THE REPUBLIC OF UGANDA

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Review of the Legal Framework for Land Administration

THE LOCAL GOVERNMENTS RATING ACT

FINAL DRAFT ISSUES PAPER

Kalenge, Bwanika, Kimuli & Company, Advocates

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FINAL DRAFT ISSUES PAPER -LOCAL GOVERNMENTS (RATING) LAW AND PRACTICE

1.0 Introduction

Property rating in Uganda dates back to 1948 when the first valuation roll was prepared for Kampala. As might be expected, rating law and practice in Uganda were modeled on the English system, modified slightly to suit local conditions.

Today, rating is governed by the Local Government (Rating) Act, No. 8 of 2005. This replaced the Local Governments (Rating) Act, a decree enacted in 1979. The Local Governments (Rating) Act, 2005 empowers local governments to levy rates on property within their areas of jurisdiction.

The basic task of this assignment is to carry out a comprehensive review and analysis of the land-sector laws listed in the TOR for revision and harmonization. One of the listed laws is the Local Governments (Rating) Act, No. 8 of 2005. The Consultant is required to identify key issues in rating law and practice that need addressing if the Client is to achieve its objectives as set out in the TOR.

This Final Draft Issues Paper builds on our earlier paper on this topic. Importantly, it also takes into account the comments which the Law Reform Working Group (LRWG) made on the recommendations in our earlier paper. The LRWG's comments were made following the retreat it held from 24 - 27 January 2010 to consider the papers we had presented on various topics under our Terms of Reference.

2.0 Policy context

This Final Draft Issues Paper must be viewed in the context of a number of significant Government initiatives. The first is the Second Private Sector Competitiveness Project (PSCP II). The overall objective of the PSCP II is to create sustainable conditions for enterprise-creation and growth that respond to local and export markets. It aims to better position the private sector to respond to market opportunities, by eliminating restraints on Uganda's international competitiveness.

Important objectives are to encourage investment and reduce the cost of doing business.

PSCP II has three mutually-reinforcing components. The pertinent one for this assignment is the Project Component 3 (Improving the Business Environment).

Another important initiative is the Medium-Term Competitiveness Strategy (2000-2005) (MTCS), now replaced by the Competitiveness and Investment Climate Strategy (CICS). Its aim was to create an environment in which the private sector could grow, become profitable, and compete both locally and abroad. It set out reform priorities, including reforms to the substance and application of commercial law, the regulatory and administrative framework governing business transactions, and more particularly (for the purposes of our project) reforming the land registry—including by rehabilitating existing land records, and promoting decentralization as a means of improving access to land information.

The MTCS also aimed to facilitate the growth of an efficient land market, so as to stimulate investment and market-led development. From the perspective of the land sector, a priority was to remedy shortcomings in the land registration system; these were seen as a significant barrier to investment.

Another initiative is the Land Sector Strategic Plan (LSSP). One of its major aims is to enhance revenue from the land sector and land-related activities. This will help to finance land-sector activities and to finance basic infrastructure development and the delivery of services by local governments.

This brings us to a central point in this Final Draft Issues Paper. Local governments must have the ability to raise revenue. Without adequate revenue, they cannot deliver the services that are crucial to a successful decentralization policy. That policy requires that local governments are effective, efficient centres of good governance and participatory democracy. They must be able to provide home-grown solutions to local problems, and be able to set and implement local priorities.

Further, a successful decentralization policy must:

- empower councils to plan, finance and provide services to their residents; and
- provide a linkage between the payment of taxes and provision of services.

In these endeavors, revenue mobilization by local governments is fundamental.

The raising and collecting of local revenue promotes local democracy and public accountability. It engenders citizen interest in how services are delivered and, in turn, helps hold local councilors and officials accountable for expenditures. The Local Government Finance Commission in a Report on Inventory of Best Practices in Local Revenue Enhancement, 2003 noted that "*Local revenue ... enhances ownership and autonomy of local governments*".

3.0 The existing legal framework

The1995 Constitution and the Local Governments Act, Cap 243 empower local governments to collect local revenue within the areas of their jurisdictions. They provide the legal framework under which local governments may deliver vital infrastructure and social welfare services to the people, through a process based on transparency and accountability. Article 191 of the Constitution allows local governments to levy, charge, collect and appropriate fees and taxes in accordance with any laws enacted by Parliament.

