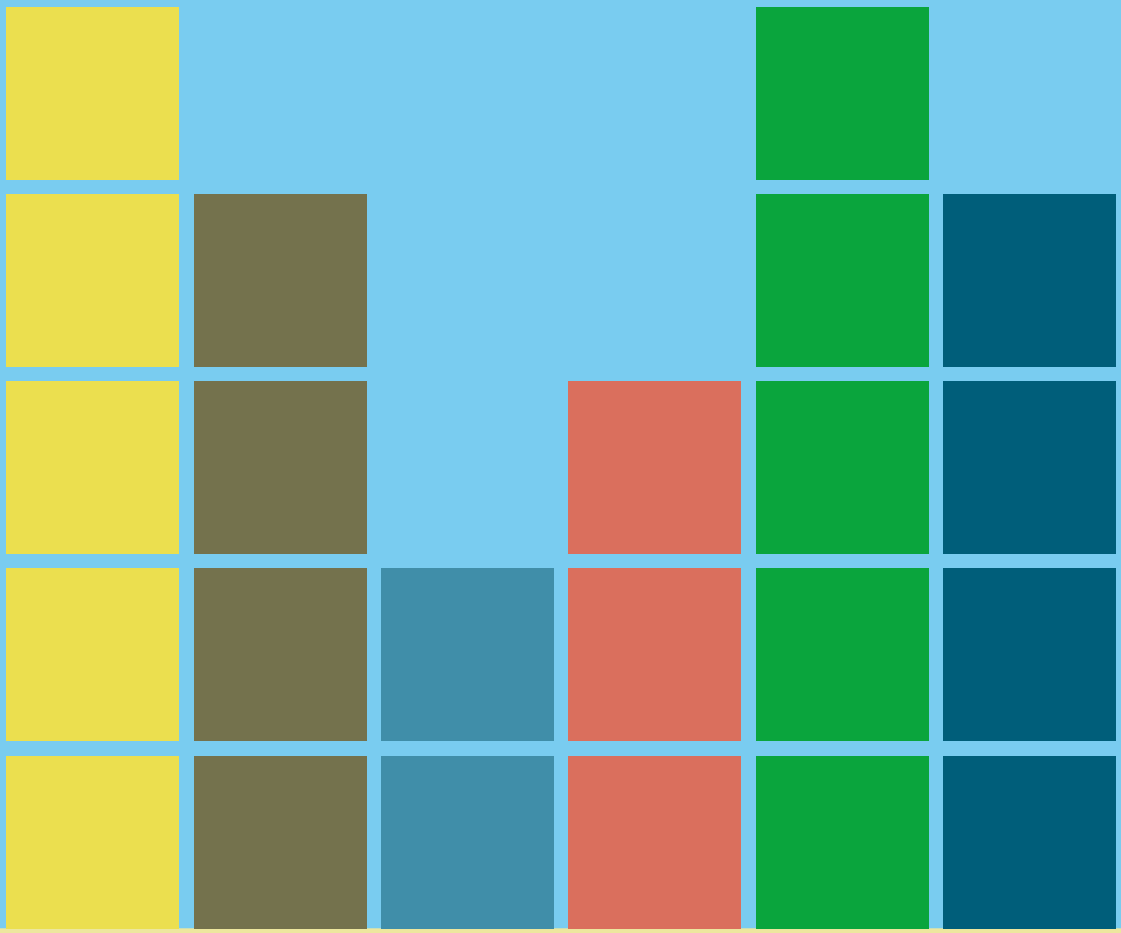
J.-M. Halleux ▪ A. Hendricks ▪ B. Nordahl ▪ V. Maliene (Eds.)

Public Value Capture of Increasing Property Values across Europe



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Preface

Alexandra Weitkamp and Thomas Hartmann

Both the European Academy of Land Use and Development (EALD) and the International Academic Association on Planning, Law, and Property Rights (PLPR) welcome this comprehensive and comparative book on public value capture. Cities currently face huge dynamics and challenges resulting from rapid urban growth and increasing public and private interests in urban land. In many European metropolitan and urban areas, land values are rapidly increasing due to the high demand for housing and the associated rising rents and real estate prices. While robust property rights and thriving land markets provide a solid basis for economic growth and urban development, the increasing land values could potentially be captured for realizing public demands. However, the general understanding of value capturing, the amount of the levy, how it is collected and the relation to municipal land policy differ greatly across different countries.

The value capture is meant to pursue public goals. How these goals are formulated and realized depends on the focus of each municipality. The goals can be categorized into social, economic, and urban planning goals. Social goals tend to address the improvement of (affordable) housing supply, often accompanied by subsidies. Further, socially mixed neighborhoods are frequently to be supported. Economic goals are meant to reduce land prices for subsidized housing construction and to prevent costs for the public. The planning costs, procedural and development costs as well as costs for social and technical infrastructure are not to be financed from the public budget. Urban planning goals can, for example, also focus on the quality of urban development. Urban planning competitions and building regulations can be integrated into the development process. In addition, urban design standards can be defined according to density values, open space and greenfield standards. More recently, environmental standards have become more important. Often, the cities aim to adapt to climate conditions or mitigate its impact by reducing CO_2 emissions or fostering sustainable constructions. Many cities focus on the goals that are most important to them. Public value capturing can be used to achieve such goals.

The question arises as to whether the developers can contribute to the costs of realizing the goals and in what order of magnitude an appropriate contribution can be made. Land-use regulations, land management, public investments in internal and external infrastructure, private investments (e.g. buildings) and the general economic development determine the increase in value. In free markets, these benefits usually belong to the landowner. The idea of sharing costs comes from the knowledge that the development of building land results in increases in land value. And a part of this development is made possible by the public sector. Thus, there are so-called 'unearned increases' within a process. So, public value capture thus addresses the very relation between private landowners and public interests represented by spatial planning.

'It's not the one building the flat, not the one owning the house, but the one who owns the land who decides the development of our cities' (opening of Bernoulli's book 'Cities and Their Land' of 1946; own translation). Hans Bernoulli recognizes in this quote a fraught relationship between public and private interests. It is remarkable that Bernoulli did not mention spatial planners or public land managers as the ones steering urban development.

Bernoulli has therefore suggested the public should become the owner of the land itself. Other land reformers, such as Henry George or Adolf Damaschke, suggested to 'cream off' or 'capture' the planning gain via a tax. Ever since, the idea to participate in the value increase of properties due to zoning appears appealing. And how to deal with planning risks? The 2008 world economic crisis, which started as a real estate crisis, taught countries with a more active land policy such as the Netherlands, where the public authorities are actively involved in land markets, the pitfalls of relying on planning gains and increasing property markets. Public value capture can thus also reduce public risks.

Public value capture has thus a lot to do with the conception and social construction of property rights of the land. The term itself hints at a normative issue – is it capturing the value from private landowners, i.e. taking it away? Or is public value capturing just holding back and gain that is granted by the planning authorities in the first place? These are two notions of public value capture that lead to the same result – the increase in land values is transferred from the private landowners to the public – but the theoretical and legal position is different. This has also legal consequences and consequences for the public acceptance of public value capture.

Questioning and discussing ways of public value capture is thus not only a question of the most effective and efficient administrative procedure, but it is also a normative question that is linked to concepts such as legitimacy and justice. Public value capture is thus at the intersection between planning, developing, law and property rights. The implementation of the idea of public value capture can be done differently. Some European countries prefer to establish a value increase tax, whereas others realize a cost pass-through to the developers. Here, the debate is exciting regarding the tension field of public intervention. The question arises of whether these requirements may be imposed on developments and what can be seen as appropriate.

The broad scope of action and the differing understanding of the issue indicate both the societal and academic importance of a European comparison. Many insights can be drawn from this comparison. This requires an international investigation, which, however, must not lead to unexamined transferability. The added value results especially from the international awareness and the resulting rethinking and reflection of one's own way of acting or one's own understanding of public value capturing.

The two organizations EALD and PLPR, with different approaches regarding the land policy steering possibilities by public value capturing and the property-relevant question for the levy, therefore, support the insights into the handling and the different European approaches made in this book. These in-depth examinations of the possibilities of public value capture as a result of COST-Action CA17125 are to be welcomed and endorsed.

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Andreas Hendricks is Adjunct Professor at the Institute of Geodesy, Universität der Bundeswehr München. His research area is land management and real estate valuation. The topic of public value capture has been one of his focal points for 20 years. He has been involved in several research cooperations in Europe, Africa and Latin America. He is the Action Chair of EU COST project Public Value Capture of Increasing Property Values (PuVaCa), Board Member of the the European Academy of Land Use and Development (EALD), and member of the Working Group Land Management of the German Surveyor Association (DVW).

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Berit Irene Nordahl is Research Professor and Research Director at Institute for Urban and Regional Research, Oslo Metropolitan University (OsloMet). Nordahl's main interest is state-market interaction in housing and planning. Nordahl has led numerous research projects on the topic of housing policy, urban development, urban transformation, and has a particular interest in comparative research. Nordahl was part of the evaluation team for the 2008 version of the Norwegian Planning and Building Law, with a special responsibility for evaluation of the implementation instruments in the law, and scientific advisor for the evaluation of the building application part the law. Nordahl has contributed to the OECD-Lincoln Institute Global Compendium.

General Introduction

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

Land Value Capturing: A Growing Interest Among Scholars and Practitioners

"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 well-being 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 Europe-wide problem. Countries as well as municipalities have decreasing means to fulfil all their public commitments. Modernising the governance is a way to relieve economic and budgetary pressures, to design and deliver needed structural reforms, to remove existing barriers and to foster innovations. Public value capture (PVC) is an essential means to improve the refinancing of public infrastructure and keep the necessary budget for other important duties like education, health and social 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). The interest in this topic has recently grown exponentially among scholars and practitioners (Vejchodska et al. 2022). In current 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).

In most developed and developing countries, the public control over land-use planning and urban development aims to strike a delicate balance between public and private rights over land. The tension between the public right to manage a resource as scarce and socially valuable as urban land and the protection of private property rights is framed in different legal, political, institutional, economic and cultural environments that have evolved over time (Condessa et al. 2018).

The significance of the topic was underlined in the recently published OECD Global Compendium of Land Value Capture Policies (OECD and Lincoln Institute of Land Policy, 2022). The compendium gives a pinpointed presentation of 60 countries' policies. The compendium and this book substantiate each other in many ways. First and foremost by leveraging this notable, purposeful and emerging policy field. The compendium and this book also support one another by drawing attention to the importance of definitions and stringent terminology.

The compendium includes countries from all five continents and includes countries with high and lower income. 26 of this sample are European countries, and most of these countries are also part of this book. The compendium bases its information on questionnaires presenting each country relatively briefly.

This book allows deeper discussions about each country's policy and practise. Among others, this book links the land value capture instruments in each country to its planning system, allows the authors to link the instruments to the resulting value capture and analysis the countries practise of taxing income from and transaction of land.

The Final Result of the COST Action 'Public Value Capture of Increasing Property Values' (PuVaCa)

This book is the final result of the COST Action 'Public Value Capture of Increasing Property Values' (PuVaCa, https://puvaca.eu/). The first idea for the COST Action, which led to the preparation of this book, was born in 2014 as a result of a presentation at an EALD congress (European Academy of Land Use and Development). The official start was in August 2018. The network of proposers was quite small. It included 9 scientists from 7 countries. Over the past three and a half years, the network has grown considerably. It now comprises more than 100 scientists from 41 countries, including many members of the PLPR (International Academic Association on Planning, Law and Property Rights). Because of the close links between this COST Action and the two organisations EALD and PLPR, their two presidents give themselves the honour of the Preface.

The materials gathered in this book provide a comprehensive comparative analysis of public value capture in 29 countries to find similarities and differences within Europe. The results allow the improvement of existing tools by detailed discussions with experts of countries that have similar tools. On the other hand, thought-provoking impulses can be given by countries that have a totally different understanding of public value capture. Furthermore, the book might be helpful to build transfer capacity by connecting countries with more and with less capacity in this area, to enhance the public awareness and understanding of public value capture and to increase the communication and collaboration between scientists, political and administrative stakeholders and NGOs.

The book is accompanied by an implementation report available on our homepage www.puvaca.eu. This report on strategies for the implementation of new tools of public value capture or the optimization of existing tools in particular countries focuses on proposals to improve the current situation in future. It should inspire administrative and political stakeholders and clarify the chances and obstacles of the implementation of new tools or improvement of existing tools. It focuses on the weaknesses of the existing national systems based on the national chapters of the book.

This book is the final result of a very successful COST Action. Nevertheless, many specific research questions remain open in the area of public value capture. It is therefore of great importance to maintain the network and keep the topic on the scientific agenda. Through the joint efforts of our network, the EALD and the PLPR, significant innovations can and must be enabled in the future.

The Structure of the Book

As mentioned above, the research developed to prepare this book notably aimed at finding similarities and differences between European countries on public value capture (PVC). Detailed discussions with experts have allowed a comprehensive analysis of PVC in 29 European countries. The discussions with experts were structured thanks to the theoretical and methodological frameworks gathered in the first two chapters of the book. Those two chapters are respectively dedicated to a conceptual clarification and to a typology of PVC instruments.

The chapter on the conceptual clarification has two main aims. Its first objective is to propose a definition of the concept of PVC, and the second is to link this definition to the different factors that impact land values and their evolutions. Typical factors of land values are the extension of property rights (planning), reallocation of land property and the provision of internal and external infrastructure.

The typology chapter is based on the differentiation between recurring and non-recurring PVC instruments. The main forms of recurring instruments are annual taxation, real estate transfer tax and capital gain. Recurring instruments are closely related to the fiscal systems. By contrast, non-recurring PVC instruments are more related to the planning systems. When it relates to non-recurring instruments, the proposed framework in Chapter 2 is based on the differentiation between instruments focusing on one factor of value increase (e.g. fees for infrastructure) and instruments focusing on more than one factor (e.g. development agreements).

It is on the basis of the two initial chapters that the national experts have prepared the 29 country chapters which form the bulk of the book. It is also on the basis of the two first chapters that the same experts have prepared the chapters of the implementation report mentioned above. While the present book aims to analyse and present the current situation, the implementation report focuses on the optimization of current PVC instruments as well as on the implementation of new PVC instruments.

Thanks to those 29 country chapters prepared for this book, a synthesis analysis was developed and synthetized in the Conclusion chapter of the book. Despite a striking picture of variegated instruments and approaches, this conclusion reveals that both the recurring forms and the non-recurring forms contribute significantly to the well-being of our society. This conclusion also reveals that while non-recurring forms are predominantly important for establishing technical infrastructures, recurring forms usually takes a wider stance through social as well as spatial common ambitions. Another point emerging from the Conclusion is, again for both the recurring forms and the non-recurring forms, that there is much room for improvement.

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1 Terminology and Concept Clarification

Andreas Hendricks, Armands Auzins, Vida Maliene

1.1 Different Terms Under the Notion of 'Public Value Capture'

Various concepts fall under the notion of public value capture (also: public value capturing, value capture) and a multitude of often similar and overlapping terms are used in the literature to describe these concepts (Munoz-Gielen, 2014).

Alterman (2012) provided a valuable review of terms referring to rise in land values. 'Betterment' is a term used in Britain and the former colonies for the increase of land values directly caused by a planning or public works decision. The taxing of betterment values was part of the first town planning legislation in Britain in 1909 (Booth, 2012). Betterment contributions are also known as 'special assessment' in the United States (Smolka, 2013). 'Unearned increment' is internationally used for any rise in land values, whether due to public decisions or to the general economy instead of landowners' own initiatives and efforts. The term 'unearned' helps to justify the process and provides a rationale for the introduction of value capture instruments. 'Plus value' is especially used in Spanish-speaking countries to denote either betterment or unearned increment. 'Windfalls' and 'givings' are not legal terms but oftentimes used in the United States to denote unearned gains in property values (Alterman, 2012). Other authors use 'neutral' terms like 'added value' or 'development value' (Vejchodska et al., 2022). Depending on the concept, can refer to each of these terms.

Munoz-Gielen (2014) distinguishes 'cost recovery', 'value capturing' and 'creaming off plus values'. Cost recovery refers to the recovery of costs of public infrastructure (including public roads and space as well as public facilities, affordable and social housing). Value capturing describes the situation when the public organisations capture the increased value resulting from investments in infrastructure, whereas creaming off plus value refers to a public organisation capturing the enhanced value regardless of any incurred costs.

'Land value capture' is another commonly used term. This term refers to a policy approach that enables communities to recover and reinvest land value increases resulting from public investment and other government actions. Also known as 'value sharing', it is rooted in the notion that public action should generate public benefit (Land Portal, 2020). The terms, like site value, location value and land value, are used interchangeably in the corresponding literature (Fernandez Milan et al. 2016). There is a general agreement among scholars that land value capture does not refer to the value created by the efforts of the landowner (e.g. via construction of buildings). It could be discussed further whether land value capture should also include the capture of the land value created not by public organisations but by other private parties or the general economic growth. Also, the current literature reveals the discussion whether land value capture can be considered a tax or not (Munoz-Gielen and van der Krabben, 2019).

Economists and other social scientists often use the term 'land rent'. It is a financial flow of money related to the lease or sale of land not conditioned by any input of labour or capital. Economic literature generally focuses on topics like efficiency of land value taxation (e.g. price neutrality, optimisation of land take) and distributional effects (Vejchodska et al., 2022).

In general, public value capture includes land value capture and more, and the term is used in more comprehensive way than in the concept of Munoz-Gielen (2014). In our research, we will have a wider understanding of public value capture that will be concretised in the next section based on existing definitions of the term.

1.2 Definition of public value capture

In the literature, public value capture remains an open-ended term, variously defined and used.

Pursuant to Offermans and Van de Velde, value capturing is a collective term for instruments to capture the increase in value of land and property directly or indirectly. The increase in value is caused by public action. The captured value can be used to cover expenses of activities causing the increase in value (e.g. infrastructure; Slegtenhorst 2013, van der Krabben and Needham, 2008).

According to Huisman, value capturing aims to get beneficiaries to make a contribution to measures from which they profit. This means that future benefits of a project are captured to cover the current costs (e.g. new tunnel or metro line, Slegtenhorst, 2013).

Slegtenhorst uses both concepts to develop her own definition: "Value capturing is a set of instruments. It targets creation of value for different parties, caused by a measure of public action. The increase in value can be captured with these instruments to cover costs" (Slegtenhorst 2013). Similarly, Valtonen et al. (2018) associate the public value capturing with a wide range of methods those public authorities can use to capture part of the land value increment from landowners.

It should be highlighted that the work of Slegtenhorst is related to instruments of indirect value capture to fund investments in road infrastructure projects. That might be why all definitions used by the author focus on the cost recovery of those projects. However, this is a too limited understanding of public value capture for a comprehensive analysis.

A more comprehensive definition is given by Havel (2017) based on Alterman (2012). Pursuant to the author's definition, the term value capture is "used to cover any type of policy or legal instrument whose purpose is to tap any form of unearned increment, regardless of the cause of value rise".

A similar definition is given by Ingram and Hong (2012a): "Privately funded improvements by landowners increase the value of their land and property, as do other changes such as growth of the surrounding population and neighbourhood economic activity, public investments in infrastructure, the provision of public services and planning and land use regulations. Value capture focuses on realizing as public revenue (through taxes, fees, or in-kind services) some portion of the increase in land value that stems from these latter changes."

A third comparable definition can be found by Smolka (2013): "The notion of value capture is to mobilize for the benefit of the community at large some or all of the land value increments (unearned income or plusvalias) by actions other than the landowner's, such as public investments in infrastructure or administrative changes in land use norms and regulations."

All definitions above focus on the core of public value capture: capturing unearned benefits resulting from actions (especially public actions) other than the private actor's (developers and landowners). They are especially suitable for discussing singular forms of public value capture (e.g. developer obligations). In case of taxation, the problem arises that the base of taxation commonly includes the value of buildings (e.g. real estate taxes, cf. Chapter 2) resulting from actions of the landowner.

For this reason, it is important to highlight the even more comprehensive definition by Munoz-Gielen and van der Krabben (2019), which enables a broader comparative analysis of European tools of public value capture: The generic term public value capture includes "all instruments that capture all possible increases of the value of land and buildings, whether they are considered taxes or not". However, in addition, it is important to reflect on the core of public value capture as well as specific purposes that collected funds should be used.

So the revised definition of public value capture suggested by this chapter's authors is this: The term of public value capture includes all instruments that capture all possible increases in the value of land and buildings, whether they are considered taxes or not. It focuses primarily on capturing unearned benefits resulting from actions other than the landowner's. The resulting funds may be earmarked for specific purposes (e.g. recovery of development costs or provision of affordable housing).

1.3 Causes of Increasing Land Values and Level of Land Values

1.3.1 Causes of Increasing Land Values

Obviously, land values are determined by a number of factors, i.e. it is a result of both public and private investments and actions. Frequently mentioned in the literature are planning and development control (or land use regulations, e.g. McAllister et al., 2018, Wu et al., 2019). Viallon (2018) similarly to Smolka (2013) and Nguyen et al. (2017) emphasise the provision of technical infrastructure as value-creating activity (e.g. transport infrastructure). Fernandez Milan et al. (2016), Rebelo (2017) and Vejchodska et al. (2022) point out that the enhancement of land values results also from the provision of public services like parks, sport facilities or schools. Finally, Ingram and Hong (2012a), Rebelo (2017), Heeres et al. (2016), Wang et al. (2015) and Wu et al. (2018) stress the influence of further external factors like economic growth or communal or private efforts (e.g. provision of cultural infrastructure like opera or theatre or provision of jobs). In order to 'sort things out' Hong and Brubaker (2010) have divided the roots of increasing values into five main categories:

(1) the original productivity of the land, the value of current land use
(2) changes in land-use regulations, extension of property rights

(3) public investments in infrastructure and social services
(4) private investments that increase land value
(5) population growth and economic development

Ingram and Hong (2012b) argue that a conceptual delineation of these five elements of land value and their ownership can facilitate the discussion of 'who should capture what'. If we apply the five elements to a property development situation, we can construct the following Figure 1.1.

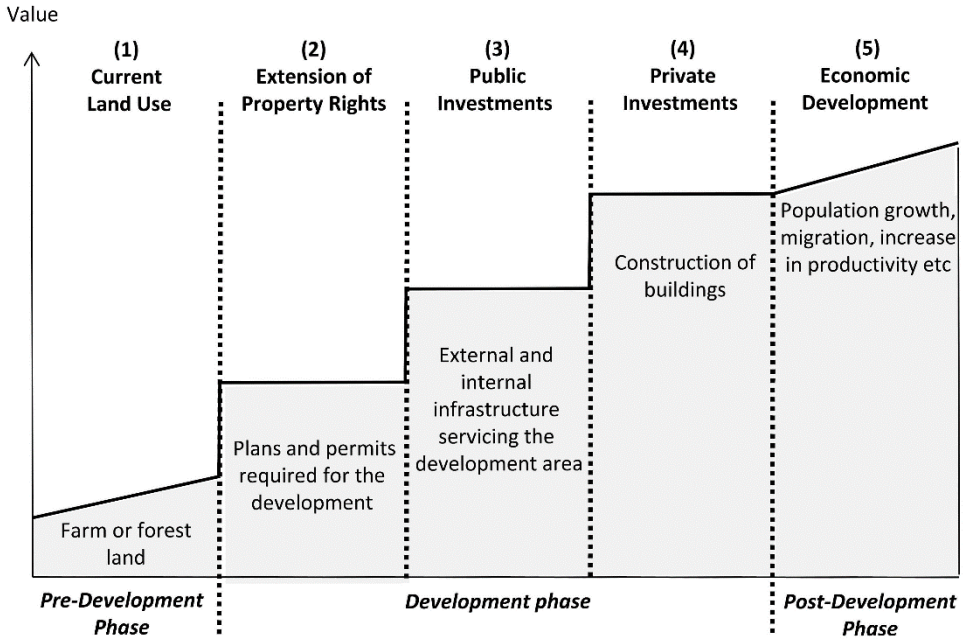

Figure 1.1: Value Steps of Property Development (Source: Hendricks et al. 2017).

In the 'pre-development phase', the property value is based on the current land-use, e.g. farm, forest or derelict urban land.

The 'development phase' contains three principal measures and activities that influence the property value:

- A change of land-use normally requires some form of permission from authorities, i.e. an extension of the property owner's right. This regulatory system differs between countries, but often it is based on land-use plan(s) and subsequent permits.
- Individual properties must be supplemented with public infrastructure. The distinction can be made between 'internal infrastructure' servicing only the development area (roads, water and sewage, etc.) and 'external infrastructure' for larger areas (main roads and parks, schools, etc.).
- The owners' (or developers') responsibility to construct buildings and facilities with their own investments on individual properties.

The value increases due to public action like specific types of land-use regulatory decisions or the execution of public infrastructure can also be classified as betterment (cf. Section 1.1).

When the property is completed, the 'post-development phase' begins. Value increase in this phase is determined by socio-economic conditions, e.g. population growth, migration, increase of societal productivity.

In real life, these activities do not necessarily follow this order as they might overlap or even precede each other in different sequences. For example, agricultural land already rezoned for housing (property owner's rights are already extended) might remain undeveloped for years, and its economic value might increase further due to general economic factors while the owner is still farming it, perhaps waiting for larger value increases. Or land already built might profit from the construction of public infrastructure by the municipality and/or from general economic factors, before the owner decides to sell their property (Hendricks et al. 2017).

There is a wide agreement to capture value increases from infrastructure improvements, public services and land-use regulations (Fernandez Milan et al. 2016). On the other hand, in several countries, the constructions are included in the computation of betterment levies or taxes (e.g. Poland and Germany). Furthermore, the economic development may be subject to taxes or fees. However, the particular countries may decide to capture the whole surplus value of a development or to limit the value capture to individual parts (Hendricks et al. 2017).

1.3.2 Causes of Level of Land Values

In the above section, a relative correlation of land value increases and factors of price increase has been found. However, this correlation does not include information about the absolute potential of value capture. For example, if 50% of the development-related value increase is caused by planning and the value of building land is 1000 €/m², then the capturing of the planning-related value increase would result in 500 €/m². In a case of a land value of 30 €/m², then the capturing would just result in 15 €/m². Therefore, public value capture is only a significant tool where there is a corresponding possibility of capturing. Accordingly, negotiable developer's obligations are the best way to take these disparities into account in the event of regional differences (cf. implementation report of this COST Action).

Economists stress the price determination as the interaction of supply and demand. The determinants of rising land prices either work as drivers of the demand side or barriers on the supply side. The most significant limits on the supply side are a lack of available building land because of too restrictive land-use planning control (Vejchodska et al. 2022) and deficient construction activities. Changes like population increase and local economic growth are important drivers on the demand side (Rebelo 2017, Ingram and Hong 2012a). Also, public services (especially technical infrastructure) and public sector expenditures promoting the quality of live in the city are reflected in property values. Furthermore, environmental amenities like mild climate or a location close to water bodies or mountains may have influence. These factors are also well known in real estate valuation. They are generally

discussed under the notion 'macro location' (Belke and Keil 2017). Finally, monetary policy is an economic driver. If high inflation is expected, land is a store of value thanks to its non-degradability in this respect (Vejchodska et al., 2022).

Therefore, these economic factors have a significant impact on the feasibility of public value capture as such and on the resulting funds. So, they can be used to answer the question of 'how much can be captured'. On the other hand, the above-highlighted factors of price increase (cf. Section 1.2.1) are helpful in the discussion about 'who should capture what'.

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2 Classification of Tools for the Capture of the Surplus Value of Developed Building Land

Andreas Hendricks

In the literature can be found different classifications of value capture based on its purpose or its outcome.

One of the first systematic analyses was published by Needham and Verhage in 1998. It is based on the Ricardian framework and refers to a comparative study by Dransfeld and Voss from 1993. The criterion is the ownership during the development process. Firstly, a basic distinction is made between development by one temporary landowner and development by several different landowners. The first option is further distinguished in temporary ownership by the municipality, a public or public-private body or a private developer. In the latter case, the municipality (or another public body) has to provide the necessary infrastructure. It can do it with or without using public powers (Needham and Verhage, 1998).

It is an interesting type of classification and very useful to demonstrate especially the big influence of public or private ownership of the land in development. However, it does not fit for a deeper analysis of tools of public value capture. On the one hand, a big part of the instruments would result in group 5 (development by several different landowners, provision of infrastructure by using public powers). On the other hand, the different types of taxation as tools of public value capture are not included in this system.

Another system of classification was proposed by Smolka in 2013, distinguishing property taxation and betterment contributions, exactions and charges for building rights and large-scale approaches. "Property taxes, contributions, and fees are typically levied on existing land values or on increments to those values due to changed conditions or land uses. Revenues tend to be used to defray investment or maintenance costs for public works, transportation, and other infrastructure" (category 1; Smolka, 2013, p. 21). "Actions taken by local planning authorities regarding urban norms and regulations often affect land uses or users, and in turn create direct or indirect land value increments for a single plot or a group of plots. Capturing that increment to benefit society is accomplished through the use of cash or in-kind exactions and other types of charges for the use of building rights" (category 2; Smolka, 2013, p. 32). "Large-scale redevelopment projects in newly incorporated yet nonurbanized peripheral areas or in abandoned or vacant sections of older neighbourhoods […] typically involve rezoning and updating the urban infrastructure and services, often resulting in significant benefits for the original landowners" (category 3; Smolka 2013, p. 45, e.g. development of public land through privatization or acquisition, land readjustment, and public auctions of bonds for purchasing building rights).

The biggest disadvantage of this system is the intersection between category 1 and 3 and between 2 and 3. It is difficult to understand why a discrete category for large-scale projects is needed.

Slegtenhort proposes a division into two categories of policy instruments. The first form is direct value capture. It refers to users contributing directly to the investment, with, for example, a user contribution (e.g. road toll). The second form is indirect value capture focusing on direct beneficiaries (e.g. landowners, residents, developers). Typical strategies for this kind of public value capture are active land policy, collaboration agreements and contributions/taxes (Slegtenhorst, 2013).

This classification was developed for the funding of investments in road infrastructure projects. It does not fit for a general analysis of tools of public value capture. On the one hand, the underlying understanding of public value capture is quite broad (including tools like road toll). On the other hand, nearly all instruments of public value capture would result in the second group. For this reason, there would be no benefit to using this type of classification.

A very interesting classification for a theoretical or philosophical analysis is given by Alterman (2012). She proposes a distinction between macro, direct and indirect value capture instruments. Macro instruments "are embedded in some overarching land policy regime, motivated by some broader rationale and ideology" (e.g. Nationalization of all land and direct government control over its use, substitution of private property by long-term public leaseholds, land banking or land readjustment). "Direct instruments for value capture are policies that seek to capture all or some of the value rise in real property under the explicit rationale that it is a legal or moral obligation for landowners to contribute a share of their community-derived wealth to the public pocket." On the other hand, "indirect instruments do not seek to capture the added value for its own sake, because it is 'unearned', but in order to generate revenues (or in-kind substitutes) for specific public services. […] The objectives behind the indirect tools are usually more pragmatic and less ideological than the objective behind either the macro or the direct value capture instruments."

This categorization based on motivating rationales has been adapted by several authors (e.g. Havel 2017, Munoz-Gielen et al., 2017). The advantage is the philosophical background and it is suitable for corresponding analysis.

The challenge is that "it is easy to confuse the direct instruments with the indirect ones because both types harness the same source of wealth" (Alterman, 2012). The classification focuses on the motivation of value capture, and the motivation of legal restrictions is oftentimes not obvious. Furthermore, instruments are often "based on a mixture of rationales" (Munoz-Gielen and van der Krabben, 2019). For this reason, it is especially difficult to use this system for an edited volume of different authors who might have different interpretations of rationales.

A further development of the system according to Alterman was proposed by Munoz Gielen and van der Krabben (2019a). This form of classification is based on three different types of instruments: developer obligations, public as well as public-private land assembly and other value capture tools. Developer obligations are further distinguished into negotiable and non-negotiable obligations. These types of instruments are first divided according to whether they are direct or indirect instruments according to Alterman's definition. The sec-

ond distinction is based on whether they are charged linked to the modification of land-use regulations or not.

This advanced system is especially suitable for a deeper analysis of developer obligations. However, it shares the uncertainties of the system of Alterman, and the large number of classification options makes it difficult to use for a larger circle of authors.

A more practical classification of direct and indirect models for value capture was established by Hendricks et al. (2017). It focuses on the subject of the instrument. Pursuant to this classification, indirect models base upon taxes on the whole real estate, while the direct models contain mandatory or voluntary proceedings to absorb a part of the surplus value as well as taxes that are referred to a specific part of the surplus value (e.g. capital gains tax).

The advantage of this system is the easy application. However, it is a quite basic differentiation and can be approved for a deeper analysis.

For this reason, the COST Action decided to use a modified version of the Hendricks' system for the following analysis. We distinguish basically recurring and non-recurring forms of public value capture. A similar classification is given by Viallon (durative and punctual value capture instruments; Viallon, 2018). 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, capitals gain tax). Non-recurring forms are further differentiated in tools focusing 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. Section 1.2.1.).

All those models need a legal framework. In the first place, the constitution must define private property and the social function of property to allow the capture of at least a part of the surplus value by law (Alterman, 2012). Furthermore, legal norms for mandatory or voluntary proceedings for this capture must exist and these regulations must be known and accepted in the local governments.

2.1 Recurring forms of public value capture

2.1.1 Recurring Forms of public value capture (Annual Payments)

2.1.1.1 The Basis of Taxation

Basically, three different models can be distinguished. On the one hand, the land value may be used in addition to the value of the buildings. Alternatively, only the land value or the profitability of the real estate may be used (Thiel and Wenner 2018).

Many countries (e.g. Poland, Germany) use the first option. Generally, professional valuation experts create maps of land values that have to be actualized at a certain interval (e.g. 5 years). The valuation of the buildings is done by a simplified version of the cost approach by multiplying the useable area of the buildings by the price per square metre, which is listed

in a valuation table. The price depends on both the use and the quality of a certain building and has to be estimated by a valuation expert.

However, many countries (e.g. Austria, Denmark, Estonia, Switzerland) use only the land value as basis for the calculation of real estate taxes. The main objective of this approach is a higher efficiency of the land use in urban areas (Fernandez Milan et al. 2016). The biggest problem is the fact that the land value oftentimes is quite small in comparison to the overall value of the real estate (especially in case of commercial properties, e.g. hotels or offices). This may cause an unjust taxation.

There are two reasons causing concern considering the profit of the real estate as basis of taxation. On the one hand, the valuation of unused plots is a problem in this system, and on the other hand, there is oftentimes a lack of information concerning the income of commercial or industrial properties. In that case, the valuation has to be based on theoretical assumptions. For these reasons, this approach is less used than the others (Morales Schechinger, 2007).

2.1.1.2 Tax Rates

In principle, the options to determine a single tax rate or different tax rates exist.

2.1.1.2.1 Progression in Stages

Generally, countries use a system of different rates distinguishing between plot and constructions, use of the plot and/or buildings (e.g. living or commercial use) or built or unbuilt plots (Hendricks, 2015).

2.1.1.2.2 Continuous Progression

The progression in stages causes leaps in the taxation. For this reason, two owners of real estate of more or less the same value may have different financial burdens, if they are in different tax brackets. This is oftentimes a displeasure for the owners. As a consequence, they do not pay their taxes or try to avoid the payment by legal actions against this kind of taxation. Oftentimes they win their court case due to the violation of the principle of equal tax treatment. The continuous progression is an approach to avoid this problem.

One option for this kind of progression are additions within a bracket, which rise continuously and adapt the maximum value in a bracket to the starting value in the following bracket.

An alternative is the definition of different rates for different 'value sections', that is, for example, a tax rate of 0.6% for 'the first' € 25,000, 0.7% for 'the second' € 25,000, etc. This system can also solve the mentioned problem of leaps in taxation. Furthermore, it is better understandable for laypersons, and in consequence it has a higher acceptance in the population.

2.1.1.2.3 Extraordinary Tax for Unbuilt Plots

The definition of higher tax rates for unbuilt plots is an interesting option to pressure the landowner to start building activities on the plot (Thiel and Wenner, 2018). If this does not work, the higher tax income of the municipality can be at least 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 go unused.

2.1.2 Recurring Forms of public value capture (in Case of Sale/Purchase)

Some types of taxes are levied only in connection with the sale or purchase of the property. The basis of taxation may be the value of the whole real estate (e.g. real estate transfer tax), while other taxes refer to specific parts of the surplus value (e.g. capital gains tax).

2.2 Non-recurring Forms of public value capture

The 'surplus value' of developed land by public measures generally is caused by planning, land management and new infrastructure. On the other hand, in several countries, the constructions are included in the computation of betterment levies. However, the legislation of a particular country may limit the capture of the surplus value to its individual parts.

The following examples should give an overview of the different types of models which are used in many countries.

2.2.1 Non-recurring Forms of public value capture (Focusing on One Factor of Value Increase)

2.2.1.1 Fees or Levies

Many countries (e.g. Germany, Poland and France) use fees or levies to recoup development costs (e.g. costs of infrastructure).

2.2.1.2 Tax or Levy on Planning Gains

A certain percentage of the added land value created by zoning is captured (e.g. Switzerland). Generally, the collected funds are dedicated to determined public purposes.

2.2.1.3 Flexible Building Rights or Transferable Development Rights

Different models which imply exceptions to the general use regulations in favour of investors or property owners who paid a certain amount of money exist. The allowed exceptions and financial considerations are generally regulated in legal norms. In doing so, the core of urban planning will be conserved in spite of more flexible building rights.

One possibility is the definition of a 'basic floor space index'. This index defines how much floor space generally may be constructed on a plot. On the other hand, the planner may fix a

maximum floor space index and the payments of the property owners to reach a higher utilisation of their plot. The municipality has to use the received amount of money for defined urban objectives like infrastructure, public housing or public facilities.

Housing shortage and concomitant inadequate urban planning are further reasons for a deviation from general use regulations. In that case, constructions are oftentimes approved in deviation of the plan to advance housing projects in the public interest. It is a selective exception in anticipation of the coming revision of urban planning. In general, compensation has to be paid (Lungo and Rolnik 1998).

A third option is the transfer of building rights onto another plot of the same owner. The main objective of this regulation is the preservation of an actual use deserving protection (e.g. heritage protection, architecturally important building or open space) that is lower than the permissible use. In this case, the owner of the real estate may transfer the difference between regular and substandard use onto another plot taking into account the value ration of both plots (Mualam 2018).

2.2.2 Non-Recurring Forms of public value capture (Focusing on More Than One Factor of Value Increase)

2.2.2.1 The 'Real Estate Consortium' or 'Conjoint Urbanisation' or 'Land Readjustment'

The public authorities and private landowners aspire a cooperation for the urban development of former rural areas by exchanging ownership rights on the land. After the development, the landowners get back a plot that has the same value as the plot before the development. Due to the increasing prices per square meter will remain a part of the developed area with the municipality. These plots may be used for social housing programmes or other public functions. Another option is a payment in cash for the development benefits (Condessa et al., 2018). The realization may be based on voluntary agreements or may be part of a mandatory proceeding. However, in many countries, all actions of public authorities have to follow the principle of the 'mildest means', that is, the measure with the lowest impact on the affected landowners. For this reason, the municipality has to try to find at first a voluntary solution (Lungo and Rolnik 1998).

2.2.2.2 Negotiated Development (Developer and Municipality)

The developer prepares the plan jointly with the municipality. Nevertheless, the municipality should take into account all private and public interests before the approval of the plan. It has to be avoided that the financial aspects compromise the public interest of good planning (Tennekes, 2018). The affected area can be the (complete or partial) property of the developer or municipality. Generally, the developer is responsible for the construction of the infrastructure.

2.2.2.3 Urban Development or Redevelopment Measures

The new development of urban areas or the elimination of urban deficits are typical urban duties. In Germany, these problems are generally solved by mandatory proceedings. Urban redevelopment measures are those measures by means of which an area is substantially improved or transformed with the purpose of eliminating urban deficits. "The purpose of urban development measures is to subject local districts or other parts of the municipal territory to development for the first time in a manner which is in keeping with their particular significance for urban development within the municipality, or which is in accordance with the desired development of the federal state district or the region, or to make such areas available for new development within the framework of urban reorganisation" (Section 165 (2) of the German Federal Building Code, Federal Republic of Germany 2004). If the municipality does not buy the real estates, the affected landowners have to pay compensation corresponding to the surplus value of their real estate.

In Latin America, urban development and redevelopment measures are generally realized by cooperations of public authorities and private investors or property owners. The process may be initiated by the public or private partner. The first step of the process is the urban and financial analysis of the project. The main duties of the municipality are the planning, the generation of the legal framework (e.g. the formal designation of the redevelopment area) and the coordination of the construction of infrastructure. On the other hand, the execution of all building activities is the duty of the private partners. In general, both get a part of the developed area as compensation for their activities. The corresponding agreement is controlled by a mixed commission occupied by representatives of public authorities and civil society (Lungo and Rolnik, 1998).

2.2.2.4 Interim Acquisition or Land Banking

The build-up of land stocks is oftentimes used in municipalities to have available plots for public objectives within urban development. Afterwards, a part of the plots may be sold to maintain the stock balance by a so-called "revolving land stock" (Hendricks, 2006). The acquisition of plots should be done long before the urban development to avoid the anticipation of price increases by the landowners. On the other hand, the time factor increases the financing costs, and the community has to bear the marketing risk (Spit 2018; Munoz-Gielen and van der Krabben 2019b). If the land is acquired just shortly before building rights are obtained, it is usually more expensive, but the period of interim financing is shorter, and the purchase is made for a specific measure. The administration of land stocks is frequently realized by external corporations. Furthermore, the urban development is frequently done by public-private partnerships. In this case, the benefits of the construction remain with the private partner and the benefits of the increasing land value remain with the municipality.

2.2.2.5 Contract Models or Developer Obligations

The agreement of certain duties of the private partner in return for subsequent building rights is an alternative to interim acquisition (Munoz-Gielen and van der Krabben, 2019b).

The most common duties are the provision of the needed area for the infrastructure or provision of plots for social, public or ecological objectives. The affected landowners are sometimes integrated into a 'real estate consortium' (cf. Section 2.2.2.1). In this case, the landowners get back a plot after the development which has the same value as the plot before the development. On the other hand, financial compensations may be agreed upon for the generated surplus value of the developed land because of public measures.

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3 Austria

Arthur Schindelegger and Laura Sidonie Mayr

3.1 Local Authorities and the Planning System

Spatial planning is a collaborative effort of various public authorities which relies on a rather complex distribution of powers in Austria. First, the national level has no formal competence for spatial planning, while it has the legislative and executive powers for many sectoral fields (e.g. waterways, highways, railways, forestry). Second, the individual nine states are in charge of planning legislation and planning activities that tackle regional planning matters. Third, municipalities are in charge of spatial planning on the very local level but have to respect binding superior planning documents and programs.[1] Municipalities have typically spatial development concepts, legally binding zoning plans and wherever necessary or obligatory legally binding development plans that regulate the actual building development on a plot/in a district (density, height, distance to roads, etc.). While general concepts and programs direct infrastructural and settlement development rather roughly to certain areas, the zoning and development plans enable, due to their accuracy, the actual usage in certain ways for the owners.

3.2 Recurring Forms of Public Value Capture

In Austria, the recurring forms of public value capture related fees are the real estate tax and the land value tax as well as the real estate transfer tax.

3.2.1 Recurring Forms (Annual Payments)

3.2.1.1 Real Estate Tax

The real estate tax (*Grundsteuer*) is an annual tax for land and its assets. It was introduced and regulated in its modern appearance with the specific real estate tax act (*Grundsteuergesetz*) in 1955 and has not seen major reforms since. The Austrian real estate tax system shows in fact many similarities with the German system (cf. Section 12.2.1.1) and represents the most important tax income for municipalities. The real estate tax is split into two major categories: Tax A accounts for agriculture and forestry, while tax B covers the remaining land and its immovable property. The classified tax rate (0.5–2‰) gets multiplied by the so-called assessed value – which is considerably less than the market value – for particular types of land and usage. Every municipality has the freedom to multiply the tax rate by up to 500% leading to a maximum real estate tax rate of 1% of the assessed value per year. The essential value here is the assessed value (*Einheitswert*) which is set by the national fiscal authority and which the municipalities cannot influence. Anyhow, the calculation and collection of the tax are done by the municipalities themselves. The municipalities also gain 100% of the revenues. To avoid

[1] Gruber et al. 2018a, pp. 61–66.

payment defaults, the tax has to be paid quarterly based on a legal notice delivered to the owner. The revenue from the real estate tax accounted for all of Austria is approximately € 719 mio. per year. Even though this looks like a high tax revenue for a small federal republic like Austria, it is in fact not. The assessed value has been a matter of public debate for a long time as it has not been adjusted to the rapidly rising real estate market values in decades. The municipalities – as beneficiaries – have at the same time no possibility to influence this essential parameter in the tax calculation or request a revision to correspond with the market values. The assessed value was used for the inheritance tax and donation tax as well for a long time, until the Supreme Court lifted both tax regulations as it missed factual arguments why the actual market value should not be the basis for these two taxes and identified discrimination within the existing regulations. Tax experts expected a similar Supreme Court decision for the 'unjust' real estate tax, but the court surprisingly did not lift the regulations.[2] Therefore, the calculation is likely to stay the same, delivering a comparatively low real estate tax revenue[3] which is at the same time insensitive to changes in values.[4]

3.2.1.2 Land Value Tax

In addition to the real estate tax, there exists in Austria the annual land value tax (*Bodenwertabgabe*) that has to be paid for zoned but yet undeveloped building land. The fixed tax rate of 1% per year is multiplied by the assessed value. The tax revenue goes mainly to the municipality (96%) and the remaining 4% to the state. The tax is currently not collected because it entails a lot of administrative work complicated by a set of exceptions and would in total not make up for the cost of administration.[5] This lack of coverage of costs is again due to the low assessed value that is not sensitive to market value developments. It is estimated that the land value tax would bring a yearly revenue of € 5–6 mio.[6]

3.2.2 Recurring Forms (in Case of Sale/Purchase)

3.2.2.1 Real Estate Transfer Tax

Like many other European countries, Austria has introduced a general real estate transfer tax (*Grunderwerbssteuer*). It is based on the actual selling price and therefore sensitive to changes in value. Up to € 250,000, the tax rate is 0.5%, and for the next € 150,000 it is increased to 2%, and from € 400,000 up the maximum tax rate of 3.5% is applied. The real estate transfer tax does not apply to inheritance and donations. Only 4% of the tax revenue are passed on to the state, while the rest remains with the municipality. In 2019, the real estate transfer tax accounted for a total revenue of € 1,317 mio. It is therefore an important tax for municipalities that creates increasing revenues to the general municipal budget from real estate transactions if the overall market prices are increasing. Between municipalities there is a big difference regarding the amount of revenue.

2 Court case number B 298/10-7 in 2010.
3 OECD, 2020. Reiss and Köhler-Töglhofer 2011.
4 Wieser and Schönbäck 2011.
5 Environment Agency Austria 2021.
6 Mayr 2018, p. 171.

3.3 Non-recurring Forms of public value capture

In Austria, neither the state nor the individual federal states have established any mechanisms that are linked to collect betterments triggered by legally binding planning decisions. There have been extensive discussions in some states, and the state of Tyrol even undertook a serious attempt to draft regulations to be adopted in the state parliament. The draft bill stipulated that 10% of a planning gain – due to a zoning operation – should be captured and used for the regional land fund to support affordable housing. The adaptation of the bill and implementation failed in the end due to the resistance of the municipalities as it was not possible to reach an agreement on how the revenue should be distributed.[7] Municipalities claimed that they should earn the full captured planning gain as they have to pay for all the infrastructure and are also responsible for the planning documents leading to the betterment. This leads directly to the discussion on other non-recurring forms of value capture. First, municipalities collect fees for technical infrastructure but not for improvements of the social infrastructure. In some cities, a share of costs for social infrastructure is compensated through private-law contracts. Second, in 2012 the federal state introduced a real estate profit tax to generally capture a certain proportion of increasing real estate values. In some federal states planning laws additionally enable land readjustment schemes that encompass regulations that land for the general infrastructure has to be provided by beneficiaries for free.

3.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

3.3.1.1 Fee for the Construction of Infrastructure

So far, Austrian public authorities have not established a system to calculate or estimate the impact of technical, social and green infrastructure on land and real estate values to request certain fees. Instead, all nine federal states have distinct regulations on fees for the provision of public infrastructure to contribute to the cost of construction and maintenance. This is typically only technical infrastructure owned and run by municipalities or associations formed by several municipalities (e.g. sewer system, local roads, drinking water supply). Fees are typically due once (i) a building permit is acquired or (ii) the infrastructure is constructed and operable. Besides the initial fee that contributes to the cost of construction, a yearly service fee exists. In addition, municipalities are allowed to enter into a contract with landowners to individually negotiate further contributions for the cost of infrastructure. These provisions were introduced from the mid-1990s onwards and amended multiple times since. The additional contributions for municipal infrastructure plus the basic fees must not exceed the actual costs. Infrastructure constructed by a state or the federal state are generally provided for free.[8]

3.3.1.2 Real Estate Profit Tax

While municipalities and states were discussing the introduction of mechanisms and regulations to connect public value capture to zoning decisions, the state single-handedly declared in 2011 that it would introduce an additional real estate tax based on the profit owners generated over

[7] Wieser and Schönbäck 2011.
[8] Kanonier, 2020, p. 128.

the years. In 2012, the real estate profit tax (*Immobilienertragssteuer*) was adopted as a national tax and linked to property transactions. The tax rate accounts for 30% of the sales profit, which is defined as the difference between the purchase costs and the sales price. It applies to transactions against payment of land, all kinds of dwellings and certain usage rights but does not apply to inheritance or donation. The rules for the application of the tax, the calculation of the sales profit and the exceptions make it a rather complex tax that has to be calculated by a notary or real estate lawyer.[9] Especially zoning decisions in the past increase the sales profit of an owner. Therefore, the tax is sometimes referred to as a 'hidden public value capture'[10] as this was not part of the argumentation for its introduction. The main difference between the real estate profit tax and a public value capture is the case of application: The real estate profit tax is linked to a sale rather than a change of the zoning, the development plan or another planning decision.

3.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

3.3.2.1 Land Reallocation, Land Readjustment

After the Second World War, the readjustment of agricultural land to improve the overall productivity was a major concern of the national and federal governments. A comprehensive legislation anchored in the constitutional law was developed to enable just and swift action. The introduction of the general spatial planning system and the adoption of zoning plans followed more than a decade later. In the first generation of zoning plans, especially building zones were demarcated generously. As the underlying agrarian plot structures tend to be not well suitable for building development, several states introduced the possibility to readjust parcels and plan for proper infrastructural development. Typically, more than 50% of the owners with more than 50% of the designated area for readjustment can apply for initiating such an operation. The demarcated area is declared to be a readjustment area limiting the rights of the property owners and introducing the obligation to acquire permits by the readjustment authority (selling, division, any changes to existing buildings, etc.). After the readjustment plan has been drafted, it is possible for the participants to accept it with a common agreement. Thereby they renounce the possibility to sue the readjustment authority. Otherwise, the authority has to issue a legal notice. As the landowners receive at the end of such a process a parcel that is well suited for development, they experience a certain betterment. This is partly captured in a non-monetary manner as all participants in such an operation have to contribute according to their share to the public infrastructure needed (typically roads and areas for local water retention and infiltration) for free. Nevertheless, such procedures do not calculate the actual value increase.[11]

3.3.2.2 Cooperative Development by Contracts

Since the 1990s, planning and urban contracts based on private law have gained momentum in the Austrian spatial planning regime. The first generation of such contracts was typically linked to zoning decisions as a mandatory prerequisite. This meant that, in addition to the rights and possibilities owners received through a zoning decision, certain conditions were

[9] General information via: oesterreich.gv.at, 2021.
[10] Russo, 2016.
[11] Gruber et al. 2018b, pp. 121f.

defined by contract. The Austrian Supreme Court lifted the legislation in the state of Salzburg concerning the causal link of such contracts and zoning decisions in 1999 due to a lack of equality of contracting parties. Municipalities now have, based on the state planning laws, the possibility to use planning contracts for example to ensure compliant development within a certain time span, agree on additional fees for infrastructural development or concede pre-emptive rights. Such contracts can only regulate matters defined by planning laws. This generally does not include the possibilities to capture planning gains.[12]

The most important anomaly concerning urban planning contracts is the city of Vienna, the capital of Austria and the only city with more than a million inhabitants. Vienna is at the same time a municipality and state and combines therefore many powers and duties. Interestingly, urban planning contracts were introduced only a few years ago.[13] Besides the established contents of such planning contracts, the Viennese regulation allows the agreement on additional services provided by developers in return for higher building densities or similar. The problem so far is the fact that there are no guidelines on how such contracts should be used for steering urban development, and there is no obligation to publish them. At the moment, such contracts are used to oblige developers to provide public infrastructure and/or some affordable dwellings, but the practice is opaque and not based on a consistent approach. Nevertheless, such contracts would hold a big potential to complement the planning system and establish public value capture on a project basis. Clear and transparent guidelines would be necessary to ensure an equal treatment of the projects.

3.4 Interim Conclusion for Austria

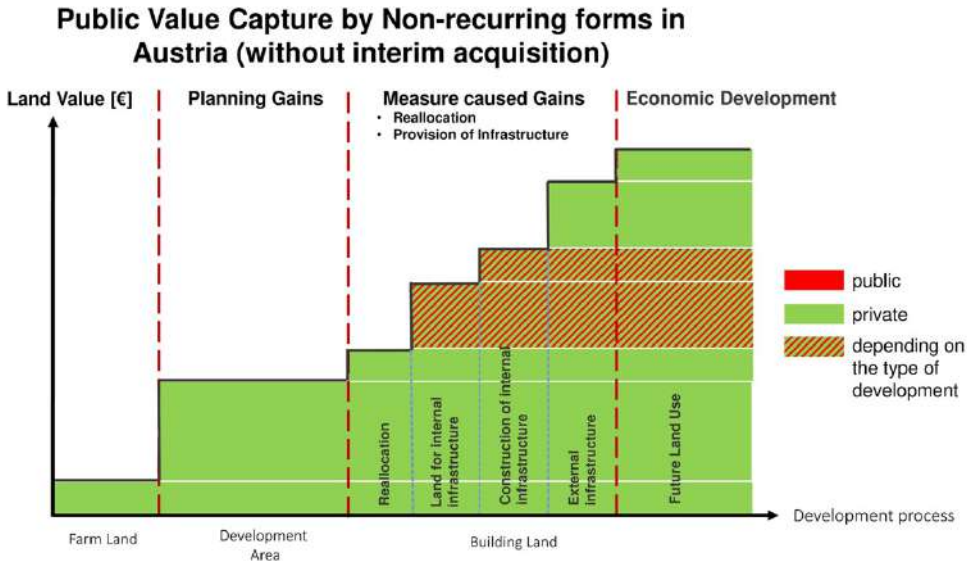

Figure 3.1: Public value capture by non-recurring forms in Austria.

[12] Kanonier 2020, pp. 123f.
[13] §1a WrBauO (Vienna Building Act).

Overall, general mechanisms to capture 'unearned increments' triggered by planning decisions or infrastructure investments in Austria do not exist so far. There is an established tax system when it comes to recurring forms of public value capture related taxes, with the real estate tax and the real estate transfer tax as a cornerstone of the municipal budgets. These are hardly sensitive to value increases/decreases. Anyhow, revenues from these taxes are not earmarked and can be used for any kind of public spending.

More important are non-recurring forms and here especially the real estate profit tax, which actually tackles the sales profit and captures typically 30% of it. Land readjustments do not play a major role in urban development. Private law urban planning contracts have the potential to be used to capture the public value, but also have some limitations.

Even though there does not exist an instrument that immediately captures planning gains from legally binding zoning decisions yet, this would be possible constitutional wise and there are also no fiscal regulations preventing an implementation.[14]

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[14] Schindelegger and Mayr 2021.

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4 Belgium

Jean-Marie Halleux and Peter Lacoere

4.1 Local Authorities and Planning System

Three main characteristics of the national context must be considered to appropriately apprehend the Belgian planning system. The first is that Belgium is a federal state composed of three regions: Dutch-speaking Flanders in the north (~6.6 million habitants), French-speaking Wallonia in the south (~3.6 million habitants) and Brussels in the centre (~1.2 million habitants), which is the federal capital and, officially, a bilingual region. Administratively, the regions of Flanders and Wallonia are both subdivided into five provinces. During the 1980s, the spatial planning competence was fully transferred from the national level to the regional level. In this domain, there are now three specific legislative and regulatory frameworks where most planning competencies are exercised jointly by the regional and by the municipal levels. In Flanders, the provincial level also plays an official role in the planning system.

The second characteristic of the Belgian situation relates to a cultural and political context where private property rights are very strong. In Belgium, public authorities usually consider they should not directly intervene in land markets. This situation can be explained by deep historical reasons and can be related to a weak planning tradition.[1] For instance, Belgium had to await the 1962 Planning Act to develop a proper planning legislation at the state level. In parallel, since the 19th century, the single detached family house and the owner-occupant status have been the cornerstone of housing policy.

The cultural and political context in favour of property rights must be related to the impact on planning of the compensation right for the loss in land values caused by land-use regulation. Indeed, due to the lobbying of land interests, the 1962 Planning Act included a clause on planning servitude.[2] With this clause, now included in the three regional legislations, public authorities must provide financial compensation to property owners if a zoning regulation introduces a new servitude, for example, a ban on building development whereas the construction was allowed before the regulation.

The third characteristic of the Belgian context relates to the importance of the instrument of the regional land-use plans (*plans de secteur* in French and *gewestplannen* in Dutch). In Belgium, regional land-use plans remain the most influential planning document. They are indeed the key reference to evaluate the granting of development permits. Following the 1962 Planning Act, 48 supra-local zoning plans covering the entirety of Belgium were implemented during the 1960s, 1970s and 1980s. In 1964, because of the mismanagement of planning, in most municipalities, the national authority took the initiative to prepare these supra-local zoning plans. This history explains why the regional authorities now have

1 De Decker 2005; Halleux et al. 2012.

2 Doucet 1985.

the competence for this instrument. This governance situation is quite specific as, in most countries, zoning plans are drawn up mainly by local authorities. Although in the three Belgian regions, local authorities also play a central role in the planning system. They can develop strategic master plans, and they have direct responsibility to evaluate the granting of development permits.

Regulatory zoning is at the heart of the regional land-use plans, in which the 'residential zones' that are legally available for housing developments are delimited. In many areas of Belgium, those residential zones were oversized, due notably to the clause on planning servitudes.[3] Indeed, planners were 'generous' in greenfield locations for residential development to avoid a ban on building development where the land could have been considered as 'building land' before the implementation of the land-use plan.

4.2 Recurring Forms of public value capture

4.2.1 Recurring Forms (Annual Payments)

4.2.1.1 General Observations

In Belgium, one finds three forms of annual payments related to immovable properties:

1. Annual property tax called *précompte immobilier* in French and *onroerende voorheffing* in Dutch;
2. Personal income tax, as land and property rental incomes are considered, besides incomes from movable property and employment incomes, for the general taxation on personal incomes;
3. Specific municipal taxes, notably on empty buildings or on non-developed building lands.

On the national scale, revenues from both the personal income tax and the specific municipal taxes are low. For the personal income tax, the low receivables are due to various exemptions. For instance, there are no such taxes on the main residences. By contrast, the main residence is taxed through the annual property tax instrument. In terms of revenues, this tax is by far the most important Belgian recurrent tax on immovable property. It is therefore explained below in more detail.

4.2.1.2 Property Tax

The property tax represented € 5,326.3 million for the whole of Belgium in 2019. This represents 1.2% of GDP and 3.9% of all tax revenue in the country.[4]

[3] Haumont 1990.

[4] Federal Public Service Finance 2019, p. 15.

The Belgian land and property tax system is based on the cadastral income (*revenu cadastral* in French and *kadastraal inkomen* in Dutch). A cadastral income is associated with any landed property in the country. It represents the tax base for both the personal income tax and the specific property tax. The cadastral income is established by the National Ministry of Finance (Federal Public Service Finance or FPS Finance). It represents a fictitious income corresponding to the market rental value of the property. For constructions, the cadastral income considers together the value of the buildings and the land value. It does not operate through a split-rate, which would allow to tax the value of land at a higher rate than structures built upon that land.

The property tax represents a percentage of the cadastral income. Although this tax is based on the cadastral income established at the national level, it is a regional tax that beneficiates the budgets of the three regions. This results from an evolution where the property tax was created at the national level before being transferred to the three regions.

The regional taxation level is low, but the provinces and municipalities define their own percentages in addition to the regional percentage. The property tax is, above all, a stable and important source of income for both the provinces and the municipalities. Most of the related revenues are received by municipalities (approximatively 70%).

4.2.2 Recurring Forms (in Case of Sale/Purchase)

4.2.2.1 Real Estate Transfer Tax – Registration Fee

In Belgium, the main transfer tax (97.5% of the incomes related to the transfer of immovable properties) is called *droit d'enregistrement* in French and *regis-tratierechten* in Dutch. It can be translated as a registration fee. As with the property tax, registration fees represent significant revenues for the budgets of the public authorities. In 2019, this revenue represented € 5,069.3 million (1.2% of GDP – 3.7% of all tax revenue).[5] Like the property tax, the registration fee was created at the national level and then transferred to the three regions.

Regional governments (Flanders, Wallonia, Brussels) are responsible for setting the rates for the registration fees. Compared to other countries, registration fees are high: 12.5% of the transaction in Wallonia and Brussels and 10% in Flanders. Although various possibilities exist to limit the fee. In Flanders, the rate is only 6% for the main residence. Flanders has also organised a system of transferable tax: If you buy another main residence and sell the first one, you only pay the difference between the new tax and the initial one. This report system aims to encourage residential mobility. In Wallonia, the tax rate is 6% for main residences of low value. In Brussels, a tax allowance is possible on € 175,000 under specific conditions (the property value must be below € 500,000 and the dwelling must be occupied as the main residence for at least 5 years).

[5] Federal Public Service Finance 2019, p. 175.

4.2.2.2 Capital Gains Tax

The Belgian fiscal system includes a specific tax for capital gains on immovable properties. This tax, which is regulated at the federal level, is applied when the sale is realized shortly after the acquisition. Its underlying philosophy is therefore to limit 'speculation'. The following tax rates are prescribed:

- 16.5% for an immovable that is built within 5 years of acquisition;
- 33% for land not built within 5 years of acquisition and 16.5% between 5 years and 8 years of acquisition.

A recent analysis of the capital gains tax in Belgium showed that the revenues from this tax are insignificant.[6] This can be explained by the possibility to escape the tax simply by waiting the 8-year period.

4.3 Non-recurring Forms of public value capture

4.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

4.3.1.1 Refund Tax and Urbanisation Tax Related to Infrastructure Works

If there is a public improvement that benefits adjacent parcels of land, municipalities can use two techniques to ask for a contribution to the beneficiary property owners:

1. A tax for the recovery of real costs. It is called 'refund tax' and can be considered as a betterment contribution (one-time charge);
2. An annual flat rate tax. It is called 'urbanisation tax' and can be considered a special assessment (a recurrent charge over a period of years).

In practice, those techniques are used to finance basic infrastructures related to road works (local roads), pavements (sidewalks) or sewers. Therefore, the payment of both taxes is only required by the adjacent owners of the road that is the subject of the work.

Refund and urbanisation taxes are a mandatory levy by a local authority on a person's financial resources for the remuneration of a service rendered (construction, road layout, earthworks). Municipalities are free to choose how the tax is calculated, provided there is an "apparent and reasonable relationship between the tax and the works, particularly between the expenses that this work ensconced and the resulting benefit" (Belgian Council of State, judgement of 26 April 1983). Municipalities must therefore be able to justify their actual costs. The municipality that has developed an infrastructure without claiming a refund tax from the adjacent owners at the time of construction can impose an annual urbanisation tax.

As mentioned, the refund tax amount should be based on the expenses of the related work. To our knowledge, there is no representative information on the actual levels of taxation applied by the municipalities. Although it is likely that, in most cases, the tax level is lower than the actual cost of the related work.

[6] Houchard 2016, p. 46.

4.3.1.2 Taxes on Planning Gains

A regional tax on gains related to land use regulation exists in both Flanders and Wallonia. The applied rationale in both regions is that a tax must be paid when non-building land becomes building land in the land-use plan. The contribution therefore applies if a public authority decides to rezone an area. On the other hand, no procedure exists if a public authority decides to allow higher density without rezoning. The fact that a similar tax does not exist in the Brussels Capital Region can be easily explained. Indeed, most of the Brussels regional territory is physically urbanised, and there is no significant land reserve that could be rezoned from non-building land to building land. However, this situation does not prevent the Brussels Region from providing legislation that would require contributions for density bonuses, i.e. in exchange for additional development rights through higher density.

For Wallonia, the legal basis for the regional tax on planning gains is the Walloon planning code. This regional tax was introduced in 2017, and, to our knowledge, it has been applied only once (in the context of an animal park). For Flanders, the legal basis is the Flemish planning code. The regional tax for Flanders was introduced in 2009, but it appears that it has not (yet) generated much income. For the whole of Flanders, € 31,620,000 would have been taxed during the 2009–2017 period. This corresponds to an average tax rate of 1.7% on a global gain of € 1,860,000,000. This represents an annual average of € 3,952,500.[7]

It is only very recently that the regional Walloon and Flemish taxes on planning gains have been introduced, even though this topic has been discussed since the 1960s, as a logical counterpart of compensation for decreases in values due to planning regulation. Belgium is marked by a cultural and political context where private property rights are very strong. Consequently, as mentioned in Section 1, the principle of compensating for decreases in land values due to planning regulation was introduced as early as 1962 in the planning legislation.

