

PREFACE

This Report for the year ended 31 March 2010 has been prepared for submission to the Governor under Article 151(2) of the Constitution.

The audit of revenue receipts of the State Government is conducted under Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. This is an exclusive report on the Registration Department.

The cases mentioned in the Report are among those which came to notice in the course of test audit of records during the period from January 2010 to July 2010 as well as those which came to notice in earlier years but could not be included in the previous years' reports.

Overview

The report contains 19 paragraphs involving ₹ 90.84 crore. Some of the major findings are mentioned below:

I Introduction

The total receipts of the Registration Department for the year 2009-10 were ₹ 3,662.16 crore as against ₹ 3,793.68 crore during 2008-09. The tax revenue raised by the Government of Tamil Nadu for the year 2009-10 was ₹ 36,546.66 crore as against ₹ 33,684.37 crore during 2008-09. The revenue of the Department decreased by three *per cent* from the previous year and it was 10 *per cent* with reference to the total revenue of the State.

[Paragraph 1.5.1]

Arrears of revenue were ₹ 197.50 crore as on 31 March 2010.

[Paragraph 1.5.5]

II Administration of stamp and registration laws

Non-inclusion of “general power of attorney” within the purview of levy on market value continues to deny revenue to the Government.

[Paragraph 2.2]

Failure to notify the rate of stamp duty for issue of shares, etc through electronic mode had resulted in the Government not being able to augment revenue during the years 2005-06 to 2008-09.

[Paragraph 2.4]

The Government did not amend the Registration Act to make certificate of sale compulsorily registrable to ensure sufficiency in payment of stamp duty.

[Paragraph 2.5]

Misclassification of instruments of conveyance as cancellation deed resulted in short realisation of stamp duty and registration fees of ₹ 4.09 crore.

[Paragraph 2.7]

Stamp duty and registration fees of ₹ 42.06 crore was short levied on mortgage deeds.

[Paragraph 2.8]

Stamp duty and registration fees of ₹ 5.33 crore was not collected as there was suppression of fact in conveyance deeds.

[Paragraph 2.9]

Stamp duty and registration fees of ₹ 9.75 crore was short levied due to undervaluation of properties in 22 Registries.

[Paragraph 2.10]

Stamp duty and registration fees of ₹ 25.70 crore was not levied due to incorrect grant of exemption.

[Paragraph 2.11]

In 35 sub-registries there was excess allocation of transfer duty surcharge to the tune of ₹ 2.77 crore.

[Paragraph 2.12.2]

III Special Deputy Collector (Stamps)

18,517 documents were pending disposal by the DRO(Stamps)/SDC(Stamps) in the offices selected by audit, as on 31 March 2009, as against 7,601 as on 31 March 2006.

[Paragraph 3.2]

Delay in assessment and determination of market value in 3,016 cases resulted in blocking of revenue of ₹ 353.02 crore due to the Government.

[Paragraph 3.6.1]

74 instruments referred for determination of market value were returned without determination of market value resulting in non-realisation of revenue of ₹ 5.24 crore.

[Paragraph 3.8.1]

IV Internal Audit

As at the end of 31 March 2009, 22,994 internal audit paragraphs involving money value of ₹ 71.28 crore were outstanding.

[Paragraph 4.1.2]

CHAPTER I

INTRODUCTION

The Registration Department was set up in 1864 to provide a method of public registration of documents establishing the legal rights and obligations arising out of or affecting a particular property. Registration of instruments which purports to transfer title to properties affirms the title through the deed. Documents are registered after collecting stamp duty and registration fees and the copies of these registered documents are preserved by the Registration Department permanently.

The Registration Department administers the Indian Stamp Act, 1899 and the Registration Act, 1908 and the rules made thereunder. It also administers 12¹ other Acts including the Hindu Marriage Act, 1955.

1.1 Organisational set up

The Inspector General of Registration (IGR) is the head of the department and functions under the control of the Secretary, Commercial Taxes and Registration Department at the Government level. He also functions as the Chief Controlling Revenue Authority under the Indian Stamp Act, 1899.

The IGR is assisted in the headquarters by three Additional Inspectors General of Registration (one each for Stamps & Registration, Intelligence and Guidelines).

1.1.1 Field formation

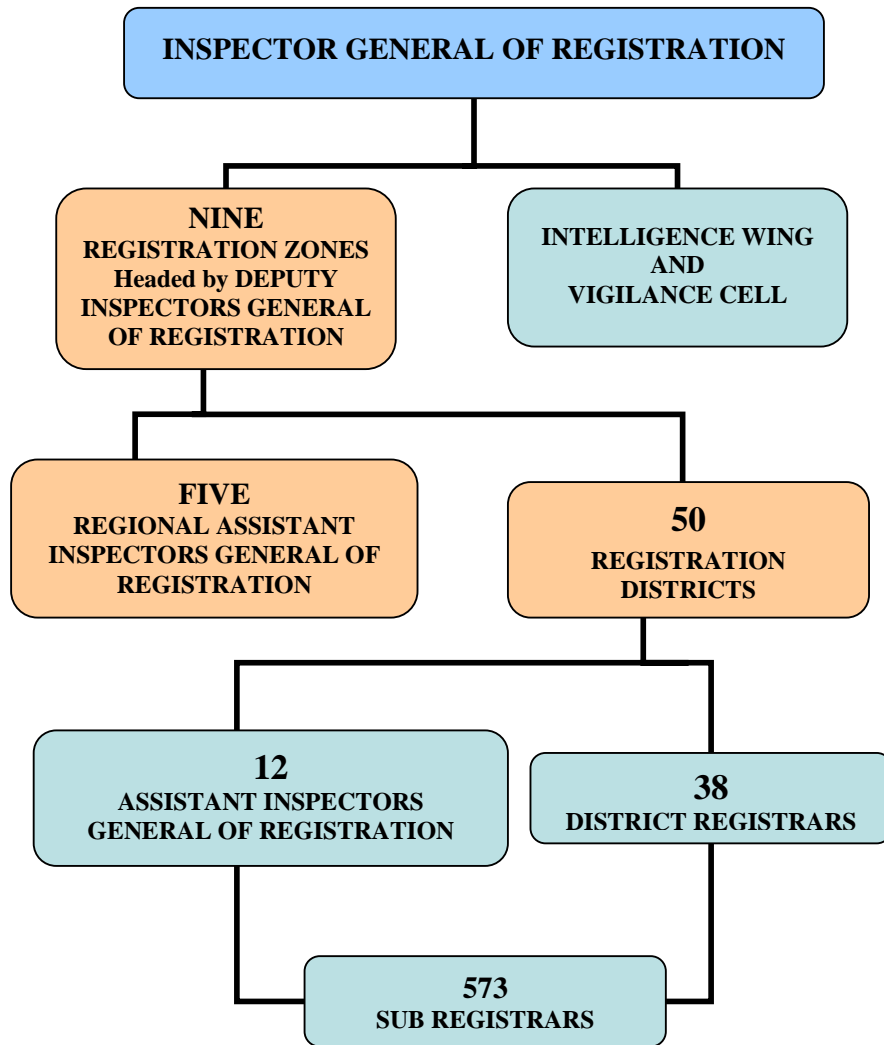
There are nine registration zones² in the state each headed by a Deputy Inspector General of Registration. There are five regional Assistant Inspectors General of Registration at Chennai, Trichy, Madurai, Tirunelveli and Coimbatore, attached to the Deputy Inspectors General concerned.

The State is divided into 50 registration districts for administrative purpose, out of which 12 registration districts are headed by Assistant Inspectors General of Registration and the remaining districts by District Registrars (Administration).

There are 573 Sub Registrar Offices in the state for registration of documents and other purposes. The department has a system of internal audit and there are 45 audit units, each headed by a District Registrar (Audit).

¹ The Tamil Nadu Non-Trading Companies Act, 1972, The Tamil Nadu Societies Registration Act, 1975, The Chit Funds Act, 1982, Indian Christian Marriage Act, 1872, The Births, Deaths and Marriages Act, 1886, The Parsi Marriage and Divorce Act, 1932, The Special Marriage Act, 1954, The Hindu Marriage Act, 1955, Tamil Nadu Marriage Registration Act, 2009, The Indian Partnership Act, 1932, Dowry Prohibition Act, 1961 and Births and Deaths Act, 1969.

² Chennai, Coimbatore, Cuddalore, Madurai, Salem, Thanjavur, Tiruchirappalli, Tirunelveli, and Vellore



1.2 Audit objectives

We conducted this review with a view to ascertain that

- proper procedures were followed to determine the market value of properties undervalued and to collect the deficit stamp duty and registration fees;
- instruments were correctly classified for the purpose of levy of stamp duty and registration fees; and
- there was no leakage of revenue.

1.3 Audit methodology and scope

Mention was made in para 3.2 of the Report of the Comptroller and Auditor General of India for the year ended 31 March 2006, Government of Tamil Nadu, highlighting the deficiencies in the levy and collection of stamp duty and registration fee during the period 2000-01 to 2004-05. The report has not yet been discussed by the Public Accounts Committee. The present review, covering the period from 2005-06 to 2008-09, was conducted from January 2010 to July 2010 in 75 registering offices. We attempted to focus on system issues and selected units for audit with a view to ensure a comprehensive coverage of the department. The selection of offices was made on the basis of the number of documents registered and potential risk applying the random sampling method. Besides, five offices of the District Revenue Officer/Special Deputy Collector (Stamps) and the office of the Inspector General of Registration were also covered in the review.

