

**Property Taxation in Francophone Southern Africa:  
Case Study of Comoros**

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**Lincoln Institute of Land Policy  
Working Paper**

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**Lincoln Institute Product Code: WP09FAB1**

## **Abstract**

The Lincoln Institute and the African Tax Institute (ATI ), located at the University of Pretoria, South Africa, have formed a joint venture to better understand property-related taxation in Africa. Its goal is to collect data and issue reports on the present status and future prospects of property-related taxes in all 54 African countries, with a primary focus on land and building taxes and real property transfer taxes. Each individual report aims to provide concise, uniform and comparable information on property taxes within a specific country or region, considering both the system as legislated and tax in practice. This paper provides a detailed case study of property taxation in Comoros.

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## 1. Introduction

This report on land taxation in the **Comoros** has been drawn up according to the same framework as preceding reports, namely :

- Basic information on the **Comoros Union**
- Governmental structures
- Land problems and the property market
- Different taxes
- Real estate taxes
- Annual land tax
- Conclusion

## 2. Basic Information

The Comoros is an archipelago situated south east of the African continent, in the Mozambique Channel. It consists of four islands whose respective land surfaces are as follows : 1,148km<sup>2</sup> - Grande Comore ( Ngazidza); 424km<sup>2</sup> - Anjouan ( Ndzuan); 290km<sup>2</sup> - Mohéli ( Mwali ) and 374km<sup>2</sup> - Mayotte ( Maore).

The first three islands constitute the Federal Islamic Republic of the Comoros; from the time of independence in 1975. Mayotte, however, remained under French administration. Although the islands consist of a basically volcanic soil structure, the islands have a particular characteristic: Anjouan and Mohéli have an older soil and a more uneven relief. They have a relatively dense hydrographic network, although at times they are faced with massive deforestation and an extension of annual cultivation.

The soil on the three islands is also characterised by a generally high level of fertility. However, the soil is shallow and consequently is subject to damage from erosion which is accentuated by human intervention, such as agriculture which is not adapted to the type of soil and accelerated deforestation.

The climate is tropical, with:

- (i) a warm and rainy season (from November to April) characterised by a vastly contrasting rainfall according to the slopes:
  - slopes which are exposed to wind and on the tip ends of the islands, during a dry season of more than six months, are more sensitive to erosion of the grass covering;
  - slopes which are exposed to the wind are less sensitive owing to the more resistant grass covering.
- (ii) a dry season (from May to October) which is more and more marked.

The population of the Comoros is increasing at a rate estimated to be *more than 2%* per annum. This considerable increase in population impacts significantly on land use and consequently on natural resources. In 2001, relative to arable land surfaces, the population density was estimated at 211 inhabitants/km<sup>2</sup> at Mwali, 753 inhabitants/km<sup>2</sup> at Ndzuani and 474 inhabitants/km<sup>2</sup> at Ngazidza. According to the latest estimations, the population concentration in the Comoros in general is 275 inhabitants/km<sup>2</sup>.

From the beginning of the 1990's, the Comoros underwent a change of economic policy. In 1991 the country adopted a Structural Adjustment Programme (SAP) as well as a range of administrative reforms. The SAP aimed at the following :

- A reduction in the State's responsibilities, namely a decrease in the number of civil servants and alongside that, improved targeting of investments;
- The relaunching of the private sector to be assisted by a reform of the fiscal and legal framework for companies, an improvement in management capacities and a new approach to credit for the economy;
- The strengthening of social services.

In 1993, budgetary measures were adopted comprising :

- A restructuring of import taxation;
- The establishment of a company fiscal service.

During the same year an improvement in the commercial balance was seen. This was due to an increase in the export of vanilla as well as a decrease in imports. However, this improvement slowed down because of an accumulation of external and internal arrears in payment . From 1995 the objectives of the Comorian economy have been the following :

- Increase the growth rate of the GDP;
- Contain the rate of inflation;
- Progressively reduce the current account deficit.

The economy of the Comoros , which is mostly agricultural (70%), was in recession in 1988 and the per capita GDP had dropped by an average of 2.3% per annum, reaching US\$ 370 in 1998. This places the Comoros amongst the poorest countries in the world.

The economy is characterised by the following :

- (i) A primary sector (41%) dominated by agriculture which represents half the country's wealth. The sector's annual growth is between 1.5 and 2%.
- (ii) A secondary sector which is much smaller (11%) where industry ( 3.7%) is more a craft industry than a traditional industry. This sector has recorded an increase of 2.3% during the past decade.

- (iii) A tertiary sector (47%) made up mostly of the trading of imported goods. Growth in this sector is 3% per annum, thus accentuating the country's commercial deficit.

The implementation of the Structural Adjustment Programme has impacted the poorest levels of society according to a study carried out by the UNDP in 1995. (See *Poverty in the Comoros*): The total poverty line relative to nutritional needs are 170335 Comorian Franc (CF) in Grande Comore, to 132469 CF in Anjouan and 165025 CF in Mohéli per capita per annum. The poverty line has been defined as *the cost method of basic needs*, proceeding in the case of each island to an evaluation of the food and non-food poverty lines. The rate of employment offers is 51.3% for the country as a whole and women participate less in the job market.

Three levels of poverty have been identified :

- (a) The first level comprises households where the incidence of poverty is between 55 and 65%. This includes subsistence farmers who possibly have parallel processing or fishing activities ;
- (b) The second group consists of households for whom the poverty incidence is between 40 and 45%. This comprises farmers engaged in private crop production, breeders, inactive people and non-agricultural independents.
- (c) The third group whose poverty incidence is between 25 and 30% includes salaried workers and the unemployed.

The proportion of the population which is in a position of absolute poverty is estimated at approximately 50.8% ( according to the budget consumption survey ). Poverty affects 41% of the population in Grande Comore; 78% in Anjouan and 64% in Moheli. Poverty is more pressing in rural areas than in urban areas. The incidence is 70% for households whose head is a farmer and more than 50% for those whose household is managed by a subsistence farmer.

Agriculture plays an important part in the national economy for the following reasons :

- It provides employment for about 70% of the active population ;
- It is responsible for almost all exports ( 98% of foreign currency). These export crops make up a considerable contribution to the State budget. In addition, through its induced and indirect effects, agriculture is at the root of most of the other economic activities amongst which are the following:
  - Processing, transport and marketing of agricultural products which are sold and in particular, export products ;
  - Services which are needed to supply rural areas. However, in terms of calories and proteins, national production supplies less than 60% of dietary requirements.

### 3. Government Structures

The Comoros Union is a republic with a unicameral structure. Several regimes have come and gone, some of which were considered to be violent dictatorships. The present regime was adopted by referendum in December 2001.

The present institutions have been influenced by the 1997 crisis. The Union, as well as each of the four islands, has a president who is also the head of government. The prerogatives of the Union's President are external policy and defence. The islands are mainly autonomous in areas such as the economy, taxation, health, justice... The Comorian Franc which is dependent on the Euro, is not an independent currency. The political regime is a multi-party one. A president, who is head of the executive, is at the head of the government and there is a rotating presidency. Each island enjoys considerable autonomy and has its own president and cabinet. The legislative house is called an Assembly and has 33 members of which eighteen are elected and fifteen are elected representatives from indirect suffrage. Members are elected for a period of five years.

Following the framework agreement in Fomboni (Moili) on 17 February 2001, Comorians approved the constitution on 23 December 2001. This effectively ended the Federal Islamic Republic of the Comoros. A new political and institutional system was established : The Union of the Comoros.

Consequently, the institutions of the Union of the Comoros are :

1. Executive Power : The Union's President is the head of government and in that capacity, he takes the lead in Union policy;
2. Legislative Power : The Assembly is the legislative organ of the Union ;
3. Judicial Power : The Supreme Court is the highest court ;
4. The Constitutional Court: this organ decides on the constitutionality of the laws of the Union and the islands;
5. Consultative organs: these can be established in association with the Union's Presidency.

In April 2002, the Comorian people elected the first President of the new Comorian grouping, His Excellency, Colonel Azali Assoumani. Following that, the Presidents of the autonomous islands were elected: Messrs Mzé Abdou Soulé El Back, Mohamed Bacar, Mohamed Fazul, who were respectively elected as Presidents of Ngazidja, Ndzouani and Moili.

