

Chapter IV: Stamp Duty and Registration Fees

4.1 Results of audit

Test check by audit of records of Stamp Duty and Registration Fees for the period 2004-2005 revealed irregularities amounting to Rs.35.21 crore in 865 cases which broadly fall under the following categories:

(In crore of rupees)

Sr. No.	Category	Number of cases	Amount
1.	Short levy of stamp duty and registration fees	835	3.74
2.	Misclassification of instruments	3	0.02
3.	Short levy of stamp duty/ registration fees on lease deeds	26	0.09
4.	Review : Levy of Stamp duty and Registration fees	1	31.36
	Total	865	35.21

During the year 2004-2005 the Department accepted audit observations involving 2.83 crore in 524 cases. Of these cases, the Department recovered Rs.30.78 lakh in 101 cases.

The results of review '**Levy of Stamp duty and Registration fees**' involving financial effect of Rs.31.36 crore are given in the following paragraphs.

4.2 Review: Levy of stamp duty and registration fees

Highlights

Stamp duty of Rs.17.57 crore was not levied on land transferred to Punjab Urban Planning and Development Authority and Agricultural Marketing Board due to non execution of conveyance deeds.

Non execution of deeds where full payments were made by the allottees resulted in non realisation of stamp duty of Rs.4.11 crore including registration fee.

Stamp duty and registration fee amounting to Rs.2.18 crore was levied short on sale deeds executed for sale of commercial, residential and agricultural land/properties due to undervaluation.

(Paragraph 4.2.9)

Stamp duty amounting to Rs.46.47 lakh was not levied on transfer deeds executed in favour of family members not being class-I heirs as defined under the Hindu Succession Act, 1956.

(Paragraph 4.2.11)

Levy of user charges on registered instruments without approval of legislature, resulted in unauthorised collection of Rs.6.30 crore on behalf of a society.

(Paragraph 4.2.16)

4.2.1 Recommendations

The Government may consider the following suggestions for speedy settlement and prompt realisation of Government revenue.

- ensure that all documents of transfer of property are compulsorily registered.
- prescribe and enforce a time limit for determination of stamp duty and registration fee in the cases referred to the Collectors.
- the Department should introduce periodical return to be furnished by the registering officers indicating details of revenue realised, exemption allowed and cases pending at different levels involving blockage of revenue.

4.2.2 Introduction

Registration of a document attracts levy of stamp duty and registration fee. The levy of stamp duty on various types of instruments such as conveyance, exchange, mortgage and lease etc. is governed by the Indian Stamp Act, 1899 (Stamp Act) and Rules framed thereunder. The duty is paid by the executors of instruments either by using impressed stamps or by affixing stamps (non judicial) of proper denomination. The levy of registration fee on the instruments presented for registration is regulated by the Indian Registration Act, 1908(Registration Act) and Rules framed thereunder.

The State Government is empowered under the Act to reduce or remit prospectively or retrospectively, the levy of stamp duty and/or registration fees. The exemptions/remissions are granted mainly for the upliftment of the members of scheduled castes and other economically weaker sections of society, to encourage them to avail the benefits of welfare schemes, for promotion of small scale industries, to encourage the cooperative movement and such other development projects for small farmers and rural community.

4.2.3 Organisational set up

The State Government exercises control over the registration of instruments through the Inspector General of Registration, who is assisted by the Deputy Commissioners (Collector), Tehsildars and Naib-Tehsildars acting as Registrars, Sub Registrars (SRs) and Joint Sub Registrars (JSRs) respectively. No registration work is, however, done in the office of the Registrars. The Registrar exercises superintendence and control over the SRs and JSRs of the district. For the purpose of levy and collection of stamp duty and registration fee, the state has been divided into four* divisions and 17** districts having 17 Registrars, 72 SRs and 55 JSRs.

4.2.4 Scope of audit

The records relating to levy and collection of stamp duty and registration fee in 43 out of 127 registering offices for the year 1999-2000 to 2003-2004 were test checked in audit between April 2004 and February 2005. The audit findings were reported to the Department/Government in March 2005 requesting them to attend the meeting of Audit Review Committee (ARC) so that the viewpoint of Government could be considered before finalising the review. However, no officers from the Department/Government attended ARC meeting as a result of which their views could not be incorporated in the review.

