

## Taxation of Property in Lagos State: An Appraisal

### Abstract

*To remedy the infrastructural and administrative deficits in Nigeria, the government requires more revenue.<sup>1</sup> In recognition of the need for additional and sustainable income, the Lagos State House of Assembly passed the Land Use Charge Law in January 2018 (LUCL 2018) which repeals and replaces the Land Use Charge Law 2001. It increases the rates payable on all property situated in Lagos State and aims to block loopholes in the previous law. This paper analyses the LUCL 2018, highlighting changes introduced in the law. It also examines the legality of the LUCL 2018 and finally concludes that although the Constitution empowers the State to impose property tax, the responsibility to assess and collect LUC is vested on the Local Government Councils (LGC). This paper then recommends that for the sake of true federalism, the LGC should be allowed and supported to assess and collect LUC. Besides, they also need funds to perform their responsibilities.*

**Keywords:** *Property Tax, Land Use Charge, Lagos, Nigeria.*

### 1. Introduction

The Constitution of the Federal Republic of Nigeria 1999, Cap. C23 Laws of the Federation of Nigeria 2004 (as amended), mandates the State and Local Government Councils to perform certain functions. Some of these functions are, the maintenance of roads, streets, drains, public highways, parks, gardens, slaughter houses, markets, public conveniences, etc.<sup>2</sup> To effectively run the government and perform these functions, States and the Local Government Councils have to explore all possible means of generating revenue. They have to look beyond the already dwindling federal government allocations and grants, and focus on taxation, which is the most sustainable means by which a sovereign government can generate income.<sup>3</sup> In recognition of the need to increase internally generate revenue, the Lagos State House of Assembly passed the Land Use Charge Law 2018 (LUCL 2018).

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<sup>1</sup> Ade Ipaye, 'Property Taxation as a catalyst for development- Land Use Charge Law of Lagos State', Journal of Private and Property Tax, 2003, Vol. 22, p.1.

<sup>2</sup> Section 7(5), Constitution of the Federal Republic of Nigeria 1999, Cap. C23 Laws of the Federation of Nigeria 2004 (as amended), with particular reference to the Fourth Schedule thereof

<sup>3</sup> Ade Ipaye, Property Taxation as a catalyst for development- Land Use Charge Law of Lagos State, Journal of Private and Property Tax, 2003 Vol. 22, p.1.

However, just like its predecessor – LUCL 2001,<sup>4</sup> the recently enacted LUCL 2018 has generated a lot of controversy. This is quite understandable, as the new law seeks to increase the Charge rates and most people do not like to pay tax, irrespective of their social status.<sup>5</sup> Despite the reduction in the charge rates by the Lagos State Government, the outcry still persists.<sup>6</sup> Critics contend that basing the charge rate on market value does not only increase the rate by 200-500%, but that it will increase rent in the State and consequently drive inflation. They also complain about the inadequacy of stakeholder engagement in the law making process, before enactment. However, supporters of the LUCL 2018 believe that the upward review of the rate is only logical ‘for a city that has a huge infrastructure deficit estimated at over fifty billion US dollars.’<sup>7</sup> They argue that the new rates, when compared to applicable rates in other jurisdictions,<sup>8</sup> are quite low.<sup>9</sup>

This paper analyses the LUCL 2018, highlighting changes introduced in the law. It also examines the legality of the LUCL 2018 and finally makes recommendations on how this property tax of Lagos State can be improved. Following the introduction, the second part discusses the nature of property tax. It analyses what type of property is taxable as property tax. The third part provides an insight into how property tax in Lagos has evolved. The fourth part interrogates the legal basis for the LUCL 2018 and then goes on to discuss some important provisions of the Law.

## 2. Nature of Property Tax

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<sup>4</sup> No 11, 2001.

<sup>5</sup> *Ade Ipaye, n3.*

<sup>6</sup> Lagos State Government, Lagos Reduces Land Use Charge Rates, Waives Penalty for Late Payment (March 15, 2018) <https://lagosstate.gov.ng/blog/2018/03/15/lagos-reduces-land-use-charge-rates-waives-penalty-for-late-payment/> accessed 31 May, 2018.

<sup>7</sup> Kenneth Erikume, How Controversial is the New Land Use Charge Law in Lagos, PWC [www.pwc nigeria.typepad.com](http://www.pwc nigeria.typepad.com) last accessed on 3<sup>rd</sup> May, 2018.

