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Public Value Capture of Increasing Property Values across Europe

Jean-Marie Halleux, Andreas Hendricks, Berit Nordahl, Vida Maliene

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J.-M. Halleux ■ A. Hendricks ■ B. Nordahl ■ V. Maliene (Eds.)

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Report on strategies for the implementation of new tools of public value capture or the optimisation of existing tools



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1. Obstacles and Improvement of Implementation of Tools of Public Value Capture

Andreas Hendricks

“There is nothing more important for the progress of our economies than good regulations. By good regulations is meant the sort that serves to enhance the wellbeing of the community at large” (OECD 2015).

Public administration shapes economic prosperity, social cohesion and sustainable growth. It moulds the environment for creation of public value (European Commission 2016).

The shortage of financial resources is a global problem. Coming out of the economic and financial crisis, countries as well as municipalities have decreasing means to fulfil all their public commitments. This report provides options to solve this highly topical problem. Modernising governance is a way to relieve economic and budgetary pressures, to design and deliver needed structural reforms, to remove existing barriers and to foster innovation. Public value capture is essential to improve the refinancing of public infrastructure to keep the necessary budget for important duties like education and health care. For this reason, it is one of the key factors of responsible land management and smart tools are needed for a successful implementation (Hendricks 2020). In literature, a wide agreement exists on capturing value from infrastructure improvements and public services. Although it raises political opposition, the same occurs with the value from changes in land use regulations (Fernandez Milan et. al. 2016).

Much can be learned from approaches in different countries. However, a “one-size-fits-all-approach” should be avoided. Planning systems, cultures and operating contexts vary considerably in terms of their national characteristics, political goals, administrative and legal arrangements, cross-scalar state interactions and influences and the relative strength of different state, market and civil interests and actors (Peel 2018). The optimal tool box has to be adapted to country specific circumstances (Hendricks 2020).

However, some general considerations can be given concerning obstacles and improvement of implementation of tools of public value capture. These considerations are the result of our COST Action Public Value Capture of Increasing Property Values as well as literature review.

1.1 Obstacles

The constant frustration within the planning sciences and planning practice on this topic shows that attempts to limit or capture speculative profit are always subject to resistance. This can also be demonstrated by a historical review of the discussions on the introduction of a legally regulated plan for value capture in Germany and Great Britain. Fundamental for the conflict over the legality or illegality of public value capture are the respective understanding of property rights and the perspectives on land use regulations (Helbrecht and Weber-Newth 2017).

However, almost all countries around the globe practice land use and development regulations or taxation of real property, so they no longer follow a purist Lockean position. Instead, the debates focus on specific issues such as the appropriate degrees of land use and environmental regulation, the extent of government powers to take land for

public needs and whether the increment in value due to government decision should be recouped for the public (Alterman 2012).

Property rights are formed through a political process in which governments and other agents, including political entrepreneurs, negotiate. The result reflects the conflicting economic interests and bargaining strengths of the agents involved. The political process of defining and enforcing property rights can be decisive because of the distributional implications of different property right allocations. Profit maximisation is contrasted with non-monetary gains. Large wealth accumulation under an existing property rights regime is likely to prevent institutional change, as possible losses under a new regime induce agents to oppose change (Granath Hansson 2017).

Politicians commonly dislike public value capture because the voters do, and the administration is reluctant to do so because of the increased effort involved in introducing new instruments. Property taxes are one of the most unpopular types of taxes. Thus, it is politically difficult to implement any changes of the taxation of residential property that implies tax increases or major redistribution of tax payments (European Commission 2012). Furthermore, there is oftentimes a lack of political willingness of local authorities to implement developer obligations because city governments tend to consider good relations with developers for future projects more important than obtaining a substantial share of increasing property values (Lambelet and Viallon 2019). For these reasons, this report is dedicated to recommendations for a successful implementation of smart tools of public value capture.

The first step of implementation is the establishment of legal norms for mandatory or voluntary proceedings of public value capture and these regulations must be known and accepted in the local governments (Hendricks 2015). Local officials often allege their hands are tied and they avoid taking action, even when they are permitted to apply many value capture instruments. This situation resonates where principles established administratively or by law are essentially ignored in practice, or at best are implemented partially or selectively in a few jurisdictions (Smolka 2013). Furthermore, a strong planning system is required to avoid unregulated development.

Apart from the legal framework, the biggest problem of implementation is the necessary cooperation between different departments and offices. Ultimately, this is a thematically and organisationally highly demanding task and the local conditions are of particular importance (Faller and Beyer 2018).

The role of data is highly important for effective and reliable policies as they provide solid evidence base to draw upon successful policy design. This implies gathering and interpreting data from an array of sources and viewpoints, and challenging pre-convinced ideas and current practices in the search for more effective policy solutions. Updated and complete land registers and/or cadastres are essential requirements for tax collection and other tools of public value capture. Furthermore, data is necessary for valuation. A collection of relevant data is oftentimes missing. Especially real estate markets characterised by high fluctuations require annual updates (Hendricks 2020).

Corruption is another problem for successful public value capture. In case of real estate taxation it hinders the efficient tax collection as the probability to get caught in case of tax evasion is quite low. The problem for developer obligations is the uncontrolled

development without building permit or with unjustified permit against payment. As long as developers are able to develop land in this way there is no incentive for any agreement to cover public costs of development. On the other hand, the “inner logic” of corruption and negotiations for development agreements is quite similar (“building right against payment”), i. e. the developer is willing to pay for the building permit. The municipality has just to force the developer to cooperate with public authorities instead of criminal actors (Hendricks 2020).

1.2 Options to improve implementation

In this report, we use the classification of tools of public value capture that has been developed for this COST Action. We distinguish basically recurring and non-recurring forms of public value capture. Recurring forms are further differentiated in annual payments (e.g. real estate tax) and payments in case of sale/purchase (e.g. real estate transfer tax, capital gain tax). Non-recurring forms are further differentiated in tool focussing on one factor of value increase (e.g. fees for infrastructure) and tools focusing on more than one factor (e.g. development agreements). Typical factors of value increase are extension of property rights (planning), reallocation of land property and provision of internal and external infrastructure (cf. Hendricks 2022).

Recurring forms (especially real estate taxes)

Real estate taxes are widely used for public value capture. Basically, three different models can be distinguished concerning the basis of taxation. First, the land value may be taxed in addition to the value of the buildings. Alternatively, only the land value or the profitability of the real estate may be taxed (Thiel and Wenner 2018). The first or second option are used by many countries and are recommendable for implementation while the last approach is less established than the others (Hendricks 2015). Both a compound property tax as well as a land value tax should be primarily considered as a fiscal tool and not as a steering tool (Löhr 2018). For this reason, side effects like distributional aspects of these tax systems are not considered in this introduction. However, economists and other social scientists consider land rent taxation as a remedy to current societal problems including the uneven distribution of wealth. Their findings might be helpful to improve the tax system (Vejchodska et. al. 2022).

Generally, countries use a system of different tax rates distinguishing between plot and constructions, use of the plot and/or buildings (e.g. living or commercial use) or built or unbuilt plots. The continuous progression is an approach to avoid unequal tax treatment because of different financial burdens for similar real estate values. Generally, the structure of the tax system should be kept as simple as possible to create an understandable tax system for laymen and the general public to get in consequence a higher acceptance in the population (Hendricks 2015). Furthermore, the rates have to be sufficiently high to raise enough revenue to cover the administrative costs of the tax (Fernandez Milan et. al. 2016).

Setting higher tax rates for unbuilt plots is quite common in many countries (Thiel and Wenner 2018). One reason for this regulation is the pressure on the land owner to start building activities on the plot. However, it is unlikely that the tax on undeveloped land in rapidly growing areas will be so high as to wholly discourage speculation (Fainstein 2012). In any case the higher tax income of the municipality can be used to refinance the higher

costs of technical infrastructure which are caused by the fact that the municipality has to develop new building areas while parts of the developed urban areas are unused.

The compilation of an updated and complete list of all liable persons to tax including all the needed data of the subject is an essential requirement for a comprehensive tax collection. For this reason, it is important to have updated and complete land registers and/or cadastres.

Real estate valuation is another challenge. A sufficient number of highly skilled valuation experts and a collection of relevant data for valuation (e.g. purchase prices, land prices or rental prices) are necessary to keep the information updated (Hendricks 2020). Often authorities use mass appraisal procedures for the assessment. While some methods are designed to take into account the particularities of each single case, most use crude approximations like the size of a building or the floor space to determine the tax base, i.e. the value of the taxed object, to facilitate administrative procedures. Hence, mass valuation always faces a trade-off between efficiency and justice (Thiel and Wenner 2018). The higher the justice the higher the acceptance but also the administrative effort. The most justice appraisal would involve annual updates of plot-specific market values but these are administratively unfeasible (Fernandez Milan et. al. 2016).

The process of tax collection can be deficient for two reasons. On the one hand, the probability to get caught in case of tax evasion is quite low. Oftentimes there is a lack of qualified staff or adequate registers to control the payments. On the other hand, if someone gets caught, the punishment might be too light. Another problem involves too low taxation. In consequence, many taxpayers do not consider it necessary to pay small amount of money and the local authorities do not want to spend money to prosecute the claim (Morales Schechinger 2007). For these reasons, an efficient control system has to be established as well as an adequate punishment of tax evasion.

Non-recurring forms (especially developer obligations)

A stringent planning system is an essential requirement for the use of non-recurring forms of public value capture. The municipality must penalize any violation of planning regulations to obtain the control of urban development. As long as developers are able to buy land on the “pirate market” and to develop it without building permit there is no incentive for any agreement to cover public costs of development. For the same reason, corruption has to be avoided (Hendricks 2020).

It is important to increase the knowledge about the complex nature of varied value capture approaches and to promote greater understanding among public officials and citizens about how value capture tools can be used to benefit their communities (Smolka 2013). For this reason, conducting research, documenting and disseminating implementation experiences are essential to assist public officials and decision makers in understanding the operating mode and opportunities of public value capture. Furthermore, documentations are helpful how value capture has fostered investments in urban infrastructure and services and improved land use development. It is important, to duly explain the assumptions, methodology and potentialities of new instruments to politicians and promoters to get their support. The willingness to accept tools of public value capture increases, if these tools are perceived to be associated directly with the solution of a locally recognized problem (Malcata Rebelo 2017). There should be a direct

link between the government authority responsible for public value capture and the one that benefits from the revenues (Alterman 2012). The main objective is the creation of a win-win situation for private developers and the general public. Generally, developers are willing to accept developer obligations, if the regulations are fair and transparent and all investors are treated equally (Vejchodska and Hendricks 2021). Transparency is also important to reduce the risk of corruption (Munoz-Gielen and van der Krabben 2019).

In order to retain public support, the legislation should determine in advance which public services may be financed by the captured value increase and should expose this to the public. However, there is inherent tension between this objective and the need to maintain flexibility to accommodate changing needs for public services or changing public perceptions about what services merit public support. The traditional services such as technical infrastructure may compete with newer items on the list like educational facilities, environmental conservation, historic preservation or affordable housing (Alterman 2012). A solution might be a more general regulation by law in combination with resolutions on the municipal level defining the details of developer obligations. This resolution can be easier adapted to changing local conditions (e.g. SoBoN Munich, cf. Vejchodska and Hendricks 2020). Another option is the combination of negotiated developer obligations (NDOs) and non-negotiable developer obligations (N-NDOs). NDOs are easier to introduce because they require less regulation. On the other hand, they often show problems of transparency. A combined use of both options offers the possibility of optimizing their advantages while minimizing their disadvantages. NDOs can definitively offer the opportunity of adapting rapidly to new conditions without legislative changes. However, if NDOs are not regularized to clarify the scope of negotiations, they might lead to important setbacks. For this reason, N-NDOs should soon follow NDOs to clarify and consolidate the scope of contributions. In some contexts, NDOs might be the best and only option while in other contexts, negotiations should disappear and obligations can be charged only through statutory N-NDOs. Sometimes both should be used complementary. Negotiations can initially lead to a voluntary agreement, but in case the public sector and the private landowners cannot achieve this, the public sector can charge N-NDOs. In this context, N-NDOs are also a tool for the municipality to pressure the developers to find an agreement. On the other hand, negotiations can lead to a voluntary agreement about additional contributions above basis package of N-NDOs (Munoz-Gielen and van der Krabben 2019).

After improving the understanding of public value capture in general there are several key factors for a successful implementation (Munoz-Gielen and Mualam 2019). The success of public-driven strategies in negotiation procedures requires an improvement of political and technical capability (Pogliani 2019). It demands management skills to deal with many complex factors and diverse stakeholders including fiscal, planning, and judicial entities as well as local government leaders. The administrative continuity has to be ensured in the whole implementation process (Hendricks 2020).

All calculations should be based on available, reliable and comparable data ensuring the assessment of betterments and corresponding predicted levies related to clear and objective parameters (Malcata Rebelo 2017). This is another reason for updated and complete land registers and/or cadastres and further data for valuation. For this reason, reliable studies on urbanisation and infrastructure costs are needed that allow calculating the appropriate size of obligations (Pogliani 2019).

Other supporting environments for developer obligations include those where public and private actors have a culture of collaboration, local flexibility exists and local politicians/officials are proactive, public actors respect private imperatives and vice versa and where there is a general environment of transparency and accountability.

Proper value mechanisms can contribute, together with solid and sustainable public land-use planning, to achieve the social function of property in urban development, i.e. to balance private profits and public costs, and increase the accountability of public actions in urban development (Munoz-Gielen and van der Krabben 2019). The following proposals for implementation of tools of public value capture in particular countries base on the mentioned principles in this introduction and the analysis of the current state of public value capture in these countries (cf. Edited Book of this COST Action "Public Value Capture of Increasing Property Values across Europe").

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2. Austria

Arthur Schindelegger and Laura Sidonie Mayr

Neither the nine Austrian states nor the federal state itself have comprehensive regulations in place that enable public value capture based on planning gains. Anyhow, the Austrian tax system as well as state's planning laws provide certain mechanisms to communitize a certain share of real estate values and betterments. There haven't been any major reforms lately and there is no wider public debate on fostering public value capture in connection with planning decisions at the moment.

2.1 Recurring forms of public value capture

In Austria, the recurring forms of public value capture are three different taxes: the real estate tax, the land value tax and the real estate transfer tax (Schindelegger and Mayr 2022).

Real estate tax

The real estate tax in Austria is based on the real estate tax act (*Grundsteuergesetz*) introduced with the independency of the 2nd republic in 1955. Eversince, the tax delivers yearly revenues from land and immovable property that go fully to municipalities. The classified tax rate (0.5-2 ‰) gets multiplied with an individual value of up to 500% set by every municipality leading to a tax rate of a maximum of 1 ‰. While the tax rate and allocation of revenues to municipalities is commonly accepted and perceived as just and proportionate, a lengthy debate exists on which 'value' should be used for applying the tax rate. In fact, there exist several different methods for property valuation. Austria has a real estate valuation law (*Liegenschaftsbewertungsgesetz*) that outlines three different approaches: (i) the comparative value approach (*Vergleichswertverfahren*) which seeks to determine the value based on an analysis of actual real estate transfers; (ii) the earnings value approach (*Ertragswertverfahren*) which is based on the likely revenue that can be generate from real estate property and (iii) the real value approach (*Sachwertverfahren*) that adds up the land value, the value of buildings and additional assets based on an expert assessment. Interestingly, none of these valuation approaches is used for real estate taxation. Instead, the assessed value (*Einheitswert*) is applied. This value gets determined by the national fiscal authority and cannot be influenced by the federal states nor municipalities. It has not been raised in decades and is a completely fictional value significantly under the market value of real estate. It is at the same time not sensitive to increasing or decreasing land prices. The assessed value was also used for the calculation of the inheritance tax as well as donation tax. The supreme court lifted both tax regulations as it recognized a substantial discrimination within these regulations by not using actual market values or values determined on basis of the real estate valuation law. Eversince, Austria has neither an inheritance tax nor a donation tax. Tax experts expected the supreme court to also lift the regulations for the real estate tax. Surprisingly the supreme court confirmed the constitutional conformity of the use of the assessed value for taxation in 2010 (Court case number B 298/10-7). The system is therefore very likely to be kept as it is (OECD 2020, Reiss and Köhler-Töglhofer 2011) eventhough thereby it misses to capture any value in-/decreases (Wieser and Schönback 2011). Therefore, other instruments and mechanisms are necessary to capture property value increases.

Land value tax

The land value tax (*Bodenwertabgabe*) is based on a federal legal act (*Bodenwertabgabegesetz*) and applies for zoned but yet undeveloped building land. The initial underlying goal was the utilisation of dedicated building land. The fixed tax rate of 1% per year is multiplied with the assessed value (Schindelegger and Mayr). The estimated yearly revenue of this tax would be € 5-6 Mio (Mayr 2018) but it is at the moment not collected. There is no discussion if the tax rate or case of application should be changed to deliver a higher revenue. This is due to the fact that municipalities use different planning instruments as well as civil law-based contracts to mobilize zoned but yet undeveloped building land. Also the land value tax would be a unitary tax for all of Austria that conflicts with states planning and municipal planning regimes. Further, the additional costs for land owners due to the land value tax are so limited, that it is quite uncertain if the land value tax can generate a mobilisation effect. In any case, the land value tax could be based on the market value and enabling prompt development but it would rather contribute to land use conform development than capturing betterments.

Real estate transfer tax

The real estate transfer tax is a component of the ancillary costs that comes with any real estate transfer. The tax rate reaches from 0.5% to 3.5% according to a progression scheme. The tax is market value based and therefore sensitive to changes of land value. Nevertheless, it only applies once a transaction (esp. sale, donation) takes place and is not directly linked to a change of planning documents. Inherited real estates are not encompassed by the tax. The real estate transfer tax does not hold any potential to capture increasing land and property values once they occur.

2.2 Non-recurring forms of public value capture

Austria has a variety of non-recurring forms of public value capture mechanisms focussing on benefits from infrastructure construction or land reallocation, real estate profits and more recently cooperative development by civil law-based planning contracts. None of these approaches is actually based on a consistent calculation of “unearned increments” to determine a unified share of public value capture. The existing day-to-day practice as well as the regulatory basis are somewhat confusing and difficult to comprehend. Therefore, they are lacking transparency, traceability as well as legal and planning certainty.

Fees for the provision of infrastructure

So far there is no nationwide system to calculate and collect fees for the provision and maintenance of technical and social infrastructure. All nine federal states have different regulations, mostly regarding technical infrastructure, such as roads, sewer systems or drinking water supply. Typically, the land owner needs to contribute to the construction costs and further on with a yearly fee to the maintenance costs. Neither the impact of technical, social, digital nor green infrastructure on the land or the real estate value is calculated and such a fee is not collected either. Since the mid 90s municipalities are allowed to form a contract with the land owner and negotiate further contributions to the infrastructure. This leads to an inconsistent day-to-day practice with large potentials for municipalities to cover their construction and maintenance costs. At the same time the

competition for attracting inhabitants and enterprises leads to a rather marginal contribution to infrastructure costs.

Real estate profit tax

The real estate profit tax was introduced in 2011 on national level. The tax is linked to the sale of a property, but considers the value gain. Relevant for the calculation is the tax rate of 30 % of the sales profit defined by the difference between the purchase costs and the sales price of the property. The real estate profit tax is a rather complex tax, e.g., the date of purchase is relevant for the tax rate and there exist several exemptions. Due to the fact, that zoning decisions lead typically to a value gain and therefore to a higher absolute tax revenue, the tax is often referred to as a 'hidden public value capture' tax (Russo, 2016). The main difference is the case of application: the real estate profit tax is linked to a sales transaction; a zoning decision or detailed development plan that allows higher densities itself do not hold any obligation to pay the real estate profit tax. Solely the value gain due to a planning decision is not captured and represents a gap in Austria's tax regime. Due to its mandatory link to a sale the real estate profit tax has no potential to fill this gap.

Land reallocation, land readjustment

Land reallocations or land readjustments are conducted to improve the parcel structure for a building development. At the end of such a process the land owners receive a plot that has the necessary infrastructure and is suited for development, which leads to a certain value gain. Depending on the procedure some land has to be handed over and dedicated for public infrastructure such as roads. An actual value gain is not calculated nor captured, but a certain non-monetary capture takes place due to the dedication of public land. Land reallocation or readjustments are important (re-)development tools but hold no potential for any direct public value capture. The application cases are also rather low.

Cooperative development by planning contracts

Planning contracts based in civil law were established in the 1990s in the Austrian planning system and are nowadays an important additional instrument within the planning system and a relevant tool to establish public-private collaborative arrangements. Municipalities can negotiate specific agreements with contract parties. Typically, the intended use has to be executed through development within a certain time frame or additional contributions to infrastructure costs are defined. The subject of contracts has to be authorised by planning acts and cannot be freely negotiated. This legal allowance generally does not include the possibilities to capture planning gains (Kanonier 2020).

In 2014 the city of Vienna introduced so called 'urban contracts' as the last federal state (§ 1a WrBauO (Vienna Building Act)). The Viennese contracts include a variety of new possibilities. For example, a higher building density can be negotiated in the return of certain additional services for the public provided by the developer. Interestingly, these contracts are not publicly accessible and there are no common rules for trade-offs. This leads to uncertainties on the developer's side and an inconsistent practice. The main advantage of such contracts is the flexibility to negotiate contributions for the general public depending on the location and granted additional rights.

At the moment there does not exist a direct public value capture mechanism linked to planning decisions in Austria. The introduction of such a mechanism would be possible

constitutional wise. Additionally, fiscal regulations do not oppose such a change (Schindelegger and Mayr 2021). With further development and an adaption of the legal basis, planning contracts could be used to capture a value gain. Additionally, provisions that guarantee transparency and equal treatment would be of outmost importance. Another option would be the introduction of the instrument based on the state's planning laws. There would also be the necessity to adapt these laws. The design of the instrument could consider the specific situation of the state.

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3. Belgium

Jean-Marie Halleux and Peter Lacoere

3.1. General observation

The overview of land value capturing in Belgium (Halleux and Lacoere 2022) has put forward deep contextual specificities that need to be considered. Firstly, it must be recalled that Belgium is a federal state where planning competences have been transferred to its three regions (Flanders, Wallonia and Brussels). By contrast, the competence of tax collection has been split between the federal level and the regional level. Secondly, Belgium is marked by a cultural and political context where individual property rights are very strong. This context explains the oversupply of building land into the regional land use plans (called “*plans de secteur*” in French and “*gewestplannen*” in Dutch). More generally, this context also explains why planners face huge difficulties to concretely influence land uses. In parallel, it also explains why both concepts of land value capturing and unearned increments are unfamiliar to most Belgian stakeholders and decision makers. In this perspective, our first proposal to improve the current situation is to better integrate those concepts into public debate, as this represents a prerequisite to develop more active land policies. Of course, we are aware that the implementation of this proposal can only be fruitful in the long term.

3.2. Recurring forms of public value capture

In Belgium, one finds two important recurring forms of land value capture: the property tax and the transfer tax (Halleux and Lacoere 2022). The tax base for the property tax is the cadastral income, which represents a fictitious income corresponding to the market rental value of the property.

The system of the Belgian property tax suffers from two main weaknesses. Its first weakness is that, through the cadastral income, land and buildings are taxed as a single integrated unit. In relation to the philosophical background of land value capture, several economic arguments are in favour of taxing land values more heavily than building values (Fernandez Milan et al. 2016). To launch a structural reform aiming to implement a two-rate property taxation in Belgium will require to solve various technical problems. However, the most important blockage is probably cultural. Indeed, most Belgian stakeholders and decision makers hardly perceive that an immovable that is built is actually a combination of two different elements – a parcel of land and a construction. To be more precise, most Belgian stakeholders and decision makers hardly perceive the usefulness to consider this differentiation.

Following the Belgian legislation, an update of the cadastral incomes (officially called equalization) should be introduced every ten years. For political reasons, the last equalization was achieved in 1980 (on the basis of market values from the 1st of January 1975). This operation is much unpopular and perceived by the population as a potential source of taxation increase. As a consequence, the former ministers (more precisely, the former Federal ministers of Finance) did not choose to take the political risk to launch such a reform. The absence of a recent equalization can be explained by political reasons

but it can also be explained by budgetary reasons. Indeed, the cost of a global equalization has been estimated to 100 million euros (Dubois 2010).

This absence of recent equalization represents the second main weakness of the Belgian property tax as this is the source of major inequities. By using the above mentioned differentiation between land values and building values, we can see inequalities due to the evolution of land values as well as due to the evolution of the physical characteristics of the constructions.

As mentioned above, the 1980 equalization was based on the cadastral incomes from the 1st of January 1975. Since 1975, in relative terms, property values – and therefore land values – tend to increase in urban outskirts and rural areas and to decrease in urban centres. In concrete terms, this situation implies that, considering two properties of the same market values, taxes will be higher on the urban property than on the suburban or rural property. This situation is clearly unfair for urban owners. Moreover, it clearly hinders the spatial objectives to limit urban sprawl and to regenerate traditional urban fabrics.

Concerning the physical characteristics of the construction, it must be noted that the absence of a recent equalization did not provide an appropriate monitoring of the renovation of the housing stock. This is another source of inequities between owners subject to the property tax.

In this context, due to absence of recent equalization, the cadastral income cannot be considered any longer as an appropriate indicator of the market values. Following the European Court of Justice, this makes the basis of the Belgian property tax legally contestable (European Court of Justice ruling 12 April 2018, no. C-110/17).

3.3. Non-recurring forms of public value capture

3.3.1. Non-recurring forms of public value capture – Focusing on one factor of value increase

In Belgium, one finds two main land value capturing instruments focusing on one factor of value increase: the refund and urbanisation taxes on the one hand and the taxation for rises in values due to planning regulation on the other hand (Halleux and Lacoere 2022).

The refund and urbanisation taxes

The refund and urbanisation taxes are used to finance basic infrastructures related to road works, pavements or sewers. They must be paid by the adjacent owners of the road who directly benefits from the works. It appears that refund taxes and urbanisation taxes are only marginally used by municipalities. This situation can be explained by three main reasons:

- such forms of taxation are very unpopular and, as a consequence, local politicians avoid them in most cases. Costs of road and sewage works are rather collectivised by municipalities and utility companies. This mechanism, in combination with a very dense road network, results in cheap construction works, more urban sprawl and environmental damage. A striking example is 400,000 homes that, in Flanders, are not connected to the sewage network and thus pollute the soil and watercourses (not a

single watercourse in the Flemish region achieves the European water quality standard that must be met by 2027).

- the property tax represents an important income source for the municipalities (Halleux and Lacoere 2022). For this level of government, this is probably considered as a “sufficient” way to tax land.
- although they can be related to the municipal level, most improvements or services that justify a contribution by local property owners are actually financed through external subsidies from utility companies or from other levels of authorities (regional subsidies, national subsidies or even European subsidies). This may prevent municipalities from taxing something that has actually been paid by other actors.

In the end, our analysis on the refund and urbanisation taxes tend to show that the Belgian system is characterised by both, the avoidance of direct taxation and the “invisible” collectivisation of costs.

Taxation for rises in values due to planning regulation

A betterment tax on gains related to land use regulation exists in both, Flanders and Wallonia. Those taxes have been introduced recently into the two regional legislations (in 2009 for Flanders and in 2017 for Wallonia). By contrast, a clause on planning servitudes exists since the 1962 Planning Act. Such a time-lag between the application of those two symmetrical instruments has to be related to the contextual observation on the cultural and political strength of private property rights in Belgium. In fact, taxes on planning gains related to land use regulation have been recently rediscovered because they were considered necessary to finance the compensations that becomes urgent in order to achieve the planning objective of urban sprawl limitation. In other words, the rediscover of taxation on land values created by zoning can be explained by the objective to capture new land values related to new building land in order to finance the compensation related to old building land that has to be rezoned.

This Belgian context in favour of property rights also explains the difference between low taxation rates on the one hand and high compensation rates on the other hand. The portion of capture and compensation is not balanced in Belgium. Compensation borne by the regional governments is fixed at 80% of the value loss, whereas the capture of increased land value only varies from 1% up to 30% in Flanders and from 0.5% up to 15% in Wallonia. On top of that, Belgium has a culture of tax evasion and contestation. As a result of low taxation and the contestation of it, no more than 31,620,000 euros was collected by the Flemish government of the 1,860,000,000 euros of estimated planning gains between 2009 and 2017. This corresponds to an average tax rate of 1.7% and an annual average of 3,952,500 euros¹.

From a social just perspective and given the oversupply of building rights that needs to be wiped out in Belgium, a mirror image of public value capture is needed to cover the costs of compensation. To achieve more efficient and significant betterment taxes on gains related to land use regulation would require a cultural and political turn in favour of social

¹ Source: <https://cartoon-productions.be/hoeveel-is-uw-grond-waard-bij-een-bestemmingswijziging/> (last visit 10/04/2020).

equity ambitions aiming to redistribute land value to the community. As the balance between individual property rights and collective regulations is strongly rooted in societies, it is hard to perceive how such change could actually happen in a predictable future.

Analysing the Belgian situation on land value capture has put forward that density bonuses are not used in the country (Halleux and Lacoere 2022). This situation can be explained by the fact that the issue of density is not so central in Belgian planning practices. Indeed, in most cases, urban developments are not subject to regulations related to density. In Belgium, regional land use plans are the most important planning device and this instrument does not define density norms. Regulatory zoning (although not much detailed) is at the heart of these plans, in which land is divided into general urbanisation areas (housing areas, economic activity areas...) and non-urbanization areas (agricultural areas, forested areas, green spaces areas...). When these regional plans were adopted during the sixties, seventies and eighties, no betterment tax was imposed and an oversupply of build-up land was designated over the whole of the Belgian territory (Halleux et al. 2012). Taxation of planning gains is thus a very recent phenomenon in Flanders and Wallonia and still non-existing in the Brussels capital region.

In 2020, a proposal to integrate density bonuses has been discussed in Flanders. This proposal was justified by the fact that more and more construction projects are densification projects within the existing urban zones. However, the proposal was not accepted by the Flemish regional parliament and the legislative modification has not been applied. It was argued that an undefined density was already “given” to the landowners when the regional land use plans were adopted, which leaves the increase in the land value of further densification to the private owners.

3.3.2. Non-recurring forms of public value capture – Focusing on more than one factor of value increase

In the last twenty years, urban planning charges were more and more applied by Belgian municipalities (Halleux and Lacoere 2022). On this topic, let us recall that urban planning charges are contributions that public authorities require from developers to deliver planning approvals. To develop further this form of developer obligation would probably require more transparency regarding the revenues received by municipalities from urban planning charges. It is likely that knowing more about this topic would lead to the conclusion that many municipalities could recover more of the uplift in land values arising from the right to develop. However, achieving this aim would require, on the one hand, to develop the real estate economics expertise of local planners to allow more equilibrated negotiations with developers and, on the other hand, to increase transparency and prefeasibility to protect the viability of the development projects.

Besides the improvement of planning practices related to urban planning charges, improving the Belgian situation regarding land value capturing would require to activate or reactivate various land policy instruments. An interesting instrument that could be reactivated is urban land readjustment. This tool was applied for the reconstruction of municipalities severely hit by the Second World War. Since that period, it looks like it is not used anymore, although it is still included in the Walloon and in the Brussels planning legislations. In Flanders, urban land readjustment (“*ruilverkaveling-herverkaveling*” in Dutch) has been taken out from the planning code, but it has been embedded in the code on rural land readjustment. This integration makes it possible to link urban or rural land

readjustment to changes in the land use plans, for instance changing one area from residential to agricultural use and another from agricultural to residential use. This has to be considered in the Belgian context where there is an oversupply of building land and where compensation for decreases in values due to planning regulation applies. By using the land readjustment technique, it becomes possible to reduce building land without compensation fees. Unfortunately, the first experiments being carried out on this perspective have shown to be more complicated than expected.

The Belgian legislation differentiates two instruments in relation to land lease: “*droit de superficie*” or “*recht van opstal*” for the first one, and “*droit d'emphytéose*” or “*recht van erfpacht*”. There are no consensual English translations of the terms and we choose to use the following terms in English: “surface right” and “emphyteusis right”. Both rights are coming from a Dutch laws from 1824 (between 1815 and 1830 Belgium and the Netherlands were integrated into the same country). Later, those two laws have been integrated into the Belgian Civil Code. Those two laws allowed to create a distinction between the owner of the land and the owner of what is developed on the land (it can be constructions but it can also be plantations). Those rights are potentially much useful to capture land value. Although, at the present time, their use is marginal.

Concerning “emphyteusis right”, an interesting application relates to the development of the new town of Louvain-la-Neuve, where it was successfully used to control the spatial and social development of the town (Remy and Laconte 2020). Concerning “surface right”, we have seen the use of this instrument by various actors active in the field of maritime-economic development. It has also been used by actors active in housing policy, with the aim to limit the acquisition cost of housing (Bernard 2010).

3.4. Concluding recommendations for Belgium

Based on this overview of the Belgian case, we conclude that there is probably no need to develop new specific instruments of value capture. Although, we recommend a more severe implementation and adjustment of the existing instruments to bring them in line with the current spatial and housing policies:

- To organise regular equalizations of the cadastral incomes to use more actual and fairer tax bases;
- To implement a two-rate property taxation to discourage further high land take;
- To develop a more systematic implementation of the refund tax by the local authorities to better cover costs of road and sewage works;
- To develop legal research on the implementation of density bonuses within the framework of the regional land use plans;
- To develop the expertise of local planners in the application of urban planning charges;
- To achieve a fairer balance between the levels of value capture in case of upzoning and the level of compensation in case of downzoning.

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4. Bosnia and Herzegovina

Nataša Simeunović and Jelena Manojlović

Given that in Bosnia and Herzegovina there is no legal regulation directly related to PVC, there is significant space to improve the situation in this field through existing legal mechanisms.

4.1 Recurring forms of public value capture

In B&H, the recurring forms can be divided in the real estate tax, the real estate transfer tax and the capital gain tax (cf. Simeunović, N., Manojlović J. 2022).

