

**A Study on the Stamp Duty Collection System of Title
Deeds with Special Reference to the Western
Province, Sri Lanka**

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The work described in this dissertation was carried out under the supervision of Dr. Pivithuru Janak Kumarasinghe, Senior Lecturer of the Department of Business Economics and any report this has not been submitted in whole or in part to any university or any other institute for another degree / examination or any other purpose.

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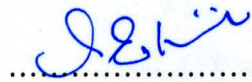
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Hereby I certify that Mr. Charith Udara Suwandarathna, GS/M.Sc./REMV/3776/09, duly completed the research titled "A Study on the Stamp Duty Collection System of Title Deeds with Special Reference to the Western Province, Sri Lanka" under my supervision & recommended for final submission.



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ABSTRACT

Stamp duty is the one of the indirect tax charged based on the value of the property conveyed. The concept of stamp duty is to preserve the interest of the people by keeping with the economic equity and efficiency. Stamp duty is the second highest source of income to the Western Provincial Council and it is distributed to the Local Authorities. Inefficiency of the stamp duty collection system causes inequality between tax payers, excess tax burden, reduce return on real estate properties, negative attitude on entire tax system etc. This research is study on the stamp duty collection system on Title Deeds in Sri Lanka to find a pragmatic ways and means to improve the present system. It was used three types of questionnaires to measure tax awareness of different stakeholders. Economic impact of under declaration of property values is measure by analyzing sample of Title Deeds & Stamp Duty Cases. Stamp duty cost efficiency is compared with Hong Kong & Singapore. Present institutional, administrative and legal setup is analyzed and it was compared with two Asian and a European country i.e. India, Hong-Kong and England & Wales respectively.

About 73% of the Buyers/Transferees under declared their properties & only 35% people consider about stamp duty payable before his decision to purchase the property. Buyers/Transferees who stated the actual consideration on the Title Deed has the lower negative opinion of the entire tax system. Tax compliance is depends on their employment, educational level, salary scale, types of use & types of deed etc. Cost efficiency of Sri Lanka is inferior to Hong Kong & Singapore i.e. 11.44% in the year 2010. Revenue & cost per deed is drastically reduced during 2008 to 2010. That is because of the number of deeds registered over the period has been increased at an increasing trend compared to the rise of expenditure. From the every deed executed, average of 303% under declared and Rs. 48,490 causes loss to the Western Provincial Council. It was taken average of 2 years to settle stamp duty cases. If all the deeds are correctly pay its stamp duty, it will be the highest income source for the Western Provincial Council & It will be added 0.35% to the Gross Domestic Product of Sri Lanka. The structure of stamp duty collection system in Sri Lanka is different from other countries because verification of the stamp duty payment is done after the registering the property at the Land Registry. Therefore Sri Lanka needs to computerize the land registration and stamp duty collection procedure but it should be an integrated system among the authorities.

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ABBREVIATIONS

ATD	Abstract of Title Deed
ASP	Agreement for Sale & Purchase
BOI	Board of Investment
CARD	Computer Aided Registration of Deeds
DR	Department of Revenue
GDP	Gross Domestic Product
HMRC	Her Majesty's Revenue & Customs
LR	Land Registry
RGD	Registrar General's Department
SDLT	Stamp Duty Land Tax
SD	Stamp Duty
UDA	Urban Development Authority
UK	United Kingdom
WP	Western Province
WPC	Western Provincial Council

CHAPTER 01

INTRODUCTION

1.1 Title of the Research

A study on the stamp duty collection system of Title Deeds with special reference to the Western Province, Sri Lanka

1.2 Background of the Problem

The 13th amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka introduced the concept of Provincial Councils. It has authority to levy taxes, duties and fees under Section 36 of List I of the Ninth Schedule. Stamp duty is the one of its tax source based on the value of instrument used in the various transactions. Alm et al (2004) identifies stamp duty as two sub-classification; “judicial stamp duties” and “non-judicial stamp duties”. Judicial stamp duties are fees collected from litigants in courts, and are best view as court fees. Non-judicial stamp duties are typically a one-time charge on the transfer of immovable property.

Registration of Documents Ordinance No 23 of 1927 governs the requirement for the transfer of ownership of any immovable property and provisions in the Notaries Ordinance lays down the procedure for such transfer. Notaries or Attorneys needs to state the consideration in to a deed which is certified. So Based on that consideration Provincial Council levy taxes called Stamp Duty.

Stamp Duty Act No. 43 of 1982 which was administered by the Department of Inland Revenue replaced the Stamp Ordinance of 1909 which was applied for the whole Island. However, the 13th Amendment of the Sri Lanka Constitution enacted in 1987 & it was devolved the administration of Stamp Duty relating to transfer of the immovable properties and court proceedings to the respective Provincial Councils. At present stamp duty of Western Province is administrated by the Financial Statute of the Western Province No 06 of 1990. Stamp duty rates for the Deed of Gifts are 3% for the first Rs.50,000 & 2% on the balance amount and for the other Transfers, 3% on the first Rs. 100,000 & 4% on the balance amount.

According to the section 48 of the Financial Statute of the Western Province No. 06 of 1990 stated that stamp duty is chargeable on the value of the property conveyed & the

“value” refers in the section 106 as the open market value on the date of transaction. If any instrument is declared lower value than the market value is called as under declaration. Generally it is said that properties are under declared for evasion of stamp duty tax in Sri Lanka. Stamp duty is the one of the major field that contributes about 20% of the revenue to the Provincial Councils but authorities pays least consideration on this area because it is transferred to the local authority. On the other way, main revenue source of local authorities is the rates collected based on the annual value of the properties.