* Faridkot, Ferozepur, Jalandhar and Patiala.

** Amritsar, Bathinda, Faridkot, Fatehgarh Sahib, Ferozepur, Gurdaspur, Hoshiarpur, Jalandhar, Kapurthala, Ludhiana, Mansa, Moga, Muktsar, Nawan Shahar, Patiala, Ropar and Sangrur.

4.2.5 Audit objective

Test check of the records of registering offices was conducted with a view to ascertain:-

- extent of compliance with prescribed rules and procedure with consequent revenue loss in the event of deviation thereto,
- the efficiency and effectiveness of the system of levy and collection of stamp duty and registration fees,
- the disposal of appeal cases by the Commissioners.

4.2.6 Audit criteria

Audit was conducted with reference to the provisions of Stamp Act, Registration Act and Rules made thereunder and instructions/notifications issued by the Government from time to time.

4.2.7 Audit methodology

The records of the registering offices were test checked to see whether the concerned offices had complied with the provisions of the Acts and Rules regarding levy and collection of stamp duty and registration fee.

4.2.8 Trend of revenue

According to the provisions of Punjab Budget Manual, budget estimates of revenue receipts of the ensuing year should be based on average receipts for six months of previous year and actual receipts of the first six months of the current year to make the estimates realistic.

The budget estimates and actual receipts realised under the revenue head “Stamp Duty and Registration Fees” during the years 1999-2000 to 2003-2004 are given below:

(In crore of rupees)

Year	Budget estimate	Actuals	Shortfall(-) Excess(+)	Percentage of Excess(+)/ Shortfall(-)
1999-2000	350	325.65	(-)24.35	(-) 7
2000-2001	450	424.06	(-) 25.94	(-) 6
2001-2002	490	444.31	(-) 45.69	(-) 9
2002-2003	500	558.94	(+) 58.94	(+) 12
2003-2004	600	729.08	(+) 129.08	(+) 22

The Department attributed excess receipts in 2002-2003 and 2003-2004 to the fact that receipts are variable in nature which depends upon the number and kinds of instrument and its value.

4.2.9 Non execution of conveyance deeds

- Stamp Act provides that no duty shall be chargeable in respect of any instrument executed by or on behalf of or in favour of Government. The conveyance deeds of the land transferred to Punjab Housing and Development Board after acquisition by the Land Acquisition Collectors (LAC) are required to be executed under the provisions of the Stamp Act as in the case of erstwhile Punjab Housing Development Board (now PUDA). The PAC while discussing paragraph no. 4.1.2 of the Report of the Comptroller and Auditor General of India (Revenue Receipts) Government of Punjab for the year 1979-1980 in 85th Report placed in assembly on 22 December 1992 had also reiterated that since the Government had rejected the demand of Punjab Housing Development Board for exemption from payment of stamp duty and registration fee, expeditious steps be taken to execute the conveyance deed.

Test check of record of the two LACs Urban Development Punjab (PUDA) Mohali and Jalandhar revealed that land measuring 1,345.17 acres was acquired and transferred to PUDA (which is a local body) between 2001-2002 and 2003-2004 at a cost of Rs.160.41 crore. PUDA had not executed any conveyance deeds although the land was transferred/entered in the revenue records in the name of PUDA and the Department took no step to recover the same inspite of PAC recommendation. Non execution of conveyance deeds resulted in non levy of stamp duty of Rs.9.62 crore besides registration fee.

After this was pointed out in audit in November 2004, LACs stated in February 2005 that since transfer of land was between Government to Government, stamp duty and registration fee was not leviable. The reply was not tenable, as Government had rejected the demand of Punjab Housing Development Board (now PUDA) for exemption from payment of stamp duty and registration fee.

