|  |
| --- |
| http://www.bcasonline.org/images/clear.gif |
|  |
| http://www.bcasonline.org/images/clear.gif |
| Top of Form   |  |  |  |  | | --- | --- | --- | --- | | **BOMBAY STAMP DUTY ACT** |  |  |  | | 1. **APPLICABILITY**   The Bombay Stamp Act applies to the entire State of Maharashtra. Only the instruments specified in the Schedule I to the Act are covered by this Act. All other instruments are either chargeable under the Indian Stamp Act (e.g., transfer of shares) or are not chargeable at all (i.e., if they are not specified under the Act as well as under the Indian Stamp Act).   1. **CHARGE OF STAMP DUTY**   2.1 It is very important to note that stamp duty is on an instrument and not on a transaction.  2.2 S. 3 of the Act levies stamp duty at the rate provided in Schedule I on any instrument executed in the State. Even instruments executed outside the state are liable to duty only on their receipt in the state, provided it relates to a property situated in the state or a matter or thing to be done in the state.  2.3 An instrument covering or relating to several distinct matters is chargeable with the aggregate amount of duty with which each separate instrument would have been chargeable.  2.4 In case an instrument is so drafted that it is covered within the ambit of more than one Article under Schedule I, then it shall be taxed by that Article which levies the highest amount of stamp duty.  2.5 The term "Instrument" has been defined to include every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded.  However, it does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt.   1. **CERTAIN DEFINITIONS**   3.1 "Conveyance" has been defined to include:   1. a conveyance on sale, 2. every instrument, 3. every decree or final order of any Civil Court, 4. every order made by the High Court u/s. 394 of the Companies Act, 1956 in respect of amalgamation of companies; by which property, whether movable or immovable or any estate or interest in any property is transferred to, or vested in any other person *inter vivos* and which is not otherwise specifically provided for by Schedule I.   The Explanation to the definition provides that any instrument by which one co-owner transfers his property to another co-owner would be deemed to be a conveyance provided that it is not an instrument of partition.  3.2 "Instrument of gift" has been defined to include, in case of an oral gift any instrument recording its making or acceptance, whether by way of declaration or otherwise.  3.3 "Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property and includes:   1. any final order for effecting a partition passed by any revenue authority or any civil court, 2. an award by an arbitration directing a partition, and 3. when any partition is effected without executing any such instrument, any instrument or instruments signed by the co-owners and recording, whether by way of declaration of such partition or otherwise, the terms of such partition amongst the co-owners.   The expression ‘co-owners’ includes all kinds of co-ownership such as joint tenancy, tenancy in common, coparcenary, membership of HUF, etc. and the partnership.  3.4 "Immovable Property" includes land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth. The two leading decisions on this definition are those of the Supreme Court in the case of **Sirpur Paper Mills (1998) 1 SCC 400** and the case of **Duncan’s Industries (2000) 1 SCC 633**.   1. **PAYMENT OF STAMP DUTY**   4.1 S. 17 of the Act provides that all instruments chargeable with duty and executed in Maharashtra **should be stamped** **before or at the time of execution or immediately thereafter** or *on the next working day following the date of execution****.***  4.2 Instrument executed only out of Maharashtra may be stamped within three months after it is first received in India.  4.3 Duty can be paid by way of adhesive or impressed stamps on the instruments. Adhesive Stamps affixed should be cancelled at the time of execution so that they are not available for reuse.  4.4 Further, s. 14 prohibits writing of a second instrument chargeable with duty on a stamp paper on which an instrument chargeable with duty has already been written.  