

Inefficient and Unfair: The Case against Ad Valorem Property Taxation in Trinidad and Tobago

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1. INTRODUCTION

Accounts of revenue in the Blue Book 1837-1961, the Central Statistical Office Annual Statistical Digest and the Estimates of Revenue and Expenditures, clearly indicate that the contribution of property taxation to national revenue has been insignificant. Official government reports namely Copes (1963) and Hettiarachchi (1991) confirm this with words as “negligible” and “meagre.”

For decades no other form of taxation has consistently produced so much public angst and tumult as the taxation of property.

In the last 48 years the debate on property taxation was restricted to reform. Repeated failure had a very predictable cycle. At this time and apart from collection of arrears of taxes for the years prior to 2010, property taxation is according to the Ministry of Finance “on hold until further notice.”

We will never have a better time to step back, analyse property taxation and relate it to other taxation and economic and social policies. We must come to a logical, evidence driven conclusion on the place, if any, for property taxation in a modern tax system.

2. THE ECONOMIC CASE FOR PROPERTY TAXATION

Property taxation has been held as a price for local goods and services. As put by Dillinger (1991) “Tastes and preferences vary among individuals and communities, and welfare gains can be realized if communities are in a position to choose the level and mix of services that suit them. Municipal revenues should function not only as means of raising funds, but also as a price for municipal services”

He expanded by saying” It must be a benefit tax; a tax whose incidence corresponds to the distribution of the benefit of the services it finances. This is the primary argument for the property tax.”

Dillinger however had to concede that “The match between incidence of the property tax and the benefit of the services it finances is clearly far from perfect; the statutory burden of the property tax is distributed according to value of property; the benefits of the services are not.”

He concluded that “The economic case for the property tax is persuasive” and that “it is extremely difficult to exploit.”

Property taxation was also held up as a mechanism to encourage development. During the period 1968-1996 Trinidad and Tobago had accepted but not implemented site value as the basis of property taxation. It was claimed that this basis would encourage development. Jamaica had implemented site value taxation since 1957 and once held that view. But after their experience with site value, that view was abandoned.

According to Holland (1969) “It is one thing to fashion a system that will tax unimproved value successfully; it is quite another to accomplish the goal of development. For one thing the former is concerned with establishing and administering the base of the tax; the latter very likely involves the rate of taxation as well. But more than this, as the people I spoke with in Jamaica so frequently emphasized, to place on one tax measure the whole burden of development is both unfair and unwise. For development is the product of numerous factors.” Holland listed these factors as demand for construction, availability of finance, foreign exchange for equipment and furnishings and skills.

3. EFFICIENCY AND FAIRNESS

The inefficiency of property taxation—the high cost of administration and compliance—is well known. Property taxation is set apart from other taxes by not having assessments contemporaneous with every liability. The sheer quantity and heterogeneity of property make the task huge and the cost prohibitive.

According to Harvey (1981) the defect of local property taxes is particularly their lack of buoyancy or rigidity in the face of inflation. Other taxes like income tax and VAT adjust automatically to inflation.

Annual reassessments are necessary to maintain the real value of tax liabilities. Annual field reassessments are too expensive and annual tax increases are too politically controversial. Periodic assessments are a relic of the non-inflationary past. (Dillinger 1991) Annual assessments are also required to maintain relative values between properties.

Dillinger suggested “desk” appraisals by indexing land values and construction costs to achieve cost effective annual assessments. This will fail because costs and values are based on different factors and may move at different rates and even go in different directions. Dillinger conceded that after a few years indexing loses relevance.

Mass appraisal, also suggested by Dillinger, is contrary to the taxpayer’s right to an independent assessment. To avoid large scale objections, underassessment has to be practiced.

The existence of a nexus between ownership and ability to pay an ad valorem tax is an archaic concept. It applied only to the agrarian economies with limited land ownership in previous centuries. Today property ownership is widespread but property is not the only

income-earning asset. The property owning poor are the result of a history of settlement by land grants and ad hoc estate fragmentation. Successive governments ignored hardship in property taxation.

Copes cautioned that land tax does not give effect to the personal circumstances of the tax payer. Harvey addressed hardship and hardship in property taxation saying “local taxes tend to be regressive and inequitable. Not only do poor people tend to spend a high proportion of their income on housing but also the tax levied may be unrelated to ability to pay.”

