

Indian Stamp Act, 1899 – Amendments (proposed)

February 5, 2019

In brief

The Finance Bill, 2019, has 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 with respect to stamp duty(ies) by certain authorised entities for issuance and transfer of securities and subsequent disbursement of the duty collected to the respective states.

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 Act.

“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.

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 which 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 which is 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 issue, sale or transfer of securities under the newly inserted section 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 purpose of levy of the stamp duty and no stamp duty shall be charged on any other instruments relating to the said transaction.

Centralised collection

A new 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.

Stamp duty on issuance

- Debentures - 0.005% (currently charged at 0.05% per year up to a maximum of 0.25% or INR 2.5 million, whichever is lower)
- Security (other than debenture) - 0.005% (currently the issuance is charged as per State schedule, which is generally @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

- In case of sale of security through stock exchange: buyer
- In case of sale of security otherwise than through a stock exchange: seller
- in case of transfer of security through a depository: transferor
- in case of transfer of security otherwise than through a stock exchange or depository: transferor
- In case of 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

The takeaways

The amendments propose a uniform system for collection and payment of stamp duty on the issue and transfer of securities, and thus, it would result in effective collection of duty across all the states and reduce instances of evasion/ avoidance of stamp duty payments. However, certain articles fall under the jurisdiction of states, and thus, the acceptance and implementation of some of these amendments under respective state laws would need to be seen.

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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