

## EXECUTIVE SUMMARY

<b>Tax collection</b>	<p>In 2010-11, the collection from stamp duty &amp; registration fee increased by 41 <i>per cent</i> over the previous year, due to abnormal increase in number of registered documents.</p>
<b>Results of audit conducted by us in 2010-11</b>	<p>In 2010-11, we test checked records of 64 units relating to stamp duty &amp; registration fee and found underassessment of tax and other irregularities involving ₹ 52.28 crore in 2,188 cases.</p> <p>The Department accepted underassessment and other deficiencies of ₹ 27.61 crore in 1,474 cases, which were pointed out by us during the year 2010-11. An amount of ₹ 4.91 crore was recovered in 3,236 cases during the year 2010-11.</p>
<b>What we have highlighted in this Chapter</b>	<p>In this Chapter, we present illustrative cases of ₹ 34.22 crore selected from observations noticed during our test check of records relating to non/short levy, non/short realisation etc. on stamp duty &amp; registration fee in the office of the Sub Registrars (SRs) where we found that the provisions of the Acts/Rules were not observed.</p> <p>It is a matter of concern that similar omissions have been pointed out by us repeatedly in the Audit Reports for the past several years, but the Department has not taken corrective action.</p>
<b>Our conclusion</b>	<p>The Department needs to improve the internal control system including strengthening of internal audit so that weaknesses in the system are addressed and omissions of the nature detected by us are avoided in future.</p> <p>It also needs to initiate immediate action to recover the amount on account of non/short levy of stamp duty &amp; registration fee pointed out by us, more so in those cases where it has accepted our contention.</p>

## CHAPTER - VI STAMP DUTY & REGISTRATION FEE

### 6.1 Tax administration

Registration and Stamps Department is under the Commercial Tax Department headed by the Principal Secretary. The Inspector General, Registration and Superintendent of Stamps, Madhya Pradesh (IGR) is the head of the Department. Two Joint Inspectors General, Registration (JIGR), one Deputy Inspector General Registration (DIGR), one Senior District Registrar (SDR), one District Registrar (DR) and one Accounts officer (AO) are deployed at the headquarters. There are 48 Registration Districts notified in the State. There is a SDR in each Registration district (15) and a DR in each of the remaining districts (33). There are 226 Sub Registrar (SR) offices in the State. Instruments are registered in SR offices. Collector is the head of registration administration at district level.

### 6.2 Trend of receipts

Actual receipts from Stamp Duty & Registration Fee during the period 2006-07 to 2010-11 along with the total tax receipts during the same period are exhibited in the following table:

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual tax receipts vis-a-vis total tax receipts
2006-07	1,000	1,251.10	(+) 251.10	(+) 25.11	10,473.13	11.95
2007-08	1,400	1,531.54	(+) 131.54	(+) 9.40	12,017.64	12.74
2008-09	1,700	1,479.29	(-) 220.71	(-) 12.98	13,613.50	10.87
2009-10	1,560	1,783.15	(+) 223.15	(+) 14.30	17,272.77	10.32
2010-11	1,900	2,514.27	(+) 614.27	(+) 32.33	21,419.33	11.74

In 2010-11, the collection from stamp duty & registration fee increased by 41 *per cent* over the previous year, due to abnormal increase in number of registered documents.

### 6.3 Analysis of budget preparation

No files regarding budget preparation were made available to the audit at Government level. However, we observed from the records available at the office of the Head of the Department that the budget estimates were prepared on an *ad hoc* basis without following any uniform criteria on estimating the receipts to be actually realised during the year. The revised estimate for the year 2010-11 was ₹ 2,200 crore against budget estimate of ₹ 1,900 crore. The actual receipts (₹ 2,514.27 crore) showed an increase of 14.29 *per cent* over the revised estimate due to abnormal increase in number of registered documents.

#### 6.4 Cost of collection

The gross collection in respect of revenue receipts, expenditure incurred on collection as furnished by the Department and the percentage of expenditure to gross collection during the years 2008-09, 2009-10 and 2010-11 along with the relevant all India average percentage of expenditure on collection to gross collection for the relevant previous year are mentioned below:

(₹ in crore)

Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage for the previous year
2008-09	1,479.29	41.72	2.82	2.09
2009-10	1,783.15	51.69	2.90	2.77
2010-11	2,514.27	90.65	3.61	2.47

Thus, the percentage of expenditure on the collection was considerably higher than the all India average and needs to be looked into by the Government.

#### 6.5 Working of internal audit wing

Four posts of Internal Audit Officer and one post of Accounts officer have been sanctioned for the internal audit wing (IAW) of the Department. At present three Internal Audit Officers and one Accounts Officer are working in the IAW.

Out of 226 units of the Department, 18 units were planned for internal audit out of which 16 units were inspected by the IAW. An amount of ₹ 166.16 lakh was involved in 93 observations made by the IAW.

#### 6.6 Results of audit

Test check of the records of 64 units relating to Stamp Duty and Registration Fee revealed underassessment of tax and other irregularities involving ₹ 52.28 crore in 2,188 cases which fall under the following categories:

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1.	Loss of revenue in instruments executed by/in favour of co-operative housing societies	3	0.05
2.	Loss of revenue due to inordinate delay in finalisation of cases	433	10.03
3.	Short realisation of stamp duty and registration fee due to undervaluation of properties	757	9.08
4.	Incorrect remission of stamp duty and registration fee	87	0.47
5.	Loss of revenue due to misclassification of documents	26	1.19
6.	Other observations	882	31.46
<b>Total</b>		<b>2,188</b>	<b>52.28</b>

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 27.61 crore in 1,474 cases, which were pointed out in audit during the year 2010-11. An amount of ₹ 4.91 crore was realised in 3,236 cases during the year 2010-11.