1.4 Acknowledgement

We acknowledge the co-operation extended by the Registration Department in providing us the necessary information and records. An entry conference was held with the Secretary to Government, Commercial Taxes and Registration Department in February 2010 in which we explained the audit objectives, scope and methodology. The draft report on comprehensive review of the Registration Department was forwarded to the Government and the Department in October 2010. The exit conference was held with the Inspector General of Registration on 12 October 2010. The views expressed at the exit conference and at other times have been taken into consideration and incorporated in the report.

1.5 Trend of revenue

1.5.1 Revenue position

The tax raised by the Registration Department, the total tax revenue of the Government of Tamil Nadu during the year 2009-10 and the corresponding figures for the preceding four years are as mentioned in the following table:

(₹ in crore)

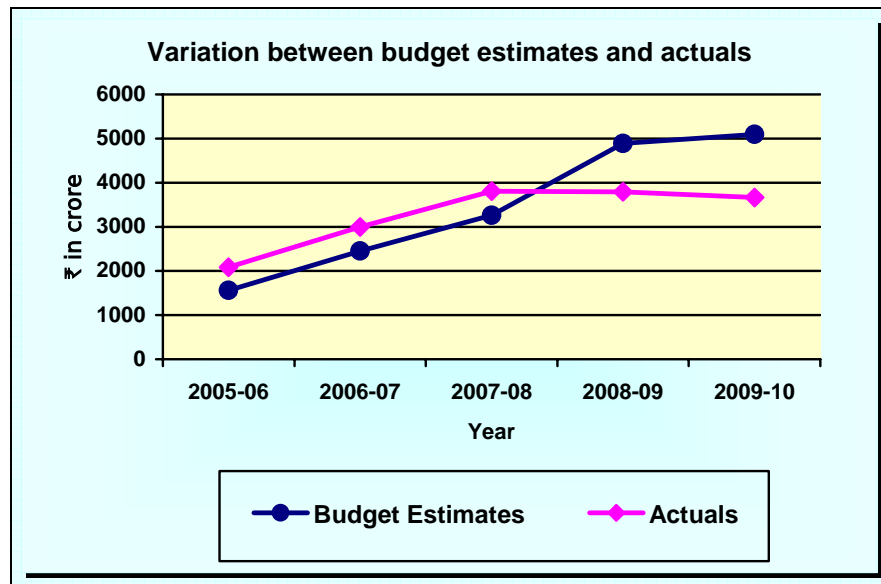
Sl. no.	Particulars	2005-06	2006-07	2007-08	2008-09	2009-10
1	Tax revenue	23,326.03	27,771.15	29,619.10	33,684.37	36,546.66
2	Stamp duty and registration fees	2,084.86	2,997.46	3,804.74	3,793.68	3,662.16
3	Percentage of increase/decrease from previous year	30	43.77	26.93	(-) 0.29	(-) 3
4	Percentage of 2 to 1	9	11	13	11	10

1.5.2 Variation between the budget estimates and actuals

The variation between the budget estimates and the actuals of revenue receipts for the years 2005-06 to 2009-10 are as mentioned below:

(₹ in crore)

Year	Budget estimates	Actuals	Variation excess (+) or short fall (-)	Percentage of variation
2005-06	1,562.81	2,084.86	(+) 522.05	33
2006-07	2,451.65	2,997.46	(+) 545.81	22
2007-08	3,258.88	3,804.74	(+) 545.86	17
2008-09	4,888.90	3,793.68	(-) 1,095.22	(-) 22.40
2009-10	5,093.99	3,662.16	(-) 1,431.83	(-) 28.11



The decrease in the year 2008-09 was attributed to recession/slow down in the real estate sector as a result of which registration of documents with high value relating to transfer of properties declined.

1.5.3 Analysis of documents registered and revenue collected

Year	Number of documents registered	Percentage of increase/decrease over previous year	Revenue collected (₹ in crore)	Percentage of increase/decrease over previous year
2005-06	20,11,566	(+)14.18	2,084.86	(+)30.00
2006-07	24,92,294	(+)23.90	2,997.46	(+)43.77
2007-08	26,91,002	(+)7.97	3,804.74	(+)26.93
2008-09	28,32,686	(+)5.27	3,793.68	(-) 0.29
2009-10	27,31,026	(-) 0.04	3,662.16	(-) 3.00

A comparative study of the above particulars revealed that there was a decreasing trend in registration of documents as well as the revenue collected.

The Department stated that the reason for increase in registration of documents upto 2008-09 was due to increase in registration of those type of documents which attract lower stamp duty. This in turn reduced the revenue collection.

1.5.4 Cost of Collection

The gross collection in respect of stamp duty and registration fees, expenditure incurred on collection and percentage of expenditure to gross collection during the years from 2006-07 to 2009-10 along with all India average percentage of expenditure on collection to gross collection for the corresponding previous years are furnished in the following table:

(₹ in crore)

Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage for the previous year
2006-07	2,997.46	106.89	3.57	2.87
2007-08	3,804.74	133.84	3.52	2.33
2008-09	3,793.68	133.20	3.51	2.58
2009-10	3,662.16	162.10	4.43	2.77

The percentage of expenditure on collection in the State was significantly higher than the All India average in all the years.

1.5.5 Analysis of arrears of revenue

The position of arrears of revenue at the end of each financial year beginning from 2005-06 to 2009-10 is mentioned below.

(₹ in crore)

Year	Opening balance	Addition	Total	Amount collected	Closing balance
2005-06	182.50	31.63	214.13	39.49	174.64
2006-07	174.64	11.23	185.87	25.52	160.35
2007-08	160.35	17.31	177.66	28.85	148.81
2008-09	148.81	29.98	178.79	30.91	147.88
2009-10	147.88	71.54	219.42	21.92	197.50

As seen from the table, the arrear position marginally decreased from year to year except during 2009-10. However, arrears of over five years have increased to a great extent. Out of ₹ 197.50 crore outstanding as on 31 March 2010, ₹ 193.68 crore was covered under the Revenue Recovery Act while demands of ₹ 3.81 crore were stayed by the High Court and other judicial authorities.

The Department stated that District Revenue Officers/Special Deputy Collector(Stamps), Zonal Deputy Inspectors General, District Registrars and Sub Registrars were instructed during monthly review meetings to collect the arrears.

1.6 Results of audit

We test checked³ the records of the offices of the Registration Department, and found cases of under assessment, misclassification, etc. amounting to ₹ 156.59 crore in 948 cases, which fall under the following categories:

(₹ in crore)			
Sl. No.	Categories	Number of cases	Amount
1	Comprehensive separate audit report	1	90.84
2	Misclassification of documents	537	37.80
3	Undervaluation of properties	216	10.16
4	Miscellaneous	194	17.79
	Total	948	156.59

During the year 2009-10, the Department accepted and recovered ₹ 2.59 crore, involved in 170 cases of under assessments and other irregularities. Out of this, an amount of ₹ 0.32 crore involved in 24 cases was pointed out in 2009-10 and the rest in earlier years.

1.7 Outstanding inspection reports and audit observations

The Principal Accountant General (Commercial and Receipt Audit) conducts periodical inspection of the Registration Department to test check the transactions and verify the maintenance of important accounting and other records as per the prescribed rules and regulations. When important irregularities, detected during the inspection, are not settled on the spot, those inspection reports (IRs) are issued to the head of the office inspected with a copy to the next higher authority. More serious irregularities are reported to the head of the department and the Government. The head of office is required to furnish replies to the IRs through the head of Department within a period of one month.

The number of IRs and audit observations issued upto 31 December 2009 and pending for settlement by the department as on 30 June 2010, along with corresponding figures for the preceding two years are as mentioned below:

Particulars	2008	2009	2010
Number of Inspection Reports pending for settlement	988	1,170	1,239
Number of outstanding audit observations	1,532	2,311	2,635
Amount of revenue involved (₹ in crore)	146.69	261.31	260.32

³ Regular Audit - April 2009 to March 2010; Separate Audit Report - January to July 2010

1.8 Follow up on Audit Reports – summarised position

To ensure accountability of the executive in respect of the issues dealt with in the Audit Reports, the Public Accounts Committee (PAC) had directed that the department concerned should furnish remedial/corrective action taken notes (ATN) on the recommendations of the PAC relating to the paragraphs contained in the Audit Reports within the prescribed time frame of six months.

We reviewed the outstanding ATNs as on 31 March 2010 and found that the Registration Department had not submitted the ATNs in respect of 41⁴ recommendations pertaining to eight audit paragraphs.

Further, the PAC has laid down that necessary explanatory notes for those issues mentioned in the Audit Reports should be furnished to the Committee within a maximum period of two months from the date of placing of the Report before the legislature. Though the Audit Reports for the years from 2006-07 to 2008-09 were placed before the Legislative Assembly between 14 May 2008 and 14 May 2010, the Department is yet to submit explanatory notes for 24 paragraphs (including one review) included in these reports.

