

Article

Stamp duty on Lease Transactions in Maharashtra

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The provisions of Indian Stamp Act, 1899 are applicable to whole of India and its territories excluding the states which have their own legislations on the stamp duty payable there. The Indian Stamp Act has been adopted by almost all the states with or without amendments in the main Act. However, the following are the states where separate stamp act have been enacted:

- Karnataka Stamp Act, 1957
- Bombay stamp Act, 1958
- Gujarat Stamp Act (provisions of Bombay Stamp Act are applicable)
- Kerala Stamp Act, 1959
- Rajasthan Stamp Act, 1998

Stamp Duty in Maharashtra (governed by the Bombay Stamp Act, 1958)

The stamp duty on the lease agreements to be executed in the State of Maharashtra is governed by Article 36 read with Article 25 of Schedule 1 to the Act. The term "Lease" has been defined in the Bombay Stamp Act in Section 2(n) which can be read as:

"lease" means a lease of immovable or movable (or both) property, and includes also, -

- (i) a Patta;*
- (ii) a Kabulayat, or other undertaking in writing not being a counterpart of a lease to cultivate, occupy or pay or deliver rent for immovable property;*
- (iii) any instrument by which tolls of any description are let;*
- (iv) any writing on an application for a lease intended to signify that the application is granted;*
- (v) a decree or final order of any Civil Court in respect of a lease;*

Provided that, where subsequently an instrument of lease is executed in pursuance of such decree or order, the stamp duty, if any, already paid and recovered on such decree or order shall be adjusted towards the total duty leviable on such instrument.

Definition of Lease under the Indian Stamp Act

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Section 2(16) of the Indian Stamp Act, 1899 defines lease as –

(16) "Lease". - "lease" means a lease of immovable property and includes also-

- a. a patta;*
- b. a kabuliyat or other Undertaking 'in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for immovable property;*
- c. any instrument by which tolls of any description are let;*
- d. any writing on an application of a lease intended to signify that the application is granted;*

Bombay Stamp Act, clearly includes lease of moveable property in the ambit of definition of lease, whereas Indian Stamp Act as applicable to other states does not. Hence, while stamp duty is levied on the lease of moveable property in the State of Maharashtra, the other states do not have such provisions.

So, any Lease transaction executed in Maharashtra will be stampable on the rates mentioned in Article 36 read with Article 25 as mentioned above.

The stamp duty on Lease, including under lease or sub-lease and any agreement to let or sub-let or any renewal of lease under Article 36 shall be:

Description of Instrument	Stamp duty payable
(a) where the lease purports to be for a term not exceeding 5 years	The same duty as is leviable on a Conveyance under clause (a),(b),(c) or (d), as the case may be, of Article 25, on 10 % of the market value of the property
(b) where the lease purports to be for a term more than 5 years but less than 10 years, with a renewal clause contingent or otherwise	The same duty as is leviable on a Conveyance under clause (a),(b),(c) or (d), as the case may be, of Article 25, on 25 % of the market value of the property
(c) where the lease purports to be for a term more than 10 years but less than 29 years, with a renewal clause contingent or otherwise	The same duty as is leviable on a Conveyance under clause (a),(b),(c) or (d), as the case may be, of Article 25, on 50 % of the market value of the property
(d) where the lease purports to be for a term more than 29 years or in perpetuity or does not purports for any definite period, or lease for a term more than 29 years with a	The same duty as is leviable on a Conveyance under clause (a),(b),(c) or (d), as the case may be, of Article 25, on 90 % of the market value of the property



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renewal clause contingent or otherwise	
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For the purpose of calculation of stamp duty,

1. any consideration in the form of premium, advance, security deposit or by whatever name called, shall for the purpose of market value, be treated as consideration passed on.
2. The renewal period, if specifically mentioned, shall be treated as part of the present lease.

Article 25 states that stamp duty applicable on conveyance of moveable property shall be Rs. 15 for every Rs. 500 or part thereof of moveable property.

Hence based on the understanding above, Article 36 read with Article 25, the stamp duty applicable on the lease agreement would be 0.3% of the market value of the equipment leased out.

Relief on stamp duty applicable to Machineries by further notification

In the year 1996, the government by a notification¹ has reduced the stamp duty on lease of machineries which have been brought specifically for the manufacturing activities. As notified, the stamp duty on such machineries will be applicable as:

Description of Instrument	Stamp duty payable
Where lease rent is fixed and no premium is paid	1% on the annual average rent irrespective of the period for which the lease deed is executed subject to a maximum of Rs. 10,000/-
Where the lease is granted for a premium or money advanced in addition to fixed rent	1% on the total amount of premium or money advanced plus annual average rent irrespective of the period for which the lease deed is executed subject to a maximum of Rs. 10,000/-

¹ Notification no. STP 1693/3979-CR-834/M-1 dated 21.05.1996

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However, for availing the benefit of this notification, following conditions must be satisfied:

- The machinery should be brought particularly for manufacturing activities;
- The agreement should be executed by leasing companies registered under Companies Act, 1956, statutory corporations and other bodies corporate who are in the business of leasing;
- Such machinery is chargeable to stamp duty under clause (2) to (c) of the Article 36.

