More taxes on the horizon:

A look at the proposed property tax in the FCT

By Taiwo Oyedele

If the Bill is passed in its current form, the tax payable on a property used for residential purposes in the FCT will exceed the tax payable in Lagos by more than ten folds. There could also be a bandwagon effect in other states in addition to the secondary tax implications that may arise as a result of the property tax such as PAYE tax on accommodation benefit.

Property owners and tenants in the Federal Capital Territory ("FCT") should brace up for more taxes if the proposed Bill currently under consideration at the National Assembly is anything to go by. The bill titled "**The Federal Capital Territory Property Tax Bill, 2011**" seeks to introduce a property tax payable on all real property situated in designated areas within the FCT. The FCT Authority claims that there is currently no property tax in the FCT hence the proposal.

Real property is defined to include land in use and land covered by water; and building or structure situated thereon including machinery, installations and equipment affixed to a building, a mobile home, a bulk storage tank and any supply pipelines connected therewith, and any wireless pole, pipe, tower, equipment or structures forming part of a television or radio broadcasting transmitter including a cable television system, telephone, electric light or any electric power distribution system.

Certain properties are exempted from the tax including properties owned and occupied by a religious body and used exclusively for religious purposes, real property owned by any person and used as a non-profit making cemetery or burying ground, but where such property is not immediately required for interment of the dead it shall not be exempt. This is to prevent land owners from designating their properties as cemetery just for the purpose of claiming exemption. Other properties exempted include real property designated and used for public purposes including public institution of learning, or for official or residential purposes by diplomats, palaces of recognised traditional rulers, property owned and used for social welfare services by NGOs.

The tax will be administered by the FCT Property Tax Agency to be headed by a Managing Director appointed by the FCT Minister. The Agency will be responsible for tax appraisal, assessment and collection. The Agency is required to appraise all taxable real property at least once in every 5 years. The value at which properties are to be appraised is the **market value** as of January 1st in the year of appraisal. The Agency must revise the appraisal of all real property to reflect the current market value by multiplying the appraised value with an adjustment multiplier which must factor in the rate of inflation and other factors that may affect the value of property in the FCT.

The rate at which tax is payable annually is 0.3% for recreational property, 0.4% for residential property, 0.6% for commercial property and 0.7% for others. It is important to compare the rates proposed for the FCT with other rates in Nigeria and similar countries globally. For the purpose of property tax, properties are assessed based on the physical appearance, aesthetic features and age and the usage and status of occupation. Under the Land Use Charge Act in Lagos State, properties are classified under three broad categories as Commercial, Industrial and Residential. Commercial properties attract a rate of 0.394% of the assessed value, industrial properties at 0.132%. Assessments of residential properties are categorised under three scenarios which attract different rates. A property solely occupied by the owner for residential purpose is charged at a rate of 0.0394%, while a similar property occupied by the property owner and tenant(s) or third parties is charged at a rate of 0.132%. The third scenario/category is an investment property fully occupied by tenants or third parties for revenue generation, charged at a rate of 0.394%.

Under the FCT proposed property tax regime, an assessment must be done within 30 days of appraisal in the name of the beneficial owner of the property even if it belongs to an infant. A demand notice is to be delivered by March 31st in each year or soon thereafter as is practicable for the Agency. The notice may be delivered to the occupier of the real property if the Agency is unable to ascertain the address of the beneficial owner. Where there is no occupier the Assessor can effect delivery by posting the notice on the real property and publishing same in any newspaper circulating nationwide and such posting and publication shall be sufficient delivery of the notice. Any demand notice unpaid after 30 days will attract interest at the rate to be prescribed by regulations issued by the FCT Minister. The tax due together with any interest thereon constitute a lien on the property and has priority over every claim, lien, privilege or encumbrance of any person and does not require registration or filing to preserve its validity of priority. Where taxes are overdue and unpaid the Agency shall not later than 24 months levy a notice that the property is liable to be sold by the Agency. If still unpaid 12 months after (that is, 36 months in total), the Agency is empowered to sell the property within 60 days and apply the proceeds towards the overdue tax, capital gains tax and any balance to the beneficial owner.

Any objection by a taxpayer must be made within 30 days to the Managing Director of the Agency but such persons may be required to pay a deposit of 50% pending the determination of the objection.

There may be some merits to the proposed introduction of property tax in the FCT but the rates must be affordable and the administration must be convenient to make the new regime less painful for businesses and individuals. For instance payment of 50% of the amount stated in the demand notice before appealing to the Managing Director of the Agency should be removed and probably required at the Tax Appeal Tribunal level as currently provided in the relevant legislation. Also, if the Bill is passed in its current form, the tax payable by a property owner for residential purposes will exceed the tax payable in Lagos by more than ten folds. There could also be a bandwagon effect in other states. The impact will even be more considering that the FCT will use market values compared to Lagos state values which are usually less than fair market values.

In addition, the tax should not be considered in isolation but also from the perspective of the secondary tax implications that will arise as a result of the property tax. A good example of this is the personal income tax for employees in respect of accommodation benefit provided by their employers which is taxable under the Personal Income Tax Act based on rateable value, that is, value used for local rates purposes.

Given that inflation is one of the factors that may affect the value of land, it will be necessary to equally consider the impact of inflation on the original cost of acquisition for Capital Gains Tax purposes perhaps through indexation.

The definition of real property should be streamlined to exclude non real property assets otherwise it is an indirect imposition of real property tax on non real property assets. Also the Bill should contain a provision to delete, supersede and replace all other state and local taxes on the ownership of properties within the FCT to avoid double taxation. More importantly as is the case for any other tax, the proposed property tax should be a social contract with specific benefits to taxpayers in the FCT rather than merely to generate revenue for government.

Property tax takes different forms in many countries around the world but generally at affordable rates which are progressive and designed to achieve desired economic development goals. Property tax is usually seen as a tax on the rich but given that it can easily be passed on to the tenants the rich may not ultimately bear the incidence. Although the Bill seeks to impose tax on properties in designated urban areas within the FCT being Asokoro, Central Area, Maitama, Wuse, Garki, Jabi, Jahi, Wuye, Gudu and

Durumi, there should be a threshold to exempt poor people from the tax including pensioners and senior citizens especially those without any regular source of income.

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