

**Report of the
Comptroller and Auditor General of India
on**

**Levy and Collection of Stamp Duty and
Registration Fees**

for the year ended March 2011

Government of Rajasthan

Report no. 6 of the year 2011-12

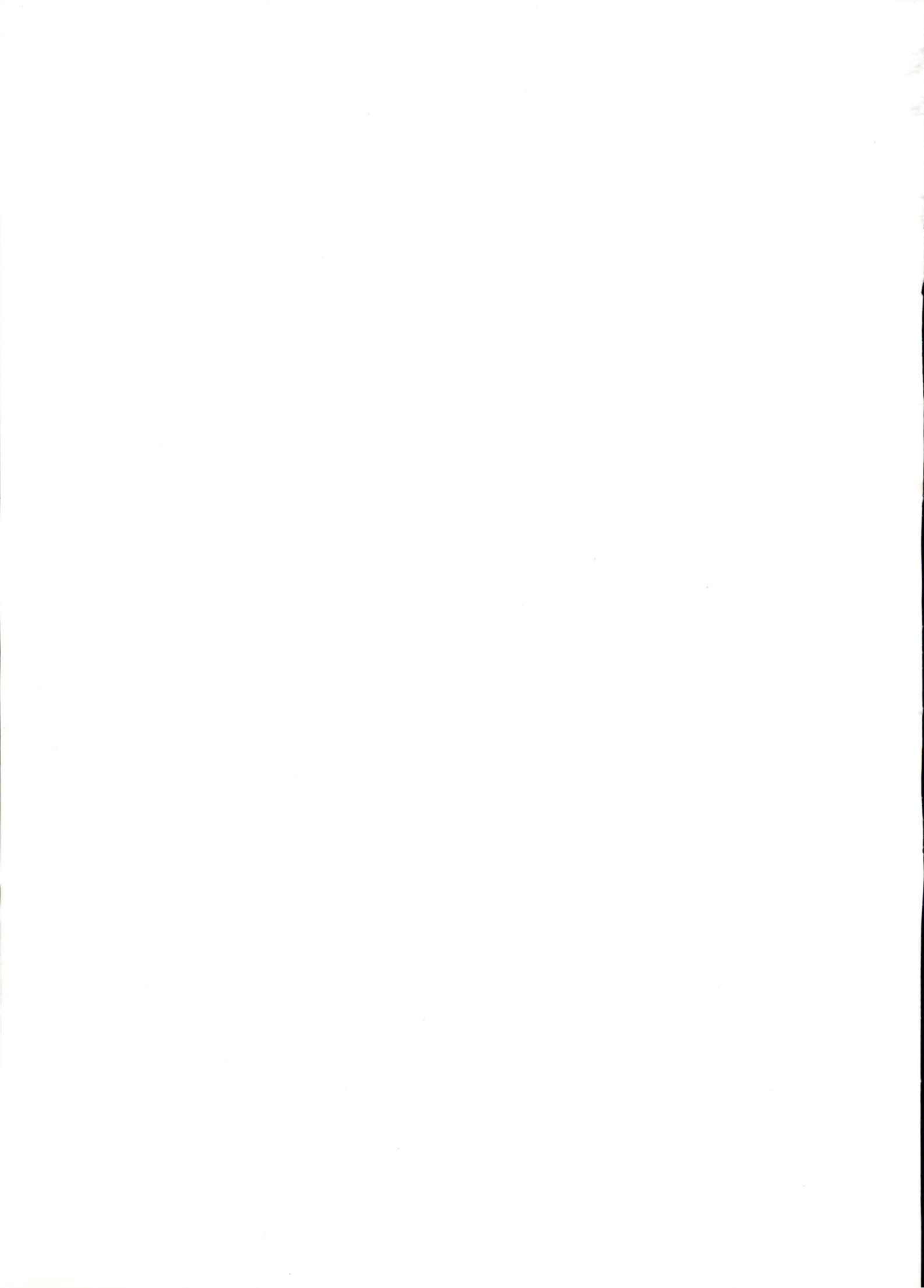


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PREFACE

This Report for the year ended 31 March, 2011 has been prepared for submission to the Governor under Article 151 (2) of the Constitution of India.

The audit of stamp duty and registration fees receipts of the State Government is conducted under Section 16 of the Comptroller & Auditor General's (Duties, Powers and Conditions of Service) Act, 1971.

This Report presents the results of the Performance Audit on the "Levy and Collection of Stamp Duty and Registration Fees" for the period 2006-07 to 2010-11.

The cases mentioned in this Report are those which came to notice during the course of audit of sample records of units selected as per statistical sampling techniques for the period 2006-07 to 2009-10, test audit of records for the period 2009-10 to 2010-11 and selected public offices during the year 2010-11.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

*Executive
summary*

*Summary
of
recommendations*



Summary of Recommendations

For augmentation of the revenue of stamp duty and registration fees receipts, efficient revenue collection and check against plugging leakage of revenue, we recommended the following:

Arrears of revenue

- A strong mechanism may be developed to ensure speedy recovery of arrears of revenue due to the Government.

(Para 1.8)

Valuation of properties

- Government may consider instructing all SRs to evaluate the properties at the prescribed rates determined by District Level Committee.

(Para 2.1 to 2.2)

Deficit stamp duty and registration fees

- Government may consider providing instructions to all SRs for levying and collecting the stamp duty and registration fees not inconsistent with the Schedule appended to the RS Act, 1998.

(Para 3.1 to 3.4)

Classification of instruments

- Government may consider instructing all SRs that stamp duty has to be charged on the basis of the recitals given in the documents and not on the basis of its title.

(Para 3.5)

Records of public offices

- The Government may consider issuing instructions to the public offices to be more vigilant to ensure that instruments produced before them are duly stamped and if not, to take prompt action to inform the cases for proper realisation of stamp duty and registration fees.

(Para 4)

- The Government may also consider prescribing a periodical return to be furnished by public offices to the Revenue Department regarding number and nature of documents presented and also consider inspection of these offices by Stamp authorities.

(Para 4.1.1 to 4.4.3)

Lacunae in the Act

- The Government may consider amendments to the Article 18 of the Schedule to the RS Act, 1998 to clarify that for purposes of Instruments of Shares, the face value includes the amount of premium, if any, at which the shares were issued.

(Para 5.1)

- The Government may consider that any Amnesty Scheme, if issued, should be in consonance with Sections 30 and 75 of the RS Act, 1998.

(Para 5.5)

Procurement, sale and accountal of stamps paper

- The Government may consider ensuing strict compliance by all treasuries for sending their indents timely in the prescribed format and that indents are as per actual requirements

(Para 6.1 to 6.2)

- The Government may take immediate steps for utilisation of non-judicial/adhesive stamps lying unused in Treasuries.

(Para 6.3.1 to 6.3.3)

- The Government may ensure that no impressed or adhesive stamps which are not superimposed as "Rajasthan or RAJ" shall be used in the State of Rajasthan.

(Para 6.5)

Internal Audit

- Internal audit may be strengthened by Government to ensure timely detecting and correction of error in levy and collection of revenue, avoid recurrence of mistakes pointed out and speedy settlements of outstanding paras.

(Para 7.2)

CHAPTER-I

INTRODUCTION

Why we chose the topic

Audit objectives

Organisational set up

Audit scope and methodology

Acknowledgement

Budget estimates and trend of revenue receipts

Arrears of revenue

Cost of collection

Cases pending adjudication

CHAPTER-I

Introduction

1.1 Introduction

Management of levy and collection of stamp duty and registration fees is the responsibility of both the Government of India (GOI) and the State Government.

The Indian Stamp Act, 1899 (IS Act) enacted by the GOI prescribes the rates of Stamp Duty in respect of Bills of Exchange, Cheques, Promissory notes, Bills of lading, Letter of credit, Policies of insurance, Transfer of shares, Debentures, Proxies and receipts as specified in entry 91 of list-I Union list of the Seventh Schedule to the Constitution of India. The States are empowered under Entry 63 of list-II State list of the Seventh Schedule to the Constitution of India to prescribe the rate of stamp duty on instruments other than the instruments specified in Entry 91 of Union list.

Receipts from the Stamp Duty and Registration fees (SD and RF) in the State of Rajasthan are regulated under the Rajasthan Stamp Act (RS Act), 1998; the Registration Act, 1908 and Rules made there under. The Stamp duty is leviable (*ad valorem* or fixed) on market value of the instruments executed at the rates prescribed from time to time in the IS Act or RS Act and registration fees is payable at the rates prescribed in the Registration Act, 1908.

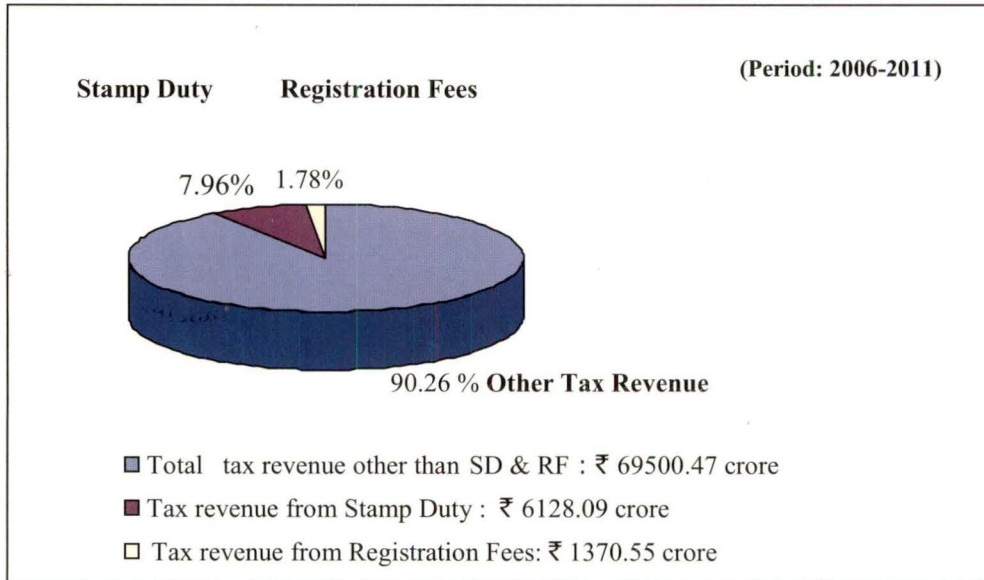
Stamp Duty is leviable on instruments evidencing transactions. The Stamp Act is a fiscal law enacted under the State policy to ensure payment of Stamp Duty on certain executed instruments. The Stamp Act's objective is to collect revenue for the State by levying stamp duty on instruments, to penalise acceptance of an irregularly stamped document on instruments evidence, and to provide prosecution in case of evasion of stamp duty. The Stamp Duty is payable at the rates (*ad valorem* or fixed) prescribed under the RS Act. With the enactment of the RS Act, 1998, which came into force with effect from 27 May 2004, the IS Act, 1899, as adapted in Rajasthan under the Rajasthan Stamp Law (Adaptation Act, 1952 (No. VII of 1952), was repealed.

The GOI enacted the Registration Act, 1908 which extends to the whole of India except the State of Jammu and Kashmir. The Registration Act provides evidence regarding any transaction of immovable property between vendor and vendee through a registered instrument. All transactions relating to transfer of immovable properties of the value of one hundred rupees and upwards, transferred *intervivos* are compulsorily registrable. The registration fees at the prescribed rates are charged on every instrument, not as a source of income for the State but in lieu of the expenditure incurred to register the document and for keeping it safe in Government custody.

1.2 Why we chose the topic

Stamp duty is an important source of revenue to the State. The Stamp Duty receipts in Rajasthan grew from ₹ 1,293.68 crore in 2006-07 to ₹ 1,941.07

crore in 2010-11. The average revenue realised as Stamp Duty and Registration Fees during the years 2006-07 to 2010-11 constituted almost ten per cent of the total tax revenue of the State as shown in the chart under:-



Thus, collection of Stamp Duty and Registration Fees plays a vital and important role in the State economy.

At the same time growth of this sector is evident from the fact that during the period on an average 9, 34,652 documents were registered every year.

Looking at the revenue potential of this sector in State revenues and increasing transactions in real estate, we decided to conduct a Performance Audit of this sector.

A Performance Audit for the period 2002-03 to 2005-06 on this topic was done previously and incorporated in the Audit Report 2006-07, highlighting non/short recovery of stamp duty and registration fees, etc. along with a review on 'Information Technology System in the Registration and Stamps Department'. This Report was discussed before the Public Accounts Committee on 19-20 July 2011. Recommendations of the PAC on the Performance Audit are awaited (January 2012).