The Local Governments Act, Cap 243 specifies the major sources of revenue that local governments may collect. Property taxes are amongst them. However, it s the Local Governments (Rating) Act, 2005 that provides the legal basis for local governments to value, assess and collect rates on properties. That Act empowers local governments to levy rates on properties within their areas of jurisdiction. "Local government" is defined in the Act to mean a district council, a city council, a municipal council, or a town council within the meaning of the Local Governments Act.

According to the Local Governments (Rating) Act, local governments may levy such rates as they may determine on the basis of the rateable value of any property within their areas of jurisdiction. All properties within the jurisdiction of the local government are rateable, unless exempted by law.

4.0 The conceptual framework

4.1 General

The largest proportion of revenue for local governments comes from financial transfers from central government. Nevertheless, there is considerable scope for local governments to enhance revenue-generating capacity from their own sources. For example, the property rates tax is one of the most common local taxes, but its potential is not fully exploited.

In order to raise more revenue from the property rates tax, both technical expertise and institutional arrangements in tax administration must be improved. To give obvious examples: tax administration would be greatly improved by up-to-date land title records and cadastral base maps; by regular re-valuation of taxable properties; and by computerized billing systems. It would also be improved by an incentive system which would reward local governments for their efforts in tapping the property tax—especially given that it the tax is politically unpopular.

The main aim of any property rating system should be to raise revenue to enable local authorities to provide services for their citizens. The revenue generated should normally be used to finance amenity services. Examples are roads, street lighting, waste disposal, environmental health, and physical infrastructure. The very nature of these services means that they cannot be financed entirely through user charges.

In many ways, property tax is the ideal form of local tax. It scores well on the acknowledged criteria for measuring the potential and performance of taxes. The following criteria were developed by James McMaster (1994):

i. Adequacy and elasticity

Revenue sources should be adequate to meet the costs of the services they are intended to finance. They should also be elastic, yet stable and predictable.

ii. Equity

The incidence of a tax (including a local tax) should be:

1. equitable as between people of different income levels ("vertical" equity);
2. equitable as between different sources of income—for example, a salaried person should not pay more than a person with similar income from business or agriculture ("horizontal" equity); and
3. fair as between different geographical areas—people should not be taxed more heavily simply because they live in one area rather than another.

Specifically for property rates, equity demands that the cost of providing local services should be equitably shared between all classes of property owners, and should be fair as between property owners within those classes. An equitable tax takes cognizance of the benefits received by the property owner as well as his or her ability to pay.

iii. Administrative capacity and cost efficiency

Revenue sources require varied amounts of skill, integrity, and determination in their administration. They also required varied amounts of time and money in their collection, compared with their yield. If a tax is difficult to assess and collect, if the costs of collection consume a large part of the amount collected, or if too many special reliefs and exemptions are permitted, then the tax will not be efficient. Property taxation has the administrative merit that liability is obvious: one cannot conceal a plot or a building.

iv. Political acceptability

No tax is popular, but some taxes are more unpopular than others. Political will is needed to impose taxes, to collect them, and to enforce sanctions against defaulters. Property taxes are politically sensitive for two reasons:

1. They have to be collected directly from the payers and are, therefore, seen as a burden even more overtly than income taxes (which may be deducted by employers).

2. Any increase in tax, whether by rate revision or re-valuation, normally depends on a deliberate political decision.

v. Economic efficiency

Taxation has a dual purpose: to provide money for public purposes and to influence economic behavior. Taxes affect the cost of individual decisions—for example, a property tax affects the profitability of a building. In some jurisdictions, unimproved site value taxation is used to encourage high-value development and, conversely, penalize under-development.

4.2 The economics of property rating and linkage with the land information system (LIS)

The capacity of local governments to supply local services and undertake necessary infrastructure development is severely constrained by finances. Local governments face a growing number of responsibilities, many of which arise from the process of decentralization, under which the obligation to provide services is increasingly transferred to local government. This is occurring hand in hand with increasingly inadequate funding from central government.