From that time the Union's President made every effort to bring about national reconciliation and the completion of the institutions of the New Comorian Grouping. After numerous detours and bitter discussions, the obstacle course was completed by the

establishment of the Constitutional Court a few months after the installation of the assemblies on the islands and in the Union (June 2004).

The investiture and the swearing in of His Excellency Monsieur Ahmed Abdallah Mohamed Sambi took place on 26 May 2006. Mr Ahmed Abdallah was democratically elected as the second President of the Comoros Union a few weeks previously. This completed the institutional architecture of the country.

With the change in power which took place at the level of head of State, it is the island of Anjouan which is responsible for the rotating Presidency for the next 4 years. This rotating Presidency was instituted by the constitution of the Union of the Comoros.

#### **4. Land Problems And The Property Market**

The Union of the Comoros was involved in an investment programme called «*National Medium Term Investment Programme*» which recognises the pressing need to define and implement a land policy which will reassure the different actors involved in order to reach the stated objectives.

In fact, right from the period following independence, the land question has preoccupied the young Comorian State. During the period 1975–1978, President Ali Soilih desired to solve the question by means of a programme of nationalisation of agricultural land which led his regime to destroy a large proportion of the documents which had been archived by the Land Register Services. The government authorities who succeeded him set aside all ideas of land nationalisation land, and from the beginning of the 1980's, several studies and land proposals financed by diverse organisations and financial backers (FAO, World Bank, Coopération française, CARE, GAD, etc.), were carried out in order to find less radical solutions than those which had been put forward by the revolutionary regime of 1975.

Against this background, a structure was established called «*Support cell for land security*» (CASF) which was made up of senior officials of the *Ministry of Production* and the *Ministry of Rural Development*. This was proof of a genuine will by the authorities and senior officials to implement a land policy moving in the same direction as the conclusions arrived at by the above mentioned studies. The CASF carried out land characterisation work in certain villages on the island of Mohéli, in collaboration with the *Mohél Regional Development Project* (PDRM) and as well as Grande Comore. However, owing to lack of means, this cell is no longer functioning and in fact seems to have to disintegrated. Nevertheless, the present Comorian authorities appear to be resolute, both from central government and at the level of the islands, to address the question of land security in order to avoid a situation where the environment suffers from the land insecurity which characterises the country and also in order to promote civil peace.

It is for this reason that at Mohéli the island's government established a provisional commission tasked to consider the land question and to make suggestions regarding land texts: a bill on the legal system of land usage on the autonomous island of Mohéli and a draft law on the statutes regarding farming and tenant farming. The Comorian universities are also involved in looking for ways to clarify the land question. The numerous studies on the land question carried out by students from the *Patsys tertiary school* (in the form of a final year thesis) are proof of this involvement. Civil society has also mobilised itself on this question, namely through the *Action Group for Development* (GAD) which formulated a land project and the *Association for the promotion of the environment and development* (APED) which is also interested in this field.

At institutional level, the Union of the Comoros comprises four executive powers, four legislative powers and four judicial powers. At local level, an institutionalisation of the communes was envisaged; and the island of Anjouan was the first of the four islands to complete the process. At Mohéli and Grande Comore, only a few experimental communes existed. However, more are planned and the population seems to be expecting many more according to comments made on the ground in the context of the preparation of the different land projects.

Usually, farms are small (about 1 ha) and of the family type. Many land tenure methods can be seen. These are governed by different laws: customary, Muslim or colonial. Private property, as it is understood by the French Civil Code, co-exists with the *miliki*, or traditional law of possession and different forms of indirect and assimilated farming, (loan of plots, letting, sub-letting, tenant farming, sub-tenant farming, encroachment on State-owned land, etc.).

The Comorian agricultural sector is confronted with numerous difficulties amongst which are:

- (a) ***The lack of a land and legislation policy to make secure access modes for producers to land and natural resources.***

The legislation in force, which dates back to the days of the French colony, is no longer valid. Consequently, the forestry legislation of 25 January 1930, which is still in force, prohibits the cutting and unlimited extraction of wood and leaves (articles 5, 6, 49, 50 and 62). This legislation has not been adhered to by the population. The proposals for improvement made in 1995 (see documents by Du Saussay and Zaki), are not implemented in practice. Regarding the draft legislation applicable to the legal regime of soil use, proposed at Mohéli, this document would be worth developing more fully the studies carried out during the past 25 years. Sometimes the present situation is a hindrance to adopting agricultural practices which sensitive to the environment. It can even contribute to the emergence of social conflicts where land insecurity gives rise to a revaluation of land from plantations, as is the case in certain zones of Mohéli and Anjouan, for example: conducting several studies in the field of land use, namely draft legislation on which one can rely in order to solve the problem of land insecurity;

(b) *the phenomenon of rapid urbanisation which diverts valuable human resources from the country to the cities;*

(c) *Land situations which are varied, complex and subject to conflict.*

*Manyahuli* land is situated at Mbatsé and Itsamia. Communal land (village reserves, common land), can be seen at Itsamia and Hanyamoida. State-owned and forest land which are squatted can be found at Jimilimé, Mbatsé–Mtakoudja, etc. Private colonial squatted land or land which has been bought back exists at M’Batsé. At Hajoho 1 and 2, former royal lands are squatted. The practice of plot loans and indirect farming, tenant farming, sub-tenant farming, hiring of land is generally implemented.

Often, many rights of various degrees of legitimacy co-exist on the same land. This makes the land question even more complex and gives rise to latent or open conflicts. The different land studies carried out in the Comoros do not contradict each other on a number of points:

- (i) they recognise the existence of certain land rights in the Comoros and the overlapping of these rights in many cases;
- (ii) they promote a flexible approach based on the principles of the patrimonial management of land;
- (iii) they reveal that land regulation mechanisms exist locally which are similar to patrimonial management practices;
- (iv) they confirm the inviolability of the right to private property (inherited from the days of colonisation), without placing the latter above other rights of autochthon or Muslim origin;
- (v) they recognise the necessity to substitute a simpler procedure of land registration to the present land registration procedure;
- (vi) they recommend the establishment of decentralised authorities to manage land problems;
- (vii) they consider it necessary to carry out further investigations in order to clarify certain grey areas in the land question.

All projects which concern land security must therefore be based on the common points of these studies. These studies have the advantage of promoting decentralisation, dialogue and good governance, the protection of the right to private property while also adhering to local rights and supporting local land innovation. Land security therefore, will enable the preceding principles to be implemented as well as reinforcing the existing regulation mechanisms and making use of the institutional environment which is already

in place at village, communal, island and national levels. The complexity of the socio-land situations that characterise the Comoros has made it impossible to consider an efficient uniform policy on a national level.

The precariousness of land rights demotivates occupants from investing in the improvement and conservation of land. Consequently, land and in particular, the delimitation of the State's public domain from neighbouring properties constitutes one of the major problems which must be resolved in the Comoros.

In the public domain two texts, one dating back to 1926 and the other to 1958 provide an identical definition namely "the public domain comprises the domain's assets which, either by their very nature or following the destination which has been attributed to them by the authorities, serve as usage, enjoyment and protection for all and which cannot become public domain as they are already private property" (Article 2 of the 1926 decree and article 2 of the 1958 decree). Defined in this way, the public domain is subdivided into three categories: *the natural public domain, the artificial public domain and the legal public domain.*

Article 4 of the 1926 decree provides a complete list of assets which are found in these 3 categories. The 50 geometrical step zone, or 81.20m is part of the legal public domain. The inhabitants of the coastal towns and villages occupy this zone for their agricultural and livestock farming needs. They consider this zone to be part of their heritage and refer to the establishment of authentic rights. Hence the need for the State to demarcate its public domain in order to resolve latent conflicts and at the same time taking into account the realities of the situation.

The law governing the urban and housing code requires that all buildings to be used for residential purposes or not, must have a construction permit whether they are built by a private or a public person. The permit is granted by the prefect or the mayor after prior study of the dossier by the Regional Directorate for Urban Affairs and Housing. This permit can be refused or subjected to particular conditions when the proposed building affects the "character or the interests of neighbouring areas, sites or natural or urban landscapes...".

## **5. Taxation**

The General Tax Department (DGI) is a structure which dates back to colonial times and has been inherited from the former tax administration. It was established a few years after the independence of the archipelago of the Comoros. In order to better serve its users and to come closer to its taxpayers, the Department undertook a number of reforms in order to address the present context, by making use of new technologies and more particularly, the computerisation of certain taxes (tax base and collection). As a result of efforts by the authorities during these past years, direct and indirect taxation has been simplified.