1.9 Compliance with the earlier Audit Reports

During the period from 2004-05 to 2008-09, the Department/Government accepted audit observations involving ₹ 7.12 crore, of which ₹ 2.17 crore had been recovered till 31 October 2010 as mentioned below:

(₹ in crore)

Year of Audit Report	Total money value SD & RF	Accepted money value	Recovery made
2004-05	1.30	1.30	1.14
2005-06	76.66	0.05	0.05
2006-07	8.58	0.00	0.00
2007-08	42.63	1.90	0.37
2008-09	10.73	3.87	0.61
Total	139.90	7.12	2.17

The Government may institute a mechanism to monitor the position of recoveries pointed out in the Audit Reports and take necessary steps for early collection.

⁴ One recommendation pertains to the Audit Report year 1979-80 and the rest are from Audit Report 1988-89 to 1997-98.

1.10 Departmental audit committee meetings

In order to expedite the settlement of the outstanding audit observations contained in the inspection reports, departmental audit committees are constituted by the Government. These committees are chaired by the Secretaries of the concerned administrative department and attended by the concerned officers of the State Government and officers of the Principal Accountant General (Commercial & Receipt Audit).

It is necessary that the audit committees meet regularly and ensure that final action is taken in respect of all the audit observations outstanding for more than a year, leading to their settlement. During the period from 2007-08 to 2009-10, only four meetings were held by the Registration Department in which 18 paragraphs were settled. Considering the huge number (2,635) of outstanding paragraphs, it is imperative that meetings are held periodically to clear the cases.

CHAPTER II
ADMINISTRATION OF STAMP AND
REGISTRATION LAWS

Highlights

Non-inclusion of “general power of attorney” within the purview of levy on market value continues to deny revenue to the Government.

[Paragraph 2.2]

Failure to notify the rate of stamp duty for issue of shares, etc., through electronic mode had resulted in the Government being not able to augment revenue during the years from 2005-06 to 2008-09.

[Paragraph 2.4]

The Government did not amend the Registration Act to make certificate of sale compulsorily registrable to ensure sufficiency in payment of stamp duty.

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Stamp duty and registration fees of ₹ 42.06 crore was short levied on mortgage deeds.

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Stamp duty and registration fees of ₹ 5.33 crore was not collected as there was suppression of fact in the conveyance deed.

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Stamp duty and registration fees of ₹ 9.75 crore was short levied due to undervaluation of properties in 22 Registries.

[Paragraph 2.10]

Stamp duty and registration fees of ₹ 25.70 crore was not levied due to incorrect grant of exemption.

[Paragraph 2.11]

2.1 Introduction

The Inspector General of Registration is the highest departmental authority. He also acts as the Chief Controlling Revenue Authority (CCRA). We studied the efforts made by the Department in augmenting revenue by plugging loopholes, exploring new areas of taxation and simplifying the process of registration for the benefit of the general public and our comments are given in the succeeding paragraphs.

2.2 Concept of market value and the necessity for widening its ambit

The Registration rules provide for registering the documents on the basis of consideration received. As innumerable instances of understating the consideration for the purpose of reducing the stamp duty were noticed, the Government, to plug the leakage of revenue, decided to levy stamp duty on the market value of the property.

The instruments of sale, exchange, gift, settlement and release of benami right were brought under the ambit of market value. Three more instruments viz., (1) leases over 99 years, (2) release in favour of a co-owner and (3) release in favour of a partner in the firm were also brought under the ambit of market value from the year 2000.

The aspect of widening the definition of conveyance, *inter alia*, to include agreement to develop the property and general power of attorney

executed in favour of third persons other than blood relations⁵ has been engaging the attention of the Department and the Government since 1997. These instruments were, however, not brought within the purview of market value so far. Mention was also made of this in the Comptroller and Auditor General's Audit Report 2005-06 and though the Government agreed to look into this aspect, no decision has been taken so far.

The Government may consider bringing in agreement to develop property within the definition of conveyance. It may also consider treating such power of attorney where power to sell immovable property is given to third persons other than blood relations as conveyance deeds for stamp duty purposes, by amending the Act/Rules governing stamp duty in the State. Such provisions have already been made in other states such as Rajasthan (Section 44 EE of the Rajasthan Stamp Act).

⁵ Two persons are said to be related to each other by full blood, when they are descendents from a common ancestor by the same wife (Section 3(e) of the Hindu Succession Act, 1956).

As per the existing provision under Article 48(e) of the IS Act, on power of attorney given with consideration, stamp duty is leviable at four *per cent* on the amount of consideration. However, if the power of attorney is not given for consideration, ₹ 20 only is charged as stamp duty.

2.2.1 We observed during test check of records in nine offices⁶ that though general power of attorney was stated to have been given without consideration to third persons other than blood relations in nine cases, it was found through subsequent documents viz., sale deed executed by the power agent with the third party in three cases and sale agreement executed on the

same day in six cases, that consideration had been given. Hence, the general power of attorney should be treated as deeds of conveyance and charged to stamp duty accordingly. Had the stamp duty been levied on the consideration, an amount of ₹ 5.77 crore would have accrued to Government (inclusive of registration fee).

2.2.1.1 Misclassification of instrument of power for consideration as sale agreement

According to Section 5 of the IS Act, any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under the Act. As per Article 48(e) of Schedule I to the Act, when a power of attorney was given for consideration, stamp duty is leviable at four *per cent* on the amount of consideration.

We observed during test check of the records in Sub-Registry, Thiruporur in October 2008 and August 2009 that through eight instruments of sale agreement executed in October 2007/August 2008 and registered between October 2007 and August 2008, 29.77 acres of agricultural land was proposed to be conveyed. The entire sale consideration of ₹ 49.38 crore as set forth in the documents was paid and stamp duty of ₹ 800 and Registration fees of ₹ 0.49 crore was collected.

However, we noticed from one of the conditions of the agreement that the buyer was authorised to transfer, assign, mortgage and to deal with and dispose of the property in such manner as the buyer may, in his discretion deem fit and proper, without any reference and/or consent from the seller and/or the confirming party. The buyer was also free to receive, recover and appropriate, consideration and amounts that may become due and recoverable on such transactions. It is clear from the above that the instruments comprised

⁶ Adayar, Hosur and Tiruppur – **Sale deed** and Cuddalore, Konnur, Kundrathur, Neelangarai, Suramangalam and Tambaram – **Sale Agreement**

of two different matters, i.e., one a ‘sale agreement’ and the other ‘power for consideration’. Therefore, stamp duty of ₹ 1.97 crore at four *per cent* on the value set forth in the documents as provided in Article 48(e) was to be levied.

We pointed this out to the department in December 2008/October 2009 and to the Government in December 2009. The Government accepted (April 2010) the audit observation in one case. We are awaiting further report (March 2011).

2.3 Overlooking the grounds and causes of previous amendment

2.3.1 In order to arrest the tendency of the registering public to reduce the duty incidence on sale of property by opting for leases over 99 years, leases over 30 years were subjected to duty on market value by Act No.1 of 2000. However, the amended Act No.31 of 2004 shifted the factor for levy to set forth value.

2.3.2 Partition among family members is subjected to stamp duty on market value (under Article 45(a) of the IS Act since December 2004) whereas partition among non-family members is stamped on the value of the separated shares. While the registering officer assesses the market value in the former case, the parties themselves declare the value in the latter.

2.3.3 Three kinds of releases viz., release of benami right, release in favour of co-owner and release in favour of partner of the firm are covered under Article 55 B to D of the IS Act. Any other release like leasehold right, tenancy right, conjugal right, contractual right and litigants right would fall under Article 55-A of the IS Act as clarified by the IG of Registration.

By an amendment in December 2004⁷ under the Registration Act, the concession of registration fees was restricted only to family members, whereas corresponding amendment under IS Act was not confined to family members though as per the ‘Statement of objects and reasons’, the Government decided to give concession only to transactions relating to family members.

Stamp Act	Registration Act
Article 55A	Proviso under Item 1(b) of Table of Fees
<u>Before Amendment</u>	<u>Before amendment</u>
4 per cent of the value of release	One per cent on the value on which the stamp duty is levied
<u>After amendment</u>	<u>After amendment</u>
One <i>per cent</i> on the market value subject to a maximum of ₹ 10,000	A proviso was included for transactions among family members restricting the fee to ₹ 2,000

⁷ vide GO 185 CT, dated 16 December, 2004

Omission to restrict the stamp duty concession under Article 55-A only to family members resulted in unintended concession of ₹ 7.99 crore in the following few illustrative cases.

(₹ in lakh)

Name of the sub-registry/ Nature of the instrument (No.of documents)	Nature of transaction	Stamp duty and registration fee leviable/ levied	Difference
Annanagar/ Conveyance deed (1)	The person who was contracted originally to purchase the property from the owner was paid ₹ 50 crore by the ultimate purchaser and the contracted person also signed the deed as a confirming party. This execution by the confirming party has to be treated as release of contractual rights, and stamped accordingly.	250.00/Nil	250.00
Ten ⁸ Sub-registries (70)	Through 70 instruments, the confirming parties involved in the documents received consideration for releasing their contractual rights and litigation rights besides transfer of lands by the owners in favour of the purchasers. As such, the instruments should be classified as conveyance cum release (between non family members) and stamp duty and registration fees were to be levied .	549.00/Nil	549.00
<p>After we pointed this out, the department replied that the sale deeds in question were executed by the owners of the properties and the agreement holders in the capacity of confirming party to the said sale to perfect the transfer of title by the vendor.</p> <p>The reply is not tenable. It is clear from the recitals of the documents that the confirming parties signed the document in order to relinquish their rights over the property. As such the documents should be classified as conveyance cum release and stamped accordingly.</p>			

⁸ Annur, Jt.II Chingleput, K. Sathanur, Kundrathur, Manavalanagar, Neelanganai, Padappai, Sulur, Thirukazhikundram and Tiruporur

2.4 Augmentation of revenue

Under the provisions of the Constitution, levy and regulatory powers in respect of stamp duty is governed by the Concurrent list and rate of stamp duty (except those that are covered in Entry 91 of the Union List) is in the exclusive domain of the State Government. The State of Tamil Nadu adopted the IS Act with suitable amendment, wherever necessary.

