

**Property Taxation in Francophone Central Africa:
Case Study of the Republic of Congo**

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Abstract

The Lincoln Institute of Land Policy and the African Tax Institute (ATI), located at the University of Pretoria, South Africa through a joint partnership are awarding Research Fellowships to African Scholars to undertake research on property related taxation in all the 54 African countries. The goal is to collect relevant data regarding all forms of property taxation, property tax systems both as legislated and practiced, and their importance as sources of national and or municipal revenue. The project issues reports on the present status and future prospects of property-related taxes with a primary focus on land and building taxes and real property transfer taxes. Each report aims to provide concise, uniform and comparable information on property taxes within a specific country, considering the tax system as it is both legislated and practiced. This paper provides a detailed review of property taxation in the Republic of Congo.

Table of Contents

Introduction	1
Background Information	1
Government Structure	1
Land Issues and the Property Market	3
Mechanisms for Acquiring Land	3
Land Use Created	4
Land System	7
Transfer of Property Ownership and Creation of Property Rights	14
Registrar	16
Land Registration Fees	17
Sundry Provisions	18
Taxes	20
Principle Taxes	20
Features of the Tax System	22
Methods of Tax Payment	23
Means of Collecting Taxes	23
Duties on Fixes Property	25
Property Sale or Transfer Deeds	25
Duties on Land Registry and Surveying Work	25
Minimum Duties Collected on Land Registry and Surveying Work	25
Fees on Land Registration	25
Minimum Proportionate Fees Collected on Land Registration	26
Property Tax	26
Conclusion	27

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Introduction

Background Information

The Republic of the Congo is a country in central Africa bordering on Gabon, Cameroon, the Central African Republic and the Democratic Republic of the Congo from which it is separated by the River Congo and Cabinda (a province of Angola). The Congo stretches for 1,300 km from north to south, and from the Atlantic Ocean to the border with the Central African Republic, also along the River Congo. Resources (water, forests and minerals) are plentiful but not well-developed because of the small population and poor infrastructure.

The Congo is sometimes called Congo-Brazzaville to avoid confusion with the Democratic Republic of the Congo (formerly Zaire), also sometimes referred to as Congo-Kinshasa. The Congo was also known under the name of the People's Republic of the Congo (1969-1992).

Since its independence in 1960, the Congo has seen its history dotted with a number of conflicts and in particular between 1958 and 1979 it has experienced turbulent times with three *coups d'état* and the assassination of one of its presidents. In 1968 a military regime came to power and subsequently installed a Marxist-Leninist regime. The National Sovereignty Conference that took place between 25 February and 10 June 1991 re-established democracy in the country, giving rise to free and transparent elections. However, between 1993 and 1999 the country was yet again ravished by three civil wars.

A process of political liberalisation occurred in November and December 1999 (the cease-fire agreement made provision for the re-establishment of political parties), and a new Constitution was adopted in January 2002, followed by presidential, parliamentary, local and senatorial elections. Thanks to these elections, a climate of reconciliation and dialogue was established, and these saw opposition parties taking their seats in parliament. After the parliamentary elections of 2007, the Presidential Majority obtained 125 seats out of a possible 137, giving it a comfortable parliamentary majority.

In March 2003, the signing of a peace agreement between the regime in power and almost all of the remaining rebel organisations has consolidated this progress. This agreement allowed the government to launch a programme for demobilising the former protagonists and reinforcing democratic institutions. The Presidential appointment of Frédéric Bintsamou (also known as Pasteur Ntumi) on May 21, 2007, President of the C.N.R. (National Council of Republicans), to the post of Executive Director for the promotion of the values of peace and reparations for the aftermath of war should bring to an end any acts of violence from this last bastion of the rebellion.

Government Structure

The Republic of the Congo's government institutions are:

- The Presidency of the Republic;
- The Senate;
- The National Assembly;
- The Government;
- The High Court of Justice;
- The Constitutional Council;
- The National Commission for Human Rights;
- The Higher Council for the Freedom of Communication;
- The Economic and Social Council.

The Congo is divided into 12 administrative areas (*départements*) which are:

- Bouenza 12,260 km², principal town Madingou;
- Cuvette 74,850 km², principal town Owando;
- Cuvette-Ouest 27,200 km², principal town Ewo;
- Kouilou 13,650 km², principal town Loango;
- Lékoumou 20,950 km², principal town Sibiti;
- Likouala 66,044 km², principal town Impfondo;
- Niari 25,925 km², principal town Dolisie;
- Plateaux 38,400 km², principal town Djambala;
- Pool 33,955 km², principal town Kinkala;
- Sangha 55,795 km², principal town Ouesso;
- Brazzaville;
- Pointe-Noire, 510 km from Brazzaville.

And the urban districts (*communes urbaines*) are:

- Dolisie, 110 km from Pointe-Noire;
- Nkayi, 70 km from Dolisie;
- Mossendjo;
- Ouesso;
- Owando.

These districts are themselves divided into 86 smaller administrative areas (*sous-préfectures*): Brazzaville, the capital, comprises 7 districts (*communes*) which are :

- Makélékélé;
- Bacongo;
- Poto-Poto;
- Mougali;
- Ouenzé;
- Talangai;
- Mfilou.

The will to decentralise has been long established in the Congo. The Constitution adopted on June 24, 1973, under the presidency of Marion Nguabi, had already attempted to decentralise decision-making bodies and public finances. Some years later, in July 1979, a new Constitution was adopted which, reflecting the concerns of President Sassou's government, pursued a decentralisation policy that favoured provinces (*départements*) and communes.

Act 17/95 of 14 September 1995 set up the framework for decentralisation (but this was suspended). The most recent legal text establishing decentralisation is article 175 of the Constitution of the Congo. The powers and resources of the decentralised bodies, (départements and communes) are determined under a single Act. It is also specified under this same Constitution that any charging of items that are the responsibility of the state to the budgets of decentralised corporate bodies is forbidden. Recognised as crucial as an impetus for local development, decentralisation in the Congo has a huge problem, which is that of local authorities being able to exercise their powers. This ability in fact depends on the financial resources they have available and the laws on decentralisation have almost nothing to say about financial devolvement. Rather, they are concerned with the devolvement of administration.

For a country in which 70% of public income is spent on public debt, as Jean Christophe Boungou Bazika points out in his article on "the strategy for reducing poverty" (2004), the much awaited regional drive for development in the Congo is in danger of never happening as decentralised bodies are always financially dependent on central government.

Land Issues and the Property Market

To understand the Congo's problems with land, the mechanisms used by the different players involved and those responsible for managing the urban land sector must be understood. An understanding of all of these mechanisms will illuminate the issues the town has, especially as far as land is concerned.

Mechanisms for Acquiring Land

Since colonisation, two countervailing legal systems have governed land rights in the Congo. The law of custom and practice and French civil law. Their areas of application were not supposed to cut across each other, but the development of socio-economic and political factors have complicated the situation. For example, the occupation of lands at Pointe-Noire is a direct consequence of the duality of these two judicial systems.

Congolese law of custom and practice

According to Congolese customary law, ownership of the land is collective. Land is the property of the community. However, the concept of land within this system is a narrow one; it does not apply to those sites that are appropriate for settlement or agricultural or pastoral use.

