

CHAPTER-IV: STAMP DUTY AND REGISTRATION FEES

4.1 Tax administration

Registration department is under the control of Principal Secretary, Taxes at Government level and the Inspector General of Registration is the head of the Department. Instruments affecting immovable property are to be presented for registration in the office of Sub Registrar within whose jurisdiction the whole or some portion of the property is situated.

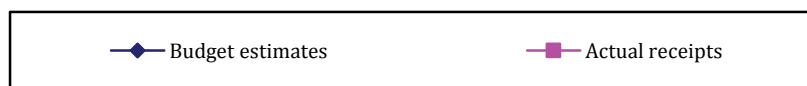
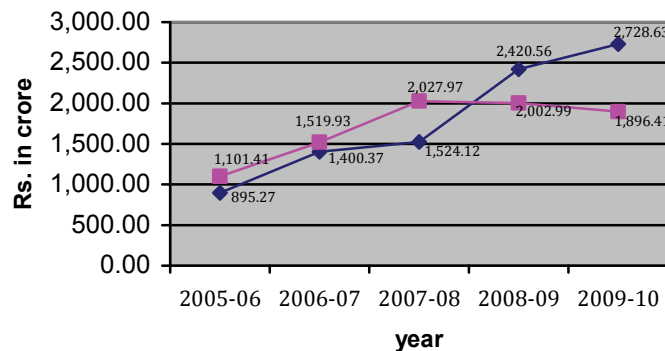
4.2 Trend of receipts

Actual receipts from Stamp duty and Registration fee during the last five years (2005-06 to 2009-10) along with the budget estimates during the same period is exhibited in the following table and graph.

(Rupees in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2005-06	895.27	1,101.41	(+) 206.14	(+) 23.03	9,778.62	11.26
2006-07	1,400.37	1,519.93	(+) 119.56	(+) 8.54	11,941.82	12.73
2007-08	1,524.12	2,027.97	(+) 503.85	(+) 33.06	13,668.95	14.84
2008-09	2,420.56	2,002.99	(-) 417.57	(-) 17.25	15,990.18	12.53
2009-10	2,728.63	1,896.41	(-) 832.22	(-) 30.50	17,625.02	10.76

Budget estimates and Actual receipts



We noticed that except in 2006-07 there was significant variation between budget estimates and actual receipts.

We recommend the department to streamline the budgeting process to make more realistic budget estimates.

4.3 Cost of collection

The gross collection of revenue receipts under the head Stamps and registration fees, expenditure incurred on collection and the percentage of expenditure to gross collection during 2005-06 to 2009-10 alongwith the all India average percentage of expenditure on collection to gross collection for relevant years are mentioned below:

Year	Collection	Expenditure on collection of revenue	Percentage of expenditure to gross collection	All India average percentage
	(Rupees in crore)			
2005-06	1,048.03	46.81	4.47	2.87
2006-07	1470.73	59.06	4.02	2.33
2007-08	1,946.08	77.64	3.99	2.09
2008-09	1,931.75	82.97	4.30	2.77
2009-10	1,812.89	100.70	5.55	Not available

We noticed that the expenditure on collection in respect of stamp duty and registration fees was higher than the all India average.

We recommend the Government to examine the reasons for such high costs of collection and make efforts to bring it down.

4.4 Working of internal audit wing

Internal audit wing at the zone and district level is working under the Inspector General of Registration (IGR). The District Registrar (DR) (Audit) is in charge of internal audit in Sub Registry level. The department has not prepared a separate internal audit manual. The Finance Officer monitors the internal audit wing with the assistance of seven staff at headquarters level and 14 DRs (Audit) with two staff at each district. During the year 2009-10, inspection of 14 DROs and 14 SROs were fixed as target for the IGR and DR (Audit) respectively.

The Kerala Registration Manual stipulates inspection of SROs by the Registrar twice a year. Considering the total number of 14 DROs and 309 SROs in Kerala, the target fixed for inspection was much lower. As per the information given by the department, 5,172 paragraphs involving ₹ 1.02 crore relating to 1,819 internal audit inspection reports remained outstanding at the end of March 2010.

During 2009-10, IAW had issued 464 inspection reports involving money value of ₹ 29.30 lakh which is very low compared to revenue of ₹ 1,896.41 crore generated. Remedial action and the amount, if any collected based on the performance of internal audit wing are not available.