2.4.1 According to Section 8-A of the Indian Stamp Act, the issuer of shares, debentures or other marketable securities through electronic mode, is liable to pay stamp duty on the total amount of securities. However, the State Government is yet to notify the rate of stamp duty under Section 8-A. Thus, issuer of shares in demat form are not paying duty. This issue was already pointed out in the Audit Report for the year 2005-06 and though the Government agreed to consider the issue, no rate was notified so far.

We observed that 25 Tamil Nadu based companies issued demat shares during the period from 2005-06 to 2008-09 for ₹ 3,847.52 crore on which no stamp duty was paid.

The Government of India made 'contracts for sale' compulsorily registerable. A new article 23-A was inserted (September 2001) in Schedule I to the Indian Stamp Act, 1899 by which contracts for sale executed in the Union Territories are liable to stamp duty at ninety *per cent* as applicable to conveyance.

2.4.2 The Inspector General of Registration stated in his letter dated December 2001 that a separate proposal would be sent to the Government for providing appropriate rate of stamp duty for agreements to sell with consideration. The rate of stamp duty for contracts for sale has, so far, not been prescribed by the Government of Tamil Nadu. As a result, the contracts for sale with possession are being stamped with duty of ₹ 20 only under Article

5 (j), a residuary article.

We observed in Sub Registry, Annanagar, that an immovable property was contracted for sale and the contracted person also developed the property. However, the contract for sale was not registered and stamped accordingly as the rate of stamp duty has not been prescribed so far.

As the power to fix the rate of stamp duty remains with the State Government, whenever amendments were made in the Stamp Act and other Acts, effect of such amendments needs to be studied immediately so as to fix/revise the rates of duties wherever necessary in order to maximise the revenues to the State.

2.5 Sufficiency of stamp duty in respect of documents not requiring compulsory registration

The registering officer appointed under the Registration Act, 1908 is also notified as “Collector” for various sections under Chapters III & IV of the Indian Stamp Act, 1899 and he is duty bound to ensure stamp duty sufficiency in respect of instruments presented to him for registration.

As per sections 2(6), 2(12), 3 and 17 of the IS Act, every instrument mentioned in Schedule I is liable for stamp duty. As per Section 33 of the IS Act, every person in charge of a public office may impound instruments not requiring compulsory registration or instruments requiring compulsory registration but not opted for registration that may come to his notice in discharge of his functions.

Instruments like court decree and certificate of sale confer title over immovable properties. Copies of orders or the details of such judicial or quasi-judicial orders are required to be forwarded to the jurisdictional registry. However, their registration is optional as per section 18 of the Registration Act. The registering officer, on receipt of such details, is duty bound to index the same as per Section 55(2) of Registration Act.

2.5.1 We observed in four registries⁹ that

certificate of sale was issued by the Debt Recovery Tribunals in respect of properties valued at ₹ 6.17 crore. Subsequently, the parties, while settling or mortgaging or selling the property so acquired described the mode of acquisition as being through certificate of sale in the instruments sought to be registered, thus avoiding the stamp duty required to be paid on the certificate of sale. Further, the certificate of sale was simply indexed in the registry concerned. As the instrument is not compulsorily registrable, stamp duty amounting to ₹ 37.03 lakh could not be realised.

The IGR issued instructions on 3 July 2002 that such type of documents should be compulsorily registered. The Hon’ble High Court¹⁰ struck down the instructions issued by the IGR as ultra vires, as there was no provision in the Act to make certificate of sale compulsorily registrable. The above lacuna could have been plugged had the Government amended the Act so as to bring certificate of sale under the purview of compulsory registration.

After we pointed this out, the Department replied that similar attempt made by the Government of Andhra Pradesh to inspect banks was held unconstitutional by the Supreme Court of India¹¹. The reply is not tenable since the case law relied on by the Department pertains to an amendment to Section 73 which empowered demand of deficit duty from the public officer who held insufficiently stamped instrument, whereas the audit point is that an

⁹ Hosur, Konnur, Rajapalayam and Tuticorin

¹⁰ WP No.17833 of 2009 – High Court of Madras

¹¹ District Registrar Versus the Canara Bank reported in 2004(5) CTC 376 SC

amendment is required to be made for compulsory registration of certificate of sale to ensure the sufficiency of stamp duty at the time of registration. We are awaiting further report (March 2011).

2.5.2 Misclassification of instrument of conveyance as certificate of sale

As per Article 23 of the Schedule I to the IS Act, in the case of conveyance of an immovable property, stamp duty is leviable at the rate of eight *per cent* including transfer duty surcharge (TDS) on the market value of the property. As per Article 18, on sale of any property through public auction by a Civil Court or Revenue Court or Collector or other revenue officer in respect of which a certificate of sale is issued to the purchasers, the stamp duty at the rate of six *per cent* is leviable on the market value equal to the consideration.

We observed during test check of the records in four¹² registering offices that in 10 cases, certificates of sale were issued, for a value of ₹ 8.77 crore by persons not empowered to issue certificate of sale. These instruments were, therefore, to be classified as conveyance deeds and stamp duty was leviable on the market value which was ₹ 12.18 crore. The misclassification of instruments resulted in short levy of stamp duty and registration fees of ₹ 49.76 lakh (due to undervaluation of properties and non collection of difference

amount at two *per cent* being the TDS portion on the value of the property).

We recommend that the Government may consider amending the Registration Act to make certificate of sale compulsorily registrable.

2.6 Delayed reference for valuation

Under Section 47A of the IS Act, if the registering officer has reason to believe that the market value of the property has not been truly set forth in the instrument, he may, after registering the instrument, refer the same to the Collector for determination of the correct market value.

The Inspector General of Registration instructed (September 2002) that the documents wherever required should be referred within 21 days from the date of registration.

We observed that there were 4,081 instances of delayed reference under Section 47A(1) out of 9,723 sampled cases

pertaining to 149 Sub-Registries. In 867 cases the delays ranged from 91 days to 688 days. The delay in initiating action under Section 47A(1) further delayed the realisation of revenue.

¹² Jt-II SR, Chengalpet, DR Erode, SR Neelankarai, and Jt.IV Madurai

2.7 Misclassification of instruments of conveyance as cancellation deed

As per Article 17 of Schedule-I to the IS Act, on the instrument of cancellation if attested and not otherwise provided for, stamp duty is leviable at ₹ 50.

It was judicially¹³ held that there can be no such thing as cancellation of a conveyance under which the right of the property has already been passed. Property can be retransferred only by a conveyance.

We observed during test check of the records in 45 District Registries/Sub Registries¹⁴ that conveyance of properties effected through 500 sale deeds were cancelled on mutual agreement by both the executants and claimants through deeds of cancellation registered subsequent to the date of registration of the original deed on the ground that consideration was not received or possession was not given or the properties were not in absolute ownership of the original vendor, etc. Further by making an entry in the registration records regarding registration of cancellation deed the registration of original sale deed was nullified. This was also included in the encumbrance certificate issued by the department. The time gap between the original sale deed and the cancellation deed is as follows:

Time gap in years	No.of documents
Less than one year	135
One year to two years	113
Three to five years	183
Six to ten years	39
More than 10 years	30
Total	500

Since the original vendors re-acquired the right and interest over the property from the original purchasers through cancellation deeds these deeds were to be treated as conveyance deeds. Accordingly, stamp duty and registration fees of ₹ 4.10 crore was to be levied on the market value of the property of ₹ 45.54 crore as against ₹ 0.01 crore levied by the department. The misclassification of conveyance deed as cancellation deed resulted in short realisation of stamp duty and registration fees of ₹ 4.09 crore.

After we pointed this out, the Department replied that the relevant sale deeds registered earlier were cancelled and there was no conveyance and it was covered under Article 17 of the Stamp Act. The reply is not tenable since it

¹³ WA.Nos.592 & 938 of 2009 – High Court of Madras

¹⁴ Alandur, Ambattur, Arakkonam, Avinashi, Bhavani, Cheyyar, Cuddalore, Dharmapuri (West), Dindigul, DR Erode, Guduvancherry, Jt.IV Kanchipuram, Karur (West), Katpadi, Kumarapalayam, Kundrathur, JT,IV Madurai, Mannargudi, Melapalayam, Neelangarai, Padappai, Palayamkottai, Palladam, Perambalur, Periamedu, P.N. Palayam, Pollachi, Poonamallee, Purasaiwakkam, Rasipuram, Redhills, Jt.II Saidapet, Sular, Tambaram, DR Thanjavur, Thiruchengodu, Thirumangalam, Thirupathur, Thuraiyur, Tiruporur, Tiruppur, Tiruvermbur, Villivakkam, Walajahbad, and Walajahnagar

has been judicially held that a sale cannot be cancelled by merely stating that the consideration was not received and possession not handed over even though it has been stated otherwise in the original sale deed. The misuse of the provisions of Article 17 by registering cancellation of sale deeds resulted in short realisation of revenue to Government. We await further report (March 2011).

