

CHAPTER-V: STAMP DUTY AND REGISTRATION FEE

5.1 Tax administration

Receipts from Stamp Duty (SD) and Registration Fee (RF) in the State are regulated under the Indian Stamp Act, 1899, the Registration Act 1908, the Rajasthan Stamp (RS) Act, 1998 and the Rules made thereunder. The SD is leviable on execution of instruments and RF is payable on registration of instruments.

The Secretary, Finance (Revenue) is responsible for determination of policy, monitoring and control at the Government level. The Inspector General, Registration and Stamps (IGRS) is the head of the Registration and Stamps Department. He is assisted by an Additional Inspector General in administrative matters and by a Financial Adviser in financial matters. Besides, one Additional Inspector General, Jaipur is entrusted with the work of Chief Vigilance Officer. The entire State has been divided into 18 circles, headed by Deputy Inspector General (DIG) (Stamps) and there are 114 Sub-Registrars (SRs) and 409 *ex-officio* SRs¹.

5.2 Internal audit conducted by the Department

The Department has an Internal Audit Wing under the charge of the Financial Adviser. Planning for internal audit of units is made on the basis of importance and revenue realisation. The position of the internal audit conducted and units remaining unaudited during the years 2011-12 to 2015-16 was as under:

Year	Total units due for audit	Units audited during the year	Units remaining unaudited	Shortfall in per cent
2011-12	369	149	220	59.62
2012-13	369	183	186	50.40
2013-14	369	117	252	68.29
2014-15	523	16	507	96.94
2015-16	523	125	398	76.10

Source: Information provided by the IGRS.

The short fall in coverage of units due for audit ranged between 50 per cent and 97 per cent during 2011-12 to 2015-16. The Department stated that the short fall was due to shortage of manpower.

It was noticed that 11,216 paragraphs of internal audit reports were outstanding at the end of 2015-16. Year-wise breakup of outstanding paragraphs of internal audit reports is as under:

Year	Upto 2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	Total
Paras	7,270	941	1,187	794	121	903	11,216

* Source: Information provided by the IGRS.

¹ Tehsildars and Naib Tehsildars have been declared as ex-officio SRs.

Out of 11,216 paragraphs, 7,270 paragraphs were outstanding for more than five years. The huge outstanding position defeated the very purpose of internal audit.

The Government may consider advising the Department to focus its attention on addressing the short comings pointed out by internal audit as with the passage of time it would become difficult to settle the outstanding paragraphs.

5.3 Results of audit

During the year 2015-16, test check of records of 227 units of the Registration and Stamps Department disclosed short realisation of SD and RF of ₹ 232.70 crore in 1,880 cases, which broadly fall under the following categories:

(₹ in crore)

Sl. No.	Categories	Number of Cases	Amount
1	Paragraph on 'Coordination between Public Offices and Sub-registrar Offices relating to Stamp Duty and Registration Fee'	1	130.34
2	Incorrect determination of market value of property	1,377	19.89
3	Non/ short levy of Stamp Duty and Registration Fee	437	81.00
4	Other irregularities related to:		
	(i) Revenue	64	1.43
	(ii) Expenditure	01	0.04
Total		1,880	232.70

During the year 2015-16, the Department accepted under assessment and other deficiencies of ₹ 41.52 crore pertaining to 2,767 cases, of which 1,347 cases involving ₹ 34.55 crore were pointed out during the year 2015-16 and the rest in the earlier years. The Department recovered ₹ 6.97 crore in 1,529 cases during the year 2015-16, of which 145 cases involving ₹ 0.95 crore related to the year 2015-16 and rest of the earlier years.

A paragraph on 'Coordination between Public Offices and Sub-registrar Offices relating to Stamp Duty and Registration Fee' involving revenue of ₹ 130.34 crore and a few illustrative cases involving ₹ 11.37 crore are discussed in the succeeding paragraphs.

5.4 Coordination between Public Offices and Sub-registrar Offices relating to Stamp Duty and Registration Fee

5.4.1 Introduction

The instruments are chargeable with Stamp Duty (SD) of the amount indicated in the schedule under section 3 in accordance with the Rajasthan Stamp (RS) Act, 1998. As per State Government's notification (16 December 1997), all offices of Central Government and State Government, Corporation and Autonomous Bodies, Local Bodies, Registered Societies and Co-operative Institutions, all Incorporated and Unincorporated Companies, Notary Public and Offices of the Oath Commissioner have been declared as Public Offices.

Section 37 stipulates that every person-in-charge of a public office shall examine every document/instrument produced before him to ascertain whether it is stamped properly. When a person-in-charge of a public office, during the course of inspection or otherwise, detects from an instrument or copy thereof that the instrument is not duly stamped, he shall impound and forthwith make a reference to the Collector² in that matter.

The Inspector General (Registration and Stamps) (IGRS) issued directions from time to time³ to the DIGs (Stamps)/SRs to inspect the records of public offices to ensure whether SD was being paid correctly.

5.4.2 Audit objectives and scope

Audit was conducted during February 2016 to June 2016 in 22 Public Offices⁴ of three districts⁵ out of 33 districts covering the period 2011-12 to 2015-16 with a view to ascertain whether coordination existed between Registration and Stamps Department and Public Offices to ensure prompt and correct realisation of SD on the transactions/instruments executed or presented in the public offices. Cases of similar nature found during regular audit are also included in this paragraph.

Audit findings

5.4.3 Failure to sensitise persons-in-charge of Public offices

The State Government notified (16 December 1997) certain offices as public offices. However, it was observed that neither any advertisement was published nor any circular/guideline issued by IGRS to the persons-in-charge of these public offices for effective implementation of the provisions of the Act/Rules.

It was noticed that persons-in-charge of selected public offices had not made any reference of non-levy/short levy of SD to Collector (Stamps) although

² Means any officer whom the State Government may, by notification in the Official Gazette, appoint on this behalf.

