

Land Use Charge Law No. 11 Of 2001 Of Lagos State

Introduction

The Land Use Charge Law, No. 11 of 2001 applicable to real/landed properties in Lagos State was passed into Law by the Lagos State Government with a commencement date of June 22, 2001 (?LUCL?). The main objective of this Law, as has been proffered repeatedly by the Lagos State Government, is to generate additional revenue needed to develop the state whose population is growing at an alarming rate without any corresponding increase and or improvement in its physical and social infrastructure.

The Land Use Charge Law is intended to be a SINGLE PROPERTY CHARGE which replaces all other State and Local Governments taxes on real property including taxes like tenement rates, ground rents and neighbourhood improvement charges. By the LUCL, once the Land Use Charge is imposed upon a property, the rates and charges, which were, hitherto payable under the old legislations, will no longer be applicable and due on the same property.

Operation of the Law

The Land Use Charge (?LUC?) is a charge imposed on the owner of the property. However, where the owner is not in possession of the property, the LUCL authorises the collecting authority to appoint the occupier, who is usually the tenant, to be assessed with and pay for the tax; the tenant is in turn authorised by the LUCL to offset such a payment, made under this Law, from monies that may be due from the tenant to the owner of the property. There is thus an indemnity in favour of the tenant/occupier against the owner. How this procedure would work in practice, especially in the light of the temperament of the Lagos landowner, is awaited.

The LUCL does not apply to all properties in Lagos State . Properties that are exempted from the operation of this law are government owed properties, and other properties used for public, religious and charitable activities. Note however that this exemption will only be granted where an application for exemption is made to the Commissioner for Finance, Lagos State .

Based on the controversy and the resistance that have followed the rates/percentages of

assessment, the Lagos State Government have further reduced the rates payable under this Law as follows:

- Commercial Property used for residential purposes ? 0.5% per annum of the assessed property value.
- Commercial property used for business purposes ? 1.25% per annum of the assessed property value.
- Industrial premises used for manufacturing concerns ? 0.5% per annum of the assessed property value.
- Owner-occupier residential property ? 0.15% per annum of the assessed property value.
- Owner-occupier pensioner's property ? exempted from Land Use Charge assessments but liable to whichever is applicable between tenement rate, ground rent or neighbourhood improvement charge.
- Family compounds ? exempted from LUCL but liable to tenement rate at the last assessed amount with an increase of 25% of that amount.

A Chargee of a LUC is entitled to some rights under the LUCL, although these so-called rights have also been criticised by some legal analysts. They include:

- The Chargee, on receipt of an assessment, can in writing make a formal complaint to the Commissioner for Finance that the assessment is too high and should be reduced or that the categorisation of the property under the LUCL is wrong.
- An Chargee also has the right to file an appeal against the assessment to the Assessment Appeal Tribunal on the precondition that the Chargee pays 50% of the amount assessed and the fees that would be prescribed by the Appeal Tribunal for the filing of the appeal.

Also, there are various penalties for default under the LUCL. They include:

- Payment increases of up to 25%, 50% and 100% respectively where the Chargee delays payment for up to 75, 105 and 135 days from the date of it/his receipt of the assessment.
- Liability to incurring the appointment of a receiver over the property until all outstanding taxes, penalties and administrative charges are paid where payment is not received after 135 days after service of the assessment.
- Application to a superior Court by the Commissioner for Finance to recover the sum assessed and payable under the Law. Pending the determination of the suit, the Court can

attach the earnings accruing from the property.

- Penalties of up to ₦100,000 (One Hundred Thousand Naira) or three months imprisonment for non-compliance with the LUCL, obstruction of authorised officials, damages to property identification plaques or incitement to other persons to refuse to pay the tax.

Collection of Charges

The Local Government Authority in the jurisdiction/locality where the property is located is the authorised collecting authority. In order for there to be compliance with the constitutional requirements on the division of powers between the State and the Local Governments, the Land Use Charge Law is predicated on the principle of mutual delegation of authority between the Lagos State Government and each of the Local Governments in the state. Whether a Local Government

Authority can delegate its constitutional power to State Government is a matter of various litigations in Lagos State presently. However, in the case of Knight, Frank & Rutley v. A.G of Kano State [1990] 4 NWLR (Pt 143) 210 the Nigerian Court of Appeal had expressed the view that it was not constitutional for a tier of government to delegate its constitutional powers to another tier. The Supreme Court affirmed this decision in [1998] 7 NWLR (Pt. 556) 1; [1998] 4 S.C. 251 .

Also, the question of whether payments made under this Law are tax deductible or not under the Companies Income Tax Act (?CITA?) and Personal Income Tax (?PIA?) remains a matter of much difference amongst practitioners.

Advantages and disadvantages of LUCL

Some of the advantages of the tax, according to its proponents, include:

- Prevention of multiplicity of taxes between the State and Local Governments in Lagos State.
- Reduction and or prevention of property tax evasion by ensuring that its administration, including its assessment and collection, are much easier.

Some of the LUCL disadvantages, according to its opponents include:

- The high rate of the tax would discourage property development and investment.
- With no new investment in the property sector, the housing requirements of the citizens residing in Lagos State and the rentals payable per annum are expected to worsen.
- The tax would further discourage mortgages and perfection of property/land titles.

Presently, a purchaser of land in Lagos State has to contend with the following fees: (a) the total cost of the land; (b) 20% of the total cost of the land as legal and agency fees for securing the land; (c) 15% to 30% as consent fees; (d) stamp duties of about 3%; (e) capital gains tax of 10%; (f) registration fee of 1%; (g) legal fees for processing the consent or certificate of occupancy usually in the region of over 10%. The total of these percentages, which are percentages of the sum used to purchase the land, are over 60% of the total cost already paid by the purchaser to the vendor of the land.

Conclusion

An Auditor is a professional who provides customer related services. His main stock in trade is the trust and goodwill of his client which ought to protect at all times otherwise he will go out of business. Also, with the advent of democracy in Nigeria and globalisation world-wide, professionals, including Auditors, should exercise more care and diligence in the performance of their statutorily responsibility in order to avoid loss of trade or incur civil and criminal liability as a result of a breach of statutory duty.

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