Real estate tax

In Bosnia and Herzegovina, there is a lack of current data on the property of displaced persons who migrated from one entity to another during the war, where they bought new land and built new facilities registered in those entities and where they pay taxes on newly acquired property. The problem is in the collection of taxes on property that has been abandoned and about which there is no updated data on ownership in the official records of these entities, which directly affects the lack of income from property taxes. Registry update mechanisms need to be introduced.

The second part of the problem is that some of the houses that were devastated by over 70%, and were therefore exempt from paying property taxes, have been rebuilt over time, but due to lack of administrative mechanisms to update data on renovations, they still avoid paying property tax liabilities.

There is no connection between the real estate register and the tax administration. If a person has not independently registered the real estate, the state does not have mechanisms to determine the existence of the property tax liability, at least until the moment the real estate is sold or inherited.

In the FB&H, when it comes to property taxes, living space is not taxed, regardless of the size of the living space or the number of household members, unlike in the RS. Moreover, the basic condition for exemption from real estate tax in the form of a housing unit is that it is used for residential housing, which opens the possibility for adult family members, who own several such units, to register separately by units as if each lives separately and thus resort to avoiding paying taxes on the same.

In the entity of RS, the basis for calculating the real estate tax is determined on an annual basis for each local community divided into zones (determined value per m² / per zone * area in m² = tax base). The disadvantage of this calculation system is that it does not take into account the age of the building, construction method, energy efficiency of the building, etc., that is, it often does not reflect the real value of real estate, which would differentiate the tax burden. Thus, for example, if we look at two properties of the same size, number of household members and located in the same zone, and different ages, quality of construction and overall landscaping, which would result in a drastic difference in market value of both properties, in terms of property tax, they would be subject to obligations of the same value. In our opinion, there is space here to improve this

mechanism, because it could monitor the movement of real estate values, the development of individual zones and achieve a higher level of value capture.

On the example of the local community of the city of Bijeljina, it was noticed that the estimated market value of real estate by zones has not changed in the last 5 years, the last time their values were adjusted to more by about 9%. On the other hand, prices in the real estate market jumped by about 25% compared to prices 5 years ago.

Real estate transfer tax

Real estate transfer tax, as a tax instrument that has to be paid if a real estate property changes the owner, is applied in FB&H² and it is calculated in the amount of 5% of the sale value of real estate. In most FB&H cantons, the seller as a taxpayer pays this obligation except for the Sarajevo Canton where the buyer is liable to pay real estate transfer tax.

In order to implement this measure in FB&H, notaries, courts, and administrative bodies, each within its competence, are obliged to submit real estate contracts, inheritance decisions and gift contracts to the Tax Administration within eight days from the date of issuance of the original copy, that is, of the finality of the decision on inheritance, and if they do not submit it within the prescribed period, they will face high penalties.

The RS entity does not know the real estate transfer tax as a tax instrument, unlike the FB&H. Although the introduction of this tax instrument on the territory of RS would contribute to a significant increase in public revenues, due to the relatively lower standard of living in B&H, this burden could potentially cause further social stratification, poverty, and other negative consequences so it would be necessary to investigate in detail the benefits as well as the disadvantages of its eventual introduction.

Capital gain tax

A capital gains tax of 10% is applied in the RS entity (cf. Chapter B&H, final publication of this COST Action), unlike in the FB&H, which does not have a clearly specified instrument, but appears as a form of income tax at the same rate.

In all cantons of FB&H, if the purchased or otherwise acquired real estate is sold within less than 3 years from the date of acquisition³, the seller is liable to pay the real estate transfer tax and, as well, the income tax, which by its nature is more in line with the concept of capital gain tax. Therefore, the seller suffers a greater tax burden, except in the Sarajevo Canton, where the real estate transfer taxpayer is the buyer starting from 2019. This double burden on the seller as a taxpayer does not have a stimulating effect on the real estate market.

² Law on Real Estate Sales Tax and Heritage and Gift Tax (Official Gazette of Sarajevo Canton, No. 28/18)

³ Balta, F. [2018]: Taxation of Real Estate Transactions in the Area of the Federation of Bosnia and Herzegovina. <http://privrednastampa.ba/wp-content/uploads/2018/11/3.-Fuad-Balta-28.11.18..pdf> (last visited 12/12/2021)

4.2 Non-recurring forms of public value capture

The RS Law on Spatial Planning and Construction⁴ defines that a construction plot destined for construction must have provided car and pedestrian access to public traffic, an adequate number of parking spaces and a green area that covers at least 20% of the total plot area when building new facilities, except in the case of replacement of an existing facility with a new one. Unfortunately, it is a very common practice to avoid landscaping by buying old buildings on whose plots new ones are being built, thus avoiding the obligation to provide a minimum of 20% of green space in favor of housing.

Also, there is a noticeable phenomenon of corruption with the aim of influencing the obtaining of building permits in zones where the regulatory plans do not allow construction, and it affects the change of the regulatory plan in order to obtain it.

It is recommended that local authorities with real estate owners, investors, residents, urban planners, and other stakeholders, establish cooperation in order to define a strategy by which local authorities would gain additional funds by defining new instruments to maintain value capture in urban areas where possible and expected. It is also important to emphasize that in addition to all that, it is necessary to further develop sustainable development strategies. The proposed mechanism is indicated as a better choice compared to public-private partnerships.

In B&H, due to migrations caused by the war in the early 1990s, there are many illegally constructed buildings, most of which are not registered and there are no grounds for tax obligation. The legalization process lasted until 2016, but the situation is still such that only an insignificantly small percentage of such facilities have been legalized due to the slow functioning of the system.

Penal provisions exist in the law, but to a large extent there are no mechanisms to determine that the avoidance of reporting an obligation has occurred.

When it comes to the tax on land that is cultivated or not cultivated, as well as whether it is built or unbuilt plot, the laws of B&H do not make a difference. The investor of the construction of facilities on the city construction land is obliged to pay the rent and compensation for the costs of arranging the city construction land before obtaining the construction permit and he must pay a fee for the conversion of agricultural land into construction land if the conversion is needed.

When it comes to social housing, it is recognized by law, but there is no obligation of the builder (developer) to provide housing, but at the level of local communities and entities, decisions are made to invest in their construction depending on available funds. The state provides subsidies to a certain number of social housing users who meet the prescribed conditions in the name of paying rent costs, and the news is that for the period from 2021 to 2030, the threshold for exercising that right has been raised so that as many families as possible can exercise it. Also, the plan is to increase investment in providing more social housing units.

The EU project "Establishment of a cadastral database on real estate ownership" is being implemented in the RS entity. Since the beginning of 2017, the Republic Administration

⁴ "Official Gazette of RS" No. 40/13, 2/15, 106/15, 3/16, 104/18 and 84/19

for Geodetic and Property-Legal Affairs⁵ has been recording all purchase and sale agreements in this territory, based on which real estate transactions and registration are performed. The intention is for this database to serve as a guide for buying or investing, for making plans and reports necessary for market monitoring, for the needs of valuation for households, investors, banks, appraisers ... In future, the database could potentially relate to the Tax Administration and serve as a basis for updating the database of real estate taxpayers as well as the possible determination of tax based on sales values from the contract, but disparities have already been noticed in the values of real estates shown in the contracts registered so far and the question arises as to whether switching to such a solution would make sense.

Local authorities do not recognize enough the importance of investing in infrastructure projects that would ultimately be the basis for increasing tax revenues due to the growth of real estate market value, or the possibility of significant value capture of real estate growth in terms of public revenues.

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⁵ Law on Survey and Cadastre of The Republic of Srpska "Official Gazette of the RS", No. 6/2012, 110/2016, 22/2018 - decision of the Constitutional Court, 62/2018 and 95/2019 - decision of the Constitutional Court

5. Bulgaria

Venelin Boshnakov

Public value capture in Bulgaria could be implemented via two general channels, as distinguished by the classification of recurring and non-recurring forms. The first one is grounded on the state and local policies for taxation of immobile properties (land and buildings). The administrative system for assessing property values does not prove to be flexible enough to swiftly reflect the significant increments in the market value of real estate objects. The second one is related to the territorial planning system that regulates the processes for land development in both urban and rural areas of the country. Although it has been institutionalized by the adoption of several specific laws by the Parliament, it needs to be further elaborated to introduce operational instruments targeted on substantial property value increments that stem from the realization of development plans. Certainly, any possible reform of the regulations concerning any of the two channels should take into account the feasibility of any particular instrument in the social and political environment of Bulgaria, especially concerning the spatial development targeted in the resurrection of the depressed regions.

5.1 Recurring forms of public value capture

5.1.1. Real estate taxation

The recurring forms in Bulgaria are generally related to real estate taxation system, including transferring and donating real estate taxes (Boshnakov & Bobchev 2022).

The major problem in the effectiveness of local taxation identified via recent political debate concerns the mechanism of determination of the tax assessment value of a real estate object. According to Local Taxes and Fees Act (LTFA), the Municipal Council determines the amount of the tax within an interval established by the law, e.g. the tax rate is chosen from the range of 0.1 to 4.5 per mille of the tax assessment value of the property. The valuation is performed by municipality experts that apply standards set by LTFA (Appendix No.2) which depend on the area, the location, the kind of the property, the construction type, the degree of wearing out, etc. A major component here is the coefficient reflecting the location – for example, the location coefficient for Sofia Metropolitan area varies between 28.1 and 93.6 per square meter in different zones, however these zones have been updated last time in 2008.

Moreover, a zone covers one whole neighbourhood and does not reflect at all any substantial differences in the market values between places with or without significant public investment for development. An adjustment is applied by a “coefficient for infrastructure” which takes into account the availability of utilities already provided to the object (e.g. water supply, sewerage, electricity, central heating, street connectivity). An obstructed political configuration in the Municipal council typically does not allow any constructive agreement and consequent action for updating the legislation and revision of tax assessment values to allow some form of value capturing. A good example for this impediment is the political pressure on the Vice-Mayor of Sofia (Minko Gerdzhiakov), which led to his resignation in 2011 after a trial for a reform in the zoning scheme. In the same time, representatives of Municipal Councils in Bulgaria reveal clearly their

expectations for significant reforms in the tax assessment rules that will allow a much higher degree of reflection of the market prices, and much more frequent reassessment practices (Ganev 2019).

5.1.2. Reforms in real estate administration

Another source of advance in public value capturing policies with a regular character is the need for recurrent reforms in the administrative system that governs the processes of real estate development. For example, it is widely acknowledged that the issuing of building permits in Bulgaria, being a significant aspect of land development process, is a complicated procedure that is governed by several state agencies. However, the data necessary for proper execution of duties of both developers and agencies is dispersed across a variety of sources: databases, registers, websites, etc. For this reason, only a limited number of consultants proficient in the administrative issues concerning the construction processes, including the building permitting, are well oriented in the whole procedure.

In this respect, a recommendation of World Bank consultants has been put on discussion regarding a *“merge of the Land Registry and Cadaster into a single administrative agency... which should be operationally independent, government supervised, and partially or fully fee-financed”* (WB 2015: p.37). Another case, which needs political attention to be resolved, is the obstructed interaction between Geodesic, Cartography and Cadaster Agency (GCCA) and Sofia Municipality in the process of developing effective links between the state cadastre system and the municipal Geographic Information System (GIS). The expert opinion in this regard is that, to be effectively operational, a dynamic GIS should be interconnected to the respective “master plan” where the maps must encompass all relevant data sections, e.g. *“zoning, infrastructure and construction information to allow designers to proceed with their plans without having to contact authorities for further details”* (WB 2015: p.29). The reform in zonation of course stays. Moreover, the private sector expectations are oriented to a future provision of regulated access to both systems.

5.2 Non-recurring forms of public value capture

The current status of implementation of such forms in Bulgaria cannot be considered as a recognized policy realized by particular tools that are adequately institutionalized. However, different insights concerning the defence of the public interest can be found in various documents and reforms proposals. For example, such a document is the “National Concept for Spatial Development for the period 2013-2025” (NCSD) that emphasises on targets and interests common to all stakeholders and the nation as a whole. Unfortunately, such strategic documents are too general and just outline directions which should be followed by particular steps to transform it into an effective instrument for spatial development. For example, it clearly states that it *“creates a basis for full-fledged participation of the private sector as well by attracting significant investments by means of public involvement”* (NCRD 2012: p.113). One of the key tools for its realization is the public-private partnerships considered as a new driving force of spatial development which, however, needs further elaboration as methodological guidelines for different actors.

As a result of a recent activation in this direction, amendments to the Spatial Development Act (SDA) were publicized by the National Parliament official source (State Gazette No.16 / 23.02.2021). Some of the proposals invoked a severe dispute among the

supporters of the different sides, including representatives of the professional community of real estate development. Particular revisions were considered as quite provocative and were officially complained due to which a presidential veto has been enacted; nevertheless, the Parliament has subsequently lifted the veto (Milcheva & Kolev 2021).

One particular proposal has been discussed concerning the introduction of Unified Spatial Development Public Register by the Ministry of Regional Development and Public Works. As an integrated database, it should encompass information about the various acts issued by different state bodies (Ministry, the Directorate for National Construction Control, regional and municipal administrations). When such Register becomes operational the state agencies will be able to operate in an informed environment accessing all relevant facts recorded in the Register. Undoubtedly, this should facilitate much better the procedures for issuing permits as well as the monitoring and control of all consecutive processes.

Among many other current proposals for upgrading the acting legislation of spatial planning processes, one specific case is worth describing as far as it relates to a certain situation of value capturing via the approvals of private development plans. A core duty of a municipality concerning the territorial development is to execute the so-called “street regulation”. Permitting a construction project requires the municipalities to apply this regulation not only to the lot which is the object of permit but also to the other objects along the street (up to a defined point).

Certainly, it could be expected that such a rule may hinder the investment efforts of the owners (or developers) of properties allocated on a new unregulated street. Another objection here is that by the approval of such regulation a major duty assigned currently to the local government is conveyed to the private stakeholders because of the inability of the Municipal Council to guarantee the provision of the road facility. In this line, a conclusion is derived that a major right pledged by the Constitution is intimidated (i.e. ownership rights). In other words, if the municipality does not execute its duty to provide road access, this will not only hinder the construction process – it will *de facto* deprive a citizen from exercising her property right on the respective lot.

As a partial case, the following case illustrates the character of such policy reform. According to the proposed alteration of the street regulation, construction projects in resorts, holiday villages, golf villages, water parks, and other recreation areas shall not be permitted if the construction of streets, roads or lanes have not been executed – and this, the municipality has not linked the prospective construction site to the existing road network providing regular access to the lot of interest. “*As a rule, it is the municipality’s obligation is to build streets and street infrastructure... however in case the municipality does not take the necessary actions and does not build the street, the construction works may not be commissioned. This means that if investors do not want to depend on the municipality’s actions, they will have to build the street at their own expense*” (Milcheva & Kolev 2021).

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6. Czechia

Eliška Vejchodská

Land value capture has two possible pillars. One pillar is based on taxes imposed on land value, eventually on the whole real estate value, without focusing on sudden land value increments. The second pillar comprises planning instruments focusing on one-time significant land value increments, e.g. resulting from the assignment of new development rights (Vejchodská et al., 2021). Possible reform of the first pillar will be discussed in Section 2.1, the proposed reform of the second pillar in Section 2.2. For defining real estate taxation reform, we come from findings of general economic literature. For defining the basic framework of a reform of Czech spatial planning practice concerning land value capture instruments, we took into account the opinion of the professional public on the feasibility of adopting selected foreign instruments into the Czech institutional context. Therefore, the proposed reform of Czech spatial planning practice is based on several waves of data collection from Czech spatial planning experts (see Vejchodská et al., 2019; Vejchodská et al., 2020; Vejchodská and Hendricks, 2023).

6.1 Recurring forms of public value capture

Land tax and real estate tax can be considered the basic recurrent form of capturing land value. Therefore, this section will focus on this type of tax. We will discuss real estate tax because land tax faces the complicated evaluation of land values without considering its improvements.

Real estate tax

Real estate taxes can be applied as a potent property and wealth taxation tool, decreasing social disparities within society. A real estate tax reform can be observed from the following viewpoints: (i) tax base definition; (ii) the magnitude of the tax and the changes in the tax yield of other taxes in relation to the increase of the real estate tax yield; (iii) the tax recipient; (iv) social aspects of the tax. Below, we will discuss each point separately.

ad (i) A typical approach for tax base definition would be the mass property value assessment based on statistical regression models operating with buy and sale prices of properties. The statistical models reassess the market value of real estate periodically. The property owner pays an ad-valorem tax based on this assessed property value. An ad-valorem tax based on the assessed property value may also be recommended for the Czech practice. However, Czech authorities worry about the feasibility of the appraisal of real estate properties within the Czech context, as current practice depends purely on physical indicators of properties combined with coefficients and values per square metre set by law.

Ad (ii) In many countries, unlike in Czechia, real estate taxes comprise a significant source of public finance (OECD, 2020). Using property value appraisal for tax base definition, Czechia might increase its property taxation to the level typical for advanced European countries and decrease other taxes, such as income taxes, to leave the overall tax burden untouched.

Ad (iii) Currently, municipalities are real estate tax recipients in Czechia. If real estate tax yield increased, depended on local real estate values, substantial budgetary disparities within municipalities would need to be avoided to prevent the creation of excluded communities with low property values. An example of the approach limiting such disparities is the Dutch approach of a compensation mechanism. The higher is the real estate value in a given municipality, the lower is the state financial contribution to the municipal budget (Rijksoverheid, 2019). Another possible approach is the central redistribution of property taxes among states, regions and municipalities, used in Czechia currently for income taxes or value-added tax (Act No. 243/2000 Coll.).

Ad (iv) Increased real estate property taxes might have adverse effects on selected social groups, such as the elderly. To avoid it, the tax burden of vulnerable social groups might be shifted to the sale or inheritance of the property, as is the case in Denmark (Hughes et al., 2020). Other approaches to this issue might be found in countries like Estonia, where home-owner-occupied buildings are tax-exempt (Wenner, 2018).

6.2 Non-recurring forms of public value capture

One of the essential starting points for defining land value capture instruments for Czech practice is the administrative organisation of Czech local authorities. As of 2021, there are 6,258 municipalities in Czechia, which are the main guarantors of the development of their territory. Small municipalities with several hundred inhabitants without a professional administrative apparatus have entirely different possibilities of utilising such instruments than large cities. Instruments discussed here and their possible adoption is described Vejchodská et al. (2020).

6.2.1 Adopting the tax on added land value created by zoning

Instruments of minimal administrative burden which capture land value more or less automatically are more suitable for small municipalities. Therefore, the adoption of the Swiss model of the tax on added land value created by zoning (see, e.g., Viallon, 2018) can be recommended for the Czech context. Changes in the land use plan creating a certain advantage for the landowner establish the duty to pay this tax. The payment is postponed to the time of construction or land sale.

Czech experts in spatial planning perceive this instrument as relatively feasible for adoption into Czech spatial planning practice compared to other possible new instruments. They perceive the only significant pitfall in need for land value appraisal, emphasising the dependence of the valuation result on the author of the study and selected appraisal method. When adopting the Swiss model, no significant reforms of the Czech spatial planning system would be necessary if the fee calculation was based on the rough spatial regulation provided by the spatial plan. However, a more detailed plan would be a more accurate basis for assessing the increase in land value. This would necessitate an effective scheme of conditioning new development with the creation of a more detailed plan.

The primary purpose of the Swiss instrument is to collect funding for the specific needs of municipalities and the canton, such as the need for compensating other landowners when reducing the value of their land with a new regulation or the need for brownfield revitalisation. The same logic can also be applied in Czechia. It seems crucial to determine

the purpose of the money collected and their distribution among municipalities, regions, or the state to prevent creating a new incentive for municipalities to define new buildable areas within their spatial plans.

6.2.2 Universalising the existing fee on added land value created by local infrastructure provision

An instrument applicable also in small municipalities is the fee on added land value created by infrastructure provision. Currently, this fee is defined by Czech law No. 565/1990 Coll. Its applicability is limited to the cost coverage of the construction of the water supply and sewerage network. The fee amount can be derived based on land area, not on other characteristics, such as the gross floor area of planned buildings. This setting makes it impossible to use this fee effectively for different types of construction and local public infrastructure. Universalising this fee would bring broader opportunities for Czech municipalities to cover their costs of public infrastructure provision, which is directly connected to new development.

6.2.3 Functioning and predictable developer obligation scheme

Representatives of larger cities would also appreciate the opportunity to negotiate developer obligations actively, as is the case, e.g. in Germany. Czech actors considerably differ in their opinion if, under current legislation, negotiated developer obligations called in the Czech legislation planning contracts can be applied in Czechia or not.

The new law (No. 283/2021 Coll.) approved in 2021 brings considerable changes in planning contracts definition and applicability. It also introduces the desirable clarification of the content of planning contracts. Under the new definition, developer obligations may cover the infrastructure provision or cost-covering of infrastructure provision, decontamination of the site, settlement of property relations in the area, the financial or in-kind contribution for the added land value created by zoning.

On the other hand, the condition of the new law on the applicability of planning contracts for a limited period only after the urban plan approval (4 years) limits the negotiating powers of municipalities significantly. The investor can always wait for four years to get rid of the need to sign the planning contract before proceeding with development preparation. Therefore, landowners and investors will be willing to contribute up to the lost profit from waiting with development for further four years, not more. We can expect, therefore, only negligible contributions from the side of investors, if any.

For making planning contracts work, the time limitation of the applicability of planning contracts present currently in law No. 283/2021 Coll. has to be removed. At the same time, the principle of proportionality should be added for setting the ceiling for overall demands placed by municipalities on landowners (the principle of proportionality is present, e.g. in German law under §11, more on this principle can be found, e.g. in Drixler et al., 2014).

The current developer obligation model contains a perverse incentive for small municipalities located within metropolitan areas of big cities to sprawl, as land market values within their cadastres are high. If the developer obligation model was effective, these municipalities would make a fortune from contributions for the added land value created by zoning by defining new land for development. This incentive has to be

removed from the scheme of developer obligation model to avoid massive sprawl in future (see also Section 2.2.1).

6.2.4 Adopting a land readjustment scheme

The fragmented property structure is linked to the construction of most development areas in Czechia. An instrument such as land readjustment would reorganise these areas and prepare them for development. At the same time, it would enable to treat all landowners equally, regardless of the location of non-commercial activities within the area. Development is thus usually carried out only if a prominent developer manages to buy up all land. Therefore, the adoption of a land readjustment scheme would be recommended (the new building law No. 283/2021 Coll. does not operate with any such scheme).

The discussions with Czech stakeholders in development uncovered hunger for such instrument within the Czech context, but with scepticism, if it is possible to adopt such a scheme due to the historical roots of the Czech nation. Stakeholders highlight too strong interference in property rights of such a scheme. The Czech nation is sensitive to property rights interference due to the past collectivisation of private agricultural land. Even more than 30 years after the end of the socialistic regime, this legacy still strongly shapes the Czech public debate. Any instruments that weaken the principle of the inviolability of personal property thus face a significant handicap in Czechia. The solution could be setting a minimum share of owners to agree on the final readjusted solution. The starting point for the Czech regulation could thus be the Act on Land Adjustments in force in Czechia. It contains a requirement for the consent of the owners of 60% of the land area. The second option is to apply this instrument only to brownfield areas.

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7. Estonia

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Different tools that correspond to the concept of value capture are used in Estonia, but there is no legal definition of value capture or regulation by law for capturing planning gains. There is a need to develop a legal framework to address social infrastructure costs and to improve the financing of public infrastructure. Each municipality has developed its own practice and there are no common rules in Estonia. Value capture tools that have been the most used in Estonia are land tax and cost-sharing in development projects, but they need to be improved.

7.1. Recurring forms of public value capture

In Estonia, the recurring forms of public value capture can be divided into land tax, real estate transfer fees and capital gain tax (Taimsaare and Jürgenson 2022).

Land tax

In general, property taxes are a well predictable and stable source of revenue for local governments. However, the land tax revenues in Estonia are not important enough to cover a sufficient proportion of the infrastructure investments that local governments have to make, nor the fixed costs that the construction of infrastructure entails. For that reason, the land valuation methods and land tax rates have to be discussed.

To assess the value of land for tax purposes, a mass valuation is used. The mass valuation is based on a mapping of value zones and a list of the value of land by value zones and intended purposes (Parliament 1994, § 5(1),(2)). It can be argued that mass valuation is not as fair as individual assessment. However, mass valuation is much cheaper and a faster way to assess land for tax purposes.

There have been three (1993, 1996, 2001) mass valuations in Estonia since 1991. For the last 20 years the land tax has been based on the taxable land value assessed in 2001. As a result, it does not account for the actual land value anymore. The current situation is unfair, because the owners of cheaper land pay a comparatively higher land tax than the owners of more expensive land. Until now, the land tax has not performed as a tool for land value capture. The taxable values do not reflect the betterments and rise of land values (Taimsaare 2020).

Local governments have had the opportunity to increase the tax rate to compensate for the obsolete value of the land on which the land tax is based. Nevertheless, for the tax to be fair, a new land valuation is needed. In Estonia, there is an up-to-date transaction database that is essential for valuation. The mass valuation is carried out by the Land Board with the involvement of specialists, including professional real estate appraisers who are competent to carry out the assessment.

The Estonian Land Board has prepared a new mass valuation which is planned to be effective in 2022 after a break for almost 20 years (Maa-amet 2021). In 2020 and 2021, the development of the valuation methodology and the development of the mass valuation

information system were launched. A test of the methodology and evaluation information system has been done. Valuation will be carried out in 2022,

It is foreseen that the new taxable value of land will also increase the tax burden. As expected, population is against a land tax increase. To curb the excessive increase of the land tax, the annual growth of the land tax is capped. Awareness-raising efforts will be made by local authorities to explain that when land is used for its intended purpose, the land revenues will be high enough to cover the land tax and should not be burdensome.

It is planned that from now on, mass valuations will be made regularly every four years. It allows changes in the value of land to be considered on time (Maa-amet 2021). Then the land tax instrument could work as an efficient tool for value capture.

In Estonia, the replacement of the land tax by a real estate tax has also been discussed. The main obstacle to the implementation of a property tax would be the poor record keeping of the respective registers. Estonia does not have an official database of prices for all properties. If the purpose of the real estate tax were to increase the general tax revenue, more efficient ways could be found. Revenues can be increased by raising the land tax rate. As a value capture tool, real estate tax would probably not be more efficient than land tax, considering that public infrastructure investments are also reflected in the value of the land.

Real estate transfer fees and capital gain tax

When a real estate property changes its owner, the transaction is subject to two fees: a notary fee and a state fee (payable for land register acts). The Notary Fees Act and State Fees Act give the tax rates. Tax rates apply on the value of the property. However, it is not a consistent rate (%). It varies by property value class. The revenues of these taxes go to the State budget, so these fees do not work as a tool of public value capture.

Capital gain tax must be paid on the gained value when selling a real estate property, with some exceptions (Parliament 2000, § 15(1),(4),(5)). Gained value is the difference between the selling price of the property and the acquisition cost, minus the costs directly related to the sale of the property. There is a fixed tax rate for capital gains tax. The seller must pay 20% of the gained value if he or she did not use the property as a dwelling. If two residences are sold in less than two years, the first transaction is tax-free, and the second transaction is taxed.

Unlike transfer fees, which are assessed on the selling price of real estate, capital gain tax is based on the profit from the sale of property. Since the purpose of land value capture is to reinvest land value increase that result from public investment, capital gain tax that is based on the gained value is a better option for value capturing.

7.2. Non-recurring forms of public value capture

Non-recurring forms of public value capture focus on increasing land values. It is possible to find additional funding for public infrastructure or to share some costs when the municipality makes a voluntary contract with a person interested in the development or with the development's beneficiary (Taimsaare, Jürgenson 2022).

Developer obligations

In Estonia land markets perform well: property rights are well-defined and secure, property transactions occur without frictions, there is competition for land between developers, and there is almost always a buyer for a plot offered at market price. Also, there is no negotiation to get development agreements (“building right against payment”).

It is possible to develop the plot only according to a detailed plan. If the established detailed plan is not suitable for a developer, a new one has to be established. Developers are not able to buy land on the “pirate market” and to develop it without a building permit. Also, it is not possible to buy additional building rights when the established density or height baseline appears too low or when the land use or zoning is not suitable for a project. To obtain the necessary permits, developers can enter into an administrative agreement with local government, by which the developer undertakes to bear all, or part of the construction of the road and related public facilities required in the detailed plan (Parliament 2015, § 130(1)).

Cost-sharing in a development project is well accepted by some municipalities. Usually, developers are required to build the public roads, playgrounds, green areas, street lighting, water, and sewage. After the delivery of works, developers usually have to transfer the land on which transport and public facilities are built to the local government free of charge. However, sometimes developers must also build schools or kindergartens or pay part of these costs to local government. Usually in bigger cities (Tallinn, Tartu) there is no opposition because many developers want to develop a project and competition to get building permits is high.

Cost-sharing in a development project is not as common in some smaller cities and rural areas, where there are not so many developers. In areas of this kind, local governments want to attract developers and to promote economic development. Because of that, they do not want to enforce additional obligations for the developers that could impede the development of the area.

There is limited awareness of land value capture principle and practice in Estonia. Awareness-raising efforts should be made to introduce this concept and its advantages in order to give a better understanding how value capture tools can be used for the benefit of the community. Although the concept of value capture is difficult for many to understand and needs further clarification, different value capture tools have already been used in Estonia. However, every municipality has its own rules for applying these instruments (Jürgenson *et al.* 2017; Taimsaare 2020).

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8. Finland

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The Finnish system of land development relies on a system of agreement based on statutory instruments that provide municipalities with strong rights and possibilities in cost recovery. The Finnish legal system is based on cost recovery, instead of value capture. That is, the law acknowledges the landowner's duty to participate in the costs of providing infrastructure, and value appreciation is typically only referred to in relation to setting the upper boundary for these participations.

The main challenge in the Finnish system is that while providing municipalities with a strong position in ensuring cost recovery, the fairness and equal treatment of landowners may be challenged. In many cases, the municipality has, in practice, the right to dictate or set the compensations and fees, and there is little transparency in the way they are set. Also, as there is little data and information available on land use fees and costs of infrastructure provision and maintenance, and as the cases are very heterogeneous, it is difficult for a landowner to evaluate the fairness and reasonability of the imposed fees, and even more so, to challenge them.

A further, structural problem in the Finnish system is the sheer number of various separate fees and payments that relate to infrastructure provision. There are e.g., charges related to joining the various infrastructure networks, annual fees and general taxes. The fees are not always set in a transparent manner, and there is a risk that some cost items are recovered several times. Especially in the case of assignment and expropriation of land designated as road areas, Viitanen and Seppälä (2020) observe that the landowners are often not treated equally, and the processes are often not followed through procedurally, which further escalates mistrust to the system.

Finally, the Finnish system of cost recovery and value capture was developed when a large share of development happened on undeveloped land. In such an environment, public land development worked relatively well. Now that the emphasis of development is shifting towards redevelopment of areas, there is increasing pressure to develop privately owned land. At the moment, development of privately owned land rests on land use agreements, which may work well for development of individual properties but does not scale up to larger development areas where coordination between landowners would be needed. There is an obvious need to extend the tool kit supporting development of privately owned land.

8.1 Recurring forms of public value capture

The Finnish recurring forms of value capture include the real estate tax, recurring fees that relate to infrastructure provision, the transfer tax and the capital gains tax (cf. Falkenbach, Riekkinen and Viitanen 2022). In this section, we will focus our attention on the real estate tax and transfer tax.

Real estate tax

As described in the (cf. Falkenbach et al. 2022), the real estate tax is set on a moderate level, limiting its role as a value capture instrument. Furthermore, there are challenges in the setting of taxation values. According to a study by Peltola (2014), taxation values of

detached houses are notably lower than market values (medians varying between 20-50% of market value in Finnish municipalities). Due to valuation-related challenges, effective tax rates vary both across and within municipalities.

The two-tier tax system taxing land and improvements separately is theoretically strong in incentivizing efficient use of development but leads to challenges in tax valuation. It is difficult to find data for the valuation of land, and to support the valuation of improvements. If real estate were valued as an entity of land and improvements, one could more efficiently take advantage of data on real estate transactions. In addition, as the values would be defined following the same logic as the market does, the incidence of taxation would be more understandable and foreseeable for the owner. Another point of concern is that in the Finnish system, where apartments are not regarded as real estate but movable property (see Puustinen and Viitanen 2015), the subject of taxation is not the apartment, but the housing company (owning the land and the whole building with all apartments). This complicates the valuation task further and has been observed to lead to apartments experiencing an even lower tax burden than units held as real estate (median taxation values being only 20-40% of market values).

The Finnish real estate tax legislation also acknowledges an option for a three-tier tax rate, where the municipality can impose a higher tax rate for unbuilt building sites. The increased tax rate for unbuilt building sites is not really a tool for value capture, but a tool to support plan implementation which has economic significance for municipalities through implementation-dependent cost recovery. The tax has been observed to be efficient in incentivizing housing construction (Lyytikäinen 2009). A challenge pointed out in recent studies is that the tax is to be applied in the whole municipality area, and its implementation cannot be limited to specific areas (Falkenbach et al. 2021). Allowing the tax to be implemented in specific areas within the municipality (such as specific plan areas), could be useful for value capture and plan implementation in e.g., infill development areas, and reduce pressure for cost recovery through land use agreements.

Real estate transfer tax

The origin of the real estate transfer tax in Finland is not in value capture, but in covering the expenses of ownership registration and the upkeep of a flawless registry of property rights. There is, however, evidence that the transfer tax has substantial welfare costs through its effects on mobility. A recent study using Finnish data (Eerola et al., 2021) finds a roughly 7.2% reduction in treatment group mobility due to a 0.5 percentage point increase in the transfer tax rate. Hence, it would be useful to analyse critically, whether the benefits or the tax outweigh its negative effects. Also, currently, transfer tax rates are different for real estate and apartments (4 % and 2 % respectively), the motivation of which seems unclear.

