Stamp duty on securities transactions effective from 1 July 2020

July 3, 2020

In brief

The Finance Act, 2019, had introduced certain amendments in the Indian Stamp Act, 1899, to streamline the levy and collection of stamp duty on securities transactions. The Ministry of Finance 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. These amendments have come into force with effect from 1 July 2020.

In detail

Background

The relevant provisions of the Finance Act, 2019, amending the Indian Stamp Act, 1899 (the Act) and the Indian Stamp (Collection of Stamp-Duty through Stock Exchanges, Clearing Corporations and Depositories) Rules, 2019 (the Rules) were notified[1] together on 10 December 2019 which were to come into force from 9 January 2020[2].

However, the Ministry of Finance, *vide* notifications[3][4] dated 8 January 2020, extended the effective date to 1 April 2020, and *vide* notification[5][6] dated 30 March 2020, further extended the effective date to 1 July 2020. This Regulatory Insight summarises the provisions of the Act as amended by the Finance Act, 2019 and the Rules, as applicable to securities transactions.

Amendments effective from 1 July 2020

Instruments of securities liable to stamp duty

- The definition of debentures has been inserted such that "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 (SEBI) from time-to-time.
- "Debenture" has been excluded from the definition of "bonds." This exclusion ensures

[1] Notification issued by Ministry of Finance dated 10 December 2019
[2] Notification issued by Ministry of Finance dated 10 December 2019
[3] Notification issued by the Ministry of Finance dated 8 January 2020
[4] Notification issued by the Ministry of Finance dated 8 January 2020
[5] Notification issued by the Ministry of Finance dated 30 March 2020
[6] Notification issued by the Ministry of Finance dated 30 March 2020

that stamp duty on "debentures" is chargeable only under any Article 27 (Union list) of the Constitution of India and not under the classification of "bonds."

- The definition of securities has been widened to include –
  - (i) Securities, as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (SCRA Act);
  - (i) A "derivative," as defined in clause (a) of section 45U of the RBI Act, 1934;
  - (ii) 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
  - (iii) Any other instrument declared by the Central Government, by notification in the Official Gazette, to be securities for the purposes of this Act.
- The definition of the term "instrument" has been widened by including in its ambit, 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.

Valuation mechanism

- Stamp duty is to be levied on the market value of a stock or security. The definition of market value provides as follows:

  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 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.
- In the absence of a specific provision for market value in case of transfers without consideration, it seems that such transactions would not be subject to stamp duty in the absence of any other instrument of transfer. The Government of India has issued frequently asked questions (FAQs)[7] for the implementation of amendments in the Act and the Rules made thereunder. Questions 15 and 24 of the FAQs clarify that no stamp duty is payable in relation to transactions without consideration, i.e., gift, bonus shares, transmission of securities, etc.
- In the following cases, the

  market value for computation of stamp duty is as under:
  - (i) In case of Options in any securities: premium paid by the buyer;
  - (ii) In case of Repo on corporate bonds: interest paid by the borrower; and
  - (iii) In case of Swap: only the first leg of cash flow, i.e., in a swap agreement, the notional/ gross value of the contract for the buyer.

Levy of stamp duty

- The newly inserted sections 9A and 9B of the Act consolidate the stamp duty provisions relating to the issue, sale or transfer of securities.
- 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.
- The new section 8A provides levy of stamp duty in relation to the transfer of dematerialised securities and units of mutual funds between beneficial owners. The transfer of securities from a person to a depository (dematerialisation) or from a depository to a person (rematerialisation) shall continue to be exempt.
- A quick glance of the changes to the stamp duty rates are provided in the below table:

Article	Transaction	Rate with effect from 1 July 2020	Erstwhile rate
27	Issue of debenture	0.005%	0.05% per year up to a maximum of 0.25% or INR 2.5m, whichever is lower

[7] FAQs issued on 30 June 2020

Article	Transaction	Rate with effect from 1 July 2020	Erstwhile rate
	Transfer and re-issue of debenture	0.0001%	Charged as per State Schedules
56A	Issue of securities other than debentures	0.005%	Charged as per State Schedules Exempt for issue of units of mutual funds
	Transfer of security other than debenture on delivery basis	0.015%	0.25% for unlisted shares; Exempt for units of mutual funds and shares held in dematerialised format
	Transfer of security other than debenture on non-delivery basis	0.003%	Charged as per State Schedules
	Derivatives – Futures (equity and commodity)	0.002%	Charged as per State Schedules
	Derivatives – Options (equity and commodity)	0.003%	Charged as per State Schedules
	OTC currency and interest rate derivatives	0.0001%	Charged as per State Schedules
	Other derivatives	0.002%	Charged as per State Schedules
	Government securities	0%	Charged as per State Schedules
	Repo on corporate bond	0.00001%	Charged as per State Schedules

- There has been significant reduction in stamp duty on certain transactions. For example, stamp duty on the transfer of unlisted shares is now reduced from 0.25% to 0.015%. In addition, stamp duty on allotment of shares is now 0.005%, which was 0.1% in certain States.

