

# JUGGLERS, LAND AND TAXES



By Dr. David B. Ascher, M.A.I.

(£ = one Israeli pound)

**WHAT IS A NOTIONAL SALE?** You don't know? Neither did Mr. Shlomo Cohen, of Ramat Gan, Israel, when he carried out such a notional sale. But it enabled him to save a good many pounds which the Assessing Officer for Income Tax asked him to pay. It happened as follows:—

Mr. Cohen bought a plot of land in Ramat Gan in 1932 for £250. Then he built a house on it for his own purpose and lived in it until 1960. In that year, an appraiser told him that the plot was now worth £31,000. He could have sold the plot for this sum to a contractor, but he decided to become a contractor himself. He pulled down his house and built a block of flats on the land. He sold the flats and earned a handsome profit.

It was just this profit which drew the attention of the Assessing Officer to the "notional sale," that is, the "transfer" of the land from the private person Cohen to the contractor Cohen—which was no transfer at all but a "notional" happening; an imaginary one in the eyes of the Assessing Officer, and a minor change in the entry of Mr. Cohen's own books and accounts.

But the Assessing Officer disregarded the notional sale and said:

"You bought the plot for £250, so I shall allow a deduction of £250 plus cost of construction from the proceeds of sale, and you have to pay Income Tax on the difference."

Meanwhile Cohen learned the advantages of a notional sale to himself (perhaps without understanding the meaning of it). He said: "The notional sale by the private person Cohen to the contractor Cohen took place in 1960. Therefore, it is the "cost price" in 1960, i.e. the value of the land in 1960, £31,000, that ought to be deducted from the proceeds of sale, plus cost of construction." Cohen relied for this argument on *Sharkey v. Wernher* (1955, 3 ALL E.R. 493) in which it was held that in a "notional" sale of property from the owner of a business to himself in his private capacity the price of the object "sold" was the market price at the time, and not the price paid at the time when the "notional vendor" actually acquired it.

Now there is a good weapon against dangerous precedents, and it is called "distinction." The Assessing Officer used this weapon. *Sharkey v. Wernher* applied, in his opinion, only to the case where a businessman sells to himself something in his *private* capacity. It has previously been upheld that the rule laid down in *Sharkey v. Wernher* does not apply to the opposite case; that is when private property was converted into trading stock.

However, on a technical point Judge Raveh, of the Tel-Aviv District Court, decided in favour of Mr. Cohen. The Assessing Officer then appealed to the Supreme Court of Israel.

The judgment of the Israel Supreme Court (CA 221/65, of May 29, 1966) has been translated into English and published in the *Jerusalem Post* of June 28, 1966. The Assessing Officer's appeal was dismissed—by majority decision. The case seemed important enough to submit it to the President and four Justices. And it is important. It was argued, quite correctly, that if the courts were to give recognition to a deviation from the cost price rule, they would have to allow businessmen to juggle with their stock valuations to the detriment of the assessing officer.

Now we come to the true root of the problem and to a wider issue which doesn't concern Israel or Britain only, but the whole of mankind. It is the question of how to make tax laws, and how to apply a tiny bit of wisdom and horse-sense to the field of taxation.

It has been said (Romans 14 : 13) "Let no man put a stumbling-block or an occasion to fall in his brother's way."

This good advice has been given not only because it is immoral to put an occasion in such a way, but also because such brother is *free to avoid the occasion*, and if he does avoid it, the man, or law-giver who put it there, becomes ridiculous. A good many years ago, Professor Pigou stated that a tax built upon such "occasions" has no "announcement value," that is, nobody, neither the taxpayer nor the tax-collecting government, can calculate in advance how much tax ought to be paid and collected, because the taxpayer is free to avoid it. Likewise, Lord Justice Greene has stated that everybody is free to carry out his business purpose in such a way that no payment of income tax will ensue, and that there are nearly always two ways to such an end, one involving income tax and the other not involving it.

To return to our Mr. Cohen: he would be perfectly right in making that "notional" sale—or in refraining from it. He is free to build or not to build, and if a tax is imposed on building or selling, he may give that "occasion"—or not.

The true answer, therefore, is to scrap both Income Tax and Land Increment Duty because they are built on nothing but a host of "occasions." And if the legislator cannot do so, he should at least tax land values, not by way of these taxes, but by land-value tax alone and all these problems would evaporate in a minute! For the

land-value tax is not built upon "occasions." Neither Mr. Cohen nor any other taxpayer can alter the value of the land itself.