8.2 Non-recurring forms of public value capture

Non-recurring forms (focussing on one factor of value increase)

For non-recurring forms focussing on one factor of value increase, the Finnish system acknowledges two instruments: the land use agreement, and, in case a voluntary agreement cannot be reached, the development charge. In practice, all development on privately owned land is done with land use agreements, which municipalities regard as flexible tools.

The development charge, on the other hand, is regarded as bureaucratic and difficult, and is in practice not used at all. There are both principal and practical challenges in these instruments.

In principle, the planning outcome should not depend on agreed compensations or fees. However, in practice, if no land use agreement is reached, the municipality will not proceed with the drafting or amendment of the plan. Hence in practice, if no agreement on land use fee is reached, the municipalities have the option to lean on the development compensation paragraphs in the law, but this option does not extend to the landowners: The development under negotiation will just never proceed to the stage, where development charges would be determined. This affects naturally the negotiation power and position of the private landowners but may also distort development in other ways due to cost timing issues: most municipalities require the land use agreement fees to be paid at the time of plan approval, whereas development charge is paid when the building permit has been granted. This restricts especially infill development on the sites held by housing companies (Finnish equivalent of condominium), as they must find a developer for the potential building right already before the planning process (for more detailed discussion, see Puustinen and Viitanen 2015).

The practical challenges relate more to the definition of fees and charges, and their transparency. For development charge, there is a defined list of cost items that can be covered by the charge, and the maximum charge is set to be 60% of the value appreciation. For land use agreement, no such regulation exists, although the resolution of the supreme court (KKO 2016:8) states that the limitations that apply for development charges set a reference for determining the reasonability of a land use agreement and related fees.

The legislation in Finland is relatively clear on the fact that the land use agreement fee should be based on costs, not on value appreciation. The practice in municipalities is, however, to define the fee based on value appreciation, typically at 50% of it (Falkenbach et al. 2021). This, in addition to being against the main principles of the Finnish legislative system, also induces a risk of collecting fees from landowners for infrastructure provision multiple times. This risk is most obvious in the case of infill development, where the landowners first participate in the infrastructure provision costs when the first land use plan is drafted, and then may be subject to new fees when the volume of building rights is increased by plan amendment.

Another area of criticism relates to the lack of transparency in the setting of land use agreement –related fees. Fees are based on negotiations, and there are no clear guidelines or rules on what the fees should cover, making the evaluation of their reasonability difficult. Further, the agreements are not publicly registered, and even if the final fees could be found in official documents, the justifications for their levels are usually very generic.

Hence, regulations and practices related to development compensation and land use agreements require adjustments. As development is increasingly focusing on privately owned land, the pressure on these two instruments will grow in the future, emphasizing the need for immediate improvements.

Non-recurring forms (focussing on more than one factor of value increase)

As described in the Falkenbach et al. 2022, Finland is one of the few countries in Europe where the public land development model is used. The regulation on public land development is developed and works well. From a value capture perspective, public land development enables full value capture. Based on the Expropriation Act, the compensation for the land is determined based on its market value, but with the specific limitation that if the act for which the expropriation is conducted for has significantly increased or decreased the value of the asset during the past 7 years, these do not affect the compensation. Whereas this definition can efficiently support full value capture, it also means that at the time of expropriation, the landowners do not receive a full compensation as required in the Constitution. The legality of this principle will be re-evaluated in the near future when the Land Use and Building Act is being renewed.

The value capture opportunities offered by public land development have made it lucrative for municipalities. Many municipalities have large land reserves (land banks), and land is often acquired even decades between the development happens. Thus, municipalities' financial status is also dependent on land markets. There is little evidence or research on the financial feasibility of public land development from municipality perspective, but recent research (Valtonen et al. 2017) suggests that the municipalities might not be able or prepared to mitigate the risks related to the land development risk exposure. Recently, it has also been suggested that large positions in land holdings by municipalities may incentivise the municipalities to allocate development rights on their own land (instead of privately owned land), which could lead to suboptimal allocation of building rights from environmental and economic perspectives. Hence, the benefits of full value capture may not outweigh the risks and inefficiencies associated with the model. Furthermore, the policy has been criticized for lack of foreseeability: whose land is expropriated and who gets the right to develop with a land use agreement?

The popularity of the public land development model may partly be due to the lack of other, functional land policy instruments that would allow for coordinated development of areas. As the regulations for special development areas and urban land readjustment do not work in practice, the only tool used for the development of privately owned land are land use agreements. As land use agreements are negotiated with every landowner separately, they may be suitable when individual properties are (re)developed, but they do not support coordinated development in neighbourhood or block level. There is a clear need for an instrument that would support (re)development of privately owned areas in a coordinated manner. Such an instrument should provide incentives for both municipalities and landowners to engage in development, while being able to tackle risks related to holdouts and free riding.

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9. France

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Although it is frequently referred to in French official reports and analyses, the concept of Land Value Capture (LVC) is scarcely accepted in French political discourse or in related legislation. The preferred principle is a contribution to the cost of public facilities, which underpins the use of several instruments. Without considering the ideology that underlies the use of LVC instruments, a discussion may be initiated around the ability of public instruments to capture Land Value.

9.1 Recurring forms of public land value capture

In France, capital gain tax is obviously a direct LVC instrument. In addition, two kinds of instruments may be considered as LVC instruments in terms of international typology (Alterman, 2012, Hendricks, 2022): real estate transfer taxes and property taxes. For a long time, these taxes have enjoyed a high degree of social acceptability while the efficiency of LVC has been challenged.

Capital gain tax

This national tax is levied on all land or real estate property transactions. It was introduced in 1963 and regularly updated with three main objectives: capturing land value (by increasing the tax rate), stimulating real estate production and discouraging land retention (by reducing the tax rate or granting an exemption). The government also reduces the capital gain tax burden to protect households' land ownership and capital savings. Changes to this tax are frequent in line with economic trends and electoral imperatives. This was especially the case in the 2008 – 2013 period. The instability of the tax base had a negative influence on taxpayers' understanding and compliance. The theoretical impact is also distorted as tax revenues are not tied to any specific government policy: there was a disconnect between the origin of the land value and the instrument. Capital gain tax is ultimately used as a macro-economic counter-stabilizer.

Transferring tax revenues to local authorities could be an option to strengthen the involvement of landowners in territorial development without any great loss to the central government budget (€1 billion in 2020, i.e. 0.25% of the tax revenue). Local authorities are entitled to tax first-time sales of unbuilt land reclassified as building land under local city planning guidelines. When levied, this additional taxation is not visible enough as it is paid together with national taxation. It amounts to an additional "sanction" levied on real estate transactions.

Real estate transfer tax

Real estate transfer tax is levied on land and real estate transactions. It is based on the actual price and the tax rate is decided at the central government level with very little room for maneuver at the local level, especially with regard to rates. More specifically, different local authorities set rates for the same taxpayer: a rate of 1.2% is applied to *communes* (municipalities) and 4.5% (or a sliding scale between 1.2% and 4.5%) to *départments* (counties). An administrative fee is also levied. In 2020, the related tax revenue amounted

to €16 billion. This is not a targeted tax. Although revenues are directly linked to real estate prices and the volume of transactions, the purpose of the tax is merely to collect revenues. As the *département's* main mission is to deliver social services (which do not contribute much to land value), it is not considered a LVC instrument by the taxpayer – nor is it one in reality. However, tax revenues are higher in wealthier areas where the need for social services is lower. Concerning local taxes, which actually finance the provision of local services and amenities within the territory, the low rate of the tax makes it inconsistent with the required level of investment. Between 2008-2010, when the market shrunk and sales dropped, total tax revenues collapsed from €11 billion (in 2007) to €6 billion (in 2010). Many municipalities suffered from this decline in revenues which was beyond their control. As with capital gain tax, the absence of a link between the tax and the expenditure that it actually finances explains why French transfer tax cannot be considered a LVC instrument.

The opportunity to convert this tax into a “strong” local capital gain tax (see above) could make sense without involving too many administrative constraints. This could strengthen the commitment of landowners to local development. It could also help reduce the speculation from investors that is reported to be one major cause of rising land prices and create a healthier land and real estate market.

Property taxes

Property taxes are the cornerstone of the French local taxation system and the primary source of revenue in local budgets. They include land property tax, real estate tax and business property tax. The philosophy of these taxes is based on delivering public services and covering the related operational costs. Land and real estate prices tend to reflect the amount and quality of public services at the local level (Capitalisation theory, Oates, 1969) and that is why property taxes are considered to be land value capture instruments. For a long time in France, property taxes have suffered from a very weak link to real land prices as the assessments are not revalued regularly and the evaluation process provides no guarantee this will be done in the future. This is therefore a structural problem. Since the tax was introduced, municipalities have compensated the assessment/m² provided by the central government by fixing a tax rate that will meet their financial needs: this rate is generally fixed at a high level when the assessment is low, and at a low level when the assessment is high. This system has been maintained over time and such a long tradition cannot be overhauled without a tremendous “revolution” in tax principles and practices. The revision of tax assessments undertaken by the government in 2020 will be achieved within 3 years at the earliest. It also has to respond to the concern to leave municipal revenues unchanged and smooth tax changes over time for landowners (Finance Law for 2020). Switching from an inadequate property tax to an efficient LVC instrument faces substantial inertia that favours the use of indirect LVC instruments.

9.2 Non-recurring forms of public value capture

The failure of recurring taxes to deal with the issue of LVC is counterbalanced by the relative effectiveness of non-recurring forms of public value capture instruments. These occur during the land development process and are paid by developers, whether or not they are landowners. The absence of a direct link between the instruments and property ownership makes them easy to implement in the French context of a heightened sense of

ownership. The concomitance of development profit and development contribution makes them much easier to bear.

In the development process, the local authority can either levy a tax on building permits paid by the builder or require a contractual participation from the developer (Booth, 2012). Both instruments are presented as a contribution to public infrastructure expenses required by new buildings. Even if LVC is never referred to when justifying the tax or fee, both instruments comply with the objectives of LVC instruments.

Development tax

The development tax is fixed by local authorities and serves the investment budget. It is a single assessment rate (fixed for the national territory except for the Paris region where it is higher) levied per square meter according to the building permit. The tax is therefore not proportional to land value or LV increase and the possibilities of increasing or decreasing the rate are low. Moreover, the possibility of changing the tax burden (the tax rate, see Guelton and Verhage 2022) is linked to the amount of public investment and does not depend on the land value increase. This leads to contradictory effects.

First, the tax burden does not vary in line with current land prices meaning that at a given public investment level, new buildings in a neglected, unattractive city with low land prices will be taxed at the same rate as property in an attractive city where the prices are higher. This does not help efforts to boost a city's attractiveness. The assessment should be changed to reflect market prices.

In addition, instead of changing the tax rate in line with public expenditure, foreseeable changes in land price should be considered by municipalities. This would make it possible to vary the tax burden according to the actual unearned increment in land value.

The fact is that up to now, the portion of the increase in land value generated by public investment and the portion generated from external factors is not known. More research could help anticipate price increases in different situations and change the tax rate accordingly.

An attempt to use the development tax to encourage environmental preservation has just been made. Since 2021, the legislation enables municipalities to increase the tax rate when an equipment is to be built, with the aim to reduce heat island, to enhance biodiversity, to develop public transport or soft mobility and, more generally, to improve quality of life. It also withdraws the required reference to equipment costs and the justification of proportionality principle. The legislation opens the range of taxation possibilities and of all kinds of public strategies.

Research is conducted (by Guelton and Poullaude in progress, following Guelton, Poullaude and Rosen, 2021) to identify those strategies. First conclusion is that local authorities will use the taxation for various purposes. They generally aim at land value capturing with a high tax rate. A high tax rate could also be decided in order to preserve green areas and discourage developers from high building rate. Governments should be careful not to pursue too many goals at the same time. If not anticipated, a disincentive tax could have adverse consequences for the territory and a counterproductive impact on LVC objectives. For example, decreasing the tax rate in the town centre to attract new buildings could lead to difficulties with public facilities management. Municipalities should

analyse infrastructure requirements and cost very precisely before deciding on a “strategic” development tax.

Contractual participations (developers’ contributions)

The advantage of a developer’s contribution is that it is discussed by both parties and fixed according to mutual participation in forthcoming works and costs. The level of involvement is anticipated and agreed and the predicted level of land value increase is part and parcel of said agreement. The risk of not carrying out the project is therefore reduced. From the perspective of LVC efficiency, a developers’ contribution appears to be a more effective instrument than the development tax.

In practice, French local authorities find it too long (much too long!) to negotiate developers’ contribution as both parties pursue very different objectives – social welfare versus individual profit. In addition, such agreements must comply with rather cumbersome legislative requirements related to transparency and equity. Some people also fear that such agreements may vary according to the project and the people involved and ultimately lead to unfair decisions. The cost of oversight can be considerable – all the more so when local authorities lack capacity. As far as we can see from developers’ contribution practice (see Vilmin and Llorente, 2012), these arrangements are implemented relatively successfully when there is good municipal awareness of market conditions and fair dialogue with developers. The use of a developer’s contribution is also effective when market conditions are very difficult and developer risk is high, as on brownfield sites. In such case, the developer’s contribution is accepted because local authorities support and guarantee the project. However, results may be questionable, especially when municipalities do not have the necessary capacity to negotiate with developers.

Ultimately, French development tax is an efficient process to recover some land value from developers. However, it does not appear to be a very sophisticated instrument and needs to be tailored and adjusted to price levels while developers’ contribution requires strong relationships, trust and understanding between the private and public sectors to achieve a decent level of efficiency.

Other: social mix obligations/ interim land ownership (land lease)

Since the law of 2000 (cf. Guelton and Verhage 2022), larger French municipalities must meet social mix obligations. This means that 20% to 25% of the housing stock is subject to social requirements. Municipalities may use several instruments to comply with the law. They may subsidise developers who build social housing, but more often they include social obligations – a minimum of social housing – in every building project, in local planning guidelines and building permits. This policy instrument works rather well and developers generally find a way to recover the low housing selling price, either by purchasing the land at a lower price, following LVC theory or by selling other housing at a higher price, frequently in supply-constrained land markets (Coloos, 2018). The reason is that, when faced with land scarcity, developers compete to find available land and the purchase price offer increases. To balance their budget, developers have no other solution than to increase selling prices – developing projects in places where demand is present – or to abandon the project (see Asterès 2020, Ch 4). This in turn creates territorial segregation.

To avoid such territorial segregation, partnership solutions are promoted to organise fair LV sharing. Information on land prices needs to be more widely circulated. Transparency or sharing information about developers' business models could also help in adapting planning regulations.

The new experiment using long land leases (see Guelton and Le Rouzic, 2018) for the provision of social housing has just begun and there is insufficient feedback at present. Up to now, lower land values have been maintained by the public institutions that participate in land ownership. The instrument relies on the ability of public institutions to buy the land or share in its ownership. Consequently, in a context of scarcity of public funds, this instrument has few possibilities for developing on a larger scale.

9.3 Conclusion

The long tradition of taxation in France makes it difficult to reshape the system to include more LVC power within existing taxes: only marginal changes may be implemented, however these would be well worthwhile. Our proposal focuses on two points: first, the link between tax revenues and local infrastructure and social amenities should be visible, and secondly, tax assessments should be improved to factor in local land prices. As regards property tax assessments, the ongoing reform needs to be evaluated.

As taxation levels are high in France, any new form of taxation risks being unpopular and counterproductive. Local governments should look for alternative tools. The general observations recommend improving the cooperation and involvement of partners in the development process. As cooperation is generally project-specific, this makes it necessary to shape an operating framework that prevents unequal treatment. It is also necessary to improve the capacities of local authorities to lead negotiations and organise cooperation in a win-win manner.

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10. Germany

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Although there is no regulation by law of capturing planning gains, Germany as a whole has many efficient tools for public value capture. Nonetheless, the current real estate tax reform (cf. below), in particular, deserves closer examination, and the non-recurring forms of public value capture may be optimised with regard to individual aspects.

10.1 Recurring forms of public value capture

In Germany, the recurring forms can be divided into the real estate tax, the real estate transfer tax and the capital gain tax (Hendricks 2022).

Real estate tax

In April 2018, the Federal Constitutional Court declared the use of the *Einheitswert* (assessment basis of taxation) unconstitutional and demanded a new legal regulation by the end of 2019. The valuation of the properties under the new law will be carried out for the first time on 1 January 2022. Essential factors for the calculation are the respective value of the land (standard land value) and the amount of the rent. Other factors include the area of the land, the type of property and the age of the building. The current tax rates will be reduced in such a way that the reform as a whole is revenue-neutral. Until 31 December 2024, the federal states have the opportunity to prepare regulations that deviate from federal law. The new regulations on real estate tax - either federal or state - will then apply from 1 January 2025. Until then, the previous law will continue to apply.

The new national regulation is the provisional end of a debate lasting 20 years. However, opposition comes from different groups.

Two states with high land values (Hamburg and Bavaria) are planning a property tax based on the physical size of the building and the plot without considering the value of the real estate. Important reasons are the availability and stability of corresponding data. They are available in cadastre and they are not subject to price fluctuations. However, a house owner in Munich would have to pay the same as somebody in the spatial periphery (if the size is the same) with a fraction of the market value of the real estate. It is hard to imagine that such a tax system would be accepted by the Constitutional Court which declared the former tax basis unconstitutional for the same reason (not reflecting the market price; Löhr 2018).

Another opposition group argues for the taxation of land without including the building values. In November 2020, Baden-Württemberg was the first federal state to adopt an individual law to regulate real estate tax. It is a "modified land value model" basically using the standard land value as the basis. A reduction is provided for the owners of residential buildings (Haufe 2020a).

Obviously, there are still a lot of disparities despite of the national regulation. There are two important points concerning public value capture. On the one hand, the new tax system should be revenue-neutral. For this reason, the captured funds for the municipalities will remain the same independent of the tax system. On the other hand, the core idea of public value capture is the capturing of "unearned increments" (Hendricks et.

al. 2022). Valorisation of land is predominantly caused by public services and decisions, besides other factors such as agglomeration of qualified workforce or efforts of neighbours. So the land value is mainly the result of external effects. In contrast, a compound tax base based primarily on the value of buildings implies that the privately created value of the building is socialized and most of the publicly created land value is privatized. For this reason, land tax is the better solution in relation to the philosophical background of public value capture (Löhr 2018).

However, especially in the literature of economics and social sciences side effects such as distributional aspects of these tax systems can be found (Vejchodska et. al. 2022). These effects are important for the design of a tax system. At this point, an overview of important arguments for and against land tax is given without further discussion. Compound tax bases are criticized for various reasons. There is no pressure to bring underused or unused real estate into use. In contrast, the tax is lowest, if a site is kept idle. Moreover, a compound real estate tax on buildings can be shifted to the tenants, since the supply of buildings is elastic to a certain degree. The supply of land is inelastic, if there is strict land-use planning (Löhr 2018). For this reason, there is land tax neutrality in theory, even if not all assumptions for neutrality hold in reality (Vejchodska et. al. 2022). Finally, the winner in the struggle for income and wealth distribution during recent years has not been labour and capital. The land tax could help to redistribute this income and value from the land. However, land tax is not a silver bullet. It could be argued that land tax encourages gentrification since individual landowners cannot prevent rising land values, even if they wanted to. This especially affects asset-rich but income-poor households, who might be forced to move (Thiel and Wenner 2018). This effect should be taken into account designing the tax system (e.g. tax reduction for one and two-family houses).

Finally, the decision for a tax system is always a compromise between efficiency and justice (Thiel and Wenner 2018). The higher the justice, the higher the acceptance but also the administrative effort. The most justice appraisal would be annually updated plot-specific market values but they are administratively unfeasible (Fernandez Milan et. al. 2016). The difficulties of mass appraisal are not so much caused by land as by the building. For this reason, the national regulation is based on the gross floor area. However, the gross floor area includes no information about the residential quality of the building. Standard construction values are classified into three categories depending on the year of construction. In consequence, new buildings are systematically overvalued. Furthermore, there is no market adjustment and tax values of buildings in the periphery appear systematically too high (Löhr 2018). Nevertheless, the effort is very demanding. In Germany, the valuation of 35 million plots would be necessary and would have to be repeated every 7 years. In Berlin alone, which wants to apply the national model, 800,000 plots would have to be valued (Haufe 2020a). The planned tax system of Bavaria and Hamburg tries to reduce the effort but shows the mentioned problems of unfair taxation (cf. above). Land tax is a very good solution in terms of practicability. Standard land values are already comprehensively available in Germany. However, the quality of these values is not always satisfying. On the one hand, the functioning, the financial and personal endowment, and the organisation of the responsible committees of valuation experts differ from state to state (Löhr 2018). On the other hand, the determination of land values is a problem in shrinking areas because of the lack of market information.

In total, land tax is at least the recommendable solution in terms of practicability and in relation to the philosophical background of public value capture. The building land commission additionally recommends the definition of higher tax rates for unbuilt plots (Building land commission 2019).

Real estate transfer tax

The real estate transfer tax is a legal transaction tax. The tax has to be paid, if a real estate property changes ownership. The German states determine the tax rate, which varies from 3.5 to 6.0 % of the purchasing price (Hendricks 2022). In the past years and decades, the abolition of the land transfer tax has often been discussed. However, the reason for this is more a stimulation of the real estate market than aspects of value capture. However, an exemption regulation for land acquisition by municipalities could support the municipal interim acquisition and thus an active land policy (Building land commission 2019).

Capital gain tax

The current regulation distinguishing between private and commercial trade is a good compromise between public value capture and support of the purchase of the real estate by families (Hendricks 2022). An exemption regulation for municipalities might be appropriate to support active land policy (analogous to real estate transfer tax, cf. above). On the other hand, it is discussable to increase the tax rate for commercial trade (Initiative Münchner Aufruf 2017).

10.2 Non-recurring forms of public value capture

Concerning „unearned increments” the non-recurring forms in Germany are focused on land value and its increase. The private building activities are not taken into account. Generally, the refinancing of concrete activities of the public authorities (e.g. construction of local infrastructure, land reallocation) is possible. On the other hand, planning gains remain to the landowner, if the area is developed by mandatory measures. Only if the area is developed by cooperative (voluntary) procedures, the municipality is generally able to capture the part caused by the planning (Hendricks 2022).

The discussion about the legislative regulation of the capturing of planning gains is almost as old as the Federal Republic of Germany. As early as 1950, the so-called "Lex Dittus" was intended to enable the municipalities to capture 80 % of the increase in land value to cover their urban development expenditure. With the onset of the “economic miracle” (in German: *Wirtschaftswunder*), these efforts were silenced (Hendricks 2006) and the levy has been replaced by an increase of real estate taxation. The most emphatic push came in the early 1970s from the social-liberal coalition. In this context, a legislative proposal was developed to capture 50 percent of the land value increase. The draft was rejected with reference to ownership protection in Article 14 of the German Constitution and the issue was not taken up again in the following decades (Helbrecht and Weber-Newth 2017).

However, over the past 25 years, effective tools of public value capture have been developed. This is particularly true for urban agglomerations with high land values. By contrast, in shrinking regions, there is hardly any possibility, but also no reason for value capture due to low prices (cf. Hendricks et. al. 2022). For this reason, it is especially important to develop strategies of public value capture in urban agglomerations. Many cities implemented the so-called “building land models”. The basic parameters are defined

in a resolution of the municipal council and they are binding for the agreements between the property owner or developer and municipality. This is a good tool for public value capture but even better would be interim acquisition (Hendricks 2022).

The building land commission recommends a comprehensive active and strategic land policy for all affected administrative stakeholders to guarantee a sustainable development. The purposely pluralistic composition of the commission includes representatives from politics and administration as well as stakeholders from the real estate industry, urban development and tenants (Building land commission 2019), even if the real estate companies complain that their interests are not considered adequately in the final report (Haufe 2020b). Municipalities should be empowered to pursue a communal land stock policy. This requires above all adequate financial resources. In addition, the KfW (Kreditanstalt für Wiederaufbau) should consider improving the financing conditions for the municipalities. The KfW is a national development bank, four fifths of whose capital is held by the Federal Republic of Germany and one fifth by the Federal States. Furthermore, appropriate staff with the necessary expertise is needed (Building land commission 2019). The public land property acquired should remain permanently in public ownership and be made available for use by third parties for a limited period, primarily by means of a heritable building right (Initiative Münchner Aufruf 2017). Revolving land stocks are an option to decrease the financial problem. However, the financial aspect, as well as the development risk, may not allow the implementation of land stocks (Hendricks 2022). In this case, building land models are an established option.

Compared to negotiating individual contracts, the advantage of the building land models is the transparency of the framework conditions and the equal treatment of the contracting parties, which is achieved by the municipal council resolution. This increases the acceptance of public value capture and reduces the risk of corruption (cf. Chapter 1). Despite the longstanding establishment of the instrument (Munich was one of the first cities to introduce such a model in 1994), there are still options for optimization. In the literature, it is controversially discussed how many percent of the value increase which is caused by the development may be captured by the municipality. So far it is the prevailing opinion that capturing up to two thirds is permitted. However, there is an increasing number of experts advocating a higher percentage (cf. Münchner Aufruf 2017; Vejchodska and Hendricks 2021). In this context, a statutory regulation or a Supreme Court decision would be desirable to eliminate or at least reduce existing uncertainties. A further point of criticism is based on German planning law. In inner urban areas, landowners have already development rights by law without the opportunity to apply negotiable developer obligations to this development (cf. Hendricks 2022; Vejchodska and Hendricks 2021). For this reason, it is recommendable to change the German Federal Building Code establishing sectoral legally binding land-use plans for these areas (Building land commission 2019).

Extensive information and training activities are recommended to increase the general acceptance of public value capture and to improve the application of the individual tools (cf. Chapter 1). Furthermore, this should increase the knowledge of administrative and political stakeholders about the application of the entire range of instruments. In addition, municipalities and Federal States should inform about good practice examples and disseminate experience through events, exhibitions, guidelines, etc. (Building land commission 2019).

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11. Hungary

Andrea Pődör and János Katona

In Hungary, the recurring form of value capturing mainly relies on annual local taxes. Municipalities can impose taxes on buildings and lands.

Real estate tax and real estate transfer tax are regulated by law. In addition, municipalities can levy local taxes, such as real estate tax for buildings, real estate tax for lands, and municipal tax. In Hungary the investors have very few obligations to participate in public value capture. Therefore, in the settlements with an increased population, the local governments can not provide basic services (e.g. kindergarten, health care). Municipalities are heavily dependent on government subsidies and the local business tax. There is a need for a complex value capture method that excludes speculation and expects greater social involvement from investors.

11.1 Recurring forms of public value capture

In Hungary, the recurring forms are real estate transfer tax, capital gain tax, real estate tax and the municipal tax. The real estate transfer tax and capital gain tax is in case of sale of the real estate. The real estate tax can be differentiated into two parts based on local regulations, one is for buildings and another for land. (Pődör and Katona 2022). According to a 2021 report by the State Audit Office of Hungary, in 2019, local taxes accounted for one-third of municipal revenue. The bulk of this revenue was the local business tax generated in the cities (Állami Számvevőszék 2021).

Over the past three decades, the rules on local taxation have been amended many times by Parliament. Building tax, land tax, municipal tax on individuals, are stable elements, and can be considered as an indirect tool for public value capture. Notwithstanding this, the rates and procedural rules for these taxes have also been amended on several occasions.

Despite the high degree of autonomy that has been established, over the last twenty years the scope of action for local government has steadily decreased, and the provision of local public services has required increasing efforts (Juhász 2020). The local taxes are very diverse. 97 percent of local governments introduced at least one type of local tax (Nagy 2004).

Real estate tax

Real estate tax for buildings and land are regulated by Act C. of 1990 on local taxes (Szilovics 2012). The real estate tax accounted for only 4.5% of municipal revenues. Two rules related to reducing the building tax have also been introduced:

- from 2004, the possibility of tax deferral for the elderly and the disabled, and
- from 2008, tax exemption for the renovation of listed buildings.

The essence of the local tax is to contribute to the expenditure incurred in the organisation of local public services, i.e. local public charges. As a result, local authorities make different decisions and taxpayers with the same income and wealth can face substantially different tax burdens in different areas.

There is practically no value-based real estate tax for buildings in Hungary. Ad valorem taxation, where the tax rate per square meter varies within a municipality, is rare in Hungary. The authors currently find only one example in case of Érd (Local real estate taxes in Érd)

According to a study of A. Nagy possible instruments for tax reform is a value-based real estate tax. Real estate taxes have the advantage of helping to achieve horizontal and vertical equality. It takes into account that if a person has significant wealth in addition to his/her current income, the distribution of the tax burden is fair. Real estate taxes result in stable, predictable tax revenues and tax avoidance is difficult (Vígvári 2002)

There is no consensus on which type of tax rate is desirable, value-based or uniform. Some says that taxing wealth encourages spending, not saving, others argue that real estate tax is expensive, generates little revenue, and there are technical difficulties (such as continuous revaluation). Also, the most valuable part of the municipal real estate stock is the real estate of companies, not of individuals, and taxing the real estate assets of companies is in contrast to the main financial policy priorities, such as supporting small and medium-sized enterprises and encouraging investment. A reduction in the personal income tax (base) is necessary in addition to the introduction of a value-based tax. This can be achieved by deducting all or part of the amount of the building tax from the personal income tax or its tax base.

If all dwellings in the country would be taxed on the basis of value, individual – partly subjective – assessments would be very costly and, in many cases, would impose an unbearable burden on the population. If someone owns a well-located, valuable property, it does not necessarily indicate that they have a large tax base, as they may have acquired it at a discount through inheritance or 10-20 years ago. In Budapest, the majority of pensioners live in larger flats (cc. 100 sq m). Taxation regardless of these circumstances is forcing people to move and change their lifestyle. The disadvantage of this taxation is that, it has to be adjusted every few years to take account of the increase in value. The authorities lack human capacity for regular valuation. Furthermore, the preparation of the tax involves high costs (review of building plans, registration, verification of self-declaration, property valuation), cooperation with the land registry and the tax office, which makes the procedure lengthy. In the event of a dispute, i.e. if the taxpayer disagrees with the result of the valuation, a legal remedy must be provided (Nagy 2004).

Generally, it can be concluded that the majority of the citizens in Hungary mostly own their own home, it's their only wealth. It is quite usual that people pay building loans and it would be difficult for them to even pay taxes on their real estate

As the valuation process is not yet clear in Hungary, an automatic assessment based on selling price per square meter per year can be a base on this. However, this option meets political resistance as well.

The value-based real estate tax can have a good environmental impact as well. The construction won't produce oversized buildings, as the owners would build more consciously and eco-friendly to minimize the size and the consumption of buildings.

Municipal taxes

The second most common tax levied by local authorities is the municipal tax on individuals, which is levied by 2,094 municipalities (68% of those introducing a local tax). By 2018, around one and a half hundred municipalities had introduced the municipal tax, mostly small municipalities, but at the opposite extreme, some districts of Budapest had also taken advantage of this option (Corpus Juris Hungarici 2000).

Municipalities are reluctant to tax their residents, as taxation is disfavoured measure, and municipalities fear for losing voters, but when they do, they levy the municipal tax instead of the real estate tax for buildings or lands, as its maximum rate is more favourable to taxpayers (Dobos and Szelényi 2003).

One of the advantages of this tax is that, unlike real estate tax for buildings and lands, there are no mandatory statutory exemptions, so local specificities can be taken into account more widely. For example, exemption can be granted on the basis of per capita income or by comparing the number of occupants with the size of the dwelling. Secondly, it is the easiest tax to administer, because it is sufficient to keep records to establish the tax liability, i.e. it involves relatively low administrative costs. Thirdly, the range of taxpayers is wide, which means more revenue for the municipality. In smaller municipalities, this tax is the easiest to get accepted by the population.

In determining the tax rate, the location, condition, and purpose of the land can be taken into account and differentiated accordingly. Many municipalities grant a discount to individuals who make a municipal investment or a payment for such an investment: the value of the investment or the amount of the payment is deductible from the local tax. Also, deductible from the local tax is a payment made under a savings contract for the purpose of a municipal investment (Nagy 2004).

Real estate transfer tax

Hungarian legislation prescribes that all incomes are taxable, and tax shall be payable on acquisition of property. The tax rate for real estate is the 4 % payed from selling price. This is an average rate in the European Union. This type of tax and the associated tax rate are accepted by Hungarian society. No change is required.

Capital gain tax

Hungary currently has a 15% flat-rate capital gain tax. It is levied on every income and also on land and real estate purchase transactions. Therefore, it is an instrument to capture land value increase. In European terms, this rate is among the lowest, although the increase of this tax is not supported by the society, because the other types of taxes are higher than in other European taxes.

11.2 Non-recurring forms of public value capture

The Constitution enshrines the right of municipalities revenue. However, this constitutional provision does not mean that all statutory tasks must be covered by a state budget contribution. This financial source is provided by a combined system of own resources and central budget contributions.

Due to the high tax at the international level, the social acceptance of land value capture in Hungary is low. Although more and more municipalities are introducing legally allowed local taxes, the real solution may be the tool of cooperative development by urban contracts. The urban development concept of the capital aimed at normative urban development funding. According to the new strategy, property investors would pay a contribution to the urban development fund in proportion to the value of the property investment. To implement the strategy, a new value register needs to be created (Túry 2020).

As there is a correlation between decentralization and economic efficiency, the freedom of local governments must be maintained. At the same time, there is a need for a legal framework that supports land value capture. If they are not endowed with satisfactory political and financial power, they run the risk of losing their economic position, from the perspective of both capital, labour, and external companies. In the spirit of social responsibility, expectations must be set for real estate developers (Finta et al. 2013).

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12. Israel

Rachelle Alterman and Nir Mualam

12.1 Recurring forms of public value capture

12.1.1 Recurring forms (annual payments)

12.1.1.1 Real estate tax

The *Arnona* is Israel's equivalent of a property tax. It is a monthly municipal property tax paid to the municipality that covers the ongoing costs of services provided by the local municipal bureaucracy such as trash collection and education (Darin, 1999; Alterman and Mualam, 2022).