Stamp duty payment

In the absence of an agreement to the contrary, the person responsible for the payment of stamp duty in case of different transactions is described in the below table.

Nature of transaction	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	Person making, drawing or executing such instrument

Stamp duty collection mechanism

- The provisions prescribe the centralised collection and payment mechanism of stamp duty by stock exchanges, clearing corporations and depositories (collecting agents).
- The collecting agents for certain transactions provided in the below table.

Nature of transaction	Collecting agent
Sale of security through stock exchange	Stock exchange or clearing corporation appointed by it
Transfer of security through a depository	Depository
Issue of securities resulting in creation/ change in records of depository	
Transactions otherwise than through a stock exchange or depository	Registrars to an issue and/ or share transfer agents/ or issuer/ or seller

- For the sale of any securities through the stock exchange, including the sale of any listed units of any registered pooled arrangements or scheme or tripartite repo –
  - (i) Stamp duty shall be collected on the settlement day;
  - (ii) For transactions reported to a stock exchange, 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. However, if reporting is by the depository, and such depository has collected stamp duty and informed about it, the stock exchange should not collect stamp duty on such transactions;
  - (iii) The sale consideration reported to a stock exchange shall be considered as the actual sale value;
  - (iv) In case of interoperability 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.
- For transfer of securities for consideration made by a depository otherwise than through a stock exchange –
  - (i) Stamp duty has to be collected before the execution of all off-market transfers involving the transfer of securities in the depository system. This includes over-the-counter trades occurring in dematerialised or electronic form;
  - (ii) In case of transfer of securities pursuant to the invocation of a pledge, duty shall be collected from the pledgee on the market value of securities.
- On the issue of securities leading to creation or change in records of the depository –
  - (i) Stamp duty shall be collected from the issuer before executing any transaction in the depository system;
  - (ii) Stamp duty shall not be collected on the creation or destruction of securities on account of corporate actions such as stock split, consolidation, mergers and acquisitions, or such similar actions, if it does not involve change in beneficial ownership. Provided there is fresh issue to an investor as part of a corporate action, such issuance shall be subject to stamp duty.
- 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.
- Within three weeks of its collection, stamp duty collected is to be transferred to the State Government where the buyer resides. If the buyer is located outside India, the stamp duty is to be transferred to the State where the trading member/ broker of the buyer is located. If there is no such trading member, it needs to be deposited to the State Government having the registered office of the participant.
- Collecting agents may deduct 0.2% of the stamp duty collected as facilitation charges before transferring it to the concerned State Government.
- The collecting agent will submit a monthly stamp duty return along with the list of defaulters in the prescribed manner, within seven days of the succeeding month. An annual return is also required to be filed on or before 30 June of the immediately following financial year.

Potential impact

- Multiple incidences of taxation are prevented, as States shall not collect stamp duty on any secondary record of transaction associated with a transaction on which the depository/ stock exchange has been authorised to collect the stamp duty.
- The burden of stamp duty costs in certain transactions, such as transfer of securities on non-delivery basis and derivatives, has reduced, as stamp duty is now levied only on one side (either on the buyer or the seller but not on both) instead of being levied on both seller and buyer.
- The incidence of stamp duty has been reduced in many segments, such as the issue of shares, debentures, transfer of shares not in dematerialised format, transfer of debentures (including re-issue), etc. This shall aid capital formation and promote the corporate bond market.
- Investors should be cognisant of stamp duty implications on transactions involving units of mutual funds and alternative investment funds.
- The standardisation of levy and collection mechanism shall avoid tax arbitrage for the issue or re-issue or sale or transfer of securities happening outside stock exchanges and depositories.
- This system will help develop equity markets and equity culture across the length and breadth of the country, ushering in balanced regional development.
- This rationalised and harmonised system through the centralised collection mechanism is expected to minimise the cost of collection and enhance revenue productivity.

The takeaways

The amendments made effective from 1 July 2020 will lead to a standardised stamp duty regime for securities transactions. This is a welcome step towards a robust and well-defined framework for securities transactions in India.

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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