The enjoyment of the land possessed is individual. Any person may use it as he wishes, but he cannot pass it on to another, nor despoil it. Only those plots of land that have been developed can be leased out without title. To preserve this enjoyment, they must be developed and maintained. The question of private ownership therefore does not arise in the same way as in the west, or at any rate as it does under French Napoleonic law.

French civil law

The civil code favours private ownership. The passing on of property by inheritance and the possibility of transferring it to a third party are fundamental.

Terms such as “land ownership” or “land title” are concepts that have been imported into the Congo. Colonists, because they were in the minority, had no interest in stirring up opposition among the natives by despoiling them of their property, especially as large swampy areas remained open to any one wishing to occupy them. It is here that colonists, using their technological knowledge, settled with their regulations on land rights. This is how the two legal systems gave rise to two parallel types of settlement, each with its own land laws. In the township, there were the laws of custom and practice, in the European towns, the code based on French law.

In the Congo, the settlement of certain towns, (Pointe-Noire for example), bears the hallmark of both legal systems. Indeed, the town reflects both systems, colonial and native.

The colonist created his town on a marshy, difficult site to which no-one laid claim. He had no trouble in getting ownership granted and therefore avoided conflict, particularly as he claimed to have come with friendly intentions.

The new town was born. The colonist planned it without regard for the site, which in the event concerned him little. The swamps were filled in, and the topography of the whole western area was changed beyond recognition.

In the east, change was restricted to zoning according to the social dynamics in play. Land controls and management were non-existent in the African village, so these came under customary law; after 1960, the system was extended with a hint of democracy. In particular, there was a return of customary landowners who, because of the position they occupied, were the only players involved in the management of the urban environment.

The city centre escaped from the excesses of customary landowners, because colonial law remained in force in these areas, especially because of the swampy nature of the terrain and its social environment.

The Land Use Created

Up to 1983, the two land systems arising from these two legal systems appeared to co-exist: the most ancient customary laws having the characteristics underlined above, and the official code (a euphemism to mean the French code). During the colonial period from 1899, the administrative authorities introduced the civil code, and with it, the concept of private ownership in the Western sense of the word. This gave rise to the problem of succession. Another innovative feature was the appearance of written documents that allowed rights to be proved.

These two factors gave the colonial administration ownership of other lands not yet occupied. It used the duality of the two codes to its advantage to dispossess the native inhabitants: it adhered to the code of custom and practice, but constructed buildings that were subject to the civil code. Up to 1937 it remained low-key, but with the publication of laws on permanent buildings and the laws on sanitation, which, supplemented by an amendment to the land laws in the colonies in 1938, the administration used to set up businesses using long-lasting building techniques which were directly opposed to the logic of natives whose buildings or roads were made from perishable materials. Thus, in accordance with the law of custom and practice,

colonisers ensured that they were able to perpetuate their presence, and thus their ownership of the lands concerned, by the construction of permanent buildings. Aware of this, colonisers sought out unoccupied lands that had not been developed and were difficult to farm and/or were swampy in character, in order to establish their land rights.

Having occupied the land, the colony introduced several modifications to the land systems obtaining in the colonies, while at the same time recognising certain forms of customary law (so as to avoid conflict).

As far as Pointe-Noire (the second largest town after Brazzaville) was concerned, it was the codes of 1920 preceding the foundation of the town, the codes of 1930, 1949 and 1958 that tended to restrict the influence of customary law by successively nibbling away at it. Although, in 1983 the Congolese law on land ownership no longer recognised customary law, land use continued to be governed by applying both laws. Right up to 1992, customary law was still recognised in practice. The co-existence of the laws had the advantage of allowing a very large number of inhabitants of the city to have easy access to private ownership in the Western sense of the term. Under this system, that was more or less a democratic one, the city was able to meet its housing needs.

The costs of acquiring land ownership were very low: 625 to 875 C.F.A. Francs per square metre between 1982 and 1985 with an easy payment system for purchaser and without planning permission. In 2006-2007, the price of a square metre varied between 1,200 and 3,000 C.F.A Francs. The minimum average wage was around 25,000 C.F.A, Francs.

On the downside, the unrestricted spread of the city must be considered, together with the absence of facilities to accompany this development. Furthermore, the city authorities have no oversight or control over land matters. Partitioning the land is carried out using blocks of equal area and transfers are difficult.

Another no less significant additional problem is that of laying on services to newly developed land, with the danger of the emergence of ecological and health problems. To understand this, the method by which land is allocated needs to be analysed. Both legal systems are still relevant: custom and practice and the official legal system, but in addition to these there are two other methods, a method that is dubbed as illegal as far as the other two legal systems quoted above are concerned, and that of economic traders who avail themselves of the socio-economic and political activities of the private sector and the state.

Land-owning customary chiefs, for financial and other reasons, in deciding to sell on their own account a part or all of the lands that they assume to be in their possession, avail themselves of the services of some of the officials at the land registry to partition the land. Often, the town hall services act as private project managers independently of the town hall. These officials generally partition the land as if it were a chessboard, with plots 20 by 20 metres or 20 by 25 metres, with roads 6 to 8 m wide.

For reasons of profitability, space for public facilities is often reduced to their simplest form; in general, it is recorded that such land has been retained for future profit that will be realised when the district has been almost fully developed. When it is sold off,

potential purchasers have to pay firstly the landowner, then on a subsequent occasion an equal amount to the town hall to obtain the bill of sale.

Once the bill of sale has been obtained, purchasers then go to the Municipal Land Office that issues an occupancy licence that is vital for obtaining planning permission. Thus, the town hall and the authorities are responsible for initiating and approving of the spread of the city.

Indeed, this practice, though not written down but extremely effective, comprises a skilful and ambiguous mixture of custom and practice (adherence to the principles of collective ownership) and the official code (respect for private ownership) according to how the representatives of the different bodies arrange matters for the purposes of expediency at any given moment. In consequence, the purchaser must validate his bill of sale at a customary court by producing an occupancy licence and planning permission obtained from the official authorities.

According to the observations of Congolese experts, the local authority allocates plots of land according to the following criteria:

1. firstly, residents who do not have a plot of land;
2. granting land to inhabitants who can pay;
3. the local authority places weight on the social status of the head of the family;
4. grants are made in the order of receipt of applications.

According to these Congolese observers, this order of allocation has never been adhered to and arbitrariness alone has been the dominant factor. The town hall demands a payment of 2/3 of the transfer price before possession of the land is taken. The local authority asks for contribution costs toward the provision of infrastructure (which is never put into place).

After acquiring the land, it must be developed within a maximum period of three years otherwise the plots that have not been developed revert to the land authority. Thus, one must be able to build on the site in less than 3 years.

Some Congolese experts assert that the official law has caused a whole sector of the population to be excluded from the legal cycle of urban development (for fear that the land will revert to the land authorities) and caused customary law to be reinforced. This means that other districts have also been affected by the application of customary laws to a greater or lesser degree. Indeed, either the town hall paid back a sum to these customary owners, or purchasers paid a certain sum to the customary owners with the purchase sum being determined by the town hall.

The third method in particular affects poor quality lands, especially swampland or land difficult to develop. As far as customary law is concerned, these are assumed to belong to no one, as they have not been developed; and, in the eyes of the official law, there are no grounds for opposing an occupancy permit.