<sup>8</sup> For instance, Ireland, Canada, Brazil, Chile, Egypt, Greece and Jamaica

<sup>9</sup> *Ibid.*

According to Okany, the word 'property' has various meanings depending on the context in which it is used. Sometimes it means the thing (*res*) over which ownership may be exercised; it could also mean ownership itself; finally, it may mean interest in a thing less than ownership. <sup>10</sup>Black's Law Dictionary<sup>11</sup> gives a simple definition by describing 'property' as the right to possess, use and enjoy a determinate thing (either a tract of land or a chattel); any external thing over which the rights of possession, use, and enjoyment are exercised.

Also explaining what 'property' means, Salmond stated that:

In its widest sense, property includes all of a person's legal rights, of whatever description. A man's property is all that is his in law. This usage, however, is obsolete at the present day, though it is common enough in the older books.... In a second and narrower sense, property includes not all a person's rights, but only his proprietary as opposed to his personal rights. The former constitute his estate or property, while the latter constitute his status or personal condition. In this sense a man's land, chattels, shares, and the debts due to him are his property; but not his life or liberty or reputation.... In a third application, which is that adopted [here], the term includes not even all proprietary rights, but only those which are both proprietary and in rem. The law of property is the law of proprietary rights in rem, the law of proprietary rights in *personam* being distinguished from it as the law of obligations. According to this usage a freehold or leasehold estate in land, or a patent or copyright, is property; but a debt or the benefit of a contract is not.... Finally, in the narrowest use of the term, it includes nothing more than corporeal property — that is to say, the right of ownership in a material object, or that object itself.<sup>12</sup>

From Salmond's description, there are four ways 'property' can be conceptualised. The first, second and third conceptions are too broad to fit the interpretation of property under the Land Use Charge of Lagos State and the property law of other States, for instance, Edo State. This is because Salmond's second conception includes tangible things, for instance, cloths,

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<sup>10</sup> Martin C. Okany, *Nigerian Law of Property* (Fourth Dimension Publishers, Enugu, 1986)

<sup>11</sup> Bryan Garner, *Black's Law Dictionary*, 8<sup>th</sup>edn. (Thomson West, USA, 2004)

<sup>12</sup> John Salmon, P. J. Fitzgerald, *Salmond on Jurisprudence* (Sweet & Maxwell, London, 1966)

furniture, and automobile; while the third conception includes intangible rights, like intellectual property rights. Therefore, the fourth conception, which is the narrowest, applies as the interpretation of property by the LUCL 2018 of Lagos State<sup>13</sup> and the LUCL of Edo State.<sup>14</sup> Property tax in Nigeria is only imposed on corporeal property.

It is noteworthy that property tax is not imposed on income or expenditure from property like the Capital Gains Tax<sup>15</sup> which is imposed on income from the disposal of assets. Rather what is taxed is the ownership or occupation of real property. The amount payable is based on the value of the property. Even if the owner does not derive any form of financial benefit from the property, he will still be liable to pay property tax.

Property tax is one of the various types of taxation. It has been described as an untapped goldmine primarily because<sup>16</sup> it is easy to administer and extremely difficult to evade. A taxpayer who finds the charge rates unacceptable cannot change the property location in response to the tax.<sup>17</sup> From the policy perspective, property tax may either be viewed as an equitable means of generating revenue or as a regressive and undesirable form of public finance. The perception depends a lot on the environment, the design and the administration of the property tax in question.<sup>18</sup>

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<sup>13</sup> Section 1 LUCL 2018 defines 'property' as including a building; any improvement of land; a parcel of land, whether or not reclaimed, waterlogged or otherwise, a parcel of land and any building or improvement; a wharf or pier; and leasehold of up to 10 years. The inclusion of 'leasehold' slightly widens the meaning of property.

<sup>14</sup>Section 27 of the Land Use Charge of Edo State 2012. Furthermore, Section 3 (1) of the Land Use Charge of Edo State 2012 provides that land use charge is payable on real property situated in Edo State. That 'real property' includes a parcel of land, an improvement on the land and a wharf or pier

<sup>15</sup> Capital Gains Act, Cap. C1 Laws of the Federation of Nigeria (LFN) 2004

<sup>16</sup>Emeka Ihebie, 'Property Tax: Overview, Contentious Issues & Matters Arising', being paper delivered at the Unilag Consult Intensive Refresher Tax Training Programme at Eko Hotels & Suites, Lagos, on the 6<sup>th</sup> of February, 2018; <http://abiolasanniandco.com/2017/07/31/property-tax-is-an-untapped-goldmine-in-nigeria/>

<sup>17</sup> Richard M. Bird and Enid Slack, *International Handbook of Land and Property Taxation* (Edward Elgar, Cheltenham, UK, 2003) p.19