1.3 Audit objectives

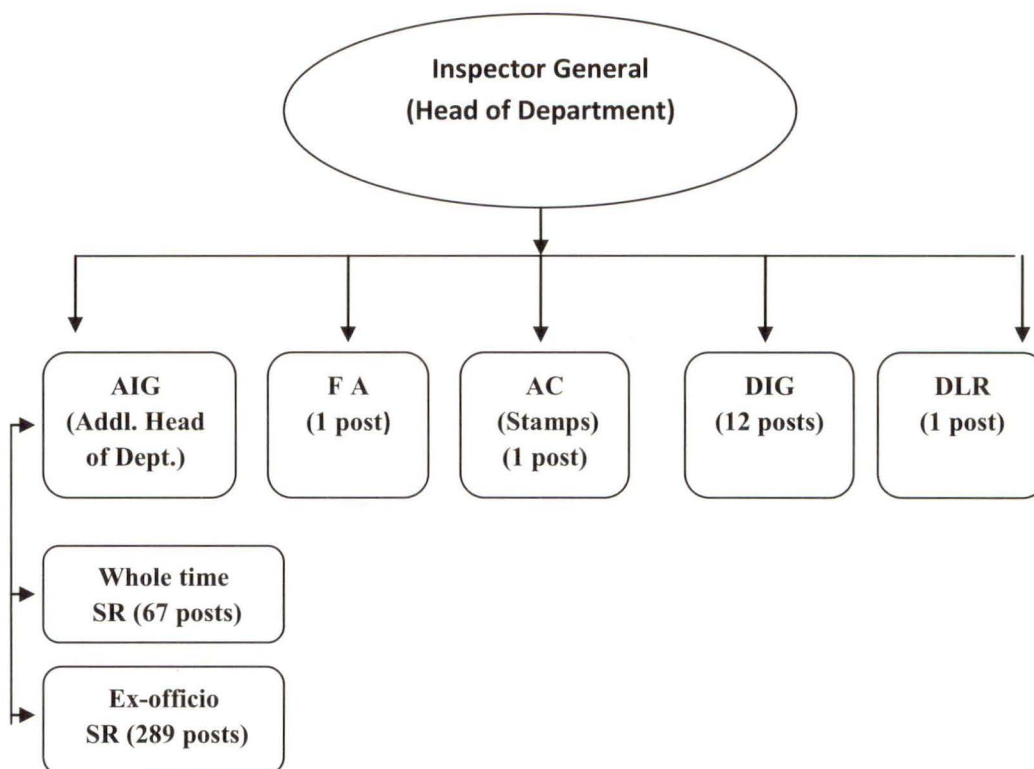
We conducted the audit to get a reasonable assurance that:

- the provisions of the relevant Act/Rules and Departmental instructions were adequate and were enforced properly to safeguard revenue of the State;
- the Department had devised systems to ensure that the documents required to be registered were presented for registration and the requisite Stamp Duty and Registration Fees were levied;
- adequate system and procedures were in place to ensure that the exemptions/remissions were correctly granted;

- registering authorities were discharging their functions in accordance with the prescribed rules and procedures; and
- internal control mechanism was effective and sufficient to safeguard collection of the Stamp Duty and Registration fees.

1.4 Organisational set up

The Department functions under the overall administrative control of the Finance Department. The Inspector General, Registration and Stamps (IG) is the head of the Department. He is assisted by an Additional Inspector General in administrative matters and by a Financial Adviser in financial matters. The State has been divided into 13 circles, of which 12 circles are headed by the Deputy Inspector General (DIG) cum *ex-officio* Collector (Stamps) and Jaipur circle by Additional Collector (AC) (Stamps). There are 67 Sub-Registrar offices headed by a Sub-Registrar (SR) and 289 *ex-officio* Sub Registrar offices headed by a *Tehsildar* or *Nayab Tehsildar*. The persons in position as on 31 March 2010 were as under:-



1.5 Audit scope and methodology

We reviewed the records in the offices of the Secretary Finance (Revenue), IG, Registration and Stamps; ten out of 33 DRs, nine out of 13 DIGs and 36 out of 356 SRs along with a few major public offices for the period 2006-07 to 2009-10. Our audit was conducted during September 2010 to April 2011. Important audit observations which came to the notice in the course of test audit of records during the year 2009-10 to 2010-11 are also incorporated.

Our methodology was based on two stage sampling. Initially, we prepared list of all the 356 SR offices in alphabetical order showing the last four years revenue receipts and progressive total receipts against each office. We selected

36 offices (i.e. ten *per cent* of total 356 offices) on the basis of Simple Random Sampling with Replacement method. At the second stage, we selected 12,640 instruments by adopting Systematic Random Sampling Method in selected 36 offices.

In the SR offices, registered instruments are entered in the following type of books:-

- (i) Book no. I :Register of non-testamentary instruments relating to immovable property.
- (ii) Book no. III :Register of 'will' and 'authorities' to adopt.
- (iii) Book no. IV :Miscellaneous register for non-testamentary instruments (other than will) relating to movable property and optional instruments covered under Section 18 (f) of Registration Act, 1908.

With a view to select optimum sample size, we selected maximum 350 instruments (n) in an office. The total number of instruments (N) registered in Book no. I, III and IV by each office were divided by the sample size (n) to arrive at an interval between two instruments. The 350 instruments for detailed audit were picked-up at a regular interval which was calculated by dividing total instruments (N) from sample size (n) and then this interval was added to the first number selected from the random table.

1.6 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Finance (Revenue) Department and IG, Registration and Stamps in providing necessary information and records for audit. An entry conference was held on 14 October 2010 with the Secretary, Finance (Revenue) wherein, objectives and Methodologies of audit were explained.

An exit conference was also held on 17 January 2012 with the Secretary Finance (Revenue) in which results of audit and recommendations were discussed. The replies of the Government/ Department have been incorporated in the Performance Audit.

1.7 Budget estimates and trend of revenue receipts

Actual receipts from Stamp Duty and Registration Fees vis-a-vis budget estimates along with total tax receipts of the State during the years 2006-07 to 2010-11 are exhibited in the following table:

(₹ in crore)

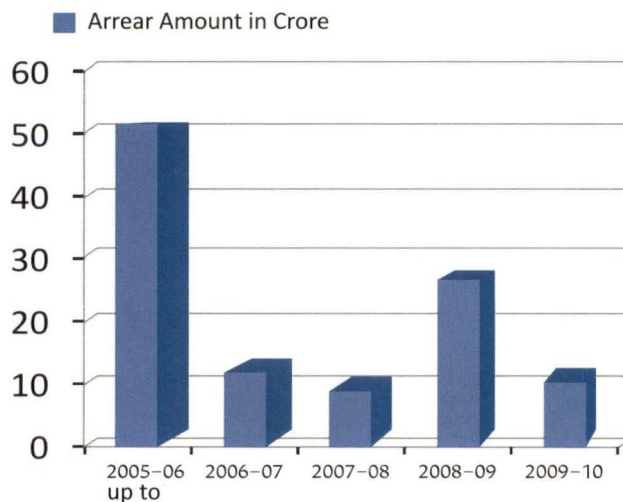
Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-a-vis total tax receipts
2006-07	1,275.00	1,293.68	(+) 18.68	(+) 1.47	11,608.24	11.14
2007-08	1,500.00	1,544.35	(+) 44.35	(+) 2.96	13,274.73	11.63
2008-09	1,575.00	1,356.63	(-) 218.37	(-) 13.86	14,943.75	9.08
2009-10	1,450.00	1,362.94	(-) 87.06	(-) 6.00	16,414.27	8.30
2010-11	1,750.00	1,941.07	(+) 191.07	(+) 10.91	20,758.12	9.35

The actual receipts from Stamp Duty and Registration Fees were 13.86 *per cent* less of the budget estimates (BEs) during the year 2008-09. The Department stated (January 2011) that shortfall in actual receipts during 2008-09 to 2009-10 were due to decrease in number of instruments for registration in the year 2008-09, rebate allowed in stamp duty to female purchasers and remission in stamp duty during the year 2009-10.

The receipts from stamp duty and registration fees consisted 8.30 *per cent* of the total tax receipts of the State during the year 2009-10, as against 11.63 *per cent* during the year 2007-08. There has been a decreasing trend since 2007-08 to 2009-10 in collection of revenue under the stamp duty and registration fees in comparison with the total tax receipts of the State.

1.8 Arrears of revenue

After the documents are registered, if subsequent irregularity in valuation of the underlying subject matter i.e. property etc., is noticed, fresh demand is raised for the differential Stamp Duty. The party may go in appeal against the valuation to higher authorities, including court. We observed that ₹ 119.60 crore were pending for recovery as on 31 March 2010 as shown below:



The Department stated (October 2010) that the demand of ₹ 44.70 crore is covered by recovery certificates and recovery of ₹ 74.90 crore is stayed by the High Court and other judicial authorities.

1.9 Cost of collection

The gross collection in respect of stamp duty and registration fees, expenditure incurred on their collection and percentage of expenditure to gross collection during the years 2006-07 to 2010-11 along with the relevant All India average percentage of expenditure of collection to gross collection for the relevant

years are mentioned below:

(₹ in crore)

Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage for the year
2006-07	1,293.68	19.21	1.49	2.33
2007-08	1,544.35	22.80	1.48	2.09
2008-09	1,356.63	29.09	2.14	2.77
2009-10	1,362.94	31.33	2.30	2.47
2010-11	1,941.07	35.95	1.85	NA

The percentage of expenditure to gross collection was less than all India average, however, the percentage of expenditure on collection to gross collection increased from 1.49 per cent (2006-07) to 2.3 per cent (2009-10).

1.10 Cases pending for adjudication

Under Rule 51 and 65 of the Rajasthan Stamp Rules (RS Rules), 2004, instruments relating to under-valued properties or those that are under stamped are referred to Collector (Stamps) for adjudication by registering authorities. Collector (Stamps) issues show-cause notices to the persons liable to pay duty on the instruments and is required to complete the summary enquiry within a period of three months.

We observed that 3,770 cases were pending for adjudication in 13 circles¹ involving stamp duty and registration fees of ₹ 91.09 crore as on 31 March 2010. The year-wise position of cases pending adjudication during 2006-10 was as under:

Year	Position of cases pending for adjudication				Amount involved (₹ in crore)			
	Opening balance	Additions during the year	Clearance during the year	Pending cases	Opening balance	Additions during the year	Clearance during the year	Pending cases
2006-07	8,646	10,498	13,665	5,479	83.25	16.55	50.27	49.53
2007-08	5,479	9,258	10,073	4,664	49.53	70.72	51.89	68.35
2008-09	4,664	7,364	7,101	4,927	68.35	89.20	51.21	106.34
2009-10	4,927	6,904	8,061	3,770	106.34	23.98	39.23	91.09
Total		34,024	38,900			200.45	192.60	

¹ Ajmer, Alwar, Bharatpur, Bhilwara, Bikaner, Hanumangarh, Jodhpur, AC (Stamps) Jaipur, DIG (Rural) Jaipur, DIG (Vigilance) Jaipur, Kota, Pali and Udaipur.

We noticed that 3,295 cases have remained outstanding beyond the prescribed time limit of three months involving stamp duty and registration fees of ₹ 85.67 crore as on 31 December 2009. The age wise analysis of the cases pending for adjudication are mentioned as under:-

Sl. no.	Period of pendency		Number of cases	Amount involved (₹ in crore)
	More than	Less than		
1	three months	one year (01.04.09 to 31.12.09)	1,491	18.55
2	one year	three years (01.04.06 to 31.03.09)	1,693	57.78
3	three years	five years (01.04.04 to 31.03.06)	67	1.28
4	five years and above (cases before 31.03.06)		44	8.06
Total			3,295	85.67

As seen from the above table, the Collector (Stamps) failed to adhere to the time limit of three months prescribed for disposal of cases pending for adjudication having substantial revenue impact of ₹ 85.67 crore. We also noticed that the Department had not prescribed any return for monitoring pending adjudication cases.

The Government may consider evolving a system for monitoring and timely disposal of the pending cases by prescribing periodical returns.

CHAPTER-II

VALUATION OF PROPERTY

Short levy of SD and RF due to under valuation of properties

Non-recovery of registration fees due to incomplete description of property in release deeds

CHAPTER - II

Valuation of property

2.1 Short levy of SD and RF due to under-valuation of properties

The Stamp Duty and Registration Fees are to be valued on the prescribed market rates as per the provisions of the relevant Act/Rules and Departmental instructions. The non-compliance of the relevant Act/Rules and Departmental instructions by the SRs resulted in short levy of Stamp Duty and Registration Fees.

2.1.1 On sale deeds

Under Article 21 (i) of the Schedule to the RS Act, SD on Instruments of Conveyance relating to immovable property shall be levied on market value of the property. Rule 58 of the RS Rules, 2004 provides that the market value of land shall be assessed on the basis of the rates recommended by the District Level Committee (DLC) or the rates approved by the IG (R&S), whichever is higher. The RF is also chargeable at the rate of one *per cent* of the valuation subject to maximum of ₹ 25,000 and ₹ 50,000 since 09 April 2010. As per point 5 (b) of the circular 2/2004 issued by the IG (R&S), If property is situated at the corner then 10 *per cent* extra land cost shall be charged on the valuation of the said property.

During scrutiny of the records of 29 SR offices¹ for the period 2006-07 to 2010-11, we noticed (October 2010 to November 2011) that 123 Sale Deeds were under-valued due to application of “residential” rates instead of “commercial” rates, non-charging of ten *per cent* extra land cost for corner plot, non-application of rates of irrigated land, incorrect rebate allowed on construction though no mention was there in recitals

etc. The under-valuation of the properties resulted in short levy of Stamp Duty

¹ Amer, Ajmer- II, Alwar-I, Asind, Bhiwadi, Beawar, Bikaner-I, Bundi, Deedwana, Gangapur City, Jaipur-IV, Jaisalmer, Jodhpur-II, Jodhpur-III, Jayal, Kota-II, Neem ka thana, Nimbaheda, Nohar, Nokha, Pilibanga, Rajakheda, Rawatsar, Revdar, Sanganer-II, Shrimadhpor, Sikar, Udaipur-I and Udaipur-II.

and Registration Fees aggregating ₹ 95.95 lakh as shown in table given below:-

Sl. no.	Deficiencies/ Irregularity noticed	Number of instruments	Amount in ₹ involved
1	Applying residential rates instead of commercial rates	17	28,34,008
2	Applying agricultural rates instead of commercial rates	1	31,08,437
3	Ten <i>per cent</i> extra land cost for corner plot not adopted	4	7,642
4	Non-application of rates of irrigated land	4	2,01,875
5	Incorrect rebate allowed on construction	1	25,494
6.	Non-applying prescribed DLC rates	13	11,40,809
7.	Stamp duty not taken at prescribed percentage	2	26,798
8	Others	81	22,49,885
TOTAL		123	95,94,948

When we pointed out, eight SRs² replied (May 2011) that notices had been issued to the executants for recovery of ₹ 4.26 lakh in 15 cases.