A few illustrative audit observations involving ₹ 34.22 crore highlighting important audit findings are mentioned in the following paragraphs.

## 6.7 Short levy of stamp duty and registration fees on agreement to lease

Under Section 33 and 35 read with Section 38 of Indian Stamp (IS) Act, 1899, every public officer before whom, any instrument chargeable to duty is produced, shall, if it appears to him that such instrument is not duly stamped, impound the same. He shall admit the instrument in evidence upon payment of duty or send it to the Collector for determination of proper duty leviable thereon. Further, the instruments having lease period of more than 12 months are to be compulsorily registered under Section 17 of the Registration Act, 1908. Stamp duty is charged on such instruments at the rate prescribed in schedule 1-A to the IS Act. Registration fee is leviable at three-fourths of the stamp duty.

**6.7.1** We observed in the District Mining (DM) offices Hoshangabad, Khargone and Tikamgarh between May and December 2010 that the Madhya Pradesh State Mining Corporation (MPSMC) sub-leased the right of extraction and sale of sand for 12 months to one contractor and for 24 months to four contractors between July 2009 and April 2010 for ₹ 104.87 crore on which stamp duty of ₹ 7.86 crore and registration fee of ₹ 5.83 crore was payable. However, we noticed that agreements to this effect

were executed on stamp papers of ₹ 100 in each case and no registration fees was paid. The District Mining Officer (DMO) did not initiate any action for proper levy of stamp duty and registration fees. This resulted in short realisation of revenue of ₹ 13.69 crore.

After we pointed out the cases, the District Registrar (DR), Khargone directed the Mining Officer in March 2011 in respect of three instruments to refer the cases to him to register the cases for recovery. DMO, Hoshangabad stated in December 2010 that action would be taken as per rule after scrutiny while DMO, Tikamgarh stated in May 2010 that necessary action would be taken. Report on further developments has not been received (March 2012).

**6.7.2** We observed in nine Sub-Registrar (SR) Offices<sup>1</sup> between May 2009 and January 2011 that in case of 20 documents of lease deeds registered between April 2008 and March 2010 stamp duty and registration fee of ₹ 1.67 crore was leviable but the registering authorities levied ₹ 78.73 lakh only by treating lesser period of lease in three cases<sup>2</sup> while there was mistake

<sup>1</sup> Ambah (Morena), Bhind, Bhopal, Dhar, Indore, Jabalpur, Morena, Raghogarh (Guna) and Shujalpur (Shajapur).

<sup>2</sup> In case of Indore the period of lease was not mentioned in the document and rent after five years was to be decided by the Central Government. In case of Ambah (Morena) the lease period was specified as five years but there was a clause in the instrument according to which the lease would be continued till the loan is cleared, leaving scope for an indefinite period of lease. In Jabalpur there was an undertaking from lessor that after expiry of five years the lease would be extended for a period of four years. Rent was also reserved for that period and as such the lease period was nine years and not five years as taken by the SR.

in computation in 17 cases. This resulted in short realisation of stamp duty and registration fee of ₹ 88.10 lakh.

After we pointed out the cases, the DR, Morena and Guna stated (February-March 2011) in respect of 10 instruments that cases against the executants had been registered and action was in progress. DR Dhar stated (June 2011) that ₹ 1.26 lakh had been recovered in one case (January 2011). The SR, Jabalpur stated (September 2010) in respect of one instrument that the lease period was for five years. We do not agree with the reply because it was contrary to the facts on record. The SR, Indore stated (December 2010) in respect of one instrument that duty was charged as per recitals of the document. We do not agree with the reply because the reply was silent as to why the premium/cost of land was not considered in computation of registration fee. In respect of another instrument he stated that lease deed was for five years and it was a license on which duty of ₹ 500 only was chargeable. We do not agree with the reply because as per section 2 (16) of the IS Act, 1899 and article 33 (a) of Schedule 1-A the instruments should either have been treated as a lease in perpetuity or not purporting to be for a definite period. The SR Bhind, Bhopal and Shujalpur (Shajapur) stated in respect of six cases between May 2009 and January 2011 that the documents would be referred to the Collector of Stamps for recovery. Further, progress has not been received (March 2012).

**6.7.3** We observed in DM Office, Khargone in June 2009 that all the quarries of sand mineral of the district were sanctioned to MPSMC Ltd. in the year 2002 for an unlimited period (until further orders) but no quarry lease agreement was executed and got registered even after eight years of the sanction. This resulted in non-realisation of stamp duty and registration fee of ₹ 22.09 lakh<sup>3</sup>.

After we pointed this out, the DMO, Khargone stated (June 2011) that an agreement to lease would be executed and got registered. Further progress has not been received (March 2012).

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<sup>3</sup> Extracted quantity of sand 14,06,080 cubic meter upto 2008-09 and treating the lease period of 10 years.

The instructions issued by the Government of Madhya Pradesh, Mineral Resource Department (March 1993) provides that royalty payable on quantity of minerals shown in the application or mining plan or dead rent or average of royalty paid by the lessee during the last three years, whichever is higher, shall be considered for levy of stamp duty on mining/quarry leases at the rates prescribed under article 33 of Schedule 1-A to the IS Act. In case of trade quarry, the stamp duty is leviable on auction amount at the rate prescribed therein. Further, registration fee at three-fourths of the stamp duty is leviable on lease deeds under article II of the table of registration fee of the Registration Act.

**6.7.4** We observed in six DM Offices<sup>4</sup>, between October 2008 and September 2010 that stamp duty and registration fee of ₹ 27.77 lakh was leviable on two mining, three quarry and 16 trade quarry leases granted for different lease periods falling between April 2006 and September 2038. However, we noticed that stamp duty and registration fee of ₹ 19.59 lakh only was levied due to computation mistake.

This resulted in short levy of stamp duty and registration fee of ₹ 8.18 lakh.

