

AMENDMENT IN INDIAN STAMP ACT, 1899

I. OBJECTIVE OF AMENDMENT

Indian Stamp Act, 1899 (“**the Stamp Act**”) has been amended vide the Finance Act, 2019ⁱ, with respect to the manner of charging of stamp duty on issue or transfer of securities market instruments, whether in physical mode or Dematerialise (“Demat”) mode, inter-alia.

The said amendment in the Stamp Act has been made with the following objectives:

- To bring in uniformity and affordability of the stamp duty on securities;
- To design zero evasion collection mechanism in respect of Securities market instruments;
- To enable states to collect stamp duty on securities market instruments at one place by one agency (through the stock exchanges or clearing corporations authorised by the stock exchange or by the depositories) on one Instrument.

II. EFFECTIVE DATE

The said Stamp Act amendment shall be effective from January 09, 2019ⁱⁱ. Central Government has also introduced Indian Stamp (Collection of Stamp Duty through Stock Exchanges, Clearing Corporations and Depositories) Rules, 2019ⁱⁱⁱ which shall also be effective from January 09, 2019.

III. APPLICABILITY

The provisions of amended Stamp Act shall be applicable to all Companies issuing Securities.

IV. KEY AMENDMENTS

1) INSERTION / SUBSTITUTION / AMENDMENT OF FOLLOWING VITAL DEFINITIONS:

- a. **Section 2(1) "Allotment list"** means a list containing details of allotment of the securities intimated by the issuer to the depository under sub-section (2) of section 8 of the Depositories, Act, 1996.
- b. **Section 2(10A) "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 debenture 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 upto one year as the Reserve Bank of India 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;
- c. **Section 2(14) "Instrument"** includes-
- (a) every document, by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded;
 - (b) a document, electronic or otherwise, created for a transaction in a stock exchange or depository by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded; and
 - (c) any other document mentioned in Schedule I,
- d. **Section 2(15A) "Issuer"** means any person making an issue of securities;
- e. **Section 2(16A) "Marketable security"** means a security capable of being traded in any stock exchange in India;
- f. **Section 2(16B) "Market value"**, in relation to an instrument through which-
- (a) any security is traded in a stock exchange, means the price at which it is so traded;
 - (b) 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;
 - (c) any security is dealt otherwise than in the stock exchange or depository, means the price or consideration mentioned in such instrument;
- g. **Section 2(23A) "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 Reserve Bank of India Act, 1934;
 - (iii) a certificate of deposit, commercial usance bill, commercial paper, repo on corporate bonds and such other debt instrument of original or initial maturity upto one year as the Reserve Bank of India 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;

- h. **Rule 2(f) “Market transfer”** means transfer of securities effected towards the completion of a transaction carried out on the stock exchange or as reported to the stock exchange or clearing corporation on which either the stock exchange or clearing corporation collects the required stamp-duty;
- i. **Rule 2(h) “off-market transfer”** means transfer of securities other than a market transfer;

2) SECURITIES DEALT IN DEPOSITORY NOT LIABLE TO STAMP-DUTY:

Provision of Section 8A of Stamp Act deals with transactions in securities in demat which are exempted from chargeability of Stamp duty, which have been withdrawn vide the amendment in Section 8A of Stamp Act. Below is compared provision of existing Section 8A and amended Section 8A:

EXISTING PROVISION- SEC.8A	AMENDED PROVISION- SEC.8A
<p>Notwithstanding anything contained in this Act or any other law for the time being in force, —</p> <p>(a) an issuer, by the issue of securities to one or more depositories, shall, in respect of such issue, be chargeable with duty on the total amount of security issued by it and such securities need not be stamped;</p> <p>(b) where an issuer issues certificate of security under sub-section (3) of section 14 of the Depositories Act, 1996 (22 of 1996), on such certificate duty shall be payable as is payable on the issue of duplicate certificate under this Act;</p> <p>(c) the transfer of—</p> <ul style="list-style-type: none"> (i) registered ownership of securities from a person to a depository or from a depository to a beneficial owner; (ii) beneficial ownership of securities, dealt with by a depository; (iii) beneficial ownership of units, such units being units of a Mutual Fund including units of the Unit Trust of India established under sub-section (1) of section 3 of the Unit Trust of India Act, 1963 (52 of 1963), dealt with by a depository, <p>shall not be liable to duty under this Act or any other law for the time being in force.</p>	<p>Notwithstanding anything contained in this Act or any other law for the time being in force,—</p> <p>(a) an issuer, by the issue of securities to one or more depositories, shall, in respect of such issue, be chargeable with duty on the total amount of securities issued by it and such securities need not be stamped;</p> <p>(b) the transfer of registered ownership of securities from a person to a depository or from a depository to a beneficial owner shall not be liable to duty.</p>

As per existing provision of Section 8A of Stamp Act, following transactions are exempted from chargeability of stamp duty:

- ✓ Demat to Remat of Securities OR Remat to Demat of Securities.
- ✓ Transfer of beneficial ownership of securities in Demat mode.

As per proposed amendment in Section 8A of Stamp Act effective from 09.01.2020, only the following transaction would be exempted from chargeability of stamp duty:

- ✓ Demat to Remat of Securities OR Remat to Demat of Securities.

In nut shell, it can be said that w.e.f. 09.01.2020, the Transfer of Shares in Demat Mode would also be chargeable to stamp duty.

