ABOUT WIRC OF ICAI

The Western India Regional Council of the Institute of Chartered of Accountants of India (WIRC of ICAI) is the largest Regional Council amongst the five Regional Councils. The WIRC of ICAI has a membership of more that 49,000 members who are either in practice or holding eminent positions in various industries as well as in government organisations. The Western India Regional Council of ICAI includes the States of Maharashtra, Gujarat, Goa and the Union territories of Daman, Diu, Dadra and Nagar Haveli. The Regional Headquarters is at Mumbai with 23 branches and around 80 Study Circles spread across the region.

The WIRC of ICAI plays a lead role in organising various seminars, workshops, lecture meetings covering diverse areas of professional interest for the benefit of the members and students. It also organises various programmes for the benefit of the public at large. It also organises classes for the students of chartered accountancy from the region. Various cultural and social events are also on the agenda of the WIRC.

WIRC liaises with different government and regulatory bodies within the Region and also makes representations to these bodies on various matters of professional interest on behalf of its members. The WIRC of ICAI publishes a monthly Newsletter with an international look and style. This newsletter contains various regular updates on various laws, etc. The website of WIRC www.wirc-icai.org is being regularly updated with various useful information, which includes the background materials of various seminars, workshops and lecture meetings, for the benefit of the members and students. The WIRC has a full fledged library with over thirty thousand books at its Cuffe Parade premises. Besides this, there are reference libraries set up at Income tax offices at Aayakar Bhavan and Pratyakshakar Bhavan. It has also set up reading room facilities at RVG Hostel, Andheri (W), at Dadar (E) and also at Mulund.

WIRC under the auspices of the Western India Chartered Accountants' Educational Trust, manages "Dewan Kuldeep Singh CA Students Hostel", at Vasai, exclusively for students pursuing Chartered Accountancy courses. WIRC has been regularly organising Career Counselling programmes in various colleges to promote the CA course.

**WESTERN INDIA REGIONAL COUNCIL OF
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STAMP DUTY

Some Frequently Asked Questions

**WESTERN INDIA REGIONAL COUNCIL OF
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**

Stamp Duty

Some Frequently Asked Questions

Western India Regional Council of
The Institute of Chartered Accountants of India

First Edition

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FOREWORD

I am extremely happy to present before you the publication "STAMP DUTY – Some Frequently Asked Questions" which has been brought out by the Research & Publications Committee of WIRC of ICAI.

It is the endeavour of the Research & Publications Committee of Western India Regional Council of the Institute of Chartered Accountants of India to bring out publications on different subjects for the benefit of the members and the society at large. With this objective in mind, WIRC has come out with this booklet, which covers various aspects of law relating to Stamp Duty and questions that a lay man has on the topic. This book puts more emphasis on practical issues faced by clients and professionals and is indeed a culmination of hard work put in by the learned authors.

I appreciate and compliment the Chairman of the Research & Publications Committee of WIRC CA. Mangesh Kinare and CA. N. C. Hegde who have taken the initiative to put together this publication and the authors CA. Mehul Modi, CA. Devarsh Patel and Shri Prem Rajani, Shri Amish Shroff and Shri Amit Wadhwani of Rajani Associates for coming out with this excellent publication.

CA. B. C. Jain
Chairman WIRC

PREFACE

The Institute, in its role as a regulator of the profession of chartered accountancy in India, understands the need for keeping its members well informed and well versed with the technicalities of the profession so that they are able to discharge their professional duties and responsibilities in an effective and efficient manner. As a step towards keeping the members abreast with the developments on an area which is often faced by both clients and professionals, the Western India Regional Council of The Institute of Chartered Accountants of India has come out with a booklet which highlights certain aspects of the Stamp Duty law as applicable to the States of Gujarat and Maharashtra.

At this juncture, I wish to place on record my sincere thanks to CA N.C. Hegde, member of the WIRC who has coordinated the efforts in bringing out this publication and CA Mehul Modi, CA Devarsh Patel and Prem Rajani, Amish Shroff and Amit Wadwani of Rajani Associates, who have been involved in compiling the relevant details for this publication.

I am confident that this publication would serve as a useful tool in the hands of not only the members in practice but also those in the industry.

CA. Mangesh Kinare
Chairman, Reserach and Publication Committee of
Western India Regional Council of ICAI

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Stamp Duty

Some Frequently Asked Questions

The Oxford Dictionary of Law defines "*stamp duty*" to mean a tax payable on certain legal documents specified by statute; the duty may be fixed or *ad valorem*.