After we pointed out the cases, DMO, Chhatarpur stated in September 2009 that action would be taken after scrutiny, while the remaining five DMOs stated between October 2008 and September 2010 that the amount would be recovered from the contractors/cases would be referred to the SR/DR for recovery. Further progress has not been received (March 2012).

We reported the matter to the Director, Geology & Mining (DGM), Inspector General, Registration (IGR) and the Government between February and May 2011; their replies have not been received (March 2012).

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<sup>4</sup> Chhatarpur, Mandla, Morena, Panna, Sidhi and Sheopur.

## 6.8 Incorrect determination of market value/non-finalisation of cases

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

**6.8.1** We observed in eight SR offices<sup>5</sup> between July 2010 and February 2011 that 329 cases referred by the registering authorities between March 2007 and March 2010 for determination of market value of property had not been finalised though the period of three months had already elapsed. In these cases, the difference of stamp duty and registration fee as worked out by the SRs was ₹ 9.24 crore.

After we pointed out the cases, five SRs<sup>6</sup> stated between September 2010

and February 2011 in respect of 269 instruments that Collector of stamps would be requested for early disposal. The DR, Sagar stated in March 2011 in respect of 21 instruments that four out of 21 cases had been disposed, in which ₹ 3.37 lakh was recovered in two cases and for remaining two cases action for recovery was being taken. DR, Morena stated in February 2011 in respect of seven instruments of Ambah that cases had been disposed and action for recovery was in progress. DR, Bhopal stated in January 2011 in respect of 32 instruments that pending cases would be disposed early. Further progress has not been received (March 2012).

**6.8.2** We observed in 16 SR offices<sup>7</sup>, between June 2009 and January 2011 that in 292 instruments registered between May 2007 and March 2010, the market value as per guidelines was ₹ 129.21 crore against the registered value of ₹ 85.95 crore. The SR did not refer these instruments to the Collector for determination of correct value of properties and duty leviable thereon. This resulted in short levy of stamp duty and registration fee of ₹ 3.74 crore.

After we pointed out the cases, seven SRs<sup>8</sup> stated between May 2010 and January 2011 in respect of 83 instruments that the market value determined was correct. The reply is contrary to the facts on record and provisions of the market value guidelines. SR Indore accepted the audit observation in respect of five instruments and an amount of ₹ 1.95 lakh was recovered

<sup>5</sup> Ambah (Morena), Bhopal, Dabra (Gwalior), Dhar, Gadawara (Narsinghpur), Indore, Jabalpur and Sagar.

<sup>6</sup> Dabra (Gwalior), Dhar, Gadawara (Narsinghpur), Indore and Jabalpur.

<sup>7</sup> Ambah (Morena), Badnawar (Dhar), Bhind, Bhopal, Dewas, Gohad (Bhind), Indore, Jabalpur, Kasrawad (Khargone), Morena, Nagda (Ujjain), Obedullaganj (Raisen), Sehore, Sonkatch (Dewas), Sidhi and Ujjain.

<sup>8</sup> Bhopal, Dewas, Indore, Jabalpur, Nagda (Ujjain), Sehore and Sidhi.



(December 2010) in two cases at the instance of audit. 11 SRs<sup>9</sup> stated between May 2010 and January 2011 in respect of 118 instruments that cases would be referred to the Collector of stamps/necessary action would be taken, while in respect of the remaining 86 instruments the DR, Dhar, Khargone and Morena stated between December 2009 and March 2011 that cases have been registered against the executants and action was in progress. Further progress has not been received (March 2012).

We reported the matter to the IGR and the Government between February and May 2011; their replies have not been received (March 2012).

## 6.9 Loss of revenue due to lack of provision in the schedule of duty

Article 33 of Schedule 1-A to the IS Act, provides for levy of duty on a lease deed at prescribed rate on the amount of average rent reserved and premium as specified therein. Further, where the lease purports to be for a term exceeding thirty years or in perpetuity the duty on such lease shall be chargeable as a conveyance on the market value of the property leased. Thus, in such instruments, rent and premium are disregarded whereas they are taken into account in assessment of duty on lease deeds where the lease purports to be for a term exceeding twenty years but not exceeding thirty years. As such in the cases of properties leased for a period exceeding 30 years where market value is less than the amount of premium plus five times the annual rent, the leviable duty as per the existing provisions in such cases would be a lesser amount whereas in a similar situation for a property leased for a period exceeding 20 years but not exceeding 30 years the leviable duty would be a higher amount because duty would be levied on the amount of premium plus five times the annual rent and not on market value which was less than the amount of premium plus five times the annual rent. **There is no provision in the schedule to avoid loss of the duty in such cases.**

We observed in SR office, Indore in December 2010 that two instruments of lease were registered in June 2008. The lease was granted for premium in addition to rent fixed for a term exceeding thirty years/ in perpetuity. The duty and fee of ₹ 1.38 crore was levied by the SR on these instruments on the basis of the market value. Had there been a similar provision in the Schedule 1-A for the properties leased out for a period exceeding 30 years the duty of an amount of ₹ 5.34 crore would have been levied instead of ₹ 1.38 crore. Thus, the Government was put to a loss of revenue of ₹ 3.96 crore due to lack of provision in the schedule 1-A.

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<sup>9</sup> Bhind, Bhopal, Dewas, Gohad (Bhind), Indore, Jabalpur, Nagda (Ujjain), Obedullahganj (Raisen), Sehore, Sonkatch (Dewas) and Ujjain.

**The Government may consider amending Schedule 1-A to the IS Act to avoid loss of stamp duty due to adopting different criteria for determining the duty in case of leases between 20 to 30 years and leases exceeding 30 years. A uniform standard may be adopted in such cases as has been done in other states like Chhattisgarh and Andhra Pradesh.**

We reported the matter to the IGR and Government in April and May 2011; their replies have not been received (March 2012).

