

Real Estate Transfer Taxes

MVV182K Property-related Taxation: Issues and Trends
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Introduction

- Real property markets in developing/transition countries
 - Informal v formal land/property markets
 - Land registration/titling issues
 - Insecure tenure
 - Political interference
 - Urbanisation and informal settlements
- Real estate/property transfer taxes
 - Easy tax handler
 - Tax bases
 - Tax rates
 - International trends
 - Policy issues

Informal Markets – Developing/Transition Countries

- Land tenure issues
 - Albania, Croatia, Slovenia, Romania
- Insecure tenure and property taxation
 - Colombia versus Northern Territory, Australia
- Incomplete titling or deeds registration
 - Cameroon, Croatia, Romania and Rwanda
- Rapid urbanisation and large informal settlements
 - Dar es Salaam (Tanzania), Nairobi (Kenya), Rio de Janeiro (Brazil)
- **High transfer taxes**

Formal Markets

- **Australia and Canada**

- Title registration (Torrens system)
- Comprehensive and accurate – government guarantees accuracy
- Sharing of information and data amongst government departments and local authorities
- Information in the public domain

- **South Africa**

- Deeds registry (not 'title')
 - Hybrid Torrens system
- Well-functioning, vibrant capital (and rental) market
- Information in the public domain

Property as a Taxable Object

- Property-related taxes –
 - Income produced (e.g. Ancient China)
 - Ownership or occupation (e.g. property taxes)
 - Acquisition and/or alienation (i.e. transfer)

Property as a Taxable Object

Significance of –

10 May 1529

Property Transfers as Taxable Events

- Property is fixed in location
- Property is highly visible
- Property has an inherent value
- Taxpayers are usually readily identifiable
- Transfers are often “public” and require official input
- **Administrative provisions**
 - **No legal transfer of (property) rights before payment of tax**
(i.e. before tenure rights are acknowledged and protected in terms of law)

Historic Overview

- Property transfer has been a taxable event since ancient times
 - Egypt
 - Rome
 - **Charles V – 10 May 1529**
 - Spain – Alva and the 5% tax (1571)
 - Holland
 - Transfer duty (40th penny – i.e. 2.5%) in 1598
 - Stamp duties in 1624
 - Batavia (Indonesia) - 1623
- Transfer duty is the oldest tax still levied in South Africa
 - Introduced in **January 1686**

Comparative Overview

Taxes on the transfer of real estate

- **Transaction-type taxes**

- Focuses on the underlying *transaction* (e.g. contract of sale)
- Typical in Civil Law-countries with a European legal tradition
- E.g. Belgium, Germany, Luxembourg, Spain
- High tax rates (often above 5%) – e.g. Belgium, Spain
- South Africa: 0% to 10%, Zambia: 10%

- **Stamp duties**

- Focuses on *documents* (e.g. deed of sale/registration)
- Typical in Common Law-countries with an English legal tradition
- E.g. UK, US, Canada, Australia, **India**
- Low tax rates (generally below 2%), but:
 - UK: 0% to 12%
 - Grenada: 10% and St Vincent & The Grenadines: 10%

- **Both stamp duty and transfer tax(es)**

- Some Caribbean countries, Thailand

Registration fees

- Focuses on registration, but constitutes a user charge rather than a tax

Advantages

- Simplicity
- Given a comprehensive registration system, compliance can be enforced with ease
- Easy to administer - thus low administration cost
- 'Low' compliance cost – as it is often collected as part and parcel of the property titling or property registration process

Disadvantages

- May undermine legalisation of (informal) land tenure
- May undermine property tax base, by incentivizing under-declaring of values
- (Vertical) tax competition

Some Policy Issues (1)

- **Tax base**

- Possible “overlap” with other taxes
 - Value-added tax (VAT)
 - Capital wealth taxes (death duties and gift taxes)
 - Capital gains tax (CGT)
- Taxation at more than one government level
- Scope of “acquisition”
- Scope of “property”

- **Taxpayer**

- Seller or buyer or both?
 - Caribbean countries
- Higher rates on acquisition by non-citizens
 - Caribbean, Seychelles, Botswana

Some Policy Issues (2)

- **Taxable value**
 - Sales price or market value?
- **Tax rate**
 - High (e.g. Belgium, France, South Africa)
 - Low (e.g. US, Australia)
- **Nature of the charge**
 - Tax?
 - User charge?

What constitutes 'Property'?