The Constitution of India provides three lists, viz. the Union List, State List and Concurrent List. The Parliament has exclusive powers to make laws with respect to any of the matters enumerated in the Union List, the Legislature of any State has the power to make laws with respect to any of the matters enumerated in the State List and both the Parliament and the Legislature of the State have the power to make laws with respect to any of the matters enumerated in the Concurrent List.

The Constitution of India lays down the provisions for levying taxes. This includes tax in the form of stamps on instruments recording certain transactions. The Stamp Act is a fiscal statute dealing with tax on transactions.

Under the Constitution of India, the power to levy stamp duty is divided between the Union and the State. The Parliament (Central Government) has the power to levy stamp duty on the instruments specified in Article 246 read with Schedule VII, List I, Entry 91 and the State Government has the power to levy stamp duty on instruments falling under Article 246 read with Schedule VII, List II, Entry 63.

The payment of proper stamp duty on instruments bestows legality on them. Such instruments get evidentiary value and are admitted as evidence in Courts[1]. A stamped document is considered more authentic and reliable than an unstamped document.

1 Section 35 of the Indian Stamp Act, 1899 and Section 34 of the Bombay Stamp Act, 1958

1. Levy of Stamp Duty in India

The Indian Stamp Act, 1899 (the "***Indian Stamp Act***") was enacted to consolidate and amend the law relating to stamps. It extends to the whole of India, except the State of Jammu and Kashmir. It includes all transactions between parties.

Section 2(14) of Indian Stamp Act, 1899 defines the instrument as every document by which any right or liability, is, or purported to be created, transferred, limited, extended, extinguished or recorded.

The Indian Stamp Act, 1899 defines the term "duly stamped" as applied to an instrument. The phrase means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with law for the time being in force.

The Finance (No. 2) Act, 2004 inserted the definition of "stamp" as any mark, seal or endorsement by any agency or person duly authorised by the State Government, and includes an adhesive or impressed stamp, for the purposes of duty chargeable under Indian Stamp Act, 1899.

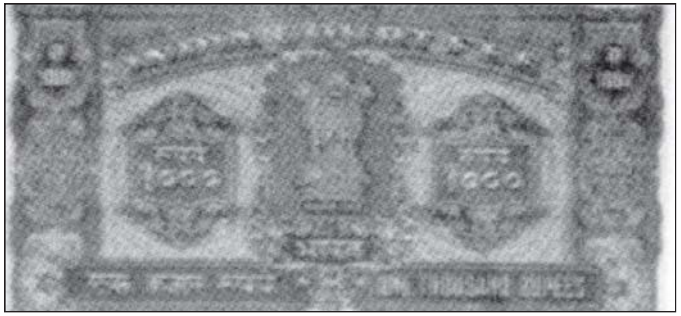
The Indian Stamp Act, 1899 is a Central enactment and States have powers to adopt the Indian Stamp Act, 1899 with amendments to the same to suit the transactions peculiar to each State. Section 3 of the Indian Stamp Act, 1899 is the charging section and stipulates that stamp duty has to be paid on the instruments provided in Schedule I to the Indian Stamp Act, 1899. Certain States have introduced Schedule IA to the Indian Stamp Act, 1899 being the stamp duty payable in that State.

States such as Gujarat, Maharashtra, Karnataka, Kerala and Rajasthan have their separate State Stamp Acts, while many States follow the 1899 legislation. However, where stamp duty payable on certain transactions is not covered in the

respective State Stamp Act, the State/s refer to the stamp duty rates provided in the Indian Stamp Act, 1899 for such transactions.

The stamp papers impressed with the desired amount of stamp duty are used both for judicial and non-judicial purposes as described hereinbelow:

1. **Judicial Stamp (court fee stamp):** Stamps used in courts i.e. for applications, petitions etc., are judicial stamp papers and in normal parlance are called court fee stamps.



2. **Non-Judicial Stamp**: Non-judicial stamp is the most common form of stamp used throughout the country to register deeds, contracts and other instruments. This kind of stamp is printed (impressed) on the paper in various denominations, such as Rs. 50, Rs. 100, Rs. 1,000, Rs. 5,000.

