

Ethiopia's Stamp Duty Proclamation No. 110/1998:

An Old Instrument with
Uneven Practical Application



Proclamation No. 110/1998
Federal Democratic Republic of Ethiopia



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STAMP DUTY



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1. Introduction

Proclamation No. 110/1998, the Stamp Duty Proclamation, was issued by the House of Peoples' Representatives and published in the Federal Negarit Gazette on 12 May 1998. It entered into force on the date of publication. The Proclamation is among the older fiscal instruments still in force in Ethiopia. It has not been repealed, it has not been comprehensively amended, and it continues to govern the imposition, computation, liability, and collection of stamp duty on a defined list of instruments. Its preamble records that it had become necessary to amend the stamp duty levied on documents in a manner that would contribute to the development of art, the activities of financial institutions, and the transfer of capital assets. The Proclamation was issued under Article 55(1) and (11) of the Constitution.

The Proclamation's age is not merely a matter of chronology. It has practical consequences. The rates prescribed in its Schedule were set in 1998 and have not been revised, so their real value has eroded substantially. Several of its procedural provisions refer to institutions that have since been reorganised, and its enforcement has been uneven across instrument types and sectors. Some instruments are routinely stamped in practice, notably transfers of title to property and security deeds, while others are frequently left unstamped or are stamped without careful attention to the applicable rate. The result is a regime that exists on the statute book, that generates revenue, but that operates with a degree of informality that is not reflected in its text. This update examines what the Proclamation establishes, how its provisions operate, and where the gap between the text and practice is most pronounced.

2. What Does the Proclamation Regulate?

The Proclamation regulates stamp duty on instruments. It defines an instrument as a written document by which any right or obligation is or purports to be created, recorded, transferred, extinguished, or by which its scope is limited or extended. It then specifies the instruments that are chargeable with stamp duty. These are: memorandum and articles of association of any business organisation, cooperative, or other form of association; awards; bonds; warehouse bonds; contracts and agreements and memoranda thereof; security deeds; collective agreements; contracts of employment; leases, including sub-leases and transfers of similar rights; notarial acts; powers of attorney; and documents of title to property.

The list is finite. Instruments not falling within it are not chargeable under the Proclamation, though they may attract other taxes or fees. The Proclamation also defines several key terms, including award, bond, collective agreement, contract of employment, notarial act, security deed, and articles of association. The definitional provisions matter because the classification of an instrument determines both the applicable rate and the person

liable to pay. A contract that is characterised as a contract of employment, for example, attracts a rate of one percent of salary and places liability on the employer, whereas the same arrangement characterised as a contract or agreement attracts a flat rate of five Birr and joint and several liability on the parties. Classification is therefore not a technicality; it determines the fiscal outcome.

3. Rates of Stamp Duty

The rates are set out in the Schedule, which forms an integral part of the Proclamation. Memorandum and articles of association of a business organisation attract a flat rate of 350 Birr on first execution and 100 Birr on subsequent execution. The corresponding instruments for cooperatives attract 35 Birr and 10 Birr respectively. Awards attract one percent of value where the value is determinable and a flat 35 Birr where it is not. Bonds and warehouse bonds attract one percent. Contracts and agreements attract a flat five Birr. Security deeds attract one percent. Collective agreements attract 350 Birr on first execution and 100 Birr on subsequent execution. Contracts of employment attract one percent of salary. Leases, including sub-leases and transfers of similar rights, attract 0.5 percent. Notarial acts attract a flat five Birr. Powers of attorney attract a flat 35 Birr. Documents of title to property attract two percent.

The structure of the Schedule is notable in two respects. First, it combines ad valorem rates with flat rates, so that the fiscal burden varies dramatically depending on the nature of the instrument. A transfer of title to property at two percent of value can be a substantial sum, while a contract or agreement at five Birr is nominal. Second, the flat rates have not been adjusted since 1998. In real terms, the five Birr charge on contracts and the 35 Birr charge on powers of attorney are now trivial, and the 350 Birr charge on memorandum and articles of association is modest relative to the cost of incorporation. The ad valorem rates, by contrast, remain significant, and it is these rates that account for the bulk of stamp duty revenue in practice.

4. Mode of Valuation

The Proclamation establishes rules for determining the value on which ad valorem duty is computed. Where the value of the right or obligation executed by the instrument can be determined, the rate is a percentage of that value. Where it cannot be determined, a fixed amount applies. Where an amount is expressed in a currency other than Birr, it is computed at the prevailing rate of exchange. Where duty is chargeable on an ad valorem basis in respect of stock or a marketable security, the amount is computed on the average value prevailing at the time the instrument is made. Where an instrument comprises or relates to several distinct matters, the aggregate amount of duty payable on each separate instrument applies.

The most consequential valuation rule concerns documents transferring title to property. The Proclamation provides that stamp duty on such documents is calculated on the value agreed between the transferor and the transferee, provided that the valuation is

approved by the Federal Inland Revenue Authority. Where the agreed value is not acceptable to the Authority, the value is determined by a special committee appointed for that purpose by the Federal Government Revenues Board. This provision is important because it gives the revenue authority a supervisory role over the declared value and a mechanism to correct undervaluation. In practice, the operation of this provision depends on the capacity of the authority to review declared values and on the functioning of the special committee mechanism. Where review is weak, the provision may not achieve its purpose.

5. Liability to Pay Stamp Duty

The Proclamation allocates liability to pay stamp duty among the parties to an instrument. Unless otherwise provided, the beneficiary of an instrument is liable. The person making or issuing an instrument in Ethiopia is liable upon its execution, and where an instrument is made or issued outside Ethiopia, the person who first executes it in Ethiopia is liable. The lessee is liable for stamp duty on a lease unless the lease agreement provides otherwise. The borrower is liable on security deeds. The transferee is liable on documents transferring title unless otherwise agreed. Parties to a contract or agreement are jointly and severally liable. The employer is liable on contracts of employment. Parties to an award are jointly and severally liable. The employer and employees are jointly and severally liable on collective agreements.

The liability rules are detailed, but their practical significance depends on whether the instrument is in fact stamped. Where an instrument is not stamped, the liability rules determine who bears the consequences, but they do not by themselves ensure collection. The Proclamation does not, in the provisions reviewed, establish a comprehensive mechanism for detecting unstamped instruments or for requiring proof of stamping as a condition of registration, enforcement, or admissibility. Its enforcement therefore depends on the cooperation of registries, courts, and the revenue authority's audit capacity. Where these institutions do not systematically check for stamping, the liability rules operate in the abstract.

6. Time and Manner of Payment

The Proclamation prescribes the time at which stamp duty is payable for each category of instrument. On memorandum and articles of association, duty is payable before or at the time of registration. On awards, before or at the time of issuance. On contracts or agreements, before or at the time of signature. On leases or sub-leases, before or at the time of signature. On notarial acts, at the time of issuance. On security deeds, before or at the time of signature. On documents of title to property, before or at the time of issuance.

The manner of payment depends on the amount. Where the duty is under 50 Birr, payment is effected by affixing stamps of appropriate value to the instrument. Where the duty exceeds 50 Birr, or where the type and nature of the instrument so require, the

Federal Government Revenues Board may by directive provide that duty be paid by means other than affixing stamps. The Proclamation also requires that whoever executes or receives an instrument bearing an adhesive stamp shall cancel the stamp at the time of execution so that it cannot be used again. Cancellation must be in the manner prescribed by the Federal Inland Revenue Authority. An instrument bearing an adhesive stamp that has not been cancelled as prescribed is deemed, so far as that stamp is concerned, to be unstamped. Responsibility for non-cancellation rests on the person executing or receiving the instrument, not on the person submitting the document for execution.

These provisions are detailed, but they are also dated. The affixing and cancellation of adhesive stamps is an archaic mode of collection that is poorly suited to modern document flows, and the Proclamation's reliance on it is one reason why the regime has not operated as its drafters might have expected. The directive-making power to permit other modes of payment is the escape route, and its exercise is what has allowed stamp duty to be collected in practice on high-value instruments.

7. Powers of the Federal Inland Revenue Authority

The Proclamation vests the Federal Ministry of Revenue with powers to collect the stamp duty determined under the Proclamation and to implement its provisions. It may require persons liable to pay stamp duty to submit registers, books, papers, documents, and proceedings necessary for the determination of stamp duty, and may require the attendance of such persons to give explanations in the course of inspection. These powers are standard revenue powers, and their effectiveness depends on the authority's audit capacity and on its willingness to exercise them across instrument types. In practice, the authority's attention has concentrated on high-value instruments, particularly transfers of title and security deeds, rather than on the flat-rate instruments where the revenue yield is low and the compliance burden of enforcement is high.