- Land (and improvements) - 'property'
- Limited real rights
 - Usufruct, *usus* (right of limited use), *habitatio* (i.e. right to occupy)
 - Servitudes (e.g. rights of way)
 - Leasehold and quitrent
 - Mineral and mining rights
 - Rights in terms of the Sectional Title/Strata Title laws
- Extension of definition of 'property' to shares in a company or trust owning primarily real estate?

'Acquisition' of Property

- Meaning of 'acquisition'?
- Acquisition of a personal right to claim transfer – i.e. a 'transaction'?
- Acquisition other than by way of transaction

Taxpayer: Person Acquiring Property

- Natural persons
- Persons 'other than natural persons':
 - Companies and close corporations
 - Trustees in respect of a trust
 - Deceased estates
 - Curators and insolvents
 - Foundations
- Partnership
- Agents

Taxable Value

- 'Consideration'
 - Additions
 - Exclusions

and/or

- 'Declared value'
 - The contracting parties provide values

and/or

- 'Market value'
 - Responsibility?
 - Capacity?

Tax Rate Design

- Single flat rate
 - Croatia, Czech Republic, Zambia
- Multiple flat rates – depending on who acquires
 - Citizens vs. non-citizens (e.g. Grenada, Saint Lucia)
 - Natural persons vs. companies (e.g. Namibia)
- Progressive tax rates – with reference to value
 - Possible zero-rating (e.g. South Africa)
- Tax rate trends
 - Abolition – Kosovo, Slovakia, Srpska (B & H)
 - Reductions in tax rate – many Caribbean countries, India
 - Increases in tax rates – South Africa, UK, Zambia

Tax Rates (1)

- **South Africa**

- **From 1 March 2015:**

R0 – R750,000	0%
R750,001 – R1,250,000	3% of the value above R750,000
R1,250,001 – R1,750,000	R15,000 + 6% of the value above R1,250,000
R1,750,001 – R2,250,000	R45,000 + 8% of the value above R1,750,000
R2,250,001 and above	R85,000 + 11% of the value exceeding R2,250,000

- Regular amendments (amounting to tax relief) since 1 March 2002

- **Botswana**

- **5%** of value or purchase price above BWP 200,000 and **30%** on non-citizens acquiring agricultural land

- **Zambia**

- 3.5% (2008), 5% (2010), **10%** (from 2014)

Tax Rates (2)

Namibia

Transfer duty on improved and unimproved land for natural persons can be determined according to the following scale:

– **Unimproved Land**

- Up to N\$ 24,000 at 1%
- Between N\$ 24,000 – N\$ 250,000 at 5%
- Over N\$ 250,000 at 8%

– **Improved land**

- Up to N\$ 60,000 at 1%
- Between N\$ 60,000 – N\$ 250,000 at 5%
- Over N\$D 250,000 at 8%

Tax Rates (3)

Lesotho

- Registration fees, **Stamp Duty**, and **Transfer Duty** are paid at the Registrar of Deeds.

The formula to calculate **Stamp Duty** payable on immovable property is:

Transaction amount x duty payable

Under LSL 7,000 1%

Over LSL 7,000 LSL70 + 3% for value exceeding LSL7,000

The formula to calculate **Transfer Duty** payable on immovable property is:

Transaction amount x duty payable

Under LSL10,000 3%

All other amounts 3% on first LSL10,000 + 4% for value exceeding LSL10,000

Tax Rates (4)

The Gambia

- The purchaser pays **stamp duty** at the **Department of Income Tax**. Details of permission are inserted into the transfer documents. And, as of 2007, all those wishing to pay taxes must possess a tax identification number (TIN) issued by the Ministry of Finance, usually upon a company's registration/incorporation.
- **Stamp Duty will not be accepted unless Capital Gains tax has been paid**. Once these taxes are paid, the purchaser will obtain receipts with proof of payment and the **transfer deed will be stamped**.

Tax Rates (5)

Jamaica

- Speaking in the House of Representatives Tuesday (28 July 2009), Mr. Shaw pointed out that with the new proposed implementation date, **stamp duty and transfer tax** would have been reduced by almost half, since September, 2007.
- "In 2007, a vendor paid 7.5 per cent in transfer tax and 2.75 per cent in stamp duty, for a total cost to the vendor of 10.25 per cent. With these adjustments, at August 1, [2009] the vendor will now pay 4 per cent in transfer tax and 1.5 per cent in stamp duty, for a total reduced cost of 5.5 per cent, down from 10.25 per cent," the Minister explained.
- He added that, in 2007 buyers paid 2.75 per cent, which was half of the 5.5 per cent stamp duty but, as of August 1, they will pay 1.5 per cent stamp duty.
- "These proposed rates will bring Jamaica's stamp duty and transfer tax rates more in line with international standards," Mr. Shaw said.
- "We see examples in **Argentina**, their **stamp duties range from 0.5 per cent to 2.5 per cent and transfer tax is 1.5 per cent**. Barbados has a stamp duty of one per cent, no transfer tax, Belize has a stamp duty of 5 per cent and no transfer tax," he noted.