The general department of taxation of the Union of the Comoros is a public administration which benefits from the excessive prerogatives of common law. Its uniqueness in matters of fiscal law is expressed in the transactions which are conducted in order to close a contentious matter. This tax right which is particular to it, makes it a judge and jury and consequently it escapes the fundamental principle of the unavailability of the public ministry, stipulated in the Comorian penal code procedure.

As in the case of other taxes levied in developing countries, tax authorities in the Union of the Comoros have undertaken a restructuring and modernising campaign of their services in order firstly to meet the urgent and constant needs for financing the State's expenses and secondly, to meet the requirements for mastering of the international fiscal chain.

### **5.1 Fiscal administration in the Comoros**

The role of fiscal administration in the Comoros is to guarantee fiscal revenue necessary for financing public expenses, by the following methods:

- Determining the tax base;
- The recovery of State taxes (consumer tax, taxes on sundry profits, general income tax, registration duties);
- Controlling adherence to tax laws and the fight against fiscal fraud. Fiscal agents are employed for this purpose.

General Management, the three Regional Management Departments at Ngazidja, Anjouan and Mohéli as well as the Prefectures and Communes are responsible for taxation and handle associated operations including legal affairs. An information centre is at the disposal of the public to guide and advise users.

### **5.2 Users**

Taxpayers are large companies, moral persons, professional people and individuals. The following taxes constitute the fiscal base in the Comoros :

1. General income tax (progressive between 5-30%);
2. Tax from yields: Taxes on sundry profits (30-40%), taxes on revenue from movable capital (15%), taxes on let and built properties (20-30%), income tax on agricultural land (500-10 000 F);
3. Contributions from patents;
4. Consumer taxation (3-10%);
5. Land advertising tax (1-2%);
6. Tax on turnover;
7. Tax on insurance contracts (3-15 %);
8. Assimilated taxes: Tax on television sets, tape recorders and video recorders (10,000 F/year), special tax on diesel engine vehicles (25 000 F) as well as road taxes (3,000-22,500 F).

In terms of local taxes , there are the following:

- Tax on communal participation;
- Tax on firearms (1,000 F);
- Taxes on real estate;
- Additional centimes (10%).

## **6. Taxes On Real Estate**

### **6.1 Registration duties for deeds and transfers**

#### 6.1.1 General, deadlines

Registration duties are fixed, proportional, progressive or graduated according to the nature of the deeds and transfers which are subject thereto. Fixed duties apply to deeds which do not involve any transfer of property, usufruct or use of fixed or movable property or to the cancellation of amounts and values or to contribution by marriage, or to contribution through companies, or the sharing of movable or fixed property and, generally speaking, in respect of all other deeds (even those exempt from registration) which are voluntarily submitted for registration.

Proportional duties, progressive duties or graduated duties are instituted for the transfer of property, usufruct or the use of movable or fixed property, (either between living people or upon death), the cancellation of amounts and values as well as deeds ascertaining a contribution through marriage, a contribution through a company, or a division of movable or fixed property. These duties are based, either on the price stated plus charges which could be added, or (failing the stated price or if the real value is higher than the price plus charges) on an estimation by the parties monitored by the administration.

In the case of the collection all kinds of duties stipulated in the tax code, fractions of amounts and values less than 1,000 F are disregarded.

Regarding transfers and agreements with suspensive conditions, the applicable tariffs and the taxable amounts are determined from the date of the implementation of the conditions.

When a deed contains two clauses with differing tariffs, but which, because of their correlation, do not give rise to a plurality of duties, the clause which serves as a basis for collection is that which results in the highest tariff. On the other hand, in the case of a deed (either civil, judicial or extra-judicial) where there are several independent clauses or where these do not necessarily derive one from the other, a particular duty is payable for each of them according to their kind. The share in these cases is determined by the article in the tax code in which the clause is classified and to which one can refer. When a

deed contains several independent clauses which introduce either proportional, progressive or graduated duties or a fixed duty, nothing is deducted from these latter clauses except the application of the highest fixed duty as a minimum for collection if the required amount of proportional, progressive or graduated duties is lower.

The given date of the deed or the date of the commencement of the succession is not factored into the time frame allowed for the registration of deeds and declarations. When the expiry date of the approved time frame for this process or for payment of taxes coincides with a day on which offices are closed, this time frame is extended to the first working day following. The following must be registered :

a) – Within a period of two weeks from their respective dates the following must be registered : all mandates, agreements of sale, deeds pertaining to property movement and, generally speaking, deeds relating to the function of an intermediary for the acquisition and sale of buildings or businesses or to the quality of owner acquired by the habitual buying of the same assets with a view to resale, either in totality for all assets without exception, or in lots or groups, for urban or suburban land unless they have been drawn up by notarial deed.

b) – Within a period of one month from their respective dates the following must be registered : bailiffs' deeds, auctioneers' deeds as well as deeds of those authorised to draw up writs and reports.

c) – Within a period of two months from their respective dates the following must be registered:

1° - Notaries' deeds, authenticated deeds, deeds from the Clerk of the Court, as well as deeds from canton heads and arrondissement heads with the exception of wills;

2° - conciliation reports drawn up by judges and court presidents, arbitration judgments and agreements which have occurred in the course of proceedings or during or following procedures, summary judgments as well as judgments and rulings in the first and last resort, containing final clauses in all matters;

3° - deeds regarding the transfer of property or usufruct of fixed property, businesses or clients or the transfer of rights to a lease or to the benefit of a commitment to a lease in respect of all or part of a building;

4° - deeds in respect of the transfer of property or the usufruct of fixed property;

5° - deeds regarding the transfer of use of fixed and movable property;

6° - all deeds and documents confirming the nature, substance or value of assets belonging to each of the spouses at the time of solemnisation of the marriage;

7° - all deeds pertaining to the creation, extension, transformation or dissolution of a company, the increase, redemption or reduction of its capital;

8° - deeds pertaining to the division of movable or fixed property of any kind whatsoever;

9° - deeds and documents of all kinds for registration in a land registry with the exception of request for registration and requests for the registration of deeds.

d) – Within a period of three months from the date of death of the testators, the wills submitted to lawyers, arrondissement or canton heads, or received by them.

There is no definite deadline for the registration of all deeds other than those mentioned previously. Similarly, for transfer and conveyance of credit contracts drawn up at the time of banking transactions and for markets and treaties which serve as business deeds, drawn up or passed by private signature.

In the absence of deeds, transfers referred to in Article 611.12 - III-3 of the tax code consist of detailed reports and estimations two months after possession has been taken. If there are no deeds, the transfers of fixed property possession consist of reports, by the lessor or the tenant which are to be registered during the last three months of each year. The reports are compiled according to special formulas supplied by the administration. They apply to the period from 1 January to 31 December of the current year.

In the absence of written agreements, the transfers as well as the conventional or legal extensions regarding the use of the business for the lessor consist in detailed reports or estimations within a period of two months from the date of possession. The registration of authentic deeds or deeds under private agreements and judgments handed down outside of the Comoros and pertaining to fixed property, businesses or clients situated in the Comoros must be requested three months following possession thereof, from the revenue office in the vicinity of the property.

The period for registration of reports that heirs, donees or legatees have to make for assets due to them or transferred after death are:

- Six months from the date of death when the person whose estate is under consideration died in the Comoros ;
- One year, if death occurred outside the Comoros.

If, before the end of the last six months of the period fixed for estate reports of persons who died outside the Comoros, the heirs take possession of the assets, the only period left to submit a report is six months from the date of possession.

The heirs, legatees and all those called upon to exercise rights which result from the death of an individual whose absence has been ascertained, are required to submit a report within six months from the date of provisional possession (for which they would have been responsible had a death occurred) and pay duties on the total value of assets or rights which they accrue. The time frame for the vacant estate reports is one year from possession of assets expressly covered by the guardian.

The lawyers and any others fulfilling that task may only register their deeds at their local office. The bailiffs and others with the authority to establish writs or reports are required to register their deeds either at their local office or at the office in the area where they were drawn up. The clerks of the court and the central municipal or regional administration officials must register the required deeds according to the regulations at the office in the district in which they practise.

Reports of verbal transfers in respect of buildings, businesses or clients, as well as reports of verbal transfers from a right to a lease or benefiting from the undertaking of a lease for all or a part of a building, must be drawn up at the office where the property is situated.

