

KENYA
50568

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REC
RUC 13 OCT 20

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1028
PHEBY
1920
SRPTR

LAND TAX ORDINANCE

The copies with legal report. Points out it has become a law penalizing non-development and has lost much of its revenue-producing character. Considers it will be a useful piece of legislation and that a new and separate bill taxing gradually rising land values might reasonably be introduced later. Requests telegraphic reply.

previous paper
-112

Mr. Battersby

I do not know if you will go to the City of London or to the Bank of London. I have not seen you for some time. I am sorry to hear that you are not well. I hope you will get better soon.

I am sorry to hear that you are not well. I hope you will get better soon. I am sorry to hear that you are not well. I hope you will get better soon.

Also, in your letter, you mention the fact that the members of the Council are not well. I am sorry to hear that you are not well. I hope you will get better soon. I am sorry to hear that you are not well. I hope you will get better soon.

sequent paper

Set in hand by Miss ...

W & L 10/20/20

Mr. B. [unclear]

There is no objection by the Board
myself attacked. I am being asked
to have him able to send [unclear] to [unclear]
but my time has been pretty [unclear]
up with the [unclear] arrangements
etc. [unclear] work

W.D.

30 x 20

Mr. H. [unclear]

Kenya has not been saved [unclear] all
its fiscal legislation - the [unclear] [unclear]
and, say, 60 off the [unclear] [unclear]
because its revenue-producing character
is [unclear].

It is not [unclear] [unclear] [unclear]
and two attractions [unclear] the
multipled yield for £30,000 to
£10,000. The latter amount is to be
in part with [unclear], but it is
probable that before the necessary
arrangements for collecting it [unclear]
could be got through the [unclear] [unclear]
workable [unclear].

I think we must tell the Gov.
that the [unclear] [unclear] [unclear]

Mr. [Name]

These are my wishes by Mr. [Name]
I myself attached to [Name]
to have been able to [Name]
but my time has been pretty taken
up with the [Name] arrangements
and having work

MS

30 x 20

Mr. [Name]

Kenya has not had much luck with
its fiscal legislation - the [Name] tax [Name]
was, say, 10% of the [Name] [Name]
because its revenue producing character
was [Name]

Kenya's attention [Name]
and [Name] yield from £50,000 to
£10,000. The latter amount is not
to be [Name] with [Name], but it is
possible that before the [Name]
[Name] [Name] for [Name] at the
[Name] to go through the [Name] [Name]
[Name] [Name]

I think we must [Name] to the [Name]
that the [Name] [Name] [Name]

objection in a list number 1 from the
only approval on grounds of measure
to list papers to address been in
the subject by de-brief?

I do not think that legislation with
this object is necessarily objectionable, but
I feel rather strongly that the present
moment is not opportune for the
change. Times are hard, expenses of
production are high, & laborers are scarce.
Many of the men who would be forced on
them who would be only too glad to
develop if they could.

W. C. H. 20

Colonel Anthony.

proposed

1/21/20

I think some of the names mentioned should be included in the list.

Jan 1/11/20

As the Governor states in his despatch, the Ordinance had, during its passage through the Legislative Council, entirely altered its character. It has ceased to be a revenue producing measure, and has become a law penalizing non-development, but though the character of the Ordinance has been thus altered, it has retained its previous structure which, if the measure is to be retained at all, wants ^{considerable} ~~substantial~~ overhauling.

In the first place the title itself wants altering - the title should be "An Ordinance relating to the Imposition, Assessment and Collection of a tax on Unimproved Land."

In spite of the change of the whole scope and character of the Ordinance, the machinery is left just as it was. Returns are ^{to be} furnished by all landowners every year without any exception - apparently the Indian owner of half an acre is to be required to furnish a return equally with the Company owning 10,000 acres. The work of sending out, collecting, and examining the prescribed forms must involve a great amount of labour and a large increase of staff and great expense if the work is to be done properly. The returns are to be considered by local Assessment Boards who are to report the valuation on the assessment to the Commissioner. The Boards are apparently to consist of unofficials, either appointed by the Governor, or elected on some principle to be laid down. Will any local farmers, or other unofficials, be found willing to undertake so thankless a task, and if they are, will they be competent to do the work? They will certainly

certainly want expert advice, and who is to supply it? In the case of an appeal against the assessment of the District Assessment Board, there is to be constituted a Central Assessment Board, consisting of the Commissioner of Lands, the Attorney General, the Director of Agriculture, and three non-officials. This seems open to two criticisms -

(1) Surely the three high officials mentioned are far too busy to be able to give their time to appeal work of this kind.