Tax Rates (6)

Current Property Transfer Taxes in the East Caribbean Currency Union

Country	Transfer Tax/Stamp Duty on Citizens in Percent		Transfer Tax/Stamp Duty on Non-citizens in Percent		Alien Landholding License Fee	Other Taxes on Transfer
	Seller	Buyer	Seller	Buyer	Buyer	
Antigua & Barbuda	7.5 1.0	2.5 1.0	7.5	2.5	5	5.0% land appreciation value tax paid by non-citizen seller
Dominica	2.5	7.5	2.5	7.5	10	EC\$100 transfer fee in Roseau City
Grenada	5		15	10	10	
St. Kitts & Nevis	5.0 to 18.5		5.0 to 18.5		Greater of EC\$750 or 10%	
St. Lucia	2.5 to 5.0	2.0	10.0	2.0	EC\$5,000	
St. Vincent & Grenadines	5	5	5	5	ECD10,000 + 6% (ECD100,000-ECD3 mil) + 4% (above ECD3 mil)	

Tax Rates (7)









Current Property Transfer Taxes in Thailand

Tax	Tax rate(s)	Revenue	Taxpayer
Transfer fee	2% of registered value	Local	Buyer
Stamp duty ¹	0.5% of registered value	Central	Seller
Withholding tax (under income tax)	1% of appraised value or registered sale value (whichever is higher)	Central	Seller
Special business tax	3.3% of appraised value or registered sale value (whichever is higher)	Shared: Central (3%) Local (0.3%)	Seller

Source: Thai Revenue Code.

Note: When special business tax is payable, the taxpayer is exempt from stamp duty.

Tax Rates: Europe

Western Europe	Transfer Tax (%)		CEE & SEE Countries	Transfer Tax (%)	
	Minimum	Maximum		Minimum	Maximum
Austria 	3.5		Bosnia & Herzegovina	5.0	
Belgium	10.0	12.5	Bulgaria	2.0	4.0
Cyprus	3.0	8.0	Croatia	5.0	
Denmark	0.6	1.5	Czech Republic 	3.0	
Finland	4.0		Estonia	0.27	0.4
France	0.7	5.1	Hungary	10.0	
Germany 	3.5	6.0	Kosovo	0.0	
Greece 	3.0		Latvia	2.5	
Ireland 	1.0	2.0	Lithuania	0.2	1.0
Italy 	2.0	9.0	Macedonia	2.0	4.0
Luxembourg	10.0		Moldova	0.2	0.5
Malta	5.0		Montenegro	2.0	
Netherlands 	2.0		Poland	2.0	
Norway	2.5		Romania	1.0	3.0
Portugal	6.5		Russia	18.0	
Spain	6.0	10.0	Serbia	2.5	
Sweden	3.0		Srpska (B&H)	0.0	
Switzerland	0.0	3.3	Slovakia	0.0	
United Kingdom 	0.0	12.0	Slovenia	2.0	

Sources: UN Habitat, *Land and Property Tax-A Policy Guide*, 2011; *World Bank's Doing Business 2014*.

Exemptions

- Persons/entities
- Manner of acquisition
- Important exemptions:
 - Government
 - Succession?
 - Transactions where VAT is payable

Typical Problem Areas

- Nature of 'property'
 - Is it properly defined?
- Separate properties for a lump-sum price
- Property includes other items
 - e.g. goodwill and/or movables
- Valuation of limited real rights and/or bare *dominium*
- 'Indirect acquisitions' - through companies, corporations, or trusts
- Multiplicity of similar taxes – e.g., Caribbean and Thailand

Conclusions on Transfer Taxes

- Nature and status of the transfer tax
- Co-existence with a VAT, capital gains tax (CGT) and property tax?
 - **Ideally transfer taxes should be replaced by CGT**
- Impact on -
 - Overall fiscal policies
 - Property markets (e.g. Caribbean countries)
 - Cost of housing (e.g. Croatia)
 - Credible property values (e.g. Kenya and Thailand)
 - Recurrent property tax base
- **Bahl, R.W. 2004. 'Property Transfer Tax and Stamp Duty'. *ISP Working Paper 04-27*, Andrew Young School of Policy Studies, Georgia State University**