³ December 2009, August 2010.

⁴ Registrar of Firms, Jaipur (City), Jaipur (Rural), Jodhpur, Alwar, Bhiwadi; Registrar of Companies Jaipur; National Highway Authority Jaipur; Debts Recovery Tribunal, Jaipur; Jodhpur Development Authority, Jodhpur; Urban Improvement Trusts, Bhiwadi, Alwar; RIICO-Sitapura, Bais Godam, VKIA, Malviya Nagar Jaipur, Bhiwadi-I, II, Neemrana, Alwar, Jodhpur; Nagar Nigam, Jaipur and Jodhpur.

⁵ Alwar, Jaipur and Jodhpur.

they were liable to make reference to Collector (Stamps) for non/short levy of SD.

No steps were taken by IGRS to sensitise the persons-in-charge of their responsibilities as regards SD despite a lapse of 19 years since issue of notification.

5.4.4 Inspections of public offices by DIGs/Collectors (Stamps)/SRs

The IGRS directed (January 1998) the DIGs (Stamps) to inspect the records of public offices to see whether SD was being paid by the public correctly. The need for conducting the inspections was reiterated from time to time and in 2010 the IGRS had instructed all DIGs (Stamps) to inspect public offices once in a year and SRs once in a quarter.

Information relating to inspection of 22 public offices falling within jurisdiction of DIGs (Stamps) in the three districts was sought. No information regarding inspection was furnished by DIGs (Stamps), Alwar and Jaipur though they were required to conduct 90 inspections.

In Jodhpur district, four public offices⁶ were selected for test check by audit. We noticed that out of these, no inspection was conducted by DIGs (Stamps), Jodhpur in two offices, three inspections were conducted in Jodhpur Development Authority (JDA) and two inspections were conducted in Nagar Nigam Jodhpur against target of five in each.

However, when we conducted audit of 22 public offices of three districts, we noticed short levy of SD of ₹ 130.34 crore in 131 cases in 12 public offices as detailed in the following table:

(₹ in crore)

Sl. No.	Name of Public Office	Number of cases	Short levy of SD
1	Registrar of Firm; Jaipur (City) and Jodhpur	77	84.41
2	Registrar of Companies Jaipur	6	2.15
3	National Highway Authority of India, Jaipur	15	36.48
4	Debt Recovery Tribunal, Jaipur	16	0.61
5	Urban Improvement Trust; Alwar and Bhiwadi	10	4.21
6	Rajasthan Industrial Investment Corporation; Bhiwadi-II, Jaipur- Bais Godam, Neemrana, Sitapura, and VKIA Jaipur.	7	2.48
Total		131	130.34

The findings indicate that had the concerned DIG (Stamps)/SRs conducted the inspection as directed by the IGRS, a number of cases of under stamping could have been checked and leakage of huge revenue could have been plugged. The above cases have been discussed in detail in the succeeding paragraphs.

⁶ Jodhpur Development Authority, Nagar Nigam, RIICO and RoF Jodhpur.

5.4.5 Non-levy/short levy of Stamp Duty

Section 17 of the Registration Act provides that non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish whether in present or future, any right, title or interest whether vested or contingent, of the value of ₹ 100 and above to or in immovable property, are required to be compulsorily registered. Further, as per Article 21 of the Schedule appended to the RS Act, in case of instrument of conveyance, the SD is chargeable at the rate of five *per cent* on the market value of the property. Surcharge is also chargeable on SD at the rate of ten *per cent* with effect from 9 March 2011 and 20 *per cent*.

Article 43(1) (c)⁷ provides that where share contribution of initial capital is brought in by way of immovable property, the SD is chargeable as on conveyance on the market value of such property.

5.4.5.1 Transfer of immovable property to partnership firms

• Cases relating to Public Offices

Scrutiny of records of Registrar of Firm (RoF) Jaipur City, Jodhpur, UIT Bhiwadi and RIICO-II Bhiwadi revealed (between February 2016 and June 2016) that in 56 cases of partnership deeds, immovable properties amounting to ₹ 1,121.69 crore were contributed as share contribution by the partners during the period 2008-09 to 2015-16. These instruments fell under the category of conveyance, on which SD of ₹ 67.30 crore was chargeable. However, it was noticed that SD of ₹ 0.28 lakh only was paid on these partnership deeds. The Persons-in-charge of these offices failed to perform their duty as public officer to ensure that correct SD was paid on execution of partnership deeds and did not intimate the transactions to the concerned DIGs. This resulted in short levy of SD of ₹ 67.30 crore including surcharge. A few instances are mentioned in the following table:

(₹ In crore)

Sl. no.	Registration number date	Name of firm	Areas of properties	Market value of properties	SD Payable
1	<u>13/452/2011</u> 15.4.2011	M/s. KGK Homes, Jaipur	2692.75 sqm	11.27	0.67
2	<u>13/451/2011</u> 15.4.2011	M/s. KGK Venture, Jaipur	50.576 bigha	45.52	2.73
3	<u>13/588/2011</u> 11.5.2011	M/s. KGK Residentials, Jaipur	171090 sqm	85.63	5.14
4	<u>13/587/2011</u> 11.5.2011	M/s. KGK Commercials, Jaipur	46850 sqm	194.80	11.69
5	<u>13/774/2011</u> 21.6.2011	M/s. KGK Realtor, Jaipur	57600 sqm	221.76	13.31

The matter was pointed out to the Department and reported to Government (September 2016). The Government replied (October 2016) that in 46 documents, cases had been registered with DIGs (Stamps); in four documents, notice for recovery had been issued and compliance of remaining six cases was awaited.

⁷ Substituted by Rajasthan Finance Act, 2012 (Act no. 18 of 2012) w.e.f. 26 March 2012.

