

## LAGOS STATE LAND USE CHARGE: APPROPRIATENESS OF THE ASSESSMENT METHOD AND PAYMENT LIABILITY

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### ABSTRACT

This research investigated the appropriateness of assessment method and payment liability of Lagos State Land Use Charge. Objectives of the study include: to identify the components of Land Use Charge, to identify various methods of valuation used for assessment and their appropriateness, to establish if assessors are qualified and to establish the appropriate tax liability and way of enforcement. The result of the review of extant literature, identified liability of payment of Land Use Charge, assessment of Land Use Charge and penalty for default, from where questionnaire was constructed which was the main source of data collection. Out of a population of 500 practising estate surveyors and tax accountants in Lagos State, 200 questionnaires were administered out of which 104 were retrieved representing a return of 52%. Frequency analysis and test of hypothesis done with the aid of SPSS 20 showed several percentages and correlation analyses of  $P > 0.05$  probability and only one  $P < 0.05$ . It was found out that, Lagos State Land Use Charge authorities use crude valuation and enforcement methods. They also tax bare sites and have been recommended to use professional estate surveyors and valuers for their assessment and also to take defaulters to court rather than their present crude method.

**KEYWORDS:** Assessment Method, Payment Liability, Professional Estate Surveyors and Values, Method of Enforcement, Undeveloped Land

### INTRODUCTION

Land taxation, if well handled from assessment stage to levying stage is a good source of revenue for governments. Tenement rate in Lagos State had been handled by local governments in terms of assessment by estate surveyors and valuers and collection but it later became part of the consolidated property tax known as Land Use Charge (LUC). Land Use Charge Law of June, 2001 changed the scenario of land taxation in Lagos State.

It was intended to be a single property charge and replaced many other state and local government taxes on real property, for example, ground rates, tenement rate, neighbourhood improvement charges. Its objective was to generate additional revenue needed to develop the state whose population is growing at an alarming rate without corresponding increase and/or improvement in its physical and social infrastructure. It was not long before the problem emerged of the method of assessment and payment liability.

This research intends to address this problem of assessment and tax liability created by Land Use Charge handlers. The aim of this research is therefore to establish the appropriateness of the assessment method and the correct payment liability applicable to Lagos State Land Use Charge. In the process of achieving this aim, the objectives shall be: to identify the components of Land Use Charge, to identify various valuation methods in use for its assessment, to identify the assessment method the assessors use and its appropriateness, and to establish if the assessors are qualified to carry out such assignment. Appropriate tax liability and way of enforcement shall be established. In other words, the underlisted questions must be answered: what are the components of the Land Use Charge, what valuation methods are used for property tax assessment and which are the appropriate ones to be used for Land Use Charge assessment? Are those carrying out the assessment of Land Use Charge in Lagos State qualified to do so? Who should be liable to pay this tax and what is the best way to enforce payment of Land Use Charge?

In our null hypothesis, the following will be tested: the method used for assessment of Land Use Charge are appropriate, estate surveyors and valuers are not qualified to assess Land Use Charge and tenants and not landlords, should be liable to payment of Land Use Charge.

## LITERATURE REVIEW

From inception tenement rate was a local rate or charge on properties by the local governments in Great Britain to raise funds for local needs. When governments adopted this source of raising funds for Improvements in Nigeria, it was also a local government rate or tax for achieving eight (8) objectives namely:

- Raising revenue;
- Social justice;
- Redistribution of income;
- Allocation of resource;
- Capital formation;
- Planning;
- Development;
- Economic stabilization (Ogbuefi, 2004; Umeh, 1972)

By the Land Use Charge Law, Lagos State Government has hijacked the Local Government sources of finance. The Land Use Charge Law, 2001 consolidated some landed property taxes such as tenement rates, ground rents plus development charge on lands allocated by the State and neighbourhood improvement charge (improvement charge from developed and undeveloped private property) into a single property charge otherwise known as the Land Use Charge because according to Tinubu, 2003 and Ogbuefi, 2004, the former arrangements were subjected to abuses and losses. Seasoned estate management academics, Umeh (1972) and Ogbuefi (2004), were of the opinion that tenement rates which were annual based tax cannot be seen in the same light with capital value based tax, and also peppercorn rent cannot be considered as normal taxation.