Deeds under private signature other than those referred to in article 611.26 may be registered in the offices regardless. Wills drawn up outside of the Comoros may only be implemented in respect of property situated in the Comoros after having been registered at the testator's local office, if he has one, otherwise at the office of his last known address in the Comoros. In a case where the will contains clauses pertaining to buildings which are situated there it must in addition, be registered at the office where these buildings are situated without it double duty having to be levied.

Transfers through death are registered at the office of the deceased's domiciled address, regardless of the situation of the movable or fixed assets to be declared. In the absence of a domicile in the Comoros, the report is sent to the Moroni tax office. In a case where, according to measures in force, a deed has to be registered free of charge these formalities may be waived, postponed or simplified. In the event of waiving, postponement or simplification of these formalities, the recovery duty of the treasury will be in force in respect of the same amounts and under the same conditions as those indicated in the tax code.

#### 6.1.2 Tariffs applicable and the liquidation of duties

No less than 1,000 F may be levied in a case where the amounts and values do not produce 1,000 F of proportional, progressive or graduated duties.

##### 6.1.2.1 Proportional duties

In all cases where duties are levied after an estimation by the parties, the report and the estimation must be detailed. Before registration a report of this kind is subscribed, certified and signed at the foot of the deed or judgment when amounts or values serving as a tax base for proportional duties are not determined.

The value of ownership of the property without usufruct and the usufruct of fixed and movable property is determined as follows for the liquidation and payments of proportional duties:

- For transfers of assets other than debts, allowances or pensions which are carried out for a fee according to the stated tariff and adding all the charges to the capital;
- For marriage contributions of the same assets after an evaluation carried out in the following way: if the usufructuary is less than twenty years of age, the usufruct is as seven tenths of the bare ownership, the bare ownership as three tenths of the full property. After that age, the proportion decreases for the usufruct and increases for the bare ownership by one tenth for each period of ten years, without interruption. From the time when the usufructuary reaches seventy years of age, the proportion is determined at a tenth for the usufruct and nine tenths for the bare ownership. In order to determine the value of bare ownership only, the usufructs which are open on the day of transfer of this bare ownership are taken into account. The usufruct constituted for a fixed period is estimated at two tenths of the entire property for each period of ten years of the duration of the usufruct without interruption and taking no account of the usufructuary's age;

When the proportional duties depend on the value of the bare ownership or the usufruct determined according to the conditions enumerated above, the deeds must make mention, according to sanctions specified by article 614.22 in the event of inaccurate indications, the date and place of birth of the usufructuary. If the birth occurred outside the Comoros, he is justified regarding this date before registration. Failing that, the highest duties which could be due to the Treasury are levied unless the over-payment of duties is refunded within a period of two years on presentation of a birth certificate in a case where birth has taken place outside the Comoros.

In all deeds or statements in the case of either the sale of a building or the transfer of a business or the lease rights or the benefit of an undertaking of lease in respect of all or a part of the building, or an exchange or sharing which includes buildings or a business, each of the sellers, purchasers, traders, sharers, their husbands, representatives or legal administrators are required to conclude the deed or the statement with the following sentence : “The undersigned declares according to article 366 of the penal code that the said statements make mention of the agreed price or balance in cash.”

a) – The following are subject to a 3% duty in cases where duration is limited : leases, sub-leases and conventional or legal extensions of leases in the case of buildings, businesses and other movable assets, as well as pasture and animal feed leases, herd leases, or the recognition of animals and leases in respect of food for human consumption. State asset leases and local government leases, are subject to the same duties.

b) – In the case of leases, sub-leases and extensions of movable asset, business and building leases, the amount considered as a tax base for taxation is determined by the annual stated price, plus the charges imposed on the lessee. The duty is due on the total price of all years, except the staggering of payments for period leases. If the price of the lease or rental is stated as being payable in kind or on the basis of the current value of

certain products, the duty is realised according to the value of products on the day of the contract, determined by an estimation by the parties. If the amount of duties is split this estimation is only in force for the first period. For each of the subsequent periods, parties are required to submit a new estimation of the value of the products on the day of commencement of the period serving as a basis for the realisation of duties. The two preceding measures are applicable to leases with portions of returns for the lessor's share which must be previously stated.

Transfer duties (which are liable to a fee) levied on leases and fixed properties are determined as follows :

- commercial use 20% ;
- residential use 15% ;
- industrial use 10% ;

The same measures are applicable in cases of transfer of these properties.

All transfers of a duty to a lease or the profit of an undertaking of lease for all or part of a building are subject to a registration fee of 15%, whatever form the parties have given it, whether it is considered to be a transfer of goodwill, departure allowance or other. This duty is levied on the amount or the allowance stipulated by the transferor for his benefit. It is different to that which may be due for the transfer of use of rented property.

The election or statements of principal in purchase or friendly statements, following the adjudication or a sale contract of immovable property (if the statement is made at the end of the three days of adjudication or of the contract or when the faculty of electing a principal in purchase has not been reserved for it) are subject to a 15% duty.

Exchanges of movable property are subject to a 10% duty. The duty is levied on the value of one part when there is no return. If there is a return, the duty is paid at a rate of 10 % on the lesser portion, and as in a sale, on the return or the increase in value. The buildings of whatever kind they may be, are estimated according to their market value on the date of transfer, according to the estimation of the parties.

The returns of fixed property are subject to a duty building sale duty as well as their undivided parts and portions acquired by auction .

The sharing of fixed and movable property between co-owners, co-heirs and co-associates for whatever reason unless it is justified, are subject to a 2% duty which is realized on the net amount of shared assets. If there is a return, the duties are levied according to the rate stipulated for sales in conformity with article 612.32 of the tax code.

Returns on sharing of movable property are subject to movable property duties, while those resulting from sharing of immovable property are subject to immovable property sales duty.

Adjudications, sales, resales, transfers, retro sessions, withdrawals carried out after expiry of the agreed deadlines according to the redemption option contracts and all other civil or

judicial transfers of property or usufruct of immovable property where payment is due, are subject to a 15% duty. The duty is realised on the estimated price, adding all the capital charges as well as all allowances stipulated to the advantage of the transferor for whatever reason or whatever cause it might be. When the transfer of property applies to buildings by kind and also by destination, the latter must have a particular price and a detailed description.

The sales of State-owned buildings are subject to duties mentioned in the preceding paragraph. However, allowances for occupation without title are not considered to be charges which are added to the price. These allowances are subject only to the lease duty. Adjudications in the case of free bidding of fixed property are subject to a 15% duty, but only insofar as it exceeds the price of the preceding adjudication if this duty has been paid. Deeds for the sale of low cost individual houses constructed by public institutions, construction companies or individuals, are subject to transfer duties according to the sale of buildings.

However, when the price has been specified as payable by annuities, the levying of the transfer duty may, at the request of the parties, be carried out in several equal parts, without the number of these parts exceeding that of the annuities mentioned in the contract. Furthermore, they may not exceed five in number.

All delays in payment of the second or subsequent portion of the duties result in the total amount due to the Treasury being payable immediately. If the sale is cancelled before the duties have been fully paid, the rent paid or due for more than three months accrues to the Treasury and the other duties become bad debts.

The measures above are applicable to deeds of sale of buildings for agricultural purposes as well as to deeds of sale/rental of residential property. When a deed of transfer of a property or of usufruct includes movables and immovables, the registration duty is levied on the total price according to the fixed rate for immovables, unless a particular price is stipulated for movable objects and they are described and their value estimated, article by article, in the contract.

Assets freely transferred between living persons and following death, are subject to a proportional tax of 8% which is deducted either at the time of submission of the estate, or at the time of registration of the donation, in conformity with measures contained in the tax code relative to free transfer duties, with the exception of certain articles (612.78 and 612-79).

In the case of the realisation and payment of duties on free transfers, buildings, of whatever nature they are, are estimated according to their real market value on the date of transfer, according to the detailed estimate of the parties. However, for rented houses which are built with permanent materials, this value may not be less than the capital constituted by ten times the annual rental or the rental value.

1° - For the realisation and the payment of progressive duties, the value of bare ownership and the usufruct is determined according to conditions contained in article 612.9 of the tax code.

2° - No duty is payable for the usufruct meeting of the property when this meeting takes place following the death of the usufructuary or the expiry of the deadline for the duration of the usufruct.

