

CHAPTER-IV: STAMP DUTY

4.1.1 Tax administration

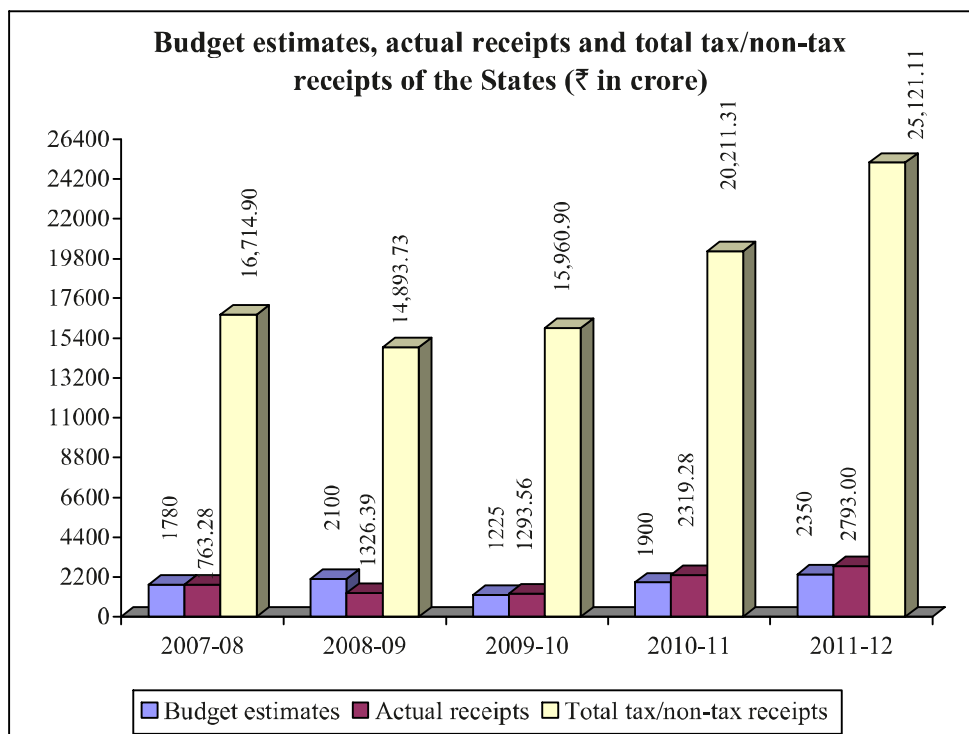
Receipts from the stamp duty (SD) and registration fee (RF) in the State are regulated under the Indian Stamp Act, 1899 (IS Act), Indian Registration Act, 1908 (IR Act), Punjab Stamp Rules, 1934, as adopted by the Government of Haryana with suitable amendments and the Haryana Stamp (Prevention of Undervaluation of Instruments) Rules, 1978. SD is leviable on the execution of instruments as per Schedule I-A of the IS Act and RF is payable at the prescribed rates fixed by the State Government. At the Government level, the Additional Chief Secretary and Financial Commissioner, Revenue and Disaster Management Department, Haryana, Chandigarh is responsible for the administration of the IS Act and IR Act and the rules framed there under relating to the registration of various documents. The overall control and superintendence over levy and collection of SD and RF vests with the Inspector General of Registration (IGR), Haryana, Chandigarh. The IGR is assisted by the 21 Deputy Commissioners (DCs), 67 tehsildars and 46 naib tehsildars acting as Registrars, Sub Registrars (SRs) and Joint Sub Registrars (JSRs) respectively.

4.1.2 Trend of receipts

Actual receipts from SD and RF during the years 2007-08 to 2011-12 along with the total tax/non-tax receipts during the same period is exhibited in the following table and graph:

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/shortfall (-)	Percentage of variation (Col. 4 to Col. 2)	Total tax/non-tax receipts of the State	Percentage of actual receipts vis-à-vis total tax/non-tax receipts (Col. 3 to Col. 6)
1	2	3	4	5	6	7
2007-08	1,780.00	1,763.28	(-) 16.72	(-) 01	16,714.90	11
2008-09	2,100.00	1,326.39	(-) 773.61	(-) 37	14,893.73	9
2009-10	1,225.00	1,293.56	(+) 68.56	(+) 6	15,960.90	8
2010-11	1,900.00	2,319.28	(+) 419.28	(+)22	20,211.31	11
2011-12	2,350.00	2,793.00	(+) 443.00	(+) 19	25,121.11	11



Source: State Budget and Finance accounts.

