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AMENDMENTS TO THE INDIAN STAMP ACT - AN OVERVIEW OF KEY CHANGES IMPACTING M&As

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The amendments to the Indian Stamp Act 1899 (Act) have come into effect from 1 July 2020. These amendments were first proposed under the Finance Act of 2019 and the Indian Stamp (Collection of Stamp-Duty through Stock Exchanges, Clearing Corporations and Depositories) Rules, 2019 (Rules).

The amendments are intended to facilitate ease of doing business and bring in uniformity in stamp duty payments on issue and transfer of securities and have introduced substantial changes to the erstwhile stamp duty regime. The amendments relate not only to the rates of stamp duty but also to the process of levying and collecting stamp duty. The stamp duty regime has undergone a fundamental change since the taxable event has shifted from 'execution of an instrument listed in the schedule' to a 'corporate action pertaining to a transaction'. This paradigm shift may be subjected to judicial scrutiny for examining its constitutional validity.

We have summarized below certain key aspects of these amendments and its impact on the Mergers & Acquisitions (M&As) in India – i.e. issuance by and transfer of securities of public and private companies.

A. *Revision in Stamp Duty Rates (Comparative Analysis)*

Nature of Transaction	**New Stamp Duty Rates (applicable with effect from 1 July 2020)**	**Stamp Duty Rates applicable prior to 1 July 2020***
Issue of securities (other than debentures) through a stock exchange, depositories or otherwise	0.005%	0.1%
Issue of debentures through a stock exchange, depositories or otherwise	0.005%#	0.05% per year of the face value of the debenture, subject to the maximum of 0.25% or INR 25,00,000 (Indian Rupees

		Twenty Five Lakhs) whichever is lower**$
Transfer of securities (other than debentures) in dematerialised form	0.015% (transfer on delivery basis) 0.003% (transfer on non-delivery basis)	NIL
Transfer of securities (other than debentures) in physical form		0.25%
Transfer of debentures	0.0001%	0.05% per year of the face value of the debenture, subject to the maximum of 0.25% or INR 25,00,000 (Indian Rupees Twenty Five Lakhs) whichever is lower.**

**For comparison purposes, we have relied on the stamp duty rates under Maharashtra Stamp Act 1958.*

***payable on debentures being marketable securities*

 # Prior to the amendment to the Act, only debentures being 'marketable securities' were liable to be stamped under Article 27 of Schedule I to the Act which deals with stamp duty on Debentures. The amended Article 27 omits the words "being a marketable security". The Act therefore now seeks to levy stamp duty on issue of all types of debentures – marketable or otherwise.

$ Further, the Amendment seeks to withdraw the exemption from payment of stamp duty on Debentures if the Debentures were issued in terms of a duly stamped registered mortgage deed or debenture trust deeds. The withdrawal of the exemption would lead to enhanced transaction costs for companies borrowing funds by means of issue of securities.

B. *Onus of payment and amount on which stamp duty is calculated*

Nature of the Transaction	**Duty Payer**	**Duty Payable On (as per the prescribed rates stated above)**
Issue of securities which results in creation or change in records of the depository	Issuer	Total market value of the securities mentioned in the allotment list
Issue of securities otherwise than through a stock exchange or depository	Issuer	Total market value of the securities
Sale of listed securities through the stock exchange	Buyer	Price at which the securities are traded
Off market transfer of securities made through a depository	Transferor	Consideration amount mentioned on the delivery instruction slips

Transfer of securities otherwise than through a stock exchange/ depository	Transferor	Consideration amount mentioned in the share transfer form

C. *Onus of payment and amount on which stamp duty is calculated*

1. Changes to key definitions

Term	**Details**
Instruments	The definition of 'instruments' has been widened to include in its ambit 'a document, electronic or otherwise, created for a transaction in a stock exchange or depository by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.'
Securities	The definition of the 'securities' has been widened to include certificate of deposit, commercial usance bill, commercial paper, repo on corporate bonds and such other debt instrument of original or initial maturity up to one year. Given the nature of financial liability, this appears to be clarificatory in nature.
Debentures	The amendment has introduced an inclusive definition of debentures. The following falls within the ambit of 'debentures', (i) debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not; (ii) bonds in the nature of debentures; (iii) certificate of deposit, commercial usance bill, commercial paper and such other debt instrument RBI may specify; (iv) securitised debt instruments; and (v) any other debt instruments specified by SEBI.
Market Value	The definition of market value has been introduced to mean, in relation to an instrument through which (i) any security is traded in a stock exchange, the price at which it is so traded; and (ii) any security which is transferred through a depository but not traded in the stock exchange, the price or the consideration mentioned in such instrument.

2. No exemption for transfer of securities in dematerialized form

Prior to the amendment, by virtue of Section 8A of the Act, stamp duty was not payable on the transfer of shares in dematerialized form. This made transfer of shares in the dematerialized form an attractive proposition due to reduced costs. However, Section 8A of the Act has now been amended and stamp duty exemption available for transfer of shares in dematerialized form has been done away with.

3. Collection of Stamp Duty

The amendment has introduced several changes to the process of collection of stamp duty in case of issuance, transfer or sale of securities through stock exchange or depositories. In case of,

(i) sale or transfer of securities on the stock exchange, stamp duty shall be collected by the stock exchanges or clearing corporations; and

(ii) in case of off market transfer of shares through the depositories or issuance of securities which results in creation or changes in the records of the depository, stamp duty will be collected by the depository.

There have been no significant changes made to the manner in which stamp duty is levied and collected in case of issuance and transfer of securities in physical form.

Comments:

The amendments have introduced a uniform system for collection and payment of stamp duty on the issue and transfer of securities. These changes will certainly bring affordability in the stamp duty at least in some states and are likely to avoid practice of choosing states where the stamp duty rates are lower. This rationalized and harmonized system through centralized collection mechanism is expected to ensure minimization of cost of collection and enhanced revenue collection.

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