   The revenue from such duties forms a considerable part of the revenues of the State. For the sake of ensuring uniformity of rates of duty with regard to certain instruments of a commercial nature such as bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts, the power to prescribe the rates of duties on such commercial documents is vested with the Union Legislature (*Schedule VII Entry 91 of the Union List*) and the power to reduce, remit or compound such duties on the commercial documents is also vested with the Central Government (Section 9 of the Indian Stamp Act).

On the other hand, the power to prescribe the rates of duties on non-commercial instruments is vested with the State Legislature (*Schedule VII Entry 63 of the State List*) and the power to reduce or remit such duties on non-commercial documents is with the State Government (Section 9 of the Indian Stamp Act).

The legislation has added separate Schedules to the Indian Stamp Act, 1899 applicable to the concerned States, except in Tamil Nadu, Assam and the North Eastern States where the changes are made in the Articles of Schedule I. The Indian Stamp Act, 1899 is also in force in the whole country as regards matters in the Concurrent List, but the Legislature has amended various sections and added new sections as applicable to each State. In the five States referred to above, the Act is in force in such matters only as regards instruments specified in entry 91 of the Union List. Thus, the Indian Stamp Act, 1899 is now a composite Act amended by the Union Legislature and State Legislature in their respective spheres of legislation.

The disparity of stamp duty in respect of the (non-commercial) documents has become greater on account of State legislations since different States levy different stamp duty on the similar instruments.

With regard to conveyance there is another important aspect which seems to have received no attention at all till now, except in a few States where market value of the property is made the criterion for duty. A transfer may be for a consideration which is far less than the real value of the property because of the transferor's natural love and affection towards the transferee or of a sense of gratitude for some past act of service or of hope of future reward in some kind;

but still duty would be chargeable only on the actual amount of consideration i.e. real value (market value) of the property.

2. Types of Stamp in India

There are two kinds of stamps (a) impressed stamps, and (b) adhesive stamps.

A. <u>IMPRESSED STAMPS</u>

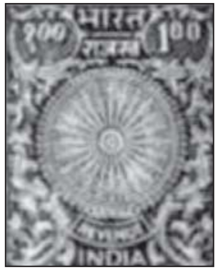
1. Labels affixed and impressed by proper officer;
2. Stamps embossed or engraved on stamped paper; and
3. Impressions by franking machines generally being done by the banks by depositing the necessary amount of stamp duty with the banks. This kind of stamping is mostly preferred on instruments (other than commercial instruments) as at times it becomes difficult to obtain stamps embossed on stamp paper of a higher value such as, Rs. 5,000 or Rs. 10,000. For example, if on an instrument, the stamp duty payable is Rs. 16,00,000 it would be very difficult to collect embossed stamp papers of say Rs. 10,000 aggregating Rs. 16,00,000. Hence, it is convenient for the person paying stamp duty to simply draw a pay order in favour of bank which shall frank the instrument for an amount of Rs. 16,00,000 as franking may be allowed up to any amount.

B. <u>ADHESIVE STAMPS</u>

Adhesive stamps are labels which can be conveniently stuck on the instruments. Adhesive stamps can be further categorised as postal stamps and non-postal stamps. Postal Stamps are used only for transactions with the post office and related functions.

Non-Postal adhesive stamps are:

1. **Court fee stamp**: Court fee stamps are generally used by public and other departments as processing fees for transactions with Government departments, such as RTO, police, revenue officers.



2. **Revenue Stamp:** Revenue stamps are used for acknowledging the receipt of money.

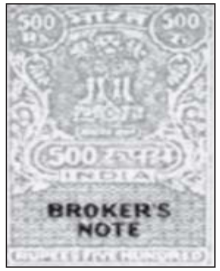
3. **Notarial Stamp:** Notarial stamps are used by a Notary Public who is a duly appointed officer whose function is to draw, attest and certify deeds, conveyances and Power-of-attorney usually under his official seal along with the notary stamp[2];

4. **Special adhesive stamp**: The Special adhesive stamps are non-judiciary stamps used in certain financial instruments such as bills of exchange, cheques, promissory notes, instruments of transfer of shares and transfer of debentures.[3]

2 Article 42 of the Indian Stamp Act, 1899

3 Rule 17 of the Indian Stamp Rules, 1925

5. **Foreign bill stamp:** Foreign bill stamp is a special adhesive stamp bearing the words Foreign Bill. Such kind of stamp is generally used in case of bills of exchange and promissory note drawn out of India[4].