- It was noticed that land measuring 712.84 acres was acquired at a cost of Rs.132.59 crore and transferred to a board, a local body and a corporation between April 2001 and March 2004 for setting up new grain markets, industries and for residential purpose without executing conveyance deed. This resulted in non levy of stamp duty of Rs.7.95 crore as detailed below:-

(In crore of rupees)

Sr. No.	Name of the Department/ agency for which land was acquired/ transferred	Year	Area of land (in acres)	Purpose	Value	Amount of non levy of duty
1	2	3	4	5	6	7
1	Director Colonisation/ Punjab State Agricultural Marketing Board (PSAMB)	2001-02	122.56	Grain markets	8.36	0.50
2	LAC/Improvement Trust	2001-02 to 2003-04	352.26	Residential	103.03	6.18
3	LAC- Industries Department/Punjab Small Industries and Export Corporation (PSIEC)	2000-01 to 2001-02	238.02	Industries	21.20	1.27
Total			712.84		132.59	7.95

The matter was brought to the notice of the Department and reported to the Government (March 2005). This was followed up with reminders to the Financial Commissioner and Secretary to Government, Punjab, Revenue Department in May, June and July 2005. However, inspite of such efforts, no reply was received (September 2005).

- Under the provisions of Registration Act, all instruments relating to sale or lease of immovable property for any term of one year or more are required to be registered. Freehold commercial, residential plots and built up houses/flats were allotted by PUDA through allotments/auction. As per terms and conditions of allotment, payment is to be made on lumpsum basis or in 10 equal annual instalments as the case may be. The owner had to execute a conveyance deed in prescribed form in such manner as may be directed by the Estate Officer, PUDA within three months from the date of final payment.

A test check of records of PUDA Mohali, revealed that conveyance deeds in the cases of 820 residential/commercial plots and built up houses/flats valued at Rs.60.38 crore had not been got executed though full payments had been made by the allottees and no due certificates were issued in favour of them by PUDA. Non execution of conveyance deeds resulted in non realisation of stamp duty of Rs.4.11 crore including registration fee.

- **Short levy of stamp duty and registration fee due to under valuation**

Under the Punjab Stamp (dealing of under valued instruments) Rules, 1983 as amended in 2002, the Collector of a district in consultation with the committee of experts as defined thereunder, fixes the minimum market value of land/properties, locality wise and category wise in the district, for the purpose of levying stamp duty on instrument of transfer of any property.

Test check of the records of 34* SRs/JSRs revealed that in case of 230 conveyance deeds registered between the period from 2002 to 2004 on account of sale of residential/agricultural/commercial land/sheds and built up houses etc. the market value was calculated at rates lower than the rates approved by Collectors. This resulted in short levy of stamp duty of Rs.2.18 crore including registration fee.

- **Short levy of stamp duty and registration fee on lease deeds**

Under the provisions of Stamp Act, stamp duty at prescribed rate is chargeable on an instrument of lease on the basis of periods of lease and the amount of the average annual rent reserved. The Act further provides, that, where the lease is granted for a fine or premium or for money advanced in addition to rent reserved, the duty is to be charged on the value of such fine or premium or money advanced set forth in lease deed.

During test check of four** SRs, it was noticed between June 2002 and August 2004 that in respect of seven instruments of lease registered between 2001-2002, 2002-2003 and 2003-2004 consideration had not been worked out correctly as the periodical increase in rent reserved, premium or money advanced in addition to average rent reserved was not taken into account while calculating the stamp duty leviable on these instruments. This resulted in short levy of stamp duty and registration fee amounting to Rs.6.65 lakh.

4.2.10 Inordinate delay in disposal of reference and revision cases

Under the provisions of Stamp Act, power to decide the cases referred by the SR/JSR is vested in the Collector. The Collector shall issue a notice to the person liable to pay the duty on receipt of the cases referred to him by the Registering Officers. He should, thereafter, hold an enquiry for correct determination of market value after hearing the parties. The Act and the Rules, however, do not provide specific time limit for deciding such cases.

Scrutiny of records for the period between April 2000 and March 2004 of 10*** Collectors revealed that 952 cases referred by Registrars under Stamp Act were pending for final decision as on March 2004 as per details given below:

* Amritsar-I & II, Amlloh, Balachaur, Barnala, Bathinda, Bhogpur, Bholath, Dera Bassi, Fatehgarh Sahib, Gurdaspur, Jalandhar-I & II, Jalalabad, Kapurthala, Khamano, Khanna, Kharar, Ludhiana (West), Malerkotla, Moonak, Nabha, Nakodar, Nawan Shahar, Nur Mahal (JSR), Patiala, Phagwara, Phillaur, Rajpura, Ropar, Samana, Sardulgarh, Sunam and Tarn Taran.