• **Cases relating to Sub-Registrar**

Scrutiny of the recital of 17 sale deeds of six SRs⁸, test checked during September 2015 to January 2016, revealed that in 12 cases, land owned by individuals/companies/firms was transferred to partnership firms as their share in partnership firms and in five cases, the ownership of firms was changed. Thus, the individual owner/owners/companies or partners (assigners) had transferred (assigned) their land to assignee (proprietor/partnership firm/companies) and therefore, the assignee had become the sole owner of the said property. Hence, the immovable properties possessed by the individuals/firms/companies were transferred to the others on which SD, surcharge and RF of ₹10.12 crore was leviable. However, the SRs while registering the sale deeds did not charge the same which resulted in non-levy of SD, surcharge and RF of ₹ 10.12 crore.

The matter was pointed out to the Department (between October 2015 and February 2016) and reported to the Government (September 2016). The Government replied (September 2016) that cases had been registered with DIG (Stamps) in 12 documents and notices for recovery had been issued in two cases. In case of three documents, it was stated that SR, Jaipur-III had not agreed with the audit observation and these cases were under examination at department level.

5.4.6 Non-execution of lease deeds

5.4.6.1 During scrutiny of records and information provided by Senior Regional Manager, Rajasthan Industrial Investment Corporation (RIICO), Sitapura and Baisgodam, Jaipur it was noticed that RIICO had allotted/sold three plots (between February 2012 and July 2015) to entrepreneurs. The allotment cost of these plots was ₹ 25.55 crore on which SD of ₹ 1.53 crore was chargeable. The lease deeds of these plots were to be got registered within 90 days from the date of deposit of full amount of development charges as per the terms of allotment letter. However, the lease deeds were not executed/registered though possession of the land was given to purchasers. Persons-in-charge of RIICO offices had neither taken any action for execution of lease deeds nor intimated the Collector (Stamps) about the transactions. This resulted in non-levy of SD of ₹ 1.53 crore including surcharge.

The matter was pointed out to the Department and reported to Government (September 2016). The Government replied (October 2016) that in one document, case had been registered with DIGs (Stamps) and in other two cases, notices for recovery had been issued.

5.4.6.2 Scrutiny of information provided by the Debt Recovery Tribunal (DRT), Jaipur revealed that due to failure in repayment of loan, properties of 16 borrowers were attached and auctioned by the DRT. SD of ₹ 61 lakh was chargeable on auction amount (₹ 10.25 crore) of these properties. The DRT granted certificate of sale to the successful bidders/purchasers. However, the person-in-charge of DRT had not ensured that the certificates of sale were registered. This resulted in non-levy of SD of ₹ 61 lakh including surcharge.

The matter was pointed out to the Department and reported to Government (September 2016). The Government replied (October 2016) that in six

⁸ Ajmer-I, Bharatpur, Jaipur-II, Jaipur-III, Jaipur-VI and Jaipur-VII.

documents, cases had been registered with DIGs (Stamps); in six documents, notices for recovery had been issued and compliance of remaining four cases was awaited.

5.4.6.3 Scrutiny of records of UIT, Alwar revealed that eight plots were auctioned and allotted (between September 2015 and March 2016) to the successful bidders/purchasers. The purchasers deposited cost of the plots to the UIT. SD of ₹ 55 lakh was chargeable on auction amount (₹ 9.22 crore) of these plots. Scrutiny of the allotment record revealed that the purchasers did not execute the lease deeds with UIT. However, the persons-in-charge of UIT had neither intimated the SR about the sale of plots nor taken any action to execute the lease deeds. This resulted in non-levy of SD of ₹ 55 lakh including surcharge.

The matter was pointed out to the Department and reported to Government (September 2016). The Government replied (October 2016) that in all eight cases, notices for recovery had been issued.

5.4.7 Non levy of Stamp Duty on concession agreements

Section 2 (x-a) of the RST defines concession agreement as an agreement involving a grant of rights, land or property by the State Government, local authority, public sector undertaking or other statutory entity to provide some service on commercial basis using such assets of the State Government or a local authority or a public sector undertaking, as the case may be, subject to certain conditions.

As per Article 20-A of the Schedule to the RS Act, 1998, prescribed rate of stamp duty is payable on concession agreements executed by the executants. The rate of stamp duty is based on the capital investment made by the executants. As per explanation below this rule, concession agreements executed prior to 14 July 2014 shall be chargeable under this article.

Scrutiny of information available on website of National Highway Authority of India (NHAI), New Delhi revealed that 15 concession agreements were executed on Built Operate and Transfer basis during the years 2002 to 2015 between NHAI and various contractors/concessionaires/consultants for the National Highway projects situated in Rajasthan. Out of these, 14 agreements were executed prior to 14 July 2014 while one agreement was executed on 14 October 2015. Though all these concession agreements were liable to be stamped, NHAI had neither sent the copies of concession agreements to concerned DIGs (Stamps) to ensure levy of SD on concession agreements nor had impounded the documents. This resulted in short levy of SD of ₹ 36.48 crore including surcharge. A few instances are mentioned in the following table:

(₹ in crore)

Sl. no.	Date of agreement	Name of project	Name of contractor/concessionaire/consultant	Total project cost	Payable		
					Stamp duty	Surcharge	Total
1	22.6.2011	Beawar-Pali-Pindwara	L&T BPP Pvt. Ltd.	₹ 2,388.00 crore. For capital cost more than 1,000 crore, the duty payable was rupees five crore.	5.00	1.00	6.00
2	22.2.2013	Fatehpur-Raj./Har border	Salasar Highways Pvt. Ltd.	₹ 530.07 crore. For capital cost more than 500 crore, the duty payable was rupees two crore.	2.00	0.40	2.40
3	13.10.2005	Bharatpur-Mahua	Madhucon Agra-Jaipur Expressway Ltd.	₹ 250.00 crore. For capital cost more than 200 crore, the duty payable was rupees one crore.	1.00	0.20	1.20
4	10.3.2006	Agra-Bharatpur	M/s Oriental Pathways. (Agra) Pvt. Ltd.	₹ 195.00 crore. For capital cost more than 50 crore, the duty payable was rupees forty lakh.	0.40	0.08	0.48

The matter was pointed out to the Department and reported to Government (September 2016). The Government replied (October 2016) that in two documents, cases had been registered with DIGs (Stamps); in six documents, notices for recovery had been issued; in two documents, cases were under analysis at Department level; in three documents, cases were under analysis at DIG (Stamps) level and compliance of remaining two cases was awaited.