The SR Alwar-I, Asind, Deedwana and Jayal replied (February to May 2011) that in 25 cases, recovery of ₹ 0.45 lakh was under progress.

The reply of the SR Jayal (May 2011) that in one case, the agricultural land was un-irrigated as per *khasra Girdawari* report, was not tenable as in the *Jamabandi*, the agricultural land was mentioned as Irrigated.

The SR Asind replied (May 2011) that in one case, the matter will be investigated and action shall be taken accordingly (amount involved is ₹ 0.13 lakh).

The SR Revdar replied (May 2011) that in five cases (involving ₹ 1.10 lakh), DLC rate for undeveloped land were taken for valuation of property. The reply is not acceptable as the land was converted into the residential purposes and was adjoining the highway, and therefore, the DLC rates prescribed for developed land were applicable for valuation of properties and as such should have been applied.

The SR Sanganer-II replied (May 2011) that in one case, (amount of ₹ 0.36 lakh) had been recovered.

The SR Amer replied (December 2011) in two cases that the instruments were registered as per DLC rates described in check list by the vendor, which could not be verified from SARATHI software as the server was down on that day. The reply is not acceptable as the rates should have been confirmed through other means, before accepting them. Replies in remaining 73 cases were awaited (January 2012).

² Beawar, Bikaner-I, Neem ka thana, Nohar, Pilibanga, Rajakheda, Jaisalmer and Udaipur-I.

The Deputy Secretary (Finance) replied (December 2011) that the concerned Collector (Stamps) have been directed (September 2011) for recovery of Stamp Duty and Registration Fees in documents pointed out by us.

2.1.2 On power of attorneys

Under Article 44 (ee) (ii) of the Schedule to the RS Act, 1998, stamp duty at the rate of two *per cent* on market value of the property shall be levied on execution of instruments in which power of attorney is given without consideration to sell immovable property to any other person.

During scrutiny of the records of SR Kota-I and Bundi, we observed (January and April 2011) that two sale deeds were executed through power of attorneys which were not duly stamped and were hence not acceptable as evidence in execution of Sale deeds. Power of attorney holders had paid stamp duty of ₹ 1.21 lakh at the rate of two *per cent* on land treating it as agriculture in nature amounting to ₹ 60.27 lakh instead of stamp duty payable of ₹ 3.34 lakh on value of residential land of ₹ 1.67 crore. This resulted in short levy of stamp duty of ₹ 2.13 lakh.

When we pointed out, the SR Bundi and Kota-I replied (April and May 2011) that power of attorney was duly stamped treating the land as agricultural in nature. The replies are not acceptable because agricultural land were divided into the plots (i.e. residential land) at the time of registering the power of attorneys. Hence, land should have been treated as residential in nature for Stamp Duty purpose.

The Deputy Secretary (Finance) replied (December 2011) that the concerned Collector (Stamps) have been directed (September 2011) for recovery of stamp duty and registration fees in documents concerned.

2.1.3 On purchase of land by a Company for industrial purposes

IG, Registration and Stamps, Ajmer directed in circular 1/2010 that, if any, private educational institutions/ Company purchase agricultural land, not having intention to cultivate the land in its Article of Association, stamp duty and registration fees shall be charged at commercial/ industrial rates.

During test check of the records of SR Jaisalmer for the year 2010-11, we noticed (November 2011) that SR while registering (Document no. 1273 dated 28.04.2010) an instrument pertaining to purchase of agricultural land for setting up wind power project by a company during the year 2010-11, incorrectly determined the value of land ₹ 6.64 lakh (Face value ₹ 41.00 lakh) on the rates prescribed for agricultural land instead of ₹ 2.93 crore at industrial rates. This resulted in short levy of stamp duty and registration fees amounting to ₹ 12.71 lakh.

The SR Jaisalmer replied (November 2011) that the valuation of land, at the time of registration was calculated on the rates prescribed for agriculture land. We do not accept the reply as the land purchased was for setting up an

industry (wind farms) which is evident from the authorisation letter dated 15 March 2010 issued in favour of their representative for the purpose of procurement of land for development of wind farms and conversion order of land on 13 July 2010 by the Collector Jaisalmer. The registration at agricultural rates violated the IG (Registration and Stamps)'s own circular of 2010.

2.2 Non-recovery of registration fees due to incomplete description of property in release deeds

As per Rule 91 (5) of the Rajasthan Registration Rules, 1955, the condition of admissibility of document is that the document should contain sufficient description about the immovable property. If the release deed of an ancestral property or part thereof is executed by or in favour of father, mother, son, daughter, brother and sister (in six close relations), the registration fees of ₹ 100 is chargeable (Article-I (1) of notification dated 21 March 1998) and in cases other than the six close relations, the registration fees at the rate of one *per cent* subject to maximum ₹ 25,000 is to be charged on the market value of the property renounced.

We observed (March 2011) in SR Nadbai that two release deeds were registered in one of the six close relations and ₹ 200 were charged as registration fees. The recitals of registered deeds revealed that the members who renounced the ancestral property in favour of other family members were those other than six close relations. Hence, the registration fees, at the rate of one *per cent* of the market value of the property were to be charged. We were unable to ascertain the market

value of property due to non-description of renounced property. The acceptance of incomplete deeds for registration by SR resulted in evasion of prescribed registration fees.

When we pointed out, the SR Nadbai replied (May 2011) that now full description in respect of ancestral immovable property renounced by other than six close relations is being indicated in documents. The registration fees payable on these two documents may be recovered under intimation to audit.

The Deputy Secretary (Finance) replied (December 2011) that the concerned Collector (Stamps) have been directed (September 2011) for recovery of Stamp Duty and Registration Fees in documents under audit objection.

CHAPTER-III

DEFICIT STAMP DUTY AND REGISTRATON FEES

Application of inconsistent notifications by ROs

Short levy of SD and RF due to incorrect application of rates

Non-registration of Developer Agreements

Misclassification of instrument of transfer of lease by way of assignment

CHAPTER - III

Deficit Stamp Duty and Registration fees

3.1 Application of inconsistent notifications to the RS Act, 1998 causing loss of revenue

Systemic deficiency

The Section 3 of the RS Act, 1998 provides that subject to the provisions of this Act and the exemptions contained in the Schedule appended to the Act, every instrument mentioned in it shall be chargeable with duty of the amount indicated in the Schedule. The RS Act, 1998 came into effect from 27 May, 2004. Further, the Section 91(2) of the RS Act, 1998 provides that **any appointment, notification, notice, order, rule or form** made or issued under the enactment hereby repealed shall be deemed to have been made or issued **under the provisions of this Act in so far as such appointment, notification, notice, order, rule or form is not inconsistent with the provisions of this Act** and shall continue in force, unless and until it is superseded by an appointment, notification, notice, order, rule or form made or issued under the Act. Thus, any notification under the repealed IS Act 1899 should continue only if was consistent with the 1998 Act.

We observed that a few notifications issued under the repealed Rajasthan Stamp Law (Adaptation) Act 1952, wherein exemptions/ remissions were granted by the State Government, which were in force up to 26 May 2004, continued to be effective during the period of audit. The provisions of these notifications were inconsistent with the provisions contained in the Schedule to the Section 3 of RS Act 1998 and hence, should not have been applied by the Registering Officers (ROs) in terms of the Section 91 (2) of the RS Act. Based on our earlier local audit observations on application of these inconsistent Notifications, the Registration and Stamp Department had identified 11 such types of notifications wherein the rates of stamp duty/provisions were different from the rates/provisions were prescribed in the Schedule. However, these notifications continued to be applied by the ROs, causing loss of stamp duty revenue.

The details of 11 such notifications are given below:

Sl. no	Article no. of Schedule	Detail of Article of Schedule in Present Act	Stamp Duty Chargeable as per present Act (RS Act, 1998)	Notification no./Date	Notification in existence prior to enactment of the present Act	Inconsistency as per RS Act, 1998
1	2	3	4	5	6	7
1	37	Mortgage deed, not being an agreement relating to deposit of title-deeds. pawn or pledge (no.6) mortgage of a crop (no.38), security Bond (no.50)	The same duty as on a bond (no.14) for the Amount Secured on such deed	F.2(3)VIT/ GROUP-4/93/1-83 Dated 07.3.1994	Stamp Duty reduced to one <i>per cent</i> of the loan amount or ₹ 100 whichever is higher on mortgage deed for the loan taken from bank or cooperative society for non-agricultural purposes.	The Article 14 of the Schedule provides a charge of five <i>per cent</i> stamp duty whereas as per the notification the same was charged at the rate of one <i>per cent</i> or ₹ 100 whichever was higher.
2	37	Mortgage deed, not being an agreement relating to deposit of title-deeds. pawn or pledge (no.6) mortgage of a crop (no.38), security Bond (no.50)	The same duty as on a bond (no.14) for the Amount Secured on such deed	F.2(3)VIT/ GROUP-4/93/1-83 Dated 07.3.1994	Stamp Duty reduced to one <i>per cent</i> of the loan amount or ₹ 100 whichever is higher on mortgage deed for the loan taken for purchase, conversion/ extension of house/ flat.	The Article 14 of the Schedule provides charge of five <i>per cent</i> stamp duty whereas as per the notification the same was charged at the rate of one <i>per cent</i> or ₹ 100 whichever was higher.
3	37	Mortgage deed, not being an agreement relating to deposit of title-deeds. pawn or pledge (no.6) mortgage of a crop (no.38), security Bond (no.50)	The same duty as on a bond (no.14) for the Amount Secured on such deed	F.2(3)VIT/ GROUP-4/93/1-83 Dated 07.3.1994	Stamp Duty reduced to one <i>per cent</i> of the loan amount or ₹ 100 whichever is higher on mortgage deed for the loan taken by employees for purchase, conversion/ extension of house/flat from registered private institution.	-do-

1	2	3	4	5	6	7
4	40	Note or Memorandum, sent by a broker or agent to his principal intimating the purchase or sale, on account of such principal of any goods, stock or marketable security	0.5 per cent of the value of the goods, stock or marketable security subject to a minimum of ₹ 100.	F.2(3)VIT/K AR-ANU./97 Dated 26.6.1997	Stamp Duty reduced to 0.10 per cent subject to minimum of ₹ 10 and maximum of ₹ 75.	The Stamp Duty @ 0.10 per cent subject to minimum of ₹ 10 and maximum of ₹ 75 was charged instead of 0.5 per cent of the value of the goods, stock or marketable security subject to a minimum of ₹ 100.
5	50	Security Bond or Mortgage Deed, executed by way of security for due execution of an office, or to account for money or other property, received by virtue thereof, or executed by a surety to secure the due performance of a contract or the due discharge of a liability.	Subject to a minimum of ₹ 200, half (0.5) per cent of the amount secured.	F.2(11)FD/T AX-DIV./ 97 Dated 21.03.1998	Stamp Duty reduced to 0.1 per cent on the Security Bond.	The Stamp Duty @ 0.1 per cent on the Security Bond was charged instead of half (0.5) per cent of the amount secured subject to a minimum of ₹ 200.
6	42	Instrument of partition	The same duty as on conveyance (No. 21) for the amount or value of the separated share or shares of the property.	F.4(14)FD/T AX-DIV./98-52 Dated 09.07.1998	Stamp Duty reduced to one per cent of the market value of the separated share or ₹ 10,000 whichever is less in respect of ancestral property.	The present Act does not classifies property into ancestral or other property for charging stamp duty and prescribes stamp duty at the rate of five per cent of the market value of the property as in a conveyance on the separated share.
7	5 (C)	Agreement or memorandum of an agreement, if not otherwise provided for	₹ 100	F.2(15)FD/T AX-DIV./98-73 Dated 14.08.1998	Stamp Duty reduced to ₹ 10 in case of agreement executed between RSEB and Consumer for taking new electric connection.	The Stamp Duty @ ₹ 10 in case of agreement executed between RSEB and Consumer for taking new electric connection is being charged instead of ₹ 100.