<sup>18</sup>Ibid

The main role of property tax is that it is a source of revenue for the relevant government, usually the local government. Aside from this obvious role, property tax also has a non-fiscal role. It can be used to control the development of land in certain areas or to ensure the effective use of land. For instance, the reduction of the rates charged on developed or developing property can be used as an incentive to develop land in an area in need of development. This is especially so in countries where only lands are taxed (e.g. Kenya, Australia and South Africa).<sup>19</sup> Also, taxation of both land and improvement based on market value, discourages improvement of property, building and development of land.<sup>20</sup> This is because property owners who improve their property pay more tax.<sup>21</sup>

In Nigeria, there exist some diversifications in the application of property tax in various States of the Federation. The differences are with regards the imposing legislation, the tax base, charge rates, tax administration, and so on. This is as a result of the federal system of government in Nigeria where the various States are empowered by the Constitution to make laws that govern the assessment and collection of property tax.<sup>22</sup>

### **3. Land Based Taxes in Lagos State**

Before the introduction of the LUCL in June 2001, taxation of property in Lagos State was fragmented. There were a number of land based charges and rates applicable in the State. They include:

- Land Rates (payable under the Land Rates Law 1984)<sup>23</sup>
- Neighbourhood Improvement Charge (payable under the Neighbourhood Improvement Charge Law 1986)<sup>24</sup>

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<sup>19</sup> *ibid*

<sup>20</sup> *ibid*

<sup>21</sup> *ibid*

<sup>22</sup> Section 4(7) Constitution of the Federal Republic of Nigeria 1999, Cap. C23 Laws of the Federation of Nigeria 2004 (as amended),

<sup>23</sup> Cap 112, Laws of Lagos State 1994

- Tenement Rate (payable under the Tenement Rate Law)<sup>25</sup>

The objective of the Land Rates Law 1984 was to charge and collect development charge,<sup>26</sup> ground rents,<sup>27</sup> premium<sup>28</sup> and all incidental rates on State allocated lands. The Neighbourhood Improvement Charge Law 1986 imposed tax on developed and undeveloped property in the State which has been designated as ‘improvement area’. An area is designated improvement area if an improvement has been made to the area at the expense of the public. The Neighbourhood Improvement Charge Law is an equivalent of the Land Rates. Hence, the charge does not apply to property subject to the Land Rates Law.<sup>29</sup> Although the Tenement Rates Law does not contain a charging provision, tenement rates was imposed on Tenements in Lagos State and ‘Tenement’ was defined by the Supreme Court in *Shell Petroleum Development Company of Nigeria Ltd v Burutu Local Government Council*<sup>30</sup> as ‘building on land and all other immovable properties which are permanently attached to land but does not include vacant land’.

The Land Use Charge Lagos State 2001 consolidated the above mentioned taxes. The old taxes were left in force to apply to properties that had not yet been accessed according to the LUCL 2001. However, once a property had been assessed according to the LUCL 2001, then the individual land based charges cease to apply to that property. It gradually phased out the application of all the other property tax laws.

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<sup>24</sup> Cap 136, Laws of Lagos State 1994

<sup>25</sup> Cap 186, Law of Lagos State 1994

<sup>26</sup> This refers to charge on the allocated piece of land for recouping the cost of providing or renewing certain common infrastructure/facilities in a government estate; usually a one off payment

<sup>27</sup> This is the remaining amount of money payable on an allocated piece of land spread over a number of years and paid annually

<sup>28</sup> Premium is the bulk payment/price on a piece of allocated land. It is a one-off payment

<sup>29</sup> Abiola Sanni, ‘Land Use Charge Law 2001 of Lagos State: A Legal Critique’ in M. M. Omirin, T. OluNubi and A. Fawehinmi (eds.) *Land Management and Property Tax Reform in Nigeria* (Department of Estate Management UNILAG, Lagos, 2003) pp.275

<sup>30</sup> Vol. 4 All NTC 93; (2000) 1 N.R.L.R. 1

The primary aim of the 2001 LUCL was to enable local government authorities to generate revenue to perform their basic constitutional duties. It also aimed to make the payment of property tax in Lagos State less complicated, more transparent and to reduce the opportunity for corrupt practices and arbitral charges.<sup>31</sup> However, its enactment caused a lot of controversy and was described as “the most controversial and draconian state law so far in a democratic dispensation”.<sup>32</sup> The validity of the law was challenged in numerous cases, the most notable being *Shell Petroleum Development Company & Anor. v. The Governor of Lagos State & Ors.*<sup>33</sup> where the court gave judicial validation to the law. However, in response to the intense pressure from the organized private sector, the government reduced the rates at, not less than, three different occasions.<sup>34</sup>

In 2018, the Lagos State House of Assembly passed the Land Use Charge Law 2018 to repeal and replace the LUCL 2001. The primary aim of the law is to generate more revenue for the state government by increasing the rates and blocking loopholes in the old law.<sup>35</sup> The few changes made will be highlighted at the relevant parts of this paper.