This category of occupation particularly affects a few districts within the city of Pointe-Noire, districts such as Kilometre 4 (the oldest one dating from the 1950s), Planche (the second oldest), Dibodo, Tchinouka, Culotte, Mouyondzi. This form of

occupation makes no provision for services to be laid on, and is therefore is practically impossible to legislate for. But it also affects lands abandoned because they are too liable to flooding and those occupying them for the first time therefore resort to customary law.

The city's businessmen, whether in the private or public sector, develop the city without adhering to the laws or regulations in force. Using influence, intimidation or bribes, they obtain exemptions from town planning and construction regulations, and even the civil code.

This largely affects the city centre area. Here, for reasons linked to the cultural context (and this despite the country's independence) the feeling persists that these areas belong to the Europeans, and by extension to the well-off Congolese. The political context and the non-democratic practices of the local authority only reinforce this state of affairs.

This area of the city is becoming more densely developed because of a sort of total freedom granted to the purchaser of a plot of land. This can be likened to privates Z.A.L.s (development zones) that escape from all possible regulations, if indeed there ever were any laws. Market companies put up buildings for their employees, especially housing for Europeans; the Congolese are admitted if they are at managerial level. A mixture of social classes is only rarely found in this type of development.

Companies put up buildings without regard for consistency in town planning and perpetuate a colonial style of development. These development blocks form a patchwork with little or no consistency, and pose serious communication and transport problems. This form of development leaves the uniformed visitor with the impression of a city that is unfinished and without a distinct centre, or of a village that has grown too quickly.

To these four methods of developing the environment may be added the activities of public departments and bodies supporting urban development such as those providing public facilities, the management of energy, water and so on. In every case, the same urban fabric pervades the whole city.

There has been no attempt to conceive the city in its entirety. Pointe-Noire, for example, is made up of two adjacent cities that are completely separate, whose only point of commonality is its monotonous chessboard pattern. Congolese experts believe that these two cities will be forced to come together over future issues on land and urban development.

The Land System

Registration

In the Congo, property and rights *in rem* to property belonging to Congolese or foreign nationals or corporate bodies are subject to the provisions of the Land Act, No. 17-2000 of 20 December 2000.

The Civil Code regulations on the distinction between movable and immovable property and on the succession of rights to property are applied throughout the Republic of the Congo in so far as they are not in opposition to the Land Act.

The same law specifies in article 3, that registering a property consists in establishing a land title and having this recorded in the land ownership registry. The purpose of this registration is to place the property within the land ownership system so that it cannot subsequently be excluded from it.

Registration is therefore compulsory. It is carried out within three months of the award of a permit to occupy the land (an occupancy permit or an order awarding the land). When the above-mentioned three-month period has expired, and after a formal warning notice has been issued but remained unanswered, the land registrar of the land concerned may, after consultations with the other departments involved in the registration procedure, automatically register the property that is the subject of the occupancy title, with the titles being paid for by the owner of the property to be registered. The period within which the automatic registration procedure must be implemented cannot be less than six months from the date that the occupancy licence was drawn up.

According to article 11 of the said law, the plots of land and the buildings, development or investments are alone liable for registration. Developments and/or additional investments made on registered properties must be subject to a declaration at the land and property registries. Registration nullifies and removes all previous rights not recorded in the land registry.

A land title is final and unassailable, except under the circumstance described under articles 15 and 32 of the Land Act. In Congolese courts of law, it forms the only departure point for all property rights and easements existing over the property, development or investment, at the point in time when it was registered, to the exclusion of any other unrecorded rights.

No statute of limitations can cause any claim over a registered property against a registered owner to be invoked, nor lead to the extinguishment of any property rights recorded on a land title. And individuals who are wronged as the result of registration cannot bring an action *in rem* but only in the event of fraud by bringing a personal action for damages against its perpetrator.

The Registration Procedure

Under article 16, the only parties that can request registration are:

- the owner;
- the co-owner when he meets the conditions required to exercise this right;
- beneficiaries of the right to usufruct, or the acquisition of a long lease;
- a mortgagee not paid by the due date, eight days after a summons has been issued and gone unanswered;
- the owners of a right of easement arising from custom and practice, settlement or mortgage with the consent of the owner or co-owners;
- the land or mortgage registrar when the periods specified (under articles 10 and 107 of the Land Act) expire;
- a legally authorised representative.

Unless there is an agreement to the contrary, the costs of registration are borne by the beneficiary. Any applicant for registration shall give the mortgage or land registrar a statement that includes the following, and shall receive a receipt for this:

- a registration application signed by him or his agent and the deed of occupancy or any other document replacing this. In the event that the applicant cannot sign, he shall give his fingerprint;
- a claim order detailing, if the applicant is an individual, his name, forename, nickname, address and marital status, and for the corporate body, its company name or trade name, form, company office, the date of its establishment and its constitution ;
- a description of the property with a statement of its market or rental value, an indication of its location (region, district, town or village), and its area, capacity, the street and house number, the name under which it will be registered, its characteristics and the buildings and plantations it might contain ;
- details of the property rights and leases established for more than three years that relate to the property, and the identity of those to whom they are assigned.

The applicant shall also file any contracts, original documents or private deeds. The order shall always be made out in French. If necessary, the Registrar shall send the documents to an accredited state translator (the Ministry of Foreign Affairs). A translator shall not communicate documents or translations to a third party. These documents must go directly to the Registrar.

Third-party holders of the above documents are obliged to file them with the Registrar, who will issue a receipt for them without charge, within eight days after they have received a summons to do so by the registration applicant; failing this they are liable for damages.

The Registrar shall give the person filing the application copies of the entry or the documents filed by third parties. If the need arises, copying costs shall be met by the person requesting them, unless he makes a claim against the registration applicant. And he (the Registrar) shall send the individual orders to the land registry and survey departments or to an approved surveyor's office for marking out the claim.

In the case of routine marking, registration orders are made on site in conjunction with the land registry and survey departments. The land registry and survey department or the approved surveyor shall establish by common consent with the mortgage or land registry, the date on which marking out operations will be carried out.

The marking out operations shall be carried out by an accredited surveyor in the presence of the applicant and the Registrar or their representatives. The surveyor shall summon the applicant to be present by letter at least ten days before the date set for marking out the claim. Marking out shall be completed on the date agreed. The surveyor shall contact the local authority, and shall interview the applicant's neighbours. The latter shall indicate the boundaries of the property to be registered.

The surveyor shall set the markers, both to mark out the perimeter indicated by the applicant and to determine any areas included within the perimeter to which third parties may object, and he draws up a plan showing the boundary posts. In the event that any claims emerge during these marking out operations, this plan is regarded then as provisional. A new date fixed for the marking out process is publicised at least ten days beforehand and a report records the diligence exercised in carrying this out. It is signed by the surveyor, the Registrar, and the appearing and intervening parties.

The report drawn up by the surveyor shall highlight:

- the dates, month and year of the operation;
- the diligence exercised to ensure publicity and to invite those involved;
- the names, forenames, position and addresses of those present;
- the different stages in the operation and the disclosures of those taking part;
- the findings of the enquiry, the topographical features (relief, pits, tracks, footpaths, cultivated land with the names of the owners if there are any etc);
- the setting out of the markers, their number and type;
- documentation produced by the parties during the marking out process;
- any objections raised; these must be recorded by the Registrar in the objections ledger.