5.4.8 Short levy of Stamp Duty on dissolution of partnership firms or retirement of a partner

As per provisions of Article 43(2) (a)⁹ to the Schedule of the RS Act, an instrument of dissolution of partnership or if on retirement of a partner, any property is taken as his share by a partner other than the partner who brought in that property as his share of contribution in the partnership, the SD is chargeable at the rate of conveyance on the market value of such property.

During scrutiny of records of RoF, Jaipur City and RIICO, Bhiwadi, it was noticed (between February 2016 and June 2016) that in five cases, one or more partners of firms retired. In these cases, the immovable properties of these firms were transferred to partners other than the partner who had brought in his share as immovable property. However, it was noticed that SD of ₹ 0.03 lakh only was paid on these partnership deeds instead of ₹ 7.89 crore on market value of ₹ 131.59 crore of such properties. This resulted in short levy of SD of ₹ 7.89 crore including surcharge.

The matter was pointed out to the Department and reported to Government (September 2016). The Government replied (October 2016) that in all five documents, cases had been registered with DIGs (Stamps).

⁹ Substituted by Rajasthan Finance Act, 2012 (Act no. 18 of 2012) w.e.f. 26 March 2012.

5.4.9 Non-levy of Stamp Duty and surcharge on transfer of lease by way of assignment

As per Article 55 of the Schedule to the RS Act, in case of instrument of transfer of lease by way of assignment, the SD is leviable as a conveyance on the market value of the property which is the subject matter of transfer. The IGRS vide circular number 06/2009 clarified that the instrument executed for change in the partnership/dissolution of firm/change in legal entity of firm should come in the category of transfer of lease by way of assignment.

During scrutiny of records of Senior Regional Manager, RIICO, Neemrana, it was noticed (May 2016) that in one case, legal entity of M/s Shubham Buildev Private Limited registered under Company Act, 1956 was changed to Limited Liability Partnership (LLP) with effect from 1 November 2014. The SR charged (February 2014) SD of ₹ 18 lakh only on conversion charges of ₹ 3.60 crore while registering the amended lease deed. The fact that the legal entity of the company was changed to LLP was not considered by the SR while registering the amended lease deed on which SD of ₹ 72 lakh on the market value of ₹ 12 crore of the property should have been charged.

Similarly in another case of UIT, Bhiwadi, it was noticed (May 2016) that provisions of Section 37(4) were not followed by the person in-charge of the UIT while giving approval of change of legal entity from Rajsha Infrastructures Private Limited to Rajsha Infrastructures LLP. The market value of the property mentioned in the document was ₹ 46 crore on which SD of ₹ 2.76 crore was chargeable. This was not got stamped/ registered.

The above cases resulted in non-levy of SD aggregating to ₹ 3.48 crore including surcharge.

The matter was pointed out to the Department and reported to Government (September 2016). The Government replied (October 2016) that in the case pertaining to Neemrana, the document had already been registered with SR, Behror as document number 617 dated 26 February 2014 and hence no action was required.

The reply of the Government is not tenable because the legal entity of the company was changed to LLP on 31 October 2014 and amended lease deed was issued on 17 April 2015. The document, therefore, should have been registered after change of legal entity and SD should have been charged on market value of the immovable property. The compliance of remaining one case was awaited.

5.4.10 Non-levy of Stamp Duty on amalgamation of companies

As per Article 21(iii) to the Schedule of the RS Act, an order under Section 394 of the Company Act 1956 in respect of amalgamation, demerger or reconstruction of a company is chargeable with SD subject to a maximum of ₹ 25 crore at the following rate:

(i) An amount equal to four *per cent* of the aggregate amount comprising the market value of shares issued or allotted or cancelled in exchange of or otherwise, or on the face value of such shares, whichever is higher and the amount of consideration, if any, paid for such amalgamation, demerger or reconstruction, or

(ii) An amount equal to four *per cent* of the market value of the immovable property situated in the State of Rajasthan of the transferor company whichever is higher.

During scrutiny of records of Registrar of Company (RoC), Jaipur, it was noticed that 11 companies valuing ₹ 44.69 crore were amalgamated with six other companies during 2011-12 to 2015-16. Scrutiny of records revealed that the persons-in-charge of the public office had not ensured that the documents were got registered. The persons-in-charge failed to fulfill their duty as per Section 37 of the Act and non-registration of amalgamation orders resulted in non-levy of SD of ₹ 2.15 crore including surcharge.

The matter was pointed out to the Department and reported to Government (September 2016). The Government replied (October 2016) that in four documents, cases had been registered with DIGs (Stamps); in one case, instruction had been issued by DIG (Stamps) to concerned SR for recovery and compliance of remaining one case was awaited.

5.4.11 Non-levy of Stamp Duty on order of change of land use

As per notification dated 8 March 2016, the SD chargeable on the order of land use change and conversion issued under the Rajasthan Urban Areas (Change of Land use) (Conversion of agricultural land for non-agricultural purpose in Rural Areas) Rules, 2007 or under any other relevant rules, as the case may be, shall be charged at the rate of five *per cent* of the amount of charges or fee for land use change, subject to a minimum of ₹ 500 in each case.