### Liability to Pay Land Use Charge

The Land Use Charge is levied on the property owner and where he is not the occupier, the tenant would pay and deduct such amount from his rent. This has been a source of conflict between landlord and tenant. According to Babawale/Nubi, the Land Use Charge failed to conform to best practice both in policy and administration. As a result, the reform has not ceased to generate controversies, enjoyed limited acceptability and achieved limited result.

Oserogho (2002) stated that the Land Use Charge Law imposes liability of payment on the landlord or owner and where the owner is not in occupation of the tenement, for the tenant or occupier to be responsible. However, the tenant is authorised to offset the payment from monies that may be due from the tenant to the owner of the property. The intention of the Land Use Charge Law, 2001 is to make the owner of the property liable for the charge, which is contrary to tenement rates laws where occupiers were rated and not the landlord except landlord is also occupier.

### Assessment of Land Use Charge

Oni (2009) cited section 5(1) of the Law which provided the statutory formula for determining the annual amount payable as Land Use Charge as follows:

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

Where,

LUC = annual amount of Land Use Charge in Naira;

M = the annual charge rate expressed as a percentage of the assessment 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 land parcel in square metres;

LV = the average value of a land parcel in the neighbourhood 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 neighbourhood 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 neighbourhood and which also accounts for the degree of completion of construction of the building.

The components of this statutory formula are entirely at the discretion of the tax officials. The implication of this provision is that no property owner is sure of the amount of charge to be paid in every succeeding year; therefore negating the principles of fair and equitable tax which expects that the amount should be certain. Computation of tax liability at the discretion of government officials makes the law prone to abuse by political office holders and the amount payable uncertain.

Whereas annual tax is an assessment based on yearly returns, the Land Use Charge is based on capital value which is a capitalisation of many years returns times a multiplication factor. The cannons of taxation clearly state that annual tax should be levied on annual returns. Whereas equity, certainty and equal incomes pay equal taxes. It is premised on wrong method of valuation i.e. capital (rather than annual).

Harvey (2000) and Oni (2009) were of the opinion that since Land Use Charge is a form of local property tax, it must be usual for it to be levied ad valorem and the bases of assessment may be net annual value (NAV), capital value or site-value. Newell (1977) opined that using the capital value basis, tax is the value of premises if sold freehold in the 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. The net income receivable from property 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 the calculation of capital value (Oni, 2009; Richmond, 1975); and another tax is payable on profit rent (Oni, 2009; Ajayi, 1998; Richmond, 1975). Rent is an annual or periodic payment for the use of land or land and buildings [Britton, Davies, and Johnson (1980)]. Oni (2009) asserted that taxes 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 a limited period.

In a related study by Thontteh (2010), on the effects of the Land Use Charge Law in Lagos State, it was found out that the statutory formula to determine the amount of charge payable is inappropriate and that high charge and penalties may discourage investment in new housing and maintenance of existing stock.

### **Penalty for Default**

Payment increases up to 25%, 50% and 100% respectively where charge delays payment up to 75, 105 and 135 days from date of his receipt of assessment. There is also liability of incurring the appointment of a receiver over the property until outstanding arrears, penalties and administrative charges are paid. If this is applied strictly, many properties in Lagos State may be subject to receivership. Also, incremental levy on days of default is against one of the principles of tax rate which is the proportion or percentage of tax object or item to be paid as tax.

According to Metu (2017), the Land Use Charge has no definitive basis of assessment. It consolidates tenement rate and ground rate, on properties that already has certificate of occupancy. It charges rate on land value rather than on annual value. Companies are picketed even when their cases are in court. Some of the assessors studied Christian Religious Studies and claimed he was trained to assess properties, according to Metu.