4.5 Results of audit

We test checked the records of 161 units relating to registration department. We detected underassessment of tax and other irregularities involving ₹ 9.04 crore in 258 cases which fall under the following categories:

(Rupees in crore)

Sl. No.	Categories	No. of cases	Amount
1.	Undervaluation of documents	228	4.27
2.	Short levy due to non-registration of lease deeds	1	3.18
3.	Other lapses	29	1.59
	Total	258	9.04

The department accepted undervaluation and other deficiencies of ₹ 3.02 crore in 176 cases, of which 72 cases involving ₹ 1.72 crore were pointed out in audit during the year 2009-10 and the rest in earlier years. An amount of ₹ 3.29 lakh was realised in 54 cases during the year 2009-10. A few illustrative observations involving ₹ 4.37 crore are mentioned in the succeeding paragraphs.

4.6 Audit observations

We scrutinised the records of various registration offices and found several cases of non-compliance of the provisions of the Indian Stamp Act 1899 and Kerala Stamp Act 1959 (KS Act) and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the Sub-Registrars (SRs) are pointed out in audit each year but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system including strengthening of the internal audit.

4.7 Non-compliance of provisions of Act/Rules

The provisions of the KS Act and Registration Rules require:-

- i) initiating action in cases where documents were undervalued; and*
- ii) correct classification of documents.*

We noticed that the SRs did not observe some of the above provisions at the time of registration of the documents. This resulted in short levy/evasion of stamp duty of ₹4.37 crore as mentioned in the succeeding paragraphs.

4.7.1 Short levy due to non-registration of lease deeds

(PWD (NH) and Roads and Bridges Development Corporation of Kerala (RBDCK), Greater Cochin Development Authority (GCDA) and Kannur Municipality; March 2010)

Registration of documents relating to leases of immovable property is compulsory as per Section 17(d) of Registration Act, 1985. Lease of immovable property including instruments by which tolls of any description are let would come under lease as defined in the Indian Stamp Act/Kerala Stamp Act. Stamp duty and registration fees are leviable on the premium received as well as amount of average annual rent.

We conducted scrutiny of records of 28 contract agreements in the above offices in March 2010 for collection of tolls from year to year. We found that the documents were executed on non-judicial stamp paper of ₹ 50/100. These agreements were covered by the Registration Act and should have been registered with the Sub-Registry Offices. The non-registration of the lease agreements by the offices of PWD/RBDCK/ GCDA/municipality

had resulted in short levy of stamp duty and registration fees of ₹ 3.18 crore.

We brought the matter to the attention of the Principal Secretary to the Government and Chief Engineer (NH) in March 2010. We have not received any reply so far (December 2010).

4.7.2 Loss of revenue due to erroneous order

(District Registrar, Thrissur; November 2009)

Non-testamentary instruments which purport or operate, to create, declare, assign, limit or extinguish whether in present or in future any right, title or interest, whether vested or contingent, of the value of one hundred rupees and above shall compulsorily be registered as per Section 17(1) (b) of the Registration Act, 1908. Any instrument comprising or relating to formal distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments each comprising or relating to one of such matters, would be charged under the Act as per Section 5 of the Kerala Stamp Act.

We observed the following facts in respect of an impounded document viz. P1/2007. Vendor (i) who was the absolute owner of 1.3842 hectares of property executed an unregistered agreement in February 2007 for sale of this property to vendor (ii) within the validity period of July 2007. Before this transaction of sale materialised, vendor (i) and vendor (ii), jointly executed a sale deed vide document number P1/2007

of SRO, Ayyanthole for a consideration of ₹ 21.37 crore. The consideration was apportioned between vendor (i) for ₹ 13.67 crore and vendor (ii) for ₹ 7.69 crore. When this sale deed was presented for registration in June 2007, the Sub-Registrar, Ayyanthole impounded the document on the opinion that an earlier hidden transaction of making vendor (ii) a co-owner in the property with share value of ₹ 7.69 crore was evident from the recital of the document which attracted stamp duty at 13.5 *per cent* of that value. The matter finally came up before the Commissioner of Land Revenue for a final decision after the decision of District Registrars in favour of revenue. The Commissioner of Land Revenue had concluded that vendor (ii) had got possession of the property described in the document as he had made developments in the property and the agreement dated 1 February 2007 can be treated as a conveyance of value ₹ 7.69 crore. Further he had decided that the deemed sale value involved in the transfer of right by vendor (i) to vendor (ii) shall also be included in the final transaction conducted in this document. But contrary to the above conclusion, he ordered that adequate consideration is depicted in the document and the stamp duty paid is sufficient. This ruling is erroneous as it was contrary to his own findings and against provisions of Section 17(1) (b) of Registration Act and Section 5 of Kerala Stamp Act referred earlier. This resulted in short levy of stamp duty and registration fee of ₹ 1.19 crore.