Neither in Flanders nor in Wallonia can the introduction of those new taxes on planning gains be explained by the philosophical or political objective to capture an 'unearned increment' from land-use planning. In fact, the justification is financial, with the aim of generating revenues that could finance compensation for decreases in land values related to planning regulation.

As also mentioned in Section 1, the application of the principle to compensate for decreases in land values due to planning regulation explains why, in many parts of the country, one finds an overabundance of building land in the old regional land-use plans (*plans de secteur* in French and *gewestplannen* in Dutch). At the present time, this represents a main blockage to meeting the planning objective of land-take reduction that is put forward by both the Flemish and the Walloon regional governments. The objective of limiting land take and urban sprawl therefore requires compensating landowners if designated areas for residential development must be rezoned into non-building land. It is in this perspective that the taxes on planning gains have been implemented. However, in practice, financing compensation

[7] Source: https://cartoon-productions.be/hoeveel-is-uw-grond-waard-bij-een-bestemmingswijziging/ (last visit 10/04/2021).

through taxation cannot actually be operationalised, as taxation rates are significantly lower than compensation rates! Once again, the cultural and political context in favour of private property rights must be mentioned to explain such an incongruous situation.

4.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

4.3.2.1 Urban Planning Charges and Urban Planning Conditions

The instrument 'urban planning charge' is called *charge d'urbanisme* in French and *stedenbouwkundige lasten* in Dutch. This instrument exists in the three regional legislations. Although there are differences between the three legislations, the basic principles are the same.

Urban planning 'charges' and urban planning 'conditions' are contributions that public authorities require from developers to deliver building permits. Therefore, they can be considered developer obligations. Urban planning conditions are considered 'necessary' for the feasibility of the development project. Construction work (roads, sewage, etc.) is usually included in the conditions. Besides conditions, local authorities can impose 'charges' to compensate for the impact that the project imposes on the community. The legal distinction between 'charges' and 'conditions' exists in Flanders and Wallonia. In Brussels, the legislation only refers to the notion of 'charge'.

The instrument of urban planning charge was integrated into the 1962 National Planning Act. In the context of the 1962 legislation, this instrument was justified by problems of road servicing, with the fact that urban and property developments were not always sufficiently equipped. Such situations were denounced by the preparatory parliamentary activities of the 1962 Planning Act, where it was mentioned that, "due to inadequate land servicing, the municipal authorities are forced to carry out expensive work at the community's expense in order to remedy those problematic situations" (my translation of the parliamentary activities). Initially, 'urban planning charges' therefore used to correspond to what is now called 'urban planning conditions'.

Considering the context of the 1962 legislation leads to pinpoint that urban planning charges aimed to finance similar equipment than the refund and urbanisation taxes described above (cf. Section 2.1.1), i.e. basic infrastructures related to roads, pavements or sewages. A fundamental difference between the two kinds of instruments was that charges had to be be paid by developers to obtain development approvals, while refund and urbanisation taxes are paid by landowners.

Since the 1990s, urban planning charges have been more and more widely used by municipalities, with an increasingly diverse range of developer obligations, including affordable housing. Urban planning charges related to the construction of affordable units seem to be quite common in Brussels and in Flanders. In Wallonia, where land and property prices are lower, such urban planning charges can also be imposed, but less frequently than in the two other regions.

The increasing use of urban planning charges can be explained by the conjunction of increasing public budget constraints and increasing property prices. The rise in property values, particularly strong in Belgium between the 1990s and 2008, was clearly higher than the inflation in construction costs. This has created new margins in land value, and many municipalities have sought to indirectly benefit from it. This trend has led to the legal differentiation between 'charges' and 'conditions'. This differentiation was introduced in 2009 in Flanders and in 2017 in Wallonia.

The financial information about urban planning charges and conditions is opaque. At the national scale, we cannot rely on any reliable data to estimate the related revenues. In Brussels, the legislation obliges to provide a register on the urban planning charges. Although, in practice, the register simply does not exist. For the City of Namur, with a population of ~110,000 inhabitants, we know from an informal source that annual urban planning charges represent ~ € 3 million. For the whole of Belgium, to apply a similar ratio income/population would result in a figure of € 300 million. However, this estimate cannot be considered a robust one. On the one hand, it is based on informal data, and, on the other hand, we cannot consider that Namur is representative of the whole country.

4.4 Interim Conclusion for Belgium

The overview of public value capture 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. By contrast, other instruments remain marginal in terms of public finance. Even though, during the last 20 years, we have seen a more frequent use of urban planning charges and conditions. However, compared to the above-mentioned instruments, the related incomes remain much lower.

As illustrated by Figure 1, planning gains provide low public revenues. This results from the very recent implementation of the two regional taxes on planning gains. In fact, due to the history of the regional land-use plans (cf. Section 2.1), most building lands in Belgium have not been the subject of this tax.

The analysis of Figure 1 leads to return to both, urban planning charges and urban planning conditions. Using those instruments can help to capture gains related to the development of infrastructure (including through the use of the required land). As mentioned above, financial information about urban planning charges and conditions is opaque. As a consequence, we cannot seriously evaluate the proportion of the land value increase that is captured through those instruments. However, as illustrated by Figure 1, we can consider that this proportion is lower for external infrastructure than for internal infrastructure.

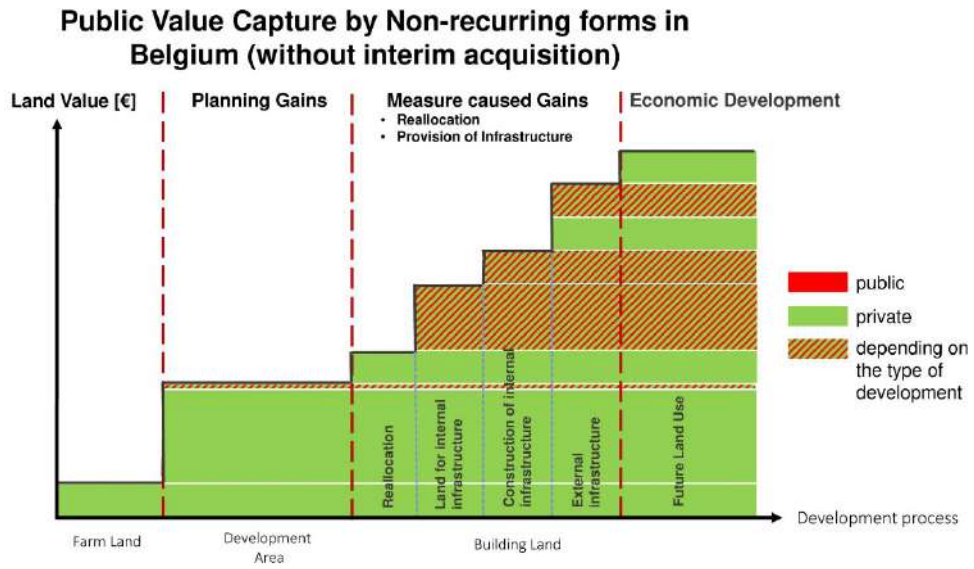

Figure 4.1: Value capture in Belgium.

Our overview of public 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 or public investments. In fact, it seems that this idea of a possible 'unearned increment' is unfamiliar to most Belgian stakeholders and decision makers. The fact that the property tax instrument does not make any difference between the value coming from the land and the value coming from the construction is also illustrative of a cultural context where land remains considered and treated as a 'normal' commodity.

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5 Bosnia and Herzegovina

Nataša Simeunović and Jelena Manojlović

5.1 Local Authorities and Planning System

Bosnia and Herzegovina is a complex state that consists of two entities – the Federation of Bosnia and Herzegovina and Republic of Srpska – and Brčko District. In addition to that, the Federation of Bosnia and Herzegovina consists of ten cantons. At the entity level as well as at the Brčko District level, there is a legislative, judicial and executive authority.

Due to its specific (unique) form of state system, or should we say political structure, the laws are mostly being delivered for every political subdivision, but in most cases, they are mutually harmonized.

The Tax Administration is organized based on the structure of governance. At the country level, there is the Indirect Taxation Authority, which is responsible for VAT collection. At the entity level, there are tax administrations whose jurisdiction includes 'direct' taxes (corporation tax, income tax, property tax, personal income tax/social security contributions, real estate tax, etc.). For the purpose of this research, we will refer mostly to the legislative of Republic of Srpska (RS) comparing with regulations of Federation of Bosnia and Herzegovina (FB&H) and Brčko District (BD) in the most important points.

The Law on Spatial Planning and Construction of the RS[1] stipulates that the Government and the National Assembly of the Republic of Srpska as well as the assemblies of local self-government units are responsible for spatial planning in the Republic. Planning is done by adopting spatial planning documents and other documents and regulations determined by this law. These are acts that are passed depending on the nature and the character of the area for which it is drafted.

The main documents of spatial planning are divided in two levels, entity level and local self-government units' level. In this context, it is very important to find a balance between private and public interests. Especially in relation to the delimitation of the territory of local self-government units.

5.2 Recurring Forms of public value capture

The area of property taxation in B&H is regulated by the Law on Real Estate Tax[2] and Income Tax Law[3] for the area of Republic of Srpska and by property tax laws for each canton of Federation of B&H followed by the Income Tax Law of FB&H[4] delivered on entity level.

1 Official Gazette of RS, no. 40/13, 2/15, 106/15, 3/16, 104/18 and 84/19).
2 Official Gazette of RS, no. 91/15.
3 Official Gazette of RS, no. 60/15, 05/16, 66/18, 105/19, 123/20 and 49/21.
4 Official Gazette of the Federation of B&H, no. 10/08, 9/10, 44/11, 7/13 and 65/13.

According to the property tax laws of B&H, there are two recurring forms of property taxation in Bosnia and Herzegovina: the real estate tax and the property income tax (a tax on income from renting immobile property object). Additionally, as the third form, defined by the income tax laws, is the capital gains tax, which has to be paid in case of sale/purchase.

5.2.1 Recurring Forms (Annual Payments)

5.2.1.1 Real Estate Tax

The real estate tax, i.e. the property tax in B&H, is regulated by laws at the level of cantons in the Federation of B&H, at the level of the entities of the Republic of Srpska and Brčko District.

According to the property tax laws of B&H, a taxpayer of real estate tax is the owner of real estate. In the case of co-ownership and joint ownership of real estate, each co-owner and each joint owner is a taxpayer, in proportion to the ownership share. Also, if the owner of the real estate cannot be determined or found, the taxpayer is a person who uses the real estate on any basis.

Furthermore, Article 3 of the Law on Real Estate Tax in RS defines that real estates in the Republic of Srpska are subject to taxation except the ones that are exempt from taxation in accordance with this Law. As well, Article 4 of the same Act defines the tax base for the calculation of taxes on real estate, which represents an estimated market value of real estate for each tax year on 31 December of the previous year, considering the characteristics of real estate registered with the Tax Administration. For each characteristic of real estate, the Tax Administration determines the value of the coefficient by which the correction of its market value is made. According to the entity law, municipalities are competent to

1. submit, by the end of January each year, to the Tax Administration of the RS records on the value of each property that can be identified as immovable property according to the law;
2. decide on the amount of the tax rate for taxable immovable property, i.e. real estate.

Real estate tax in RS is paid at a rate of up to 0.20%. Exceptionally from the previous, the tax rate for real estate in which the production activity is directly performed is up to 0.10%.

In the RS, the Real Estate Tax Law has predicted categories for exemption or reduction of the amount of property tax, and this applies to the owner of the property for living sized up to 50 m² plus for each additional household member up to 10 m² but only for one real estate per owner. It is important to note that property tax relieves owners of the property under construction.

Property tax in the Federation of B&H is levied on property for rest and recreation, as well as business and residential buildings that are leased. Tax on own living space in FB&H is not paid.

5.2.1.2 Property Income Tax (Rent, Lease, etc.)

Revenues generated from property rights (rent, lease, etc.) are regulated by the Law on Income Tax of the Federation of B&H[5], and on an annual basis, this tax is paid in the amount of 10% on realized income deducted for 20% of its total in name of standardized expenses. In the Republic of Srpska, this form of tax is known as a capital income tax regulated by the Income Tax Law of RS.

The basis for taxation is the registration of real estate in the register maintained by the Tax Administration. However, when it comes to reporting and paying taxes on property income as well as property taxation, the situation is different. Evidently, many taxpayers do not declare income from property or pay the tax, even when they are obliged to do so by law. In addition, some taxpayers knowingly report smaller amounts of income from the property to pay less tax.

Furthermore, taxpayers have been found to avoid property taxes related to buildings or holiday and recreational objects by registering such property as their home and granting the property where they actually live to a close family member (spouse or children).

Yet another case is that the owners of leased housing avoid reporting and paying property and income taxes, exploiting legal procedures where the burden of proof lies with the Tax Administration. There is no law on the origin of property in the territory of Bosnia and Herzegovina. Often owners do not sign formal contracts with the tenants (citizens or foreigners), so the officials of the Tax Administration cannot obtain the personal data of the contractor or any other information regarding the contract, amount of payment, etc.[6]. Even if the Tax Administration succeeds in obtaining information about the contractors, they are usually given false information about the duration and costs of the lease (in most cases, it is stated that the tenant is allowed to stay in the property without a fee).

The Tax Administration conducts many activities by itself as well as cooperates with other departments and administrative services in order to collect information and identify taxpayers who avoid reporting and paying taxes.

5.2.2 Recurring Forms (in Case of Sale/Purchase)

5.2.2.1 Real Estate Transfer Tax

The real estate transfer tax should be paid if a real estate property changes owner.

In the Federation of B&H, real estate transfer tax is 5% and is regulated at the cantonal level by laws on tax on real estate and rights turnover. The specificity of these laws is that in all cantons of FB&H (except in the Canton of Sarajevo[7]), the person liable to pay this tax is the seller of real estate. Since January 2019, only in the Sarajevo Canton has the buyer been liable to pay this tax.

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5 Official Gazette of the Federation of B&H, no. 10/08, 9/10, 44/11, 7/13 and 65/13).

6 Tanović S., Haračić N. Center of Excellence in Finance, https://www.cef-see.org/property-taxation-in-bosnia-and-herzegovina-basic-characteristics-2016-04-25

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

Also, a very common question is whether VAT is paid when buying real estate. VAT is paid when buying real estate only in the case of the first acquisition of property[8]. If you buy an apartment from someone who has already lived in it, VAT is not calculated in that case. However, if the purchased property is sold within less than 3 years from the date of its purchase, additional capital gains tax must be paid on that sold property if the capital gain is realized.

Real estate sales tax in RS, such as the one in FB&H of 5%, does not exist. It is present only in the form of a capital gains tax, which will be explained in the next section.

Tax on inheritance and gifts is not applied in RS, but it exists in Federation of B&H deferred from canton to canton in the range from 2% up to 10%.

5.2.2.2 Capital Gains Tax

Capital gains tax refers to real estate transactions where the tax base represents a positive difference between the sale price of a right or property and its purchase value, which the taxpayer realises by selling, i.e. transferring in cash or non-monetary compensation, real rights to real estate, use rights and construction rights on construction land. The tax rate is 10%. It is important to note that this type of tax is not, by nature, a real estate transfer tax as in the case of the FB&H cantons explained in the previous section.

5.3 Non-recurring Forms of public value capture

5.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

5.3.1.1 Fee for the Construction of Infrastructure

The fee for the construction of infrastructure is determined at the level of local self-government units and includes the actual costs of preparing and equipping construction land, i.e. the actual costs of planned construction of communal and other infrastructure and arranging public areas according to the spatial planning implementation document, urban plan of the local self-government unit, calculated per square meter of usable area of the total planned facilities.

The arrangement of the construction plot on which the subject construction is performed is done by the investor at their own expense to the regulation line. The construction of communal and other infrastructure facilities that are planned in the investor's facility or cross their construction plot, and which are financed and built by the local self-government unit, is excluded from the previous one[9].

[8] Velić, L., Grgić, D. 2018, pp. 141–154.

[9] Law on Spatial Planning and Land Use at the level of the FB&H, Official Gazette of the Federation of B&H, no. 2/06, 72/07, 32/08, 4/10, 13/10 and 45/10 and Law on Spatial Planning and Construction of the RS, Official Gazette of RS, no. 40/13, 2/15, 106/15, 3/16, 104/18 and 84/19.

5.3.1.2 Tax or Levy on Planning Gains

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.

The amount of rent is determined as a percentage within the given ranges for individual zones of the average final construction price, which are, respectively, from the first to the sixth zone, from 6% to 1%.

In the part of the first zone that is determined as particularly suitable for construction and in which the communal infrastructure is fully built, the rent is additionally increased up to 20% as well as for facilities that may have a negative impact on the environment, natural values, and cultural and historical assets regardless of the zone.

In RS as well as FB&H, due to impairment and loss of agricultural land as a good of general interest, a fee is paid for changing the purpose of agricultural land. The investor pays a one-time fee, except in cases of exemption from payment of fees prescribed by the Law on Agricultural Land, respectively, for RS[10] as well as for FB&H[11].

In the territory of FB&H, the amount of compensation for temporary change of use of arable agricultural land is paid annually and cannot be less than 5% of the market value of that land on the day of application, and the amount of compensation for permanent change cannot be less than 20% of the market value of arable agricultural land on the day of application, and for individual housing construction 5% of the market value. The amount of compensation for permanent change of use of agricultural land may not be less than 100 times the cadastral income determined for that land and for temporary change may not be less than 10 times.

Funds from the collected fee are used for training and arranging agricultural lands that are degraded, neglected, of poorer quality or infertile, for repairing and improving soil fertility, for implementing anti-erosion measures and reclamation of agricultural land of lower quality, for the implementation of the consolidation procedure and for the implementation of the procedure for the allocation of agricultural land for lease.

5.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

5.3.2.1 Development According to General Urban Planning Legislation

Spatial and urban plans[12] are development, strategic, long-term spatial planning documents that define the basic goals and principles of development in space, and in the B&H are adopted for a planning period of up to 20 years. Exceptionally, they can be extended by a decision of the body responsible for its adoption for a maximum of 10 years, while the

[10] Official Gazette of RS, no. 93/06, 86/07, 14/10, 5/12 and 58/19 and Official Gazette of B&H, no. 16/20.

[11] Official Gazette of FB&H, no. 52/09.

[12] Law on Spatial Planning and Construction. Official Gazette of RS, no. 40/13, 2/15, 106/15, 3/16, 104/18 and 84/19 and Law on Spatial Planning and Land Use at the level of the Federation of Bosnia and Herzegovina Official Gazette of FB&H, no. 2/06, 72/07, 32/08, 4/10, 13/10 and 45/10.

Implementing Documents of Physical Planning are adopted for a planning period of up to 10 years, and are valid until it is amended or adopted, unless it contradicts a higher order spatial planning document.

Unlike RS, the B&H Federation regulates[13] the consolidation of agricultural and other lands. It represents a unique technical-legal measure which groups the land to create as large and regular land plots as possible in order to more economically cultivate and use the land and perform works on its arrangement in order to achieve general interest, all in accordance with spatial planning documentation.

Land consolidation presents an instrument to address the structural problems in agriculture characterized by small farm sizes and fragmentation of agricultural land. However, reparceling alone doesn't solve all of the problems. Land consolidation could be seen in the broader context of integrated local rural development as a tool for urban land adjustment.

The consolidation procedure does not affect the real rights of the owners, unlike the expropriation procedure, where the owners are permanently deprived or limited of the right of ownership[14] over their real estate with adequate compensation defined by the applicable regulations[15]. Both entities have special laws on the expropriation of real estate in the general interest.

Through land consolidation and expropriation procedures, the increase in the value of property belongs to the owners.

5.3.2.2 Cooperative Development by Urban Contracts

5.3.2.2.1 Contract Models

According to the Law on PPP of RS[16] as well as of the cantons of FB&H[17], there are two forms of cooperation between public and private partners. The first form is an institutional partnership which implies the joint formation of an economic entity through the role of capital of a public and private partner. The second form, which is much more present in practice, is based on contractual relations, where the private partner finances, builds or reconstructs, maintains or manages public infrastructure by providing services of public interest while charging for its services.

PPPs in B&H are primarily focused on the implementation of numerous infrastructure projects of importance to the citizens of B&H, such as highways, airports, schools, preschools, hospitals, landfills, energy facilities and the like.

The Law on Concessions of the RS[18] deals in detail with the issue of a contract between a public and private partner which can be concluded for a maximum period of up to 50 years,

[13] The Land Consolidation Act, Official Gazette of FB&H, no. 57/16.
[14] Real Rights Law, Official Gazette of RS, no. 124/08, 3/09, 58/09, 95/11, 60/15, 18/16, 107/19 and 1/21.
[15] Law on Expropriation, Official Gazette of FB&H, no. 70/07, 36/10, 25/12, 8/15 and 34/16 and Law on Expropriation, Official Gazette of RS, no. 112/06, 37/07, 66/08, 110/08, 106/10, 121/10, 2/15 and 79/15.
[16] Official Gazette of RS, no. 59/09, 63/11 and 68/20.
[17] Official Gazette of Sarajevo Canton, no. 27/11 and 16/17.
[18] Official Gazette of RS, no. 59/13 and 16/18.

whereby the private partner is obliged to pay the concession fee determined by the Law and the Contract. The fee consists of two parts: a monetary fee for the assigned right, which is paid once upon concluding the contract, and a concession fee for use, which is expressed as a percentage of the annual income generated by performing the concession activity or per unit of measure. Concession fees vary depending on the type of activity. A concession may be granted for the purpose of providing the construction of infrastructure and/or services for the exploitation of natural resources.

Given that PPP in B&H is relatively in its infancy compared to the global level, public-private partnership is a desirable form of cooperation between the government and the private sector which would significantly contribute to the modernization of existing infrastructure and public services, but also new investments. PPP is a good alternative to credit borrowing because it reduces the need to finance capital investments through loans, which contributes to reducing public debt and, on the other hand, the inflow of funds from foreign investments, with additional increases in public revenues.

Unfortunately, due to the complexity of procedures and lack of understanding of the PPP concept in Bosnia and Herzegovina[19], we often have a wrong choice of PPP models, poorly structured and financially unjustified PPP projects, which leads to the lack of significant results in this area.

5.4 Interim Conclusion for Bosnia and Herzegovina

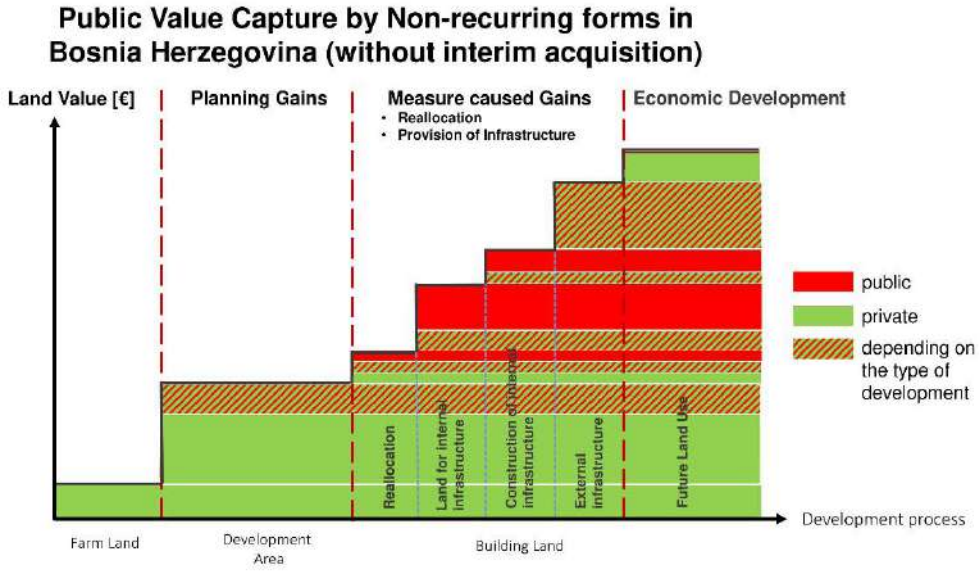

Figure 5.1: Value capture in Bosnia and Herzegovina.

[19] Amović, G.; Maksimović, R.; Bunčić, S. Critical Success Factors for Sustainable Public-Private Partnership (PPP) in Transition Conditions: An Empirical Study in Bosnia and Herzegovina. Sustainability 2020, Vol. 12, 7121.

By analyzing the situation in B&H, it could be concluded that there exists, defined by laws, several recurring and non-recurring forms of PVC instruments, but the question is which of them is really implemented and can they, as such, capture the increase in the value in whole.

When looking into the budget of the second largest municipality of RS, it could be concluded that the most significant among the recurring forms is real estate tax that contributes with 15.14% in 2019 and 12.02% in 2020.

Among the non-recurring forms of PVC, the compensation for the costs of arranging the city construction land before obtaining the construction permit contributes 25.69% in 2020 compared to 2019 when it was 10.31% lower. The good realization of this income is a direct consequence of the intensified construction of residential and business facilities, which occurred due to the adoption of regulatory plans for the city area and giving investors the opportunity to pay land rent and fee for urban construction land in installments, although it was the period of impact of COVID-19 pandemic. Here, we should also mention the income from land rent and lease of buildings owned by the city, which in 2020 was represented by a significant 10.23%.

Taxes referred to the transfer of property rights are at the significantly lower level as well as the fees for given concessions (less than 1%) and tax or levy on planning gains that refers to the change of usage from agricultural or forest land to building land (approximately 2%).

In the last few years, this municipality made significant investments in arranging new plots of industrial zones, so the income from selling these plots was rather noticeable, especially in 2019 (6.21%).

According to everything abovementioned, there is wide space open for the implementation of new models of PVC in Bosnia and Herzegovina.

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6 Bulgaria

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6.1 Local Authorities and Planning System

The legal framework of the real estate planning and development in Bulgaria is provided by a system of separate laws, each of which regulates respective specific aspects. Such acts are the Law on Administrative Territorial Structure of the Republic of Bulgaria; the Law on Cadastre and Land Registry; the Ownership Act; the State Property Act; the Municipal Property Act; the Law on Property and Use of Agricultural Land; the Law on Forestry, etc. (some of which extended by the so-called 'Regulation on Implementation' instruction). The most general treatment of the planning system at the national and regional level is provided by the Regional Development Act (RDA), which regulates the programming, management, resource provision, control and assessment of the "implementation of the strategies, plans and programmes for conducting the state regional development policy" (RDA, Art. 1).

A key role in the management of real estate development processes plays the cadastral authority (Agency of Geodesy, Cartography and Cadastre of the Ministry of Regional Development and Urban Development), which maintains core maps and datasets on real estate properties: legal boundaries of administrative-territorial units, land plots within a unit, landed properties, buildings, etc., and property rights on real estate objects. These maps and databases provide information for the maintenance of the Land Registry, real estate development plans and investment projects in general.

According to the Regional Development Act, any owner may organize construction activity on the land plot on the basis of 'development plan'. The latter needs to be submitted to and approved by a local authority – typically, a municipal architectural unit or the mayor. In cases of more complicated large-scale plans, approval is needed by the Regional Governor or, ultimately, the Minister of Regional Development. This development plan should define in an itemized way the land plot description, financing, construction details (e.g. building type and height, the maximum density and intensity, etc.) as well as the 'greening' components of this plan.

6.2 Recurring Forms of public value capture

As recurring forms in Bulgaria can be identified: real estate (immobile property) tax; real estate transfer taxes; capital gains tax. The latter of these is integrated into the personal income taxation and is not part of the local taxation sources.

6.2.1 Recurring Forms (Annual Payments)

6.2.1.1 Real Estate Tax (Immovable Property Tax)

This tax is regulated by the Local Taxes and Fees Act (LTFA) and is due by any individual or company that owns immovable property. It is levied on lots, buildings and parts of buildings positioned within the development limits of a settlement (including the so-called 'dispersed settlements'). Additionally, lots outside such development limits are subject to taxation if, under an approved site development plan, they have been assigned utilization according to RDA (e.g. for residential, public-services, manufacturing, storage, resort, country-house, sporting or recreational functions, for green spaces and landscaped links between green spaces and nature-conservation areas, for decorative water features, for public access and transport, including bicycle paths and for movement of people with disabilities, etc.)[1]. Agricultural land areas and forests are excluded from this taxation, except plots of 'developed land'.

The tax base of both residential and non-residential property is determined as 'tax assessed value' of the immovable property. The local government maintains a database of immovable properties allocated on the municipal territory as well as the taxable persons. Tax assessment values are periodically re-evaluated according to LTFA, including the taxable amounts of residential properties owned by enterprises. This amount for a non-residential property owned by an enterprise is the highest of (i) the book value and (ii) the tax assessed value, according to LTFA. From a public value capture point of view it is worth noting that taxation value assessment for corporeal immovable property is multidimensional – it may depend on the property type, its area, structure, and degree of depreciation as well as its location and related circumstances.

The real estate tax is administered and collected by the municipal administration following a procedure provided by the Tax and Social-Insurance Procedure Code. The tax rates are determined by the respective Municipal Council, which may choose a rate between 0.1 and 4.5 per thousand BGN of the taxable value. If a property (dwelling) is the main residence of a taxpayer-physical person, then a 50% discount can be applied off the tax duty.

6.2.2 Recurring Forms (in Case of Sale/Purchase or Donation)

6.2.2.1 Real Estate Transfer Tax (Tax on Onerous Acquisition of Property/

The transfer tax is also regulated by LTFA and is levied on any commercial exchange of immovable property. Its rate is set by the Municipal Council, taking into account the circumstances of the area where the object is located, choosing a figure between 0.1% and 3%. The transfer tax is based on the property value where the larger one is selected between: (i) the tax assessment value of the object, as determined by the municipality according to Annex 2 of LTFA; (ii) the contracted price of the deal.

[1] Ministry of Finance of the Republic of Bulgaria, official website (Tax System; Immovable Property Tax) https://www.minfin.bg/en/778

Additionally to the transfer tax, two fees must be paid on the formalities of the deal at the notary's office[2]:

(1) Notary fee (based on a regulated Tariff annexed to the Notaries and Notary Activities Act) plus VAT;
(2) Land registry fee for registering the title deed at the Registry Agency, amounting to 0.1% of the declared 'material interest'.

6.2.2.2 Inheritance Tax

The inheritance tax is also regulated by LTFA and is levied on an individual when they inherit property located in Bulgaria or property situated abroad. Any debts of the decedent owner may reduce the taxable base. This base for the corporeal immovables within Bulgarian territory is determined by the tax assessed value of the property (according to LTFA). Other objects of taxation also fall in the scope of the inheritance tax, e.g. foreign currency deposits, precious metals, and securities; transport vehicles and movable properties; whole or partial ownership of enterprises or companies, etc.

The tax rates are determined by the Municipal Council within a range set by LTFA, e.g.:

(i) the first BGN 250,000 of the value is tax exempt;
(ii) for the excess amount over this threshold, tax rates are applied: 0.4–0.8% for siblings (children of siblings/; 3.3–6.6% for other heirs.

6.2.2.3 Gift (Donation) Tax

Another local levy is the gift tax imposed on properties donated or conveyed for no compensation. Exclusions of this tax are done when beneficiaries are the spouse or direct-line relatives of the benefactor, or for specific qualifying organizations defined by law (e.g. health, social, educational, or cultural institutions). The tax base for immovable properties is again the tax assessment value of the donated estate. Gift tax rates are determined by the municipalities within limits like the inheritance tax: 0.4–0.8% of the tax value of the property donated to siblings (or their children); 3.3–6.6% for donations to other beneficiaries.

6.2.2.4 Capital Gains Tax

Capital gains tax is incorporated into the personal income taxation regime in Bulgaria. According to the Personal Income Tax Act, additionally to the typical sources (e.g. employment or self-employment earnings), the taxable income of a resident individual includes also income from transfer of rights on property (movable or immovable) – income from renting of property or income accruing from the sale (exchange of immovable property). The tax value of the latter is determined by any positive difference between the selling price of the property and its acquisition cost. The PIT Act allows a deduction of 10% for any operational expenses incurred.

[2] Registry Agency: Taxes and Fees in Case of Purchase and Sale Transactions (http://property-in-bulgaria.bg/en/).

Such income is non-taxable in the cases of sale of:

i. one immovable housing property, if over 3 years have passed after the acquisition date;
ii. up to 2 immovable properties, or any number of agricultural or forest land plots, if there are over 5 years between the dates of acquisition and sale/exchange of these properties.

Anyway, these recurring forms are the major source of tax revenues for the local governments in Bulgaria. The share of immovable property tax in the total tax receipts is 33.5% on average for the period 2016–2020; this share for the real estate transfer tax is 29.6% (63.1% in total)[3]. In absolute terms, the revenue from both sources in 2020 amounts to € 346 million out of € 547 million total tax receipts of Bulgarian municipalities. However, this is an insignificant tax revenue source in the total tax receipts of the consolidated General Government (2.7% for 2020). Besides, if we take into account the substantial central grant to local governments[4] (as well as other local receipts) the share of these sources falls to about 7% of the total expenditures of municipalities for 2020.

6.3 Non-recurring Forms of public value capture

The development of infrastructures in Bulgaria is conducted by both the state (central government) and the municipal (local government) administrations. At these levels, this process is planned with the so-called General Site Development Plan established for each built-up area. For the capital city (Sofia) this General Plan needs to be passed through the National Parliament and is a subject of a special regulation. According to these General Site Development Plans, and the specific zones defined within them, the municipalities operate and develop the respective infrastructures – roads, sewage, electricity, water and gas supply systems, etc. This may be conducted by public companies or private ones commissioned by the respective government.

6.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

6.3.1.1 Private Development Plan

Non-reccuring forms for capturing value from private development plans are related to the different phases of the process of real estate development. Several kinds of administrative fees are required from private developers at different stages of the realization of the so-called 'Development Agreement'. Architectural project design must be approved by the respective municipal administration before commencement of any construction works[5] (i.e. the chief architect where the real estate is located). In some cases, 'Environmental Impact Assessment' is also needed for real estate projects.

[3] National Statistical Institute, Governments Finance Statistics, Taxes and social contributions by type and sub-sectors of General Government (ESA 2010), Sub-sector Local Government (S1313): https://nsi.bg/en/content/2427/sub-sector-local-government

[4] Ministry of Finance, Statistics, Data on State Budget: https://www.minfin.bg/en/statistics/18

[5] Invest Bulgaria Agency: Construction and building permits (https://investbg.government.bg/en).

In order to issue a Construction License (building permit), the municipal authority requires the developer to submit preliminary agreements with the local utility companies for providing water and electricity supply. In some cases, the realization of such 'extensions' to the existing infrastructures appears to be a long process, and connecting to them may become quite expensive. All costs incurred for this connecting are covered by the private developer. There is some regulation of this matter, and in some cases the supplying company (e.g. the electricity supplier) has no right to oblige the developer to construct the respective expensive external connection on its own account. In such a situation, the utility company 'disguises' the case in the following manner: The developer funds and builds the infrastructural extension, and when the time comes for the Authorization for Placing in Service (usage permission), the respective company formally 'buys-out' this additional infrastructure from the developer. In fact, the utility company pays nothing because simultaneously it charges a 'fee for connection' amounting to the same value. In reality, the developer transfers the infrastructural extension to the utility company without receiving a payment. In some cases, the costs for producing such infrastructural objects (electricity, water, central heating) may be shared among several developers operating in a neighborhood.

6.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

6.3.2.1 Implementation of Contiguous Projects

Even though this practice is not firmly regulated, the municipal authorities require (or stimulate) the developers to refresh an obsolete or construct a new infrastructural unit, for which the government itself does not have enough resources to accomplish. For example, a developer constructs a building on a site where the street does not have an asphalt covering and/or the adjacent pavements are seriously damaged or missing. The municipal administration 'advises' the developer to construct them on their account, for which they are provided with quick documentation processing and a range of other relaxations of the administrative burdens, until the ultimate approval of the finished building. Such practices exist also in cases when the developers receive some notifications to 'demonstrate social responsibility' before the respective neighborhood, for example, by building and granting the municipality of children playgrounds, small green park zones, low-scale parking facilities, etc. Another case for such non-recurring contiguous projects is the so-called 'compensatory grassing', which is legally regulated. This originates from the need of the developer to remove (cut off) definite trees from the construction site, however, consenting of the obligation to plant the same (or higher) number of trees elsewhere (suggested by the municipality). Usually the developer executes this entirely on their account and finally consigns the produced betterment to the municipality.

6.4 Interim Conclusion for Bulgaria

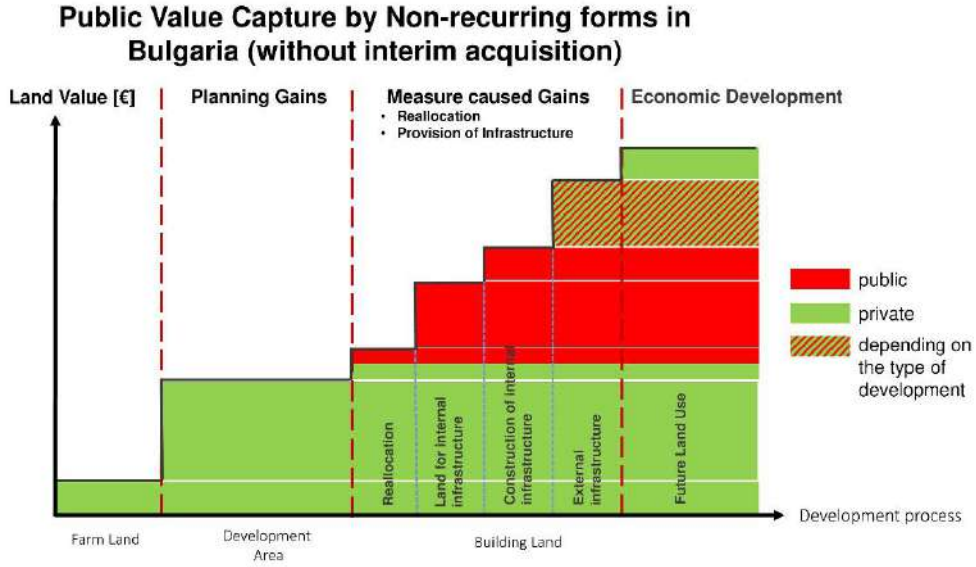

Figure 6.1: Value capture in Bulgaria.

Capturing any value increments incurred due to public investments in Bulgaria is generally based on the implementation of recurring forms like local taxation of immovable properties. This is also the major tool for capturing value increments from private investments and development projects, which happens typically by periodic re-assessment of the urban zones and property values for tax purposes done by local governments. Land value in Bulgaria also increases as a result of all sides' efforts: owners, developers, local and central government. All this induces opportunities for municipalities to increase local taxes and fees in order to 'catch-up' the overall economic development and to generate more adequate resources to the local society.

Since 2007, and even during the EU accession period before that, the major infrastructure development in the country was financed mainly by European Union structural funds augmented by circa 20% compulsory co-funding from the national budget (OPRD, 2015). No substantial burden is levied on private owners or developers with the purpose of partial recovering of the public funds invested.

Private developers are obliged to follow a detailed procedure from the emergence of investment idea to the finalization of the real estate object to be developed. During this process several types of state fees need to be paid to public authorities; however, these are much more of administrative character than of significant instruments for capturing the substantial amounts of European plus national public funds invested for the general development of the territory, public utilities, and national infrastructure.

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7 Croatia

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7.1 Local Authorities and Planning System

In late 2013, Croatia enacted a new Spatial Planning Act (Official Gazette, 2013) (amended in 2017, 2018 and 2019) and a new Construction Act (Official Gazette, 2013) (amended in 2017 and 2019), which are applicable as of 1 January 2014. As with many other laws, the changes to these laws were triggered by, inter alia, a requirement to align them with EU law, once Croatia became an EU Member State. The efficiency of spatial planning is ensured by the Croatian Parliament, the Government of the Republic of Croatia and the representative bodies of local and regional units by adopting spatial plans (Scharmann, Cibilic, 2020). The central institution dealing with physical planning is the Institute for Spatial Development, which is a part of the Ministry of Construction and Physical Planning. It is also worth noticing that Croatia is a maritime country. As a consequence, the maritime spatial planning is of great importance (Kovačić, Zekić, Rukavina, 2016).

Funding the public needs of local communities has undergone significant changes in the last 30 years. The central government has given some tax revenue to local communities through the process of fiscal decentralization. Nevertheless, despite that fact, local governments lack ways to raise sufficient funds to finance the growing needs of the community, because demands for financing public needs and infrastructure investments are increasing. In Croatia, public value capture as a form of public benefit does not exist. However, due to the budget deficit of most local governments, with the growing need for further development of local communities, this form can offer a solution for further urban development of local communities. Also, this model could serve as a source of funds for the implementation of quality reconstruction and static reinforcement of buildings damaged during last year's earthquake that hit the Croatian capital, Zagreb.

The first earthquake with a magnitude of M5.5 hit Zagreb, the capital of Croatia, in March 2020 and caused major damage to buldings in city centre. The damaged buildings in the city centre and suburbs suffered major damage primarily due to age and non-compliance with earthquake protection rules, but also due to the non-maintenance of infrastructure (Markušić et al. 2020). This unpredictable situation should be used as an incentive to consider future development and investment in property both publicly and private.

7.2 Recurring Forms of public value capture

Contemporary regulation in Croatia does not recognize capture value planning and recurring forms of public value capture and current regulation on taxation deserves further examination and improvements.

Generally, in Croatia there is neither a definition nor regulation by law of capturing planning gains. Croatian legislation in the area of property law follows German (Austria and

Germany) legal tradition with old land registers dating from the second half of 19th century based on Austrian and Italian tradition and measurement (land registers) for the most parts of today's Republic of Croatia (Kontrec 2010). After the Second World War, until 1990, Croatia was part of the Socialist Federative Republic of Yugoslavia and as such adopted the concept of collective property rights, i.e. all the land was owned by the state. That led to the situation where land registers were neglected, nationalization of real properties was conducted and social ownership prevailed over private ownership. The neglect of the land registers was caused by neglect of private ownership, since the land registers did not represent any relevant records, and the function of land registers was given to the cadastre or state administration (Kontrec 2010; Josipović 2016).

After declaring independence in 1991, Croatia started the process of returning to its civil law roots, which mainly meant the legal tradition that was known before the socialist time (Ziha, 2016).

Croatia does not apply property tax but has few forms of real estate taxation. The sale and purchase of real estate is, depending on its type and nature, subject to either real estate transfer tax (RETT) at the rate of 3% (reduced from 5% to 4% as of 1 January 2017; and reduced from 4% to 3% as of 1 January 2019) (Official Gazette, 2016), or value added tax (VAT) at the rate of 25% (Official Gazette, 2013). Transfer of construction land and transfer of buildings or their parts before the first occupation or use, or within 2 years of the first occupation or use to the next supply (including reconstructed buildings), are subject to VAT. Transfer of other buildings and agricultural land are VAT exempt and fall under the RETT regime, whereas any input VAT previously deducted needs to be corrected. For VAT-exempt supplies, the Value Added Tax Act (Official Gazette, 2013), however, allows an option to apply VAT, but only under the condition that the buyer is a VAT payer with the full right to input VAT deduction relating to that particular supply. The VAT option must be applied at the time of supply.

Real estate transfer tax applies when the seller is not a value added tax payer, irrespective of the type of real estate. Stamp duty is not due on the acquisition of real estate in Croatia.

7.2.1 Analysis of Real Estate Taxation Schemes for Value Capturing: The Case of Croatia

There are only three kinds of real estate taxes in Croatia: 1) inheritance and gifts tax, 2) real estate transfer tax, and 3) tax on vacation houses. Because the tax system of the Republic of Croatia is primarily oriented towards the taxation of consumption and the tax burden on labour is relatively high, real estate taxes are quite low.

Inheritance and Gifts Tax

A person who has to pay a tax is a natural or/and legal person (new owner) who inherits the property, receives as a gift or in other ways acquires assets without compensation which are subject to inheritance and gifts tax. The tax base is an amount of cash and market value of pecuniary claims and securities as well as movables on the date of tax assessment, following the deduction of debts and expenses related to the assets subject to the said tax. The tax

should be paid for cash, pecuniary claims and securities, and movables if individual market value amounts to more than HRK 50,000 on the date of tax assessment. The tax rate is 4%. The responsibility is on the central government.

Real Estate Transfer Tax

A taxpayer is a person who acquires real estate in the Republic of Croatia when such acquisition is exempt from value added tax (VAT). The tax base is the market value of the real estate now when the tax liability is incurred. The subject of taxation is the transfer of real estate. The acquisition of real estate excluded from VAT is not considered the transfer of real estate. The tax rate is 3% of the value of the real estate. The responsibility and power lie with the central government.

Tax on Vacation Houses

A taxpayer is a legal and private person who owns vacation houses. The tax base is per square meter of usable area. The rate ranges from 5 to 15 HRK. The responsibility and power are shared between the central and the local government.

7.2.2 Real Estate Revenues

As mentioned earlier in the text, real estate taxes are extremely low, and thus their total revenue share is almost negligible.

Any private person or legal entity may own real estate. In relation to foreign natural persons and legal entities there are, however, certain restrictions, namely, such persons may acquire ownership of real estate by inheritance or, with special consent from the Ministry of Justice, in both cases under condition of reciprocity. These rules do not apply to natural persons or legal entities from EU Member States, except in the case of agricultural land and protected natural areas.

Reciprocity is determined on a factual basis – meaning that a foreigner may acquire ownership over real estate in Croatia solely if Croatian citizens can do so in the country of the foreigner's citizenship and under the same conditions.

Additionally, a number of international retailers have established a presence on the Croatian market and are likely to continue to do so in the next year, as the government is enacting various tax measures aimed at increasing private spending.

7.3 Non-recurring Forms of public value capture

Non-recurring forms of public value capture are not in use in Croatia despite state ownership.

7.3.1 State Ownership

The Republic of Croatia is still the largest single owner of the property in Croatia. A special company was established by the state: 'Državene nekretnine d.o.o.' (State Real Estate LLC).

Državne nekretnine d.o.o. was established by the Republic of Croatia, and the company is in 100% ownership of the state.

The company manages apartments and business premises of commercial value, residential buildings and other real estate owned by the Republic of Croatia which have been transferred to the company for management by the Ministry of Physical Planning, Construction and State Property. The company is authorized to enter into all transactions related to the scope of business.

The Republic of Croatia manages more than 6,000 real estates, from which more than one quarter are commercial buildings with more than 137,860 m^2. The company manages more than 5,000 residential spaces at 108 locations in Croatia with more than 224,611 m^2. Additionally, the company manages state residences in Zagreb, Brijuni and island Hvar with more than 12,000 m^2, 400,000 m^2 of parks and 5,000 artefacts.

7.4 Interim Conclusion for Croatia

As stated previously, Croatian legislation in the area of property law follows German (Austrian and Germany) legal tradition. In Table 7.1 an overview of types of public value capture in Croatia is presented.

Table 7.1. Overview of Types of public value capture in Croatia.

Classification		**Croatia**
Recurring forms of public value capture	Annual payments	1;2;4
	In case of sale/purchase	1;4
Non-recurring forms of public value capture	Focusing on one factor	1;2
	Focusing on more than one factor	0

(1) Annual payments: 1 for personal income tax; 2 for specific municipal taxes; 4 for real estate taxation. In case of sale/purchase: 1 for capital gains tax; 4 for transfer tax.

(2) Focusing on one factor: 1 for taxation for rises in values due to planning regulation; 2 for refund and urbanisation taxes related to road works.

(3) Focusing on more than one factor: 0 for no instrument.

Like in Germany, the non-recurring forms are concentrated on land values and their increases (Figure 7.1). Private building activities or connection to utilities such as gas, electricity, water or telecommunication are not a part of the land price. Moreover, their financing is regulated by contracts between the property owner and private or public partners.

Planning gains remain with the landowner. If there exists a legally binding land-use plan, the consequential price growth forms part of the private property of the landowner. Also, the local authorities are generally allowed to intervene in the private property before the passing of the municipal planning.

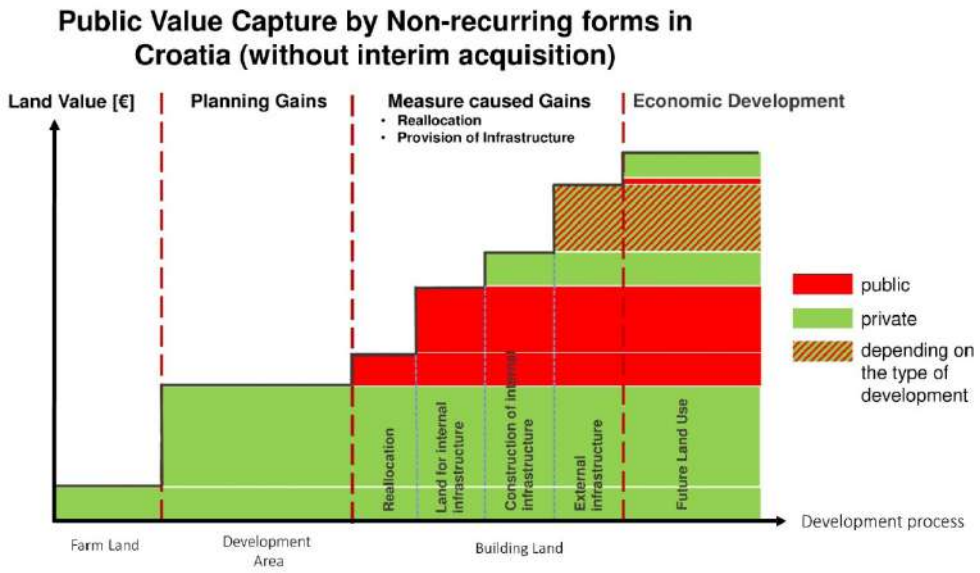

Figure 7.1: Value capture in Croatia.

Generally, in Croatia land consolidation is used for developing new building land. This instrument can be used only if there is a state (or local) interest. When describing the private interest, there is no legal instrument for consolidation. We can conclude that the level of this instrument depends on the investor. It can be used when the investor is a state or local government, but it doesn't exist when the investor is a private person.

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8 Czechia

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8.1 Local Authorities and Planning System

Czech land-use planning is defined by Building Act No. 183/2006 Coll. until 2023. Afterwards, a new law (Building Act No. 283/2021 Coll.) comes into force. The new law leaves the fundamental principles of planning untouched, but the opportunities for land value capture were changed as described below. As the new coalition established after 2021 elections claims that significant changes to the new law have to be undertaken, the future of Czech planning rules is rather unclear.

The planning process usually proceeds in the following steps: land-use plan approval, planning permission approval, and building permit approval. Land-use plans are initiated and approved by municipal authorities. They are created in accordance with many rather stringent laws and central state agencies directives. Thus, this central state guidance supports as well as constrains local planning. Land-use plans are prepared at a scale of 1:10,000, not enabling going into detail. They only define the type of future development without delineating the spatial structure of development, gross floor area of new development, public space or infrastructural needs. It is therefore not well suited for public value capture like defining obligations for developers, as the future use of the plots as well as infrastructural needs are still unclear. Municipal authorities might also initiate the creation of a more detailed plan called a regulatory plan, which is voluntary. Nevertheless, as they find the preparation of regulatory plans rather unfeasible within the Czech institutional context, regulatory plans are rarely implemented. Therefore, only land-use plans that are less detailed than regulatory plans guide most development and are first and usually at the same time the last planning stage in Czechia with political decision-making power. The rest of the development approval process is in the hands of public administration officers who, based on the limits defined by land-use plans, approve planning and building permits[1] of individual investors (MRDCR, 2019). Land-use plans are binding for their decision-making and enable obtaining planning permissions by landowners unconditionally after fulfilling law requirements. The opportunities for public value capture within these planning stages are thoroughly described below.

8.2 Recurring Forms of public value capture

Recurrent forms generally concern taxes on real property, which in Czechia include real estate tax and capital gains tax. The real estate tax accrues to, and its amount is influenced by, the municipality. However, income from this tax is relatively negligible compared to the centrally collected and redistributed revenue from shared taxes. About 1.3% of the total

[1] Planning permission stage verifies the possibility to place a particular building on a plot based on technical infrastructural needs (e.g. the connection of planned development to the road network), land-use plan requirements and other general regulations; within the building permission stage, technical details of planned development are checked with the support of a detailed technical documentation.

tax revenues of public budgets came from property taxes, including real estate tax, in 2019 (OECD, 2020). Capital gains tax accrues to the national budget and is related to income taxation.

8.2.1 Recurring Forms (Annual Payments)

8.2.1.1 Real Estate Tax

The real estate tax is based on Act No. 338/1992 Coll. It is necessary to stress that the Czech real estate tax is meagre and among the lowest within the OECD countries (OECD, 2020). Its low yield reflects the broader pattern of the lower significance of real estate taxes in transition countries (Janoušková and Sobotovičová, 2021). This tax made up 4% of municipal budgets in 2012 (Sedmihradská, 2013) and 0.6% of total national tax revenue in 2017 (Janoušková and Sobotovičová, 2021). Calculating the real estate tax amount for each property is a complex process. In the first step, it relies on fixed rates (e.g. amount of CZK per 1 m^2 of built-up area) or prices set by law (e.g. land prices set by law taxed by an annual rate of 0.75%) without any relation to market value. In the second step, the calculated amount is multiplied by a coefficient dependent on the number of inhabitants of the municipality in which real estate is located. These default coefficients can be largely decreased or slightly increased by the municipality.

Land and buildings are taxed as separate units, while the land is taxed at a lower fixed rate per square metre than the gross floor area of buildings. Commercial and industrial property is taxed at a higher fixed rate than residential property (probably due to the political feasibility of real estate taxation), and agricultural land and undeveloped land are taxed at a lower rate than residential property (Sedmihradská, 2013).

Although experts recommend calculation based on market value, its implementation is hindered by the financial and administrative demands of the valuation system (Janoušková and Sobotovičová, 2021).

The real estate tax does not play any role in the decision-making concerning the use of the property, as it is too low. Similarly, the possibilities of coefficients' adjustment given to municipalities do not significantly affect the total amount of real estate tax collected as they are rarely used (Janoušková and Sobotovičová, 2021).

8.2.2 Recurring Forms (in Case of Sale/Purchase)

8.2.2.1 Real Estate Transfer Tax

Real estate transfer tax applied on the property purchaser was abolished in 2020, whereas inheritance tax was abolished in 2014. The reason for abolishing transfer tax was, as explained by politicians, to support the real estate market affected by the Covid-19 pandemic. However, the abolition was not a temporary measure tied to the Covid-19-induced economic crisis.

8.2.2.2 Capital Gains Tax

The capital gains tax from sold real property is based on Act No. 586/1992 Coll. on income tax. The general income tax, covering also the income from capital gain, is determined at a 15% level (person's income in excess of 48 times the average wage is taxed at a 23% tax rate). The capital gains from the sale of real properties are tax exempted for individuals if the seller uses the revenue for buying another property for their own housing needs. Sales are also tax exempted after 10 years of ownership, or if the seller lived in real estate for more than 2 years before the sale.

8.3 Non-recurring Forms of public value capture

In this section, several non-recurrent forms of public value capture are discussed. Compared to recurrent forms, these rest on the discretion of local actors, which pose higher demands on the capacities and resources of local actors for their implementation.

8.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

8.3.1.1 Fee for Construction of Infrastructure

Act No. 565/1990 Coll. on local fees establishes the opportunity for the municipality to collect a fee from the owners of developable plots for the improvement of their property stemming from its connection to the water supply or sewerage system. The fee does not relate to any other type of infrastructure and is collected by the infrastructure provider, often the municipality. The fee must not exceed the difference between the price of land with and without the possibility of the connection to the waterworks or sewerage system. Its calculation is based on the developable land area, not on any other measure, such as gross floor area. The fee needs to be set by the municipality in a generally binding decree issued in the year of the final inspection of the construction at the latest.

8.3.1.2 Infrastructure Investments by Developers

Other relevant duties of investors follow Act No. 274/2001 Coll. on water lines and sewerage systems. This act states that if an investor requests connection to water lines or sewerage system, but this action would exceed this infrastructure's (clearly defined) capacity, the municipality is not obliged to accept the request. Many big investors invest in capacity enlargement themselves if they want to get planning permission (on the other hand, other investors in the same area can take advantage of these undertaken investments for free). The same principle stays within the area of transport infrastructure provision. In large cities, where private development necessitates the accommodation of the adjacent infrastructure (for instance, an increase of its capacity), the developer company is usually responsible for it; otherwise, it would not obtain the planning permit. In other circumstances, such as in the case of small investors, the connection to transport infrastructure is provided by the road owner without any conditions, which is on the local level the municipality usually. In fact, the public sector often pays for the connection of plots to transport infrastructure.

8.3.2 Non-recurring Forms (Focusing on More than One Factor of Value Increase)

8.3.2.1 Replotting

The Building Act (183/2006 Coll.) defines replotting (land readjustment or land reallocation, in other words), which focuses on adjusting land for new needs within a development area. The instrument was introduced by the amendment of the Building Act by Act No. 350/2012 Coll., which specifies that:

'*The land-use plan may define the area or corridor in which any changes in the area* [its development] *is conditioned by a contract with the owners of land and buildings that will be affected by the proposed plan, which must include approval of the plan and consent to the distribution of costs and benefits associated with its implementation*.'

The 'replotting agreement' specifies, for instance:

- the share of individual owners in the total value of land and buildings or the area of the territory concerned,
- the obligation of the owners to reduce their share by transferring a proportional part of the land necessary for the implementation of technical infrastructure,
- the obligation of the owners to tolerate a part of the technical infrastructure on their land,
- consent of the owners with the replotting intention,
- an agreement on property settlement if some owners lose their landownership by replotting or if the parcelling proposed in connection with the new land use does not allow them to maintain their share in the total value or acreage of the site.

As it is obvious from the list of demands that, for reaching the replotting agreement, resolving several potentially conflicting issues that affect property rights is necessary. In combination with the requirement of 100% consent of all owners in the area, this proved unrealistic in most cases. The ownership is often so fragmented that transaction costs of undertaking such a negotiating process with a high probability of not being approved in the end prevent from even trying it. After municipalities realised this was a dead-end, they relinquished conditioning the new development by 'replotting agreements'.

The new Building Act No. 283/2021 Coll. does not define the instrument replotting or land adjustment at all.

In addition to this instrument, there is a particular instrument to be used for farmland purposes only, based on Act No. 139/2002 Coll. on land consolidations. Land consolidation seems to be an absolute necessity as a legacy of socialism. During socialism, some farmland was developed or reorganised, some previous roads disappeared, and new ones were created. As properties were given back to previous owners before their nationalisation, the resultant property structure did not allow smooth farming. Compared to replotting, land consolidation functions well in terms of the number of projects finalised. However, this instrument cannot be considered a value capture instrument. The idea is to spatially and functionally organise farmland in the public interest and in the interest of the rational management of landowners' properties. The final objective is to ensure the accessibility and use of farmland. The law states that "*if it is necessary to set aside the necessary acreage of land for common facili-*

ties [e.g. technical infrastructure, or anti-erosion measures]*, land owned by the state and then owned by the municipality shall be used first*". The landowners have to receive a property in the same value (valued according to the criterion of land fertility, not the provision of infrastructure) as before, plus or minus 4%.

8.3.2.2 State Acquisition of Land

The instrument which enables the state to acquire property beyond private law contracts is based on Act No. 256/2013 Coll. on cadastre, which specifies that properties with unclear ownership rights whose owners do not use them and do not pay property tax will become state ownership. This issue is not rare due to discontinuity in property rights caused by socialism and later transition to the market economy (see above). The owners have a legally determined (see Act No. 89/2012, Civil code) period for claiming their ownership for such properties, which ends by the end of 2023. After that, a state agency (Office for Government Representation in Property Affairs) will acquire the property until it is sold to the highest bidder in a public auction. This instrument aims to unblock the development of neglected properties, be it for private or public investment. Since it is sold regardless of the intended use, the goal is not the active land-use planning and value capture.

8.3.2.3 Temporarily Restricted Property Rights

The possibility to restrict property rights temporarily is based on Act No. 283/2021 Coll. on building law (included also in the law No. 183/2006 Coll.). It concerns the temporary restriction (up to 6 years) of building activity in the delimited area until the new land-use plan is approved. It enables the municipality to restrict development when it exceeds public infrastructure capacity, and the solution requires new land-use regulation. It can be considered a supportive instrument for public infrastructure cost recovery in a later planning phase if the municipality utilises this phase for negotiating with local landowners.

8.3.2.4 Cooperative Development by Urban Contracts

The legal framework of the Building Act No. 183/2006 Coll. currently offers limited opportunities to utilise urban developer obligations for land value capture. Therefore, some municipalities try improvising in implementing some voluntary obligation models based on private law, which would allow them to grasp at least a small part of the land value increase caused by planning.

The Building Act 183/2006 Coll. mentions 'planning contracts' (§66) applied when the investor requests a regulatory plan. The investor requests a regulatory plan when the regulatory plan approval conditions the development of a particular area. The municipality has 1 year only for its approval; otherwise, this condition expires (§43), which is probably why municipalities rarely use this instrument. As a part of the preparation of the regulatory plan, the municipality can request signing a planning contract specifying a contribution of the investor for the construction of infrastructure. However, since this type of regulatory plan is rarely used, as are also planning contracts.

Furthermore, building law specifies (§88) which requirements can be imposed on the investor for planning approval by public authorities. Suppose the planned project necessitates the construction of additional technical and transport infrastructure outside the area proposed for development due to the lack of infrastructure capacities (such as a new capacity intersection, new capacity of water pipes network). In that case, the investor has to sign contracts with the owners of the infrastructure specifying the solution and usually covers the investment costs or provides the infrastructure on their own. This approach is much more often used than the planning contracts based on §66.

The binding land-use plan enables the obtainment of planning permission by landowners unconditionally, as specified in Section 3.1. The rest of the approval process concerns checking formal requirements for new construction by administration officers and ends with planning permits of individual investors. Municipal politicians have only the right to declare their statement towards the intended development, which is not binding for public officials. Although the decision of public administration should be politically independent, municipal politicians dominate over public officials as they can influence their employment status or financial bonuses (Feřtrová et al., 2013), which forms the basis for political influence over granting planning approval. The threat of hindering the process by local authorities leads to the willingness of developers to negotiate with them and to give a voluntary financial contribution to municipalities in return for the decrease of the risk of blocking development by them. Mostly, these voluntary contributions amount to € 20–80 per square meter gross floor area (Vejchodská and Hendricks, 2022).

The new law No. 283/2021 Coll. formalises planning contracts to be used more often for public infrastructure costs recovery, and removes the informal linkage between municipal politicians and employers of the building office by removing the delegated powers in the building approval process from the municipal office to the state. This step largely disables the functioning of the voluntary developer contribution schemes and seeks to enable the penetration of more formal obligations in the future. It even includes the possibility for the municipality to require in-kind or cash contributions from landowners for changes of land-use plan without which the development intention cannot be realised (the law limits neither the character nor the scope of these contributions). However, in situations without the need to change the land-use plan, the utilisation of planning contracts is limited. First, the land-use plan needs to specify places where development is conditioned by concluding a planning contract with the investor. Second, this condition is valid for 4 years only starting from the land-use plan approval. After this period, development can proceed without any obligations from the side of the investor. We can expect that the real effect of such planning contracts will primarily be the postponement of development rather than covering the costs of public infrastructural needs.

8.4 Interim Conclusion for Czechia

The paper reviewed the number of public value capture instruments recognised in Czech law or informally used in practice. The existing institutional context of planning in Czechia offers limited opportunities for land value capture, although some rather effective approaches

can be identified (for an overview of land value capture practice during the development process, please see Figure 8.1).

Mainly larger municipalities found ways how to force developers to pay for the technical infrastructure within their development areas and ways how to force them to increase the capacities of technical infrastructure, which is necessary for the realisation of their projects outside the development area. Beyond these requirements, some municipalities try to force investors to give 'voluntary' contributions to the municipal budget or pay for additional infrastructure on their own to create a good relationship between the developer and the municipality. However, these contributions are minor, matching municipalities' minimal negotiating power after the approval of the binding land-use plan.

The debate on possibilities for land value capture has recently intensified among experts and politicians (see, Vejchodská et al., 2019). Recent research indicates that various actors in land development, including municipal authorities and private developers, perceive the current situation in the public infrastructure provision as unsatisfactory. Municipal authorities miss better opportunities for public infrastructure provision, developers feel a lack of a predictable entrepreneurial environment and would welcome some new models of land value capture if they would provide them with a level playing field and a better relationship with the municipalities as well as the public (Vejchodská and Hendricks, 2022). The new law No. 283/2021 Coll. also tried to react to this demand, partly unsuccessfully, however (Felcman and Vejchodská, 2022). The continuing debate in Czechia on the effectiveness of value capture models provides confident hope for the improvement of Czech public value capture models in the years to come.

