

Review

A critical analysis of the right to equality before the law in property rates tax law and practice in Kampala capital city authority

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Abstract

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Property rates tax is a principal source of revenue for local governments, a significant operating cost for business, and one of the biggest components of housing costs for many consumers. Property rates tax is levied by local governments on the properties within their jurisdiction. Property rates tax in Uganda is governed by the Local Governments (Rating) Act, No. 8 of 2005 and its Regulations. The Act empowers Kampala Capital City Authority (KCCA) to levy property rates tax and provides the procedure of assessment, collection and enforcement of payment of property rates tax. The Act also provides for exemptions from property rates tax. This Act was amended by the Local Governments (Rating) (Amendment) Act No. 12 of 2006 which exempts assessing and collection of property rates tax on buildings which are residences and “owner-occupied”. Although the extension of exemptions has negative budgetary ramifications for KCCA, the main argument in this article is that such exemption constitutes a violation of the right to equal treatment of individuals as enshrined in international instruments to which Uganda is a signatory and the national Constitution. This article is divided into five sections. The first section provides an introduction. The second section provides an overview of the concept of property rates tax while the third analyses the concept of equality before the law. The fourth section analyses the right of equality before the law in light of property rates law and practice in KCCA. The last section provides a conclusion to the article. The article concludes that persons who are in equal economic situations are not treated equally by property rates law and practice in KCCA, contrary the right to equality before the law.

Keywords: Property rates tax, right to equality before the law, Kampala Capital City Authority.

INTRODUCTION

Property rates tax is a principal source of revenue for local governments, a significant operating cost for business, and one of the biggest components of housing costs for many consumers (Goodman, 2005). As a source of revenue for Local Governments in light of decentralisation, it has been noted that increasing the autonomy for the districts and other levels of government over planning, budgetary and spending has potential for

ensuring that delivery of services is tailored toward the specific needs of each district and call for collection of some taxes like rates on their own to finance their budgetary needs (The Republic of Uganda, Ministry of Local Government, *Participants Handbook, Property rates Training for Local Governments*). Property rates tax is levied by local governments on the properties within their jurisdiction. The property rates tax system was

introduced in 1900 under the Buganda Agreement (Clause 9 of the Agreement: Note – This clause 9 introduced and spelt out a wide range of taxes, embodying inter alia the Hut Tax) and the Hut Tax Regulation in 1900 (Regulations No. 29 of 1900). A number of enactments governing property rates tax system have been in place. The latest Act being the Local Governments (Rating) Act, No. 8 of 2005, as amended by Act, No. 12 of 2006. This is supplemented by the Local Governments (Rating) Regulations (Local Governments (Rating) Regulations, Statutory Instrument No. 38 of 2006). The objectives of the current legal system are to provide for: (a) the levying of rates on properties by local governments within their areas of jurisdiction; (b) the valuation of property for the purpose of rating; and (c) the collection of rates and other related matters. Notwithstanding all these changes in the legal framework, innumerable problems continue to affect property rates tax system. Most affected is the tax base, which has seen a substantial “turn down” in the event of the enactment of the Local Governments (Rating) (Amendment) Act No. 12 of 2006 which exempts assessing and collection of property rates tax on buildings which are residences and “owner-occupied” (The Local Governments (Rating) 2005, as Amended by the Local Governments (Rating) (Amendment) Act No. 12 of 2006, Section 5). Part 1 of the second schedule to the Local Governments (Rating) Act expands the category of properties exempted from property rates tax levy (than under section 4 of Decree No. 3 of 1979) to include: any official residence of a traditional or cultural leader within the meaning of Article 246 of the Constitution of the Republic of Uganda; any property owned by an organization entitled to privileges under the Diplomatic Privileges Act; and any institution with which the government has a contractual obligation to not levy fees and tax against it. Although the extension of exemptions has negative budgetary ramifications in Kampala City, the main argument in this article is that such exemption constitutes a violation of the right to equal treatment of individuals as enshrined in international instrument to which Uganda is a signatory and the national Constitution.