From the fiscal point of view, the following is considered to form part of the usufructuary's estate unless contrary proof is provided : all movable assets, all movable and immovable assets belonging to the deceased person by usufruct, and in the case of bare ownership, belonging to one of his heirs apparent or their descendants, even those excluded in the will, or to his stipulated donees or legatees, even by post factum will, or to intermediary persons, unless there have been regular donations.

However, if bare ownership reaches the heir, the donee or the legatee or the intermediary person following a sale or a donation to that person agreed to by the deceased, the transfer duties paid and justified by the bare owner are attributed to the transfer tax through death which is payable following the incorporation of the assets in the will.

### 6.1.3 Obligations of persons bound by a formality , parties and receivers

In all cases where duties are levied following an estimation by the parties, this statement of estimation must be detailed. Before registration, a statement of this kind is subscribed, certified and signed at the foot of the deed or judgment when amounts or values which serve as a base for progressive duties are not determined.

The heirs, legatees or donees and their guardians are required to submit a detailed statement and to sign it on a printed form supplied by the administration. In the case of buildings which are let, the statement must make mention of the amount of rental. However, in a case of buildings situated in the proximity of the offices which are different to the office where the statement was made, the detail must be presented not on this statement, but clearly for each office regarding the situation of the properties on a form supplied by the administration and signed by the declarant.

a) – The statement mentioned in the preceding article must include the surname, Christian names, date and place of birth:

1° - of each of the heirs, legatees or donees;

2° - of each of the heirs', legatees' or donees' children living at the time of the opening of the rights of the latter to the estate.

If the birth has taken place outside the Comoros, proof of that date must be given before registration of the statement, failing which the highest duties which could be due to the Treasury will be levied, unless the excess levied is refunded as mentioned in article 612.58 above.

b) – Apart from information contained in the preceding paragraph, the statement must of necessity indicate the number, date and place where the heir's identity certificate was drawn up.

c) – The declarants are required to indicate in the statement whether the deceased was subject to general income tax or not. If need be, the statement must make mention of the amount of the deceased's income during the year preceding his death, the place of taxation and the article's number in the register.

If the party submitting a statement before expiry of the legal time frame claims that this statement is partial and will be completed as soon as possible there is no need to require him to submit a confirmation of sincerity immediately. However, in order to justify the absence of an affirmation, the statement must end clearly indicating its partial nature, after it has been read to the declarant, if the latter affirms that he cannot or is not able to sign. Partial statements cannot be accepted after the termination of the period of six months, except for exceptional circumstances and on condition that the recovery of debt to the Treasury be guaranteed by other means.

It is forbidden, on penalty of a fine of 3,000 F for all notaries, clerks of the court or anyone acting in that capacity, to receive any bailment without establishing a bailment. An exception is made for wills registered at notaries by testators.

Mention is made in all dispatching of public, civil or judicial deeds which must be registered in the minutes of the payment of duties by a literal and complete registration of this receipt.

Similar mention is made in the minutes of public, civil, judicial or extrajudicial deeds which are established by virtue of private agreements or passed outside the Comoros and which are subject to registration. Every infringement is liable to a fine of 3,000 F.

This reading will be expressly mentioned in the deed on penalty of a fine of 3,000 F. The heads of cantons and arrondissements as well as public officials and civil servants responsible for drawing up deeds are subject to the same regulations.

The notary or anyone acting in that capacity who draws up an inventory after death is required before the end, to confirm that in the course of operations he has not detected the existence of any values or debts other than those mentioned in the deed, nor of any bank account outside the Comoros and that he has not detected any trace of the existence (outside of the Comoros), either of an individual account for depositing funds or titles or a joint or collective account with solidarity. The public official who has knowingly contravened the preceding regulations or voluntarily submitted an incomplete or inaccurate affirmation is liable to a fine of 30,000 F to 300,000 F without prejudice to disciplinary sanctions.

Notaries, bailiffs and clerks of the court are required to present a summary report of these deeds, judgments or decrees, each time that they present deeds, judgments or decrees for

registration. These must be drawn up by them in duplicate on printed forms which will be supplied to them by the tax administration. Failing that, registration will be refused.

All deeds or judgment which relate in any way to transfers or the awarding of real property rights are required to indicate in a detailed way the name of the property, the number of the title deed or the request for registration, the nature, substance, situation, street number, lot number allocated by the municipal services; if it is a cadastral property or in the course of being cadastral, the number of the plot, the name of the section and the place. For non-registered land or land not in cadastres the demarcations and the exact situation must be furnished. Similarly, the above deeds and judgment must contain details of the origin of the property and the type of registration.. All contraventions to the measures contained in this article are liable to a fine of 5,000 F. During the month of judgment containing liquidation of legal costs or fees tax by the judge, the clerks of the court are required to transfer to the receiver of revenue the extract of judgment or the executory on penalty of 3,000 F for each extract of judgment or each executory which has not been transferred in the given period.

The schedules of fees drawn up by lawyers, bailiffs, clerks of the court, notaries and legal aid assistants must indicate clearly in a special column and for each disbursement, the amount of duties of all kinds paid to the Treasury.

All violations of this measure are punishable by a fine of 3,000 F.

All persons or companies undertaking intermediary operations for the purchase or the sale of buildings or businesses or who usually buy in name the same properties of which they then become owners with a view to resale must :

1° - declare them within a period of *one month from the commencement of operations mentioned above* to the tax receiver of his residential area and if necessary, to each of his branches or agencies ;

2° - keep two directories with columns presenting all mandates, undertakings of sale, property transfer deeds, on a daily basis, without blanks or line spaces as well as in a general way, all deeds referring to the profession of intermediary or to his capacity as owner; one of the directories concerns intermediary operations while the other is used for operations carried out in his capacity as owner ;

3° - to exercise the right of communication of tax agents it is necessary to conform to the prescriptions of article 811.1 and following. All breaches of these measures are punishable by a fine of 30,000 F, notwithstanding the sanction provided for in article 811.7 of the tax code.

Notaries, bailiffs, clerks of the court and secretaries of local and municipal administrations are required to keep directories with columns in which they fill in the following, on a daily basis, without blanks or line spaces and according to numbers :

1° - notaries : all deeds and contracts they receive, even those that have been patented, with a penalty of 3,000 F for every omission ;

2° - bailiffs : all deeds and writs in their Ministry with a penalty of 3,000 F for each omission ;

3° - clerks of the court : all deeds and judgments which, in terms of the present code, must be registered in the minutes, with a penalty of 3,000 F for each omission ;

4° - secretaries : deeds of local administrations indicated in article 611.12, paragr. III-3°, 4° and 5° of the tax code with a fine of 3,000 F for each omission. Each article of the directory must include :

- the number of the deed ;
- its date ;
- its nature ;
- surnames and first names of the parties and their residential address ;
- an indication of the assets, their situation and price when it involves deeds in respect of property, usufruct or the use of real estate ;
- the type of registration.

Notaries, bailiffs, clerks of the court and secretaries of local and municipal administrations must present their directories every six months to the receivers of revenue in their residential areas, who will notarise them and indicate the number of deeds registered. This presentation will take place every year during the first ten-day period of each of the months of *January and July*, with a single penalty of 5,000 F, regardless of the length of the delay.

Independently of the presentation required by the preceding article, notaries, bailiffs, clerks of the court and secretaries are required to make their directories available to the tax agents, (whenever they are required) who will visit them for purposes of verification, with a fine of 5,000 F in the case of a refusal, over and above the fine payable according to article 811.7. of the tax code.

The directories will be listed and intialled; those from the notaries by the president or, failing that by a civil court judge from the area; those from the section bailiffs and clerks of the court, by the judge in their area of residence; those from the bailiffs and clerks of the courts, by the president or judge which he has appointed for that purpose and those from the secretaries of administrations by the administrative authorities under whose jurisdiction they fall.

Specific measures have been set in the case of buildings:

- (a) Every purchaser of real estate rights or businesses in the Comoros and who is dependent on an inheritance will only be able to free himself from the purchase price if he is in possession of a certificate issued *free of charge* by the receiver of revenue confirming either the settlement or the non-payability of the transfer tax through death, unless he prefers to retain as a guarantee for the Treasury,

and keep a sum equal to the total amount of tax from the price until presentation of the receiver's certificate;

- (b) Whoever has contravened the measures contained in the first paragraph will be personally responsible for the required penalties except for a recourse against the person to whom one is indebted and, in addition, liable to a fine of 10,000 F ;
- (c) The notary and the public official who have received a deed relating to the acquisition of real estate rights or a business subsequent to an inheritance will be jointly responsible for the duties and fines mentioned in paragraph (b);
- (d) Registration at the land office and the cadastre's office of deeds and documents for transfer of real estate duties through death or the registration of land transfer documentation through death of the same duties or registration in the commercial register of the transfer of funds, can only take place on presentation of a certificate issued free of charge by the receiver of revenue confirming settlement and the non-payability of the transfer tax by death;

Mayors or administrative officials appointed to receive civil status deeds must furnish the receivers of revenue *each quarter* with statements of death certificates certified by them. These statements will be issued on unnotarised paper and delivered in the following months : January, April, July and October. A receipt will be given for this.