2.8 Mortgage in English form

As per explanation under Article 40, where power of attorney to collect rent from the mortgaged property had been given by the mortgagor to the mortgagee while executing the mortgage deed, the mortgagor is deemed to have given possession of the property in favour of the mortgagee and the deed shall be chargeable to stamp duty at three *per cent* plus surcharge at one *per cent* on the amount of loan secured in the deed and the registration fees is collectable at the rate of one *per cent*, subject to a maximum of ₹ two lakh.

As per Section 58(e) of the Transfer of Property Act, 1882, under English mortgage, the mortgaged property is absolutely transferred to the mortgagee. It would be retransferred to the mortgagor upon repayment of the loan as agreed. A stipulation in the instrument that the mortgagor would, until he committed default in payment of the principal or the interest, remain in possession of the mortgaged property and he would receive the rents and profits of the mortgaged property and would pay rates and taxes on the property, does not detract the absolute nature of the transfer and make any difference in the

position that the mortgage is an English mortgage.

We observed during test check of the records in three¹⁵ Sub-Registries that in four mortgage deeds registered between November 2004 and October 2006, the mortgagors created mortgages in favour of the mortgagees, who were the security trustee for the lenders for the total loan amount of ₹1,115.92 crore borrowed by the mortgagors. All the four mortgages were English mortgages and the same were rightly classifiable as mortgage deeds with possession under Article 40(a). Omission to correctly classify the deeds resulted in short levy of stamp duty and registration fees of ₹ 42.06 crore.

¹⁵ Alandur, Kumarapalayam and Kuttalam

2.9 Suppression of transfer of immovable property

As per Section 17 of the Registration Act, 1908, any instrument, through which any title or interest, whether vested or contingent, is created or declared of the value of one hundred rupees or more in immovable property, is compulsorily registerable. As per Section 5 of the IS Act, any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act. As per Article 58 (ii), in case of settlement of properties in favour of a person stamp duty is chargeable at eight per cent.

As per Article 23 of Schedule I to the Indian Stamp Act, 1899 in the case of conveyance of immovable property, stamp duty shall be levied at the rate of eight *per cent* including surcharge on the market value of the property which is the subject matter of conveyance.

2.9.1 We observed during test check of the records in Sub Registry, Poonamallee that in a sale agreement registered in September 2007 M/s Muktha Shanthiniketan Properties, a registered partnership firm, had transferred 29.12 acres of land to its retired partner, M/s. HIEC Trading Company, towards settlement of their accounts. The transferred property was in possession of the retired partner

from the said date. However, in the sale agreement mentioned above, the retired partner company was mentioned as second part and also referred to collectively as sellers, represented by its nominee M/s Sriji Ventures, mentioned as confirming party and were included in the sale agreement for conveying the said property. We further observed that the transfer of immovable property by the firm to the retired partner company was not registered. Though the above transfer was registered only through this sale agreement, the stamp duty and registration fees for distinct matters i.e., the settlement made was not noticed by the registering officer and the sale agreement document was not impounded. The market value of the property was ₹ 57.66 crore. The omission of the registering officer to charge duty for settlement made resulted in non levy of stamp duty and registration fees of ₹ 5.19 crore.

2.9.2 We observed from the sale deed executed and registered in February 2006 in Sub Registry, Thiruverumbur that M/s. Tamil Nadu Small Industries Development Corporation Ltd., allotted 65 acres of land situated in Valavandan kottai village of Trichy taluk in favour of M/s. Indian Oil Corporation Ltd., vide an allotment order in June 1999. As per the memorandum of understanding executed in March 2001 the purchaser paid the entire consideration of ₹ 5.15 crore to the vendor through cheque in June 1999. The possession of the entire land of 65 acres was handed over to the purchaser in March 2001. However, instead of executing a sale deed for the entire extent of 65 acres described in schedule-C of the document, the vendor conveyed an extent of 28.90 acres only, described in schedule-D for a

consideration of ₹ 2.29 crore through the sale deed. Thus, for land measuring 36.10 acres for which a consideration of ₹ 2.86 crore was already paid in June 1999, no sale deed was executed and registered. This was contrary to the provisions of the Registration Act. The omission to register the conveyance of 36.10 acres of land resulted in non collection of stamp duty and registration fees aggregating ₹ 14.30 lakh.

2.10 Undervaluation of property

As per the provisions of Article 23 of the Schedule-I to the IS Act, in the case of conveyance of immovable property, stamp duty including the surcharge is leviable at the rate of eight *per cent* on the market value of the property. According to Section 27, the consideration, the market value and all other facts and circumstances affecting the chargeability of the instrument with duty or the amount of the duty with which it is chargeable shall be fully and truly set forth therein.

As per Rule 3(4) of the Tamil Nadu Stamp (Prevention of undervaluation of instrument) Rules, 1968, the registering officer may also consider the value of the property as per the guidelines register for the purpose of verifying the market value.

The Central Valuation Committee for guideline value had decided in September, 2007 that if any document with a value higher than the guideline value was registered for a particular survey

number/street/nagar before 1 August 2007, the same should be taken into account for registering the document on or after 1 August, 2007.

We observed during test check of the records in 22 Registries between April 2010 and July 2010 that in 193 instruments there was undervaluation of properties to an extent of ₹ 108.38 crore resulting in short levy of stamp duty and registration fees of ₹ 9.75 crore.

2.11 Exemption to societies

According to notification dated 29 June 1966, issued under the Co-operative Societies Act, remission of stamp duty chargeable under the IS Act is admissible in respect of instruments executed by a member of a registered co-operative society, provided the executant was a member of such society continuously for a period of not less than two years.

2.11.1 We observed during test check of the records in 12 registering offices that 134 sale deeds were registered whereby lands were conveyed in favour of a co-operative housing society by persons who were not members of the society or by members who had not completed two years of membership, for a consideration of ₹ 262.94 crore. These instruments were

exempted from payment of stamp duty, despite the fact that the executants

were not members of the society concerned/ not members for a continuous period of not less than two years, which was not in order. The incorrect exemption resulted in non levy of stamp duty of ₹ 21.05 crore as detailed below:

(₹ in crore)

Sl. No.	Name of the registry/ No.of documents	Nature of irregularity	Stamp duty involved
1	Jt II Chingleput, Kundrathur and Salem (West)/ 65	Lands valuing ₹ 16.25 crore were conveyed to a Co-operative Housing Society by non-member vendors through their power agents. As the vendors were not members of the Society, no remission was admissible in respect of the above sale instruments.	1.32
The department replied that any instrument executed by or on behalf of any society or by an officer or member thereof and relating to the business of such society is exempted from stamp duty as per Notification dated. 29.06.1966. The reply is not tenable since the remission of stamp duty is not admissible in respect of documents executed by a non-member in favour of the societies.			
2	Ten ¹⁶ Registries/ 69	Lands valuing ₹ 246.69 crore were conveyed by persons who were members of the society for a period less than two years and the transactions were exempted. Since the period of membership of the vendors was less than two years, these instruments were not eligible for exemption from payment of stamp duty.	19.73
The department replied that as per the G.O. and the instructions of Inspector General of Registration, the period of two years membership is applicable only in the case of Co-operative House Construction Society. Since the societies in the instant cases are Co-operative Housing Societies, the condition of two years is not applicable. The reply is not tenable as the second proviso of the notification clearly indicates that exemption is admissible only to those members who are in continuous membership of two years or more and is applicable to all the registered societies and not to the House Construction Societies alone.			
Total			21.05

2.11.2 Misuse of exemption

We further observed in Guduvancherry Sub-Registry that in respect of two sale deeds the above exemption was misused to undervalue the properties with consequent short payment of stamp duty of ₹ 4.65 crore as detailed below:

(₹ in crore)

Sl. No	Name of the registry/ No.of documents	Nature of irregularity	Stamp duty involved
1	Guduvancherry/ one	Land measuring 12.39 ½ acres was conveyed by a vendor company for a consideration of ₹ 5.58 crore through a sale deed on 1 August 2007. As the set forth value was less than the guideline value of ₹ 7.61 crore, the document was referred to the District Revenue Officer (Stamps), Chennai for determination of the market value.	0.60

¹⁶ Chengleput, Guduvancherry, Kanchipuram, Katpadi, Padappai, Sriperumbudur, Thirukazhikundram, Tiruporur, Walajahbad and Walajah Nagar