(2) In any case, the Commissioner of Lands and the Attorney General seem out of place on such a Board as being interested parties.

All this complicated machinery might be justifiable if it was designed to bring in a large amount of revenue, but it will bring in a merely negligible amount. The tax will only apply to a very small proportion of landowners - (1) it is not to apply if the landowner has carried out improvements to the value of 25 per cent on the unimproved value of the land; (2) in the case of an owner of several estates, all the estates are ~~to be~~ ^{to be} ~~taken~~ ^{taken} together for the purpose of the Ordinance, so that the big landowner who develops one estate highly, can leave one or two wholly undeveloped. It does not seem likely, therefore, that the Ordinance will penalise the big speculator, and the only man hit will be the small man. The Government have dropped their proposal to impose the tax on the transfer of land, so that the owner of unimproved land can avoid the tax by transferring it to some other person - this, of course, opens the door to dummying and all sorts of secret arrangements.

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As to the scale of assessment, it is proposed that the tax should be imposed on the value of the unimproved value of the land whatever the amount of improvements may be. e.g. the man owning land whose unimproved value is £2,000, and having put in improvements to the value of £400, has to pay the same sum as the man who has put in no improvements at all. This does not seem fair.

We do not think it necessary to enlarge on all the difficulties attendant on the enforcement of legislation of this kind, and on the various shifts, dummyming, etc., to which recourse may be had to evade it - evidence of that may be found in every country that has tried such legislation. As regards the particular Ordinance now before us, it seems to us that the amount of good to be derived from it is so small as compared with the expense and trouble involved, and the friction, irritation and sense of injustice likely to be caused, that we do not think that the Secretary of State would be justified in assenting to the Ordinance. We suggest that the objections as set out above should be explained to the Governor, and that he should be informed that, after careful consideration, the Secretary of State cannot see his way, in present circumstances, to approve the legislation.

There are various drafting points of varying importance to which attention might be called, but it does not seem worth while going into them at length until the Secretary of State has decided whether or not to approve the Ordinance.

MMS

At

No. 1028

GOVERNMENT HOUSE
N. AROBI
50568
REC'D
RES'D
2 September 1930
13 OCT 20

303

My Lord,

With reference to Your Lordship's telegram of the 28th July, I have the honour to transmit herewith six copies of the Land Tax Ordinance, together with a Comparative Table of Sections and a Statement of Objects and Reasons prepared by the Acting Solicitor-General.

2. As Your Lordship is aware, the bill was introduced primarily as a financial measure, and, as Your Lordship will observe on perusal of the attached Statement, it has now, by the exemption granted to beneficially occupied land, become in effect a law penalizing non-development and has lost much of its revenue-producing character.

3. In view of the fact that the prospective revenue so lost by this modification can be made up by land-owners now being unable, under the Income Tax Ordinance, to claim any reduction in respect of Land Tax paid by them, I consider that this Ordinance will become a useful piece of legislation and should greatly stimulate the development by their present proprietors of large areas of idle land or the transfer of such areas to more enterprising owners. I would also

remark

400/3712
Ordinance.
189.
Comparative Table of Sections.
Statement of Reasons

ROYAL HONOURABLE SECRETARY OF STATE FOR THE COLONIES,
ALFRED MILNER, P.C., G.C.E., G.C.M.G., &c., &c.,
SECRETARY OF STATE FOR THE COLONIES,
DOWLING STREET,
LONDON, S.W.

remains that when, and if, this function is achieved it will be possible by a few simple amendments to restore the original financial character of this Ordinance, if that is considered desirable, without modifying machinery which should, by that time, be in smooth working order.

4. The excision of the clauses relating to taxing land-transfers does not, in view of the fact that only future increases of value would be liable, represent anything at present but a negligible loss of revenue. The principle of taxing incremental land values received the approval of members of the Legislative Council; but it was considered that the proposal immediately to tax transfers would be likely to have a more prejudicial effect on the influx of capital than, for some time to come, its importance warrants.

5. I consider that a new and separate bill taxing gradually rising land values might reasonably be introduced at a later stage.

6. I shall be grateful if Your Lordship will signify by telegram whether or not I may give my assent to this Ordinance.

I have the honour to be,

Your Lordship's

Humble, obedient servant,

Edward Nathan

GOVERNOR.