### 6.10 Short levy of stamp duty and registration fee due to misclassification

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

We observed in seven SR Offices<sup>10</sup> between June 2009 and January 2011 that there was misclassification of documents in 32 cases which resulted in short levy of stamp duty and registration fee of ₹ 2.69 crore as mentioned below:

(₹ in lakh)				
Sl. No.	No. of cases Registered between	Nature of irregularity	Stamp duty and registration fee leviable levied	Stamp duty and registration fee short levied
(1)	(2)	(3)	(4)	(5)
1.	<u>19</u> April 2008 and March 2010	Agreement to sell without mention about status of possession treated as agreement to sell without possession	<u>242.99</u> 17.29	225.70
2.	<u>4</u> July 2008 and August 2009	Gift treated as release deed	<u>22.87</u> 7.96	14.91
3.	<u>2</u> October 2007 and August 2009	Conveyance treated as release deed	<u>16.79</u> 6.81	9.98
4.	<u>2</u> July 2009 and February 2010	Instruments relating to several distinct matters treated as instrument of single matter	<u>9.87</u> 0.002	9.87
5.	<u>2</u> September 2008 and November 2008	Gift treated as Settlement deed	<u>6.89</u> 3.07	3.82

<sup>10</sup> Bhind, Bhopal, Dhar, Gohad (Bhind), Indore, Jabalpur and Morena.

(1)	(2)	(3)	(4)	(5)
6.	<u>1</u> December 2009	Conveyance treated as agreement to sell without possession	<u>1.84</u> 0.15	1.69
7.	<u>1</u> March 2010	Gift treated as Co-ownership deed	<u>1.61</u> 0.29	1.32
8.	<u>1</u> July 2009	Simple mortgage treated as equitable mortgage	<u>1.80</u> 0.51	1.29
<b>Total</b>	<b>32</b>		<b><u>304.66</u></b> <b>36.08</b>	<b>268.58</b>

After we pointed out the cases, the DR, Jabalpur and Morena stated between February 2010 and February 2011 in respect of four instruments that cases had been registered against the executants and action was in progress. DR Dhar stated (June 2011) in respect of one case that ₹ 6.83 lakh had been recovered (January 2011). SR Bhind, Bhopal, Gohad and Indore stated between August 2010 and January 2011 in respect of eight instruments that cases would be referred to the Collector of stamps/necessary action would be taken after investigation while no reply was given in respect of two instruments by the SR Indore. SR, Morena (September 2009) did not agree with the audit observation in respect of six instruments without assigning any reason. SR Bhopal and Indore stated between November 2010 and January 2011 in respect of 11 instruments that the classification of the instruments and duty levied thereon was correct. We do not agree with the reply because it was contrary to the facts on record and the departmental instructions issued in September 2005 in respect of the classification of instruments and duty leviable thereon. Further progress in the matter has not been received (March 2012).

We reported the matter to the IGR and the Government between December 2010 and May 2011; their replies have not been received (March 2012).

## 6.11 Non-registration of instruments

Article 5(d) of schedule 1-A to the IS Act, provides for levy of stamp duty at the rate of two *per cent* of the market value of the land on an agreement if it is related to the construction of a building on the land by a person other than the owner or lessee of such land and having the condition that after construction, such building shall be held jointly or severally by the other person and the owner or that it shall be jointly or severally sold by them. Further, such instruments are to be compulsorily registered under the Registration Act, 1908.

**6.11.1** We observed in SR offices, Indore and Jabalpur between June 2009 and December 2010 that in 10 sale deeds registered between July 2008 and August 2009, the constructed properties were sold jointly by the builders and the landowners. During scrutiny of the recitals of these documents, we noticed that in each case, there was agreement between the builder and the landholder that the constructed property would be held and sold jointly by them. However, we noticed that these agreements

involving land measuring 4.10 acres, valued at ₹ 22.43 crore in accordance with market value guidelines, were not got registered. This resulted in non-realisation of stamp duty and registration fee of ₹ 62.79 lakh.

After we pointed out the cases, the DR, Jabalpur and Indore stated (February 2010 and July 2011) in respect of 10 cases that the cases against the executants had been registered and action was in progress. Further progress in the matter has not been received (March 2012).

Registration of documents of conveyance/lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent is compulsory under the Registration Act, 1908. For the registration of conveyance/lease deed, registration fee is leviable at the rates prescribed in the table of registration fee under the Registration Act. Further, article 33 of schedule 1-A to the IS Act provides for levy of stamp duty on lease deeds at the rates prescribed therein.

**6.11.2** We observed in SR office, Kukshi (Dhar) and information furnished by the Chief Municipal Officer, *Nagar Panchayat*, Kukshi (Dhar) in September 2010 that 90 shops were allotted to individuals on lease on premium of ₹ 3.33 crore and monthly rent of ₹ 67,550 for the period of 35 months between October 2006 and November 2009. We however, noticed that lease deeds were not got registered which resulted in non-realisation of stamp duty and registration fee of ₹ 44.01 lakh.

After we pointed out the cases, the DR, Dhar stated in July 2011 that SR had been directed to get the lease deed registered. Further progress has not been received (March 2012).

**6.11.3** We observed in SR office, Jabalpur in October 2010 that a lease deed of a shop registered in November 2009 was executed by Pandit Shiv Prasad Trust and Ashirvad construction (Company) where the trust was the owner of the land. The recitals of the lease deed revealed that '*Ashirvad Swarn Market*' was to be constructed on the land of the trust by the company under an agreement. As per the agreement, the land was leased out to the company for 35 years for which rent was reserved by the trust. This agreement of lease was a compulsorily registerable document on which stamp duty and registration fee of ₹ 30.05 lakh was leviable. However, we noticed that this agreement was executed on stamp paper of ₹ 50 only which was also not got registered. The Department did not take any action to get it registered. This resulted in short levy of stamp duty and non-levy of registration fee of ₹ 30.05 lakh.