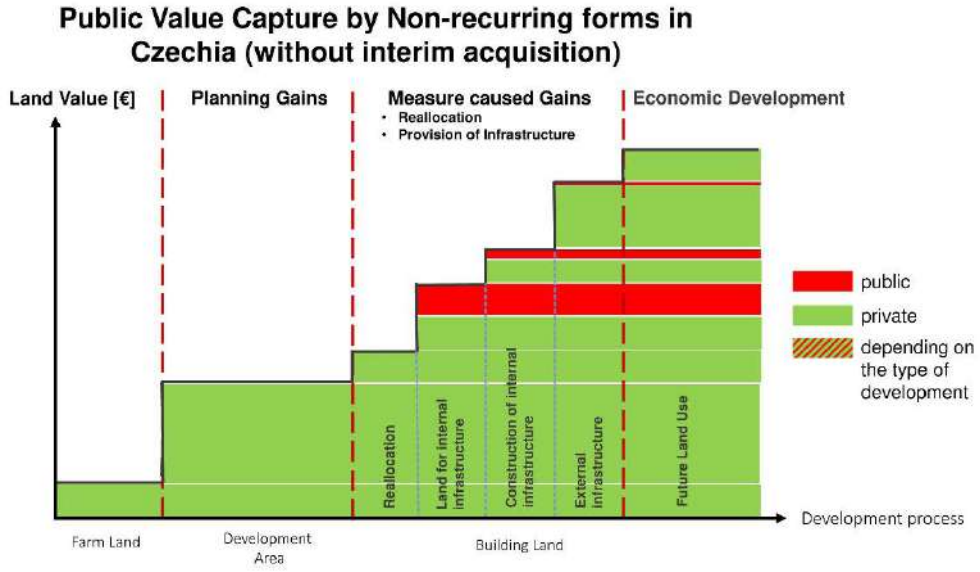

Figure 8.1: Value capture in CzechiaNote: The instrument of reallocation (land readjustment) does not apply in Czechia.

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9 Estonia

Elery Taimsaare and Evelin Jürgenson

9.1 Local Authorities and Planning System

Estonia is a parliamentary republic with a central government and local governments. There have been 79 local governments (15 cities and 64 rural municipalities) in Estonia since the administrative reform of 2017. Initially, in 1991, the number of local governments was 254 (Rahandusministeerium, 2019a; Rahandusministeerium, 2019b). All of them (cities and rural municipalities) have the same legal status.

According to the Estonian Planning Act, the organizer of planning activities is the Ministry of Finance, another government agency or a local government according to its competence (Planning Act, 2015, §4(1)). There are four types of spatial plans: national spatial plan, countywide spatial plan, comprehensive plan, detailed spatial plan (the organizer of last two is a local government). The plan of the higher level gives the directions, and lower levels specify these directions.

The national and countywide plans are prepared at the central government level by the Ministry of Finance and established by order of the Government of the Republic, and their purpose is to define the principles and directions of the state's spatial development (Planning Act, 2015, §13(3)(6), §24(1), §55(1)(4), §71(1)). Local governments have extensive planning autonomy to prepare comprehensive and detailed spatial plans for their territory and are responsible for land-use planning. The comprehensive plan determines the directions of land use, and a detailed spatial plan is prepared for a smaller part of the territory, and it provides a legal basis for the construction of new buildings, the extension of existing buildings, the division of land into plots and the change of property boundaries of existing plots (Planning Act, 2015, §74(8), §124(10)).

9.2 Recurring Forms of public value capture

In Estonia, the recurring forms of public value capture can be divided into land tax, real estate transfer tax and capital gains tax.

9.2.1 Recurring Forms (Annual Payments)

9.2.1.1 Land Tax

The land tax is a tax based on the taxable value of land (without buildings) (Land Tax Act, 1993, §1(1)). The taxable value of land is determined by a licenced land valuer, and the procedure for contestation is established according to the Land Valuation Act. The land tax is paid in full to the local government budget, and in 2020, the land tax revenue was around € 59 million (Statistics Estonia, 2021). The land tax makes up only about 3% of the local government budget, so the revenue from the land tax is not large enough to cover a sufficient

proportion of the infrastructure investments local governments have to make, nor the fixed costs the construction of infrastructure entails.

Land tax is imposed on all land on a yearly basis (there are some exceptions). The national government sets the land tax rate range (currently 0.1–2.5%), and the local government sets the specific tax rate. To assess the value of land for tax purposes, a mass valuation is used.

A mass valuation means a periodic valuation for taxation, and as a result, the value of land by zones and intended purposes or by land-use types is determined (Land Valuation Act, 1994, §5(1)(2)). The results of a mass valuation are prepared as maps of value zones and a list of the value of land by value zones and intended purposes. A mass valuation is carried out based on data in the database of transactions of the land register as of June 30 of the valuation year (Land Valuation Act, 1994, §5(1)(2)).

There have been three mass valuations in Estonia since 1991 (1993, 1996, 2001). Today, the land tax is based on the taxable land value determined in 2001, and it does not express the actual land value anymore. The Land Board has prepared for a new land valuation, and it is planned to be carried out in 2022 (Maa-amet, 2021). It can be expected that the new taxable value of land will influence the land tax further. Until now, the land tax has not worked as the tool of value capture because the taxable value did not reflect the betterments and rise of land value as well (Taimsaare, 2020). From now on, mass evaluations will take place regularly every 4 years. That allows changes in the value of land to be taken into account on time (Maa-amet, 2021), and then the land tax instrument can be connected to planning decisions and made investments and work as an efficient tool of value capture.

9.2.2 Recurring Forms (in Case of Sale/Purchase)

9.2.2.1 Real Estate Transfer Fees

When a real estate property changes owner, there are two fees for the transaction: the notary fee and the state fee (payable for land register acts). The Notary Fees Act and State Fees Act give the tax rates. Tax rates are based on the value of the property. However, it is not a consistent rate (%). It is divided into classes according to the property value.

These are only fees for a property transaction. Although they are based on the value of the property, they are not real estate transfer taxes. The income goes to the state budget, so these fees do not work as a tool of public value capture.

9.2.2.2 Capital Gains Tax

Capital gains tax must be paid on the received profit when selling a real estate property, with some exceptions (Income Tax Act, 2000, §15(1)(4)(5)). Gained value is the difference between the sale price of the property and the acquisition cost, less the costs directly related to the sale of the property. There is a fixed tax rate for capital gains taxes. The seller has to pay 20% of the gained value if they did not use the property as a dwelling. If two residences are sold in less than 2 years, the first transaction is tax-free, and the second transaction is taxed.

9.3 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 sources or share certain costs if the municipality makes a voluntary contract with a person interested in the development or the development's beneficiary (landowner, real estate developer, etc.).

9.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

9.3.1.1 Fee for Construction of Infrastructure

The conduct of development activities is regulated by the Local Government Organization Act, according to which the task of a local government is to organize spatial planning and construction of infrastructure if these tasks have not been assigned to someone else by law (Local Government Organization Act, 1993, §6(1)). According to the Planning Act, the authority that arranges the preparation of the detailed spatial plan is obligated, at its own expense, to complete the construction, according to the plan, of any public roads together with the related civil engineering works, vegetation, street lighting and technical infrastructure, unless the authority and the party interested in the preparation of the plan have agreed otherwise (Planning Act, 2015, §131(1)). However, the organizer of the preparation of the plan may enter into an administrative agreement with the person interested in the detailed plan, by which the interested person undertakes to bear all or part of the construction of the road and related facilities intended for the public use according to the detailed plan (Planning Act, 2015, § 130(1)). Usually, developers are required to develop the infrastructure (public roads, playgrounds, green areas, street lighting, water and sewage) and, upon completion, to hand over the transport and public land to the local government free of charge. However, sometimes developers must build schools or kindergartens or pay some amount of these costs. Developers agree to bear all or part of these development costs to obtain the necessary building permits (Taimsaare, 2020).

The Planning Act authorizes municipalities to enter a contract with the developer. However, it does not explicitly give the exactions or fees and does not define when and how developers can be charged. It means that every municipality can work out their own rules (Taimsaare, 2020).

9.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

9.3.2.1 Land Consolidation

If plots of land are not leveraged to their most efficient use, the land consolidation can be carried out. Land consolidation is regulated by the Land Consolidation Act. Public entities and private landowners can carry out a land readjustment project, but landowners must agree. After the readjustment of plots, landowners receive a plot with a value proportional to their original holdings. Landowners may be reallocated to different plots within the readjustment area. As there is only one valuation during the land consolidation process in Estonia, the landowner who gets a more valuable plot pays compensation to the person who gets the plot of lower value.

If sub-national governments pool and readjust plots, they need approval from the higher-level government. The local authority approves the plan and communicates it to all the parties. The plan may be implemented after it has been approved by the Land Board, state authority under the Ministry of Environment (Land Consolidation Act, 1995, §26[1](1)).

Typically, the plots are pooled or readjusted for farmland consolidation or providing railroads, highways and streets. In Estonia, there are no land readjustment projects in urban areas. There is only land consolidation; at least division and joining of immovable have been ordinary procedures.

9.3.2.2 Acquisition of Immovables in the Public Interest

The acquisition, including expropriation, of an immovable in the public interest means acquiring the immovable in general public interests for fair and immediate compensation (Acquisition of Immovables in Public Interest Act, 2018, §2(1)(2)). An immovable is acquired by agreement with the owner or, where no agreement is reached with the owner, expropriated. The establishment of compulsory possession means the encumbrance of an immovable with an immovable property ownership restriction that substantively corresponds to a personal right of use (Acquisition of Immovables in Public Interest Act, 2018, §2(1)(2)).

In some countries, the public body (national government, municipality) strategically acquires land to develop it and eventually to lease or sell it. That kind of strategic land banking can work as a value capture tool, since the value of the land increases as a result of the development activities and the money invested is returned when the land is sold. In Estonia, land and other real property are typically acquired only for new infrastructure (railroad, roads, streets) and other public services (schools, kindergartens). The public body (national government, municipality) does not generally act as a developer. Private developers develop the land and sometimes get some financial support from a municipality to implement public spaces, for instance, streets. After the streets are implemented the constructions and land (separate property) are given over to the municipality ownership. It is possible to acquire land needed for public purposes, so it stays in the hand of the public body (Taimsaare, 2020).

9.3.2.3 Public Land Lease

Public entities can grant private and public entities the right to occupy, improve and use publicly owned land for a specific period of time in exchange for rent to generate public revenues, facilitate development with a public purpose (e.g. affordable and social housing) or facilitate planned urban growth and development. As a leasing contract is also one kind of contract, it is possible to make agreements between the leaser and lessee which treat the length of the leasing contract and payment or reduce the payment according to the lessee's scope or (additional) activity. The right of superficies is used for the constructions permanently attached to immovables (schools, affordable housing and homes for the aged). An immovable may be encumbered such that the person for whose benefit a right of superficies is constituted has a transferable and inheritable right for a specified term to own a construction permanently attached to the immovable (Law of Property Act, 1993, §241(1). It means that parties are free to negotiate and make the contracts. It causes the situation that contracts are very different.

9.4 Interim Conclusion for Estonia

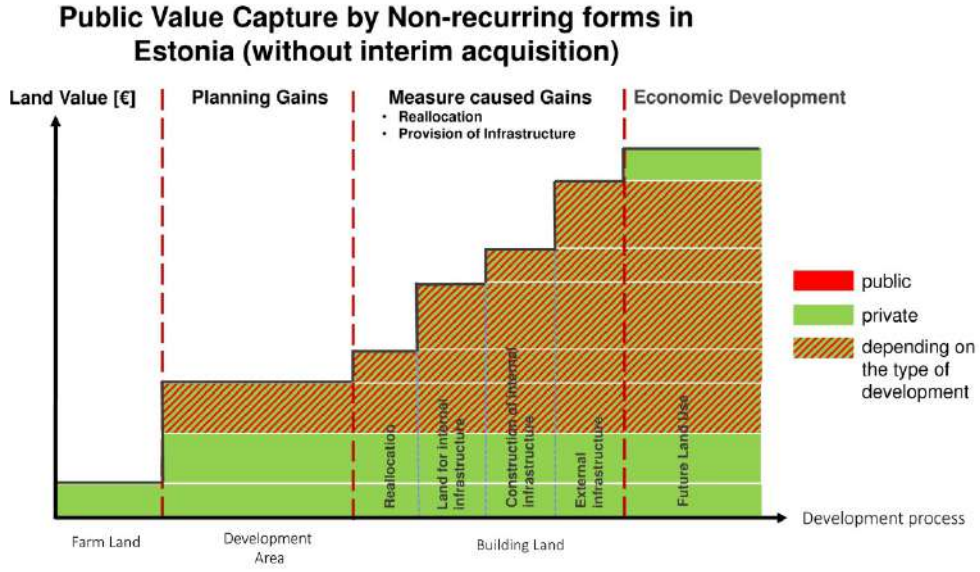

Figure 9.1: Value capture in Estonia.

The concept of value capture is not defined in Estonian regulations. Meanwhile, there are activities regulated in legislation that correspond to the idea of value capture. While regulations are missing on the state level, each municipality has developed its practice, and there is no common practice in Estonia (Taimsaare, 2020).

The most used value capture tools in Estonia that are also best suited to the Estonian legal system are land tax, sharing of development responsibilities (e.g. construction of infrastructure) and public land lease; however, every municipality has its own rules for applying these instruments (Jürgenson et al. 2017; Taimsaare, 2020).

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10 Finland

Heidi Falkenbach, Kirsikka Riekkinen, Kauko Viitanen

10.1 Local Authorities and Planning System

Land-use planning in Finland is defined in the Land Use and Building Act 5.2.1999/132 (LUBA). There are three layers of planning: the regional land-use plans, local master plans and local detail plans[1]. The planning system follows a hierarchical logic, where more general plans steer the more detailed plans. The regional land-use planning is guided by the national land-use guidelines issued by the Ministry of Environment. The regional land-use plans set the principles of land use and community structure and are drafted and approved by regional councils. Local master plans lay down the objectives of land use within the municipality and set, e.g. the location of residential areas, commercial areas and traffic infrastructure, and direct the drafting of local detailed plans. The local master plans are drafted and approved by the municipalities for their own areas, but municipalities can also choose to draft a local master plan in co-operation. The local detailed plans determine the organisation of land use and development opportunities in a detailed manner. For example, the locations, sizes and intended uses of buildings are defined in the local detailed plans. In practice, significant development cannot be executed in the absence or in breach of a local detailed plan.

The municipalities have the independent right to decide upon the initiation, preparation and approval of detailed plans, alongside the responsibility to provide and maintain related municipal infrastructure.

It is important to note that, in addition to fees and charges related to cost recovery and value capture, Finnish municipalities also collect municipal income tax. In 2021, the tax rates varied from 16.5% to 23.50%, the median being 21.25%.

10.2 Recurring Forms of public value capture

10.2.1 Recurring Forms (Annual Payments)

10.2.1.1 Real Estate Tax

The real estate tax is governed by the Act on Real Estate Tax 20.7.1992/65. The tax is based on the estimated value of the property, where land and buildings are taxed as a single, integrated entity. The taxation values, however, are defined separately for the land and the buildings. Only built-up land and land planned for building are taxed. In practice, the value of land is based on a modification of a market-based approach, where the value of land is determined based on the development potential defined in the local detailed plan, size of the plot, its location, etc., and the value of buildings is based on a cost approach. The taxable

[1] In addition, there are specific plan types for shore areas, which are not further discussed in this chapter.

value is set below the assessed market value of the property, the target being about 75% of the market value. The taxable values have been observed to be even notably lower than the 75% of market value and to adjust poorly to market changes (see, e.g., Peltola, 2014).

The real estate tax is collected by the municipality in whose area the real estate is located, and it forms a part of the general budget of the municipality. The minimum and maximum tax rates for different types of property are set in the law, and each municipality sets the tax rates for different property types within its jurisdiction within these ranges. For example, in 2020, the pre-defined range of tax rate for permanent residential buildings was 0.41%–1%. In addition, the municipalities in Greater Helsinki Area must, and other municipalities can, adopt an increased tax rate for unbuilt building sites, ranging between 2% and 6%. In 2020, the real estate tax revenue totalled € 1.94 billion, of which the share of land was about 26% and the share of buildings was 74%. On average, the real estate tax constitutes 7.6% of local tax revenue and 3.5% of municipal revenue (OECD 2019).

10.2.1.2 Additional Recurring Fees That Relate to Infrastructure Provision

In some cases, the municipality may charge annual fees to owners or holders of properties located in an area benefitting from the municipality's stormwater system to cover the costs incurred by its construction and upkeep (LUBA §103n). A similar right applies to the local Water Supply Agency (usually municipal actor) (Water Management Act 9.2.1991/119). Further, there may be similar fees and costs related to connection to other infrastructure, such as electricity and telecommunication networks. These fees are, however, not based on the land value appreciation nor are the fee levels based on the value of the property.

10.2.2 Recurring Forms (in Case of Sale/Purchase)

10.2.2.1 Real Estate Transfer Tax

Transactions of real property and transactions of apartments, which in Finland are structured as shares and are thus movable property, are subject to a transfer tax. The transfer tax is 4% for real property and 2% for apartments and other entities transacted in the form of shares and paid by the buyer. The tax is based on the transaction price. First-time homebuyers are exempted from the transfer tax.

10.2.2.2 Capital Gains Tax

If at the transaction of a property, the seller makes a capital gain (the selling price is larger than the purchase price and/or costs of producing the asset), the seller is liable to capital gains tax. The capital gains tax is 30% up till capital gains of € 30,000 and 34% for capital gains exceeding the threshold of € 30,000. In case the seller has owned the transacted property for at least 2 years and used it as their permanent residence uninterruptedly for at least 2 years, the seller is exempted from the capital gains tax.

10.3 Non-recurring Forms of public value capture

According to LUBA, a landowner who benefits to a significant extent from a local detailed plan has the duty to participate in the costs of the provision of the infrastructure. The participation in costs should as first principle be agreed upon between the municipality and the landowner (see Section 1.3.1.1), and in case agreement is not reached, statutory fees are applied (see Sections 1.3.1.2–1.3.1.4).

In Finland, plans can be drafted on municipality-owned land (see Section 1.3.2.1) or on land owned by other parties (see Sections 1.3.1.1–1.3.1.4), and the logic and tools of value capture differ in these two approaches. Based on a recently published report, most municipalities prefer drafting first local detailed plans on municipality-owned land (Falkenbach et al. 2021). Drafting plans on land owned by other parties is, however, gaining significance, especially due to the increase in infill development and regeneration of already planned and implemented areas.

10.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

10.3.1.1 Land Use Agreement

The municipality and landowner can agree on the initiation of planning and plan implementation in a land-use agreement. However, the agreement cannot include binding clauses on the content of a plan, such as permitted densities or spatial layout. In practice, land-use agreements are the most-used tool to determine landowner participation in the cost of the provision of infrastructure. The Finnish LUBA specifically draws that the land-use agreements and related land-use fees are not restricted by what is applied for the development charge (see 1.3.1.2). However, a relatively recent resolution of the Supreme Court (KKO 2016:8) states that stipulations regarding development charges set a reference for determining the reasonability of a land-use agreement and related fees.

As described in the law, land-use agreements are tools to divide the costs of the provision of infrastructure. The contracting practice is, however, commonly based on the value appreciation caused by the plan and thus, in essence, used as a value capture tool. Based on a recently published report, most municipalities aim to capture 50% of the value appreciation through these contracts (Falkenbach et al. 2021).

10.3.1.2 Development Charge

If the municipality and landowner cannot reach an agreement on their participation on the cost of providing infrastructure, the municipality can impose a development charge that is defined as a share of the value appreciation deriving from introduced or increased building rights or change in the permitted use of site and the costs of the provision of infrastructure for the specific plan area. The fee can only be imposed if the landowner receives significant benefit, and at least 500 m² of building right for residential construction. In practice, the development charge has only been used a few times.

The development charge is based on the costs of providing infrastructure. The infrastructures included and accounted for in the development charge are listed in the law and may include costs of the acquisition, planning and construction of streets, parks and other public areas. The infrastructures accounted for can locate within the plan area or outside of it, but they must serve the plan area in question. Also the costs of noise-defying measures (such as noise barriers), remediation of soil and costs of drafting the plan can be included. The costs can include costs directly related to the plan in question but also costs that have been incurred before the drafting of the plan, if they are considered reasonable. When defining the charge, one first takes out those street areas and compensations that relate to street areas as described in Section 1.3.1.3. Also, if the plan is drafted on a serviced area, previous fees and payments are taken into account.

For any landowner, the development charge may not exceed 60% of the value appreciation caused by the plan. The municipality can decide on a lower maximum percentage for the whole municipality or for a specific plan area.

The development charge is determined by the municipality, and it is assigned for each building site separately, unless one landowner owns areas covering several building sites. The development charge is to be assigned immediately after plan approval and is subject to an annual increase of 2% starting from 2 years after the plan has become legally binding. The development charge is paid when the landowner has received a building permission for the site in question, or if the landowner sells the site before developing it, at the time of transaction.

10.3.1.3 Assignment and Expropriation of Land Designated as Road Areas

In defined cases where a plan is drafted, the municipality has the right to assign and expropriate land as road areas.

There are two cases of land transfer without any compensation to the landowner. First, in case there is a private road within a local master plan area, which is reserved by the landowner as a road area and is in an area designed as a trafficway, the municipality is entitled, without compensation, to service and improve the road and related conduits and assign it for general traffic (LUBA §92). Second, when a detailed local plan comes into force, the areas of a state-owned public road included in the plan area are transferred without compensation to the local authority's ownership (LUBA §93).

When a detailed local plan is approved for an area for the first time, the municipality gains possession of any area designated as a street area in the plan not previously in its possession (LUBA §94). In these cases, the municipality compensates the landowner for these areas only if 1) the transferred area exceeds 20% of the owner's land ownings in the specific local detailed plan area or exceeds the amount of building right assigned to the specific landowner within the specific local detailed plan, or 2) the transfer without compensation would be considered as unreasonable. When defining the 20% limit, lands assigned for agricultural or forestry purposes or as water areas are not accounted for. If the landowner's responsibility to transfer land for road areas without compensation is significantly smaller than the maximum threshold defined above, the municipality can impose a fee to the landowner to account for it. The fee is rarely used in practice (Viitanen and Seppälä 2020).

10.3.1.4 Expropriation and Acquisition of Land Designated for Public Purposes

The municipality has the right to expropriate with compensation any areas designated as public areas or as sites used for municipal purposes. A similar right applies to the state or public organisation owned by the municipalities. This right also applies to limitations of use in areas where the municipality or the state has been assigned underground building rights. The municipality also has the responsibility to expropriate (with compensation) areas that, due to the local detailed plan, cannot be utilised by the landowner in a reasonable manner.

10.3.1.5 Connection Charges

If the property is connected to an infrastructure network, such as water and sewage system, district heating system or gas network, the agency operating the network, which is typically associated with the municipality, charges a connection fee for joining the network. The fees depend on the location of the property, the capacity requirements of the property and other aspects that relate to the costs of establishing and extending the network.

10.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

10.3.2.1 Public Land Development and Acquisition of Raw Land

In Finland, similarly to the Netherlands and Sweden, municipalities can engage in public land development (PLD, also referred to as active land policy). In PLD, the local authority acquires raw land, either through voluntary sales, pre-emption or expropriation, drafts the local detailed plan, builds the required infrastructure and sells (or leases) the serviced building sites to developers, thereby capturing all planning-induced value increases.

The efficiency of value capture in PLD depends on the price paid for raw land. Many municipalities own large land areas within their jurisdiction for historical reasons. In addition, many municipalities are very active buyers in their local land markets. The Expropriation Act 29.7.1977/63 gives municipalities and other public bodies a relatively broad possibility to acquire land serving public needs through compulsory means. In the Finnish context, urban development is regarded to serve public needs, and thus municipalities can expropriate raw land with few limitations.

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, these do not affect the compensation. Thus, if real property is acquired by public bodies for urban development in an area for which the local council has decided to have a detailed land-use plan drawn up or an existing detailed plan amended, any rise in the value of the land because of the plan after the decision to draw up or amend the plan is ignored, however for 7 years max. (§31). This limitation supports efficient value capture by municipality. Consequently, the price levels in voluntary transactions tend to be the same price level, as if the price were higher, the municipality can proceed with the acquisition through compulsory means.

10.3.2.2 Special Development Areas and Urban Land Readjustment

The Finnish legislation also acknowledges the procedures of special development areas (LUBA §112) and urban land readjustment (Real Estate Formation Act 554/1995 §113–§130). The urban land readjustment procedure has never been applied and is hence not discussed further in this chapter.

In special development area procedure, the municipalities can assign a geographically limited, built-up and unbuild areas that fulfil certain conditions as special development areas for a maximum of 10 years' time. Within special development areas the municipalities can

- delegate the responsibility for implementing the area to a body established for that purpose,
- at the time of drafting or amending a local detailed plan to re-arrange properties, distribute benefits and costs incurring from the development of the area,
- use pre-emptive purchase right with less limitations, and direct special support measures to these areas,
- collect reasonable development fees from those landowners whose benefits is disproportionate to the costs incurred (LUBA §112).

The law does not specify how reasonable development fees should be defined, and they have never been applied in practice. The special development area procedure is regarded complex and complicated, and municipalities feel they can reach the same result through land-use agreements. Hence, it has barely been used, and conclusions on cost recovery or value capture cannot be drawn.

10.4 Interim Conclusion for Finland

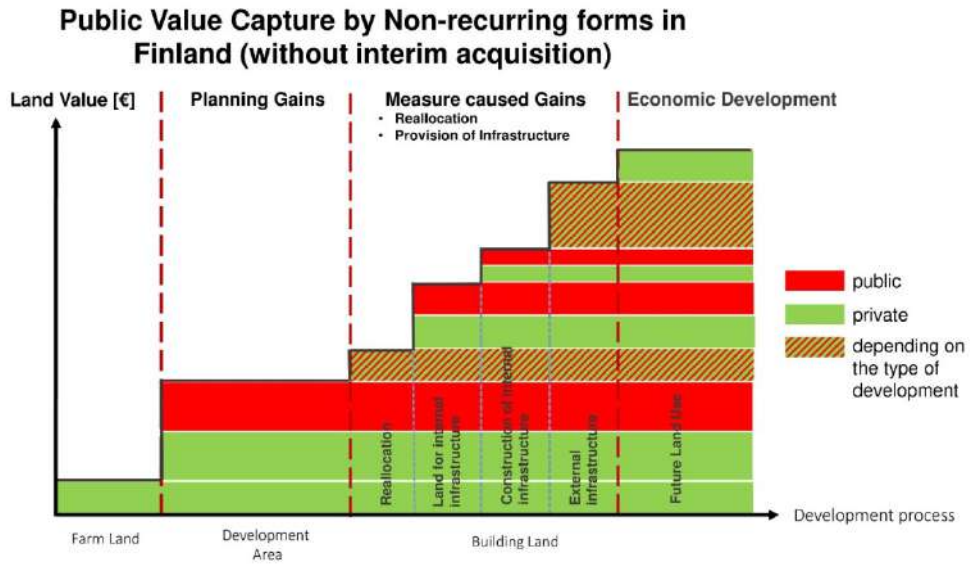

Figure 10.1: Value capture in Finland.

The value capture in Finland is focused on the non-recurring forms that are used in the context of planning, and the role of real estate tax is relatively small. The Finnish system of public value capture relies on a system of compulsory instruments (esp. development charge and expropriation rights) that provide the municipalities strong rights. Even if these instruments are rarely used, they motivate the landowners to engage in the negotiations and impact the fee levels related to the contract-based instruments. It is important to note that the motivation and legal basis for non-recurring forms of value capture is that of cost recovery, and value capture is typically only referred to set the upper bound on the cost recovery. In practice, however, the contracts often are value-capture, and not cost-recovery, motivated.

Figure 10.1 gives a stylized illustration of value capture when a land-use agreement is reached. In the figure, it is assumed that the municipality and the landowner reach an agreement of about 50% value capture, which is the mode.

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11 France

Sonia Guelton and Roelof Verhage

11.1 Local Authorities and Planning System

France is known as a highly centralized country. In fact, the centralist approach applied to the field of urban planning after the Second World War until the end of the 20th century. However, in 1982 and 1983, a set of decentralization laws changed the situation. With these laws, numerous prerogatives were transferred from the state level to the local and supralocal level, including controls and responsibilities in urban planning. As a result, local and supralocal authorities became the main actors in planning. In particular, they became responsible for the elaboration of the legally binding local land-use plan. Still, these local land-use plans must be consistent with national laws and obligations dealing with risk and environmental issues or social housing provisions.

Since the 1960s, intermunicipal bodies were created to rationalise the delivery and management of public services at a larger territorial scale and coordinate all municipal planning activities. Known as Communauté Urbaine, the state created the first four of these intermunicipal bodies in 1969. The decentralisation laws transferred urban planning empowerment to the intermunicipal level. Since then, diverse intermunicipal bodies have been created with diverse powers: Communauté de communes in 1992, Communauté d'agglomération in 1999 and Métropole since 2014. In 2021, there are 1,253 intermunicipal bodies in France, and every municipality is a member of at least one intermunicipal authority. Strategic structure plans (SCOT: Schémas de Cohérence Territoriale) are elaborated at the intermunicipal level. They aim at assuring territorial coherence on a supralocal scale in a country where 85% of the municipalities have less than 2,000 inhabitants[1]. Local land-use plans (PLU: Plan Local d'Urbanisme) have to be compatible with the strategic structure plans.

In order to better adjust local land-use plans to territorial dynamics, the state has gradually reinforced the role of the intermunicipal level, resulting in 2014 in Law no. 2014-366. This is known as the ALUR law (Accès au Logement et Urbanisme Rénové – Access to housing and remodelled urban planning policy). The ALUR law transferred the elaboration of the local land-use plans to the intermunicipal level at the horizon of 2021.

Despite taking a significant step towards decentralisation, it has to be noted that the state nevertheless retains a certain level control. In particular, only the state can determine the application, directives and objectives of French planning law (code de l'urbanisme). This includes instruments of value capture that are defined and framed at the central level. However, the municipalities or intermunicipal cooperation structures, in charge of the local land-use plans, have a certain amount of freedom in their concrete application.

[1] DGCL – *Direction Générale des Collectivités locales*, 2021.

11.2 Recurring Forms of public value capture

In France, recurring forms of public value capture can take the form of annual property taxes, real estate transfer taxes and capital gains taxes.

11.2.1 Recurring Forms (Annual Payments)

11.2.1.1 The Property Taxes

France implemented property taxes long ago (before the 1789 revolution), which leads to call them '*les 4 vieilles*' ('the four old women'): a property tax on unbuilt land, a property tax on built land, a housing tax and a corporate tax. Only three of them survive: the property taxes on built and unbuilt lands and the corporate tax. Since 2010 the corporate tax includes two parts: a part based on business property (the corporate property tax – *CFE: cotisation foncière des entreprises*) and another part (the corporate value added tax – CVAE: *cotisation sur la valeur ajoutée des entreprises*) calculated according to the added value created by companies. This last part of the tax is no longer related to land or property values.

These taxes are 'local taxes' as they are raised by local authorities and benefit to them: property tax on built land is fixed by municipalities, intermunicipalities and *départements* (an intermediate level of government between the regional and the local level) in an independent but additional process. Property tax on unbuilt land and corporate property tax are fixed by municipalities only.

These taxes (CFE included) are due by the land or property owner every year, considering the situation on 1 January. The tax revenues supply the local budgets and can be spent for any operating expenditures. In 2020, the annual revenues collected were € 68.4 billion, 33.2% of the total receipts of the local authorities (source *Direction Générale des Collectivités locales,* 2021).

Each property tax liability is calculated by multiplying the rental value of the property by the property tax rate. Following the French tradition of local taxes on land and property, the tax rate is fixed by local institutions (municipality, intermunicipal level or *départements,* depending on the tax). According to the law (code général des impôts – Art. 1379 to 1518F), the assessment of the rental value of the properties – which serves as the tax base – is carried out by national budget services. This assessment is supposed to reflect the annual market rental value of the property considering the quality, use and localisation. In reality, the assessments done in 1975 have not been re-evaluated locally since then. As a consequence, several distortions appear with the present market property value[2].

The government regularly tries to re-evaluate the assessments to follow the current market price index. Up to now, a national index price is applied, but it does not consider the evolutions in local markets. To be able to capture the current property value increase at a local level, a re-evaluation was done in 2017, for the first time since 1975, but only for commercial and business properties. The revaluation is supposed to be effective for residential properties in 2026. In parallel, several tax exemptions are proposed to support social amenities

[2] Brémond, 2012.

and social housing situations. For example, a 15-year property tax exemption is allowed for dwellings being built by social housing companies[3].

An additional taxation on unbuilt properties is expressly supposed to capture the potential land value due to increased building rights in the local land-use plan. The tax was introduced by national law in 2000 as an option. Municipalities can decide whether or not they want to levy this tax. When they do, it becomes part of their income (Art. 1396 Code general des impôts). The tax concerns properties designated as 'buildable' in the local land-use plan, but which remain unbuilt-upon. The landowner has to pay an additional charge fixed by municipalities as a maximum of 0.75 €/m² additional value to the assessment of the rental value of these unbuilt properties. In 2014, an attempt to add a mandatory 5 €/m² to the rental value assessment of identified unbuilt properties has been experimented with[4]. However, in 2017, due to landowner's recrimination, the government had to come back to an optional increase freely fixed by municipalities, from € 0 to € 3/m². About 400 municipalities out of 35,360 French municipalities adopted the additional charge in 2018[5].

11.2.2 Recurring Forms (in Case of Sale/Purchase)

11.2.2.1 Real Estate Transfer Taxes

The real estate transfer tax is a legal transaction tax raised by départements and municipalities on all property purchases. It is not levied on a legal property transfer by heritage or donation. The tax rate is determined nationally by the law at 1.20% of the purchase price for the municipal part, and from 1.2% to 4.5% for the departmental part. In addition, the state levies a maximum of 2.37% of the departmental part to compensate for the costs of collection of the tax. New buildings are exempted from this tax, regardless of whether they are subject to VAT. In 2020, the annual revenues collected were € 16.4 billion (source DGCL – Direction Générale des Collectivités locales, 2021).

11.2.2.2 Capital Gains Taxes

A national tax aims at transferring part of the capital gain of any purchase of real property to the state. The capital gain is reduced according to the length of possession[6], and the tax rate is fixed by the state. In 2020, the rate was 36.2% of the capital gain calculated on the basis of a book value. This tax is considered as unstable as the taxation rate can vary over time, depending on the policy issues. In the past, some governments have decided to reduce it in order to boost real estate markets, while others have decided to increase it in order to generate incomes for the public budgets.

In addition, a national tax concerns the sale of land of which the designation as agricultural land has been changed into a designation as 'buildable' land in the latest revision of the local

[3] French Social housing companies benefit from a special status when they sign a contractual agreement with the state. The agreement includes maximal rental prices for low-income households, between others.

[4] Guelton et Leroux, 2016.

[5] Pouillaude, 2019, p. 39.

[6] In 2020, the tax is not due after 22 years of possession.

land-use plan. Only the first transaction of the land after the change of designation is concerned by this tax. As such, the tax aims at capturing part of the value increase of the land due to its new status in the local land-use plan (planning gain). The taxation is progressive with the level of capital gain: tax rate of 0% if the gain counts for less than 10 times the purchase price, tax rate of 5% if the gain is between 10 to 30 times the purchase price, and tax rate of 10% if the gain is over 30 times of purchase value. These tax revenues are allocated to a national agency which funds supports farmers by enabling their access to land and by supporting innovation.

Both national taxes aim at capturing the land value increase to the benefit of the state (i.e. the national budget).

In addition, municipalities can also tax capital gains generated from a planning decision (planning gain). The planning gain tax is levied on the first sale of unbuilt land after its designation as 'buildable' in the local land-use plan. The tax base is calculated as the difference between the current selling price and the declared purchase cost at the time of the prior acquisition of the land (or declared value in case of heritage for instance), actualized by an official real estate index. If the historical purchase cost is unknown, the assessed capital gain is 1/3 of the current selling price. The tax rate is 10%. The tax contributes to the financing of the municipal development strategy, but the annual revenues remain low. In 2020, only 6,500 municipalities of the 35,360 municipalities had decided to implement the planning gain tax (fiscal statistics from Ministry of Finance[7]).

11.3 Non-recurring Forms of public value capture

11.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

Since 1965, the law enables two types of instruments to capture land value increases induced by new public infrastructures. Local authorities can either use a development tax (*taxe d'aménagement*) or two forms of contractual participations (or developer obligations)[8].

11.3.1.1 Development Tax (*Taxe d'aménagement*)

The development tax is levied by local authorities and assigned to the local budget to finance public infrastructure. It is paid on the entire municipal perimeter by the recipient of a building permit (for new constructions as well as for parking spaces). The tax is levied on the number of newly produced square meters of floor space, stated by local authorities in the building permit. The tax base is fixed at the national level, currently it is 870 €/m² of newly produced floor space in the Paris region, and 767 €/m² in other regions (as mentioned by the law in 2020). The tax rate is fixed by municipalities, between 1% and 5%. An additional 2.5% tax rate is levied by the *départements*. Municipalities have the possibility to increase the tax rate to 20% on an identified area when the infrastructure cost is massive. The revenues can be spent on infrastructure of all kinds.

[7] https://www.data.gouv.fr/fr/datasets/impots-locaux/

[8] See Booth, 2012.

The tax is commonly used in France, as 80% of local authorities collect the development tax[9]. In 2020, the annual revenues accounted for € 1.1 billion (DGCL – *Direction Générale des Collectivités locales*, 2021).

11.3.1.2 Contractual Participation (Developer Obligation)

Two instruments for contractual participation of developers to public infrastructure exist: the *ZAC: Zone d'Aménagement Concerté* (Comprehensive Development Zone) and the *PUP: Projet Urbain Partenarial* (Partnership Urban Project). Both these instruments are quite common to support local authorities' investments in identified areas. They are designed as financial partnerships and very often include additional negotiations on the urban quality of the development and the building program[10].

Comprehensive Development Zone – Zone d'Aménagement Concerté

The Comprehensive Development Zone (*Zone d'Aménagement Concerté – ZAC*) was initiated in 1967. It applies to development projects initiated by the public sector and gives a lot of power to the land developer (expropriation rights), under strict public conditions, requirements and controls. The land developer is required to finance part of the public investment in the area via 'developer contributions'. The range of developer contributions is wide, but it has to comply with two requirements: (1) causality: a direct link should be made between facilities imposed on the developers and the real needs related to the new buildings; (2) proportionnality: fees charged to the developers should be proportional to the use made of them by (occupiers of) the new buildings. The ZAC process is transparent (i.e. publicly advised) and strictly controlled by the law. The counterpart of the developers contributions is a solid guarantee of the achievement of the project.

Traditionally, all the land included in the perimeter of a ZAC is temporarily owned by the land developer, who services the land and then sells the remaining area as serviced building plots. Recently, new ZAC contracts can include private landowners in the area who wish to keep the land for their proper use. They still have to pay the same contributions as those required in the developed area proportionally to their land surface.

Partnership Urban Project – *Projet Urbain Partenarial*

The Partnership Urban Project (*Projet Urbain Partenarial – PUP*) is a contract introduced after 2014 which enables local authorities to charge private landowners for participation to public infrastructure in a private project, initiated and developped by the private developer. The contribution scheme is the same as in a ZAC but results from a negotiated process. Even though negotiations depend on the local context, they have to comply with the same requirements of 'causality' and 'proportionnality' as in a ZAC.

[9] For a full description, see Guelton et al., 2021.

[10] See Guelton, 2018.

11.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

France experiments tools to transfer land value increase to social achievement without a direct contribution to public budget. During the previous decades, a focus was on the provision of social housing. Public authorities use two kinds of instruments to include social housing in construction programs: first, a legislative obligation provided by the state and, second, an instrument allowing long-term land leases.

Social Mix Obligations – Servitudes de mixité sociale

Since 2000, the law *Solidarité et Renouvellement Urbain* Art. 55 makes it compulsory for large cities to reach 20% of social housing of the total housing stock. In 2014, the rate was increased to 25% when a tense market pressure occurred. Every year, a statement is made to identify the municipalities where the ratio is not met. In 2019, 1,100 municipalities did not reach the requirement. If they remain in default after 3 years, the state can impose penalties and decide to replace the municipal authority in the control of urbanization processes. This might imply various interventions without the approval of the local authority: through the use of preemption rights, through the delivery of building permits and through the development of new social housing projects. In 2020, 36 municipalities were in this situation, while the others succeeded in convincing developers to build enough social housing. In addition to large publicly led projects, municipalities use regulations in the local land-use plans and negotiations to require a mix of private and social housing in new programs of housing development by private developers. This is called *servitudes de mixité sociale* (social mix obligations).

Interim Landownership

In 2014 and 2015, the French government introduced a new instrument of value capture based on long-term land leases, with the objective of securing social home ownership. The system mixes two instruments[11]. A non-profit organisation (*organisme de foncier solidaire (OFS)*, ALUR law, 2014) has been designated to buy land plots, build dwellings and sell them without the land to low- or middle-income households. The land remains the property of the OFS, who leases it to the homeowners. A new long-term land lease called *bail réel solidaire (BRS)* (the Macron Law of 2015) was created to enable a kind of tenure in which homeownership remains affordable. Under this system, the future homeowner can buy the house from the OFS at a lower cost without paying the land price. The land lease that the homeowners have to pay to the OFS is set at such a rate that access to housing under these conditions is much cheaper than in the free market. A specificity of the type of land lease used (the BRS) is that when the dwelling is sold, anti-speculations clauses apply, and the land lease is renewed. This system enables the OFS to capture and freeze the land value in the long term for homeownership benefits. Since 2014, 9,400 housings have been launched through 71 OFS, most of them being supported by local authorities (source *Foncier Solidaire France Association*, Nov. 2021). A public report suggested opening the system to become a profitable organisation, but the proposal has been rejected by the Parliament.

[11] See Guelton and Le Rouzic, 2008.

11.4 Interim Conclusion for France

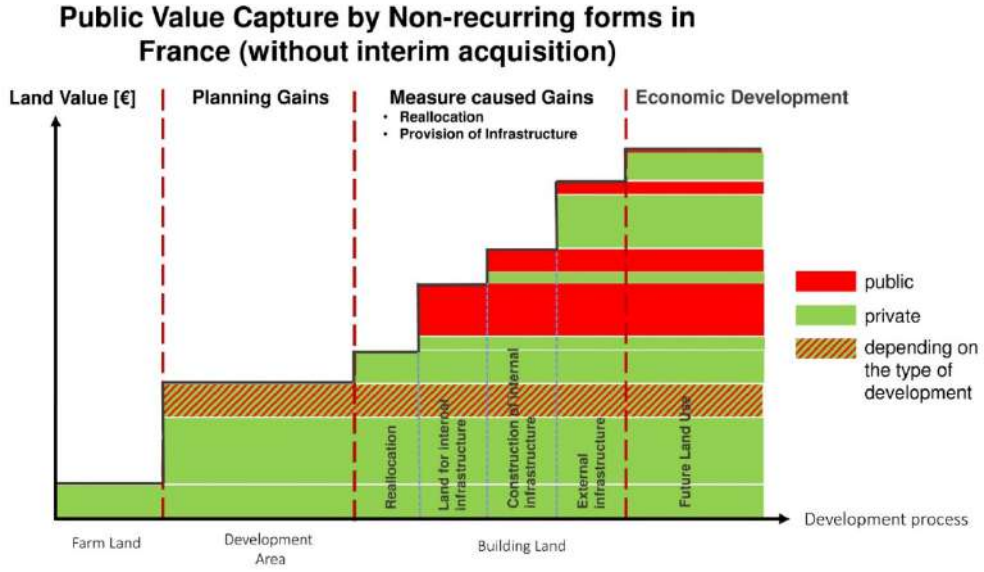

Figure 11.1: Value capture in France.

While there is a political involvement in France to implement recurrent tools of value capture, the attempts remain weak. Property taxes are not based on the market value of the property, and capital value taxes do not apply to owner-occupiers. This situation reflects a political reluctance to tax property, which can be related to the importance assigned to property rights in France (considered, following Art. 17 of the Declaration of Human Rights of 1789 as *inviolable et sacré*, inviolable and sacred). State interference in property rights is considered justified only if there is a demonstrated public necessity and a just compensation for the property owner.

Nevertheless, a number of indirect instruments succeed in reallocating part of the value increase induced by urban planning. Contractual 'tailor-made solutions' via PUP and ZAC are efficient in buoyant markets. Other instruments, like development tax or municipal capital gains tax, have a reduced impact as they concern very few cities and limited places. They are using the local land-use plan to impose some reallocation of land value increase for collective use, like the realisation of social housing (through *servitudes de mixité sociale*) or environmental preservation.

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12 Germany

Andreas Hendricks

12.1 Local Authorities and Planning System

According to the German Federal Building Code, municipalities are the bodies responsible for urban land-use planning, which has two stages. The first step is the preparatory land-use plan. It is binding for the administration but has no direct external impact. It achieves a strategic balance between different public and private interests related to the limited area of land within the municipal boundaries. The second step is the legally binding land-use plan that has to be developed out of the preparatory land-use plan. Its main contents are plot-specific regulations concerning land use and building density and the determination of those parts of a plot on which houses may be built.

12.2 Recurring Forms of public value capture

In Germany, the recurring forms can be divided in the real estate tax, the real estate transfer tax and the capital gains tax.

12.2.1 Recurring Forms (Annual Payments)

12.2.1.1 Real Estate Tax

The real estate tax is a non-personal tax, which takes up the outer characteristics of the tax object. Nowadays, the assessment basis is the so-called *Einheitswert*[1] of the property (land and buildings). The real estate tax is raised yearly as a product of the *Einheitswert*, the *Steuermesszahl* (as a part of the *Einheitswert* fixed by the state) and the *Hebesatz* (a municipal percentage that varies depending on location).[2] In 2018, the real estate tax revenue of German municipalities was around € 14.2 billion. It was the second largest source of income for the municipalities after the commercial tax (€ 55.8 billion; Federal Statistical Office of Germany).

In April 2018, the Federal Constitutional Court declared the use of the *Einheitswert* unconstitutional and demanded a new legal regulation by the end of 2019. The current three-step procedure – valuation, *Steuermesszahl* and *Hebesatz* – will be retained. The valuation of the properties under the new law will be carried out for the first time on the 1st January 2022. Essential factors for the calculation are the respective value of the land (standard land value) and the amount of 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 such that the reform as a whole

[1] The ***Einheitswert*** is a standard value for undeveloped and developed land that is determined on a certain reference date in a legally regulated, standardised procedure and serves as the assessment basis for taxes, fees and contributions. Valuation date is the 01.01.1964 and 01.01.1935, respectively.

[2] Buntrock, 2014, pp. 367–383; Lehmbrock & Coulmas, 2001; Josten, 2000.

is revenue-neutral. The municipalities will be given the opportunity to set an increased tax rate for undeveloped plots of land that are ready for construction (cf. Section 2.1.1.2.3). This is intended to help cover housing needs more quickly in the future. Until 31 December 2024, the federal states (*Bundesländer* in German) have the opportunity to prepare regulations that deviate from federal law. The new regulations on real estate tax – either federal or particular state – will then apply from 1 January 2025. Until then, the previous law will continue to be applied.

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 based on the standard land value. A reduction is provided for the owners of residential buildings. Other federal states are also planning independent regulations, but these have not yet been adopted (as of November 2020).

The standard land values mentioned in this section are determined by committees of valuation experts. These have been established in Germany in all larger cities or at the district level and are responsible for statistical analyses of the real estate markets. The results are published to create transparency in the property market. One important result is the standard land values as an average price for a defined area. They are available for the whole country.

12.2.2 Recurring Forms (in Case of Sale/Purchase)

12.2.2.1 Real Estate Transfer Tax

The real estate transfer tax is a legal transaction tax. The tax has to be paid when a real estate property changes ownership. The basis of this transaction can be a contract, the disposal of a leasehold or a legal property transfer by heritage or donation. Reallocation instruments like the urban land reallocation measure (*Umlegung*) are excluded from tax liability. The German states determine the tax rate, which varies from 3.5 to 6.5% of the purchase price.[3]

12.2.2.2 Capital Gains Tax

With regard to capital gains 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 the increase in value, on the one hand, and on the personal income tax rate, on the other hand. If a person sells 3 or more properties in 5 years, then the regulations of the commercial property trade is applied.

[3] Ardizzoni et al., 2008; Fischer, 2014, pp. 321–352.

12.3 Non-recurring Forms of public value capture

Concerning 'unearned increments', the non-recurring forms in Germany are focused on land values and their increases. 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 with the landowner if the area is developed by land reallocation procedures. Only if the area is developed by cooperative (voluntary) procedures is the municipality generally able to capture the part of value caused by the planning. In this case, it is very important that the contract (e.g. for developer obligations) is concluded before the adoption of the legally binding land-use plan. If a legally binding land-use plan already exists, the resulting price increase forms part of the private property of the landowner. On the other hand, according to the German ownership law, the anticipation of a price increase does not form part of the property. For this reason, local authorities are generally allowed to intervene in the private property before the passing of the legally binding land-use plan.

12.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

12.3.1.1 Fee for Construction of Infrastructure

The municipality is obliged to provide the local public infrastructure, whereas nobody is entitled to infrastructure provision – also if a legal binding land-use plan already exists. The municipality provides the local public infrastructure as part of their capability and according to political discretion. Local public infrastructure, according to the federal building code, includes, for example, roads and other traffic facilities, but also parks and green spaces. The construction costs are allocable to the landowners. The beneficial landowners have to bear up to 90% of the costs as a recoupment charge. A local law regulates the distribution basis. Only if an investor is ready to do the provision in the context of a developer agreement (cf. Section 3.3.2.3.2) does the municipality not have to bear the 10% difference.[4]

12.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

This section provides an overview of the most important instruments that are regularly used in Germany.

12.3.2.1 Development According to General Urban Planning Legislation

The German federal building code provides various instruments for developing building land. Land reallocation and the provision of infrastructure are important instruments for municipalities in developing building land.

If the municipality wants to realize its binding land-use plans, the reallocation measure can be used to rearrange the property (borders and property rights). The reallocation creates plots suitable in terms of location, shape and size for building development or for other

[4] Schmidt-Eichstaedt, 2005, pp. 427ff.

uses. The needed public areas (e.g. roads, green spaces) are also provided. The construction of infrastructure is refinanced by fees (cf. Section 3.3.1.1). The structure of the new plots is fixed in the binding land-use plan.

The process is a kind of conjoint urbanization (cf. Section 2.2.2.1). The property owner receives new plots in the same or equivalent location. The reallocation measure represents a burden sharing, for example, concerning the loss of private area in the location of the new public area. With reallocation, the owners altogether as a solidarity community contribute only a small part of their area for the use of new public infrastructure. The property owner has various advantages from the reallocation. The development time is shortened, and the quality of the land increases. The owner has an advantage through the provision of infrastructure and ecological compensation areas (in Germany, ecological compensations are needed for any new construction). In addition, they have a favour through the consistence of the binding land-use plan and the property structure. Therefore, the owner has to pay the value increase caused by the land reallocation measure (in cash or in land). In contrast, the planning advantage in the form of increasing land value by urban planning (preparatory and binding land-use plan) remains with the owner.[5]

12.3.2.2 Development According to Special Urban Planning Legislation

The German special urban planning legislation contains instruments that municipalities can only use under special conditions (cf. Section 2.2.2.3). Before using those instruments, the municipality must try to get a contractual solution and has to prove that other instruments, like reallocation measures, would fail. Special circumstances need special instruments with a high intervention in the property. Therefore, the municipality can capture the whole value increase caused by the measures in the urban development and the urban redevelopment measure. At this point, only the urban development measure needs to be presented.[6] The municipality captures all value advantages by planning, reallocating and providing the infrastructure. This is realized through interim acquisition (in this case, via forced sales). The municipality buys the land at a value that is not influenced by the measure at the beginning. After planning, reallocation and the provision of infrastructure, the building land is sold to new owners. The value difference has to be used for the realization of the measure. A possible surplus must be distributed to the former owners.[7]

12.3.2.3 Cooperative Development by Urban Contracts

Following the German terminology (*städtebauliche Verträge*), there is a wide understanding of what is meant by urban contracts. It includes interim acquisition as well as contract models (developer obligation).

[5] Dieterich et al., 2006; Teigel, 2002, pp. 44–78.

[6] The urban redevelopment measure is used in built areas. Within other instruments of this special legislation, municipality has no possibility of capturing the value increase and therefore are not considered any further.

[7] Runkel, 2013, §§165–171.

12.3.2.3.1 Interim Acquisition

The build-up of land stocks is oftentimes used in municipalities to have available plots for public objectives within urban development (cf. Section 2.2.2.4). The main advantages of this model are the absolute control of the circle of future landowners and the capture of the whole price increase between purchase and sale. The main problems are the interim financing between purchase and sale and the development risk, i.e. the municipality has to find customers for the developed area. Generally, parcels may be bought for low prices if they are bought long before the planning process starts. But in that case, the period of interim financing and the development risk are quite high. On the other hand, if the parcels are bought shortly before the passing of the land-use plan, the prices are higher but there is a lower development risk and a shorter period of interim financing.

'Revolving land stocks' are another instrument to decrease the problem of interim financing by selling a part of the plots to buy new ones. However, a lot of money is needed to initiate the land stock.

12.3.2.3.2 Contract Models (Developer Obligations)

The agreement of certain duties of the private partner in return for subsequent building rights is an alternative to interim acquisition (cf. Section 2.2.2.5), but German legislation includes some restrictions concerning the objectives of urban contracts. The German Federal Building Code defines the legal objectives. The 'contracts of measures' include the contracts of planning (e.g. the draft of the preparatory or legally binding land-use plan) and the contracts to prepare the building activities (e.g. demolition of old buildings, removal of plants or contaminated soil). The 'contracts of edification' may regulate the use of the plot (e.g. type and grade of the authorized use, the obligation to finish the construction of the buildings in a given period of time), ecological compensation, the housing supply for sections of the population who have extraordinary problems finding adequate accommodation, or the housing supply for the locals. The most important group of contracts are the 'contracts to cover the follow-up costs'. They can be used to cover the costs of the municipality (not another territorial authority) in the past or in the future, which are a condition or consequence of the development of the area (e.g. infrastructure in the broader sense).

All the contents of a contract have to meet two important legal principles. The first one is 'the exclusion of arbitrary tying arrangements'. There has to be a strict objective connection between the obligations of the private contractual partner and the urban development. Furthermore, the municipality has no right to 'sell' sovereign acts. The second one is 'the imperative of adequacy'. The problem is that the interpretation of 'adequacy' depends on the way you look at it. The best criterion to check the fulfilment of this principle is the proportion of the value increase of the developed land to the cost distribution. It is debatable in the literature how much of the value increase caused by the development should be captured by the municipality. So far, it is the prevailing opinion that a capture of up to two-thirds is permitted. However, there is an increasing number of experts advocating a higher percentage.[8]

[8] E.g., Bunzel, 2015; Hendricks et al., 2021.

On the whole, it is permissible if the municipality absorbs up to two-thirds of the planning gains to fulfil an objective according to Article 11 of the German Federal Building Code and if the contract is concluded before the planning (more precisely before the approval of the legally binding land-use plan). A permissible capture of more than two-thirds has to be checked in every case. Furthermore, all costs incurred by the municipality, which are the condition or consequence of the development in the past or in the future, can be refinanced.

12.4 Interim Conclusion for Germany

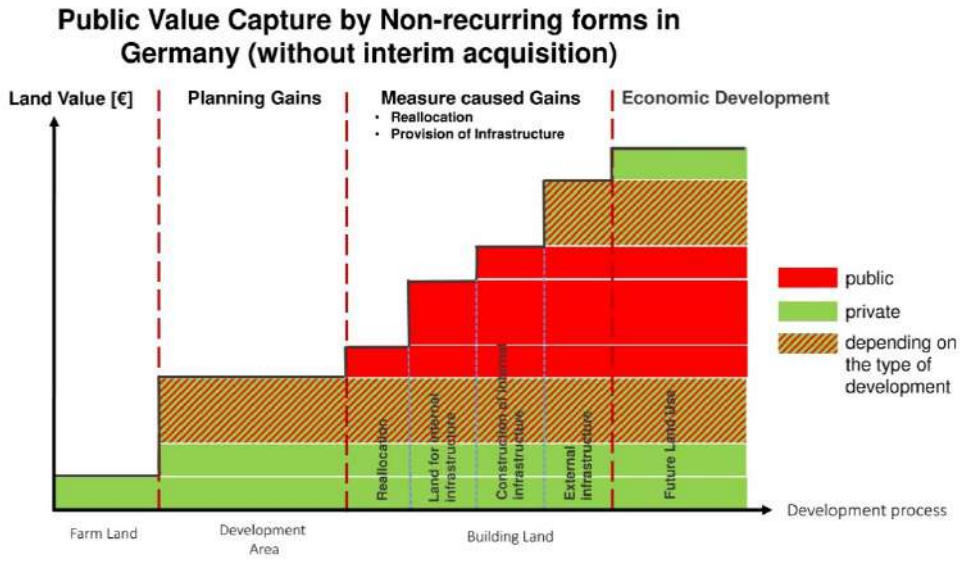

Figure 12.1: Value capture in Germany.

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 with the landowner if the area is developed by land reallocation procedures proceedings. Only if the area is developed by cooperative (voluntary) proceedings is the municipality generally able to capture the part caused by the planning. In this case, it is very important that the contract (e.g. for developer obligations) is concluded before the planning. If the legally binding land-use plan already exists, the resulting price increase forms part of the private property of the landowner. On the other hand, according to the German ownership law, the anticipation of a price increase does not form part of the property. For this reason, local authorities are generally allowed to intervene in the private property before the passing of the legally binding land-use plan.

Concerning 'unearned increments', the non-recurring forms in Germany are focused on land values and their increases. Neither private building activities nor connection to utilities (e.g. gas, electricity, water or telecommunication) are taken into account. These kinds of constructions and their financing are regulated by contracts between the property owner and private or public partners. For example, the property owner has to apply to a local energy provider and pay a defined all-inclusive price to get a connection to power supply.

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13 Greece

Nikos Karadimitriou and Thanos Pagonis

Although there is no regulation by law for capturing planning gains, Greece as a whole has a number of tools for public value capture. Taxes on property provide significant tax receipts, much higher than the average in the EU, as a percentage of GDP (3.126%, the 5th highest in the OECD in 2019). Some aspects of the tax regime have been heavily criticised for their negative effect on growth (IOBE, 2018) and are due to be reformed with a view to reducing the overall tax burden, promoting investment and making the system more equitable. The non-recurring forms of public value capture are not particularly functional nor are they very efficient. The allocation of development rights in Greece, according to Karadimitriou and Pagonis (2019), follows 11 pathways that encompass both planned and unplanned development as explained in Section 2.3. There are also a few exceptional arrangements for big projects, which actually have explicit public value capturing arrangements (e.g. the old Athens Hellinikon airport regeneration project). In the cases where public value capture occurs, the process is cumbersome mainly due to the primacy that the Greek constitution and legislation give to private property rights.

13.1 Local Authorities and Planning System

Competence for urban planning in Greece has historically been a point of friction between central and local governments. Eventually, the Council of State issued several decisions, and annuled several urban masterplans that had been approved by local authorities during the 1990s, which tilted the balance in favour of the central government (Wassenhoven, 2021). This balance between central and local competence is reflected in the post-2010 reforms to the planning system, which have been critiqued for ardently promoting centralisation.

The mainstream planning process in Greece, so-called public regulatory planning, is carried out at the municipal level and aims at outlining development zones, land use and binding development parameters throughout the entire municipal territory. Besides that, there are also special planning instruments, namely, the reallocation of plots (land re-adjustment), active planning and private planning, which refer to organized types of urban development.

Unplanned development (see Section 2.3.1.2) constitutes a widespread practice in Greece. It accounts for a very large part of the overall land development and comprises both formal and informal processes. Here, we comment from the point of view of value capture on the three development pathways that enable the allocation of development rights without a statutory urban plan on owned land. Hence, we do not discuss the case of land and development rights grabbing.

13.2 Recurring Forms of public value capture

In Greece, the recurring forms can be divided into those applying to real estate ownership and those applying to real estate transfer. Tax income from real estate taxes in Greece as a percentage of GDP is one of the highest in the EU and the OECD (IOBE, 2018).

13.2.1 Recurring Forms (Annual Payments)

13.2.1.1 Real Estate Taxes

The most important such tax is the Uniform Real Estate Property Tax (REPT, in Greek: ΕΝΦΙΑ). The assessment basis is the 'objective value' of the real estate, which is determined based on a valuation done by private sector valuers for the Ministry of Economy. However, what is taxed are the rights over the property such as usufruct, etc. The 'objective values' cover thousands of zones throughout the country and are usually lower than the running market price, although the current re-valuation (to apply from 2022 onward) was approximating 'average' market levels for each zone. The tax is calculated by multiplying the square meters of the property (building or land plot) with a fixed 'tax due per square meter', which increases progressively according to 12 'objective value per square meter' bands (i.e. € 0–500/m², € 501–750/m², etc.). The total amount is adjusted using a set of coefficients to reflect the size, age, floor, location in the building and other characteristics of the object. Furthermore, the tax due is adjusted to reflect the type of right and the age of the owner.

A supplementary tax (progressive rate 0.1% to 1.15%) is charged to individuals if the total value of property rights subject to REPT exceeds € 250,000 (excluding the value of agricultural plots). Corporate supplementary tax is also charged, at a standard 0.55% of the total tax value of said rights. The rate drops to 0.01% if the company uses the assets for their business purposes.

The other significant tax in this category is the Municipal Property Duty (MPD, in Greek: ΤΑΠ), which is charged via the electricity bill. The rates are 0.025% to 0.035% of the 'objective value' of the object. Buildings under construction and listed buildings are exempt.

Finally, a special tax regime applies to a) real estate investment companies, which are taxed on the average value of their investments, and the tax rate linked to the European Central Bank rate and b) to companies whose owners cannot be traced back to a physical person or to companies whose passive income (from rents, etc.) exceeds their active income, whereby the tax rate is 15% per year on the value of the assets.

13.2.2 Recurring Forms (in Case of Sale/Purchase)

13.2.2.1 Real Estate Transfer Tax

The real estate transfer tax (RETT) is a legal transaction tax. The tax has to be paid, if a real estate property changes ownership but is not subject to VAT (currently 24% for newly built properties but suspended until the end of 2022). The basis of this transaction is a sale contract, a disposal of a leasehold or a legal property transfer by heritage or donation. The

tax rate is determined by the central government and currently is either 3% of the purchase price or the 'objective value', whichever is higher, for a purchase contract. A 3% municipal tax and 7% road building tax are charged on the total RETT due and in addition to it. The tax rate for inheritance and donations varies according to the total value of the inheritance/donation and the degree of kinship. Exchanges are taxed at 1.5%, adverse possession at 3%, distribution at 0.075%. Finally, there is a land registry fee of between 0.0475–0.06% in order to register the transaction.

13.2.2.2 Capital gains tax

Capital gains tax only applies to individuals selling for non-commercial purposes. There is a legal provision to apply such a tax, but application has been suspended until the end of 2022. The tax rate is 15% of the difference between purchase price and sale price, if that difference is a profit. There is a tax-free lump sum of € 25,000 if the object was owned by the seller for more than 5 years and there is a sliding scale for the tax rate, depending on the years of ownership. No tax applies if the object was owned by the seller before 1/1/1995.

If a person sells three or more properties in 2 years, then the regulations of the commercial property trade apply.

13.3 Non-recurring Forms of public value capture

The discussion about non-recurring forms of value capture in Greece cannot be approached without reference to the contextual particularities in the allocation of development rights. In our analysis of 2019, we demonstrated how development rights are allocated both in the context of planned and unplanned development and in ways that are not delimited by the formal planning system. For this reason, we have adopted the concept of the development pathways to include a wider spectrum of established institutional arrangements and social practices associated with the development of land (Karadimitriou & Pagonis, 2019). What is important to note is that, while value capture mechanisms are incorporated in most of the development pathways of planned development, they are either not activated or only partly activated. The development pathways of unplanned development that are widely utilised do not in fact incorporate direct public value capture mechanisms, resulting in a great overall value capture deficit in the operation of the land development system. As discussed in Section 2.3.1.2, the recent regulation for the legalization of informal construction, adopted in 2013, can be seen as a form of non-recurrent value capture instrument. However, this reform does not address the problems with unplanned and informal development.

13.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

13.3.1.1 Value Capture in Planned Development

The special planning instruments that we comment on here are the reallocation of plots and private planning, where the main factor of value increase is the allocation of (enhanced) development rights by virtue of creating a plan. The main mechanism or value capture in either case is the contribution of land from private landowners.

Plot Reallocation

The process of plot reallocation/land re-adjustment (in Greek: αστικός αναδασμός) is described in Law 947/1979 according to which private properties of a given area can be exchanged or even merged compulsorily, and after the exchange or merger the equivalent of the value of the merged/exchanged property is offered to the former owner in the form of land or property. In this way, the state can proceed with the implementation of an urban plan without enforced expropriations. The land surplus that is created through this process can be optimally allocated for the creation of public spaces and common facilities. The redistribution of plots differs from forced expropriation both in the type of compensation, which is non-monetary and, in the manner of compensation, since it does not result in the deprivation of the property but rather its readjustment for the sake of the common interest. A precursor of this planning instrument in Greece was applied for the redevelopment of the burnt parts of Serres (1914) and Thessaloniki (1917) and was then incorporated in the legal framework of planning in 1923 (P.D. 17.07.1923). Its use, however, has been limited only to very special occasions of natural disasters or bombings, where the imposition of a new town plan was urgently needed, such as in the cases of Cefallonia, Chania and Corfu.