** Amritsar-I, Ludhiana (East and West) and Sangrur.

*** Amritsar, Fatehgarh Sahib, Hoshiarpur, Jalandhar, Kapurthala, Mansa, Nawanshahar, Patiala, Ropar and Sangrur.

Year	Opening balance	Number of cases received	Total	No of cases decided	Balance	Percentage of disposal (Col 5 to 4)
1	2	3	4	5	6	7
2000-2001	218	582	800	688	112*	86
2001-2002	206	1,438	1,644	859	785	52
2002-2003	785	1,043	1,828	1,309	519	72
2003-2004	519	1,760	2,279	1,327	952	58

Out of 952 cases, 276 cases were more than four years old which were pending as on February 2005. The reasons for delay in disposal of pending cases were called for from the Department in March 2005; reply was awaited (September 2005).

4.2.11 Irregular remission of stamp duty

Punjab Government issued a notification on 21 December 2001, remitting stamp duty chargeable in case of transaction of transfer during his life time by an owner of agricultural land and rural residential property to his class I heirs as defined under the Hindu Succession Act, 1956 which includes widow, mother, sons and daughters and sons of pre deceased sons/ daughters. However, the provisions of notification are not applicable in case of transfer of property made by an owner of land to his daughter-in-law/or by a grandfather to his grandson where son is alive.

Test check of 36 conveyance deeds valued at Rs.7.73 crore pertaining to transfer of land executed between April 2001 and March 2004 revealed that stamp duty and registration fee amounting to Rs.46.47 lakh was irregularly remitted as per details given below.

(In lakh of rupees)

Sr. No.	Number of Registering Offices	Year of execution of conveyance deed	Number of deeds	Value of land	Stamp duty/ registration fee leviable	Nature of irregularity
1	15**	2001-2002 2002-2003 2003-2004	4 7 11	150.40 115.21 185.35	9.02 6.91 11.22	Remission of stamp duty on the transfer of rural land in the names of grand sons was not admissible when the sons were alive.
2	2 (Balachaur and Ludhiana - East)	2002-2003 2003-2004	4 2	60.77 175.52	3.65 10.53	Remission of stamp duty on transfer of urban land was not admissible.

* The difference between closing balance of 2000-01 and opening balance for 2001-2002 was due to non furnishing of information by Collectors of Ropar and Patiala.

** Balachaur, Bhawanigarh, Dasuya, Fatehgarh Sahib, Goraya, Gurdaspur, Jalandhar-I & II, Kharar, Khem Karan, Ludhiana (West), Mohali, Rampura Phool, Sultanpur Lodhi and Sunam.

3	6*	2002-2003 2003-2004	1 5	5.95 56.41	0.38 3.38	Remission of stamp duty was not admissible on the transfer of land to brothers/nephews as class I heirs were alive.
4	2 (Jalandhar and Nakodar)	2002-2003 2003-2004	1 1	19.64 3.41	1.18 0.20	Remission of stamp duty was not admissible on the transfer of land to daughters-in-law as sons were alive.
Total			36	772.66	46.47	

After this was pointed out in audit between August 2003 and February 2005, the Department accepted the observations and recovered an amount of Rs.3.76 lakh in three cases pertaining to the year 2002-2003. The position of recovery in remaining cases was awaited (September 2005).

4.2.12 Misclassification of instruments

- Under the provisions of Stamp Act, every instrument is chargeable with duty at prescribed rates. A 'mortgage deed' includes every instrument whereby, for the purpose of securing money advanced by way of loan or an existing or future debt, one person transfers or creates in favour of another, a right over or in respect of specified property. For availing cash credit facility from commercial and banking institutions, property mortgaged by individuals without possession was required to be stamped under the Act.

During test check of records of six** SRs, it was noticed that nine instruments were executed for securing loan of Rs.5.94 crore from scheduled banks between April 2001 and 31 March 2004 as 'memorandum of deposits/surety' by third party. Since the instruments were executed for securing loans to avail cash credit facilities against security of immovable property, these instruments were to be classified as 'mortgage deeds' without possession. Thus, misclassification of instruments resulted in short levy of stamp duty of Rs.11.60 lakh.