After we pointed out the cases, the SR stated in October 2010 that the case would be referred to the Collector of Stamps. Further progress has not been received (March 2012).

In another case the recitals of a document [No. 860 (4)] dated 5 December 2009 revealed that land measuring 12,000 Sq. ft. was sold by '*Sanmati Graha Nirman Samiti* (Society)'. It was also mentioned in the document that the said land was in possession of three members (4000 Sq.Ft. each) as a result of allotment of plots in the past. It was further mentioned that since they had

surrendered the plots in favour of the society, it was sold to another purchaser. In support of this the photocopies of surrender deed were also attached. These surrender deeds were to be treated as conveyance deed and required to be registered. Accordingly, stamp duty and registration fee of ₹ 3.34 lakh was leviable on these deeds. However, we noticed that these deeds were executed on stamp paper of ₹ 50 only and the Department did not initiate any action for registration of these deeds. This resulted in loss of stamp duty and registration fee of ₹ 3.34 lakh.

After we pointed out the cases, the SR stated in October 2010 that levy of duty on documents not produced was not in accordance with law. We do not agree with the reply because the photocopies of the surrender deed were attached with the sale deed. Further, the reply is silent as to why action to get the deed registered was not taken.

We reported the matter to the IGR and the Government between February and May 2011; their replies have not been received (March 2012).

## 6.12 Illegal sale of Government land

Section 34 of the Registration Act, 1908, provides that the registering officer shall register the duly stamped instruments after identification of the executants. Section 112 of Madhya Pradesh Land Revenue Code, 1959 provides that when any document purporting to create, assign or extinguish any title to or any charge on land used for agricultural purposes is registered under the Registration Act, 1908, the registering officer shall send intimation to the *Tahsildar* having jurisdiction over the area in which the land is situated. Further, departmental instructions (November 2005) provide that a copy of the latest *khasra* of the agricultural land which is the subject matter of the instrument presented for registration shall be produced by the executants.

We observed in SR office, Sheopur (October- November 2009) that copies of latest *khasra*<sup>11</sup> duly verified by the respective revenue officers/*patwaris* were submitted by the executants with 11 sale deeds of agricultural land measuring 575 *bigha* 14 *biswa* valued at ₹ 1.13 crore. We noticed that the sale deeds were registered in the SR office during May and June 2009 but the intimation about these transactions was not sent by the registering officer to the concerned *Tahsildar*. In the absence of any verification regarding the titles of the executants from the records of the *Tahsil* office, the SR was not in a position to ascertain the veracity of the documents

submitted by the executants. **On cross verification with the records of *Tahsil* relating to *Panchsala Khasra* (Records of Rights) and Collectorate, Sheopur, we noticed that the titles of the executants were fake and the land in question was Government land. This resulted in illegal sale of Government land valued at ₹ 1.13 crore.**

<sup>11</sup> A record containing the information about survey number, title, land use and status etc. of the land.

We brought the matter to the notice of Principal Secretary of Revenue Department through a demi official letter and copy to the Principal Secretary of Commercial Tax Department, the IGR and the Commissioner, Settlement and Land Records in December 2009. We also reported the matter to the IGR and the Government in January 2010 through the Audit Inspection Report of SR office, Sheopur. After we pointed out the cases, the IGR and Under Secretary to the Commercial Tax Department stated (August-October 2010) that the matter was investigated by the Collector Sheopur and cases were lodged in five cases by December 2009 against the defaulters and the concerned SR. We have not received any information about the status of possession of land and action taken in respect of the remaining six cases (March 2012).

We reported the matter to the IGR and Government between December 2010 and May 2011; their replies have not been received (March 2012).

### 6.13 Irregular remission of stamp duty and registration fee

Article 29 of Schedule 1-A to the IS Act, provides that the same duty as a conveyance on the market value of the property of greater value which is the subject matter of exchange is chargeable on exchange deeds. The Government in its notification No. (51) B-4-12-96-CTD-V dated 8 November 1996 remitted the stamp duty chargeable in respect of deeds of exchange of agricultural land upto five acres provided that the land under exchange is approximately of equal market value. Further, as per article I of the table of registration fees, registration fee at *ad-valorem* rates is chargeable on such instruments.

**6.13.1** We observed in SR offices, Bhopal, Dewas and Indore between December 2010 and January 2011 that stamp duty and registration fee of ₹ 19.51 lakh was remitted in respect of 12 deeds (registered between April and October 2009) for exchange of agricultural land upto five acres. We further noticed that in seven out of the 12 cases the agricultural land valued at ₹ 2.37 crore was exchanged with agricultural land of ₹ 1.28 crore. (There was difference from 12.55 *per cent* to 187.44 *per cent* between the market values

of the properties exchanged). As the market value of the properties exchanged were not equal, the remission of duty was not admissible in these seven cases and remission of registration fee was not admissible in all the cases. Thus, the Government was deprived of stamp duty and registration fee of ₹ 19.51 lakh.

After we pointed out the cases, the SR, Bhopal accepted (January 2011) the audit observation in respect of irregular remission of registration fee while in respect of remission of stamp duty, he stated that remission was granted correctly. The reply is not acceptable because no specific reason was stated by him. The SR Dewas and Indore stated in December 2010 that market value of properties exchanged were approximately equal as mentioned by the executants. We do not agree with the replies because market value of the properties worked out in accordance with the guidelines were not approximately equal, therefore the remission was not admissible.

