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Analysing developments impacting business

CURBING RATE SHOPPING – MINISTRY OF FINANCE INTRODUCES NEW STAMP DUTY RULES

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Background

The present system of stamp duty collection governing securities market transactions had many challenges such as multiple rates for the same instrument, differing rates in states and lack of clarity, often leading to higher transaction costs and roadblocks in capital formation. It also encouraged corporates to forum shop for jurisdictions which provided favourable stamp duties.

The Finance Act, 2019 has introduced certain significant amendments to the Indian Stamp Act, 1899 (Central Act) with the objective of curbing stamp duty evasion and introducing a centralised collection mechanism for stamp duty collection through a single agency for securities transactions. The amendments also consolidated the provisions pertaining to stamp duty on issuance, sale and transfer of securities market instruments under the newly inserted Sections 9A and 9B of the Central Act with an endeavour to avoid multiple instances of stamp duty and restricting the ability of the State Governments to determine rates or levy stamp duty in addition to the Central Act.

On 10 December 2019, the Ministry of Finance (a) notified the amendment to the Central Act, and (b) introduced the Indian Stamp (Collection of Stamp-Duty through Stock Exchanges, Clearing Corporations and Depositories) Rules, 2019 (Stamp Duty Rules), both of which shall come into force with effect from January 9, 2020.

Key Changes introduced by the Stamp Duty Rules

Mechanism for stamp duty collection

A. Creation of new security/Change in records of depository upon issuance of securities

Nature of the transaction	Day of the stamp duty obligation	Party obligated to collect the stamp duty	Party obligated to pay the stamp duty	Rate of Stamp Duty to be paid
Fresh issue of securities <i>Such as fresh issue of securities by way of IPOs/QIPs etc.</i>	Prior to execution of any transaction in the depository system	Depository	Issuer**	Issuance of securities (other than debentures): 0.005% Issuance of debentures (irrespective of whether marketable or not): 0.005%

* to be paid on each sale included in the allotment list (list containing details of allotment of securities intimated by the issuer to the depository)

***In case of acquisition of shares of minority shareholders by majority shareholders pursuant to Section 236 of the Companies Act, 2013, the stamp duty obligation shall be on the Issuer company*

Stamp duty payment is to be paid on the total market value of the securities as per the allotment list. Further, no stamp duty is applicable on creation/destruction of securities on account of stock-splits, stock consolidation, mergers and acquisitions etc if there is no change in the beneficial ownership.

B. Sale of securities through Stock Exchange

Nature of the transaction	Day of the stamp duty obligation	Party obligated to collect the stamp duty	Party obligated to pay the stamp duty	Rate of Stamp Duty to be paid*
<p>Sale of securities through a stock exchange, including sale of any listed units of any registered pooled arrangements or scheme or tripartite repo</p> <p><i>Such as secondary sales on the market, block/bulk deals etc.</i></p>	Settlement Day [#]	Stock exchange or clearing corporation authorised by the Stock Exchange	Buyer	<p>Transfer of security other than debentures(delivery basis): 0.015%</p> <p>Transfer of security other than debentures (non-delivery basis): 0.003%</p> <p>Transfer of debentures (irrespective of whether marketable or not): 0.0001%</p>
<p>Transactions arising from tender offer/open offer/offer for sale/private placements executed through the stock exchange</p>	On successful completion of the transaction	Stock Exchange	Offeror/Seller	<p>Issuance of securities (other than debentures): 0.005%</p> <p>Issuance of debentures (irrespective of whether marketable or not): 0.005%</p>
<p>Option instruments including instruments with zero or near zero premium</p> <p><i>Such as call/put option transactions, currency derivatives etc.</i></p>	Date of each constituent transaction	Stock exchange or clearing corporation authorised by the Stock Exchange	Buyer	<p>Equity and commodity futures: 0.002%</p> <p>Equity and commodity options: 0.003%</p> <p>Currency and interest rate derivatives: 0.0001%</p> <p>Other derivatives: 0.002%</p> <p>Government securities: 0%</p> <p>Repo on corporate bonds: 0.00001%</p>

* to be paid on each sale included in the clearance list (list of transactions of sale and purchase relating to contracts traded on the stock exchange submitted to a clearing corporation)

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#Settlement day means the day on which (a) a transaction is settled by a stock exchange/ authorised clearing corporation upon delivery of funds and underlying securities to the buyer and seller, respectively; or (b) it is reported to a stock exchange/ authorised clearing corporation specifying the that the transaction has been carried out (provided the security is not held in dematerialised form in any depository) ; or (c) issue/ transfer is effected in a depository for dematerialised securities which may have to be later reported to the stock exchange/clearing corporation.

Note: In case of transactions merely reported to the stock exchanges, the stamp duty shall be collected by the stock exchanges and the reporting intermediaries are required to report the domicile of the clients to the stock exchange.

Stamp duty to be collected on the entire value of the transaction (at the time of reporting), irrespective of the consideration being paid in part, or in instalments in future. This amount will also be considered as the actual sale value for the purpose of payment of stamp duty.

C. Transfer of securities through the depository system*

Nature of the transaction	Day of the stamp duty obligation	Party obligated to collect the stamp duty	Party obligated to pay the stamp duty	Rate of Stamp Duty to be paid
Off-market transfers including over the counter trades occurring in dematerialised or electronic form Such as transfer of securities of a private company/unlisted public company.	Prior to execution of all off-market transfers	Depository	Transferor**	Transfer of security (delivery basis): 0.015% Transfer of security (non-delivery basis): 0.003% Transfer of debentures (irrespective of whether marketable or not): 0.0001%

* including over the counter trades

**In case of transfer of securities pursuant to the invocation of pledge ,stamp duty to be paid by the pledgee on the value of securities

Stamp duty to be collected on the consideration amount specified by the transferor in the delivery instruction slip, irrespective of the consideration being paid in part, or in instalments in future. This amount will also be considered as the actual consideration amount of the transaction for the purposes of payment of stamp duty.

Other notable inclusions

- 'Debenture' has been defined to include bonds/commercial papers and other instruments of a similar nature.
- The determination of nature of transfer, whether delivery based or non-delivery based, will be done by the clearing corporation at the time of settlement as per established principles.
- In case of inter-operability of the clearing corporations, the trades of a client across the stock exchanges are to be considered to determine if the transaction would result in a delivery or not.
- For issue of securities (otherwise than through a stock exchange or depository), stamp duty is to be paid by the issuer at the place where its registered office is located on the total 'market value' of the securities issued as per the rates specified in Schedule I of the Central Act.
- The collecting agent (i.e. stock exchange/authorised clearing corporation/depository) is required to submit a monthly return (within 7 days of the succeeding month) and an annual consolidated return (on or before 30 June of succeeding financial year) in the format provided in the Stamp Duty Rules to the state government listing out the stamp duty collections and the list of defaulters for the relevant period.
- In case the parties erroneously indicate a transaction as 'not involving a sale consideration', the required stamp duty can be paid by the person liable to pay the stamp duty to rectify the error, provided the relevant collecting agent is intimated within 3 weeks after end of the month in which the stamp duty payment was to be made.

¹ Market value shall be: (i) in case of listed securities, the price at which it is traded on the stock exchange; (ii) in case of unlisted securities transferred through a depository, the consideration mentioned in the instrument for transfer; (iii) in all other cases, the consideration mentioned in the instrument for transfer.

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Comment

The introduction of the New Stamp Rules is a strategic move by the Central Government to centralise the stamp duty collection and curtail stamp duty evasion, including rate shopping. However, it remains to be seen how the implementation of the new stamp duty regime will be undertaken amongst the stakeholders.

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