Still more: under Land Value Taxation, Mr. Cohen's plot would not rise in *selling value* from £250 to £31,000 within 28 years. It is quite possible that he may become a contractor, but then only to earn an honest penny by building, and not in order to make a quick buck by enjoying the enhancement of his land's value.



## WEST GERMAN HOUSING POLICIES

**E**VERY EUROPEAN COUNTRY has a housing problem and in each country the size of the problem and the method of dealing with it is different. The contrast between West German and British housing policy since the war for example is to be found in the fundamentally different approaches of the two countries. In Germany, there are no publicly owned houses; in England nearly a third of the total stock of houses is vested in the public sector. Both countries still have considerable difficulties to face in meeting housing needs and it is therefore not surprising to find that both are confronted with a common land problem.

According to Miss Della Nevitt\* (Lecturer in Social Administration, L.S.E.) who has recently visited the Federal Republic, building costs in Hamburg rose by a multiple of four during the period 1950-1960 while land prices rose by a multiple of 10. High house prices in Germany as far as Miss Nevitt could determine are due to the high price paid for land. The German taxation and subsidy systems are geared completely to the encouragement of private house building; the net effect is that most of the tax concessions have tended to be capitalised by the owners of building sites. Cash grants to lower income savers, income tax relief for building society investors, tax relief for companies providing homes for their employees all add up to higher land values. On the credit side, however, the Germans have two measures which positively encourage housing development; a local land tax on vacant sites and relief from local taxes on the building value assessments. In this way pure land speculation is discouraged and improvements are not penalised. Nevertheless, the land tax rate is relatively low and its positive effects to date have not been great enough to keep pace with general inflation and rapidly rising land prices.

It is perhaps comforting to know that the German subsidy system tends to produce anomalous conditions in a predominantly private market which are not

dissimilar from those in the English municipal sector. According to one observer 70 per cent. of those who because of need should be living in subsidised accommodation are not able to do so because of shortage. Miss Nevitt considered that probably 75 per cent. of those who do enjoy subsidised housing have no need to obtain as much financial help as they get. Many such families are easy to find in the older cost-rent housing association homes. In this kind of accommodation where associations are assisted by loans and grants and profit is limited to four per cent. on capital, rents are fixed for a period of fifty years. This has given rise to people paying vastly different rents for comparable types of homes. A monthly rental of a flat built in 1950 is 60 D.M., one built in 1960 is 130 D.M. and one built in 1966 is 250 D.M. While in Germany the long term policy of introducing market rents is seen as an integral part of social policy, cash subsidies to needy families and other forms of relief to the not-so-needy ones are given to meet the rising costs while endeavours are made to build up the total stock of houses. With rising land prices the Germans are on an escalator as perilous as their English counterparts.

Miss Nevitt clearly sees the German problem thus: "But despite prodigious efforts to build more houses, the capital market has expanded more rapidly than houses have been built. This has had the inevitable consequence of raising the price of land, and the rather wasteful use of land by the construction of small dwellings has accentuated the shortage of land around all big cities."

While our own housing policies have to date had little more success, if any, than those of Germany, we should certainly heed Miss Nevitt's warning:

"We have different problems and different possibilities; and it would be a pity if at this stage in our housing history we were to be panicked into introducing a subsidy system which seems generous, but in fact only results in pushing up house and land prices."

One thing is certain: the Germans could improve upon their situation if they were prepared to place more emphasis on their land tax structure and steeply increase the tax rates. In Britain we still need to convince the politicians of the benefits that can be derived from even a levy on vacant land.

### FROM *The Times* 1866

**T**HE FIRST duty of an Indian financier at present is not so much to devise ways of expending money, as juster ways of obtaining it. The bulk of the Revenue is derived from the Land Tax, Opium, the Customs, Excise, and the Salt Duties. The Land Tax, being in fact the rent of Land, presses unequally upon no class, but all the other branches of Revenue are fed by contributions taken from the poorest ryot, out of all proportion to his means, and the richer classes in India almost escape their share of the common burden. It is impossible not to see the impropriety of maintaining a fiscal system so unequal in its incidence.

\* "Housing in West Germany." A series of three articles in the *Local Government Chronicle*.