The Concept of Property Rates Tax

Property rates tax is embedded in two concepts: property and rate. *Osborn's Concise Law Dictionary* defines property as that which is capable of ownership whether real or personal, tangible or intangible. It can also mean a right of ownership, for example the property in the goods (Rutherford and Bone, 2003), *Osborn's Concise Law Dictionary*; 8th edition; Universal Law Publishing Co. Pvt. Ltd. New Delhi, p. 266.). In the context of property rates tax, the term property is used to refer to buildings and the land they sit on but vacant land without buildings is not

regarded as property (The Republic of Uganda, Ministry of Local Government (2003), Revenue Mobilization in Local Governments, Participant's Handbook for Lower Local Governments). The Local Government (Rating) Act defines property to mean “immovable property and includes a building (industrial and non-industrial) or structure of any kind, but does not include a vacant site (Section 2 (1) of Local Government (Rating) Act No. 8 of 2005)”. The Act also defines “rate” to mean a rate on the property levied by the Local government (under the Act) (*Ibid*). According to *Halsbury's Laws of England* (*Halsbury's Laws of England*, Fourth Edition Vol. 39, para. 10, p. 9), the rate is not a tax on the land, but a personal charge (This position is fortified by the case of *R. v. S.T. Luke's Hospital* (1760) 2 Burr 1053 at p. 1063, it was held that the remedy for the failure to pay rates is a personal one, that is, by distress on the defaulter's goods). Under the Act, the rate is ascertained by reference to the rental value of the property (The Local Government (Rating) Act No. 8 of 2005, section 11).

From the above concepts, property rates tax can be defined in simple terms as a tax on properties (private houses, commercial houses, factories, banks, e.t.c.) paid to local governments based on their rental value (Kampala District: Local Government Budget Frame Work Paper for Financial Year 2001/2002, p. 41). The base for the property tax is “real property” defined as land and improvements or attachments to the land (Rutherford and Bone, *supra* note 7, p. 278).

According to (Mila *et al.*, 2001), *the challenges of urban Government; Policies and Practice*, World Bank Publications, p. 269.) property tax can be differentiated from other taxes by virtue of two main characteristics: its visibility and the diversity of the local context within which it is implemented- diversity with regard to the range of properties on which it can be imposed. The property rates tax is a highly visible tax. Unlike income tax, for example, the property rates tax is not withheld at the source. Rather, taxpayers generally have to pay it directly in periodic lump sum payments (De Cesare, 1999). This means that taxpayers tend to be much more aware of the property taxes they pay. The property taxes also finance services that are highly visible such as roads, garbage collection. Visibility is desirable from the decision-making perspective because it makes taxpayers aware of costs of local public services (*Ibid*). This awareness enhances accountability.

Property rates tax also has the advantage of being progressive. The presumption is that those who have properties to rent out are rich and they are the ones liable to pay rates. As one's income grows, he/she establishes more structures and pays more taxes in terms of rates. On the other hand, owner-occupied residential houses are exempt and, therefore, those with no properties to rent out but only have their residential houses (who are the poor) are not liable to pay rates. This, *prima-facie*, meets the desired principle of taxation that as one's

income increases, the tax should also increase and vice versa.

The other advantage of property rates tax lies in the fact that it is difficult to avoid paying rates. The tax is assessed basing on the rental value which is easy to ascertain. Again it is assessed on immovable property, so there is nothing like the taxpayer has moved out of jurisdiction. Further, under the Local Government (Rating) Act, the tax is payable by the owner. However, if the owner cannot be found, then the occupier is liable to pay the rates. This illustrates that in all circumstances the tax has to be paid and is very hard to avoid thereby providing the local governments with a realistic, stable and predictable financial base from which a local authority can make reasonable forecasts of likely future income, with a substantial certain and predictable yield.

Further, the tax burden needs to be apportioned according to the benefits that the individuals gain from the government expenditures, which are funded by the taxation. Therefore, property owners whose property is protected by the taxing authority should pay more in tax for the expenses so incurred than those who do not receive such protection. Property rates tax is justified on this ground because property owners are the major beneficiaries for the services provided as they increase the value of real properties. An example is where a person owns property in an area with a poor road. If the road is afterwards repaired by the local authority, the rental value of the property will increase and in this case it is only just that the person pays for the enhanced value in terms of property rates.

Although the benefit approach may be challenged on account of the benefits not being traceable to individual property ownership and the fact that the bulk of property tax revenue is spent on provision of general public services such as street lighting, property owners view property taxes and public services as closely linked. There is likely to be more willingness to pay where property tax revenue is spent on public services. Thus besides the criticisms, the benefit approach is seen to gain some support.

