

Chapter-VI

Stamp Duty and Registration Fees

6.1 Results of audit

Test check of the records of 97 out of 233 units related to Stamp duty and Registration fees during the year 2013-14 indicated non realisation of revenue due to inordinate delay in finalisation of cases, short realisation of Stamp duty and Registration fees, incorrect exemption and other observations involving ₹ 356.46 crore in 3,139 cases which fall under the following categories in the following **Table-6.1**.

Table - 6.1

(₹ in crore)			
Sl. No.	Categories	No. of Cases	Amount
1.	2.	3.	4.
1	Performance Audit on “Assessment and Levy of Stamp duty and Registration fees”	1	85.46
2.	Loss of revenue due to inordinate delay in finalisation of cases	874	10.58
3.	Short realisation of Stamp duty and Registration fees due to undervaluation of properties/incorrect exemption	590	11.88
4.	Incorrect exemption from payment of Stamp duty and Registration fees	131	94.00
5.	Loss of revenue due to misclassification of instruments	68	17.54
6.	Other observation	1475	137.00
Total		3139	356.46

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 41.43 crore in 1,794 cases, which were pointed out in audit during the year 2013-14 and reported realisation of ₹ 3.35 crore in 462 cases.

A Performance Audit on “**Assessment and Levy of Stamp duty and Registration fees**” involving revenue impact of ₹ 85.46 crore is mentioned in succeeding paragraphs.

6.2 Performance Audit on “Assessment and Levy of Stamp Duty and Registration Fees”

Highlights

There was short levy of Stamp duty and Registration fees of ₹ 40.13 crore on instruments of lease deeds of mines due to incorrect determination of average annual royalty.

(Paragraph 6.2.10)

Inaction on the part of the Department to ensure registration of lease deeds of mobile towers led to short levy of Stamp duty and non levy of Registration fees of ₹ 13.92 lakh in 44 cases.

(Paragraph 6.2.11)

Incorrect application of rates on instruments of agreements related to development of land by the Department led to short levy of stamp duty of ₹ 33.63 lakh.

(Paragraph 6.2.12)

Incorrect determination of market value and non-finalisation of referred cases led to short levy of Stamp duty and Registration fees of ₹ 13.69 crore.

(Paragraph 6.2.13)

There was short levy of Stamp duty and Registration fees of ₹ 1.22 crore on instruments of power of attorney and due to misclassification of documents.

(Paragraph 6.2.14 and 6.2.15)

There was short realisation of Stamp duty and Registration fees of ₹ 21.49 lakh by selling land belonging to Scheduled Tribe persons for consideration of ₹ 3.60 crore instead of ₹ 11.24 crore to non Scheduled Tribe Persons. This also resulted in failure in safeguarding the interests of Scheduled Tribe Persons by depriving them of land with market value of ₹ 7.64 crore.

(Paragraph 6.2.17)

There was non/short realisation of revenue of ₹ 9.69 crore due to non-registration of instruments of development agreement and short/non levy of Stamp duty and Registration fees in 24 cases.

(Paragraph 6.2.18)

There was short/non levy of Stamp duty and Registration fees of ₹ 10.23 crore due to undervaluation of development expenditure on mortgage deeds of developing land in 99 cases.

(Paragraph 6.2.19)

6.2.1 Introduction

Stamp duties other than duties or fees collected by means of judicial stamps is a subject included in the Concurrent List of the Seventh Schedule of the Constitution of India. The Indian Stamp Act, 1899 and the State Acts impose duty on various instruments at the rates specified therein. Such duties are paid by executors of instruments by either using impressed stamp paper of proper denomination or by affixing stamps of proper denomination. The State Governments have made rules for the purpose of the Act by virtue of powers vested in them. These rules lay down the detailed procedure for determination and collection of Stamp duty. The Indian Registration Act, 1908 and rules made thereunder by the State Governments, broadly outline the system of assessment and collection of Registration fees. The Sub-Registrar or the registering authority examines the documents presented before them to see that they have been presented within the time allowed and that the instruments have been properly stamped as required under the Indian Stamp Act.

The revenue of the Department has gone up from ₹ 1783.15 crore in 2009-10 to ₹ 3389.99 crore in 2013-14. This increase in receipts led to the decision of conducting this Performance Audit.

6.2.2 Organisation Set up

Registration and Stamps Department is under the Commercial Tax Department headed by the Principal Secretary. The Inspector General, Registration and Superintendent of Stamps, Madhya Pradesh (IGR) is the head of the Department. Two Joint Inspectors General, Registration (JIGR), one Deputy Inspector General Registration (DIGR), one Senior District Registrar (SDR), one District Registrar (DR) and one Accounts officer (AO) are deployed at the headquarters. There are 50 Registration Districts notified in the State. There is one SDR in 15 Registration districts, 35 DRs in the remaining districts and 233 Sub Registrar (SR) offices in the State. The SR office is the place where all the registration works take place and having the maximum interface with the common public. Collector is the head of Registration administration at the district level. The role of DR is to guide SRs in their day-to-day function, pass orders in cases of valuation of stamps required, penalty, refund and inspection of SR and public offices where Stamp duty is involved.