	<p>The purchaser who was a member of the Chennai Metropolitan Co-operative Housing Society, sold the same property on 7 August 2007 for a value of ₹ 12.27 crore to the Society within seven days from the date of purchase and no duty was paid availing the exemption. Since conveyance of the said property directly in favour of the co-operative society involved payment of stamp duty on the actual consideration of ₹ 12.27 crore, the parties adopted the method by undervaluing the property as ₹ 5.58 crore and paid lesser amount of stamp duty and registration fees.</p> <p>We also observed that the department handed over the document to the purchaser in July 2009 based on the court order along with the endorsement that action under section 47A(1) was pending with the DRO(Stamps). The document was not shown as pending and was treated as cleared in the departmental record.</p>	
Guduvan-cherry/one	<p>Land measuring 7.24 lakh square feet was developed and the approved layout was conveyed (February 2008) by M/s. Hi-Bright Property Developers India Private Limited and two others in favour of an individual (Shri P.Raju) for a consideration of ₹ 19.92 crore after remitting the stamp duty and registration fees of ₹1.79 crore. However, it was seen that through another sale deed executed and registered in March 2008, the same property was conveyed by the individual in favour of Chennai Metropolitan Co-operative Housing Society Limited for a consideration of ₹ 64.93 crore. Stamp duty was fully exempted on the ground that the deed was executed by a member of the society in favour of the society. It was seen from the details of payments recited in the sale deed executed in March 2008 that the society paid the entire sale consideration of ₹ 64.93 crore to Shri P.Raju (₹ 7.26 crore), M/s. Hi-Bright Property Developers India Private Limited (₹ 39.43 crore) and to Shri Dayalan (₹ 18.24 crore) between May 2007 and March 2008. This included a sum of ₹ 1.79 crore paid by the society at the request of the vendor Shri P.Raju by way of cheque dated 14 February 2008 for the issue of demand draft in favour of the Sub-Registry, Guduvancherry as stamp duty and registration fees for the first deed. From the above, it is clear that instead of conveying the said property in favour of the society by the company and individuals, who are not members of the society, one member of the society acted as a middlemen in those transactions to reduce the payment of stamp duty and registration fees by undervaluing the property in the sale deed executed in February 2008. Thus, the property was undervalued to an extent of ₹ 45.01 crore in the first document. This resulted in short levy of stamp duty and registration fees.</p>	4.05
Total		4.65

2.11.3 Unintended benefit to members

We observed during test check of the records in the Sub Registry, Katpadi that through four sale deeds registered in 2006, house sites were conveyed by the Katpadi Co-operative Society to the buyers for a total consideration of ₹ 72.49 lakh. As the buyers were members of the seller society, stamp duty was exempted and only registration fee was collected. Subsequently, the

purchasers conveyed the said property for a total consideration of ₹ 1.45 crore in the year 2006 and in April 2007.

As per the conditions of sale, the plot should be used by the member only for construction of residential building and the same was agreed to by the member of the society. This condition was violated by disposing of the same to a third party who was not a member of the society.

Since the member of the society had not utilised the allotted plots but had sold them to the third parties, the objectives of the co-operative society was defeated. Further, there was no provision in the Act to withdraw the exemption of stamp duty allowed in such cases.

The Government may consider introducing enabling provisions to withdraw the exemption if the properties are re-conveyed and not used by society members for the intended purpose.

2.12 Other points of interest

2.12.1 Incorrect remission of stamp duty under Samadhan Scheme

The Government by an order introduced Samadhan Scheme in April 2007 wherein a remission of 40 per cent of the difference of stamp duty and registration fee between the stamp duty/registration fee already paid and the duty/fee chargeable as per the guideline value can be given.

The scheme was made applicable in respect of instruments which were pending as on 22 March 2007 under sections 47A(1), 47A(3), 47A(5), 47A(6), 47A(10) and 19B of the Indian Stamp Act, 1899 for determination of market value and in respect of instruments registered and pending with the registering officer as on 22 March 2007 for

referring to the Collector.

We observed during test check of the records in the office of the DRO (Stamps), Coimbatore, for the period from June 2007 to August 2007 that in respect of 118 documents, though the market value had been fixed and pending for collection under the RR Act, they were sent for inclusion under the Samadhan Scheme as detailed below:

Month	No. of cases	Amount (₹ in lakh)
June 2007	96	134.85
July 2007	16	15.09
August 2007	6	9.34
Total	118	159.28

As the cases were not pending for finalisation their inclusion under the scheme was incorrect. The reasons for their inclusion were not found on record. The

incorrect procedure followed by the DRO (Stamps), Coimbatore, resulted in loss of revenue of ₹ 63.71 lakh.

2.12.2 Excess allocation of transfer duty surcharge to local bodies

According to Section 94 of the Tamil Nadu Urban Local Bodies Act, 1998 and Section 175 of the Tamil Nadu Panchayat Act, 1994, a duty shall be levied on the following classes of transfer of immovable property in the form of surcharge on the duty imposed under the Indian Stamp Act, 1899, viz., sale, exchange, gift, mortgage with possession, and lease in perpetuity. It shall be levied and collected at the rate of two *per cent* on the market value of the property transferred and subsequently allocated to the concerned local bodies.

We observed during test check of the records in 35 sub registries that though a sum of ₹ 0.36 crore was due towards transfer duty surcharge, ₹ 3.13 crore was allocated to local bodies due to typographical/arithmetical error and allocation made in respect of ineligible documents. This resulted in excess allocation of ₹ 2.77 crore made to local bodies out of the revenue due to Government.

After we pointed this out, the Government replied in May 2009 and June 2010 that an amount of ₹ 46.28 lakh pertaining to six offices has since been adjusted. We await recovery details (March 2011).

2.12.3 Registration Training Institute

The Registration Training Institute (RTI) functioning from September 1996 has been imparting training to the staff of the department to acquire functional knowledge of the provisions of the Indian Stamp Act, Registration Act and other Acts administered by the department. Between 2004-05 and 2008-09, 494 Sub Registrars and 50 Assistants were trained. Even though Junior Assistants post is the feeder cadre for the Assistants post, no training was imparted to Junior Assistants in the RTI.

The RTI has not been provided with computers to impart training in EDP and has no full fledged library. Hence the trainees are being deputed to sub-registrar offices for basic computer training. The training institute has not taken into consideration the future needs of the department viz. online registration, data collection from other sources, e-governance etc. while imparting training.

2.12.4 Record management

One of the key activities of the Registration Department is preservation of registered documents. Prior to computerisation, the documents were preserved in the form of books in bound volumes. Since computerisation of the Registration Department, documents are being stored as image files and preserved in hard discs at the concerned registration offices and at three

different locations (concerned sub-registrar, jurisdictional district registrar and jurisdictional Deputy Inspector General) and archived on a monthly basis.

At present documents are scanned and stored in open-tiff format in folders. However, the security control in the system is not adequate. We observed from check of records that registered documents were tampered with in several cases. In one such case in sub registry, Aranthangi, in two sale documents registered in 2003, the schedule of the property conveyed was tampered with, by which the area conveyed was altered in the original document and also the image files stored in the computer system were replaced which led to the dismissal of the delinquent officer. Five more cases were also detected by the department during the period from 2003-04 to 2008-09.

The department stated (June 2010) that safe storage of registered documents has been the prime concern of the department. Necessary modules for strengthening the security control system have been incorporated in the functional document and given to M/s.ELCOT for the development of an integrated web based software. They also stated that proposals were under way to create a technical set up in the department.

A foolproof mechanism needs to be installed for the preservation of records as it is the responsibility of the department to give legal security to transactions registered through documents. **The Government may consider putting in place a system of storing the scanned images in a centralized server with an adequate backup system and viewing through a web based software.**

2.12.5 e-Governance

The computerisation of the Registration Department was completed in July 2009. The objectives of e-governance through computerised operation was to provide speedy service to the public in issuance of encumbrance certificates, certified copies of documents already scanned, registration of marriages, preparation of property valuation statement etc. The reduction in time envisaged for some of the activities on account of computerisation was as follows:-

	Prior to computerisation	After computerisation
Issue of encumbrance certificate	8 days	5 minutes
Registration of document	4 days	60 minutes
Marriage certificate copy	1 day	15 minutes
Certified copy of value of property	30 minutes	5 minutes

We observed in 14¹⁷ sub-registries, that in many cases, the prescribed time schedule was not adhered to. Audit scrutiny revealed in three¹⁸ sub-registries that during the period from 2005-06 to 2008-09, in 97,547 cases, the delay for issuing encumbrance certificate ranged from one to five days.

We also observed that during the period from 2005-06 to 2008-09 the delay in scanning and return of documents ranged between one and 10 days. Thus the benefits of computerisation did not reach the general public.

The other objectives of computerisation were to provide link among field units to enable registration of documents at any place in the State, obtaining encumbrance certificate at any office, online registration etc. However, proper network facilities have not been provided so far. Though “REGINET”, the official website of the department, is in existence for the last seven years, data available in the website were not updated or found faulty in some cases. The names of 24 stamp vendors whose licences were cancelled still figure in the approved stamp vendors list published in the “REGINET” rendering the information generated unreliable.

2.12.6 Quantum of revenue forgone

As per the provisions of Section 9 of the Indian Stamp Act, 1899, the Government may by specific orders allow remission of stamp duty in respect of any instruments executed by or in favour of any particular class of persons/any members of such class.

We observed during test check that no mechanism was evolved by the department to ascertain the quantum of remission of stamp duty and also the number of beneficiaries. The computerised system used in this department was also not having the facility for capturing the details of concessions in duty (nature of document wise and article wise)

granted at the time of registration of instruments. Consequently, the department did not have any database to indicate the amount of concession allowed to different classes of people every year.

The department confirmed that details were not available and there was no provision in the computerised system to generate such details.

The Government may consider a system of monitoring the quantum of such remissions/exemptions through computerised data.