6. **Broker's note:** Brokers note is a special adhesive stamp bearing the words Broker's Note. Such kind of stamp is used in case of transactions through brokers or agent to his principal intimating the purchase or sale on account of such principal (a) if any goods exceeding Rs. 20. (b) of any stock or marketable security exceeding Rs. 20[5].

7. **Insurance Policy stamp:** This kind of stamp is used by the insurance department to authenticate the insurance policies.

4 Rule 17(a) of the Indian Stamp Rules, 1925

5 Article 43 of the Indian Stamp Act, 1899.

8. **Share transfer stamp:** This kind of stamp is used by financial institutions in respect of transactions pertaining to Shares[6].

3. Important Provisions of Stamp Duty

Power of Parliament in respect of stamp duty: Parliament has exclusive powers to make laws with respect to any of the matters enumerated in Union List which includes, prescribing rates of stamp duty. The stamp duty rates prescribed by Parliament in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts, will prevail all over India. In case of States, the rates prescribed by individual States will prevail in those States.

Powers of State Government in respect of Stamp Duty: State Government has powers to fix stamp duties on all documents, except bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts. The rates prescribed by State Government will prevail in that State.

Instruments chargeable to stamp duty: Instrument includes every document by which any right or liability, is, or purported to be created, transferred, limited, extended, extinguished or recorded. Any instrument mentioned in Schedule I to Indian Stamp Act, 1899 is chargeable to duty as prescribed in the Schedule. The list includes all usual instruments like affidavit, lease, memorandum and articles of association of a company, bill of exchange, bond,

6 Article 62 of the Indian Stamp Act, 1899.

mortgage, conveyance, receipt, debenture, share, insurance policy, partnership deed, proxy, shares etc. Thus, if an instrument is not listed in the Schedule, no stamp duty is payable.

Duty payable when there are several instruments: In case of sale, mortgage or settlement, if there are several instruments for one transaction, stamp duty is payable only on one instrument. On other instruments, nominal stamp duty is payable. If one instrument relates to several distinct matters, stamp duty of aggregate amount is payable on the principal instrument. However, it may happen that one instrument covering only one matter can come under more than one description given in Schedule to Stamp Act in such a case, the highest rate specified among the different heads will prevail.

Powers to reduce stamp duty: The Government can reduce or remit whole or part of duties payable. Such reduction or remission can be in respect of whole or part of territories and also can be for particular class of persons. The Government can also compound or consolidate duties in case of issue of shares or debentures by companies. Government means "Central Government" in respect of stamp duties on bills of exchange, cheque, receipts etc. and "State Government" in case of stamp duties on other documents.

Mode of payment of stamp duty: The payment of stamp duty can be made by adhesive stamps or impressed stamps. Instrument executed in India must be stamped before or at the time of execution of the same. Instrument executed out of India can be stamped within three months after it is first received in India. However, in case of bill of exchange or promissory note made out of India, it must be stamped by first holder in India before he presents for payment or endorses or negotiates in India.

Valuation for stamp duty: In some cases, stamp duty is payable on *ad valorem* basis, i.e. on basis of value of property. In such cases, value is decided on prescribed basis by the Government.

Adjudication as to stamp duty payable: Adjudication means determining the proper duty payable on an instrument. Normally, the person paying the duty himself may calculate the stamp duty payable as per the rates provided in the Indian Stamp Act or the State Stamp Act, as the case may be, and pay accordingly. However, in cases of complex documents, the person paying the duty may not be able to ascertain the correct stamp duty payable, and in such case, he can apply for opinion of the Collector of Stamps.

For getting the instrument adjudicated, one has to apply with draft document and prescribed fees for adjudication to the Collector of Stamps. The Collector of Stamps will then determine the stamp duty payable on such instrument as per his judgment.

Instrument will not be accepted as evidence if not duly stamped: An instrument not duly stamped will not be accepted in evidence by court of law, an arbitrator or any other authority authorised to receive the same in evidence.

Case when deficient payment is by mistake: If non-payment or deficient payment of stamp duty is by accident, mistake or urgent necessity, the person can himself produce the document to Collector of Stamps within one year for payment of the proper stamp duty. In such a case, the Collector of Stamps may receive the amount and endorse the document that proper duty has been paid.