Private Planning

Private planning (in Greek: ιδιωτική πολεοδόμηση) involves large-scale developments initiated by the private sector, mostly resorts and second-home settlements. The provision for private planning was incorporated in the legal framework with L. 1947/1991 and subsequent legislation referring also to the organized development of economic activities. The main factor of value increase in this case is the allocation of (enhanced) development rights and the concept of value capture in the context of private planning is implicit in the existence of an organized plan and in the fulfilment of obligatory requirements for open spaces and common facilities imposed by legislation. The infrastructure, which eventually gets built, mainly benefits the inhabitants of the development and less so the general public. A precursor of private planning, which in fact is a separate development path, are the 'building cooperatives' initiated since 1915. The building cooperatives are associations that acquire land with the purpose of converting it into developable land for the benefit of the members of the cooperative. The building cooperatives have been associated with practices of land grabbing with contested legality, especially in forest and coastal areas, a form of usurpation of public goods.

13.3.1.2 Value Capture in Unplanned Development

Development Inside Designated Settlement Boundaries

The right to develop inside designated settlement boundaries was introduced in the 1980s in order to facilitate development in remote rural and mountainous territories with less than 2,000 inhabitants. The justification was that such local authorities did not have sufficient resources to prepare detailed plans, and that there was no development pressure in these areas anyway. The application of this regulation however, led to widespread diffuse urban development outside the urban plan boundaries, due to the large number of settlements in Greece

that falls in this category (Yiannakou, 2015). More importantly, that pathway also covers numerous densely built suburban and second-home areas that evolved from settlements located in the periphery of metropolitan centres resulting to a significant loss of value capture. Every buildable plot of this category has to make land contributions according to a standard formula in order to provide public spaces or other public infrastructure (mainly roads).

Construction Outside the Town Plan

The right to construct outside the town plan boundaries (in Greek: εκτός σχεδίου δόμηση) is a blanket regulation that allocates limited development rights to land plots located in areas not covered by statutory plans, based on criteria related to the surface of the plot and technical parameters. This regulation, introduced in 1923 (Decree of 17/7/1923) to cover the needs of rural areas, is one of the most persistent institutions in Greece and has shaped the character of the vast majority of peri-urban landscapes and tourist areas. By granting development rights to practically every plot of land with few exceptions, it enables development to take place without explicit consideration for the social and environmental costs for the provision of public goods. In a lot of cases, this regulation has severely compromised the process of public regulatory planning and the potential for value capture, given that the right to construct outside the town plan boundaries is not suspended when the process of the preparation of the plan is initiated but only after the detailed implementation plan has been approved, which could be years later, if not at all. The cost of bringing the utilities network to each plot at the time of development is borne by the developer, who usually is the landowner. This is the one factor where some form of value capture occurs.

Informal Land Development

Informal land development (in Greek: αυθαίρετη δόμηση), meaning development without permission or deviating from the planning permission, is historically rooted in the process of land development in Greece, most notably the post-1922 refugee settlements and the post-WW2 decades of rapid urbanization. As scholars have noted, informal development has played a structural role in compensating the shortage of state intervention for the provision of housing and welfare (Mantouvalou & Mavridou, 1993). Nowadays these conditions have changed. Still, the informal sector retains a significant share of land development, covering a wide range of cases from illegally constructed villas in forested zones and tavernas on the seafront, to small-scale illegalities, for instance, turning balconies into enclosed spaces. These widespread practices, which cut across different social classes, have been 'invisible' to the formal value capturing mechanisms, given that there was practically no institutional way to acknowledge them as de facto developed land. Since 2010 and particularly since 2013, this has changed through a series of laws (L.3819/2010, L.4014/2011, L.4178/2013, L.4495/2017) that enabled property owners who had engaged in irregular development to be formally awarded those development rights retrospectively, for a given period of time, by paying a fine. Despite these contradictions and the criticism expressed by the professional planners' community and the Council of State, this regulation established a successful form of non-recurrent value-capture mechanism, which focuses on one factor of value increase (the usurpation of development rights). A total of € 2.4 billion had been collected from fines until 2017, and the initial purpose was to use them for urban green infrastructure projects.

Eventually, only a small fraction will be dedicated to that, the rest will be kept on a separate account to be offset against public debt.

13.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

13.3.2.1 Value Capture in Planned Development

Active Planning

Active planning (in Greek: ενεργός πολεοδομία) refers to the intervention of the state or other authorized body to plan and develop organized urban developments in response to social and economic needs, such as social housing. This planning instrument can be activated within special zones designated through the planning system, within which the state is given special powers to negotiate for the acquisition of private land in order to pursue the organized development scheme. The value capture is implicit in the provision of an organized plan, which incorporates physical, social and cultural infrastructure and suspends land speculation for the benefit of the community. Active planning was first introduced in 1979 (L.947/1979) and still forms part of the planning legal code but has seen very limited implementation and is practically inactive.

Public Regulatory Planning

Public regulatory planning represents the mainstream planning process in Greece. It involves the allocation of development rights through the preparation of spatialized development regulations, a process of detailed plan making for existing urban areas or urban extensions. As part of this pathway, land and property ownership is restructured, and detailed regulations are applied to buildable land plots, usually following the stipulations of higher-order spatial plans that are more strategic in nature. Responsibility for this process is entirely assumed by the public sector, and the role of central government is key in promoting this process. Value capture in public regulatory planning comes through the mandatory contributions to the cost of urban development of properties included in development zones. These contributions come in the form of land contributions without compensation as well as monetary contributions. The amounts of obligatory contributions were introduced in L.947/1979 and were applied at a large scale with L.1337/1983. The contributions depend on the size of the property and are a mandatory prerequisite for the allocation of development rights under the statutory power of the newly established urban plan. The land acquired through this process is allocated to roads and public spaces provisions, while the monetary intakes contribute to the cost of public infrastructure. Under the current planning law (Law 4447/2016), the required land contribution is taken at the time of approval of the road plan, i.e. at the stage of the detailed masterplan implementation.

Obligatory land and monetary contributions have been an innovative mechanism for value capture. However, in reality, the high level of complexity of public regulatory planning and lengthy approval processes have reduced its success in delivering the expected results. One of the main reasons for this is attributed to the existence of other pathways that allow the allocation of development rights outside the context of planned development, operating in parallel and often bypassing the planned development process as explained in the previous section.

13.4 Interim Conclusion for Greece

This analysis has attempted to shed light on the particularities of the real estate taxation system and the non-recurrent forms of value vis-à-vis the development rights allocation system in Greece. It has shown that, while recurring value capture mechanisms are reasonably effective, the non-recurring mechanisms embedded in the formal planning system are either not activated or counteracted by a number of parallel mechanisms that enable the allocation of development rights outside the context of planned development.

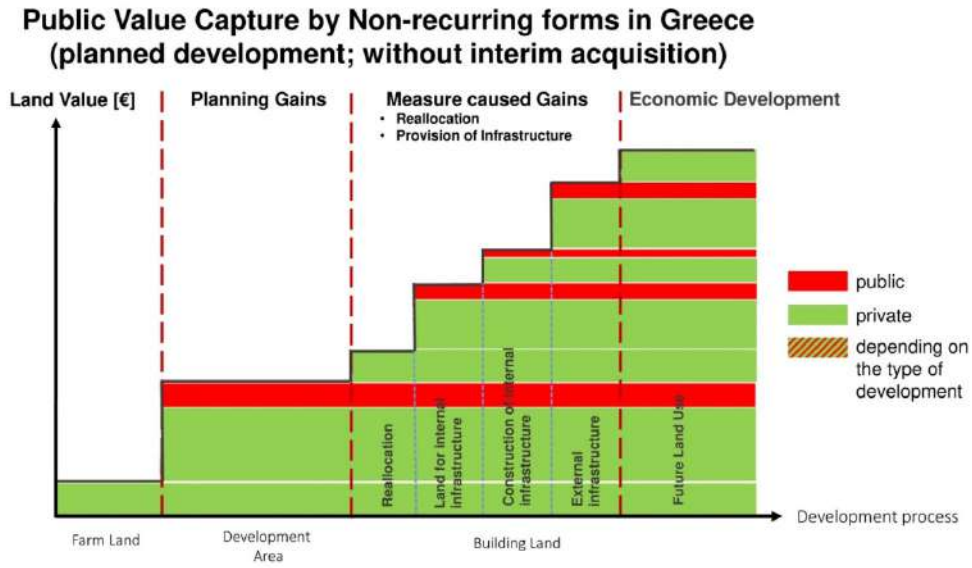

Figure 13.1: Value capture in Greece[1,2].

The combined effect of this state of affairs is a substantial loss of captured value, which is reflected in the built environment of Greek cities. Crucially, it manifests as underinvestment in public goods such as open spaces and public infrastructure. The recently adopted regulation for the legalization of illegal development is a corrective measure that extracts some of the value created through informal development. However, its potential for value capture has not been exploited in full, given that the funds are not reinvested for the creation of public goods but withheld to offset Greek public debt. Furthermore, it has created incentives for breaching planning regulations, especially in already developed urban areas, with a view to paying a fine and reaping huge returns in the process.

1 The diagram does not show PVC for unplanned development because it is very low (5–10%) and therefore difficult to present here.

2 Reallocation has been used in exceptional cases, mainly when entire urban quarters or towns were rebuilt after earthquakes or fires. These cases comprise a tiny percentage of the total urbanised land.

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14 Hungary

Andrea Pődör and János Katona

14.1 Local Authorities and Planning System

In Hungary, the urban land-use planning and urban development are laid down by Act LXXVIII of 1997 on the formation and protection of the built environment. The amendment of Government Decree 253/1997 (XII. 20.) on the national requirements regarding town planning and construction contains legislation details concerning settlements, such as the requirements of urban planning, building placement or building regulations. Investments also require a permit from the local building authority. One of the most important urban planning means is the settlement structure plan, which determines the urban structure, the urban use and the structure of utility networks. The settlement structure plan contains each and every unit of land use. General requirements concerning all zones are specified in the Government Decree; local building codes can also supplement these requirements.[1] The development plan should contain the source and distribution of the financial background of the projects (e.g. it is financed publicly or privately). It is worth mentioning at the beginning of this chapter that the concept of Public Value Capture does not exist at the societal level in Hungary. However, the authors revealed every possible instrument that can serve as a tool for PVC.

14.2 Recurring Forms of public value capture

14.2.1 Recurring Forms (Annual Payments)

In Hungary, the recurring PVC are based on annual local taxes, which can be divided into real estate tax and municipal tax. Local regulations can differentiate the real estate tax into two forms: one is for buildings and the other is for land.

Those local taxes are defined in the local tax legislation. There are taxes that every municipality is allowed to impose either on owners, residents or local businesses. The purpose of local taxes is to create a predictable financial base for the municipalities, in order to maintain their integrity and independence from state support.

14.2.1.1 Real Estate Tax for Buildings

One type of locally levied tax is the building tax. The municipalities can introduce this optional tax in their areas of jurisdiction. The building tax covers several types of real estate, not just housing. Those who are registered in the land register, as an owner or a beneficiary or the holders of another right, will be a taxable person.[2] As a property can have more than

[1] https://net.jogtar.hu/jogszabaly?docid=99000100.tv (local taxes).

[2] Act C. of 1990 on local taxes.

one owner, there may be several taxpayers. Municipalities publish on their website who and how much tax they have to pay. Taxpayers must create a declaration form.

In the area under the jurisdiction of the local government, a tax must be paid – in accordance with the local government decree – on residential buildings as well as on non-residential buildings. It can also be paid for parts of buildings such as garages. As a curiosity, it can be mentioned that the same tax has been levied on advertising panels since 2018.

The tax liability arises when a building permit has been issued for the building and the permit has become final in the following year. In the same way, the maintenance permit also generates the tax liability. Any changes related to the taxation of the structure must be reported to the municipal tax authority within 15 days. The obligation to pay the building tax, on the other hand, ceases when the building is demolished.

There are various cases of tax exemption:

- emergency housing,
- room for healthcare provided by a medical practitioner,
- a facility used exclusively for the storage of radioactive waste and the storage of spent nuclear fuel (under the Atomic Energy Act),
- a building for animal or plant production (e.g. fertilizer storage barn, greenhouse, crop storage, seed storage) if the building is used by the taxable person for its intended purpose.

There are two methods for calculating the amount of the tax and it is up to the municipality which method to choose. According to one method, the tax is calculated per square meter. According to the other method, the tax is calculated based on the corrected market value of the building, where the building tax may not exceed 3.6% of the market value. In case of tax calculated per square meter, the rate per square meter may vary from place to place. There are municipalities where buildings for residential purposes are not taxed.

14.2.1.2 Land Tax

The land tax is one of the optional local taxes that many municipalities have introduced. The land is by law the area where there is no building. The municipality should announce on their website whether they have introduced this type of tax or not. The concept of a plot/land includes several categories, and there are various cases of tax exemption:

- forest land,
- land under agricultural cultivation, from 1.01.2017,
- the taxable area of the land under construction (in this case, the tax rate is 50% of the normal tax rate),
- land which is under a construction ban,
- a protection zone for a product production plant if at least 50% of the taxable person's income comes from that holding.

There are two ways to calculate the amount of land tax. It is the free decision of the municipality which method is used. On the one hand, it can be based on a tax base per square meter

of floor area. The law defines the highest value per square meter that can be requested by the local government (currently 200 HUF per square meter). The other way to calculate the land tax is to use the corrected market value of the land (which is 50% of the total market value). If the municipality decides to use this, the land tax can be up to 3% of the corrected market value.

14.2.1.3 Municipal Tax

The municipalities must announce on their website the regulation and the rate of municipal tax. The real estate tax for buildings or lands and municipal tax cannot be levied on the same taxable real estate.

The municipal tax payment is related to the building or the land. There is also communal tax on an apartment lease, which is shared proportionally by the tenants, unless it is agreed in the contract who is the taxable person.

The amount of the tax is determined by the local government. The calculation of the limit of the tax is based on the maximum value of the tax defined in 2004 and it is corrected by the annual inflation rate in each year. The tax varies greatly from municipality to municipality.

14.2.2 Recurring Forms (in Case of Sale/Purchase)

In the case of sales, there are the real estate transfer tax and the capital gains tax.

14.2.2.1 Real Estate Transfer Tax

Hungarian legislation prescribes that, on the one hand, all incomes are taxable and, on the other hand, that a tax be paid on acquisition. In other words, after the sale of a property, tax has to be paid by both the previous owner and the new one. With the tax payment, the citizen proportionally contributes to the central budget. The rate of the tax paid by the buyer is uniformly 4% of the purchase price below 1 billion forint. Above 1 billion, the rate is 2%, but the maximum amount is 200 million forint. There are allowances, and the most important ones are the following:

- replacement purchase: if the person sells the property and buys another one in a 3-year period, the tax amount will be calculated on the basis of the difference between the value of the two properties – in case the new property is more expensive,
- for the youth: people under the age of 35 can ask for tax allowance if they buy their first property and if the total value of the property exceeds 15 million forint,
- for a new-built property,
- tax-exempt: people are exempt from paying the tax if the transaction is realised between married persons or close relatives.

There are several ways in which the government and the municipalities are trying to curb realty sector speculation. According to the changed tax law effective from February 2020, the property transfer tax is extra high (90%) when an area becomes a potential building land (i.e. when it is integrated ‘inside’ the urban perimeter).

14.2.2.2 Capital Gains Tax

Hungary currently has a 15% flat-rate personal income tax. The method of the calculation is the following:

1. tax base = selling price – purchase price – eligible costs
2. the amount of tax payable= tax base * 0.15
3. It follows that it is payable only in the case of a gain realized on the property. The tax base decreases over the years and is cancelled after 5 years.

14.3 Non-recurring Forms of public value capture

According to Act LXV of 1990 on municipalities, the municipalities are responsible for providing local public transportation, public education, medical aid, district heating, water utility management and ensuring parking areas. Since a lot of municipalities would not be able to supply the basic tasks individually, they are invited to tenders by the Ministry of Interior of Hungary. These tenders can be used for building or renovating day nurseries, kindergartens or hospitals.

14.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

14.3.1.1 Fee for Construction of Infrastructure

Although one of the tasks of municipalities is to provide utility services, citizens need to pay a contribution for the utility network. Both the service provider and the municipality can ask landowners 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. The provision of sewer utility services does not belong to the basic tasks of a municipality, but in case of its construction, the municipality obliges citizens to be connected to the utility network.

The municipalities develop local road networks as much as possible financially. Typically, they do not ask residents to pay a contribution.

14.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

14.3.2.1 Cooperative Development by Urban Contracts

14.3.2.1.1 Interim Acquisition

The municipality usually sells building plots with a construction obligation. It is mandatory to finish the construction within 2 years from the purchase. This further compels the real-estate developer or the construction company to buy the building plot. Immediately upon the construction is completed, they can sell the end product (e.g. apartment, office). The revenues from the sale price will be used to finance further urban development investments. In this perspective, it is therefore an instrument to capture land value increase.

The development and sale of building plots are often carried out by municipalities. Although there are costs for building plots, small settlements with a permanent population of less than 5,000 can apply for support from the Hungarian Government (Magyar Falu Program).[3]

According to the data of the Hungarian State Treasury, in 2018, 1.95% of local government revenues came from the sale of real estate.

14.4 Interim Conclusion for Hungary

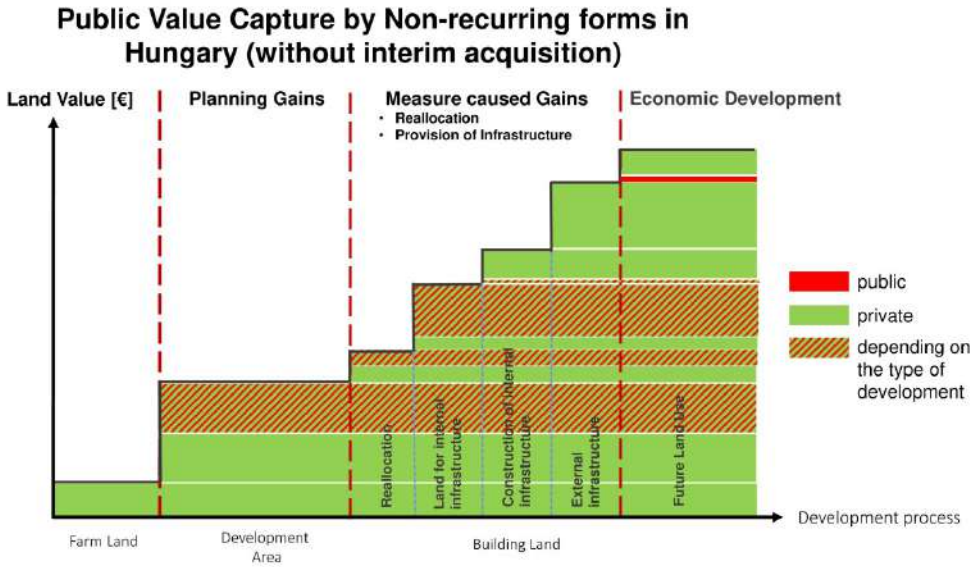

Figure 14.1: Value capture in Hungary.

'Unearned increments' in Hungary basically are based on recurring forms of value capture in the form of taxes. In Hungary, infrastructure development is financed primarily from European Union tenders and local business tax revenues.

Private building activities or connections to utilities (e.g. gas, electricity, water or telecommunication) are regulated by law and contracts between the property owner and private or public partners. For example, the property owner has to apply to a local energy provider and pay a defined all-inclusive price to get a connection to a power supply. The network is built and operated by a utility company.

[3] Magyar Falu Program.

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15 Israel

Rachelle Alterman and Nir Mualam

15.1 Local Authorities and Planning System

According to the Israeli Planning and Building Act (of 1965), Local Planning Committees are the responsible bodies for land-use planning. They are empowered to prepared and approve a range of local plans such as heritage protection plans, readjustment and urban renewal plans (Alterman, 2001; Alterman & Gavrieli, 2008). The first stage is 'plan deposition' in which the plan is being prepared and objections can be filed by property owners or other interested parties (such as neighbors). After a hearing, the Local Planning Committee would decide whether to approve the plan or not. Notably, because of the hierarchical Israeli planning system, some local plans can be prepared only by the District Planning Committee – a body controlled by central government ministries (Razin, 2015). Either way, upon approval, the local plan becomes legally binding.

15.2 Recurring Forms of public value capture

15.2.1 Recurring Forms (Annual Payments)

15.2.1.1 Real Estate Tax

There is no recurring annual tax payment for real estate in Israel designed to capture unearned benefits. The closest thing that resembles recurring payments for real estate is called *Arnona*, which is a municipal property tax (Darin, 1999). It is a monthly payment to the municipality which covers the ongoing costs of services supplied by the local municipal bureaucracy such as trash removal and education. 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. Likewise, the *Arnona* is not calculated in accordance with the property value but rather in accordance with certain specific parameters that generally affect the price of property. It is levied according to a schedule pre-approved by the central government. The schedule includes minimum and maximum tax rates payable to the local government. It is calculated, in each municipality, according to certain parameters, such as the size of the property, its built-up area, location, type of property and its age. Unlike common recurring real estate taxation, the *Arnona* is to be paid by either a tenant or the property owner who uses the property.

Although *Arnona* calculations are not predicated on land values, but rather, on the size, age, type, use and location of the property, in fact, however, the price charged per meter is to be determined, roughly, according to the economic scale of the neighborhood. Thus, properties in prestigious neighborhoods would pay more *Arnona*.

15.2.2 Recurring Forms (in Case of Sale/Purchase)

15.2.2.1 Real Estate Transfer Tax

In case of a sale, the property owner is obliged by Israeli legislation to pay real estate transfer tax. This applies to instances where long-term leasehold is sold as well as ownership. The tax rate and exemptions from paying the tax are determined by the central government and are updated from time to time.

In the main, a household owning a single residential property may be exempted from paying the real estate transfer tax, but those households owning more than one apartment, as well as ownership of non-residential properties would usually entail the payment of tax in case of a sale. In the case of private sales, when a household owns a single residential property, the possible profit from the sale of a house or an apartment is not taxable if there are at least 18 months between the acquisition of the property and its sale. Therefore, taxation is not applicable in some private sales.

As of 2021, the tax rate amounts to 25% of the rise in the property value. The rise is calculated by referral to the date of purchase which is compared to the price at the time of the sale. The total value of the property is calculated by factoring in both the value of the plot and the structure built on it. In fact, however, the real estate transfer tax is much lower following an extensive legal reform in 2018. This reform set lower tax rates for purchases made before 2014. Thus, owners who bought their properties in the 1990s or the 1980s or earlier will pay lower taxes because of linear tax calculations.

15.2.2.2 Capital Gains 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 land including buildings on it. The taxation covers price increases resulting from the impact on 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 the income tax rate (starting at 31%).

15.2.2.3 Extraordinary Tax for Unbuilt Plots

Until 2000, Israeli legislation had stipulated that empty plots of land must pay extraordinary tax for vacant land. The tax was payable by owners whose land had been designated for construction in a land-use plan but was not built. The primary goal of the legislation was to expedite construction and prevent speculation. Part of the tax payment was stored by central government in a special 'compensation fund' designed to cover a range of costs incurred by landowners that are not covered by insurance, such as recovery costs in case of natural catastrophes, fires, floods, etc.

However, in 2000, a new legislation abolished this tax. Critics argue this move was not due to constitutional considerations but rather the result of continuous pressure by real estate developers and companies who specialize in land banking.

15.3 Non-recurring Forms of public value capture

Concerning 'unearned increments', the non-recurring forms in Israel are focused on land values and their increases. Existing tools are primarily provided by the national government through parliamentary legislation. The key enabling laws are the 1965 *Planning and Building Act* (frequently amended) and the 1943 *Land Ordinance*[1] *(Acquisition for Public Purposes)*. Price increases may be reaped through a variety of non-recurring and *ad hoc* regulatory measures, as described below. In addition, it appears that besides national legislation, local governments through their local planning committees, as well as district planning committees, have come up with site-specific, and plan-specific, tools for value capture. These are frequently debated between practitioners as they are not always enabled by national legislation.

15.3.1 Non-recurring Forms (Focusing On One Factor Of Value Increase)

15.3.1.1 Fees for Construction of Infrastructure

Israeli landowners pay special fees for infrastructure, also known in Hebrew as *Heytelei Pituach*. Infrastructure fees are charged for infrastructure included in a detailed statutory land-use plan, built by the government, and from which landowners specifically benefit. This typically includes 'internal infrastructure', i.e. related directly and in close proximity to the developer plot. For example, public roads, sewage pipes, public utilities and green space (only in limited cases, where an area clearly lacks green spaces). Infrastructure fees are estimated using pre-determined formulas for each type of public work, based on their estimated cost. They for example, take into account the physical location, size and position of directly abutting properties. Thus, infrastructure fees are not determined according to land value increases. The national government sets a range within which local governments have the discretion to estimate and levy *Heytelei Pituach*. An earlier version of these fees was linked to the increase in land values created by public works. However, it proved difficult to administer and was replaced by the current *fees*, which are unrelated to proof of added value to land plots. Thus, one can argue that Israeli infrastructure fees reap some of the value increments, yet they are not calculated directly according to those increases, but instead according to the actual costs. Moreover, not all external infrastructure (like schools) is financed through infrastructure fees. Some types of infrastructure are financed by central governments, some by developers according to negotiated agreements and some by local governments through betterment levies or other revenues (see below).

The Israeli infrastructure fees are set primarily in local by-laws, which were broadly authorised in the 1949 *Local Governments Ordinance*.

[1] The term 'ordinance' implies that the legislation was originally enacted as an order by the King of England during the period of the British Protectorate over Palestine – IL. However, when Israel was founded in 1948, all such ordinances were incorporated into Israeli legislation and have the full status of parliamentary legislation. Only the terminology remains.

15.3.1.2 Betterment Levy on Planning Gains

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 approval of a new or amended detailed plan that grants more lucrative development rights, or the granting of a relaxation or small variance from a permit. The payment does not have to be immediate. The incidence points are either the issuance of a building permit according to the new development rights or sale of the property – the earliest among the two occurrences. To estimate the increase in value of land plots due to the granting of new or increased development rights, the legislation provides for two-tier appraisal: First, the local government obtains an appraisal by a legally certified real estate valuer. If the owner contests the sum, they may request a second appraisal by a nationally appointed valuer among a list of highly experienced real estate valuers. These semi-judicial valuers act as high inspectors. They have ceased private practice and are certified to decide on appraisals contested by private parties and local governments.

The Israeli *betterment levy* dates back to the 1920s, but the legislation was dysfunctional until thoroughly revised in 1981. Local governments are obliged to require owners to pay the levy. Its revenues are a major part of local budgets. Local governments can use the revenues from the levy for an open-ended list of infrastructure development anywhere within the city's boundaries. Put differently, the levy is not necessarily intended to cover the costs of infrastructure built in the area where the levy had been charged. It can also finance works that are unrelated to the paying plot of land. Moreover, a recent amendment allows directing 10% of the revenues to school education, not only to building works. Public buildings, social services, small housing units and some urban regeneration projects are fully or partially exempt from the betterment levy. Local governments are currently lobbying for reinstalling the full levy on urban regeneration projects due to unavailability of other funding resources for public services.

15.3.1.3 Transferable Development Rights and Flexible Building Rights

These value capture mechanisms are also used, albeit sporadically, in local land-use plans in Israel. Transferable development rights (TDR) are increasingly applied by savvy local governments for the protection of architectural heritage (Mualam, 2018). Local governments across Israel have allowed the transfer of building rights to protect designated historic buildings such as in World Heritage Sites. These rights are moved to another plot, usually within city boundaries. A real estate valuer would have to evaluate the extent of development rights to be transferred in this 'match-making' process. This is because 1 m^2 in the city center is worth more than 1 m^2 at its fringe.

As for flexible building rights, two major methods can be identified: First, the local planning authority may grant a building permit inclusive of an easement. This is a slight deviation from the local detailed plan. For example. It may allow a developer to build 4 floors instead of 3, or it may allow smaller setbacks in a given plot (thus adding to a building's mass). The discretion of the local planning authority is defined by the *Planning and Building Regulations*

of 2002. Courts have criticized this form of flexible decision-making but overall did not interfere much as long as the local planning authority had explained why these easements were needed (e.g. when the only way to build all floor space granted by the plan is to make a building higher or slightly bigger). In these cases, the owner has to pay betterment levies for an easement. Here, too, the charge is 50% of the total value increase.

A different model to enhance flexibility in planning is to allow owners a larger bundle of building rights in exchange for carrying out certain public works. The statutory plan would have to be approved by the local planning authority and in many cases by the district planning committee as well. Then, the statutory plan can include a 'quid-pro-quo' mechanism based on the increase in land values caused by the density bonus (Margalit, 2014). Thus, a plan can determine a certain floor-area ratio (FAR). But, in addition, it can include a mechanism that allows more floors/floorspace to be built beyond the basic floor space index. These additional floors (namely, density bonuses) are granted by the local planning commission in exchange for the provision of certain public goods. For instance, in its Master Plan, the city of Tel Aviv-Jaffa earmarks urban areas having minimum and maximum FARs. When a developer chooses to build more floors, they would have to provide certain public goods such as affordable units, or other in-kind contributions. The costs of providing these public amenities would then be deducted from the total payable betterment levy, in each project.

15.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

15.3.2.1 Land Readjustment in Israel

Land readjustment in Israel dates back to a 1955 amendment to the 1936 *Town Planning Ordinance*. Currently, the 1965 *Planning and Building Law* and its amendments contain the relevant clauses that apply to readjustment (Alterman, 2007). Israeli local governments use land readjustment frequently for new development, redevelopment and to unlock cases of fragmented landownership where private plots are scattered. Land readjustment areas are not treated as special development areas with a separate institutional structure. Rather, land readjustment is a routine practice set in almost-regular planning processes.

Both local governments and private landowners can initiate a land readjustment project. For a land readjustment project to be approved, landowners whose property falls within the readjustment area need to consent (Munoz Gielen & Mualam, 2019). In reality, agreement with all landowners is sought, although the process can be carried out even without consent (in which case, the non-consenting owners would probably file objections to the proposed readjustments).

After the pooling and readjustment of plots, landowners receive a plot with a value proportional to their original holdings and located as close as possible to their original land. However, because higher densities almost always require reconfiguration of roads and allocation of land for public services, most frequently, landowners are reallocated to newly created plots within the readjustment area. Often, due to high urban densities, owners receive apartments instead of their original ground plots.

To harmonise the reallocation of readjusted plots among landowners, two compensation mechanisms exist. First, if readjusted plots are less valuable than original ones, affected landowners receive the difference in value from the local government or other landowners, whereby the local government is only a mediator. Second, if readjusted plots are more valuable than original ones, the same mechanism works in reverse. Over and above the internal balancing among landowners, landowners whose property has risen in value are required to pay the *betterment levy* on the value added of plots (as explained above). As usual, the latter revenues become part of the general funds of the municipality.

For new development, typically 50–70% of land readjustment areas are reserved for public improvements and services such as public roads and transport, public utilities, parks, schools, etc. Nevertheless, usually the remaining land is still much more valuable than undeveloped plots (which are reserved for public use). In fact, in the Israeli high urban density and demand context, the value of land highly increases if it is released for development, despite the often large share of land allotted for public services through readjustment.

In Israel, both landowners and local governments often view land readjustment as a win-win. It occurs within regular planning processes, i.e. through statutory planning. Additionally, readjustment is financed through the same instruments as other public improvements and services, specifically via the betterment levy for increases in land values and infrastructure fees for public services on readjusted plots.

According to the letter of the law, when a statutory plan earmarks land for public use without involving land readjustment, the allocation should not exceed 40% of a given plot. The courts have interpreted land readjustment to override this limitation (so long as there is added value to owners). In other words, the planning commission can take more than 40% from a given plot (or a bundle of plots) when initiating land readjustment. Consequently, direct expropriation is almost never necessary in this case. The pre-condition is that any amount of land needed for public services in a land readjustment project may be taken as long as the readjusted plots are more valuable than the original ones.

15.3.2.2 Negotiated Development (Developer and Municipality) Instead of, or in Addition to, the Betterment Levy

In the past, some municipalities allowed and negotiated the provision of in-kind infrastructure by developers, instead of, or in addition to, the betterment levy. This was useful to substitute the betterment levies, which come late in the building permit process. Thus, ad hoc agreements enabled planners to make sure the infrastructure is supplied, financed, and sometimes built by developers, instead of the city (Alfasi & Ganan, 2015). However, in 2011 the 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).

Since then, the Court's decision has left planners in limbo, uncertain about the future of negotiations. Some city administrations ignored it, thereby continuing to negotiate with developers. Some were unsure when and if negotiations could take place. Overall, it appears

that the Court's decision has been implemented slowly, with some municipalities still using negotiated agreements to tap value increases and add public amenities and infrastructure. Following, a 2016 amendment to the *Municipalities Ordinance* sought to remedy and clarify things. The amendment allows a developer and municipality to sign a contract for the provision of infrastructure in limited cases where the project included in the statutory plan is for more than 100 housing units or above 5000 m^2 of office/retail space. In these cases, it is allowed and possible for the city and the developer to strike a deal for the provision of infrastructure. However, the developer must receive payment from the local government.

15.3.2.3 Interim Acquisition

Plots that are designated for public use in statutory plans are often expropriated by local governments (Alterman, 1990). At other times, owners agree voluntarily to transfer title to the city in those pre-designated plots (or part thereof) in order to expedite planning or to receive density bonuses. When land is formally acquired by the local government (a form of compulsory dedication), it is able to take up to 40% of land surface without compensation. The land is then used for construction of soft or hard infrastructure like schools, parks and other utilities defined by *the Planning and Building Act*. If land is acquired for a public use that is not stipulated by the law, then the government must pay full compensation for the land taken. The assumption here is that, when statutory plans earmark land for public utilities, these can be allocated to the government with relative ease. On the other hand, however, land banking in Israel is not done on a regular basis. Local governments are not authorized to purchase land for future development. This, can be done only by the Minister of Finance or other central government bodies.

In both cases, however, the government rarely exercises interim voluntary acquisition for land banking. In case of expropriation, government bodies do not transfer ownership back to the original owners unless forced to do so by law or through court decisions.

15.3.2.4 Contract Models and Developer Obligations

The agreement to carry out certain duties of the private partner in return to subsequent building rights (or other planning benefits) is a frequent occurrence in the Israeli planning system, whenever a statutory plan is on the table (Mualam et al. 2021). It is also a viable alternative to forceful acquisition (expropriation) of land. These agreements are used by planners to provide their locality with much-needed in-kind contributions. For example, developers may be required to renovate a historic monument or to build public amenities on their expense. Developers would cooperate as long as the value increase in land values offsets the costs of their obligations. As noted above, the legal rule regarding betterment stipulates that 50% of planning gains are transferred to the public authorities through betterment levies. However, in some cases, local governments attempted to extract more than 50% of planning gains, by requiring landowners to make in-kind contributions that amount to more than 50% of betterment. In so doing, public authorities *de facto* charge more than 50% of betterment, through requirements that developers or owners make additional contributions.

However, as noted above (Section 3.3.2.2), the Israeli legislation does not include legislative measures that allow planners to negotiate freely with developers in order to reap unearned increments and tap value increases. The Israeli Supreme Court ruled this voluntary horse-trading as illegal, let alone when it is not predicated on firm legal rules (Erlich and Alterman, 2020).

In practice, Israeli municipalities have continued negotiating with developers. When faced with arguments that these deals are void and amount to trespass of authority, they often wave the flag of freedom of contracts. When these agreements are challenged *ex post* by developers in courts, they are sometimes dismissed on the grounds of unjust enrichment; namely, a developer or owner who had signed an agreement with the planning authority, and subsequently received certain benefits (such as bonus densities), cannot argue, after the fact, that these agreements are unlawful.

15.4 Interim Conclusion for Israel

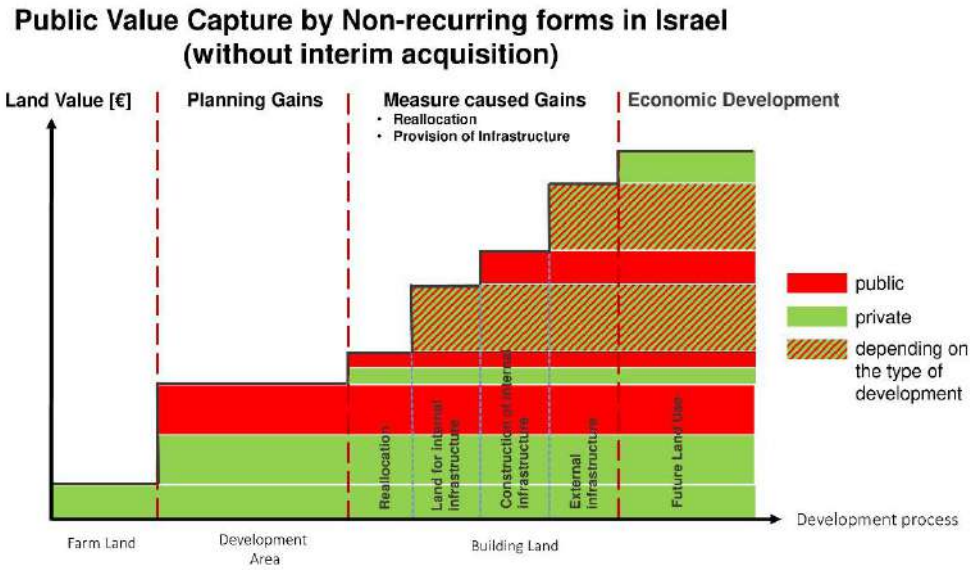

Figure 15.1: Value capture in Israel.

Concerning 'unearned increments', the non-recurring forms in Israel are focused on land values and their increases. In the main, value is captured by public authorities given activities performed by the government, including planning committees. The Israeli system is predicated on both betterment levies and infrastructure payments. In addition, there are several special cases that enable public administrators to reap unearned increments such as TDRs and easements.

The Israeli public value capture system is not perfect, and there are numerous loopholes in implementing it. Court rulings have added uncertainties. Statutory exemptions from the betterment levy are also debated frequently by appeal tribunals and the courts. However,

there is a growing concern that, as the national government decreases its financial support for local governments, the financial burdens on them would become heavier. As a result, local governments are continuously seeking new ways to expand their reach in terms of value capture, through enabling certain developer agreements and even expanding betterment levies beyond the 50% threshold for development.

Generally, and like in other countries (e.g. Germany) the revenues from various value capture instruments suffices, more or less, to cover local governments' direct actions (e.g. land allocation and construction of local infrastructure). However, in some cases, local governments are short of funding. They attempt to capture more than 50% of the value increment through negotiated agreements between the parties. The legal boundaries in such practices are not entirely clear, and the topic is often contested before the courts. Private owners contend that charging them with more than 50% betterment amounts to coercion, all the more so when owners are also required to pay other non-recurring as well as recurring payments. Court rulings on this issue have varied over time, but the financial needs to supply the growing package of services expected by citizens lead local governments to continue to explore negotiated development.

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16 Italy

Michela Tiboni, Francesco Botticini, Corrado Lo Storto

16.1 Local Authorities and Planning System

The Italian urban planning system is regulated by state laws. The national urban planning law is 1150 from 1942. It is still in force today, even if modified and integrated over the years. It introduces two levels of planning: spatial planning and municipal planning.

At the beginning of the 1970s, regions with ordinary statutes were established, to which the power to legislate on urban planning was transferred but in compliance with national laws. Today, regions, provinces (since 1990) and municipalities are the official bodies that deal with general planning in Italy. However, there are also other institutions which have the power over specific sector plans. The sector plans are single-issue planning tools. They govern the use of the territory in specific sectors (environment, soil protection, mobility, energetic and environmental resources, etc.). They are developed by specific bodies and agencies that have the task of regulating the use of those specific resources.

In the second half of the 1990s, changes were made to the Italian Constitution, which resulted in the attribution of greater powers to local authorities (municipalities) in matters of territorial governance, according to the principle of subsidiarity.

In Italy, there are important regional differences, especially as regards the denomination of the different plans and related procedures. Although, throughout the national territory, there is a distinction between a level of strategic planning (which is the responsibility of regions and provinces) and a level of government of the local territory that is the responsibility of the individual municipalities (7,904 in 2021).

Municipalities have the task of defining the possible uses of municipal land and the specific land regulation in force in the areas of their competence. Provinces and regions have the task of defining the general lines of development and verifying the coherence of municipal instruments with respect to them.

16.2 Recurring Forms of public value capture

Recurring forms of public value capture in Italy concern the taxes that citizens must pay based on their properties. There are two different types of taxes: the IMU and the TASI, both of which must be paid annually. There are also other types of tax: the capital gains tax and the real estate property transfer taxation, which is applied in the case of economic transactions involving assets.

16.2.1 Recurring Forms (Annual Payments)

16.2.1.1 IMU

The IMU (Tax on Property) also called the Municipal Tax, is a tax of a patrimonial nature whose prerequisite is the ownership or possession of an asset. Modified several times, the IMU is part of the Single Municipal Tax (IUC) since 2014, which currently also includes the TARI (Tax on waste) and TASI (Tax on indivisible services).[1] The IMU, in 2014, was definitively abolished for the main houses, that is, those where people usually live. The IMU must be paid by the owners of main luxury dwellings or by those who own second homes, etc., shops, offices, warehouses and premises not belonging to the main house. IMU is also paid by those who are not owners but have a real right on the property (such as usufruct, use, housing, surface or lease). The IMU also weighs on agricultural buildings and agricultural land.

The IMU is collected by the municipalities. The calculation basis is the cadastral income revalued by 5% and multiplied by the coefficient corresponding to the type of property subject to taxation (160 for homes, whereas different coefficients apply to offices, factories and shops). The cadastral income is thus adopted as a reference to automatically determine the value of a property. This figure is considered net of expenses but includes taxes and duties due. To establish the cadastral income, the cadastral categories are considered in relation to properties of the same type. The cadastral income is defined based on two elements: the size of the property (which is measured based on the number of rooms and the volume) and the estimate (the estimate rate is related to the census area in which the property is located and to its type). The 5% revaluation is established by the Italian Revenue Agency because the cadastral value is usually lower than the real value of the building.[2]

The rate approved by the municipality where the property is located is applied to the value obtained (Table 16.1). The IMU tax rate can vary from year to year. At the national level, the government provides an average tax rate, while at the local level, each municipality establishes the minimum and maximum values based on the average value provided by the Government. Reduced IMU rates or exemptions might apply depending on property status, owner's conditions and local rules. The IMU legislation gets amended frequently by the national government, whereas the municipality is free to establish the applicable rates and exemption rules.

[1] Agenzia delle Entrate (2017).

[2] Agenzia delle Entrate; Risposta n. 278.

Table 16.1: IMU tax rates according to type of real estate.

Real estate typology	Tax rate		
	National level	Municipality	
		Minimum	Maximum
Main house (after 2014), except for luxury houses	0%	–	–
Main house (before 2014), except for luxury houses	0.40%	0.2%	0.6%
Rural buildings utilized by farmers	0.20%	0.1%	0.2%
Buildings that do not produce land income and rented buildings	0.76%	0.4%	0.76%
All other cases	0.76%	0.46%	1.06%

The amount of the tax depends on the local authority and also on the size, location and category of the property. If the property is passed as uninhabitable or being restored, the tax is reduced by 50%. In the case of farmland, progressive reductions of the tax rate are applied for the land value, but only if land is cultivated by a professional farmer. In fact, agricultural land was taxed in Italy for the first time in 2011 with the introduction of the IMU tax. The local governments can apply further reductions to the tax rate, but only if there is no substantial negative influence on the overall municipality budget. Thus, it is common that local governments exempt or reduce the IMU tax payable on the house of elderly people living in a nursing home (and, consequently, have changed their residency) or on the main residence in Italy of Italian nationals living abroad.

16.2.1.2 TASI

The TASI, like the IMU and the TARI (Tax on Wastes), is part of the IUC and is the Tax on Indivisible Services. It was introduced in 2014 and is collected by the municipalities. Its justification is to cover the costs of collective services such as public lighting, road, garden maintenance, etc. Currently the TASI affects all properties (including the main residences) and must be paid both by the owners and, in part, by the tenants, who are entitled to a share of 10 to 30% based on the resolutions of the municipalities. To calculate the TASI, the same rules apply as for the IMU and the same tax base is used (cadastral income). A minimum rate of 1 per thousand (set by the state) is applied to this value, while the maximum is determined so that the sum of IMU and TASI does not exceed 10.6 per thousand. If the property is a main residence, the maximum rate must not be greater than 2.5 per thousand. Municipalities can provide tax breaks for the first houses. They can also apply an additional rate up to 0.8 per thousand on other types of property.

16.2.2 Recurring Forms (in Case of Sale/Purchase)

16.2.2.1 Capital Gains Tax

The capital gain is nothing more than the positive differential (gain) that derives from the sale of an asset previously purchased. The activity related to the sale of financial instruments brings with it the problem of determining the correct taxation to be applied to the gain obtained. In Italy, the taxation regime for financial income differs depending on the type of investment made. The goal is to better target the taxation of income deriving from the use of its capital.[3]

The following categories of legal entities are subject to the capital gain regime:

- Resident natural persons if they do not achieve the capital gain in the exercise of business activities, self-employment or as employees.
- Simple partnerships and equivalent entities.
- Non-commercial entities if they do not achieve the capital gain in the exercise of business activities.
- Non-resident subjects (of any nature) provided that the sale is considered carried out in Italy pursuant to Article 23 of Presidential Decree no. 917/86.

For natural persons with business activities, there is no taxation of capital gains because this income is directly part of the business income.

The capital gain received by individuals (not under the corporate regime) is characterized by taxation at the time of the annual tax return. In the tax return, the capital gain generated is classified among other financial income.[4] In the ordinary taxation regime, the capital gain from the sale of real estate flows into the total income and is added to other taxable income (income from employment, pension, etc.). The capital gain must be taxed according to the rates provided for the various income brackets (the percentage for the lowest bracket is 23%).[5]

As an alternative to ordinary taxation, a substitute tax of 26% can be applied to the capital gain from the sale of property. The seller of the property exercises this taxation option at the time of the transfer in the notarial deed.[6]

16.2.2.2 Real Estate Property Transfer Taxation

A single rate has been introduced, equal to 9% for all transfers with the exception of a house used as a non-luxury main residence, to which the rate of 2% is applied.[7]

3 Agenzia delle Entrate; "Tassazione plusvalenze immobiliari – che cos'è".
4 Borsa Italiana, 2020.
5 Rizzi, 2020.
6 Migliorini, 2021.
7 Camera dei Deputati, 2018.

16.3 Non-recurring Forms of public value capture

16.3.1 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

The non-recurring forms of capturing public value include the payments that owners or developers of areas must pay to public administrations when they undertake urban developments thanks to planning decisions. These payments are justified by the fact that private properties acquire greater value thanks to merits not directly attributable to the owner's action.[8] In this way, the private owners contribute to the development of the public city and its infrastructures. These forms of value capture are divided into construction contributions and urbanization charges.

16.3.1.1 Construction Contributions

In Italy, to obtain a building permit, it is necessary to pay the so-called 'construction contribution' to the municipality. This contribution is commensurate with the construction costs.

The construction contribution for new buildings is periodically determined by the regions with reference to the maximum eligible costs for subsidized construction (e.g. social housings). The value of the contribution cost is defined by regions, and it varies on the basis of building typologies.

The chambers of commerce could increase the fee paid by companies if the projects implemented allow companies to obtain favorable conditions (better connection with infrastructure, etc.).

The construction contribution represents a share of the construction cost of new buildings, ranging from 5% to 20%, which is determined by the regions according to the characteristics and types of buildings and their destination and location.

In cases of subsidized housing construction, the contribution relating to the building permit is reduced to the only share of the urbanization charges. This is applied to permits related to existing buildings too, and it is valid if the permit holder undertakes, by means of an agreement with the municipality, to apply the sales prices and agreed rents related to the sector of subsidized housing.

To facilitate building densification interventions, for the renovation and recovery of no longer being used buildings, the construction contribution is reduced of at least 20% compared to that envisaged for new buildings. This includes cases of construction works whose value is greater than that of their original use. The municipalities define the criteria and application methods for applying the relative reduction.

[8] Oppio, Torrieri & Bianconi, 2019.

16.3.1.2 Urbanization Charges

Urbanization charges are contributions to the expenses incurred by the municipality for the urbanization of built-up areas (for example, (e.g. the construction of roads, schools and other infrastructures). Urbanization charges are contributions that the municipalities require from developers to deliver building permits. The urbanization charges are normally paid to the municipality upon issuance of the building permit. At the request of the interested party, it can also be paid in installments.[9]

A distinction is made between:

- Primary urbanization charges: residential streets, rest or parking spaces, sewers, water networks, electricity and gas distribution networks, public lighting, equipped green spaces, multi-service shafts and cable ducts for the passage of networks telecommunications.
- Secondary urbanization costs: kindergartens, compulsory schools as well as structures and complexes for education, neighborhood markets, municipal delegations, churches and other religious buildings, neighborhood sports facilities, green areas of neighborhood, social centers, and cultural and health facilities. Health equipment includes works, constructions and plants intended for the disposal, recycling, or destruction of urban, special hazardous, solid, and liquid waste, and for the reclamation of polluted areas.

The incidence of primary and secondary urbanization charges is established by a resolution of the city council based on the regional parametric tables.

Every 5 years, the municipalities update the primary and secondary urbanization charges, in compliance with the relative regional provisions, in relation to the findings and foreseeable costs of the primary, secondary and general urbanization works.

With total or partial deduction of the amount due, the holder of the permit may directly carry out the urbanization works, with the methods and guarantees established by the municipality.

After deducting the primary and part of the secondary urbanization charges, the owner can take control of the construction of the urbanization works (e.g. roads, car parks, parks, etc.). In this case, the necessary costs of building the infrastructures or services are deducted from the total cost payable to the administration by the private individual. The owner is also required to transfer to the administration the private areas on which the public urbanization works will be carried out.

The type and cost of the works that will be carried out in deduction of the costs or the quantity of private areas that have to be sold to the public body are the subject of a specific negotiation procedure called urban planning agreement. The agreement is stipulated between the developer and the administration, and it is the final step of the administrative process for the approval of the urban transformation.

[9] Cutini Rusci, 2016.

16.4 Interim Conclusion for Italy

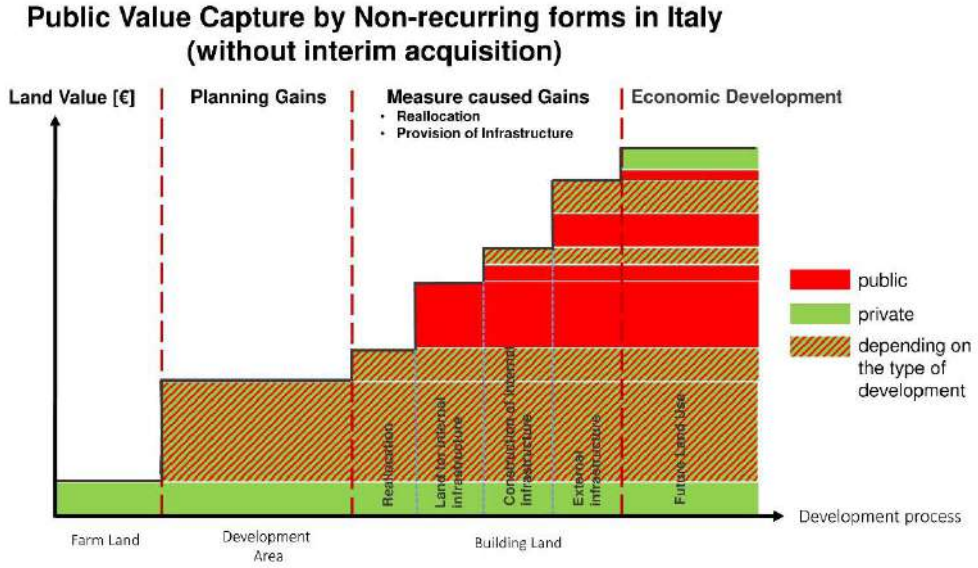

Figure 16.1: Value capture in Italy.

Within the urban transformation process, the capture of value by the public body takes place indirectly as private operators are required to carry out the urbanization works stipulated during the urban planning agreement. In parallel, they also must pay the urbanization charges.

This process is made possible by the stipulation of the urban planning agreement, which provides public bodies with the power to negotiate with the owners and to force them to carry out public works. If the developers cannot realize these works, they must provide the resources, both in economic terms and in terms of areas, for the realization of the urbanization infrastructures.

The type of works and the amount can vary from case by case, and the infrastructures can be realized both inside or outside the development zone.[10] In this way, the land value that is created, and from which both the public administration and the community benefit, is given by a higher quality of public areas and a higher level of territorial endowments.[11]

[10] Tira, van der Krabben & Zanon, 2011.
[11] Tira & Badiani, 2009.

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17 Latvia

Armands Auziņš

17.1 Local Authorities and Planning System

According to the Spatial Development Planning Law[1], the municipalities (local governments) are the responsible bodies of spatial planning. At the municipal level, various planning instruments are developed and approved: the development strategy, the development programme, the spatial plan of the municipality (comprehensive spatial plan), local plans for a part of the municipality, detailed plans and thematic plans. These plans, except for a thematic plan, have legally binding regulations with a different degree of detail regarding land use and building. The spatial plan of the municipality is long-term, laying down the requirements for land use and building, including functional zoning, public infrastructure, regulations regarding land use and building as well as other conditions for land use. It is developed for an administrative territory or a part of it. A local plan is also long-term, developed for a part of the city or town, a village or its part, or a part of the rural territory for solving a planning task or detailing or amending a spatial plan. A detailed plan of a part of municipal territory is developed to lay down the requirements for the use of specific land units and building parameters as well as to adjust the borders of land units and restrictions.

17.2 Recurring Forms of public value capture

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

17.2.1 Recurring Forms (Annual Payments)

The immovable property tax represents the indirect instrument of public value capture. However, any other types of tax income and fees may be used for improving public infrastructure in the territory of the municipality according to the accepted annual financial plan (the budget of the municipality). Typically, the immovable property tax and personal income tax benefit municipalities and constitute the main part of their resources. Although the revenues from immovable property tax for 100% and personal income tax for 80% are held by municipalities, the financial means from the last source (personal income tax) prevails significantly.

17.2.1.1 Immovable Property Tax

The immovable property tax is imposed upon tangible things that are located in the territory of the Republic of Latvia and that cannot be transferred from one place to another without being externally damaged. The tax is levied on land, buildings (including those registered

[1] Spatial Development Planning Law, 2011. https://likumi.lv/ta/en/en/id/238807

in the Cadastre Information System but not transferred into exploitation) and engineering structures[2]. Either property owners or their legal possessors pay the tax based on the cadastral value. The State Land Service determines the cadastral value according to common methodology, which in general prescribes the cadastral value base (base values and correction coefficients based on market data analysis)[3]. The municipality determines the tax rate different for land and buildings in the range 0.2%–3% of the cadastral value and indicates it in binding regulations. The general tax rate is 1.5% of the cadastral value of the property unit. Residential property is taxed at a rate of 0.2%, 0.4% and 0.6% depending on the value of the property (the progressive tax of different value thresholds). 3% are paid, for instance, for degraded property or neglected agricultural land. The share of immovable property tax in municipal tax revenue gradually increases (from 8% in 2008 to 15% in 2014) mainly on account of the increase of property value[4]. However, the rights of municipal authorities to apply a tax discount (up to 90%) to specific population groups and the obligations to the financial equalization fund influence municipal tax revenues and their use for providing public goods and services. The national government (the Cabinet of Ministers) determines the classification of the purposes for the use of the immovable property and the procedures for the specification of the purposes for the use of the immovable property[5]. In 2011, the purpose of 'undeveloped building land' was introduced for the properties with missing infrastructure – road access and electricity connection. This introduction causes lower tax income to the budget of a municipality.

17.2.2 Recurring Forms (in Case of Sale/Purchase)

17.2.2.1 State Fee (Immovable Property Transfer Tax)

The state fee for registering ownership rights in the land register (Land Book) per immovable property by substance is a real property transaction tax. The fee (tax) has to be paid if an immovable property changes the owner, before the registration of ownership rights in the land register. The payment is transferred to the state basic budget. The basis of this transaction is a contract or a legal property transfer by heritage or donation. The state fee amount is determined, based on the information on persons' relationship, stated in the additional terms of the registration request (notarial act). The determined rate of the fee varies from 0.5% to 6.0% of the immovable property's value – the highest – a purchasing price or the cadastral value of immovable property[6]. Rates are determined by the regulation of the Cabinet of Ministers. Their application varies depending on the type of transaction and specified conditions. Most often, the rate of 2% is applied for alienation of land property or land and building property based on a sales contract or a court decision.

[2] Law on Immovable Property Tax, Section 1. https://likumi.lv/ta/en/en/id/43913
[3] Immovable Property State Cadastre Law, Section 7. https://likumi.lv/ta/en/en/id/124247
[4] Auziņš, 2018, p. 219.
[5] Immovable Property State Cadastre Law, Section 9. https://likumi.lv/ta/en/en/id/124247
[6] Regulation Regarding State Fee for Registering Ownership rights and Pledge Rights in the Land Register, Cabinet of Ministers Regulation No. 1250, 2009. https://likumi.lv/ta/en/en/id/200087

17.2.2.2 Capital Gains Tax

The capital gains tax is applied if private real properties have been 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. The capital gains tax goes to the tax income of the central government (state budget), but it may be assumed that the distribution of public goods (e.g. main roads, public transport, etc.) largely contributes to the increase of the property value in the area of a particular municipality.

17.3 Non-recurring Forms of public value capture

The direct public value capture instruments focus on development procedures in Latvia. Property owners finance or refinance the 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) the implementation of detailed plans and (2) charges for local infrastructure due to the implementation of public projects. Development fees are not typical in Latvia. However, developers cover a lot of costs during the development process. Decisions related to development opportunities (incl. to develop and finance local plans and detailed plans) are adopted by municipalities based on the spatial plan and binding regulations regarding the land use and building of the territory. The regulations on land use and building can be considered a source for direct value capturing in a municipality, e.g. they may determine that before getting a building permit for residential building, the developer has to ensure the construction of a street, electricity supply, water supply and sewerage drain within a development territory. The costs of new infrastructure and improvements required for development are borne by the owner/developer of the property to the extent necessary following the local plan and/or detailed plan. Municipalities cannot finance the costs related to the development of private property. Legislation determines land-use planning and land consolidation measures[7,8]. However, the projects, including land readjustment measures, are not the instruments for public value capture in Latvia. Such projects mostly serve for subdivision and/or readjustment of land plots as well as for voluntary or compulsory purchase in case of providing new public infrastructure, e.g. road, railway or highway.

17.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

17.3.1.1 Implementation of Detailed Plans

The implementation of a detailed plan may require land for public use and cover some infrastructure costs. Formal (institutionalised) tools of spatial planning due to their implementation may be considered for direct value capture. A detailed plan is implemented according to an administrative contract – 'Implementation Agreement' concluded between the municipality and the developer. Following the provisions of the Administrative Procedure Law, a contract contains various conditions: time periods and disclaimers regarding cancellation; requirements concerning the time for commencement of construction work of objects; management of

[7] Land Use Planning Law, 2006. https://likumi.lv/ta/en/en/id/144787https://likumi.lv/ta/en/en/id/144787

[8] Land Management Law, 2014. https://likumi.lv/ta/en/en/id/270317https://likumi.lv/ta/en/en/id/270317

the detailed plan territory and public infrastructure; construction stages and consequence. A municipality may specify the time period within which the implementation of the detailed plan is commenced – building (use) of the detailed plan territory in compliance with planned solutions and specific requirements[9]. If reallotment is considered for a new development area but an infrastructure for streets has not been created, about 20% of the territory designed to readjust should be intended for public purposes, e.g. streets, green areas, etc. Accordingly, for the development of new infrastructure objects such as streets, roads, main utility networks and constructions, the territory should be detached as a separate land unit (e.g. a territory for transport infrastructure and/or territory for technical building)[10]. After development, such a land unit may be allocated to the municipality for its further management.

17.3.1.2 Implementation of Public Projects

The implementation of public projects, e.g. utility networks like electricity, water, sewerage and gas, may require covering some infrastructure costs. Based on the development agreement, a charge (fee) for the provision of local infrastructure can be applied. The owner of the utility network (a company) or its lessee according to the contract is responsible for the management of the utility network. Maintenance costs of the utilities normally are covered by user charge (an annual or based on actual consumption). Some networks are managed by the municipality or municipally owned companies, e.g. water supply, sewerage disposal and heat supply, but some – by public or privately-owned companies, e.g. power supply, telecommunications, and gas supply[11].

The reason to conclude the *development agreements* appears when the rights and obligations of developers/property owners and municipalities are not defined by statutory regulations (e.g. by an 'Implementation Agreement'). In case the municipality owns the land, the conditions on land allocation and the price for the land is a matter of negotiation between the municipality and the developer. According to national and EU regulations about state aid, the land must be sold at a market value determined by an official appraisal. The development agreements sometimes represent the initiative for urban development based on *public-private partnership*s. Therefore, the benefits of the buildings remain with the private developer (income and profit), and the benefits of the increased property value remain with the municipality (fees and taxes)[12].

17.3.1.3 Development Fee (the Case of the Capital City of Latvia)

The municipal fee for the maintenance and development of the municipal infrastructure in Riga City[13] can be seen as a part of the development charge policy in a particular administrative territory (municipality), which is not typical in Latvia. Thus, a one-time charge is imposed on initiated development to help finance the capital cost of providing

[9] Spatial Development Planning Law, 2011. Chapter V, Section 31. https://likumi.lv/ta/en/en/id/238807

[10] Regulations No. 240 of the Cabinet of Ministers, "General Regulations for the Planning, Use and Building of the Territory", Section 2 and Section 6. https://likumi.lv/ta/en/en/id/256866

[11] Auziņš, 2018, p. 218.

[12] Auziņš, 2018, p. 218.

[13] Since 1995, the implementers of the construction plan in Riga City have been paying a fee for the maintenance and development of the municipal infrastructure.

services (including offsite services) for the building intention. According to the currently valid regulations of 2013[14], the calculation of the fee takes into account: the classification coefficient of buildings (by type), the location of the building in the city (4 zones); the type of development of the structure, the area of the structure, other indices and coefficients. For construction plans that provide for the construction of residential buildings, a fee for the development of social infrastructure is calculated and applied. However, the amount of this fee can be reduced by granting discounts and rebates. Discounts in the calculation of the fee are applied for the investment of the implementer of the construction plan in the development of external infrastructure, e.g. streets, squares, sewage collectors.

In some other municipalities, such fees are also set by the municipal binding regulations, which are based on the classification of buildings, but the amount of the fee is much lower than in Riga City as it resembles a charge to cover administrative costs, similar to the charge applied for issuing a building permit. Thus, for instance, a specific payment should be paid either for the entire construction plan in Carnikava municipality or the impact of the construction plan on traffic infrastructure objects per day in Tukums municipality.

17.4 Interim Conclusion for Latvia

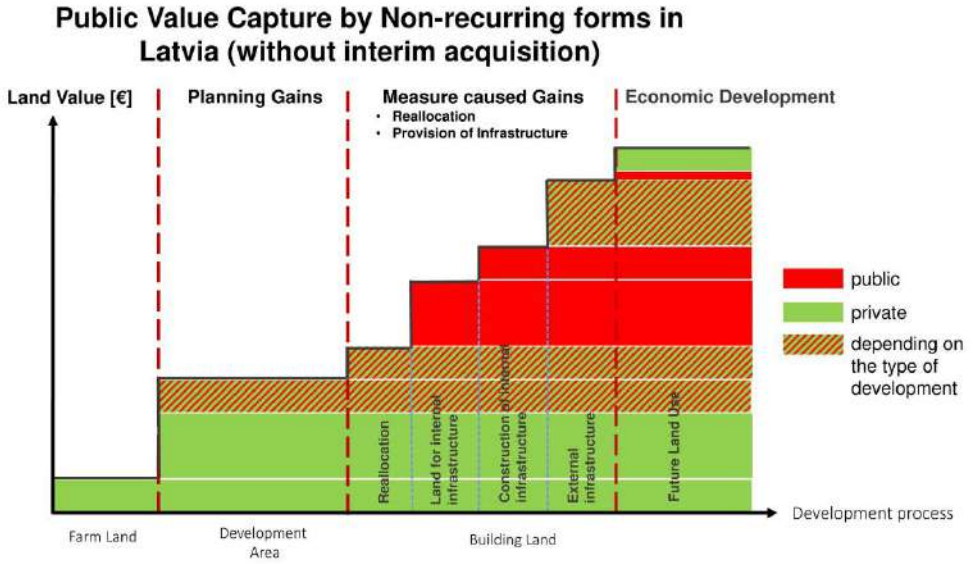

Figure 17.1: Value capture in Latvia.

Value surplus due to private investments is subject to value capture in Latvia[15]. Conceptually, one has to distinguish between capturing the value surplus of the development and covering its costs (also administrative ones). However, all costs for development influence the creation of surplus value to be captured.