#### **4. Legislative Power to Impose Property Taxation**

Section 4(7) of the 1999 Constitution empowers the State House of Assembly to make laws for the peace, order and good governance of the State with respect to: matters not included in the Exclusive Legislative List as set out in part I of the Second Schedule; matters set out in the Concurrent List; and any other matter that the Constitution empowers it to legislate on.<sup>36</sup>

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<sup>31</sup>Ade Ipaye, n1

<sup>32</sup>Abiola Sanni, n28

<sup>33</sup>Suit No. M/721/2000

<sup>34</sup>Abiola Sanni, n28.

<sup>35</sup>Taiwo Oyodele, ‘Lagos State Land Use Charge Law Amendment Bill 2018- Highlights’, Tax Alert Pricewaterhousecoopers Ltd, [pwc-nigeria.typepad.com/files/tax-alert\\_new-lagos-land-use-charge-law-2018.pdf](http://pwc-nigeria.typepad.com/files/tax-alert_new-lagos-land-use-charge-law-2018.pdf). accessed on 20<sup>th</sup> April, 2018.

<sup>36</sup>Section 4(7) Constitution 1999

A perusal of the Exclusive and Concurrent Legislative Lists as contained in the Part I and II of the Second Schedule leads to the discovery that property tax is not listed as one of the matters to be legislated upon by the National Assembly exclusively or concurrently. The only tax related matters in the legislative lists are contained in paragraphs 58 and 59 of the exclusive legislative list and paragraph 7 in the concurrent legislative list. They are stamp duties, taxation of incomes, profits and capital gains. Since property tax is neither a stamp duty nor is it imposed on income, profits or capital gains, it is outside the scope of the National Assembly and within the powers of the State legislative house as a residual matter.

The Constitution empowers the State House of Assembly to make laws for the establishment, structure, composition, finance, and functions of the Local Government Council.<sup>37</sup> They are also empowered to make legislation for the collection of any tax, fee, or rate or for the administration of the law providing for such collection by the Councils.<sup>38</sup>

A House of Assembly may, subject to such conditions as it may prescribe, make provisions for the collection of any tax, fee or rate or for the administration of the law providing for such collection by a local government council<sup>39</sup>

Paragraph 7(1)(j) of the Fourth Schedule of the 1999 Constitution also provides that

1. The main functions of the local government council are as follows:  
...  
(j) assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State.

In exercising its constitutional power, the Lagos State House of Assembly passed the Land Use Charge Law 2018 imposing land use charge on all real properties situated in Lagos State,

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<sup>37</sup>Section 7(1) Constitution 1999

<sup>38</sup> Paragraph 9, Part II of the Second Schedule of the 1999 constitution

<sup>39</sup> *Ibid.*

except those exempted by the law. It also provides that each local government area in the State shall be the collecting authority and the only body empowered to levy and collect tenement rate for its area of jurisdiction.<sup>40</sup>

Interestingly, in the High Court case of *AFDIN Ventures Ltd & 2 Ors. v. Chairman Abuja Municipal Area Council & 1 Or.*<sup>41</sup> the plaintiff submitted that no constitutional effect should be given to paragraph (1)(j) of the fourth schedule of the constitution until an enabling law is passed by the relevant State House of Assembly because paragraph (1)(j) of the fourth schedule of the 1999 constitution is not self-executing; there must be an authorisation or activation in that behalf by the relevant House of Assembly. In other words, a local government council cannot assess and collect property tax unless and until the relevant State legislature has passed a law authorising it to do so; that since the crux of the dispute touches on the imposition of financial burden, the canon of interpretation of tax legislation should be followed by construing the law strictly and restrictively. In support of his submission, he cited the case of *Ahmed v. Gov. of Kogi State*<sup>42</sup> where the court of Appeal re-stated the well-known canon of interpretation on tax legislation:

The Law in question is, in its nature, a law which imposes pecuniary burden and is under the rule of interpretation, subject to the rule of strict construction. It is a well-settled rule of law that, all charges upon the subject must be imposed by clear and unambiguous language because in some degree they operate as penalties; the subject is not to be taxed unless the language of the statute clearly imposes the obligation...

In a taxing legislation one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about tax. One can only look fairly at the language.