4. FROM CURVEE TO PROPERTY TAX ACT 2009

Twice every year from 1785 each of Trinidad’s three commissioners of population had to supervise the “clearing and repair of roads distributing the work among the planters according to the number of slaves belonging to each, the quantity of land owned and the frontage on each public road.” (EE Williams 1962) That was curvee- the compulsory contribution of labour and material. It was the earliest imposition in the way of a tax on land owners. It persisted until 1844 when road toll ordinances were enacted.

In 1786 during the French occupation of Tobago a house tax that fell largely to the merchants and artisans was levied to balance a poll tax on slaves that burdened planters. It was 8% of capital value of houses in Scarborough, Plymouth and Georgetown (now Studley Park). This was followed in 1788 by a 6% tax on rents that yielded 10,000 livres or 4% of total tax take of 240,000 livres. (EE Williams 1962)

The Order of the Prince Regent introduced a house tax in Port-of-Spain for the first time in 1815. It was based on the cost of gravelling streets and laying the pavements before each dwelling house at the average cost of \$120. Some houses were sold on default.

Ordinance No. 4 of 1844 introduced annual house rates for Port-of-Spain with effect from 1st January 1845 at the rate of 5% of the annual rent or annual value. Arima and San Fernando followed shortly after. Ordinance No. 9 of 1849 levied taxes on lands and buildings outside the limits of the Municipal areas.

In 1851 Lord Harris used “ward rates” to fund primary education in “ward” schools. This was short lived as he was criticized by established churches for “educating heathens.” The 1905 Belmont Improvement Ordinance no. 38 of 1905 provided for the cost of new bridges and streets in Belmont. The central government contributed half, the Town Commissioners one-quarter and the householders the remainder by way of an Improvement Rate of 2 percent on the Annual Rateable Value of their houses.

Under the provisions of Part V Municipal Corporation Act 1991, Chaguanas and Point Fortin became taxing authorities and the former counties were to follow.

On 31 December 2009, Lands and Building Taxes Act and Part V Municipal Corporation Act 1991 were abolished: the Property Tax Act was passed, assented to but never implemented and is now awaiting repeal.

6 THE COPES ERA 1963-1996.

John Marcus Copes FCIV,FREI was an Australian valuer and UN adviser to not only Trinidad and Tobago but Jamaica and Barbados. In the latter countries his influence was very strong but their results were very different. His *“Report to the Government of Trinidad and Tobago on Land Valuation, Taxation and Rating”* June 1963 remains the most outstanding work done on land valuation and taxation in this country. The Copes Report recommended discontinuance of the existing system and a change to either (i) improved capital value that is the value of the land, buildings and other site improvements or (ii) unimproved site value that is the bare site value or (iii) a modification of both. It found that the interests of Trinidad and Tobago were best served by a system based on site value.

Other recommendations were that tax policy should aim at providing incentive for development and curbing speculation. A “cushioning period” of up to 5 years was advised to relieve the increase in taxation due too the change in system or review of the existing system. A change to site value system should be preceded by a wide scale publicity and education campaign. Consideration of a land tax based area that should be used for the poorest rural holdings and only as an administrative expedience. The tax policy should include a betterment levy or capital gains tax to finance development projects and curb inflationary trends.

FS Hettiarachchi’s 1991 report *“Property Taxation in Trinidad and Tobago”* made the following criticisms of site value taxation: (i) the hypothetical situation may be hard for taxpayers to understand, (ii) the rate imposed on potential value may be more regressive than the existing system and (iii) the potential value is taxed before it is realized.

He recommended “Improved Capital Value” because (i) it is simple in application, (ii) it is an adequate expanding tax base and rational and comprehensible basis for valuation, (iii) it is independent of administrative process and (iv) it is equitable in its incidence and ensures a fair and just distribution of the tax burden.

However site value did not die easily. Land policy put forward in “A new Administration and Distribution Policy for Land” 1992 called for “a substantial land tax to reduce incentive to hold underutilized lands and drive down land price.”

In 1996 a pilot project in mass appraisal was conducted in Point Lisas and Arima by National Economic Research Associates, an American firm, and local valuers. The results were never used to implement reform (Kissoon,2006). It was part of a \$30 million property taxation overhaul programme undertaken by five international firms.