On the other hand, property rates tax has been seen as terribly unpopular with voters, and as a result, politicians detest relying too heavily on it. Revenue raised in form of property taxes may generate more negative reaction than any other levy (Bahl and Martinez-Vazquez, 2007). There are several reasons for this degree of unpopularity. One is that the tax is levied on (unrealized) accretions to the wealth of an individual or a business, and these accretions do not necessarily correspond to income received. The unpopularity of the property tax is also a bi-product of the judgmental approach to assessment. A proposed increase in the tax rate on a tax base that is determined in uncertain or even mysterious ways is bound to provoke negative reactions. Finally, the tax is unpopular in part because it is so visible. Most income tax payers are subject to withholding, but even so,

may not be able to accurately report their annual payment. Consumption taxes are paid in small increments, and are often obscured in the final price of the merchandise. Most could not even estimate the annual amount of VAT that they may pay. The property tax, on the other hand, is highly visible in that it is usually billed annually or quarterly, and property owners are much more likely to know exactly what they pay (*Ibid*).

Property rates tax is also said to be bad because of its inelasticity. Local government officials desire a tax that exhibits an automatic revenue growth. This protects them from returning regularly to the voters for permission to increase the tax rates every time the demand or cost of public services increases. The property rates tax is not an income-elastic tax. The basic problem is that reassessments occur only on a periodic basis; hence year-to-year growth in revenues is mostly due to the addition to the tax base through construction. When revaluation is too infrequent, say every 5 or 10 years, it leads to large one-time increases in tax liability, and to voter uproar from the shock (*Ibid*, p. 7).

Traditionally, property rates tax has been identified with local government and decentralization for reasons of its visibility and the inability of the tax object to shift location as a result of the imposed tax (Kelly, 2003), *Property Taxation in Indonesia: Challenges from Decentralization*, Lincoln Institute of Land Policy Working Paper). The tax is also considered a suitable local source of revenue due to the linkage between the type of services often provided by local government and the enhancement in property values. Expenditure of property tax revenue on services such as street lighting, road construction and garbage collection results in increased property values within the jurisdiction of that local government.

Property taxation is an attractive and promising option for financing local government operations and for providing local authorities with access to a broad and expanding tax base. Locally raised funds also allow Local Governments more flexibility in decision making, since such funds are not tied to any particular area of spending. Property rates have supported a big part of Local Governments' budgets in Uganda. SEATINI – Uganda & Oxfam (2013) have estimated property rates to accounts for about 32% of the total local revenue of local governments in Uganda.

The Concept of Equality before the Law

Equality before the law, known as legal equality, is the principle under which all people are subject to the same laws of justice (due process). Equality before the law means that in the making of a law every person is to be treated equally. Equal protection of the law means that in applying or enforcing a law already made, there should

be no differentiation except on a rational and justifiable basis (Mark, 2012). However, it is impossible to treat everyone as equal. For this reason equality has come to mean not that every person should be treated in the same manner but that every person who is in an equal situation should be treated equally — that those in like situations should be treated alike (*Ibid*). Where people are treated differently, there must exist a rational and justifiable basis.

Equality before the law and freedom from discrimination is a fundamental right guaranteed by a number of international legal instruments. For example, Article 7 of the Universal Declaration of Human Rights states that all are equal before the law and are entitled without any discrimination to equal protection of the law. Thus, the law and the judges must treat everybody by the same laws regardless of their gender, ethnicity, religion, socio-economic status etc, without privilege. The right is also enshrined in Article 14 (1) of the International Covenant on Civil and Political Rights which states that all persons shall be equal before the courts and tribunals.

At the national level, the 1995 Constitution of the Republic of Uganda under Article 21 provides that all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law. A person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability. Discrimination is defined to mean giving different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.

Equality before the law must ensure and guarantee equal rights. Equal rights simply are what one citizen can do, another citizen can do. For example, if citizen A can open a casino, then the law must guarantee that same right to citizen B to operate a casino if they have equal rights. Any business is treated the same under equality before the law. If one citizen can start a particular business, in a society where there is freedom, any other citizen no matter of race, ethnicity, religion, or class can involve themselves in that business. The principle of equality before the law is especially important for groups that are in the minority, such as indigenous people, or groups that have less political or other power, such as the poor, although its application is not limited to these groups.

Equality in Property Rates Tax in Kampala City

The tax system should be fair in its treatment of different individuals if it is to meet the international human rights standards. The fairness of a tax system is in many cases seen as a simple phenomenon that can be achieved by a

tax structure that differentiates tax burden according to chosen criteria in an economy. There can be varying perceptions about what constitutes a fair tax system. However, the common approach used by economists is to describe fairness of a tax system in terms of horizontal equity and vertical equity.