The certificate must also be produced following the death of the spouse of the registered title holder, except when the certificate states clearly to the person who is the subject of the land certificate, that the title belongs to the surviving person as his own property. The receiver's certificate remains free of stamp and registration duties even when it is annexed to a property certificate.

(a) – In a case where the transfer, change of ownership, conversion to the bearer or reimbursement give rise to the existence of a property certificate, issued in conformity with regulations relating to the system of nominative deeds, it is the responsibility of the person drawing up the document to stamp if necessary the receiver of revenue certificate mentioned in the preceding paragraph. The certifier's responsibility in this case is substituted to that of society or groups.

(b) – Whoever contravenes the above measures will be personally responsible for duties and penalties without recourse against the creditor and in addition, will be liable to a fine of 3,000 F.

When the transfer, change of ownership and conversion to the bearer are carried out with a view to or on the occasion of the negotiation of deeds, the receiver of revenue's certificate mentioned in the preceding article, may be replaced by a statement by the parties drawn up on unnotarised paper indicating very clearly the deeds to which it refers and also that the transfer has been made in order to settle the transfer duties through death and that the product from that will be paid directly to the relevant receiver in order to receive the inheritance statement by the intermediate person responsible for the negotiation.

Envisaged transfers, changes of ownership and conversions are only those carried out in view of and for the negotiation of deeds. Consequently, transfers which register titles in the name of heirs are excluded as well as conversions to the title bearers which are kept by the heirs. The statement by the parties produced to the intermediate person at the place of the receiver's certificate is not subject to any particular form. It will suffice if it contains the indications prescribed by the legal text.

The statement is drawn up on unnotarised paper; it does not need to be registered even when it is attached and annexed to a property certificate drawn up by a notary.

In a case where all or part of the titles are redeemed, the intermediary audited payment of funds from the reimbursement will free the paying institution under the same conditions as the handing over of the deeds themselves. Every intermediary person who does not make the necessary transfer according to previous paragraphs is personally liable for a fine equal to *the amount which he relinquished in an irregular way*.

Public administrations, institutions or any organisations subject to the control of tax agents, companies, bankers, discounters, public or ministerial officials or business agents who are depositories, holders or debtors of deeds, amounts or values depending on an estate which they know to be covered, must supply the list of these deeds, amounts or values either before the payment, handing over or transfer or fourteen days following these operations, to the receiver of revenue in their residential area. A receipt will be given for this.

#### 6.1.4 Collection

The duties in respect of deeds and those relating to transfers through death must be paid *before registration at a rate and share stipulated in the tax code*. No one may alter or delay the payment on the pretext of dispute regarding the shares or for any other motive whatever, except to appeal for restitution if necessary.

No public authority or tax administration or agents may grant a postponement or reduction of registration duties and subsequent penalties, neither can they suspend or have the collection suspended without becoming personally responsible for this. However, the Ministry of Finance may decide as a reciprocity measure, to exempt or reimburse the required duties or paid duties following the implementation of the tax code on deeds passed on behalf of foreign states by their diplomatic or consular agents when it is known that the deeds of the same nature passed in these foreign states by the government of the Comoros enjoy the same exemption.

Collection agents may not, for any reason whatever, even if valuations have been carried out, defer registering of deeds and transfers whose duties have been paid at the rates stipulated in the tax code. Neither may they suspend or stop the course of procedures by holdings back deeds or writs. However, if a deed for which there is no record, or a writ contains information which might be useful for discovering duties, the agent may make a

copy and have it certified as being in conformity with the original by the official who has presented it. In the event of refusal he may keep the deed for 24 hours only in order to obtain for himself a collation in form at his own cost except for a repeat if that is necessary. This measure is applicable to deeds which are signed privately and which are presented for registration.

The registration receipt is placed on the registered deed or on the extract of the statement by the new owner. The following is expressed in words : the date of registration, the register's folio, the number and the amount deducted. When the deed contains several measures each operating according to a particular duty, the relevant agent must briefly indicate them in the receipt and must specify clearly the share of each duty which has been deducted.

The duties of deeds to be registered are settled by :

- Notaries for deeds passed in their presence ;
- Bailiffs and others who have the power to establish writs and reports for those in their Ministry ;
- Clerks of the court for deeds and judgments (except for certain anticipated cases) and those passed and received in the clerk's office, as well as reports drawn up according to article 612.28 of the tax code ;
- Civil servants of central and municipal administrations for the deeds of those administrations which are submitted to procedure;
- Parties in the case of deeds under private signature, and those passed in foreign countries which they need to have registered. For rulings on request or statements, the certificates which are issued immediately by the judges and in the case of deeds and decisions which they obtain from arbitrators, if they have not registered them.
- Heirs, legatees and donees, their guardians and the executors for wills and other acts of generosity owing to death.

The parties are jointly responsible to the Treasury for the payment of simple duties which can also be required in the case of judgments or decrees. However, the applicant is the only tax debtor if the judgment or decree dismisses his application altogether. Parties required to pay are also the only debtors of duties when the judgment or decree allocates an allowance, a pension, private income or damages in case of an accident.

The duties regarding transfer statements owing to death must be paid by the heirs, donees or legatees or their guardians. Public officials who have advanced the registration duties for the parties may pursue payment in conformity with the measures contained in the regulations in force for the collection of fees due to notaries and bailiffs.

The duties pertaining to civil and judicial deeds regarding the transfer of property or usufruct of movable or immovable assets, *are borne by the new owners*, and the duties on all the other deeds are borne by the parties benefiting from the deeds, when in these different cases, no contrary measures have been stipulated in the deeds.

On request of any legatee or donee or any of the co-heirs the amount of transfer duties through death may be settled in several equal payments under the conditions and guarantees mentioned in articles 832.1 and following of the tax code.

Failing payment, the debts *will be the subject of an individual or collective notice in respect of collection*, established by tax agents, notified by registered letter with acknowledgement of receipt. This notification takes place by means of extract if it is a collective deduction title deed. The notification orders immediate payment of claimed duties which are payable immediately.

The proceedings flowing from the collection notice may be entered into *one month after this notification* failing payment or claims with guarantees. All delays in submission of the statement regarding the registering of deeds, statements and writs, the implementation of obligations stipulated in the code, the payment of duties, all inaccuracies, omissions or shortfalls give rise, when the infringement has resulted in a prejudice for the Treasury, to the payment of an additional duty equal to the amount of duties or the rest of the payable duties. This amount may not be less than 5,000 F. All other infringements are liable to a fine of 2,000 F in a case where it has not resulted in a default in payment of all or part of the tax.

Notaries, bailiffs and other agents accredited to make writs and reports and the clerks of the court who neglected to submit the deeds they were required to present for registration within the given timeframe, are personally liable to a fine according to the preceding article. In addition, they are required to pay the duties apart from their recourse against the parties in respect of these duties only.

Persons who, in the eyes of the Treasury, are jointly responsible for payment of the capital, are also jointly responsible for the payment of the fine and the duties over and above that. When, in the case of a legal decision regarding conviction to the advantage of the State, of local governments, communes and non-commercial public institutions, the opposing party has failed to transfer the necessary amounts to the clerk of the court for the registration of this decision, the procedure will be considered as debt to enable the moral person according to public law to have the decision implemented.

The following is considered to be null and void : Any counter-letter whose objective is an increase in price or any agreement with the aim of concealing part of the price of a sale of property or a transfer of business or clients or the transfer of a lease right or the benefit of an undertaking of lease in respect of all or part of a building and of all or part of the balance of an exchange or a sharing comprising immovable property, a business or a clientele.

All concealing of the price of the sale of a building, the transfer of a business or clientele or the transfer of a lease right in the case of a undertaking of lease in respect of all or part of a building and in the balance of an exchange or a sharing, is punishable by a *fine equal to half of the amount concealed*. This amount must be paid jointly by the parties and must be distributed equally amongst them.