1	2	3	4	5	6	7
8	43	Instrument of partnership	₹ 500	F.2(22)FD/T AX-DIV./99-215 Dated 22.04.1999	Stamp Duty reduced to ₹ 100 in case of partnership deed executed on account of change in partnership.	The instrument executed on account of change in partnership classifies as transfer of lease by way of assignment thereby stamp duty chargeable at the rate of five <i>per cent</i> under the Article 55.
9	33 (a), (b), (c)	Lease including an under lease, or sub lease and any agreement to let or sub let.	The same duty as on conveyance (No.21) for a consideration equal to the amount or value of the average rent of two years, where the lease purports to be for a term of not less than one year but not more than 20 years.	PA.4(4)FD/03-223 Dated 05.03.2003.	Where the lease purports to be for a term of not less than one year but not more than 20 years in which only rent has been paid but not premium: the stamp duty reduced as under:- 1.in residential cases – one <i>per cent</i> 2. in commercial & other cases- two <i>per cent</i> .	1. The Finance Department agreed that the notification dated 05.03.2003 was inconsistent with the provision of the present Act wide notification dated 25.8.2010. However, later vide notification dated 1.12.2010 rebutted the same stand. 2. The notification prescribes reduced rate of stamp duty for residential and commercial and other cases thus inconsistent with provisions of the Article 33 (a) (ii) 3. The Provisions of notification dated 05.3.2003 was applied in cases cover under article 33(c)(iii) which is included in the Schedule on 27.5.2004.
10	48 (b)	Release in any other case (other than non-ancestral property)	The same duty as on conveyance (No.21) for an amount equal to the market value of the share, interest, part or claim renounced.	-	Stamp Duty reduced to five <i>per cent</i> in case of non - ancestral property.	The Stamp Duty @ five <i>per cent</i> in case of non-ancestral property was charged instead of as on a conveyance.
11	23 (II)	Debt assignment	Stamp duty payable @ 0.5 <i>per cent</i> on debt	PA.2(22)VIT / KAR/03-05 Dated 20.05.2004	Subject to a maximum of ₹ 2 lakh, 0.1 <i>per cent</i> in case of debt assignment.	Stamp duty @ 0.1 <i>per cent</i> subject to maximum ₹ 2 lakh was charged instead of @ 0.5 <i>per cent</i> on debt.

The ROs failed to implement the provisions of the RS Act, 1998 which came into force w.e.f. 27 May 2004. Though the provisions of Section 91(2) of the RS Act, 1998 were very clear, the Department allowed exemptions or incorrect rates under inconsistent notifications to the RS Act, 1998. The cases which we came across during our audit are enumerated in the succeeding paragraphs (3.1.1, 3.1.2, 3.1.3, and 3.1.4) whereby there has been a loss of ₹ 6.46 crore to the State *exchequer*, due to application of incorrect rates.

We recommend that the IG (R&S) issue instructions to all the ROs regarding implementation of the provisions of the RS Act, 1998 as per the Schedule entries governing stamp duty rates applicable for various Instruments.

3.1.1 On lease deeds in which rent is fixed but no premium was paid

Under the provision of Article 33 (a) (ii) of the Schedule to the RS Act, 1998, where the lease purports to be for a term of not less than one year but not more than 20 years and by such lease, the rent is fixed and no premium is paid or delivered, the stamp duty is chargeable as a conveyance for a consideration equal to the amount or value of the average rent of two years. Registration Fees are also chargeable on the instrument of lease at the rate of one *per cent* of the value or consideration subject to a maximum of ₹ 25,000 and ₹ 50,000 since 09 April 2010 under the Section 78 of the Registration Act, 1908.

During scrutiny of the records of 11 SR offices¹, we noticed (October 2010 to September 2011) that 84 lease deeds were registered during the period 2006-07 to 2010-11 in which the SRs had charged registration fees at the rate of one *per cent* and stamp duty at the rate of two *per cent* of average rent for one year instead of at conveyance rate on average rent of two years. This resulted in short levy of Stamp Duty and Registration Fees aggregating ₹ 94.52 lakh.

When we pointed out, four SRs (Beawar, Bikaner-I, Jaipur-V and Udaipur-II) replied (May and June 2011) that notices had been served to the executants for recovery of ₹ 0.71 lakh. Other seven SRs replied that (September 2010 and May to September 2011) Stamp Duty and Registration Fees were charged as per Government's notification dated 5 March 2003. The reply is not acceptable as the notification dated 5 March 2003 was issued prior to the enactment of the RS Act, 1998 which came into force w.e.f. 27 May 2004. The provisions of the notification are inconsistent to the Schedule appended to the Act, hence, were not applicable in terms of Section 91(2) of the RS Act, 1998.

The Deputy Secretary (Finance) replied (December 2011) that the Stamp Duty and Registration Fees on the lease deeds registered under Article 33 (a) (ii) were charged as per Government's notification dated 5 March 2003. The reply

¹Beawar, Bikaner-I, Bundi, Jaipur-II, Jaipur-V, Jaisalmer, Jodhpur-I, Jodhpur-II, Jodhpur-III Kota-I and Udaipur-II.

is not tenable as the provisions were inconsistent to the Schedule appended to the Act and hence, should not have been applied by the ROs, in terms of the Section 91(2) of the RS Act, 1998.

3.1.2 On lease deeds granted for premium *etc.* in addition to rent

Under the provision of Article 33 (c) (i) of the Schedule to the RS Act, 1998, where lease is granted for a fine or premium or for money advanced or development charges advanced or security charges advanced in addition to rent reserved and such lease purports to be for a term of not more than 20 years, the Stamp Duty is chargeable as a conveyance for a consideration equal to the amount or value of such fine, premium or advance and amount of average rent of two years as set forth in the lease. The Registration Fees are also chargeable at one *per cent* of the valuation subject to maximum of ₹ 25,000 and ₹ 50,000 since 09 April 2010.

During scrutiny of the records of 17 SR offices², we found (October 2010 to December 2011) that 193 lease deeds covered under Article 33(c) (i) *ibid* were registered during the period 2006-07 to 2010-11. The SRs charged registration fees at the rate of one *per cent* and stamp duty at two *per cent* in case of commercial property and at one *per cent* in case of residential property on average rent of one year, in addition to security deposit, instead of at conveyance rate on average rent of two years and security deposit. This resulted in short levy

of stamp duty and registration fees aggregating ₹ 3.54 crore.

When we pointed out, six SRs (Bundi, Jaipur-IV, Jaipur-V, Jaisalmer, Udaipur-I and Udaipur-II) replied that notices had been issued to the executants for recovery of ₹ 6.81 lakh. Other 11 SRs replied that Stamp Duty and Registration Fees were charged as per Government's notification dated 5 March 2003. We do not accept the replies as the provisions of the notification dated 5 March 2003 are inconsistent to the Article 33 (c) (i) *ibid*, hence, were not applicable in terms of Section 91(2) of the RS Act, 1998.

The Deputy Secretary (Finance) replied (December 2011) that the concerned Collector (Stamps) have been directed (September 2011) for recovery of Stamp Duty and Registration Fees in documents under audit objection.

²Amer, Ajmer-II, Bundi, Jaipur-I, Jaipur-II, Jaipur-III, Jaipur-IV, Jaipur-V, Jaipur-VII, Jaisalmer, Kota-I, Nadbai, Rajsamand, Sanganer-I, Sikar, Udaipur-I and Udaipur-II.

3.1.3 On mortgage deeds

As per Article 37 (b) of the Schedule to the RS Act, 1998, when possession of the property or any part of the property comprised in mortgage deed is not given to the mortgagee by the mortgagor, the stamp duty is leviable as on a bond (Article 14 of RS Act) *i.e.* five *per cent* for the amount secured by such deed. In addition to the stamp duty, registration fees are also payable at the rate of *one per cent* subject to maximum ₹ 25,000 and ₹ 50,000 since 09 April 2010.

During scrutiny of the records of 11 SR offices³, we found (January 2011 to October 2011) that 19 mortgage deeds to secure the money advanced or to be advanced by way of loan or an existing or future debt were registered during the period 2006-07 to 2010-11. The concerned SRs charged stamp duty at the rate of 0.1 to one *per cent* instead of five *per cent* for the amount secured by such deed. This resulted in short levy of

stamp duty and registration fees aggregating ₹ 1.08 crore.

When we pointed out, three SRs (Asind, Jayal and Nadbai) replied (May 2011) that notices had been issued to the executants for recovery of ₹ 0.16 lakh.

The SR Sanganer-I replied that the instrument was categorised under Article 6 of the Schedule to the RS Act, 1998 and SD was charged at the rate of one *per cent* accordingly. The reply is not acceptable as the instrument was, in fact, titled as mortgage deed and SD is payable under Article 37(b) of the Schedule to the RS Act, 1998.

Remaining seven SRs, replied that stamp duty were charged at the rate of 0.1 to one *per cent* on the loan amount as per Government's notification dated 7 March 1994. The reply is not acceptable because the provisions of the notification dated 7 March, 1994 are inconsistent to Article 37 (b) to the RS Act, 1998, hence, were not applicable in terms of the Section 91(2) of the RS Act, 1998.

The Deputy Secretary (Finance) replied (December 2011) that the stamp duty and registration fees on the mortgage deeds registered under Article 37 (b) were charged as per Government's notification dated 7 March 1994. The reply is not tenable as the provisions are inconsistent to the Schedule appended to the Act and hence, were not applicable in terms of the Section 91(2) of the RS Act, 1998.

³ Asind, Deedwana, Jaipur-II, Jaisalmer, Jayal, Kotputli, Jodhpur-III, Nadbai, Sanganer-I, Sri Ganganagar and Udaipur-I.

3.1.4 On partition deeds

Stamp Duty on an instrument, whereby co-owners of any property divide or agree to divide such property in severalty, is leviable as a conveyance on the market value of the separated share or shares of the property under Article 42 of the Schedule. The largest share remaining after this property is partitioned (or if there are two or more shares of equal value, the one of such equal shares) shall be deemed to be that from which the other shares are separated.

During scrutiny of the records of eight SR Offices⁴ for the period 2006-07 to 2010-11, we found that the SRs charged stamp duty amounting to ₹ 1.91 lakh on 20 instruments for separated share/shares at the rate of one *per cent* on the market value ₹ 15.28 crore of the separated shares or maximum ₹ 10,000 instead of leviable stamp duty ₹ 91.29 lakh based on market value of the separated share of the property. This resulted

in short levy of stamp duty ₹ 89.38 lakh.

When we pointed out, all concerned SRs replied (September 2010 to December 2011) that stamp duty on partition deeds were charged at the rate of one *per cent* subject to maximum of ₹ 10,000 on the market value of the property as per Government's notification dated 9 July 1998. The reply is not acceptable as the notification dated 9 July 1998 was issued prior to enactment of the RS Act, 1998 which came into force w.e.f. 27 May 2004. The provisions of the notification are inconsistent to the Schedule appended to the Act and hence, were not applicable in terms of the Section 91(2) of the RS Act, 1998.

The Deputy Secretary (Finance) replied (December 2011) that the stamp duty and registration fees on the partition deeds registered under Article 42 were charged as per Government's notification dated 9 July 1998. The reply is not tenable as the provisions are inconsistent to the Schedule appended to the Act and hence, were not applicable in terms of the Section 91(2) of the RS Act, 1998.

⁴ Amer, Beawer, Bikaner-I, Jaipur-II, Jaipur-V, Jodhpur-III, Kota-I and Udaipur-I

3.1.5 Short levy of Stamp Duty on sureties/securities by way of bank guarantees

Section 17 (1) (c) of the Registration Act, 1908 provides that non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest are compulsorily registrable. Further, under Article 50 of the Schedule to the RS Act, 1998, security bond or mortgage deed executed by way of security for the due execution of an office, or to account for money or other property, received by virtue thereof, or executed by a surety to secure due performance of a contract or the due discharge of a liability are chargeable to a stamp duty at 0.5 *per cent* of the amount secured subject to a minimum of ₹ 200.

Information gathered from 10 District Excise Offices (DEOs)⁵, we noticed (May 2011) that 137 bank guarantees involving ₹ 5.90 crore were executed during 2006-07 to 2009-10. The executants were required to pay stamp duty and registration fees of ₹ 7.55 lakh. However, stamp duty of ₹ 1.08 lakh only was paid. This resulted in short levy of stamp duty and registration fees aggregating ₹ 6.47 lakh.

The Deputy Secretary (Finance) replied (December 2011) that the

stamp duty had been recovered at the rate of 0.1 *per cent* on sureties/ securities as per notification dated 21 March 1998. We do not accept the reply as the provision of the notification dated 21 March 1998 was inconsistent to the Article 50 of the Schedule appended to the RS Act, 1998 and not applicable in terms of the Section 91 (2) of the RS Act, 1998.

3.2.1 On registration of perpetual lease deeds

Article 33(a)(iii) of the RS Act, 1998 provides that where a lease purports to be for a term in excess of 20 years or in perpetuity or where the term is not mentioned, Stamp Duty is chargeable as on conveyance on the market value of the property. The term of a lease shall include not only the period stated in the document but shall be deemed to be the sum of such stated period alongwith all immediately preceding period without a break for which the lessee and lessor remained the same. Further, as per clarification issued under IG's circular no. 8/2004, for computing period of more than 20 years, the periods of renewal shall also be counted. Registration fees are also chargeable at the prescribed rates

We noticed (September 2010 to March 2011) that in six Sub-Registrar offices registered six lease deeds pertaining to a period of more than 20 years during the period 2006-07 to 2009-10, Stamp Duty was recovered on the basis of

⁵Baran, Bharatpur, Bikaner, Dausa, Jaisalmer, Jhalawar, Nagaur, Pratapgarh, Sawai Madhopur and Tonk.