The Copes Era came to an end when Minister of Finance Brian Kuei Tung addressed the 14th General Assembly of the Caribbean Organisation of Tax Administrators (COTA) and said:

“With respect to the real property taxation, the archaic method of annual rental value exists in most countries except for five countries which adapted a system based on market value. You will agree with me when I say that an exercise to evaluate all these tax system will be both time consuming and futile”

The “wind of change” in the basis of property taxation in the Caribbean referred to by E M Raymond (1970) never took effect in this country.

7. THE THREE R’S OF TRINIDAD AND TOBAGO PROPERTY TAXATION- REASSESSMENT, REVOLT AND ROLLBACK

A Revolting Tax

Our property taxation revolts were informal resistance cutting across party allegiances, religious, ethnic and class groupings. They were caused by (i) infrequent reassessments with steep rises in liability, (ii) poor public education and relations and (iii) failure to appreciate and deal with hardship. This is despite the recommendations of Copes, Pierre (1972) for “gradualism”, the Kong Report (1980) for reliefs and exemptions, and suggestions by Kisson for mechanisms such as rebates, exemptions and transitional relief.

The cycle of reassessment, revolt and rollback was repeated five times after 1963.

The First Property Taxation Revolt 1968-1970

The government proceeded with a reassessment on the existing rental basis as an interim measure after accepting the recommendation of the Copes Report that was endorsed by the Fiscal Review Committee to adopt the unimproved site value basis.

During the second reading of the Valuation of Land Bill (May 9, 1969), FC Prevatt, Minister of State in the Ministry of Finance disparaged claims of hardship. Prevatt said “the majority of people did not own land.”

Months later the Prime Minister and Minister of Finance Dr. EE Williams conceded “We are studying ways and means of removing the hardship caused by the increased assessments already issued to the lower income groups and in the meantime we have stopped the revaluation of properties under the existing Ordinance.

I have now decided to extend the deadline for payment of tax this year to March 1970, to give us in the Government some more time to find an acceptable solution.”

The “acceptable solution” came in the 1971 Budget Speech given by FC Prevatt in December 1970.

“Following the undertaking given by the Minister of Finance in his 1970 Budget Speech, Government took the following decisions:

- i) the re-assessment of non-residential buildings and property would continue as provided for in the existing law;
- ii) the assessment of new residential buildings and the reassessment of residential buildings in which major improvements were made during 1969 would be carried out;
- iii) residential buildings in which no improvements were made during 1969 would not be re-assessed and rate payers would pay Lands and Buildings Taxes on the basis of their previously existing assessments. These rate payers who had already paid taxes in 1970 on the basis of any re-assessments made in 1969 and after would receive a credit which would be offset against their future tax liability in three installments;”

The Second Property Taxation Revolt 1972 (Port-of-Spain).

The Commissioner of Valuation gave the following description of the reassessment and revolt:

“During the last seven months Trinidad and Tobago witnessed one of the most vehement protest of all times, against the increases in House Rates in the City of Port-of-Spain. The increases followed a wide scale revision in an attempt to up date the Rateable Values of properties in keeping with current rental values.

This revision resembles the sting in the tail of the Dying Scorpion. On the eve of the repeal of City House Rates laws and its replacement by the new Modified Site Value System, City fathers motivated by the need to raise some more urgently needed funds took the decision to revise the rates.

There must have been well over 8,000 appeals filed. The matter is not yet resolved so far. One cannot help feeling that there must be widespread regret by the City Authorities that the revision was ever attempted. Protests were loudest on the point of the percentage increase as well as the point of the increased income tax liability.” (R A Pierre Sept 1972)

The Third Property Taxation Revolt 1978 and the Notorious Cabinet Minute 3975

Cabinet Minute 3975 gave effect to the 1978 rollback and limited further assessments. Its contents were explained in the letter from the Permanent Secretary, the Ministry of Finance to the Town Clerk, San Fernando in March 1979.

- (i) “All wholly owner occupied properties reassessed with effect from 1st January 1978 will revert to their assessed Annual Rateable Value existing at 31st December 1977”

The intention is to postpone the application of new rates pending the adoption of a uniform method of assessment which will be applicable to all taxpayers. This concession applies to owners of vacant lots.

- (ii) “All rented properties reassessed with effect from 1st January 1978 should be assessed at the rent passing or the Annual Rental Value, whichever is the higher.”