If the applicant is not present during marking out and there is no one to represent him, the marking out operation shall not take place and the report will record this absence.

The land registry and surveyor's department or the approved firm of surveyors must send to the Registrar for Mortgages and Landed Property four copies of the report on the marking out of the land to which shall be appended four plans of the boundaries. All boundary plans must be duly recorded and certified by the land registry department.

The Registrar for Mortgages and Landed Property, once he has received the registration order, the report and the boundary plan, shall insert a notice in the Official Gazette or a newspaper publishing legal notices. Publication shall also be made by means of notices displayed at the town hall and at the offices closest to the location of the property and at the Government Tax Department.

Objections to the registration and complaints against the boundary marking may be received by the Registrar for Mortgages and Landed Property for a period of two months from the day of publication; once this period has elapsed, further objections cannot be accepted. Objections, which must be by letter, shall be recorded in a ledger and numbered and initialled by the President of the appropriate Court.

On the expiry of the two month period prescribed under article 26 of the Act, and having ensured that all of the requirements to publicise the procedure have been met, the Registrar shall draw up a certificate of objection or non-objection, as appropriate, and shall send the registration application file to the President of the Court nearest to the location of the property.

If there is no opposition, the President of the Court shall examine the application to see whether it is in order and check that all the formalities required by this Act have been

met. He shall specify the nature and scope of the various property rights that attach to the property and shall make out a registration order.

If there are any objections or disputes, the registration application shall be brought before the court where the property is located. The Court shall decide upon the merits of the case in common form and shall rule on allowing all or part of the registration, order a record of the property to be made that it has recognised and shall have the boundary markings and the plan checked, if appropriate. The file sent by the Registrar shall comprise the following documents:

- the applicant's handwritten registration application sent to the Registrar for Mortgages and Landed Property;
- a certified copy of the original of the title to the occupancy of the property;
- a report on the valuation or value of the property;
- the plan and report on marking the boundaries;
- the registration order;
- notice to enclose the land;
- details of publication in the Official Gazette or a newspaper publishing legal notices;
- the certificate of objection or non-objection, whichever is appropriate;
- all of the documents which record the actual or possible rights attaching to the property.

Decisions on registration are not subject to appeal. However, they can be the subject of an appeal before the Supreme Court. The Registrar shall carry out registration on the basis of the order made by the President of the Court. Registration is only carried out after the boundary marking and plan have been corrected, if necessary. At the same time that he completes the registration, the Registrar shall record the actual rights existing over the property, development or investment, according to the court ruling.

The Registrar shall send the President of the competent Court the registration order and the documents and certificates that were filed to support it. During the registration procedure, the President of the Court shall ensure no property rights relating to those who are legally incompetent or absent from the Congo are breached, and, with this in mind, he will make all the checks and enquiries that are necessary. In this case, the powers bestowed upon him are discretionary.

The President of the Court may, at the request of one of those persons named under article 36 of the Act, extend the time period (article 26) so as to raise objection on behalf of those who are legally incompetent or absent at the time of registration. Notice of this is sent to the Registrar for Mortgages and Landed Property responsible for receiving objections.

Within the same time period, guardians, legal representatives, parents, the Chief Prosecutor, the Administrator of estates and vacant property are allowed to object on behalf of those legally incompetent or absent to the judicial authorities.

The land title is entered by the Registrar for Mortgages and Landed Property in a register in which he records the details of the owner, the property's land registry information, any development, and existing property rights and easements that are

attached to it. The report and the boundary plan are attached to it. Each land title bears a serial number. Land titles are copied in the form of a record booklet and issued to the applicant by the Registrar for Mortgages and Landed Property.

When a title is drawn up on behalf of a minor or any other legally incompetent person, the minor's age or the nature of his incompetence must be recorded on the title deed. When this period of incompetence no longer exists, when the minor has come of age or the incompetent person has become legally competent, a correction shall be made to the entries recorded on the title deed. The owner, but not third parties, is entitled to a certified copy of the land title. This copy is registered and the Registrar for Mortgages and Landed Property shall certify its authenticity by signing it and stamping it with the Registry stamp.

When several persons are co-owners of a property, development or investment, original copies of the land title are issued to each co-owner. In the event that the copy of a land title is lost or destroyed, the Registrar can only issue a new one following a judgement made in the competent court. This judgement must specify that the first copy is null and void, and must be returned to the Registrar if it is rediscovered. An exception to this is properties belonging to the state or other bodies governed by public law for which the issue of new copies is subject to permission being granted by the Minister of Finance.

When the Registrar issues a second copy of a land title, a note of this is made in the land registry. When the Registrar for Mortgages and Landed Property draws up a new land title, the previous one is cancelled. He shall make a note of the cancellation and stamp the Registration stamp on all the pages. He shall cancel the copy in the same way and store it in the records.

When a property, development or an investment is divided up after partition, each of the plots are marked out by an accredited surveyor who shall record this on an authenticated copy of the plan. A separate land title and map shall be drawn up for each of the divisions of the property, development or investment. Nevertheless, in the case of partial transfers, it is not necessary to create a new title for the part of the property that is not being sold on and remains in the possession of the owner. The title that has already been issued and its attendant plan must be retained after the appropriate notes have been entered on them.

The detached portion of a property that is already registered may, instead of being the subject of a new separate land title, be attached to the title and plan of another adjacent property or one with which it is incorporated that has already been registered and belongs to the same owner.

Different contiguous, adjacent or neighbouring properties that form part of the same block which are the subject of separate titles but belong to the same owner may be consolidated under a single title and plan. This also applies to plots abstracted at the same time from different neighbouring properties which can be reconstituted on the map and title of another registered property belonging to the same owner if they are adjacent and form together a block.

The court may automatically subject the sale to prior registration if the land title has not been produced before sale by tender. Registration prior to bidding may be required in cases:

- of distraint, by the distraining creditor;
- where the property of those legally incompetent is concerned, by the guardian or surrogate guardian, with the permission of the family counsel.

Registration costs are paid by the applicant: the sum is included in the expenses paid by the successful bidder, over and above the capital price.

In matters of distraint, registration orders are established in the name of the debtor distrained by the distraining creditor or his representative who shall attach a certified true copy of the distraining order. He shall also attach all property titles, contracts, public or private deeds and any other documents that illuminate the existing rights on the property and which he has in his possession. Filing these documents has the effect of mobilising its benefits in accordance with the provisions of the Code on civil procedure. When property held *indivisum* is auctioned by court order, or when that belonging to legally incompetent persons is sold, the registration order must be filed in accordance with articles 16 and 17 of the Land Act.

After the period fixed for the objection procedure has expired and the final plan has been drawn up, the distrainer shall file his bidding papers at the court office and the procedure for the distraint of property shall continue until the auction.

The auction can only take place after a final judgement has been made on registration. If the judgement modifies the standing or legal status of the property as defined in the tender documentation, the distrainer must publish a corrigendum before auction.

Any land title established by court decision ordering registration remains in the hands of the Registrar of Mortgages and Landed Property until the property can properly be transferred in the name of the successful bidder. The latter shall bear the costs of registering the change of name on the land title. Nevertheless, when registration has been made at the order of a distrainer, the title established in the name of the distrainee may be issued to the latter if he is in possession of a contractual or legal document releasing him from the distraint against him.