“average rent” instead of as “on conveyance” on the market value of property. This resulted in short levy of SD and RF aggregating to ₹ 73.20 lakh as per the details given below:

(Amount in ₹)

Sl. no.	Name of SR	Document no. and date	Name of lessee	Market value	Market value adopted	SD and RF		Short levy of SD and RF
						Leviable	Levied	
1	Shri Madhopur	392/21.1.09	SBI, Reengus	64,00,710	3,16,440	5,37,057	9,500	5,27,557
2	Jodhpur-II	3837/16.03.09	SBBJ, khanda falsa, Jodhpur	89,55,298	5,65,323	7,41,424	16,970	7,24,454
3	Jaipur-II	1916/9.4.09	Canara Bank, Jaipur	2,27,94,813	5,31,288	18,48,585	15,950	18,32,635
4	Rajakheda	11/11.2.09	SBBJ, Rajakheda	41,70,000	1,44,000	3,58,600	4,320	3,54,280
5	Jaipur-V	914/2.2.09	The Oriental Insurance co., Delhi	4,60,98,619	89,08,044	36,87,890	1,78,170	35,09,720
6	Neem Ka Thana	725/02.03.07	Gandhi Vidya Mandir Samiti, Neem Ka Thana	53,50,979	24,000	3,72,814	1,740	3,71,074
Total				9,37,70,419	1,04,89,095	75,46,370	2,26,650	73,19,720

Remarks:

1. Initial lease period of 10 years expired on 30 June 2008 and new lease period for another 15 years term was extended from 01 July 2008.
2. The premises known as Bank was already in possession of SBBJ Bank and new lease period for another term of 15 years was extended from 01 January 2009.
3. The lessee was already a tenant under the lessor in respect of premises. In absence of the mention of previous period in document, it is categorised as a perpetual lease.
4. The lessee was already a tenant on the same property since 31 August 1967.
5. The lessee was already a tenant in respect of floor II since 10 August 1984 and the III floor since 17 June 1988.
6. The lessor was bound to lease out the property on expiry of lease term of 19 years.

When we pointed out, the SR Sri Madhopur replied (January 2011) that intimation regarding recovery of stamp duty shall be communicated later on.

The SR Rajakheda replied (April 2011) that action for recovery shall be initiated against the lessor.

The SR Jaipur-II and Jodhpur-II replied (September 2010 and December 2010) that Stamp Duty and Registration Fees were recovered as per recital of instruments presented for registration. We do not accept the replies as lessee were already in possession of Bank premises.

When we pointed out (April 2011), the SR Neem Ka Thana replied (May 2011) that notice to the executants had been issued for recovery of ₹ 3.71 lakh. In case of non- recovery, the case shall be referred to DIG (Vigilance), Jaipur for adjudication.

The Deputy Secretary (Finance) replied (December 2011) that the concerned Collector (Stamps) have been directed (September 2011) for recovery of stamp duty and registration fees in documents under audit objection.

3.2.2 On power of attorneys

Under Article 44 (ee) (ii) of the Schedule to the RS Act, SD at the rate of two *per cent* on market value of the property shall be levied on execution of instruments in which power of attorney is given without consideration to sell immovable property to any other person. RF is also payable at the rate of one *per cent* of the market value of the property subject to maximum ₹ 25,000 and ₹ 50,000 since 09 April 2010 on registration of these instruments (Notification dated 14 March 1997).

3.2.2.1 We observed (November 2010 to February 2011) that in seven SR offices⁶ nine sale deeds were presented for registration during the years 2006-07 to 2009-10, by the holders of power of attorney on behalf of their property owners.

Recitals of sale deeds and power of attorneys revealed that the power of attorneys were executed in the office

of Notary Public, which were not duly stamped. Such types of power of attorneys were not acceptable as evidence in execution of sale deeds being not duly stamped. The concerned SRs did not charge stamp duty while registering these documents on such power of attorneys while registering these documents at the rate of two *per cent* on the market value of the property transferred. This resulted in short levy of Stamp Duty aggregating ₹ 2.15 lakh.

When we pointed out, five SRs (Bikaner-I, Bhiwadi, Kota-I, Sanganer-I and Vallabh Nagar) replied (May 2011) that notices had been issued to the executants for recovery of ₹ 2.05 lakh.

The SR Revdar replied that Stamp Duty of ₹ 0.06 lakh were charged at the rate of two *per cent* but no evidence regarding recovery was furnished. Reply from SR Sikar has been not received (January 2012).

The Deputy Secretary (Finance) replied (December 2011) that the concerned Collector (Stamps) have been directed (September 2011) for recovery of Stamp Duty and Registration Fees in documents under audit objection.

3.2.2.2 During scrutiny of the records of nine SR offices⁷ for the years 2006-07 to 2009-2010, we found (October 2010 to April 2011) that in 250 cases of power of attorney covered under Article 44(ee)(ii) *ibid*, the concerned SRs incorrectly charged registration fees of ₹ 100 in each case instead of charging one *per cent* on the market value. This resulted in short levy of registration fees of ₹ 15.39 lakh.

The SR Jaipur-VIII replied (February 2011) that the RF were charged as per rates prescribed in SARATHI software. Mistake has now been corrected in software and recovery ₹ 8.42 lakh pointed out in previous cases could not be affected. We do not accept the reply as registration fees were to be charged as per notification dated 14 March 1997.

⁶ Bikaner-I, Bhiwadi, Kota-I, Revdar, Sanganer-I, Sikar and Vallabh Nagar.

⁷ Beawar, Jaipur-IV, Jaipur-V, Jaipur-VIII, Jaisalmer, Phagi, Sanganer-I, Udaipur-I and Udaipur-II.

When we pointed out, the other seven SRs replied (May 2011) that notices had been issued to the executants for recovery of ₹ 2.70 lakh.

The Deputy Secretary (Finance) replied (December 2011) that the concerned Collector (Stamps) have been directed (September 2011) for recovery of Stamp Duty and Registration Fees in documents under audit objection.

3.2.3 On exchange deeds

As per Article 29 of the Schedule to the RS Act, 1998, the stamp duty on an instrument relating to exchange of property is chargeable as on a conveyance for a market value equal to the market value of the property of greater value which is the subject matter of exchange. As per notification dated 5 April 1984 issued under the RS Act, 1998, exchange deeds of agriculture land and of land mutually transferred under section 48 of the Rajasthan Tenancy Act, 1955 were exempted from payment of stamp duty provided that land is of same kind, same cost and is not divided into pieces.

During scrutiny of the records in two SR offices⁸, we observed (February and March 2011) that agriculture lands were exchanged through two exchange deeds in August 2009 and October 2009. The exchanges of land were neither similar in kind nor in cost, hence, stamp duty exemption was not applicable. Based on the greater value of the land, stamp duty ₹ 0.81 lakh were recoverable as against of ₹ 0.09 lakh recovered by the SRs. This resulted in short levy of stamp duty of ₹ 0.72 lakh.

When we pointed out, the SR Srikanpur replied (February 2011) that stamp duty was exempted under notification dated 5 April 1984. Reply is not acceptable as cost of land was not same. Hence, exemption granted was not in consonance with the provision of the notification.

The SR Pilibanga replied (May 2011) that stamp duty and registration fees of ₹ 0.17 lakh were charged on the valuation calculated on the difference of land exchanged. The reply is not acceptable as the stamp duty and registration fees were payable on the valuation calculated on the greater part of land exchanged.

The Deputy Secretary (Finance) replied (December 2011) that the concerned Collector (Stamps) have been directed (September 2011) for recovery of stamp duty and registration fees in documents under audit objection.

3.2.4 On an agreement to sell with possession

As per explanation (i) given under Article 21 of the Schedule to the RS Act, 1998, an Agreement to Sell an immovable property executed shall, in case of transfer of the possession of such property before, at the time of or after the execution of any such instrument, be deemed to be a conveyance and the stamp duty thereon shall be chargeable accordingly.

⁸ Pilibanga and Srikanpur

During test check of the records of the SR Ahore (District Jalore) for the year 2007, we noticed (March 2011) that a sale deed (Instrument no. 1957 dated 18 October 2007) was registered between vendor and vendee from where it was seen that an Agreement to Sell was registered in the office of Notary Public (18 January 2007) for a consideration of ₹ 5.00 lakh with the land owners which was not duly stamped and the possession of a converted (12 April 1999) residential land measuring 45,600 Sqm was handed over on the same date by the owner.

The SR did not enquire about the registration of the Agreement to Sell with the original owner as a result of which stamp duty and registration fees ₹ 24.17 lakh (on the market value of land ₹ 3.68 crore calculated at the rates prescribed for residential land) was not recovered.

When we pointed out (March 2011), the SR replied (March 2011) that the matter shall be brought to the notice of the previous SR for comments and facts in this regard shall be communicated later on.

3.3 Short levy of SD and RF due to incorrect application of rates

Under the Section 3 of the RS Act, 1998, every instrument mentioned in the Schedule shall be chargeable with duty at the prescribed rates.

During scrutiny of the records of seven SR offices⁹ for the period 2006-07 to 2009-10, we noticed that in 10 instruments,¹⁰ stamp duty and registration fees were not charged at the rates prescribed in the Schedule *ibid*, resulting in short levy of stamp duty and registration fees aggregating ₹ 2.66 lakh.

When we pointed out, four SRs (Kota-I, Neem ka Thana, Vallabhnagar and Rajakheda) replied (May 2011) that notices to the executants had been issued for recovery of ₹ 0.53 lakh. Replies from remaining SRs have not been received (January 2012).

The Deputy Secretary (Finance) replied (December 2011) that the concerned Collector (Stamps) have been directed (September 2011) for recovery of stamp duty and registration fees in documents under audit objection.

3.4 Non-registration of Developer Agreements

Under the provisions of Article 5 (bbbb) to the Schedule of the RS Act, 1998, Agreements or Memorandum of agreements, if relating to giving authority or power to a promoter or a developer, by whatever name it may be called, for construction or development of any immovable property, are chargeable to stamp duty at the rate of one *per cent* of the market value of the property and registration fees at the prescribed rates.

On test check of the records of five SRs,¹¹ we found (November 2011) that 20 instruments were executed between vendors and vendees for purchase of readymade flats

⁹ Deedwana, Kota-I, Neem ka thana, Rajakheda, Sikar, Shrimadhapur and Vallabhnagar.

¹⁰ Release deeds, Gift deeds, Lease and Agreement to sell of immovable property.

¹¹ Jaipur-II, Jaipur-IV, Jaipur-V, Jodhpur-II and Sanganer-II.

during period January 2009 to February 2011. The recitals of the instruments revealed that multi-storey flats were constructed by a developer on behalf of the owners of the land as per terms and conditions of the Agreement. The fact about registration of Agreement in SR office was neither mentioned in the Sale deeds nor was the copy of Agreement enclosed with the Sale deed for Registration of Flats for ready reference. The non-registration of these Developers Agreements in SR offices cannot, therefore, be ruled out. The Stamp Duty and Registration Fees receivable was ₹ 2.44 crore at the rate of one *per cent* each of market value¹² of the property.

When we pointed out, the SR, Jaipur-IV replied that intimation in this regard shall be conveyed after verification of records. Reply was awaited (January 2012).

The Deputy Secretary (Finance) replied (December 2011) that the concerned Collector (Stamps) have been directed (September 2011) for recovery of stamp duty and registration fees in documents under audit objection.

3.5 Misclassification of instrument of transfer of lease by way of assignment

As per circular issued (8/2004) by the Inspector General of Registration and Stamps, Ajmer, documents executed as supplementary documents *inter alia* on change of legal status of firm or change of partners or dissolution of partnership shall be categorised as 'transfer of lease by way of assignment'. Under Article 55 of the Schedule appended to the RS Act, 1998, in case of instrument of transfer of lease by way of assignment, the stamp duty is leviable as a conveyance on the market value of the property which is the subject matter of transfer.

During scrutiny of the records of three SR offices¹³ for the years 2007-08 to 2010-11, we observed (November 2010 to December 2011) that nine instruments of transfer of lease of land were executed, wherein the lease was transferred/ assigned from the assignor to the assignee. The SRs

misclassified the instruments as supplementary deed/ correction deed and charged stamp duty and registration fees of ₹ 1.89 lakh instead of ₹ 24.08 lakh leviable on transfer of lease by way of assignment. This resulted in short levy of stamp duty and registration fees of ₹ 22.19 lakh.

The Deputy Secretary (Finance) replied (December 2011) that notices had been issued to the executants for recovery. In cases of non-deposition of stamp duty, the matter shall be referred to concerned Collector (Stamps) for initiating action for recovery.

¹² Calculated as per DLC rate effective from November 2010.

¹³ Amer, Bhiwadi and Jaipur-V

CHAPTER-IV

PUBLIC OFFICES

Failure to check the records of public offices

Registrar of Firms

Debt Recovery Tribunal

Non-registration of lease deed by RIICO

Registrar of Companies

CHAPTER - IV

Public Offices

The Government had declared (December 1997) all offices as public offices wherein instruments are presented. These offices were required to bring unstamped instruments to the notice of the Collectors (Stamps).

4. Failure to check the records of public offices

As per Section 37 (3) of the RS Act, 1998, the State may determine what offices shall be deemed to be public offices and who shall be deemed to be persons in charge of public offices. Rule 64 (1) of the RS Rules, 2004 provides that where an unstamped or under stamped instrument is detected in course of inspection or otherwise by a public officer, a report, therefore, shall be made forthwith to the Collector. The IG directed (January 1998) the DIGs/ Collector (Stamps) to inspect the records of public offices to see whether stamp duty was being paid by the public correctly. Further, vide circular dated 23 December 2009 the IG reiterated that the inspection of public offices was not being conducted effectively by the DIGs/ Additional Collector (Stamps) resulting revenue loss to the State and directed the DIGs/Additional Collector (Stamps)/SRs to prepare a list of public offices under their jurisdiction and chalk-out an inspection programme in such a manner that the inspection of every public office could be carried out once in a quarter.