4.5 The stamp papers must be in the name of one of the parties to the transaction. They cannot be in the name of the Chartered Accountant or Lawyer of the parties.  4.6 The date of issue of the stamp paper must not be more than 6 months older than the date of the transaction.  4.7 Who bears and pays the stamp duty is a matter of agreement between the parties. In the absence of any such agreement, the Act provides that in the case of a Conveyance, duty is to be paid by a buyer and by the lessee in case of a lease. In cases of Bonds, Release, Settlement, it is to be paid by the person making or drawing the instrument. In case of exchange, it is to be paid by the parties in equal shares and in case of partition, by the parties in proportion to their respective shares. In all other cases, it is to be paid by the person executing the instrument.  4.8 Stamp duty is payable at rates mentioned in Schedule I. Depending upon the Instrument, it may be based upon the Market Value, Area, or various other criterion. In case of instruments which are based upon Market Value of the property, the term in relation to any property which is the subject matter of an instrument, means the price which such property would have fetched if sold in open market on date of execution of such instrument or consideration stated in the instrument whichever is higher.  The stamp office determines the market value of the property by referring to an Annual Statement of Rates (commonly known as Stamp Duty Ready Reckoner) which gave the Market Values of various immovable properties in Mumbai. The Reckoner divides the immovable property into various categories such as developed land, undeveloped land, residential units, industrial units/office, shops, etc., and fixes their market value accordingly.  4.9 Any person can apply to the Collector of Stamps for adjudication of the stamp duty payable on the instrument who shall determine the duty, if any with which the instrument shall be chargeable. It may be noted that now adjudication is compulsory in all cases where an instrument requires registration as the Registrar of Sub-Assurances insists upon the same. The instrument should be brought to the Collector within 1 month of execution of such instrument in the State and within 3 months from date of receipt of such instrument in the State.   1. **UNDERSTAMPED DOCUMENT**   5.1 Under s. 34 of the Act, any instrument which is inadequately /not stamped, then it shall be inadmissible in evidence for any purpose, e.g., in a Civil Court. Such instruments can be admissible in evidence on payment of the requisite amount of duty and a penalty @ 2% per month on the deficient amount of duty calculated from the date of execution. However, the maximum penalty cannot exceed twice the amount of duty involved.  5.2 Further, any public officer can impound such improperly stamped instruments if it comes to his notice. Such impounded instruments must be sent to the Collector who would then determine the amount of duty and penalty, if any, payable on the same. Any party to an instrument can also *suo moto* submit an instrument for adjudication by the Collector u/s. 31.  5.3 A person can be punished with rigorous imprisonment for up to 6 months (not less than 1 month) and with fine up to ` 5,000, if it is proved that the instrument was undervalued or short payment of duty was made with intention to evade duty.  **SCHEDULE I RATES (IMPORTANT ARTICLES)**  **MAHARASHTRA**   |  |  |  | | --- | --- | --- | | **Article** | **Description of instrument** | **Stamp Duty** | |  | **Affidavit (Exemption:** for use in the Court or Tribunal**)** | ` 100 | |  | **Agreement** |  | |  | relating to shares & securities | 0.005% of the value of security | |  | relating to purchase or sale of bullion | 0.005% of the value of gold/silver | | (g-a)(i) | Development Rights Agreement | Same as in the case of a Conveyance as on the market value | | (g-a)(ii) | relating to purchase of units in any scheme by an investor from a developer – when the investor sells the unit a set-off of the duty paid would be allowed against duty on Conveyance under Art. 25 | Same as in the case of a Conveyance as on the market value | | (g-d) | relating to transfer of tenancy rights for residential property in:   1. Greater Bombay having area up to 300 sq. ft. | ` 200 | | having area above 300 sq. ft. | Same duty as