The provincial revenue structure has remained unchanged over the past two decades of fiscal devolution continuing to mobilize less than a fifth of expenditure needs at current levels of service delivery. Provinces collect less than 0.5% of GDP suggesting that the overall tax effort is inadequate. From the twenty items of revenue assigned to provinces, only three sources account for as much as ninety percent of local revenue. There are Business Turnover Tax on whole sale and retail sales, Motor Traffic Fees, Stamp Duty and Court Fines. Stamp duty is transferred to local authorities. Therefore despite the larger number of sources assigned, the tax assignment to provinces under the 13th Amendment is weak and ensuing revenues are low by any standards (Asoka, 2010).

Alm et al (2004) & Sirivastava et al (2006) discussed about the higher stamp duty rates in most of the Indian States and its effects to under-declaration of property values for evasions of stamp duty. Alm et al (2004) indicates that the high duty rates coupled with weak tax administration, leads to widespread evasion of the tax through under-declaration. This under-declaration of property values directly affects collection of other taxes, among them, property taxes and capital gain tax. Moreover, it indirectly affects the collection of all taxes through the impact of under-declaration on the circulation of black money. Simulation indicate that revenue lost due to a lowering of stamp duty rates closer to international levels are quite likely to be recovered in higher collections of other taxes. In Sri Lanka, Capital gain tax, Wealth tax, Gifts tax had been imposed in the year 1958. Then Estate duty and Gifts tax had abolished in the year 1985. Later Wealth tax & Capital gains tax had been abolished in the year 1992 and 2002 respectively.

In a different view, Rupananda et al (2002) & Premathilake (1999) considered about Stamp duty as transaction cost by considering on buyers point of view. Hence Rupananda (2002) stated that cost of transaction has increasingly become a major issue in the recent past as the parties are called upon to bear this cost in addition to the value of land, level of which, also has increased. It is evident that the proper functioning of the property market is impaired due to high cost of property transaction. Generally the cost of transactions discussed above amount to about 7% to 10% of the value of the property. Premathilake (1999) on similar view and it is stated that there is a stamp tax on the prices of the property. This, of course, increase the total cost over the land & building & in turn causes to increase the secondary market price.

World Bank (2000) stated that the State land registry also does not examine the validity of land values/price. Colombo land registry has, of course, a very limited capacity thereby land registry activity is not encouraged for a prudently developed property markets in the city of Colombo. Ariyawansa (2008) stated that people can go through loopholes of the existing legal and administrative system and prevent from tax and other official payments. Stated property values in legally registered deeds, of course, are considerably below to the actual transaction. The situation, in fact, seems not empirically tested and documented. Since such transactions are generally accepted as 'formal sector', investigators discuss more about the informal sector only. Except some mortgage properties, none of property registrations is checked twice regarding the accuracy of stated value/price of the relevant property. But objective of the Land Registry is to "assist the public to secure their rights by registration" but not the collection of taxes.

Ariyawansa (2008) stated that the above situation has dual effects on the land and property price/values. In some cases, official document shows less property values while the actual money transaction is higher keeping the property price higher in practice. On the other hand people try to over-states the deed consideration to get increases the loan amount. Then the net-results of this type of cases are that "sated loses its, tax income" and "society gets increase of the property price". Finally society get higher tax burden on property transactions and this leads to imperfection of the property market.

1.3 Justification of the Research

Why people has to pay stamp duty on their property transactions. What is the concept of stamp duty? Government responsibility is to preserving the legal interest of the properties by properly maintains & update the land records and it helps to facilitate the investment on lands, minimize the land frauds and other costs etc. Therefore government is charged stamp duty to cover the cost of maintaining such system and revenue generation for resource allocation on public works. Stamp duty is the one way of land value capture mechanism. Why this land value should be captured? Government carries out infrastructure projects, development projects etc for development of the country by spending money which was collecting from poorest of the poor to wealthy persons. Because of such development it increases the value of the land in particular areas. Administrative and cost efficiency of the stamp duty collection system is positively effect on societal wellbeing of the country.

1.4 Problem Statement

Many countries used land as a main component of their tax base. Land taxation includes local tax, transfer taxes, stamp duty, capital gains taxes, value added taxes, inheritance taxes etc. Perhaps the most common alternative form of land tax is one on land transfers. In fact, land transfers may sometimes be subject to various taxes and charges – land transfer taxes, stamp duties, notaries' fees, registry charges, value-added taxes and, in some instances, succession and gift taxes. Stamp duty is the one of its tax source based on the value of instrument used in the various transactions. Alm et al (2004) identifies stamp duty as two sub-classification; “judicial stamp duties” and “non-judicial stamp duties”. Judicial stamp duties are fees collected from litigants in courts, and are best view as court fees. Non-judicial stamp duties are typically a one-time charge on the transfer of immovable property.

Government responsibility is to preserving the legal interest of the properties by properly maintains & update the land records. Government is maintaining land records over the period of time therefore when the time of ownership changes (i.e. transferring or gifting of properties), it is essential to have a payment by the new owner at least on the cost perspective. For example, Estate duty is a tax on the total market value of a person's assets (cash and non-cash) at the date of his or her death. On the other way Duties are generally inputs and are tagged with a “cost” perspective.