We observed that the DIGs/Additional Collector (Stamps)/SRs did not conduct prescribed inspections, which resulted in a number of irregularities not being highlighted and consequent non-realisation of revenue to the State.

Our scrutiny in respect of a few public offices revealed non-realisation of stamp duty and registration fees ₹ 20.74 crore in the following cases.

4.1 Registrar of Firms

4.1.1 Non-registration of transfer of lease by way of assignment

As per Article 55 of the Schedule appended to the RS Act, 1998, in case of instrument of transfer of lease by way of assignment, the stamp duty is leviable as a conveyance on the market value of the property which is the subject matter of transfer. The IG, by issue of circular no. 6/09, clarified that the instrument executed for change in the partnership will come in the category of transfer of lease by way of assignment. Section 17 of the Registration Act, 1908 provides that other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest whether vested or contingent, of the value of ₹ 100 and above to or in immovable property, are required to be compulsorily registered. Further, stamp duty and registration fees are also payable at the prescribed rates

We noticed (May 2011) that in two partnership firms, the partners in existence were retired from the firms and remaining partners continued in the firms. The firm paid the retiring partners (assignor) the capital amount in lieu of their assets. Hence, the immovable property possessed by the retiring partners was also transferred to other partners (assignees) of the firm. The assignors transferred 1,238.485 square metre land valuing ₹ 11.19 crore to assignees. However, the instrument of change in partnership were not stamped and registered. It resulted in non-recovery of stamp duty and registration fees aggregating ₹ 56.45 lakh.

When we pointed out (May 2011), the SR Jaipur-I replied (July 2011) that notices had been issued to the firms for recovery. Further, reply was awaited (January 2012).

The Deputy Secretary (Finance) replied (December 2011) that the SR Jaipur-I had been directed (September 2011) either to recover the stamp duty or get register the cases under reference.

4.2 Debt Recovery Tribunal

4.2.1 Non-registration of certificate of sale

Section 17 of the RS Act, 1998 provides that all instruments chargeable with duty and executed by any person in the State shall be stamped before or at the time of execution or immediately thereafter on the next working day following the day of execution. Further, Section 17 (1) (e) of the Registration Act, 1908 provides that non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent of the value of one hundred rupees and upwards, to or in immovable property are to be registered compulsorily. Section 23 and 25 of the Registration Act provides that no document other than a Will shall be accepted for registration unless presented to the proper registering officer within four months, which can be extended for next four months on payment of fine equal to ten times of registration fee. As per Article 17 of the Schedule to the RS Act, 1998, a certificate of sale granted to the purchaser of any property sold by public auction by a civil or revenue court or Collector or other Revenue Officer, the stamp duty as on a conveyance is to be charged for consideration equal to the amount of the purchase money. Registration fees are also payable at the rate of one *per cent* on the value set forth in the certificate of sale subject to maximum of ₹ 25,000.

Our scrutiny in the Debt Recovery Tribunal (DRT) office revealed that due to failure in repayment of loans, the properties of five loanees were attached and auctioned by the DRT. The DRT granted certificate of sale to the successful bidder/purchaser. However, the purchasers did not register the Certificate of

Sale in the registering offices despite a lapse of period ranging from six to 74 months after the prescribed time limit.

Non-registration of certificate of sale resulted in non-levy of stamp duty and registration fees aggregating ₹ 6.60 crore on the purchase money as per details given in **Annexure-1**.

The matter was pointed out (May 2011) to the concerned SR/ DIGs to whom a copy of certificate of sale were endorsed by DRT. Replies have not been received (January 2012).

The Deputy Secretary (Finance) replied (December 2011) that the concerned DIG's (Stamps) have been directed (September 2011) either to obtain the copy of registered certificate of sale deeds for confirmation or recover the stamp duty.

4.3 RIICO Limited

4.3.1 Non-registration of lease deeds

Section 17 of the Registration Act, 1908 provides that other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest whether vested or contingent, of the value of ₹ 100 and above to or in immovable property, are required to be compulsorily registered. Further, stamp duty and registration fees are also payable at the prescribed rates.

As per information collected (May 2011) from the Rajasthan State Industrial Development and Investment Corporation Limited (RIICO), Jaipur, the RIICO allotted/sold, during July 1988 to March 2010, 1499 industrial plots of 28,05,019.41 square metre land valuing ₹ 189.87 crore to various firms to establish industries. The lease deeds of these plots were to be registered within 90 days from the date of deposition of full amount of development

charges. Despite, issue of notices to the firms, lease deeds of the plots were not got executed and registered (August 2011). This resulted in non-recovery of stamp duty and registration fees aggregating ₹ 13.32 crore as per details given in **Annexure-2**.

The Deputy Secretary (Finance) replied (December 2011) that the all concerned DIG's (Stamps) have been directed (September 2011) to inspect the RIICO offices and initiate action to get lease deeds registered.

4.4 Registrar of Companies

4.4.1 Non-levy of stamp duty on instruments of amalgamation of companies

Article 21 (iii) of the Schedule to the RS Act, 1998 provides for the levy of stamp duty at the rate of four *per cent* on the instrument relating to amalgamation of companies by the order of the High Court under Section 394 of the Companies Act, 1956. Registration fees are also to be charged at the rate of one *per cent* subject to maximum ₹ 25,000.

We noticed (May 2011) from the information collected from the Registrar of Companies (ROC), Rajasthan, Jaipur, that in five cases, the transferee companies did not pay stamp duty of ₹ 14.54 lakh and registration fees or ₹ 1.03 lakh payable on orders issued by the High Court for amalgamation. This resulted

in non-levy of stamp duty and registration fees ₹ 15.57 lakh.

We pointed out (May 2011) the matter to the ROC, reply has not been received (January 2012).

The Deputy Secretary (Finance) replied (December 2011) that the Additional Collector (Stamps) Jaipur had been directed (September 2011) either to recover the stamp duty or get register the cases under reference.

4.4.2 Short levy of stamp duty on increase in authorised share capital of companies

As per Article 11 (i) of the Schedule to the RS Act, 1998, SD on instrument of amendment in Article of Association of a company relating to increase in authorised share capital is chargeable at 0.5 *per cent* of the increase in authorised share capital from 27 May 2004. Prior to 27 May 2004, SD on such instruments was chargeable at 0.2 *per cent* subject to maximum of ₹ 2 lakh vide notification dated 14 January, 2004 issued under the Rajasthan Stamp Law (Adaption) Act, 1952, which was repealed on 27 May 2004.

Information collected from the ROC Rajasthan, Jaipur, we noticed that a private limited company at Jaipur had increased its share capital by ₹ 17.00 crore in March 2009 (from ₹ 5.00 crore to ₹ 22.00 crore). The ROC incorrectly accepted the instruments stamped at ₹ 3.40 lakh at the lower rate i.e. 0.2 *per cent* instead of ₹ 8.50 lakh at the rate of 0.5 *per cent* leviable under the RS Act, 1998.

This resulted in short realisation of stamp duty ₹ 5.10 lakh.

The matter was pointed out (May 2011) to ROC, reply was awaited (January 2012).

The Deputy Secretary (Finance) replied (December 2011) that the stamp duty was recovered as per notification dated 14 January 2004. We do not accept the

reply as this notification dated 14 January 2004 was declared (21 January 2010) inconsistent to RS Act, 1998 by the Finance (Tax) Department.

4.4.3 Non-levy of stamp duty on share allotment by companies through IPO

As per Article 18 of the Schedule to the RS Act, 1998, stamp duty on a certificate or other document, evidencing the right or title of the holder thereof or any other person, either to any shares, scrip or stock in or of any incorporated company or other body corporate to become proprietor of shares, script or stock in or any such company or body, is leviable at the rate of one rupee for every thousand rupees (0.1 *per cent*) or a part thereof, of the face value of the shares, scrip or stock

From the information collected from the ROC, Jaipur, we noticed (May 2011) that three companies having registered offices in Rajasthan had raised their funds through Initial Public Offer (IPO) and issued 2,30,41,157 shares having face value of ₹ 23.04 crore

to general public, institutional buyers *etc.* during February 2007 to July 2008. Information on whether Stamp Duty was paid by these companies was awaited (₹ 2.30 lakh).

The matter was pointed out (May 2011) to the ROC, reply was awaited (January 2012).

The Deputy Secretary (Finance) replied (December 2011) that the Additional Collector (Stamps) Jaipur had been directed (September 2011) to initiate action for recovery of stamp duty as per the provisions of the RS Act, 1998.

Recommendations

- Government may issue instructions to the public offices to be more vigilant to ensure that instruments produced before them are duly stamped and if not, to take prompt action to inform the cases to the Collector (Stamps) for proper realisation of stamp duty and registration fees.
- The Government may also consider prescribing a periodical return to be furnished by the public offices to the Department on the number and nature of documents presented before them and SD paid by the executants.

CHAPTER-V

IMPLEMENTATION OF SCHEMES AND LACUNAE IN THE ACT

Non-inclusion of premium value of shares for Stamp Duty

Evasion of Stamp Duty and Registration Fees due to non-fixing of rate for barbed wire fencing

Non-fixing of composite floor area rates for flats

Implementation of Anywhere Registration Scheme

Amnesty Scheme of Stamp Duty

Non-maintenance of database of revenue foregone

CHAPTER-V

Implementation of Schemes and Lacunae in the Act

5.1 Non-inclusion of premium value of Shares for Stamp Duty

Section 23 of the RS Act, 1998 provides that where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable or other security, such duty shall be calculated on the value of such stock or security according to the average price or the value thereof on the day of the date of the instrument. Article 18 of the schedule to the RS Act, 1998 provides allotment of shares, scrip or stock to general public, institutional buyers *etc.* and stamp duty is leviable at the rate of one rupee for every thousand rupees (i.e. 0.1 *per cent*) or a part thereof, of the face value of the shares, scrip or stock.

Information collected from the ROC, Jaipur revealed that three companies issued 2,30,41,157 numbers of shares for ₹ 23.04 crore to general public and institutional buyers as per details given in **Annexure-3**.

We observed that the companies paid stamp duty on the face value of shares excluding premium amount received by these companies amounting to

₹ 32.95 crore. Non-inclusion of premium value of shares for stamp duty purposes has resulted in loss of stamp duty of ₹ 3.29 lakh.

The Secretary (Finance) replied during Exit Conference held on 17 January 2012 that matter shall be looked into.

The Government may consider amendments to the Article 18 of the Schedule to the RS Act, 1998 as done by other States, like the State of Maharashtra¹ (Article 17 of Schedule I) and clarify that the face value of shares includes the amount of premium, if any.

5.2 Evasion of stamp duty and registration fees due to non-fixing of rate for barbed wire fencing

As per Article 21 (i) of the Schedule to the RS Act, 1998, stamp duty on the instrument of conveyance relating to immovable property shall be levied on the market value of the property. Rule 58 of the RS Rules, 2004 provides that the market value of land shall be assessed on the basis of the rates recommended by the District Level Committee or the rates approved by the IG, whichever is higher.

We observed in SR Jaipur-II that a sale deed was registered (March 2009), wherein, vendor sold 13.85 bigha irrigated agriculture land duly fenced with iron angle and barbed wires situated at village Macharkhani, Tehsil Sambhar, District Jaipur to vendees for ₹ 29.88 lakh.

¹ The State of Maharashtra clarified vide explanation inserted w.e.f. 1 May 1995 under Article 17 of Bombay Stamp Act, 1958 that the value of shares, scrip or stock includes the amount of premium, if any.

The agricultural land was fenced with iron angle and barbed wires but the cost of fencing was not included in the valuation of land for the purpose of levy of stamp duty and registration fees. Though the rates for *Pakki/Kacchi* boundary wall had been fixed ₹ 300 and ₹ 100 per running metre respectively and no rates are prescribed for barbed wire fencing. This resulted in evasion of stamp duty and registration fees due to non-fixing of rate for fencing by the department.

The Government may consider by fixing the cost of iron angle and barbed wire fencing in running metre.

5.3 Non-fixing of composite floor area rates for flats

As per circular no. 1/09 issued by the IG Registration and Stamps, the cost of flats in the residential apartment having more than three stories should be determined by the District Level Committee. The rates should be fixed per square feet floor area including the cost of land, constructions and common facilities.

During scrutiny of the records of two SR offices (Kota-I and Udaipur-II) for the period 2009-2010, we found that three instruments for sale of flats in multi-story apartments having more than three stories were registered. The valuation of the flats were incorrectly assessed by the SRs as per

circular no. 2/2004² issued by the IG stamps which relate to valuation of residential flats in apartments upto three stories. Incorrect application of circular no. 2/2004 and absence of determination of composite floor area rate by the District Level Committee resulted in short levy of stamp duty and registration fees aggregating ₹ 0.23 lakh calculated on the amount of consideration shown in the document.

The Government may ensure that composite floor area rates are fixed by DLCs in respect of flats in residential apartments having more than three stories as per circular no. 1/09 so that proper stamp duty and registration fees is realised.