Local governments may justifiably complain that most of the taxes assigned to them are less productive and less elastic than those available to the central government. They see property taxation as a means of raising badly needed revenues. It is an attractive option for giving local governments access to a broad and expanding tax base, from which to finance local government operations. Unfortunately, however, the existing property rating system performs well below its potential.

Earlier, we mentioned the objective of the PSCP II to create sustainable conditions for enterprise-creation and growth. A sub-component of the Land Component of PSCPII is the development of a Land Information System (LIS). Property taxation/rating is one of the many potential users of land information. A major limitation on the Ugandan property rating system is the lack of an efficient land information system. Most urban areas are unplanned and unsurveyed. It is extremely difficult to identify individual properties from among numerous units erected on a single large plot, even in planned and surveyed areas. Maps are out of date or are unavailable. The title register is grievously out of date. An efficient LIS would enable local governments and professional valuers to create a "fiscal cadastre" containing information about property ownership, valuation, and property tax information. This would facilitate the equitable and efficient administration of property taxation/rating.

A land "cadastre" is a parcel-based and up-to-date land information system containing a record of interests in land. It usually includes a geometric description of land parcels, linked to other records describing the nature of the interests in the land. It often includes the value of the land parcel and its improvements. It may be established for fiscal purposes (eg, valuation and taxation), legal purposes (conveyance), to help in the management of land and land use (for planning and other administrative purposes), and to facilitate sustainable development and protection of the environment.

The cadastre is the primary means of providing information about land. It generally:

- identifies those people who have interests in parcels of land;
- identifies those interests—e.g. their nature and duration; and
- gives other information about the parcel—e.g. location, size, improvements, value.

A "fiscal cadastre" may be defined as an official inventory of land parcels that provides the information needed to determine the value of property (land and/or improvements) for the purposes of taxation (Whittal, Jennifer, 2004).

5.0 Regional and international experience

5.1 General

Property taxes are compulsory charges or levies that relate specifically to ownership, occupation or development of land and buildings (McCluskey, 1993). They are mostly levied on capital value or annual rental value (real or imputed), and are collected for use by local authorities. Their consequences are both fiscal (revenue generation) and regulatory (encouraging property development and/or discouraging land speculation).

One of the most common forms of property taxation is property rating. This in effect requires residents of a particular area to contribute money year-by-year to share the cost of providing services to themselves and others within their area.

Other forms of property tax are:-

- Stamp duty (transfer fees)
- Death duty/estate duty (tax on the estate of deceased)
- Capital gains tax
- Income tax on rental income

Property taxes are generally considered to be an ideal source of revenue for local government. As a percentage of GDP, property taxes average 1.4% in industrial countries, but just 0.4% in developing countries, and 0.1% in Uganda.

5.2 Property rating systems and tax bases

Different African countries use a variety of tax bases for their property tax systems. This is demonstrated by an analysis of 10 African countries (see the table below). The legislation in all 10 countries mandates an ad valorem property tax system, with discrete values for each rateable property. Uganda is the only country in this group which taxes *annual rental value*. All the others tax the *capital value* or *sale value*. Most of the countries tax both the land and the buildings on the land. However, Tanzania taxes just the capital value of the building(s), and Kenya taxes just the value of the land.

The table below shows the property tax bases in the 10 countries.

Country	Basis of Assessment
Kenya	Unimproved site value
Ghana[1]	Depreciated replacement cost
Uganda	Annual rental value
Tanzania[2]	Market value and replacement cost
Malawi	Open market value (capital value)
Zambia	Open market value
Zimbabwe	Open market value for non-residential; unit basis for residential
Namibia[3]	Open market value for land; depreciated replacement cost for improvements
South Africa[4]	Unimproved site value; improved value of land (flat rating); unimproved value of land + value of any improvements (composite rating)
Rwanda	Area rate (not based on value)

The choice of system largely reflects historical factors. The United Kingdom and France have traditionally valued property on the basis of rental value; in general, their one-time colonies in Africa and Asia also do so. Countries influenced by the United States (e.g. the Philippines, Liberia, and most of Latin America) follow US practice and levy rates on the basis of capital value. Capital value is also used in most of Northern Europe (e.g. Germany, the Netherlands) and in Japan, Turkey, and Indonesia (Dillinger, 1991). Counties in Southern Africa that follow Roman-Dutch law (i.e. South Africa, Namibia, Botswana, Lesotho and Swaziland) use multiple rating systems.

