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APPLICABILITY OF STAMP DUTY ON UNITS OF AIFs

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With the amendments to the Indian Stamp Act 1899 (Stamp Act) brought in by the Finance Act 2019 (to be effective from 1 July 2020), there was an ambiguity on the application of such amendments on issuance and transfer of units of alternative investment funds (AIFs). This was followed by the issuance of a circular by SEBI, i.e. circular SEBI/HO/IMD/DF6/CIR/P/2020/113 dated 30 June 2020 (Circular), whereby SEBI has provided clarity on the applicability of stamp duty on issuance and transfer of units by AIFs and its treatment of units of an AIF as a 'security' under the Securities Contract (Regulation) Act 1956.

What are the important considerations and next steps for AIFs?

In light of the Circular, fund managers will need to be cognizant of the following considerations:

- *Appointment of RTAs*: Registrars to an issue and/or share transfer agents (who have been notified as a "depository" for the purposes of acting as a "collecting agent" for AIFs) (RTA) that have been appointed by AIFs must collect the stamp duty on issue, transfer, and sale of units of AIFs, as per the applicable law. In case of AIFs that have not appointed RTAs, a deadline of 15 July 2020 has been prescribed to appoint an RTA to comply with this requirement.

- *Interim measures till appointment of RTA*: Till the RTA is appointed by AIFs, they must keep the applicable stamp duty on issue, transfer, and sale of units of AIFs in a designated bank account to be held in escrow. Upon appointment of the RTA by AIFs, the said stamp duty amount will be transferred to the RTA.

- *Stamp duty on issuance of units of AIFs*: Where AIF units are issued, stamp duty has to be collected and remitted by RTA. Such amount shall be recoverable from the contributors to AIFs.

- *Stamp duty on transfer of units of AIFs:* When a transferee approaches RTA for effecting the transfer in their books, RTA will collect the stamp duty from the transferor before effecting the transfer and then remit it to the state of domicile of the transferee.

- *Timing of payment of stamp duty:* The stamp duty would be payable at the time of issuance of the units. Thus, if units are issued against drawdown then the payment would be against each drawdown. If units are issued on a partly paid basis, the stamp duty may then be payable on the entire face value upfront and no further stamp duty when the portion of those units are paid-up.

- *Calculation of stamp duty on AIFs:* Stamp duty on units of AIFs is as follows:

Particulars	Stamp Duty Amount
Issue of units of AIF	0.005%
Transfer of units of AIF	0.015%

So, what does it mean for AIFs?

Fund managers of newly launched AIFs that are currently in the process of fund-raising or such AIFs that have achieved closings but are in the process of making draw-downs should be mindful of the aforementioned stamp duty implications on units of AIFs. This will be a pertinent compliance requirement in relation to execution of contribution agreements and issuance of unit certificates to investors by AIFs. Appointment of RTAs for collection of stamp duty in relation to AIF units would also need to be adhered to by fund managers.

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