5.4 Implementation of Anywhere Registration Scheme

The "Anywhere Registration Scheme within District" launched by GOR (March 2007). The Scheme envisages that a person, at his own convenience, can get register of his instrument in any SR office situated within the district. As per Section 64 (1) of the Registration Act, 1908, every SR on registering a non-testamentary document relating to immovable property not wholly situate in his jurisdiction shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other SR in whose jurisdiction any part of such property is situate, and such SR shall file the memorandum in his Book No. I.

² The cost of land is to be shared by the purchaser if flat is sold without ceiling on the ground floor 80 per cent, at first floor 70 per cent, at second floor 60 per cent, at third floor 50 per cent and at the basement 50 per cent. The valuation of construction was to be determined as per Government notification no. F.12(2) FD/tax 05-221 dated 24 July 2005. i.e. for RCC construction ₹ 400 per square foot and ₹ 200 per square foot for *patti* posh construction. These rates were revised to ₹ 600 and ₹ 400 from 08 December 2009 for RCC and *patti* posh respectively.

The IG, Registration and Stamps vide circular no. 17/09 dated 23 December 2009 reiterated the directions regarding sending of memorandum/endorsement copy of documents by the registering SR to the SR in whose jurisdiction property situated, forwarding the site inspection report to the registering SR *etc.*

We observed (September to April 2011) in test-checked 36 SR offices that none of the SR offices maintained register/record for documents registered in Anywhere Registration Scheme, sending/receiving memorandum/inspection report *etc.* In absence of registers/records maintained for Anywhere Registration Scheme by the concerned SR offices, we were unable to ascertain the compliance of the instructions and evasion of duty, if any, the number of cases and amount due for realisation of stamp duty and registration fees evades, if any.

The Deputy Secretary (Finance) replied (December 2011) that a fresh order for supervision in terms of circular number 17/09 is being issued.

The Government may consider prescribing reports/returns for effective monitoring of the scheme.

5.5 Amnesty Scheme of stamp duty

The GOR have been issuing every year Amnesty Scheme under section 9 (1) and 9 A of the Rajasthan Stamp Act, 1998, to provide relief to all executants and with secondary object to recover due stamp duty expeditiously in the cases before instituted/decided by the Collectors (Stamps).

The Amnesty Scheme provides, *inter alia*, rebate/remission of SD, penalty and interest in the cases instituted before the Collector (Stamps) or decided by the Collector (Stamps), on payment of SD (after remission) before a particular date as under:

Sl. no.	Rebate allowed	Rebate applicable to
1	30 per cent of SD	All cases instituted and decided upto the date of notification/prescribed date.
2	30 to 50 per cent of SD	Where instruments executed upto the date of notification/prescribed date and cases instituted on the basis of inspection or <i>suo-motu</i> .
3	100 per cent penalty	In all cases.
4	100 per cent interest	In all cases.

As per Section 30 of the RS Act, 1998, the consideration, if any, and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth in instruments. Section 75 of RS Act, 1998 provides that any person, who, with intent to defraud the Government, executes any instrument, or takes part in its preparation, without fully and truly setting forth all the facts and circumstances required by section 30 of the RS Act, 1998 is liable to be punished with imprisonment for a period which may extend to three years, or with fine which may extend to ₹ 20,000.

We observed (January 2011) in office of SR Jaisalmer that two instruments relating to transfer of immovable property were executed and submitted for

registration on 3 October 2008 involving consideration amount as set forth in instruments of ₹ 47.00 lakh. The SR kept pending these instruments in the minute book. The SR conducted site inspection on 6 October 2008 and found that true facts about location *etc.* were not described in the document. The SR determined the valuation of property at ₹ 2.39 crore. Accordingly stamp duty ₹ 19.11 lakh and registration fees ₹ 0.50 lakh were payable. Since SD and RF were not deposited by the executants, these cases were instituted before DIG, Jodhpur in April 2009 for adjudication. However, instead of imposing penalty or initiating action for prosecution under Section 75 of the RS Act, the SR permitted the executants to deposit stamp duty of ₹ 14.50 lakh allowing rebate at the rate of 30 *per cent* amounting to ₹ 4.61 lakh under Amnesty Scheme notified on 17 November 2009. This resulted in short levy of stamp duty of ₹ 4.61 lakh.

We are of the opinion that the exemption of ₹ 4.61 lakh given by the Stamp authorities was irregular being not admissible under the Scheme to the executants due to concealment of true consideration and full other facts about location, which affected the chargeability of stamp duty and registration fees. It is evident that Amnesty Scheme in its present form is not in consonance with the provisions of section 75 of the RS Act, 1998 and remission should be allowed in proper cases outstanding for a long period.

The Deputy Secretary (Finance) replied (December 2011) that the proposals for Amnesty Scheme, if issued, shall be sent to the Government in consonance with the Sections 30 and 75 of the RS Act, 1998.

The Government may consider that the Amnesty Scheme, if issued, should be in consonance with section 30 and 75 of the RS Act, 1998.

5.6 Non-maintenance of database of revenue foregone

The Government in extending exemptions or remissions forgoes revenue in pursuance of certain defined objectives. A reliable database of revenue foregone is, therefore, a prerequisite for informed decision making and transparency.

The GOR has sanctioned concessions/remission in SD, penalty and interest under various schemes or to specific categories such as female purchaser, physically handicapped person *etc.*

During scrutiny of the records of the 36 SR offices, we found that there was no database or any other records to ascertain the revenue foregone due to allowing concessions and remissions under the Rajasthan Investment Promotion Scheme 2003, for female purchaser and Government's Amnesty Schemes *etc.* The Department could neither furnish the exact number of cases where remissions were allowed nor the numbers of cases in which exemptions were allowed to the industrialists and the money value involved.

The Deputy Secretary (Finance) replied (December 2011) that the efforts for making computer programme for database is being done with the Rajcrest Jaipur.

The Government may consider proper maintenance of a centralised database of remissions/concessions for effective monitoring and review of the schemes.

CHAPTER-VI

PROCUREMENT, SALE AND ACCOUNTAL OF STAMPS PAPER

Introduction

Procurement of Stamps

Heavy stock balances of non-judicial and special adhesive stamps
in treasuries

Theft of non-judicial stamps

Lack of superimposition of word "Rajasthan or RAJ" on adhesive
stamps

Inspection of treasuries

CHAPTER-VI

Procurement, Sale and Accountal of Stamps Paper

6. Introduction

Procurement, storing, issuance and utilisation of stamps are regulated under Rajasthan Treasury Rules (RTR) 1999 and Rajasthan Stamp Rules, 2004.

The Additional Inspector General (AIG) is the ex-officio Superintendent, Stamps at Headquarters. There are 34 treasuries¹ in the State which deal with procurement, storage, sale and issue of stamps. The entire process of collections of stamp duty which involves forecasting, indenting, receiving, stocking, selling and accounting is monitored by the IG, Registration and Stamps.

Ajmer treasury was nominated as the nodal point in the year 1999 for receipt, custody and issue of stamps in the State of Rajasthan from the printing press Nasik and Hyderabad.

Procurement of Stamps

6.1 Indent

As per Rule 240 of Rajasthan Treasury Manual, 1952, from the year 2004 onwards, a denomination wise half yearly indent on 31st December and 30th June in a prescribed format was required to be sent by the treasuries to the IG, Registration and Stamps for the replenishment of stock.

We observed that four treasuries i.e. Bharatpur, Bikaner, Karauli and Udaipur did not send the required information during 2007-08 to 2010-11 while remaining treasuries did not send the information regularly in the prescribed format.

The Government may consider ensuing strict compliance to be followed by the all treasuries for sending their indents timely in the prescribed format.

¹ Ajmer, Alwar, Banswara, Baran, Barmer, Beawer, Bharatpur, Bikaner, Bhilwara, Bundi, Chittorgarh, Churu, Dausa, Dholpur, Dungarpur, Ganganagar, Hanumangarh, Jaipur, Jaisalmer, Jalore, Jhalawar, Jhunjhunu, Jodhpur, Karauli, Kota, Nagaur, Pali, Pratapgarh, Rajsamand, Sawai Madhpur, Sikar, Sirohi, Tonk and Udaipur.

6.2 Receipts

As per Rule 304 (1) of RTR, 1999, after arrival of supply of Stamps from the depot, the officer incharge of the depot i.e. Treasury Officer shall as soon as possible personally examine the outward appearance of the packets or the packages and satisfy himself that the same are not tampered with. He shall then have the packages opened in his presence and the contents therein counted either by himself or by some authorised official in his presence. Rule further lays down that discrepancy or deficiency, if any, in number or otherwise is found, a report thereto should be immediately submitted to IG with a copy thereof to the Director Treasuries and Accounts.

Further, as per Rule 305 of RTR, the IG shall invariably send an invoice in duplicate to every depot showing therein the denomination, the quantity and the face value of the stamps supplied. The original copy of the invoice should be retained by the treasury and the duplicate should be returned to the IG with the acknowledgement of the office incharge of the depot not later than fifteen days after receipt consignment of Stamps.

The Ajmer Treasury received Stamps from Central Stamps Depot (CSD), Nasik for onward distribution to other treasuries. We observed that these Stamps were forwarded to the concerned treasuries without any physical count. This defeated the very purpose of formation of the nodal point. As a result of this, stamps worth ₹ 11.75 lakh were received short in two treasuries (Alwar and Sriganganagar) during 2007-08 to 2008-09. The short receipt of these stamps was pointed out after a delay which ranged between three and six years. As the shortage was not pointed out within 15

days of the receipt, the same was not accepted by CSD, Nasik.

We pointed out (December 2011) to the IG, Registration and Stamps and the reply was awaited (January 2012).

6.3 Heavy stock balances of non-judicial and special adhesive stamps in treasuries.

6.3.1 Annual Forecast

As per Rule 300 (1) and (2) of Rajasthan Treasury Rules, 1999, each Treasury officer should indicate the requirement of each denomination of stamps based on actual issues during each of the preceding three years, balance in hand on 1 April and estimated issues for the current financial year.

In order to enable the IG Registration and Stamps to regulate supply of stamps periodically, each Treasury Officer (TO) after ascertaining the probable requirement of all sub-treasuries for the whole year, is required to send an annual forecast in the prescribed format to the IG by 30 November of each year.

We observed that none of 34 treasuries had sent the annual forecast in the prescribed manner during 2006-07 to 2010-11. In absence of this information, the basis of placing indent with CSD, Nasik for procurement of stamps by IG, Registration and Stamps could not be ascertained in audit. This resulted in excess procurement of non-judicial/adhesive stamps from depots which are lying unused in treasuries as per details given below:

6.3.2 Non-judicial stamps

(₹ in crore)

Sl. no.	No. of Treasuries	Year	Balance available as on	Value of stamps	procurement during the year
1	34	2006-07	31.3.07	937.20	189.20
2	34	2007-08	31.3.08	639.67	107.00
3	34	2008-09	31.3.09	2,104.23	1,825.10
4	34	2009-10	31.3.10	1,802.83	35.40
5	32	2010-11	31.3.11	1,596.05 ²	420.20
Total				7,079.98	2,576.90

We observed that despite of heavy balances available with treasuries in hand every year, stamps worth ₹ 2,576.90 crore were also procured from CSD, Nasik during the years 2006-07 to 2010-11.

6.3.3 Special adhesive stamps

(₹ in crore)

Sl. no	No .of Treasuries	Year	Balance available as on	Value of stamps	procurement during the year
1	34	2006-07	31.3.07	835.65	08.71
2	34	2007-08	31.3.08	761.81	10.08
3	34	2008-09	31.3.09	594.39	10.24
4	34	2009-10	31.3.10	526.98	31.00
5	34	2010-11	31.3.11	456.00	32.80
			Total	3,174.83	92.83

As per the notification issued by the State Government dated 28 August 1984, special adhesive stamps were allowed to be used as adhesive non-judicial stamps of the same denomination after super imposition of the words "Non-Judicial" in green ink thereon. Despite instructions of the State Government, special adhesive stamps could not put to use worth ₹ 456 crore as on 31 March 2011 and stamps worth ₹ 92.83 crore were also procured from CSD, Nasik in excess quantity during the years 2006-07 to 2010-11.

Government may take immediate steps for utilisation of non-judicial/adhesive stamps lying unused in treasuries.

² Balances of Treasury Banswara and Bikaner were not available with IG Office.

6.4 Theft of non-judicial stamps

On scrutiny of the records of IG, Registration and Stamps, Ajmer, we observed (December 2011) that a case of theft of non-judicial stamps worth ₹ 7.00 lakh from sub-treasury, Uniara district Tonk had taken place on 22 July 2009 as per details given under:-

(Amount in ₹)

Sl. no.	Quantity and description of stamps stolen	Denomination of stamps	Value of stamps
1.	200 numbers A-983301 to 983500	₹ 1,000	2,00,000
2.	100 numbers 634901 to 635000	₹ 5,000	5,00,000
Total			7,00,000

Though 29 months had elapsed, neither responsibility of officials for theft was fixed nor the Department had taken action for write-off the revenue loss.

6.5 Lack of superimposition of the word "Rajasthan or RAJ" on adhesive stamps

Rule 4 (2) of the Rajasthan Stamp Rules, 2004 provides that no impressed or adhesive stamps which is not superimposed as "Rajasthan or RAJ" shall be used in Rajasthan, after the commencement of these rules (11 June 2004), to indicate the payment of duty chargeable on any instrument.

We observed that in contravention of the Rule 4 (2) of Rajasthan Stamp Rules 2004, the IG, Registration and Stamps procured special adhesive stamps worth ₹ 92.83 cores from CSD, Nasik depot during 2006-07 to 2010-2011 which were not superimposed with the word "Rajasthan" or

with the letter "RAJ".