The actual receipts of the Department during the period 2007-08 to 2011-12 ranged between eight and 11 *per cent* and the stamp duty receipts increased by 20 *per cent* during the year 2011-12 over the previous year.

4.1.3 Analysis of arrears of revenue

The Department stated that the information relating to arrears of revenue was awaited from the office of the Divisional Commissioner. The Department had not supplied the details of arrears pending at the beginning of the year, arrears added and collected during the year and arrears pending at the end of the year due to non-availability of centralised database at the apex level. Thus, the Department could not monitor and expedite the progress of recovery of arrears.

4.1.4 Cost of collection

The gross collection in respect of SD and RF, expenditure incurred on their collection and the percentage of such expenditure to gross collection during the years 2007-08 to 2011-12 along with the relevant all India average

percentage of expenditure of collection to gross collection for the relevant year are mentioned below:

(₹ in crore)

Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage for the year
2007-08	1,763.28	12.04	0.68	2.09
2008-09	1,326.39	16.31	1.23	2.77
2009-10	1,293.56	13.72	1.06	2.47
2010-11	2,319.28	11.39	0.49	1.60
2011-12	2,793.00	12.41	0.44	-

Source: Finance Accounts.

4.1.5 Impact of Audit on Revenue

4.1.5.1 Position of Inspection Reports

The performance of the Revenue Department to deal with the irregularities detected in the course of local audit conducted during the year 2010-11 and the corresponding figures for the preceding four years is tabulated below:

(₹ in crore)

Year	Units audited			Cases accepted		Recovery made during the year	
	Number	Number of cases	Amount	Number	Amount	Cases	Amount
2006-07	179	3,476	8.99	2,352	6.67	104	0.03
2007-08	180	85,543	44.43	2,136	6.04	240	0.07
2008-09	180	1,157	6.50	310	1.90	7	0.01
2009-10	182	481	23.07	159	20.99	18	0.13
2010-11	101	1,346	7.26	1,158	5.78	227	0.18
Total	822	92,003	90.25	6,115	41.38	596	0.42

We observed that the recovery in respect of accepted cases during the years 2006-07 to 2010-11 was only one *per cent*.

4.1.5.2 Position of Audit Reports

During the last five years (including the current year's report), instances of non/short levy/realisation of SD and RF, evasion due to non-execution of conveyance deeds, non-presentation of documents for registration, misclassification of documents, incorrect grant of exemptions/remissions, application of incorrect rate etc., with revenue implication of ₹ 59.62 crore in 23 paragraphs (including two performance audits). Of these, the Department/Government had accepted audit observations to the tune of ₹ 47.99 crore in 23 paragraphs (including two reviews) and recovered ₹ 15.40 lakh. The details are shown in the succeeding table:

Year	Paragraphs included		Paragraph accepted		Amount recovered	
	(₹ in crore)				(₹ in lakh)	
	Number	Amount	Number	Amount	Number	Amount
2007-08	4	1.70	4	1.70	1	0.87
	1 (Review)	24.69	1	15.11	-	-
2008-09	5	0.76	5	0.76	1	1.43
2009-10	1 (Review)	22.85	1	20.96	1	11.50
2010-11	6	5.49	6	5.33	2	1.60
2011-12	6	4.13	6	4.13	-	-
Total	23	59.62	23	47.99	5	15.40

We observed that the Revenue Department had recovered only ₹ 15.40 lakh out of accepted cases amounting to ₹ 47.99 crore during the years 2007-08 to 2011-12. Thus, the recovery in respect of the accepted cases was very low (0.32 per cent). The slow progress of recovery even in respect of accepted cases is the indicative of failure on the part of the heads of offices/Department to initiate effective action to recover the Government dues promptly.

We recommend that the Government may revamp the recovery mechanism to ensure that at least the amount involved in accepted cases are promptly recovered.

4.1.6 Results of audit

Test check of the records of various registration offices during the year 2011-12 revealed non/short levy of stamp duty and registration fee amounting to ₹ 11.86 crore in 1,148 cases, which broadly fall under the following categories:

Sr. No.	Category	(₹ in crore)	
		Number of cases	Amount
Revenue Department			
1.	Short recovery of stamp duty and registration fee due to non-charging of residential rates on purchase of land	562	4.61
2.	Short realisation of stamp duty due to sale of property at lower consideration than the amount mentioned in the agreement deeds	134	1.05
3.	Non/short recovery of stamp duty due to undervaluation of immovable property	182	1.68
4.	Irregular exemption of stamp duty on mortgage deeds/compensation certificates to land acquired	46	0.65
5.	Short recovery of stamp duty due to misclassification of instruments	59	3.30
6.	Miscellaneous irregularities	165	0.57
	Total	1,148	11.86

During the course of the year 2011-12, the Department accepted underassessment and other deficiencies of ₹ 11.75 crore involved in 1,048 cases, out of which ₹ 11.62 crore involved in 1,035 cases were pointed out during the year and the rest in earlier years. The Department recovered ₹ 12.61 lakh in 13 cases pointed out in earlier years.