6.2.3 Scope of Audit and methodology

The Performance Audit on “Assessment and levy of Stamp duty and Registration fees” was conducted between April and July 2014 covering the period from 2009-10 to 2013-14 and selected 45¹ out of 233 SR offices. The

¹ Bhikangaon, Bhopal-I, Bhopal-II, Bhopal-III, Bina, Chachoda, Chhindwara, Dabra, Depalpur, Dhar, Guna, Gunnaur, Gwalior-I, Gwalior-II, Hoshangabad, Indore-I, Indore-II, Indore-III, Indore-IV, Jabalpur-I, Jabalpur-II, Kasarawad, Katni, Khachrod, Khargone, Khurai, Maheshwar, Mahidpur, Maihar, Mhow, Nagda, Narsinghpur, Pandurna, Panna, Raghogarh, Sagar, Sanver, Satna, Seoni Malwa, Sihora, Singroli, Sogahpur, Tarana, Ujjain and Vidisha.

selection of units was done through simple random sampling method. The audit objectives, criteria and methodology were discussed with Inspector General, Registration and Superintendent of Stamps, Madhya Pradesh in the Entry Conference held in March 2014. The draft Performance Audit report was forwarded to the Government and Department in August, 2014 and discussed with the Principal Secretary, Commercial Tax Department, in the Exit Conference held in August, 2014. Views of the Government have been incorporated suitably in the relevant paragraphs.

6.2.4 Audit objectives

The Performance Audit was conducted to assess whether:

- Internal control mechanism of the Department was effective and sufficient systems were in place to examine that the documents have been presented within prescribed time and the instruments have been properly stamped before their registration to safeguard collection of duty and fee on instruments;
- The provisions of the Act/Rules and departmental instructions related to registration of different deeds/instruments, determination of market value and classification of documents are adequate and enforced accurately to safeguard revenue of the state; and
- Departmental inspections were being conducted regularly as per their prescribed roster.

6.2.5 Audit criteria

The audit criteria were derived from the following:

Indian Stamp Act, 1899;

The Registration Act, 1908;

Indian Stamp (Madhya Pradesh Prevention of Undervaluation of Instruments) Rules, 1975;

Madhya Pradesh Preparation and Revision of Market Value Guidelines Rules, 2000;

Madhya Pradesh Stamp Rules, 1942;

Madhya Pradesh Municipal Corporation Act, 1956;

Madhya Pradesh Municipalities Act, 1961;

Madhya Pradesh *Panchayat Raj Adhinyam*, 1993; and

Madhya Pradesh *Upkar Adhinyam*, 1982.

Circulars and orders of the Government of Madhya Pradesh, issued from time to time.

The relevant provisions of the Acts/Rules and orders have been cited in the paragraphs concerned.

6.2.6 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Registration Department in providing necessary information and records for audit.

6.2.7 Trend of receipts

Actual receipts from Stamp duty and Registration fees during the period 2009-10 to 2013-14 along with the total tax receipts during the same period are exhibited in the following **Table-6.2**.

Table - 6.2

(₹ in crore)						
Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual tax receipts vis-a-vis total tax receipts
1.	2.	3.	4.	5.	6.	7.
2009-10	1560.00	1783.15	(+) 223.15	(+) 14.30	17272.77	10.32
2010-11	1900.00	2514.27	(+) 614.27	(+) 32.33	21419.33	11.74
2011-12	2000.00	3284.41	(+) 1284.41	(+) 64.22	26973.44	12.18
2012-13	3200.00	3944.24	(+) 744.24	(+) 23.26	30581.70	12.90
2013-14	4000.00	3389.99	(-) 610.01	(-) 15.25	32342.12	10.52

(Source: Budget estimates and Finance Accounts of the Government of Madhya Pradesh)

It may be seen that in the year 2013-14, Department failed to achieve the budgetary targets. Though the percentage of variation in 2012-13 was (+) 23.26 *per cent*, but in 2013-14, it was reduced by ₹ 610.01 crore which was 15.25 *per cent* of budget estimates. Department attributed this drop in collection of revenue to the order issued by Hon`ble Madhya Pradesh High Court (Gwalior Bench), on PIL (July 2010) and also due to worldwide recession, fewer number of documents were got registered.

The reason assigned to this drop in collection of revenue is not convincing as there were several other causes which have duly been highlighted in the system and compliance issues of this Report.

6.2.8 Arrears of revenue

Position of arrears of Stamp duty and Registration fees during the period 2009-10 to 2013-14, as furnished by the Registration Department, is given in the following **Table-6.3**.

Table - 6.3

(₹ in crore)					
Year	Opening balance	Addition during the year	Total	Recovery during the year	Closing Balance
1.	2.	3.	4.	5.	6.
2009-10	62.74	19.99	82.73	15.63	67.10
2010-11	67.10	23.35	90.45	18.28	72.17
2011-12	72.17	19.46	91.63	19.25	72.38
2012-13	72.38	33.44	105.82	20.50	85.32
2013-14	85.32	60.27	145.59	30.68	114.91

(Source: Information furnished by the Department)

There was no time bound programme with the Department to reduce the arrears.

We recommend that the Department should take appropriate steps to reduce the arrears by fixing the target for recovery for all field units.

6.2.9 Audit observations

The Performance Audit revealed a number of deficiencies in the system and compliance and also in the provisions of the Acts and Rules. Some of the important points are discussed in the succeeding paragraphs.

6.2.10 Short levy of Stamp duty and Registration fees on instruments of lease deeds of mines

6.2.10.1 Incorrect determination of average annual royalty

According to the instructions of Government of Madhya Pradesh (March 1993), Mineral Resources Department, Stamp duty and Registration fees are leviable on average annual royalty on new mining lease to be calculated on the basis of mineral to be extracted as shown in the application for mining lease or the production given in the mining plan, whichever is higher.

During scrutiny of documents registered in Sub Registrar office Satna and Singroli, and information collected from respective District Mining offices, we noticed that while sanctioning mining leases for a period of 20 to 30 years, lease deed was executed /registered (between September 2011 and March 2014) on the basis of the average production of the first five years as shown in the mining plan instead of the average of the proposed production for the complete lease period as per the instruction *ibid*. The lessee of limestone and coal had paid Stamp duty and Registration fees amounting to ₹ 54.23 crore as against the leviable amount of ₹ 85.97 crore. This resulted in short levy/recovery of Stamp duty and Registration fees of ₹ 31.74 crore. In another case at SR office in Sohagpur, it was noticed that cess at the rate of five *per cent* on Stamp duty was not levied. This resulted in short realisation of revenue amounting to ₹ 16.04 lakh (**Annexure-XIV**).