The possibility of fraudulent use of special adhesive stamps procured from other States can not be ruled out.

We pointed out (December 2011) to the IG, Registration and Stamps, reply was awaited (January 2012).

6.6 Inspection of treasuries

The Department was required to keep a close watch on proper indenting, receipt and issue of stamps through by conducting regular inspection of treasuries which was inadequate.

We observed that as against an annual inspection of each treasury, inspection of treasuries ranging between three and 13 were conducted each year for all the 34 treasuries transacting in stamps in the State by Additional IG, Registration and Stamps. The percentage of short fall ranged between 62 and

91 per cent during the five years ending 2010-11 as indicated below:-

Year	Inspection required	No. of inspections conducted	Percentage of Short fall
2006-07	34	03	91
2007-08	34	13	62
2008-09	34	04	88
2009-10	34	06	82
2010-11	34	05	85

When we pointed out (December 2011) to the IG, Registration and Stamps, the reasons for shortfall were not furnished to audit (January 2012).

Recommendations

- The Government may consider evolving suitable devise for the replenishment of stock in treasuries as per their actual requirement.
- The Government may ensure that the nodal treasury should invariably / physically count the contents of stamps received from the depot and discrepancy and deficiency found, if any, be pointed out to the depot within 15 days after receipt of the consignment of stamps.
- The Government may ensure that no impressed or adhesive stamps which are not superimposed as "Rajasthan or RAJ" shall be used in the State of Rajasthan.

CHAPTER-VII

**INTERNAL CONTROL AND INTERNAL AUDIT
MECHANISM**

Internal control

Internal audit

Conclusion

CHAPTER - VII

Internal control and Internal Audit Mechanism

Audit Mechanism

Inspection is an important internal control in the hands of administration for ascertaining that rules and procedures prescribed by the department are being followed and are sufficient to safeguard proper collection of revenue.

7.1 Internal Control

Inspection of subordinate offices

Rajasthan Registration Rules, 1955 envisaged that the District Registrars (DR) were to visit each SR office at least once in a year. The results of inspections were to be recorded in the inspection books and a copy was to be sent to the IG. The circle officers (DIGs) are to conduct inspection of SR offices once in a year where less than 500 instruments are registered and twice in a year where 500 or more instruments are registered in the previous year.

A. The number of inspections required to be conducted in test checked ten districts by the DRs in the SR offices under their jurisdiction and inspections carried out along with shortfall during the years 2006-07 to 2009-10 were as under:

Sl. no.	Name of DR	No. of SRs under jurisdiction	Total no. of inspections to be conducted	No. of inspections carried out	short falls	Percentage in shortfall
1	Ajmer	14	56	53	3	5.36
2	Alwar	19	76	68	8	10.53
3	Bundi	7	28	27	1	3.57
4	Bikaner	9	36	Information not provided.		
5	Jaisalmer	3	12			
6	Jaipur	25	100			
7	Jodhpur	13	52			
8	Kota	9	36	13	23	63.89
9	Sikar	9	36	Information not provided.		
10	Udaipur	17	68			
	Total	125	500	161	35	

The information regarding actual inspections carried out during the years 2006-07 to 2009-10 were not furnished by DRs of Bikaner, Jaipur, Jaisalmer, Jodhpur, Sikar and Udaipur districts. The shortfall in conducting inspections by the DRs Ajmer, Alwar, Bundi and Kota ranged between four and 64 per cent.

B. The inspections required to be conducted and actual inspections carried out by the circle officers in test checked nine circles during the years 2006-07 to

2009-10 were as under:

Sl. no.	Name of circle officer	Total no. of SRs under Jurisdiction	Total no. of inspections to be conducted	Total no. of inspections carried out	Shortfall	Percentage of shortfall
1	DIG, Alwar	19	152	Information not provided		
2	DIG, Ajmer	41	328	299	29	8.84
3	DIG, Udaipur	31	248	31	217	87.5
4	DIG, Bikaner	26	208	64	144	69.23
5	AC (Stamp), Jaipur	5	40	Information not provided		
6	DIG (Stamp), Jaipur Rural	34	272			
7	DIG, Jodhpur	26	208			
8	DIG, Kota	12	96			
9	DIG (Vigilance), Jaipur	12	96	45	51	53.13
Total		206	1,648	439	441	

The actual inspections conducted were not furnished to audit by the circle officers except DIG Ajmer, Bikaner, Vigilance Jaipur and Udaipur. The shortfall in conducting inspections ranged between nine and 88 per cent.

The Department may consider by prescribing reports/returns to be furnished by the inspecting officers to IG mentioning the quantum of inspections carried out against the target fixed along with brief results of inspection.

7.2 Internal Audit

A. The internal audit wing conducts internal audit of the SR offices under overall control of the IG. There are six internal audit parties. The position of the internal audit during 2007-08 to 2009-10 was as under:

Year	No. of units due for audit			Units audited during the year	No. of units remained unaudited at the end of the year	Percentage of unaudited units
	Arrear of previous years	Current year	Total			
2006-07	Information not provided.					
2007-08	406	358	764	152	612	80.10
2008-09	612	358	970	349	621	64.03
2009-10	621	369	990	531	459	46.36

We observed that the shortfall in conducting internal audit ranged between 46 and 80 per cent during the years 2007-08 to 2009-10.

During Exit Conference held on 17 January 2012, the Financial Advisor replied that old arrear in conducting internal audit has been cleared upto to the year 2007-08.

B. We observed that 3,204 paras of internal audit pertaining to the years 2006-07 to 2009-10 involving ₹ 22.51 crore were outstanding for settlement/recovery as on 31 March 2010 as under:

Sl. no.	Year	Outstanding Objections			Amount involved (₹ in crore)
		Procedural	Financial	Total	
1.	2006-07	588	405	993	4.62
2.	2007-08	171	122	293	1.67
3.	2008-09	511	343	854	6.29
4.	2009-10	618	446	1,064	9.93
Total		1,888	1,316	3,204	22.51

The position of outstanding paras pertaining to the period upto March 2006 was not made available to audit.

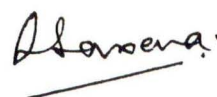
We observed that 3,204 paras involving ₹ 22.51 crore were outstanding for compliance and recovery.

The Government may consider strengthening the internal audit wing to ensure timely detection and correction of errors in levy and collection of revenue to avoid recurrence of mistakes pointed out and speedy settlement of outstanding paras.

7.3 Conclusion

The provisions of the RS Act, 1998 which came into force with effect from 27 May 2004 were not implemented *in toto* by the ROs as they continued applying notifications under the erstwhile law, while registering instruments and levying stamp duty at rates which were inconsistent with the 1998 Act, resulting in loss of revenue to the *exchequer*. We came across instances of failure of ROs in inspection of public offices in the state as a result of which instruments were not stamped/registered on sale of properties effected by Debt Recovery Tribunals; lease deeds not executed by RIICO and Stamp Duty not paid in office of the Registrar of Companies on issue of IPOs/amalgamation of Companies. There were instances of short levy of Stamp Duty due to under-valuation of the properties or due to incorrect application of rates.

There was heavy stock of non-judicial/adhesive stamps in the State. Internal control mechanism was weak as evident from inadequate inspections and internal audit.



(SUMAN SAXENA)

Principal Accountant General

(Economic & Revenue Sector Audit), Rajasthan

JAIPUR

The 03 August 2012

Countersigned



(VINOD RAI)

Comptroller and Auditor General of India

NEW DELHI

The 06 August 2012

Annexure-1
(Refer to paragraph 4.2.1)
Statement showing the details of defaulter loanees who's properties were
auctioned by DRT

(Amount in ₹)

Sl. no.	Case no.	Name of loanee	Name of loaner	Name of purchaser	Particular of property	Auction amount	Date of auction/ issue of sale certificate	Amount due		Total
								S.D. @ 6.5 %	R.F. (Max.)	
1	67/98	Oberoi Industries	Punjab National Bank	SSB ENGG. (P) Ltd., 133, MIA, Alwar	E-85 MIA, Alwar (4000 Sq.mt.)	4350000	14.07.08/ 10.09.08	282750 @ 6.5 %	25000	307750
2	145/01	Mahesh metal works	UCo Bank	Lovely colonizers (P) ltd. Hamir colony, Madanganj, Kishangarh, Ajmer	Rupangarh road, Madanganj, kishangarh, Ajmer	14007000	18.02.05/ 31.03.05	1120560 @ 8 %	25000	1145560
3	109/03	Mewar Textile Mill	Bank of Rajasthan	Gitanjali Infosystem. (P) ltd, Udaipur	Land & building, Plant & Machinery, Furnit. & fixtures, Near railway bridge Bhilwara (57 Bigha & 67 Bishwa)	1252000000	04.12.09/ 05.01.10	62600000 @ 5 %	25000	62625000
4	24/09	Siros melt	ASRECK	M/s Hira Lal, Sukh Lal, 1921/35, NH-8, Balicha, Udaipur	A-197, MIA, Khasra No. 1047 Bedwas, Udaipur (10000 Sq.mt.)	23900000	23.03.10/ 12.05.10	1195000 @ 5 %	50000	1245000
5	68/08	Punsumi devices	Canara Bank	Sumit Bhargava, Meera marg, Bani Park, Jaipur	D-16 Meera Marg, Banipark, Jaipur	12000000	20.05.05/ 14.12.10	600000 @ 5 %	50000	650000
Total						1306257000		65798310	175000	65973310

Annexure-2
(Refer to paragraph-4.3.1)

Evasion of Stamp Duty and Registration Fees due to non-execution of lease deeds by the entrepreneurs

(Amount in ₹)

Sl. no.	Name of Unit	No. of allotments	Area allotted (sq. mt.)	Value of land/ plot	Stamp duty payable	Registration fees payable	Total
1	Sr. Manager (RIICO) Jaipur (Rural)	49	110257.00	156686148	11675231	494124	12169355
2	Sr. Manager (RIICO) Jaipur (City)	217	242265.88	890948816	52019594	4297699	56317293
3	Sr. Manager (RIICO) Udaipur	15	20315.00	19576682	1248872	181251	1430123
4	Sr. Manager (RIICO) Bharatpur (Incl. Dholpur)	119	153348.00	48296359	3211787	461172	3672959
5	Sr. Manager (RIICO) Balotra	70	75944.50	61930571	4241567	359693	4601260
6	Sr. Manager (RIICO) Ajmer	184	371444.00	304207502	22737032	1433861	24170893
7	Sr. Manager (RIICO) Kota	1	4000.00	6000000	480000	25000	505000
8	Sr. Manager (RIICO) Jhalawar	57	819595.00	26000979	1617579	260011	1877590
9	Sr. Manager (RIICO) Bhilwara (Incl. Chittorgarh)	76	163244.00	71604821	4181300	609289	4790589
10	Sr. Manager (RIICO) Sawai Madhopur	36	36838.50	18356640	1277130	168555	1445685
11	Sr. Manager (RIICO) Hanumangarh (Under-Sri Ganganagar)	34	11271.00	8884882	631429	88851	720280
12	Sr. Manager (RIICO) Jhunjhunu	67	73668.25	28351038	2220474	283513	2503987
13	Sr. Manager (RIICO) Sri Ganganagar	285	333180.50	58992536	4031327	517477	4548804
14	Sr. Manager (RIICO) Boranada (Jodhpur)	179	136533.95	121957416	6934687	762395	7697082
15	Sr. Manager (RIICO) Jaipur (South) including Dausa	72	210313.83	65456394	5391448	533826	5925274
16	Sr. Manager (RIICO) Nagaur	38	42800.00	11492400	660249	114923	775172
	Total	1499	2805019.41	1898743184	122559706	10591640	133151346

Annexure-3
(Refer to paragraph 5.1)

Details of stamp duty not charged on premium amount of shares

(Amount in ₹)

Sl. no.	Name of Company	Date of allotment of shares	No. of shares allotted	Premium amount per share	Total premium amount paid up	Stamp Duty payable @ 0.1%
1	Lawreshwar Polymers Ltd.	02.02.2007	2462500	6	14775000	14775
2	Lawreshwar Polymers Ltd.	08.03.2007	6250705	6	37504230	37504
3	Somi Conveyor Beltns Ltd.	17.07.2008	6227952	25	155698800	155699
4	Jagjanani Textiles Ltd.	08.03.2007	8100000	15	121500000	121500
Total			23041157		329478030	329478

Glossary of abbreviations

AC	-	Additional Collector (Stamps)
AIG	-	Additional Inspector General
BE	-	Budget Estimates
DIC	-	District Industries Centre
DIG	-	Deputy Inspector General
DLC	-	District Level Committee
DLR	-	Deputy Legal Remembrance
DR	-	District Registrar
FA	-	Financial Advisor
GOI	-	Government of India
GOR	-	Government of Rajasthan
IG	-	Inspector General, Registration and Stamps
IPO	-	Initial Public Offer
IS Act	-	Indian Stamp Act
NA	-	Not Available
RF	-	Registration Fees
RIICO	-	Rajasthan Industrial Investment Corporation
ROC	-	Registrar of Companies
R S Act	-	Rajasthan Stamp Act, 1998
RS Rules	-	Rajasthan Stamp Rules, 2004
SD	-	Stamp Duty
SR	-	Sub Registrar
ROs	-	Registering Officers

