



RESEARCH ARTICLE

INCIDENCE OF LAND USE CHARGE LAW OF LAGOS STATE

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ABSTRACT

The Land Use Charge Law of Lagos state combined the three existing land taxes: the land rate, neighbourhood improvement charge and tenement rate with a view to generating more revenue for the provision of infrastructural services, and also to prohibit multiplicity of property taxes. The law stipulates that property owners are liable; meanwhile, economic theory suggests tax burden depends largely on elasticity of demand and supply. The paper sought the opinion of property owners and Estate Surveyors and Valuers in Lagos, Nigeria on the incidence of the Land Use Charge (LUC). Questionnaires were randomly administered on Estate Surveyors and Valuers and purposively on landlords. Data were analysed using descriptive statistics. Findings reveal that though property owners are statutorily liable, the respondents believe that LUC should be borne by both the property owners and tenants, and in most cases, the incidence of the tax has been shifted to tenants. The paper concludes that in any populated city like Lagos, where demand for real estate products is always on the rise, incidence of property tax irrespective of the position of the law may be unavoidably borne by tenants either partially or in whole.

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INTRODUCTION

The Land Use Charge is a product of the Lagos state Land Use Charge Law which was conceived in the year 1999/2000 and passed into law in 2001. The law purportedly consolidates all the property and land based rates and charges payable under the Land Rates Law, Neighbourhood Improvement Charge Law and Tenement Rate Law in the state into property Land Use Charge (LUC). The consolidation was necessary to address the problem of multiple property taxations, reduction of compliance cost and revenue generation for equitable land use and sustainability in the state. The LUC is a property tax. Property tax is an annual charge on ownership or occupation of property and the proceeds is primarily used to offset the costs of providing social amenities, and it is traditionally associated with local governments (Babawale, 2013; Kelly, 2000). Kelly (2000) also observed that virtually all countries seem to be focusing on strengthening the property tax which is seen as the common revenue source for local government throughout the world. Similarly, Bird and Slack (2006) noticed an increased interest in land and property taxes among many developing and transitional countries around the world as property tax

keeps popping up on their policy agenda for various reasons and with varying degree of urgency. This is because local governments around the world are expected to provide various social and infrastructural services to their communities. These services, according to Kitchen (2003) range from those that exhibit private good characteristics (e.g. water, sewers, solid waste collection and disposal, public transit) to those that exhibit mainly public good characteristics (local streets and roads, street lighting, fire safety and police protection etc). Therefore, to perform its statutory responsibilities adequate finance is very essential for local authorities. However, four possible ways of financing local governments have been identified. These are local taxes, users' fees, subsidies and grants, and loan (Olowu, 1985).

In Nigeria, both the states and local governments rely heavily on Federal government subventions and grants which have not been adequate for the provision of social and infrastructural facilities necessary to produce conducive and liveable communities. Users' fees on the other hand are suitable for services with private good characteristics because beneficiaries of those services are identifiable and should pay for the enjoyment of those services. However, for the services provided mainly for collective benefits (i.e. public goods like roads and street lightening) the beneficiaries cannot be identified, therefore user' fees are inappropriate, but could be

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funded from local tax imposed on residents (Kitchen, 2003). This is because property tax at local level has the potential of capturing those services with public good characteristics (Jibao, 2009; Kitchen, 2003) which are enjoyed mainly by residents. Therefore, in 2001, in an attempt to raise revenue for the provision of its statutory obligations, Lagos state government introduced a consolidated property tax law (LUC Law). The law stipulates in its Section 4 that property owner is liable to pay LUC in respect of any taxable property; meanwhile, economic theory suggests tax incidence depends on elasticity of demand and supply of any commodity. Similarly, Davidoff (2013) observed that the person who ends up paying a tax may not be the person upon whom the tax is levied. To further substantiate the veracity of Section 4, the land use charge law in Section 10 and 11 enables the taxing authority to appoint and empower an agent, tenant or occupier to pay the LUC from the any money which may be held by him for the property owner, or money due by or become due by him to the owner. However, Section 36 of the tenement rate law which is one of the consolidated rates states that occupiers or subsequent purchaser of a tenement shall be primarily liable while owners shall be secondarily liable for payment of the rate except the owner also resides in the premises. In addition, it is observed that council taxes is mainly paid by tenants/occupiers who are direct beneficiaries of government services in advance country like United Kingdom.

According to Zodrow (2006) economic incidence of property tax or who actually bears the burden of the tax as opposed to its statutory incidence is a critical aspect of property tax that is seldom addressed in public debate. Though, position of the LUC on who is liable to the charge is unambiguous, the questions agitating one's mind are: do landlords actually pay LUC without tenants' involvement? Do landlords and tenants both share the property tax? Or has the burden been shifted on tenants completely? This paper therefore sought to know who actually bears the burden of the LUC in Lagos state because it might not be equitable if landlords solely pay LUC for all the services enjoyed by residents without rent increment, and it will not be fair to shift the LUC totally on tenants because it will affect their spendable income and as well aggravates poverty level of some renters. Fairness demands that all beneficiaries of government services be responsible for property tax.