During scrutiny of records and information provided by three Senior Regional Managers of RIICO¹⁰, it was noticed that land use of three plots having area of 6,459.22 square meters was changed. Registration fee, stamp duty and surcharge amounting to ₹ 22.73 lakh was payable on conversion charges of ₹ 3.54 crore.

However, the same was not recovered at the time of issue of order for land use change. In one case, the SR, Neemrana charged SD of only ₹ 100 at the time of registration of amended lease deed while in other two cases, SD was not recovered on order of land use change due to non-execution of amended lease deeds. This resulted in non-levy/short-levy of SD of ₹ 22.73¹¹ lakh including surcharge and registration fee.

The matter was pointed out to the Department and reported to Government (September 2016). The Government replied (October 2016) that in two documents, cases had been registered with DIGs (Stamps) and no action was required in case of document number 1,299 as the document had already been registered on 4 June 2012 with SR, Neemrana. The reply of the Government is not tenable in case of document number 1,299 because the document was executed on change of land use from industrial to hotel while SR had not charged SD on amended lease deed issued by RIICO on 19 August 2015 after the land use was changed from hotel to commercial.

¹⁰ Neemrana; VKIA and Bais godam (Rural), Jaipur.

¹¹ Stamp duty + surcharge + registration fee of ₹ 17.69 + ₹ 2.04 + ₹ 3.00 = ₹ 22.73 lakh.

Conclusions and Recommendations

The directions of IGRS to the DIGs/Collectors (Stamps)/SRs to inspect the records of public offices to watch whether SD was being paid correctly by the public could not be ensured. No steps were taken by IGRS to sensitise the person-in-charge of their responsibilities regarding SD despite provisions in RS Act, 1998 and issue of notification relating to public offices. Due to lack of effective coordination between public offices and SR offices, we observed non levy/short levy of SD on transfer of immovable property to partnership firms; non-execution of lease deeds; execution of concession agreements between NHAI and concessionaires; dissolution of partnership firm; transfer of lease by way of assignment; and amalgamation of companies.

The Government needs to enhance coordination between public offices and SR offices to plug leakage of revenue. It may ensure inspection of public offices by DIGs/Collector (Stamps)/SRs to check non-registration or under stamping of documents. The persons-in-charge of public offices must be sensitised of their responsibilities as regards SD and must inform the SRs all transactions which require the instruments to be stamped. It is also recommended that deeds of new partnership/change in partnership/retirement of partners/dissolution of partnership firm and amalgamation/demerger order of companies must be registered in SR offices before submission to RoF/RoC, as the case may be, and if needed, the RS Act may be accordingly amended.

5.5 Non-recovery of Stamp Duty and Registration Fee on agreement to sell with transfer of possession

Section 2(xi) of the RS Act defines ‘conveyance’ as a conveyance on sale by which property or any estate or interest or any property is transferred to or vested in, any other person, *intervivos*. As per explanation (i) given below Article 21 of the Schedule to the RS Act, an agreement to sell an immovable property, in case of transfer of possession of such property before, at the time of or after the execution of any such instrument, be deemed to be a conveyance and SD shall be chargeable accordingly.

During test check (August 2015 and October 2015) of records of SRs, Bassi and Jaipur-II, it was noticed that two sale deeds were executed on 12 April 2013 and 19 February 2015. The recital of these sale deeds revealed that agreements to sell were executed (30 November 2008 and 31 January 2013) and on the basis of which plots/villas were sold by the executants which proved that possession was transferred at the time of agreements to sell. There was nothing on record to prove that the agreements to sell were registered or not. However, the SRs did not notice the fact while registering the sale deeds and did not ascertain payment of SD on agreement to sell at the rate prescribed for instrument of conveyance. This resulted in non-recovery of SD, surcharge and RF amounting to ₹ 1.09 crore.

The matter was pointed out to the Department (between September 2015 and November 2015) and reported to the Government (August 2016). The Government replied (August 2016) that case had been registered with DIG (Stamps) in one document and in other case, the document was under legal examination.

5.6 Non-recovery of exempted Stamp Duty under Rajasthan Investment Promotion Scheme

As per Clause 5 of Rajasthan Investment Promotion Scheme (RIPS)¹², 2010, an enterprise to which Entitlement Certificate (EC) has been issued shall be eligible to claim 50 per cent exemption on the SD payable on the instruments executed for the purchase or lease of land. Clause 3 of the RIPS stipulates that the scheme shall be applicable to new enterprise, sick industrial enterprise for its revival and existing enterprise making investment for modernization/ expansion/diversification subject to the condition that the enterprise shall commence commercial production or operation during the operative period of the scheme.

As per serial number 4 of Annexure-1 of RIPS, enterprise established at the site of an existing enterprise excluding sick industrial enterprise would not be eligible for benefit of subsidy and/or exemption under the RIPS. As per Clause 8(D), where on scrutiny or inspection by the officers of Commercial Taxes/Industries Department, it was found that the enterprise which had availed the benefits under the scheme was not eligible for such benefits, a reference should be made to the appropriate Screening Committee. On being satisfied with the genuineness of the reference, the Committee may take appropriate decision including withdrawal of benefit and recovery of the benefit already availed with interest at the rate of 18 per cent per annum.

During test check (between October 2015 and January 2016) of records (letters from RIICO, check list, EC and sale deed) of six SR¹³, it was noticed that in 15 cases, benefit of 50 per cent exemption of SD was availed by the purchasers who had failed either to fulfill the conditions or were not eligible for availing such benefits as detailed below:

(₹ in crore)

Sl. No.	Name of SR	Number of cases	Amount of SD and surcharge	Remarks
1	Jaipur-II, Jaipur-III, Jaipur-V & Kotputli	5	1.15	Purchasers purchased existing enterprises for new investment. Hence, they were not eligible to claim exemption under the Scheme.
2	Jaipur-VII & Shahpura	10	0.31	Irregular exemption was given to the purchaser on the basis of entitlement certificate issued to the seller.
Total	6	15	1.46	

Due to breach of conditions mentioned in the scheme or lack of eligibility, the beneficiaries were liable to refund the SD and surcharge of ₹ 1.46 crore together with interest.