[1] The basis was changed from "annual rental value" to the "replacement cost".

[2] Replacement cost is used where market value cannot be ascertained. The maximum depreciation allowable is 25%.

[3] Municipalities can generally decide on any of 4 bases: general rate (on the value of the whole of such rateable property); site value rate (on the value of the land only); improvement rate (on the value of the land and the value of improvements, but separately).

[4] Three options are generally available; reform on tax bases started in 1997 and is continuing.

Of course, no individual system is perfect. Some countries, including Uganda and Ghana, have moved from one system to another. Sometimes more than one rating system (indeed, up to 4 systems) operates at the same time in the one country. Before 1979 Uganda operated 2 rating systems—i.e. annual rental value as well as capital value. Namibia operates 4 tax bases.

Internationally, property taxation is undergoing a resurgence. More and more countries are seeking to improve both the bases of assessment and the methods of administration of their property taxation systems. The object is to create a greater potential tax base, or even the introduction of a new property tax. Hybrid rating systems, and what we may call technologically-modified rating systems, are also now beginning to appear. The UK in 1988 replaced domestic rates with a community charge; this did not have universal acceptance, and was eventually replaced by a council tax in 1993, effectively returning to a property tax.

6.0 Key areas that require reform

6.1 The rating authority vis a vis the definition of local government

The existing Ugandan rating law empowers local governments to levy rates on property within their areas of jurisdiction. "Local government" is defined in the law as a district council, a city council, a municipal council or a town council within the meaning of the Local Governments Act, Cap 243.[5] In the case of a district, the rating authority is the district council; in the case of a city, it is the city council; and in the case of a municipality, it is the municipal council. The role of the division councils and sub-county councils is not clear, and yet they are local governments under the Local Governments Act, Cap. 243.

LRWG's comments on Recommendations 1 and 2:

In relation to the two recommendations that follow, the LRWG noted that they saw no need to revisit the Local Governments Act, because all sub-counties are catered for under bigger councils, and the smaller ones cannot pay for rating. However, on further reflection, we consider that in any thorough-going review these two matters require attention. Therefore, respectfully, our recommendations remain unchanged.

[5] Under the Local Government Act, Cap 243, local governments include a district council, a sub-county council, a city council, a city division council, a municipal council, and a municipal division council.

Recommendations

1. **The definition of "local government" under the rating law should be revisited with a view to harmonizing it with the definition of "local government" under the Local Government Act, Cap.243.**
2. **The roles of division councils and sub-county councils, which are local governments under the Local Governments Act and which have roles to play in the rating system, should be properly defined in the rating law. Unless this is done, clashes in institutional mandates are certain to arise.**

6.2 The power to appoint a Valuation Court

The rating law does not empower town councils to appoint valuation courts. In the interpretation section of the law, "valuation court" means the valuation court appointed by a district, city or municipal council under the Act. There is also ambiguity over whether the District Council may appoint one valuation court to serve all town councils within the district.

The LRWG made no comment on Recommendation 3, which follows, and so it remains unchanged.

Recommendation

3. **Town Councils should be empowered to appoint their own Valuation Courts.**

6.3 The definition of "urban area"

"Urban area" is defined in the rating law as a city, municipality and town, and any other area prescribed by statutory instrument. This definition is limiting, as a Town Board is not considered an "urban area" until the minister declares it so by a statutory instrument. It ought to be noted that the Local Governments (Amendment) Act, 2005 created Town Boards, which makes them urban councils.

The LRWG made no comment on Recommendation 4, which follows, and so it remains unchanged.

Recommendation

4. **Town Boards should be recognized as urban areas under the rating law.**

6.4 Definitions given to "commercial building", "industrial building"

Definitions given to *"commercial building" "industrial building"* and *"non-industrial building"* are ambiguous, confusing, and open to conflicting interpretations.