Criticism against the land use charge law

The LUC suffered early criticism from individuals and organized private sector including professionals. According to Sanni (2003) the law generated so much controversy that it was dubbed the most controversial and draconian state law so far in a democratic dispensation. Similarly, Adisa (2003) is of the opinion that the law is so bad in its entirety that it cannot be sanitised with cosmetic amendment. Nevertheless, the law is still effective till date, though not without state government compromise that has led to rate reductions. Adisa further highlights five reasons for stiff opposition against the Land Use Charge Law:

- Consolidation of taxes with differing bases and principles

- Lack of equity in bringing together everybody into the tax bracket irrespective of the individual tax liability under the previous tax laws
- Enumeration and assessment by non qualified people contrary to the provisions of the Estate Surveyors and Valuers Registration Board of Nigeria (Decree 24 of 1975).
- Evidence showed that the tax is high
- It is draconian for properties to come under receivership if payments are not made after 135 days as stated in the law. Meanwhile, there are evidences of tenant defaults for more than 6 months (Oni, 2009).

Other criticisms include high charges, multiplicity of taxes, poor consultation with stakeholders and inadequate assessment (Oni, 2009).

Incident of property tax

According to Davidoff (2013) the person who ends up paying a tax may not be the person upon whom the tax is initially levied. Citing an example of commercial property developers, Skaburski and Tomalty (2000) opine that property taxes do exert influence on development decisions in some situations. Skaburski and Tomalty (2000) observed that certain commercial property developers, in an attempt to reduce tax burdens on office buildings which suffer high vacancy rates resulted in building demolition. Demolition of buildings to reduce tax burdens is a waste of resources. However, these commercial developers might have weighed the cost implication of demolition against the tax burden and found their action justifiable. Again, high property tax is disincentive to property development and housing sustainability. If the property tax had been reduced or the commercial developers have had the opportunity of sharing the tax burden, demolition of property to alleviate tax incidence would not have been necessary, but the prevailing high vacancy rate indicates saturation in the property market. The tax had to be borne solely by the developers because demand for office space in the case above is highly elastic.

However, vacancy rate of both residential and commercial properties in Lagos Nigeria is low. This is due to the fact that the tiny state, in terms of landmass is the most populous state in Nigeria and Africa and could generate much revenue for the government. This notwithstanding, the LUC has been found to be high, repulsive and unsatisfactory to taxpayers (Babawale and Nubi, 2011, Nubi, 2002 and Oni, 2009 and 2010). Generally, the burden of high tax could distort the behaviour of the statutory payers to evade, avoid or shift the burden either partially or wholly to the consumers. Obviously, the LUC law does not take cognisance of the owners' ability to pay otherwise there would have been less agitation. Though, property tax has been referred to as tax on wealth (Aluko, 2006) because ownership of property connotes wealth, there is little or no correlation between a property and taxpayer's income (Kelly, 2013 and Rosengard, 1998). These authorities observed that there are many low value properties owned by wealthy taxpayers while there are higher value properties owned by asset-rich but cash-poor taxpayers. Another category of people who benefit from communities services are the cash-rich, but no asset in the taxing jurisdiction. These are tenants who enjoy

community betterment and thus should contribute to public welfare. Though, Kelly (2013) describe property tax as a general tax that cannot be linked to a specific service for which taxpayers get direct benefit and pay users' fees or charges, beneficiary of public amenities should contribute to neighbourhood improvement and welfare through tax.

Studies on tax incidence according to Davidoff (2013) have variously revealed that payroll taxes are mostly borne by workers, the retail sales taxes been borne primarily by consumers, while the incidence of corporate taxes falls on both workers and investors. The view of Kelly (2013) is that property taxes on businesses may not be fully borne by the business owners but rather shifted backwards to the factors of production and forward to consumers in various ways. From economist point of view, tax incidence depends primarily on the elasticity of demand and supply. The group that bears the burden is least prone to price changes. For instance, if the demand for a commodity is relatively inelastic to the supply the tax will be borne mostly by the buyer rather than the seller. In the contrary, if demand is elastic relative to the supply, the tax will be born mostly by the seller, nevertheless, where price elasticity of both demand and supply equate, both buyer and seller share the tax burden equally. In the property market however, when demand for homes and offices are higher than supply, which is usually the case in most urban centres, the buyers or tenants mostly bears the burden of property tax. This usually occurs during economic boom and expansion but at a point when the property market reached saturation, the incidence may not be borne by buyer or tenant only. During economic recession, property market starts contracting and declining, there are lots of houses for sale and foreclosures, then, imposition of property tax or its increment is likely to be borne solely by property owners.

