

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.

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

The stamp duty on Lease, including under lease or sub-lease and any agreement to let or sub-let or any renewal of lease 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 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 90 % of the market value of the property

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.

Relief on stamp duty applicable to Machineries by further notification

In the year 2005, 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

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.

If any of these conditions are not fulfilled, the stamp duty will be calculated as per Article 36 of the Act.

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