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<sup>40</sup> Section 2 (1) (2) LUCL 2018

<sup>41</sup> 2017 31 TLRN 65

<sup>42</sup>(2002) 3 NWLR (Pt. 755) 502

However, the court had a contrary opinion. It held that the plaintiff's counsel's argument failed to take cognizance of the operative word 'may' in Paragraph 1(j) of the Fourth Schedule of the Constitution. In this case, the word is not mandatory but discretionary. In other words, the prescription of the rates to be levied on a property by the State House of Assembly is not all that mandatory. Therefore, the absence of a supportive statute which prescribes the rate cannot restrain a local government council from exercising its assessing and collecting property tax.

The court went on to state that if there is a doubt as to the existence of a law stipulating the rate to be collected as property tax, it is the duty of the court to give it a closer look to construe it in favour of the government since it is revenue based. To support this view the court cited *FBIR v. IDS Ltd*<sup>43</sup> where it was held that:

If a statute is revenue based or revenue oriented, it will be part of sound public policy for a court of law to construe the provisions of the statute literally in favour of revenue or in favour of deriving revenue by government...This is because; it is in the interest of the generality of the public and to be in revenue and affluence to cater for the people...

Therefore, the court concluded by stating that it was not ready to lend its hand to persons or bodies bent on beating the efforts of the government at collecting tax. The action was, therefore, dismissed. A similar opinion on the interpretation of tax statutes was held by Niki Tobi (JCA) in *Phoenix Motors Ltd v. NPFMB*<sup>44</sup> where he stated that if a statute is revenue based or revenue oriented, the provisions thereof must be construed liberally in favour of revenue or in favour of deriving revenue by government.

## **5. Assessment, Levying and Collection of LUC**

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<sup>43</sup>(2009) 8 NWLR (pt. 1144) 615 at 639.

<sup>44</sup>(1993) 1 NWLR pg. 718 at 731

Section 7 (5) provides that ‘the functions to be conferred upon the local government councils shall include those set out in the Fourth Schedule to this constitution’. The fourth schedule goes on to list the functions of the local government council. They include the collection of rates, television and radio licences;<sup>45</sup> and the identification and assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State.<sup>46</sup> Having regards to these provisions, it is indisputably plain that the local government is indeed empowered to assess and collect property tax from privately owned houses and tenement.<sup>47</sup>

However, if paragraph 1(j) of the Fourth Schedule is to be interpreted independently and literally, then the local government is empowered to assess and collect property tax is restricted only to privately owned houses and tenement; it does not extend to all forms of real property. When interpreted literally ‘privately owned houses and tenement’ does not include land without building, wharfs, piers etc. For instance, ‘tenement’ was defined in *Shell Petroleum Development Company of Nigeria Ltd v Burutu Local Government Council*<sup>48</sup> as ‘building on land and all other immovable properties which are permanently attached to land but does not include vacant land’. Therefore, the definition of tenement as land with or without building by the Tenement Rates Law of Osun State could stand to be challenged in court by a property owner who could argue that paragraph 1(j) of the Fourth Schedule of the 1999 Constitution only empowers the local government council to tax ‘privately owned houses and tenement’.

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<sup>45</sup> Paragraph 1(b) of the 4th Schedule, 1999 constitution

<sup>46</sup> Paragraph 1(j) of the 4th Schedule, 1999 constitution

<sup>47</sup> *Knight Frank & Rutley (Nig.) v A.G. Kano State* (1998) 7 NWLR (pt. 556) 1; *AFDIN Ventures Ltd & 2 Ors. v Chairman Abuja Municipal Area Council & 1 Or* (2012) unreported case by the Federal High Court Federal Capital Territory on the 18<sup>th</sup> of October, 2012. Suit No./CV/545/2011.

<sup>48</sup> Vol. 4 All NTC 93; (2000) 1 N.R.L.R. 1

Therefore, can the local government impose tax outside the express provisions of schedule 4 of the 1999 constitution as amended?<sup>49</sup> To this question, this paper answers in the affirmative. It is argued that even though the language of paragraph 1(j) of the Fourth Schedule of the 1999 Constitution appears to be restrictive, a further reading of paragraph 2(d) provides that the functions of the local government council may be expanded by the State who has the power to confer additional functions on the local government council. Besides, the use of the phrase 'shall include' in section 7(5) of the Constitution indicates that the lawmakers envisaged the functions as provided by the Schedule is in-exhaustive; that there will be need to expand the functions of the local government council.

Additionally, Section 2(2) of the LUCL 2018 states that the Local Government Council shall be the only body empowered to levy and collect LUC of properties in the Local Government Area. However, the section 3 then permits the local government council to delegate the levying and collection powers to the State, by written agreement, with respect to the assessment and collection of property tax from privately owned property and tenement.