- Under the provisions of Stamp Act, conveyance includes a conveyance on sale and every instrument by which, property whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided by Schedule I-A of the Act. In July 1961, Government clarified that documents containing essential ingredients of conveyance would amount to sale and therefore, duty as leviable in case of conveyance be levied. Further, amendment in December 2001 in Schedule I-A of the said Act, provides, that in case of agreement to sell followed by possession or evidencing delivery of

* Ajnala, Chamkaur Sahib, Dera Baba Nanak, Goraya, Khamano and Kharar.

** Amritsar-II, Gurdaspur, Guru Harsahai, Jalalabad, Shahkot (Jalandhar) and Sunam.

immovable property agreed to be sold, the same duty is leviable as leviable in the case of conveyance deed.

During the course of audit of 11* SRs, it was noticed that 20 cases of agreements to sell immovable property for consideration of Rs.1.68 crore were entered into between parties with mention of consideration as well as handing over the possession of property to the purchasers during the year 2001-2002 to 2003-2004. Though the description of title of each document read as 'agreement to sell', the substance of the document clearly indicated handing over of possession of the property to the purchasers after receiving consideration. As such stamp duty as applicable under conveyance deed was leviable whereas stamp duty as applicable to 'agreement to sell' of immovable property was levied. This resulted in short levy of stamp duty of Rs.8.97 lakh.

4.2.13 Incorrect grant of exemption

The Government vide notification issued on 21 June 2001, exempted stamp duty and registration fee on instruments executed by a person in favour of any commercial/banking institution to meet the expenditure for any of the items specified in connection with agricultural purposes or purpose allied to it (including machinery and building not used for commercial purposes).

Test check of records of 17** SRs revealed that, 22 deeds of mortgage without possession were executed between 2001 and 2004 by individuals in order to secure loans of Rs.12.35 crore from commercial/banking institutions for the purpose of non farming sector i.e. for rural godowns or for business etc. not specified in the notification. This resulted in incorrect grant of exemption from levy of stamp duty of Rs.24.50 lakh including registration fee.

4.2.14 Incorrect grant of exemption to charitable institutions

By a notification issued in February 1981, Government exempted from the levy of stamp duty and registration fee chargeable on instruments of transfer of land by sale or gift executed in favour of a charitable institution within the meaning of the Charitable Endowments Act, 1890 (Central Act of 1890) for purpose of construction of roads or buildings of schools, colleges, hospitals and dispensaries on such land.

- In seven*** SRs, stamp duty of Rs.6.68 lakh including registration fee was not levied on conveyance deeds of land valuing Rs.1.04 crore executed in favour of seven charitable institutions registered under the Societies Act, 1860 without recording the purpose in the sale deeds as laid down in the Central Act of 1890.

* Amloh, Barnala, Bholath, Ferozepur, Jalandhar-I, Kapurthala, Khamano, Ludhiana (East), Mandi Gobindgarh, Nakodar and Patiala.

** Amritsar-II, Barnala, Batala, Bholath, Chamkaur Sahib, Dhilwan, Ferozepur, Goraya, Hargobindpur, Jhabal, Ludhiana (East), Ludhiana (West), Nakodar, Phagwara, Ropar, Sultanpur and Sunam.

*** Balachaur, Barnala, Bathinda, Dhuri, Khanna, Rajpura and Sunam.

- In nine* SRs, 12 deeds for sale of land valuing Rs.2.08 crore were executed in favour of trusts/societies/ religious institutions without production of registration certificates as required under Central Act of 1890 at the time of registration. This resulted in incorrect grant of exemption of stamp duty of Rs.13.28 lakh including registration fee.

4.2.15 Incorrect refunds

As per Stamp Act, the Collector may, on application made within period prescribed in the Act, make allowance for impressed stamp spoilt due to refusal of any person to execute documents after signing the application. The application for relief in such cases shall be made within two months from the date of purchase of stamp papers.

During test check of records of three** Sub Divisional Magistrate-cum-Collectors (Collectors), it was noticed that 26 persons purchased non judicial stamp papers valued at Rs.3.02 lakh between October 2000 and December 2003 from different treasuries/vendors for executing conveyance deeds in respect of their properties. The deeds could not be got registered by persons although these were written and signed by both the parties. Refund of value of stamp papers was applied for after expiry of two months to the Collectors who allowed the refund between April 2001 and March 2004 after making statutory deductions. This resulted in incorrect refund of Rs.2.72 lakh.