According to Zodrow (2006) economic incidence of property tax as opposed to its statutory incidence is a critical aspect of property tax that is seldom addressed in public debate. In line with this observation, Felix (2006) also notes that impacts of urban policies on real estate are not usually glaring because such policies are generally regarded as public goods without obvious market process, yet these policies are not without implications. It was further noted that real estate policy desirability does not automatically arise just because policies are put in place but should be a derivative of the behavioural changes the policy induced in market participants and intermediaries Felix (2006). In 2010, Oni opined that high property charge would increase landlord's outgoings and would consequently increase the rent that landlord will demand for a given property. Oni (2010) and Nubi (2002) also demonstrate graphically the likely incidence of LUC both in the short and long runs and conclude that LUC will cause reduction in property owners' income in the short run but shift its incidence to tenants in the long run. The study thus, ascertains the validity of the postulation that the Land Use Charge will lead to increase rent at the long run in Lagos state.

Research Methodology

The study examines the incidence of the Land Use Charge of Lagos state seeking the views of Estate Surveyor and Valuers,

and property owners in Lagos state in respect of who pays the land use charge though property owners are statutorily liable. Also the firms of estate surveyors and valuers are registered to deal in real estate transactions, and likewise serve as managing agents to many landlords. The duos are in the best position to give reliable information in respect of incidence of LUC. Structured questionnaires were randomly administered on 135 estate surveying and valuation firms and purposively administered on 135 landlords in Lagos State. The value of responses to Likert scale of strongly agree (5) and agree (4) were summed together likewise disagree (2) and strongly disagree (1) to reveal the aggregate value of agreement (positive) and disagreement (negative). Of the total questionnaires administered, 106(78.5%) and 64(47%) were returned by the firms and landlords respectively, and were found usable. The data collected was analysed using descriptive statistics. The low response of the landlords might partly due to the timing of questionnaire administration which coincided with the time demand notice for LUC was being served on the property owners, and partly due government threat on property owners. For instance, some companies were sealed for non-compliance.

Analysis and discussion of result

In order to determine the respondents' knowledge and understanding of the Land Use Charge Law, their age and years of experience/ownership were sought.

Table 1. Profile of Respondents

	Valuers		Landlords	
	Freq	%	Freq	%
Age				
Less than 25 years	8	7.55	-	-
26-30 years	12	11.32	1	1.56
31-35 years	28	26.42	7	10.94
36 years and above	58	54.71	56	87.50
Total	106	100	64	100
Years of Experience/Ownership				
Less than 5 years	7	6.60	10	15.63
6 – 10 years	18	16.98	11	17.18
11 – 15 years	60	56.60	15	23.44
16 – 20 years	11	10.38	18	28.12
21 years	10	9.43	10	15.63

Shown in Table 1 are the age distribution and years of experience of the respondent valuers, and age and years of ownership of the landlords. The Table reveals that majority of the valuers (54.71%) and the landlords (87.50%) were above 36 years old and were not minor as of the time the law was enacted. Also, majority of the valuers had work for between 11 and 15 years (56.6%) while most of the landlords (28.12) had owned their property for about 20 year. It thus means that the respondents were capable of giving reliable information based on their experience with the Land Use Charge Law.

Perception on Land Use Charges

The study also sought to know the perceptions of valuers and property owners as regards the charges payable under the Land Use Charge Law. This was to determine whether they considered the charges as low, moderate, high or very high.

Table 2. Perceptions on Land Use Charges

Assessment	Estate Surveyors & Valuers		Landlords/Property owners	
	Frequency	%	Frequency	%
Low	-	-	-	-
Moderate	21	19.81	10	15.63
High	54	50.94	23	35.94
Very High	31	29.25	31	48.44
Total	106	100.00	64	100.00

From Table 2, it can be deduced that LUC is high as most of the valuers (50.94%) believed that the tax is high while majority of the landlords (48.44%) indicated that the tax was very high. This finding corroborates Oni (2009) where 93.33% valuers agreed that the charge was too high. However, 19.8% of the valuers and 15.63% of the landlords were of the view that the charges were moderate. The reason for moderate charges as indicated in Table 2 could be the result of several criticism and litigations that led to reductions of land use charge by the government.