6.4.1 *"Commercial building"* is defined as a building, the whole or any part of which is used for the purpose of any business. The key term "business" is not defined.

6.4.2 *"Industrial building"* is defined as a factory, mill or other premises of similar character used wholly or mainly for industrial purposes.

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6.4.3 *"Non-industrial building"* is defined as a building which is not an industrial building.

These definitions give rise to many uncertainties. For example:

- Where do the following properties fall: electricity dams/power generating plants; airports and airfields (where buildings constitute only a small part of the value of the property); water works; sewerage works; railway lines; water pipelines; oil pipelines; communication towers/masts?

- What is an industrial building in case of (for example) a brewery, or a textile mill, or a steel mill, or a sugar mill, etc? That is, what constitutes the brewery: is it the building, or the building together with the plant and machinery?

- Where do car parking yards (used purely as a business) fall? Examples are parking yards in Busia Town and Malaba Town, which are used by the Customs Department of Uganda Revenue Authority.

- What about properties such as tea estates, sugar cane estates, cut flower plantations?

In other jurisdictions, the legislation levies rates on property/real property, and not mere buildings. Properties are usually classified as:

- agricultural properties
- residential properties
- commercial properties, and
- industrial properties.

LRWG's comments: The LRWG disagreed with our view about the insufficiency of the existing definitions of terms such as "commercial building" "industrial building" and "non-industrial building". It considered that the definitions were adequate, taking into account planning permissions. However, with respect, we consider that in an overall review of rating law and practice, such matters need attention. The LRWG made no comment on our recommendation (below) that Uganda should adopt the practice of rating properties as distinct from buildings.

Accordingly, and with respect, our Recommendation 5 remains unchanged.

Recommendation

5. Uganda should adopt the practice of rating properties, as opposed to rating buildings. The rating law should classify and define the different categories of properties.

6.5 The tax base is too narrow, given the definitions and exemptions in the rating law

"Property" is defined under the rating law as immovable property and includes a building (industrial or non-industrial) or structure of any kind, but does not include a vacant site. Thus, vacant sites are exempt.[6]

Section 3(5) provides that "for avoidance of doubt, no rate shall be levied in respect of a residential building in a place not being in an urban area". This implies that all residential buildings outside the city council, municipal council or town council are exempt, even when they are rented. This makes neither political nor economic sense. The implications are that in Seeta (which is not an urban area as defined in the law) owners of rented residential properties do not pay property rates, while those who own commercial properties do pay. This seems to breach the equity principle, mentioned earlier in this Paper.

Section 3(4) limits the rateable properties outside an urban area to commercial buildings only. This is because it provides that: "notwithstanding subsection (3), the rate may be levied in any area outside the urban area in respect of a commercial building". While this section extends property taxation powers to district local governments, at the same time it limits them to taxing commercial buildings only. What about industrial properties in the districts?

Owner-occupied residential properties are now exempt from property rates, following an amendment directed by the President a few months after the new rating law came into force. Up until then, owner-occupied residential properties were liable to property rates. However, the main aim of any property rating system is to raise revenues so that the local authority may provide services. Equity demands that the cost of local services be equitably shared between all classes of rate payers, and that the burden be fair as between rate payers within those classes.[7] An equitable tax should take cognisance of the benefits received by rate payers as well as their ability to pay. People who decide to reside in their

[6] In many jurisdictions, vacant sites in urban areas are taxed, not only to raise revenue but also to prevent land speculation. There is a good argument that vacant and underutilized land in urban areas should be taxed, so as to deter keeping land for speculative profits.

[7] Property value is an indicator of a taxpayer's net wealth or income. And most importantly, the intangible housing benefits which owner-occupants enjoy have to be weighed against the visible flow of rents from rented properties.

own houses consume the same services as those who rent them out. This type of exemption is likely to encourage evasion by discriminated property owners.

Exemptions and favourable treatment for particular types of property can remove significant contributors from the property tax base. If owner-occupied property in fact merits favorable tax treatment, then the tax rate could be made lower than the rate on equivalent renter-occupied property. For example, in Karachi, the tax rate on owner-occupied residential property is 25% lower than the rate on equivalent renter-occupied property.