4.2.16 Unauthorised levy of user charges

Under the provisions of Stamp Act and Registration Act, subject to provisions of the Act and exemptions contained in Schedule I/I-A, the instruments chargeable with duty/fee are as given in the said Act. Further under Article 265 of the Constitution, no executive legislation to levy tax is permissible in the absence of legislative enactment. Further the State Financial Rules provide that the departmental receipts collected on behalf of the Government should be credited into the treasury on the same day or on the morning of next day.

It was noticed that the Director, Land Records, Punjab, Jalandhar on the basis of resolution of Punjab Land Records Society passed by Governing Council meeting held on 29 January 2004 issued directions on 15 February 2004 to all Deputy Commissioners to charge Rs.150 per deed/document as user charges from public in addition to stamp duty and registration fee for computerisation of land records. The Director of Land Records cum Member Secretary of Punjab Land Records Society issued instructions on March 2004 that out of total amount so collected 15 *per cent* of the funds be transferred to savings bank account of the Punjab Land Records Society.

* Balachaur, Hoshiarpur, Jalandhar, Kharar, Ludhiana (West), Malout, Mukerian, Nawanshahar and Payal.

** Kharar, Patti and Tarn Taran.

As per the information collected from 10* District Collectors, an amount of Rs.6.30 crore was collected from the persons who got instruments executed between February 2004 and January 2005. A sum of Rs.46.12 lakh was transferred in the savings bank account of the Society and the District Collectors utilised Rs.3.62 lakh towards expenditure. The collection of the user charges without the sanction of the Legislature and retention of money outside the Consolidated Fund of State was irregular and against the provisions of the Financial Rules.

4.2.17 System deficiencies

- **Improper/Non maintenance of records**

Punjab Financial Rules provide that cash book should be maintained and Government money received should be deposited into treasury on the same day or by next day and reconciliation of remittance be done with the treasury by the head of the office to avoid the chances of misutilisation of Government receipts.

Test check of records revealed that cash book in the form prescribed in PFR volume I was not maintained by SR Khanna, Ludhiana (West) and Payal and reconciliation was not done by 10** SRs. The chances of misutilisation/misappropriation of Government money could not be ruled out.

Full description of land/property such as situation of the property, nearest road to property, distance of property from railway station/bus stand, hospital, factory and educational institutions etc. and khasra number/khewat/khatauni of latest jamabandi etc. in Form –I as required under the Punjab Stamp (dealing of under valued instrument - First Amendment) Rules, 2002 was not found recorded by the registering offices.

While fixing the rates under Rules 3-A of the Punjab Stamp (dealing of under valued instruments – First Amendment) Rules, 2002 the Collector approved different rates for land/property situated on G.T. roads, link roads, plain roads or near abadi/village. It was, however, observed that exact location of sites, land and properties were not mentioned in the instruments. Thus, the correct value of land/property could not be checked in audit.

- **Monitoring and evaluation**

Financial Commissioner, Department of Revenue and Rehabilitation examines the proposals for grant of exemption/remission received from different departments. However, the Department neither maintained/ compiled any data of remission of stamp duty and registration fee nor conducted any survey of the actual impact of exemptions allowed to different sections of society. In the absence of information/data, it was not possible to ascertain whether the object

* Amritsar, Fatehgarh Sahib, Jalandhar, Kapurthala, Ludhiana, Mansa, Nawan Shahar, Patiala, Ropar and Sangrur.

** Bassi Pathana, Bathinda, Jaitu, Ludhiana (West), Moonak, Mukerian, Patiala, Rampura Phool, Sultanpur Lodhi and Tarn Taran.

for which the concessions/remissions allowed were actually achieved or not. Thus, without any evaluation, misuse of concessions/remissions for purposes other than permissible under the rules could not be ruled out.

4.2.18 Conclusion

The review has revealed lapses in monitoring of receipts and collection of Government revenue due to non observance of instructions contained in Stamp Act and Registration Act by the SRs. As a result amount due to Government remained unrealised. As stamp duty constituted a major part of tax revenue of the Government, it is the duty of the Department to have a detailed look at the working of the SRs and its procedure with a view to ensure proper and accurate realisation of duty/fee and implementation of provisions of Acts/Rules.

The above points were brought to the notice of Department and referred to the Government in April 2005; their replies were still awaited (September 2005).