4. Bombay Stamp Act, 1958 (the "Bombay Stamp Act")

Stamp duty is levied by different States in accordance with their respective Stamp laws enacted in line with the Indian Stamp Act, 1899. Such stamp duty collected forms a considerable part of the revenue of the States. Revenue so collected by the States is earmarked to the State in which they are levied under the Constitution of India. However, the power to prescribe the rates on the commercial

instruments (as stated in the Indian Stamp Act, 1899 and Section 74 of the Bombay Stamp Act, 1958) remains with the Parliament.

Provision of the Indian Stamp Act, 1899 and Bombay Stamp Act, 1958 are more or less similar, so also the Schedules appended to these two Acts. However, the stamp duties fixed under these Acts materially differ. For example, with the introduction of the concept of "true market value" of the immoveable property to Article 25 of the Bombay Stamp Act, 1958, the stamp duty payable on instruments such as conveyance, exchange, gift, partition, power of attorney to sell when given for consideration, deed of settlement, transfer of lease, is on the basis of market value of the subject matter and not on the basis of consideration mentioned in such instruments as was provided earlier.

Stamp Duty on instruments under the Bombay Stamp Act, 1958

Schedule I of the Bombay Stamp Act, 1958 comprises of 62 instruments that are chargeable to stamp duty as provided under section 3 of the said Act along with exemptions as contained therein. The 62 instruments are indicated in the form of articles under Schedule I.

Broadly, the 62 articles of Schedule I can be grouped in three categories:

Category I) Articles whose amount of Stamp duty is fixed irrespective of the value mentioned in the instrument. (*for example, administration bond, adoption deed, affidavit, divorce, appointment in execution of power, apprenticeship deed, article of clerkship, award, cancellation deed, partnership deed, copy of extracts, entry of memorandum of marriage, indemnity bond, letter of licence, memorandum of association of a company, notarial Act, power of attorney*)

Category II) Articles where depending upon the value mentioned in the document, the amount of stamp duty is varied (*such as agreement relating to deposit of title deeds, pawn, pledge or hypothecation, clearance list, article of association, mortgage deed, security bond.*)

Category III) Articles which attract stamp duty on the consideration mentioned in the document or True Market Value, whichever is higher (*such as conveyance, agreement for sale, lease, gift, exchange, partition, development agreement, transfer, trust.*)

For category (I) and category (II) types of instruments the stamp duty payable can be ascertained by referring to the Schedule I; but to ascertain the Stamp duty on the instruments mentioned in Category III, the expertise in valuation is required. The True Market Value is determined as per the provision of the Bombay Stamp (Determination of True market value of the Property) Rules, 1995.

We set out below stamp duty on few foremost and important instruments as prescribed under Schedule I of the Bombay Stamp Act, 1958.

Articles	*Description of the instrument*	*Stamp Duty*
	CATEGORY I	
2	**Administration Bond**	
	a) where amount does not exceed Rs. 2500	1% subject to a minimum of Rs. 100.
	b) in any other cases	Rs. 100
7	**Appointment in execution of Power** *(not being a Will)*	
	a) of trustees	Rs. 100
	b) of property movable or immovable	Rs. 250

Articles	*Description of the instrument*	*Stamp Duty*
35	**Indemnity Bond**	Rs. 200
39	**Memorandum of Association of a Company**[7]	
	a) if accompanied by Article of Association	Rs. 200
	b) if not so accompanied	The same stamp duty as is leviable on Article of Association under Article 10 according to the share capital of the Company.
42	**Notarial Act**	Rs. 25
47	**Partnership Deed (instrument of partnership)**	Rs. 500[8], maximum of Rs. 5,000.
48	**Power of Attorney not being a Proxy**	
	a) for registering or admitting execution of document before the Sub-Registrar	Rs.100
	b) when authorising one person or more to act in a single transaction / more than one transaction	Rs. 100

7 Except of such company not formed for profit and registered under section 25 of the Companies Act.

8 However, if the contribution is brought in by way of property (not being cash), then the stamp duty will be computed as per conveyance.

Articles	Description of the instrument	Stamp Duty
	c) authorising to sell immovable property and given for consideration	same as conveyance[9]
	d) authorising to sell or transfer immovable property without consideration	
	i. if given to father, mother, brother sister, wife, husband, daughter, grandson, grand daughter or such other close relative	Rs. 500
	ii. in any other case	same as conveyance
	e) when given to a promoter or developer for construction on, development of, or sale or transfer (in any manner whatsoever) of, any immovable property.	same as conveyance[10]
	CATEGORY II	
6	**Agreement relating to** deposit of title deed	***If the amount secured does not***

9 Same duty as is leviable on a Conveyance under clause (a), (b), (c) or (d) as the case may be of Article 25, on the market value of the property.