Article 22 (g) of schedule 1-A of IS Act, provides that "Where by an instrument, the property is conveyed fully or partially to a female transferee or transferees, the rate of stamp duty applicable shall be two *per cent* less than the rate of stamp duty payable under this article on the share of property transferred and described clearly in the instrument in favour of the transferee or the transferees, as the case may be." But there is no mention in these provisions that such exemption is also admissible to a buyer institution/company where a female executes the deed or a gift deed in favour of a female transferee.

**6.13.2** We observed in five SR offices<sup>12</sup>, between June 2009 and January 2011 that two *per cent* exemption from payment of stamp duty as applicable in case of female transferees was granted to companies/societies on 13 sale deeds and 13 gift deeds registered between June 2008 and March 2010. This resulted in short levy of stamp duty of ₹ 16.89 lakh.

After we pointed out the cases, the DR, Sagar stated (March 2011) in respect of three instruments that ₹ 47,415 has been

recovered in two cases and action was in progress in one case. The SR, Morena stated in respect of one instrument in September 2009 that the owner of the company is a female, therefore exemption was granted. We do not agree with the reply because there is no mention in the Act/notification about such exemption. The DR, Jabalpur stated (February 2010) in respect of three instruments that cases had been registered against the executants and action was in progress. The SR, Bhind, Bhopal and Jabalpur stated (between August 2010 and January 2011) in respect of 19 instruments that cases would be referred to the Collector of stamps for necessary action. Further report in the matter has not been received (March 2012).

As per notification of June 2005 issued by the Commercial Tax Department, instruments of sale of sick or closed industrial units are exempted from payment of duty provided that exemption shall be granted only once and unit is started by the purchaser within 18 months of the execution of the instrument, failing which the exempted amount along with interest at the rate of 0.75 *per cent* per month is to be recovered.

**6.13.3** We observed in SR office, Obedullahganj (Raisen) in May 2010 that a lease deed registered in August 2009 was executed between *Audhyogik Kendra Vikas Nigam* and Sanwariya Agro Oil Limited. The registration fee of ₹ 4.34 lakh was charged on the document while chargeable stamp duty of ₹ 5.79 lakh was remitted on the basis of certificate granted by the Commissioner of Bhopal

division in August 2005. During further scrutiny of the case we noticed that exemption from payment of duty of ₹ 45.50 lakh had already been granted by the Department in September 2005 on sale deed of sick unit to the purchaser

<sup>12</sup> Bhind, Bhopal, Jabalpur, Morena and Sagar.



on the basis of this certificate. As such, exemption from payment of duty was not admissible on the lease deed registered in August 2009 and consequently the Government was deprived of duty of ₹ 5.79 lakh.

After we pointed out the case, the SR stated in May 2010 that the case would be referred to the Collector of Stamps after scrutiny. Further progress has not been received (March 2012).

As per Government notification No. 773-1155-VI-R of 24 October 1980, instruments executed by or in favour of primary cooperative housing societies (Societies) for acquisition of land for housing purpose of its members were exempted from payment of stamp duty and registration fee. Department directed in August 2001 to review all such cases where the societies were granted exemption from payment of duty on conveyance deeds and later on the land was used for a purpose other than housing for its members. In all such cases, stamp duty and registration fees which were exempted at the time of purchase of such land were to be recovered.

**6.13.4** We observed in SR Office, Gwalior in March 2010 that land valued at ₹ 30.59 lakh purchased between June 1997 and July 2004 for housing purpose through six instruments by three societies was not utilised for housing purpose of the members of the societies. The land was disposed of between May and November 2008 to persons other than members of the societies such as builders, individuals etc. Thus, stamp duty and registration fee of ₹ 3.61 lakh exempted at the time of acquisition of land became recoverable. However, no action was taken by the Sub Registrar to recover the amount. This resulted in non

realisation of revenue of ₹ 3.61 lakh.

After we pointed out the cases, the SR stated in March 2010 that the cases would be referred to the Collector of Stamps for recovery. Further progress has not been received (March 2012).

We reported the matter to the IGR and Government between February and May 2011; their replies have not been received (March 2012).



#### 6.14 Short levy of stamp duty and registration fee due to non-mentioning of facts affecting duty in instruments

Section 27 of the IS Act provides that the consideration and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein. The procedure for valuation of land situated in Municipal Corporation area of Bhopal, Gwalior, Indore and Jabalpur is laid down in the market value guidelines. The developed land/undeveloped land where land use in master plan is residential/commercial or other than residential/commercial is to be valued in accordance with different slab systems prescribed for each category. It is further provided in the guidelines that when sellers are more than one and not joint holders of the property or purchasers are not family members, the valuation of property shall be done by treating them as sellers or purchasers separately in accordance with the above provisions.

We observed in SR office, Bhopal in January 2011 that in 10 documents registered between August 2009 and March 2010, there was no mention in the documents about the land use in the master plan of the plots and this was shown as agricultural land in the instruments. During further scrutiny of the records and cross verification from Joint Director, Town and Country Planning, Bhopal we noticed that the land use of the sold land was residential/commercial in the master plan and the market value of properties as per market value guidelines was ₹ 12.66 crore. However, we noticed that the market value of the properties was determined by the Department at ₹ 8.31 crore treating the land use as 'other than residential or commercial.' The certificates in respect of land use were

also not obtained from the Director, Town and Country Planning by the executants and submitted to the Registration Department. This resulted in short levy of stamp duty and registration fee of ₹ 45.79 lakh.

After we pointed out, the SR stated in January 2011 that land use was for agricultural purposes and the land cannot be valued at plot rate on the basis of land use in the master plan. He also referred to a High Court decision of the year 1996 (*Chhapru Panchayat Samaj v/s Kailash Agrawal*) in support of his reply. We do not agree with the reply because the decision of the High Court is of the year 1996 whereas Madhya Pradesh Preparation and Revision of Market Value Guidelines Rules, 2000 came in force from 31 July 2000. The Guideline for the year 2009-10 provides that undeveloped land of which land use is commercial/residential in the master plan is to be valued at the slab rates given in the guidelines. The land use was mentioned as residential/commercial in the master plan and therefore the slab rates prescribed were to be applied which was not followed by the Department. Further, the market value of land was worked out by audit in accordance with the provisions of the guidelines and not at flat rates treating the land as developed residential land.

