



Exemption or refund of Stamp duty to Special Economic Zones ('SEZ') Developers¹

Background

The Indian Stamp Act, 1899 ('the Stamp Act') provides for exemption from Stamp duty on any instruments executed for purposes of SEZ in favour of an SEZ Developer or Unit. This exemption was provided by an amendment to the Stamp Act through Section 57 of the Special Economic Zones Act, 2005 ('SEZ Act').

Recent Development

Consequent upon this amendment to the Stamp Act, States had sought clarification from the Ministry of Commerce and Industry, Department of Commerce ('MoC') in relation to treatment of certain transactions related to SEZ for the purpose of application of Stamp duty.

Taking into consideration the concerns raised by the States, MoC has issued following clarifications:

- The exemption/ refund of Stamp duty in respect of purchase of land by the SEZ Developer will depend on the stage of the SEZ Approval at the time of such purchase:

¹ Instruction No 18 issued under F.No.H.4/ 3/ 2009-SEZ dated 2 July 2009 by Department of Commerce ('the Instruction')

Situation (Stage of SEZ Approval)	Clarification
Purchase of land after formal approval (which is after in-principle approval, but before SEZ notification)	The State Governments are expected to give full exemption of Stamp duty as provided for in the SEZ Act
Purchase of land before formal approval, but after the in-principle approval	The State Government may; <ul style="list-style-type: none"> • give the exemption of Stamp duty up front (subject to final setting up of the SEZ) or • ask the developer pay the Stamp duty but refund the same after the formal SEZ notification is issued
Purchase of land even before the in-principle approval	The potential developer has to pay the Stamp duty up front, but it may be refunded by the State Government after the SEZ notification is issued

In all cases, if the SEZ is not actually commissioned within the time indicated in the approval, or if the SEZ notification is cancelled, the State Governments will be entitled to withdraw the concession of Stamp duty and recover the same from the Developer.

- The facility of exemption from Stamp duty on purchase of land by the SEZ developer for activities like housing, hostel, recreation, entertainment, golf etc. would be available only with respect to the land which falls within the SEZ area.
- The concession of Stamp duty is available only on conveyance of land, buildings, premises, etc. by lease or otherwise (but not by sale) in an SEZ to the units/ entities permitted to carry out operations therein.
- The facility of exemption of Stamp duty to a Developer will not be available for purchase or sale of any land or building at a place outside the notified SEZ.

Conclusion

The Stamp duty exemption had become a contentious issue with States, and the States had demanded that the exemption should be restricted to processing area of the SEZ. The clarification in the Instruction will provide breather to the SEZs, as through the Instruction MoC has provided clarity in relation to the Stamp duty exemption.

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