STAMP DUTY IN INDIA: A case for reform for Ease of Doing Business

1. Background

1.1 Stamp duty is a tax that levied on documents, paid by pasting a stamp on the document or using embossed or impressed stamp paper to make such document or in recent times by e-stamping.

1.2 Stamp duty is a global phenomenon. However many developed nations have progressively kept its scope focussed on property transfer documents (such as document evidencing sale or mortgages) generally exempting non property transfer documents (such as agreements, guarantee). Also, in the developed nations the rates of stamp duty are generally moderate and stable.

1.3 In India, the stamp duty-

(a) is decided by central government for some documents while state government for others[1];
(b) is applicable on vast majority of documents- property transfer related and even others;
(c) rates differ from state to state in case of documents, where state government is to decide the stamp duty;
(d) rates are generally high; and
(e) applicability and rates are frequently changed.

1.4 This makes a case for reforms for doing business with ease.

1.5 The collection of the duties is the responsibility of the state government in which the transaction occurs, and the state government retains all revenues collected by the state, although the states sometimes allocate a portion of the duties to the local government in which the collection occurs.

1.6 Stamp Duty forms a significant source of revenues for the state governments and the state governments appear exploiting this avenue fully, and it times unreasonably. It is experienced that the states of Maharashtra is on the forefront on this count and is its actions are emulated by neighbouring states like Gujarat, MP, AP and Karnataka, while stamp duty in other states continues to be reasonable and stable.

2. Analysis

2.1 While instance of ad- valorem (i.e. proportionate with the value of the property or matter covered under the document) stamp duty is justifiable in case of sale of property, it being a transfer for long term enjoyment where the stamp duty cost could amortize over such long term.

2.2 However documents for bank borrowing and related security creation are generally not for long term. It is for a term of one year to few years. Therefore, it does not appear justifiable to saddle such documents with such high instance of ad valorem stamp duty, as it adds to the cost of such bank borrowing transaction.

3. Way Forward

There is a need to have a stamp duty regime creating right environment for doing business with ease which will also broaden and enhance stamp duty collection and we should build opinion and coordinate with the Central as well as various State Governments to achieve-

(A) Uniform stamp duty pan India;
(B) Reasonable stamp duty rates commensurate with the transaction value; and
(C) Stable stamp duty.

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[1] **This is in keeping with Article 226 of Constitution of India, which provides-**

List- 1: Central List . Item 91
Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, and policies of insurance, transfer of shares, debentures, proxies and receipts.

List- 2: State List- Item 63
Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

List- 3: Concurrent List- Item 44
Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty