

What is stamp duty?

Stamp duty is a tax that is levied on instruments; it is payable to the Federal and State Government on instruments such as Sale Agreements, Tenancy Agreements, Contracts or even documents such as Letters and Certificates of admission, Insurance Policies, etc.

1. Where do you pay Stamp Duty?

The Federal Government has the sole authority to impose charge and collect Stamp Duty in respect of documents relating to matters between a Company and an individual, group or body of individuals. This will be paid to the Federal Internal Revenue Service – Stamp Duties Office.

The State Government has authority to collect Stamp Duty with respect to documents executed between individuals or persons at such rates imposed or charged as agreed with the Federal Government. This means documents executed in transactions between individuals or between an individual and a group of individuals. Stamp Duty should be paid to the State Internal Revenue Service – Stamp Duties Office.

See: **Section 4(1) & (2) of the Stamp Duties Act, 2004.**

2. What is the effect of stamping instruments that are required under the law to be stamped?

The legal effect of stamping instruments that are required under the law to be stamped is that stamping gives such instrument legal validity and makes the document binding on the parties to the transaction.



An instrument which requires stamping but not stamped is not admissible in evidence in court.

See: **Section 19 of the Stamp Duties Act, 2004.**

3. What are the categories of stamp duty?

Stamp Duty can be charged ad valorem or as fixed duty.

An ad valorem tax is a tax based on the assessed value of an item, such as real estate or personal property. The Duty payable varies with consideration on the instrument.

Fixed stamp duty is a duty that does not vary with the consideration of the instrument being stamped. The same duty is payable irrespective of the value of the instrument.

4. What are the documents required to be stamped under the fixed duty category?

The following are some of the chargeable transactions in the Fixed Duty Instruments category: Power of Attorney (Revocable and Not Land Related), Wills, Oaths and Affidavits declarations, Memorandum and Articles of Association, Certificate of Occupancy (C of O), Appointment of Receiver, Appointment of Trustee or of Attorney, Memorandum of Understanding (related to ordinary agreement), Joint Venture Agreements (JVA), Appointment of receiver etc.

See: The Schedule to the Stamp Duties Act, 2004.



5. What are the documents required to be stamped under the Ad valorem category?

While some of the Instruments that are chargeable under Ad valorem category of the Stamp Duties Act are Appraisement or Valuation of Property, Deed of Assignment, Tenancy /Lease Agreement, Deed of Gift, Deed of Release/Surrender, Loan Agreements, Power of Attorney (Irrevocable/Land Related), Sales Agreement, Share Increase (pre-incorporation), Legal Mortgage or Debentures, Insurance Policies, Contract Agreements, Legal Mortgage (up stamping).

See: The Schedule to the Stamp Duties Act, 2004.

6. What is the evidence that stamp duty has been paid on a document?

The document or instrument will be stamped. This means that the document will be impressed upon by means of an engraved or inked block die, adhesive stamps or digitally tagged with electronic stamp or notional stamp on an electronic receipt. **Section 5 Stamp Duties Act.**

7. Is there a time limit for the payment of stamp duty?

Section 23 (1) Stamp Duties Act provides that except where express provisions are made in the Stamp Duties Act, any unstamped or insufficiently stamped instruments may be stamped within 40 (Forty) days from its first execution.



All duties due that remain unpaid are recovered with fines and penalties in a summary manner.

See: Section 110 & 111 of the Stamp Duties Act, 2004

8. In what circumstances can the requirement to pay Stamp Duty be waived?

Section 52 & 55 Stamp Duties Act exempts certain documents in a Conveyance on Sale such as where ad valorem duty has been paid on a decree or order conveying interest in Property to a Purchaser or any other person acting in his behalf or by his direction, any Conveyance based on such a decree or order shall be exempt from ad valorem duty.

Section 102 (3) Stamp Duties Act provides that before the issue of such a loan capital, a statement of the amount to be secured is to be submitted to the Corporate Affairs Commission and where it is shown to the satisfaction of the Corporate Affairs Commission that duty has been paid in respect of a mortgage or marketable security on any trust deed or other document securing a loan capital, such a loan capital shall be exempt from Stamp Duty.

Section 104 Stamp Duties Act further exempts documents in reconstructions and amalgamations such as a conveyance or transfer of sale assigning debts whether secured or unsecured of the existing company or documents vesting or relating to the vesting of the undertaking or shares in the transferee Company. However, this exception shall not apply to debts (apart from debts due to banks or trade creditors) incurred less than two years before the proper time for making a claim of exemption.



9. **What is the meaning of up-stamping?**

Up-stamping of mortgages refers to the practice or process of payment of additional stamp duties on a mortgage document in a transaction as a result of the increased facility granted over an earlier mortgage. In other words, up-stamping involves getting additional loan from the mortgagee while using the property used for the first loan as security. In this regard, in the new mortgage created, the document will be taken to the stamp duties office for stamping.

For further enquires please contact info@aolegal.net.