Who are qualified to assess properties? According to Estate Surveyors and Valuers (Registration, etc.) Decree No. 24 of 1975, now CAP E13 (Laws of the Federation of Nigeria) 2007, Estate Surveyors and Valuers Registration Board of Nigeria (ESVARBON) came into being as a Board charged with the general duty of regulating the practice and scope of standard of estate surveying and valuation services in Nigeria. One of the services, by this regulation, is property valuation, and only those recognised by the ESVARBON are entitled to render the service of property valuation for whatever purpose in Nigeria. The purpose includes valuation of land and buildings for sale, mortgage, insurance, mergers, balance sheets, takeovers, acquisition, new issues, debentures, receiverships, joint venture, development financing, TAXATION, rating, disposals, tenancy renewals, asset declaration, probate, stocks and shares. So only those recognised and registered by

ESVARBON are qualified to value properties for purposes of taxation.

## METHODOLOGY

This research paper employed a descriptive approach in form of questionnaire to get data from practising estate surveyors and valuers, accountants and tax consultants on modalities and methodology employed in assessment, decision on liability and enforcement of Land Use Charge in Lagos State. The number of qualified and practising estate surveyors and valuers, accountants and tax consultants in Lagos State is estimated to be 500. A total of 200 questionnaires were administered and 104 were successfully completed and retrieved. The retrieved questionnaires were coded and entries made in to Statistical Package for Social Sciences (SPSS) 20. This was summarised in form of frequency distribution and further analysed through regression.

## DATA PRESENTATION AND ANALYSIS

Looking at our objectives and research questions, the following data and analysis are presented

**Table 1: Are All Land-based Taxes Included in the Land Use Charge**

	Frequency	Valid Percentage (%)	Cumulative Percentage (%)
Strongly agree	26	25	25
Agree	30	28.8	53.8
Maybe	8	7.7	61.5
Disagree	34	32.7	94.2
Strongly disagree	6	5.8	100
<b>Total</b>	<b>104</b>	<b>100</b>	

Field Survey, 2017

Analysis from Table 1 above shows that majority of respondents (32.7%) disagree that all land-based taxes are included in Land Use Charge while 28.8% agree. 25% strongly agree while 5.8% strongly disagree. From the above, not all land-based taxes are included in the Land Use Charge.

**Table 2: Valuations Methods Used for Land Use Charge**

Method	Frequency	Valid Percentage (%)	Cumulative Percentage (%)
Accounts	8	7.7	7.7
Investment	34	32.7	40.4
Capital Value	40	38.5	78.9
Annual Value	18	17.3	96.2
Others	4	3.8	100
<b>Total</b>	<b>104</b>	<b>100</b>	

Field Survey, 2017

Table 2 shows that 7.7% of respondents agree that Accounts Method of Valuation is used for Land Use Charge, while 32.7%, 38.5% and 17.3% respectively agree that Investment Method, Capital Value Method and Annual Value Method are used for computation of Land Use Charge. In essence, Capital Value is the Basis of Valuation of Land Use Charge.

**Table 3: Are Assessors of Land Use Charge Qualified for the Job?**

	Frequency	Valid Percentage (%)	Cumulative Percentage (%)
Strongly agree	4	3.8	3.8
Agree	24	23.1	26.9
Maybe	16	15.4	42.3
Disagree	46	44.2	86.5
Strongly disagree	14	13.5	100
<b>Total</b>	104	100	

Field Survey, 2017

From Table 3 above, 44.2% disagree that assessors of Land Use Charge are qualified to do so. They are really not qualified for the specialised job of valuation.

**Table 4: Professional Estate Surveyors and Valuers are Qualified for the Valuation of Land Use Charge**

	Frequency	Valid Percentage (%)	Cumulative Percentage (%)
Strongly agree	70	67.31	67.31
Agree	20	19.23	86.54
Maybe	2	1.92	88.46
Disagree	10	9.62	98.08
Strongly disagree	2	1.92	100
<b>Total</b>	104	100	

Field Survey, 2017

From Table 4 above, out of 104 respondents, 70 strongly agree that professional estate surveyors and valuers are the ones qualified to value for Land Use Charge.

From Table 5 (not shown) for lack of space, 61.5% of the respondents agree that landlord should be responsible for payment of Land Use Charge, while 7.7% agree it should be the tenant. It is obvious that majority of respondents favour payment by the landlord.