[14] Riga City Council binding regulations No. 211 of 19 February 2013, "On the Municipal Fee for the Maintenance and Development of Infrastructure in Riga". https://likumi.lv/ta/id/255358

[15] Jürgenson et al., 2017, p. 6.

Land value increase due to the extension of property rights benefits both a developer/landowner and a municipality. All types of taxes and fees that create municipal revenues and are used for the benefits of local society (e.g. the development of public infrastructure), to a great extent apply to all property value increases independently of the roots of increasing values.

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18 Lithuania

Marija Burinskienė

18.1 Local Authorities and Planning System

In Lithuania, planning is carried out at three levels: state, municipalities and localities. In each of them, General Plans are prepared, the main drawing of the solutions of which is intended for land use. This drawing shows the land use of the individual areas, which describes the main requirements and restrictions for land use. All plans are interconnected and cannot contradict each other. Lower-level plans detail the solutions for higher-level plans. Local municipalities are responsible for municipal and local-level spatial planning documents.

The public administration in Lithuania is divided into two levels: government level and municipal level. The municipal territories are administered by municipal councils. Urbanization is possible only in accordance with the territorial planning documents, and the buildings must comply with the purpose of the use of the sites. Construction permits are required for the construction of buildings or the installation of public spaces. The most important element is land.

18.2 Recurring Forms of public value capture

In Lithuania, the recurring forms can be divided into the real estate tax, the real estate transfer tax and the capital gains tax.

18.2.1 Recurring Forms (Annual Payments)

18.2.1.1 Real Estate Tax

The development of real property tax system in Lithuania is conditioned by many factors, among which the most significant ones are as follows: privatization, development of the real property accounting and administration system, decentralization of governance and strengthening of local self-management, general reform of the tax system, comparatively low level of living.

The first Law on Real Estate Tax was adopted in 2005 and entered into force on 1 January 2006. The fee is paid by natural and legal persons. The object of the tax is real estate (or a part thereof) owned by natural and legal persons and located in the territory of the Republic of Lithuania. The tax rate is 1% of the tax value of real estate. The average market value of real estate and the value of real estate specified in Items 3 and 4 of Paragraph 2 of Article 9 of this Law, determined by the replacement value (cost) method, is considered the tax value of real estate. The tax is included in the budget of the municipality in whose territory the real estate is located. The tax period of the tax is a calendar year according to Lithuanian legislation. From 2020, the tax-free value of non-commercial real estate for natural persons

is reduced to € 150,000 (from € 220,000). Municipalities must increase the minimum real estate rate to 0.5% (from 0.3%).

Lithuania's tax system aims at ensuring stable budgetary income, supporting sustainable economic growth and fair and proportional tax distribution. The tax system is based on the general principles of taxation and aligned with EU tax legislation.

Taxes on real estate property provide a contribution to Municipal Budgets:

- Most of revenues are transferred to Municipal Budgets
- Up to 7% of total revenues of the municipalities in 2018 (72% of which from real estate property tax and rest 28% from land tax).

There are two main functions of real property tax system in Lithuania: fiscal – to ensure the finance of public services at municipal level, and regulative – contributes to common regulative function of taxation system (housing market regulation; supporting regional policy; a tool for municipalities to combat against abandoned real estate).

Several major reforms of the real estate law have taken place in recent years.

The recent (2017–2018) changes in taxation aimed at more competitive and clear labour taxation: reduction of taxation on low- and middle-income earners; ensuring predictable and stable tax environment; supporting sustainable economic growth; reduction of informal economy.

Measures taken/planned to broaden the tax base:

Progressive tax rates for the non-commercial real estate of natural persons (residential buildings, gardens, garages, recreational buildings, etc.) introduced since 2018. To shift the tax burden from labour to the taxes less detrimental to growth, which government approved. The object of land tax private land located in Lithuania territory (except forestland).

The tax payers are owners of private land (natural person and legal entity). The taxable value of the land are average market value. The tax rate fluctuates from 0.01% to 4% of the taxable value of the land. The tax administrator provided and formed declaration and payment until 1 November of each calendar year period.

In Lithuania, an amendment to the Law on Land came into force on 1 March 2022, when developers in urban areas have to pay a tax on real estate developed on state land when the purpose of its use has changed.

Remuneration for reconstruction or construction of 10–75% of the value of the plot will be applied. Remuneration for the possibility of construction is planned to be applied in all cases when state land is leased for the operation of buildings. In other cases, when public land is leased for projects of national or regional importance, free economic zones, concession or PPP projects, the operation of ports or airports will not be remunerated for the right to build.

Only those tenants whose lease term under the contract will be over 3 years are eligible for construction on state land. Short-term leases do provide an opportunity to build.

The tax applies to both new construction and reconstruction when the building is increased or decreased. The amount of the fee varies depending on the volume of construction (future building area or total area).

The tax applies not only to buildings, but also to engineering structures – sites, streets, retaining walls, treatment plants and other structures – if the area of the plot to be built on them changes.

The development fee does not apply to demolition, simple and major repairs, and modernization of buildings when the building is being repaired or reconstructed in accordance with standard building designs approved by the Ministry of the Environment or its authorized body.

In the Law, the amount of the tariff is related to the volume of construction, when both the area of land built with buildings increases and the total area of the building after construction and/or reconstruction, the remuneration for the right to build on state land consists of the remuneration calculated for the increase for an increase in the total area of the building, but not more than 75%. This means that, in the frequent case of conversion, where both the building area and the total area increase by more than 30%, the builder has to pay a maximum remuneration of 75% of the average market value of the plot for the possibility to build.

The change of land use or use is allowed, and the 5% fee is waived, when the change of use is allowed, when the state land is leased for the operation of buildings and the possibility of changing the main land use and/or use is provided in the leased state land plot.

18.2.1.2 Land Tax

The land tax is paid by all legal and natural persons developing their activities or residing in the territory of Lithuania. The main exemptions of Land Tax are applied to commonly used roads, land used for the purposes of nature protection (national parks, nature reserves, etc.), land of historical, archaeological, natural, cultural, etc., monuments and land of ethnographical homesteads; land for farmer's farm establishment (first 3 years).

Moreover, municipal councils are entitled: to establish the size of tax-exempt land plot owned by disabled land-owners, old-age pensioners; to apply further exemptions from land tax.

Land tax essential reform includes:

- introduction of *average market value* as a basis for imposing the land tax;
- the right for municipal councils to set concrete tax rates *within the range provided by the law* (0.01–4%);
- the right for municipal councils to set specific rates *by criteria*_defined in the law (purpose of real estate property, use, legal status, technical features, maintenance condition thereof, location, etc.).

The tax base is the average market value of the real estate property, for evaluation mass evaluation or recoverable value(cost) methods were used. The land tax rate varies from 0.3–3.0% of the taxable value of the property, with progressive rates for non-commercial real estate (from 0.5 to 2%).

The main exemptions are applied to real estate property: state-owned or municipal real estate property, unused real estate property with unfinished construction, used for education work, used solely for the provision of health care services, of societies for disabled persons, of the charity and sponsorship funds, used for environmental protection and fire prevention, etc.

Municipal councils have the right to apply for further exemptions

An exception applies to the real estate 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 € 220,000 per person is exempt (for taxpayers with 3 or more children or a disabled child, the value of exempt property is increased by 30%). Excess is subjected to progressive tax rates (0.5–2%).

The Seimas of the Republic of Lithuania adopted an amendment to the Law on Land, which entered into force on 1 March 2022 to tax construction on state land if a change of use is required.

18.2.2 Recurring Forms (in Case of Sale/Purchase)

18.2.2.1 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. 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.

18.2.2.2 Capital Gains Tax

With regard to capital gains tax, a distinction must be made between private and commercial trade.

In 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 the increase in value. The capital gains 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 selling price with a deduction of demonstrable improvement cost.

18.3 Non-recurring Forms of public value capture

Concerning 'unearned increments', the non-recurring forms in Lithuania are focused on land values and their increases. The of public value capture of 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 is the municipality generally able to capture the part caused by the planning. In this case, it is very important that the contract be concluded before the planning. If a legally binding land-use plan already exists, the resulting price increase forms part of the private property of the landowner. On the other hand, according to the Lithuania ownership law, the anticipation of a price increase does not form part of the property. For this reason, the local authorities are generally allowed to intervene in private property before the passing of the municipal planning.

18.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

18.3.1.1 Fee for Construction of Infrastructure

The municipality is obliged to provide the local public infrastructure, whereas nobody is entitled to infrastructure provision – even if a legal binding land-use plan already exists. The municipality provides the local public infrastructure as part of their capability and according to the political discretion. Local public infrastructure according the law is, for example, roads and other traffic facilities but also parks and green spaces. The construction costs are allocable. A local law regulates the distribution basis. Only if an investor is willing to do the provision does the municipality not have any costs.

The fee for construction infrastructure depends on whether the land is classified as a priority development (urbanized) territory or a non-priority (non-urbanized) territory. The infrastructure of the municipality of the priority areas will be financed from 2021 in accordance with the territorial planning documents-general plans. Municipalities prepare infrastructure development programs for the implementation of the General Plans. Its funds are divided into two parts: contributions for the development of priority municipal infrastructure and contributions for the development of non-priority municipal infrastructure. Accordingly, funding for infrastructure development is provided in the respective areas. Priority and non-priority areas are provided for in the general plans of municipalities or their implementation programs.

18.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

18.3.2.1 Development According to General Urban Planning Legislation

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 the general plans of city municipalities, the mandatory requirements for building intensity and building height are additionally established.

Detailed plans are prepared in the urbanized territories determined in the general plans of the municipal level or local level, when the development of the territory is envisaged and/or when the regulation on the use of the territory is changed. Detailed plans are valid indefinitely or until the development and approval of territorial planning documents of the same level are approved.

The detailed plans set out the following regulations for the use of the site: the type and manner of use of the site, permissible height of buildings, permissible building density and intensity of land plots, possible building types, building construction area, boundary and line, the boundaries of the territories and (or) engineering communications corridors required for the engineering and social infrastructure, the stages of the development of the priority infrastructure of the municipality according to The Law on Territorial Planning.

18.3.2.2 Development According to Special Urban Planning Legislation

Solutions of special plans must be integrated into complex plans (general and detailed); only according to them it is possible to take land plots for public needs or infrastructure development. Efforts are made to reach an agreement with the landowners and compensate them for the land taken at the average market value. The municipality buys the land for a value not initially affected by the future improvement measure. After the infrastructure is planned, redistributed and implemented, the building land is sold to new owners, unless it is for communication corridors or public spaces. Compensations must be paid with some exceptions, for example, if easements are provided.

18.3.2.3 Cooperative Development by Urban Contracts

In Lithuania, land consolidation is carried out only in non-urbanized areas. In urbanized areas, no legal mechanism is developed for the consolidation process; therefore, the municipality must negotiate with the owners of individual land plots. In Lithuania, according to the Law on Territorial Planning of Lithuania, the main drawing of the Towns General Plan regulates the use of land in urban areas.

18.3.2.3.1 Interim Acquisition

The municipality has plots that are used for urban development for public purposes. To this end, the municipality must find customers to develop facilities for public purposes. Plots are purchased at a low price if they are purchased before the planning process begins. To this end, the municipality announces tenders in accordance with the Law on Public Procurement.

But, in this case, the period of interim financing and the development risk are quite high. On the other hand, if the plots are purchased just before the land-use plan is approved, the prices are higher, but there is less development risk and a shorter interim financing period. However, building up state land reserves requires a lot of money: When the land-use plan is finished, prices are higher but there is less development risk and a shorter interim financing period.

18.3.2.3.2 Contract Models

Lithuanian municipalities enter into agreements with developers so that they can develop the territory according to the intended purposes, whether it is public buildings or residential houses or the infrastructure needs development. To this end, land for project development must be acquired or leased. Its improvement value is reflected in the value of the land after the implementation of the development. Until 2021, there were specific contracts with developers, where they were obliged to compensate for the improvement of the development area (with funds, land or buildings needed by the public). With the adoption of the Municipal Infrastructure Law, which came into force in 2021, it has become more clearly regulated and understood. A methodology has been created on how to calculate the compensation for the developer.

18.4 Interim Conclusion for Lithuania

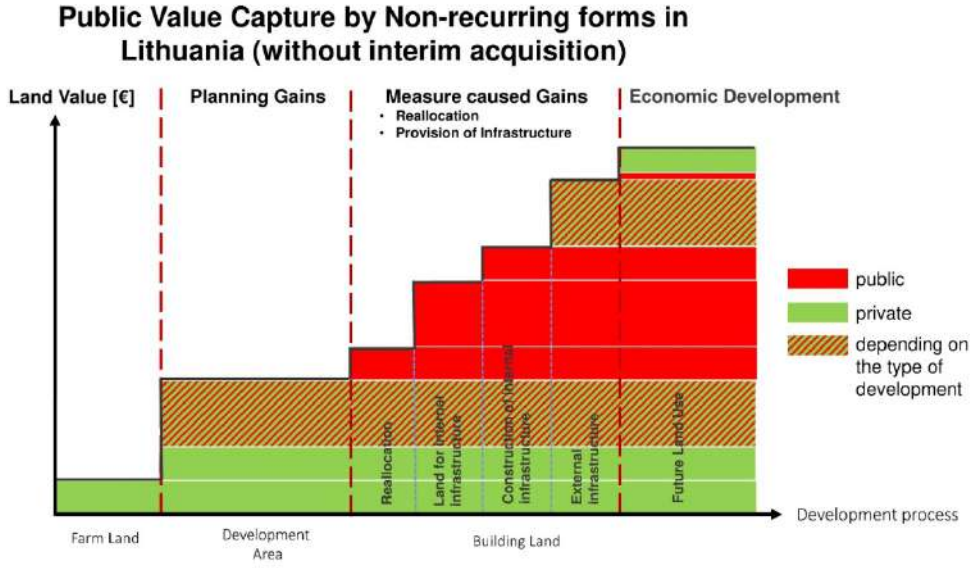

Figure 18.1: Value capture in Lithuania.

In terms of increments, recurring forms in Lithuania are focused on land values and their increase. Such constructions and their financing are regulated by contracts between the property owner and private or public partners. For example, a property owner has to contact a

local energy supplier and pay a set price to get connected to a power source. Activities or connections to utilities (e.g. gas, electricity, water or telecommunications) are taken into account. Specific activities of public authorities can usually be funded. It is very important that the contract be concluded before planning; if there is already a legally binding land-use plan, the resulting price is part of the landowner's private property.

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19 Malta

Odette Lewis

19.1 Local Authorities and Planning System

In Malta, development planning is carried out on a national level. The Development Planning Act, Chapter 552 of the Maltese Legislation, makes provisions for the sustainable planning and management of development. The Strategic Plan for the Environment and Development (SPED), which was approved by Parliament in July 2015, is based on an integrated planning system that regulates the sustainable management of land and sea resources. The plan provides a strategic spatial policy framework for both the environment and development, complementing the Government's social, economic and environmental objectives (Government of Malta, 2015). At the time of writing, the SPED is being reviewed.

In Malta and the sister island of Gozo, there are 68 Local Councils. Local Councils do not regulate development planning in their locality. This is regulated at a national level, through the Planning Authority.

Local government was established in Malta in 1993, through the Local Councils Act. In 2001, the system of local government was entrenched in the Constitution of Malta. So whereas previously all public infrastructure both large-scale and small-scale was carried out on a national level, in the past decades smaller-scale infrastructure is being carried out by the Local Councils.

Local authorities do not develop roads, hospitals or schools. That type of infrastructure is provided on a national level. If the government or a public entity requires land that belongs to the private sector for the construction of roads, schools, hospitals and any other public project, market prices are paid for the acquisition of such land. Public land is managed in line with *Cap. 573: Government Lands Act.*

Local authorities provide smaller-scale infrastructure like public open spaces, gardens and community facilities. Local Councils have limited budgets to carry out infrastructure improvements for their localities.

Seven Local Plans, covering groups of localities, cover the whole archipelago. Development zones and the relevant planning policies applicable for each area are identified in these Local Plans. The first Local Plan, the Marsaxlokk Bay Local Plan, was approved by Parliament in 1995, whilst the subsequent six Local Plans were approved between 2002 and 2006.

In 2006, a rationalization of development zone boundaries was carried out. Although approved by parliament, this extension of boundaries was and is still controversial. Pockets of lands, in some cases considerable in size, mostly at the edge of development zones were turned into developable land. Thus large swathes of land, which previously formed part of the Maltese countryside and located outside development zones (ODZ), became developable through this rationalization exercise.

The Local Plans have for a long time been due for a total review. However, a total review of these plans has not materialized to date. Only partial reviews, which changed zoning in specific areas, were carried out.

When comparisons are made between European countries, such as is being done in this book, one has to keep in my mind that the issue of scale does matter. In general, in Malta most of the development is carried out on individual small-scale plots of circa. 150 m². Larger-scale developments do exist, but these are fewer in number.

The term public value capture (PVC) is not usually referred to in Malta. One can only find limited reference to this term in research. However, PVC tools do exist and are widely used.

19.2 Recurring Forms of public value capture

In Malta, we do not have a property tax, but we have a final withholding tax paid by the seller and a stamp duty paid by the buyer upon the transfer of property.

19.2.1 Recurring Forms (in Case of Sale/Purchase)

19.2.1.1 Final Withholding Tax and Duty on Property Transfer

With effect from 1 January 2015, the previous tax system, which consisted of both a 12% final withholding tax on the transfer value and 35% tax on the profit or gain, was replaced by one final withholding tax rate of 8% on the value of the property transferred (Inland Revenue Department, 2021). The final withholding tax, which is paid by the seller, is regulated by *Cap. 123: Income Tax Act*.

Besides the withholding tax, one finds a 5% Duty on Transfer, which has to be paid by the buyer. The Duty on Transfer is regulated by *Cap. 364: Duty on Documents and Transfers*.

There are several exceptions to the 8% final withholding tax, which, for example, include a reduced tax rate of 5% final withholding tax on the transfer of a property situated in an urban conservation area or scheduled by the Planning Authority, in terms of Article 57 of the Development Planning Act, so as to encourage the regeneration of these areas.

Furthermore, as part of Malta's Economic Recovery Plan, the Duty on Transfer and the Property Transfer Tax have been lowered to 1.5% and 5%, respectively, on the first € 400,000 for specific periods between 2020 and 2022.

The monies collected through duties and property transfer taxes are channeled to the Government's Consolidated Fund. € 89 million and € 148 million were collected in stamp duty on property transfers in the years 2020 and 2019 respectively. In 2018, the revenue from stamp duty on property transfers represented 3.67% of the total tax revenues in Malta (National Statistics Office, 2021).

19.3 Non-recurring Forms of public value capture

The non-recurring forms of public value capture in Malta include the Infrastructure Service Contribution (ISC) and Planning Obligations, both regulated through *Cap. 552: Development Planning Act.*

19.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

19.3.1.1 Infrastructure Service Contribution

The state, mainly through the Planning Authority(PA), regulates various aspects of development. Applications for development permission are submitted to the PA.

On submission of an application for Development Permission, the Infrastructure Service Contribution (ISC) is charged.

The ISC is paid by the development applicant towards the cost of infrastructure services and other services or facilities arising from the permission to develop land. The rates per square metre charged take into account the services involved, the areas of development and other material considerations. Rates are stipulated in SL 552.12 Development Planning (Fees) Regulations according to the type of development. As an example, the sewer fee for a residential development is € 2.60/m², whilst the street fee is € 1.70/m². For commercial developments, these fees go up to € 3.00/m² and € 2.00/m², respectively.

Any entity (be it a private or a public entity) that applies for a development permit pays the relevant ISC, where required. Development applicants are thus paying a share for the provision of civil infrastructure, such as sewers and roads, adjacent to their developments. The ISC does not cover the full cost of infrastructure provision.

In order to clarify the level of infrastructure provision, one can classify developments in Malta into

1. Small individual developments normally on 7 m by 21 m plots or combinations thereof;
2. Medium-scale developments, which include private internal roads;
3. Larger developments forming part of the local plan rationalisation exercise of 2006.

In the first case, the developers carry out the initial road formation in front of or adjacent to their property to gain access. The construction of the roads and the necessary utility infrastructure is planned, constructed and provided by a national entity.

In the second case, where developers are creating private internal roads, which are not 'schemed roads', developers carry the full cost of infrastructure provision within the development footprint. Outside the development footprint, the same principles as Case 1 apply.

In the third case, developers first have to apply for and pay for a Planning Control application for the zoning and road alignments to be established. Once the schemed roads are determined, the same principles as Case 1 apply. In such cases, the schemed roads are considered public roads, and thus the developers do not bear the full cost for the construction and provision of road and utility infrastructure.

19.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

In addition to the ISC, planning obligations can be placed upon any type of development, and these are normally determined on a case by case basis.

19.3.2.1 Planning Obligations

As regulated by Cap. 552, the (PA's) Planning Board may seek to impose obligations on the applicant, in connection with the grant of development permission. These obligations may be in the form of activities or works on the land in respect of which development permission is being sought; or any other land; or on both. Obligations can also be in the form of payments or benefits. In general, planning obligations are placed on certain large private sector projects.

Payment in respect of Planning Obligations is channeled to the Development Planning Fund. *"This fund promotes improvement and embellishment works in urban areas, such as landscaping, traffic management and other urban projects which are considered beneficial to the wider community."* (Planning Authority, 2021)

In 2020, through *PA Circular 2/20: Revisions to the Development Planning Fund (DPF),* revisions were made to the DPF to further encourage the use of PA funds for urban greening concepts, Green and Blue Infrastructure (GBI) and furthermore to aid vulnerable sectors within society, including facilities for the disabled.

As an example, in December 2020 a planning obligation was placed upon the redevelopment of a disused hotel in the Southeast of Malta. A contribution of € 25 per m² of GDF had to be made to the Development Planning Fund as a planning gain. The funds had to be allocated towards the costs of the restoration of a historical tower (located adjacent to the hotel), including the rehabilitation of the ditch and the glacis. The developer also had to fund the rehabilitation of the foreshore, including the removal of all concrete accretions.

19.4 Interim Conclusion for Malta

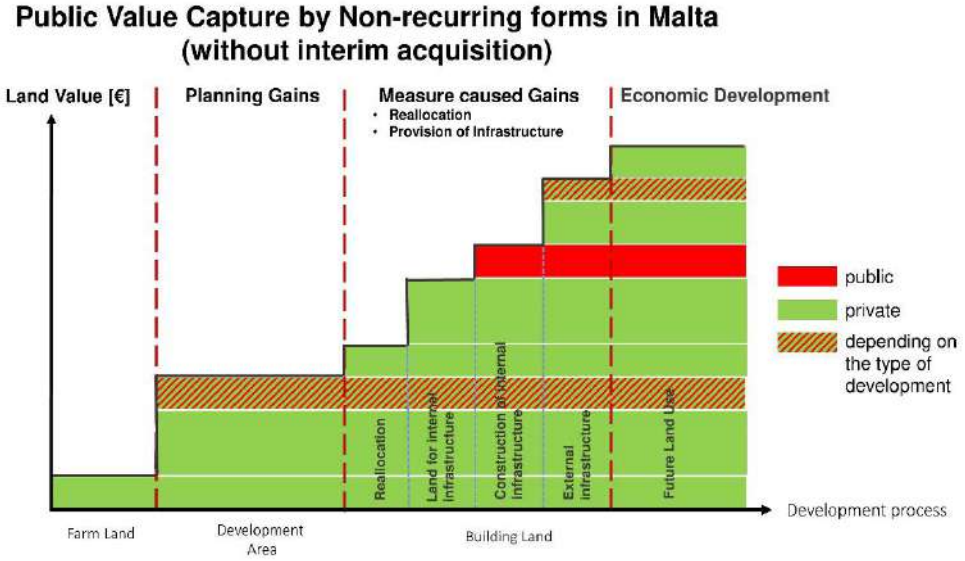

Figure 19.1: Value capture in Malta.

As has been described, in Malta we do not have a property tax, but we have a final withholding tax paid by the seller and a stamp duty paid by the buyer, upon the transfer of property.

Recurring and non-recurring forms of Public Value Capture are limited in Malta. The Development Planning Fund (DPF), which is partly funded from planning obligations, proves to be a good source of funds for community projects.

In general, one finds a good level of public infrastructure in Malta, most of it financed through national government funds as well as through EU funds. The country is on the path to improving the quality of infrastructure and public open spaces by striving for an increase in green and blue infrastructure, which aims to reinforce the drive towards a more sustainable built environment. The extension of the concept of Public Value Capture, embedded in the Planning Obligations framework, may be considered one of the tools to support such a drive. An overhaul of how planning obligations are applied is necessary.

For instance, Malta has long been considering mass rapid transit (MRT) as an alternative to the car-dominated landscape in the country. The financing of such a large infrastructure project has long been debated. The financing of MRT through Public Value Capture is a consideration that should enter this ongoing debate.

Housing Affordability in Malta is another area where Public Value Capture is being discussed. Due to a period of rapid financial growth, gentrification and mass development, which is supported by the financialisation of the housing market, an unprecedented disparity between the average household income level and property prices was created (Ministry

for Social Accommodation, 2020). Thus various models of affordable housing provision and financing including PVC tools are being debated. Such concepts have never been applied in Malta to date.

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20 Republic of North Macedonia

Aleksandar Petrovski and Julijana Angelovska

20.1 Local Authorities and Planning System

The Law on Spatial Planning[1] in R. N. Macedonia mandates the rights to develop urban plans to private offices with an adequate number of licensed urban planners and other related engineers; public institutions for urban planning which can be established by the municipality if due to the size and complexity of the city, as well due to the size and complexity of the workload, there is a need for its establishment; Agency for Spatial Planning.

The type of urban plans in N. Macedonia are categorized according to the area for urban planning, the importance of the area subject of planning (whether it is of state or local importance), such as General Urban Plan (GUP), Detailed Urban Plan (DUP), Urban Plan for village, Urban Plan outside populated area, Urban Plan for areas or building of state importance.

According to the Law on Spatial Planning of R. N. Macedonia, the Agency for Spatial Planning is responsible for the development of the Spatial Plan of the Republic as a strategic document for land-use and future development of the country. The Spatial Plan is promulgated in the Assembly of the Republic of N. Macedonia.

The Agency for Spatial Planning develops the GUP in which the city development guidelines are defined, alongside with the land-use zoning and other related parameters. The public institution established by the municipality can also develop GUP for the city in which it is situated. The planning period for the GUP is 10 years, and it defines the planning area, i.e. the border of the city, the borders of the DUPs for the urban areas within its city limits, the borders of the zones according to the land use, defining the land use with percentage representation of the various land uses, etc. The urban area within a municipality is divided into urban quarters and blocks. For each urban block within the municipality, a DUP is developed which is in force for 5 years.

The DUPs are documents integrating the public and private demands and aspirations of the society and define parameters regarding land use, parameters for building on a given plot, among which the most important are number of floors, height of the building (defined by the top end of the facade wall), percentage of the area of the plot under construction, coefficient of construction (defined by the total gross constructed area divided by the plot area), number of parking places in relation to the constructed area and its type of use, etc. The construction itself, the procedure for obtaining construction permit, the rights and obligations of the stakeholders in the construction process and other related questions are defined by the Law on Construction.[2]

[1] Official Gazette of RM, No. 32/20.

[2] Official Gazette of RM, No.130/2009 … 18/20.

20.2 Recurring Forms of public value capture

According to the Law on Property Taxes[3] that regulates the means of taxation, recurring forms of property taxation in N. Macedonia, can be divided into 1. property tax; 2. inheritance and gift tax; and 3. tax on real estate turnover. From 01.01.1994 to 30.06.2005 (in accordance with the Law on Property Taxes dated 30.12.1993), the determination and collection of property taxes – property tax, inheritance tax and gift and sales tax on real estate and rights – is carried out by the Public Revenue Office. During the validity of this law, tax rates were fixed. In 2005, the process of decentralization in the Republic of Macedonia started. With the new Law on Property Taxes, which started on 1 July 2005, the jurisdiction over property taxes from the Public Revenue Office was transferred to the units of local self-government (the municipalities and the City of Skopje). The determination and collection of property taxes are carried out by the municipal administration, the administration of the municipalities in the City of Skopje and the administration of the City of Skopje. The tax rates are proportional, and the rates for each type of tax are determined by the Municipal Council.

20.2.1 Recurring Forms (Annual Payments)

20.2.1.1 Real Estate Tax

The Law on Property Taxes as a subject of taxation in Article 3 declares: "Property tax shall be paid for immovables, except for property which is exempted from taxation according to this Law."[4] The property tax for moveable property in North Macedonia is excluded from the authorities. Accordingly, we can use real estate tax instead of property tax.

The tax subject is juridical and physical persons as owners of the real estate. When the proprietor of the proper estate is not known to the authorities, then the taxpayer is the person, juridical and physical, using the real estate. Taxpayer for the real estate tax can be even the person who is using the estate, and if the estate is jointly owned by more persons, then every one of them will be liable upon their owner share.

The base of the property tax is the market value of the immovables. The determination of the market value of the immovables is made by an assessor employed in a local self-government unit. Upon a request of the local self-government unit it may be made by an authorized assessor.

The collection of real estate tax is fundamental to the essential functioning of the local governments. The tax rates are proportional and range from 0.10% to 0.20%. They can be set regarding the type of real estate. In this case, the agricultural land that is not used for its purpose can be taxed with this law from three to five times more than the reference rates. The rates are determined by decision by the Council of the Community[5]. The market value is determined by appropriate methodology for the assessment of market value of immovable

[3] Official Gazette of RM, No. 61/04 ... 102/08.
[4] Official Gazette of RM, No. 61/04 ... 102/08.
[5] Official Gazette of RM, No. 61/04 ... 102/08.

estate[6]. The taxpayer who lives in the building or apartment liable for real estate tax has the right for a reduction of the calculated tax in the amount of 50%.

The Assembly in North Macedonia recently adopted relevant amendments to the Law on Property Taxes, aiming to harmonize the legislation with the applicable Law on Misdemeanors, on the one hand, as well as to make efforts and introduce more just property taxation, on the other hand. The basic property tax rates remain within the legal framework, i.e. they are proportional and amount to between 0.10% and 0.20%. The most significant change introduced by these amendments is the introduction of the so-called luxury tax, including the increase in the property tax rates by three times for

- real estate that is not used by the owner or is not leased for more than 6 months during a year, and
- agricultural land that is not used for purposes of agricultural production.

Additionally, the proposed amendments prescribe a five-time increase in the property tax rates for real estate owners who fail to declare that they do not use certain real estate in their ownership.

Pursuant to the amendments, the real estate market value is audited every 4 years, considering that it may change without the knowledge of the appraisers and the municipal administration. The introduced increase property tax rates will apply from 01 January 2022.

The amendments also regulate other specifics, such as the assessment of the market value, property tax treatment in cases of sale of real estate in joint ownership or co-ownership as well as amendments in the manner of calculating the prescribed misdemeanor sanctions.

Amendments to the Law on Property Taxes are needed, but there is a lot of work for the municipalities to make efforts to collect taxes, as there is tax evasion in a vast number of municipalities, before introducing more just property taxation. As Hendricks (2020) points, the optimal toolbox has to be adapted to country-specific circumstances. The success of public-driven strategies in negotiation procedures requires an improvement of political and technical capability[7].

20.2.2 Recurring Forms (in Case of Sale/Purchase)

20.2.2.1 Inheritance and Gift Tax

Inheritance and gift taxes are paid upon the fixed real estate and the right for consumption and usage of real estate, which the inheritances, i.e. gift receivers, inherit or receive according to the Law for Inheritance or a gift agreement. Also, it is paid for in cash, money demand, securities and other forms of movable assets, only if the market value of the inheritance or gift agreement is higher than the the 1-year average wage in North Macedonia in the previous year, according to State Statistical Office. The value of all gifts from the same type, received within 1 year, represents one tax base. For the value of the gifts, the administration of the local authorities takes

[6] Methodology for assessment of the market value of the real estate (Official Gazette of the Republic of Macedonia, no. 54/12).

[7] Pogliani, 2019.

notes, upon which the receiver of gifts can be levied with tax at the end of the year. That happens only if the person receives more gifts of the same kind and in amounts above the appointed sum. The tax rates for inheritance and gift are proportional and differ depending the inheritance order. The inheritor or receiver of first-line relation is exempted from taxation. The inheritance tax and gift for second-line relation is set at 2–3%, and for an inheritor from a third-line relation or someone who is not a relative to the predecessor, the tax is levied at 4–5%. The transfer of real property is subject to a municipal-level transfer tax determined by the council of the local government[8]. The tax base for the inheritance tax and gift is the market value of the inherited real estate or real estate that is received as a gift at the moment of imposition of tax liability and decreased for the debts and expenses for governance of the real estate, which is subject to taxation.

20.2.2.2 Real Estate Transfer Tax

Transfer tax on real estate is paid on the sale of real estate. Transfer of real estate is considered a transfer with or without fee of the ownership right on the real estate, as other means of acquiring real estate with or without fee between physical and juridical persons. The taxpayer of the transfer tax of real estate is a juridical or physical person – the seller of the real estate. Under exclusion, an obligator for transfer tax of real estate can even be the buyer of the real estate, if it is agreed upon in the agreement for sale of the real estate. In the process of switching real estate, the taxpayer is the participator in the swop which in return gives real estate with higher value. If the transfer is the ideal part of the ownership on real estate, then the taxpayer is every owner separately. If the right to ownership of real estate is transferred under agreement for long life support, the taxpayer is the receiver of real estate, i.e. their heirs.

The rates for transfer tax on real estate are proportional and range from 2% to 4%. The rates are formed through a decision in the Council of the community. The tax base of the transfer tax on real estate is the market value of the real estate at the moment of creating the obligation. In the case of switching real estate, the tax base is the difference in market values of the real estates that are switched. In the case of transferring the ideal part of ownership on real estate, the tax base is the market value of the ideal part of the estate.

When the real estate is sold during bankruptcy proceedings, the tax base is achieved through the sales price as a result of competitive bidding or direct agreement, if the real estate is not sold through competitive bidding after two auctions.

20.2.2.3 Capital Gains Tax

Capital gains from the sale of real estate property are taxed as ordinary income at the 10% rate regulated with Personal Income Tax Law[9]. Capital gains are calculated as selling price less acquisition costs and incidental transaction costs. The tax is then levied on 70% of the calculated capital gain. The sale price is considered as the sale price when selling the real estate, and if the Public Revenue Office assesses that the agreed price is lower than the market price, the sale price is the market value of the real estate determined by the local self-govern-

[8] Gaber & Gruevski, 2020, p. 16.

[9] Personal Income Tax Law (Official Gazette of RNM, no. 275/19).

ment unit and the City of Skopje, according to the Methodology for assessment of the real estate[10], without real estate sales tax.

Capital gains realized on real estate property after an ownership period of 3 years are exempt from taxation.

20.3 Non-recurring Forms of public value capture

20.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

20.3.1.1 Fee for Construction of Infrastructure

In order to obtain a construction permit, for any type of building, it is required that the investor submit a complete construction project, aligned with the DUP-defined parameters, according to which the municipality calculates the fees.

Upon the payment of the fees by the investor, they are assigned a right to build, and the municipality is obliged to provide the local public infrastructure up to the connection of the plot with the public infrastructural grid. That means that the municipality needs to construct the road and the communal infrastructure to the plot.

Each municipality in R. N. Macedonia defines the fees per square meter. In the capital city of Skopje, the most expensive fees are among the central municipalities, while the fees decrease further out from the city center. The municipalities with mostly rural areas have even lower fees for construction infrastructure in order to attract construction investments, although such income is often insufficient for their yearly operations.

The municipalities' fee for permitting the construction of new square meters (defined in the urban plan) on a plot is one of the most significant contributions to the municipalities budget. The construction fees within the municipalities are predefined and depend on the type of the building, the type of spaces within the building, i.e. whether it is living space, terrace, etc., and whether there is a significant reduction in the case of living spaces in the attics.

20.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

20.3.2.1 Cooperative Development by Urban Contracts

20.3.2.1.1 Contract Models

Public-private partnership (PPP) are seldom cases in Macedonia. With the PPPs so far contracted, the investors are entitled to a certain ownership share of the total gross constructed area, while the remaining area belongs to the municipality and has a public purpose which can be municipality offices, kindergarten, etc.

There are a few cases where the municipality has constructed a municipality building with a share of the building belonging to the investor. However, there were a couple of procure-

[10] Methodology for assessment of the market value of the real estate (Official Gazette of the Republic of Macedonia, no. 54/12).

ments for building municipality building and public theatres which have not found solid economic grounds for both parties.

20.4 Interim Conclusion for Macedonia

After analysis of an example of one of the wealthiest municipalities in Macedonia, it can be concluded that the construction fee contributes 25% to the total budget of the municipality for the year 2021, while in 2020 it amounted to 29%. The decrease in 2021 is due to the decrease in new developments because of the Covid-19 pandemic. In the previous year, this construction permit fee contributed 28.6% to the total municipalities budget.

For example, in one municipality in Skopje, the property tax of the private owners represents 27% of the total property taxes charged, the property tax on business owners amounts to 11%, while the taxes collected from buying/selling properties within the municipality amount up to 55% from the total property taxes collected. However, the property tax from private owners contributes 3% to the total budget of the municipality, while the contribution of tax on real-eastate buying/selling is 8%.

The income from selling state-owned land is a negligible 0.8%. It is worth mentioning that the money transfer from the central to the local government in the analysed municipality is 44.8% in 2021 and 39.8% in 2020. Thus, it can be concluded that the main income in the municipalities is the construction permit fee, which creates an increasing construction pressure on the limited and finite space resources of the municipality. This generates densification, and in a large part it decreases the green areas in the plots.

Therefore, most often the budget of the municipalities, i.e. the local government, is supported by the central government, and new models for public value capture are needed.

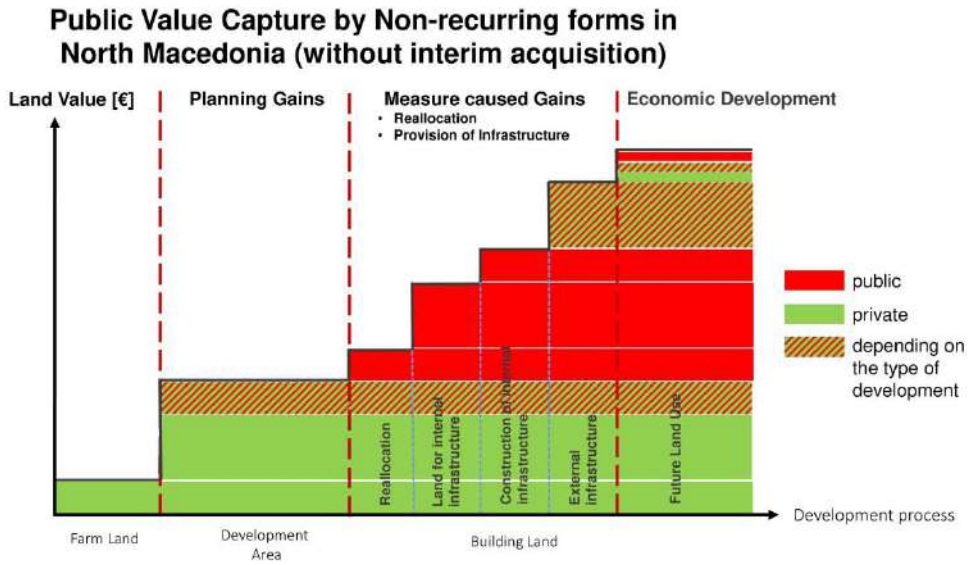

Figure 20.1: Public Value capture by non-recurring forms in Macedonia.

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21 Norway

Berit Irene Nordahl

21.1 Local Authorities and Planning System

At a first glance the Norwegian planning system may seem contradictory: It is hierarchical with plan-led land-use decision, but at the same time, landowners and commercial developers play a prominent role in proposing development plans. The fact that most of the implementation powers is in private hands has labelled the system as *market led* and *liberal*[1,2]. However, labelling the system as liberal is imprecise. Leaving the implementation powers to the private sector does not justify such a label. The Norwegian system has a strong public emblem on the *vision* that guides all development activity. This makes it plausible to highlight the judicial aspect when the system is scrutinized[3].

The planning hierarchy envisions how guidelines for land-use policy trickles down the planning tiers, following the cascade principle[4]. In Norway, the local level government tier, the municipalities, is at the core planning authority and has been since 1837, as a part of the idea of home rule and the principle of subsidiarity[5]. Norway is divided into 356 municipalities and 11 counties[6]. The land-use principles at the national level are reflected in the Preamble of the Planning and Building Act, revealing a strong focus on sustainability. This is further enforced through 'national expectation' for land-use planning (formally expressed as His Majesty's expectations) and *national planning guidelines* for selected land-use considerations. There are currently four such guidelines concerning (1) the protection of the interests of children and youth in land-use planning, (2) ensuring the coordination of transport and housing in planning, (3) good coastal area management and (4) guidelines for local climate and energy planning, and (5) for protected watercourse. In line with the hierarchical 'cascade principle', the 'national expectation to planning' and the guidelines are concretized both in regional plans and in municipal plans. All regional plans are developed in close cooperation with the affected municipalities, to ensure good coordination, 'ownership' and compliance.

Norway has two regional entities: firstly, the states' regional representatives, termed *regional state administration* (*Statsforvalter*); this is a governmental position that has the authority to set aside both regional and municipal land-use plans if they do not respond adequately to the national guidelines and national expectations.

The second regional entity is a kind of representation of all municipalities within a county. It is a formal tier of government, led by a political electorate, and has a (small) administra-

1 Sager, 2015.
2 Falleth & Nordahl, 2017.
3 Lind, 2002.
4 Siemenova et al., 2018.
5 Baldersheim, 2012.
6 The number of both municipalities and counties have been reduced stepwise over the last decades. The last and most comprehensive reform was fully implemented in 2020, reducing the number of municipalities from 422 to 356 and the number of counties from 19 to 8.

tion. This entity is responsible for making plans that cover larger areas and does this in close cooperation with the municipalities.

Under this umbrella of hierarchy and the cascade principle, it is the *municipalities* who are the main actor in land-use decisions in Norway. The municipal planning system consists of statutory plans and thematic non-statutory plans. The municipal masterplan is a holistic plan addressing a broad spectre of local challenges and pointing out future responses regarding services, finances, land use and the economic development within the municipal area. The master plan has a societal part and a land-use part. The societal part states objectives and implementation tasks for business, care and culture, whereas the land-use part states objectives for spatial development including pathways for reaching the objectives. The municipalities are obliged to have an updated land-use plan. Every fourth year the newly elected municipal council either revises the existing plans or conducts a full new planning process.

The regional state evaluates the municipal land-use plans and gives statements whether the plans are in line with the national planning guidelines, His Majesty's planning expectation and details in the regional plans. Thus, despite developers having the right to suggest detailed plans, these plans are both subordinated to the municipal master plans and must comply with the general visions for the region[7].

The municipal land-use planning system is tiered: The superior tier, which is the land-use part of the municipal master plan, covers the entire municipality and points out future land use: It points out areas designated for growth, redevelopment or protection, etc. This level has a strategic approach and is not legally binding and not basis for expropriation. The second and third tiers in the land-use planning system are two kinds of 'area plans' (*områderegulering*/ area plans and *detaljregulering*/detailed zoning plans). These plans focus on smaller areas/ communities. The former (area plan) points out strategies for local area development; they define land-use zones including areas for new developments, greens and protected areas, entry points, future exploitation rates, infrastructure needs, etc. An example is a strategic plan for a redevelopment area of approximately 1 km^2 pointing out new street layout, new greens, different land-use zones (i.e. residentials and business), protected area, etc. The 'area plans' contain land-use zones and are legally binding for all parties. The most detailed tier of plans area is the 'detailed zoning plans'. These plans are legally binding, the basis for expropriation and in addition to land-use zones, they also show building lines, building volumes at different plots, details about accesses, water and electricity supply, sewage system, waste system, etc.

Both the 'area plan' and the 'detailed zoning plans' might include a *clause of succession* that states which areas to build first and last, and at what stage in the development process infrastructure and common amenities must be completed. The 'detailed zoning plans' might, for instance, state that the playground must be completed before the construction of residences. The Norwegian planning system grants the public monopoly in the making of master plans and area plans, but not in the making of the 'detailed zoning plans'. These plans might be

[7] Please note that it is possible for the municipal masterplan to deviate from the principles in the regional plan, and it is possible for a detailed land-use plan to deviate from the (adopted) municipal land-use plan, if the case is well argued.

drafted by private persons, landowners or commercial developer. Full drafts are handed over to the planning administration and forwarded for political handling.

The *clause of succession* might include passages that no building activity can start before the parties have *signed a development agreement*[8]. This clause must be seen in relation to the fact that municipalities are obliged to ensure that all new developments are connected to infrastructure – from access roads and sewage to bicycle roads, outdoor recreation areas, green corridors, etc. A system of development agreement details how the construction of these facilities will be organised and how they will be *financed*. The detailed planning process thus comprises sets of negotiations between developers and the municipal planning authority[9]. The planning and building law contains several specifications about how developers' contribution must be announced in the superior plans and what topics can and cannot be included in the development agreement negotiations. Thus, the frames for developers' contribution – or public value capture – are rooted in the tiered planning system and implemented through the rules of succession. The details are further presented in Section 3 below: The core is that developers' contributions are practical and related to project implementation; there is no discussion of extracting any plan-generated land value increase, neither in the past nor in the recent suggestions of law amendments.

To sum up: Norway's planning system is frequently termed liberal as developers play a prominent role in project implementation and hold the right to forward detailed plans for political handling. However, the superior plans reflect the national land-use policy and set the frames for developers' plans. The system has a clause that empowers the municipality to pass some infrastructure cost over to developers and to make them take financial responsibility for this and for project-related common areas and facilities.

21.2 Recurring Forms of public value capture

21.2.1 Recurring Forms (Annual Payments)

Norway has taxes related to property, both recurring and non-recurring, but none explicitly tailored to the taxing of land value increase. There are two kinds of taxes on property: a 'proper' property tax and an indirect asset-based tax. Neither separate the value of the constructions from the value of the land – the tax basis is the value of the property as a whole (without furniture and other movables).

The indirect asset-based tax departs on the value of the property an individual owns, fully or partly. It might be the value of a home, a secondary home or holiday home, or other kinds of tangible properties. To set the tax base, the municipality estimates the market value of the on the basis of average market value/m² where the house is located. The tax base is 25% of that value for primary homes and 90% of the value for secondary homes. The property value is assessed annually. The end-cost of the tax an individual has to pay depends on the

[8] This paragraph of the law is now under revision. The Ministry wants to link the agreement to higher tier plans. The change will make the wording of the law better adapted to the complexity of urban redevelopment.

[9] Nordahl, 2006.

individual's total mortgage, as mortgage interests are subtracted from the income, and total debt is subtracted from the total asset. This tax is national – the revenue accrues to the state.

If a homeowner rents out their home, they have to pay a tax equal to 22% of the net rent. The landlord may, for instance, subtract any outlays connected to the letting, and the tax base is the net rent. Tax on income from properties is additional to tax on a person's income from employment, pension or others.

The direct 'property tax' is a local tax. It is optional whether municipalities want to collect property tax, what kinds of property they want to tax and what rates to apply. The state supervises the municipalities and sets the maximum rates that the municipalities may use. The tax varies between 1 and 7 permille of the property value. The municipality might apply different rates for different kinds of property assets, for instance, micro-hydroplants, wind-power plants or petroleum plants may have a higher rate than homes and holiday homes. The state recently capped the amount that the municipalities might levy on homes and holiday homes at 4 permille of the market value. 319 of Norway's 356 municipalities have one or another kind of property tax, and 233 municipalities apply the full-range tax. The municipality itself is the recipient of the property tax revenues. The income from municipal property tax is minor but significant. In 2020, the total revenue generated by property tax amounted to € 427,369,368[10]. In 2018, direct property tax amounted to approximately 8% of total municipal tax revenue (KS 2018).

Neither the indirect asset-based tax nor the property tax is sensitive to changes in land value from planning, infrastructure upgrading or other investments in the area where the property is located. However, in the long run, the market value of the property might rise due to centralisation, comprehensive area upgrading or other external factors. When the market value rises, the tax base also rises.

21.2.2 Recurring Forms (in Case of Sale/Purchase)

Property transaction is taxed in Norway, at different rates for different properties and different owners. The tax base for pure land transactions distinguishes between types of sellers: If the seller is a company, the tax is 49.6% of the sales price of the land, but if the seller is a private person, the tax is less than half, 22%, of the value. The logic behind this is that for private persons surplus or gain from selling land is equally footed with any other capital gain, but for businesses selling of land categorizes as business income and is therefore more heavily taxed. It is necessary to mention that eventual loss on property trading might be subtracted from the tax base.

Professional property development companies have found ways around land transaction tax, for instance, by wrapping the transactions of land into transactions of companies. In these cases, the buyer does not buy the land as such, it buys a company in which the land is a part of its assets. There are also other legal but more dubious ways around the tax requirement – like using a document in blank[11]. This is relatively risky for the buyer and mainly used for

[10] Statistics Norway, https://www.ssb.no/offentlig-sektor/kommunale-finanser/statistikk/eiendomsskatt

[11] Janson, 2011.

temporarily ownership, and when used it is usually backed by other legal agreements (e.g. an accompanying restrictive clause curtailing the disposal of the land/assets[12]).

The tax on property trade is significantly less for 'ordinary' trading of homes. For such trading, the house and land are not separated: It is the price for the full property that counts. The transaction cost is 2.5% of the value. This tax is paid as a part of the transaction proses and is due for payment as the new owner of the property is registered in the register of deeds. The tax was implemented in 1976, replacing the 300-year-old stamp duty.

Housing cooperatives are exempted from this stamp duty. The reason is that housing cooperatives are not considered fixed property, and the transaction is therefore not subjected to the decisions on stamp duty on transactions of homes. This is the case despite that cooperatives in Norway grant the owner close to full control over the particular unit they inhabit, and the unit can be freely sold on a market, through auction.

When house prices rise, the stamp duty comes into dispute. Some see it as an unnecessary burden for families on the move. Others argue that the tax should apply for transactions of housing cooperatives as well. The economists argue that, if the tax is removed, the average house prices would instantly increase by the same percentage. So far, no political party has succeeded in dismantling the 'stamp duty'. At the end of the day, it brings about € 1 billion in annual revenue to the state[13].

21.3 Non-recurring Forms of public value capture

21.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

Official Norway actually never discusses increases in land value in relation to tax, apart from when the ministry financed a report on future infrastructure finance in Oslo. In a recent, subsequent policy brief, this option was included as an appendix to the discussion, but the policy brief is very clear that any changes to the contribution of landowners and developers will follow *the practical approach* and will address concrete infrastructure co-financing models[14]. Thus, any future changes in non-recurring public value capture will follow the trace of Alterman's indirect land value capture[15], as described in Falleth and Nordahl[16].

As mentioned in Section 1, the detailed tiers in the land-use planning might include a *clause of succession,* and this clause is the concrete entry point for negotiations between developers and planning administration regarding what infrastructure the developer have to foot. Developers' contribution is limited to practical and project-related infrastructure investments including investments in common facilities as specified in the plan; it is an unavoidable condition to ensure successful implementation of a high quality development area. Local planning administration's professional discretion is at the heart of this version of indirect value capture, as what is *necessary* does have discretional elements. This is why development

12 https://www.raeder.no/aktuelt/bruk-av-blancoskjote-ved-eiendomstransaksjoner
13 SSB, 2021.
14 KMD, 2021.
15 Alterman, 2012.
16 Falleth & Nordahl, 2017.

agreements are subject to negotiation in Norway. In these negotiations, the parties agree on details about what part of the required infrastructure the developer will finance/provide and what the municipality will provide. It could be said the negotiations over development agreements *ensure* developers' contribution to important infrastructure, because if the parties fail to meet an agreement, the municipality cannot grant building permits. The development agreements are 'vehicles' tailored to ensure that the required infrastructure and common amenities are in place, at the right time – *and* that the costs are distributed between the municipality and the developer. It is the land-use plan that defines *what* is needed and thus the total cost of infrastructure, and the development agreements that set up the financing of this infrastructure. It is an important feature of the Norwegian system that all infrastructure and common amenities *must depart from the land-use plan.* If it is not in the plan, it is not considered necessary for development and cannot be included in the planning agreements.

The national government has made several attempts to clarify what kind of contributions the municipality can expect from developers. The developers' contribution was first regulated in the 2006 amendment of the Planning and Building Act. These amendments restricted the range of contributions and prohibited developers' contribution to services which the municipality is obliged to provide, and which are already financed through national income transfer system. The amendments also prohibited *transfer of contribution* from the development site to other areas within the municipality. In short, the 2006 amendment stated four important 'rules' for developers' contribution. Firstly, the amendment sharpened the 'necessity' requirement. Secondly, it imposed a *rule of predictability* requiring the municipality to clarify in what areas the municipality would expect developers to contribute to the financing of new infrastructure. Thirdly, it stated a rule of proportionality ensuring that developers' contribution should be 'fair' and 'reasonable' in total seize. Lastly, it stated that, if municipalities wanted for social reasons to earmark some of the new houses to particular residents – to residents for whom the municipality has a particular responsibility – the municipality must purchase these units at market price.

The 'rules' have been effective in greenfield developments with one landowner/one developer, but are more complicated in transformation areas[17,18]. Such areas have more landowners and high internal dependency between owners. There are, for instance, more users of the infrastructure and cherished amenities like parks benefit to all residents. Particularly the necessity rule has proved hard to handle, and the planning authorities have had to worked out systems for cost distribution. The planning administration in Oslo created a system of non-statutory planning documents to help organise regarding *what who pays when*[19]. The practice is adopted by many other cities in Norway[20], but also criticised for being undemocratic[21] and inefficient, causing heavy work-loads for plans and creating uncertainty for developers[22]. As briefly noted, the ministry recently initiated a change in the law which should facilitate urban redevelopment more efficient. The change explicitly sticks to the notion that

17 Barlindhaug et al., 2011.
18 Nordahl & Roald, 2019.
19 Nordahl & Falleth, 2011.
20 Nordahl et al., 2019.
21 Hanssen & Aarsæther, 2018.
22 Nordahl & Roald, 2019.

any developer contribution is rooted in a land-use plan and explicitly *refuses* the idea of a development tax:

> *A basic precondition for the Ministry's proposal is that private financing of public infrastructure should not be a fee, for example, a regulation fee that should distribute planned values, ground rent tax or similar general taxation. The purpose of the new rules for financing and development of infrastructure is to solve known needs for development or reorganization of infrastructure in connection with the planning area, so that the area plan can be implemented and the area can be ready for development. Only infrastructure that covers real needs triggered or reinforced by the development or remedy the disadvantages this leads to can be included.* (page 118, KMD hearing note July 2021; author's translation)

21.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

The Norwegian system does not allow for exceptions to the general regulations to favour developers who would contribute to particular needs, for instance, who will include affordable, below-market houses in their development proposal, even if the rising house prices in the largest cities in Norway have prompted the discussion of 'third-sector, below-market value' houses.

21.4 Interim Conclusion for Norway

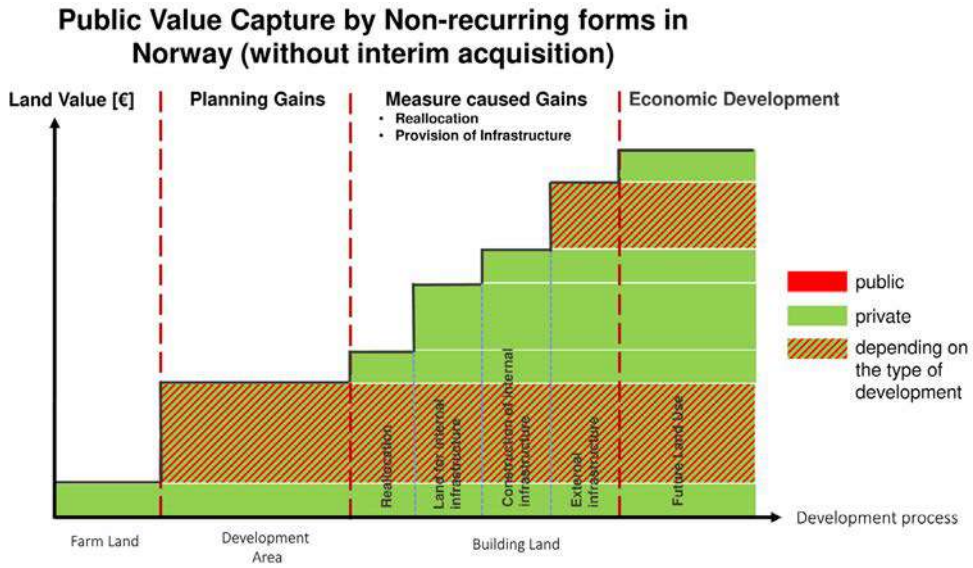

Figure 21.1: Value capture in Norway.

The Norwegian tax values in land as income and as items of transaction. Nonrecurring land value increase is not taxed in Norway. The planning system explicitly distinguishes between planning, ownership and value increase and strongly emphasises that *the planning* guides what landowners might contribute. The system aligns well with Alterman's 'indirect land

value increase' (Alterman 2012). The underlying assumption is that, as the land value increases due to planning, the developer can 'afford' to invest in the needed infrastructure. Regarding the terminology 'unearned increments', the Norwegian system does not address this.

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22 Poland

Małgorzata Barbara Havel and Magdalena Załęczna

22.1 Local Authorities and Planning System

In Poland, the current legal framework divides the planning system into three levels: national, regional and local. The national spatial development concept is developed at the national level, a landscape audit and a voivodeship development plan at the regional level. At the local level, there are two main paths of urban development. The first is based on the traditional sequence of preparatory and detailed urban land-use planning for which the municipality is the responsible body. The second, dominant path is based on local administrative decisions or national special acts.

In the first path, the municipality elaborates two types of land-use planning documents to implement land policy – the Studies of the Conditions and Directions of Spatial Development (the Study) and the local land-use plan (the MPZP, from the Polish *miejscowy plan zagospodarowania przestrzennego*). The Study is the preparatory land-use plan. It is binding for the administration but has no direct external impact. It specifies the directions of sustainable urban development for the entire area of the municipality. The legally binding local land-use plans (MPZP) have to be consistent with the preparatory land-use plan. The main contents are plot-specific regulations concerning land use and building density. There are no guidelines for the minimum area covered by a single plan. Municipalities are under no obligation to elaborate on the local land-use plans, if not required to do so in the Study. The local land-use plans cover only a small portion of the country's area (in 2020 this amounted to 31.4%)[1].

The second path – the decision on land development conditions (the DWZ, from the Polish *decyzja o warunkach zabudowy*) – is based on the so-called 'good surroundings principle'[2]. It does not need to be consistent with any spatial plans at the upper level of the planning system, including with the Study or other regional plans. It is used in a situation when there is no local land-use plan (MPZP) enacted for an area. In the years 2016–2020, there were more than 140,000 DWZ issued annually, mostly for residential purposes[3]. These decisions are necessary to apply for building permits when there are no local plans. In the years 2016–2020, there were 187,500–200,500 building permits issued annually[4]. Therefore,

1 GUS, 2021.

2 Anyone can apply for a decision, and such a decision must be issued when all of the following conditions are met: (1) at least one plot in the neighbourhood that is accessible from the same public road must be developed in a way to establish the requirements for the new development as regards the continuation of functions, density and architectural form; (2) the land must have access to a public road; (3) the existing or planned infrastructure must be sufficient; (4) no permission is required for changing the function of land from agricultural or forestry use; (5) the decision is compliant with other specific regulations (e.g. the Act on Environmental Protection) (Art. 61.1 LUDPA).

3 GUS, 2021.

4 GUNB, 2021.

development without traditional land-use plans constitutes the predominant land development method in Poland.

The philosophy of strong private property rights dominant in the neoliberal transition to the market economy can contribute to an understanding of the current urban development system[5]. First, the Polish courts maintain the primacy of property rights over the public interest and spatial order in rulings[6]. Also, while enacting the new planning law, the Polish legislator comes out to a large extent from the doctrinal assumption that the right to develop is an element of property rights, while planning regulations should be considered as a factor limiting the use of these rights[7]. In the planning system in Poland, every landowner has the right to develop the land in accordance with the conditions outlined in the local land-use plan (MPZP), or in case of the lack of a local land-use plan, in accordance with the administrative decision on land development conditions (DWZ) (Art. 6.2.1 LUPDA[8]). In practice, property rights have been equated with development rights. Planning exists and still belongs to the area of public policy, but it becomes detached from the separate world of market urban governance[9]. Public authorities must issue decisions on land development conditions (DWZ) when the conditions are fulfilled, regardless of spatial plans.

The enactment of local land-use plans is also very expensive in connection to high compensation rights for land value decrease due to land-use planning regulations. The balance of rights in relation to upward and downward property value effects is tilted very much in favour of private developers and landowners[10]. In current planning practice, the use of existing value capture instruments is limited.

22.2 Recurring Forms of public value capture

In Poland, the recurring forms can be divided into a real estate tax[11] (*podatek od nieruchomości*), perpetual usufruct fee (*opłata za użytkowanie wieczyste*), a stamp duty (*opłaty notarialne i podatek od czynności cywilnoprawnych*) and a capital gains tax (*podatek od dochodu z tytułu sprzedaży nieruchomości*). To the recurring forms of public value capture could also be added a planning fee (*opłata planistyczna*), which is paid only when land is transferred. However, as the planning fee concerns land-use regulations, it will be explained below in the following part. There are also receivables for excluding land from agricultural or forestry production; when it comes to agricultural land, this is yearly for 10 years, and in relation to forests, a one-time fee for premature logging.

5 Havel, 2020.
6 Izdebski, 2013, pp. 151–154.
7 Izdebski, 2013, p. 128.
8 Land Use Planning and Development Act of 2003 (LUPDA – ***Ustawa o planowaniu i zagospodarowaniu przestrzennym***).
9 Havel, 2020.
10 Havel, 2017; Gdesz, 2012, Śleszyński et al., 2021.
11 In Poland, there are in fact three types of real estate tax: for agricultural land, for forest land, and for other functions of property – the last one is the most important and it is described in this chapter.

22.2.1 Recurring Forms (Annual Payments)

22.2.1.1 Real Estate Tax (*podatek od nieruchomości*)

The real estate tax plays an important role in municipal budgets; in 2020, it provided 16.5% of the income of local governments[12]. The subject of real estate tax is the ownership, or perpetual usufruct or possession of land, buildings, and other constructions. The 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. Some attempts to reform the old system have been made, but the lack of political will to introduce an ad valorem tax has blocked the reform. The rates of real estate tax applicable in the territory of a given municipality are established by the municipal councils by way of resolutions. The maximum rates are set annually by the Minister of Finance. There are many discounts and exemptions from the real estate tax, e.g. all properties of universities, public schools and institutions, churches, research and development units are exempt.

22.2.1.2 Leasehold of Public Land – Perpetual Usufruct Fee (*opłata za użytkowanie wieczyste*)

Perpetual usufruct is a right established on land owned by the state or local government and represents a long-term interest in land. This is a type of land leasehold which concerns only public land. It was introduced in Poland by a decree in 1952. Fees for perpetual usufruct are set as a percentage rate of the price of the land. The percentage rate of the first perpetual usufruct fee is from 15% to 25% of the price of the land. The percentage rates of annual fees for perpetual usufruct depend on the contractually agreed purpose for which the land is let and ranges from 0.3% to 3% of the price of the land.

22.2.2 Recurring Forms (in Case of Sale/Purchase)

22.2.2.1 Stamp Duty (*opłaty notarialne i podatek od czynności cywilnoprawnych*)

Stamp duties are associated with the notary fee to be paid customarily by the buyer. The fees charged by the notary include a stamp duty (*podatki od czynności cywilnoprawnych*), court fees (*opłaty sądowe*) and the notary's fee (*taksa notarialna*). The stamp duty (also called the PCC tax) amounts to 2% of the market value of the purchased real estate[13]. In 2020, this provided 2% of the income of local governments[14]. The Polish state determines the maximum rate of the notary's fee. This depends on the value of the subject of the notary deed.

[12] Rada Ministrów, 2021.

[13] The tax office may decide that the price in the notarial deed is lower than the value and indicate a higher amount to be paid.

[14] Rada Ministrów, 2021.

22.2.2.2 Capital gains tax (*podatek od dochodu od sprzedaży nieruchomości*)

Pursuant to the provisions of the Personal Income Tax Act (PIT Act), the sale of real estate before the expiry of 5 years from its purchase or construction and if the disposal does not take place as part of a business is taxable by personal income tax. The tax is calculated on the income obtained, not on the sale price of the real estate[15]. The legislation provides for a tax exemption in cases when funds from the sale of the property was spent on personal residential purposes.

22.3 Non-recurring Forms of public value capture

The non-recurring forms of public value capture in Poland include betterment contributions (*opłaty adiaceńckie*), 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*)[16]. In relation to the two main paths of urban development, it should be emphasised that the planning fee (*opłata planistyczna*), concerns only the traditional planning path. Other instruments relate to both pathways of urban development. There are also two recently introduced instruments, which have not yet been used, but which indicate changes in the approach to value capture in Poland. These are the town planning contract (*umowa urbanistyczna*) in the Act on Revitalization of 2015 (*Ustawa o rewitalizacji*) and the agreement with the developer (*porozumienie z inwestorem*) in the Special Act on Housing Development of 05 July 2018 (*Ustawa o ułatwieniach w przygotowaniu i realizacji inwestycji mieszkaniowych oraz inwestycji towarzyszących*).