¹⁷ Erode (DR), Kancheepuram (Joint IV), Kundrathur, K. Sathanur, Peelamedu, Perundurai, Pollachi, Sathur, Sular, Thirumangalam, Thiruverumbur, Thuraiyur, Tiruppur and Wallajabad

¹⁸ Erode, Perundurai and Thirumangalam

2.12.7 Non receipt of copy of speaking orders from Collector

As per clause (2) of Rule 7 of The Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968 the Collector should pass final order in the cases referred to him under Section 47A of the Indian Stamp Act for determination of market value in the instruments where the properties were undervalued. Further, he should forward a copy of the same to the registering officers concerned for their file.

We observed during test check of the records in four¹⁹ District Registries/Sub Registries that out of 3,762 cases for which final orders were passed by the Collectors under Section 47A(2), in respect of 3,589 cases, the final orders were not received by the registration offices. Instead, only the details regarding payment of deficit duty and interest, if any, collected were forwarded along with the original documents.

The registering officers had also not insisted upon the Collectors to furnish the same. As a result, the registering officers were not in a position to identify the cases detrimental to the revenue and for submission to higher authorities for *suo-motu* revision under Section 47A(6) by the CCRA.

2.13 Conclusion

For the purpose of levy of stamp duty and registration fees, other information available with the department were not taken into account in addition to the details furnished in the recitals of the document to determine the true nature of the transactions. No rate was prescribed for the levy of stamp duty on the issue of shares in demat form. In the case of co-operative societies, remission of stamp duty was allowed without ascertaining the eligibility of the member and the period of membership. There was no system in the department to ascertain the quantum of revenue forgone by way of exemption and the number of beneficiaries availing the concessional stamp duty.

¹⁹ SR Kumarapalayam, SR Rasipuram, DR Salem West and Joint III SR Trichy.

2.14 Recommendations

The Government may consider taking the following steps:

- **Provision may be made for levy of stamp duty on power of attorney instruments on market value irrespective of whether the power was given with or without consideration.**
- **As the power to fix the rate of stamp duty remain with the State Government, whenever amendments were made in the Stamp Act and other Acts, the effect of such amendments need to be studied immediately so as to fix/revise the rates of duties wherever necessary in order to maximise the revenue to the State.**
- **Suitable amendment may be made in the Registration Act to make certificate of sale compulsorily registrable.**
- **A system may be evolved for recording the beneficiary wise details of remission of stamp duty/registration fees allowed.**
- **Provisions for withdrawal of concession of stamp duty may be made in case of violation of the conditions of sale in instruments executed by co-operative societies in favour of their members.**

CHAPTER III
SPECIAL DEPUTY COLLECTOR
(STAMPS)

Highlights

18,517 documents were pending disposal by the DRO(Stamps)/SDC(Stamps) in the offices selected by audit, as on 31 March 2009, as against 7,601 as on 31 March 2006.

[Paragraph 3.2]

Delay in assessment and determination of market value in 3,016 cases resulted in blocking of revenue of ₹ 353.02 crore due to the Government.

[Paragraph 3.6.1]

74 instruments referred for determination of market value were returned without determination of market value resulting in non-realisation of revenue of ₹ 5.24 crore.

[Paragraph 3.8.1]

3.1 Introduction

Under Section 47A of the IS Act, if the registering officer has reason to believe that the market value of the property has not been truly set forth in the instrument, he may, after registering the instrument, refer the same to the Collector viz., DRO(Stamps)/SDC²⁰ (Stamps) for determination of the correct market value and duty payable thereon. The DRO(Stamps)/SDC(Stamps) determines the market value under section 47A(2), collects the deficit duty, if any, and returns the document to the registering authority for collection of the deficit registration fee, if any. The Collector, under Section 47A(3), may *suo motu* or otherwise review the value of properties fixed by the registering authorities.

The valuation made may be challenged by the executants under Section 47A(5) by appealing to the Chief Controlling Revenue Authority (CCRA). The CCRA under Section 47A(6) may also *suo motu* review the values determined by the Collector.

There are two²¹ DRO (Stamps) and nine SDC²² (Stamps) offices. We selected²³ two DRO (Stamps) and three SDC (Stamps) offices on the basis of pendency of documents. We analysed 9,500 documents out of 1,10,787 documents received in these five offices for determination of market value during the period of audit involving a referred deficit duty of ₹ one lakh and above in each case as detailed in the Annexure.

²⁰ DRO – District Revenue Officer; SDC – Special Deputy Collector

²¹ Chennai and Coimbatore

²² Cuddalore, Madurai, Salem, Thanjavur, Tirunelveli, Trichy, Tuticorin, Vellore and Virudhunagar

²³ Chennai, Coimbatore, Madurai, Salem and Trichy

3.2 Trend in pendency of documents

The number of documents pending as on 31 March 2009, alongwith the position for the previous years in respect of the five offices selected by audit is detailed below:

	Position as on 31 March			
	2006	2007	2008	2009
Number of documents pending	7,601	14,198	16,489	18,517
Increase in percentage of pending documents over previous year	---	87	16	12
Amount involved (₹ in crore)	351.58	355.02	493.01	819.29

The number of pending documents increased by 87 per cent in 2007 as compared to 2006 whereas the increase percentages were 16 and 12 for the years 2008 and 2009 respectively.

3.3 Internal control mechanism

A Master Register is maintained in each office of the department to make entries of details of documents referred under Section 47A(1) and 47A(3) and to monitor the progress of disposal. The register has columns for incorporating various details such as document number, date of registration, value referred, value fixed, date of notice under Form I, etc. All entries were assigned unique numbers every calendar year to facilitate identification of cases and the relevant files.

We observed that each office maintained the master register in its own way and a number of columns were left blank or incorrectly entered. No column was provided in the register to enter the date of receipt of cases and audit had to consider the date of entry as the date of receipt. The correctness of the entries was not authenticated and the register was not closed. In the absence of vital information like the date of receipt of document, date of issue of Form I notice, final orders, status of the cases, etc and authentication and closing of registers, we could not ascertain the correctness of the details prepared and submitted every month to the CCRA.

Thus, the internal control mechanism was rendered ineffective as the returns/periodicals submitted to the CCRA did not present the complete information since the basic data from which these returns/periodicals were prepared were incomplete.

3.4 Discrepancies in system of valuation

Section 47A(2) empowers the Collector to determine the market value of properties referred to him by the registering authority. The market value of a property, as provided in the explanation under Section 47B, shall be estimated to be the price which, in the opinion of the Collector or the CCRA or the High Court as the case may be, such property would have fetched or would fetch if sold in the open market on the date of execution of the instrument of conveyance, exchange, gift, release of benami right or settlement. Rule 5 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules prescribes the principles to be followed for determination of the value of properties.

The guideline values have several applications apart from being a valuation criteria for the Registration Department. In Tamil Nadu, there are about one crore guideline values and they are displayed on the Internet for use by the general public. The Registration Department and the officials of Revenue Department headed by the Collector were involved in the preparation of guideline value. However, the guideline values do not have statutory backing and therefore, have to be distinguished from market values.

We observed during test check that there was wide

variation between the values referred by the registering officers and the values fixed by the DRO/SDC (Stamps). In 590 out of 5,691 cases whose values were fixed during the period of review, the value fixed was 10 *per cent* or less than 10 *per cent* of the guideline values referred.

For the purpose of ascertaining the assessment procedure followed by the Collector for determination of value, the audit period was divided into two parts. The first part was from 1 April 2005 to 31 July 2007. During this period, the guideline values fixed on 1 April 2003 remained unrevised. The Collector, however, had valued the properties lower than the guideline values in respect of cases referred to him during this period as detailed in the following table:

Total cases analysed	2,781 cases.	Percentage of total cases analysed
Determination of value around 10 <i>per cent</i> of the guideline value	296 cases	11
Determination of value around 10 to 25 <i>per cent</i> of the guideline value	528 cases	19
Determination of value around 25 to 50 <i>per cent</i> of the guideline value	466 cases	17
Determination of value equal to or more than the guideline value	188 cases	7

The second period was from 1 August 2007, the date on which a revised structure of guideline values was introduced by the Registration Department. These values were prepared by a panel of officials from both the Registration and Revenue Departments and the classification of lands too was revised in consultation with the Revenue Department. The purpose of the revised structure was to eliminate anomalies in classification and values, and reduce appeals. Even after this revision, the Collectors continued to differ with the nature of land and values referred to them, and their decisions had mostly gone against the revenue as detailed below:

Total cases analysed (registered after 1.8.2007)	2,748 cases	Percentage of total cases analysed
Determination of value around 10 <i>per cent</i> of the guideline value	287 cases	10
Determination of value around 10 to 25 <i>per cent</i> of the guideline value	506 cases	18
Determination of value around 25 to 50 <i>per cent</i> of the guideline value	400 cases	15
Determination of value around 50 to 75 <i>per cent</i> of the guideline value	730 cases	27
Determination of value around 75 to 99 <i>per cent</i> of the guideline value	664 cases	24
Determination of value equal to or more than the guideline value	161 cases	6

The above table show that the Collectors, only in seven *per cent* of the documents, had fixed the value equivalent to the guideline value in the pre-revised period. For the latter period, where the guideline values were prepared in consultation with the Revenue Department, fixation of value equivalent to the guideline value was made in only six *per cent* of documents referred.