Section.	Remarks.
1.	Short title.
2.	Division of Ordinance into Parts.
3.	Interpretation.
4.	Provisions for the collection of the tax and the necessary staff.
5.	New. Provides for the taxation of all land with certain exceptions, amongst which is all included land beneficially occupied. Also land which is not beneficially occupied for 2 years after first transfer; and land which has not been alienated by the Crown for a period of two years is exempted. This last exemption was intended to give farmers under the Soldier Settlement scheme time to develop their land without being hampered by taxation. Beneficial occupation is defined.
6.	The levy and payment of the tax is provided for.
7.	The date at which ownership of land is determined for taxation purposes is fixed and the person who is shown as owner in any Register or instrument affecting the title to land is deemed to be the owner unless the Commissioner of Lands is notified. For comparison of these sections 5, 6 and 7. See Part III Land Tax Assessment Act, 1912. (Australia) and Part II Land and Income Assessment Act, 1912. (New Zealand).

- Provisions as to joint tenants. Compare Section 33 Land Tax Assessment Act (Australia) 1910 and Section 59 Land and Income Assessment Act, 1906, (New Zealand).
- Makes provision for the keeping of separate accounts of tax payable by persons in their individual right and a representative capacity.
- Relates to the charging of agents and trustees. Compare Section 62 Land Tax Assessment Act, 1910 (Australia).
- The Commissioner is given power to demand information and the production of title deeds etc.
- The taxpayer is liable to the Commissioner for the full amount of the tax.
- Provides for the distribution of the burden of the tax proportionately between joint owners.
- Compare Section 55 Land Tax Assessment Act, 1910, (Australia).
- See. Provides for returns to be made to district assessment boards. Compare Section 15 Land Tax Assessment Act, 1910 (Australia).
- Follows Section 16 Land Tax Assessment Act, 1910, (Australia).
- See. Provides for the constitution and establishment of the District Assessment Boards referred to in Section 15 and prescribes their duties and functions.

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Assessment Boards. Compare Section 15 Land Tax Assessment
Act, 1910 (Australia).

Follows Section 16 Land Tax Assessment Act, 1910, (Australia).

Provides for the constitution and establishment of
the District Assessment Boards referred to in Section 15
and prescribes their duties and functions.

13. Provides an alternative procedure where no District Assessment Board has been appointed (Compare Section 17 Land Tax Assessment Act (Australia) 1910.
14. Follows with modifications Section 18 Land Tax Assessment Act, 1910, (Australia) and includes a new proviso relating to the appointment of Secretaries to District Assessment Boards.
15. Follows with modifications Section 19 Land Tax Assessment Act, 1910 (Australia).
16. Follows as modified Section 20 Land Tax Assessment Act, 1910, (Australia).
17. Follows as modified Section 21 Land Tax Assessment Act, 1910, (Australia).
18. Follows Section 22 Land Tax Assessment Act, 1910, (Australia).
19. Follows Section 23 Land Tax Assessment Act, 1910, (Australia).
20. Follows Section 24 Land Tax Assessment Act, 1910, (Australia).
21. Follows Section 25 Land Tax Assessment Act, 1910, (Australia).
22. Compare Section 26 Land Tax Assessment Act, 1910, (Australia).
23. New. Establishes a Central Assessment Board to hear all objections to assessments of land.
24. New. The constitution duties and functions of the Central Assessment Board are provided for in this and the succeeding Sections 30 to 35.

Remarks.

See above and compare Section 23 of Land and Income Assessment Act, 1908. (New Zealand).

Compare Section 34 Land and Income Assessment Act, 1908. (New Zealand).

Compare Section 25 Land and Income Assessment Act, 1908. (New Zealand).

Compare Section 26 Land and Income Assessment Act, 1908. (New Zealand).

New. An appeal from the High Court is allowed as though the matter arose in a civil suit.

Compare Section 49 Land Tax Assessment Act, 1910. (Australia).

Compare Section 50 Land Tax Assessment Act, 1910. (Australia).

Compare Section 51 Land Tax Assessment Act, 1910.

(Australia). The latter portion of this Section is an addition to the National Bill and corresponds to a statutory provision in the Income Tax Ordinance, 1920, which was taken from Section 24 of the Land and Income Taxation Act, 1910. (Australia).

Compare Land and Income Assessment Act, 1908. (New Zealand) Section 94.

Compare Section 96 Land and Income Assessment Act, 1908. (New Zealand).

Follows Section 99

Section.	Remarks.
36.	Compares Section 57 Land Tax Assessment Act, 1910, (Australia).
37.	Follows Section 61 Land Tax Assessment Act, 1910, (Australia) except that the penalty in this Section varies from £5, whereas under the Australian Act the penalty is £50.
38.	Is a modification of Section 62 of the Land Tax Assessment Act, 1910, (Australia).
39.	Gives similar powers to the Central Assessment Board to grant relief from taxation on the advice of the Commissioners as are granted to a board constituted under Section 66 of the Land Tax Assessment Act, 1910, (Australia).
40.	These sections were modeled on the Land and Income Assessment Act, 1908, Sections 106 and 108 sub-clause (a) of Section 108 being placed in Section 50 of this Ordinance because it was considered that a person obstructing an officer under the Ordinance should be subjected to a higher penalty than that prescribed by Section 51.
41.	Fines are made recoverable summarily as a civil debt.
42.	Power is given to the Governor to make Regulations. The nature of the Regulations is not definitively described but it will be for the Legal Advisors to advise when such Regulations are made if they are within the powers granted by the Section.