Simultaneously in Poland, there are many examples of informal practice where the developer voluntarily contributes to improving urban infrastructure provisions if it is in their interest[17].

22.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

22.3.1.1 Betterment Contributions (*opłaty adiaceńckie*)

As in the case of Germany, the Polish municipality is obliged to provide the local public infrastructure like municipal streets, open spaces and green areas. The municipality is also responsible for connecting the development site to the infrastructure network of public services like day-care and some schools. However, as legal rules describe, the municipality provides the local public infrastructure as part of their capability and according to political discretion, which means that no citizen can sue a municipality that does not provide infrastructure.

[15] The taxable base is the difference between the purchase price of the real estate and its selling price, costs of some improvements and fees are also added to the purchase price.

[16] Havel, 2017; Gdesz, 2012.

[17] Szewczyk, 2019.

Betterment contributions relate to three different causes of land value increase: 1) a betterment arising from publicly funded infrastructure works, 2) a betterment arising from the subdivision of a plot of land (*podział nieruchomości)* and 3) a betterment arising from the consolidation and subdivision of plots of land (*scalenie i podział nieruchomości*). Betterment charges are regulated by the Act on Real Estate Management of 21 August 1997 (AREM 1997). Betterment charges in relation to publicly funded infrastructure are levied *after* the connection of property to individual elements of the technical infrastructure or the new road. The construction of technical infrastructure is understood as the construction of roads and underground, on-ground or above-ground pipes or infrastructural equipment for water, sewage, heating, electrical, gas and telecommunications. The betterment charges depend on the increase in property value caused by the construction of technical infrastructure facilities and should not be higher than 50% of the value difference between the value of the property before and after the technical infrastructure facilities are built[18]. In the case of consolidation and subdivision of the property, a maximum rate of 50% of the value of the difference between the value of the property before and after the process is also applicable. In the case of betterment arising from the subdivision of plots of land, a maximum rate of 30% of the value difference can be charged[19]. The increase in property value requires the appraisal of each parcel and is determined by a registered property assessor (Art. 146.1a AREM).

22.3.1.2 Planning Fee (*opłata planistyczna*)

The planning fee is regulated by the Land-Use Planning and Development Act of 2003. (LUPDA). The law only pragmatically states that, if in connection to the enactment of a local land-use plan (MPZP), the value of the property has increased and the owner or perpetual user sells the property, the municipality receives a one-time fee that cannot be higher than 30% of the value of the difference between the value of the property before and after the enactment of the plan (the percentage is determined in the local land-use plan, MPZP). However, the fee may be charged only in cases when the owner sells the property within 5 years from the date when the local land-use plan or its revision comes into force (Art. 36.4 LUPDA). The planning fee relates only to the local land-use plan (MPZP), not to the administrative decisions (DWZ).

22.3.1.3 The Commitment to (Re)construct Public Roads Necessary to Obtain a Building Permit (*budowa lub przebudowa dróg publicznych spowodowana inwestycją niedrogową*)

According to Art. 16 of the Act of 21 March 1985 on public roads (*Ustawa o drogach publicznych*), the (re)construction of public roads caused by a non-road investment is the responsibility of the investor of the project. Following this provision, the detailed conditions for the (re)construction of roads are negotiated and specified in a contract between the road-traffic authority *(zarządca drogi)* and the developer as a precondition for issuing

[18] It should be stressed that there is no connection with the costs of infrastructure.

[19] The rate should be indicated in the local land-use plan; if this is not available, the municipality has no right to impose a fee.

a building permit. Up until 2015, this was in fact the only possible and legally supported cooperation between actors in the planning process, and is a kind of a development agreement, but it concerns 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.

22.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

22.3.2.1 Development in a Revitalization Area via a 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., areas of a municipality in a state of crisis due to a concentration of negative social and technical phenomena. The municipal council may adopt a local revitalisation plan (MPR, from the Polish *miejscowy plan rewitalizacji*), which is a special form of local land-use plan (MPZP). 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 technical and social infrastructure or residential premises. The magnitude of the developer's obligations should be proportional to the increase in the value of the real estate as a result of the plan. Therefore, the municipality and the developer have the possibility to sign a town planning contract (*umowa urbanistyczna*) with a wider scope of its content in the revitalization areas. However, this instrument has not yet been used in practice.

22.3.2.2 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 Act on Housing Development of 5 July 2018 (*Ustawa o ułatwieniach w przygotowaniu i realizacji inwestycji mieszkaniowych oraz inwestycji towarzyszących*). This act is a part of the National Housing 'Apartment Plus' Programme, announced back in 2016, which aims to increase access to apartments for people with lower incomes. The act introduced measures for the reduction of the administrative and legal barriers concerning land acquisition. The new regulation also addresses the issue of the division of rights and liabilities concerning the provision of urban infrastructure in cities. The act sets several conditions for developers that must be met in order to initiate an affordable housing project, namely, the need to fulfil so-called urban standards. The developer may conclude an agreement with the municipality (*porozumienie z inwestorem*) to determine fulfilment of the requirements for provision of the social infrastructure.

22.4 Interim Conclusion for Poland

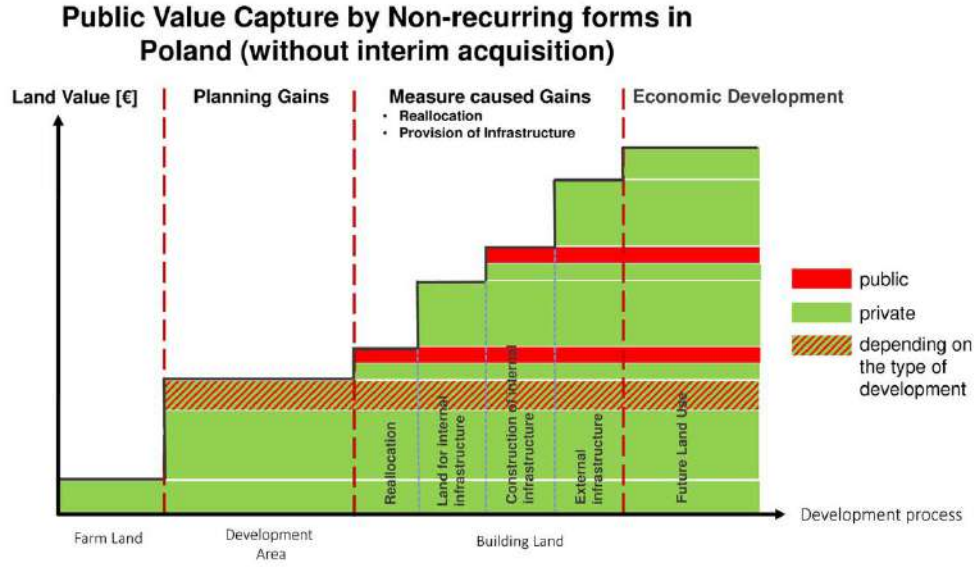

Figure 22.1: Value capture in Poland.

Poland is not unfamiliar with public value capture instruments that would potentially enable land value to be captured in the context of urban and property development. However, in practice, these instruments do not provide significant revenue and an effective form of co-financing for urban infrastructure. Current planning practice in Poland largely neglects the fact that the costs of providing urban infrastructure and services are borne by all members of society and the profits belong only to the developer.

Concerning 'unearned increments', the two first non-recurring forms in Poland (betterment contributions and the planning fee) are focused on land values and their increases (Figure 1[20]). However, these instruments are largely non-operational. Their use is very often restricted due to the operational difficulties in their design. The planning fee may be charged only in cases where the owner sells the property within 5 years from the date when the local land-use plan comes into force, and landowners can easily avoid this fee. The municipality is in a weak position to capture the increase in value caused by the planning decision because the planning fee does not apply to the most common land development method, the *ad hoc* administrative permission (DWZ). Gains resulting from changes in planning belong therefore to the landowner. The betterment contribution raises the problem of proving that the increase in land value is caused by an abstract legal event. The use of this contribution is also limited as it can be charged only after technical infrastructure has been built, while the determination of the fee itself may take place only within 3 years and the appraisal cost

[20] In reference to Figure 1, it should be noted that stages in real estate development processes in Poland often overlap or proceed in different order. Moreover, the generalized increase in land value would be better represented by a wavy line as the law indicates only the maximum rate of value capture instruments and also each case requires a separate real estate valuation.

is high. In general, municipalities are reluctant to use this instrument due to the legal and technical problems. These instruments cannot be considered developer obligations because they do not condition anything and are not related to obtaining any permit.

The legal framework in Poland allows municipalities to partially cover their infrastructure expenses through the use of value capture instruments, but many local governments, despite the lack of funds, do not want to discourage potential investors and developers, so they do not use the existing tools. However, the effects of this course of action are paradoxically visible in the deterioration of the situation of developers and investors. They often have to create the necessary infrastructure themselves. In very dynamic markets, such as, for example, Warsaw, it is practiced, whereas in less developed markets, there may be different scenarios, depending on the negotiating position of each party.

The government also recently introduced new value capture instruments. Before 2015, according to planning law, the local authority was not allowed to condition the approval of a local plan on any conditional agreement with private sector investors. However, slowly, the legislator is also introducing developers' obligations for cost recovery in planning practice in Poland. New value-capturing instruments – town planning contracts and agreement with the developer require commitment and strategic action on the part of local units. Observing the Polish practice, it can be predicted that they will be used only to a small extent.

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23 Portugal

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23.1 Local Authorities and Planning System

The Portuguese planning system is mainly designed with a top-down approach. The National Spatial Planning Policy Program (*Programa Nacional da Política de Ordenamento do Território* – PNPOT) sets the national policy framework. Based on this framework, local governments – municipalities – devise a municipal director plan (PDM) which is a strategic zoning plan covering the whole municipal territory. The PDM is the key planning instrument at this administrative level. It is both compulsory and binding. It includes, for example, the qualitative and quantitative specification of urban and planning reference indices, indicators and parameters. On the one hand, PDMs are integrated with higher-level spatial plans (inter-municipal, regional and national), that is to say include for instance ecological and agricultural reserve areas. On the other hand, the PDMs are the base for the urban development plans and the detail local plans, which are more detailed municipal plans that regulate, among other, infrastructures and buildings.

23.2 Recurring Forms of public value capture

In Portugal, recurring public value capture instruments are the real estate tax, the real estate transfer tax and the capital gains tax.

23.2.1 Economic Value (*valor patrimonial*) of the Properties

Both the real estate tax and the real estate tax transfer are based on their economic value (*valor patrimonial tributável* – VPT).

Before 2004, new properties were taxed according to their economic value (*valor patrimonial*), while older properties were taxed according to their original economic value, even though that value did not correspond to current market prices. Hence, new properties paid much higher taxes. In 2004, a new system tried to put an end to this inequality, with an updated valuation process. The property assessment for tax purposes (VPT) differs according to the type of property, namely, urban (e.g. villas, townhouses and apartments) and rural property (land), and according to consistent criteria.

The valuation of existing urban properties takes into consideration as many aspects of differentiation as possible to establish fair comparable taxable values in the same areas as well as from one area or municipality to another. The assessment of new urban properties is established by the authorities on construction completion and licensing information. The taxable value of rural properties is based on their potential annual production income.

The VPT is automatically updated by the Ministry of Finance every 3 years. Several elements are included in its calculation[1]. One of the elements used to determine the VPT of properties purchased since December 2003 is the location coefficient, which varies in range from 0.4 to 3.5, as stated in Paragraph 1 of Article 42 of the IMI Code, and may, in situations of dispersed housing in rural areas, be reduced to 0.35. The location coefficient depends on several accessibility factors (distance from schools, hospitals, public transportation, and so on), quality and variety of maritime, road and railway routes, and the value of the real estate market. Therefore, properties located in large urban centers usually have a higher location coefficient than those located on the periphery or in areas where the offer of accessibility, equipment and services is lower.

23.2.2 Recurring Forms (Annual Payments): Real Estate Tax

The Portuguese real estate tax, *Imposto Municipal sobre Imóveis* (IMI), substituted the *Contribuição Autárquica* in 2003. The IMI is levied on the VPT of rural and urban properties; it is due annually. The tax rate is as follows: rural properties – 0.8%; urban properties – 0.3% to 0.45%; rural or urban properties owned by entities residing in a territory subject to a clearly more favorable tax regime – 7.5%. Tax rates for urban properties can triple in case of vacancy or dereliction longer than 1 year. Municipalities may set a reduction of up to 50% of the IMI rate for public interest properties, municipal value or cultural heritage properties, provided that they do not benefit from other exemptions. In 2016, a so-called Family IMI was created, allowing municipalities to offer reductions to families with children (20% – 1 child, 40% – 2 children, 70% – 3 or more children), for permanent and own housing properties coincident with the owner's tax domicile.

To promote urban rehabilitation, urban properties built more than 30 years ago and located in urban rehabilitation areas are exempt from IMI for a period of 3 years from the issuance of the construction license.

Low VPT properties are exempt if the taxable persons or their household's gross income, in the year prior to the purchase, does not exceed 2.3 times the annual value of the social support indexer (*Indexante dos Apoios Sociais* – IAS) and the global VPT of all the household's rural and urban properties does not exceed 10 times the annual IAS. This exemption also applies to properties ceded by housing and construction cooperatives or residents' associations to their members.

Urban residential properties intended for permanent or rental housing, except in certain cases, when the property is owned by an entity subject to a privileged tax regime, are exempt from IMI for a period of 3 years, provided the household's taxable income from the previous year's IRS (*Imposto sobre o Rendimento sobre as Pessoas Singulares*) does not exceed € 153,300.

[1] VPT (tax equity value) = Vc (base value of built plots/property) x A (sum of the gross construction area and the area exceeding the implantation area) × Ca (allocation coefficient) × Cl (location coefficient) × Cq (quality and comfort coefficient) × Cv (obsolescence coefficient).

In addition, real estate properties valued above € 600,000 have to pay an additional to the Municipal Tax on Real Estate (AIMI). For the AIMI the following rates are applied: 1) individual taxation: 0.7% on the overall real estate values (VPT) in excess of € 600,000, up to € 1,000,000, and 1% on the overall VPT in excess of € 1,000,000; 2) Spouses or unmarried couples with joint taxation: 0.7% on the overall VPT in excess of € 1,200,000, up to € 2,000,000, and 1% on VPT in excess of € 2,000,000; 3) Undivided inheritance: 0.7% on the overall VPT that exceeds € 600,000; 4) Corporate: 0.4% of the overall VPT.

In 2019, the total real estate tax revenue raised by the municipalities in Portugal reached € 1,488,978 thousand (DGO/IMF, PORDATA 2021).

23.2.3 Recurring Forms (in Case of Sale/Purchase)

23.2.3.1 Real Estate Transfer Tax

In general, the purchase of real estate is subject to a legal transaction tax (*Imposto Municipal sobre a Transação de Imóveis* – IMT) and stamp duty[2]. The IMT is levied on the value of the act/contract or on the property's VPT, whichever is higher. In Portugal, properties are excluded from real estate transfer tax liability when purchased for resale; classified as being of national, municipal or public interest; acquired by credit institutions in execution proceedings, bankruptcy/insolvency or in payment in fulfillment; or located in business location areas.

As an incentive for urban rehabilitation, purchases of urban properties with that purpose are exempt from IMT, provided the works begin within 3 years. In addition, urban properties purchased exclusively for own and permanent housing are exempt from IMT, for the first transfer of the rehabilitated properties and when located in a defined urban rehabilitation area. The real estate transfer tax rate varies from 1 to 10%, according to the table.

Table 23.1: Portuguese Real Estate Transfer Tax (IMT) Rates.

Rural		
5%		
Urban – own and permanent housing		
Property assessment	Marginal rate	Subtracted value (€)
0–92,407	0%	0
> € 92,407 a € 126,403	2%	1,848.14
> € 126,403 a € 172,348	5%	5,640.23
> € 172,348 a € 287,213	7%	9,087.19
> € 287,213 a € 574,323	8%	11.959.32
> € 574,323	6%	

[2] Stamp duty on property acquisition has a fixed rate of 0.8%, which is levied on the higher of the two values: value of the property declared in the deed/ or VPT (the same value that serves as basis for the settlement of the IMT).

Urban – housing		
Property assessment	Marginal rate	Subtracted value (€)
0–92,407	1%	0
> € 92,407 a € 126,403	2%	924.07
> € 126,403 a € 172,348	5%	4,716.16
> € 172,348 a € 287,213	7%	8,163.12
> € 287,213 a € 550,836	8%	11,035.25
> € 550,836	6%	
Urban – not exclusively intended for housing and other onerous purchases		
6,5%		
Urban or rural purchaser is resident in a territory subject to a clearly more favorable tax regime		
10%		

The total real estate transfer tax revenue raised by the Portuguese municipalities in 2019 was € 1,010,412 thousand (DGO/IMF, PORDATA 2021).

The revenues collected from property taxes (IMI and IMT) are the main source of income for the Portuguese coastal municipalities This type of revenues has comparatively a small relevance for the municipalities located in the hinterland, whose local budgets largely rely on subsidies from the central government. The weight of property taxes in the budget of municipalities located in the littoral has somewhat contributed to the phenomenon of sub-urbanization and for the abandonment of buildings in the city centers, constraining urban rehabilitation policies.

23.2.3.2 Capital Gains Tax

In Portugal, 50% of the capital gains from the sale of real estate (after 1 January 1989) is taxed at progressive rates varying from 14.50% to 48%, in 2019[3]. The capital gains tax base is calculated from the sale of real estate and the purchase price, reevaluated with an official coefficient to account for inflation. Acquisition costs, costs incurred during the transfer of ownership and also any property improvement costs incurred within 5 years prior to the sale are also deductible from the taxable gain. The gain may be totally or partially exempt if the property sold is the taxpayer's primary residence and the sale proceeds, reduced by the value of any unsettled loans relating to the purchase of the property being sold, are reinvested in the acquisition, improvement or construction of another primary residence in Portugal or in another country of the European Union within 36 months after the sale or in the 24 months preceding it.

[3] Land for construction is subject to tax irrespective of the date of acquisition by the seller.

For non-residents, 100% of the capital gain is taxed at a 25% or 28% autonomous rate, for companies and individuals.

23.3 Non-recurring Forms of public value capture

Municipalities can establish municipal fees and collect the respective amounts with a large autonomy, for the land subdivision license, for the construction license and for the construction of infrastructure (from € 100s to € 1000s, depending on the dimension of the construction/development).

Decree-Law no. 555/99, as amended by Law no. 60/2007, foresees that land subdivision projects must provide areas for green spaces and public spaces, road infrastructures and public equipment, whose dimensioning parameters are those defined in a municipal spatial plan, or in its absence, the parameters defined in Ordinance no. 216-B/2008. When there is no transfer to the public domain, compensation in cash or in kind may be provided for in municipal regulations.

In Portugal, the issue of compensation (*perequação*) of unearned increments and outlays as a result of spatial planning entered the agenda after the approval of the Land Use Policy Law (Law no. 48/1998). The law established the legal obligation for the binding spatial plans to provide for equitable mechanisms of compensation aiming at ensuring the redistribution among interested parties of the resulting benefits and outlays. The new legal regime of territorial management instruments (Decree-Law No. 380/1999) specified further the possibilities to be adopted.

However, the law only lists mechanisms available to the municipal administration in the preparation of its plans, namely, an average utilization index; an average cession area; distribution of development costs. The average utilization index corresponds to the average buildability determined by the construction allowed for each property or set of properties in the local spatial plan and reflects the abstract right to build held by the owners. The average cession area must be established together with the average utilization rate to equitably share the outlays resulting from the execution of the spatial plan. The distribution of development costs is based on the definition of a calculation criterion for the co-payment of infrastructure and urban services provided for in the plan, taking into account the type or intensity of urban development allowed in each property.

Table 23.2: Compensation of Unearned Increments in Portugal.

Compensation of unearned increments	Between property owners	With the municipality
In land	Owners association	Land concessions for construction
In cash	Index transfer	Fees Compensation

Source: Based on Carvalho and Oliveira (2003).

Thus, municipalities have discretionary powers to devise their system of compensation of unearned increments using the tools listed in Table 23.2, which range from compensation in cash to land concessions for construction.

Public value capture tools of increasing property values due public infrastructures are rare in Portugal, although they were used in a few cases. A special contribution to the municipalities of Lisbon, Porto and Loures and to the entity EXPO98 was implemented due to the property valorization emerging from investment in public infrastructures (e.g. road and rail systems, science and technology parks).

The Decree Law 43/1998 establishes that the investments made in the highways CRIL (Regional Internal Circular of Lisbon), CREL (Regional Outer Circular of Lisbon), CRIP (Regional Internal Circular of Porto), CREP (Regional Outer Circular of Porto) and their accesses and the railroad crossing of the Tagus Park (a science and technology park), complementary rail sections as well as the extensions of the Lisbon metro and the realization of light rail systems, substantially increased the value of rural properties and surrounding building land.

It was considered that such valuation justified the creation of a special contribution. It constitutes state (national government) revenue and has a duration of 20 years. 30% of the amount charged thereon is annually transferred to the municipalities of the areas where the special contribution is levied. The tax incidence is calculated based on the value of the property after and before the construction of the infrastructure.

Similar legislation was applied when the EXPO 98 was built (Decree Law 54/95). The 1998 Lisbon International Exhibition (EXPO 98) caused a substantial value increase in the rural properties and the surrounding land. The construction of the bridge over the Tejo River (Vasco da Gama bridge) also considerably enhanced the value of the rural properties and surrounding construction land. The Decree Law 51/95 defined the rules for the special contribution in this case.

23.4 Interim Conclusion for Portugal

The non-recurring forms in Portugal are based on the increase in land value. As in Germany, neither connection to utilities nor private activities are considered. For example, to get a connection to the water supply network, the property owner has to apply to the local water provider, either public or private, and to pay a defined price.

The Portuguese spatial planning legislation has taken a step forward in the process of building a more solidary and fair city by providing for compensation mechanisms; however, without powers to impose the legal duty of urban development and construction on private properties[4] and without direct equalization mechanisms, public administration and the success of municipal spatial plans are dependent on the will of private owners (Carvalho and Oliveira 2003, Monteiro 2006)

[4] Except through expropriation for public interest.

This dependency makes the model adopted in Portugal mainly suitable for promoting equitable distribution of burdens and unearned increments resulting from spatial plans when there is an agreement between all parties to promote its execution. When this agreement does not exist, or when it is necessary to overcome inertia or resistance of one or more landowners, public administration cannot put into practice the compensatory equalization mechanisms set in a given plan (Monteiro 2006).

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24 Serbia

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24.1 Local Authorities and Planning System

The planning system of the Republic of Serbia is a hierarchical system where the responsibilities of different actors are divided and defined by the Law on Planning and Construction (Planning and Building Act). The unit of local administration prepares the buildable land and oversees its use according to the intended use of the land provided for in the planning document, in compliance with the law. Municipalities are responsible for the drafting and passing of urban plans (General Urban Plan, General Zoning Plan and Detailed Zoning Plan), which are legally binding documents for all the actors in the planning and building process. Local authorities are responsible for construction, which can also be done by private investors, and maintenance of local public infrastructure and services on buildable land. The management of urban land in municipalities in Serbia is carried out mainly by public enterprises and municipal administrative agencies.

24.2 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 gains tax.

24.2.1 Recurring Forms (Annual Payments)

24.2.1.1 Real Estate Tax

The Serbian Property Tax Law regulates the right of local governments to collect real estate tax, which is determined according to the market value of the real estate, calculated on an annual basis. Real estate tax (property tax) is payable on real estate including: 1) ownership right or landownership right for an area of over 1000 m^2; 2) right to a lease, i.e. use, on a dwelling or a residential building constituted for the benefit of natural persons; 3) right of use to building land exceeding 1000 m^2 in area pursuant to the law governing the legal regime of building land; 4) right of use to real estate in public ownership by the holder of the right of use pursuant to the law governing public property; 5) use of real estate in public ownership by the users of real estate, pursuant to the law governing public property; 6) possession of real estate whose holder of ownership right is not known or not specified; 7) possession of real estate in public ownership, without any legal basis; 8) possession and use of real estate under financial leasing contract[1].

The tax base is determined on the assumed value of the real estate, which is calculated upon the size of the real estate (building or plot) and the average price per square meter in the zone

[1] Zakon o porezima na imovinu 2020, Article 2.

where the real estate is located. The zones (at least two of them in every local administration unit) are established according to existing communal infrastructure, public facilities, traffic connections with central parts of the local administration unit and working zones, etc. The average price of the square meter of the real estate in a zone is calculated yearly based on prices realized on market. The value of the real estate, except land, can be lowered by 1% for each year of the age of the building (up to 40%).

The tax rates for land are 0.3% of the estimated value and for buildings 0.4% or more depending on the value of the real estate – the tax rates are higher if the value of the real estate is higher. The total amount of the tax can be lowered by 50% if the owner lives on the property. The collection of property taxes also includes illegally built structures, which means that the tax services in local governments have a way to calculate the market value of these facilities[2].

Considering the aforementioned criteria for calculating tax base and tax rates, the amount of the tax depends on the market value of the real estate, so the local administration unit can capture the rise in the value of the buildings. On the other hand, land parcels smaller than1000m^{2}are excluded from paying tax, and since in urban areas most parcels are in this category, the value of the land is not actually captured.

This tax is a significant source of income for many local administrations in Serbia, and in 13 municipalities has a share of over 10% and up to 44% of the overall local budgets[3].

24.2.2 Recurring Forms (in Case of Sale/Purchase)

24.2.2.1 Real Estate Transfer Tax

The real estate transfer tax (type of tax on the transfer of absolute rights) is paid in case of transfer of ownership rights, but also in case of transfer of right to a lease or use of buildable land. The tax rate of 2.5% is paid by the seller (in case of transaction) or by the leasee (in case of a lease or use of the urban land), yet in practice, it is usually paid by the buyer. The first-time buyer is exempt from real estate transfer tax for the 40 m^2 and in addition for the 15 m^2 for each member of their family. The application of this law shows that buyers and sellers often report a lower value of their real estate in contracts than the actual market value, paying part of the real estate value in untaxed cash in order to avoid paying taxes on the transfer of absolute rights in full[4]. To prevent such manipulations, the Law defines that the responsible tax office has the right to set a tax base that is equal to the market value if it finds the contracted price is lower than the market value.

24.2.2.2 Capital Gains Tax

The capital gains tax is defined by the Individual Income Tax Law and, among others, includes gains realized by transfer of rights on real estate. The tax rate is 15% of the gain. The sellers are exempt from capital gains tax if they owned the property for at least 10 years.

[2] Žerjav, 2013, p. 19.
[3] Bisić, 2011, p. 79.
[4] Janjić, 2018, p. 58.

Also, taxpayers who invest the funds generated by the sale of real estate within 90 days from the day of transaction in resolving their housing issue and the housing issue of their family members in Serbia are exempt from the capital gains tax[5]. The capital gains tax is considered as one of most useful tools in context of legalization of illegally built structures, assuming that the value of legalized building is at the level of those legally built[6], and for sure higher than before legalization. In fact, the mere announcement of legalization of illegally built structures without additional concrete actions (investment in infrastructure, public facilities, etc.) increases their value, which now encompasses 'future expectations'[7].

24.3 Non-recurring Forms of public value capture

Non-recurring forms of public value capture in Serbia are limited to contributions for the landscaping of urban land and the fee for the change of land use from agricultural land and forestland to urban land, with a recently introduced measure of urban land consolidation. The contribution for the construction of infrastructure is a one-time charge that defrays the cost of public infrastructure and other improvements. This fee is paid for both developed and undeveloped urban land. The tax for change of land-use purpose to building land is paid in the case of expansion of urban areas. The urban land consolidation is defined by law but is still underused.

24.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

24.3.1.1 Fee for Construction of Infrastructure

The Contribution for the Landscaping of Urban Land[8] is paid by the investor to a local government unit. In addition to supporting the construction of infrastructure and the construction/development of public spaces, the funds raised this way should be spent on exploratory works, drawing up geodetic, geological and other maps, preparation of planning and technical documentation, programs for land development, dislocation, and demolition of facilities, terrain remediation, etc. These funds are a significant source of income for the units of local administration, with the shares ranging from 10 to 38% of the overall local budgets depending on the municipality[9].

The fee is determined according to the surface area, the average price of a m^2, usage of the facility and its location – more attractive locations pay higher fees, which implies that this fee can be considered an instrument for value capturing. Specifically, for buildings to be built at the location for which utility infrastructure is being prepared with the funding from the owner, the contribution for landscaping of buildable land is being reduced by the real costs of utility outfitting, and at most 60% of the amount of compensation assessed according to criteria for assessment for that location[10]. In addition to the contribution to the landscaping

5 Zakon o porezu na dohodakgrađana, 2020, Article 77.
6 Žerjav, 2013, p. 25.
7 Žerjav, 2013, pp. 14
8 Zakon o planiranju i izgradnji, 2021, Article 96.
9 Bisić, 2011, p. 79.
10 Žerjav, 2013, p. 21.

of urban land, owners have to apply and to pay to get connection to utilities (e.g. gas, electricity, water or telecommunication).

The public buildings and infrastructure systems in public ownership are exempt from this tax. Also, the present Law on Legalization relieves the owners of illegally built structures of the payment of this fee; instead, they should pay only the 'tax for legalization'[11].

24.3.1.2 Tax or Levy on Planning Gains

The Law on Planning and Construction[12] defines the fee for the change of usage from agricultural land and forestland to urban land, which is applicable in case of the expansion of the urban area. However, there are no relevant instruments in case of land use change or densification inside urban areas. The fee for land use changes should be paid by the owner of the parcel before the building permit is issued. The base for this fee is equal to the base of the property tax (based on estimated market value), while the rate is 50% of the market value of the land[13]. The law defines several cases when the owners are excluded from the fee (e.g. in case of improving housing conditions).

24.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

24.3.2.1 Urban Land Consolidation

The first attempt to introduce urban land consolidation (readjustment) into the legal system in Serbia was in 1931 by the Construction Law (Official Gazette of the Kingdom of Yugoslavia, No. 133/1931), but without significant results in practice[14]. After the Second World War, this tool was not used, while expropriation was a common way for the acquisition of land for public uses. Urban land consolidation was reintroduced in the Law on Planning and Construction in 2011, with several amendments in later versions. As a new instrument in planning regulation, it is still rarely used, but the first experiences and preparations for this measure have shown its usefulness[15]. Land consolidation is defined as a public interest for the Republic of Serbia. Within a procedure, the existing cadastral parcels in the land consolidation area (for which a general zoning plan or a detailed zoning plan is adopted) are converted into urban parcels. The process is carried out in accordance with the applicable planning document and on the basis of the confirmed design of urban land consolidation, with a view to rational use and development of building land[16]. Redistribution of urban parcels is performed based on area criterion[17] or based on value criterion[18]. The process of land consolidation is realized in accordance with the rules of parcelling and re-parcelling

[11] Zakon o ozakonjenju objekata, 2020, Article 33.
[12] Zakon o planiranju i izgradnji, 2021, Article 88.
[13] Zakon o naknadama za korišćenje javnih dobara, 2021, Articles 44 and 45.
[14] Šoškić, 2016, p. 21.
[15] Lazić, 2017, p. 363.
[16] Zakon o planiranju i izgradnji, 2021, Article 107.
[17] Each owner got a building plot whose area is equal to the area of the plot that is included in the land consolidation reduced by the share in the area that will be used for public uses.
[18] Each owner got one or more building plots whose market value after the consolidation corresponds at least to the value of the construction land entered in the consolidation mass.

contained in the binding planning document and is financed by the municipality (unless it is initiated by the owners). The market value of the newly formed parcels is higher after consolidation, because of the improved features (shape, position, access to public area). Even though the received area is smaller, the measure is conceived as more equitable than previously used expropriation, since the owners retain the right of ownership over the land[19].

24.4 Interim Conclusion for Serbia

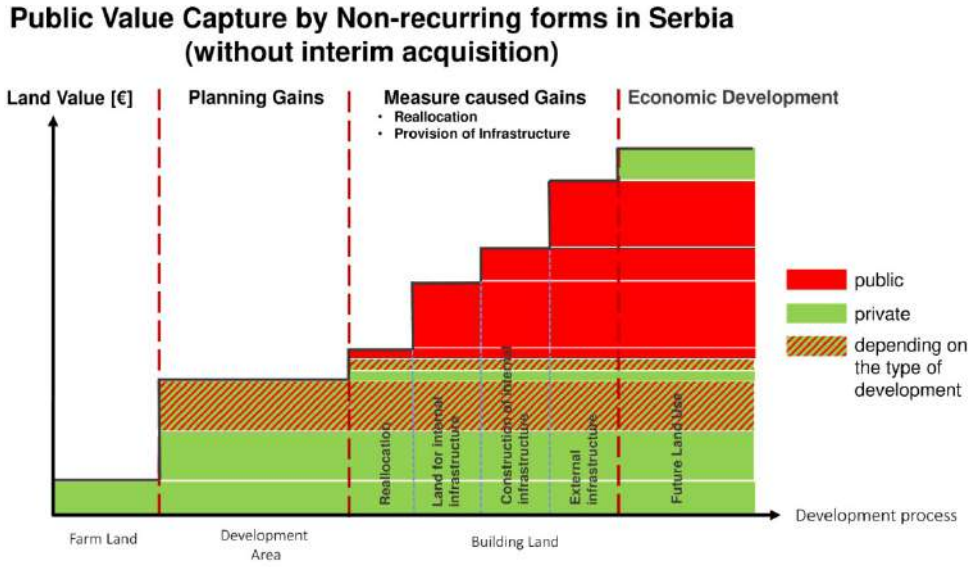

Figure 24.1: Value capture in Serbia.

Recurring forms of public value capture in Serbia are much more developed and used than non-recurring forms. At the moment, there are not any instruments that regulate public-private partnerships, in a sense that public authorities offer certain types of benefits to private landowners or private investors (e.g. allowing them to increase the floor area ratio), which could in exchange transfer part of the land for public needs such as the construction of non-profit functions of public importance (e.g. green spaces, squares) or social housing programs. Land banking as a practice is also unknown, although there is a consensus that the aforementioned could help in preventing speculative investments as well as in controlling (at least partially) illegally built structures[20] which could be of particular importance in resolving locally specific problems of spatial development.

Among non-recurring forms of public value capture, a contribution to the landscaping of building land is the most exploited measure. This fee is used for providing infrastructure (Fig. 24.1), and in some units of local administration this is a significant source of income.

[19] Lazić, 2017, p. 369.

[20] "A similar thing happened with the settlement of Altina in Zemun (Belgrade, Serbia) during the 1990s, so this settlement, although informally built, still has a proper structure, which makes the subsequent equipping of the land much easier and cheaper." Žerjav, 2013, p. 27.

A tax or levy on planning gains is applicable only in case of change of usage from agricultural land and forestland to building land, and recently introduced a measure of urban land consolidation, still needs to be more verified in practice. Recurring forms thus present a group of public value capture tools that can be further developed, adapted and used by targeting specific spatial and economic issues in Serbia.

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25 Slovakia

Julius Golej and Daniela Spirkova

25.1 Local Authorities and Planning System

The last decades have brought to Slovakia a modernization and decentralization of public administration and the introduction of self-government at the regional level. The powers of state administration were transferred to municipalities and regions, while the influence of social participation on the planning and decision-making process was strengthened. According to Finka (2015), these changes have substantially affected new territorial governance and increased the responsibility of local and regional self-government bodies for the development of their respective territories.

The planning activities and policies in Slovakia can be identified in five main levels and three pillars, as follows: (1) national tier: represented by the parliament and government; (2) regional tier: represented by the regional governments; (3) supra local: represented by the micro-regions, mostly institutionalized as associations of municipalities; (4) local: represented by the municipalities; (5) sub-local/zonal: represented by the municipalities and city districts. These five levels utilize key elements (pillars) for spatial development: (1) spatial planning activities – spatial planning with (a) integrative comprehensive planning activities represented by landscape planning, strategic socioeconomic development and land-use planning; (b) sector planning activities such as environmental planning, transport planning, and infrastructure planning; (2) spatial monitoring and information management system; (3) spatial management – implementation control system.[1]

Spatial planning is regulated by the Act no. 50/1976 Coll. on Land Use Planning and Building Order (the so-called Building Act). This Act addresses the process of land-use planning, spatial arrangements, construction proceedings and expropriation.

25.2 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.

[1] Finka, 2015, pp. 66–67.

25.2.1 Recurring Forms (Annual Payments)

25.2.1.1 The Real Estate Tax

The real estate tax is a local tax imposed by a municipality. The legal basis for the real estate tax is provided by national law.[2] The real estate tax comprises a) land tax, b) tax on buildings and c) tax on apartments and non-residential premises within apartment buildings.[3] The municipality determines in its generally binding regulation the amount of tax, deduction or exemption from tax. The tax administrator of the municipality in which the real estate is located levies a real estate tax annually. The declaration of taxes is filed by a taxpayer (i.e. a person who is liable to pay tax). If the land, building, flat and non-residential premises in a residential building are co-owned by several persons, the declaration is submitted by each natural or legal person, i.e. the co-owner, up to the amount of their co-ownership share. However, it is possible to appoint, by agreement of all co-owners, a common representative who files a declaration on behalf of all. The annual revenue (national aggregate) collected through the recurrent real estate tax was € 364.82 million in 2019, which represented 6.4% of all municipalities' income in a given year, corresponding to 2.3% of all state revenues or almost 0.35% of the GDP of the Slovak Republic.

25.2.2 Recurring Forms (in Case of Sale/Purchase)

25.2.2.1 The Real Estate Transfer Tax

Income from the sale of real estate is included in the passive income of a natural person[4]. Income from the transfer of ownership of real estate includes, for example, income from the sale of land, the sale of an apartment, house, cottage, recreational facility, etc. It may be reduced in accordance with an expenditure related to this revenue. The transfer tax is thus paid only on the difference between income and expenses, i.e. the entire income is not taxed. The tax rates of transfer taxes are set by the National Government. The tax base includes taxable income, while deducting the expenses incurred to achieve it. If the costs associated with the transfer of ownership of real estate are higher than the income, the difference is not taken into account. The tax rate depends on the tax base, which is formed according to the partial income tax base[5]. If the tax base for 2020 does not exceed € 37,163.36, a tax rate of 19% applies. A tax rate of 25% applies to that part of the tax base that exceeds € 37,163.36. However, the following income is exempt from taxation:

- the sale of real estate (not commercial property) – after 5 years from the date of its acquisition;
- the sale of real estate (not commercial property) acquired by inheritance (successive inheritance) in direct succession or by one of the spouses, if at least 5 years have elapsed from the date of acquisition;

[2] Act no. 582/2004 Coll. on Local Taxes and Local Fee for Municipal Waste and Minor Construction Waste, as amended, from September 2004.

[3] §4 of Act no. 582/2004 Coll.

[4] According to §8 par. 1 letter b) of Act No. 595/2003 Coll. on income tax, as amended, i.e. income from the transfer of ownership of the real estate.

[5] According to §5, §6 and §8 of the Income Tax Act.

- the sale of real estate included in a bundle of business assets – after at least 5 years since removing from business assets;
- the sale of real estate issued to a person according to special regulations (these special regulations are specified in specific laws, e.g. in the Judicial Rehabilitation Act; in the Act on Mitigation of the Consequences of Certain Property Injuries; in the Act on Out-of-Court Rehabilitations; or in the Act on the Regulation of Property Relations and the Settlement of Property Claims in Cooperatives[6]).

25.3 Non-recurring Forms of public value capture

In Slovakia, the issue of public improvement or service is not established in the legislation. In practice, major public improvements are implemented through a municipality or city district, and the costs are often co-covered by EU funds. If municipalities carry out public improvements using their budgets and this development increases the prices of some plots or properties, then owners are not required to pay betterment fees or contributions.

25.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

25.3.1.1 Developer's Contribution to the Local Infrastructure

If a developer initiates a certain project in the city/municipality, in addition to the development fee, they often have to meet the municipality's requirements of the municipality regarding the city's infrastructure (most often the provision of roads, sidewalks and bike paths that are directly related to their project). These requirements are formulated in the form of an agreement with the developer. Negotiating with the developer is purely within the powers of the municipality. There are cases of small, less developed municipalities in particular, which do not ask developers for any contribution to the city's infrastructure, in order to increase their appeal and attract investments.

25.3.1.2 Development Fee

According to the Act on Local Development Fee[7], the development fee is payable when a building is constructed on the territory of the municipality specified in a) a valid building permit authorizing the construction (hereinafter referred to as the 'building permit'), b) notification of the building authority to the announced construction[8], c) a valid decision on permitting a change in the building before its completion, d) a valid decision on the ad-

[6] Act no. 119/1990 Coll. on Judicial Rehabilitation; Act no. 403/1990 Coll. on the Mitigation of the Consequences of Certain Property Losses; Act no. 87/1991 Coll. on Out-of-Court Rehabilitations, as amended; Act no. 42/1992 Coll. on the regulation of property relations and the settlement of property claims in cooperatives.

[7] Act 447/2015 Coll. on the local development fee and amendment of certain laws. Introduced on 1 November 2016.

[8] The builder is obliged to notify the building authority in advance in writing form of the execution of construction works, building modifications and maintenance works. The Building Authority may stipulate that the notified construction works, building modifications or maintenance works may only be carried out on the basis of a building permit. The builder may carry out these activities only on the basis of a written notification from the Building Authority that he has no objections to their implementation.

ditional building permit[9]. The development fee is charged for construction under Section 1 if the proposed development involves a new or additional floor area in the upper part of the construction. In case of demolition of the original building, the original upper floor area is deducted from the floor area of the new building.

In Bratislava, the city districts are the collectors and administrators of the development fee. The revenue from the fee is divided between the city districts and the city in a percentage of 68:32 in favor of the city districts[10]. The fee amount is established by local governments by adopting a general binding regulation. In the 3 years since the introduction of the development fee (at the end of 2016), city districts have levied taxes amounting to more than € 19 million on builders, since most of them have set fees at the upper limit of the rate of € 35 per square meter of floor space. According to the law, the city and districts must spend the resources from the development fee only on capital investments for purposes specified by law. The purpose of development fees is to provide municipalities with additional resources to build new infrastructure so that new construction brings immediate benefits to existing city residents. It is these citizens who should demand the use of this money and information on how it is used. However, the Bratislava city districts have so far used only € 3.6 million of collected fees, intended for the construction of transport, social and cultural infrastructure, and increase the share of greenery. This represents less than 28%[11] of the total collected fees that accrue to the city districts[12].

25.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

25.3.2.1 Development According to Urban Planning Legislation

Land-use plans are binding legal documents in Slovakia. They are relatively inflexible regulations, and it is impossible to make changes to them due to the demands of individual development projects. The municipality can collect suggestions for changing or supplementing the zoning plan and may from time to time proceed to approve a cumulative change or a supplement to the zoning plan (it is not effective to open the zoning plan for 'every plot'). The process of incorporating the proposed changes can take several years, so on the face of it, statutory plans are quite rigid. For example, the current Bratislava Spatial Plan stipulates certain conditions for mixing functions in the city area, which do not absolutely reflect the needs of the current development of the city. This is a consequence of low flexibility when the city needs the construction of new housing, but the zoning plan prescribes large areas

[9] If the Building Authority finds that the building was built without or in conflict with the building permit, it initiates the proceedings on its own initiative. The Building Authority invites the owner of the building to submit documents within a specified period of time, explaining why the additional permit is not contrary to the public interest, in particular the objectives and intentions of spatial planning. If the owner of the construction does not submit the required documents within the specified period or if a conflict between the construction and the public interest arises, the Building Authority orders the removal of the construction.

[10] Bratislava as the capital of the Slovak Republic has a unique position. It is an independent territorial self-governing and administrative unit of the Slovak Republic. In the case of Bratislava, its 17 city districts are also territorial self-governing administrative units. They perform the self-government of Bratislava and its delegated powers, and to this extent they have the status of a municipality.

[11] Institute of Urban Development, 2020.

[12] 68% of € 19 million represents € 12.9 million.

of civic amenities. Therefore, developers are building 'suits' that are not defined directly by law. The law recognizes only residential and non-residential premises. The difference between a 'flat' and a 'suite' in the Slovak context is the following: A flat must have a living area of at least 16 m², and the smallest room must not be less than 8 m². Its main function is permanent housing and must meet hygienic and technical standards. At least 1/3 of the area of a flat must be illuminated by daylight at least 1.5 hours a day. Unlike a flat, a suite is considered non-residential space (also known as a studio) and is not suitable for year-round use (rather only seasonally). In practice, of course, this is not enforced regularly due to the absence of a control mechanism. As the Building Act, the Cadastral Act and the Act on the Ownership of Flats and Non-Residential Premises do not recognize the term suite, its entry on the title deed is not always uniform. Most often, a suite is approved as a 'non-residential space', but in some cases it is possible to meet the registration as a flat. This is how developers often circumvent existing zoning regulations, without asking for a change in the spatial plan or its zoning. The latter option is often very time-consuming and more costly because developers must carry out extensive studies as a basis for changing the spatial plan.

25.3.2.2 Land Reallocation

In 2019, the Slovak government began reallocating land after almost a decade of complete stagnation. Based on the proven urgency of land reallocation, the Ministry of Agriculture and Rural Development of the Slovak Republic selected a total of 120 cadastral areas in which land reallocation began in 2020. The cost of these activities was calculated at € 68 million, paid from the state budget. The average duration of the reallocation procedure is 5 years. The duration of the whole process at the current rate of land reallocation is estimated to be 30 years.

Land reallocation in Slovakia is divided into two categories[13]. The first category is 'Complex land reallocation', which covers the entire area of the rural zone of the cadastral area. The consent for their implementation is given by the Ministry, and the costs of their implementation are covered by the state. The consolidation of land is carried out as much as possible as is the design of common facilities and measures (public improvements). The second category consists of 'Simple land reallocation'. This includes only a selected part of the cadastral area (the so-called 'area of interest'). Land reallocation of this type is paid by owners or investors who apply to the District Office, Land and Forestry Department for permission for simple land reallocation. Land reallocation during the processing phase of initial documents, land reallocation procedures also enable the government to identify the intentions of landowners and users (tenants) and thus define and conditions further steps in landscaping their position. This makes it possible to resolve discrepancies and inconsistencies in land use and to create problem-free land-use plans, better access to land, and direct payments. Sometimes, the owners do not agree with the land reallocation. To prevent the cessation of the land reallocation process due to the disagreement of individuals or a smaller group of owners, the law makes the validity of the land reallocation process conditional on the consent of participants with at least two-thirds of the land area in which the reallocation will take place. The reason

[13] Act no. 330/1991 Coll. on land arrangements, settlement of land ownership rights, district land offices, the land fund and land associations, as amended.

for the implementation of simple land reallocation for investment plans is the quality of investment projects and their compliance with land-use planning. A suitable example for the application of such reallocation is, in addition to housing construction, also the construction of industrial parks or highways. The application of this type of land reallocation is currently the most widespread type, thanks to which municipalities and cities are growing with new residential zones.

25.4 Interim Conclusion for Slovakia

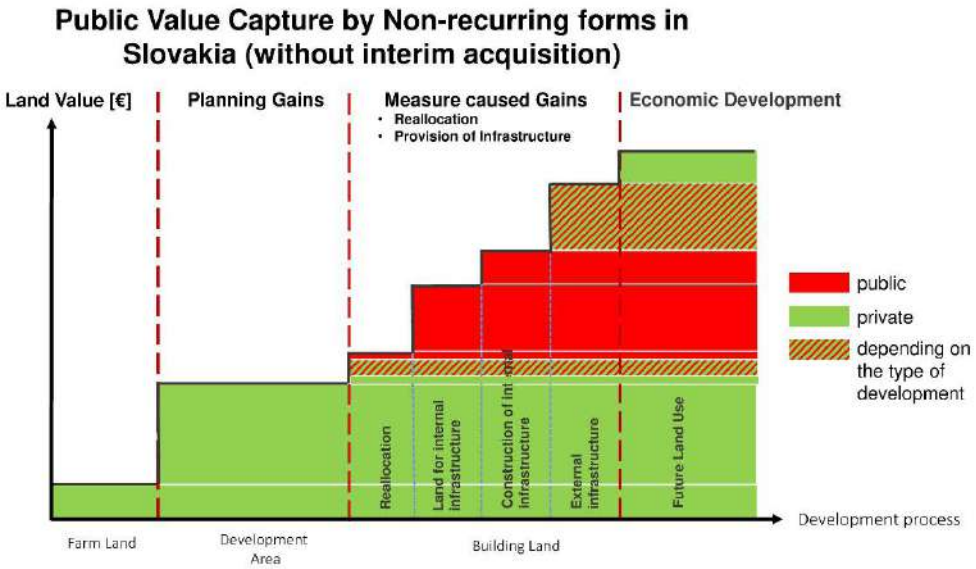

Figure 25.1: Value capture in Slovakia.

The basic recurring forms of public value capture in Slovakia include annual payments in the form of real estate taxes and real estate transfer tax. Non-recurring forms of public value capture include developers' contributions to the local infrastructure, which are based on negotiations between the municipality and the developer and are therefore hard to quantify in advance. Through this tool, municipalities are often able to build municipal infrastructure not only in direct contact with a future project. Another tool by which the public sector can obtain funding for its investments is the development fee. This fee was originally intended to replace the aforementioned contribution of developers to the construction of the infrastructure and to bring a degree of fairness and transparency to this process. The original intention did not work out, and developers often bear the double burden as they are required to pay fees and, at the same time, to negotiate additional benefits with municipalities. At the end of the day, these increased project costs are then passed on to end users, the future owners. Changes in zoning plans that allow for a reformulation of regulations are currently almost impossible in Slovakia. Regulations are inflexible, and municipalities currently insist on strict adherence to land-use plans. The only recourse is a formal request to change the zoning plan. This can usually take several years. It is the introduction of some flexibility in

spatial planning that could provide municipalities with a useful tool in negotiations with the private sector, with which they could capture some portion from increasing property values (e.g. in cases involving a change in the functional use of land). Another tool by which the public sector can capture value is land reallocation (readjustment), according to which common and public facilities can be allocated.

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26 Slovenia

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26.1 Local Authorities and Planning System

Slovenia has a hierarchical system of spatial planning, where the highest-level planning document is the *Spatial Development Strategy*, which outlines the main objectives for spatial development. The national government can also adopt national spatial plans, which are spatial arrangement plans for development projects of national importance. The municipalities are responsible for land-use planning at the local level, considering all the planning documents at higher levels (national, inter-municipal spatial plans). The municipal spatial plan with zoning regulations is the only mandatory and comprehensive spatial planning document at the sub-national level, with a strategic and mandatory zoning implementation. For detailed land-use planning, the municipal spatial plans are further foreseen, prepared and adopted for specific development areas defined by municipal spatial plans (Spatial Management Act 2017).

There is no specific legal definition of land value capture in Slovenian legislation. Still, the social function of property is already emphasised in the Constitution (1991), where Article 67 states: *"The manner in which property is acquired and used shall be determined by law in such a way as to ensure its economic, social, and environmental function."*

Here, land value capture can be treated as a set of mechanisms and measures with the common goal of returning land value to the public. The concept of land value capture should be made of various taxes and charges related to land tenure and its management. The fundamental provision of the Constitution (1991) regulating the imposition of taxes at the state and local levels is Article 147: *"The State shall levy taxes, duties and other charges by law. Local communities shall levy taxes and other charges under the conditions provided by the Constitution and laws."* Article 147 thus regulates the full fiscal sovereignty of the state, while the second sentence regulates the partial (limited) budgetary autonomy of self-governing local communities. Within limits set by the legislature, taxation is not a limitation of the property right but an integral part of it. It is the inherent duty of every owner to contribute their share to public needs (Korže, 2015, p. 355).

The autonomy of self-governing local communities, i.e. municipalities, to levy taxes implies an obligation for the legislator to provide them with the means to finance the exercise of their constitutional functions. The legislator has to provide them with their own (autonomous) funding sources in the first instance. The autonomy of local communities requires the legislature to consider the constitutional position of self-governing local communities when setting taxes. In the case of taxes closely related to local communities, e.g. property tax, the legislature must, to a certain extent, allow local communities to influence the amount of funds themselves (Constitutional Court, Decision No. U-I-24/07).

Taxes, fees and other public charges related to real properties are, on the one hand, a source of financing for the implementation of land policy (fiscal aspect), and, on the other hand, they can be a powerful instrument for the performance of land policy (guiding factor). The above mentioned means that the enactment of public taxes can influence the spatial development of a municipality (Rakar et al., 2008). While some of the recurrent real property taxes/fees are considered as revenues of the state budget (e.g. *real property transaction tax*), municipalities have, among others, a legal right to define the fees that are used to finance public infrastructure and services. The most essential fiscal measures in these fields, which can also be considered as public land value capture instruments, are:

- *the compensation for the use of building ground*, which is an annual payment and can be treated as a property tax, and
- *the land development fee*, i.e. public utility fee, which has to be paid prior to the issuance of a building permit or the commencement of the use of a service.

Both of these charges are important sources for the construction and renovation of public utility infrastructure and public services in the local community. In addition, some other recurring and non-recurring forms of public value capture are known in practice and will be presented in the next sections.

26.2 Recurring Forms of Public value capture

In Slovenia, the recurring forms can be divided into annual payments and payments, related to real property transactions and capital gains.

26.2.1 Recurring Forms of public value capture (Annual Payments)

Over the last two decades, Slovenia has been developing a new system of real property taxation based on the modern market system of real property mass appraisal. Still, there has been a lack of political will to introduce the new modern real property tax (see also Mitrović and Smodiš, 2017). Currently, most of the taxes from real property are generated by the following recurrent taxes on real property:

- The compensation for the use of building ground,
- The tax on real property,
- The real property income tax assessment for natural persons.

26.2.1.1 Compensation for the Use of Building Ground

The compensation for the use of building ground (slov. *nadomestilo za uporabo stavbnih zemljišč* – NUSZ) is revenue of municipalities introduced in 1984 by the Building Land Act as compensation for the use of building ground. Through the municipal ordinance, the municipalities specify the zones in which the compensation is levied. Several factors are considered in determining the unit area compensation, such as planned land use (e.g. residential, industrial, etc.), the type and quality of adjacent roads, parking lots, recreational areas, other public facilities. Those liable for the compensation include legal entities and individuals,

users or owners of undeveloped land, buildings and parts of buildings. A municipality has considerable autonomy to exempt owners from this compensation fully or partially (see also Grote, Borst and McCluskey, 2015). In Slovenia, the 5-year period of complete exemption from the payment of compensation begins to run from the day of moving into an apartment or a residential house. The Municipal Assembly may prescribe exemption or partial exemption from the payment of compensation also for citizens with lower incomes and citizens who have invested social funds in the construction of communal facilities, under the criteria agreed in the Building Land Act.

26.2.1.2 The Tax on Real Property

The tax on real property (slov. *davek od premoženja*) is the municipalities' revenue introduced in 1988 by the Civil Tax Act (1988). It is paid by individuals who own or have in their possession buildings, parts of buildings, dwellings, garages or premises for recreation and leisure. The tax is not levied if the living area of the building in which the taxpayer or their immediate family members have their permanent residence is less than 160 m². There are other exemptions from the tax on real property, including buildings used for agricultural purposes and cultural or historical monuments, and a temporary exemption for 10 years for taxpayers who own newly constructed buildings or substantially renovated buildings where the value has increased by more than 50%.

26.2.1.3 The Real Property Income Tax for Natural Persons

The Personal Income Tax Act (2006) refers to real property income tax (only for individuals). If an individual is not engaged in business activity and rents the real property to another individual, the person must pay a personal income tax for property rental income into benefit of the state. It is used to fund public services, government obligations and provide goods for citizens. Personal income tax is calculated and paid at a rate of 27.5% (from 2019, previously 25%) of the tax base, i.e. the amount of income from real property rental less flat-rate expenses equal to 15% from 2019 (previously 10%) of the income earned. Instead of the flat-rate expenses, taxpayers may also claim the actual costs incurred for maintaining the value of a property.

26.2.2 Recurring Forms of Public Value Capture (in Case of Sale/Purchase)

Recurring measures and instruments for returning land value to the public, which are levied in connection with the sale or purchase of the property or the inheritance of the property, are especially:

- The real property transaction tax,
- The capital gains tax,
- The gift and inheritance tax on immovable property.

The beneficiary of all these taxes is the state.

26.2.2.1 The Real Property Transaction Tax

There are several types of real property transactions that are considered as a transfer of real property and therefore subject to the real property transaction tax, e.g. sale of real property, exchange of real property (the exception being agricultural land and forests in the case of a farmland plot structure improvement), financial lease of real property, etc. The real property transaction tax, regulated by the Real Property Transaction Tax Act (2006), is levied at the state level.

The liability of transaction tax usually burdens the seller. The real estate transaction tax is paid at the rate of 2% of the transaction price for the legal transfer of title and the transaction payment for the transfer of the right of superficies if no VAT is charged or paid at the time of sale. When real property is sold, the seller is liable for real property transaction tax and, in some cases, personal income tax on capital gains. Personal income tax on capital gains is only levied if the real property sold was acquired after 1 January 2002.

In the case of creating a building right, the taxpayer is the founder; in the case of transferring building rights, the taxpayer is the transferor. In exchange, each participant is a taxpayer for the value of the real property they dispose of, in the case of a finance lease, lessor, and possession, possessor.

26.2.2.2 The Capital Gains Tax

The disposal of real property is considered a sale, gift, donation, or exchange (swap). Personal income tax on capital gains, which is regulated by the Personal Income Tax Act (2006), is determined if the real property being sold was acquired after 1 January 2002. The taxable base is the sale price of the land reduced by the acquisition cost (it may also be a lump-sum cost). Capital gains are taxed separately at a flat rate of 25%, then reduced by 10% after the first 5 years of holding, by 5% for each additional 5 years of holding, and finally non-taxable after 20 years.

Capital gains from the disposal of shares or other capital holdings in qualified companies are partly exempt from the taxable income of the holding company. As with individuals, capital gains from land disposal that has changed its function into building land are also subject to this tax.

26.2.2.3 The Gift and Inheritance Tax of Immovable Property

The inheritance and gift tax, which is regulated by Inheritance and Gift Tax Act (2006), applies to the transfer of real property. The tax is paid by individuals or legal entities under private law who have received property in the form of inheritance or gifts. Individuals classified as all direct descendants and spouses; farmers who inherit agricultural land or the entire farm; and legal entities under private law established for religious, humanitarian, educational, cultural, charitable and specific other activities are exempt from the inheritance and gift tax. The tax is levied progressively, depending on the value of the property and the category under which the relation to the deceased or donor is classified.

26.3 Non-recurring Forms of public value capture

The non-recurring form of public value capture can be seen in several measures related to land development in terms of infrastructure construction, partly also inland reallocation.

26.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

In Slovenia, there are several nonrecurring measures and instruments for returning land value to the public, such as payment by real property owners for the new or improved public facility or service, e.g. betterment contributions, charges for building rights or contributions of developers for public services. In addition, some land management measures, such as land readjustments, can be seen as a public value capture tool of the municipality, investing in public utilities within such projects.

26.3.1.1 The Compensation for Agricultural and Forest Land Conversion into Built-up Land

In Slovenia, the compensation for agricultural and forest land conversion into built-up land was introduced in the 1970s to slow down the vast interventions in agricultural land and, at the same time, to get financial resources for investments in agriculture, in particular for agricultural operations. The compensation for agricultural and forest land use conversion into built-up land has to be paid at issuing the building permit and depends on soil quality. It is calculated as a fixed compensation per m² of the building footprint (Agricultural Act 2011). 70% of the means of compensation referred to in this Act belongs to the budget of the Republic of Slovenia and 30% to the municipality's budget where the land is located.

26.3.1.2 The Public Utility Fee

An essential source of funding for the construction and renovation of public utility infrastructure and public services in Slovenia is the development or 'public utility' fee, which must be paid before a building permit is issued or before the new/improved public service is put into operation. The current legal basis is the Spatial Management Act (2017). However, the so-called 'public utility fee' has been in the legal system for decades.

The public improvements or service projects must be defined in the municipal public (utility) services plan. The fee is administratively calculated for the planning zones and types of public improvement services respecting the Decree on the programme for servicing building land and on the ordinance determining the base for assessing the public utility charge for the existing public infrastructure and on the calculation and assessment of the public utility charge (2019). In principle, the fees cover the cost of the public improvement or service not funded by other sources. Benefiting property owners are identified by a known, fixed planning zone defined in the municipal public (utility) services plan (the land plots that can use the public improvement). The municipality may provide exceptions based on the local decree (e.g. the local community's properties, real properties for public services, specific organisations, etc.). If the landowner has contributed to the financing of the infrastructure

project (including in-kind), the lump sum may be reduced based on the estimated contribution. If the landowner has co-financed the infrastructure project (in-kind), the fee can be reduced based on the estimated contribution.

26.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

For the realisation of the land-use plan, the municipality can initiate a land reallocation project. While the infrastructure financing system has its roots in the 1980s (see Section 1.3.1), the land reallocation measures are relatively new in urban areas. They are usually initiated and implemented as a private initiative. In contrast, there have been only limited cases of the projects initiated by the municipalities that consider the opportunities of public value capturing. The current Spatial Planning Act (2017) brought some changes regarding the urban land reallocation projects, which might stimulate the municipalities to initiate land reallocation projects. Two types of land reallocation for urban land are foreseen (1) municipality-initiated land consolidation with the agreement of landowners who together possess at least 67% of the targeted land area, and (2) owners-initiated land consolidation based on the owners agreement for 100% of targeted land area, in the form of a contract. The municipality-initiated land consolidation can only be carried out in an area with an adopted municipality in a detailed spatial plan. A municipal detailed spatial plan is not required for the owner-initiated consolidation.

The share of land areas for public needs, taken from the land consolidation mass, is not prescribed and is determined according to the agreement between the owners and the municipality.

26.3.2.1 Cooperative Development

For urban land development, the joint-ventures also play an important role. Namely, economic activities on a lasting basis can be performed by entities that are specifically legally determined for such purposes, such as private entrepreneurs, companies formed under the Commercial Companies Act (Official Gazette of Republic of Slovenia 42/2006 and amendments) and Co-operatives formed under the Co-operatives Act (Official Gazette of Republic of Slovenia 13/1992 and amendments). In principle, all forms of companies and co-operatives are suitable for joint ventures. Namely, co-operatives are primarily used in the agriculture and craft sectors and are not generally used in business and urban land development. Still, in urban development projects, joint ventures are known as public-private partnerships, e.g. companies. Municipalities often use the public-private partnership instrument to develop sports parks, administrative and parking buildings, underground infrastructure and similar projects, and provide investors with time-limited (99 years) building rights. Compensation must be provided at the interruption or closure of a public-private partnership, as defined in the contract.

26.4 Interim Conclusion

The provision of municipal autonomy, defined by the Constitution, is the basis for municipalities determining the fees used to finance public utility infrastructure independently. The primary fiscal measures in these fields are (i) *the compensation for the use of building ground* and (ii) *the public utility fee*.

The compensation for the use of building ground, introduced in 1984, is based on complex calculations and varies widely among municipalities. There are plans to replace the compensation with a modern real property tax based on the market values of real properties (see also Mitrovič and Smodiš, 2017). The fee rate varies among the municipalities as well.

While there can be wide variations between municipalities when comparing the rates of compensation for the use of building ground and the public utility fees, other taxes on real property, e.g. real property transfer taxes, capital gains taxes, inheritance taxes, are based on state legal provisions and rules and are the same for the entire country.

The non-recurring forms such as the compensation for agricultural and forest land conversion into built-up land, land consolidation and cooperative development enable the capturing of revenues resulting from land consolidation and external infrastructure and planning gains.

Although taxes and fees on real property are not the only instruments related to the public land value capture, it is essential to emphasise that Slovenia's low revenues from real property taxes (according to the Ministry of Finance for 2019, annual revenues amounted to 0.6% of GDP, i.e. € 296 million) compared unfavourably with the EU as well as OECD average. This long-term trend is recognised by the authorities. It has led to renewed attempts to modernise the property tax, which resulted in severe failures in determining the tax parameters (Verbič et al., 2016). In 2014, the Constitutional Court rejected the Real Property Mass Valuation Act and the Real Property Tax Act and instructed the authorities to reinstate the previous legislation (Grote, Borst and McCluskey, 2015). Although Slovenia has developed an advanced infrastructure for introducing the new real property tax, including the mass valuation system with the advanced analyses of the real property market, the latest real property taxation system has not yet been introduced (see also Lisec, 2015; Mitrović and Smodiš, 2017).