on a Conveyance on the market value | | 1. Thane, Pune, Nagpur, Navi Mumbai  having area up to 300 sq. ft. | ` 200 | | having area above 300 sq. ft. | Same duty as on a Conveyance on the market value | | 1. Other Municipal Corporations having area up to 300 sq. ft. | ` 200 | | having area above 300 sq. ft. | Same duty as on a Conveyance on the market value | | relating to transfer of tenancy rights for non-residential property in the above on a locations for any area | Same duty as Conveyance on the market value | | (g-e) | relating to hire purchase | Same duty as on a Lease | | (h) | 1. relating to certain advertising contracts | ` 2.5 for every ` 1,000 | | 1. relating to contracts for exclusive broadcasting / exhibition rights of a film | (approx. 0.25%) if the amount | | 1. relating to specific performance by a person where contract > ` 100,000 | agreed is up to ` 10 lakhs | | 1. relating to assignment of Copyrights | and ` 5 for every ` 1,000 (approx 0.5%) if the amount exceeds ` 10 lakhs | | 1. relating to creation of any obligation, right or interest and having monetary value | ` 1 for every ` 1,000 (approx. 0.10%) if the amount agreed is up to ` 10 lakhs and ` 2 for every ` 1,000 (approx. 0.20%) if the amount exceeds ` 10 lakhs. | | General (not otherwise provided for) | ` 100 | |  | **Agreement for Deposit of Title Deeds, Pawn, Pledge or Hypothecation** Deposit of title deeds securing amount of loan or for pawn, pledge or hypothecation securing amount of loan | Re. 1 for every ` 1,000(approx. 0.1%) or part thereof of the amount secured by the deed if the amount secured is up to ` 5,00,000 and ` 2 for every ` 1,000 (approx. 0.2%) in all other cases | |  | **Articles of Association of a Company** On the share capital, thereof subject to a nominal capital or increased share capital  (Exemption S. 25 companies) | ` 1,000 for every ` 5,00,000 or part thereof subject to a maximum of ` 50,00,000 (approx. 0.2%) | |  | **Award** by an Arbitrator or Umpire (not being an Award directing a Partition) |  | |  | On the property value to which the award relates | ` 5 for every ` 500 or part thereof subject to a maximum of ` 100 | |  | Other cases | ` 100 | |  | **Cancellation (Exemption:** Revocation of will) | ` 100 | |  | **Certificate or Other Document** (Shares, Scrip, Stock, etc. on face value and premium) | Re. 1 for every ` 1,000 or part thereof (approx. 0.1%) | |  | **Composition Deed** | ` 200 | |  | 1. **Conveyance (on the true market value) Movable Property** | ` 15 for every ` 500 or part thereof (approx. 3%) | |  | 1. (A) **Immovable Property** | Duty on every ` 500 of Market Value | |  | Within the Municipal limits of any urban area | 5% of market value of property | |  | Within the limits of any Municipal Council / Panchayat /Cantonment of any area within MMRDA | 4% of market value of property | |  | Within the limits of any Gram Panchayat | 3% of market value of property | |  | 1. High Court order u/ s. 394 of the Companies Act, in respect of amalgamation or reconstruction of companies | 10% of market value of shares allotted in exchange and consideration if any paid but not exceeding the higher of : i) 5% of market value of the immovable property located in Maharashtra or  ii) 0.7% of market value of shares allotted in exchange and consideration if any paid | | **Special Points for Conveyance:**   1. An agreement for sale providing for transfer of possession shall be deemed to be a ‘Conveyance’ and will be stamped accordingly. However, a set off of the duty paid will be given at the time of execution of the conveyance. 2. Assignment of copyrights is exempt from stamp duty. 3. In case of amalgamation/reconstruction of companies, the market value of the shares of transferee company is the value of shares on stock exchange on the "appointed day" mentioned in the scheme or else the date of the court’s order. If the shares are not listed or not quoted, the market value means the value of shares to the transferor company or the value as determined by the Collector. | | | | **27** | **Counterpart/Duplicate Maximum** | ` 100 | | **32** | **Exchange** | Same duty as on a conveyance but on the market value of that property which has the greater value | | **34** | **Gift** (other than a settlement, will or transfer) | Same duty as on conveyance. In case of a gift to spouse, brother, sister, lineal ascendants or descendants @ ` 10 for every ` 500 or part thereof (approx. 