Any other counter-letter privately signed which concerns an increase in the stipulated price in an official document or in a private agreement previously registered is punishable by a fine equal to the duty which should have been paid for amounts and values thus stipulated. This fine must not be less than 10,000 F.

When it is recognised amicably or judicially established that the real nature of the stipulations in a contract or an agreement has been concealed or undervalued, a double duty is due above that. This penalty is due jointly by all the contracting parties.

The following are punishable by a fine equal to the sum of the required duty. This fine may not be less than 10,000 F:

- All inaccurate indications influencing the amount of duties in a donation act between living persons or in an estate account ;
- All subscribed statements for the collection of transfer duties by death which have unduly resulted in the deduction of a debt, the purported debtor who has falsely confirmed its existence is jointly responsible with the declarant for the payment of a fine ;
- All infringements to measures contained in articles 613.41 to 613.44 of the tax code, depositories, holders or debtors are personally responsible for the required duties except for recourse against the debtor;
- All omissions found in an estate account. A minimum of 10,000 F is applied in a case where no supplementary duty is due owing to the infringement.

Heirs, donees and legatees who have not declared assets transferred to them through death within the given time frame will be required to pay a fine of 2% per month or part of a month of the arrears of duty owing with a minimum of 10%.

Guardians will be held personally responsible for the liability above if they neglect to make the necessary statements within the given time.

#### 6.1.5 Sundry measures

For a period of six months from the date of registration of the deed, the administration has the right to exercise a pre-emptive right to the benefit of the State on buildings, land rights, businesses or clientele, lease rights or in favour of an undertaking of lease in respect of all or part of a building of which it believes the sale price to be insufficient by offering to pay the legal claimants *the amount of this price increased by one tenth*.

In conformity with regulations regarding the expropriation procedure for reasons of public benefit, the court is required to consider statements made by taxpayers concerning transfers which are either payable or not between living persons following death as a basis for evaluating benefits.

Transfer of a building or property or usufruct is sufficiently established for the request for registration duty and proceedings in respect of payment against the new owner, either by

registration by name in the land tax register and payments made by him in accordance with this register, or by leases signed by him or by transactions or other deeds confirming his property or his usufruct.

Use of a building for rental or commitment is sufficiently established for the demand and proceedings regarding payment of lease duties or unregistered obligations through deeds that reveal it or by the payment of contributions imposed on leaseholders, tenants or temporary holders. Duties that are levied regularly on deeds or contracts that are subsequently revoked or rescinded for the following reasons do not need to be reinstated :

- 1° - the revocation of donations between living persons for reasons of lack of adherence to the conditions or for reasons of ungratefulness ;
- 2° - revocation of the agreement following a resolutive condition ;
- 3° - resolution of a bilateral contract in a case where one of the parties does not honour its commitment ;
- 4° - resolution of the sale for reasons of non-payment ;
- 5° - exercising the possibility of buying back or redemption to the advantage of the seller.

In a case of cancellation of a contract for reasons of lesion or cancellation of a sale owing to hidden inaccuracies and, in addition, in every case where cancellation is necessary, the duties levied on the cancelled, resolved or rescinded deed can only be restored if the cancellation, resolution or rescission has been formalised by a judgment or a decree following formal judgment.

In such a case, proportional transfer duties are not levied. In the event of the return of an absent person the duties paid in conformity with article 611.20 (paragraph above) are restored under the only deduction of the one to which the heirs are able to have use. The date of private agreement cannot be opposed to the Treasury for the prescription of duties and penalties incurred, unless these deeds are dated exactly by the death of one of the parties, or otherwise.

## **6.2 Tax on Land Advertising**

Taxation on land advertising is levied on the procedures required in real estate registers.

- 1° - requests for the registration of buildings in land registers;
- 2° - the registration of all real estate duties according to decrees of 4 February 1911 and of 9 June 1931;
- 3° - the registration of building leases;

4° - references to subrogation and deletion. The tax on advertising is proportional when the acquired registrations are to be evaluated. Contrarily, the minimum fixed duty covers all the clauses of the deed.

Proportional tax is realized in the following cases:

(a) for registration requisitions: on the value of the buildings on the date of submission of the requisition;

(b) for the registration of real estate duties other than mortgage debt: on the price of buildings or real estate duties which are the subject of advertising plus charges or, for deeds which do not have a price, on the evaluation determined by an estimation added at the foot of the deed or submitted document or on the real value on the date of the deed if it is higher than the price or the value stated.

The taxable amount may not be less than that which serves as a basis for the levying of registration duties. The increase of the amount in a case where it is recognised that the price or the evaluation are insufficient for the levying of registration duties means that an extra simultaneous levy of the land advertising tax will be deducted.

On the subject of exchanges, *taxation is based on the total number of buildings or real estate rights*. In the event of a transfer of rights, and subsequent termination of joint ownership, tax is due on the value of the buildings or real estate rights including the purchaser's share.

In a case of sharing, *taxation is due on the total value of buildings or shared building rights*.

(c) for the registration of bond debts : on the total amounts guaranteed in capital, interest and accessories;

(d) for the registration of leases : on the accumulated amount, divisions, rentals including charges;

e) for the references to deletion and subrogation, reduction: on capital amounts, interest and accessories even determined, possible or conditional, guaranteed by the registration or on the portion of the amount which is the subject of the subrogation, reduction or deletion : the total capital and accessories to which the partial subrogation refers or the reduction of the guaranteed amount must be declared in the deed or failing that, must appear as an estimation at the foot of the document submitted.

In a case of a reduction of surety taxation is according to the total amount guaranteed by the registration or on the value of the exempted building, if this amount is declared in the deed and is less than the taxation amount according to the value of the building on

condition that this value is indicated in the deed. Taxation is levied even if the documents to be registered are under suspensive conditions.

### 6.2.1 Rate of taxation

The rate of advertising tax is determined at 1% for the procedures indicated in paragraph (d) and (e), and at 2% for all other procedures. However, the 2% rate is reduced by half for the registration of deeds that are purely and simply shared.

Regarding the levying of tax, fractions of amounts and values less than 1,000 F are disregarded. A minimum of 1000 F must be levied for procedures which do not produce 1000 F of proportional tax. The following are subject to a fixed duty of 1,000 F :

1° - the registration of deeds in respect of extras receipt of price, interpretation, rectification of material errors, acceptance, non-transferable renunciation, non-transferable withdrawals, confirmation, approval, ratification and implementation of a suspensive condition.

Regarding deeds mentioned above, the implementation of a fixed duty is conditional on these deeds not increasing in price or amounts or values stipulated or guarantees by the principal deed in which case they give rise to proportional tax on the sum increased except for a levy of a fixed minimum of 1,000 F. These deeds do not involve any levies if they are presented for process at the same time as the principal deed to which they refer.

2° - registrations of statements of principal in purchase or adjudication statements, deeds relative to the pre-emptive right by the owner jointly, sharing deeds on the allocation of assets previously awarded with a promise of award contained in the principal;

3° - Registration of transfer deeds to the advantage of companies financed from public funds to the proportion of at least 90% according to statutes;

4° - registration of judgment registrations, state-owned titles declaring property, titles of state-owned concessions;

5° - registration of agreement deeds pertaining to the registration of community rights of married women;

6° - registration of the union of the usufruct to bare ownership when this union takes place as the result of the expiry of a deadline for the duration of the usufructuary;

7° - in a general way, the registration of deeds and legal decisions which are not subject to proportional duties.

### *6 2 2 Exemptions*

The following are exempted from land advertising tax :

1° - the registration of deeds and transfers :

- (a) for the benefit of the State, communes and public institutions which are neither commercial nor industrial in nature;
- (b) for the benefit of companies or associations which are recognised as being of public benefit;

2° - registration of deeds of all kinds in expropriation matters for reasons of public benefit, or regarding purchases carried out according to an alignment plan approved in the normal way relating to public roads and even by means simple road network;

3° - registration of transfer deeds passed by institutions and credit organisations when it is ascertained that these deeds are part of the social objective stipulated in their statutes;

4° - registration of acquisition and property rental deeds for the benefit of:

- (a) international aid and co-operation organisations to the benefit of the Comoros;
- (b) public, civil or military services of states associated with the Comoros or by agreements;

5° - registration of acquisition and property rental deeds for the benefit of embassies, legions, consulates as well as those who benefit from diplomatic buildings ;

6° - registration of transfers of buildings dependent on the estates of the military and those of persons who are victims of national disasters while on duty ;

7° - registration of acquisition or property rental deeds necessary for its proper operation for the benefit of the Red Crescent ;

8° - registration of loans granted to victims of natural disasters by organisations or entities whose legal nature is determined by statutes or result from the law ;

9° - registration of transfer deeds in conformity with regulatory plans for rural regroupings.