After this was pointed out to the Department between November 2015 and February 2016 and reported to the Government in September 2016, the Department replied (October 2016) that entire amount of ₹ 2 lakh had been recovered in one case; cases had been registered with DIG (Stamps) in 12 documents and recovery was pending in two cases. The reply from the Government is awaited (October 2016).

¹² RIPS is a Scheme to promote investment in the State and to further generate employment opportunities through such investment and to facilitate investment in establishment of new enterprises and/ or investments made by the existing enterprises for modernisation/ expansion/ diversification.

¹³ Jaipur-II, Jaipur-III, Jaipur-V, Jaipur-VII, Kotputli and Shahpura.

5.7 Short levy of Stamp Duty and Registration Fee on lease deeds where rent is fixed and no premium is paid

The Article 33(a)(iii) of the Schedule to the RS Act prescribes that where rent is fixed and no premium is paid or delivered and where the lease purports to be for a term in excess of twenty years or in perpetuity or where the term is not mentioned, the SD should be chargeable as on conveyance on the market value of the property.

During test check (October 2015) of records of SR, Jaipur-VII, it was noticed that one lease deed was got registered for a period of more than 20 years. As such, the valuation should have been done on the market value of the property and SD should have been charged as on conveyance as per extant provisions. However, the SR charged SD, surcharge and RF of ₹ 42 lakh on value of ₹ 7.47 crore instead of chargeable SD, surcharge and RF of ₹ 65 lakh on market value of ₹ 11.75 crore. This resulted in short levy of SD and RF of ₹ 23 lakh.

The matter was pointed out to the Department (November 2015) and reported to the Government (July 2016). The Government replied (August 2016) that a case had been registered with the DIG (Stamps).

5.8 Non-levy/short levy of Stamp Duty, surcharge and Registration Fee on development agreements/sale deeds

The State Government vide notification dated 6 March 2013 reduced the chargeable SD to one *per cent* of the market value of the property in case of an agreement or memorandum relating to giving authority or power to a promoter or a developer, by whatever name called, for construction on or development of, or sale or transfer (in any manner whatsoever) of any immovable property. As per Article 21(i) of the Schedule to the RS Act, SD on the instrument of conveyance relating to immovable property shall be levied on the market value of the property. Rule 58 of the RS Rules provides that the market value of the land shall be assessed on the basis of the rates recommended by the DLC or the rates approved by the State Government, whichever is higher.

Following cases of non-levy/short levy of SD, surcharge and RF were noticed.

5.8.1 Non-payment of Stamp Duty and surcharge on Development Agreements

During test check (between August 2015 and October 2015) of records (sale deeds and related documents) of two SRs¹⁴, it was noticed that four documents were registered for sale of plots/flats/shops. The recitals of these four instruments disclosed that plots and multistoried flats/shops were got constructed/developed by developers on behalf of the owners as per terms and conditions of the development agreements. However, copies of the development agreement were not found on record. It could not be ascertained where the SD leviable on these document was recovered at the time of the execution of the development agreement. The fact about registration and payment of SD on development agreements was not ascertained by the SRs before registering the sale documents of plots/flats/shops. This resulted in

¹⁴ SRs: Jaipur-II and Udaipur-II.

non-levy of stamp duty and surcharge of ₹ 74 lakh on market value of ₹ 67.38 crore.

The matter was pointed out to the Department (between September 2015 and November 2015) and reported (September 2016) to the Government. The Government replied (September 2016) that cases had been registered with DIG (Stamps) in three documents and were under consideration. In one case, the matter was dropped without giving any reason.

5.8.2 Misclassification of sale deed as development agreements

5.8.2.1 During test check (October 2015) of records of SR, Neemrana, it was noticed that one document (number 1855) was registered as development agreement for land measuring 2.90 lakh square feet at village *Mohaldiya*. On scrutiny of the recital of deed, it was found that the owner had given possession of the land to the developer and authorised him to take the lease deed in his favour after obtaining permission of change of land use under Section 90-A of Land Revenue Act, 1956, from UIT, Bhiwadi. It was also seen that the owner had received ₹ 3.43 crore as non-refundable security deposit from developer. The SR charged SD and surcharge of ₹ 13 lakh at the rate of one *per cent* of total value of the property (₹ 12.14 crore) treating the document as development agreement instead of ₹ 67 lakh at the conveyance rate of five *per cent*. Misclassification of document of sale deed as development agreement resulted in short levy of SD and surcharge of ₹ 54 lakh.

The matter was pointed out to the Department (November 2015) and reported to the Government (May 2016). The Government replied (September 2016) that a case had been registered with DIG (Stamps).

5.8.2.2 During test check (between January 2016 and February 2016) of records of two SRs¹⁵, it was noticed that four documents were registered between April 2014 and May 2014 as development agreements. The documents were classified on the basis of their title and SD was levied at the rate of one *per cent* on the market value of the property as per Article 5 (e) of the Schedule. On scrutiny of recital of these development agreements, it was noticed that the owners of the land had authorised the developers to take possession of the land with the right to construct, develop and deal with the land in exchange of entitlement to the extent of 40 to 100 *per cent* of the property. The developers were entitled to dispose of the developed property without requiring any consent from the owners. Such authorisation was covered under the category of conveyance as per Article 21(i) of the RS Act and SD was chargeable at the conveyance rate on the share of property transferred to the developer. However, the SRs recovered SD of ₹ 10.90 lakh at the rate of one *per cent* including surcharge and RF on market value of ₹ 8.13 crore of the properties instead of ₹ 34.98 lakh at the rate of five *per cent* of developer share on market value of ₹ 5.47 crore of the properties and one *per cent* of owners share on market value of ₹ 2.66 crore of the properties. This resulted in short levy of SD, surcharge and RF of ₹ 24.08 lakh.