A few illustrative cases involving ₹ 4.13 crore are mentioned in the succeeding paragraphs.

4.2 Non-compliance of the provisions of the Acts/Rules

The provisions of the Indian Stamp Act, 1899 (IS Act) and Indian Registration Act, 1908 (IR Act) require:-

- (i) *levy of stamp duty (SD) at the prescribed rate;*
- (ii) *exemption of SD on fulfillment of prescribed conditions; and*
- (iii) *correct classification of documents.*

We noticed that the registering authorities did not observe some of the above provisions at the time of registration of documents in cases mentioned in the paragraphs 4.2.1 to 4.2.5. This resulted in short levy/evasion of SD of ₹ 4.08 crore.

4.2.1 Evasion of stamp duty due to undervaluation of immovable property

Section 27 of the IS Act as applicable to the State of Haryana, provides that consideration and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of duty with which it is chargeable, should be fully or truly set forth therein. Further, Section 64 of the IS Act provides that any person who, with intent to defraud the Government, executes an instrument in which all the facts and circumstances required to be set forth in such instrument are not fully and truly set forth, is punishable with a fine which may extend to ₹ 5,000 per instrument.

During test check of the records of 111 registering offices between December 2010 and June 2011, we noticed that 30 conveyance deeds were registered between April 2009 and June 2011 on account of sale of immovable properties. The total value of properties set forth in all these conveyance deeds was ₹ 6.51 crore. Cross verification of these deeds with the agreements executed between the concerned parties between May 2008 and December 2010 revealed that the total sale value of agreements worked out to ₹ 12.88 crore. Thus, the conveyance deeds were got executed and registered at a consideration less than what had been agreed to between the parties. Undervaluation of immovable properties in conveyance deeds resulted in evasion of SD of ₹ 23.92 lakh. In addition penalty not exceeding ₹ 1.40 lakh was also leviable for incorrect information in the document.

After we pointed out these cases between December 2010 and June 2011, SR Rania stated in September 2011 that the Collector had ordered between December 2009 and May 2010 for deposit of SD amounting to ₹ 1.98 lakh including penalty of ₹ 10,000. SRs Ballbgarh Jind, Pillukhera, and Sohna stated in January 2012 that the cases had been referred to the Collector in February 2010 under Section 47 A of the Act for final decision for the outstanding amount of ₹ 9.33 lakh. SR Sirsa stated in January 2012 that efforts would be made to recover the outstanding amount of ₹ 4.68 lakh. We have not received report on recovery and action taken to levy penalty and reply from

¹ SRs: Alewa, Ballabgarh, Dabwali, Jind, Narwana, Pataudi, Pillukhera, Rania, Saffidon, Sirsa and Sohna.

the remaining five² SRs for the outstanding amount of ₹ 8.03 lakh (October 2012).

We reported the matter to the Government in May 2012. During exit conference held in January 2013 the Additional Chief Secretary, Revenue Department agreed to the audit observation and assured to take corrective/preventive steps.

4.2.2 Non-levy of stamp duty on plant and machinery

Under Section 2 (10) of the IS Act, “Conveyance” includes a conveyance on sale and every instrument by which property whether movable or immovable is transferred. As per instructions issued by the Government in August 2003, Conveyance deed includes sale of business including land, building and machinery which was installed permanently on land for running the business, machinery would be treated as immovable property for ascertaining value of property for SD.

During test check of the records of the office of Sub Registrar (SR), Karnal in June 2011 for the year 2010-11, we noticed that a vendee purchased a factory land, building, plant and machinery for a consideration of ₹ 7.80 crore (land and building: ₹ 4.19 crore and plant and machinery: ₹ 3.61 crore) in an auction conducted by the official liquidator attached to the Punjab and Haryana High Court at Chandigarh. While executing the conveyance deed in March 2011, SD of ₹ 20.94 lakh was paid on the cost of land and building but the Registering Authority did not levy SD of ₹ 18.06 lakh on ₹ 3.61 crore of the cost of plant and machinery. This resulted in short levy of SD of ₹ 18.06 lakh.