LRWG's comments:

The LRWG commented that in urban areas the purpose of rating is to provide services, and so "every developed premises should pay". We agree, and our recommendation will allow this.

In relation to residential land, the LRWG's comments seemed to suggest that rates should be payable, but that lower rates should apply.

In relation to vacant land, key words appear to have been omitted from the LRWG's comments, so we are not sure of their views.

Accordingly, we have amended our Recommendation 6 in relation to residential land to reflect the input of the LRWG.

Revised recommendation

6. **The tax base should be reviewed to achieve principles of equity and efficiency. The exemption given to owner-occupied residences should be removed, to be replaced with a lower tax rate than non-residential premises. Vacant sites in urban areas should be taxed to raise revenue and achieve other objectives (such as curbing land speculation, thereby bringing land that is unused or under-used into production, making more land available to potential buyers and developers).**

6.6 Overall tax burden

No tax can be considered in isolation. Property rates must be considered in the context of the tax system generally in order to assess the combined burden of taxation. In general, Uganda lacks a comprehensive tax policy. There is too much duplication. Property owners in Uganda today are subjected to the following types of taxes:

- Property rates
- Income tax on rental income
- VAT on rental income from commercial properties
- Stamp duty/transfer tax
- Capital gains tax
- Estate duty.

All the above taxes, except property rates, are national taxes. By the time local governments impose property rates, the property owner is already burdened by the other types of tax collected by the Central Government. Income tax on rental income works out at about 16% of gross annual rental.

Importantly, property rates are not allowable as an expense against income for tax purposes. Further, none of the above national taxes are allowable as expenses against rental income for the purposes of property rates tax. The statutory deduction on gross rental value, which currently stands at 22%, is not sufficient to take care of the national property taxes and other outgoings and expenses (such as mortgage interest, insurance fees, and maintenance and repair costs) which a property owner must pay.

There is urgent need to review both the national taxation system and the local government taxation system, with a view to harmonizing them. There is also need to assess the overall incidence of tax—ie, the combined effect of all taxes. Taxation should not pose a disincentive to investment. Further, if citizens perceive a tax to be unfair or excessive, then collection and enforcement becomes difficult and non-compliance flourishes. The only successful property tax is a collectable one.

LRWG's comments:

The LRWG commented that our recommendations about reviewing the overall burden of taxation was "not applicable to rating". However, and with respect, we disagree. In our view, an equitable tax system requires all aspects of taxation to be taken into account, including the burden of property taxes. In this regard, therefore, our Recommendation 7 remains unchanged.

The LRWG made no comment on the subject matter of our Recommendation 8, and so it also remains unchanged.

Recommendations

7. A comprehensive review of the national property taxation system should be undertaken with a view to harmonizing the taxation system at the national level with the system at the local government level, to eliminate over-taxation and/or double taxation.

8. The statutory deduction on the gross annual rental value should be set at a level sufficient to cover the relevant national property taxes and other expenses to a property owner.

6.7 Mass valuation/appraisal methods and models

The rating law permits valuation on the basis of a single property as well as on the basis of mass valuation. Mass valuation relies, not on direct market information about any particular property, but on extrapolation by formula from a sample of properties. It is

used to value common types of properties. It is particularly associated with computerized multiple regression analysis, which is a method of ascertaining the relative importance of value-significant characteristics. Mass valuation is most common in capital value countries—that is, countries which value on the basis of capital value. Uganda is not one of these countries.

A variant is computer assisted mass appraisal (CAMA). This is a computerized system to assess the value of homogeneous properties, such as high-rise offices and condominiums. CAMA is based on mathematical modeling, involving the determination of a dependant variable (capital value or rental value) from a number of independent variables (property characteristics). It is easier to develop a functional model from homogeneous (smoothly varying, non-skipy) data, rather than from sparse or clustered non-homogeneous data (such as widely varying property prices, rentals and characteristics affecting value), or from outdated, incorrect or inconsistent data.

Section 11 of the Local Governments (Rating) Act provides that "there shall be estimated the rent at which the property might reasonably be expected to let from year to year…". This appears to require a valuation on the basis of individual properties.