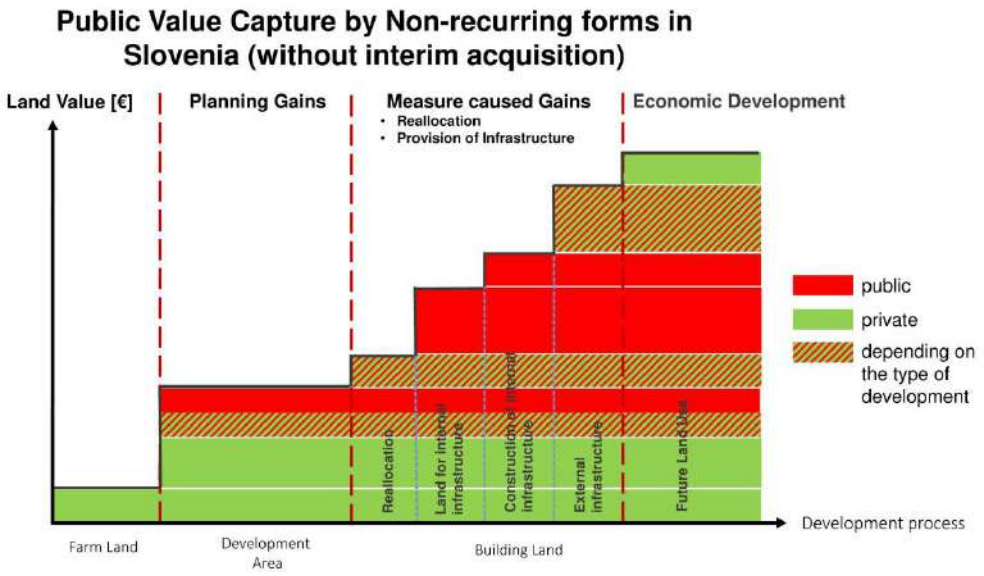

Figure 26.1: Value capture in Slovenia.

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27 Sweden

Peter Ekbäck

27.1 Local Authorities and Planning System

According to the Swedish Planning and Building Act (*Plan- och bygglagen*), the municipalities are the responsible bodies of the urban land-use planning. However, in exceptional situations the state can make an order for a municipality to adopt, revise or cancel plans, if necessitated by national interests or by the need to coordinate interests involving several municipalities.

The planning process has two main stages. The first step is the comprehensive plan (*översiktsplan*). Each municipality must have an up-to-date comprehensive plan covering its entire area. The plan indicates the basic features of land and water use and of future urban development.

The second step is the detailed development plan (*detaljplan*) which is mandatory for extensive changes of land use in a particular area. The detailed development plan is legally binding; the rights and obligations apply both to property owners and to the municipality.

Finally, municipalities exert development control by granting building permits (*bygglov*). The Planning and Building Act stipulates a general requirement for building permit for the erection of new buildings, for extensions and changes in design, and for employment of buildings to an essentially new purpose.

27.2 Recurring Forms of public value capture

In Sweden, the recurring forms comprise the real estate tax, the stamp duty and the capital gains tax. The real estate tax is an annual tax. In case of sale/purchase, the public value capture forms comprise the real estate transfer tax/stamp duty and the capital gains tax.

27.2.1 Recurring Forms (Annual Payments)

27.2.1.1 Real Estate Tax

The Swedish Tax Agency levies the annual tax on Swedish real estate, according to the regulations in the Act on State Property Tax (*Lag om statlig fastighetsskatt*) and the Act on Municipal Property Tax (*Lag om kommunal fastighetsavgift*).

The liability to pay real estate tax rests on the subject registered as the owner of the property at the beginning of the year.

The real estate tax is based on the assessed tax value (see below). The tax rate on properties for residential purposes (single homes) is 0.75% of the assessed tax value, with a maximum amount of 8.524 SEK/€ 840 (2021).

The annual property tax on apartment properties for residential purposes is 0.3% of the assessed tax value of the property, with a maximum amount of 1.459 SEK/flat, € 140 /flat (2021).

The tax rate is 1.0% for commercial office space and 0.5% for industrial properties.

Agricultural and forest properties are exempted from real estate taxation.

The assessed value for tax purposes is set by the Swedish tax authorities. It includes both land and buildings (cf. Section 2.1.1.1) and should correspond to 75% of the estimated market value of the property. The owner of the real estate receives a property declaration every 3 or 6 years where information about the real estate is stated.[1] The Swedish Tax Agency uses the information in the property declaration to calculate the tax value. Owners of real estate can get a special property assessment in between the 3 or 6 years if there have been any major changes to the property or if it is newly formed.

27.2.2 Recurring Forms (in Case of Sale/Purchase)

27.2.2.1 Real Estate Transfer Tax/Stamp Duty

All transactions on land and buildings are subject to stamp duty, according to the stipulations in the Act on Stamp Duty at Registration Authorities (*Lag om stämpelskatt vid inskrivningsmyndigheter*). It is the buyer of the property who is liable to pay the tax.

The stamp duty is based on the higher of the purchase price and the assessed value for tax purposes. The stamp duty rate is 1.5% if the buyer is a natural person or a non-business association, e.g. a housing cooperative association, and 4.25% if the buyer is a company.

Some exemptions from the liability to pay stamp duty include; transfer of ownership due to inheritance, estate division or gift.

27.2.2.2 Capital gains tax

When properties are sold, the seller is liable to pay a capital gains tax, which is based on the profit. The profit is calculated as the sale price minus the real estate agent's fee minus purchase price minus improvement costs.

For natural persons, the tax rate is 30% for 22/30 of the profits (effective tax rate 22%).

For companies, sales of land and buildings are subjected to corporate income tax. As of January 2021, the applicable tax rate is 20.6%.

In certain situations, it is possible for the seller of a residential property to get a deferral of the capital gains tax. This is applicable if the seller buys a replacement property within a specific time limit (normally 1–2 years) that has the same or a higher value than the sold property.

[1] The normal periodicity for the property declaration is 3 years. The 6-year interval only applies to industrial units, electricity production units and quarries.

27.3 Non-recurring Forms of public value capture

Concering 'unearned increments' the non-recurring forms in Sweden are focused on refinancing of concrete provision of technical infrastructure. These appropriations can either take the form of fees for the construction of specific infrastructure from the property owners or be negotiated in different forms of development agreements with a developer. Planning gains and property rights extensions, however, generally accrue to the property owner or developer.

27.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)[2]

27.3.1.1 Fee for Construction of Infrastructure

A development project includes several types of facilities – streets, green spaces, water and sewerage mains, electricity supply, telecommunications, etc. To a large amount, the municipality is responsible for the provision of these infrastructures. For some facilities, however, the Swedish system relies on market actors and private solutions.

In general, the municipality is responsible for areas that are designated as 'public spaces' in a detailed development plan – streets, green areas, etc. To cover the cost of public spaces, the municipality is entitled to levy charges from the property owners. These charges may not exceed the construction costs of the facilities.[3] Maintenance costs, on the other hand, have to be funded out of municipal tax revenues.

For national roads – regulated in the Roads Act (*Väglagen*) – financing is normally covered by state tax revenues. During the last decades, however, the legislation has opened up for the possibility to charge road tolls for national roads, an alternative that still is rather uncommon.[4]

Water supply and sewage disposal are generally managed by the municipality (or municipally owned companies). The municipality is entitled to cover the costs for construction and operation by charges from the property owners.[5] The charges consist of a connecting fee and an annual user fee.

Power supply and district heating, supplied by municipal or privately owned companies, are financed entirely by means of charges to users. These generally take the form of a connection fee, an annual fixed fee and a variable fee based on the actual consumption.

Telecommunications and fiber-optics are managed by private operators of internet, TV and telephone and are financed entirely by means of charges in the form of a connection fee and an annual subscriber fee.

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[2] This and the following sections rely to a large extent on Thomas Kalbro's report of the Swedish system in Hendricks et al., 2017.

[3] The Planning and Building Act, Chapter 6, Sections 24–27.

[4] Kågeson, 2004.

[5] The Act on Public Water Services (***Lagen om allmänna vattentjänster***).

27.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

27.3.2.1 Negotiated Development (Developer and Municipality)

27.3.2.1.1 Development Agreements

As seen above, many rights and obligations of developers/property owners and municipalities are defined by statutes. However, in projects carried out by professional developers, the statutory provisions are elucidated and supplemented by agreements between the municipality and the developer–development agreements (*exploateringsavtal*). These agreements may specify more in detail the allocation and distribution of infrastructure costs (cf. Section 2.2.2.2).

The employment of development agreements is regulated in the Planning and Building Act,[6] and the provisions give the municipality the possibility to charge the developer for technical infrastructure – streets, water and sewage, etc. – that is 'necessary' for the implementation of a development project (i.e. the detailed development plan). This means that also external roads/streets and so on that are prerequisites for the development may be carried out or financed by the developer.

In contrast, 'social infrastructure' – such as schools, day-care facilities or health centers – must *not* in any case be financed by the developer.

27.3.2.1.2 Land Allocation Agreements

In Sweden, a lot of land appropriate for housing is owned – often since many years back – by municipalities and supplied to developers through the use of 'land allocation agreements' (*markanvisningsavtal*). A land allocation connects a developer and a municipality in an interdependency-based collaboration intended to jointly create an implementable development right, followed by a land transaction from the municipality to the developer.[7]

Through the land transfer to developers – to the actual market price – the municipality can assimilate the value increase due to the extension of property rights and public investments.

27.3.2.1.3 Co-financing Compensation

Regional and national infrastructure projects – national roads, railroads, subways, etc. – are often a prerequisite for the implementation of individual development projects.[8] In order to cover large investment expenses, it is possible to divide the financing responsibility between several public actors – so-called co-financing – which means that municipalities, regions or the state make contributions to the construction of transport infrastructure that is the responsibility of another actor. The municipalities' right to co-finance the regions' or the state's infrastructure is regulated in the Act on Certain Municipal Powers (*Lagen om vissa kommunala befogenheter*).

6 The Planning and Building Act, Chapter 6, Sections 39–42.
7 Caesar, 2016.
8 Cars et al., 2013.

The provisions for co-financing were supplemented in 2017 with the possibility of negotiating over co-financing compensation by amendments to the Planning and Building Act.[9] The new regulations mean that municipalities that co-finance state or regional transport infrastructure may negotiate with developers and property owners who receive benefits from the infrastructure about compensation to cover parts of the costs for the co-financing.

The provisions for co-financing compensation thus aim to enable voluntary capture of parts of the increase in value of properties that arises due to large investments in transport infrastructure. Conversely, municipalities obtain increased opportunities to finance their costs for grants for state or region infrastructure projects.[10]

27.3.2.2 Interim Acquisition, Land Banking and Site Leaseholds

Sweden is characterized by a rather extensive municipal landownership. Municipal land is today, and will most likely for long remain to be, an important component in housing development projects. Apart from the function to control the development of the built environment, municipal landownership also serves a function to control direct negative or otherwise inequitable effects derived from land values.

Land close to or within urbanized areas is not primarily valued based on its physical attributes. It is rather the unique localization of the land, combined with existing or potential building restrictions – i.e. its development right – that guides the value.[11] Thus, it is typically the scarcity of 'alternative' land within a defined area that, in combination with adjacent and often publicly supplied infrastructure, determines the value – rather than visible efforts made by existing landowners. From both state and municipality perspective, (high) land values as well as its (unearned) increments have been considered to cause land speculation.[12]

Municipal land banking (cf. Section 2.2.2.4) can be undertaken by negotiations and voluntary purchases. There are also legal possibilities for compulsory purchases, based on the stipulations in the Expropriation Act (*Expropriationslagen*), comprising that: "Expropriation may take place in order to enable a municipality to dispose of land or other space which, in view of future development, is required for future urban development or a related arrangement."[13] In practice, however, these legal coercive measures are rarely used, since the consequences of 'political bad will' are obvious.

The Swedish Expropriation Act also contains a particularly interesting provision concerning so-called 'value increase expropriation'.[14] The provision aims precisely at the general public being able to capture an increase in land value. In the event of a measure that could warrant expropriation, properties in the immediate vicinity of the area for which the planned measure is expected to entail a significantly increased value or properties that are given improved utilization possibilities through the measure may be expropriated. This may be, for example,

[9] The Planning and Building Act, Chapter 6, Sections 39–40.
[10] Karlsson & Puskas, 2018, pp. 27–36.
[11] Alexander, 2014.
[12] Caesar, 2016, pp. 15–16.
[13] The Expropriation Act, Chapter 2, Section 1.
[14] The Expropriation Act, Chapter 2, Section 11.

the construction of a new traffic route that increases the value of the nearby properties. Value increase expropriation could thus be used when public investments lead to an increase in property value. However, the rule has never been applied but provides legal support for municipalities to negotiate compensation for value increases as a result of also major infrastructure investments in development agreements. The provision on value increase expropriation strengthens, through its mere existence, the municipality's negotiating position on public value capture in negotiations on development agreements. The idea is that, by paying a reasonable compensation through development agreements, the property owner can avoid expropriation.[15]

Instead of allocating the land to a developer or selling off the individual properties to private homeowners, the Land Code (*Jordabalken*) comprises provisions for granting 'site leasehold' (*tomträtt*) to private homeowners and thereby keep the land in municipal ownership even after a project has been implemented.[16] A site leasehold is a real property right of use without a time limit. Through the site leasehold institute, the municipality can claim and possess the future increase in land value. At present, there exist around 60,000 site leaseholds in Sweden, which means that this institute is not of major relevance in the context of public value capture.[17]

27.4 Interim Conclusion for Sweden

Applying the Swedish system for public value capture to the 'value steps of property development model' in Chapter 1, the following general remarks can be made. Firstly, property and capital gains tax is (more or less) applicable to all property value increases, independently of the 'sources' 1–5. Secondly, value surplus due to private investments is not subject to public value capture. Thirdly, thus the non-recurring forms of public value capture, described in sections 27.3.1–27.3.2, are confined to the extension of property rights and public investments (i.e. elements 2–3 in Figure 27.1).

Land value increase due to extension of property rights – detailed development plan/building permit – benefits, in principle, the developer/landowner, with the exception that the administrative cost for preparing the plan and the permit falls on the developer. Thus a (minor) part of the planning gain is recouped by the public sector. In cases where land allocation agreements are employed, the size of this part is open for negotiations. See Figure 27.1 for a graphic illustration.

Due to the provisions for development agreements and co-financing compensation in the Planning and Building Act, parts of the costs for external infrastructure may be covered by charges from the developer. The cost recovery is, however, limited to technical infrastructure, i.e. streets, water and sewage, etc. 'Social infrastructure' such as schools, day-care, etc., remain a public sector responsibility.

[15] SOU, 2012: 91, pp. 206–207.

[16] The Land Code, Chapter 13, Sections 1–26.

[17] The quantity of site leaseholds represents approximately 2% of the total number of properties in Sweden (SOU, 2012: 71, pp. 50–51).

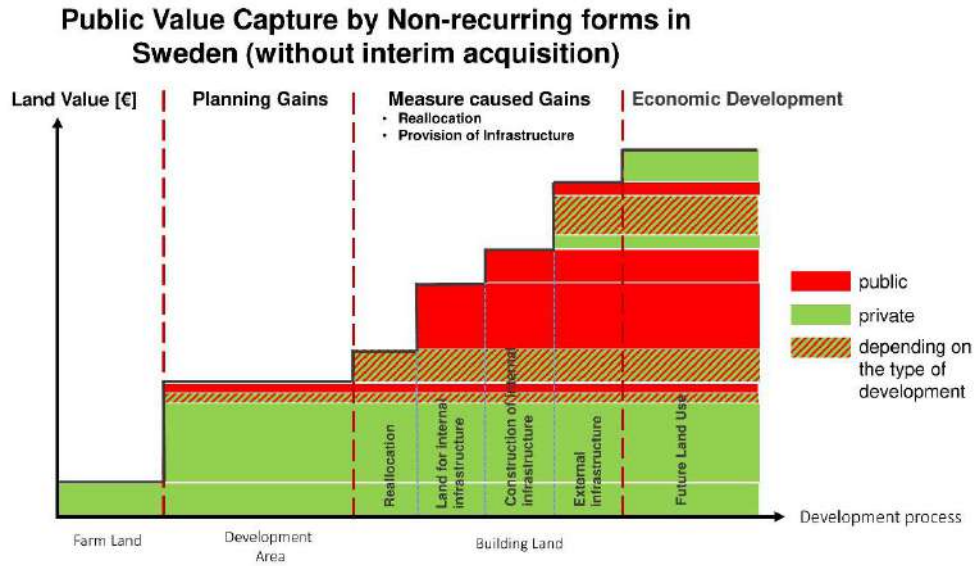

Figure 27.1: Public value capture by Non-recurring Forms in Sweden (Without Interim Acquisition).

As described above in Sections 27.3.1–27.3.2, the internal and technical infrastructure is a developer's financial responsibility.

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28 Switzerland

Jean Ruegg

28.1 Local Authorities and Planning system

According to the Swiss Federal Constitution (Art. 75 Cst.), the federal state lays down the principles of spatial planning. However, it is up to the 26 cantons (states) to set the performing rules and to put them into practice. To do this, they must refer to the federal Spatial Planning Act (SPA) and enact their own cantonal implementing legislation. With the sole exception of 2 cantons, the cantonal implementing acts designate the local level (with more than 2,100 municipalities) as responsible for land-use planning.

Together, these three complementary political-administrative tiers – federal, cantonal, local – serve one main objective, namely, "the appropriate and economic use of land" (Art. 75, al. 1 Cst.).

Local land-use plans are legally binding. They identify buildable areas, which must be strictly distinguished from non-buildable areas. Within buildable zones, regulations may be plot-specific (land-use and building density). But they may also require that additional rules be defined later (*plan de quartier* or specific land-use plan). This is a useful tool for urbanising larger buildable areas where development is strategic, or if a multi-parcel approach is requested (e.g. to solve servicing problems or to protect green spaces within the urbanised area).

The SPA was substantially revised in 2012 (enacted in May 2014) with the implicit goal of curbing urban sprawl by promoting more inward and dense housing development. Two main changes were introduced. The first is an attempt to oblige landowners to use their building rights (if they have any) within a pre-defined timeframe. The second is the obligation for each canton to introduce in its implementing legislation a mechanism for capturing planning gains and compensating for planning losses (withdrawal of building rights). These provisions are still too recent to be able to measure their effects, especially as several cantons are encountering implementation problems.

28.2 Recurring Forms of public value capture

The recurring forms are the real estate tax, the wealth tax, the capital gains tax, and the property transfer tax (*droit de mutation*). The first one is a 'real' – object-based – tax based on the value of the property and not on the personal quality of the taxpayer (income, wealth, solvency). The wealth tax and the capital gains tax are 'direct' taxes cantons are required to levy under the Federal Law on the Harmonisation of Direct Taxes of the Cantons and Municipalities (LHDT). The justification for the property transfer tax is related to the management and maintenance of the land register.

None of these taxes is conceived to directly support planning goals.

28.2.1 Recurring Forms (Annual Payments)

28.2.1.1 Real Estate Tax

The real estate tax should be understood as a consideration for the use of a portion of the territory where the (immovable) property is located (DIF/AFC, 2019, p.1).

This tax is not defined at the federal but at the cantonal level. Cantons have to establish a separate law that will specify who, from the canton and/or the communes, is authorised to collect the property tax and how.

As a result, the general picture is extremely diverse. Seven cantons do not collect real estate tax at all. Eleven cantons levy it on natural and legal contributors. One does the same but only for the part of the property that generates income. Seven collect a 'minimum' real estate tax only if its amount is higher than the tax a contributor would have to pay on their wealth (property and capital). In cantons that levy the tax, some allow it at the cantonal level only, others only at the municipal level. Finally, in a few cases, it can be cantonal and made either compulsory or optional for municipalities (*ibid.*).

In cantons that apply it, it represents about 3% of the total annual taxes they levy. Where municipalities are allowed to collect it as well, the tax rate cannot be higher than that of the canton. The real estate tax is therefore not decisive in terms of revenue.[1]

The real estate tax is based on a tax assessment which depends on the value of the property. Again, 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 with a flat or progressive rate.

In general, it is common – especially in rural municipalities allowed to levy real estate tax – for the definition of the value of a vacant plot of land (whether or not it is located in a building zone) to be based on the yield value generated by its actual use (agricultural use or brownfield). If the land is built on, the market value is used as a reference for the tax assessment. However, there is nothing technically to prevent the value of vacant land being based on its potential value as defined in the land-use plan or the market value of the built-up property including all the building rights on the plot and not just those that are realized (Thalmann, 2008). These limitations only have political reasons. They explain why the real estate tax does not serve planning goals: It offers no incentive to build on vacant lots located within the buildable area and no penalty when building rights are not fully exploited.

[1] In many cantons, its revenue is much lower than the vehicle tax, for example.

28.2.1.2 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.[2] The wealth tax consists of capital (bank accounts, shares, bonds) and movable and immovable properties. This section deals with the real estate part of the wealth tax only.

It relies on the same tax assessment as for the real estate tax (in cantons where it exists). It is only calculated differently. The real estate tax takes into account the gross value, whereas the wealth tax is based on the 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. But in return, the potential rent (*valeur locative*) the owner would receive for renting out their property must be added.

There has been a long-standing debate about whether or not to change this system. It benefits the new homeowners at the expense of the old ones. Those who have owned their homes for a long time have relatively little debt. They can therefore only deduct relatively small amounts, far below the potential rent, which is regularly adjusted to rental market values.[3] Many pensioners are facing this problem and asking for a change. A revision of the law is under discussion in the Swiss Parliament. As of July 2021, the outcome of the debate remains undecided.

28.2.2 Recurring Forms (in Case of Sale/Purchase)

28.2.2.1 Capital Gains Tax

The capital gains 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.[4] The seller must pay for it. It is based on the sale price fixed in a contract drawn up by a notary.

The capital gains tax has an anti-speculation component. In most cantons, 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.[5]

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2 To give some orders of magnitude: In the canton of Vaud, ordinary tax accrued for 2/3 of 2020 total tax revenue. The proceeds of wealth tax represented 1/5 of the proceeds of income tax.

3 The potential rent value cannot be lower than 60% of the rental market value. In many cantons, it accrues for 70% of this latter.

4 The revenue of the capital gains tax is difficult to assess. Most cantons do not separate the origin of capital gains and consider an 'overall' capital gains tax. In 2020, it represented 4.2% of total tax revenue in the canton of Vaud, and 2.2% in the canton of Neuchâtel.

5 To give just two examples: The canton of Geneva applies a coefficient of 50% if the property is sold within 2 years of purchase, but the capital gain is no longer taxable after 25 years of holding; the canton of Vaud applies a coefficient of 30% if the property is sold within 1 year of purchase, and the lowest coefficient (7%) is reached after 24 years of ownership.

The capital gains tax promotes home ownership as well.[6] First, its payment is deferred if the proceeds of the sale are used to buy another property. Second, any investment made to increase the value of the property can be deducted from the capital gain. Finally, in several cantons, the time needed to get a lower ratio is reduced by half for those who occupy their own home.[7]

28.2.2.2 Real Estate Transfer Tax

The real estate transfer tax is due when a real estate property changes owner. 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. One canton does not levy any real estate transfer tax, while seven other cantons do not collect it as such. Instead, they charge transfer duties or land register fees.

28.3 Non-recurring Forms of public value capture

Non-recurring forms are divided into two categories: public value capture within the framework of existing legally binding land-use plans and PuVaCa where regulation changes are to be expected either to reduce or extend building zones, change land uses or increase density indices.

In the first category, the authorities have little room for manoeuvre. They must comply with the SPA and the cantonal implementing legislation. PuVaCa is linked to the compulsory servicing of the land. This is a prerequisite for a plot of land to be constructible under Art. 15 SPA. The servicing of the land offers a clear advantage to owners. The contribution they have to pay is then defined according to the benefits they obtain.

The second category is more demanding for authorities. They may engage in negotiations with landowners, 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. Negotiations are formalised by a public or private law agreement. Negotiations are never completely open. An explicit relationship between the additional building rights a developer might obtain and the compensation they will give to the local authorities is required. In addition, before a building permit is issued, citizens always have the opportunity to oppose the project in a referendum. The outcome of the vote is uncertain. For example, if the citizens feel that the agreement is not fair, it may end up with a negative vote. In such a case, no building permit is issued, and the whole project has to be reworked.

However, the recent revision of the SPA and the obligation for the cantons to introduce a mechanism for capturing planning gains have more firmly framed the authority's room for manoeuvre, which must first serve the objectives of curbing urban sprawl and force owners

[6] The Swiss ratio of home ownership is low in comparison to other European countries. It only increased from 28.5% in 1970 to 36.4% in 2019 (Federal Statistical Office).

[7] An owner in Vaud who occupies their property only needs 12 years to benefit from the 7% ratio, as opposed to 24 years for someone who has invested in a property for renting it out.

to build. Implementation has just started, and it is too early to detect any impact on landowner behaviour.

28.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

28.3.1.1 Owners' Contribution to the Servicing of Land

According to the SPA, 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, cycle paths), and to the water, energy and sewage pipes (Art. 19, al. 1 SPA). 'Equipment' here is limited to technical infrastructure.

According to the law, all the plots of the building zones must be serviced within a maximum of 15 years. The authority must do so in accordance with the equipment programme it has drawn up (Art. 19, al. 2 SPA). It may include stages and deadlines of implementation. If the authority does not meet its own deadlines, it must allow private owners to build the infrastructure or to advance the sums necessary for its completion.

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 owners. For the costs of detailed servicing, it is up to the municipalities to define the owners' share. It can be up to 100%. But, in general, it is capped (from 50% to 80% in the canton of Neuchâtel). It is common for owners to also pay part of the basic servicing (up to 50% in the canton of Neuchâtel and in the canton of Bern, but only for road construction). 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.

28.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

28.3.2.1 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 (see Section 3.3.1.1) but also to ask owners/developers to contribute to the financing of community or socio-cultural facilities (e.g. school, sports facilities, public transport line/stops, bike routes, green areas, public park, water treatment plant). Part of this infrastructure will benefit the newcomers. But they 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 the parties sign on a completely voluntary basis. Some municipalities attach the contract to the special plan. Both must be voted

on by the legislative body before coming into force (e.g. municipality of Nyon, canton of Vaud [Berta 2016]). Others keep them 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 [Eymann 2016]).

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. The quality of acceptance 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, where it would be inconsistent with Art. 5 (see Section 3.3.1.2). It is generally derived from the cantonal local tax law.

The ability to negotiate requires specific skills and the support of good lawyers. Therefore, mainly urban municipalities[8] can use the agreement model. Since they are in charge of the legally binding land-use plan, they can develop development strategies that exploit the direct link between their planning power and the contribution they require from owners/developers of strategic areas that demand a special plan.

28.3.2.2 Capturing Planning Gains Due to Planning Measures (Art. 5 SPA)

The 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 met this requirement. For the others, it is assumed that the taxation of capital gains (see Section 3.2.2.1) or the provision of a legal basis for specific agreements (see Section 3.3.2.1) fulfilled the requirement of Art. 5 SPA from the federal government perspective.

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 5 years (starting 1 May 2014) to adapt their implementing legislation and define a compensation regime. The money collected from capturing planning gains was not only to compensate for planning losses but was also intended for the reallocation of brownfield sites and the promotion of densification measures (Art. 5, al. 1ter SPA).

Seven years later, only a partial balance sheet can be drawn up. All cantons have a compensation scheme. But the first conclusions are disappointing as Art. 5 SPA is rarely used to its full potential.

The revised SPA requires capturing at least 20% of planning gains (Art. 5, al. 1bis SPA). 18 cantons out of 26 are not asking for more than 20%[9] (Espace suisse, 2021).

[8] At the end of December 2017, less than 7% of the total number of Swiss municipalities had more than 10,000 inhabitants.

[9] Case law considers that capturing up to 60% of planning gains remains compatible with the constitutional right to property (Art. 26 Cst.).

It allows for capturing planning gains in three situations: 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 (this is the only one mandated by the SPA). Six cantons leave it up to the municipalities to levy planning gains for either of the other two situations, provided they have an adequate regulatory basis. Finally, less than half of the cantons levy planning gains for all three situations, often at varying rates (ibid.).

In terms of the allocation of revenues, the results are as follows: 19 cantons use them to compensate for planning losses – often explicitly placed as the first priority – and to promote measures for curbing urban sprawl (Art. 5, al. 1ter SPA), 5 to compensate for and finance other measures not directly related to urban sprawl, and 2 to finance only measures related to the problem of urban sprawl (ibid.). This outcome is intriguing. For many years, case law has consistently shown that judges have had a very restrictive interpretation of the right to financial compensation for the withdrawal of building rights. The courts do not always equate that withdrawal with expropriation. They often consider that building rights should not have been granted simply because they do not correspond to the needs – as defined in Art. 15 SPA – of municipalities that already have an oversupply of building areas. And in the event they recognize a situation similar to expropriation, they require the authorities to pay financial compensation only if the owner has already demonstrated their willingness to use their building rights in accordance with the land-use plan.

The discussion on the implementation of article 5 SPA shows that old issues such as compensation for planning losses are back on the agenda, introducing uncertainty and tying up revenue[10]. This means that landowners are still powerful in cantonal parliaments and keen to protect their rights. As a result, more general spatial planning goals often take a back seat.

There are also more encouraging stories. In the canton of Valais, the parliament has accepted the principle of paying financial compensation in the event of building rights withdrawal. But the compensation is limited to the investment the owner made for having their land serviced (see Section 3.3.1.1). This provision helps the administration to assess how much of the revenue is to be allocated to compensation and how much is available to promote planning measures. It also supports an approach that allows planning authorities to work with owners rather than against them.

Finally, one issue still requires comment. It concerns the articulation between the capital gains tax (see Section 3.2.2.1), the agreement model (see Section 3.3.2.1) and capturing planning gains under Art. 5 SPA. The issue at stake refers essentially to the authority that benefits from these different sources of PuVaCa. In most cantons, cantonal authorities are the primary beneficiaries of both capital gains tax and capturing planning gains. In cantons where (few) municipalities have a long history with the agreement model, tensions may develop with the cantonal authorities. Because it is forbidden to tax the same gain twice, some experts fear that municipalities will lose revenue (Eymann 2016) and are aware of a possible conflict. Some cantons have already implemented a 'solution'. Planning gains that are nego-

[10] In the canton of Fribourg, it is only when the fund exceeds 20 million Swiss francs that financing measures in accordance with art. 5, al. 1ter SPA can be considered.

tiated with a municipality are deducted from the planning gains that are levied under Art. 5 SPA, which are deductible – in any case (Art. 5, al. 1^{sexies} SPA) – from the capital gains tax. This last example demonstrates the complexity of the Swiss system of PuVaCa as a whole. Prior to the adoption of the SPA revision, some commentators favored the 'new' Art. 5 SPA on the grounds that the revenue collected would be available to promote solely planning objectives, unlike the capital gains tax, which is part of the total revenue authorities can rely on to finance all the tasks they have to perform. Lack of hindsight prevents a clear picture of the overall outcome. But the future may well reveal that the capture of planning gains under Art. 5 SPA may well fall short of the expectations that were attached to it throughout the procedure that led to the SPA revision and its subsequent adoption.

28.4 Interim Conclusion for Switzerland

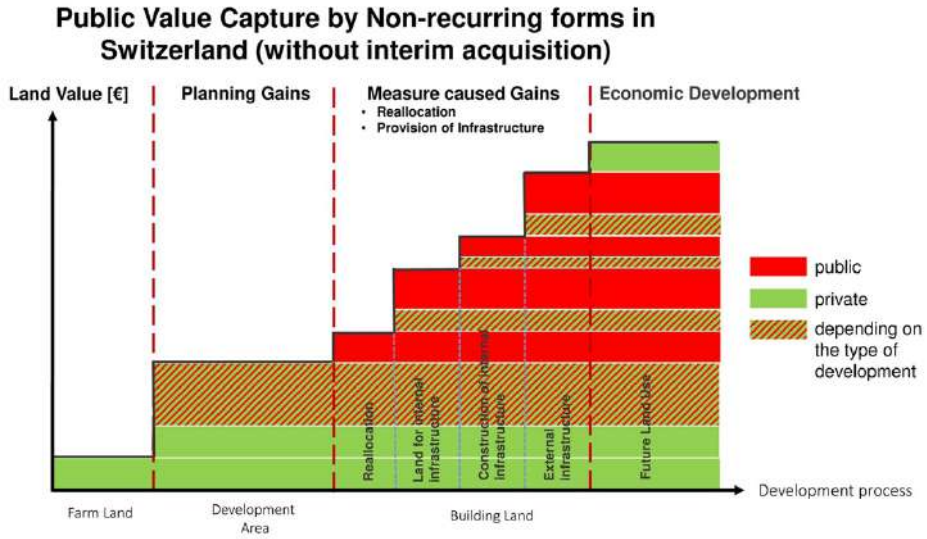

Figure 28.1: Value capture in Switzerland.

Because of Switzerland's federal structure, it is almost impossible to estimate the percentage of total tax revenues that are generated by public value capture. It is probably well below the 10% mark, with most of it coming from income tax of natural and legal persons.

Various taxes are levied on a property (land and buildings) and on the increase in its value. Few revenues are directly allocated to the pursuit of planning objectives. Of these, the landowner's contribution to land servicing is common. It essentially finances the construction of technical equipment that is necessary for any real estate development (see Section 3.3.1.1). The most interesting in terms of proactive planning strategies are the agreement model (see Section 3.3.2.1) and the capture of planning gains according to Art. 5 SPA (see Section 3.3.2.2).

The former depends entirely on the ability of local authorities to define a vision and strategy for controlling urban development and negotiating with property owners. The latter is too

recent to assess its performance. The most promising avenue for improvement is to better articulate them together (Imhof, 2016).

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29 Turkey[1]

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29.1 Local Authorities and Planning System

In Turkey, the administrative structure of a province mainly depends on the population, and there are three types of local governments: special provincial administrations, metropolitan or district municipalities, and villages. Based on Law No. 6360, in provinces with a population in excess of 750,000, local governments are metropolitan and district municipalities with a two-tiered structure. This two-tiered structure empowers metropolitan municipalities for macro-services and district municipalities for micro-services in the same jurisdiction, which is formed by the provincial borders. In non-metropolitan provinces, provincial, district and town municipalities are responsible for the services in their jurisdiction with a similar structure, function, and power. Outside the municipal jurisdiction, special provincial administrations are responsible for public services. As of 2020, metropolitan provinces hold approximately 78% of the total population, and there are 30 metropolitan and 519 district municipalities. In non-metropolitan provinces, there are 51 provincial, 403 district, 387 town municipalities and 51 provincial special administrations[2].

Turkey has a plan-led regulatory planning system driven by national policies through a planning hierarchy. The legal framework for spatial planning is provided by Development Law No. 3194 and the Bylaw on the Preparation of Spatial Plans. The plans are spatial strategy plans, environmental plans and land development plans from the country to regional and local levels, respectively. Land development plans, which are comprised of master and implementation plans, conform to higher-scale regional and environmental plans prepared by the central government. Master plans are at a scale of 1:5000 to 1:2000 and provide block-based information such as social-technical infrastructure, land uses, zoning types and population densities. Based on the master plan, implementation plans are drawn up at a scale of 1:1000 and provide parcel-based information such as the land use, the quantity and characteristics of the development, zoning types, floor area ratio, maximum building area, building types and all social-technical infrastructure. Implementation plans are the most detailed land-use plans and are binding for landowners. In addition, public areas in this plan should be acquired by the relevant public authorities within 5 years. Local governments have the full authority to prepare and implement land-development plans in their jurisdiction. In addition, the central government has planning powers in special domains, such as tourism, mass housing, disaster risk, urban renewal and large-scale investment.

[1] The Turkish chapter was prepared before the name was changed to the Republic of Türkiye.

[2] ÇŞB, 2020, pp. 28.

29.2 Recurring Forms of public value capture

In Turkey, the main recurring forms of public value capture tools are the property tax, valuable residence tax, real estate transfer fee and capital gains tax.

29.2.1 Recurring Forms (Annual Payments)

29.2.1.1 Property Tax

In Turkey, buildings and land are subject to property tax (*emlak vergisi*) based on the Property Tax Law, dated 1970. Property taxes are not levied on market values and are calculated by unit tax values assessed by municipalities every 4 years and updated annually by the annual change in the Wholesale Price Indices computed by the Ministry of Finance[3]. While assessing the unit tax values, the minimum unit value of the land types in rural areas and the minimum unit value of lands facing each street in urban areas are taken into account. The tax value for land is calculated by multiplying the unit tax value, land area and the tax rate. The building tax values are calculated with the cost approach and are equal to the land tax value plus the cost of construction, less depreciation. For condominium units, an ownership fraction is applied to this value. For both, the depreciation amount is determined based on the building age, and the construction cost is calculated at certain rates determined annually by the related ministries. The property tax rates are 0.1% for residential, 0.2% for other buildings, 0.1% for rural and 0.3% for urban land. These rates are applied with a 100% increment within the metropolitan municipalities. In 2020, the property tax revenue of municipalities was around TL 11 billion, and 77% of this revenue came from building taxes, 22% from urban land taxes and 1% from rural land taxes. The average annual proportion of property tax in municipal budgets was 7.57% between 2006 and 2020[4].

29.2.1.2 Valuable Residence Tax

The valuable residence tax (*değerli konut vergisi*) entered into force in 2019, by Law No. 7194 as Articles 42–49 of the Property Tax Law. Before being amended in 2020, properties registered as residences in the land registry with a value of more than TL 5 million were subject to valuable residence tax at progressive rates (0.3–1%). Unlike the property tax, market values appraised by the General Directorate of Land Registry and Cadastre (GDLRC) are taken as the tax base, and the revenue is collected by the central government. However, the tax faced public reaction and especially thousands of lawsuits were filed against the value assessments made by GDLRC. As a result, the tax was amended by Law No. 7221 in 2020. With the amendment, exemptions are provided, payments are postponed to 2021, the tax base is changed from market value to tax value, and the taxable amount becomes the value exceeding TL 5 million instead of the full value of the properties. These changes sharply restricted the effectiveness, total amount and scope of the tax.

[3] Çağdaş, 2013, pp. 546–547.
[4] HMB, 2021a.

29.2.2 Recurring Forms (in Case of Sale/Purchase)

29.2.2.1 Real Estate Transfer Fee

Sale/purchase transactions are levied a fee under Fees Law No. 492. The fee is collected by the state separately from the seller and buyer at a rate of 2% of the declared value, which must not be less than the taxation value. However, for non-citizens, market values are used and a valuation report is mandatory. In 2020, the revenue from sale/purchase fees was more than TL 18 billion[5], which can be regarded as a very small share of the national budget.

29.2.2.2 Capital Gains Tax

In Turkey, revenue from the sale of a property is taxed as a commercial or capital gain as specified in the Personal Income Tax Law, No. 193. The distinction is made by the presence of a commercial organization, sales activity (more than once a year or once each year) or the sale purpose. Commercial gains are subject to income tax and are not further considered in this context of public value capture. Capital gains, which are non-commercial gains resulting from property sales within 5 years of the purchase date, are subject to progressive tax rates of 15% to 40%. The tax is calculated by subtracting the purchase price, updated by the Producer Price Index, the exception and costs from the selling price. If the sale takes place 5 years after the acquisition date, the capital gains tax is not imposed.

29.3 Non-recurring Forms of public value capture

In Turkey, the non-recurring forms mainly involve capturing the value increases resulting from different phases of the land development process via fees, donations and land deductions, which are detailed below.

29.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

29.3.1.1 Infrastructure Fees

In Turkey, local governments are responsible for infrastructure development, and to cover the expenses, they can impose two types of fees: technical infrastructure fees (*teknik alt yapı harcı*) and participation shares in infrastructure expenditures fees (*alt yapı harcamalarına katlma payı*). Technical infrastructure fees are regulated in Article 23 of the Development Law and are collected during the building permit application and paid by the applicant of the building permit, which is generally the developer. The fee is only collected in areas defined in the plans as 'new development areas' (*gelişim alanı*) and only from properties that do not have any access to roads or sewers. The fee is one of the requirements for obtaining a building license in new development areas, and it is calculated based on the cost of the infrastructure. Participation shares in infrastructure expenditures are levied for road, sewage and water infrastructure costs, as specified in Articles 86, 87 and 88 of the Municipal Revenues Law, respectively. Unlike the technical infrastructure fee, these fees have no spatial limita-

[5] HMB, 2021b.

tions 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 published by the Ministry of Environment and Urbanization and the fees cannot exceed 2% of the property taxation value. In 2020, municipalities collected TL 76,199,000 for sewage, TL 36,571,000 for water and TL 327,873,000 for road infrastructure through participation shares in infrastructure expenditure fees[6].

29.3.1.2 Development-Related Fees

In Turkey, municipalities can charge a variety of fees, mainly for land development and construction activities, in addition to infrastructure fees (see Section 3.3.1.1). Municipalities levy a parcellation fee when the parcels become compatible with the implementation plan; a subdivision fee when a parcel becomes two or more different properties; an amalgamation fee when a new parcel is formed by the combination of two or more parcels; a plan-project approval fee; a building occupancy permit fee; a building construction fee, etc., according to Article 80 of the Municipal Revenues Law. The legislation sets limits for these fees, and municipal councils determine the rates. In 2020, municipalities collected TL 690,613,000 for building construction fees and TL 265,778,000 for occupancy permit fees[7].

29.3.1.3 Plan Amendment Charges

In Turkey, Implementation Plans determine building rights and have a significant impact on property values. Landowners/developers generally seek increased development rights or a more profitable land use through plan amendments. Until 2020, the value increases resulting from plan amendments remained with landowners, resulting in strong demand[8]. The lack of value capture tools and high demand resulted in municipalities discovering the value capture capacity of plan amendments. Via planning protocols[9] (a written agreement between the municipality and the developer or landowner on a plan amendment), municipalities obtain contributions in return for using their planning powers to provide extra development rights, approve certain projects, and even legalize illegal buildings/building parts. These contributions could be in many forms. For instance, with the intention of enabling plan implementation at no cost, the parts of the parcels that correspond to public spaces in the plan could be taken as free land deductions in exchange for a plan amendment that provides an additional building right or profitable land use. On the other hand, many complex planning protocols could also be carried out. For instance, in 2014, the developers of the Istanbul Marmara Forum Mall Project donated 33,136 m² of office space, 16,000 m² of land and a 100-car parking plot to the municipality in exchange for a plan amendment that enabled the project's illegal parts to be legalized. Therefore, the use of protocols, particularly as a legalizing instrument, generates controversy, and plan amendments become perceived as corruption and irregularity by society. A charge for value increases resulting from plan

6 HMB, 2021a.
7 HMB, 2021a.
8 Yılmaz et al. , 2020.
9 Turk, 2018, pp. 3–6.

amendments (*değer artış payı*) was recently enacted by Law No. 7221 in 2020. Today, developers/landowners who benefit from plan amendments must pay for the value increase. The charge is determined by a commission and the revenue is shared among public authorities to fund public services.

29.3.1.4 Plan Notes

In Turkey, a spatial plan is accepted as a whole with a report and plan notes. The provisions of the planning area, such as binding rules, standards, and requirements for land use functions, exemptions, building rights and construction standards, are detailed in the plan notes. In addition, plan notes may also include provisions for a specific parcel, block and land-use type. The plan notes can be regarded as the most detailed document in Turkey's local spatial planning, controlling land and physical development. Within this broad scope, plan notes are also used to enable value capture. In general, via plan notes, additional building rights are defined as incentives for those who support a specific policy, such as realizing urban renewal for disaster prevention, land assembly, infrastructure development, etc. The most common use of plan notes in the context of value capture is to get free land deductions, mainly the parts of the parcels that correspond to social or technical infrastructure, in exchange for additional development rights.

29.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

In Turkey, non-recurring forms generally appear in the implementation phase of local development plans, which are detailed below.

29.3.2.1 Implementation of the Local Plans

In Turkey, the main tools for the implementation of the local plans were land readjustment (LR), voluntary method and expropriation. However, with an amendment to the Development Law in 2019, LR became the main plan implementation tool, and the voluntary method can only be applied after plan implementation.

29.3.2.1.1 Land Readjustment

In Turkey, LR project areas are decided by local governments in their jurisdiction, and within these areas, LR is compulsory. In Turkish LR, technical and social infrastructure areas are obtained from landowners by land deduction in exchange for the value increase caused by the LR in theory. However, in practice, the value increase is not assessed, and all calculations are based on area. The deduction rate is the ratio of the total public areas to the total project area and could be at max. 45%. If more land is needed, first public properties and then expropriation are used, respectively. In the Turkish LR, only the acquisition costs of public areas are covered, and the LR authority undertakes all other costs. Therefore, the land deduction rate in each project determines the public value capture and might be considered very low when compared to the landowners' profits from real value increases.

29.3.2.1.2 Voluntary Method – Subdivisions and Amalgamations

In Turkey, the voluntary method consists of parcel-based subdivisions and amalgamations based on the overlapping plan structure and was the main choice[10] of municipalities for plan implementation until 2019. In the method, with the requests of landowners, public areas in the overlapping plan are given freely by landowners to obtain a building right in the remaining area. If the remaining area is unsuitable for development, landowners generally wait for LR or expropriation. The land deduction amount is the overlapping area between cadastral parcels and public areas in the plan. The voluntary method provides partial but gratis acquisition of public spaces and parcel-based quick implementation. However, as the voluntary method is parcel-based, it takes much more time than the other plan implementation tools to implement the plan in the whole area. In general, municipalities avoid covering the costs of comprehensive implementation, and although it takes longer time, they prefer the voluntary method. However, according to the Development Law, public areas should be acquired by the relevant authorities within 5 years. However, as the time required to complete the whole plan through the voluntary method is generally longer, this results in the limitation of property rights for an uncertain time and was accepted as an intervention to property rights by the Turkish Supreme Court in 2010. In the decision, it is accepted that public entities that remain passive and do not provide acquisition of public areas within 5 years interfere with property rights. This decision, namely, confiscation without expropriation by plans (hukuki el atma), reveals a comprehensive problem in Turkey. After this decision, landowners whose property rights have been restricted for more than 5 years are able to claim compensation. Still, many municipalities have accumulated compensation to pay. As a result, the use of the voluntary approach for plan implementation is restricted by an amendment to the Development Law in 2019. The tool can be applied only after plan implementation.

29.3.2.2 Public Land Development

In Turkey, municipalities, through corporations, and the central government, through the Housing Development Administration (HDA), carry out land-development projects for various purposes. The most common types are housing, mass housing and renewal projects. In addition to own properties, projects can take place in areas purchased on the free market or in special areas (mass-housing areas, renewal areas) acquired through expropriation. By using its planning powers, public bodies provide profitable building rights and uses, which enables value increases in the project areas. The construction activities are realized by the public itself, via subcontractors, or by the developers under a revenue sharing model, etc. The profit from these projects is claimed to be used for social housing and urban renewal projects, which are also carried out by municipalities (under Law No. 5373) and the central government (under Law No. 6306). Despite the regulatory planning system, urban renewal projects are realized with a project-based approach, and particularly those carried out by the central government are the most flexible ones. Planning activities and changes in the physical environment cause a value increase which is mainly shared by local and central

[10] Yılmaz, 2020.

governments, developers and landowners. The developers' and landowners' profits depend on the building areas received from the projects. The public's value capture, on the other hand, varies depending on a number of factors, including the project's implementer, type, and physical, social and environmental characteristics, the agreement between actors, the costs, profits and the feasibility of the project. While some value capture tools, such as technical infrastructure fees and participation shares in infrastructure expenditures, plan notes, planning protocols, land readjustment and the voluntary method could be used, exemptions from plan amendment charges, taxes and fees are also possible. Therefore, value capture in public land development projects varies depending on many factors.

29.4 Interim Conclusion for Turkey

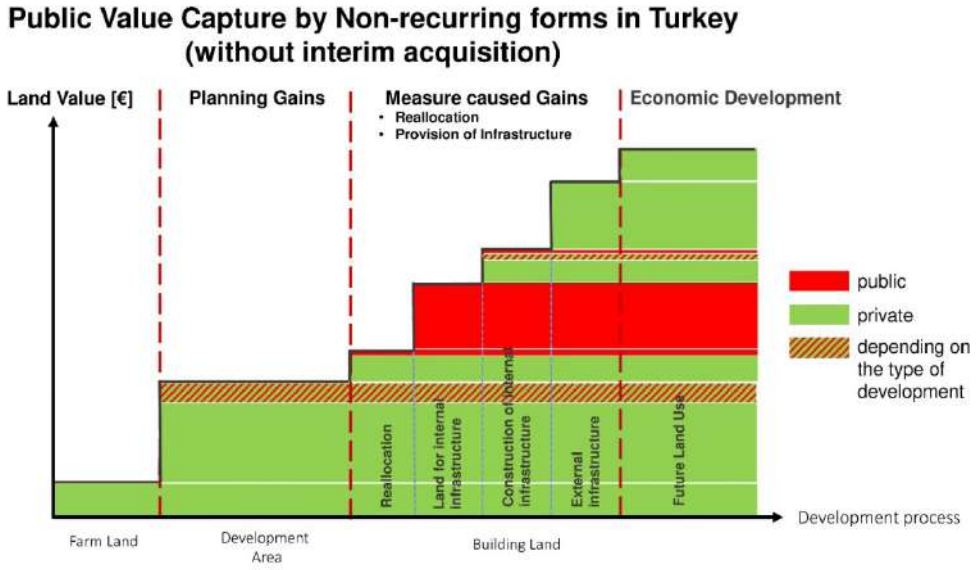

Figure 29.1: Value capture in Turkey.

Concerning the unearned increments, in Turkey, the non-recurring forms generally focus on capturing value increases via land deductions. The scope of non-recurring forms generally covers the land development process. This process begins with the enactment of the plans, in which all the value increase is left to the landowners. In order to capture some of these value increases, municipalities extend the use of planning protocols and plan notes beyond their original intent, focusing on value capturing as a case-based attempt. In these cases, municipalities enabled the capturing of a portion of the plan-based value increases. Furthermore, landowners' demands for more planning gains, together with the lack of value capture tools, resulted in a high number of plan amendments for years, limited with plan amendment charges in 2020. After this phase, plans are implemented by the local governments. Municipalities used to prefer waiting for the voluntary method to acquire infrastructure areas freely in return for providing development rights to landowners. However, long-term non-implementation of the plans causes interference with property rights, prompting the method's re-

striction in 2019. From then on, land readjustment became the main plan implementation tool. In the Turkish LR, acquisition of public areas, in exchange for the theoretical value increase, is possible via a land deduction of a maximum of 45% from landowners. Except for land deduction, local governments undertake all the other costs, and the remaining uncalculated value increase is captured by the landowners. In addition, the construction and cost of internal infrastructure are not included in the land assembly process in Turkey. These areas are realized by local governments after implementation of the plans, and infrastructure fees, which cannot exceed 2% of the taxation values of the properties, could be levied to cover the costs. Furthermore, there are no cost recovery or value capture tools available for external infrastructure facilities. On the other hand, if the whole urbanization process is realized as public land development, or in special areas such as mass housing or urban renewal, then public value capture is much more effective.

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30 Ukraine

Olga Petrakovska

30.1 Local Authorities and Planning System

The main legal act that regulates the issues of spatial planning is Law of Ukraine 'On the Regulation of Urban Planning Activities'. As for the detailing of the provisions of the laws, it is carried out with the help of various state regulations and rules. Basically, in Ukraine, two forms of local government organization coexist: local self-government bodies and local state administrations. From 2014 to 2021, as a result of the decentralization reform in Ukraine, significant powers and resources were transferred from state bodies to local governments. In this context, administrative reform took place which resulted in local communities voluntarily merging into the United Territorial Communities (UTC). As a consequence, a new type of spatial plan was introduced for UTC since 2021 – a comprehensive community spatial development plan, designed for the community consisting of two or more settlements. In case the community consists of only one settlement, a master plan is developed instead.

The main bodies responsible for urban planning are communities, responsible for the development of comprehensive spatial development plans, master plans and detailed plans. The settlement's development strategy is defined in the master plans, which are part of a comprehensive spatial development plan in the case of developing a strategy for UTC. Zoning, as part of comprehensive or master plans, determines the possible types of land use, taking into account all legally approved regulations and rules of land use and development. The main planning document that establishes the type of land use and the possibility of construction of various buildings and structures is a detailed plan. All spatial development plans are ordered and approved by local authorities.

Each landowner or user starting a construction process must receive a construction permit, meet all the requirements and observe restrictions established for the development of their land parcel. The state policy on the issues of state architecture and construction control is carried out by the executive body of the State Inspectorate for Architecture and Urban Planning of Ukraine.

30.2 Recurring Forms of public value capture

In Ukraine, land and buildings/structures are separately taxed (according to legislation on '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.

30.2.1 Recurring Forms (Annual Payments)

The formation of a separate independent tax system in Ukraine began with the adoption of the Law of Ukraine 'On the Taxation System' (1991). Numerous changes were introduced

to the Law within 19 years. In 2010, the Tax Code was adopted, which defines the list of obligatory taxes and fees paid in Ukraine.

30.2.1.1 Land and Real Estate Taxes

Land and real estate taxes are non-personal taxes, collected according to the characteristics of the taxed property. Land and real estate taxes are paid according to the location of the object of taxation and are credited to the appropriate budget. Land and real estate taxes go to the revenues of the local governments on whose territory the land parcels and buildings are located.

The basis of land taxation is the normative monetary valuation (NMV) of land, which characterizes the capitalized rental income from land and is calculated according to the norms established and approved by the Cabinet of Ministers.

The tax rate for land parcels, the normative monetary valuation of which has been carried out, cannot be more than 3% of their regulatory monetary valuation. For public, agricultural and forest lands, the tax rates are different:

- for public lands: not more than 1%;
- for agricultural lands: not less than 0.3% and not more than 1%;
- for forest lands: not more than 0.1%.

If the NMV has not been carried out, the tax base is the normative value of arable land area in the region. The update of the NMV is carried out at least once in every 5–7 years for land parcels in settlements (regardless of the land-use purpose), once every 5–7 years outside boundaries the settlements for agricultural land parcels, and once every 7–10 years for non-agricultural land parcels.

The basis of real estate taxation is the area of residential and non-residential real estate specified in the State Register of Real Property Rights.

The owner of residential real estate pays tax per each square meter:

- for apartments (regardless of their number) – if the total area exceeds 60 m^2;
- for residential buildings (regardless of their number) – if the total area exceeds 120 m^2;
- for different types of residential real estate – if the total area (apartments and houses) exceeds 180 m^2.

Tax rates for residential and non-residential real estate owned by individuals and legal entities are set by the decision of the community council, depending on the location (zoning) and types of real estate, and cannot exceed 1.5% of the minimum salary established by law on January 1 of the tax year. The tax is paid for each square meter of area exceeding the established norms.

Table 30.1: Characteristics of Annual Payments for Land and Real Estate.

Characteristics	Land tax	Real estate tax
Legal basis	Tax Code, 2010	Tax Code, 2010
Object	Private land parcels and leased state and municipal land parcels	Residential and non-residential real estate, including its share
Taxpayer	Owners of private land and or lessees of state and municipal land (natural person and legal entity)	Owner of residential and/or non-residential real estate
Tax base	Normative monetary valuation of land parcels	Real estate area that exceeds the established norms
Tax rate	The tax rate for land parcels depends on the land use purpose and whether a normative monetary valuation has been carried out or not	Tax rates for residential and/or non-residential real estate do not exceed 1.5% of the minimum salary established by the law

30.2.2 Recurring Forms (in Case of Sale/Purchase)

30.2.2.1 Land and Real Estate Transfer Tax

In case of transfer of the rights of land or real estate owner, the following taxes and fees have to be paid:

- personal income tax,
- military tax (1.5%),
- state duty (1%),
- fee to the pension fund (1%).

The mentioned taxes base is the transaction price, but not less than the officially determined appraised value.

The rate of *personal income* tax could be 0–18% depending on:

- the number of transactions conducted per year,
- time of property ownership,
- whether the seller is a resident of Ukraine or not.

The transaction is not taxed by personal income tax if, throughout the year, a person makes only one transaction with land and real estate they own for more than 3 years. If the income is received from the sale of the second property during the reporting year, the tax rate for residents is 5%, and 18% for non-residents.

The base for payment of transfer taxes is the market value, which is indicated in the valuation report, a mandatory document for the transaction. Since 2013, a single database of valuation reports for transfer taxes purposes has been introduced in Ukraine, thanks to which it is impossible to underestimate the value of any real estate. In the database, the adequate market value of different types of real estate is indicated. The value less than the indicated cannot be defined as eligible and must be recalculated. Thus, the value of transfer taxation is regulated. The database contains the value of each real estate for which transactions are planned, and taxation value is updated constantly according to the information received.

30.3 Non-recurring Forms of public value capture

30.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

30.3.1.1 Infrastructure Construction Fee

Municipalities are responsible for infrastructure development. As the legislation stipulates, financing of infrastructure development comes from the state and municipal budgets, depending on the importance and location of the facility. Additionally, private investments of interested investors can be used. From 2011 to 2021 in Ukraine, the mechanism of 'share participation' in development of an infrastructure of settlements was used. For instance, certain investors who planned the construction of a building or structure had to pay a share of participation in the development of infrastructure. The amount of share participation established by the local self-government body cannot exceed the maximum determined in the law: for non-residential construction – 10% of the estimated cost, for residential buildings – 4%. It is defined considering the total estimated cost of construction of an object, determined in accordance with construction norms, state standards and rules. This amount was paid to the budget community where the construction of residential or non-residential real estate was planned. On January 1, 2021, equity participation in the development of the infrastructure of the settlement was completely abolished. However, if the share participation agreement was concluded before January 1, 2021, it must be paid.

The construction of internal infrastructure serving one or more private lands is financed by private investment.

30.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

30.3.2.1 Development According to General Urban Planning Legislation

The Law of Ukraine 'On Regulation of Urban-Planning Activity' defines that compliance with spatial plans is binding on all subjects of urban development. The placement and construction of facilities should be carried out in accordance with spatial plans, considering the legitimate interests and requirements of the owners or users of real estate surrounding the construction site.

Financing of planned development of the territory of oblasts, districts, cities and their parts (comprehensive, master and detailed plans) is carried out at the expense of the corresponding

budgets. Planning documentation for the territory of oblasts and districts is usually financed from national or regional budgets. For financing of spatial development measures and urban infrastructure development on the local level in addition to municipal funding private investments can be involved, 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. Such investments are partial compensation for the cost of the municipality on the development of infrastructure, but not being the method of value capture. Financing of the project design to build up individual land parcels is carried out at the expense of their owners or users. Building rights are acquired after the development and approval of the project design, whereas the project design should be developed in accordance with the urban planning conditions and restrictions and technical conditions provided by the executive authorities in the field of urban planning. These include conformity of the purpose of the land parcel use with the spatial plans, maximum permissible height of buildings and structures, maximum permissible percentage of the land parcel construction, minimum permissible distances from the object to the red lines, different limitations (protected areas of cultural heritage, and nature reserves, coastal protection zones and sanitary protection zones, etc.)

30.3.2.2 Development According to Special Urban Planning Legislation

In recent decades, the provision of land for public facilities has become an acute problem in Ukraine. When private land is needed for the construction of public facilities, the mechanism of 'compulsory purchase' should be used. However, in the Constitution of Ukraine, it is established that natural or legal entities may not be unlawfully deprived of the right of private ownership of land and other real estate belonging to them. Therefore, when buying land for public needs, the owners must be compensated at 100% of the market value of the property. Such a mechanism is accepted by the Law of Ukraine 'On the Purchase of Land for Public Needs', which establishes the list of objects for which a 'compulsory purchase' could be used. Such objects are transport and engineering infrastructure facilities. Compensation costs are paid from the state or communities budgets and depend on the status and type of facility. An alternative to compulsory purchase can be an exchange for an equivalent property. In both cases, the owner has to agree to purchase or exchange. Otherwise, the decision is made by the court. The basis for the decision of the court is the approved spatial plans (like comprehensive, master and detailed plans), where the location of facilities is approved. At the same time, the communities must prove that the other location and using other land will be ineffective (or even impossible). In case if owner disagrees to sell property, the decision has to be made in the court. The judgment can take up to 2–3 years and delays implementation of the public facilities provision. The budget deficit is also the reason for the delay of public facilities development. In such both cases, a 100% compensation is justified because the owners are forced to abandon their land parcels and change the place of residence. If only a part of the land parcel is required for public needs, the compensation is paid based on the market value of 1 m^2 of land. However, as the owner receives 100% compensation or an equivalent property, these mechanisms cannot be considered tools of public value capture.

For land parcels whose value has increased as a result of the construction of the municipal facilities, capture value methods are not used. Even if such methods existed in Ukraine, they would practically not contribute to the replenishment of the budget, since taxes are levied from a normative assessment, which is not adequate to the market value. In order to establish the effective value capture methods, it is necessary that the basis of taxation should be market value.

Today in Ukraine, when the value of real estate rises as a result of public investment, value capture methods are not established, and no taxes or payments are legally required.

30.3.2.3 Cooperative Development by Urban Contracts

When conducting a public-private partnership, a private partner may receive land parcels and/or building rights. Usually, land parcels are leased for the term of the partnership. Building rights are realized on the general basis, taking the law into account. The private partner participates in financing the infrastructure development according to the terms of the agreement.

30.4 Interim Conclusion for Ukraine

In Ukraine, there are only recurring forms of public value capture like annual payments and payments in case of sale/purchase. Non-recurring forms of public value capture can be implemented only through a legally established agreement with the owners and investors. However, it does not really work in practice.

Table 30.2: Overview of Types of public value capture in Ukraine.

Classification		**Ukraine**
Recurring forms of public value capture	Annual payments	4
	In case of sale/purchase	4
Non-recurring forms of public value capture	Focusing on one factor	1
	Focusing on more than one factor	1

The increase in value due to land-use planning remains with the owner. The increase in value due to the development of transport and engineering networks also remains with the owner. At the same time, the property owner must contact a local utility provider (gas, electricity, water, etc.) to pay a certain fee to be connected to the mains.

The value capture can be considered only as an indirect mechanism: the higher the land value, the higher the tax transferred to the local budget. For real estate, this mechanism does not work because the base for tax is the construction area.

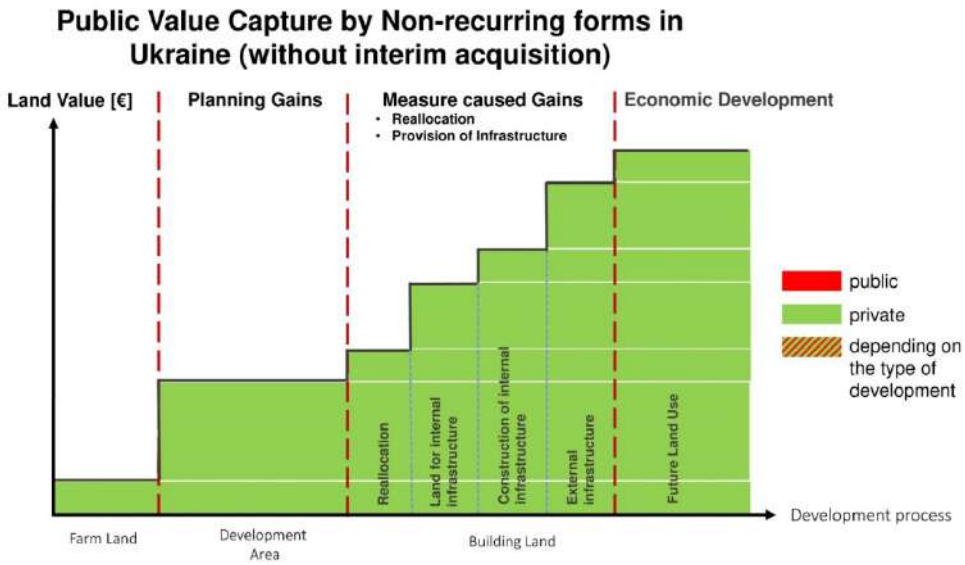

Figure 30.1: Value capture in Ukraine.

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31 United Kingdom

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31.1 Local Authorities and Planning System

For readers unfamiliar with governance structures in the United Kingdom, the process of devolution since 1997 has resulted in a divergence of planning systems across the four separate countries of the United Kingdom. The Secretary of State for the Ministry of Communities, Housing and Local Government (MCHLG) has ultimate responsibility for the planning system and the direction of planning policy only in England. The planning systems for Scotland, Wales and Northern Ireland are set within devolved governance frameworks (i.e. the Scottish Parliament and the Assemblies for Wales and Northern Ireland, respectively). Although the planning systems adopted by the four composite countries remain similar, with similar characteristics and requirements, for the purpose of brevity, this chapter will focus on the situation in England only.

Administratively, there are over 300 local planning authorities in England, ranging from metropolitan urban authorities such as Birmingham and Manchester with large populations of over half a million citizens, to predominantly rural authorities with much smaller populations in the tens of thousands. From a planning perspective, the English planning system is often referred to as a 'plan-led system' as all local planning authorities are required to produce a Development Plan to provide the basis for certainty and consistency when making decisions on planning applications. Approved plans also provide an element of certainty for local communities and developers alike to broadly understand where land is available for development of different land use activities such as residential, retail and commercial, and to confirm where land is to be protected from significant development.

The hierarchical nature of the English planning system requires local Development Plans to be consistent with the National Planning Policy Framework (NPPF) and support National Planning Policy Guidance. The NPPF is a government document that outlines the main purposes of the planning system across England and sets out policy guidance to assist Local Planning Authorities in the preparation of their own plans. For the purpose of land value capture, development contributions are covered in Paragraph 34: "Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan" (MCHLG, 2021). The tension between expectations and deliverability is discussed later in this chapter following an overview of recurring forms of public value capture. A further aspect of the planning system in England is the introduction of neighbourhood plans as part of the Localism Act (2011). This actively promotes community planning in England via parish councils and neighbourhood forums to allow for the preparation and approval of a Neighbourhood Plan. Given the hierarchical nature of the English planning system, a Neighbourhood Plan

must be in general conformity with the strategic policies of the Development Plan. This means a neighbourhood plan cannot be used to stop development, but the process enables communities to set out a positive vision to shape development in ways that should meet the needs of local people.