Arnona, however, is not a real estate tax designed to reap the unearned increment, and it is calculated in accordance with certain specific parameters that generally affect the price of property rather than in accordance with the property value. In each municipality, it is calculated based on the size of the property, its built-up area, location, type of property, and age.

The key problem with the *Arnona* is that each municipality has its own tax rate (which must be pre-approved by central government). The tax rate is frequently accused of being arbitrary and ambiguous. Furthermore, the calculation varies from city to city: for example, while some cities include certain service areas as taxable, others do not. Furthermore, commercial tax rates are much higher than residential tax rates. Consequently, there are enormous disparities among municipalities based on their capacity to designate land for business and industries rather than housing. The former's rate is about 3 times that of housing. *Arnona* rates for housing never cover municipal service costs, even in well-off towns. A not-so-good practice is widely used: To change the municipal boundaries only for the purpose of transferring some of the commercial zones to a neighboring municipality, instead of revising the legislation to mandate regional collection and redistribution of money (fluid) according to preset criteria that does not change from one city to another.

12.1.2 Recurring forms (in case of sale/purchase)

Real estate transfer tax

In case of a sale, the property owner is obliged by Israeli legislation to pay real estate transfer tax (Alterman and Mualam, 2022). The tax rate and exemptions from paying the tax are determined by central government and are updated from time to time. The tax is paid to central government (the Ministry of the Treasury), and not to localities. The latter do not receive any direct payments from owners who pay real estate transfer fees. The key challenge with the tax is its complexity: its calculation is not straightforward and fraught with ambiguity: numerous exemptions and complex calculation rules make it harder to pin-point before a sale. One needs to be assisted by a lawyer or an experienced accountant to ascertain the probable tax rate. Deductibles must also be calculated while completing several unfriendly tax forms. When the tax base is calculated by an individual taxpayer, it is sometimes challenged by central government tax agencies, thereby making the payment an

arduous process. When this happens, the taxpayer can appeal the state's calculation. This entails hiring expert land appraisers, which makes the process more costly.

Capital gain tax

When a property is sold by a company, it would also have to pay tax for unearned increments in property value. The capital gains tax, like the real estate transfer tax, applies to an increase in the sale price of a land including buildings on top of it. The taxation covers price increases resulting from the impact of the general economy. In general, a company would have to pay 23% of the total value uplift through capital gains tax. An individual shareholder, however, might have to pay up to 30% of the value uplift. In addition, the tax rate changes according to the date of purchase, thus, for assets purchased before January 2012, different tax rates apply. Specifically, for purchases made between 2003-2011, the tax rate may be lower in case of a sale. When the purchase was made up until January 2003, the tax rate would be levied according to income tax rate (starting at 31%).

These rules make the calculation of capital gains tax quite arduous, and taxpayers often need to be assisted by accountants and lawyers specializing in real estate taxation to make the payments as straightforward as possible.

12.2 Non-recurring forms of public value capture

12.2.1 Non-recurring forms (focusing on one factor of value increase)

Fees for construction of infrastructure

Impact fees according to Israeli legislation enable cities to charge developers for sewage, water pipes, roads, street paving, as well as other designated infrastructure works (Alterman and Mualam, 2022). Owners frequently contest these payments due to the many ambiguities in the formulae used to calculate them. Furthermore, each city has its own calculation, and each type of infrastructure may require a different method of calculation (charging those fees from nearby properties versus those strictly adjacent to the public works; charging per square meter of built-up space versus charging according to size of plot frontage etc.). Furthermore, while some cities charge impact fees long before a building permit is issued, others do not require payment until the permit is approved by the planning authority. These inconsistencies stymie the development process and add uncertainty.

Due to the dominance of the high and compulsory betterment levy, the notion of impact fees has not taken root in Israel. Real calculation of impacts and its systematic monetization is not an easy task. In Israel, from time-to-time central government surfaces an initiative to substitute betterment levies for some other formula which is somewhat reminiscent of impact (such as a fee per square meter). The reason is that the betterment levy is inherently uneven across municipalities and over time, and purposely not related to a specific project (Alterman 2012). However, none of these ideas have made any headway due to local government protests. Local governments are guessing quite right that central government is unlikely to compensate them for the loss of revenues generated today by the betterment levy, which the law permits them to use for citywide needs related to development.

Betterment Levy on Planning Gains

A large share of value is captured in Israel through betterment levies, established since 1981 in the Planning and Building Act, based on a yet-older provision (Alterman 1979; Alterman and Mualam 2022). In the past, some municipalities used to substituted the hefty 50% levy for in-kind works. This was ruled illegal by a Supreme Court decision. As a result, betterment levies must be charged by planning authorities each time value increases. However, there is a long list of exemptions from the betterment tax to incentivize some types or projects. These invite many legal battles between local planning authorities and developers, surrounding the proper interpretation of such exemptions. In addition, central government has provided developers with incentives in urban renewal projects by relieving them from the mandatory duty to pay betterment levies in certain regeneration projects. This exemption was considered by local planners as an assault on municipalities' ability to finance public works. As a result, municipalities lose revenues that could have otherwise financed much needed infrastructure in renewal areas.

Because of public protests, central government has sought ways to appease local mayors by allowing municipalities to charge betterment in certain renewal projects that involve significant additions to the existing pool of building rights.

Although betterment levies amount to 50% of the added value, some municipalities have negotiated the payment of increased betterment payments that amount to more than 50% in certain lucrative projects. These negotiations are borderline legal and rely on mutual agreement between developers and public administrators. Central government has expressed unease about this situation. At the same time, the central government recognized that times had changed since the introduction of betterment levies in the 1980s. Particularly because of recent developments involving massive increases in building rights in high-end areas. Following that, there is currently discussion about imposing a particularly high betterment-like levy on properties adjacent to proposed subway stations. In November 2021 the parliament approved these changes allowing government to charge up to 75% of betterment from property owners whose property is situated near planned metro stations.

Flexible building rights or transferable development rights

The transfer of development rights (TDR) has been used in the Israeli planning system in certain occasions (Alterman & Mualam 2022), yet this mechanism relies on the approval of statutory plans. These plans are approved mostly by planning bodies that work rather slow, because of the inherent maladies of the Israeli hierarchical planning system (Alterman, 2001). Moreover, TDR is complex and is not regulated by Israeli statutes. It has been a bottom-up practice, nurtured by local planners to achieve variety of goals such as preservation of important assets (Mualam, 2018a). However, TDR entails a 'sending' and a 'receiving' plot of land. It is hard to match plots and there is no official registry of development rights that have been moved and removed from a certain plot. As such, it become harder to track movable 'air' rights. In addition, TDR faces other hurdles; the Israeli planning system de facto blocks moving around development rights from one administrative region to another. This is purely because of bureaucratic matters. Although there have been suggestions to establish an official 'development rights bank', they have not come to fruition.

As for flexible building rights, local planning authorities in Israel may grant a building permit inclusive of an easement. This is a slight deviation from the local detailed plan (Alterman and Mualam, 2022). While this is possible under the Planning and Building Act, such deviations have drawn fire by experts; They are regarded as erratic, capricious, and entirely dependent on the whims of local politicians (council members in local planning authorities). As a result, the central government sought ways to eliminate or at the very least limit these discretionary measures. The ability to grant easements in specific local urban renewal projects was partially abolished by the parliament in November 2021. While local planners and politicians see flexible building rights as essential for stimulating development, central government sees them as too discretionary and as undermining mainstream statutory planning.

12.2.2 Non-recurring forms (focusing on more than one factor of value increase)

Land Readjustment in Israel

Israel has one of the world's most vibrant, regularly used land-readjustment practices, well established in legislation and jurisprudence (Alterman 2007). Its main shortcomings are linked to ongoing flaws in the planning system as a whole. Plan approval in Israel is thought to be extremely slow in comparison to statutory planning in other countries. In fact, it may take 5-8 years for a land readjustment plan to be approved, and another 2-3 years for it to be implemented (State Comptroller, 2015). Other factors, such as disagreements between owners included in the land readjustment area, exacerbate the slow pace of development. The process usually takes longer time than usual plan approval processes (which are very long in Israel in any case). This is due to back-and-forth appraisals vis a vis the owners, and some interim appeals regarding appraisal rules or expected land dedications. Central government sought ways to expedite readjustment, by first devolving powers to local planning authorities (Margalit and Mualam 2020) to approve a variety of land readjustment plans (powers held traditionally by the district (regional) tier only). Second, by centralizing powers in the hands of special "*Supertanker*" committees that can trump local planning initiatives and readjust large chunks of land (Mualam, 2018b).

Negotiated development (developer and municipality)

In the past, some municipalities negotiated the provision of in-kind infrastructure by developers, instead of, or in addition to the betterment levy. However, in 2011 the Israeli Supreme Court ruled that negotiation and the provision of in-kind works by developers is illegal. Moreover, it was ruled that local planning authorities cannot forfeit betterment levy payments, which are mandatory (Levine-Schnur, 2013).

The Court's decision had created uncertainty: while some municipalities continued to negotiate with developers to secure funds and in-kind services, others were unsure about the implications of the new precedent. To make matters even more ambiguous, some district courts ruled post-hoc that certain development agreements still stand because the developer signed them willingly. Cancelling these agreements, according to the ruling, would amount to illicit enrichment of developers at the expense of the public. To put it another way, while illegal, some agreements were not declared null and void when challenged in court. As a result, several municipalities continued to negotiate development in the hope that contracts signed with developers would not be voided.

Interim acquisition

When land is formally acquired by the local government, it can take up to 40% of land surface for public utilities without compensation (Alterman and Mualam, 2022). Furthermore, planning authorities may acquire land by expropriating it and then developing new residential or commercial uses on it. In this case, full restitution is required. Having said that, land banking is not a common practice in Israel. The government rarely purchases large tracts of land. It almost never 'collects' land to reserve it for future use as defined in a future plan. The government rarely uses interim acquisition and does not return ownership to the original owners unless required to do so by law or by a court decision.

With respect the '40% rule', judicial decisions focused on the amount of land dedication that planning authorities may exact (without paying compensation) from a newly developed plot of land: the legislation says 40%, but many issues of interpretation have arisen over the decades: 40% of what? What rules apply to the remainder? Is 40% also the maximum in cases of land readjustment? Despite a long series of supreme court decisions on a variety of such issues, the legislation on land dedication has not been revised since 1965, and a few ambiguities linger on.

Furthermore, when large tracts of land are acquired forcibly, planning authorities are frequently confronted with objections, appeals, and legal challenges from original owners who are unwilling to be removed from their property, even for a short period of time. In fact, objections and similar challenges are so common in Israel (Margalit and Kemp, 2019) that public administrators refrain from acquiring and then developing large tracts of land.

Contract models and developer obligations

As abovementioned, Israeli legislation does not include legislative measures that allow planners to negotiate freely with developers to reap unearned increments and tap value increases (Alterman and Mualam, 2022). The Israeli Supreme Court ruled this voluntary horse-trading as illegal, let alone when it is not predicated on firm legal rules (Erich and Alterman, 2020).

In practice, however, Israeli municipalities have continued to negotiate with developers. Because there are few to no formulae determining the rules of the game and the expected outcomes of these ad hoc negotiations, central government representatives regard these bottom-up negotiations as void, if not corrupt. As a result, the central government has attempted to limit negotiations to specific situations. The 'Cities Ordinance' was amended in 2016 to allow developers and cities to sign a contract under which the developer will carry out infrastructure works in exchange for 'a proper amount of money' to be paid by the city. This is limited to plans with more than 100 residential units or more than 5000 square meters of commercial office space. Without the need for a public tender, the contract can be signed. In other words, the city administration is not required to issue a public tender to determine which developer will win the bid and complete the public works. Instead, the city could reach an agreement with an existing developer in the area. This approach is likely to be maintained as the central government's concern about developer obligations grows.

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13. Italy

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The Italian scenario is characterized by the presence of recurring forms of public value capture (PVC) and non-recurring forms. The former includes taxation instruments that are applied to real estate properties or during transactions when capital gains are capitalized. Non-recurring forms are those that apply in correspondence with urban transformations. The non-recurring forms are applied with the aim of rebalancing the value between the private areas under development and the surrounding public areas. This kind of operations is based on “agreements” between the developers and the administration. With the agreements the promoters are required to contribute to the public city development by paying of charges and / or the construction of urbanization works. It is important to underline that, in Italy, the recurrent instruments for capturing public value are fiscal instruments and therefore are the same throughout the national territory. Non-recurring instruments, on the other hand, are of an urban nature and therefore may vary from Region to Region, in compliance with the principles defined by national framework laws. Urban planning is in fact regulated at national level by law 1150/1942 which introduces two levels of planning: general planning and implementation planning. However, it has the limit of not specifying, during a territorial development operation, who is responsible for the task to build the infrastructures and services. In 1967, Law 765 was passed which, with the consequent implementing decree 1444/1968, introduces the concept of urbanization works and urban planning standards whose construction costs are borne by developers.

In 1972 the Regions were established, and urban planning has become a competitor between the State and the Regions, which can legislate in compliance with national principles or about aspects not regulated by state laws such as the reduction of land consumption or urban regeneration. For this reason, it is not possible to define a unitary scenario, as regards the non-recurring forms of PVC but it is necessary to refer to the regulations in force in each individual Region (Crupi 2016). A national bill concerning aspects related to urban regeneration is the subject of parliamentary debate. It also aims to regulate, define, and unify the framework of tools for capturing public value at the internal urban planning operations. Namely there are references to actions aimed at recovering the urban fabric already built and discouraging new urbanizations in an extra-urban environment with consequent new land consumption.

13.1 Recurring forms of public value capture

Italian recurring forms of PVC consist of fiscal mechanisms, that are the taxes and duties applied on the increase in real estate value, borne by the owners or users of real estate.

The main tax mechanisms in force in Italy are the urbanization co-pay fee which is focused on taxation system, the municipal tax on real estate, and the increase of the annual fee paid by companies.

The Law no. 10 of 28.01.1977 has introduced the urbanization co-pay fee. The private actor must pay part of the costs necessary to carry on the urban and building transformation of the territory, with the aim to relieve the community of the expenses related to the development of economic activities.

The Financial Law of fiscal year 2007 has introduced a more focused taxation system by allowing the municipalities to adopt a “purpose tax” to finance a part of the expenses to develop public assets. When the municipality defines the regulation for the adoption of the purpose tax, they must specify the public work that should be constructed, the amount of the expense that must be financed, the tax rate, the exemptions, fiscal reduction, or detraction for certain taxpayer categories, and finally, how, and when the tax should be paid. The law requires that public works should be started no later than 2 years after the approval of the work lay-out. The tax has a duration of ten years.

The Legislative Decree no. 504 of 30.12.1992 has introduced the “Imposta Comunale sugli Immobili (ICI)” (= municipal tax on real estate). Until 2008 this tax provided the municipalities with the largest amount of financial resources. In 2011, with Law 23, a property tax was reintroduced on owned properties excluding the main residence: the IMU: “Single Municipal Tax” (in Italian is “Imposta Municipale Unica”), which became valid from 2014.

The Law no. 580 of 29.12.1993 has given the Chambers of Commerce the possibility to increase the annual fee paid by companies till 20% to finance part of the expenses necessary to improve the economic condition of the territory

13.2 Non-recurring forms of public value capture

Non-recurring forms of PVC can be grouped into two categories: Project financing and “Urban Planning and Land Development related tools”. Project financing tools allow the involvement of private actors in the financing of public works, such as, a transport infrastructure. This category includes mechanisms that involve private actors to finance the infrastructure assets (Milotti, Patumi).

The instruments of the second group, on the other hand, concern all the mechanisms for governing the territory and, therefore, are of a regional nature (Oppio, Torrieri & Bianconi 2019).

Project financing

This category includes mechanisms that involve the private actor to finance the infrastructure asset (“Build-Operate-Transfer” project finance operations). In Italy, since 1998 (Direttiva Costa-Ciampi no. 283/98) the mechanism of “subentro” (a take-over reimbursement) is used in the concession agreements for the construction of the new highways. When the life cycle of the infrastructure asset is longer than the concession period, after the first concession period, the second concessionaire must pay a take-over fee (the reimbursement) calculated as the residual value of the asset. Consortia were established to manage the realization of infrastructures for the industrial development (Consorti ASI – Consortia for Industrial Development Areas). This mechanism has been used in two cases: “Pedemontana” and “Bre.Be.Mi” highways. Urban Planning and Land Development related tools.

Among the Regions that have already enacted rules on territorial governance, reduction of land consumption and definition of a framework of tools for capturing public value, we can mention Lombardy, Tuscany, Lazio, and Emilia Romagna. Although the founding principles of the regional laws are derived from the National Urban Planning Law of 1942, the regional regulations are different both in terms of content and methods of application

(Pezzagno, Richiedi). As example, the Lombard experience is analyzed. In Lombardy Region the urban planning system is regulated by the Regional Law (LR) 12/2005. This law determines the methods of implementation at the local level of the principles defined by national law. The LR 12/2005 takes up the aspects defined by law 1150/1942 concerning the subdivision between comprehensive urban planning and detailed planning. This second type is characterized by negotiated procedure called "urban planning agreement". Through these procedures the public administration has the right to stipulate the "developer obligation", i.e., the charges to be paid and the urbanization works that can be carried out. In other words, the methods of capturing value are defined with the developer obligations. These methods vary on a case-by-case basis, in fact, depending on the value of the transformation and the urban load that is going to be established in the area (Oppio, Torrieri, Oca 2018). The amount of works may vary according to standards defined by the municipal administration in the general planning phase. This procedure tends to rebalance the value between public and private areas and redistribute the surplus value. However, the recent changes made to the LR 12/2005 with the entry into force first of the LR 31/2014 and then of the LR 18/2019 have led to imbalances in this field as will be better explained in the following chapters.

The urban development system is reported in Figure 13.1. It explains which the different methods are to realize urban provisions. They are mainly subdivided into two categories: the Direct Implementation and the Indirect implementation.

Different public value capture tools are related to these methodologies. With the Direct Implementation the main PVC tool is represented by the planning fees. In the Indirect Implementation the planning fees are supported by other tools which are defined case by case with operative agreements and developer obligations. These tools are widely applied in Lombardy Region.

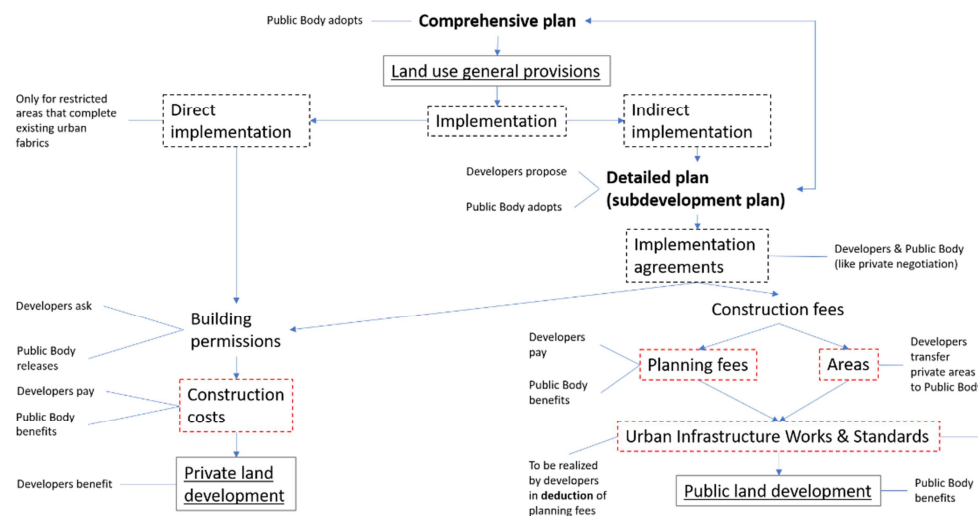


Figure 13.1: Indirect mechanism of PVC in spatial development in Lombardy

The urban planning agreements define who and how must built services and infrastructures. These aspects were introduced by Law 765/1967 which established that

these works were the responsibility of the developers. However, the municipalities in the past had the right to use the monetizations derived from the payment of urbanization charges and to use them for budgetary purposes. This mechanism has led public administrations to favor urban sprawl, since, to have a higher revenue, public bodies tended to encourage the development of new building areas. Currently this is no longer possible, in fact, it is mandatory that the charges are used for the construction of urbanization works both inside and outside the sector (Tira, Badiani 2009).

Regional Law 18/2019

Regional Law 18/2019 is the law with which the Lombardy region has completed the framework of regulatory instruments concerning the governance of the territory and has the aim of regulating and defining the methods of implementation of urban regeneration processes in the regional territory. The law is subsequent and complementary to the LR 31/2014 with which the theme of reducing land consumption was introduced, in line with the European directives that set the NNLT (no net land take) threshold equal to zero by 2050. Lombardy Region therefore in urban regeneration and territorial tools aimed at pursuing the objective of reducing land consumption.

These laws introduce the dichotomy between “sustainable urban development” and “unsustainable urban development” in Lombardy as they seek to create the conditions to promote the recovery of abandoned areas and buildings within the city and to make the urbanization of new free or agricultural land less attractive for operators. In fact, by promoting working on the built-up area, an attempt is made to pursue a widespread regeneration of the consolidated city through the implementation of specific interventions aimed at revitalizing the economic and social spheres that characterize the cities as well as the urban fabric (Cutini, Rusci 2016).

Urban regeneration issues imply a close relationship between operators and public bodies as the topic of building recovery is characterized by the problem of high ownership fragmentation. This point implies that the capture of value necessarily passes through the developer obligations defined in the urban planning agreement (Tiboni, Botticini, Sousa, Jesus – Silva 2020). The law defines the way to incentivize operators to develop urban recovery and urban regeneration actions instead on building on free soil. The main aim is to make these kinds of operations more economically advantageous. The founding principles of the law are positive, but the implementation methods developed can have negative repercussions both from the urban quality and the capture of value point of view. Tools such as the reduction of planning fees are very advantageous for developers and are disadvantageous for public bodies. The administrations, thanks to the value capture tools defined in the agreement, can intervene on the public city by redeveloping existing infrastructures or creating new services (Ombuen 2018). The strong reduction and limitation of these tools provided by the law 18/2019 makes it difficult for Public Bodies to redistribute the surplus value which is created thanks to the urban planning operation.

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14. Latvia

Armands Auziņš

In Latvia, there is no concept (term) of value capture nor its definition recognised by any formal (statutory) source. However, the tools for capturing an increase of real property value can be identified. The discussions about possible directions of real estate (immovable property) tax reform are based on the theoretical review and best practice and their impact on monetary poverty and income inequality indicators since the study on improvement of the tax system in 2014. Recurring forms in the case of sale/purchase are pretty well established and implemented by the law. However, they do not contribute to the budgets of local governments directly. Non-recurring forms of public value capture focus on one factor of value increase. They are drawn from the implementation of spatial planning instruments (detailed plans, local binding regulations on land use and development) and may be promoted and optimised to improve and make more transparent the development procedures.

14.1 Recurring forms of public value capture

In Latvia, the recurring forms can be divided into the immovable property tax (IPT), the immovable property transfer tax (state fee) and the capital gain tax (Auziņš 2022).

Real estate tax

A recent study (BICEPS 2014) assessed the existing tax system in Latvia and developed proposals for the necessary reforms to create a fairer and more efficient tax system. The Latvian tax-benefit system was analysed from the point of view of fairness, redistribution, progressivity and work incentives within an EU member state context. One of the main findings informs that the degree of redistribution ensured by the tax-benefit system in Latvia is one of the lowest in the EU. Revenues from IPT are relatively low. If the EU average ratio to GDP is 1.5 %, taxes on land, buildings and other structures yielded 0.8 % of GDP in Latvia (BICEPS 2014). The outcome of evaluating possible IPT reform directions shows that: the only simple rate increases and flat rates applied to high-value properties have significant positive effects on revenues; a uniform doubling of the tax rate on residential property would increase revenues by 20 million EUR.; introducing non-taxable thresholds improves progressivity; none of the possible reforms has a significant effect on poverty and inequality indicators. The last is essential because property taxes and especially changes in them represent a relatively small share of the incomes of most households (BICEPS 2014).

IPT is an obvious candidate for reform in Latvia as the revenue from it is comparatively low. Based on the evaluation of the effects of the proposed reforms, the main characteristics of the reforms formed scenarios for residential property tax. Thus, possible reforms based on theoretical considerations and international experience include a change in the minimum tax payment; non-taxable threshold; an increase in IPT rates; higher rates for second homes; tax allowances and the exemption of the elderly and income-conditional exemptions. Compared to residential property, the land tax and tax on buildings of commercial property represent much bigger tax bases. Theoretical considerations suggest that land is a particularly good tax base from the perspective of

economic efficiency and hence should be a good candidate for a higher tax rate (Mirrlees et al 2011).

However, a particular problem in the taxation of land and property is the prevalence of significant discounts in many local authorities. For instance, in Riga (the capital city), the land tax rate applied to persons residing in Riga is only 1 %. In Jurmala, there is a 70 % discount for registered residents. There are also discounts for both land and property tax for businesses. A similar 1 % land tax rate also applies to residents in smaller local municipalities. Many municipalities also apply a variety of discounts to businesses located in the territory of the municipality. According to binding regulations of a particular municipality, persons with limited means (conditions specified by the regulations) may apply for a discount. For instance, in Riga city, the procedure for granting IPT relief allows a discount of up to 90 % of IPT (Latvijas Vēstnesis 2019). In the main, such a competition between local governmental authorities creates distortions and results in the misallocation of resources.

A significant conclusion about property taxation in Latvia is that the Latvian system of cadastral valuation is relatively good by EU standards – in many countries, cadastral values are hopelessly out of date, and the rationale of the tax base is lost. In Latvia, cadastral (assessed) values are reasonably close to market values, and this is expected to further improve in the future. On the obverse side, the discounts applied by local governments to attract residents or businesses are problematic and generate competition. This kind of tax competition generates zero societal gains but creates inefficiencies as a result of the distortions it makes (BICEPS 2014, p.86).

The collection of IPT primarily represents an effectuation of social functions. Finances extracted from personal income tax benefits local governments the most (over 80 % of municipal tax revenue). Thus, the income from this tax constitutes the central part of their resources that, together with other tax income and fees, can be used for improving public infrastructure in the territory of the municipality. Although the share of IPT in municipal tax revenue has gradually increased over the past decade mainly on the account of the increase of cadastral (assessed value), the municipalities cannot fully utilise it as a financial source for the improvement of local infrastructure because of the financial equalisation fund of local governments.⁶ (FEF). FEF is concerned with a distributional model among the municipalities to promote 'equal opportunities' to execute their functions. This model has been modernised since 2016 but still influences the financial capability of each municipality, including the public investments for land value increase. Some recent local initiatives show an interest not to include the revenues from IPT into FEF but to determine this type of tax as 'infrastructure tax' to be used only for the improvement of local public infrastructure (Auziņš 2018). It is also suggested that the income tax could be paid considering the workplace of a natural person, as well as some share of enterprise income tax could benefit the municipal budget as well. Accordingly, the local authorities

⁶ The purpose of the law on the Equalisation of Local Government Finances is, taking into consideration the socioeconomic differences between local governments, to create similar possibilities for local governments to perform their functions laid down in law, as well as to promote their initiative and independence in the creation of their financial resources. The law prescribes the procedures for performing the equalisation of local government finances, providing for partial equalisation of financial differences between local governments. <https://likumi.lv/ta/en/en/id/274742>.

could be more interested in better entrepreneurship and investments as well as in better jobs and increased employment in their territories.

The system of property taxation may be beneficial in limiting new land consumption and rationalising the use of abandoned and degraded land in Latvia. For instance, by introducing progressive IPT (extra to double tax rate – 3 % of assessed cadastral value) for degraded land, abandoned agricultural land and land with degraded buildings, it may be possible to encourage the owners of these lands to hurry up with their decisions on further development.

Following the enforcement of a new comprehensive plan or amending an existing one, a local government is entitled to decide on higher IPT due to the extension of property rights. For example, if an open space is rezoned as residential development, higher IPT can be charged. Some landowners who conclude that their development project is not economically feasible anymore (e.g. land is zoned but remains under-developed) may request to change zoning (land-use pattern) to avoid further payment of a higher IPT. Latvia does not grant compensation to owners upon downzoning, i.e. converting from a buildable to an unbuildable land-use. In 2011 the land-use purpose of “undeveloped building land” was introduced for properties with missing infrastructure – including road access and electricity connection. This policy results in lower tax revenues in local governments (Auziņš 2022). At the same time, it does not facilitate the development of missing infrastructure. To balance things, it is possible to decide on a higher IPT rate for unused/vacant development land with assessed potential for further development. For this purpose, there should be made a comprehensive revision of planning instruments (for instance, using GIS mapping) to identify planned but undeveloped lands in Latvia, similar to what has been done in Flanders (Hendricks et al 2021). Thus, spatial plans would be assessed and provide actual information about the potential of either the new development or subsequent greening/gardening to make positive synergetic value upgrades to existing developed surroundings. A difference in IPT can prevent owners from speculatively holding on to their development rights and waiting for 'better' times with more demand. These measures have been tried elsewhere in South America, well beyond EU shores (Mualam and Sotto 2020).

State fee (immovable property transfer tax)

This fee is a real property transaction tax. The fee (tax) must be paid if the immovable property changes owner before the registration of ownership rights in the land registry. Payment shall be transferred to the State budget. Most often, the rate of 2 % is applied for alienation of either land property or land and building property based on a contract or a court decision (Auziņš 2022). Local governments do not gain from the collection of these payments. However, they have the pre-emption rights (a right of first refusal) and may use them in case they consider using the proposed real property for the performance of their autonomous functions (e.g. local infrastructure and provision of other public needs). In the past years, the abolition of this right has been discussed (Viesturs and Auziņš 2019). It was evidenced that local governments exercise their right of first refusal in rare cases. A recent study provided arguments and recommended abolishing the right of first refusal of local governments in the case of selling real estate or entitling local governments to the right of first refusal only in certain areas indicated in the spatial development plan (Viesturs and Auziņš 2019).

Capital gain tax

The capital gain tax is applied if private real properties are sold in the market. The tax rate is 20 % of the capital gain – the difference between the acquisition and selling price with a deduction of demonstrable improvement cost (Auziņš 2022). The rate has risen from 15 % to 20 % since 2018. The capital gain tax remains in the hands of the national government. However, it is possible that the distribution of public goods (e.g., main roads, public transport, etc.), in general, contributes to the increase of the property value in the territory of a particular municipality.

14.2 Non-recurring forms of public value capture

The direct public value capture instruments focus on development procedures in Latvia. Property owners finance or refinance costs of specific activities of the public sector from which they gain access to public infrastructure. Planning fees are not introduced. Development agreements are signed for: (1) implementation of detailed plans and (2) payments for local infrastructure due to implementation of public projects. Development fees are not typical in Latvia. Regulations pertaining to land use and construction can be considered as a source for direct value capturing in a municipality (Auziņš 2022).

Municipalities cannot finance the costs related to the development of private property (Auziņš 2022). The construction of public infrastructure cannot take place on real estate owned by a private person based on a real estate lending agreement, as it does not comply with the law "On Prevention of Waste of State and Local Government Funds and Property". The underlying approach here is that the long-term use of public land will not be feasible if private land is used instead. Also, this may cast a shadow over good governance practices. The premise of the law is that a private entity might terminate a lease agreement at any time, which may cause not only material damage to the municipality but also to the long-term stability of the use of the territory. At the same time, it is necessary to stipulate the cases when the construction of public infrastructure may be carried out based on possession of the real estate if it is related to significant public interests.

Legislation determines land use planning and land consolidation measures. Projects, including land readjustment measures, are not the instruments for public value capture in Latvia (Auziņš 2022). However, if the comprehensive reallocation is considered for a new development area but an infrastructure for streets/public space has not been created, more than 20 % of the territory can be dedicated for public open space, e.g. streets, green areas, etc. For such reason, a specific agreement has to be signed between the local governmental authority and involved private property owners. A municipality can extend the area being planned by a developer/owner if, according to the proposed development, it is necessary to develop a particular tract of land inclusive of public infrastructure. Co-financing is calculated proportionally to the contribution/costs of each involved party (Latvijas Vēstnesis 2014).

The astringent planning system is an essential requirement for the use of non-recurring forms of public value capture (Auziņš 2022). In Latvia, a detailed plan is mandatory before commencing new construction or subdivision of land units if it creates a necessity for complex solutions and unless laid down otherwise in laws and regulations. Local governments and local regulations are responsible for key decision-making regarding the

implementation of plans. These decisions are binding upon property owners, developers and economic sectors in general. Therefore, above mentioned measures of financing development costs and land readjustment can be handled by "implementation agreements" due to the implementation of detailed plans. The key here is the content of such an administrative contract to be accomplished appropriately in good practice, transparently showing the investments and benefits of each party from the implementation of the conditions and solutions of a detailed plan.

The implementation of public projects may require covering some infrastructure costs. Based on the development agreement, a charge (fee) for the provision of local infrastructure can be applied (Auziņš 2022). *Development agreements* are signed when the rights and obligations of developers/property owners and municipalities are not defined by statutory regulations (e.g. are not a matter of "implementation agreement"). The Law on Public-Private Partnership defines contractual public-private partnership (PPP), where the cooperation between the public and private sector takes place by the public and private partner concluding and executing a partnership procurement contract or a concession contract (Latvijas Vēstnesis 2009). The law essentially incorporates the guidelines published in the international circulation on PPP issues and the current case law of the European Communities. Thus, attempts have been made to limit the partners' discretion by providing a control and monitoring mechanism. The law also stipulates that the PPP contract is awarded by tender, observing the principles of equal treatment, transparency and free competition. Consequently, from the point of view of the regulatory framework, the risk of corruption is small, but at the same time, it is crucial how these norms are interpreted and applied in practice. The most significant risks relate to the integrity, objectivity and confidentiality of the concession procedure commission when awarding a PPP contract, as well as to the capacity of the responsible authorities to perform their functions in particular quality (Latvijas Vēstnesis 2009).