After we pointed this out, Sub Registrar, Singroli and Sohagpur stated (February 2014 and March 2014) that action for recovery would be taken and Sub Registrar, Satna stated (June 2014) that the case was finalised by Collector of Stamps, accordingly the documents were registered.

The reply of Sub Registrar, Satna was not acceptable as Collector of Stamps should have calculated the duty on the average production for the complete lease period instead of average production for the first five years.

However, during Exit Conference, the Principal Secretary, Commercial Tax Department stated (August 2014) that the matter would be discussed with mining Department and MPSMCL for levy of stipulated Stamp duty / Registration fees.

6.2.10.2 Non registration of contract lease by sub-lessees of sand mines

According to the instructions issued by Mineral Resources Department, Government of Madhya Pradesh in March 1993, full amount of contract money shall be treated as premium for the purpose of levy of Stamp duty. Further, as per Article 33(b), Schedule 1A of Indian Stamps Act, 1899, when the lease is granted for a premium then same duty as a conveyance is leviable. Besides, as per Indian Registration Act, 1908 Registration fees shall be levied at the rate of 75 per cent of Stamp duty.

Information collected from District Mining Offices Gwalior and Hoshangabad regarding leases sanctioned to Madhya Pradesh State Mining Corporation Limited (MPSMCL) indicated that the corporation entered into an agreement with six contractors for mining lease in March 2013 for the period of two years for ₹ 94.09 crore. Stamp duty of ₹ 4.70 crore and Registration fees of ₹ 3.53 crore was leviable and recoverable in this contract. MPSMCL, however, executed a contract on a stamp paper of ₹ 100 in each case. This resulted in a short realisation of ₹ 8.23 crore (**Annexure-XV**).

Interestingly, even though MPSMCL is a Government organisation, which entered in the sub-lease agreement with private contractors, it failed to safeguard the revenue interest of the Government.

During Exit Conference, the Principal Secretary, Commercial Tax Department stated (August 2014) that the matter would be discussed with mining Department and MPSMCL for levy of stipulated Stamp duty / Registration fees.

We recommend that the Government may consider prescribing a periodic return by the public offices to the DRs which may contain details of number of documents presented before them and those not found duly stamped to safeguard the leakage of leviable Stamp duty.

6.2.11 Non execution/registration of lease deed of mobile tower

Article 33 of Schedule 1-A of the Indian Stamp Act, 1899, provides for levy of Stamp duty on lease deeds at the rates prescribed therein. Section 17 of the Registration Act, 1908, provides that registration of lease deed for any term exceeding one year is compulsory. Section 33 of the IS Act provides that it would be obligatory on every public officer to impound cases which are

unduly stamped and initiate action under Section 38 of the Act. As per Para 469 of *Karyapalik Anudesh* (executive instructions) of Registration Department, the DR is required to inspect the records of public offices to see whether Stamp duty was being paid correctly and the documents which require registration are submitted in SR offices.

The Information collected from four municipal corporations /municipalities² revealed that in total 455 cases, no objection certificate was issued by Nagar Nigam/Nagar Palika for installation of Mobile Towers. In these cases, the land for installation of mobile tower was taken by the mobile company on lease from the land owners for the period ranging between one to 30 years. These lease deeds were required to be compulsorily registered under Section 17 of the Registration Act, 1908. We found that these lease agreements were not registered and executed on stamp paper of ₹ 100 each. Out of 455 cases, audit test checked 44 cases produced before audit. This resulted in short levy of Stamp duty and non levy of Registration fees of ₹ 13.92 lakh in these cases. It is important to mention that the inspection of Nagar Nigam, Hoshangabad was conducted by DR but no objection related to registration of lease deeds of mobile towers was pointed out. DR, Chhindwara stated (June 2014) that inspection of municipalities was included in the roster of DR, but no inspection was conducted, while DR, Jabalpur did not provide information regarding inspection of public offices.

During the Exit Conference, the Principal Secretary, Commercial Tax Department stated (August 2014) that, matter would be sorted out in consultation with Municipal Corporations / Municipalities.

We recommend that necessary co-ordination among the Department for timely exchange of information from other bodies/Departments must be ensured to safeguard against leakage of revenue.

6.2.12 Incorrect application of rates

Article 5(d) of Schedule 1-A under the Indian Stamp Act, 1899 (IS Act) provides that Stamp duty at the rate of two *per cent* of market value of land was leviable up to 31 March 2011 on the instruments of agreements related to the development of land for construction of building on a land by a person other than the owner or lessee of such land. Article 5(d) was amended with effect from 1 April 2011, according to which the Stamp duty at the rate of three *per cent* on the market value equal to the estimated cost of the proposed construction or development as mentioned in the agreement, was leviable. Further, the State Government reduced the rate of Stamp duty to one *per cent* with effect from 1 April 2012 on instruments of agreement related to development of land for the purpose of development of residential colony.

In SR Offices Chhindwara and Gwalior-I, we test checked 1,650 instruments out of a total of 16,483 instruments and found that in five instruments of builder agreements registered between August 2012 and November 2013 between land owner and builder for construction of building, the estimated cost of construction mentioned in the agreements was ₹ 16.81 crore and Stamp duty of ₹ 50.44 lakh was leviable thereon at the rate of three *per cent*. We however noticed that Stamp duty of ₹ 16.81 lakh was

² Chhindwara, Jabalpur, Narsinghpur and Pandhurna

levied at the rate of one *per cent* on the estimated cost of construction mentioned in the agreements. This resulted in short levy of Stamp duty of ₹ 33.63 lakh due to incorrect application of rates.