3.5 Lack of provision for levy of minimum duty

We observed during the analysis of 9,500 cases sampled, that in 2,913 cases (30.68 *per cent*) value of 10 *per cent* or less than that of the guideline value was set forth. In 130 documents, the declaration was only upto one *per cent* of the guideline value. In the absence of a provision for levy of minimum stamp duty for registration of documents at the time of presenting the documents for registration, the executants in these cases chose to declare a modest

consideration while protesting the guideline values. It bestows double advantage to parties protesting guideline values as they can pay a meagre amount as duty at the time of registration and pay the balance after fixation of the deficit duty by the Collector at a much later date. Moreover, the registration fee also is collected only on the declared consideration.

The Government may consider levy of stamp duty and registration fee payable on any document admitted for registration on a percentage of guideline value which could be adjusted in the final assessment by Collector.

3.6 Delay in assessment and determination of market value

According to rule 7(1) of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules, the Collector shall determine the value of the property referred to him under Section 47A(1) and issue a final order within three months from the date of issue of notice in Form I (first notice).

3.6.1 We observed during test check of the sampled cases that as at the end of 31 March 2009 market values of the properties were not determined in 3,016 cases (constituting 31.75 *per cent*) within three months after the issue of Form I notice. The delay ranged from four to 49 months. This resulted in blocking of revenue of ₹ 353.02 crore due to the Government.

3.6.2 We further observed that there was also delay in issue of final orders and orders on provisional assessment in 2,319 cases where determination of market values of properties have been completed. The delay ranged from three to 46 months. The non-adherence of the time limit prescribed in Rule 7(1) of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules had delayed the realisation of revenue due to the Government. An illustrative case is detailed below:

3.6.2.1 We noticed in the office of the Special Deputy Collector (Stamps), Vellore in July 2008 that a sale deed registered in 2000 was referred to SDC (Stamps) for determining the market value of the property. The SDC (Stamps) after inspection of the site, determined the market value at ₹ 1.81 crore and worked out the deficit stamp duty at ₹ 21.58 lakh in February 2001.

We pointed this out to the department/Government in August 2008/January 2009 respectively. The Government replied (June 2009) that the final order confirming the value was issued in September 2008.

3.6.3 We also observed that in 222 cases there was delay in issuing final orders after determination of provisional value of properties and issue of notice in Form II (provisional assessment), the delay ranging from three to 39 months.

3.6.4 There were also 76 cases where final orders (Form III) were not issued till the date of audit. However, collection of deficit duty was made based on the provisional order, after a delay ranging from three to 19 months.

The duty involved in these cases amounted to ₹ 5.18 crore.

3.7 Delay in collection of arrears under Revenue Recovery Act

3.7.1 Arrears which could not be collected are referred for collection under the Revenue Recovery Act (RR Act). There are 63,011 cases involving a deficit duty of ₹ 168.93 crore pending for collection under the RR Act. Out of this, 42,097 documents involving ₹ 138.26 crore relate to the offices sampled by audit.

3.7.2 We observed from the records of the SDC (Stamps), Trichy, that in 28 cases, the deficit stamp duty amounting to ₹ 0.79 crore pertaining to the period 2005-2008 remained uncollected till March 2009. The cases were also not referred to the revenue authorities for effecting recovery under the RR Act.

3.8 Non-observance of the provisions resulted in non-realisation of revenue

There is no provision in the IS Act for the return of a document referred under Section 47A(1) of the IS Act without finalising the valuation of the property involved. The Inspector General of Registration had instructed the DRO (Stamps) and SDC (Stamps) in November 2005 to finalise those cases in which the documents were returned to the parties based on court direction within three months. The general procedure is that the original documents are returned based on court directions but the cases are kept pending till the valuation procedure is completed.

3.8.1 We observed during test check of the records in the selected five offices that 74 documents were returned to the registering authorities without determining the value of properties involved in these documents. The reasons for returning the documents were not recorded and the cases were also not shown as pending finalisation in their records. The return of documents without observing the procedure as per law resulted in non-realisation of revenue to the extent of ₹ 5.24 crore.

3.8.2 We further observed that in 66 cases involving a deficit duty of ₹ 209.19 crore the original documents were returned to the parties based on court directions. However, in those cases the valuation of the properties was yet to be determined.

The above procedural lapses provided undue advantage to those who protested the guideline value as against those who accepted the guideline values and paid the duty.

3.8.3 We observed during the test check of records in the Sub Registry, Thiruvottiyur that in respect of three instruments of sale (registered in 2007) referred to DRO(S), Chennai in September 2007 for fixation of market value, the DRO(Stamps), Chennai had fixed the market value in all the three cases in August 2008 and deficit stamp duty was arrived at ₹ 1.67 crore.

However, as per the court directions the documents were returned to the parties concerned in September 2008 without collecting the deficit stamp duty. No further action was initiated to collect the deficit stamp duty of ₹ 1.67 crore as detailed in the following table even after a lapse of two years.

(₹ in crore)

Sl. No	Document Number	Value fixed by the DRO (Stamps)	Value set forth in the document	Difference	Deficit amount of SD
1	10080/07	14.92	6.32	8.60	0.77
2	10081/07	14.34	6.42	7.92	0.71
3	10082/07	3.81	1.70	2.11	0.19
Total					1.67

After we pointed this out, the department replied that the matter would be referred to the DRO (Stamps) for his comments.

3.8.4 Further, in one case, a document pertaining to Sub-Registry, Konnur was returned in July 2007 by the DRO (Stamps), Chennai on the grounds that the document involving the transaction under reference was cancelled subsequently. As there is no provision in the Act to refund stamp duty on cancellation of any document, the return of document in this case resulted in loss of revenue of ₹ 1.87 crore.

3.9 Conclusion

In more than 90 per cent of the cases sampled in audit the Collector had fixed the values in between the set forth value and the guideline value only. The number of pending documents increased from 7,601 in 2006 to 18,517 in 2009. There was delay in determination of market value in 32 per cent of the cases sampled in audit.

3.10 Recommendations

The Government may consider the following:

- The Master Register may be computerised;
- A time frame may be fixed to finalise the cases pending with the SDC/DRO (Stamps); and
- The time limit prescribed in Rule 7(1) for assessment of market value after issue of notice in form I of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules may be enforced.

CHAPTER IV

INTERNAL AUDIT

4.1 Internal audit

Internal audit is a vital component of internal controls to enable an organisation to assure itself that the prescribed systems are functioning reasonably well. The Department is having a system of internal audit to ensure hundred *per cent* audit of all the documents registered. There are 45 audit units, each headed by a District Registrar (Audit). Audit is conducted monthly or quarterly, based on the number of documents registered in an office. The periodicity of audit is two or three days per office.

No specific manual has been prescribed in the Department codifying the practices and procedures relating to conduct of internal audit. Internal audit is carried out on the basis of executive orders/circulars issued by the head of the Department from time to time and instructions issued in Board's Standing Orders.

Year	Number of offices due for audit	Number of offices audited	Balance
2006-07	634	634	0
2007-08	648	636	12
2008-09	779	643	136
2009-10	887	417	470

4.1.1 Effectiveness of Internal Audit

We observed during test check of six District Registrar (Audit) offices that given the manpower and the number of documents to be checked, each member of the audit party has to check 119 documents i.e. 595 pages (approx) per day. Thus the audit party focused on the procedural lapses, arithmetical accuracy, accounting procedures, etc.

We observed from the inspection reports of the internal audit parties pertaining to five²⁴ offices of District Registrar (Audit) that out of the total outstanding objections of 3,076 as on 31 March 2009, nearly 38 per cent of the objections were having money value of less than ₹ 1,000 and 52 per cent were between ₹ 1,000 and ₹ 20,000 only. Thus 90 per cent of the objections were having money value of less than ₹ 20,000. The total money value projected in the inspection reports for the period from 2006-07 to 2008-09 was ₹ 5.37 crore which worked out to only 0.80 per cent of the total revenue collection of the units selected by us.

4.1.2 Outstanding position of audit paragraphs

A study of the pendency position of audit paragraphs revealed that on an average 5.31 per cent of the audit paragraphs were cleared every year on collection of the amounts involved or by way of dropping the paragraphs. As at the end of 31.3.2009, 22,994 paragraphs involving money value of ₹ 71.28 crore were outstanding as detailed below:

As at the end of	Number of paragraphs pending	Amount involved (₹ in crore)
31 March 2007	19,663	25.35
31 March 2008	31,340	61.62
31 March 2009	22,994	71.28

From the above it can be seen that though the number of objections has reduced in March 2009, the amount involved has increased.

²⁴ Erode, Madurai (North & South), Salem West and Trichy

4.3 Recommendation

A suitable mechanism may be put in place to produce better results in terms of quality and effectiveness of internal audit. Focus of internal audit may also include system related issues.

Chennai
Dated

(SUBHASHINI SRINIVASAN)
Principal Accountant General
(Commercial and Receipt Audit)
Tamil Nadu

Countersigned by

New Delhi
Dated

(VINOD RAI)
Comptroller and Auditor General of India

Annexure
(Refer to Paragraph 3.1)

Details of documents sampled by Audit				
Year	Finalised	Pending	Returned	Total
2005-06	1,132	454	24	1,610
2006-07	1,157	537	14	1,708
2007-08	1,810	1,179	26	3,015
2008-09	1,592	1,565	10	3,167
Total	5,691	3,735	74	9,500

(₹ in crore)

Name of the Registry	Number of documents	Amount involved
Chennai	2,726	178.31
Coimbatore	1,984	292.21
Madurai	826	33.67
Salem	2,333	95.99
Trichy	1,631	56.43
Total	9,500	656.61