We reported the matter to the IGR and the Government in April and May 2011; their replies have not been received (March 2012).

### 6.15 Short levy of stamp duty/incorrect exemption from payment of stamp duty on agreement/memorandum relating to deposit of title deed

The stamp duty on an agreement relating to deposit of title deed is levied at the rate prescribed from time to time under article 6(a) of schedule-I A to the IS Act. *Panchayat* duty equal to stamp duty is also leviable on such deeds. Further, as per explanation below article 6(a), any letter, note, memorandum or writing relating to deposit of title deed whether it is in respect of first or any additional loan, is deemed to be an instrument evidencing an agreement relating to the deposit of title deed. Further, duty is chargeable on additional amount only, if the duty was paid on previous loan. The Government in its notification dated 20 October 2004 remits/reduces the stamp duty chargeable on instruments of mortgage without possession executed by the industrialists in connection with obtaining term loan for the purpose of setting up a new industry or for the expansion of an industry.

We observed in eight SR offices<sup>13</sup> between September 2009 and February 2011 that in 25 cases, memorandum or writings related to deposit of title deeds, securing an amount of ₹ 147.97 crore were registered between March 2006 and March 2010 on which stamp duty of ₹ 60.15 lakh was leviable. However, we noticed that stamp duty of ₹ 19.60 lakh only was levied on 22 instruments by applying incorrect rates/by charging duty only on additional amount of agreement though there was no mention in the instruments that duty was paid on the previous loan, while one instrument in SR office Morena and

two instruments in SR office Gohad were incorrectly exempted from payment of duty under the notification dated 20 October 2004 though the documents of deposit of title deeds were not covered in the notification. Thus, the Government was deprived of revenue of ₹ 40.55 lakh due to short levy of duty/incorrect exemption from payment of duty.

After we pointed out the cases, the DR, Morena stated (February 2011) in respect of six instruments that cases had been registered against the executants and action was in progress. The SR, Bhind and Jabalpur stated (August-October 2010) in respect of four instruments that cases would be referred to the Collector of stamps. SR, Gohad (Bhind) stated (August 2010) in respect of three instruments that action would be taken after scrutiny. Four SRs<sup>14</sup> stated between September 2009 and February 2011 in respect of 11 instruments that action would be taken after seeking information from banks, while SR Gadwarra stated (February 2011) in respect of one case that the Government

<sup>13</sup> Ambah (Morena), Bhind, Bhopal, Gadwarra (Narsinghpur), Gohad (Bhind), Indore, Jabalpur and Morena.

<sup>14</sup> Bhopal, Indore, Gadwarra (Narsinghpur) and Morena.

notification was received late hence old rates were applied. No reply was furnished by the SR as to why action was not taken to recover the deficit duty after receipt of the notification. Further progress in the matter has not been received (March 2012).

We reported the matter to the IGR and the Government between February and May 2011; their replies have not been received (March 2012).

### **6.16 Non-reimbursement of stamp duty and registration fees**

Government notification dated 20 November 2007 (as amended) provides exemption from stamp duty and registration fee chargeable on sale deeds executed in favour of persons displaced on account of Auto Testing Track Project, Pithampur (District Dhar). The notification further stipulates that the amount of stamp duty and registration fee so chargeable shall be reimbursed by the Commerce, Industry and Employment Department to the Commercial Tax Department within one month of registration of such instruments.

We observed in SR office, Dhar and Indore between October and December 2010 that 12 documents of sale deeds were registered between July 2008 and November 2009 in favour of persons displaced due to Auto Testing Track Project, Pithampur (Dhar). It was further observed that stamp duty and registration fee of ₹ 30.12 lakh involved in the above documents was reimbursable to the Commercial Tax Department but the same was not reimbursed. Demand was also

not raised by the Registration Department. This resulted in non-realisation of revenue of ₹ 30.12 lakh.

After we pointed out the cases, SR, Dhar stated (October 2010) in respect of one case that the document remained unattended due to mistake and the letter for reimbursement was issued (October 2010) at the instance of audit. The DR, Indore stated in July 2011 that appropriate action for recovery was being taken. Report on further developments has not been received (March 2012).

We reported the matter to the IGR and Government in April and May 2011; their replies have not been received (March 2012).

### 6.17 Short levy of stamp duty and registration fee on instruments of power of attorney (POA)

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

**6.17.1** We observed in 10 SR offices<sup>15</sup> between December 2008 and August 2010 that out of 29 instruments registered between April 2006 and December 2009, in 19 instruments though the power to sell, gift, exchange or permanent alienation of immovable property was given, there was no mention in the documents to show whether the POA was without consideration for a period not exceeding one year. In 10 instruments the POA was irrevocable. In these

cases, stamp duty and registration fee of ₹ 22.69 lakh was leviable in accordance with the above provisions. We, however, noticed that all the instruments were treated as POA to sell without consideration for a period not exceeding one year and duty and fee was levied at the rate of ₹ 100 in each case. This resulted in short levy of duty and registration fee of ₹ 22.63 lakh.

After we pointed out the cases, four DRs<sup>16</sup> stated between June 2009 and October 2011 in respect of 24 instruments that cases against the executants had been registered and action was in progress. SR, Sendhwa stated in November 2009 in respect of one instrument that power of attorney was given by a wife to her husband. The reply is not acceptable because no exemption from payment of duty has been provided on such instruments under article 45(d) of Schedule 1-A. The remaining SRs<sup>17</sup> stated between February 2009 and August 2010 in respect of four instruments that the cases would be referred to the Collector of Stamps. Further report in the matter has not been received (March 2012).