After we pointed this out, Sub Registrar, Chhindwara stated (June 2014) in respect of one case that Stamp duty at the rate of one *per cent* was leviable on development agreement while in remaining four cases Sub Registrar, Gwalior stated (July 2014) that cases would be referred to Collector of Stamps for determination of market value of the property and duty leviable thereon.

The reply of Sub Registrar, Chhindwara was not acceptable as these agreements were executed for construction work where duty at the rate of three *per cent* was leviable.

Further, during the Exit Conference, the Principal Secretary, Commercial Tax Department stated (August 2014) that a detailed inquiry would be made.

6.2.13 Incorrect determination of market value/non-finalisation of cases

Under Section 47-A of the Indian Stamp (IS) Act, 1899, if the Registering Officer, while registering any instrument finds that the market value of any property set forth was less than the market value shown in the market value guidelines, he should before registering such instrument, refer the same to the Collector for determination of the correct market value of such property and duty leviable thereon. Further, according to the departmental instructions of July 2004, a maximum period of three months has been prescribed for disposal of cases referred to the Collector by the Sub-Registrar (SR) offices for determination of correct market value of properties and duty leviable thereon. Besides, market value of the property is calculated according to rates and provisions prescribed in the market value guidelines.

6.2.13.1 We observed in 13 Sub Registrar offices³ from the register of cases referred by Sub Registrars that total 668 cases were referred by the Sub Registrars to the Collector of Stamps between April 2009 and March 2014 for determination of the market value of the properties. Out of these, 353 cases had not been finalised, though period up to 57 months had already elapsed beyond the expiry of the prescribed period. In these cases, the short levy of Stamp duty and Registration fees of ₹ 12.30 crore was recoverable on the basis of market value worked out by the Sub Registrars.

After we pointed out the cases the respective SRs stated (between March and July 2014) that the Collector of Stamps would be requested for early disposal of the cases.

During the Exit Conference, the Principal Secretary, Commercial Tax Department stated (August 2014) that a detailed inquiry would be made.

We recommend that the Government should evolve a monitoring mechanism, by which it may be ensured that there should not be any unreasonable delay by DRs in deciding the cases under Section 47-A.

³ Bhopal-I, Bhopal-II, Bina, Chhindwara, Depalpur, Gunnor, Gwalior-I, Indore-II, Indore-III, Jabalpur-I, Khurai, Satna and Sohagpur.

6.2.13.2 In eight SR offices⁴ we test checked 8,247 instruments out of a total of 81,895 instruments and found that in 47 instruments registered between June 2010 and March 2014, the market value determined on the basis of guidelines issued by IGR for the respective year, was ₹ 56.32 crore against the registered value of ₹ 38.03 crore. The SRs did not refer these instruments to the Collector for determination of the correct value of the properties and duty leviable thereon. This resulted in short levy of Stamp duty and Registration fees of ₹ 1.32 crore as mentioned in the **Table-6.4**.

Table - 6.4

(₹ in lakh)					
Sl. No.	No. of SR offices/ instruments	Period of registration	Nature of irregularities	Stamp duty and Registration fees Leviable/ Levied	Short levy of Stamp duty and Registration fees
1.	2.	3.	4.	5.	6.
1.	<u>7</u> 25	Between 6/2010 and 2/2014	Non observance of provisions prescribed in guidelines regarding land properties situated within Municipal limit/ urban specified villages	<u>252.86</u> 174.67	78.19
2.	<u>4</u> 9	Between 4/2013 and 3/2014	Non observance of provisions prescribed in guidelines regarding property situated road side or corner plots	<u>88.22</u> 56.75	31.47
3.	<u>6</u> 13	Between 11/2010 and 2/2014	Non observance of provisions prescribed in guidelines regarding House/ plot properties	<u>87.20</u> 64.78	22.42
Total	<u>17</u> 47			428.28 296.20	132.08

After we pointed out the cases, three SRs⁵ stated (between April and July 2014) in respect of nine cases that the valuation of properties was correct and SR, Indore-III stated (May 2014) in respect of four cases that duty was levied correctly as per rules. The reply is not tenable as it is not in conformity with the facts and rules as in some cases either valuation of land was not done as per the rates given in guideline or other considerations which affect valuation of land such as piece of land situated in corner or value of tube wells and boundary wall were not considered for valuation of land. In remaining 34 instruments, the respective SRs stated (between March and July 2014) that necessary action would be taken and cases would be referred to the Collector of Stamps.

During the Exit Conference, the Principal Secretary, Commercial Tax Department stated (August 2014) that a detailed inquiry would be made.

⁴ Bhopal-I, Bhopal-III, Gwalior-I, Indore-III, Narsinghpur, Panna, Satna and Sohagpur (Shahdol).

⁵ Bhopal -I, Bhopal -III and Gwalior -I.

6.2.13.3 The registration Department issues annual guidelines to determine the market value of the immovable property. Paragraph 4 of the said guidelines issued by District Registrar, Chhindwara, contains provision for determination of market value of agriculture land in urban area and villages adjacent thereto. Sub-Para 4.3 has stipulated provisions to valuate rates for municipalities and specified (*Vishista*) villages.

During scrutiny of documents related to additional Book –I (which contains permanent record of typed / printed instruments related to transfer of immovable property) in Sub-Registrar, Pandhurna, for the period 2009-10 to 2013-14, it was noticed that the documents related to *Vishista* villages were not duly stamped as per the rates prescribed in the Paragraph 4 of the guidelines. These provisions were not invoked in 15 cases out of 215 test checked during audit, which resulted in a short realisation of Stamp duty and Registration fees amounting to ₹ 6.61 lakh. All the cases related to *Vishista* villages registered between 2009-10 and 2013-14 need to be re-examined and Stamp duty and Registration fees levied as per rule.