The delegation of power to levy and collect tax to the State Government has attracted a lot of debate concerning the constitutionality of the provision as it seeks to take over the functions vested on the Local Government by the Constitution. This debate has been compounded by the provisions of section 5 which expressly mandates the Commissioner of Finance to undertake or cause to be undertaken the assessment of property for the purpose of imposing property tax. Section 5 also authorises the Commissioner to enter, inspect, survey and assess the property; to take photographs and request that a property owner produces documents and other information to aid him make an assessment. He can do this with the aid of property identification officers, professional valuers and other persons as he considers necessary, any day within the hours of 7am and 5pm. He can appoint at least six consultants to assess and

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<sup>49</sup>*Eti-osa Local Government v. Jegede* [2007] 10 NWLR (Pt. 1043) 537

levy LUC. All property valuers and consultants shall register with the Lagos State Valuation Office, headed by the Director of Valuation.

Given that section 5 of the LUCL is inconsistent with paragraph 7, Item 1(j) of the Fourth Schedule of the 1999 Constitution, this section should be declared null and void to the extent of its inconsistency. This was the fate of Sections 1, 2(b), 3, 4, and 5(2) of the Rivers State Property Tax Law where the court in *Grinaker v. BIR Rivers State & Ors*<sup>50</sup> declared them void as they vested the power to assess, levy and collect property tax with respect to privately owned houses and tenement in the Rivers State government rather than the local government council. See also, *Knight Frank & Rutley v. A.G Kano State*,<sup>51</sup> *A.G. Cross Rivers State v. Ojua*,<sup>52</sup>, *IHRHL v. A.G. Rivers State & Ors*.<sup>53</sup> *Ayo Idowu v. A.G. Lagos State & Ors*.<sup>54</sup>; *Centage Properties v. Governor of Lagos State and Ors*.

As a solution to this problem, it has been suggested that section 5 of the LUCL 2018 be amended so that ‘the commissioner’ will be substituted with ‘the Local government authority’.<sup>55</sup>

After a property has been assessed, the commissioner is authorised to issue a demand notice to the owner or agent in each financial year.<sup>56</sup> Where delivery of the demand notice cannot be made to the owner or agent, the demand notice can be posted on the property, and it shall be deemed sufficient notice.<sup>57</sup> Payment is to be made to a designated bank listed in the demand notice within 30 days of receipt of the notice.

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<sup>50</sup>Vol 9, All NTC 79

<sup>51</sup> *Knight Frank & Rutley (Nig.) v A.G. Kano State* (1998) 7 NWLR (pt. 556) 1

<sup>52</sup>Vol. 7 All NTC 167

<sup>53</sup>Vol. 9 All NTC 1

<sup>54</sup>Vol 7 All NTC 417

<sup>55</sup> Onikepo Braithwaite, ‘Nigerian Elite Evade Taxes’ *ThisDay Newspaper* (being an interview of Professor Abiola Sanni, 27<sup>th</sup> March, 2018) 8

<sup>56</sup>Section 14 (1) LUCL 2018

<sup>57</sup>Section 14(3)

## 6. Valuation of Property and Charge Rate

Section 10 states the assessment formula for determining the Land Use Charge payable annually. To arrive at the land use charge, the market value of the property is multiplied by the applicable relief rate and annual charge rate.

Market value= Land Value + Building development value

Relief Rate= set by the commissioner, published in the state gazette

When calculating the market value of a property, there is a distinction between the process employed in the tenement Rate Law and the LUCL 2018. In the Tenement rates Law, assessment and valuation is done by registered members of the association of estate surveyors so as to ensure the highest level of professionalism. They prepared and published the valuation list in the State gazette or widely read newspaper, and this gave the property tax payers the opportunity to object where they were in disagreement with the valuation.<sup>58</sup> This is unlike the current process in place in the LUCL 2018 where the property owner only gets to know what his property is valued at when he receives the demand notice. Therefore, in line with one of the cardinal principles of a tax system- canon of certainty,<sup>59</sup> the system adopted by the Tenement Rate Law is more preferable and should be applied in the LUCL 2018.