2%) of market value | | **35** | **Indemnity Bond** | ` 200 | | **36** | **Lease** including sub-lease: |  | |  | 1. where lease period is on the following values: | Same Duty as on conveyance | |  | 1. up to 5 years | 1. 10% of market value | |  | 1. 5 years to 10 years with a renewal clause | 1. 25% of market value | |  | 1. 10 years to 29 years with a renewal clause | 1. 50% of market value | |  | 1. exceeding 29 years or for indefinite period or for perpetuity | 1. 90% of market value | |  | **Special Points for Lease:**   1. Consideration such as premium, security deposit, advance, will for market value be treated as consideration passed on. 2. An agreement for lease will not be treated as lease if there is no immediate demise – **Atur India P Ltd., (1994) 2 SCC 497** |  | | **36A** | **LEAVE & LICENCE** |  | |  | 1. Where the agreement is for a term not exceeding 60 months and relates to property within : |  | |  | 1. the District of Mumbai City and Mumbai suburban district, 2. **if relating to Residential Premises** and where |  | |  | 1. Average annual rent + security deposit < ` 2,50,000 for a single term of 12 months | ` 750 for every term of 12 months or part thereof | |  | 1. Average annual rent + security deposit > ` 2,50,000 but <  ` 5,00,000 for a single term of 12 months | ` 1,500 for every term of 12 months or part thereof | |  | 1. Average annual rent + security deposit > ` 5,00,000 but <  ` 20,00,000 for a single term of 12 months | ` 3,000 for every term of 12 months or part thereof | |  | 1. Average annual rent + security deposit > ` 20,00,000 for a single term of 12 months | ` 5,000 for every term of 12 months or part thereof | |  | 1. **if relating to Non-Residential Premises** | Twice the amount mentioned above in A to D | |  | 1. the Municipal Corporation of Thane, Pune, Nashik, Nagpur, Navi Mumbai, Pimpri, Aurangabad, Kolhapur, Solapur, Sangli, Amrawati, etc. 2. **if relating to Residential Premises** and where |  | |  | 1. Average annual rent + security deposit > ` 2,50,000 for a single term of 12 months | ` 500 for every term of 12 months or part thereof | |  | 1. Average annual rent + security deposit > ` 2,50,000 but <  ` 5,00,000 for a single term of 12 months | ` 1,000 for every term of 12 months or part thereof | |  | 1. Average annual rent + security deposit > ` 5,00,000 for a single term of 12 months | ` 2,000 for every term of 12 months or part thereof | |  | 1. **if relating to Non-Residential Premises** | Twice the amount mentioned in A to C above | |  | 1. *any other area besides the above* 2. **if relating to Residential Premises** and where |  | |  | 1. Average annual rent + security deposit < ` 2,50,000 for a single term of 12 months | ` 300 for every term of 12 months or part thereof | |  | 1. Average annual rent + security deposit > ` 2,50,000 but < ` 5,00,000 for a single term of 12 months | ` 600 for every term of 12 months or part thereof | |  | 1. Average annual rent + security deposit > ` 5,00,000 for a single term of 12 months | ` 1,200 for every term of 12 months or part thereof | |  | 1. **if relating to Non-Residential Premises** | Twice the amount mentioned in A to C above | |  | 1. Where the agreement is for a period exceeding 60 months with or without renewal clause | Duty as on a Lease | | **37** | **Letter of Allotment of Shares** | ` 1 | | **39** | **Memorandum of Association** |  | |  | 1. if accompanied with Articles | ` 200 | |  | 1. if not so accompanied | Same duty as on Articles of Association under Article 10 | | **40** | **Mortgage Deed** |  | |  | 1. Where possession is given | Same duty as on conveyance on the amount secured by the deed | |  | 1. Where possession is not given | ` 5 for every ` 1,000 or part thereof (approx. 0.5%); subject to a Maximum of ` 10,00,000 and a Minimum of ` 100 | | **42** | **Notary** (attestation, etc., by Notary Public) | ` 25 | | **46** | **Partition**  Special Points : |  | |  | 1. The value of largest share remaining after the partition will be excluded for duty | ` 10 for every ` 500 or part thereof (approx. 