Horizontal equity means that like taxpayers are taxed alike. Achieving horizontal equity involves a complicated question of defining the meaning of two individuals being identical in all relevant aspects and what equal treatment means. It may be very difficult to identify two individuals identical in all respects so as to achieve horizontal equity. Income is one aspect that provides a tax base operating on the presumption that individuals earning the same income pay the same tax. But if one examines the tax burden of two individuals considered as treated equally, one may find that the tax burden is not the same. For instance where two people earn the same amount but they share different burdens say from relatives, charging the same amount of tax may not produce fair results. In these circumstances, the principle of horizontal equity becomes too difficult to apply practically.

Vertical equity means that taxpayers in different circumstances be taxed differently, in an appropriate way. This is a phenomenon of progressive taxation. Accordingly, individuals with a higher level of economic wellbeing should pay higher taxes than others should do. A problem that emerges from this proposition is determining who actually should pay tax at a higher rate and how much more should the rich pay than others.

The widely used yardstick for determining who should pay at the higher rate is the level of income of each taxpayer. The level of income-yardstick requires that higher income an individual earns is translated as a greater ability to pay and therefore justifying higher taxes. The secondary question that arises is how much more should those individuals with higher incomes pay. A widely accepted view is for the rich to pay a higher fraction of their incomes in taxes, leading to a progressive tax system.

On the face of it, property rates tax system can be said to be fair in two respects. First, it is those with properties to rent out that are liable to pay rates and owner-occupied properties are exempt. This implies that as the income of the person increases, thus acquiring more properties, the higher the rates he/she will be liable to pay and the lower the person's income, the lower or even no rates are payable owing to the fact that he/she has no property. Likewise, the higher the rental value of the property (implying high rental income for the rate payer), the higher the rates he/she pays, and vice versa. To this end, the property rates tax system meets the vertical equity principle. This position may, of course, not always be accurate depending on the nature of expenditure of individuals. A different conclusion may be made where for instance a person, although earning less considers investing in real estate so important than

saving the money and keeping it in the bank; while the other is earning so much but invests less in real estate. Although both earn different income, the former may pay higher rates than the latter notwithstanding that his total income is less. Nevertheless, since we consider income in terms of income from the property, it is arguable that a property rates tax system still meets this principle. The former although earns less from other sources, he earns more from property and should pay more tax than the latter, who earns more from other sources but very less from real property.

Second, property rates tax can be said to meet the horizontal equity principle since it is levied basing on the rental value of the property and therefore, where two people own different properties with the same rental value, they are liable to the same amount. This proposition presupposes that the valuation of the rental value is accurate, otherwise, an inaccurate valuation will assess the two persons the same amount of tax but in fact one realizes less than estimated. This will affect the ability of property rates tax to meet this principle.

The above propositions may, however, be undermined by the exemptions under the Act that can be seen to foster inequality among the rate payers. Section 5 (1) of the Local Governments (Rating) Act exempts the properties specified in the second schedule from liability for rates. The Minister is given powers under the section 5 (2) to amend the second schedule in respect of the exempt properties. Under the second schedule, the properties exempted from rates include: any official residence of the President; any official residence of a traditional or cultural leader within the meaning of Article 246 of the Constitution; any property exclusively used for public worship and as a residence of the religious leader; any property used exclusively as a cemetery or as a crematorium; and any property used exclusively for the purposes of any charitable or educational institution of a public character supported only by endowments or voluntary contributions.

The Act also exempts property laid out and used exclusively for the purpose of outdoor sport or recreation or designated as a public open scheme made under the Town and Country Planning Act and controlled in accordance with the rules and regulations approved by the local government. However, properties used as recreation ground for outdoor sport for which any admission charge is made or for any form of racing, other than for human athletics are not exempt.

The Act further exempts properties belonging to a local council within the meaning of the Local Governments Act and properties owned by any Organisation or Mission entitled to privileges under the Diplomatic Privileges Act to the extent provided in the regulations and orders made under that Act; any Organisation in respect of which Uganda is obliged under any international convention, treaty or similar arrangement to exempt from taxation or similar obliga-

tions, to the extent provided for in the international convention, treaty or arrangement; and any institution with which government has contractual obligation not to levy fees and tax.

Some exemptions under the Act need some examination. The Act exempts any official residence of a traditional or cultural leader within the meaning of Article 246 of the Constitution. The strict construction of this exemption is that it is only the traditional leaders' residence that is exempted. However, some residences, for example, the Lubiri, Palace of the Kabaka in Mengo, Kampala has for a long time refused to pay rates on the basis of this 'exemption,' which legally speaking does not extend to the whole Palace. In light of the recent proposals to tender the Palace to a contractor to be used for commercial purposes, Kampala Capital City Authority (KCCA) is likely to continue to lose money from the property, which is not otherwise exempted from rates.