After we pointed out the case in June 2011, the SR Karnal stated in January 2012 that the case had been referred to the Collector in August 2011 under Section 47-A of the IS Act for final decision. We have not received further progress report on recovery (October 2012).

Similar case was also noticed during the year 2006-07 in Rohtak district involving ₹ 6.63 lakh in respect of cost of plant and machinery but no recovery had been made till date.

We reported the matter to the Government in April 2012. During exit conference held in January 2013 the Department agreed to the audit observation and assured to take corrective action.

4.2.3 Evasion of stamp duty due to misclassification of documents

Under the provisions of the Section 2 (10) of the IS Act, as applicable to the State of Haryana, separate rates have been prescribed for different types of instruments. The classification of an instrument depends upon the nature of the transactions recorded therein. In case possession of the property is handed over after receipt of full amount of consideration, the instrument becomes a conveyance deed and stamp duty (SD) becomes leviable under the IS Act.

During test check of the records of the office of Sub Registrar (SR) Gurgaon, for the year 2010-11 in June 2011, we noticed that two instruments conveying

² SRs: Alewa, Dabwali, Narwana, Pataudi and Saffidon.

possession and transfer of property valued at ₹ 2.15 crore to the vendees were executed between February and March 2011. In all the cases, the vendors received full amount in lieu of the property sold and the possession of immovable property was also handed over to the purchasers. The deeds were liable to be treated as conveyance deeds and SD of ₹ 10.77 lakh was leviable. However, the registering authority misclassified these documents and registered the deeds as Agreements to sell charging SD of ₹ 110 which was incorrect. This resulted in evasion of SD of ₹ 10.77 lakh.

After we pointed out these cases in June 2011, SR, Gurgaon stated in January 2012 that the cases had been sent to the Collector in September 2011 under Section 47-A of the Act for decision. We have not received any report of recovery (October 2012).

We reported the matter to the Government in April 2012. During exit conference held in January 2013 the Department agreed to the audit observation and assured to take corrective action.

4.2.4 Short levy of stamp duty and registration fee due to misclassification of documents

Section 2 (10) of the IS Act, provides that ‘conveyance’ includes conveyance on sale and every instrument by which property whether movable/ immovable is transferred inter vivos and which is not otherwise specifically provided for by schedule 1-A of the Act. Further, Section 54 of the Transfer of Property Act, 1882 defines “sale” as transfer of ownership in some property on payment of price or on promise of price being paid or part of the price is paid and part promised. The classification of an instrument depends upon the nature of the transaction recorded therein. In case possession of the property is handed over after receipt of the full amount of consideration or promise to pay consideration later on, the instrument becomes a conveyance deed and stamp duty (SD) becomes leviable under the IS Act.

During test check of the records of the office of Sub Registrar (SR) Gurgaon between September 2010 and June 2011 for the years 2009-10 and 2010-11, we noticed that four collaboration agreements were registered between July 2009 and September 2010 in respect of land on which SD of ₹ 100 each was levied as applicable in the case of an agreement not involving sale of land. Scrutiny of these agreements further revealed that the owners of land authorised the developers to take possession of the land with the right to construct, develop and deal with the land in accordance with the terms and conditions of the agreements. In exchange of the land, the owners of land were entitled either to take a part of the developed land or receive part payment. The developers were entitled to dispose off their shares of developed land in such a manner as they deemed fit without requiring any consent from the owners. Hence, the development right/collaboration agreements were conveyance of right to develop, construct and sell the property and were liable to pay SD on sale of property in respect of the developers’ share of land. However, as per rates fixed by the Collector applicable in the concerned areas and rates as per agreement, total value of land transferred to the developers worked out to ₹ 26.15 crore on which SD of ₹ 1.33 crore was also leviable.

Misclassification of these sale deeds resulted in short levy of SD of ₹ 1.33 crore.

After we pointed out these cases between September 2010 and June 2011, SR Gurgaon stated in January 2012 that cases had been sent to the Collector for determination of value of property and proper duty payable thereon. We have not received further progress report (October 2012).

We reported the matter to the Government in June 2012. During exit conference held in January 2013 the Department agreed to the audit observation and assured to take corrective action.

4.2.5 Short levy of stamp duty due to application of incorrect rates of immovable property

In order to check evasion of SD in sale deeds, the Government issued instructions in November 2000 to all registering authorities in the State to the effect that agricultural land sold within municipal limits, with an area less than 1,000 square yards or in case where purchasers are more than one and the share of each purchaser is less than 1,000 square yards, be valued at the rate fixed for the residential property of that locality for the purpose of levying SD.