The applicable charge rates are contained in the schedule of the LUCL 2018 follows:

- Owner-Occupier Pensioners Property- **exempted**
- Lagos State Government Property- **exempted**
- Residential Property (owner + third party), Industrial premises and manufacturing concerns- **0.256%**
- Owner-Occupier residential property, vacant properties and open empty land - **0.076%**

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<sup>58</sup> Abiola Sanni, n28

<sup>59</sup> Adam Smith, *An Enquiry into the Nature of the Wealth of Nations* (Edwin Cannan ed.) vols. 1 (1776)

- Residential properties (without owner in residence), Commercial property and residential property (without the owner in residence)- **0.76%**

The schedule also contains a table of what the relief rates are. It provides a general relief of 40% for all property liable to pay land use charge. The annual relief rate for persons with liability, aged persons (70 years and above), aged property (25 years and above) is 10%. It also provides a minimum land use charge of ₦5,000 irrespective of relief granted. Timely payment discount (payment made within 15 day of receipt of demand notice) is 15%. Partial relief of 20% is granted to recipients of partial relief and properties belonging to the federal government and other state governments.

Section 10 of the LUCL provides that the annual rate will be set by the commissioner, subject to the approval of the House, published in the State Gazette and published in at least one newspaper. Therefore, the LUCL 2018 does not explicitly prescribe what the rates are in Section 10(4). It does not also connect the provision to the schedule where the LUC Annual rates are listed. Thus, it is recommended that the rates and reliefs should be specified and enumerated in the schedule and the relevant provision should make reference to the schedule.<sup>60</sup>

After extensive deliberations with stakeholders, the State government through the Commissioner of Finance, Information and Attorney-General announced the reduction in the rate payable on commercial property by 50% and tax payable on owner-occupier, industries and company by 25%. It also waived the penalty for late payment. However, a press briefing by top government official of the State informing the public of the reduction is not sufficient at all. It is therefore advocated that the House of Assembly should pass a law amending the relevant provisions of LUCL 2018.

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<sup>60</sup> Onikepo Braitwaite, n54.

## 7. **Properties Liable to LUCL 2018**<sup>61</sup>

Property Tax is generally levied on all types of real property: residential property, commercial property, Industrial farm land, wharf and piers, reclaimed, waterlogged land etc. although the rates may differ. Some classes of property or property owner, or uses of property are exempted or granted relief. Excessive grant of exemptions is criticized because reduces the tax base and thereby increase the burden on the remaining taxpayers.

Some properties are exempted from the operation of the LUCL 2018. They are as follows:

- Property **owned** and **occupied** by religious bodies and **used exclusively** for public worship or religious education.
- Public Cemeteries and burial ground. The LUCL 2018 just included Public, as against private. The LUCL 2001 did no restrict the exemption to public cemeteries only.
- Properties used as registered educational institutions and certified by the Commissioner of Finance to be non-profit educational institutions – in the LUCL 2001 certification was not needed.
- Properties used as public libraries or as private libraries, certified by the Commissioner of Finance to be non-profit educational institutions. The LUCL 2018 allows private libraries- but certification is needed.
- Any property specifically exempted by the executive governor by notice published in the State official gazette.
- All Palaces of recognised Oba's and chiefs in the State provided that if any of the exempted properties is leased out to private entities for profit making it shall forfeit its exemption status as contemplated under the provisions of the law

The Commissioner of Finance is authorised to grant partial reliefs for:

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<sup>61</sup> Section 4 LUCL 2018

- Property occupied by non-profit organisations which are used by the general public for community games or recreations
- Property owned by a non-profit organisation, used for a charity or benevolent purpose for the benefit of the general public

By virtue of Sec 7 (1), the Governor is authorised to make specific exemptions for a property where an application has been made to him in cases of special hardship and inability of the property owner to pay his charge. Notice of exemption shall be published in the State government official gazette. An exemption may be lost where the use of the property or occupier of the property changes to one that does not qualify for exemption.

### **8. Persons Liable to pay Land Use Charge**

Section 9(1) provides that the owner<sup>62</sup> of the property or the occupier<sup>63</sup> of less than 10 years leasehold; and an occupier holding a lease of 10years and above (section 9(2)) is liable to pay the LUC. It has been<sup>64</sup> rightly pointed out, that a combined reading of the two subsections means that lessees are generally liable to LUC, irrespective of the length of the leasehold.

The true intentions of the law makers will probably be known with the amendment of the current LUCL 2018 which is on-going, because leaving Section 9 (1) and 9 (2) as it is creates a lot of confusion and uncertainty with respect to the party who should bear the tax burden. If the legislature intended that every category of leaseholder will be liable to tax, then reference to 10 years is irrelevant. The law is silent as to whether any of the leaseholders (short or long) can recover monies paid as LUC from the property owner.