During the Exit Conference, the Principal Secretary, Commercial Tax Department stated (August 2014) that appropriate action would be taken.

6.2.14 Short levy of Stamp duty and Registration fees on instruments of power of attorney

Article 45 (d) of Schedule 1-A of the Indian Stamp Act, 1899 provides that when power of attorney (POA) is given without consideration and authorising the agent to sale, gift, exchange or permanently alienate any immovable property situated in Madhya Pradesh for a period not exceeding one year, duty of ₹ 1000 (₹ 100 up to March 2011) is chargeable on such instruments. Further, when such rights are given with consideration or without consideration for a period exceeding one year or when it is irrevocable or when it does not purport to be for any definite term, the same duty as a conveyance on the market value of the property is chargeable on such instruments.

In five Sub Registrar offices⁶, we test checked 4,325 instruments out of total 42,525 instruments and found that in 13 instruments of POA registered /executed between July 2010 and March 2014, the power to sale immovable property valued at ₹ 4.44 crore as per the guidelines of the respective years was given. POA was given for indefinite period in six cases, in two cases property had already been sold and in remaining five cases POA was irrevocable. In these cases, Stamp duty and Registration fees of ₹ 28.71 lakh was leviable in accordance with the above provisions. We, however, noticed that in all these cases, duty and fees of ₹ 0.13 lakh was charged. This resulted in short levy of Stamp duty and Registration fees of ₹ 28.58 lakh.

After we pointed out the cases, the respective Sub Registrars stated between April and July 2014, that documents would be referred to the Collector of Stamps for determination of market value of the property and duty leviable thereon.

⁶ Bhopal-I, Bhopal-III, Gunnor (Panna), Panna and Sohagpur (Shahdol).

Further, during the Exit Conference, the Principal Secretary, Commercial Tax Department stated (August 2014) that appropriate action would be taken.

6.2.15 Short levy of Stamp duty and Registration fees due to misclassification

Under the IS Act, Stamp duty is leviable on instruments as per their recital at the rates specified in schedule 1A or prescribed by the Government through notifications. Departmental instructions (September 2005) provide that duty on the instruments styled as agreement to sale, release and settlement shall be chargeable at the rate of conveyance deed if the conditions specified in the instructions are not fulfilled, and prescribed entries are not mentioned in the instruments.

During scrutiny of registered instruments, we test checked 7988 instruments out of total 79273 instruments in nine SR Offices⁷, and found that there was misclassification of documents in 25 cases which resulted in short levy of Stamp duty and Registration fees of ₹ 93.33 lakh as mentioned in **Table-6.5**.

Table - 6.5

(₹ in lakh)				
Sl. No.	No. of cases/ Registered Between	Nature of irregularity	Stamp duty and Registration fees leviable levied	Stamp duty and Registration fees short levied
(1)	(2)	(3)	(4)	(5)
1.	9 / July 2011 and March 2014	Agreement to sale with possession/without mention about status of possession treated as agreement to sale without possession.	<u>60.94</u> 9.11	51.83
2.	4 / June 2010 and March 2013	Usufructuary ⁸ mortgage treated as simple mortgage.	<u>20.12</u> 5.09	15.03
3.	7 / April 2013 and March 2014	Gift treated as co-ownership deed.	<u>22.61</u> 6.00	16.61
4.	5 / April 2013 and March 2014	Gift treated as release	<u>25.36</u> 15.50	9.86
Total	25 cases	-	<u>129.03</u> 35.70	93.33

After we pointed out, SR Khargone stated (October 2013), that matter would be referred to Collector of Stamps for proper valuation, thereafter, in June 2014, he stated that five cases had been registered by Collector of Stamps and further decision is awaited while in one case recovery amounting to ₹ 2.78 lakh has been made in March 2014. SR Bhopal –I, Bhopal –III, Indore-II and Sohagpur in respect of 12 cases stated that cases would be referred to Collector of Stamps for determination of market value of the property and duty leviable thereon, while in two cases, SR Nagda and Vidisha stated that necessary action will be taken. In respect of one case SR, Bhopal –I stated that lapse occurred due to heavy work. In respect of two cases related to SR

⁷ Bhopal –I, Bhopal –III, Gwalior-I, Indore-II, Khargone, Maheshwar, Nagda, Sohagpur and Vidisha

⁸ Usufructuary mortgage is a mortgage in which beneficiary holds possession of the property and is entitled to avail all the benefits during validity of mortgage.

Bhopal–III, DR instructed to SR to send these cases for his scrutiny. In respect of one case SR, Maheshwar stated that duty was levied correctly. In respect of remaining one case SR Gwalior –I stated (July 2014) that executants were co-owners.

The reply of SR, Maheshwar is not acceptable as the office treated the gift as release which was not correct as release can only be made in favour of all other co-owners. In this case, there were four co-owners, out of which one co-owner relinquished his share in property to one of the remaining co-owners. Since property was not released in favour of all the remaining co-owners, therefore, Stamp duty should have been levied treating transfer of property as gift. The reply of Gwalior –I is not acceptable, being contrary to the facts on records as both executants were not co-owners.

However, during the Exit Conference, the Principal Secretary, Commercial Tax Department stated (August 2014) that appropriate action would be taken.

6.2.16 Blockage of Government revenue due to delay in registration of instruments

Section 33 of the IS Act provides that it would be obligatory on every public officer to impound cases which are unduly stamped and initiate action under Section 38 of the Act. Further, Section 35(f) of the Act provides that any such instrument not being a Bill of Exchange or Promissory Note shall, subject to all just exceptions, be registered or authenticated on payment of the duty with which the same is chargeable, or in case of an instrument insufficiently stamped, of the amount required to make up such duty. As per IGR circular (January 2013), instruments unduly stamped, should not be kept pending for next day.