10 The stamp duty on this instrument is subject to certain concession under limited circumstances.

Articles	Description of the instrument	Stamp Duty
	(equitable mortgage), pawn, pledge or hypothecation of movable property	***exceed Rs. 0.5 million -*** 0.10%[11] on the amount secured subject the minimum of Rs. 100 ***In any other cases -*** 0.20%[12] on the amount secured
10	**Article of Association**	0.2%[13], subject to a maximum of Rs. 50,00,000.
40	**Mortgage deed** (such, as English mortgage) – when possession is not given or agreed to be given	0.5%[14] of the amount secured, subject to- minimum of Rs. 100 maximum of Rs. 10,00,000.
59	**Transfer of debentures**	0.5%[15]

11 Computed on the basis of Re. 1 for every Rs. 1,000 or part thereof.

12 Computed on the basis of Re. 1 for every Rs. 1,000 or part thereof.

13 Computed on the basis of Rs. 1,000 for every Rs. 5,00,000 or part thereof.

14 Computed on the basis of Rs. 5 for every Rs. 1,000. If possession is given then, same as conveyance.

15 Computed on the basis of 50 paise for every Rs. 100.

Articles	Description of the instrument	Stamp Duty
	CATEGORY III	
5	**Agreement for sale**	Variable rate according to the nature of the transaction as specified in Article 5.
25	**Conveyance**	Rate of stamp duty varies according to the conveyance of various property being movable or immovable, residential or commercial. (1% to 5% of the market value)
32	**Exchange**	Same as conveyance - on the market value of the property of the greatest value.
34	**Gift**	Same as conveyance. If gifted to a family member - 2% of the market value of property
36	**Lease**	Same as conveyance, but based on certain mode of computation linked to the term of lease period

Articles	Description of the instrument	Stamp Duty
61	**Trust**	
	a) where there is disposition of property	
	(i) for religious or charitable purpose	2%[16]
	(ii) in any other case	Same as conveyance
	b) where there is no disposition of property	1%, subject to a maximum of Rs. 200

5. Frequently Asked Questions on Stamp Duty

A. <u>INDIAN STAMP ACT, 1899</u>

Q. What is the purpose of Indian Stamp Act?

Ans. The purpose of enacting such an Act is to raise revenue for the local governments. Additionally, payment of stamp duty imparts legality to the document and this can be submitted as an authentic document in courts.

Q. What is stamp duty? Why should stamp duty be paid?

Ans. It is a tax, similar to sales tax (VAT) and income tax collected by the Government. Stamp Duty is payable under section 3 of the Indian Stamp Act, 1899. Rates of Stamp Duty payable for different types of documents are as per Schedule I. Stamp Duty must be paid in full and on time. If there is a delay in payment of stamp duty, it attracts penalty. A stamp duty paid document gets evidentiary value and is admitted as evidence in court. Document not properly stamped, is not admitted as evidence by the Court.

16 Computed on the basis of Rs.10 for every Rs.500

Q. How should one sign an instrument affixed with adhesive stamp?

Ans. As per the provisions of *section 12*, any person executing an instrument affixed with adhesive stamp, shall cancel the adhesive stamp so affixed by writing on or across the stamp his name or initials. If such an adhesive stamp has not been cancelled in the aforesaid manner, such a stamp is deemed to be unstamped.

Q. How should instruments stamped with impressed stamp be written?

Ans. As per the provision of *section 13* of the Indian Stamp Act, 1899, any instrument on an impressed stamp, shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument i.e., cancel the adhesive stamp so affixed by writing on or across the stamp his name or initials. If such an adhesive stamp has not been cancelled in the aforesaid manner, such a stamp is deemed to be unstamped.

Q. How are stock and marketable securities valued?

Ans. As per the provision of *section 21* of the Indian Stamp Act, 1899, any instrument chargeable with ad valorem duty in respect of any stock or any marketable or other security, such duty shall be calculated on the value thereof on the day of the date of the instrument.

Q. How is a property subject to mortgage, when transferred to the mortgagee, charged?

Ans. As per the provision of *section 24*, when any property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

Q. When can one ask for refund of stamp duty?

Ans. As per the provisions of *sections 49, 50, 52, 53* and *54*, Stamp Duty can be refunded under the following circumstances:

1. Spoiled Stamps;
2. Misused Stamps;
3. Stamps used in excess of the value required; and
4. Stamps not required for use.

