

Indian Stamp Act, 1899 – Amendments

December 13, 2019

In brief

The Finance Bill, 2019, had proposed certain amendments in the Indian Stamp Act, 1899 (the Act) bringing uniformity in the levy of stamp duty on securities, whether through physical or dematerialised form. The amendments also seek to introduce a central mechanism for collection of stamp duty(ies) by certain authorised entities for the issuance and transfer of securities and subsequent disbursement of the duty collected to the respective States. The Ministry of Finance¹ has appointed 9 January 2020 as the date on which these proposed amendments shall come into force. It has also notified the Indian Stamp (Collection of Stamp Duty through Stock Exchanges, Clearing Corporations and Depositories) Rules, 2019 on 10 December 2019 to regulate the centralised mechanism for the collection of stamp duty across the country.

In detail

Key definitions

“Debenture” - includes

- (i) 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 debentures 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 up to one year, as the Reserve Bank of India (RBI) may specify from time-to-time;
- (iv) Securitised debt instruments; and

- (v) Any other debt instruments specified by the Securities and Exchange Board of India from time-to-time.

Exclusion in “Bond”

“Debenture” has been excluded from the definition of “bonds.” With this amendment, stamp duty on “Debentures” will become chargeable only under Article 27 (Union list) of the Constitution of India, and thus, no State exchequer can take the argument of payment of stamp duty on issuance of “debentures” under the classification of “bonds.”

“Securities” includes

- (i) 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 RBI Act, 1934;
- (iii) A certificate of deposit, commercial usance bill, commercial paper, repo on corporate bonds and such other debt instruments of original or initial maturity up to one year, as the RBI 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.

By including this definition, the Act proposes to widen the net of instruments that would fall under the ambit of stamp duty.

¹ Notification No. GSR 901(E) dated 10 December 2019

Marketable security

A security capable of being traded in any stock exchange.

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.

Key changes

Consolidation of stamp duty laws for securities

It is proposed to consolidate the stamp duty provisions relating to the issue, sale or transfer of securities under the newly inserted sections 9A and 9B of the Act. It is also proposed that the instrument on which stamp duty is chargeable under section 9A of the Act shall be the principal instrument for the levy of stamp duty and no stamp duty shall be charged on any other instruments relating to the said transaction.

Stamp duty on issuance

- Debentures – 0.005% (currently charged at 0.05% per year up to a maximum of 0.25% or INR 2.5m, whichever is lower).
- Security (other than debenture) – 0.005% (currently the issuance is charged as per State Schedule, which is generally at 0.1%).
- Derivatives

- Futures – 0.002%
- Options – 0.003%
- Currency and interest rate derivatives – 0.0001%
- Other derivatives at 0.002%
- Government securities – 0%
- Repo on corporate bonds – 0.00001%

Stamp duty on transfer

Transfer of dematerialised securities between beneficial owners was earlier exempted from stamp duty provisions under section 8A(c)(ii) & (iii) of the Act. The same has now been deleted and the exemption is only limited to transfer of securities from a person to a depository or from a depository to a beneficial owner. The rates proposed for stamp duty on transfer of securities are as follows:

- Transfer and re-issue of debentures – 0.0001%
- Transfer of security (other than debenture) on delivery basis – 0.015%
- Transfer of security (other than debenture) on non-delivery basis – 0.003%

Stamp duty payable by

- Sale of security through stock exchange: buyer
- Sale of security otherwise than through a stock exchange: seller
- Transfer of security through a depository: transferor
- Transfer of security otherwise than through a stock exchange or depository: transferor
- Issue of security whether through a stock exchange or depository or otherwise: issuer

- In any other case: by person making, drawing or executing such instrument

Centralised collection

Section 9A has been inserted, whereby stamp duty paid on any of the following instances will now be collected on behalf of the State Government and transferred within three weeks from the end of each month to the State Governments. The Central Government shall make rules for the collection and disbursement of stamp duty. As per the amendment, the following authorities would collect stamp duty:

- On sale of any securities made through a stock exchange – Stock exchange or clearing corporation appointed by it.
- On transfer of securities for consideration made by a depository otherwise than on the basis of any transaction referred to above – Depository.
- On issue of securities leading to creation or change in the records of depository – Depository.

Collection mechanism

The Central Government has notified the Indian Stamp (Collection of Stamp Duty through Stock Exchanges, Clearing Corporations and Depositories) Rules, 2019 on 10 December 2019. As per these rules:

- a) For sale of any securities through the stock exchange, including sale of any listed units of any registered pooled arrangements or scheme or tripartite repo,
 - Stamp duty shall be collected on the settlement day;

- For transactions reported to a stock exchange, the stamp duty shall be collected on the entire sale consideration when the transfer is reported, even if the consideration is paid in part or in instalments to be paid in future;
 - The sale consideration reported to a stock exchange shall be considered as the actual sale value;
 - In case of inter-operability of clearing corporations, the trades of a client across the stock exchanges shall be considered for determining whether they would result in a delivery or not.
- b) For transfer of securities for consideration made by a depository otherwise than through a stock exchange:
- Stamp duty has to be collected before execution of all off-market transfers involving transfer of securities in the depository system, including over-the-counter trades occurring in dematerialised or electronic form;
 - In case of transfer of securities pursuant to invocation of pledge, duty shall be collected from the pledgee on the market value of securities.
- c) On issue of securities leading to creation or change in the records of depository:
- Stamp duty shall be collected from the issuer before executing any transaction in the depository system;
 - Stamp duty shall not be collected on creation or destruction of securities on account of corporate actions such as stock split, consolidation, mergers and acquisitions, etc. Provided there is fresh issue to an investor as part of a corporate action, such issuance shall be subject to stamp duty;
- d) The collecting agent shall round off the stamp duty to the nearest rupee and transfer it to the account of

the concerned State Government, with the RBI, or any specified scheduled commercial bank. The agent may deduct 0.2% of stamp duty collected towards facilitation charges.

Effective date

All the aforesaid amendments in the stamp duty rates and the new collection mechanism will be effective from 9 January 2020.

The takeaways

The amendments propose a uniform system for collection and payment of stamp duty on the issue and transfer of securities. Thus, it would result in effective collection of duty across all States and reduce instances of evasion/avoidance of stamp duty payments. However, certain articles fall under the jurisdiction of the States, and thus, it is necessary to examine the acceptance and implementation of some of these amendments under the State laws.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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