In four Sub Registrar (SR) offices⁹, we test checked 7,817 instruments out of total of 78,098 instruments between June and July 2014 and found that in 47 instruments registered between November 2008 and December 2013, the Stamp duty of ₹ 6.84 crore was leviable on these instruments. These instruments were, however, presented on the stamp of only ₹ 37.39 lakh. Sub Registrar was supposed to either agree for attaching the deficit stamp paper under Section 35(f) or impound the instrument under Section 33 of IS Act. We found that these instruments were kept unnecessarily pending for the period ranging from one month to five years. This resulted in blockage of Government revenue of ₹ 6.46 crore in the shape of Stamp duty and Registration fees of ₹ 78.76 lakh aggregating ₹ 7.25 crore for the said period.

After we pointed out the cases, the Sub Registrar, Indore –I had stated that the documents were kept pending due to non receipt of Registration fees, while SRs of Bhopal –I and Gwalior –I had stated that no time limit had been prescribed for recovery of Stamp duty in Section 35(f) of IS Act.

The reply of SR Indore –I is not acceptable as SR should not have accepted these documents without registration fees while, replies of SRs Bhopal –I and Gwalior –I, is not acceptable, being contrary to the provisions of section 33 of IS Act and also IGR's order (January 2013) clearly stated that unduly stamped or undervalued documents shall not be kept pending even for the next day.

⁹ Bhopal-I, Gwalior-I, Indore-I and Indore-III.

During the Exit Conference, the Principal Secretary, Commercial Tax Department stated (August 2014) that appropriate action would be taken.

6.2.17 Short levy of Stamp duty and Registration fees and failure in safeguarding the interest of Scheduled Tribe

As per provisions of Section 165(6) of the Madhya Pradesh Land Revenue Code, 1959, areas other than those specified in the notification under Clause (i), not to be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of land to a person not belonging to such tribe without permission of a Revenue Officer not below the rank of Collector, given for reasons to be recorded in writing.

We test checked 6,165 cases out of total of 61,583 cases and found that in four cases at three SR offices¹⁰, land belonging to persons of Scheduled Tribe community was sold to non Scheduled Tribe persons. Respective District Collectors had ordered that sale consideration of the land shall not be less than the rates/valuation as per the prevailing guidelines and seller shall pay the purchase price of the land by way of a cheque/demand draft in presence of Sub-Registrar. However, Sub-Registrars ignored the orders of the Collector in these cases and land was sold to non Scheduled Tribe persons for consideration of ₹ 3.60 crore instead of ₹ 11.24 crore valued as per guidelines. This resulted in short levy of Stamp duty and Registration fees amounting to ₹ 21.49 lakh, besides financial loss of ₹ 7.64 crore as SRs failed in discharging his duties in protecting the rights of persons belonging to Scheduled Tribe as enshrined in Section 165 of Madhya Pradesh Land Revenue Code.

After we pointed this out, SR, Bhopal –I and Gwalior –I in respect of two cases each, stated (May 2014) that the cases would be referred to Collector of Stamps for determination of market value of the property and duty leviable thereon. While in one case SR, Gwalior –I stated that a document cannot be valued outside its recital and other documents cannot be verified for this purpose. The SR, Indore –I, replied that the valuation of land was done as per guidelines issued for the year 2010-11.

The reply of SR Gwalior is not acceptable, as provisions of Section 165 of the MP Land Revenue Code were not followed. Further, in one case, SR, Gwalior referred the matter to Collector of Stamps; this approach should have been adopted in other case also. The reply of SR Indore –I, is not acceptable, as the documents were registered in the year 2012-13 but SR valued it on the basis of guidelines for the year 2010-11.

However, during the Exit Conference, the Principal Secretary, Commercial Tax Department stated (August 2014) that the action would be taken.

¹⁰ Bhopal – I, Gwalior –I and Indore –I

6.2.18 Short levy of Stamp duty and Registration fees on instruments of developer agreement

Stamp duty is charged at the rate prescribed under Article 5(d) of Schedule 1-A to the IS Act on the basis of estimated development and construction expenditure mentioned in the instrument. Rule 2 of *MP Nagar Palika (MPNP) Niyam* and *MP Gram Panchayat (MPGP) Niyam* provides that the development expenditure means the expenditure incurred on developing the land in accordance with the norms prescribed therein under the approval of the competent authority (Municipal Commissioner/Sub Divisional Officer). Such norms were only available with the Municipal Corporations Bhopal and Indore. A departmental instruction issued in April 2013 provides that where power to sale of land is given by owner to the developer, the instruments captioned under developer agreement shall be charged as conveyance.

6.2.18.1 During scrutiny of records in five offices¹¹, we test checked 5,314 instruments out of total 53,086 instruments and found that 24 instruments of developer agreements registered between February 2013 and March 2014 were executed between land owner and developer for development of land. The estimated development expenditure on the basis of rates applicable in Municipal Corporation/MPHB worked out to ₹ 337.11 crore. Accordingly Stamp duty of ₹ 8.41 crore and Registration fees of ₹ 2.70 crore was leviable on these instruments. We, however, noticed that Stamp duty of ₹ 1.35 crore and Registration fees of ₹ 41.95 lakh only was levied on the basis of amount mentioned in the documents by the developers/colonisers. This resulted in short levy of Stamp duty and Registration fees of ₹ 9.33 crore.

6.2.18.2 We observed from the records of SR, Jabalpur in June 2014 that one instrument related to joint venture for development of land was executed in February 2014. The recitals of the instruments indicated that right to sale the land was transferred to the developers. As such instrument was chargeable as conveyance and accordingly Stamp duty and Registration fees of ₹ 15.67 lakh was leviable. We, however, noticed that stamp duty Registration fees of ₹ 2.95 lakh was levied on this instrument. This resulted in short levy of Stamp duty and Registration fees of ₹ 12.72 lakh.