The successful bidder may give priority to the registration of the property over carrying out the conditions of the tender specification. If he wishes to take advantage of this formality, he must, within fifteen days of the auction, pay the cost of it to the Treasury and pay the usual costs and prosecution costs within the following fortnight. He must forward to the Registrar of Mortgages and Landed Property the declaration specified under article 17 of the Land Act accompanied by the award decision. He shall also pay the Mortgage Registry for registration costs. When the standing and legal status of the property established by registration matches the conditions of the tendering specification, the price is paid after the court's decision ordering registration. If it is established that the standing or legal status of the property are not as described in the tendering specification, the successful bidder may ask for a price reduction, notwithstanding any clause to the contrary in the tendering specification. He may ask for the award to be quashed if the difference in value is equal to a twentieth of the market price. Unless he completes the formalities above, the successful bidder will lose any recourse he has against the owner of the property, the distrainer or the creditors.

The Transfer of Property Ownership and the Creation of Property Rights

All *inter vivos* acts and agreements, whether for payment or not, all records of property distraint, and all judgements and deeds that have the effect of transferring, affirming, amending or extinguishing an immovable property right or changing any other condition regarding its entry in the records, and all property leases exceeding twelve years must be made public through their entry in the land register and match their description in the land registry documents. This entry must be made within two months from the date that the deeds or judgements described above were signed.

As far as third parties are concerned, any property right on a registered property only exists *de facto* and from the date that this was inscribed on the title deed by the Registrar for Mortgages and Landed Property.

Voluntary documents and agreements that tend to create, transfer, affirm, amend or extinguish a property right only take effect between the parties concerned from the date they are recorded, without prejudice to the rights and actions against each other that parties may take because their agreements have not been honoured.

Any person applying for a registration entry must lodge with the Registrar a file containing:

- the serial number of the land title of the property that the entry relates to;
- details of the nature of the right to be recorded;
- details of the purchase deed, and the nature and date that document affirming this was signed;
- the civil status of the benefit to be recorded;
- if appropriate, the production of resolution clauses restricting disposal rights or any particular note that needs to be recorded at the same time as an entry concerning the primary right.

All deeds produced in support of an application for a registration entry must be in an officially recognised format. The following are regarded as official documents:

- legislative documents or administrative decisions;
- contracts agreed between the state and other public bodies;
- judicial decisions;
- documents issued by solicitors, enforcement officers or clerks of the court;
- documents accepted by Congolese consular officials;
- documents accepted by foreign public Ministerial officials when they have been authenticated by a qualified official from the Ministry of Foreign Affairs and filed with a solicitor's records;
- the decisions of foreign courts enforceable in the Congo. If drawn up in a foreign language, judgements and decisions must be accompanied by a French translation certified either by a qualified official at the Ministry for Foreign Affairs, or by an interpreter recognised by the Congolese courts.
- any private deeds, provided that these have been the subject of a certificate of filing at the written and signed request of all parties;
- deeds drawn up by Congolese or foreign government authorities.

The Registrar is empowered to check the identity of the filer and that the documents filed are correct in their form and content. Any entry on the land register must include

the signature of the Registrar, otherwise it will be null and void. Registration entries of rights on behalf of those not legally competent are made at the request of guardians or surrogate guardians, the State Prosecutor or relations. When an entry for a transferred title or a title created *inter vivos* is required after the death of an owner, this may be processed on the production of a document containing the signature of the purchaser alone, provided that this title has been correctly authenticated. Any transfer or creation of property rights as the result of a death must be authenticated by affidavit or judgement on the right to inherit. If necessary, it must refer to the will, the legal ruling, the document where the legacy is recorded or the judicial decision ruling in favour of the application. Lastly, it must contain details of the testator and each of the heirs and a description of the property to which it relates. When a transfer of property is produced *inter vivos* during the registration process, the formalities already completed shall represent an asset subject to the new purchaser expressing a desire to take advantage of them. If the transfer is only for part of the property, the procedure can be continued or resumed with documents supplemented by the purchaser; the marking out and publications will thus be added to as appropriate unless the parties agree to pursue the application in its original form with the new owner retaining the benefits of article 67 of the Land Act.

When an advertised right of title is created over a property during the registration process, it is open to the beneficiary, in order to take precedence and to expose the said right to objection by third parties to file at the Registry the documents needed for registration. This filing is noted in the objections register and, on the day of registration, if the procedure allows, the right will be recorded on the land title in the position allocated by virtue of the previous registration.

Property mortgages have legal force whether created by agreement or by court order. Mortgages on registered properties only exist as far as third parties are concerned and only have legal effect between creditors from the date that they are registered. Registration is for the same period as for the mortgage.

Mortgages arising from an undertaking to guarantee a loan granted to develop land provisionally conceded take effect after the date that the deed containing the said undertaking was filed and are recorded in a register kept by the Registrar. Any order distraining property must be reported to the Registrar for Mortgages and Landed Property who shall record this on the title. From this date, no further entry may be made for the property while the procedure is pending. When an entry or pre-emption entry is made in the land register, this must be made at the same time on the copy of the title.

Documents relating to the creation, transfer or extinguishment of property rights, or land charges produced and filed as records in the land registry must contain, in addition to essential information from related deeds and contracts, the following details:

- the names and forenames of the contracting parties, their status, their marital status with the names and forenames of the spouse, the date and marriage type, and the name and address of the presiding official;
- address, with temporary address for service of process at the court nearest to the registry in the event that the parties' own address is not within the jurisdiction of the court;

- a description and location of the said property and the serial numbers of the land title deeds.

At the request of the Registrar, the parties must, if necessary, give details of their position, capacity, marital status and the nature, purpose, basis, extent, scope and value of the right to be recorded. These details are given on a printed form issued by the Government Office, dated and signed by the parties involved or the guardian in the event of legal incompetence, or by their representatives. Any competent person may, by producing the documents that must be filed under the Land Act, require the Registrar to record, remove, reduce or amend property right.

In the event that a property right is the subject of several transfers or successive agreements, the last transfer or agreement cannot be recorded before the preceding ones. When he has adjudication of a forced sale, the Registrar shall automatically take the place of the distrainee on the record of the mortgage entry. Mortgage entries made on land titles are, if necessary, renewable.

The Registrar for Mortgages and Landed Property may, in the case of mortgages by agreement, after the period laid down has expired and in the absence of release, automatically renew them on the payment of fees by the person benefiting from their registration. Automatic renewal of registration by the Registrar can only occur once. Entries, notes and pre-emption entries can be removed by virtue of any document or judgement having the force of *res judicata* stating, with regard to any of the persons involved by virtue of a right that has been duly made public, that the fact or right to which they relate no longer exists or has been extinguished. A pre-emption entry inserted in the land register as the result of a judicial ruling must be automatically removed after the period of a month has expired. A party wishing to remove a record must file a release to this effect at the Registry for Mortgages and Landed Property. Entries automatically renewed shall be removed after a period of two months if fees for them have not been paid. Provisions laid down in the Code for civil procedure shall apply, and removal by the Registrar cannot be appealed.