Nairobi.

This 9th day of August, 1920.

SA. R. W. MUR MACKENZIE.

ACTING COMMISSIONER GENERAL.

THE LAND TAX ORDINANCE, 1920.STATEMENT OF OBJECTS AND REASONS.

This Ordinance, as originally drafted, was introduced for the purpose of raising revenue by a tax on land and a land transfer tax.

The measure was based mainly upon the Land Tax Assessment Act, 1910, of the Commonwealth of Australia and also the Tasmania Land and Income Tax Act, 1910, and the New Zealand Land and Income Assessment Act, 1908, were consulted.

On the second reading of the Bill submitted to the Legislative Council it was referred to a select committee to consider and report.

The Committee, after considerable discussion, decided to recommend a drastic change in the Bill, by exempting all beneficially occupied land in the Colony from taxation and to place a rather high rate of tax on undeveloped land. Further at the same time they recommended the elimination of the deduction of land tax from income tax or vice versa which had previously been provided for. The Committee hoped thus to render the incidence of taxation as just as possible and penalise the land speculator.

The recommendations of the Committee were passed by the Legislative Council with the result that the original drafting of the Bill was largely amended. Besides the recommendations above mentioned it was decided to introduce District Assessment Boards, where possible, to settle the returns on which assessments are made. An appeal is allowed from the District Assessment Board to a Central Assessment Board.

from whom, in its turn, an appeal is allowed to the High Court and thence to the Court of Appeal for Eastern Africa.

Official valuation is defined as the value of improvements on the total unimproved value of the land, and this definition is further modified so as to meet cases arising both in regard to agricultural and urban holdings.

The Committee also recommended the deletion of the sections relating to Land Transfer Tax and the recommendation was passed in the Legislative Council.

Whilst it was admitted that the principle of the taxation of incremental values was in itself sound it was considered that the great importance of introducing no measure likely to deter the entry of capital into the Colony rendered the present time inopportune for the introduction of this form of tax.

It may be considered that the introduction of the amendments indicated above has rendered the Ordinance one which is not strictly applicable to its title, the exceptions now exceeding the rule; but it is submitted that the title land tax is generic, and that even in its present form the measure is not an arbitrary piece of trafficking. It will be found effective to achieve its object.

It should be noted that the Protectorate having been declared a Colony prior to the passing of this Ordinance an amending Ordinance will be necessary to rectify the wording in places where the word Protectorate occurs, and in view of the introduction of the new currency the *shilling* will have to be substituted for *rupiah*.

Nairobi,
The 9th day of August, 1920.

Sd/ K. J. MUIR MACKENZIE.

ACTING SECRETARY GENERAL.

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sent 20 pm

4 November

Your despatch of 21st September, No. 1628, Land Tax Ordinance, seems to me open to serious objection on various grounds. Though character of Ordinance

DRAFT TELEGRAM

entirely altered no alteration made in framework, and considerable revision would appear necessary. Complicated

MINUTE.

Machinery proposed to be set up ~~will~~ ^{require}

Mr. Batterbee 4/11/20

involve great labour, expense, and additional to staff, and any small revenue

Mr. Bollenby 4/11/20

to be derived likely to be more than

Mr.

Mr. Grindie

allowed to go out of working

Mr. H. Lambert

Returns apparently to be furnished for

Mr. H. Reid

flattering assessment

Mr. G. Wickham

all land in the country though tax will only apply to small proportion of land

Mr. Amery

in case of owner of several

Lord Milner

estates all estates are to be lumped

together for purpose of the Ordinance

so that big land owner who develops one

subtle

Lycopodium orchilla

establishtly can leave one or two others

wholly undeveloped ^{taxation} Ordinance therefore

would not appear likely to penalise big

speculator but only hit small man ^{speculator} moreover,

I doubt whether present moment ^{downward} opportune

for such legislation when, owing to high costs

of production and scarcity of labour, diffi-

culties of development are great ^{difficulties} unless

you press for decision on ground of revenue

I propose to ^{propose} advise you by despatch stating

more fully ^{proposals} ^{dealing with} ^{the} ^{subject}

HILNER.