2%) of the | |  | 1. In case of order of partition by a Civil Court rebate will be given to  extent of the Court Fees paid | the market value of the separated share or shares | |  | 1. ` 100 in case of agricultural land |  | | **47** | **Partnership** |  | |  | 1. No contribution or cash contribution < ` 50,000 | ` 500 | |  | 1. Cash Contribution > ` 50, 000 | ` 500 for every ` 50,000 or part thereof (approx. 1%) subject to a maximum of ` 5,000 | |  | 1. Contribution by way of property (not cash) | Same as on a conveyance on the market value of property | |  | 1. **Dissolution or Retirement** |  | |  | 1. where any property is transferred to a partner other than the one who brought it | Same as on a conveyance on the market value subject to a minimum of ` 100 | |  | 1. in any other case   **NOTE:** There is no mention about an LLP nor is there a separate Article dealing with the same | ` 200 | | **48** | **Power of Attorney** |  | |  | 1. for sole purpose of registration | ` 100 | |  | 1. for suits in small causes court | ` 100 | |  | 1. for acting in a single transaction to one or more person | ` 100 | |  | 1. for acting in more than one transaction or generally to one person | ` 100 | |  | 1. for acting in one or more transactions or generally to one or more persons | ` 100 | |  | 1. (i) for or without consideration and authorising to sell an immovable property | Same as on a conveyance on the market value | |  | (ii) for authorizing to sell immovable property without consideration and given to parents, siblings, spouse, children, grand children, other close relatives | ` 500 | |  | 1. for construction, development, sale, etc. to a developer or promoter | Same as on a conveyance on the market value | |  | 1. in any other case | ` 100 | |  | **Special Points**:   1. In case of (f), set off of duty paid will be given on execution of the conveyance 2. Duty payable under (g) will be ` 100 only if duty is already paid under article 5(g-a) on ‘Development Rights’ Agreement |  | | **52** | **Release** whereby a person renounces a claim upon other person or property If the release is of an ancestral property in favour of certain specified relatives  Every other Case | ` 200  Same duty as on a conveyance as on the market value of the share, interest or part renounced | | **54** | **Security Bond** (where the amount secured exceeds ` 2,500) | ` 5 for every ` 1,000 or part thereof (approx. 0.5%) of the amount secured Maximum ` 10,00,000 Minimum ` 100 | | **58** | **Surrender of Lease** |  | |  | 1. without consideration | ` 200 | | 1. with consideration | Same duty as on a Conveyance on amount of consideration | | **59** | **Transfer of marketable debentures** | Re. 0.50 for every ` 100 (approx. 0.05%) of the consideration amount | | **60** | **Transfer of lease by way of assignment** | Same as on a conveyance on the market value | | **61** | **Trust** |  | |  | **A. a) where there is disposition of property** |  | |  | 1. for charitable or religious purpose | ` 10 for every ` 500 or part thereof (approx. 2%) | |  | 1. in any other case where there is no disposition | Same as on a conveyance onthe amount settled | |  | b) where there is no disposition |  | |  | 1. Revocation | Maximum ` 200 | | **SOME IMPORTANT INSTRUMENTS UNDER INDIAN STAMP ACT** | | | | **27** | **Debenture being a marketable security Transferable** |  | |  | by endorsement and exceeding ` 1,000 | ` 1.85 for every ` 500 or part thereof (approx. 0.375%) | |  | by delivery and exceeding ` 1,000 | ` 3.75 for every ` 500 or part thereof (approx. 0.75%) | | **62** | **Transfer of shares** | 25 paise for every ` 100 or part thereof (approx. 0.25%) |   ***AD* VALOREM COURT FEES PAYABLE UNDER THE BOMBAY COURT FEES ACT, 1959**  **(Wherever Applicable)**   |  |  | | --- | --- | | **Amount or Value of Subject Matter \*** | **Court Fees** | | ` 10,000 | ` 1,505 | | ` 25,000 | ` 3,530 | | ` 50,000 | ` 5,080 | | ` 75,000 | ` 5,830 | | ` 1,00,000 | ` 6,430 | | Over ` 1,00,000 and up to ` 11,00,000 | ` 6,430 + ` 200 for every ` 10,000 or part thereof (approx. 2%) | | ` 11,00,000 | ` 26,430 | | Over ` 11,00,000 | ` 26,430 + ` 1,200 for every ` 1,00,000 or part thereof (approx. 1.2%) – subject to a maximum fee of ` 3,00,000 | | ` 2,38,97,500  ` 2,50,00,000  \* Only some of the slabs are given | ` 3,00,000  ` 3,00,000 (maximum fee) | |  |  |  |   Bottom of Form |
|  |