3) INSTRUMENTS CHARGEABLE WITH DUTY FOR TRANSACTIONS IN STOCK EXCHANGES AND DEPOSITORIES:

Section 9A has been inserted in Stamp Act for detailing the mode, nature and value of transactions dealt through Stock Exchanges and/or Depositories, as detailed below:

Mode of Transaction	Type of Transaction	Who will Pay the stamp duty	Who will collect the Stamp duty	When to pay the Stamp duty	Value on which Stamp duty is to be calculated	Rate of Stamp duty
Through Stock Exchange	Sale of Securities	Buyer	By the stock exchange or a clearing corporation	On Settlement day	On Market Value of securities	At the rate specified in Schedule I
Through depository (other than stock exchange)	Transfer of Securities	Transferor	By depository	Before execution of off-market transfers	On Consideration amount	At the rate specified in Schedule I
Through Stock Exchange OR Through depository (other than stock exchange)	Creation or change in the records of a depository pursuant to an issue of securities	Issuer	By depository	Before executing any transaction in the depository system	On Market Value of such no. of Securities as contained in Allotment list	At the rate specified in Schedule I

4) INSTRUMENTS CHARGEABLE WITH DUTY FOR TRANSACTIONS OTHERWISE THAN THROUGH STOCK EXCHANGES AND DEPOSITORIES:

Section 9B has been inserted in Stamp Act for detailing the mode, nature and value of transactions dealt otherwise than through Stock Exchanges and/or Depositories, as detailed below:

Mode of Transaction	Type of Transaction	Who will Pay the stamp duty	Value on which Stamp duty is to be calculated	Rate of Stamp duty
Physical (other than through Stock Exchange or Depository)	Issue of Securities*	Issue	On Consideration amount	At the rate specified in Schedule I
	Transfer of Securities	Transferor	On Consideration amount	At the rate specified in Schedule I
	Re-issue of Securities^	Issuer	On Consideration amount	At the rate specified in Schedule I

Notes:

*For the issue of securities transactions that are not routed through a stock exchange or depository, the relevant stamp duty, as per Schedule I of the Act, is to be paid by the issuer at the place where the registered office of issued is located.

^In our view, Re-issue of securities would mean the extension of tenure of issued securities such as Debentures or Preference Shares.

5) REVISION IN RATE OF STAMP DUTIES CHARGEABLE ON SECURITIES INSTRUMENTS:

Schedule I of Stamp Act has also been amended w.r.t. rate of stamp duty chargeable on various transactions in securities by amending existing Article 27 and inserting new Article 56A in Schedule I, as detailed below:

Article No. of Schedule I	Description of Instrument and Existing rate	Description of Instrument and Revised rate (w.e.f. 09.01.2020)
27	<p>Debentures, <u>being a marketable securities:</u></p> <p>0.05% per year of face value of debenture, subject to maximum of 0.25% or rupees 25 lakhs whichever is lower.</p>	<p>Debentures:</p> <ul style="list-style-type: none"> - In case of issue of debenture- 0.005% - In case of transfer and re-issue of debenture – 0.0001%

Article No. of Schedule I	Description of Instrument and Existing rate	Description of Instrument and Revised rate (w.e.f. 09.01.2020)
56A	NOT DEFINED	<p>Security other than Debentures:</p> <ul style="list-style-type: none"> - issue of security other than debenture - 0.005% - transfer of security other than debenture on delivery basis- 0.015% - transfer of security other than debenture on non-delivery basis – 0.003% - derivatives- <ul style="list-style-type: none"> (i) futures (equity and commodity) 0.002% (ii) options (equity and commodity) 0.003% (iii) currency and interest rate derivatives 0.0001% (iv) other derivatives 0.002% - Government securities 0% - repo on corporate bonds- 0.00001%
62	<p>Transfer of</p> <p>a. shares;</p> <p>b. debentures, being marketable securities</p>	Omitted

6) IMPACT ON DEBENTURES

The term “Debentures” was not defined earlier and has now been defined in Stamp Act u/s 2(10A), which includes various instruments.

As per existing Article 27 for Debentures, the term used is “**Debentures, being a marketable securities**”, which means that the debentures which are capable of being traded on any stock exchange in India shall be chargeable with stamp duty. However, as per the amended Article 27 of Schedule I, the term used is “**Debentures**”, which means

that all instruments falling within the definition of debenture, whether capable of being traded on any stock exchange in India or not, shall now attract stamp duty under the Stamp Act.

7) CONCLUSION

The amendment in Stamp Act is welcome step for brining uniformity of process and manner of payment of stamp duty on transactions involving securities. However, it is pertinent to note that the collection point and the time of payment of stamp duty with respect to Physical issue / transfer of securities is not made clear in Section 9B of Stamp Act.

Further, State has power to legislate on the matters covered in State list of Schedule 7 of Constitution of India, therefore, it would be interesting to see whether all the states would accept the amended centralize rates of stamp duty on transactions involving securities or would prescribe a different rate?

ⁱ <http://www.egazette.nic.in/WriteReadData/2019/198304.pdf>

ⁱⁱ <http://egazette.nic.in/WriteReadData/2019/214581.pdf>

ⁱⁱⁱ <http://egazette.nic.in/WriteReadData/2019/214585.pdf>

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