The charge of development fee as a municipal fee for the maintenance and development of the municipal infrastructure by substance is recognised in the capital city of Latvia – Riga City. Other municipalities collect relatively symbolic fees to cover administrative costs. The powers exercised by local governments are based on municipal binding regulations. In general, developers are willing to accept developer obligations if the regulations are fair and transparent and all investors are treated equally (Vejchodská and Hendricks 2021). The municipalities apart from Riga have a comparatively small number of development proposals and smaller investments from private developers. Thus, to support existing growth, they shy away from charging investors with statutory development fees. Moreover, developers cover a lot of costs during the development process (Auziņš 2022). In some cases, the developer is forced to share the improvement costs of the external infrastructure outside the area covered by a detailed plan. Sometimes specific engineering preparation within the development territory is necessary for the costs of a developer (e.g. in the case of high groundwater level, peat layer or brownfield). The development of territory follows the implementation arrangements (administrative contract) of the detailed plan in which the construction sequence and responsibilities for main components are determined (e.g. electricity, water, sewerage, electronic communication (telecommunication), heating). However, it is necessary to inform not only developers but also the general public related to the development efforts in the actual area about how value capture may promote further investments in urban infrastructure,

service provision and land use management measures. In other words, how it will foster positive synergy in the broader territory. In the case of Riga City, it is recommended to broaden the goals of the municipal fee, thus indicating not only the need to provide financing for the maintenance and development of the municipal public infrastructure but also specifying the use of the obtained funds from collected fees.

Extensive information and training activities are recommended to increase the general acceptance of public value capture (PVC) and to improve the application of specific instruments (Auziņš 2022). It is concluded here that the involvement of administrative and political stakeholders in discussions about experiences applying PVC instruments and good practices regarding these will produce new knowledge and awareness. The results of the comparative analysis should be disseminated through workshops, publications, guidelines, etc. and used to propose particular instruments, supporting more efficient and sustainable decisions in land development.

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15. Lithuania

Marija Burinskiene

The Lithuanian planning system is closely connected with local municipalities.

The Law on Territorial Planning divides territorial planning into three levels.

(1) The state level. (2) Municipal level. (3) Locality level. The public administration in Lithuania is divided into two levels: Government and municipal level. Municipal territories are administered by municipal councils.

General plans, covering the entire territory of a municipality indicate: functional zoning, system of municipal centres (many municipalities are not urban but rural territories), requirements for the use of protected areas and landscapes, a natural framework system, supplementing it with a natural framework of local significance and individual greenery, requirements for the protection of immovable cultural heritage at the local level of significance, principles of engineering and social infrastructure development, engineering communication corridors, territories allocated to objects, the location of which impacts on the environment and public health, already urbanized and non-urbanized areas, requirements for the location of retail objects (in the urban areas), towns, parts thereof, and other areas for which local level plans are required, territories to be reserved for objects important to the municipality, subsoil resources, territories of planning objects of state importance.

When preparing general plans for city municipalities, the mandatory requirements for building intensity and building height are also established.

Detailed plans are prepared in the urbanized territories determined in the general plans of the municipal level or local level.

The special solutions of the Special plans must be integrated into the complex plans (general and detailed), only according to them the land can be taken for the needs of the society, i.e. infrastructure development. (Aleknavičius P., Burinskiene M., 2021)

Although there is no law defining public value capture (PVC) in Lithuania, the law on municipal infrastructure development government has appeared since 01.01.2021, which has the greatest impact on the determination of PVC, although its implementation differs significantly in major Lithuanian cities and peripheral municipalities.

15.1 Recurring forms of public value capture

The Lithuanian tax system consists of: value added tax, taxes on corporate and personal income; excise duties, taxes on real estate property, other taxes (including stamp duties, pollution tax, gambling tax, inheritance tax).

Several major reforms of the real estate law have been made in recent years.

15.1.1 Real estate tax

The first major reform took place in 2006, which introduced the average market value as a basis to impose the tax; subjecting to tax real estate property for commercial purposes owned by individuals; the right for municipal councils to set concrete tax rates within a range provided in the law (0.3 - 1% since 2007 and 0.3-3% since 2013).

Meanwhile, the 2012 reform expanded the tax base for individuals:

- subjecting to tax the property for personal purposes (including housing)
- the value of such property not exceeding 290 000 EUR (since 2015 – 220 000 EUR) exempt from tax.
- tax rate for property used for personal purposes - 1 % (since 2015 – 0.5 %; since 2018- progressive rates from 0.3 to 3 %).

Next reform proposed in 2018 to expand taxation on non-commercial real estate of natural persons: the first residential property (the value of up to EUR 220 thousand) to continue to be exempt. The second and subsequent residential properties are taxed independent of the value, i.e., the EUR 220 thousand relief is not applied.

An exception applies to the immovable property of individuals used for non-commercial purposes (including dwellings, garages, farms, and real estate used for leisure). Its total average market value not exceeding EUR 220,000 per person is exempted (for taxpayers with 3 or more children or a disabled child the value of exempted property has increased by 30 %).

Excess is subject to progressive tax rates (0.5 - 2 percent).

As far as planning systems are compatible with the real estate tax system, it is necessary to understand the powers of the municipality: in particular, complex planning documents (general and detailed plans) prepared at the initiative of the municipality, which have legal force. It is very important that all General Plans are coordinated with each other depending on the level, and the lower-level plan details the solutions of the higher-level general plan. In Lithuania, the main drawing of the general plan establishes land use regulations, i.e., what possible land uses can be applied in a particular area, what are the operating restrictions, and so on. (Connolly K. and Bell M., 2009). The municipal administration issues construction permits in accordance with the prepared documentation of territorial planning and construction projects.

Currently, the application of real estate tax has expanded not only to legal entities, but also to natural persons, depending on the value of the property managed, the calculation of which is discussed by social groups of individual property owners. (Burinskienė M., 2022). in Lithuania.

The real estate tax according to the certificates prepared by the Center of Registers is paid once a year, based on the principles of mass valuation, when the real estate is valued by the mass valuation method or the replacement value(cost) method. (Tumelionis A.,2015)

The mass evaluation method is applied to (Šulija V.,2005):

- real estate for commercial use (administrative, catering, service, commercial, hotel, leisure, medical, cultural, scientific, sports facilities and premises);
- residential, gardens, garages;
- auxiliary farm real estate.

A new mass evaluation was performed on January 1st, 2021. The newly established tax values of real estate objects are used to calculate the real estate tax

for 5 years, starting from 2021 tax period. (Aleksiene A., Bogdonavičius, 2008; Connolly K. and Bell M., 2009).

The replacement value (cost) method is applied to:

- engineering structures (road, electricity, railway, air, water port communications, oil, gas, heat, water supply, sewage disposal and other engineering networks, hydrotechnical, sports and other structures);
- other real estate not mentioned (production, industry, transport, storage and other buildings and premises).

The value determined by this method is valid for a maximum of 5 tax periods from the date of valuation.

Currently, there is a land and real estate tax in Lithuania, which paid separately once a year. It is paid by both legal and natural persons, according to the value of the assets under management (Burinskiene M., 2022).

The future plans for Real Property Tax Policy in Lithuania (Sabaliauskas K., Aleksiene A, 2002., Šulija V.2008).

- To gradually introduce a universal real estate tax for all natural persons;
- The right, not the obligation for municipalities councils to set tax rates every year (valid from 2021);
- Real estate property tax declarations - formed and provided by the tax administrator (as land tax declarations);
- Introduce a land value capture in all Lithuanian municipalities according to the Law on Municipal Infrastructure Development (came into force from 01 01 2021);
- Implement land consolidation in urban areas.

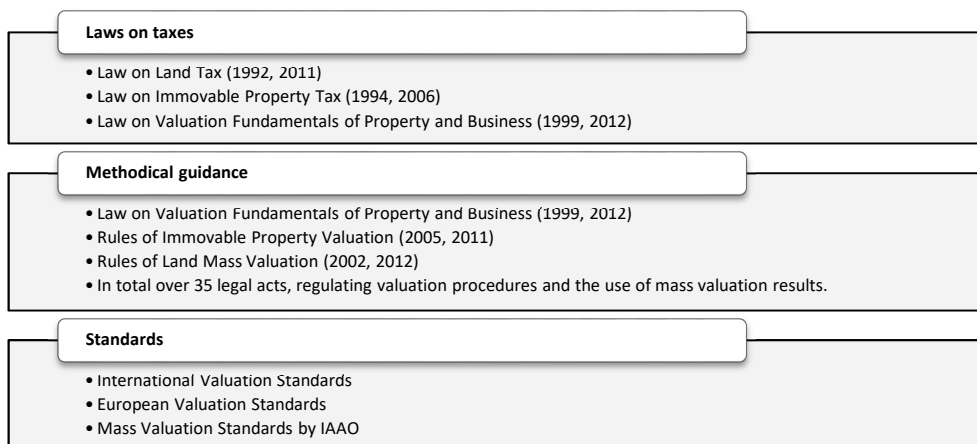


Fig. 15.1. Legal Regulation and Guidance for a Sound System

15.1.2 Real estate transfer tax

The real estate transfer tax is a legal transaction tax. The tax must be paid if a real estate property changes the owner. The basis of this transaction is a contract, a disposal of a leasehold, or a legal property transfer by heritage or donation. Reallocation instruments, like urban reallocation measure, are excluded from tax liability. The Lithuanian municipalities determine the tax rate, which varies from 3.5 to 6.0 % of the purchasing price.

15.1.3 Capital gain tax

Regarding capital gain tax, a distinction must be made between private and commercial trade.

In the case of private sales, the possible profit from the sale of a house or an apartment is not taxable if there are at least 10 years between the acquisition or manufacture of the property and its sale, or if the property has been used for own purposes. Therefore, taxation is not applicable in most cases of private sales. The amount of tax depends on the amount of increase in value. The capital gain tax is applied if private real properties have been sold in the market. The standard tax rate is 15% in Lithuania of the capital gain, the difference between the acquisition and the selling price with a deduction of demonstrable improvement cost.

15.2 Non-recurring forms of public value capture

One of the most important steps in introducing the increase in the value of land was the Law on Municipal Infrastructure Development, which was approved in 2020 and entered into force on January 1st, 2021.

This law is needed not only by all municipalities in the country, but also by every inhabitant. After all, the quality of human life is very much dependent on engineering and social infrastructure. The law closes the former legal loopholes, which have often led to chaotic development of municipal infrastructure and provides a clear framework for its legal regulation.

The new law stipulates how municipal infrastructure must be planned, implemented and financed and establishes the rights, duties, and responsibilities of natural and legal persons, state and municipal institutions in its development processes. It will create a level.

The new law stipulates how municipal infrastructure must be planned, implemented, and financed, and how establishes the rights, duties, and responsibilities of natural and legal persons, state, and municipalities. It will create a level playing field for business, and ensure acceptable access to engineering networks, communications, and social infrastructure (Malme J., Youngman J. 2004, Eckert J. K., 2008).

Many years of practice have shown that it is difficult for municipalities to meet the need for infrastructure on their own, without additional measures. Therefore, based on the experience of European countries, it has been established that real estate developers must either contribute to the development of the planned infrastructure required for the development of territories or pay a one-time monetary contribution to the municipality responsible for infrastructure development. After the entry into force of the law, the

procedure for calculating infrastructure charges will be uniform throughout Lithuania, and municipalities will have the right to set charge rates, differentiating them according to the main use of buildings or land, the level of infrastructure development, and development needs.

These contributions will be paid into a program administered by the municipality itself. The funds of which will be an additional measure for the development and compensation of infrastructure will ensure an equal sharing of the costs of this development among all its users. In addition, there is a strict control mechanism for the use of program funds.

The regulation introduced by the new law provides an opportunity to avoid the costs of maintaining excess infrastructure, but to develop only the planned one, and creates an additional tool for managing the development of territories. To this end, municipalities are committed to January 1st of 2023, to identify the priority infrastructure, its development stages, and to estimate the costs of this development in the spatial planning documents.

It should be noted that the risk of the development of the non-priority infrastructure planned by the municipality is borne by the real estate developers, but there is a possibility to receive compensation for the incurred costs - to share the costs when other users connect to the infrastructure built by them. All built or installed municipal infrastructure must be handed over to municipal infrastructure managers before construction is complete. The position of the chief engineer of the municipality must be established to coordinate the development of the engineering infrastructure.

Currently, the tax system includes separately the land tax and the buildings tax, while the real estate tax includes both elements and calculates whether the sum of both components does not exceed the statutory limit. Improvements in the implementation of this law are expected, with reservations being assessed improvements of land, public spaces, development of technical and social infrastructure, and at the same time greater justice for representatives of individual social groups. In Lithuania, land consolidation is carried out only in non-urban areas, and in urban areas, no legal mechanism has been created for such a process; therefore, the municipality must negotiate with the owners of individual land plots. According to the Law on Lithuanian Territorial Planning, the use of land is regulated by the main solution drawing of the General Plans.

On the other hand, planning gains remain to the landowner if the area is developed by mandatory measures. Only if the area is developed by cooperative (voluntary) procedures, the municipality is generally able to capture the part caused by the planning.

Land tax exists throughout Lithuania, except for individual municipalities, which make exceptions for certain social groups: pensioners, the disabled, etc. Its administration is carried out by the State Tax Inspectorate using the databases of the Center of Registers, which are compiled on the basis of mass assessment data, taking into account the situation of the owners' plots in the municipality.

The Law on Municipal Infrastructure Development stipulates how municipal infrastructure must be planned, implemented and financed, and establish the rights, duties, and responsibilities of natural and legal persons, state and municipal institutions in its development processes. It will create a level playing field for business, and ensure acceptable access to engineering networks, communications and social infrastructure. The regulation introduced by the new law provides an opportunity to avoid the costs of

maintaining excess infrastructure, but to develop only the planned one, and creates an additional tool for managing the development of territories.

Currently, the tax system that separately includes the land tax and separately the buildings tax, while the real estate tax includes both of these elements and calculates whether the sum of both components does not exceed the statutory limit.

Extensive information and training activities are recommended to increase the general acceptance of public value capture and to improve the application of the individual tools.

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16. Poland

Małgorzata Barbara Havel and Magdalena Załączna

16.1 General observations

Poland is not unfamiliar with public value capture instruments which can potentially enable the capture of land value in the context of urban and property development⁷. However, in practice these instruments do not provide significant revenue and an effective form of co-financing of urban infrastructure⁸.

The historical origins of legislation addressing the financing of public infrastructure by private parties can be traced back to the nineteenth century⁹. Unfortunately, the current detailed regulations are not well structured, rather complicated, raise many doubts in the process of their implementation, and are additionally met with reluctance by the local government to use them.

The failure to apply public value capture instruments must also be understood in the wider background of the approach to property rights and land use regulations. The lack of public engagement in favour of social equity, understood as the ability to provide effective instruments of value capture, is correlated with the lack of public engagement for the operational implementation of the desired pattern of growth. The philosophy of strong private property rights during the neoliberal transformation created a planning system that is unable to comprehensively create and implement a public policy of spatial planning¹⁰.

Further, limited value capture is not the only issue which should be discussed, but also the overall balance of rights in relation to upward and downward property value effects. The strong protection of property rights set this balance very much in the favour of private developers and landowners¹¹. In Poland the use of public value capture instruments for plan implementation is very limited, but the compensation rights for value decline due to planning injury are very broad¹².

The following part of the report discuss implementation of the existing forms of value capture as described in the chapter “Poland” of the final publication of the COST Action “Public value capture of increasing property values”.

16.2 Recurring forms of public value capture

In Poland, the recurring forms can be divided into the real estate tax (*podatek od nieruchomości*), the perpetual usufruct fee (*opłata za użytkowanie wieczyste*), the stamp duty (*opłaty notarialne i podatek od czynności cywilnoprawnych*), the capital gain tax (*podatek od dochodu z*

⁷ Havel, Załączna 2022

⁸ Havel 2017; Muñoz Gielen et al. 2019

⁹ Gdesz 2011; Szewczyk 2019

¹⁰ Havel 2020; Havel 2022

¹¹ Havel 2017; Gdesz 2012; Śleszyński et al. 2021

¹² Alterman 2010, 2012; Gdesz 2011, 2012

tytułu sprzedaży nieruchomości), and receivables for excluding land from agricultural or forestry production¹³.

16.2.1 Recurring forms (annual payments)

16.2.1.1 Real estate tax (*podatek od nieruchomości*)

The main distinguishing characteristic of the real estate tax in Poland is that the tax rate is not based on the real market value of properties. There is no comprehensive system of ad valorem taxation of real estate in Poland. However, the level of charges for real estate tax vary according to function, i.e., the real estate tax to some extent reflects the value of the property. Local jurisdictions that receive funds from this tax have the right to differentiate the rates of real estate with the same functions, but with different location, development, or use (Article 5.2 of the Act on Local Taxes and Fees). However, they do not use this option.

The real estate tax could constitute a bigger part of the municipal budget. In 2020, the real estate tax delivered 16.5% of the income of local governments¹⁴. However, it is politically difficult to implement any changes. Some attempts to reform the system have been made but the lack of political will to introduce an ad valorem tax blocked the reform.

There was also a proposal to link the tax rate to the intended use of the real estate in the plans (not the actual use, as is currently the case) or to introduce a progression in the tax rate for a property on which no development has been carried out in accordance with the planning documents¹⁵. However, this has remained merely in the sphere of academic discussion.

16.2.1.2 Leasehold of public land - perpetual usufruct fee (*opłata za użytkowanie wieczyste*)

Perpetual usufruct is a right established only on land owned by the State or local government. This form of ownership was particularly necessary after the nationalisation of land in Warsaw. At present, perpetual usufruct rights in relation to housing are being transformed into full ownership rights, so its importance in the budgets of municipalities will diminish. The abolition of perpetual usufruct in relation to housing has not been accompanied by a debate on the future of this instrument.

16.2.2 Recurring forms (in the case of sale/purchase)

16.2.2.1 Stamp duty (*opłaty notarialne i podatek od czynności cywilnoprawnych*)

The stamp duties are associated with the notary fee to be paid customarily by the buyer. The notary fee as such cannot be considered public value capture as the revenue goes to the private sector. Only the stamp duty (also called the tax on civil law transactions - *podatki od czynności cywilnoprawnych*), and court fees (*opłaty sądowe*) remain within the public sector. The rates of tax on civil law transactions (PCC) are set out in the Act on Tax on Civil Law Transactions. As a rule, the tax on civil law transactions applies when the

¹³ Havel, Załączna 2022

¹⁴ Rada Ministrów 2021

¹⁵ Leszczyński 2019

subject of taxation is not subject to VAT. Taxpayers are obliged, without being summoned by a tax authority, to submit a declaration on the tax on civil law transactions, according to a specific template, as well as to calculate and pay the tax within 14 days from the date when the tax obligation arises.

When the parties provide a value that, in the opinion of the Tax Office, does not correspond to the market value, there is a particular procedure for dispute resolution. The Tax Office considers the average prices, the market value of the property in a given location, and not the technical condition and standard of the specific premises being the subject of the transaction. This market value may be higher than the price specified by the parties to the sales contract. This problem is not only in Poland; in many countries, there is a temptation to lower the value of the real estate in notarial deeds compared to the amount paid. The result of the valuation of the real estate is decisive for the Tax Office.

16.2.2.2 Capital gain tax (*podatek od dochodu od sprzedaży nieruchomości*)

According to the Personal Income Tax Act (PIT Act), the sale of real estate before the expiry of 5 years from its purchase or construction, in the case that the transaction does not take place as part of a business, is taxable through personal income tax. The tax is calculated on the income obtained, not on the real estate sale price. There is a possibility to lower the tax by deducting tax-deductible costs, e.g., documented acquisition costs, construction costs, inheritance, and donation tax paid. The legislation provides for a tax exemption relating to the expenditure of funds from the sale of the property for personal residential purposes. These expenses can be divided into three groups: costs for meeting housing needs, loan repayment, and real estate exchange. The taxpayer is responsible for proving evidence that the specified housing expenditure has incurred in compliance with all conditions resulting from tax regulations. However, the Personal Income Tax Act does not provide a strictly defined method of documenting such expenses. In practice, interpretation problems arise, which often end in court cases.

16.3 Non-recurring forms of public value capture

The non-recurring forms of public value capture in Poland include three types of betterment contributions (*opłaty adiacenckie*), a planning fee (*opłata planistyczna*), and the commitment to (re)construct public roads necessary to obtain a building permit (*budowa lub przebudowa dróg publicznych spowodowana inwestycją niedrogową*), the town planning contract (*umowa urbanistyczna*) in the Act on Revitalization of 2015 (*Ustawa o rewitalizacji*), and the agreement with the developer (*porozumienie z investorem*) in the Special Act on Housing Development of 5 July 2018 (*Ustawa o ułatwieniach w przygotowaniu i realizacji inwestycji mieszkaniowych oraz inwestycji towarzyszących*)¹⁶.

The last two instruments have not yet entered into common use, but their introduction indicates the changes in the government's approach to value capture. However, in Poland the new regulations are often totally opposed to by the political opposition and not accepted by the local governments. This situation may serve as an example of the negative impact that distributional conflicts among political interest groups exert on shaping the institutional structure. This also relates to the new indirect value capture changes.

¹⁶ Havel, Załączna 2022

In Poland, there are also many examples of informal practice where the developer voluntarily contributes to the improvement of urban infrastructure provision if it is in their interest¹⁷. Private financing of public infrastructure represents then an example of positive externalities of the operation of the market, not a public value capture.

16.3.1 Non-recurring forms (focussing on one factor of value increase)

16.3.1.1 Betterment contributions (*opłaty adiacenckie*)

Betterment contributions are focused on land values and their increases. However, the betterment levy raises many legal problems. The initiation of charging proceedings may take place within a limited period of 3 years from the commissioning of the infrastructure. The use of it is limited due to the fact that the local government has to pay for every individual valuation, appraisal costs are high, and there is a floor for litigation over the value, and the court cases are longstanding. There is also disagreement as to whether the municipality is obliged to determine the fees, or only has such a possibility. In the direct regulations, there is such a possibility, but from the provisions on budgetary rules some people infer that the municipality must impose betterment fees¹⁸.

To be able to impose the betterment contributions in the case of a betterment arising from publicly funded infrastructure works and a betterment arising from the subdivision of a plot of land (*podział nieruchomości*), a resolution of the municipal council must be first in force, specifying its percentage rate. In the case of a betterment arising from the consolidation and subdivision of plots of land (*scalenie i podział nieruchomości*), the whole procedure is implemented by a resolution of the municipal council. There is, however, no uniform line of case law on the mandatory imposition of the betterment contributions.

The betterment levy for the construction of technical infrastructure facilities is assessed against the person who is the owner or perpetual usufructuary of the real property in question at the moment of commissioning the particular facilities or road. Therefore, if such real estate is sold after the construction of the technical infrastructure, its purchaser is not obliged to pay the betterment levy. The person who was the owner at the moment of creating the conditions for using the facility or road remains the obligee. These factors also lead to many legal disputes.

In general, municipalities are reluctant to use this instrument due to the legal and technical problems. These instruments are sometimes simply ignored in practice.

16.3.1.2 Planning fee (*opłata planistyczna*)

Planning fees also focus on land values and their increases. However, the planning fee can be charged only in cases where the owner disposes of the property within five years from the date when the local land-use plan came into force. Initially only the concept of sale of real estate was considered. Then, a 2004 amendment replaced the concept of sale with the concept of disposal, indicating that the fee is payable in any case of disposal and not only in the case of sale. However, landowners can still easily avoid this fee.

¹⁷ Szewczyk 2019

¹⁸ Kowalczyk 2016

The municipality is in a weak position to capture the part of value related to planning because planning fees do not apply to the most common land development method, the ad hoc administrative permission (DWZ). Planning gains remain therefore with the landowner.

16.3.1.3 The commitment to (re)construct public roads necessary to obtain the building permit (*budowa lub przebudowa dróg publicznych spowodowana inwestycją niedrogową*)

The detailed conditions for the (re)construction of roads are negotiated and specified in the contract between the road traffic authority (*zarządca drogi*) and the developer as a precondition for issuing the building permit. This is the only effective solution for public value capture. Until 2015, this was in fact the only possible cooperation supported by law between actors in the planning process and a kind of a development agreement, but it could concern only the roads necessary for the development. This cooperation takes place at the stage of application for a building permit, therefore, quite late, at the final stage of the development process, causing a lot of uncertainty in the urban development process. However, the use of this instrument by the local authorities is very inconsistent. Sometimes the developer is required to pay, sometimes not. Developers also perceive this instrument differently, sometimes as an unnecessary burden and unpredicted real estate development risk, or on the other hand as a possibility to rebuild the road to create more favourable environments for conducting business activities. This allows for improved the access to the developer's facilities, such as a shopping mall.

16.3.2 Non-recurring forms (focussing on more than one factor of value increase)

16.3.2.1 Development in a revitalization area by town planning contract (*umowa urbanistyczna*)

The Act on Revitalization of 2015 (*Ustawa o rewitalizacji*) introduced different land-use regulations and instruments for revitalisation areas, i.e., the areas of a municipality in a state of crisis due to the concentration of negative social and technical phenomena. The municipal council may adopt a local revitalisation plan (MPR, *miejsce plan rewitalizacji*), which is a special form of local land-use plan. The local revitalisation plan (MPR) may specify the scope of obligations of the investor and municipality in relation to the development of an area including the responsibilities for building the technical and social infrastructure or residential premises. Then local authorities can sign a town planning contract (*umowa urbanistyczna*). However, in the 5 years since this new law was introduced, no MPR have been enacted and no town planning contracts (*umowa urbanistyczna*) signed. The reason is that it is necessary to combine the urban development contract with the revitalisation plan. The challenge to use this instrument is the need to develop new planning skills and a new understanding of planning as a process by planning professionals.

16.3.2.2 Development according to the Special Housing Act using agreement with developer (*porozumienie z inwestorem*)

Recently, the government introduced one more indirect value capture instrument, the agreement with the developer (*porozumienie z inwestorem*) in a new Special Housing Act of 5 July 2018 (*Ustawa o ułatwieniach w przygotowaniu i realizacji inwestycji mieszkaniowych oraz*

inwestycji towarzyszących). At the stage of the legislative process, this new regulation caused numerous controversies and already received the name of the ‘Lex Developer Act’ from the political opposition. Several big cities governed by the political opposition immediately exercised their right to change the urban standards, e.g., Warsaw increased almost all parameters in urban standards by half, making it almost impossible to apply the new act.

However, some positive aspects of the new regulations may be found. The act itself could be seen as the step towards a more cooperative regime and network governance in planning in Poland as well as a new indirect value capture instrument.

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17. Serbia

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There are very few mechanisms of public value capture used in the Republic of Serbia (Carević Tomić et al. 2022). The term “public value capture”¹⁹ itself is not defined or even mentioned in legal documents, although existing mechanisms are covered by different laws. Tools for capturing public gains are not developed enough, are not used to their full potential, or even considered by policy makers, by professionals and other stakeholders. Nonetheless, new tools and policies could be introduced and the efficiency of the existing forms of public value capture could be optimized in order to address some of the main issues of the spatio-economic development of the Republic of Serbia.

17.1 Recurring forms of public value capture

In Serbia, the recurring forms can be divided into: the real estate tax, the real estate transfer tax, and the capital gain tax (Carević Tomić et al. 2022).

Real estate tax

The right of local governments to collect real estate tax is defined and regulated by the Property Tax Law. After 2006, with the adoption of the Law on Local Governments Financing, the collection of the real estate tax became the sole responsibility of the municipalities, with the assembly of the local government unit determining the tax rate, up to the amount of the highest rate prescribed by the Property Tax Law (Zakon o finansiranju lokalne samouprave 2020). The shift of responsibility for the collection of the real estate tax from the central (before 2006) to the local level (after 2006) was a relatively slow and difficult process (Đorđević et al. 2017). With this reform, the real estate tax has become the largest own source of revenue for municipalities in Serbia, which they are able to allocate on their own. The share of this tax is up to 44% of the overall local budgets (Bisić 2011; Carević Tomić et al. 2022).

There is a number of issues that surround the process of collecting real estate taxes, pointing out that the whole system of annual property taxation should be the subject of a larger debate and further research. One of the most important issues is the calculation. The tax is paid on an annual basis and is calculated upon the size of the real estate (building or plot) and the average price per square meter in the zone where the real estate is located. This calculation method fails to provide the principle of vertical equity, since more valuable properties pay the same tax as less valuable sharing the same unit tax value. At the same time, due to unsolved issues regarding real estate valuation, exact increase in property value cannot be assessed. In order to improve equality and also the value capture capacity, the change of calculation and declaration system is needed. Since the tax base is now determined on the assumed value of the property with the only value-driven parameter being the location, the use of mass valuation and a more detailed value assessment can be proposed as a step forward towards a more efficient, transparent and

¹⁹ Translated to Serbian as “zahvatanje dodatne vrednosti nekretnina”, the term “public value capture” is rarely used in spoken language and is unknown to most people, even to professionals who practice in the fields of urban planning, economics and law.

reliable real estate management system. First efforts made in that direction encompassed the development of the real estate valuation system with the adoption of the Law on State Survey and Cadastre in 2009, which stipulated that the real estate mass valuation comes within the competence of the Republic Geodetic Authority (RGA). From 2010 until 2015 the bilateral Serbian/German cooperation project “Strengthening of Municipal Land Management in Serbia” was implemented, where the need for the introduction of real estate valuation instruments and a more detailed value assessment was stressed (GIZ/AMBERO-ICON 2015). Another project had an impact – the Real Estate Management Project, done in 2019 by the Republic of Serbia and the International Bank for Reconstruction and Development. Part A of the project aimed to develop and implement a system of property mass valuation in order to determine the tax base for real estate taxation on real market grounds (RGA 2022). The goal is to ensure accurate, complete and electronically available information for the improvement of services in real estate management, by developing the register of property sales prices, along with the software for data processing. A pilot program on property tax rolls and collection procedures in local governments would follow, as well as the development of an accurate register of buildings (RGA 2019; International Bank for Reconstruction and Development 2019).²⁰ At the same time, the cadaster and other key data in the taxpayer registration database are still of limited accuracy, which is one of the key points to improve, especially considering the fact that there are more than 2 million illegally built structures in Serbia (Ministarstvo građevinarstva, saobraćaja i infrastrukture 2021). The accuracy of the cadaster was the subject of a recent but ‘late’ reform. In 2019, the electronic system of “the one-stop shop” for registration of properties was introduced within the Real Estate Cadaster registration reform project, to enable an easier, more efficient, and safer real estate registration procedure and establish accurate and comprehensive records of real estate in Serbia (NALED 2019). While all of the abovementioned projects raised the awareness about the subject, the political significance of this topic is still quite low, with the insufficient involvement of policy-makers, stakeholders and institutions, whose role is mostly limited to delivering data.

There are also other issues that accompany the process of collecting real estate taxes, including insufficient collection and the fact that a large number of properties are not declared for taxation by their owners (Miladinović 2015). Research has also shown that one of the causes of an inefficient taxation system at the local level is the dissatisfaction of taxpayers. Reasons behind taxpayers' attitudes towards their liabilities include the poor economic situation in the country, with real estate tax being a significant burden in family budgets, and the fact that local governments insufficiently involve taxpayers in the decisions on how to spend budget funds. Negative socio-economic circumstances and the intransparent decision-making process are accompanied by the traditional opinion that property taxes should not be paid, which, as a lack of tax culture, is still a common attitude among some taxpayers (Miladinović 2015). The motivation of taxpayers to pay real estate taxes in full on a regular basis could be increased if local governments and decision makers provided an appropriate public information program and insure that the public's contribution will influence budget creation. The contribution to this idea was made in

²⁰ Currently, the property bulk for applying the model of property mass valuation has about 26 million properties, and assumptions are that the actual situation on the ground is about 30 million properties (Republic Geodetic Authority, 2022).

recent years during the implementation of the economic development program financed by the Swiss Agency for Development and Cooperation (SDC) to assist the municipalities with tax reform. The aim of this ongoing project is to implement the property tax in a manner that is both fair to the citizens and more efficient to the administration. The goal is, therefore, to create a stronger accountability link between citizens/taxpayers and local governments by collaborating more closely on issues of both the collection and use of real estate taxes. On the one hand, citizens are given more opportunities to participate in decision-making on investment priorities (e.g., some of the local municipalities introduced online platforms for taxpayers to vote for specific projects) (Grad Bor 2019)²¹. On the other hand, the development program supported municipalities in the registration of many properties that have not yet been registered so that the collection of property taxes can be managed more effectively. A competition has also been created: municipalities that harness the largest number of as yet unregistered taxpayers and generate the greatest amount of additional income from real estate tax are rewarded with a further financial contribution for investments (SDC Western Balkans Division 2020). This program set an example in improving the capacity of municipalities to collect property tax collection, which should not be considered as a step in meeting formal requirements in a transitional country, but as an essential contribution that shows that it is possible to use tax revenue to fund citizens' priorities in accordance with good governance principles.

Real estate transfer tax

The real estate transfer tax (type of tax on the transfer of absolute rights) in the Republic of Serbia is paid in the case of transfer of ownership rights, but also in the case of transfer of right to a lease or use of buildable land. The tax rate is 2.5% (with some exceptions – Carević Tomić et al. 2022) and it should be paid by the seller (in the case of purchase) or by the user (in the case of leasing or use of the buildable land). In practice, it is usually paid by the buyer, which is generally provided for in the sales contract. In the contract, the seller gives consent to the buyer to report and pay the property transfer tax, as well as to file a tax return on behalf of the seller.

Issues related to the transfer of ownership rights in the Republic of Serbia include frequent speculations that occur as a result of the fact that the decision-making and planning processes of capital projects and infrastructure improvements are not transparent. Land is therefore often bought at a very low price and resold at very high prices after the adoption of urban plans. Improvement can be introduced through the taxation of speculation in the real estate market (Žerjav 2013). This tax should be used as an instrument by cities and municipalities where real estate prices are rising, which is today a common situation in almost all major cities in Serbia. It would serve as additional taxation of the owner who keeps the land undeveloped or resells it in a short period of time due to the constant rise in prices. It would also be charged to those who buy apartments and already own a house or an apartment in which they live, thus preventing the apartments from being kept empty in anticipation of a further price increase and resale. This measure could control the growth of real estate prices, reduce speculative purchases of apartments and land, and contribute to more efficient land use (Žerjav 2013).

