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IMPACT OF THE AMENDMENTS TO INDIAN STAMP ACT, 1899

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Introduction

The Finance Act, 2019 has brought in amendments to the Indian Stamp Act, 1899. Initially the same were to come into force on 01st of April, 2020, however, due to the prevailing situation, the Revenue Department issued a notification dated 30th March, 2020 stating that the said amended provisions shall now come into force on 01st of July, 2020. Hereinafter referred as the "the Amended Act".

Salient Features

1. The Amended Act has introduced some key definitions, in order to reduce evasion and non-payment of stamp duty, which are as follows: -;

   - **Debenture** - Debenture includes 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 debenture issued by any incorporated company or body corporate; (iii) certificate of deposit, commercial usance bill, commercial paper and such other debt instrument of original or initial maturity upto one year as the Reserve Bank of India may specify from time to time; (iv) securitized debt instruments; and (v) any other debt instruments specified by the Securities and Exchange Board of India from time to time.

   - **Market Value** - In relation to an instrument through which– (i) Any security is traded in a stock exchange, means the price at which it is so traded; (ii) Any security that is transferred through a depository but not traded in the stock exchange, means the price or the consideration mentioned in such instrument; (iii) Any security dealt otherwise than in the stock exchange or depository, means the price or consideration mentioned in such instrument.

   - **Securities** - Securities as defined in clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956; (ii) a "derivative" as defined in clause (a) of Section 45U of the Reserve Bank of India Act, 1934; (iii) a 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 as the Reserve Bank of India may specify from time to time; and (iv) any other instrument declared by the Central Government, by notification in the Official Gazette, to be securities for the purposes of this Act.

2. Streamline the payment process of stamp duty

The Amended Act primarily addresses the payment of stamp duty on securities and clarifies and streamlines the process for the payment of stamp duty on securities. The present amendment has been brought with the intent to create a legal and institutional mechanism which would enable States to collect stamp duty on securities at one place and by one agency on one instrument.

3. Collection Mechanism of the stamp duty

The Amended Act makes a provision that the stamp duty shall be payable only on the principle instrument so as to avoid multiplicity of payments of stamp duty on such transactions. Further the Amended Act clarifies that no stamp duty shall be charged on any instrument (other than the principal instrument) on a single transaction. It also specifies the onus of payment lies on the person depending upon different transactions as illustrated below: -

Nature of Transaction	Onus of Payment
Sale of security through stock exchange	Buyer
Sale of security otherwise than through stock exchange	Seller
Transfer of security through depository	Transferor
Transfer of security otherwise than through a stock exchange or depository	Transferor
Issue of security whether through a stock exchange or a depository	Issuer
Any other instrument that has not specified in Section 29 of the Indian Stamp Act, 1899	Person making, drawing or executing such instrument.

4. **Collection of stamp duty by stock exchange or clearing depositories**

As per the Amended Act, Stock Exchanges, Clearing Corporations and Depositories have been vested with the duty to levy and collect stamp duty wherein securities are sold, transferred or issued through these platforms. Subsequently, they are also assigned the responsibility of remitting the stamp duty to the State Government. However, the depositories are required to collect the stamp duty before the execution of any transaction in the depository system and the stock exchanges are required to collect the stamp duty on the date of settlement. Failure to comply with the same shall attract penal provisions. However, no stamp duty should be payable on buyback shares, as such shares result in extinguishment of shares and not transfer of beneficial ownership of shares for a consideration.

5. **Rules under collecting agent**

It further provides that after collection of stamp duty from the respective persons i.e. the buyer, transferor or issuer by the stock exchange, clearing corporations or depository (*collectively termed as 'Collecting Agent'*), the Collecting Agent shall transfer the stamp duty so collected to the account specified by the concerned State Government after deducting 0.2% of the total collection as its charges or fees. The Amended Act also states that the issuer is required to pay the stamp duty on issue of shares in physical mode. The stamp duty shall be paid to the State Government where registered office of the issuer is situated.

6. **Penalties**

The Amended Act further provides that if there is failure to collect stamp duty or failure to submit details of the transaction of securities by stock exchange or submissions of false documents/declaration to government or failure to transfer the stamp duty so collected within 15 days of the expiry of the stipulated time, it shall be punishable with fine which shall not be less than Rs. 1,00,000/-but which may extend up to 1% of the collection or transfer so defaulted.

7. **Collection of stamp duty by market value**

The Amended Act provides that where an instrument is chargeable with ad valorem duty to any stock or any marketable securities, such duty shall be calculated on the market value of such stock or security. as illustrated below: -

- In case of options in any securities the market value shall be calculated as per premium paid by the buyer.

- In case of repo on corporate bonds the market value shall be calculated as per interest paid by the borrower.

- In case of swap the market value shall be calculated as per only the first leg of the cash flow.

8. Rules under section 73

The Amended Act also aims at introducing Section 73A which gives powers to Central Government to make rules in accordance with collection of stamp-duty. The manner to collect the stamp duty on behalf of the State Government is, if it by stock exchange/ clearing corporation through sale of securities on stock exchange as per Section 9A(1)(a). If it is by depository it will be through transfer of securities made by a depository as per Section 9A (1) (b) or through issue of securities in demat form as per Section 9A (1) (c).

Impact

The amendments in the Amended Stamp Act aims at improving the efficiency in the manner of collection of stamp duty which would, in turn, most definitely reduce evasion and non-payment of stamp duty. In terms of the States eligible to receive stamp duty concerning the issuance of securities in Demat, with Amended Stamp Act, now the stamp duty will be distributed by the depositaries based on the domicile State of the allottees. This seems to be a major shift in the manner of determination of States eligible to receive the stamp duty and may also lead to loss of stamp duty for several States. The removal of the exemption from stamp duty presently available for the transfer of ownership of dematerialized securities and trading in dematerialized debentures may become expensive. However, this will lead to an increase in the cost of trading in securities as transactions specifically on the stock exchanges are already subject to the securities transaction tax. One will have to wait and see how the State Governments will adapt to the amendments, as the subject matter is only allowed to be legislated by the State Government and not the Central Government.

- Ms. Diksha Tripathi
- Mr. Mohit Kumar Hukumchand
- Ms. Shivani Shah

E: info@kaylegal.in
W: www.kaylegal.com