Perception on who should pay LUC

The study also sought the opinion of the respondents on who should pay the LUC though, statutorily, owners are chargeable. This is because Tenement rate law which is among the consolidated rates says that occupiers or subsequent purchaser of a tenement shall be primarily liable while owners shall be secondarily liable for the payment of the rate except the owner also resides in the premise.

were 41, being 38.7% of the respondents. The rest 10.4% preferred that occupiers/tenants should be responsible for the payment of LUC. The landlords' perspective was in line with the valuers on who should pay. That is, larger percentage (68.75%) of the landlords wanted the LUC shared between property owners and tenants while 21.88% wanted it solely paid for the landlords. Only 9.38% of the landlords would want tenants to bear the whole burden. It can be deduced that though the law stipulates that owners are liable to the LUC, both owners and occupiers should be responsible for the payment of the LUC.

Perception on who actually pay the LUC

Having established who should pay the Land Use Charge Table 3 above, another question was asked to determine who in practice, actually pay the LUC or how it was being paid.

Table 4 shows the perceptions of valuers and landlords on how the charge was actually being paid. The views of these two groups of respondents are alike. It is glaring from both that the aggregates of strongly agree and agree were far more higher than aggregates of strongly disagree and disagree for the fact that owners pay but increase rent. For instance, 74 (69.817%) of the firms were of the opinion that owners pay the LUC. Similarly, 61 (57.55%) agreed that owners pay the LUC but increase rent. It is also noted that 30 (28.30%) of the valuers agreed that owners pay but increase service charge. This implies that some valuers sometimes increase service charge to take care of LUC. The mean values of 4.0 and 3.7 on the part

Table 3. Perception on who should pay the LUC

Payer	Estate Surveyors & Valuers		Property owners	
	Frequency	Percentage	Frequency	Percentage
Owner	41	38.68	14	21.87
Occupier	11	10.38	6	9.38
Both	54	50.94	44	68.75
Total	106	100.00	64	100.00

Source: Author's field survey.

Table 4. Valuers and Property Owners' Opinion on Who actually Pay the LUC

Who actually pay LUC	Valuers' Perception						mean	Ranking
	Agreed (5&4)		Undecided (3)		Disagreed (2&1)			
	Freq	%	Freq	%	Freq	%		
Owner pays	74	69.81	19	17.92	13	12.26	4.0	1 st
Owner pays but increases rent	72	67.92	15	14.15	19	17.92	3.7	2 nd
Owner pays but want service charge increased	30	28.30	39	36.79	37	34.91	2.9	4 th
Owners demand that tenants pay on their behalf	33	31.13	34	32.08	39	36.79	3.1	3 rd
Landlords' Perception	Agreed (5&4)		Undecided (3)		Disagreed (2&1)		Mean	Ranking
	Freq	%	Freq	%	Freq	%		
	Owner pays	43	67.19	20	31.25	1		
Owner pays but increases rent	47	73.44	12	18.75	5	7.81	4.1	1 st
Owner pays but want service charge increased	21	32.81	11	17.19	32	50	2.6	3 rd
Owners demand that tenants pay on their behalf	13	20.31	4	6.25	47	73.45	2.1	4 th

Note: Strongly is rated as 5, Agreed is 4, Undecided is 3, Disagree is 2 and strongly disagreed is 1.

Provided in Table 3 was the view of firms of Estate Surveyors and Valuers and landlords as regard who should pay the LUC. From valuers' perspective, 54 respondents, representing 50.9% wanted the LUC shared between property owners and tenants. Those that wanted owners to solely bear the burden of LUC

of the valuers, and 4.0 and 41 on the part of the landlords in Table 4 shows that landlords actually pay the land use charge but the burden has mostly been shifted on tenants in form of rent increase.. This finding established the predictions of Nubi (2002) and Oni (2011) that the incidence of the land use charge

will fall on tenants in the long run in terms of rent increase, and also corroborates Davidoff (2013) which says that “person who ends up paying a tax may not be the person upon whom it is initially levied”. The finding also agree with Kelly (2013) which states that property taxes on businesses may not be fully borne by the business owners (in this case the property owners) but rather shifted backward to the factors of production(in this case land and building) and forward to consumers (in this case tenants) in various ways. There is no consensus on how to deal with land use charge among valuers. However, majority would prefer to embed LUC into rent rather than asking tenants to pay LUC directly or include it in the service charge, though some do.

Concluding remarks

This study has established that though property owners are liable to pay the property tax as stated in the Land Use Charge Law, the tax burden has passed in most cases to the tenants in Lagos state. Government therefore needs to be aware that statutory regulation may not be able to disrupt the forces of demand and supply and that the possibility of continuous transfer of the tax incidence on tenants is still very high in Lagos state. Meanwhile, some residents are already living in slums and squatter settlements found the around state. High tax could further aggravate the housing problem of the poor urban renters in the state. It should be noted that the LUC is not once and for all payment but an annual property tax. While property owners and tenants should be encourage to contribute willingly to the commonwealth of the state for a liveable community to evolve, it is imperative for the government to impose an affordable charge on taxpayer while social and infrastructural provisions are procured gradually and progressively.

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