²¹ In the city of Bor, a questionnaire was carried out between taxpayers both online and in person to decide on priority investment projects from the real estate tax generated funds. The majority of citizens voted in favor of health-care related projects (Grad Bor 2019).

Capital gain tax

Capital gain tax in the Republic of Serbia is considered to be any income that the taxpayer realizes through a sale or other transfer with a fee. It includes gains realized through the transfer of real estate rights, with a 15% tax rate (with some exceptions – Carević Tomić et al. 2022). Related to one of the major spatial issues in Serbia, illegally built structures, the capital gain tax can be considered as a useful tool in the context of legalization. Assuming that the value of legalized buildings is at the level of those legally built and higher than before legalization, this tax could be charged to those owners who profit from legalization by selling their facilities. This would enable that the benefits provided by the Law on Planning and Construction and the Law on Legalization (Zakon o planiranju i izgradnji 2021; Zakon o ozakonjenju objekata 2020) to apply only to those who build out of necessity and who remain living in these facilities for a longer period of time (Žerjav 2013). It is also important to note that the sale of facilities built without the building permit is forbidden since 2018 according to the corrections to the Law on Legalization (Zakon o ozakonjenju objekata 2020).

Žerjav proposes that the capital gain tax could be applied to new housing estates, especially in cases when the investor received different types of subsidies, such as the construction of non-profit housing. In that case, the capital gains tax could serve as a corrective factor that prevents the misuse of non-profit apartments: if the apartment owners or the investors try to sell the apartments at the full market price, this tax would return all subsidies to the public sector (Žerjav 2013).

17.2 Non-recurring forms of public value capture

In the Republic of Serbia, non-recurring forms of public value capture are much less used than recurring forms. There are only a few “active” non-recurring forms, of which the most common are the contribution for the construction of infrastructure and the fee for the change of purpose from agricultural land and forestland to building land.

In terms of suggested improvements, it is important not to adopt an approach that is too “general” in terms of choosing the appropriate mechanisms of non-recurring forms of public value capture. In other words, the specific characteristics of individual cities and municipalities in the Republic of Serbia should be seriously taken into account when deciding on value capture instruments in order to select the ones that are, indeed, applicable. Local governments and municipalities should implement instruments that reflect local or sub-local specificities (whether it is related to, for example, informally built settlements or newly planned and legally built buildings and areas (Žerjav 2013)).

For example, it is very likely that inclusionary zoning could be applicable in the case of informal settlements, which is, as stated previously, one of the major issues in the Republic of Serbia. The above mentioned offers a solution in a sense that the intention of the municipality to increase density is put forward to the investors (or they are offered, for example, tax relief) but this necessarily implies that a certain percentage of the area of the new residential complex is going to be reserved for social housing (Smolka and Ambroski 2000). The same goes when a private investor, in exchange for being allowed to increase density, is obliged to provide affordable housing units or to make a contribution of the same kind but at a different location (linkage policy) (Smolka and Ambroski 2000). This could be a successful practice, especially in the case of smaller informal settlements that

occupy attractive city locations, that are usually very interesting for private investors. Then again, this could only work in cases where the area occupied by informal settlements is large enough so that the demolition pays off for the investor²² (Žerjav 2013).

Furthermore, land readjustment should be further promoted as a suitable tool, especially given the fact that sustainable urban planning solutions are very much needed to deal with the intensive urbanization in Serbia, which has resulted in numerous spatial, economic and social issues. As a new tool, recently introduced in Serbian legislation, it has many possibilities for wider use. Land readjustment was promoted by the project “Strengthening of Municipal Land Management in Serbia”, which was mentioned earlier. The GIZ/AMBERO-ICON project consortium, together with the Ministry of Construction, Transport and Infrastructure, participated in the development of articles of the Law on Planning and Construction, and the new provisions for land readjustment have been adopted as an outcome. Pilot projects were also launched in three municipalities, but were temporarily stopped because there was no legal base to regulate the matter in detail (GIZ/AMBERO-ICON 2015). This exposed some of the threats to a successful use of land readjustment in Serbia, including the lack of bylaws on both state and local level, scarce awareness and skill of employees in local government offices and the possible opposing stand point of land owners, i.e. potential land readjustment participants (Šoškić et al. 2016). These are still the points that have to be improved in order for the benefits of land readjustment to become clear to all stakeholders. While the main outcome of land readjustment related to urban planning process is the higher implementation rate of urban plans, it can also lead to the increase of urban plan quality (Šoškić et al. 2016). As a newly developed tool, land readjustment would lead to the land value increase and could also offer the desirable balance between private and public interests. This is particularly important in the local situation, where there is an understandable citizens’ resistance to the way the process of expropriation is often carried out in Serbia. While with expropriation the ownership of the land is taken away from the proprietor, the property right remains in case of land readjustment accompanied by the value increase, which represents a more democratic process carried out through partnerships between the municipality and landowners. Šoškić proposes various areas where land readjustment can be implemented: new building areas (such as agricultural land changing its purpose to building land due to the expansion of the city); partially urbanized areas; illegal settlements; brownfield areas; areas damaged by the natural disasters (Šoškić et al. 2016).

Considering the current situation and the fact that in the Republic of Serbia effective tools of public value capture are unfortunately underdeveloped, the opinion of some experts is that the most sensible decision would be, firstly, to focus on the recurring forms, and then gradually over time to introduce and implement different mechanisms of non-recurring forms of public value capture. This is not to say that these forms should be put aside, but that a longer period of time is required for them to be appropriately implemented (Žerjav 2013). Improving the recurring forms first could also financially help the municipalities to invest into the implementation of non-recurring forms of public value capture. This could be argued in favour of the simultaneous implementation of recurring and non-recurring forms, which would provide a more comprehensive value capture, since the two forms

²² “Roma slums, which are often located within the city center, and have a relatively small population, are suitable for such solutions.” (Žerjav 2013)

may not cover the capture of the same value increase. This approach could cover both the value increases that would result from the expected economic development, as well as of plan implementation, when the plan implementation rates increase.

Apart from the presented improvement measures, raising awareness about the tools and mechanisms for capturing planning gains among professionals, policy makers, and other stakeholders is very much needed. Tax Administration in its Tax Administration Program 2021-2025 defined a strategic goal of 'achieving a high level of employee competencies' (Ministry of Finance 2021). Detailed measures that would have to be taken in order to achieve this goal are not proposed in this document, but it is recommended to include training activities on public value capture. Increasing knowledge among the professionals in the fields of urban planning, economics, and law, as well as within city administrations, would promote value capture as a range of tools and policies to address the main issues of urban development in Serbia. This could ultimately lead to better infrastructure and services and an improved quality of life in cities, which is of the utmost importance in the Republic of Serbia.

We would also like to stress again the importance of including taxpayers in the debate on public value capture. The benefits of taxation and other measures are not clear enough for the members of the public. In addition, they are not convinced that financing projects important for the whole community is the focus of local governments when allocating the funds raised from taxation. Changing perceptions and including citizens in the decision-making processes would lead to a better acceptance of public value capture and increased revenue collection. Even more importantly, it could generate a more just and transparent system of governance with a higher level of understanding and trust between citizens and policymakers, which is very much needed in Serbia.

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18. Slovakia

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The possibilities for Slovak municipalities to get more money in their budgets have expanded slightly in recent years. Although it still does not reach the level of developed western countries. In particular, inspiration from different European countries can bring very valuable knowledge in the field of a relatively wide range of public value capture tools. Current land use plan regulations offer local governments virtually no tradable benefits from potential development. “The chronic absence of zoning plans and their coordinating function is reprehensible, as is the lack of interest of the private sector in participating in public affairs”.²³ It is necessary to amend ambiguous legislation to ensure faster updating of spatial planning documentation, to enable its parallel processing and submission of amendments. Below are suggestions for improving the current issue of recurring and non-recurring forms of public value capture used in Slovakia.

18.1 Recurring forms of public value capture

Recurring forms of public value capture in Slovakia include the real estate tax and the real estate transfer tax (Golej, Spirkova 2022).

18.1.1 The Real estate tax

Land and buildings are taxed separately. Land is taxed at a lower rate than buildings. The revenues collected from the real estate tax is part of the general budget of the collecting entity - municipality. Currently, the use and impact of real estate taxes are not monitored.

The Ministry of Finance of the Slovak Republic is currently preparing a tax reform. This reform will introduce a comprehensive change in the tax system, in line with the government’s programme statement. This states: “We will support an increase in real estate tax offset by a reduction in the tax burden on low-income groups, in particular by strengthening the low-income deductions. The real estate tax should be differentiated according to the value and nature of the use of the property. Given the need to support rental housing projects, rental apartments should be taxed less, and vacant properties taxed more”.²⁴ Today, real estate taxes are full responsibility of local governments and are calculated on the area of the property or land. After the new reform, they will probably be calculated on the value of the property. The date of implementation of the reform is currently unknown.

According to the OECD, Slovakia has one of the lowest real estate taxes. While the EU average revenue in 2019 was 1.6% of GDP, in Slovakia, it was only 0.4%.²⁵

Among the most important challenges related to real estate tax are: resistance of property/land owners to any tax increase; lack of administrative capacity of public entities (e.g., to value immovable property, collect tax payments, recover overdue taxes, etc.); the need for good information on real estate prices (property price maps) - in many regions

²³ Kováč 2012

²⁴ Slovak Business Agency 2021

²⁵ European Commission 2019

and localities there are too few real estate transactions, therefore, information is insufficient and the increase in the tax burden is perceived as disproportionate.

One way to improve public finances through the real estate taxation appears to be to tax of undeveloped building plots in the urban area of municipalities and unused urban spaces. This tool would also help to initiate building activities on apparently abandoned land, which often devalues the surrounding environment. Another possible tool is to introduce a preferential tax rate for sustainable projects, which would also positively motivate investors to move towards sustainable solutions.

18.1.2 The Real estate transfer tax

The tax is paid only on the difference between the purchase and sale price of the property. The tax rate depends on the amount of the tax base, which is defined on the basis of the partial income tax according to the Income Tax Act (Golej, Spirkova 2022). Tax rates are set at 19% or 25%, depending on whether the amount of the tax base exceeds or not the annual limit (EUR 37 163.36 in 2020, which represents 176.8 times the amount of the applicable subsistence minimum level). There are many exceptions to the payment of this tax. One of the most important is the exemption from real estate transfer tax if the sale occurs at least 5 years after the date of acquisition (commercial property is not affected by this provision).

Based on the revenues generated by this tax (EUR 20,000 in 2017 and much less in the following year)²⁶, it is clear that people circumvent it by owning the property for at least 5 years, thus avoiding paying the real estate transfer tax. It should be added that the state is also failing to collect this tax, which it is currently trying to remedy this with additional warnings and controls.

18.2 Nonrecurring forms of public value capture

The nonrecurring forms of public value capturing in Slovakia are in-kind developer's contribution to the local infrastructure and development fee. They are also among the most important financial sources for local government budgets.

18.2.1 Developer contribution to local infrastructure

There is no legal basis for betterment contributions or similar instruments in Slovakia. Prior to the implementation of development projects, the municipality enters into a negotiation process and formulates its requirements. They usually concern local urban infrastructure directly related to the project such as roads, pavements, bike paths, and parks or local greenery adjacent to the development. These municipal requirements are formulated in the form of an agreement with the developer. This type of contribution usually benefits the development project only and very little the wider local community. Another problem is the fairness of this approach. The income generated from the projects often does not justify the cost of the contribution. It often happens that a developer with a less profitable project has to contribute more to local infrastructure than a developer with an evidently larger a more profitable project. The contributions do not take into account the purpose of the development projects, the method of project implementation

²⁶ according to the State Treasury of the Slovak Republic 2018

(toward sustainability), and the impact of the projects on the surrounding infrastructure. Municipalities have also different requirements and strengths in negotiations. Depending on their size, municipalities have different competences and room for negotiation. Smaller municipalities wishing to attract developers to their territory often formulate minimal or no requirements and limit themselves to ask for development fees only. Another relatively large problem is the transparency of this approach. The individuals authorized by the municipality negotiate the requirements for the contribution. The fact that the exact rules of this process are not set therefore leaves room for corrupt behavior.

Once developers have built the negotiated contributions, they are transferred to municipalities (who will be responsible for their maintenance). At first glance, this is a simple step. In practice, it takes a very long time. The consequence is that developers reflect the costs of negotiated contributions in property prices. The owners and end-users ultimately pay for them. Therefore, this is one of the reasons for the enormous increase in real estate prices, especially in Bratislava and its surroundings.²⁷

18.2.2 Development fee

In Slovakia, developers pay cash (and in-kind - see section on “Developer's contributions” above) to obtain development approvals. They typically pay for the approval/support of new land development on greenfield or already built-up land. The development fee was introduced at the end of 2016. Its purpose was to eliminate the problems and shortcomings associated with in-kind contributions from developers to local municipalities. It was supposed to replace it completely. The rules defining and enacting the development fee are clearly set out (in Golej, Spirkova 2022). Instead of the development fee replacing in-kind contributions, both tools are retained, which is often rightly criticized by developers as a double cost burden for their projects. With the introduction of the development fee, Slovakia becomes one of the countries in Central and Eastern Europe with the highest predevelopment cost (ie costs for construction preparation). Finally, these costs are transferred to the end users of the project. In some small municipalities located in poor regions and lacking job opportunities, it is observed that local governments rarely ask for development fees. They do not want to further deteriorate an already unattractive situation.

In the capital Bratislava and its city districts, there is currently an upper highest possible fee limit of EUR 35 per m². In 2019, the Bratislava capital city districts levied development fees of more than EUR 9 million.²⁸ In addition, in the city of Bratislava, city districts report that in the first two years, only 28% of the money collected from the development fee was actually used for the construction of new infrastructure. The potential for significantly higher incomes through the development fee still exists. This is also supported by the fact that Bratislava currently lacks at least 40,000 flats and that the interest of large developers in producing them is clear. Such projects can bring new resources to the city almost immediately after the issuance of building permits. These numbers are also realistic given the current zoning plan. Its update would of course open up further development possibilities and thus considerably increase the income generated by the development fee. Updating the zoning plan seems to be a quick and efficient

²⁷ IUR 2020a

²⁸ IUR 2020b

option for the construction of new projects. It would significantly increase the supply of housing within the capital city and take advantage of its status as a natural magnet for non-housing investment.²⁹

Since the introduction of the development fee until the end of 2021, more than € 33 million of budgets have remained unused. This amount of money is approximately the same as the collection of real estate tax for a period of one year. The budgeted amount of real estate tax for 2020 in Bratislava was EUR 33.5 million.³⁰ The reasons why the municipality did not use these funds remain unclear at this time. This situation only proves that the efficient and transparent use of funds generated by the development fee is obviously a difficult task for local governments in Slovakia.

Today, almost all developers, except for the exceptions listed in the Act on the Local Development Fee³¹, pay the development fee. We suggest that it is appropriate to consider differentiating the development fee according to each type of development, which would take into account its specific impact on the urban environment. The rate of the fee could specifically distinguish whether the development is for housing, commercial, or industrial. In addition, we suggest that development fee could also include an incentive for sparing use of land. It could also distinguish between built-up and unbuilt areas. Finally, but importantly, it should favour projects that are sustainable over those that are not. This would at least partially reduce the inefficiency of current development.

18.2.3 Additional development rights

There is no legal basis for charges for additional development rights and other similar instruments provided by law in Slovakia that mentions charges for additional development rights explicitly and defines when and how developers or landowners can be charged. Land use plans are binding legal documents. The only way to obtain an exemption from the zoning plan is to apply for changing it. This option is often very time-consuming and can take many years. We consider the modification of the legal framework to be the biggest implementation challenge. Another challenge is to clarify development norms, land use regulations, and liberalize the system. Not less important to improve the quality of the cadastre and land registry, to reduce the risks associated with land and real estate markets, and to increase the administrative capacity of public entities (e.g., to issue additional development rights, to set associated cash or in-kind charges, etc.).

At the national level, new legislation on spatial planning is being prepared. It could bring about possibilities that are more complex also on the issue of rezoning and additional development rights. At the local level, the municipal departments of “Bratislava are currently working on preparing changes in the land use plan to clarify regulatory instruments, but on the other hand, where this is not contrary to the public interest, to bring some liberalization, such as increasing the allowable share of housing in functionally mixed areas”³².

²⁹ IUR, 2020b

³⁰ IUR 2021

³¹ Act 447/2015

³² ASB.sk 2020

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19. Sweden

Peter Ekbäck

The question of who should be allowed to capture the increase in value for real properties has been discussed and debated in Sweden since the first expansion of cities and towns began. Early on, the discourse in this context was formulated in terms of "earned" and "unearned" increment or value increase, respectively. As early as 1957, the *Land Value Inquiry* presented proposals on how the state and municipalities could capture value increases for properties in the report "Withdrawal of unearned increase in land value".³³

The Land Value Inquiry proposed i.a. the introduction of a so-called "value-increment hypothecation", which would mean that the state or municipality could apply for registration of an encumbrance on a real property. After a first valuation, the value of the property would be determined, the so-called entry value. At a later date, a new valuation was to take place, whereby the so-called exit value would be determined. Of the increase in value that corresponded to the difference between the entry and exit value, the property owner would only be allowed to appropriate what the owner alone had achieved through his or her own improvement measures. For the remaining amount, an interest rate would be paid to the state or the municipality.

The proposal with a value-increment hypothecation was never implemented, but the discussion on the capture of unearned land value increments is still ongoing today.

19.1 Recurring forms of public value capture

In Sweden, the recurring forms comprise the real estate tax, the stamp duty, and the capital gains tax (cf. Ekbäck 2022).

19.1.1 Real estate tax

In 2009, a reform of the real estate tax system came into force. The change took place after extensive criticism of the previous tax system. It was considered, e.g., that the tax was problematic as it was not levied on the basis of economic viability, that it created liquidity problems as unrealized increases in value were taxed, that it was unpredictable and created uncertainty about future housing costs.³⁴ By its connection to the market value, the assessed tax value was mainly determined by circumstances beyond the control of the individual property owner. Price increases in the surrounding area could result in higher tax value, which was perceived as unfair, not least in attractive holiday home areas and in metropolitan regions. The tax assessment was also applied on a stereotyped basis and was criticized for not being able to reflect actual market values for individual properties.

The transition to the new system was combined with an increase in the percentage of capital gains tax (cf. Ekbäck 2022) as well as changed opportunities for deferral of capital gains tax, among other things through the introduction of an interest rate on deferred tax.

³³ SOU 1957:43.

³⁴ Proposition 2007/08:27.

The reform meant a shift from recurrent taxation through annual payments to taxation at the time of sale.³⁵

After the transition to the current system, the government appointed the *Housing Taxation Inquiry*,³⁶ which was commissioned to propose how the property tax assessment of housing could be abolished completely or alternatively simplified. The inquiry found that the current design, with relatively low ceiling/maximum amounts for taxation (cf. Ekbäck 2022), meant that the assessed tax value, and thus also the property's market value, became less important for taxation. It was estimated that 57 % of single-family homes and 63 % of apartments in multi-family houses reached the ceiling amount for real estate tax. As the information in the property tax assessment is used by a number of authorities, as well as by banking and insurance actors in the private sector, the abolition of the property tax assessment of housing would lead to a sharp increase in transaction costs. The inquiry proposed, in the event of the possible abolition of the tax assessment of housing, that the real estate tax be levied instead based on the size of the building and plot, respectively. For the ceiling amount, a certain differentiation was proposed by sorting municipalities into three categories: metropolitan, intermediate, and sparsely populated municipalities with tax ceilings of 10.000 SEK/990 EUR, 9.600 SEK/950 EUR and 6.450 SEK/640 EUR annually, i.e. a slightly higher ceiling amount in metropolitan and intermediate municipalities, compared to today, as well as a certain reduction in the ceiling amount in sparsely populated municipalities. The Housing Tax Inquiry's proposal has not yet become a reality.

The tax reform implemented in 2009 meant that the connection between property taxation and market value, and thus any increase in value, was weakened. Significantly more than half of the properties reach the ceiling/maximum amount, and the spread in tax payments between high and low-valued properties decreased sharply, with the largest reductions for highly valued properties, such as centrally located properties in metropolitan areas. The Housing Taxation Inquiry's proposal, with differentiated ceiling amounts in three municipal classes, can be said to advocate a modest correction back to a somewhat larger spread in tax imbursements. Its rather blunt structure – with only three municipal classes and connection to the size of the buildings and land, does not, however, properly reflect the market value and any increase in land value as a result of, for example, infrastructure investments. It is the municipal category, not the actual accessibility of the property, that forms the basis for the tax payment. The real estate tax assessment has thus to a large extent been decoupled from the market value, both in the current and in the proposed design. As a result, its potential as a means of control and financing for infrastructure investments is also limited. Despite the fact that the tax constitutes a continuous levy, it does not at all reflect, for the properties that reach the ceiling level, any increase in value as a result of infrastructure investments. Implementing the Housing Taxation Inquiry's proposal of 2012 would still imply an improved, although not perfect, connection between market value and real estate tax.

³⁵ Proposition 2007/08:27 p. 64-65.

³⁶ SOU 2012:52.

19.1.2 Capital gains tax

As mentioned in the previous section, the former reform of the real estate tax system resulted in a shift from recurrent annual taxation to taxation at the time of sale. High taxation of transactions means that the risks of lock-in effects in the economy increase and that mobility in the real property and labor markets deteriorates. Together with the reduced real estate tax, inertia and financial obstacles arise for efficient trade in the real property market. This is especially true for older age groups where the parents stay in a larger home while the children have grown up and moved away from home.

Many critics believe that the capital gains tax should be abolished altogether and instead replaced by a higher real estate tax with a direct link to the properties' market values. The European Union has also criticized the Swedish capital gains tax on real property, since this legislation constitutes an impediment to free movement within the EU.³⁷

19.2 Non-recurring forms of public value capture

19.2.1 Fee for the construction of infrastructure

In general, the municipality is responsible for areas that are designated as “public spaces” in a detailed development plan, namely streets, green areas, etc. To cover the cost of public spaces, the municipality is entitled to levy charges from the property owners (cf. Ekbäck 2022). These charges may not exceed the construction costs of the facilities. Maintenance costs, on the other hand, have to be funded out of municipal tax revenues.

The fact that operating and maintenance costs may not be financed through charges gives the municipality an incentive to instead allocate the main responsibility for public spaces – and thus the operating and maintenance costs for these – to the property owners in detailed development plans. In recent years, proposals for a legal reform have been put forward, including from the Swedish Association of Local Authorities and Regions (*Sveriges Kommuner och Regioner*) and other organizations.³⁸ The Swedish Association of Local Authorities and Regions has, among others, advocated a model similar to the one that currently applies to water and sewage systems, with a connecting fee for construction and an annual user fee for operation and maintenance. There is a demand and advocate for a strengthened municipal responsibility for streets and public spaces through the possibility of fee financing of the entire municipality's street network. Financing with fixed rates would also contribute to increased predictability in the land development process.

Several government inquiries have advocated similar changes to current street cost regulations. The 1996 *Planning and Building Inquiry* proposed a charge for both construction and improvement as well as operation and maintenance based on a municipally determined tariff (table of rates).³⁹ The inquiry drew attention to the fundamentally significant and problematic change with the transfer of responsibility for public spaces from the municipality to property owners.

³⁷ See e.g. Svenska Dagbladet (2005), Sveriges Radio (2007), Svenska Dagbladet (2007) and SVT (2007).

³⁸ Kalbro & Smith 2008, pp. 36-39.

³⁹ SOU 1996:168.

The 2005 *Planning and Building Committee* also drew attention to the shift.⁴⁰ The more current 2012 *Plan Implementation Inquiry* further states in its report that few municipalities today charge street costs, partly because the procedure is seen as cumbersome, partly because compensation for infrastructure investments can instead be obtained through special negotiations with property owners – development agreements – or be tax-financed.⁴¹ The fact that the municipalities do not charge street costs leads to irrational decisions, lack of transparency and predictability as well as unequal treatment of property owners. The inquiry advocated for a simplified set of rules and was linked to the 1996 proposal for a tariff-based street cost compensation.

However, the Plan Implementation Inquiry from 2012 was prevented by its Inquiry Directive from proposing fee financing for operation and maintenance, so the proposal was limited to proposing a tariff-based fee model only for the construction and improvement of streets and other public spaces. The withdrawal should be cost-based and the municipality could be divided into several tariff areas. External facilities that serve larger parts of the municipality, such as main streets and larger parks, should not be financed through street cost compensation. Existing residential properties become liable for payment only when a building permit is granted for additional building rights according to the detailed development plan.

In its interim report, the so-called *Sweden Negotiation Inquiry* repeated the shortcomings noted by previous investigations.⁴² Only a limited number of municipalities today make practical use of the opportunity to make decisions on street cost compensation. Instead, municipalities seek compensation through development agreements in connection with the adoption of detailed development plans or simply tax-finance land acquisition and provision of the public spaces. The reasons are that the administrative procedures for levying street costs are perceived as burdensome and that the regulatory system has not gained any broad acceptance among affected property owners and developers.

To date, neither the proposals from the 1996 Planning and Building Inquiry nor the 2012 Plan Implementation Inquiry have resulted in any bill from the government with proposals for reforms of the system. The reasons for this failure are somewhat unclear, but may have political motives. Still, the need to implement present proposals endures.

19.2.2 Land readjustment and tools for profit distribution

Desirable changes in built-up areas often come into conflict with the prevailing property division and ownership. In order for such changes to take place to a greater extent, it is therefore normally required that the land is collected on the one hand through voluntary negotiations or compulsory acquisitions, either with the municipality or a developer.

The former Act on Development Cooperation (*Lagen om exploateringsamverkan*) was introduced as part of a larger Swedish reform of the legislation on planning and building regulations in 1987. The purpose was to regulate the collaboration between several property owners to exploit land for new or densified buildings, with a fair distribution of

⁴⁰ SOU 2005:77.

⁴¹ SOU 2012:91, pp. 128-132.

⁴² SOU 2015:60 p. 44.

the profit. Development cooperation was a means of facilitating the implementation of detailed development plans and contained a special value equalization system, the purpose of which was to disconnect the new plan design from the existing property division and thus provide conditions for better detailed development plans.

In practice, however, the Act on Development Cooperation was of little importance and was finally repealed in 2012. It was seen as difficult and cumbersome to apply and was used in very few cases – only a handful of collaborative projects were implemented despite the fact that stimulus grants were paid during the first period of the law.⁴³

On a principled level, however, the law contained two means of implementation which, due to the repeal, are currently lacking in Swedish law.

Firstly, the law provided opportunities for property owners to jointly carry out the common facilities that are necessary for the area, e.g. streets, water and sewage mains, etc. Thereafter, the facilities would be handed over to the principal, the municipality or a joint facility association, which would be responsible for the operation in the future.

Secondly, the law contained a special value equalization system, through which property owners received a share of the land development profit based on what they contributed to the development association and not on how the plan's building rights were located, which in some situations would create greater justice and equality and thus provide better conditions for well-designed detailed development plans.

As mentioned above, however, the law was applied only in a few cases and was repealed in 2012. The Planning and Building Inquiry instead proposed that the existing Joint Facilities Act (*Anläggningslagen*) should exclusively deal with issues concerning the joint construction of infrastructure.⁴⁴ With regard to the value equalization system, it was found that similar systems are applied successfully and extensively in other countries – e.g. Germany, France, Norway, and the United States – and in the practical cases implemented under the Act on Development Cooperation, the possibility of a more equitable distribution of plan profits had been highlighted as particularly valuable. Therefore, the Planning and Building Inquiry considered that the system should be retained, but with a simplified design.

The new proposal meant that the municipality should be able to announce in a detailed development plan the provisions that a special distribution procedure should be applied in the implementation of the plan. At the same time, regulations would be announced on the new property division, etc. Thereafter, a distribution procedure was to be carried out at the Cadastral Authority, whereby the land would be reallocated and a financial distribution made, so that the properties concerned would receive a portion of the plan profit based on a participatory share. This participatory share should normally be determined on the basis of the area to which the property contributes.

According to the proposal, the provisions on the special distribution procedure would be included in a new law, the Act on the Distribution of Building Rights (*Lagen om fördelning av bygggrätt*). The proposal from the Planning and Building Inquiry has, unfortunately, not yet been implemented but should be prioritized in future reform work. The absence of legal

⁴³ SOU 1996:168 pp. 342-402.

⁴⁴ SOU 1996:168 p. 352-402.

tools for land readjustment and profit distribution has negative effects on both the efficiency and equality aspects of land development.

19.2.3 Interim acquisition and land banking

Current provisions in the Expropriation Act (*Expropriationslagen*) were decided by the Swedish Parliament in 2010.⁴⁵ Compared with previous version, the reform and the amendments meant that higher compensation is paid, and that several previously applicable provisions on limiting the amount of compensation have ceased to apply. The revisions were implemented to strengthen ownership and property protection. The most interesting from a public value capture perspective is the abolition of the so-called 'expectation value' provision, which meant that expectations of future changes in land use, for example as a result of infrastructure investments and increased building rights, could previously be deducted from expropriation compensation.

In 2010, the municipality's so-called pre-emption right was also abolished, by repealing the former Pre-emption Act (*Förköpslagen*). The pre-emption right gave the municipality an opportunity to, for certain purposes, acquire a property upon sale by taking the place of the original buyer and paying the price agreed between the seller and the original buyer. The municipality had the right to exercise its pre-emption right, that is, in areas intended for future urban development. Excluded from the right were, among other things, smaller residential properties of a maximum of 3.000 square meters set up for 1-2 families as well as sales to a spouse or offspring. The government justified the abolition of the legislation with the result that the pre-emption right was seldom applied, and entailed extensive administrative costs and inconveniences for actors in the real property market. The Pre-emption Act was considered to have played its role as a tool of meeting the municipalities' need for land for urban development.⁴⁶

The abolition of the pre-emption right, as well as the abolition of the "expectation value" provision of the expropriation legislation, have weakened the possibility of acquiring land proactively, to benefit in the long term from future land value increases. Also important are the more generous compensation provisions in the Expropriation Act, which have made compulsory acquisition of land more costly, which means that the potential for public value capture has diminished. One can direct special criticism at the fact that such expectation values are compensated in the event of expropriation and other compulsory acquisitions even when they are not realized, e.g. in the case of acquisition of land or property rights in favor of protected areas for the natural or cultural environment. From the perspective of public value capture, a moderated return to the previous legal possibilities would be desirable.

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⁴⁵ Proposition 2009/10:162.

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20. Switzerland

Jean Ruegg

In a country that is so committed to the principle of federalism and the guarantee of property, it is extremely difficult to have a complete representation of the mechanisms for public value capture. Nevertheless, few revenues – mostly tax-related – are directly allocated to the pursuit of planning objectives. The most relevant in this respect are the non-recurring forms.

Thanks to the revision of the Spatial Planning Act (SPA) that was enacted in May 2014, all cantons now have a mechanism to capture planning gains (and offset planning losses).

20.1 Recurring forms of public value capture

The recurring forms are the real estate tax, the wealth tax, the capital gain tax, and the property transfer tax (*droit de mutation*).

Real estate tax

The real estate tax is an object-based tax based on the value of the property. It should be understood as a consideration for the use of a portion of the territory where the (immovable) property is located (DIF/AFC 2019). It is not defined at the federal but at the cantonal level. Cantons have to establish distinct laws that will specify who – from the canton and/or the communes – is authorised to collect the property tax and how. Few cantons do not levy any real estate tax.

The real estate tax is based on a tax assessment that depends on the value of the property. The definition of value differs between cantons (and municipalities), as do the manner and frequency of tax assessment. In addition, the real estate tax can be calculated at a flat or a progressive rate.

Property tax is not really intended to serve planning purposes. It has only an indirect effect on the capture of public value. Moreover, in those cantons where it is applied, it represents only about 3% of the total annual taxes collected.

As a result, the general picture is extremely diverse (Ruegg 2022).

Within this general framework, any research – such as DIF/AFC (2019) – that documents diversity within the country should be encouraged to increase the knowledge and transparency of all cantonal practices.

Wealth tax

The wealth tax, together with the income tax, is a major component of the regular tax every natural or legal person has to pay each year. Both are used by the cantons and municipalities for tax competition purposes.

The wealth tax consists of capital (bank accounts, shares, bonds), and movable and immovable property. Only the real estate component of the wealth tax is considered here.

This real estate component of the wealth tax is based on a net value. This means that the amount of mortgage interest can be deducted as well as the annual maintenance costs

invested to maintain the value of the property. In return, the potential rent (*valeur locative*) the owner would receive if they rented out the property must be added.

There has been a long-standing debate about changing this system. It favors new owners over long-term owners. The latter bought their property at a time when prices were much lower than today's real estate values. As a result, their mortgage is relatively low, which means that they can only deduct relatively small amounts, much lower than the potential rent, which the cantons regularly adjust to rental market values. Many pensioners are facing this problem and are asking for a change. The outcome of the debate remains undecided. A revision of the law is under discussion in the Swiss Parliament. If the taxation of potential rental value were to be abolished, the current deductions would also be changed. As of December 2021, no compromise seems to be possible reached between those who demand its abolition and those who fear the effects of a law change that could reduce public revenues. In order not to burden public finances, any change in the law should be accompanied by compensatory measures.

Capital gain tax

The capital gain tax has a federal legal basis, but it is up to the cantons to define it in their “direct” tax law.

The principle of this tax is to levy a certain amount of money on the difference in value that may be generated between the time a property is sold and the time it was purchased.

The capital gain tax has an anti-speculation component. Most cantons apply two complementary rules. The tax rate is progressive and a ratio is used: the longer the property is held by the seller, the lower the ratio on resale (Ruegg 2022). The rationale for this ratio goes back to the crisis of the 1980s, when the federal government issued an urgent decree in December 1989, prohibiting any sale of property for five years after purchase. This urgent decree was abolished two years later at federal level. But many cantons have preserved its substance by adapting it to their specific situation.