During test check of the records of 17 offices³ of JSRs/SRs between December 2010 and August 2011 for the years 2009-10 and 2010-11, we noticed that 191 sale deeds of plots within municipal limits with an area less than 1,000 square yards and in case where purchasers are more than one and the share of each purchaser is less than 1,000 square yards, were registered between May 2009 and March 2011. The deeds were liable to be assessed for ₹ 51.26 crore based on the rates fixed for residential areas and SD of ₹ 3.09 crore was chargeable. However, the registering authorities assessed the deeds for ₹ 14.09 crore based on the rates fixed for agricultural land and levied SD of ₹ 87.25 lakh. This resulted in short levy of SD of ₹ 2.22 crore.

After we pointed out these cases between December 2010 and August 2011, 14 SRs⁴ stated between October 2011 and January 2012 that the cases had been sent to the Collector between May 2011 and January 2012 under Section 47-A of the Indian Stamp Act, 1899 for decision. We have not received report on recovery and reply from the remaining three SRs⁵ (October 2012). However, the Department stated in January 2013 that in respect of seven SRs, the Collectors dropped the amount of recovery citing the reason that cases of land sold was agricultural. The contention of the Collectors was not in accordance with the Government instructions issued in November 2000 as rates were to be levied treating the land as residential land even if it was agricultural land.

³ SRs: Ambala City, Ambala Cantonment, Ballabgarh, Barwala, Dabwali, Faridabad, Gurgaon, Kalka, Kurukshetra, Ladwa, Naraingarh, Pataudi, Panchkula, Pehowa, Shahbad, Sirsa and Sohna.

⁴ JSRs: Ambala Cantonment and Ladwa; SRs: Ambala City, Ballabgarh, Barwala, Dabwali, Faridabad, Gurgaon, Kalka, Kurukshetra, Panchkula, Pehowa, Shahbad and Sirsa.

⁵ SRs: Naraingarh, Pataudi, and Sohna.

Similar cases were also pointed out in earlier reports for the years 2006-07 to 2008-09 and 2010-11, Department replied that cases were referred to the Collector under Section 47 A of the IS Act for decision, and such mistakes are still repeated.

We reported the matter to the Government in May 2012. During exit conference held in January 2013 the Additional Chief Secretary, Revenue Department agreed to the audit observation and stated that corrective action would be taken to streamline the system.

4.3 Non-compliance of Government notification/instructions

- (i) *Government notification of August 1995 provides for exemption in case of purchase of agriculture land out of the compensation received for acquisition of land by Government.*

We noticed that non-compliance of some of the provision in the above notification in the following case as mentioned in paragraph 4.3.1 resulted in non/short realisation of SD of ₹ 4.99 lakh.

4.3.1 Irregular exemption of stamp duty

As per notification issued on August 1995, under the IS Act, the Government remitted the SD in respect of the sale deeds to be got executed by farmers whose land was acquired by Haryana Government for public purposes and who purchase agricultural land in the State within one year of the amount of compensation received by them for the land acquired by the Government. The remittance will be limited to the compensation amount only and the additional amount involved for the purchase of agricultural land, will be liable to SD as per rules.

During test check of the records of four⁶ offices of JSR/SR between February and June 2011, we noticed that farmers, whose land was acquired by the Government for public purposes, purchased residential and agricultural land valued at ₹ 96.23 lakh in ten cases. In eight cases, the registering authorities had registered conveyance deeds valued at ₹ 51.43 lakh between May 2009 and October 2010 for the period 2009-10. Stamp duty was to be levied at the rate of three to seven *per cent* valuing ₹ 2.75 lakh as the farmers had purchased residential land out of the compensation. In another two cases, SD of ₹ 2.24 lakh was also leviable at the rate of five *per cent* on ₹ 44.80 lakh for the period 2010-11 as the land was purchased after one year from the date of receipt of compensation amount. Thus irregular exemption of SD resulted in non-levy of SD to the extent of ₹ 4.99 lakh.

After we pointed out these cases between February and June 2011, SRs Ambala and Sohna stated in January 2012 that the cases had been sent to Collector for decision in May 2011. We had not received report on recovery and the reply from remaining JSR/SR, Saha and Mullana (October 2012).

⁶ JSR: Saha, SRs: Ambala city, Mullana and Sohna.

We reported the matter to the Government in April 2011. During exit conference held in January 2013 the Department agreed to the audit observation.