8. Offences and Penalties

The Proclamation creates offences in relation to the sale of stamps and stamped papers. A person appointed to sell stamps or stamped papers who disobeys regulations issued under the Proclamation is liable on conviction to a fine of not less than 5,000 Birr and not exceeding 20,000 Birr and to rigorous imprisonment for a term of not less than five years and not more than ten years. A person not so appointed who sells or offers for sale stamps or stamped papers is liable to the same penalty. The penalties are severe, but they relate to the integrity of the stamp distribution system rather than to the failure to stamp instruments. The Proclamation does not, in the provisions reviewed, prescribe a general penalty for executing an unstamped or insufficiently stamped instrument. That gap is significant, because it means that the principal compliance risk for taxpayers is not a stamp duty penalty but the risk that the unstamped instrument will not be accepted by a registry, a court, or a counterparty.

9. Implementation in Practice: The Gap Between Text and Application

The Proclamation's practical record is uneven, and the unevenness is the most important feature of the instrument today. Some categories of instrument are routinely stamped. Transfers of title to property attract close attention because registries require evidence of stamp duty payment before registering the transfer, and because the two percent rate is material. Security deeds attract attention because banks and other lenders require compliance as a condition of lending. Memorandum and articles of association are stamped at incorporation because the registration process requires it.

Other categories are less consistently handled. Contracts and agreements attract a flat five Birr charge, but in practice many commercial contracts are not stamped, and there is no systematic mechanism for detecting the omission. Contracts of employment attract a one percent charge on salary, but compliance is uneven and enforcement is limited. Collective agreements attract a flat charge, but their stamping is not always attended to. The result is a regime in which the fiscal burden falls most heavily on instruments that pass through formal registries and least heavily on instruments that do not.

This unevenness has several causes. The rates for flat-rate instruments have not been adjusted since 1998 and are now so low that the administrative cost of enforcement exceeds the revenue at stake. The absence of a general penalty for non-stamping reduces the deterrent effect. The reliance on adhesive stamps and manual cancellation is poorly suited to modern practice.

10. Practical Implications for Taxpayers and Advisers

For taxpayers, the Proclamation requires attention to the classification of instruments, the applicable rate, the person liable, and the time of payment. The classification question is often the most consequential, because the difference between a flat-rate instrument and an ad valorem instrument can be substantial. A transaction that is documented as a contract or agreement but that in substance creates a lease, a security, or a transfer of title may attract a different rate and a different liability allocation. Advisers should therefore consider substance as well as form.

For institutions that routinely handle chargeable instruments, such as banks, notaries, and corporate service providers, the Proclamation requires internal procedures for identifying chargeable instruments, computing duty, arranging payment, and retaining evidence of payment. These procedures should be reviewed periodically, because the rates and institutional arrangements may change and because the authority's audit priorities may shift.

11. The Case for Reform

The Proclamation is a candidate for reform. Its rates are out of date, its collection methods are archaic, its enforcement mechanisms are incomplete, and its institutional references require updating. A revised instrument could rationalise the rate structure,

replace adhesive stamps with electronic payment and digital certification, introduce a general penalty for non-compliance, integrate stamp duty with registration and tax compliance systems, and clarify the treatment of instruments that are executed outside Ethiopia but performed within it. Whether such reform is undertaken is a matter for the legislature and the executive, but the case for it is strong on both revenue and administrative grounds.

12. Conclusion

Proclamation No. 110/1998 is an old instrument that remains in force and that continues to impose stamp duty on a defined list of instruments. Its rates, liability rules, valuation provisions, and payment mechanisms are detailed, but its practical application is uneven. Some instruments are routinely stamped because registries and lenders require it; others are frequently not stamped because the revenue at stake is low and the enforcement machinery is weak. The gap between the text and practice is the most important feature of the regime today, and it is a gap that reform could close. Until then, taxpayers and advisers should treat stamp duty as a compliance obligation that varies in intensity depending on the instrument and the institution through which it passes, and should not assume that the absence of enforcement in one context will be replicated in another.

Disclaimer

This legal update is provided for general informational purposes only and does not constitute legal advice. The application of the Proclamation may depend on the specific circumstances of an instrument, transaction, or taxpayer, and on the practice of the relevant revenue authority, registry, or court. Professional legal advice should be sought before relying on this update or taking any action.

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