However, s 12 allows mass valuation. Section 12(1):

> "Any local government may, instead of the method of ascertainment of rateable value provided for in section 11 of this Act, adopt for the whole or part of its area of jurisdiction or for any categories of properties there the method of valuation known as mass valuation".

LRWG's comments:

The LRWG commented that mass valuation techniques are suitable for housing of the same character, where valuation samples can be applied across the whole category. We agree, and our Recommendation 10 so provides. Accordingly, our recommendations on these matters remain unchanged.

Recommendations

9. **Where small, low value properties constitute a large proportion of the tax base, simple valuation approaches like a "points system" should be adopted in place of rental value. Such a system would assign prices or "points" to specific property characteristics. This would bring many properties into the tax system at the lowest possible cost.**
10. **Mass appraisal techniques should be applied mainly to housing estates and condominium properties. CAMA should be applied mainly to homogeneous properties such as high-rise offices and condominiums.**

11. Single property valuations should be for unique, high value properties, where mass appraisal techniques cannot be applied.

6.8 Institutional issues

The research information on property rating systems in Uganda is scanty.[8] Such information as is available indicates serious problems in both policy and administration. These include low property tax administrative capacity; lack of political will for property tax enforcement; over-reliance on individual property valuation, with no use of simpler mass valuation techniques; and fiscal cadastre information that is incomplete and out of date. As a result, local authorities experience low revenue yields, and the country as a whole suffers from vertical and horizontal inequalities and economic inefficiencies.

In short, the property rating system requires urgent reforms. The reforms must be comprehensive, linking property information, valuation, assessment collection and enforcement.

6.9 Land information and use of computerized data base system

Currently, the rating system is based on paper files. This dependence on paper records should be eliminated, or at least minimized. There is a strong case for computerizing valuation records. There is an even stronger case for a sound legal and institutional framework for updating (and keeping accurate) information needed for valuing and assessing properties. The potential tax base is wide, and requires extensive, ever-changing information on each property. Computers can

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[8] For more in-depth discusion, refer to:

i. Nsamba-Gayiiya, Eddie (1999) "The Current Rating System in Uganda—A Case Study of Kampala City Council".

ii. Nsamba-Gayiiya, Eddie (2001) "Property Assessment and Taxation in Uganda".

iii. Nsamba-Gayiiya, Eddie (2003): "Property Taxation: Principles and Practices in Africa".

iv. Kelly, Roy (2000) "Property Taxation in East Africa, the Tale of Three Reforms".

facilitate all aspects of managing individual property information, property valuation, tax assessment, billing, collection and enforcement.

However, efficient use of computerization requires the ability to link data-processing activities with the administrative components of property taxation. These 2 areas must be effectively integrated into a comprehensive tax administration management system. Operational procedures—such as assigning and maintaining unique property identification numbers, mapping, field-data collection, valuation, enforcement and taxpayer services—must be integrated with functions such as data entry, verification and validation, valuation and assessment, tax billing, collection monitoring, systems control and information retrieval.

A modern and decentralized land information system (LIS) is crucial to achieving an efficient and effective property rating system. The database should be comprised in one central system, accessible on-line from district level and urban authority level. District and urban authorities should be able to add information of importance for their own administration. Valuation Offices should have the functionality to view, download and use the registration and cadastral data for valuation purposes. They should also have GIS functionalities to view, overlay geo-referencing, integrate and analyse other spatial data needed for property valuation. Imaging technology should be used to enhance data collection, storage and retrieval.

LRWG's comments:

The LRWG made no comment on the discussion or recommendations on this topic; and so our Recommendations 12 and 13 remain unchanged.

Recommendations

12. Legal provision should be made to authorize and facilitate collecting, retrieving, sharing and updating all information needed for an efficient and effective rating system.

13. All valuation records should be computerized.

6.10 The accountability of local governments to rate payers

Local governments should be accountable to their rate payers for rendering the services for which they have taxed property owners. The current rating law does not clearly stipulate the duties that local governments owe to rate payers in this respect. The provision under section 37(4) permitting property owners and occupants in any locality to form themselves into a rate payers association to oversee the provision and delivery of the services, does not go far enough.