The Local Government (Rating) (Amendment) Act No. 12 of 2006 provides a further exemption. Under this amendment, a residential building in an urban area where the owner resides in that residential building is exempt from rates (See Regulation 6 (2) providing that a property owner living and residing in his or her own house in an urban area shall not pay property rate on that house; but, a property owner shall pay property rate on any other residential building which he or she owns and rents in an urban area). The rationale for this amendment was to exonerate those staying in their own houses (especially the poor) who were not deriving income from them and therefore unable to pay the rates. This Amendment Act has a number of shortcomings. To start with, many people who own houses in Kampala have the capacity to pay the tax. An example could be taken from property owners in Naguru, Nakasero, Kansanga, Muyenga and Kololo. Secondly, these high-class owner occupied properties continue to demand for services from KCCA and indeed enjoy these services, in the form of garbage collection, road construction and street lighting, which are not paid for.

The amendment also renders the property rates tax system unfair, inequitable and contrary to the Constitution when one considers this example. Mr X who is employed in the Ministry of Defence owns a house in Naguru in which he resides. Although he receives a consolidated salary from the Government, there is a component of housing allowance (say Shs. 300,000). Since Mr X stays in his house, he pays the housing allowance to himself. In effect, he is renting his house to the government at Shs. 300,000 per month. In another example, Mr Y has a residential one room which he rents out at Shs. 100,000. He stays in a rented house in another area at a slightly lower cost. The inequity and unfairness embedded in this exemption lies in the fact that Mr X does not pay property rates because his house is owner occupied and therefore it is exempt while Mr Y pays property rates because he rents out his property. On the basis of this example, the

fairness intended by the amendment is rendered illusory.

The exemption under this amendment was unrealistic and brings about inequality by favouring the rich people who have expensive mansions within town. Similar to other countries, these properties ought to be subjected to rates though at a rate lower than other properties. The argument is that such properties in some parts of Kampala that are quite developed such as Nakasero, Kololo and Muyenga are many and these areas are the ones that receive most of the KCCA services, in terms of roads maintenance and garbage collection. Moreover, these properties are owned by people who are able to pay. The rates, in light of this exemption, are to be paid mainly by people with little money, rendering the tax regressive.

This amendment greatly reduced the property rates tax base. Some divisions such as Lubaga have many residential properties and exempting owner occupied properties affects its property rates tax base and consequently, the amounts collected.

The other issue related to the exemption of owner occupied residential properties is that it is likely to bring about imbalances in the development of areas. The Local Governments (Rating) Act requires KCCA to take back 75% of the rates so collected to the rate payers for provision of various services (The Local Government (Rating) Act, section 37 (2)). The concern is that since the percentage is sent to the rate payers, then how will the owner occupied properties be catered for if they don't pay rates? This is likely to leave them lagging behind in terms of development as compared to the rate payers. The interviews revealed that KCCA offers services to even owner occupied property owners using the money collected from property rates and indeed areas with many owner occupied properties are more developed compared to others. Apart from contravening the express provisions of the Local Governments (Rating) Act, this practice renders property rates tax inequitable because a section of the community is made to service another section without corresponding benefit.

In cases where owner occupied properties are in the same area with properties liable to rates, the situation is likely to produce further unfair results. The services provided from the rates collected like street lighting, garbage collection and roads construction and maintenance are generally of a public nature. There is no way the proprietor of an owner-occupied residential property can be excluded from enjoying these public amenities. In the end, they enjoy what they did not pay for, to the burden and disadvantage of the rate payers. This may be against the principle of fairness in the tax system.

CONCLUSION

The principle of fairness or equity advocates for distri-

bution of tax burden according to the individual's ability to pay in terms of both horizontal and vertical equity. In the context of the property rates tax system, this can be achieved where all taxable properties are valued regularly. The valuation must be fairly accurate to ensure that properties of similar values would be subject to similar tax liability and properties of different values would bear varying tax burden. This article reveals that owners of residential owner-occupied properties are wealthy persons who are capable of paying property rates but exempted. It was noted from the respondents that a number of persons in owner-occupied properties are paid rental allowances and are capable of paying the rates for the houses they occupy. This implies that persons who are in equal situations are not treated equally, contrary the right to equality before the law.

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