The Registrar

Subject to the penalties provided under the Penal Code and legal action for which the administration is responsible, failure to adhere to the rules regarding the keeping of the records and indexes specified under article 83 of the Land Act renders the Registrar liable to administrative penalties.

The Registrar for Mortgages and Landed Property is responsible for keeping the land register, carrying out the formalities and procedures necessary for the registration of property and recording the documents or decisions relating to the properties registered. He is obliged to keep the following registers and documents:

- the register of formalities prior to registration;
- the register of documents deposited;
- the registry of land titles or land register;
- the register of objections;
- the mortgages register;
- an alphabetical index of the holder of property rights or recorded leases;
- an index of land titles;

- an alphabetical index of owners.

The files containing technical information deposited by applicants are updated by the Registrar. In addition to the documents produced when the file is lodged, he must incorporate deeds that were the subject of an entry or a transcription in the land register. The register of documents filed and objections lodged that are maintained by the Registrar are given a number and initialled, page by page by the President of the competent court nearest to the registry.

The register of documents deposited is made up each day by the Registrar. It must be kept without crossing out, overwriting or interlineation. Any deletion must be approved in the margin or at the end of the entry. All footnotes and references must be approved. All documents issued by the Registrar must bear the official seal beside his signature. When errors or omissions occur in the drawing up of a land title or in the subsequent notes that refer to it, the parties involved may ask for a correction to be made. Furthermore, the Registrar can always automatically correct omissions or errors that are ascertained. The holder of the copy of the title must be notified of such corrections and be summoned to return it to the Registry for Mortgages and Landed Property so that it can be updated. In all cases, the original entries are left intact and corrections are recorded at the current date.

If the Registrar should refuse to make the corrections required, or when the parties do not accept the corrections that have been made, the court shall rule on the request of the party making the complaint.

The Registrar is personally responsible for any harm resulting from:

- irregularities occurring in the registers in the entries, notes, pre-emption entries or deletions that have been applied for in the proper way;
- irregularities occurring in the statements or copies that he issues and signs in one or more of the entries, notes pre-emption entries or deletions of the parties, unless the irregularity arises from inadequate descriptions of title for which he cannot be held responsible.

Land Registration Fees

Registration fees are based and paid upon the following:

- for registration, on the market value of the property at the date that the claim for registration was made;
- for recording a deed that creates, transfers or extinguishes a right over the sums listed in those deeds, when these are rights that are created, transferred or extinguished in exchange for the corresponding payment of a sum of money, or conversely, for an entry made to guarantee the reimbursement or payment of a sum loaned or due, based upon the entry fee;
- for the early deletion of a right to use, based upon the rent or rental charge sum and proportionate to the time that the right of use has to run;
- for the renewal of an entry, based upon the mortgage sum

The formalities completed by the Registry for Mortgages and Landed Property give rise to fixed or proportionate fees and charges. The proportionate fees levied are paid to the state budget and are determined as follows:

- registration fees in accordance with the provisions of volume 2 of the General Tax Code, especially those relating to combined registration requirements;
- the fees and costs of land registration at the following rates – registration 5%, deletions 3%, entries 3%; transcription 5% and mortgage renewal 3%.

Dues or proportionate charges are levied at the tariff below according to the deeds involved. They are used for on-site monitoring, publication in the Official Gazette or for legal notices and for court costs.

- filing charges: 20,000 FCFA;
- charges for issuing a copy or duplicate: 20,000 FCFA;
- storage charges: 2%;
- publishing charges: 20,000 FCFA
- registration order charges: 10,000 FCFA;
- charges for making entries required: 5,000 FCFA per title deed;
- search fees: 2,000 FCFA per year.

Exceptionally, copies of land title deeds requested by local authorities for the benefit of the public or public service needs are issued free of charge. Proportional fees and charges referred to above are subject to a minimum amount of 20,000 FCFA each to be collected.

Fees and charges for registration are paid by the applicant when he files the documents necessary for the work to be completed. However, if the payment of fees chargeable for completing a formality required by the state does not legally fall to this public body, the collection of these fees is suspended and their recovery is subsequently sought from the person who is to bear the expense.

As a special exception to the above-mentioned provisions, the payment of proportionate fees are deferred to the date when the decision taken on its merits and fixing the final amount for registration was returned. However, the Registrar shall make an entry of this mortgage in the land register without receiving payment for it at the date this registration was notified by the court. The registration fee paid upon the cost of the order awarding the provisional mortgage shall be collected at the same time as the fee for deletion paid on the same sum:

- if the above-mentioned decision taken on its merits releases the provisional mortgage;
- if the order granting the said mortgage is subsequently withdrawn.

Sundry Provisions

Falsifying, forging or altering property titles, copies issued by the Registrar for Mortgages and Landed Property, and the use of documents that have been falsified,

forged or altered shall be punished in accordance with articles 147 and 148 of the Penal Code. The following are liable to be sentenced under the Penal Code for forgery, without prejudice to any damages payable:

- any person who has a property right registered on a title or copy of a title of which he is not the owner or possessor, and any person who knowingly and wittingly accepts a registration certificate that has been drawn up in this way;
- any person who transfers a registered title of possession of which he is not the holder and any person who knowingly agrees to this transfer;
- any person who may or may not be legally competent who enters into an agreement with a third party using a title deed belonging to another.

Ministerial officials who have conspired in the drawing up of deeds that have been subject to irregularities may, under the terms of the law in force, be prosecuted as accomplices. Removing or moving the markers that determine land boundaries belonging to another, other than when this is carried out by the proper authorities, are liable to the punishments provided under the Penal Code, without prejudice to any damages they incur.

Any authorised person may obtain information recorded in the land registers or featuring on the plans of property that is registered or in the files of land titles or stored in the archives. Those concerned shall produce a requisition for the Registrar for Mortgages and Landed Property to issue any of the following, as appropriate:

- a certificate stating that a land title and a copy of the said title match each other;
- a copy of the land title and the notes recorded on it or just the notes as generally indicated in the requisition of the person concerned;
- a certificate of non-registration;
- a true copy legally attesting to the existence of all the deeds or other documents in the file for a registered property;
- a copy of the plans of the registered properties filed in the technical files.

Any dispute arising from registered property is dealt with by the courts, notwithstanding the restrictions specified under the Act.

Any person who, in good faith or negligently, has not conformed to legal requirements, shall be penalised with a late payment surcharge equal to 25% of prospective fees and charges. Any person who unintentionally violates the provisions of the Land Act and subsequently rectifies the situation shall be punished with an annual fine of 50,000 FCFA, without prejudice to the payment of the capital sum and late payment charges. The rights of individuals or corporate bodies remain unaffected if they owned or carried out building work or construction on land, or invested in it before the Land Act was introduced. Within a maximum of three years of the publication of the Land Act, they must apply for the title deeds to be issued and for the provisions of article 10 to be waived. The same provisions apply to other individual or corporate holders of pre-existing property titles such as life tenancies, easements and leases in perpetuity.

Registration processes already started when the Land Act was introduced follow the rules that previously applied. As necessary, regulations may be introduced to establish the measures necessary for the application of the Land Act.

In summary, the land ownership system in the Congo covers matters relating to:

- registration;
- the registration procedure;
- the transfer of properties and the creation of property rights;
- The Registrar of land titles;
- registration fees;
- other sundry provisions.