Since the owner of a rented property derives a direct financial return from the rent, he is in fact in a more “advantageous” position to seek a higher rent commensurate with the reassessment.

In the case of a property which is partly owner occupied and partly rented it will be in order to revert to the 1977 assessment the portion which is owner occupied and the portion which is rented to remain at the rent passing.

(iii) “All payments made on the basis of general assessment from 1st January 1978 should be adjusted where necessary and surpluses credited to the payee’s liability for the following year”

In view of the provisions under sec 334(2) of the San Fernando Corporation Ordinance refunds to tax payers should be made where appropriate.

“Assessments will continue to be made in all areas with respect to new and renovated properties”

These assessments should be based on the system in 1978 reassessment of properties.

It would be 31 years before an attempt at implementing another reassessment.

Two retired Commissioners of Valuations Quamina (1988) and Pierre (Daily Express 29 November 1993) urged government to rescind Cabinet Minute 3975; a third, Subran, in a letter to the press described it as “unlawful”.

The Fourth Property Taxation Revolt 2009 (Point Fortin)

Point Fortin residents protested increases in rates. One person said his rates went from \$306 to \$702 and his parents from \$96 to \$291. Deputy Mayor Marlon Richardson explained: “We have reviewed the situation and we have taken into consideration the present economic situation and the realities. The decision was taken last year when things were a bit more fluid and the economy was better. We realize now there is a definite problem and we gave instructions to our administration to have it reviewed. So what we are going to do is to freeze the situation and those who have already paid, we are looking to have that credited to their next year’s account.”(Daily Express 16 June 2009).

This rollback may have been influenced by the promise of the Prime Minister to have local government elections shortly after the new rates took effect.

The Fifth Property Taxation Revolt 2009-2010

Unprecedented resources were employed in this cycle but the result was worse than previous. There were briefings, meetings, 225,000 glossy brochures, radio and television information, public forum, large newspaper notices, a website and a hot line. Money and resources were not the problem.

The centerpiece was the Property Tax Act. The system was to be computerized with the taxpayer able to see his liability and that of others online. Payment could be by

debit/credit cards or electronic transfer or at a variety of service and retail outlets. Everything would be up and running on January 1 2010.

There was clear lack of appreciation of the huge task at hand. To that add a backdrop of accusations of government corruption, squandermania, scandals and open infighting between senior government ministers it was going to be difficult. What could have gone wrong went wrong.

The taxpayer was confused by the inaccurate, illogical or contradictory statements put out by the government; they were also angered by “talking down” style and perceived insults from those representing the government.

The contradictions were on (i) provision for forfeiture and sale of property for nonpayment, (ii) anticipated revenue in the first year of the reformed tax and (iii) the progress of the assessment work. Ministers reference of critics of the new measures as being “ignorant” and of persons “living of the fat of the land” proved to be major distractions.

Mrs. Tesheira led the campaign but did not display a fundamental grasp of property taxation. She began by speaking of adopting the rental value basis when it had been in use continually for 166 years. Then she said it was the “annual capital value”. Further she told her constituents that “It is not a tax on you but a tax on your property”. Retired Commissioner of Valuations Kenneth Subran told her at a Sunday public forum that she was “badly advised”.

At first, Mrs. Tesheira was adamant that there will be no exemptions to the tax. Deferrals for senior citizens on fixed incomes and persons on public assistance were allowed. Up to April 7 2010, the day Parliament was prorogued for snap general elections, implementation of the tax measures was stalled as she was still pondering the question of hardship relief.

At the opening of the new Parliament term in January 2010, President Maxwell Richards commented that “the lack of understanding may engender fear that the tax will be a source of hardship” and demanded promised changes be made.

After the 2010 elections, new PNM opposition leader Keith Rowley said that the former government’s campaign had been “badly handled.” Another PNM leader, THA chief secretary Orville London put it that the public relations in the campaign “left a lot to be desired”.

8. A PLACE FOR PROPERTY TAXATION?

There is no economic case for property taxation. The inefficiency and unfairness of property taxation are beyond debate.

There is no place for property taxation in Trinidad and Tobago where more modern and efficient Income Tax and VAT are well established and productive. There is no source of revenue that property taxation can tap into that income tax and VAT cannot.

We should abandon property taxation and focus our energies on creating a tax system that will serve us well in the twenty-first century.

Ray Pierre, 15th April 2010

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