31.2 Recurring Forms of public value capture

In England, the principal recurring forms are taxes associated with land and property such as Capital Gains Tax, Stamp Duty Land Tax, Council Tax and Business Rates.

31.2.1 Recurring Forms (Annual Payments): Council Tax and Business Rates

Recurrent land and property taxes help provide a regular and predictable revenue for the government. In England, business rates are an annual tax on non-domestic property used for business purposes collected by the local authority. The principal purpose of business rates is to help fund local services. A property's business rate bill is determined by its 'rateable value'; this is the property's estimated value on the open market on a set date, updated approximately every 5 years. In England, rental values are assessed by Valuation Office Agency (VOA) independently of both central and local government. In 2018–2019, business rates raised almost £ 24 billion in England and can contribute up to 20% of local government spending. A similar annual tax is imposed on domestic properties throughout England via council tax. The level of council tax to be paid depends partly on the value of the property but also on how much money the local authority needs to raise to meet their budget requirements. For example, the level of council tax imposed on a standard residential dwelling in a major city like Liverpool is generally higher than that imposed on a similar dwelling located in a smaller rural authority. Each local authority in England is responsible for both setting and collecting council tax, and all tax collected is then used to pay for local services. Approximately 25% of local government spending is derived from council tax.

31.2.2 Recurring Forms (in Case of Sale/Purchase): Stamp Duty Land Tax and Capital Gains Tax

The principal payments for the sale and purchase of property are Stamp Duty Land Tax (SDLT) and Capital Gains Tax. SDLT is a government-imposed taxation on the purchase of property or land over a certain price in England. As with the planning system, variations of terminology and thresholds apply in Scotland and Wales. The threshold is where SDLT starts to apply, and the government of the day can vary the threshold depending on the economic situation; for example, to stimulate the property market during the recent pandemic, the threshold was significantly reduced in England. There may also be exemptions or discounts for first-time buyers.

The current SDLT threshold in England for residential properties is £ 125,000 (UK Government, 2021a). If the purchase price of the property is less than the threshold, there is no SDLT to pay. If the purchase price is over the threshold, then SDLT is currently payable at 5% on the additional amount over the threshold, up to £ 925,000, then increasing again

for high-value properties. Due to taxation changes introduced during the Covid pandemic, Stamp duty land tax receipts reduced for 2020/2021 from approximately £ 11.6 billion in 2019/2020 to £ 8.7 billion for 2020/2021 (Statista, 2021a). As thresholds return to higher levels, combined with a general increase in property prices, the SDLT receipts for future years will match or exceed the 2019/2020 figure of nearly £ 12 billion.

In contrast, Capital Gains Tax (CGT) is imposed on the sale of assets including property that is not the main home; this includes therefore the sale of second homes, buy-to-let properties and inherited property. CGT is only imposed on the profit margin, not the overall sale price, and the tax payable is currently imposed at 18% (or 28% for a higher rate taxpayer) (UK Government, 2021b). As CGT is applied to a range of personal assets, the receipts in 2020/2021 of £ 10.6 billion are not restricted solely to property sales. It is estimated that 20% of total CGT is derived from property sales (UK Government, 2021c). The combined receipts from SDLT and CGT for 2021/2022 are likely to be at least £ 14 billion, but to be clear, these receipts are used for general taxation purposes for UK-wide expenditure rather than payment for local services.

31.3 Non-recurring Forms of public value capture

While recurrent taxes imposed on property ownership and property transactions help raise billions of pounds for the general public purse, for individual local authorities, it is the planning system that is more effective in directly capturing money from developers to cover local infrastructure costs and community benefits such as the provision of affordable housing. These are non-recurring forms dependent on developers bringing forward development schemes in accordance with the local authorities' Development Plan.

31.3.1 Non-recurring Forms (Focusing on One Factor of Value Increase)

31.3.1.1 Fee for Construction of Infrastructure

When a developer has obtained planning permission, which requires improvements or changes to the public highway, the developer and the local authority enter into a Section 278 Agreement (S278), which governs the arrangements for any work to be done. This legal agreement must be in place prior to any alterations or improvements to a public highway. For example, the new development may require a relatively simple T-junction, a more complex junction with traffic lights or general highway improvements including better facilities for pedestrians and cyclists. The agreement requires the developer to complete the work to a specified standard. Usually the developer is required to pay for the total cost of the works, and it is also common for the developer to pay a bond upfront to cover the highway authority against any risk that the developer fails to complete the work or fails to complete them to the required standard (particularly where a road may later be adopted) or to maintain them during the agreed initial maintenance period (usually 1 year). The highway authority can then use the monies held in the bond to rectify the works. As a guide to the cost of a S278 agreement, this might be approximately £ 100,000 for a new T-junction, rising to over £ 700,000 for a new junction with traffic lights (Link Engineering, 2021).

The planning application associated with the development generally establishes the principles of the works required. The highway authority cannot then refuse to enter into an agreement with the developer to undertake the approved works as long as the works meet the appropriate standards. If the developer fails to make agreed payments, or if the works are not carried out in accordance with the agreement, the highway authority is empowered to close the access to the site.

In addition to paying for highway works, developers are also responsible for ensuring the provision of utilities – gas, electricity, water and sewage disposal – for new buildings. Additionally, since an amendment to building regulations in 2017, there is now a requirement for developers to ensure new buildings can be connected to a high-speed broadband network by installing fibre-optic cables or wireless devices.

31.3.2 Non-recurring Forms (Focusing on More Than One Factor of Value Increase)

31.3.2.1 Developer Obligations and Planning Agreements

The principle that the development value should be subject to a charge or levy has been an aspect of English planning for decades, and relevant legislation can be traced back to 1947 and the introduction of the Town and Country Planning Act's Development Charge (MCHLG, 2020). Reform and change is a notable feature of the English planning system, and different legislation has been introduced at various times to justify and set out developer contributions since 1947. Currently, the policy context for securing developer contributions is framed by legislation, namely, the 1990 Town and Country Planning Act and the Planning Act 2008, whilst the NPPF as discussed earlier in the Introduction provides practice guidance to local planning authorities. The rest of this section focuses on the main instruments introduced by the legislation to help secure payment from developers: negotiated payments via 'Section 106 Agreements' and fixed payments via the Community Infrastructure Levy. Some local authorities may use Section 106 only, while others may use a combination of the two, which has prompted the Government (MCHLG, 2020 p16) to propose their replacement with a combined Infrastructure Levy.

31.3.2.2 Section 106 Agreements

The Town and Country Planning Act 1990 formally set out planning obligations under Section 106 where, for major developments, it allowed for negotiations between the local planning authority and the developer to agree on the level and form of contribution needed to support new development. Generally, these apply to large-scale developments only and particularly large-scale residential developments. The purpose of these contributions is explicitly to mitigate the impact of the proposed development and to enable permission to be granted for an application that, without the provision of either financial or in-kind contributions, would otherwise not be acceptable. This could include affordable housing, open space provision and related environmental improvements such as tree planting. The negotiated agreement is commonly referred to as a Section 106 Agreement by both the planning profession and developers, whereby the developer might pay a cash sum direct to

the local authority, or in kind by incorporating play space and equipment, constructing new community facilities or erecting a new school building. The agreement is a legally binding document; non-compliance or breach can lead to direct action and enforcement by the Local Planning Authority.

A survey of local planning authorities in England undertaken in 2019 revealed that Section 106 Agreements remain a core part of planning practice, with 90% of surveyed authorities using this method during 2018/2019. The survey also noted that the development industry values the flexibility of Section 106 Agreements in allowing both parties to reach pragmatic solutions to site-specific issues (MCHLG, 2020). This is the case despite the Government seeking to limit the scope and contents of S106 Agreements when introducing the Community Infrastructure Levy in 2008. On the downside, the survey highlighted problems in delivery: 51% of surveyed authorities had received 50% or less of the planning obligations negotiated. Local planning authorities are now employing more monitoring officers to ensure compliance. A further downside is that recent changes to the permitted development rules in England allowing for more conversion of commercial premises into residential use are often exempt from planning obligations.

31.3.2.3 Community Infrastructure Levy

Since 2010, local planning authorities have been encouraged to move away from negotiated Section 106 Agreements to a system of fixed charges by implementing a Community Infrastructure Levy (CIL). The levy can be implemented by local planning authorities but is not compulsory, although it is considered 'fairer, faster and more certain' compared to Section 106 Agreements in providing clarity to developers about expected contributions (CLG, 2011). The CIL is a locally determined fixed charge on a development which usually takes a relative form, such as '£ X per m^2 of new development'. Local planning authorities that have chosen to adopt CIL can operate both approaches, CIL and S106, in parallel to manage developer contributions, with the negotiated S106 Agreement being limited in scope to site-specific measures and to the provision of affordable housing. However, whilst the Community Infrastructure Levy is now the most *common* form of developer contribution, occurring on over twice as many planning permissions as planning agreements via Section 106 (MCHLG, 2020), it is not the most significant in terms of revenue generated. The latest available data confirm that 85% of the revenue generated comes from negotiated S106 Agreements (ibid., 2020, p. 8).

31.3.2.4 The Value of Developer Contributions in England

According to the government, the most recently available data shows the combined value of developer contributions agreed in England during the financial year 2018/2019 at £ 7 billion (MHCLG, 2020). There are geographical variations that broadly match geographical variations in property values as approximately 50% of this national figure is accounted for by just London and the Southeast, whilst just 6% of the national figure is accounted for by the Northwest of England. Specifically in London, there is also a Mayoral Community Infrastructure Levy, an additional levy on development that generates funding

for major transport infrastructure projects across the capital such as Crossrail. Transport contributions, including the Mayoral CIL, therefore summed almost £ 500 million but it is clear that affordable housing contributions are the principal category for developer contributions accounting for over £ 4.5 billion, or 67% of the total value in 2018/2019 as shown in Table 31.1 below.

Table 31.1: Value of Selected Contribution Types from Planning Agreements.

Contribution type	**Estimated value in 2018/2019 (£ mio.)**
Affordable Housing	4,675
CIL	830
Education	439
Transport & Travel	294
Mayoral CIL	200
Open Space & Environment	157
Land contributions	135
Community works	62
Other	187
Total in England	6,979

Source: MCHLG (2020b p44)

31.4 Interim Conclusion for England

A recent overview of the English experience in capturing development value (Crook & Whitehead, 2019) highlighted the relative success of the current approach in ensuring that local authorities benefit from unearned increments in land value. Amongst the reasons highlighted that have helped contribute to this success is the site-by-site basis for negotiations allowing for site specifics and market conditions to be taken into account (ibid., 2019, p. 370).

The figure below shows in approximate terms the public value capture by the non-recurring forms discussed in Section 3. In England, the low development values associated with agricultural development do not allow for public value capture, but commercial and residential developments will both result in some public value capture through non-recurring forms as discussed in Section 3; this could be from highway improvements, community infrastructure levy payments or a negotiated Section 106 Agreement. A further distinction is provided between residential development in London and the surrounding areas compared to the rest of England in accordance with the figure and the discussion at Section 3.3.2.4 where both public value capture and profit margins are much higher in London and the South. The unknown proportion reflects the negotiated basis underpinning some of the public value capture in England. With particular reference to England, affordable housing

quotas may vary widely depending on market conditions at the time of development, hence an element of uplift may, or may not, be captured for wider public benefit. A further source of uncertainty is the negotiation process: It is time-consuming and may contribute to delays in issuing planning permission. It is also a skill that may be harder to ensure is properly resourced in the public sector than the private sector. There is also the fact that an agreement secured in favourable market conditions may not be deliverable with an economic downturn, which therefore requires renegotiation of any agreements or revision to the proposed development if it is to proceed. It is for this reason that the Government is currently exploring potential reforms which might be better able to respond to these challenges. The proposal is to remove the negotiated Section 106 Agreements in favour of a new Infrastructure Levy that will, according to the government "capture a greater share of the uplift in land value that comes with development" (MCHLG, 2020, p22). Anecdotally the current approach with negotiated Section 106 Agreements is popular with developers and Local Authorities, and it will be interesting to monitor the reaction to the current proposals to end this process and see whether the new proposed levy can raise the same revenue from developers.

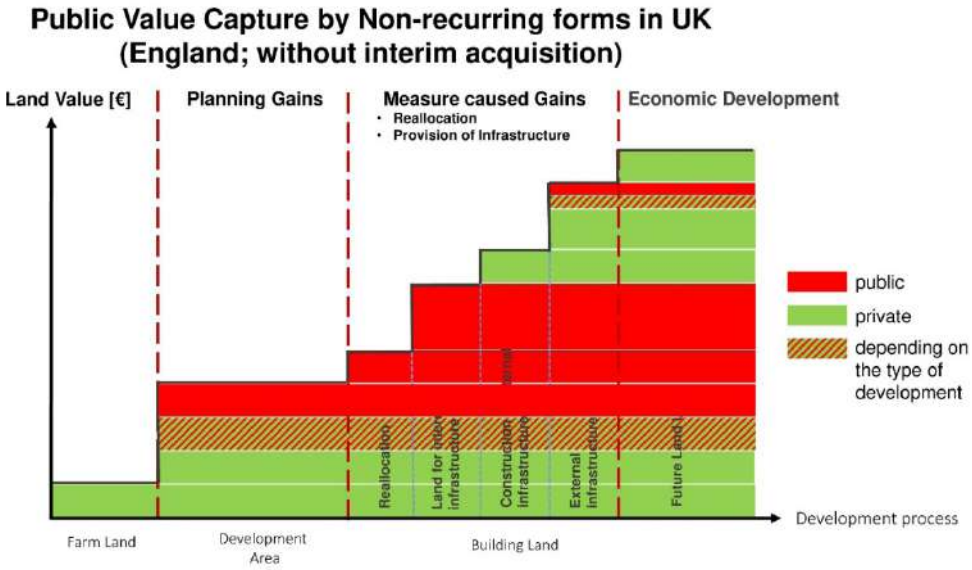

Figure 31.1: Value capture in UK (England).

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32 Conclusion

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32.1 Level of public value capture in Our Categories

The evaluations in this section are based primarily on the tables and figures presented below. It is therefore important to first address the problems in their compilation. Basically, the situation with regard to public value capture is subject to regional disparities. On the one hand, this can result from a federal structure of administrative competences and responsibilities (e.g. Switzerland, Belgium) or, on the other hand, from economic differences. Public value capture is particularly prevalent where there are high property values. Different categories were therefore introduced in the tables to take account of this problem. When creating the figures for the national chapters, the problem arose that the term public value capture is not defined in many countries and does not play a role in the public discussion. Therefore, the different instruments have not yet been assigned to the factor of the value increase. This book is therefore the first attempt to carry out this allocation for all countries. The assessment applies to the 'national average'. In order to nevertheless be able to show regional deviations, the category 'depending on the type of development' was introduced. Nevertheless, there may be individual development projects that deviate from this generalised presentation.

Despite these limitations, the tables and figures provide very interesting insights.

Tables 32.1 and 32.2 (cf. end of the chapter) give an overview of the types of public value capture established in 29 European countries. The structure of the tables reflects the classification of tools of public value capture defined in Chapter 2. There are five options for entries. A rating of 0 means that there are no instruments in this category. Rating 1 stands for instruments that exist but are only used to a very limited extent. In contrast, the instruments with the rating 2 are used occasionally, and those with the rating 3 are used regionally on a regular basis. The instruments in category 4 are used regularly throughout the country. If there was more than one instrument per category, the authors of the national chapters had the opportunity to give specifications by footnotes. Belgium, for example, had three instruments in the first category (recurring forms of public value capture; annual payments) with different ratings. For this reason, it has been specified that the rating 1 is related to the personal income tax, while the rating 2 refers to specific municipal taxes and the rating 4 to property tax.

23 out of 29 countries list tools with the highest rating of 4 in the first category (recurring forms of public value capture – annual payments), and as many as 26 countries in the second category (recurring forms of public value capture – in case of sale/purchase). In contrast, there are 18 countries in the third category (non-recurring forms of public value capture – focusing on one factor) and only 9 countries in the fourth category (non-recurring forms of public value capture – focusing on more than one factor). The average values for the categories are (based on the highest national rankings for the corresponding categories; e.g. 4 for Belgium in category 1): 3.52 in category 1, 3.76 in category 2, 3.14 in category 3 and

2.34 in category 4. The results are slightly different, if the calculation is based on the national average (e.g. 2.3 for Belgium in category 1): 3.39 in category 1, 3.50 in category 2, 2.85 in category 3 and 2.10 for category 4.

Accordingly, there are two first important findings derived from the tables: The recurring forms of public value capture are much more frequently established than the non-recurring forms, and the non-recurring forms are more focused on one factor. The following sections provide a more detailed analysis of these categories.

32.2 Recurring Forms of public value capture

The term 'land rent' refers to the financial flow of money from lease or selling of land. Economic literature generally focuses on topics like efficiency of land value taxation (e.g. price neutrality, optimisation of land take) and distributional effects (Vejchodska et al., 2022[1]). This book primarily investigates the various countries' policy and practice for capturing value changes in urban land that is generated from particular investments on the ground, or to particular changes in public regulation in how to use the land – or both. The non-recurrent land value instrument typically rests on an increase in land value caused by specific interventions (investments, rezoning, delivery of planning permissions …).

Recurrent capture of value in land is contrary to this: It refers to systems that capture value partly indifferent to any increase in value and more or less always independent of any explicit interventions that affect the value of the land. The recurrent instruments rest on different rationales. These rationales are discussed below. Before entering into the details, a short definition might be useful. Chapter 2 differentiates between taxes based on annual payments and taxes in case of sale/purchase. When it relates to taxes based on annual payments, the compiling of countries show that further refinement is needed as *annual payments* is a composite of two different approaches that can be more or less explicit. On the one hand, one finds an approach where the tax is based on the *actual income* a property generates to the owner – for instance, in the case of collection of rent. On the other hand, one finds an approach where the tax is based on *owning a property*, a tax on equity[2] (ownership to valuables). The two tax approaches rest on different rationales:

- Taxing property-generated income: Tax on income generated directly from real estate/an immobile property has strong similarities to any other income tax: The tax targets the net return that a property brings to the owner. The yield might be likened to income from the stock market/stock exchange. If the property is rented out, the owner reports the net income to the tax authority in similar ways as they report income from employment. It is discussable to consider this kind of tax as a tool for public value capture as it has a different rationale. However, as many authors of the national chapters did so, we included it also in our analysis.
- Taxing property: Tax *on* property is independent of taxing income *from* property. It is a tax on immobile equity in which the tax is seen as means for wealth redistribution. In

[1] Eliška Vejchodská, Ana Paula Barreirac, Armands Auziņš, Evelin Jürgenson, Steven Fowles, Vida Maliene (2022) Bridging land value capture with land rent narratives. Land Use Policy, Vol. 114, March 2022.

[2] Equity used in the sense of ***value, ownership and proprietorship*** (Oxford Dictionary).

economic terms, it is *equity taxing*, i.e. a tax that disregards whether the property generates any (net) cash flow to its owner. The rationale is exposed to contestation: If the property does not bring any (net) income to the owner, it might be considered unfair to tax the pure ownership. Especially if the owner is a natural person, and even more so if the owner is equity rich and income poor. On the other hand, it might be seen as fair to avoid tendencies of accumulating ownership to property on few hands and hence use taxation to force the owner of valuable land and buildings to (at least) provide a share of their wealth to society.

Capturing value from transactions of land and property also manifests as two different taxation approaches. Both relate to the sale or purchase of properties. On the one hand, capturing value from land and property trading can be about taxing the *trading activity* as such. On the other hand, it can also be about creaming off some of the surplus that the selling of a property brings to the owner.

The first approach relates to property transfer taxes. With such tax, property is perceived as a commodity being bought and sold like any other commodities. It might be seen as an economic activity in society. Most countries tax the trade of commodities through VAT, and as the country chapters show, most countries tax property trading. However, there are significant differences between VAT and property transfer tax. One difference is that the tax rate on property transfer might be at a different level than the VAT, and property tax might be differentiated between *kinds of traders* and *commodity specification*. This distinction refers to the complexity of property and the complexity of owners. To the former, a property might be traded by individuals and businesses. To the latter, traded properties obviously vary – from private homes or private second homes, to properties traded as part of business. Close to all property trade is registered, at the public notary or a similar entity that register details about the property. The notary or the similar entity also registers information about the seller and the buyer. As a consequence, it is possible to tailor fees and taxes to both the seller and the property characteristics. It makes it possible, for instance, to design fees and taxes so that they have a social profile, for example, to exempt sellers of modest homes from transaction tax – if politically preferred.

Chapter 1 defined public value capture as *"… all instruments that capture all possible increases of the value of land and buildings, whether they are considered taxes or not. It focuses primarily on capturing unearned benefits resulting from actions other than the landowner's. The resulting funds may be earmarked for specific purposes (e.g., recovery of development costs or provision of affordable housing (see Section 1.1.2)."* Obviously, recurrent taxes differ from the non-recurring as the capture is not specifically related to value change due to planning or public investment. Recurring taxes on property relate more to ownership.

Recurrent instruments usually do not separate between the value of buildings from the value of the land. Recurrent value capture has notable similarities to taxes. Although, compared to general taxes, which are generally managed by higher-level government, the local level tends to have a significant influence on the design of some of these land and property tax instruments. The local level thus might design (some of) these taxes so they can serve local priorities. In contrast to general taxes, much of the revenue from property tax also accrues directly

to the local level. As Ingram & Hong (2012)[3] state, local taxes are becoming welcomed, first and foremost because higher level governance tends to curtail lower levels finances for service and investment. This makes recurrent instruments for capturing value from land and property of particular interest. The following section sums up the characteristics in the participating countries. It shows how widespread the different taxes are, how the taxes are composed and whether the taxes are designed to take social and spatial consideration.

32.2.1 Taxing Immobile Equity – Property Tax

The first distinction in recurring property tax based on annual payments is between, on the one hand, a tax where ownership alone is taxed and, on the other hand, a tax where net yield generated from the property is subject to taxation. Except for Croatia, Malta and partly Switzerland[4], all countries in the sample in this publication apply property tax based on annual payments in one way or another. A few countries distinguish between land and buildings, whereas most countries tax property as a whole including land and buildings.

The tax rate varies significantly between the countries, with some countries measuring the tax in per mil, to countries who apply an annually charge of 1–3% of the value of the property. The Baltic countries (Latvia, Estonia and Lithuania) charge the highest rate. The maximum rate in Latvia is 3% and 2.5% in Estonia. Lithuania charges up to 4% for land and also includes roads and parks in the tax base.

As indicated in the rates for the Baltic countries, it is common to differentiate recurring property tax based on annual payments according to the use of the property, the value and its location. However, one should note that the tax rate is an insufficient source of information regarding tax level. The tax base might vary significantly between countries. Some apply market value, while others use fixed templates. The base might also vary due to the boom and bust in the property markets.

Higher Tax on Vacant Land

The compiling of countries displays that many countries apply a higher rate for vacant land. North Macedonia, where the average rate is low (0.1–0.2% of the property value), charges up to five times more for *unused farmland* than other properties. Similar policies are found in Finland, France, Germany, Hungary, Portugal and Slovenia. In Austria, this specific tax is not executed at the moment. North Macedonia uses the property tax to influence the use of farmland, whereas the other countries use the property tax to influence the owner's use of *urban land and* increase the rate for unbuilt urban land, most likely in an attempt to avoid speculation in land and to prompt development of urban areas. In either case, the property tax is used to influence landowners' behaviour to land-use policy compliance.

[3] Ingram G. K. & Y.H. Hong. (2012). Land Value Capture: Types and Outcomes. Lincoln Institute of Land Policy.

[4] There is no information on this from UK. In general, however, the UK is among the countries that tax land and property the most (OECD 2020 Revenue Statistics: Comparative tables).

Social Profile

In many countries, the property taxes based on annual payments include a social dimension (social profile). Many countries distinguish between property on which the owner lives and uses as their primary home as one category and property that is either a second home or let out as another category. The practises vary from full tax exemption for property that is the owner's primary residence to reduced tax (50% is frequent). Some countries exempt only if the owner both uses the property as their primary residence *and* is elderly. Other countries exempt the owners from paying property tax if they have lived in the house for more than 5 years. Yet others exempt very small houses (less than 50 m²). Slovenia stands out by taking a slightly different approach to the same issue: In addition to taxing large homes (above 160 m²), new buildings and fully renovated buildings are exempted from paying tax. This implies that owners who have recently invested in a new home or a fully renovated one are eased for the burden of property tax for some years. Despite variations in arrangements, the commonality is that property tax is suitable for ensuring revenue to the local government in socially responsible ways.

A Tax Important for Municipal Revenue

Property tax is a welcoming source of income to local levels in most participating countries. The overall picture is that a large share of this tax accrues to the municipalities. Ten of the 29 countries explicitly express that this tax is fully accrued to the municipality or use slightly different wording in stating that property tax is an important source of income for the municipalities. Only three countries split the revenue from this tax between the local level and the higher governance level (regional or national). In summing up this first aspect of recurrent land value tax, it is evident that the revenue is a stable source of income for local level governments, and the local levels can design this tax so that it considers both social inequality and land use measures.

32.2.2 Taxing Income from Property

Recurring Income from Letting and Leasing Property

In general, a tax on recurring income from property has similarities to a tax on labour income or financial income: It is income to the owner from capital that the owner has invested in property. Most countries have systems where the owner can subtract any expenditures related to 'doing business on property' from the income from that property before the tax is calculated. When it comes to rates, we find Bosnia Herzegovina at the lower end as they charge 10% of the income, whereas Czechia, Norway, Italy and Israel are at the other end of the scale, with rates of 15%, 22%, 23–26% and 25% respectively. The Italian percentage (23–26%) and the Turkish (15% for the first TL24000 up to 40% for rental income for values exceeding TL650000) show differentiation in the tax rate. Differentiation is something many countries have in common, and it has a clear social profile. Examples are both the progressive tax rate in Turkey, which differentiates the tax rate on income, and the Italian practice where households in the lower income brackets pay less tax on income from renting out a property than households in the higher income brackets.

Taxing Surplus When Property Is Sold

The other aspect of taxing income from property is the taxing of surplus if the property is sold at a higher price than what it was bought for. Following our terminology, this relates to value capture in case of sale/purchase.

Almost all countries in our sample tax the surplus when properties are sold. In all cases, the tax regards the positive surplus, and in more or less all cases, the seller has the opportunity to extract costs related to the sale. Croatia stands out as the only country without a tax on the surplus of property sales. For five countries, we do not know the tax rate, only that there *is* a tax on property sale surplus. For the remaining 24 countries, the rate varies between below 10% and up to 30–40% of the surplus gain. These extremes, thus, have some additional specifications. In North Macedonia, the tax applies only to households that have lived less than 3 years in the house before selling, whereas Austria has no tax if the seller has lived in the house more than 8 years. Germany, on the other hand, charges a higher tax rate if the seller has sold more than three properties within the last 5 years. Obviously, the countries design the taxes to protect individual one-time sellers and increase the tax for professional traders.

The study provides little information about the reasoning behind the tax system and choice of rate and choice of exemption. Although, it seems adequate to assume that the countries have to balance the protection of 'ordinary citizens' selling and buying homes in order to ensure adequate housing during a life period, and the frequent traders (or 'speculators') who might be professional traders using urban price rise to generate personal equity.

32.2.3 Taxing Transactions of Properties[5]

Recurring tax on properties also include the trading of properties. Any exchange of ownership for properties is registered by the notary or a similar public entity (at least in principle, although in particular situations buyers might choose not to register). The general picture is that the notary fee has developed into a transaction tax. This sum paid by the purchaser of the property might be likened to VAT on the trade of other commodities. In the country sample in this study, only one country does not apply this tax: Czechia reports having abolished this tax, apparently to stimulate the markets during the Covid-19 crisis.

The other countries' application of this tax might be sorted into those who have a uniform rate and those who differentiate the rate due to social or regional considerations. To the former group of countries belong Bosnia Herzegovina, Croatia, Estonia, Finland, France, Greece, Norway, Poland, Slovenia, Turkey and Ukraine. The rate varies significantly. The median rate is just above 2% of the sales sum. At the lowest end is Ukraine with 1%. At the higher end, we find Greece (3%) and Bosnia Herzegovina (5%). Belgium stands out with 12.5% in Wallonia and Brussels and 6% in Flanders for the main residence.

[5] The taxes on property transaction and transfer are not 100% exhaustive, tax on inheritance, for instance, is not included in all country chapters and therefore not included in the discussion. This, however, does not alter the overall picture of the recurrent taxes on income from property and surplus on property trade.

The majority of the countries (16) belong to the group that use differentiated rates. Austria, for instance, applies a progressive rate that span from 0.5% to 3%. The UK has the same practise: In the UK the highest rate is used for the most expensive objects. The same goes for Italy, as they charge luxury properties at a rate of 9%, whereas the more budget properties are charged with 2%. In addition to differentiating the tax to the price level, progressively or in other ways, some countries also differentiate between kinds of buyers and the location of the property. Serbia exempts first-time for the 40 m², and additional 15 m² for each member of household from the total property from transaction tax. Sweden distinguishes between natural persons and businesses, charging 1.5% of the sales sum to buyers who are natural persons and 4.25% for company buyers.

The Payers

The recurrent land value capture (LVC) distinguishes from non-recurrent LVC in who the payers are. Recurring LVC is first and foremost a tax on individuals. Most homes are bought and sold by individual families, something they do only a few times in life. Likewise, most homes that are charged by land rent tax is lived in by owners – the property is used for living. However, also homes are owned by companies and homes are (increasingly) commercialised and used as vehicles for finance (Sassen 2013)[6]. The non-recurrent LVC is, on the other hand, mainly paid by professionals: The payment regards changes in land use that impose a corresponding increase in land value which professionals use for businesses. Even if the distinction between (main) payers is not clear-cut, there is a decisive difference. This difference is most likely the main reason for why the recurrent tax in so many of the sample countries has a social profile.

32.2.4 Closing Words – Recurrent Instruments Taxing Properties for Social and Urban Equity

As discussed at the beginning of this chapter, the recurring instruments are not affected by direct exogenous factors that change the value of the property in the same way as non-recurrent LVC instruments. For the public to extract land rent and value from property trading, for the benefit of the society, actually bridge these kinds of taxes to the land value capture instruments. As shown, the local level is prominent also in the recurring LVC: Even if the recurrent taxes are embedded in the national tax system, the local authorities do have a significant influence on part of these taxes (land rent in particular), and the local level is one of the beneficiaries of the revenue generated. The instruments are designed to contribute to wealth distribution, directly and intendedly. In addition, as shown, the design of these taxes also targets urban development. This is evident when these taxes charge unwanted landowners acting with higher charges, for instance, by heavy taxing of urban land that is kept vacant, and wanted actions with lower taxes, for instance, by using a lower rate when taxing redeveloped areas.

[6] S. Sassen (2012), Global finance and its institutional spaces. In: K. Knorr Cetina and A. Preda (eds.), *The Oxford Handbook of the Sociology of Finance. Business and Management, Finance and Economics*, International Business Online, June 2013.

Just two countries do not have any kind of annual taxation: Malta and Ukraine. Among the remaining countries, eight have designed the tax with a social profile, meaning that the tax exempts lower-priced properties from tax or grant a lower rate for low-priced properties. Some countries exempt houses where the owner also resides, others exempt owners of old houses, etc. As discussed above, many countries report that the property tax is also used strategically to prompt desired or prevent unwanted land use. The most common is to charge a higher tax on vacant land, particularly vacant land and properties in urban cores and unutilised farmland. Eleven of the 29 countries report a land rent that considers these aspects.

The noticeable spatial planning profile in the design of many countries' *annual taxation* is not retrieved in the design of tax on *income from property*. Only three countries report having a spatial planning profile in this tax, and this profile is actually linked to changes in land value related to rezoning (i.e. from farmland to urbanised land as in France or, as the case is in Malta, where land in urban redevelopment areas is granted a reduced rate when property is transferred). Countries are more prone to design the tax on property to have a social profile. Eight of the countries have a social profile on this tax. The property transfer tax also tends to have a social profile.

A simplified summation of the picture is that out of the three recurrent land-related taxes assessed here, many countries differentiate the property tax to meet particular land use objectives, whereas a social sensitive design is at the fore in the design of property income tax and property transfer tax. The figures below display the different practises:

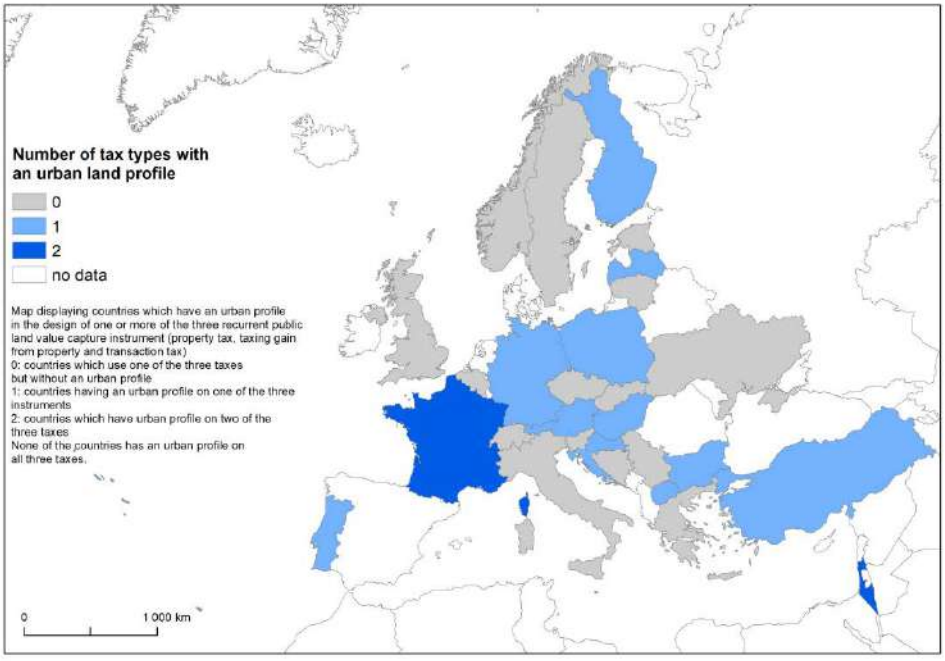

Figure 32.1: Number of tax types with an urban land profile.

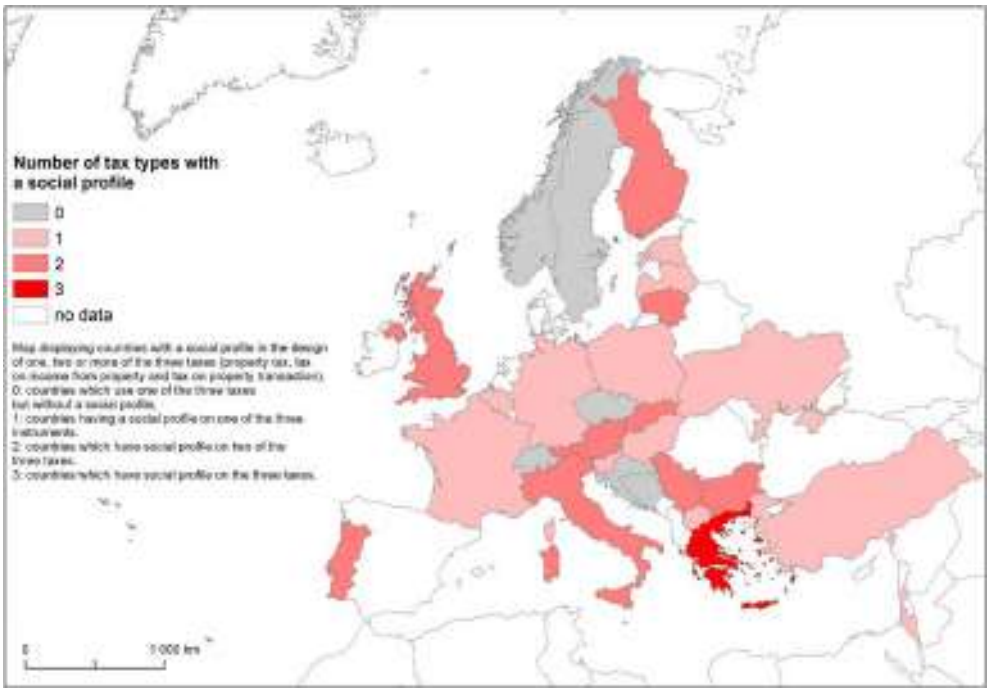

Figure 32.2: Number of tax types with a social profile.

32.3 Non-recurring Forms of public value capture

32.3.1 General Observations

The recently introduced new Urban Agenda (UN Habitat, 2022), which emphasises the connection between sustainable urbanisation and improved quality of life, will demand greater revenues for public expenditure. Therefore, there is a great need for knowledge exchange on the most efficient existing PVC tools applicable in European countries.

As the meaning and classification of non-recurring forms were discussed in Chapters 1 and 2 of this book, the discussion below will be focused on non-recurring forms of public value capture, applied in 29 participated countries of COST Project PuVaCa.

To summarise the research results, public value is captured in the analysed countries applying various PVC tools and could be defined as follow: 1. PVC increase focused on one factor, 2. PVC increase focused on more than one factor. If the PVC increase is based on one factor, then, in most cases, it relates to a technical infrastructure or social infrastructure built inside or outside the development project. It is very common when local authorities ask the developer/owner to provide in kind road and service infrastructure within development project boundaries. However, if there is a development small in size, the local authority may ask for contribution in kind to build, for example, a playground or create small open space for public outside the development boundaries. The PVC based on more than one factor links

to the combination of the following factors: A planning process (land-use change, general/spatial/detail plan, planning permission), technical (e.g. roads and services) and/or social infrastructure (e.g. schools, affordable housing, public open spaces, etc.) built inside and/or outside the development project, and potentially adopted land management instruments (land readjustment). As an example, the local authority can ask the developer/owner to contribute in kind by providing roads and services inside and outside development project as well as provide contributions in kind for affordable housing, school or kindergarden.

As you can see in the summary of results (Figures 32.3–32.5), the PVC increases due to the internal infrastructure factor (highlighted in red) in the majority of countries. This applies to Bosnia Herzegovina, Bulgaria, Croatia, Germany, Italy, Latvia, Lithuania, North Macedonia, Serbia, Slovakia, Slovenia, Sweden, Switzerland, Turkey and the UK. It is important to highlight that, in addition, the developers/owners may be asked to contribute for external infrastructure in some countries, especially in Finland, France, Germany, Israel, Italy, Serbia, Sweden, Switzerland and the UK.

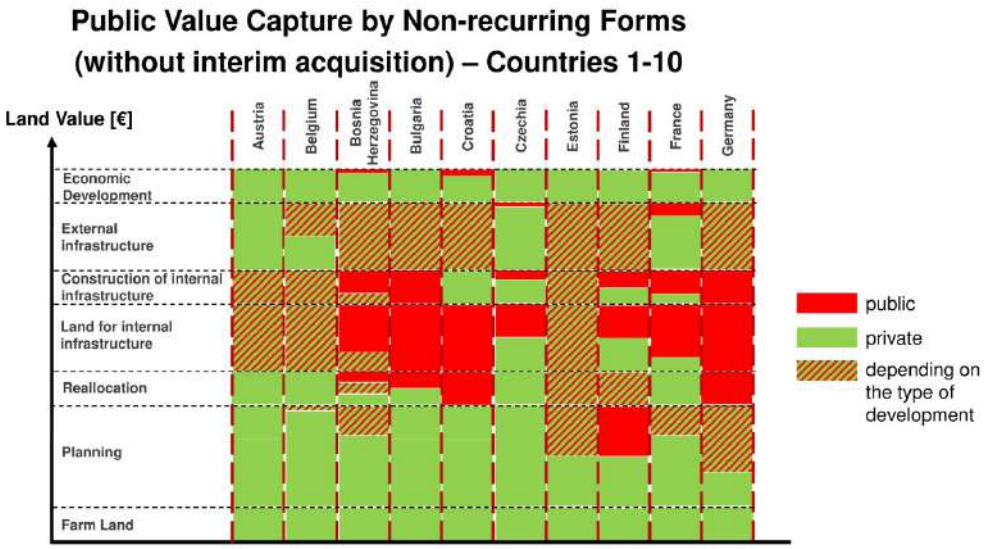

Figure 32.3: Public Value Capture by Non-recurring Forms – Countries 1–10.

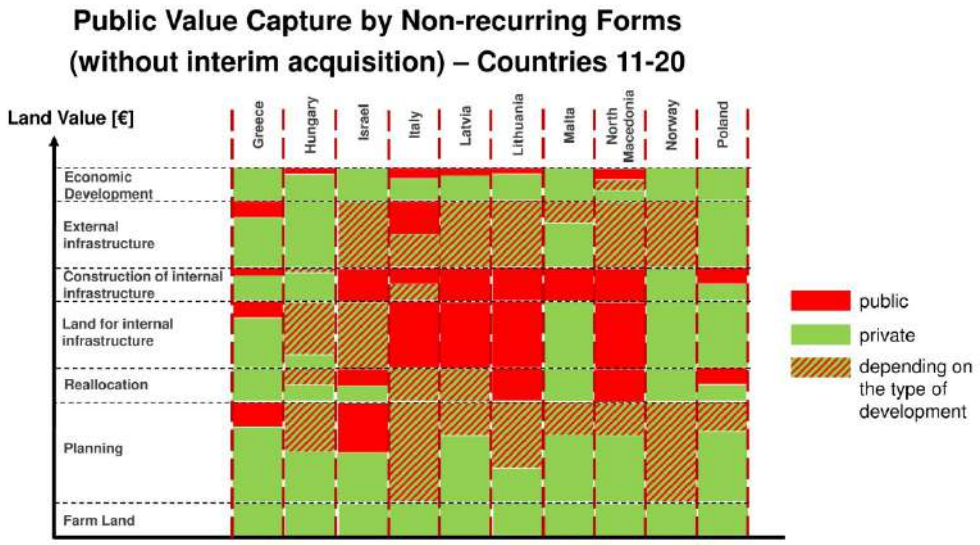

Figure 32.4: Public Value Capture by Non-recurring Forms – Countries 11–20.

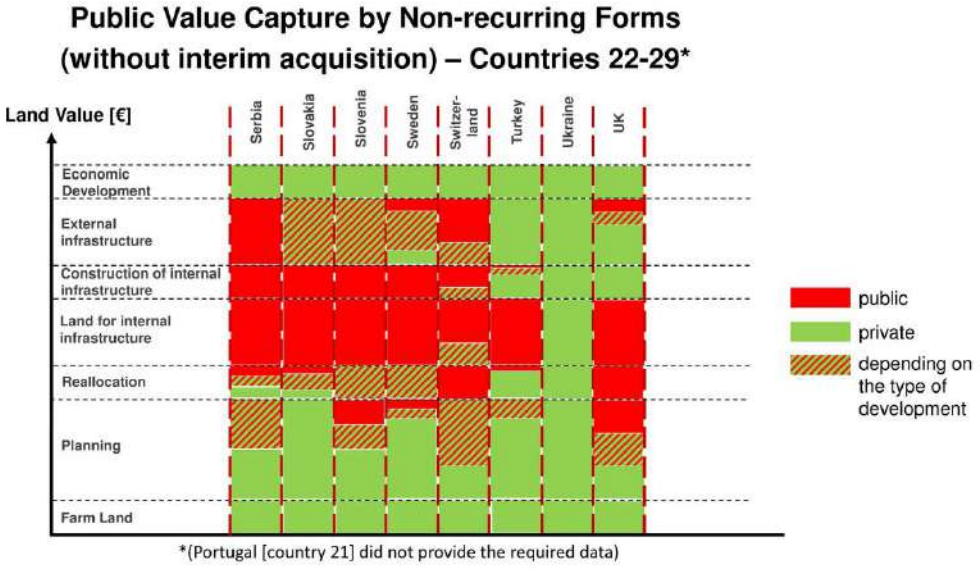

Figure 32.5: Public Value Capture by Non-recurring Forms – Countries 22–29.

It is important to highlight that the most significant PVC tool is the developers' obligation, which has been adopted by the majority analysed countries, especially in Austria, Belgium, Bosnia Herzegovina, Bulgaria, Croatia, Estonia, Finland, Germany, Hungary, Israel, Italy, Latvia, Lithuania, Malta, North Macedonia, Norway, Slovakia, Slovenia, Sweden, Switzerland and the UK (Figures 32.3–32.5, highlighted in red-green hatching). This tool serves a long tradition for PVC in many countries, which was traditionally focused on developer's contributions in kind for technical and potentially social infrastructure inside the develop-

ment project. However, nowadays the tool is heavily expanded, when the developer/owner is asked to contribute in kind or pay a levy (fee) for social infrastructure such as affordable housing, open/community spaces, schools, kindergardens, etc., inside and/or outside the development project boundaries. Almost all of the above-highlighted countries have implemented one of two methods of developer's contribution (paid levy or developer's contribution in kind) with an exception of the UK. Both methods (approaches) of developer's contribution may be applicable, though each local authority decides which policy they would prefer to assign for forthcoming developments. According to the policy known as Section 106, the local authority negotiates with the developer on the developer's contribution in kind. The negotiations are based on a development viability test provided by an independent party. According to another policy, known as Community Infrastructure Levy (CIL), the developer's contribution is paid by a developer's levy, a charge, which can be levied by local authorities on new development in their area. The developer's contributions in the UK may apply for an affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure) (NPPF, para 34, 2021).

Also, Figures 32.3–32.5 demonstrate a quite interesting result that, in some countries such as Austria, Bulgaria, Croatia, Czechia[7] and Slovakia, the developer/landowner fully enjoys the land value increase due to the planning process, and there is no PVC under this factor (Figures 32.3–32.5, highlighted in green). In most of the above country cases, it is the local authority's responsibility to provide technical infrastructure inside and outside the development project, and the developer/landowner is obliged to pay fees for it. However, in Estonia, the local authorities are responsible for the provision and payment of infrastructure pursuant to the regulation by law in development areas, and there is no infrastructure fee applicable for developer/landowner in Estonia.

For example, Austria, like the other countries listed above, either has no tool that would allow local authorities to capture public value due to planning factors nor does it exhaust implied possibilities in their legislation. However, there have been extensive discussions among governmental authorities that the policy on planning gain, or the practise of the capture, should be adopted in the future in order to support affordable housing provision via the regional land fund. In Czechia, the local authority used to collect a fee from the landowner of a developable plot for the connection to the existing water supply or sewerage networks. The fee did not relate to any other type of infrastructure. However, the new Czech planning law of 2021 increases the opportunity when it comes into force.

The spatial planning policy on land management instruments, especially land readjustment, can be an effective tool for PVC. The countries, especially Germany, Spain and Israel, that have a long-standing tradition of mandatory land readjustment procedures, successfully apply this land management instrument for efficient PVC (Muñoz Gielen and Mualam, 2019). However, other countries, such as Finland, Sweden, Switzerland, France and Belgium do not necessarily apply land readjustment instruments for public value capture, even the land management instrument is well used under their spatial planning policies.

[7] Note that the new Czech planning law from 2021 brings new opportunity to accrue a part of land value increment to municipality if the municipality specifies this condition in planning documentation.

32.3.2 Some Particularities of the Developer's Obligations

Most countries have developed non-recurring forms of PVC that can be considered as developer obligations. Developer contributes in kind or by paying a levy for agreed public development in exchange of decision allowing the development process. The developer obligations for the developer's contribution are usually based on negotiation between the local authority and the developer. The agreed obligations should be normally agreed upon before the planning permission is issued.

The developer obligations and circumstances when and how they are agreed vary from country to country, but some generalities can be found.

32.3.2.1 Aims of Developer's Obligations

According to the undertaken analysis, the developer's obligations can serve up to three aims: 1. to capture land value because benefits from land are 'unearned' (relation with the concept of land rent); 2. to finance public costs (e.g. providing technical and social infrastructure including playgrounds, open spaces, affordable housing, etc.); 3. to finance public budgets in more general terms. It should be noted that the same aims could also be related to recurring forms.

In Italy, the construction contributions commensurate with the construction costs and are defined at the regional level. The urbanization charges apply to finance the costs incurred by the municipality that are related to the new urbanization. Austria, Germany, Israel, Slovakia, Sweden and Switzerland apply a levy (fee) to the developer/owner for the construction of technical infrastructure inside the project in addition to the agreed developer's obligations for technical and/or social infrastructure outside the development project. Developers in the UK contribute in kind towards the technical and social infrastructure inside the development project in addition to the agreed developer's obligations, which can be contributed in kind or by paying a levy (fee) towards technical and/or social infrastructure outside the project. Malta applies the infrastructure service contribution related to the development project and developer's obligations, which would contribute towards large private sector projects. France applies development tax/m² to finance the project's infrastructure in addition to social mix obligations (inclusionary zoning). Belgium applies planning conditions for the developer to contribute in kind what infrastructure is necessary to be built inside the project in addition to planning charges, which compensate the impact of the development. Poland applies an infrastructure fee inside the development project and developer's obligation for the reconstruction of roads to obtain a building permit. Slovenia applies a fee for only public utility, and Latvia has developer's obligations for the infrastructure outside the development project.

32.3.2.2 Base of Developer's Obligations

In most countries, developer obligations are based on a 'public cost' approach rather than on a 'value' approach or on 'public budget' approach. In many countries, there are two-level cost approaches: firstly, value-capture tools directly related to the development project (usu-

ally the costs related to the technical/social infrastructure); secondly, other PVC tools aiming to capture more value, which could finance the public budget.

The developer's obligations, based on the value approach are used in Germany and the UK, where the development appraisal, established by an independent property valuer, is the basis of negotiation between the developer and the local authority. It is important to highlight that the value, established for development appraisal, is calculated by applying the comparative method of valuation in Germany and the residual method of valuation in the UK.

There is an alternative tool to obligations – the developer's levy, which is applicable in most of the analysed countries. The levy is normally calculated by a methodology adopted by the local authority, which is based on a charge per m^2, unit or/and total size of development.

32.3.3 Developer's Obligations in the Context of the Planning System

The countries' analysis promotes thinking how the developer obligation tool correlates with the existing country's planning system. Does the efficiency of developer obligation depend on the efficiency of the planning system? The authors would like to propose a hypothesis: A well-structured planning system helps optimise the developer's obligations, which would be an initial discussion for further research.

The developer's obligation tool is established in most of the analysed countries. The case analysis showed that the local authority's legal power over this tool varies from country to country. The Finnish case demonstrates that local authorities have strong rights as their planning system relies on compulsory instruments, such as development charge and expropriation rights. Even if these instruments are rarely used, they motivate the developers/owners to engage in the negotiations, and they impact the fee levels related to the contract-based instruments.

In many cases, the developer's obligations are determined during the issuing planning/building permit phase for the development. However, there is evidence that local plans play an explicit role in Finland, Germany, Israel, the UK, Norway and Latvia. Alternatively, there is no evidence that local plans play any role in developer's obligations in Belgium, Czechia, Estonia, Italy, Malta and Slovakia.

The developer's obligations set up at the phase of legalisation of illegal developments in Greece and Turkey.

32.3.4 Contributions for Technical Infrastructure

In some project cases, the developer is the initial landowner, though, alternatively both the landowner and the developer can be involved in the land development process with defined responsibilities.

According to analysis undertaken, the analysed countries can be divided into two groups according to financing responsibility for the technical infrastructure inside the development project. According to the approved local plan, the landowner is responsible to finance all,

or close to all, technical infrastructure in the following countries: Austria, Belgium, Estonia, Finland, Germany, Hungary, Israel, Norway, Sweden, Switzerland and Latvia (Group 1). The contribution is usually paid in fees, which are related to the cost of technical infrastructure provision. This usually happens when land use is changed according to the approved local development plan. It is important to highlight that it is common practice in countries with well-established planning traditions.

There is an alternative practice, when the developer becomes the landowner and is responsible for providing in kind or paying a levy for technical infrastructure provision. This obligation is agreed upon at the planning/building permit issuing phase. This practice is noted in the most of the analysed countries including Bosnia Herzegovina, Bulgaria, Croatia, Czechia, France, Greece, Italy, Lithuania, Malta, North Macedonia, Poland, Serbia, Slovakia, Slovenia, Turkey and the UK (Group 2).

It can be summarised that Group 1 countries are more active in planning practice, and that the countries of the Group 2 are more 'reactive' to projects initiated by (private) developers.

32.3.5 Summary

The PVC by non-recurring forms varies from country to country, and in some cases, similar variations of forms can be used across participating countries. This phenomenon heavily depends on the existing political-legal-institutional framework, which includes property rights, planning and development policies and practices in each country.

32.4 Conclusion

When all countries' practices are summed up, the first striking picture is the variegated instruments, practices and approaches. A deeper look thus unveils some lessons to be learned: Firstly, that both the recurrent and the non-recurrent value capture instruments contribute significantly to society.

To start with the non-recurrent instruments, they are highly important for establishing high-quality technical infrastructure in urban environments. More or less all countries expect developers to finance new and upgraded internal infrastructure, and quite a lot of the countries in this sample also require the developers to contribute to the financing of technical, green, and grey infrastructure *outside* of the development project. The prevailing approach to ensure these contributions is for the public (the planning authority) to state *the need* for this improved and/or upgraded infrastructure, and the prevailing logic behind developers' contribution is *to contribute to the financing* of it, either as cost recovery or contribution in kind.

The idea of *value increase* is an important motivator and an underlying factor for these requirements. Although it does not often appear as the main rationale for developers' contribution. The idea of *unearned value* increase appears to be even less on the agenda. This reflection is based on the fact that few countries use non-recurrent instruments that can extract developer contributions *to more than one factor*. In addition, relatively few countries

apply mandatory land readjustment instruments or temporarily public landownership. Both public land readjustment and temporarily public landownership are instruments well suited for extracting land for very different kinds of goods – like land for greens and kindergartens, affordable houses and technical infrastructure. The sample shows that this is relatively rare. The authors see this as unfortunate because common goods like greens and playgrounds are of utmost importance for public health, and 'social contributions' like kindergartens and affordable houses are of utmost importance for urban cohesion.

The sample shows that, in most European countries, any value extracted from increased land value caused by planning and urbanisation targets social aspects of urban life to very limited degree. The country chapters convincingly display 1) a cost-related approach to what values that are extracted and 2) a narrow range of purposes. The values that are extracted appear to be significant and indeed of great importance for society. It is notable that the values are to a very limited degree used to finance land for affordable houses, kindergartens and other social aspects of urban life.

The analysis of recurrent land value capture is more nuanced in scope and purpose. The introductory chapters draw up the canvas for *recurrent land value capture,* pointing at the *two* main sources: property tax and transaction tax. The countries' practices show that both tax types might be further differentiated: For property tax, it is sensible to distinguish between *tax on land* as *tax on equity* (or fortune), on the one hand, and as *tax on (net) income* from a property, on the other hand.

It is opportune to ask with Vickrey (1999)[8] whether property tax is an efficient equitable tax, the best of all taxes – or the worst. He asks if it is applied in ways that ensure fair rent, whether it is redistributive and whether it considers liquidity-constrained households. This review of the ountries' practices cannot provide full answers, particularly not regarding the effectiveness of these instruments. Thus, the sample shows that, in more or less all 29 countries in this study, these taxes do have redistributive orientations and do pay attention to low-income households. This discussion does not reveal the tax base, only the different rates, but it is evident that the property tax is important for the local government. As important as this income is, it is also heavily dependent on the fluctuation of real estate markets. Even though local governments have a significant influence over this tax, rapid changes in rates prove difficult as the impact on households and businesses are significant, as identified in Ihlanfeldt's (2011)[9] study of American cities and states.

The compilation of practices in this book shows both the power of LVC instruments and the limitation in the countries' application of them. The idea of value increase and even more the idea of *unearned* value increase underpins all versions of these instruments. Furthermore, the notion of *limits to property rights* prerequisite these instruments. The non-recurrent and the recurrent instruments differ, however, in how they relate to these two basic premises: The orientation of the non-recurrent land use instruments appear to blur these two cru-

[8] Vickrey, William. (1999). Simplification, progression, and a level playing field. In: K.C. Wenzer (ed.), ***Land-Value Taxation: The Equitable and Efficient Source of Public Finance,*** Armonk, NY: M.E. Sharpe.

[9] Ihlanfeldt, K. (2011). How do cities and counties respond to changes in their property tax base. The Review of Regional Studies, Vol. 41, 27–48.

cial origins by focusing on limitations in what the extractions can be used for rather than limitations in sums. Only very few countries take a comprehensive and holistic perspective regarding *for what*, under an agreed umbrella of *how much*.

Recurrent land value capture takes a wider stance: It focuses on how much and the purpose for the extracted value is subordinated to the general governance of public spending, in which social redistribution is crucial.

Do we perhaps need a public discourse that pinpoints how the joint origins and the difference practices between these two kinds of instruments may fertilise the needed development of LVC? The non-recurrent LVC are relatively new instruments and may profit from being better tailored to the idea of *a social just city*. With regard to UN SDG 11, in particular 11.3, the country chapters have shown that there is room for the sophistication of these instruments.

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Overview of types of public value capture in participating countries (countries 1-15)

Classification		Austria	Belgium [1]	Bosnia and Herzegovina	Bulgaria	Croatia [2]	Czechia	Estonia	Finland [3]	France [4]	Germany [5]	Grece [6]	Hungary [7]	Israel	Italy	Latvia [8]
Recurring forms of public value capture	Annual payments	4	1; 2; 4	4; 1	4	1; 2; 4	4	4	4	1	4	4	3	1	3	4
	In case of sale/purchase	4	1; 4	1; 2	4	1; 4	0	4	4	1; 4	4	1; 4	4	4	3; 4	4
Non-recurring forms of public value capture	Focussing on one factor	4	1; 2	4	2	1; 2	3	3	1; 4	4	4	1	1;4	4	0	4; 2; 3
	Focussing on more than one factor	2	3	3; 1	2	0	1	3	1; 4	4; 2	3; 4	3; 4	0	4	4	0

(0 – no instrument, 1 – instrument exists, but its use is very limited, 2 – instrument exists and is used occasionally, 3 – instrument exists and is used on a regular basis at least in some regions, 4 – instrument exists and is used regularly; if there is more than one instrument per category, the range of values should be noted)

(1) Annual payments: 1 for personal income tax; 2 for specific municipal taxes; 4 for property tax. In case of sale/purchase: 1 for capital gain tax; 4 for transfer tax. Focussing on one factor: 1 for taxation for rises in values due to planning regulation; 2 for refund and urbanisation taxes related to road works.

(2) Annual payments: 1 for personal income tax; 2 for specific municipal taxes; 4 for realestate taxation. In case of sale/purchase: 1 for capital gain tax; 4 for transfer tax. Focussing on one factor: 1 for taxation for rises in values due to planning regulation; 2 for refund and urbanisation taxes related to road works.

(3) For non-recurring forms of value capture: the instruments are typically optional, one of them is used. Focussing on one factor: 1 for development charge, 4 for land use agreement, assignment and expropriation of land designated as road areas, expropriation and acquisition of areas designated for public purposes and connection charges. Focussing on more than one factor: 1 for special development areas and urban land readjustment, 4 for PLD.

(4) In case of sale: 1 for municipal capital gain tax; 4 for transfer tax. Focussing on more than one factor: 4 social mix obligations; 2 Interim landownership

(5) Focussing on more than one factor: 3 for cooperative developments by urban contracts; 4 for developments according to the German federal building code.

(6) In case of sale/purchase: 1 for Capital Gains Tax and VAT; 4 for Real Estate Transfer Tax. Focussing on more than one factor: 3 for private planning; 4 for public regulatory planning according to the Greek planning legislation.

(7) Focussing on one factor: 1 for general infrastructure; 4 for water infrastructure.

(8) Focussing on one factor: 4 for implementation of detailed plans concluding “Implementation agreement”; 2 for implementation of public projects, because often it requires covering only development (including administrative) costs; 3 for development fee as it is used in Riga City, and in some other municipalities it appears as comparatively small/insignificant payment. This instrument is not typical in Latvia as only in the capital city of Latvia it is applied for public value capture.

Table 32.1: Overview of Types of public value capture in Participating Countries (Countries 1–15).

Overview of types of public value capture in participating countries (countries 16-29)

Classification		Lithuania	Malta	North Macedonia	Norway	Poland	Portugal	Serbia	Slovakia	Slovenia	Sweden [9]	Switzerland	Turkey [10]	Ukraine	UK	
Recurring forms of public value capture	Annual payments	2	0	4	3; 4	4	4	4	4	4	4	4	4	4	4	
	In case of sale/purchase	3	4	4	4	4	4	4	4	4	4	3-4	4	4	4	
Non-recurring forms of public value capture	Focussing on one factor	2	4	4	3; 4	2	2	4	3; 4	4	1; 4	4	3; 4; 4; 2	0	4	
	Focussing on more than one factor	3	2	2	0	1	1	1	1; 3	2	3-4	3-4	3	0	3; 4	

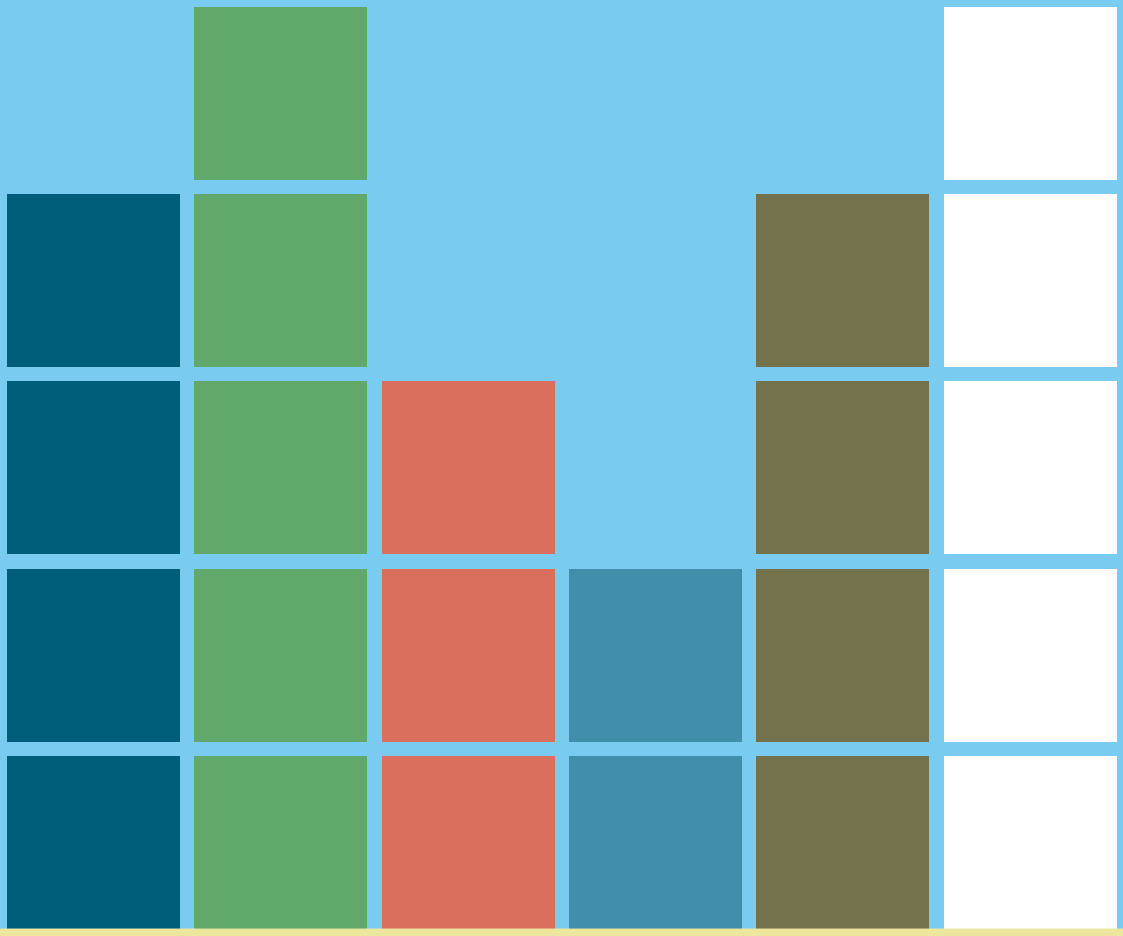
(0 – no instrument, 1 – instrument exists, but its use is very limited, 2 – instrument exists and is used occasionally, 3 – instrument exists and is used on a regular basis at least in some regions, 4 – instrument exists and is used regularly; if there is more than one instrument per category, the range of values should be noted)

(9) Focussing on one factor: 1 for public spaces in detailed development plans and national roads; 4 for water and sewage, power supply and district heating.

(10) Focussing on one factor: 3 for Infrastructure fees; 4 for Development Related Fees; 4 for Plan Amendment Charges; 2 for Plan Notes.

Table 32.2: Overview of Types of public value capture in Participating Countries (Countries 16–29).

Public value capture is an essential phenomenon to improve the refinancing of public infrastructure and secure the necessary budget for other important duties like education, health and social care. For this reason, smart tools are needed for a successful implementation. This book provides an overview and discussion of instruments and practices in 29 European countries.



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PuvaCa
PUBLIC VALUE CAPTURE OF INCREASING PROPERTY VALUES

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