The matter was pointed out to the Department (February 2016) and reported to the Government (May 2016). The Government replied (September 2016) that

¹⁵ SRs: Alwar-I and Jaipur-V.

cases had been registered with DIG (Stamps) in four documents and were under consideration.

5.9 Non-levy of Stamp Duty and surcharge on change of land use

As per notification dated 14 July 2014, a provision was made in the Rajasthan Urban Areas (change of land use) Rules, 2010. Accordingly, in case of conversion of land, SD shall be charged at the rate of 10 *per cent* of conversion charges. Prior to this, SD was leviable on difference of market value of land, calculated on the basis of previous land use and changed land use. Further, it was also clarified that the provisions of the notification would also be applicable to all conversion orders issued prior to the date of issue of this notification.

During test check (February 2016) of conversion records of SR Sriganganagar, it was noticed from the recitals of two registered sale deeds that the change of land use from industrial/residential to commercial was made by conversion orders dated 1 September 2010 and 29 April 2014. On scrutiny, it was found that the facts about payment of SD on change of land use and registration thereof were neither mentioned in the sale deed nor copy enclosed. However, the SR did not charge SD of ₹ 54.52 lakh including surcharge of ₹ 4.96 lakh on market value of ₹ 4.96 crore of the land. This resulted in non-levy of SD and surcharge of ₹ 54.52 lakh.

The matter was pointed out to the Department (February 2016) and reported to the Government (July 2016). The Government replied (August 2016) that cases had been registered with DIG (Stamps) and were under consideration.

5.10 Short levy of Stamp Duty and Registration Fee due to undervaluation of immovable property

As per Article 21(i) of the Schedule to the RS Act, SD¹⁶ on the instrument of conveyance relating to immovable property shall be levied on the market value of the property. Rule 58 of the RS Rules provides that the market value of the land shall be assessed on the basis of the rates recommended by the DLC or the rates approved by State Government, whichever is higher. The RF is also chargeable at the rate of one *per cent* of the valuation subject to maximum of ₹ 50,000 since 9 April 2010 and one *per cent* with effect from 9 March 2015.

As per notification dated 14 July 2014, the valuation of agricultural land purchased by companies/firms/institutions shall be done at one and half times of agricultural DLC rate of concerned area. The RIICO revised the rates of industrial land *vide* its order dated 4 March 2014.

During test check (between May 2015 and January 2016) of records of 19 SRs¹⁷, it was noticed that 64 documents were registered as sale deeds pertaining to agricultural/commercial/industrial/residential land. Scrutiny of

¹⁶ At the rate of five *per cent* w.e.f. 08.07.2009.

¹⁷ Ajmer-I, Ajmer-II, Bali (Pali), Bansur (Alwar), Bhilwara, Jaipur-I, Jaipur-II, Jaipur-III Jaipur-V, Jaipur-VI, Mandal (Bhilwara), Mundawar (Alwar), Mojmabad (Jaipur), Neemrana (Alwar), Udaipur-I, Udaipur-II, Sanganer-I (Jaipur), Sanganer-II (Jaipur), and Viratnagar (Jaipur).

these documents revealed that the concerned SRs had assessed the market value of properties on lower side for various reasons as detailed below:

(₹ in crore)

Sl. No.	Nature of observation and Rule position	Number of documents	SD leviable as per the Rule	SD levied	Short levy of SD
1	Short assessment of SD as per DLC rates of agricultural land instead of one and half times of agricultural DLC rates in case of companies/firms/institutions, prescribed <i>vide</i> notification dated 14 July 2014.	26	2.15	1.38	0.77
Instances: In one case, the SR, Sanganer-II assessed the value (₹ 3.82 crore) of the land at agricultural rate instead of 1.5 times (₹ 5.73 crore) of agricultural rate and charged SD of ₹ 21.49 lakh instead of ₹ 31.98 lakh. In one other case, the SR, Mundawar determined the value (₹ 7.70 crore) of the land at the face value of the document instead of 1.5 times (₹ 11.18 crore) the agricultural rate and charged SD of ₹ 36.91 lakh instead of ₹ 61.96 lakh.					
2	In 23 cases, incorrect rates of DLC were applied and in four cases, less area was taken for valuation. (Rule 58 of the RS Rules, 2004)	27	6.11	2.10	4.01
Instances: In one case, the SR, Jaipur VI assessed value of a land as ₹ 5.96 crore by applying DLC rate of other area instead of ₹ 35.93 crore as per applicable DLC rate. In one other case, the SR, Ajmer-II assessed value of a land as ₹ 0.22 crore by applying DLC rate of area not situated on national highway instead of ₹ 1.76 crore as per DLC rate applicable for land situated on national highway. In one other case, the SR, Sanganer-II took 4,106.13 square meter area for valuation instead of 16,445 square meter area sold and valued the land at ₹ 1.89 crore instead of ₹ 11.84 crore.					
3	Short levy of SD due to assessment of market value of industrial land on old rates. (RIICO order dated 4 March 2014)	11	7.57	6.27	1.30
Instance: In one case, the SR, Neemrana assessed value as ₹ 105 crore at old DLC rate instead of ₹ 122.67 crore at prevailing DLC rate for industrial land sold and charged SD of ₹ 5.78 crore instead of ₹ 6.75 crore.					
Total		64	15.83	9.75	6.08

This resulted in short levy of SD and RF of ₹ 6.08 crore due to undervaluation of immovable properties.