Collection of land advertising tax is subject to the same rules as those which govern the levying of registration duties. If, in the same deed or estate account the buildings in question are situated in places which do not depend on the same office, tax is paid in total to the office where the registration process is conducted.

The prices, values and estimations of the deeds by the parties are submitted for monitoring to the registration services. The rules that apply to registration duties are applicable to the land advertising tax. If the shortfall or the concealment of amounts or values which have served as a basis for deduction is established in conformity with the rules which govern registration duties, extra simple duties will be levied independently and in addition to that, a duty which may not be less than 1,000 F.

### 6.2.3 Tax collection

Land advertising tax is levied by the receiver of revenue. This levy takes place at the same time as the registration duties for the registration of all real estate duties and reference to subrogation and deletion. The receipt for duties is given at the same time as the receipt for registration duties or transfer duties following death. Requests for registration of buildings, deeds received by the heads of cantons and arrondissements, and all other documents which do not have to be submitted to the registration process, are registered for order with a view to enabling the collection of the tax. The receipt of duties is indicated on the document.

Tax relating to building leases and registrations which do not result from deeds or documents submitted to the compulsory process of registration will be levied on request for registration submitted in duplicate by the parties on unnotarised paper. The receipt is issued on request. Regarding deeds which have already been through the registration process, tax is levied as supplementary registration income. The receipt is shown on the deed and on an authenticated copy to be registered. Collection can occur at the office where the property is situated.

Requests for registration must be drawn up in duplicate. One copy indicating proof of deposit is transmitted by the registrar to the receiver of revenue. Transfers on behalf of heirs of buildings dependent on an estate will only be carried out on presentation of a certificate showing payment of estate transfer duties issued by the registration receiver. In order for the measures in the above article to be implemented, the certificate must include all buildings mentioned on the estate account. This certificate is issued free of charge. As many certificates will be issued as there are offices where the process must be requested.

In the case of deeds which have already been processed before the coming into force of the present text, the depositing in the land registry can only be carried out after payment of land advertising tax has been made.

Advertising tax cannot be restored except in a case of error by the agents responsible for collection. There is a provision for requesting duties after a time period of five years from the date of deposit of the deed or the document.

## **6.3 Tax on property appreciation of State-owned land**

Increases in value realised by physical or moral persons resulting from the sale, expropriation, or company contribution of land or related land rights accruing to it, which have been the subject of a transfer, either for a fee or free of charge by the land services *less than seven years previously* are liable to a levy of a fixed rate of 20%. This levy which is compulsorily the responsibility of the seller, the person expropriated or the contributor, is deducted notwithstanding any other measures to the contrary. It is recovered in the same way as registration duties.

All measures relating to the payability and realisation of these duties are applicable to it as well as those relating to their monitoring, to penalties, shortfalls or concealments of prices, proceedings, provisions, security, privileges and restitutions.

The taxable increase in value is made up of the difference, on the one hand, between the monetary value of the alienated assets liable to a fee or contributed by a company or, if necessary, the expropriation allowance, on the other hand an amount equal to 110% of the purchase price of this asset or its exchange value to which are added fees, borne at the time this asset is included in the inheritance of the person liable for tax, as well as justified unconsidered factors and possibly rent on equipment.

The unconsidered factors taken into consideration for determining the taxable increase are those relating to the period between the purchase and alienation, on condition that they are not normal operating costs or ordinary maintenance expenses. Costs taken into consideration for determining taxable increases are understood to be true costs relating to the contract which have in fact been borne by the buyer. Costs and unconsidered factors as defined in the preceding articles are not taken into account unless they are justified by all manner of proofs compatible with the written procedure.

When alienation applies to a part only of assets acquired less than seven years previously, the increase in value is determined by taking into account the dividing of the purchase price or the exchange value of all assets previously acquired accruing to the alienated assets.

When alienation involves assets flowing from successive purchases, the taxable increase in value is determined by retaining only a part of the monetary value of the alienated asset or expropriation benefit which applies to the parts bought less than seven years previously.

If alienation refers to bare ownership, the usufruct or any other real estate duty relating to property acquired in full ownership *less than seven years previously*, the taxable increase is determined by taking into account on the one hand the monetary value of the alienated right and, on the other hand, the dividing of the purchase price or the exchange value of the full property accruing to this right. If alienation refers to full ownership of an asset of which only bare ownership, usufruct or any other property right has been bought less than seven years previously, the monetary value to consider is that which bare ownership, usufruct or the previously acquired property rights would have on the date of alienation if it was the only case of alienation. Any other alienation in respect of State-owned land (or

land duties accruing to it) which was bought less than seven years previously, must be contained in a special statement drawn up according to a printed formula supplied by the administration and certified as being true and sincere under penalty of the law and signed by the person liable for tax, his legal representative or his proxy. This statement must contain all the elements that are necessary for calculating the levy or for determining whether it is not due. If necessary, it must be supported by all necessary justification, in conformity with the measures in article 65.6 of the tax code.

The statement must be submitted :

(a) as a general rule, at the time of presentation of the registration procedure of the deed ascertaining alienation;

(b) in a case of expropriation, within a period of one month from the date of payment of the levy or, if need be, notification of the deposit;

(c) in the case of operations referred to in the preceding article which have been carried out prior to the publication date of the present measures, within a period of one month from that date. The relevant revenue office for receiving the statement is the one where the deed ascertaining alienation or the statement referring to it are or have been submitted to the process. The levy must be paid when the statement is submitted. No levy is deducted when its total is less than 1,000 F.

#### **6.4 Tax On Real Estate**

Real estate tax is an annual tax levied for the benefit of the communes and according to existing information as available on the 1st January of the tax year.

Tax is due by the owner of the property whether built or unbuilt. The following are taxable :

1° - bare land cultivated or not and land where buildings have been erected which are not permanently fixed to the ground;

2° - buildings for residential use, professional, commercial or industrial use such as workshops, hangars, warehouses constructed with permanent materials.

The following are exempted :

1° - land and buildings belonging to the State, government authorities or Communes;

2° - land and buildings belonging to public institutions or institutions for general use which do not produce income;

3°- the ground around buildings constituting necessary and immediate dependence of the buildings on the ground, such as courtyards, walkways and gardens within a limit of 500 m<sup>2</sup> ;

4°- buildings belonging to foreign states and used as official residences for diplomatic and consular missions;

5°- buildings erected for purposes of worship.

Local government may exempt totally or partially land used for this type of cultivation and situated within a perimeter determined by the municipal bylaw granting exemption, with the aim of promoting market gardening or fruit production

Buildings for residential use are exempt for a period of two years from the date of completion of the building.

Taxpayers are required to submit a declaration to the receiver of revenue indicating the following for each taxable item before 1 November of each year:

1° - In the case of buildings:

- the address of the building;
- usage (residential, commercial or other);
- surface area.

2° - In the case of land:

- the situation of the land;
- usage (residential outbuilding, cultivated land, land for building, building sites or other);
- surface area.

Faults or inaccuracies in information supplied, will be sanctioned by applying an increase of 50% to duties evaded.

The rate of taxation is determined as follows :

1° - residential houses with outbuildings:

- 5,000 F for a building with a surface area equal to or exceeding 2,000 m<sup>2</sup>;
- 3,000 F for other houses;

2° - residential buildings without outbuildings:

- 1,000 F per building;

3° - in the case of buildings used for a profession which yields an income taxable according to tax on sundry profits:

- 1% of immovables carried over to the balance sheet in the case of a control statement with a minimum of 5,000 F;
- 5,000 F in all other cases;

4° - land for building:

- 5,000 F per section of 1,000 m<sup>2</sup>;

5° - other land:

- 2,000 F per section of 1,000 m<sup>2</sup>.

## **7. Conclusion**

As in the case of preceding reports on land taxation, this report has investigated legislation in force in the Comoros as well as the opinions of Comorian experts in the presentation of this valuable document which gives an exact idea of the fiscal situation of property in the Comoros.