a determined rate and statutory deductions are made for maintenance and insurance to give the net annual value. Compared with site-value basis, NAV has certain advantages, namely, because the base includes buildings as well as land, the yield is higher especially for properties whose building cost is a high proportion of the total cost. It is easier to assess, since in a free market, rents are been calculated by comparison with what is passing on similar properties. The defects include: it falls on the building as well as on land; it tends to be more regressive as regards houses which are occupied by the poor as well as the rich. Another defect is that Net Annual Value is not neutral as regards building improvements which are taxed and in the long run capital moves to untaxed uses.

Using the capital value basis, tax is the value of premises if sold freehold in the open market given a willing seller and provided that capital value equals net

annual value capitalized at the relevant rate of interest, it will produce an equivalent base for taxation as net annual value (Newell, 1977).

According to Richmond (1975); Britton, et al (1980); Millington (1982); Ajayi (1998); and Kalu (2001), Capital Value is market value and it is the amount of money which may be obtained for an interest at a particular time from those individuals who are able and willing to purchase it. It is the price arrived at under an open market normal financing, non-cohesive, and non-monopolistic condition; while, it is the best price at which an interest in a property might reasonably be expected to fetch by private treaty at a particular date assuming willing seller, reasonable period within which to negotiate the sale, taking into account the nature of the property and the state of the market, and that the property will be freely exposed to the market (N. I. E. S. V., 1985). Similarly, rent is an annual or periodic payment for the use of land or land and buildings (Britton et al, 1980).

The net income receivable from property (that is rent) is normally taxable, and it is often considered that tax is on the person not the property so that the tax on income is often ignored in calculation of capital value (Richmond, 1975); and "...tax is payable on the profit rent (Richmond, 1975; Ajayi, 1998). The import of these statements is that tax are based on income which a property owner obtains from his property and not on capital value in the case of income that is receivable in perpetuity while it is based on profit rent in the case of income receivable for limited period.

The basic economic principle is that the open market price will increase in the long run if there is higher demand for a good or service. Similarly, the higher the outgoings in form of tax liability the higher will be the rent that landlord will demand for a given property on the long run. In this regard, where initial capital costs cannot be set off against tax liability whereas maintenance expenditure can be, this will increase additional expenditure on maintenance rather than initial construction (Lean and Goodall, 1977).

In respect of supply of properties, Harvey (2000) states that in the short-run, the stock of rented houses is fixed and the new rates will be borne by landlords for net rent will fall; and in the long run supply of houses is more elastic since, assuming no planning consent is required, owners will adapt them to other uses or simply not replace them as they wear out, switching to lower-taxed and profitable forms of investment. The tax burden is then passed on to the tenants, the extent of which depends upon the relative elasticity of supply and demand.

The questions that arise therefore are what will be the long-run effects of the provisions of the land use charge law on the open market values of affected properties? Is the basis for calculating the charge reasonable? What basis is fair and reasonable? In view of the foregoing, it has become imperative to evaluate the effectiveness of the Lagos State Land Use Charge Law of 2001, and

Table 1. Default Rates amongst tenants in Lagos metropolis.

Period of defaults	No. of respondents	%
1 – 6 months	12	10.00
Between 6 and 12months	86	71.67
More than 12 months	22	18.33
Total	120	100.00

Table 2. Estate surveyors and valuers' opinion on the land use charge law.

Options	No. of respondents	%
Advantageous	2	1.67
Indifferent	18	15.00
Disadvantageous	100	83.33
Total	120	100.00

recommend the best option that will truly be fair to the citizens and yet enable government discharge its responsibilities to the people. The paper attempted to answer the questions by examining the provisions of the land use charge law, determine effects on property values, and overall implications on stakeholders in the short- and long-run.

MATERIAL AND METHODS

The Lagos State of Nigeria Official Gazette No. 20 Volume 34 dated 25th June 2001 containing the Land Use Charge Law was perused for understanding of the provisions while an evaluation of the law was carried out with process of inferences used in interpreting and making deductions, devoid of its legal jargons. In addition, questionnaires were administered on estate surveyors and valuers, who are organized part of the stakeholders to ascertain their opinions about the law. The other stakeholders - tenants and landlords are not organized into body corporate and their populations are indeterminate consequently questionnaires were administered on few of them.

There are three hundred and twenty-five registered firms of estate surveyors and valuers in Lagos metropolis and appropriate sample of the firms' population was determined using the Bartlett et al's (2001) model. The model recommends appropriate minimum sample size with level of confidence set at 95%. Using the model, one hundred and fifty firms were sampled and one estate surveyor selected from each firm for interview. The respondents were prompted to express opinion about the land use charge generally and particularly in terms of its non-consideration for default in rent payment. Questions were asked on default rates in rent payment, advantages and disadvantages of the Land Use Charge Law, and adequacy or otherwise of the amount imposed as Land use charge, reliability of the basis of valuation imposed by the law, convenience of direct deductions by estate surveyors from rents due to the Landlords, and the short- and long-run effects of the law on property values in Lagos State.

ANALYSIS AND DISCUSSION

In evaluating the Land Use Charge law, total of 150 estate

surveyors and valuers in Lagos metropolis were randomly selected for administration of questionnaires. Out of this figure, one hundred and 20 (representing 80% of the total number of questionnaires) were returned.

In expressing their opinions about the default rates in rent payments by tenants in properties that the estate surveyors manage in Lagos metropolis, hundred per cent of the respondents remarked that tenants do not always pay rent regularly. Details of their responses are shown in Table 1.

From Table 1, more than ninety percent of the respondent estate surveyors and valuers in Lagos metropolis have problem collecting rents from tenants of properties they manage and that tenants fall into arrears of six months and more.

In determining the advantages and disadvantages of the law from the perspectives of the estate surveyors and property owners, their opinions were summarized in Tables 2 and 3.

From Table 2, majority of the respondents regarded the Law as disadvantageous. About 83% of the respondents considered holding the agents liable to be of great disadvantage; 90% of them considered long-run increase in rental values to be a disadvantage, while all the respondents agreed that making defaulters' properties come under receivership is a disadvantage, while about 92% of the respondents considered the use of capital values as basis for annual tax liability to be a wrong approach. On the other hand 95.8% of the respondents considered the law as an advantage stating that it would prevent multiple taxes being levied on properties. This is summarized in Table 3.

From Table 3, about 82% of the respondents stated that the Law would assist in reduction and or prevention of property tax evasion by ensuring that its administration, assessment and collection, are much easier. In addition, 83% opined that appointment of Managing Agents to remit such rent direct from monies due to the landlords would make it easier and prompt remittance would thus be encouraged. On the other hand, 93% stated that the amount of tax was rather too high. About 92% responded that this was partly because the basis of assessment of the tax is the capital value and payable annually.

The respondents' opinions of the long-run implications of the Law are shown in Table 4.

About 80% of the respondents were of the opinion that it would discourage property investors from going into new investment in Lagos State. 65% of the respondents opined