After we pointed out the cases, SR stated (June 2014) that cases would be referred to Collector of Stamps.

6.2.18.3 During scrutiny of one development permission case provided by SDO (Revenue), Satna, we observed (June 2014) that permission for development land was granted by SDO (Revenue), Satna in August 2013. The estimated development expenditure cost worked out to ₹ 12.80 crore on the basis of rates prescribed by MPH. We, however, noticed that instruments regarding development and construction were neither executed nor got registered. This resulted in non levy/realisation of Stamp duty and Registration fees of ₹ 23.05 lakh.

After we pointed this out, SR stated (June 2014) that document was not presented for registration. DR, Satna instructed (June 2014) to SDO (Revenue), Satna to register the agreement.

¹¹ Bhopal-I, Jabalpur-I, Khargone, Satna and Vidisha.

Further, in Exit Conference, the Principal Secretary, Commercial Tax Department stated (August 2014) that matter would be sorted out in a manner so as to protect the interest of Government Revenue.

We recommend that the Government should either prescribe the rates for development deeds for the purpose of levy of Stamp duty or should direct for this purpose that rates of MPH B shall be treated as benchmark rates all over the State.

6.2.19 Non/short levy/realisation of Stamp Duty and Registration fees on mortgage deeds executed by colonisers/developers

Article 38(b) of Schedule 1-A to IS Act read with Government Notification (September 2007) and Section 75 of the Madhya Pradesh *Panchayat Raj Adhiniyam*, 1993 provides for levy of duty on a mortgage deed (without possession) at the rate of one *per cent* of the amount secured by such deed. Further, under Rule 12 of Madhya Pradesh *Nagar Palika Niyam* and Madhya Pradesh *Gram Panchayat Niyam*, a coloniser has to develop the land in accordance with the norms prescribed therein and has to mortgage 25 *per cent* of the land/ plot in favour of local authorities as a security against the expenditure on development of the land. Section 17 of the Registration Act, 1908, provides that registration of such mortgage deed is compulsory.

6.2.19.1 We observed from the records and information collected from SDO (Revenue) during audit of nine SR offices¹² that permission for development of land was granted by SDO (Revenue) to the colonisers in total 30 cases.

The estimated development expenditure of the land was ₹ 249.06 crore based on rates provided by MPH B for development of land. Though the colonisers had mortgaged 25 *per cent* of plots during this period, neither the applicable duty was paid by the colonisers nor did they get these instruments registered. This resulted in non levy/realisation of Stamp duty and Registration fees of ₹ 3.29 crore.

After we pointed out, Sub Registrar Khargone and Tarana stated (between June and July 2014) in respect of two cases that these cases would be referred to Collector of Stamps while in respect of two cases, SR Kasrawad and Sihora stated (June 2014) that necessary action will be taken. In respect of 13 cases, SR Dhar, Indore-IV, Narsinghpur and Satna stated (between May and July 2014) that instruments would be registered when received.

6.2.19.2 We test checked 16,028 instruments out of total 1,59,177 instruments, from the records of 18 Sub Registrar offices¹³ and found that in 84 instruments mortgage deeds executed by the colonisers were registered in 2013-14. The estimated development expenditure mentioned in the instruments was not justified as there was huge variation in estimated development expenditure in these instruments *vis-a-vis* estimated development expenditure calculated as per the rates provided by MPH B thus causing evasion of Stamp duty and Registration fees. The estimated development expenditure as per rates provided by MPH B was ₹ 615.47 crore against ₹ 136.85 crore as mentioned in

¹² Depalpur, Dhar, Indore, Khargone, Kasrawad, Narsinghpur, Satna, Sihora and Tarana.

¹³ Bhopal-I, Bhopal-II, Bhopal-III, Chhindwara, Depalpur, Guna, Indore-III, Indore-IV, Jabalpur-II, Katni, Khargone, Mahidpur, Mhow, Raghogarh, Sagar, Sanver, Seonimalwa and Vidisha.

instruments. This resulted in short levy/realisation of Stamp duty and Registration fees of ₹ 6.94 crore.

Further, during the Exit Conference, the Principal Secretary, Commercial Tax Department stated (August 2014) that matter would be sorted out in a manner so as to protect the interest of Government Revenue.

We recommend that the Government may consider prescribing a periodic return by the public offices to the DRs which contain details of number of documents presented before them and those not found duly stamped to safeguard the leakage of leviable Stamp duty. These officers may also be held accountable for cases of short payment of Stamp duty.

6.2.20 Loss of revenue due to amendment in guidelines withdrawn later

Clause 4 of the guidelines issued by IGR, prescribed the rates for valuation of agriculture land in urban area and for specified villages in the nearby periphery of urban area, for the period up to 2012-13. However, in the year 2013-14, an amendment was made in Clause 4 by inserting a word “*Nazul Bhoomi*” (*Nazul* land) after “*Krishi Bhoomi*” (agriculture land). *Nazul* land is a Government land which is used for construction or public utility purpose viz *bazar* or entertainment places.

During test check of 780 cases out of total of 7,761 cases at Sub-Registrar, Indore-IV we noticed that in two cases, District Collector allotted the *Nazul* land to two executants and valued the land on the basis of guidelines issued for 2013-14. The inclusion of word *Nazul* land after agriculture land paved the way for misclassification between the agriculture land and the *Nazul* land which ultimately resulted in short levy of Stamp duty and Registration fees of ₹ 2.57 crore¹⁴.

During the Exit Conference, the Principal Secretary, Revenue Department stated (August 2014) that from 2014-15, this amendment has been withdrawn from the guidelines.

The reply is not acceptable as changes were made only for the year 2013-14 without concurrence with the Finance Department and any justified reason. Thus the inclusion of word *Nazul* land was not only irregular but also led to short levy of SD and RF.