Taxes

The Republic of the Congo has a tax system inherited from the French system and is essentially administered by the customs and tax departments. As a system that is based on self-assessment, it draws its resources from three main taxes: tax on the income of individuals (IRPP), tax on company profits (IS) and value added tax (TVA). These taxes bring in 80% of tax receipts not including crude oil or customs receipts. The tax system has undergone great changes during the last ten years; these changes are linked to the national and international economic environment. The aims are to modernise the system and make it more profitable, and to adapt it to reflect the country's current situation.

An outline of this tax system will be set out by describing the taxes that comprise it, together with its principal features.

Principle Taxes

These can be categorised under six main headings according to their purpose. These taxes and dues, which fund the state and local authority budgets, will be described briefly and the rates and tax bases will be highlighted.

Income Taxes

- The tax on company profits (IS): 39% of tax profits with a special system for companies that have no permanent base in the Congo;
- The tax on the income of individuals (IRPP): this applies to eight categories of income of which the main ones are: profits from industry, trade and farming (BIC), wages and salaries (TS), profits from non-commercial occupations (BNC). After the tax base has been fixed using methods that are specific to each income category, tax is assessed using a sliding scale that takes account of the family situation of the income earner or profits.
- Property tax on rent income: this is equal to 1/12 of the rent charged. It is deductible from the IRPP, a category of income from property.

Commercial Taxes

- Special company tax (TSS): 1% of the global turnover including tax and also including sundry earnings and gains. The tax rate rises to 2% of companies showing a deficit over two consecutive financial years.
- Fixed-rate tax on wages: 5 % on the overall wage bill with a 4% surcharge on the proportion of wages that is higher than 1,500,000 francs per year per wage-earner.

It should be noted that this surcharge does not apply to merchandise handling companies;

- Apprenticeship tax: 1% of the salaries paid;
- Occupation tax: this is the equivalent of the French occupational tax. It is set in accordance with the nature of the business, the number and power demands of the machines used, staffing, the imported skills used, the rental value of the business premises etc. The taxes collected are paid for use by the local authorities.

Taxes on Outgoings

- Value Added Tax (VAT) is 18% on taxable transactions; 8% on essential imported products and certain raw materials for animal husbandry and agriculture; 0% for exports and the eucalyptus trade;
- Excise Tax is 24% on certain goods subject to VAT, especially tobacco, alcohol, jewellery and private vehicles;
- VAT additional rate is 5% on VAT;
- The Duty on Insurance Contracts is a tax varying between 4 and 25% according to the nature of the contracts.

The main tax in this category is value added tax which generates from 32% to 38% of tax receipts. It is a tax that has been recently introduced –coming into force on 1 June 1997 – and resulted from the adoption of a Regional Reform Programme (PRR) by the Customs and Economic Union of Central Africa (UDEAC), a sub-regional body to which the Congo belongs. This programme recommended the introduction of a single tax on turnover, the turnover tax, which had been introduced in 1994 and replaced by VAT in 1997.

Property Tax

- Tax on buildings, which is 15 to 20% of the rental value after an abatement of 25% has been made
- Tax on undeveloped land
- Tax on private company vehicles; the rate depends on engine capacity
- Television licences, which is 6,000 francs per set per year
- Tax on plots of land

Registration and Stamp Duties

Registration duties are collected on deeds generated by individuals or corporate bodies, judicial or extra-judicial documents, contracts, setting up companies, increases in capital, company mergers or conversions, transfer of movable or immovable property etc.

Stamp duty is collected on documents subject to registration formalities, identity documents (passports, residence permits, national identity cards) and air tickets, etc.

Taxes on State Property

- Petrol duty rates vary between 12 and 17% depending on the licences held; it is based on net production
- ‘Profit oil’ or production share is, in general, 50% of net production, depending on the licences held
- Bonuses: payable as soon as a research or mining licence is obtained
- Earnings from transporting oil cargoes

- Provision for diversified investments (PID): 1% of net production.

To these must be added mining, forestry and other dues collected for research licences and mining and forestry permits.

Features of the Tax System

These will be examined across the different taxation systems whether they refer to common law or individuals, and the methods of tax payment.

Common Law Tax Systems

There are two of these: the actual profit taxation system and the registered tax return system on the one hand; on the other the system where taxation is based on a fixed rate and which is enhanced by two methods for collecting the tax: the fixed rate global tax and down payment on sundry taxes.

The Actual Profit system

The actual profit system applies to companies with a turnover equal or higher than:

- 60 million francs CFCA for tax payers whose business is the sale of goods, the supply of foodstuffs to be taken away or consumed on the spot or the provision of housing. These taxpayers are obliged to keep strict accounting figures and to have the capacity to deduct their operational costs. The rules for determining their profit are the same as for the tax on company profits
- 20 million francs CFCA for other taxpayers, viz the suppliers of services
- 8 million for non-commercial occupations

Companies' accounting obligations are identical for all taxpayers for whom the system of taxation is determined on actual profits.

The concept of registered tax return is specific to the category of profits raised by non-commercial organisations (BNC) and covers income from non-commercial occupations whose limit is 8 million or higher. It is the opposite of government assessment which is the equivalent of the fixed rate system.

The Fixed Rate System

This system affects taxpayers whose figures do not exceed those specified for the actual profit taxation system. Accounting responsibilities are reduced to keeping a register summarising the "details of purchases" and "the details of sales".

This system largely concerns the so-called informal sector because of its almost marginal and highly fluid nature. Taxation in this sector has been the subject of new tax provisions designed to bring it under the umbrella of taxation because it plays a real economic role, although it is difficult to assess its impact, where its contribution to the tax system remains low, even nil. Down payment on sundry taxes (ASDI) on the one hand and the fixed rate global tax (IGF) on the other, introduced respectively in 1995 and 1996, are expected to address this concern.

The ASDI is levied on two types of transactions made by taxpayers under the fixed rate scheme (IRPP, category BIC): imports and purchases made from industrialists, foresters and wholesalers. Deductions made at this stage are in the form of a down

payment deductible on taxes which the taxpayer will have to pay at a later date. The deduction rate is 1% of the imports and/or purchases.

ASDI is chargeable on all taxes and dues except for occupation tax and VAT: it does not constitute a new form of taxation. The IGF is a synthetic tax which has reorganised fixed-rate taxation and under which a number of taxes can be settled at the same time that occupation tax is paid. The tax is based on a turnover of around 8%. Although the IGF is presented as a tax, in reality it is a new method of recovering, from taxpayers, pre-existing taxes that are difficult to administer. This synthetic tax brings together the occupation tax, value added tax and related VAT surcharges, (the IRPP, category BIC), the fixed-rate tax on wages and the apprenticeship tax.

The System for Foreign Companies

Articles 126 ff. of the General Tax Code (CGI) lay down the tax rules for companies that have no permanent base in the Congo. They are subject to exceptional common law tax arrangements that establish the basis for calculation at a fixed rate dependent upon a percentage of the turnover of their operations in the Congo. This percentage is equal to 16% of their turnover – after deductions for mobilisation and demobilisation costs. The tax rate applied to the profit thus calculated is 49% which corresponds to a rate of 7.84% when applied directly to the taxable turnover.

