



Amendment to stamp duty on mergers in Tamil Nadu

Government of Tamil Nadu has reduced the stamp duty and registration fees in respect of instruments evidencing transfer of property pursuant to amalgamation or reconstruction of companies

Background

On 01 March 2019, an order¹ was issued by the Commercial Taxes and Registration (J1) Department of Tamil Nadu to implement the budget announcement for the year 2019-20 which proposed reducing the stamp duty chargeable on instruments relating to amalgamation or reconstruction of companies² to 2% of the market value of immovable property or 0.6% of the market value of shares, whichever is higher, and the registration fees payable on such transactions fixed at maximum of INR 30,000.

A revised order³ has now been issued by the Commercial Taxes and Registration (J1) Department of Tamil Nadu on 19 February 2020 in suppression of the earlier order dated 01 March 2019 which provides clarifications on the reduced stamp duty.

Key clarifications

- The stamp duty reduction granted shall be made effective retrospectively w.e.f. 01 April 1956 so that all the schemes relating to amalgamation or reconstruction of companies sanctioned by the High Court or the National Company Law Tribunal until now shall also become eligible for the reduced stamp duty.

¹ G.O.(Ms.) No. 29 dated 01 March 2019

² Prior to this amendment, there was no specific entry for levy of stamp duty in Tamil Nadu on instruments relating to amalgamation or reconstruction of companies

³ G.O.(Ms.) No.47 dated 19 February 2020



- In respect of instruments which consist of immovable property situated outside the state of Tamil Nadu, stamp duty shall not be levied on such property.
- If any other instrument which is subsequently executed between the companies under the scheme for the sole purpose of reducing the terms of the scheme into writing and such instrument is found to be duly stamped with the applicable duty, subject to maximum of INR 25 crores, the principal instrument shall be deemed to have been duly stamped.
- Similarly, if the principal instrument of amalgamation or reconstruction is found to be duly stamped with the necessary duty, any other subsequent instrument executed between the same companies under the said scheme for the sole purpose of reducing the terms of scheme into writing, shall be deemed to have been duly stamped.
- For the purposes of calculation of stamp duty, following shall be considered:

Particulars	If set forth in the Scheme	If not set forth in the Scheme
Market value of immovable property	Market value set-forth in the scheme	Market value as per the guideline register prevailing on the date of order sanctioning the scheme
Market value of unlisted shares	Market value set-forth in the scheme	Value of shares found in the audited balance sheets of the companies filed with the Registrar of Companies immediately before the date of order sanctioning the scheme

Dhruva Comments

- Considering that the amendment has been given retrospective effect w.e.f. 01 April 1956, one would have to wait and watch if the stamp duty authorities demand stamp duty on past merger orders where no stamp duty or lower stamp duty was paid. Further, if that be the case, whether a refund of higher stamp duty paid on past merger orders, if any, can be claimed.
- There seems to be an ambiguity as to the maximum cap of INR 25 crores introduced. The order seems to provide a cap only on subsequent instruments executed under the scheme which are duly stamped. However, extract of the notification enclosed to the order, does not provide for a similar cap on execution of such subsequent instruments.
- One also needs to take into account a situation of merger of wholly owned subsidiary (which became a wholly owned subsidiary post the audited balance sheet date) into its parent and no shares are issued by the parent company, what treatment would the stamp duty authorities adopt in such situation for levy of stamp duty.



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