6.2.21 Transfer of rights to construct and develop land through power of attorney

According to the circular issued by the IGR (December 2011), if the rights to construct and develop land have been transferred through power of attorney to the person other than landlord, then such power of attorney shall attract Stamp duty in accordance with the rates prescribed in article 5(d) of schedule 1-A.

¹⁴	Leviable SD/ RF ₹3.03 crore/ ₹2.14 crore	Levied SD/RF ₹1.50 crore/ ₹1.10 crore	Short Levied SD/RF ₹1.50crore/₹1.07 crore
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Presently these rates are three *per cent* of the estimated cost of proposed construction or development.

During scrutiny of Additional Book-IV (contains permanent and confidential information related to transfer of movable property) in five Sub-Registrar offices¹⁵, we test checked 5,195 cases out of total of 51,213 cases and found in 46 cases that rights for construction or development were transferred to persons other than landlord on power of attorney on stamp papers of ₹100/1000 only instead of realisation of Stamp duty at the rate of three *per cent* on estimated cost of construction or development. The revenue foregone could not be calculated in absence of estimated cost of construction or development of land in these instruments.

When we pointed this out (August 2014), the IGR stated (August 2014) that such cases would be examined by DRs and DIGR and revenue would be recovered as per rule.

6.2.22 Non reconciliation of stamps issued by treasury

The Government has formulated a system (June 2004) in which Treasury Officer shall issue advice detailing printed numbers on non judicial stamps along with date and dispatch to concerned registration office in a sealed envelope. The Sub-Registrar shall reconcile these numbers with the numbers printed on stamps used for registry purposes. This exercise has been formulated to detect and check the use of counterfeit stamps.

We observed during test check of records of 45 Sub-Registrar offices that such advice was neither sent by the treasury officers nor was any action taken by Sub-Registrars to get these advices and reconcile the stamps issued by treasury with the stamps used for registration of agreements/documents. Due to non reconciliation of stamps issued by treasury, the risk of use of counterfeit stamps could not be ruled out.

During the Exit Conference, the Principal Secretary, Revenue Department stated (August 2014) that Department is moving to e-stamping system, after which, matter would automatically be resolved.

6.2.23 Ineffective spot verification policy

Random spot verification policy was implemented vide IGR's circular (January 2013) in the State. Selection of instruments for random spot verification is done by Head Quarters in case of SR Office Bhopal, Indore, Gwalior & Jabalpur while in remaining SR Offices the same is done by Regional Deputy Inspector General, Registration. Random spot verification policy mandates the Sub registrars to visit the selected property and verify whether the details of property given by the executants were correct.

We observed between March and June 2014 in two SR offices (Bhopal-I and Dabra) that SRs fed 653 instruments out of 6976 instruments for random spot verification, as selected by respective competent authorities. After verification, 81 cases of under valuation of property were detected by them in documents ranging from 10 *per cent* to 26 *per cent*. In other SR offices, the data of spot verification was not maintained manually and hence could not be provided to

¹⁵ Bhopal –III, Gunnor, Indore-II, Mhow and Ujjain.

audit. Since there is no provision for penalty relating to undervaluation of instruments, cases of evasion of tax in instruments not selected for spot verification policy could not be ruled out.

During the Exit Conference, the Principal Secretary, Revenue Department stated (August 2014) that the Department has moved for an amendment in Indian Stamps Act for levy of penalty on undervaluation, as the Act is a central Act.

6.2.24 Internal control mechanism

Internal audit is a vital arm of internal control mechanism and is generally defined as the control of all controls. It helps the organisation to assure that the prescribed systems are functioning reasonably well.

A summarised position of audit carried out by this wing during 2009-10 to 2013-14 is as under in **Table-6.6**.

Table - 6.6

Period	Total number of Units	Number of units planned for internal audit	Number of units actually audited	Shortfall in reference to units planned	
				Number	Percentage
2009-10	226	40	-	40	100
2010-11	226	18	13	5	28
2011-12	226	81	30	51	63
2012-13	226	72	28	44	61
2013-14	233	96	26	70	73
Total	1137	307	97	210	68

The above table shows that the shortfall in inspection was ranging between 28 per cent and 100 per cent during these years. We found that no norms had been fixed for inspection by IGR at any level. We further found that no system existed for inspection of office of District Registrar by any of the officers of Stamps and Registration Department. Computerisation and implementation of e-stamping system was in progress and could not be implemented anywhere in the State up to 2013-14. Due to lack of an effective internal audit mechanism, cases of misclassification of documents, short levy of Stamp duty and Registration fees etc. were observed which are duly illustrated in the preceding paragraphs.

During the Exit Conference, the Principal Secretary, Commercial Tax Department stated (August 2014) that due to lack of sufficient staff, targets set for internal audit could not be achieved.

We recommend that the Government should take immediate steps to strengthen the internal audit wing and internal control mechanism to

ensure timely realisation of revenue and also to avoid non/short levy of Stamp duty and Registration fees.

6.2.25 Conclusion

The Performance Audit revealed a number of compliance and system based deficiencies as discussed in the preceding paragraphs and requires top attention of the Government/Department. We observed that:

- the Department failed to co-ordinate with other bodies/Departments to collect timely information on the number of registerable documents leading to substantial loss of Stamp duty and Registration fees;
- there was inordinate delay in disposal and inadequate follow up of referred cases to District Registrar for early finalisation of cases resulting in unnecessary blockage of Government money;
- the Department failed to follow various provisions of the Act/Rules resulting in non/short assessment and realisation of Stamp duty and Registration fees;
- misclassification of nazul land as agriculture land in the market value guidelines led to short realisation of Stamp duty and Registration fees; and
- the internal control mechanism was not adequate due to lack of internal audit, inadequate inspection, and spot verification by DRs and SRs respectively.