The capital gain tax also promotes home ownership. Its payment is deferred if the proceeds of the sale are used to buy another property. Furthermore, in several cantons, the time needed to lower the ratio is halved for owners who occupy their property compared to those who rent it to a third party.

The capital gain tax has a clear territorial impact in curbing speculative behaviours and promoting homeownership. But, once again, it only has an indirect impact on public value capture. This does not mean that no improvements should be considered.

There is no obligation for the cantonal tax authorities to make public the sale price of real estate. Such information would greatly improve market transparency. Such an obligation should be introduced at the federal level and complement the data already available in the cantonal land registers.

Real estate transfer tax

The real estate transfer tax is due when the owner of a real estate property changes. It is based on the sale price fixed in a contract drawn up by a notary. In most cases, the buyer must pay it. Again, the situation differs from canton to canton (Ruegg 2022). Once again,

documenting the diversity in the country should be encouraged in order to increase the knowledge and transparency of all cantonal practices.

20.2 Non-recurring forms of public value capture

Non-recurring forms can be divided into two categories.

In the first category, public value capture is linked to the compulsory servicing of the land that is defined in the legally binding (local) land-use plans.

In the second category, public value capture is linked to regulation changes. This might occur, for example, where a special plan (*plan de quartier*) is needed to ensure the development of a strategic area or to promote a multi-parcel approach. The regulation changes might also be due to building zone extensions, land-use changes or density indice increases. These are planning gains that cantons can capture since the SPA was revised (Ruegg 2022).

Owners' contribution to the servicing of land

According to the federal Spatial Planning Act, the authority responsible for the land-use plan has to equip the building zones. A plot of land is serviced if the owner can connect it, without disproportionate costs, to the road network (including footpaths and cycle paths), and to the water, energy, and wastewater infrastructure (art. 19, al. 1 SPA). The notion of equipment is therefore limited to technical infrastructure. Public facilities (schools, sports facilities, etc.) are excluded.

In most cantons, municipalities are responsible for the land-use plan and are also responsible for defining the owners' contribution to the servicing of land. However, this contribution is governed by cantonal legislation which distinguishes between basic servicing, detailed servicing, and private servicing. The costs of private servicing are always borne solely by the owners. For the costs of detailed servicing, it is up to the municipalities to define the owners' share, which can be up to 100%. In general, it is capped to a lower percentage. It is common for owners to also pay part of the basic servicing). In most cases, contributions are based on actual costs, but especially when a building zone is already partially built up, it can take the form of a fee. The amount collected through fees can never be higher than the actual costs. As is often the case in Switzerland, the bases are common to all cantons and municipalities. But practices differ and there is a severe lack of information. A comprehensive understanding of all practices – especially good ones – is not available. Only applied research could fill this gap, building on the information that is already available from organisations such as EspaceSuisse (www.espacesuisse.ch).

Agreement based on Special Urban Planning Legislation

In several cantons, municipalities negotiate planning gains with owners/developers before a special plan (*plan de quartier*) is accepted. The aim of these negotiations is not only to agree on the servicing, but also to ask the owners/developers to contribute to the financing of community or socio-cultural facilities such as schools, sports facilities, new public transport lines (or new stops), bike routes, green areas, public parks or water treatment plants. Part of this infrastructure will benefit the new inhabitants, but it will also serve the local community as well.

The rationale behind this strategy is to create a win-win situation. The owners/developers benefit from the planning gains, while the municipality receives a contribution to improve the facilities it offers to all its residents.

These negotiations are formalised by an agreement (based on public or private law) which the parties sign on a completely voluntary basis. Some municipalities attach the contract to the special plan. Together they form a single document which must be voted on by the legislative body before coming into force (e.g. municipality of Nyon, canton of Vaud (Berta 2016)). Other municipalities keep the contract and the special plan separate. The contract remains in the hands of the executive body, while the special plan has to be approved by the legislative one (e.g. canton of Bern).

This difference is not insignificant. Asking the legislative body to comment on the agreement ensures transparency and contributes to a better acceptance of the new development. Acceptance quality is an important issue. The Swiss political system still offers the possibility to launch a referendum for citizens who object to the granting of planning permission.

Although this is an obvious form of capturing planning gains, the legal basis for these agreements is not directly related to the SPA. It is generally derived from the cantonal local tax law.

Only municipalities are using the agreement model, but the ability to negotiate requires specific skills and the support of good lawyers. Therefore, it is mainly urban municipalities – with a dedicated administration – that are able to use this model (at the end of December 2017, less than 7% of the total number of Swiss municipalities had more than 10,000 inhabitants). Since they are in charge of the legally binding land-use plan, they can create development strategies that exploit the direct link between their planning power and the contribution they will require from owners/developers of strategic areas that demand a special plan.

It should be up to the cantons to provide support and motivation to encourage more municipalities to enter into this type of agreement.

Capturing planning gains due to planning measures (art. 5 SPA)

The federal Spatial Planning Act (SPA) was enacted in 1980. Under art. 5, the cantons were required to define a compensation regime that would allow for the equitable treatment of significant gains and losses resulting from planning measures. Only four cantons have established specific legislation dealing with this issue. For the others, the federal government has never made a clear statement. It can be assumed that the taxation of capital gains or the provision of a legal basis for specific agreements fulfilled the requirement of art. 5 SPA from the federal government viewpoint (Ruegg 2022).

During the SPA revision, the implementation deficit of art. 5 came back to the fore. After the revision was adopted in March 2013, the cantons had five years (starting May 1, 2014) to adapt their implementing legislation and define a compensation regime. This new obligation was linked to the objective of curbing urban sprawl. The money collected from capturing planning gains was not only to compensate for planning losses (removal of building rights), but was also intended for the reallocation of old industrial – brownfield – sites and the promotion of densification measures (art. 5, al. 1^{ter} SPA).

Seven years later, only a partial balance sheet can be drawn up. All cantons have a compensation scheme. The first conclusions, based on the analysis of the rules defined in the cantonal implementation legislation, are, however disappointing. Art. 5 SPA is rarely used to its full potential (Espace Suisse 2021).

The revised SPA requires capturing at least 20% of planning gains (art. 5, al. 1^{bis} SPA). 18 cantons out of 26 are not asking for more than 20%.

The revised SPA allows for capturing the most important planning gains (in case of the definition of a new building zone, the change of land-use in an existing building zone, or the increase of density indices). Half of the cantons levy planning gains for the first situation only. Less than half of the cantons levy planning gains for all three situations, often at varying rates.

In terms of the allocation of the revenues generated by the capture of planning gains, the results are as follows: 19 cantons plan to use them to compensate for planning losses and to promote measures to combat urban sprawl (art. 5, al. 1^{er} LPS); five cantons plan to compensate for and finance other measures not directly related to urban sprawl; and two cantons plan to finance only measures related to the problem of urban sprawl (Espace suisse 2021). This outcome is intriguing. For many years, case law has systematically promoted a very restrictive interpretation of the right to financial compensation for the withdrawal of building rights.

The cantonal compensation schemes show that this very old issue of compensation for planning losses is back on the agenda. Article 5 SPA introduces uncertainty. It mobilizes human resources and it ties up revenue. For example, in the canton of Fribourg, it is only when the fund, fed by the capture of planning gains, exceeds 20 million Swiss francs, that the financing of measures independent of planning loss compensation can be considered. This suggests that landowners are still powerful in cantonal parliaments and are keen to protect their rights. As a result, the more general spatial planning goals, such as curbing urban sprawl, reducing the size of poorly located building zones, sparing land and soil, promoting densification, developing strategic sites, or introducing climate change requirements in land-use plans, often take a back seat.

There are also more encouraging stories. For example, in the canton of Valais, the members of parliament have accepted the principle of paying financial compensation in the event of building rights withdrawal. At the same time the compensation the authorities must pay is limited to the investment the owner made for having their land serviced. This provision helps the administration to assess how much of the revenue from the capture of planning gains is to be allocated to compensation and how much is available to promote planning measures (under art. 5, al. 1^{er} SPA). It also supports an approach that allows planning authorities to work with owners rather than against them.

These developments show that the 26 cantonal schemes vary considerably. They also suggest that their implementation is in its infancy. What seems most useful at this point is to recommend that close monitoring be undertaken with the aim of valuing and disseminating good practice. This monitoring could be based on the data already collected by Espace Suisse.

Another avenue for improvement would be to better articulate together the capital gain tax, the agreement model and capturing planning gains under art. 5 SPA. For the time

being, potential conflicts might occur among authorities that benefit from these different sources of public value capture. In most cantons, cantonal authorities are the primary beneficiaries of both capital gain tax and capturing planning gains. In cantons where (a few) municipalities have a long history of negotiating planning gains, tension may develop. Some experts fear that because it is forbidden to tax the same gain twice, municipalities will lose revenue (Eymann 2016). Lack of hindsight prevents a clear picture of the overall outcome. This is why documenting the implementation of Art. 5 SPA is so necessary. Care should be taken to ensure that the capture of planning gains under art. 5 SPA is actually used to promote planning objectives (and not to compensate primarily for planning losses) and that it does not conflict with local strategies (Imhof 2016). This requires a coordination effort and the willingness of federal, cantonal and local authorities to pull in the same direction.

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21. Turkey

Ahmet Yilmaz

In Turkey, public value capture could be regarded as inefficient as value increases resulting from public actions and decisions are usually left to the landowners/developers, and most of the urbanization costs are borne by local governments. Due to the inefficiency of the value capture tools and the failure to achieve fiscal decentralization, the planning system fails to provide a balanced distribution of the costs and benefits of urbanization. These problems have increased the interest in value capture tools especially in the past decade, as evidenced by the policy documents. For instance, making legal arrangement on value capturing to prevent land speculation is defined in the Action 2.1.4 of the Integrated Urban Development Strategy and Action Plan (Ministry of Public Works and Settlement 2010). In addition, broadening the tax base (article 181 and 263.7), introduction of ad valorem taxation of properties (article 264.2), increasing the revenues of local governments (article 181 and 264), using the value increases of properties for the quality and development of cities (article 684), capturing the value increases from plan amendments (article 225.2), integration of property values into land administration system to determine the value increases from public investments (article 684.1) are aimed in the 11th Development Plan (Presidency of Strategy and Budget 2020).

In the realization of these policies an important step is the World Bank-funded Land Registry and Cadastre Modernization Project, which is intended to develop a strategy for assessing, registering, updating, and using property values, as well as the required administrative, technological, and legal infrastructure and capability in Turkey. Within this project, which mainly concentrates on the taxation system, three pilot mass appraisal based on statistical models were carried out and property values are found to be about 2 to 3 times more than the tax values. The difference highlights the inefficiency and injustice of the taxation system in Turkey. Furthermore, as one of the results of this project, Department of Real Estate Valuation which is responsible for the development and management of the mass valuation system is established under the General Directorate of Land Registry and Cadastre (GDLRC). The mass valuation by this institution is used for the first time in the "Valuable Residence Tax". However, the lawsuits brought against the valuation and the deficiency in responding to the appeals within the legal period forced the lawmakers to change the tax basis to taxation values. This unsuccessful attempt revealed that the GDLRC lacks the institutional ability to conduct a full mass valuation process yet. Therefore, in 2021, GDLRC signed a protocol with the Turkish Appraisers Association for the use of a web-based system on getting valuation reports of the private companies. The system will be tested in determination of the transfer fee for non-citizen property transactions. With this policy shift, mass appraisal by GDLRC adopted as a long-term plan. But in the short-term, valuation reports prepared by private companies will be used. These developments in valuation will have an impact on the types and effectiveness of value capture tools. Recently, in addition to the recurring forms, some of the value capture related policies within the non-recurring forms have been realized and the capacity and improvement options of the public value capture tools in Turkey are discussed below.

21.1 Recurring forms of public value capture

In Turkey, the property tax, valuable residence tax, real estate transfer fee, and capital gain tax (Yılmaz 2022) could be regarded as the main recurring forms of public value capture tools.

Property tax

According to the rule, property tax is calculated mainly by the minimum unit value of land types in rural areas and the minimum unit value of land facing each street in urban areas (Yılmaz 2022). Property taxes are not levied on recent, up-to-date market values, which leads to vertical inequality for tax payers, as relatively more valuable properties pay the same tax as those sharing the same unit tax value. Furthermore, the tax system is also inefficient for municipal revenues, with the average annual proportion of property tax in municipal budgets falling as low as 7.57 percent between 2006 and 2020 (Ministry of Treasury and Finance 2021). Although property tax is accepted as the main revenue for municipalities, additional tools are attempted to compensate for its inefficiency in Turkey. For instance, the average of the annual growth rate of municipal property sales revenues over the previous decade was 26% and in 2020 property sales of municipalities brought in approximately 9 billion TL, which, like in the last five years, exceeds the total amount of the building tax (Ministry of Treasury and Finance 2021). Therefore improving the efficiency of property taxation has become a major goal of land policy for many years. However, except for a failed new tax attempt, legal, technical, and institutional efforts and capacity development in establishing a mass valuation system are still ongoing. These policies, when in place, should increase the efficiency of the property tax directly and indirectly through other value capture tools such as the valuable residence tax, the real estate transfer fee. However, considering that there are more than 20 million condominium units and 57 million parcels in Turkey, a lot of labor, money, and time will be needed to assess all properties, collect and update data and manage objections and lawsuits, and establish the technical, administrative, and institutional frameworks. Therefore, in order to establish the land value function of the land administration system, first recording the market value of properties in all public transactions, especially in sale, registration, land readjustment, and mortgage loans and establishing the required legal and technical rules, and data infrastructure seems to be a more accessible target.

Valuable residence tax

The valuable residence tax could be regarded as a result of the World Bank-funded Land Registry and Cadastre Modernization Project and realization of the land policy goals of improving the efficiency of the property tax system. The valuable residence tax is a specialized version of the property tax. However, unlike property taxes, revenues would be collected by central government rather than by municipalities, and market values assessed by GDLRC rather than unit values would be used as the tax base. Thus, this tax may lead to a conflict between the central government and the local authorities, as instead of improving the tax revenues of the municipalities, the central government introduces a new tax to create revenues for itself. In addition, this tax also faced opposition from taxpayers. They consider it unfair because it is levied only on properties worth more than TL 5.000.000, and it leads to double taxation as the same property is taxed twice, levied by two different jurisdictions. As a result, thousands of lawsuits were filed mainly against the value assessments of the GDLRC. The central government could not resist lawsuits and

before being implemented the valuable residence tax faced very restrictive changes by Law No. 7221 dated 2020. With these amendments, the tax base is replaced by the tax value, and the taxable amount is limited to the part of the value that exceeds 5 million TL. These changes sharply restricted the effectiveness, total amount collected, and scope of the tax. Therefore, rather than improving a controversial and not well received tax, it might be better to improve the property tax which is already accepted by society. Thus, it would be possible to ensure fair taxation and prevent government intervention in the value increases in the municipalities' jurisdiction.

Real estate transfer fee

The real estate transfer fee is based on the value declared by the seller and buyer. It cannot be lower than the taxation value of the property (Yılmaz 2022). The use of the declared value for the tax base and the tax value for the lower limit affect the efficiency of the fee and the mortgage loans. Most sellers in Turkey do not intend to declare a high price and instead report a price between the tax value and the market value. Similarly, since sellers do not want market values to appear in official documents that are used to calculate real estate transfer fee, capital gain tax, or income tax, they give preference to buyers who do not need a loan to finance the entire sales price. This reduces both the fee's value capture capacity and the land market's effectiveness. The land value function of the land administration system should be established to improve the efficiency of real estate transfer fees. As this is only possible in the long term, after reviewing the results of the pilot project of the protocol signed between GDLRC and the Turkish Appraisers Association (cf. above, sub-section on "property tax"), the private sector valuation reports, which have been mandatory for non-citizen transactions since 2019, could be used in the short term for all property transactions.

Capital gain tax

Capital gain tax (Yılmaz 2022) only applies to property sales that take place within five years of the purchase date. The formula used to calculate the value increase does not always reflect the real value increase in the land market, which limits the value capture capacity. Therefore, as the capital gains tax is the only tool for reducing land speculation in Turkey, removing the 5-year term limit, improving the calculation method of value increases to reflect real value increases, or relying on private sector valuation reports should be promoted.

21.2 Non-recurring forms of public value capture

In Turkey, the non-recurring forms are typically associated with the land development process. This process can be divided into three major phases: plan enactment, plan implementation, and infrastructure realization. In the first phase, municipalities extend the use of planning protocols and plan notes beyond their original intent and focus on value capturing as a case-based attempt. Otherwise, the increase in value is retained by the landowners. Furthermore, the demand for additional planning gains, combined with a lack of value capture mechanisms, resulted in a high number of plan amendments for years, culminating in 2020 with the plan amendment charges.

Following this stage, local governments implement plans and, in general, prefer to wait for the voluntary method to freely acquire infrastructure areas in exchange for development

rights. Long-term non-implementation of the plans, on the other hand, interferes with property rights, prompting the method's restriction in 2019. Since then, land readjustment has been the major plan implementation tool, allowing free acquisition of infrastructure areas from landowners through up to 45 percent land deduction in return for a theoretical value increase. The landowners keep the leftover uncalculated value gain.

In the last phase, local governments and related agencies provide all infrastructure and, in exchange, charge fees only for internal infrastructure. For external infrastructure facilities, there are no cost recovery or value capture methods available. Finally, the entire land development process, particularly for social objectives, may be implemented as a public land development project. The value capture capability of non-recurring forms of public value capture tools is discussed in the next section.

Infrastructure fees

In Turkey, local governments can impose two types of fees: technical infrastructure fees and participation shares in infrastructure expenditures fees. Technical infrastructure fees are only collected in "new development areas" from properties that do not have access to main technical infrastructure. It is calculated based on the cost of the infrastructure and paid by the developer during the building permit application process. Participation shares in infrastructure expenditures are levied for road, sewerage, and water infrastructure costs. Unlike the technical infrastructure fee, these fees have no spatial limitations and are collected for both the realization and enhancement of infrastructure, with the costs distributed to beneficiary properties (landowners) based on the ratio of the costs to the sum of the property tax values after realization of the related infrastructure. The costs are calculated by unit prices, and the fees cannot exceed 2% of the property tax value (Yılmaz 2022). Therefore, the existence of an upper limit as well as the use of the taxation values restricts cost recovery. Furthermore, under Law No. 6360 of 2012, the decision to levy participation shares for road expenditures was given to municipal councils, resulting in the fee becoming politicized and almost all municipalities declaring its waiver. Today, almost all municipalities do not levy the road expenditure fee, which hinders urbanization. On the one hand, policy documents set policy goals for improving cost recovery and value capture instruments; on the other hand, legislative changes are being implemented that diminish the efficiency of existing tools. Therefore, to improve value capture capacity, municipalities should be legally forced to collect fees, and the limits should be adjusted to market values rather than to property taxation values, or else be dropped completely.

Plan amendment charges

In Turkey, a charge in case of plan amendments leading to an increase in property value was adopted in 2020. Previously, value gains were not captured, resulting in a high demand from landowners. In Istanbul, approximately one-third of 2900 plan amendment requests between 2014 and 2019 were intended to increase property values while serving no public purpose (Yılmaz et al. 2020). Municipalities have also discovered the power of plan amendments to capture value and receive contributions in exchange for granting additional building rights, approving specific projects, and even legalizing illegal structures through planning protocols (Yılmaz 2022). As a result, the plan amendment charge was enacted as a policy measure to intervene, and regulate the system. Since all value increases would be captured by the public, no needless amendments will be made that will

theoretically regulate the system. Additionally, the government has been involved in the sharing of the captured value. Municipalities were the only actors to capture the increased value of plan amendments through protocols. The captured value, however, will be shared between the local and central governments under the plan amendment charge, resulting in a dispute (Yılmaz 2021). As a result, preventing government intervention in value increases in municipalities' jurisdiction could be realized.

Plan notes

Plan notes are the most comprehensive document in Turkish local spatial planning, governing land and physical development. Plan notes, within this broad scope, may potentially enable value capture through extra land deductions for social and technical infrastructure in exchange for additional development rights (Yılmaz 2022). Since there are no value capture instruments associated with the enactment of the plans, plan notes can be re-designed to fill this gap. Instead of existing parcel-based obligations, the scope of the plan notes for value capturing may be expanded to include the whole planning area, or as a starting point for addressing properties affected by large-scale public projects. Value capture by plan notes could be provided by a levy that applies in areas where a local government has approved a detailed plan via a charging schedule which sets out fix rates, or free land deduction obligation for public areas, social housing, or any public purpose with proper exemptions such as for small builders. Such a value capture tool could be implemented in a short time as it does not contain the shortcomings of land management in Turkey such as valuation or capacity building.

Land readjustment (LR)

In Turkey, land deductions are obtained from landowners in return for the theoretical rise in property values generated by the LR. In reality, however, the value increase is not determined, and all calculations are based on area. As a result, public value capture may be regarded as quite low when compared to landowners' gains from actual value increases (Yılmaz 2022). The determination of the value increase is the most significant aspect in improving the value capture capacity of LR. The land valuation function of the land administration should be developed to facilitate this. Considering this can only be accomplished in the long run, private sector valuation reports might be utilized in the interim. The increased value capture could easily compensate the additional costs of acquiring valuation reports. In addition, several reform measures on legal, institutional, and technical frameworks for LR and capacity building in local governments should be undertaken.

However, in addition to allowing the value capture in LR through reserve land or monetary payments, equality among landowners, including infrastructure construction and costs in LR, reducing land speculation, improving plan implementation, and so on, could be ensured either by enabling a value-based LR or a relationship between land deduction and value increase.

Voluntary method

In Turkey, the voluntary method is based on landowner requests. Public spaces in the overlapping spatial plan are willingly provided by landowners in order to obtain a building right in the remaining area (Yılmaz 2022). However, the method limits the property rights

of unwilling landowners for an indefinite period of time and was recognized as an interference in property rights by the Turkish Supreme Court in 2010. Landowners whose property rights have been restricted for more than 5 years can now demand compensation as a result of this decision. Now, many municipalities have accumulated compensations to pay. Since the voluntary method is limited in 2019, it is not necessary to improve this tool.

Public land development

In Turkey, public land development projects are carried out for a variety of objectives, including social housing and urban redevelopment for disaster prevention, and the public value capture in these projects differs based on a number of factors (Yılmaz 2022). Since these projects are being implemented for social purposes, improving the value capture capability should not be a priority. In fact, widespread use of the income sharing model on public lands that might be seen as the most successful method of value capture has been widely criticized. Flexibility and the developer's profits frequently take precedence over public value capture in these projects, especially those carried out by the Housing Development Administration. As a result, rather than directly improving the value capture capability of public land development, it may be better to consider reforms to existing instruments that have an indirect effect.

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22. Ukraine

Olga Petrakovska

The tax system of Ukraine began to take shape in 1991. Taxation mechanisms been improving for 30 years, but today there is no regulation by law that governs the direct action of capturing the increase of the value of real estate caused by a measure of public action. In the face of acute local budget deficit, the adoption and implementation of approaches that enable communities to receive part of land value increases resulting from public investment for further reinvestment in public infrastructure development are required. An analysis of existing approaches allows optimizing possible future reforms in real estate taxation.

22.1 Recurring forms of public value capture

In Ukraine, land and buildings/structures are taxed separately. According to legislation, buildings/structures are regarded as “immovable property other than land”. Thus, the recurring forms of public value capture can be divided into the land tax, real estate tax, and the property transfer taxes (Petrakovska 2022).

22.1.1 Land and real estate taxes

Real estate taxes are one of the sources of local budgets filling. However, the social justice of taxation has always been an important issue. To apply any value capture mechanisms, there must be an adequate tax base, which should reflect the real value of real estate and its further increase.

For Ukraine, the tax base is very important to discuss. For 30 years, the normative monetary valuation of land (NMV) has been the basis for land taxation and the determination of rents for the use of state / communal lands. The calculation is carried out according to the methodology approved by the Cabinet of Ministers of Ukraine (Petrakovska 2022). There were three separate methods that took into account the characteristics of different types of land: for agricultural land, for settlement lands and for other lands outside the boundaries of settlements.

These methods have changed three times (1995, 1997, 2011), but, the calculation of the assessment was always based on capitalized rental income from land parcel, determined by established and approved standards. To determine the value of land within settlements, the calculation was based on rents (or economic effect), which was a result of land use depending on the location, quality and land use purpose, calculated by the cost of land development. These costs reflected investments made during the development of the territory and were determined by calculations. After that, the results of calculations should be differentiated for particular zones. Normative Land Valuation carried out by applying the established norms does not reflect the real market value of land. For the last 10 years, the need to use mass valuation methods has been debated in society. However, in November 2021, a new unified method of normative monetary valuation has been adopted instead of the previous three, which has strengthened the standardization of this process. According to this method, rental income from land parcels is clearly set for different land use purposes and is not calculated as it was before. This approach does not contribute to fair land taxation, as the value is determined by methods that do not take

into account all the factors that affecting the real market value. In addition, since land and buildings are taxed separately, virtually all land parcels are taxed as unbuilt. In this case the difference in the value of built-up and unbuilt land parcels is not evident, although the load on the infrastructure of such land parcels is completely different.

It is also important to note that the Tax Code establishes a list of various objects to which preferential taxation is applied. The list, in addition to social facilities, unreasonably includes some objects to which benefits are applied from political and corruption. It also contradicts fair taxation and creates discontent in society.

As mentioned above, in Ukraine the taxation of land and buildings/structures (according to legislation named “immovable property other than land”) located on a land parcel is separated. The basis of real estate taxation is the area of residential and non-residential real estate which is specified in the State Register of Real Property Rights.

The tax base is the area that exceeds established norms separately for apartments and buildings. Despite the fact that the rates of tax for residential and non-residential real estate are set by the community council depending on the location (zoning), the taxation of residential and non-residential real estate does not consider all the features of the increase in property value due to its location. Under such conditions, the owner of real estate in the capital of Ukraine, Kyiv and in small town pays the same tax. This is an unfair taxation that creates social tensions. In addition, regulations that determine the area to be taxed do not take into account the number of family members. For example, if a person owns real estate with a total area of more than certain standards, they pay the same tax regardless of the number of family members living in this real estate. Thus, the owner living in a family of four (parents and children) and the owner living alone pay the same tax for the area of apartments of more than 60 square meters and the area of buildings of more than 120 square meters.

In addition, when determining the real value of apartments, the year of construction and technical condition of houses become very important. Most apartments in Ukraine were acquired as a result of the privatization of state property after 1991. This is a Soviet-era housing stock that now needs reconstruction that should be funded by owners. This factor is not taken into account in taxation of apartments, but should be. All this leads to an uneven tax burden.

The tax rate tied to the minimum wage established by law does not reflect the specifics of the use of real estate for living and business activities and does not take into account the difference in tax payments for individuals and legal entities. Moreover, such a tax rate does not take into account the real income of individuals and legal entities.

In order to be able to determine the actual increase in the value of real estate and apply the value capture on the increase in value from municipal investments, it is necessary to change the base of taxation. It has to be a mass valuation on the base of market value, the so-called *ad valorem* taxation.

22.1.2 Real estate transfer tax

The real estate transfer tax is a legal transaction tax. The tax has to be paid if a real estate property changes owner. In case the land or real estate owner conveys the rights the following taxes and fees have to be paid: personal income tax, military tax (introduced in

2015), state duty, fee to the pension fund. The taxes base is the transaction price, but not less than the officially determined appraised value. Rate of personal income tax vary up to 18% of purchase price (Pertrakovska 2022).

22.2 Non-recurring forms of public value capture

22.2.1 Share participation as a mechanism of an infrastructure development

Non-recurring forms of public value capture are not established by law in Ukraine. "Unearned increments" can be considered as an example of the mechanism of "share participation" in development of the infrastructure of settlements which was in Ukraine from 2011 to 2021. The share participation cannot be considered as a form of value capture, as it is paid not by the owner but by the developer. In addition, the payment is not charged from the increase in value of real estate, but from the cost of construction one. However, this is an alternative measure to compensate communities for the costs of infrastructure development. An investor who planned the construction of a building or a structure had to pay a share participation in the development of infrastructure. The amount of share participation was established by the local self-government body and could not exceed the maximum determined by law (Pertrakovska 2022). The amount was calculated considering the total estimated cost of construction and was paid to the budget of the community where the construction of residential or non-residential real estate was located. On January 1, 2021, equity participation in the development of the infrastructure of the settlement was completely abolished.

The extent to which the abolition of equity participation is appropriate and how to fill in the gaps in local budgets are issues debated during 2021.

It is obvious that without the development of new compensation mechanisms, budget revenues aimed at urban development will fall sharply and this will automatically slow down the development of community infrastructure. For local authorities, share contributions are an important source of revenue. For example, share participation in the budget of Kyiv was about 50%. Local authorities claim that the abolition of share participation threatens the development of urban infrastructure.

On the other hand, there is the position of investors and developers the opposite. For them it is an additional investment in the project, which, of course, increases the value of real estate. One of the political arguments for the abolition of share participation is the fact that the funds were not used for their intended purpose. This happens sometimes in reality, so it is necessary to fight corruption and not deprive the community of the opportunity to receive funds from the wealthiest part of the population.

It was assumed that the funds that will not be paid as share participation would go directly to the construction of hospitals, schools, roads and more. However, the abolition of share participation did not lead to the development of infrastructure, and did not reduce the risks of corruption.

Most of the society is inclined to think that the initiative of cancellation of share participation is more advancing the interests of developers to detriment to the interests of the city. Communities suffer from lack of financing of infrastructure projects, although usually share participation is paid by large construction companies when building the

construction of profitable commercial objects: multistory residential buildings, office, trade and industrial real estate.

22.2.2 Public-private partnership.

Financing of spatial planning development of the territory (complex, general and detailed plans) is carried out at the expense of the relevant budgets, which are usually characterized by a deficit of funds. Improving the conditions for financing spatial development measures and urban infrastructure development can be achieved by attracting private investment, which is not prohibited by law. Such investments are attracted through negotiations between the community and the interested investor or in the context of public-private partnership. When conducting a public-private partnership, the private partner may receive land parcels and/or building rights as a compensation for invested funds. Usually land parcels are leased for the term of the partnership. Building rights are realized on a general basis, taking into account the law.

22.2.3 Final remarks

Ukraine's tax policy is characterized by fiscal orientation without due regard to the solvency of taxpayers. Tax mechanisms should be developed to stimulate taxation and inform the public about the social benefits of filling budgets and further development of settlements. Inefficient and unfair use of public funds leads to a significant discrepancy between the total amount of tax payments and the totality of public goods provided to taxpayers. Also, the existence of unjustified benefits and opportunities to eliminate debts to the budget and the transfer of the tax burden from the affluent to others is discriminatory in nature. This leads to a negative perception of the population of any new taxes.

Understanding of social justification and the necessity for the use of public value capture can occur under the following conditions: tax land and buildings as a single real estate objects, changing the tax base to adequate market value, introducing fair taxation and do not applying uneven tax burden, ensure public goods through taxation, as well as changing the attitude of the population to the system of tax use.

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Annex: Fact sheets per country

Austria**General observations**

- Austria as a whole has a number of tools that can be identified as public value capture tools in a wider understanding. Nonetheless, there is no public value capture mechanism in place that is directly connected to local planning decisions or to the provision of public technical/social infrastructure improvements. The legal system would allow the introduction of such a mechanism to capture a certain share of planning gains which is absent so far. The real estate related taxes are widely neither market value nor betterment sensitive and deliver in an international comparison a rather low revenue per capita.

Recurring forms of public value capture

- The real estate tax is collected on land and assets and goes to the municipalities. The tax is calculated based on a rather low value (the so called *Einheitswert*) which is not based on market values, has not been raised in decades and is a completely fictional proxy value. Therefore, the revenues are in general low and it misses to capture any property value in-/decrease.
- At the moment the land value tax is not collected. It would apply to zoned but yet undeveloped building land. The initial underlying goal was the utilisation of dedicated building land. Anyhow, the tax rate is way too low to unfold such an effect. Therefore, municipalities rather use private law-based planning contracts to pursue this goal. It is not qualified to capture a value gain though.
- The real estate transfer tax has to be paid in case a real estate transfer in return for payment is conducted. It is linked to the market value and is therefore sensitive to changes of land value. But there is no direct link to any planning decisions, because it only applies once a transaction takes place.

Non-recurring forms of public value capture

- Fees for the provision of infrastructure are regulated rather differently depending on the particular state. There is no nation-wide system to calculate or collect such fees. Usually, the land owner has to contribute to the construction and maintenance of technical infrastructure, such as roads and drinking water supply. Improvements in the social, green or digital infrastructure are not addressed by such regulations. Municipalities themselves have the option to regulate further (financial) contributions of land owners with private law-based planning contracts. A consistent system is

missing at the moment.

- The real estate profit tax is linked to property transactions in return for payment. The basis for its calculation is the sales profit defined by the difference between the purchase costs and the sales price. Changes in planning documents do typically affect the revenue from this tax, therefore the tax is often referred to as 'hidden public value capture'. This is incorrect as only the sales transaction leads to the application of the tax. The change of a planning document itself does not trigger an application.
- Land reallocations or land readjustments usually lead to an improved parcel structure and improved conditions for a building development. The value gain along with such reallocations is neither calculated nor captured.
- Cooperative development by planning contracts has become an important additional instrument within the Austrian planning system. Municipalities can indirectly capture value gains via contracts but typically in a non-monetary manner through requested investments in public infrastructure. The current application is neither transparent nor consistent leading to debated isolated cases. The instrument of planning contracts anyhow, could be adapted to contribute to a general public value capture.

Belgium

General observations

- Belgium is a federal state where planning competences have been transferred to the three regions (Flanders, Wallonia, Brussels). In parallel, the competence of tax collection has been split between the federal and the regional levels.
- Belgium is marked by a cultural and political context where individual property rights are very strong. This context explains why planners face huge difficulties to concretely influence land uses. In parallel, it also explains why the concepts of land value capturing and unearned increments are unfamiliar to most Belgian stakeholders and decision makers. In this perspective, our first proposal to improve the current situation is to better integrate those concepts into public debate.
- The overview of land value capturing in Belgium shows that, in terms of public revenues, recurring forms of value capture are significantly more important than non-recurring forms. In particular, the property tax and the transfer tax are well-established and important financial tools for Belgian authorities.
- Our overview of land value capturing in Belgium also shows that the key objective behind the analysed instruments is to generate revenues for public authorities. In our analyses, we saw no evidence of the influence of the equity objective to capture an “unearned increment” arising from collective actions and public investments.