Q. How is stamp duty paid in transactions where more than one instrument is required?

Ans. As per *section 4* of the Indian Stamp Act, 1899, stamp duty is paid only on one of the principal instruments and on the balance documents only minimum duty is payable.

Q. Can stamp duty be paid in India, for documents executed outside India?

Ans. As per *section 18* of the Indian Stamp Act, 1899, any instrument executed out of India can be stamped in India, provided it is stamped within 3 months from the date it has been first received in India.

Q. Stamp Duty is paid on *ad valorem* basis. What does this implies?

Ans. It means that — Stamp Duty is paid on basis of value of property.

Q. How stamp duty payable can be determined?

Ans. Usually, the executor himself can calculate the stamp duty payable on document as per the rates provided in the Indian Stamp Act, 1899 or the State Stamp Act, as the case may be. Under *section 31* of the Indian Stamp Act, 1899, the executor can also apply to the Collector of Stamps after payment of the requisite fee, for the purpose of obtaining the opinion of the Collector of Stamps as to the amount of stamp duty chargeable on the instrument.

Q. How stamp duty on transfer of shares of a company is computed?

Ans. Stamp duty is payable under the Indian Stamp Act, 1899 on transfer of shares of an Indian company. If the shares are transferred under the depository mechanism, no stamp duty is payable on such transfer of shares. The stamp duty on transfer of shares as per Article 62 of the Indian Stamp Act, 1899 is 0.25% of the value of the transfer.

Q. Is a WILL made by an individual chargeable to stamp duty?

Ans. No stamp duty is payable on an instrument of WILL whether subject to the Indian Stamp Act or any state laws.

Q. Is there any stamp duty on merger, de-merger, hive off, slump sale of a business by an Indian company?

Ans. The Indian Stamp Act, 1899 do not specifically provide for any specific entry in Schedule I with regard to merger, de-merger, hive off, slump sale of a business by an Indian company. However, this does not mean that no stamp duty is payable on instruments which are used to implement such transactions. The issue is subject to several litigation and the revenue authorities take different views in different cases.

In states like Maharashtra and Gujarat, the matter is resolved to some extent by providing specific entries for levying stamp duty on merger and de-merger which are implemented under the Companies Act, 1956.

Q. Is there any penalty for violation of Stamp laws?

Ans. Yes. The penal provision includes imprisonment and fine or both for offences under the Stamp Laws.

Q. What are the consequences of non payment of stamp duty?

Ans. Every person having by law an authority to receive evidence and every person in charge of public office before whom any instrument chargeable, in his opinion, with duty, is produced or comes in performance in his function, shall, if it appears to him if such instrument is not duly stamped, impound the same.

No instrument chargeable with duty is admitted in evidence for any purpose or can be acted upon, registered or authenticated unless such instrument is duly stamped.

(B) BOMBAY STAMP ACT, 1958

Q. What are the Instruments liable to be stamped under the Bombay Stamp Act?

Ans. Instrument includes every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded, but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt.

Q. Is stamp duty payable on the instrument or transaction?

Ans. It is payable on instruments and not on transactions. Stamp duty should be charged on the basis of the contents of the instrument only. If any information essential for working out stamp duty is missing in the instrument, valuation officer can call for the same. In respect of immovable property, information such as the Carpet or Built-up area of the flat, number of floors in the building, year of construction, name of Division/Village and C.S./C.T.S. number of plot of land on which property is situated must be mentioned in the agreement for quicker response.

Q. Is stamp duty payable on all instruments/documents relating to transfer of immovable property?

Ans. Except transfer by WILL (or by original nomination in a co-operative housing society) all transfer documents including agreements to sell, conveyance deed, gift deed, mortgage deed, exchange deed, deed of partition, power of attorneys, leave and licence agreement, agreement of tenancy, lease deeds, power of attorney to sell for consideration, etc. have to be properly stamped before registration.

Q. Is there a time frame within which the Stamp Paper must be used?

Ans. According to *section 52B,* a stamp paper should be used within six (6) months from the date of purchase. Any stamps not used within this period are invalid.

Q. Is a refund possible if the Agreement has not been signed and the parties have paid the Stamp Duty and the transaction is called off?