**6.17.2** We observed in SR office, Bhopal in January 2011 that a correction deed of instrument of POA was registered in February 2010. According to the recitals of the instrument, the attorney was authorised to sell the land situated in village Bhanpur under ward No. 66 of *Nagar Nigam*, Bhopal in place of village *Karod* mentioned in the original deed (January 1996). There was no mention in the document to show whether the POA was for a period not exceeding one year. As such, stamp duty of ₹ 6.94 lakh and registration fee of ₹ 74,000 was leviable on the instrument in accordance with the above

<sup>15</sup> Ambah (Morena), Bhind, Gohad (Bhind), Gwalior, Katangi (Balaghat), Khargone, Maihar (Satna), Mehgaon (Bhind), Morena and Sendhwa (Badwani).

<sup>16</sup> Bhind, Khargone, Morena and Satna.

<sup>17</sup> Gohad (Bhind), Gwalior and Katangi (Balaghat).

provisions. However, it was noticed that duty and registration fee of ₹ 100 each was levied. This resulted in short levy of duty and registration fee of ₹ 7.68 lakh.

After we pointed out the case, SR, Bhopal stated in January 2011 that there was no conveyance on sale, neither was any consideration paid. The reply is not acceptable because as per article 45 (d) of Schedule 1-A, when POA is given without consideration to sell, gift, and exchange or permanently alienate any immovable property for indefinite period, the same duty as a conveyance on the market value of property is chargeable. In the instant cases power to sell was given for an indefinite period, hence duty at the rate of conveyance is chargeable.

We reported the matter to the IGR and Government between December 2010 and May 2011; their replies have not been received (March 2012).

### **6.18 Short levy of stamp duty on instrument of assignment of debt**

Article 22 (b) of Schedule 1-A to the IS Act read with Government notification dated 7 March 2005 provides for levy of duty on instruments of securitisation of loan or assignment of debt with underlying securities executed in favour of a securitisation company or a Reconstruction Company registered under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 at the rate of 0.1 per cent of the loan securitised or debt assigned with underlying securities, if the securities are immovable properties. Further, *Panchayat* duty and municipal duty at the rate of one per cent each is also leviable on such instruments under section 133 (d) of the M.P. Municipal Corporation Act, 1956 and section 75 of the M.P. *Panchayat Raj Adhiniyam*, 1993 respectively.

We observed in SR office, Ratlam in December 2010 that an instrument of assignment of debt of ₹ 11.93 crore executed in favour of an asset reconstruction company was registered in May 2008 on which stamp duty of ₹ 25.05 lakh was leviable as per above provisions. However, we noticed that duty of ₹ 1.19 lakh only was levied by applying incorrect rates. This resulted in short levy/realisation of duty of ₹ 23.86 lakh.

After we pointed out the case, the DR, Ratlam stated in April 2011 that *Panchayat* and

municipal duties were not chargeable on instruments of assignment of debt. We do not agree with the reply because as per section 2 (10) of the Act, assignment of debt is a transfer of property and comes under the definition of conveyance on sale, hence *Panchayat* duty and municipal duties were leviable in the instant case. Moreover, the Departmental instructions issued to all the DRs/SRs in October 2008 providing that municipal and *Panchayat* duty shall be recovered on such instruments confirms the stand taken by the audit.

We reported the matter to the IGR and Government in April and May 2011; their replies have not been received (March 2012).

## 6.19 Short levy of registration fee and non-levy of penalty

Under Article 1 of the Registration table of the Registration Act, 1908, registration fee is chargeable at *ad valorem* rates for registration of documents other than leases.

**6.19.1** We observed in SR office, Bhopal and Nagda (Ujjain) between August 2010 and January 2011 that three instruments of re-conveyance of mortgage against the secured amount of ₹ 10.07 crore were

registered between November 2009 and March 2010. As per rule, registration fee of ₹ 8.05 lakh was chargeable on these instruments. However, we noticed that fee of ₹ 1000 only was charged in one instrument while in the remaining two instruments, registration fee of ₹ 100 only in each case was recovered. This resulted in short levy of registration fee of ₹ 8.04 lakh.

After we pointed out the cases, SR, Bhopal stated in respect of two instruments in January 2011 that the documents of re-conveyance were related to deposit of title deed and not with the mortgage of property, hence the fee was recovered correctly. The reply is not in consonance with article-1 of the registration table according to which registration fees was chargeable as per the value mentioned in the documents. Moreover, no specific provision was quoted by the SR in his reply. The SR, Nagda stated in respect of one instrument in August 2010 that the case would be referred to the Collector of stamps. Further progress has not been received (March 2012).

According to Section 23 of the Registration Act, 1908, no document except will deed, shall be accepted for registration unless presented for that purpose to the appropriate officer within four months from the date of its execution. If the delay in presentation is less than one month of the initial grace period of four months, penalty equal to two times of the registration fee shall be chargeable according to article XV (a) of the table of registration fee.

**6.19.2** We observed in SR office, Obedullahganj (Raisen) in May 2010 that though an instrument was executed on 15 September 2009, it was presented before the Sub Registrar for registration on 3 February 2010. As the instrument was presented for registration after lapse of 20 days beyond the initial grace period, penalty of

₹ 2.94 lakh at twice the amount of the proper registration fee of ₹ 1.47 lakh was leviable. However, it was noticed that the registering authority did not levy any penalty. As such, Government was deprived of revenue of ₹ 2.94 lakh.

After we pointed out the case, the SR stated in May 2010 that the case would be referred to the Collector of Stamps after scrutiny. Further progress has not been received (March 2012).

We reported the matter to the IGR and the Government between April and May 2011; their replies have not been received (March 2012).