Typically, the parties would execute a master agreement (more often called the master lease agreement) and a rental schedule, with regard to a lease transaction to be undertaken. There lies ambiguity on the stamp duty applicable to the master agreement and the rental schedule.

To get clarity on the issue one needs to understand, that there is a difference between an agreement to lease and a lease agreement. While a master agreement would simply lay down the terms and conditions applicable to both the parties once a lease commences, the execution of the rental schedule marks the commencement of a lease.

Document witnessing a lease

The duty is imposed on an instrument creating or bringing a lease not on a document merely recording it. Since there are two documents, one recording the lease and the second causing the lease to come into effect, the document merely recording the lease will not be dutiable as the lease agreement. Relying on the various judgments in the past such as *Life Insurance Corporation of India vs. Dinanth Mahadeo Tembhekar & Others*, AIR 1976 Bom 395 (judgment dated 11th February, 1976, <http://indiankanoon.org/doc/566172/>), *Greaves Cotton & Co. Ltd vs. State of Maharashtra*, 2005 57 SCL 19 Bom (judgment dated – 24th August, 2004, <http://www.indiankanoon.org/doc/483972/>), *Om Prakash Berlia v. Unit Trust of India*, AIR 1983 Bom 1 (judgment dated 28th June, 1982) and *Hindustan Lever Ltd. And Another vs State Of Maharashtra And Others*, (1990) 92 BOMLR 480 (judgment dated 28 August, 1990) and so on, it was established that there may be documents executed, executory as well executable instruments which may take the formal shape of agreements or which may be spelt out by the documents that pass between the parties, but the duty is applicable on the instrument and not on the transaction.

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The State could demand stamp duty de hors an instrument and only out of a transaction.

In case of *Greaves Cotton & Co. Ltd vs. State of Maharashtra*, (supra) the question dealt was whether stamp duty was chargeable on mere allotment of convertible debentures, without an instrument of debenture having been issued and the only instrument having been issued being the share certificate upon conversion of debenture. In this case, fully convertible debentures were allotted but no debenture certificate was issued and the company issued on equity share certificate with regard to the fully convertible debentures. The company contended that since there was no debenture certificate issued, or an instrument whereby the company would be liable to pay stamp duty, the company had not contravened the provisions of law. The extract of the judgment are as below:

“...Section 2(d) which defines the word "chargeable" which means, as applied to an instrument, executed or first executed after the commencement of the said Act, chargeable under the said Act, and as applied to any other instruments, chargeable under the law in force in the State when such instrument was executed or, where several persons executed the instrument at different times, first executed. He also referred to Section 2(1) which defines "instrument" which reads under:-

"instrument" includes every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded, but 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."

If the construction of the document is such that it would lay down the general terms and conditions that the parties will follow during the continuance of the lease independently undertaken, it would be inappropriate to say that such a document would create a lease as determined under section 2(n) of the Bombay Stamp Act as there is no right being transferred for the enjoyment of the property/ equipment.

Hence, while the master agreement is only an agreement to lease, it does not make a lease come into effect. The master agreement only lays down the terms and conditions that would become applicable once the lease commences. The lease would commence with the execution of the rental schedule. Hence the stamp duty applicable on master agreement would be the same as applicable to other agreements as stated in Article 5 of the stamp schedule. The stamp duty applicable on the rental schedule would be that applicable on leases as explained in detail above.

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Place of Execution

Stamp duty is payable at the place of execution of the agreement. The place of execution of the agreement can be anywhere in India. Parties are free to choose their place of execution.

Differential Stamp Duty

Since duty is payable at the place of execution and place of execution may be anywhere in India, parties are free to choose their place of execution. The agreements can be executed in a state where the parties have a matter or thing to be done in that state or if the asset is situated in that state. The parties, may execute the rental schedule and the agreements in another state, where the stamp duty burden may be lesser in comparison to that applicable in State of Maharashtra. However, once the agreements or even the copy of the agreements would reach Maharashtra, differential stamp duty would become applicable as under Section 18 and 19 of the Act.

Where the asset is situated in more than one state

As the duty is payable at the time of execution of the agreement, the situation of the property at the time of execution of the agreement would be of relevance. For instance if the asset is purchased from West Bengal and is to be leased out in Maharashtra, however at the time of execution of the agreement, if the asset is still in West Bengal, the provision of differential duty would not be applicable.

How the applicable duty is to be paid?

Either in any of the following two ways:

- Non - Judicial Stamp Paper as per Rule 6 of the Act, or
- Impressed Label /Special Adhesive Stamp Paper as per Rule 11 of the Act
- By way of franking
- E-payment

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