Ans. When a person has stamps in his possession which have been spoiled or rendered unfit or the person does not require to immediately use the said stamps, or the transaction is called off then such a person should deliver the above said stamps to the Collector of Stamps.

In this case, the person is required to make an application within six (6) months from the date of the purchase of stamps. Under *section 52* of the Bombay Stamp Act, the person should also submit the affidavit mentioning the reasons for which the Stamps were purchased and the reasons why the refund application is being made.

Q. In whose name should the stamp paper be purchased? If it is purchased in the name of an Advocate, can the client exercise the document?

Ans. As per *section 34* of the Bombay Stamp Act, 1958, the stamp papers should be in the name of one of the parties who have signed/who would be signing the instruments.

Q. How is Mumbai City bifurcated for stamp duty purpose?

Ans. Mumbai city is divided as follows:

1) Mumbai City District: Mumbai City District is from Colaba to Mahim/Sion and consists of 19 Revenue Divisions;

2) Mumbai Suburban District: Mumbai Suburb is from Bandra to Dahisar and from Kurla to Mulund and consists of Andheri Taluka, Borivli Taluka, each having approximately 35 revenue villages. Andheri Taluka is from Bandra to Andheri, Borivli Taluka is from Jogeshwari to Dahisar and Kurla Taluka is from Kurla to Mulund.

Q. How does one ascertain the right amount of stamp duty in respect of immovable property?

Ans. You can find out the market value of a property and the proper stamp duty amount on it from the Stamp Duty Ready Reckoner and Market Value of Flats in Mumbai, as follows:

If your property is situated in Mumbai City (i.e., from Colaba to Mahim/Sion) you should know the Division name and C. S. No. (Cadestral Survey No.) of your property and if your property is situated in Mumbai Suburb (i.e., from Bandra to Dahisar and from Kurla to Mulund) you should know the Village name and C.T.S. No. (Chain and Triangulation Survey No.) of your property. This information is available from property card of the land on which your property is situated and a copy of property card is generally available from your society office or from original builder's agreement.

Q. Is there a penalty for not paying the requisite stamp duty?

Ans. *Section 34* of the Bombay Stamp Act, 1958, provides a penalty of 2% per month of the deficient portion of the stamp duty for every month or part thereof, from the date of execution of the instrument, subject to a maximum of 2 times the deficient portion of duty.

Q. In case of resale of the flat, who is required to pay the stamp duty the purchaser or the seller?

Ans. The parties can decide who shall pay the Stamp Duty. As per *section 30* of the Bombay Stamp Act, 1958, if nothing is mentioned in the agreement and if the transaction relates to resale of flats then the stamp duty will have to be paid by the purchaser.

Q. What is the Stamp duty on units or premises of Information Technology or Information Technology enabled services?

Ans. These units or premises are exempted to certain extent from stamp duty for the period commencing from the 4th June, 2003 to 31st May, 2008. *(Notification No. Mudrank 2003/2093/C.R.-462/M-1, dated 29th December, 2003)*

Q. When is stamp duty payable on an instrument in Maharashtra?

Ans. All instruments are liable to be stamped before or at the time of execution of instrument or immediately thereafter on the next working day following the date of execution, when executed in the State of Maharashtra.

Further, according to *section 18* of the Bombay Stamp Act, any instrument executed outside the State is liable to duty within three (3) months from the date of receipt of such instrument in the State, provided it relates to a property situated in the State, or a matter or thing to be done in the State.

Q. What is Adjudication?

Ans. Adjudication is process by which an opinion of Collector is obtained as to the duty, if any, with which or the Article under which that instrument is chargeable.

Q. Is there a procedure for adjudication of stamp duty?

Ans. For the purpose of adjudication, the person who is a party to the instrument has to furnish a true copy of the instrument or an abstract and an affidavit stating the facts and such other evidences as required, along with prescribed fee.

Q. Is the chargeability of stamp duty determined by the Collector of Stamps in adjudication final? Can a person go in appeal against the order passed by the Collector of Stamps. Is there any time limit for filing the appeal?

Ans: The chargeability of stamp duty on the instrument as determined by the Collector of Stamps is not final. The person affected by the order of the Collector of Stamps can go in appeal to the Chief Controlling Revenue Authority as provided in *section 53* of the Bombay Stamp Act, 1958. Though there is no time limit prescribed for the filing of appeal, it will be desirable to file the appeal at the earliest to avoid complications.

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Notes