After this was pointed out to the Department between June 2015 and February 2016 and reported to the Government in September 2016, the Government replied (September 2016) that complete amount of ₹ 0.05 crore had been recovered in one case; cases had been registered with DIG (Stamps) in 46 documents; notices for recovery had been issued to the executants in six cases and recovery was pending in 11 cases.

5.11 Short levy of Stamp Duty and Registration Fee due to undervaluation of properties registered as farm houses

According to paragraph 7 of circular 5/2011 issued (31 March 2011) by the IGRS, valuation would be made at residential rate on transfer of lease (sale) of farm houses.

During test check (August 2015) of registrations records of SR, Udaipur-II, it was noticed that in five cases, land measuring 1,21,641.98 square feet was sold for ₹ 1.10 crore through sale deeds after getting the agricultural land converted for farm house purposes. Scrutiny of these deeds revealed that in one case, the SR irregularly valued (₹ 50 lakh) the land (56,417 square feet) at 35 *per cent* of residential rate of that area and in four cases at face value (₹ 59 lakh) mentioned in the documents of that area (65,224.98 square feet).

However, valuation of ₹ 4.44 crore should had been done in all five cases at residential rate as per the circular *ibid*. This resulted in short levy of SD and RF of ₹ 17.49 lakh¹⁸.

The matter was pointed out to the Department (September 2015) and reported to the Government (August 2016). The Government replied (September 2016) that cases had been registered with DIG (Stamps) in four documents and in one case, the document was under legal examination.

5.12 Short levy of Stamp Duty and Registration Fee due to undervaluation of gift deed and extending benefit of concessional Stamp Duty

As per Article 31 of the Schedule to the RS Act, the SD on instrument of gift is chargeable as conveyance on market value of the property. The Government *vide* notification dated 6 March 2013 prescribed that the SD chargeable on gift deeds of immovable property executed in favour of relatives specified in the notification shall be reduced to 2.5 per cent, as the case may be.

The State Government *vide* another notification dated 9 March 2015 specified that SD on instrument of transfer of land for institutional purposes purchased by institutions other than co-operative societies/charitable institutions shall be charged at two times of the rates of agricultural land if the land is situated outside RIICO area.

During test check (October 2015) of the records of SR, Jaipur-II, it was noticed that four gift deeds were executed. In two cases, gift deeds of immovable properties were not executed in favour of relatives. However, the SR extended the benefit of exemption under the extant provisions. In two other cases, the SR incorrectly assessed the value of the land. This resulted in short levy of SD and RF of ₹ 14.45 lakh as detailed below:

(₹ in lakh)

Sl. No.	Document No Date	Market value assessed by SR	Market value to be assessed	SD and RF levied	SD and RF leviable	Short levy of SD and RF	Audit comment
1	2467 3.3.2014	181.62	181.62	5.49	10.49	5.00	Donor was firm and not covered under category of specified relatives. Hence, exemption of SD was not allowed.
2	7542 30.9.2014	40.66	40.66	1.52	2.64	1.12	Donor was firm and not covered under category of specified relatives. Hence, exemption of SD was not allowed.
3	7092 17.9.2014	14.78	47.52	0.55	1.78	1.23	Valuation was not taken as per revised DLC rates. Hence, gift deed undervalued.
4	3047 18.3.2015	269.10	378.24	17.49	24.59	7.10	The land was converted for institutional purposes. Hence, valuation was to be taken as two times of agricultural land instead of residential.
Total		506.16	648.04	25.05	39.50	14.45	

¹⁸ SD, surcharge and RF chargeable on valuation of ₹ 4,43,88,240 = ₹ 24,37,414
SD, surcharge and RF charged on valuation of ₹ 1,09,59,105 = ₹ 6,88,620
SD, surcharge and RF short levied = ₹ 17,48,794

The matter was pointed out to the Department (November 2015) and reported to the Government (July 2016). The Government replied (August 2016) that cases had been registered with DIG (Stamps) and action would be taken as per decision.

5.13 Short levy of Stamp Duty due to misclassification of mortgage deed as agreement of loan

As per notification dated 7 March, 1994, SD chargeable on *mortgage deed*¹⁹ executed in favour of any bank or co-operative society for obtaining loan for non-agricultural purposes shall be one *per cent* of the loan amount or ₹ 100, whichever is higher. As per Article 6 of the Schedule to the RS Act, SD on agreement relating to *deposit of title deeds*²⁰ shall be chargeable at 0.1 *per cent* of the amount of loan or debt.

During test check (January 2016) of records of SR, Alwar-II, it was noticed that a document titled as 'deposit of title deed' was registered by the SR by charging SD and surcharge of ₹ one lakh at the rate of 0.1 *per cent* on loan amount of ₹ 12.00 crore considering the document as agreement of loan. Scrutiny of recital of the document revealed that the borrower had mortgaged his property in favour of the loan provider company as security of the loan taken by him with the condition that in the event of default in payment of the amount of loan, the loan provider shall be free to sell out the property so mortgaged. As such, the document was squarely covered under mortgage deed on which SD and surcharge of ₹ 13 lakh at the rate of one *per cent* of the market value should have been charged. This resulted in short levy of SD and surcharge of ₹ 12 lakh.

The matter was pointed out to the Department (February 2016) and reported to the Government (July 2016). The Government replied (August 2016) that a case had been registered with DIG (Stamps).

¹⁹ In mortgage deed, the transaction tends to transfer an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of existing loan or for future debt. Therefore, there must be the intention to transfer an interest in property for the purpose of repayment of loan or performance of any contract and if loan is unpaid or contract not performed, the mortgagee shall have the right to sell the mortgaged property.

²⁰ A deposit of title deed is a simple agreement accompanied with the delivery (deposit) of title deed with the creditors towards the loan or debt.