Methods of Tax Payment

Generally speaking, tax is paid by instalments every month or quarterly, and sometimes in a single amount. Payment is made spontaneously by the taxpayer, the tax department reserving the right to carry out checks within the clawback period which varies between three and five years according to the tax involved.

Tax payments are those made as advance payments for the majority of taxes, and adjustments are made each month. This payment method is fairly widespread because it is an easier and more efficient means of collecting it. Today, there are no more than half a dozen taxes that are collected directly, and there are plans to change their method of collection.

A system of special cheques issued by the Treasury has been in place since October 1995 to allow companies benefiting from state contracts funded by international financiers to pay indirect duties and dues on these contracts; these must be paid inclusive of tax.

Means of Collecting Taxes

Taxes, duties and internal dues are collected either directly, or by collection notice or advance payment. Whatever the method of collection/roll, the usual procedure is to rely on voluntary payment before recourse to payment by force (articles 68 and 69 of Decree no. 2000/187 of 10 August 2000 providing general regulations on public accounting systems).

Collection must always be based on a properly issued accounting document stating the amount claimed by the public purse. This document shall generally either be the tax register previously approved by the controller of taxes or a collection notice (AMR). Using this document setting out the public claim, the accounting officer shall follow the procedure below according to whether taxes are to be collected directly or using the system of self-assessment and payment.

Taxes Collected Directly

1. The dispatch of the tax notice (a copy of the tax register) represents the start of the time period:

- leading up to the due date (the last day of the following month);
- for appeals (three months from the date that the taxpayer becomes aware of his tax liability);
- for which tax claims are valid (four years from the collection date) unless the period is suspended or interrupted (art. 94 of Decree no. 2000-187 of 10 August 2000 providing general regulations on public accounting systems).

This communication counts as the collection notice. Sending a tax reminder or warning does not, at this stage, constitute a notice to prosecute. Generally, it will indicate the costs of proceedings to which the taxpayer will be liable if he does not pay his tax bill.

2. The application of a surcharge of 10% (art. 460 of the General Tax Code, vol.1) after the last day of the second month following the tax notice;

3. Initiation of proceedings (art. 486 of the CGI, vol. 1): final demand and notice, seizure, sale.

When the collection period in respect of tax notices duly received by the taxpayer or his representative has expired, the tax collector may send notices to third-party holders.

Taxes and Dues Settled by the Taxpayer in Advance

These are generally indirect taxes and dues. They are also related to some direct taxes and dues subject to voluntary declaration such as the special company tax. In this case, payment is automatically accompanied by a payment for which a receipt is issued.

Points Common to the Different Methods of Collection

- Sending an AMR or copy of the tax register as a demand for payment (art. 484 and 486a (CGI, TI));
- Sending a final demand (art.486a of the CGI, vol. 1);
- Government closure of a company with the publication of a notice on the front of the premises stating “closed for failure to pay taxes” (art. 486b, CGI, vol.1);
- Seizure (3 days after service of notice: art. 489 CGI, TI);
- Sale by auctioneer (art. 493 para. 2), 8 days after the authorisation of the Minister for Finance (art. 492 and 493 para.1, CGI, TI) at the request of the receiver;
- Freezing of bank accounts (art 486a of the CGI, TI);
- Temporary exclusion from public contracts (art 486a of the CGI, TI);
- Suspension of the issue of import licences (art 486a of the CGI, TI);
- Measures to recover tax by force begin after a final warning is sent.

Duties on Fixes Property

The legislation in force in Congo-Brazzaville dealing with duties on immovable property was promulgated in the Finance Act of 2007 (Act no. 4 of 11 May 2007). It establishes the duties, dues and charges to be paid on property sale or transfer deeds, on work carried out by the land registry and survey department and for land registration.

Property Sale or Transfer Deeds

Deeds relating to the sale or transfer of unregistered property are recorded at the rate of 5% of the value of the property.

Duties on Land Registry and Surveying Work

Duties on land registry and surveying work are paid according to area in square metres, in urban or rural areas, using the table below:

Nature of work carried out	Duty	
	Towns	Rural areas
Defining boundaries	30 francs per m ²	20 francs per m ²
Marking out	50 francs per m ²	30 francs per m ²
Subdividing property	50 francs per m ²	30 francs per m ²
Consolidation of property	50 francs per m ²	30 francs per m ²

Minimum Duties Collected on Land Registry and Surveying Work

The minimum duties collected on registry and surveying work are laid down as follows:

Nature of work carried out	Duty	
	Towns	Rural areas
Defining boundaries	10,000 frs	5,000 frs
Marking out	15,000 frs	7,500 frs
Subdividing property	15,000 frs	7,500 frs
Consolidation of property	15,000 frs	7,500 frs

Fees on Land Registration

Fees and charges on land registration are settled on the basis of the purchase price on the market value of the property at the date of registration, excluding the additional rate, at the following rates and in the following amounts:

	Fees and charges	Fees and charges	Fees and charges
Nature of formality	Town centres	Urban areas	Rural areas
Making an entry	5%	5%	5%
Additional rate	5%	5%	5%
Registration	5%	2%	1%
Publication charges	10,000 frs	10,000 frs	10,000 frs
Court order charges	10,000 frs	10,000 frs	10,000 frs
Copying charges	10,000 frs	10,000 frs	10,000 frs
Charges for document preparation	5,000 frs	5,000 frs	5,000 frs
Storage charges	2%	1%	1%
Charges for depositing files	10,000 frs	10,000 frs	5,000 frs

Minimum Proportionate Fees Collected on Land Registration

The minimum proportionate fees and charges collected for land registration are laid down as follows:

	Town centres	Urban areas	Rural areas
Fees for making an entry	10,000 FCFA	7,500 FCFA	5,000 FCFA
Additional rate	500 FCFA	500 FCFA	500 FCFA
Registration	20,000 FCFA	10,000 FCFA	5,000 FCFA
Storage charges	10,000 FCFA	5,000 FCFA	2,000 FCFA

Note: FCFA refers to the Franc used in French colonies in Africa.

Articles 2 and 3 of the Finance Act of 2007 specifies that this law only applies for a period of 3 years from the date it was promulgated, viz 11 May 2007 (until 2010), and, at the end of this period, registration will comply with the legal provisions of the Congolese property system and the associated land registry and surveying regulations.

Property Tax

Tax on buildings (CFTB) is set at between 15 and 20% of the rental value after an abatement of 25% has been applied. There is no clear indication as far as tax on undeveloped land (CFPNB) and the tax on plots of land are concerned.

Under the new law in force in the Congo, viz the Finance Act of 2007, previous provisions regarding property tax have been abolished and replaced by the above-mentioned law for a period of three years dating from its promulgation (11 May 2007). The property law in force is therefore:

1. The provisions of the law on property described in the section on the country's land system
2. The duties described in the section on fixed property taxes

Details relating to duties on unregistered property and land have been described, as well as details relating to the taxation systems, methods of tax payment and means of collection.

Conclusion

As in most African countries, problems over property in the Congo are affected by the following factors:

- conflicts over land rights (customary law and French civil law);
- absence of control and management in the land sector;
- the poor purchasing power of the population;
- fraud and corruption;
- unrestrained urban sprawl;
- lack of utility services supplied to land plots;
- failure to observe town planning laws

It is hoped that the 3-year period that the government of the Republic of the Congo has given itself to bring order to urban property development, will be successful.