We pointed out the matter to the department in November 2009 and reported to the Government in February 2010. We have not received their reply so far (December 2010).

4.7.3 Undervaluation of property to avoid payment of stamp duty and registration fee

4.7.3.1 (SRO, Trikakara; December 2009)

Section 45 B of the KS Act stipulates that SR may refer to District Collector those instruments in which the executant has not truly set forth the consideration. Further the Collector may, *suo motu*, call for any instruments and determine the consideration and duty payable, within two years of registration. As the Government has not fixed any fair value for land in the State, wide scale undervaluation of documents is taking place all along the State.

We noticed that a builder had acquired 34.246 cents of land for ₹ 30.64 lakh in October 2008 and sold the same property without improvement with in one month for ₹ 5.48 crore. Thus, the first document was undervalued to avoid payment of stamp duty and registration fee. The extent to which the same was undervalued could not be established due to non-fixation of fair value of land by the Government. The SR also did not report the case to the

higher authorities as undervaluation case.

We also noticed such cases of undervaluation in other SR offices as mentioned in paragraphs 4.7.3.2 to 4.7.3.5 discussed below.

4.7.3.2 (SRO, Thalayolaparambu; October 2009)

We noticed that of 72.99 *are* of land purchased for ₹ 54 lakh by paying stamp duty and registration fee of ₹ 6.48 lakh in November 2007 was sold for ₹ 1.50 crore in February 2008.

4.7.3.3 (SRO, Kondotty; December 2009)

We noticed that an executant sold 58.12 cents of land for a consideration of ₹ 30.50 lakh in May 2008. But on the same day the executant sold another plot measuring 16 cents adjacent to the above property having common boundary for ₹ 27 lakh.

4.7.3.4 (SRO, Rajapuram; March 2009)

We noticed that the details of four sale deeds of landed property lying in the same survey number and adjacent to one another are as given below:

Document No.	Date of sale deed	Area (cent)	Consideration in ₹	Rate per cent ¹⁶
2872/06	22 December 2006	300	7 lakh	2,333.33
2873/06	22 December 2006	316	7.5 lakh	2,373.42
2935/06	22 December 2006	190	9.7 lakh	5,105.26
2645/07	12 December 2007	373	7.6 lakh	2,037.53

¹⁶ Cent denotes the measurement of land equal to 435.6 sq.ft.

As such the executant undervalued the properties in the document nos. 2872/06, 2873/06 and 2645/07 when compared to document number 2935/06 to the extent of ₹ 28.89 lakh.

After we pointed out the mistake, the department stated (between July 2009 and March 2010) that the document number 2935 comprising of 190 cents of landed property with a small house contains rubber and coconut trees with better yield and hence the price of this property cannot be compared to that of the undervalued properties and that the transaction having highest value is not a reference for valuing other transactions. The reply is not tenable as there is no mention in the document about rubber trees and coconut trees as well as their yield. Moreover, the value of the house was valued separately in the document. We have not received any further information from the department (December 2010).

4.7.3.5 (SRO, Malayinkizhu; December 2009)

A sale deed for 12.11 *are* of land was registered vide a document in April 2008 for a consideration of ₹ 2.70 lakh. However, we found that 11.34 *are* of land of the above property was sold in June 2008 vide two other documents for a consideration of ₹ 22.40 lakh.

We pointed out these cases to the department between November 2009 and January 2010, we have not received their reply except in case at paragraph 4.3.7.4 above. We reported these cases to the Government between February 2009 and April 2010. We have not received their reply (December 2010).

We have pointed out such cases in our earlier Audit Reports. However, the Government is yet to fix the fair value of the land.

We recommend that the Government may fix the fair value of land to avoid loss of revenue.