From Table 6 (not shown), 40.4% disagree that bare (undeveloped) site should be taxed, while 25% strongly agree. It therefore stands in support of not taxing bare (undeveloped) sites.

From Table 7 (not shown due to lack of space), 30.8% agree that embarrassing notices should be pasted on defaulter's gate, while 25% agree that defaulting tenement should have their gates double-locked. 7.7% agree that there should be punitive increase in amount owed when tax is in arrears and 19.2% agree that all the penalties should apply when one defaults. Also, while 13.5% agree that present method of enforcement which comprises all the mentioned items above is appropriate, 3.8% strongly disagree while 30.8% agree. 42% suggested legal enforcement through courts. Therefore, legal enforcement through courts should be used rather than other crude methods.

**Table 8: Are Methods Used for Assessment of Land Use Charge Appropriate?**

Methods Used for Assessment	Unstandardised Coefficient	Methods Used for Assessment		Appropriateness	
		$\beta$	Std Error	t	Sig.
		2.606	0.051	5.207	0.000
		0.021	0.079		
<b>Appropriateness</b>	<b>Standardised Coefficient</b>	Beta	0.037	0.259	0.796
F (1,50) = 0.067, p = 0.076 > 0.05, r = 0.037 <sup>a</sup>					

In testing the appropriateness of the methods used for assessment of Land Use Charge, standardised correlation coefficient  $r = 0.037$  at probability  $p > 0.05$ , methods used were not strongly and significantly correlated to appropriateness. Null hypothesis is rejected. Therefore, the methods employed are not appropriate.

**Table 9: Are Estate Surveyors and Valuers Qualified to Assess Land Use Charge?**

Estate Surveyors and Valuers and Assessment of Land Use Charge	Unstandardised Coefficient	Estate Surveyors and Valuers and Assessment of Land Use Charge		Are not the Ones Qualified	
		$\beta$	Std Error	t	Sig.
		1.586 0.149	0.674 0.086	2.352	0.023
Are not the Ones Qualified	Standardised Coefficient	Beta	0.238	1.735	0.089
$F(1,50) = 3.009, p = 0.089 > 0.05, r = 0.238^a$					

In testing whether or not estate surveyors and valuers are qualified for assessment of Land Use Charge, standardised correlation coefficient = 0.238 at probability  $p > 0.05$ . Estate Surveyors and Valuers were not strongly and significantly correlated to not being qualified for Land Use Charge assessment. Null hypothesis is rejected. Therefore, Estate Surveyors and Valuers are the ones qualified for assessment of Land Use Charge.

Table 10 (not shown for lack of space) shows liability for payment between landlord and tenants as follows: standardised correlation coefficient = 0.496 at  $p < 0.05$ . Payment liability was significant and strongly correlated to tenant paying Land Use Charge. Null hypothesis is accepted. Therefore, tenants should not be liable to payment of Land Use Charge.

## CONCLUSIONS AND FINDINGS

### Findings Reveal That

- Not all land-based taxes are included in the Land Use Charge.
- Capital value, rather than annual rental value, is the basis of valuation for Land Use Charge. There is hence an inappropriate method of assessment.
- Assessors of Land Use Charge are not qualified to value land and buildings for taxation purposes. The qualified assessors are only the professional Estate Surveyors and Valuers.
- Liability of payment should be on the landlord as it is done presently.
- Undeveloped sites should not be subject of taxation.
- Legal enforcement through courts is the preferred method of enforcement rather than less preferred methods of embarrassing notices, annual penalty increases in tax amount, barring occupants from entering their premises and revocation of title.

## RECOMMENDATIONS

Tax authority should correct itself where it has gone wrong. For example, it should use qualified assessors, namely, professional Estate Surveyors and Valuers for assessment who will use appropriate method.

It should also take defaulters to court rather than employ crude un-defendable methods, for recovery of arrears. Undeveloped site should not be taxed.

## CONCLUSIONS

It is important that, Land Use Charge authorities should use appropriate methods, by using qualified professionals who know the right basis and method to apply. They should also stop using illegal and crude means to collect taxes, when they are legal means of doing so. This work has been painstakingly done and appropriate and bold recommendations made should be adhered to by Land Use Charge authorities.

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