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<sup>62</sup>Owner- any person who receives the proceeds of rent or holder of the right of occupancy

<sup>63</sup>Occupier- any person, lawfully or unlawfully in actual occupation, this does not include lodgers. In the previous law, the definition was restricted to lawful occupation – illegality does not disqualify a taxpayer from his obligation

<sup>64</sup> Onikepo Braitwaite, n54

Section 15 provides that where the owner is not in possession, the collecting authority may appoint (in writing) any person, including any occupier, to be an agent of the owner. The agent may be required to pay the charge on behalf of the owner. Section 16 then authorises the agent to set-off such a payment from monies due from him to the owner of the property-entitlement to be indemnified.

Usually in practice, property owners transfer the liability to pay tax to the occupier. They include a 'gross-up clause' in the contract to ensure that they (the recipients of the payment) receive full payment free of withholding tax or any compulsory deductions. In effect, the paying party undertakes to bear any additional liability with regards the transaction in order for the recipient to receive payment in full. This was the situation in the case of *Total Nig. Plc v. Moshood Akinpelu*<sup>65</sup> where the parties agreed that the defendant will bear all the tax liabilities with respect to the property. The defendant sought to pay the agreed rent, less 10% withholding tax, relying on section 68 & 70 of the Personal Income Tax Act whose combined effect makes it a criminal offence for the lessee not to deduct 10% of any sum paid as rent.<sup>66</sup> The Court of Appeal held that the statute did not compel the source of the money to be paid as tax. Where the parties agree to create an obligation between them, in the absence of specific provisions affecting the obligation in the statute, the statute should not be used as an excuse to breach the law (sanctity of contract). Hence, the *Total v. Akinpelu* case does not preclude the transferability of tax burden. In other words, the specification of the party who bears the tax liability by a statute does not preclude the parties from shifting the tax burden by contract. Besides, the tax authority is not often concerned about who bears the tax burden.

## 9. Appeal

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<sup>65</sup>(2004) 17 NWLR ( Pt 903) 509

<sup>66</sup> Bidemi Olumide Oluwosile, 'Re-visiting Total (Nig) Plc v. Akinpelu: Filling the Gaps to Build the Taxpayer's Haven', <https://www.scribd.com/document/8901648/Re-Visiting-Total-v-Akinpelu-Filling-the-Gaps-to-Build-the-Taxpayer-s-Haven-by-Bidemi-Olumide-Olowosile> assessed 31 May, 2018.

Section 17 provides that on receipt of assessment, a person charged may make an appeal to the tribunal in writing that the assessment is too high and should be reduced or that the category of property under the LUCL is wrong and should be reviewed. Appeals are to be lodged with 30 days of receipt of demand notice. The onus is on the complainant to prove that the assessment on his property is excessive.

The Governor is to appoint an Assessment Appeal Tribunal of at least nine members. The decision of the Appeal panel may be taken to the High Court for review. In order to enjoy the right to appeal, the complainant shall present proof of payment of the prescribed fee to the tribunal and 25% of the amount of assessed LUC which is in dispute.

### **10. Penalties for default**

Section 31 provides that a person who fails to pay his charges 30 days after receipt of demand notice shall pay an increased charge as follows:

- 45- 75 days of default= 25% increase
- 75-105 days of default= 50% increase
- 105-135 days of default= 100% increase
- If payment is not made after 135 days, the property shall be liable to receivership by the state or appointed agent until all outstanding taxes, penalties and administrative charges are paid.

A person who obstructs authorised officials in the course of their lawful duty, refuses/neglects to comply, shall be liable on conviction, to a maximum fine of ₦250,000 or three months imprisonment.<sup>67</sup>

### **Conclusion**

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<sup>67</sup>Section 29 LUCL 2018

The need to increase the internally generated revenue of Lagos State in order to finance development and run the government is well appreciated. However, the government needs to make an effort to ensure that in the attempt to generate revenue, they do not cause hardship on the citizens. A minimal increment is justifiable, but tripling the LUC in the face of a challenging economy, multiplicity of taxes, relatively high inflation and falling income levels is unreasonable.<sup>68</sup> It is also recommended that the concerns of taxpayers should be seriously considered with regards the LUCL 2018 and that whenever the government wants to increase the tax burden of taxpayer, it should do so conscientiously, after deliberating and engaging with stakeholders.

Finally, the LUCL 2018 should be amended so as to ensure that the State government does not continue to usurp the Local Government Councils constitutionally vested function of assessing, levying and collecting property tax. The Local governments should be encouraged and supported to assess and collect property tax so as generate income and satisfactorily perform their functions.

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<sup>68</sup> Ade Ipaye, 'Funding Governmental Services in a Federation: the Inevitable Admixture of Law and Politics' Being a paper delivered at the Department of Commercial and Industrial Law 2<sup>nd</sup> Public Lecture, held on the 6<sup>th</sup> of April, 2018. p. 14