LRWG's comments:

The LRWG made no comment on the discussion or recommendations on this topic; and so our Recommendation 14 remains unchanged.

Recommendation

14. The rating law should clearly stipulate the accountability of local governments to rate payers to render services for which they have collected taxes.

6.11 Equity and application of a differentiated rate

Some local governments have been setting different rates for commercial properties and industrial properties, on the one hand, and residential properties on the other (examples are Entebbe Municipal Council and Kampala City Council).

Many countries impose higher property tax rates on commercial or industrial property than on residential property. Some give preferential treatment to owner-occupied residential property, taxing it at a lower rate than renter-occupied property. Vacant land is sometimes surcharged. The ostensible purpose of these differentials is to shift the burden of the tax onto those more able to pay, or to influence investment or land-use decisions.

Progressive tax rates—that is, rates that are higher for higher-value property—are common in developing countries.

LRWG's comments:

The LRWG made no specific comment on this matter, but did comment on differential rates in relation to residential properties. This we have discussed earlier. Thus, our Recommendation 15 remains unchanged.

Recommendation

15. Differentiated rates and progressive tax rates should be introduced into the rating law to achieve equity and other objectives.

6.12 Property tax clearance

Section 34 of the rating law prohibits the transfer of property where rates are in arrears. This goes some way to ensuring that arrears of taxes are paid. However, we would recommend a stronger provision. The Registrar of Titles should be legally forbidden to register such a transfer unless the purchaser can demonstrate that all arrears of rates on the property have been paid. This will increase the collection of revenue, as purchasers will require vendors to prove that outstanding taxes have been paid; and if taxes are unpaid, purchasers will insist that the outstanding amounts be deducted from the balance of purchase price payable on completion of the sale.

6.13 Other areas requiring reform

1. *The coming into force of the valuation list*

Under section 20, a valuation list comes into force from the commencement of the financial year next after the one in which the chairperson of the valuation court certifies it. This provision has severe financial implications for local governments.

2. *The approval process of the valuation list*

The Local Governments (Rating) (Amendment) Act, 2006 requires the Chairperson of the valuation court to certify and sign the draft valuation list with the approval of the Minister. In our view, Ministerial approval should not be necessary.

3. *The management of objections to the draft valuation list*

Property owners may have queries about rates, or may wish to appeal. In many cases the query or appeal can probably be settled by agreement without the necessity of a Valuation Court hearing. The law should be flexible and encourage disputes to be settled. Where the registered valuer and the objector reach agreement on the correct figure, then this could be approved by the Valuation Court.

General comments by LRWG

The LRWG concluded its comments on this Paper by making four points. We deal with them one by one.

1. **There are countries you pay the tax even when you are not occupying the property. The consultant should make a comparison to such countries.**

We agree that this is an issue in relation to determining an equitable tax base. It is a matter to be included in the review of property tax system which we envisage in our Recommendations 6 and 7, above. In our view, it cannot be considered in isolation from the wider issue of the overall taxation burden; and comparisons from other countries are not of great usefulness for Ugandan purposes unless considered in the context of the overall tax burdens on Ugandan land owners. The over-arching need is to reconcile the need to raise sufficient revenue to provide services to citizens without also dampening enterprise and market efficiency by an over-burdensome taxation system.

2. Investigation should be done on the ground to establish how much tax should be charged.

We agree. This, as with point 1, above, must be part of the overall assessment of tax burden on landowners. How much tax should be charged is then ultimately a question of policy for the Government to formulate.

3. The consultants should look at taxes paid and justify why they should be paid.

This is covered by our earlier discussion. In the context of property rates taxation, the purpose of the system is to provide income for local government bodies to provide adequate services to citizens. The more generous the services, the higher the necessary incidence of taxation. The balance becomes a question of Government policy.

4. The consultants should take into account the presidential directive that was incorporated into law in 2006. The directive exempts residential areas.

We have considered whether residential areas – or residential properties – should be exempted. The LRWG agreed that residential properties should be rateable, but at lower rates than for other developed properties. Our Revised Recommendation 6 above makes the same point.

[End].