Recurring forms of public value capture

- In Belgium, one finds two important recurring forms of land value capture: the property tax and the transfer tax.
- The system of the Belgian property tax suffers from two main weaknesses. Its first weakness is that land and buildings are taxed as a single integrated unit. The second weakness of the Belgian property tax is that the last equalization of the tax base (the cadastral income) dates from 1980 (on the basis of market values from the 1st of January 1975). This is of course the source of major inequalities.
- The absence of a recent equalization can be explained by political reasons (it is unpopular) as well as by economic reasons (it is costly).

Non-recurring forms of public value capture

- In the last twenty years, urban planning charges were more and more applied by Belgian municipalities. Urban planning charges are contributions that public authorities require from developers to deliver planning approvals. It is likely that many municipalities could recover more of the uplift in land values arising from the right to develop through planning charges. Achieving this aim would require, on the one hand, to develop the real estate economics expertise of local planners to allow more equilibrated negotiations with developers and, on the other hand, to increase transparency and prefeasibility to protect the viability of the development projects.
- To improve the Belgian situation in terms of land value capturing would require to activate or reactivate various land policy instruments, in particular urban land readjustment and public land lease.

Bulgaria**General observations**

- In general, Bulgaria does not have tools for public value capture that are properly institutionalized. Nevertheless, current lawmaking attempts to refine the real estate development legislation – and the non-recurring forms of public value capture that become feasible as a result – generates opportunities for advance in this respect.

Recurring forms of public value capture

- There are many proposals for reforming the Law on Local Taxes and Fees, however, significant changes have not been yet implemented.
- When the political context allows, reforms in local taxation regime may provide opportunities for local governments to clearly differentiate the tax rates on real estate by introducing appropriate consideration of the location. Moreover, the reforms must allow the municipalities to modify the taxation any time a recent public investment induces substantial benefits to particular fraction of the local territory or urban sub-area.
- Another tool with definite potential for public value capture may be implemented if supported by a certain political will, namely, the opportunity for municipalities to reappraise the tax assessment values of real estate objects. This reform should provide the local governments with the flexibility to frequently update and maintain the tax values as close as possible to real estate market prices.

Non-recurring forms of public value capture

- Several strategic documents call for introduction and implementation of measures to attract investors locally by providing them with certain advantages. However, these documents are too general and just outline directions to be followed but do not define particular instruments for spatial development. For example, the expansion of public-private partnerships is expected to boost the real estate development at municipal level, but still the division of duties is not regulated as required.
- The main focus in practice is put on the private development plans and related agreements between the developers and the local government. Currently, many practices implement a direct capture of value by transferring to the private actor part of the duties for provision of local utilities. A frequently implemented tool is the agreement for a contribution to the local

environment enhancement or other public benefit. This proved to be a working tool but still the public opinion considers this a behaviour between the official and unofficial negotiation with high moral risks for the public employees engaged with these processes.

Czechia**General observations**

- Czechia does not offer effective public value capture instruments. The instruments are either missing or ineffective. On the other hand, Czech political authorities, including central and municipal authorities, are keen to adopt at least some innovative instruments into the legal framework in the future.

Recurring forms of public value capture

- The impact of the real estate tax is limited due to its relative negligibility. Its tax base definition would need to be set with the help of mass property value assessment to reflect real estate market prices.

Non-recurring forms of public value capture

- The impact of planning contracts, which are a form of non-recurring public value capture instruments adopted in the Czech building law recently, is limited by the applicability of planning contracts as a prerequisite of building approval for only four years after the urban plan approval. This condition paralyses their utilisation as investors will be willing to contribute up to the lost profit from waiting for development for four years only.

Estonia**General observations**

- Different tools that correspond to the concept of value capture are used in Estonia, but there is no legal definition of value capture or regulation by law for capturing planning gains. There is a need to develop a legal framework to address social infrastructure costs and to improve the financing of public infrastructure. Each municipality has developed its own practice and there are no common rules in Estonia. Value capture tools that have been the most used in Estonia are land tax and cost-sharing in development projects, but they need to be improved.

Recurring forms of public value capture

- The recurring forms of public value capture can be divided into land tax, real estate transfer fees and capital gain tax.
- The Estonian Land Board has prepared a new mass valuation (to assess the value of land for land tax purposes) which is planned to be effective in 2022 after a break for almost 20 years. It is planned that from now on, mass evaluations will be made regularly every four years. It allows changes in the value of land to be considered on time. Then the land tax instrument could work as an efficient tool for value capture.
- Real estate transfer fees and capital gain tax must be paid when selling a real estate. Since the purpose of land value capture is to reinvest land value increases that result from public investment, capital gains tax that is based on the gained value is a better option for value capturing than real estate transfer fees.

Non-recurring forms of public value capture

- To obtain the necessary building permits, developers can enter into an administrative agreement with local government, by which the developer undertakes to bear all, or part of the construction of the road and related public facilities required in the detailed plan.
- Cost-sharing in a development project is well accepted by some municipalities (usually in bigger cities), where there is no opposition because many developers want to develop a project and competition to get building permits is high.

- Cost-sharing in a development project is not as common in some smaller cities and rural areas, where there are not so many developers. In areas of this kind, local governments want to attract developers and promote economic development. Because of that, they do not want to enforce additional obligations for the developers that could impede the development of the area.
- There is limited awareness of land value capture principle and practice in Estonia. Awareness-raising efforts should be made to introduce this concept and its advantages in order to give a better understanding how value capture tools can be used for the benefit of the community.

Finland
General observations <ul style="list-style-type: none">• The Finnish system of land development relies on a system of agreement based and statutory instruments that provide municipalities with strong rights and possibilities in cost recovery.• The Finnish system could be improved by increasing transparency of development related fees and charges, and their bases.• The Finnish system lacks an instrument that would support coordinated (re)development of privately owned land.
Recurring forms of public value capture <ul style="list-style-type: none">• The valuation of real estate tax values calls for improvement to ensure equal treatment of landowners.• The increased tax rate for unbuilt building sites could be used more efficiently in municipalities if it could also be applied in smaller areas than the whole municipality.
Non-recurring forms of public value capture <ul style="list-style-type: none">• The development of larger areas rests mainly on Public Land Development-model.• The popularity of the public land development model may partly be due to the lack of other, functional land policy instruments that would allow for coordinated (re)development of areas.

France**General observations**

- The concept of Land Value Capture is scarcely accepted in France in the political discourse, and in the enforced legislation. Some recurring taxes may be considered as LVC instruments, but need revisions while non-recurring forms of public value capture are developed and used with a certain degree of effectiveness.

Recurring forms of public value capture

For a long time, property taxes, real estate transfer tax and capital gains taxes have existed. They are socially accepted while the LVC effectiveness is weak.

- Capital gain tax and real estate transfer tax do not benefit municipalities that are the main public infrastructure providers. A mismatch between those who pay and those who benefit makes those taxes unable to reach the LVC purpose. A proposal to abolish real estate transfer tax and to transfer the revenues of capital gains tax to municipalities would help strengthen the understanding of the tax.
- Property taxes are the cornerstone for the French local taxation system and the primary source of revenues in the local budget. They lack a good assessment system but it is difficult to reform substantially. The revision of tax assessments is being undertaken to refer to real estate prices. However, the acceptability of the reform is not guaranteed.

Non-recurring forms of public value capture

Two traditional LVC tools are used to finance public infrastructure in new developments: development tax or, alternatively developer's contribution. Both are rather efficient in financial terms. But the monitoring of the tools needs to be considerably improved.

- To be able to target a good level of land value capture, there is a need for more knowledge on the impact of the tax on local land market evolutions.
- Information on land prices is to be promoted.
- Municipalities have difficulties negotiating with developers. There is a need to improve public-private relationships, trust and understanding to reach a win-win cooperation.
- Transparency or the sharing of information about developers' economic models could also help match with planning regulation.

Social mix obligations have been implemented since 2000 with a certain degree of results in terms of social-housing buildings but with a negative impact on territorial equality.

- To avoid territorial segregation, partnership solutions are to be promoted to organise fair LV sharing.
- New experimentation of long land leases for the provision of social housing has just begun. Although it looks promising, the instrument relies on public funding and is unlikely to develop on a large scale.

Germany**General observations**

- Germany as a whole has a number of efficient tools for public value capture. Nonetheless, the current real estate tax reform in particular deserves closer examination, and the non-recurring forms of public value capture may be optimised with regard to individual aspects.

Recurring forms of public value capture

- The real estate tax is currently under revision. The national government developed a new system of taxation. However, until 31 December 2024, the federal states have the opportunity to prepare regulations that deviate from federal law. Land tax is at least the recommendable solution in terms of practicability and in relation to the philosophical background of public value capture. The building land commission additionally recommends the definition of higher tax rates for unbuilt plots.
- Real estate transfer tax and capital gain tax: Exemption regulation for land acquisition by municipalities could support the municipal interim acquisition and thus an active land policy.

Non-recurring forms of public value capture

- Many cities implemented so called “building land models”. The basic parameters are defined in a resolution of the municipal council and they are binding for the agreements between property owner or developer and municipality. The advantage is the transparency of the framework conditions and the equal treatment of the contracting parties. This increases the acceptance of public value capture and reduces the risk of corruption.
- In the literature it is controversial discussed how many percent of the value increase which is caused by the development may be captured by the municipality. So far it is the prevailing opinion that a capture up to two thirds is permitted. However, there is an increasing number of experts advocating a higher percentage. In this context, a statutory regulation or a Supreme Court decision would be desirable to eliminate or at least reduce existing uncertainties.
- Development agreements are a good tool for public value capture but even better would be interim acquisition. Municipalities should be empowered to pursue a communal land stock policy. This requires above all adequate financial resources as well as appropriate staff with the necessary expertise.

- The public land property acquired should remain permanently in public ownership and be made available for use by third parties for a limited period, primarily by means of a heritable building right
- Extensive information and training activities are recommended to increase the general acceptance of public value capture and to improve the application of the individual tools

Hungary**General observations**

- Value capture basically is built on recurring forms (taxes).
- Due to urbanization, there is a growing need to introduce other tools of land value capture.

Recurring forms of public value capture

- Real estate tax for buildings: The subject of the tax is the owner of the structure. The tax is based on the useful floor area of the building in m² or the adjusted turnover value of the building. The upper limit of the annual tax rate: HUF 1100 / m², or 3.6% of the adjusted turnover value.
- Real estate tax for land: The taxpayer is the owner of the land. The tax is based on the area of the plot in m² or the adjusted turnover value of the plot. The upper limit of the annual tax rate: HUF 200 or 3% of the adjusted turnover value.
- Municipal tax: The municipal tax is linked to the building or land and is paid either by the owner or the tenant. A municipality cannot have both a building tax/land tax and a municipal tax.
- Real estate transfer tax: The rate of the tax is uniformly 4 % of the purchase price, above 1 milliard forint 2% but maximum 200 million forints.
- Capital gain tax: Hungary currently has a 15% flat-rate personal income tax. The tax base decreases over the years and after 5 years it is 0.
- The real estate tax accounted for only 4.5% of municipal revenues. According to experts it would improve the situation for municipalities if central taxes were reduced and local taxes increased. In addition, the taxation per square metre can be replaced by a value-based tax. This would allow fairer taxation than at present.

Non-recurring forms of public value capture

- Both the service provider and the municipality can ask citizens to pay a contribution. This is a one-time fee. The rate of the fee is determined by the representative body of the municipality; the costs of the investment can be passed on to the citizens partly or fully by the municipality.
- There are initiatives for collaborative development, but this is an area where progress is needed.

Israel**General observations**

- Value capture in Israel is dependent on a variety of (relatively effective) tools such as betterment levies, fees for infrastructure, as well as negotiated contributions. These tools are not without detractors, complexity, and uncertainties in their implementation.

Recurring forms of public value capture

- There is no traditional, annual, real estate tax payable by owners to the state. However, there is a local real estate tax (*Arnona*) payable monthly to the municipal authorities. However, *Arnona* is not a real estate tax designed to reap the unearned increment and to capture land values, nor is it charged in case of an uptick in property values
- Real estate transfer tax and capital gain tax: These are paid to central government authorities. Both are updated regularly, yet they embody many complexities as a result of exemptions, frequent update, and differential taxation depending on the date of purchase and the paying entity.

Non-recurring forms of public value capture

- Price increases may be reaped through a variety of non-recurring, and *ad hoc*, regulatory measures. Furthermore, in addition to national legislation, local governments have developed site-specific and plan-specific value capture tools through their local planning committees and district planning committees. These are frequently debated among practitioners because national legislation does not always permit them.
- Israeli landowners pay special fees for infrastructure. Infrastructure fees are charged for infrastructure that is included in a detailed statutory plan, built by the government, and from which landowners specifically benefit.
- In addition, Israeli landowners pay betterment levies which are charged when land values increase as result of certain government decisions. Betterment levies in Israel are known as *Heytel Hashbakha*, and they amount to 50% of the increase in value of land plots directly caused by specific planning decisions.
- Flexible building rights and TDRs are utilized by local government for a range of purposes such as expediting development or streamlining it, while reaping the unearned increment.
- Local governments use land readjustment frequently for new development, redevelopment, and to unlock cases of fragmented land ownership where private plots are scattered.
- In the past, some municipalities negotiated in-kind infrastructure provision by developers in lieu of, or in addition to, the betterment levy. However, the Supreme Court ruled in 2011 that developer negotiations and the provision of in-kind services are illegal. Legislation was rewritten to reflect this, but in practice, cities have continued negotiations in the hope that they will not be challenged in court. On the other hand, while some developers were willing to accept a variety of obligations, others demanded that planning authorities stick to the existing legislative tools and not demand additional contributions through negotiated or voluntary obligations.

Italy**General observations**

- Italian PVC tools can be divided into two main categories: the first one is the one related to the fiscal sphere and it is characterized by national laws; the second one is the one characterized by land management related instruments, and it is composed by tools which are different from Region to Region.
- Tools related to the fiscal sphere are widely used in the whole Nation and they are for the most part taxes and fees on houses and assets.
- Tools related to land management are implemented during the land development process and they depend by operative agreements which can vary case by case.
- In Italy there were attempts to implement project financing for the realization of big transport infrastructures, but the results were not encouraging

Recurring forms of public value capture

- The real estate tax, which is called IMU is used on the whole National territory, and it does not tax the main residential house. It is topic of strong debate because there are problems in the classification of buildings in typologies according to the categories proposed by the law. That means that similar residential houses can be subjected to different taxation regimes.
- Now in Italy there is an ongoing process that wants to reform cadastral value. The deadline of this project is 2026 and it aims to uniform cadastral values with market values. The goal is to obtain a fiscal system which is homogeneous and more equitable taxation.

Non-recurring forms of public value capture

- Project financing is not extensively used because there is a lack of culture. Big infrastructure projects are continuously subjected to variation and delays, and this brings to losses in the capability of capturing value.
- Operative agreements and developer obligations are widely used. They are the main non-recurring forms of PVC during land development processes, and they allow to fairly redistribute surplus value on public areas. They vary case by case and it is not possible to define a comprehensive framework of agreement typologies, but it is possible to analyze the effect of value capture through the observation of changes in urban quality and in land value of urban areas due

to planning fees.

- There are regional laws that want to introduce economic levers to stimulate owners investing to refurbish their assets, but those levers aim to increase private real estate value and decrease the capability of public bodies to capture value.
- Other tools such as land banking or tax equalization in land development process are not frequently used even if they are provided by the National framework.

Latvia**General observations**

- In Latvia, there is no concept (term) of value capture nor its definition recognised by any formal (statutory) source, however, the tools for capturing increase of real property value can be identified. Value surplus due to private investments is subject to value capture. Nonetheless, the discussions about possible directions of real estate (immovable property) tax reform are based on the theoretical review and best practice and their impact on monetary poverty and income inequality indicators.

Recurring forms of public value capture

- The recurring forms are divided into the immovable property tax (IPT), the immovable property transfer tax (state fee) and the capital gain tax.
- IPT is an obvious candidate for reform in Latvia as the revenue from it is comparatively low. Latvian system of cadastral valuation is rather good by EU standards. The collection of IPT largely represents an effectuation of social functions.
- Recurring forms in the case of sale/purchase are quite well established and implemented by the law, however, they do not contribute to the budgets of local governments directly.

Non-recurring forms of public value capture

- The direct public value capture instruments focus on development procedures in Latvia.
- Property owners finance or refinance costs of specific activities of the public sector from which they gain access to public infrastructure. Planning fees are not introduced.
- Development agreements are concluded for: (1) implementation of detailed plans and (2) charge for local infrastructure due to implementation of public projects. Development fees are not typical in Latvia.
- The regulations on land use and building can be considered as a source for direct value capturing in a municipality. Municipalities cannot finance the costs related to the development of private property.
- Legislation determines land use planning and land consolidation measures. Projects, including land readjustment measures, are not the instruments for

public value capture in Latvia.

- The astringent planning system is an essential requirement for the use of non-recurring forms of public value capture.
- The implementation of public projects may require covering some infrastructure costs. Based on the development agreement, a charge (fee) for the provision of local infrastructure can be applied.
- The charge of development fee as a municipal fee for the maintenance and development of the municipal infrastructure by substance is recognised only in the capital city of Latvia – the Riga City.
- The involvement of administrative and political stakeholders in discussions about experiences applying PVC instruments and good practices regarding this will raise new knowledge and awareness. The results of the comparative analysis should be disseminated through workshops, publications, guidelines, etc. and used to propose particular instruments, supporting more efficient and sustainable decisions in land development.

Lithuania

General observations

- The law on local government infrastructure has appeared since 01.01 2012, which has the greatest impact on the determination of PVC, although its implementation differs significantly in major Lithuanian cities and peripheral municipalities

Recurring forms of public value capture

- Currently, there is a land and real estate tax in Lithuania, which is paid separately once a year. It is paid by both legal and natural persons, according to the value of the assets under management.
- The basis of this transaction is a contract, a disposal of a leasehold, or a legal property transfer by heritage or donation. Reallocation instruments, like urban reallocation measure, are excluded from tax liability. The Lithuanian municipalities determine the tax rate, which varies from 3.5 to 6.0 % of the purchasing price.
- The capital gain tax is applied if private real properties have been sold in the processes. It will market. The standard tax rate is 15% in Lithuania of the capital gain, the difference between the acquisition and the selling price with a deduction of demonstrable improvement cost.

Non-recurring forms of public value capture

- The law on Municipal Infrastructure Development stipulates how municipal infrastructure, and financed must be planned, implemented and establish the rights, duties and responsibilities of natural and legal person, state and municipal institutions in its and culates whether the sum of caldevelopment processes. It will create a leve in its development playing field for business, and ensure acceptable access to engineering networks, communications and social nrastructure.
- The regulation introduced by the law provides an opportunity to avoid the costs of maintaining excess infrastructure, but to develop only the planned one, and creates an additional tool for managing the development of territories.
- Currently, the tax system includes separately the land tax and the buildings tax, while the real estate tax includes both of these elements and calculates whether the sum of both componenets does not exceed the statutory limit.
- Extensive information and training activities are recommended to increase the

general acceptance of public value capture and to improve the application of the individual tools.

Poland**General observations**

- Poland has several public value capture instruments which can potentially enable the capture of land value in the context of urban and property development. However, in practice they do not concern the most popular land development method and these instruments do not provide significant revenue and an effective form of co-financing of urban infrastructure. Non-recurring forms of public value capture are not well structured, rather complicated, raise many doubts in the process of their implementation, and are additionally met with reluctance by the local government to use them.

Recurring forms of public value capture

- Real estate tax is calculated based on plot or building surface and a specific rate. The rate is not based on the real market value of properties. The level of charges for real estate tax varies according to function of property. The real estate tax plays an important role in municipal budgets; in 2020 it provided 16.5% of own income of local governments.
- Fees for perpetual usufruct - leasehold of public land - are set as a percentage rate of the price of the land. Perpetual usufruct rights in relation to housing are being transformed into full ownership rights, so its importance in the budgets of municipalities will diminish.
- Stamp duties are associated with the notary fee to be paid customarily by the buyer. The tax on civil law transactions and court fees belongs to the public sector.
- The sale of real estate, before the expiry of 5 years from its purchase or construction, is taxable through personal income tax.

Non-recurring forms of public value capture

- Three types of betterment contributions are focused on land values and their increases. However, the betterment levy raises many legal problems. The local government has to pay for every individual valuation, appraisal costs are high, and there is a floor for litigation over the value, and the court cases are longstanding.
- Planning fees also are focused on land values and their increases. However, the planning fee can be charged only in cases where the owner disposes of the property within five years from the date when the local land-use plan came

into force. Landowners can easily avoid this fee. Planning gains remain therefore with the landowner.

- The commitment to (re)construct public roads necessary to obtain the building permit are negotiated and specified in the contract between the road traffic authority and the developer. It is causing a lot of uncertainty in the urban development process. The use of this instrument by the local authorities is very inconsistent.
- Development in a revitalization area by town planning contract and the development according to the Special Housing Act using agreement with developer are introduced recently. These instruments are not commonly used and require development of new planning skills by planning professionals.

Serbia**General observations**

- There are very few mechanisms for public value capture and even the term “public value capture” itself is not defined or even mentioned in legal documents, although existing mechanisms are covered by different laws. Tools for capturing public gains are not developed enough and are not used to the full potential or even considered by policy makers as well as by professionals and other stakeholders. Nonetheless, new tools and policies could be introduced and the efficiency of the existing forms of public value capture could be optimized in order to address some of the main issues of spatio-economic development of the Republic of Serbia.

Recurring forms of public value capture

- The real estate tax became the sole responsibility of the municipalities in 2006 and, in time, their largest own source revenue which they are able to allocate on their own. In order to improve equality and also the value capture capacity, the change of the declaration system, improvement of the collection and use of mass valuation systems can be suggested. Improvement of the accuracy of the cadaster (especially considering the fact that there are more than 2 million illegally built structures in Serbia) is highly recommendable, as well as concrete actions in order to create a stronger accountability link between citizens/taxpayers and local governments by collaborating more closely on issues of use of real estate taxes and budgeting.
- Real estate transfer tax: The improvement could be introduced through the taxation of speculation on the real estate market. This tax could be used as an instrument by cities and municipalities where real estate prices are rising, in order to control the growth of real estate prices, reduce speculative purchases of apartments and land, and contribute to a more efficient land use.
- Capital gain tax: Related to one of the major spatial issues in Serbia, illegally built structures, this tax can be considered as a useful tool in the context of legalization and charged to those owners who profit from legalization by selling their facilities. There is also a proposition that the capital gain tax should be applied to new housing estates, especially in cases where the investor received different types of subsidies, in order to serve as a corrective factor that prevents the misuse.

Non-recurring forms of public value capture

- Non-recurring forms of public value capture are much less used in the Republic of Serbia than recurring forms. The specific characteristics of individual cities and municipalities should be very seriously taken into account when deciding on value capture instruments in order to select those that are, indeed, applicable. It is very important for local governments and municipalities to use the instruments that reflect local or sub-local specificities.
- More attention should be given to the promotion of land readjustment, as a newly introduced tool that can enable a more democratic procedure and a better urban development and growth, at the same time.
- Raising awareness about the tools and mechanisms of capturing planning gains among professionals, policy makers, and other stakeholders is very much needed in order to promote value capture as a range of tools and policies to address main issues of urban development in the country. This could ultimately lead to a better infrastructure and services and to an improved quality of life in cities, which is of an utmost importance in the Republic of Serbia.
- Changing perceptions and including citizens in decision-making processes would lead to a better acceptance of public value capture and increased revenue collection. And even more important, this could generate a more just and transparent system of governance with a higher level of understanding and trust between citizens and policy makers, which is very much needed in Serbia.

Slovakia

General observations

- Current spatial planning regulations offer virtually no tradable benefits to local authorities from potential new development. The chronic absence of zoning plans and their coordinating function is reprehensible, as is the lack of interest of the private sector in participating in public affairs. Changes in zoning plans to derogate from the regulations for development projects are currently almost impossible. Spatial planning documentation is often outdated, allowing for relatively slow submission of amendments. In addition, well-protected property rights hardly make it possible to realize the public interest on private land.

Recurring forms of public value capture

- The Real estate tax: municipalities determine in their general binding regulations the details of the amount of tax reduction or exemption in accordance with national law. Slovakia has one of the lowest real estate taxes, representing only 0.4% of GDP. Government is currently preparing a tax reform. The tax should differentiate its base according to the value of the property and the nature of its use.
- The Real estate transfer tax: the transfer tax is paid only on the difference between the purchase and sale price of the property, if the property has been owned for less than 5 years. National Government sets the rates of transfer taxes. Tax rates are set at 19% and 25%, depending on whether the amount of the tax base has reached the annually set limit.

Non-recurring forms of public value capture

- Developer contributions to local infrastructure: there is no legal basis for betterment contributions or similar instruments in Slovakia. Requirements of the municipality are formulated in the form of an agreement with the developer. They most often concern the provision of local urban infrastructure directly related to the project. The contributions do not take into account the purpose of the development projects, the method of project implementation (toward sustainability), and the impact of the projects on the surrounding infrastructure.
- Development fee: developers pay a development fee to obtain development approval, and to compensate for the impact of their developments on infrastructure. The development fee may be established by a municipality on its territory, on part of it, or on a portion of the cadaster that is regulated

through specific binding regulation. The rate of the development fee ranges from EUR 3 to EUR 35 for each m² of the floor area of the above-ground part of the building. Municipalities set the rates.

- Additional development rights: there is no legal basis to charge for additional development rights, or similar instruments. Municipalities currently insist on strict adherence to land use plans. The only tool available is a formal request to change the zoning plan. This can usually take several years. At the national level, new legislation on spatial planning is being prepared. It could bring about possibilities that are more complex also on the issue of rezoning and additional development rights.
- Land reallocation: in 2019, the Slovak government resumed a decade of almost completely stagnant land reallocation. At the current rate of land reallocation, it is assumed that it will be completed within the next 30 years throughout the Slovak Republic.

Sweden**General observations**

- Sweden has several different legal instruments for public value capture. However, the previous reform of the real estate tax in combination with the capital gains tax can be criticized. The non-recurring forms of public value capture can also be improved in some respects.

Recurring forms of public value capture

- The 2009 reform of the real estate tax system significantly weakened the connection between property taxation and the properties' market value. As a result, its potential as a means of control and financing for infrastructure investments has diminished.
- The reform of 2009 also involved a shift from recurrent annual taxation to taxation at the time of sale, through an increased capital gains tax. The shift creates a risk of lock-in effects and that mobility in the real property and labor markets deteriorates.
- Proposals for an improved connection between actual market value and real estate tax have been made and need be implemented as soon as politically feasible.

Non-recurring forms of public value capture

- As a principle, the municipalities are responsible for areas designated as 'public spaces' in detailed development plans. To cover the costs of public spaces, municipalities are entitled to collect charges from the property owners. Due to several obstacles, most municipalities do not take advantage of these instruments. Instead, public spaces and street costs are generally financed by municipal taxes. Existing proposals for a reform of the system should be implemented.
- Land developments in already built up areas often come into conflict with existing property and ownership structures. Sweden's previous legislation on land readjustment and profit distribution aimed at these situations, but was repealed in 2012. The absence of legal tools for such measures has negative effects on both the efficiency and equality aspects of land development in densification areas. A current proposal for new legislation should be prioritized in future reform work.

- The reform in 2010 of the compensation system for compulsory land acquisition strengthened ownership and property protection. However, the abolition of the so called 'expectation value' provision has reduced the potentials for public value capture.
- The abolition of the former Pre-emption Act in 2010 has weakened the possibilities for municipalities to acquire land proactively, in order to benefit in the long term from future land value increases.
- Concerning the two latter reforms of 2010, a moderated return to the previous legal possibilities would be desirable from a public value capture perspective.

Switzerland**General observations**

- Switzerland as a whole has a number of tools for public value capture. Due to federalism, though, it is difficult to get a clear and comprehensive overview. The 26 “cantons” (states) and the more than 2,100 municipalities have some latitude in defining them. Moreover, the revision of the Swiss Planning Act (enacted in 2014), which obliges the cantons to define a mechanism for capturing planning gains and compensating for planning losses, has not yet produced its full effect.

Recurring forms of public value capture (real estate tax, wealth tax, capital gain tax, real estate transfer tax)

- These recurring forms only have an indirect impact on public value capture. They are not designed to explicitly pursue planning objectives.
- It would be useful to document the variety of the 26 cantonal regimes, as these recurring forms are often linked to the property market, which lacks transparency.

Non-recurring forms of public value capture

- Homeowners must contribute to the technical equipment of the buildable land, that is defined in the legally binding (local) land-use plans.
- Urban municipalities can negotiate planning gains with owners/developers before a special plan is accepted. But such an agreement model is only conceivable if a cantonal legal basis exists.
- Due to the revision of the Spatial Planning Act (enacted in 2014), all cantons must define a compensation regime for the fair treatment of significant gains and losses resulting from planning measures (art. 5 SPA). Part of the revenues generated by this regime must be used to curb urban sprawl. However, in many cantons, first priority is given to financing planning losses (retrieval of building risks). Lack of hindsight prevents a clear picture of the overall outcome.
- There is a strong need to assess cantonal practices linked to art. 5 SPA. There is also a need to better articulate together the capital gain tax, the agreement model and capturing planning gains in order to avoid potential conflicts among authorities.

Turkey**General observations**

- Public value capture tools could be regarded inefficient as most of the value increases resulting from public actions are retained by landowners/developers and the planning system fails to provide a balanced distribution of the costs and benefits of urbanization.
- The lack of the land value function in the land administration system is the most important point for the inefficiency of value capture. The legal, technical, and institutional efforts and capacity development to establish a mass valuation system are still ongoing. As a result, valuation reports prepared by private companies have been adopted as a temporary solution.
- There is a growing interest in value-capture tools in Turkey. Recently, the value capture capacity of the land readjustment has improved, and two new tools have been enacted. The first tool is a recurring tax for high-valued residences, while the second tool is a non-recurring charge for plan amendments. The design of these tools reveals the tendency of the central government to intervene in value increases in municipal jurisdictions.
- In order to improve the system for any of the value capture tools, the necessary reform measures in legal, institutional, and technical frameworks, as well as capacity building and training activities, should be implemented.

Recurring forms of public value capture

- Property Tax: The intended mass valuation system, when implemented, will improve the efficiency of the existing value capture tools. The valuation database, as well as the technological, administrative, and institutional framework, will, however, need too much effort, money, time, and other resources. As a result, starting with recording values in public transactions appears to be a more achievable goal.
- Valuable Residence Tax: The tax could be considered a failed attempt at ad valorem taxation. Many lawsuits filed against the mass valuation and the tax for being double taxation resulted in very restrictive changes before the tax was implemented. Therefore, rather than improving a controversial and poorly received tax, it might be better to concentrate on widely accepted property taxes. Thus, a fairer taxation system could be provided, and government intervention in value increases in municipalities' jurisdiction could be avoided.

- Real Estate Transfer Fee, Capital Gain Tax: The value capture capacity could be improved by minor changes in the tax design and by the use of valuation reports prepared by private companies.

Non-recurring forms of public value capture

- The non-recurring forms are associated with the land development process and can be divided into plan enactment, plan implementation, and infrastructure realization.
- Plan Notes: The scope of the plan notes could be extended by introducing a levy with a charging schedule laying out fixed rates, or land deduction and monetary payment obligations with proper exemptions when an urban plan or a large-scale public project is approved.
- Plan Amendment Charge: The charge was introduced as a policy measure to intervene and regulate undesired plan amendments. To improve efficiency, government intervention in value capture in municipalities' jurisdiction could be avoided.
- Land Readjustment: The value capture capacity could be improved by establishing the land value function within the land administration system, and private sector valuation reports could be used on an interim basis.
- Infrastructure Fees: Municipalities can be legally compelled to collect fees, and the charge can be raised to market values or removed entirely to increase value capture capacity.

Ukraine

General observations

- Recurring forms of public value capture are not established by law in Ukraine and the existing taxation system does not provide opportunities to introduce mechanisms of public value capture.

Recurring forms of public value capture

- In Ukraine, land and buildings/structures are taxed separately. The methods used to determine the tax base of both land and buildings do not reflect their real market value. In November 3, 2021, a new method of normative monetary valuation of land parcels was approved, which establishes the land tax base. According to it, the definition of land value is even more standardized. Factually, all land parcels are taxed as unbuilt. In this case the difference in the value of built-up and unbuilt land parcels is not evident, although the load on the infrastructure of such land parcels is completely different. Approaches to the taxation of buildings leads to an uneven tax burden. Fundamental changes in taxation for buildings/structures have not occurred from introduction time of this tax (2014) and are not expected in the near future.
- In order to be able to determine the actual increase in the value of real estate and apply the value capture on the increase in value from municipal investments, it is necessary to change the base of taxation. It has to be a valuation on the base of market value.
- The value capture can be considered only as an indirect mechanism: the higher the land value, the higher the tax that is transferred to the local budget. For buildings/structures taxation this mechanism does not work.
- The personal income tax rate from selling of real estate is increasing depending on the number of transactions conducted per year, time of property ownership, who is a seller. This is aimed at preventing land speculation and to some extent inhibits the development of the real estate market.

Non-recurring forms of public value capture

- The compensation to communities for the costs of infrastructure development can be obtained through negotiations between the community and the interested investor or in the context of public-private partnership.

- Understanding of social justification and the necessity for the use of value capture can occur under the following conditions: taxation land and buildings as a single real estate objects, changing the tax base to adequate market value, introducing fair taxation and not applying uneven tax burden, ensuring public goods through taxation, changing the attitude of the population to the system of tax use.