

Direct Tax Alert

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Amendments to Indian Stamp Act, 1899 with respect to securities market instruments effective from July 1, 2020

The amendments to Indian Stamp Act, 1899 with respect to securities market instruments have come into effect from July 1, 2020.

Background

- The Finance Act, 2019 had introduced certain amendments to Indian Stamp Act, 1899 ('Indian Stamp Act') to facilitate rationalised collection of stamp duty on securities market instruments across India. The Ministry of Finance also notified the Indian Stamp (Collection of Stamp-Duty through Stock Exchanges, Clearing Corporations and Depositories) Rules, 2019 ('Stamp Duty Rules') to provide for a mechanism for collection of stamp duty under the amended provisions.
- The amendments to the Indian Stamp Act and Stamp Duty Rules were notified simultaneously on December 10, 2019 and these were to come into force from January 9, 2020. Subsequently, the date of applicability of these provisions was extended to April 1, 2020 and further extended to July 1, 2020. The amendments to Indian Stamp Act and Stamp Duty Rules have thus come into effect from July 1, 2020.
- The Securities and Exchange Board of India ('SEBI') has also issued few frequently asked questions ('FAQs') which deal with the amendments to Indian Stamp Act and provide clarifications in relation to *inter alia* collection mechanism and applicability of stamp duty in case of units of mutual funds and Alternate Investment Funds ('AIFs').
- This alert provides an overview of key amendments to the Indian Stamp Act and also discusses some important FAQs issued by SEBI.



Key amendments to the Indian Stamp Act

The rates of stamp duty in relation to securities market instruments effective from July 1, 2020 are as under:

Instrument	Rate of stamp duty
Issue of debenture	0.005%
Transfer and re-issue of debenture	0.0001%
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 –	
(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%

The above stamp duty is payable on the market value of the security. The term 'market value' would mean as under:

Instrument through which	Market value
Any security is traded in a stock exchange	Price at which security is traded on stock exchange
Any security is transferred through a depository but not traded in the stock exchange	Price or consideration mentioned in the instrument
Any security is dealt otherwise than in the stock exchange or depository	Price or consideration mentioned in the instrument

The person responsible for collection of stamp duty in case of transactions undertaken through stock exchange / depository shall be as under:

Particulars	Person responsible for collection of stamp duty	Person from whom stamp duty shall be collected
Sale of any securities through a stock exchange	Stock exchange or a clearing corporation authorised by it	Buyer of securities



Particulars	Person responsible for collection of stamp duty	Person from whom stamp duty shall be collected
Transfer of securities for a consideration made by a depository otherwise than through stock exchange	Depository	Transferor of securities
Issue of securities pursuant to which any creation or change in the records of a depository is made	Depository	Issuer of securities

The person responsible for payment of stamp duty in case of transactions undertaken otherwise than through stock exchange / depository shall be as under:

Particulars	Person responsible for payment of stamp duty
Issue of securities by an issuer	Issuer
Sale or transfer or reissue of securities for consideration	Seller or transferor or issuer, as the case may be

FAQs issued by SEBI

Stamp duty in case of certain off-market transfer of securities without consideration and issue of bonus shares:

FAQ	SEBI clarification
Whether stamp duty will be charged on off-market transfer of securities without consideration such as on gift and legacy transfer?	<ul style="list-style-type: none"> No stamp duty payable in such cases. Section 21 of the amended Indian Stamp Act read with section 2(16B) clearly indicates that stamp duty is to be collected on market value which is based on price or consideration involved.
Whether stamp duty is payable on bonus issue of shares?	

Units of mutual funds and AIFs

FAQ	SEBI clarification
Whether switching in mutual fund will attract stamp duty?	<ul style="list-style-type: none"> Issue of fresh units of mutual funds in the switched scheme would also attract stamp duty even though there is no physical consideration paid or transfer of ownership. This is because the new units are deemed to have been purchased with the net asset value realized from the sale of earlier units
Whether stamp duty is applicable on redemption of mutual fund units?	<ul style="list-style-type: none"> Redemption of units of mutual funds is not liable to duty as it is neither a transfer nor an issue or a sale
Who will collect stamp duty in case of mutual fund and AIF	<ul style="list-style-type: none"> In case of sale, transfer and issue of units of mutual fund and AIF in demat mode through stock exchange or depository,



FAQ	SEBI clarification
transactions (sale, transfer and issue of units in demat mode) through stock exchange or depository?	the respective stock exchange/authorized Clearing Corporation or a depository shall be empowered to collect stamp duty
Where the transfer of units of mutual funds and AIFs which are held in physical form take place outside the purview of Registrar and Transfer Agent ('RTA'), what will be process of collection and remittance of stamp duty?	<ul style="list-style-type: none">• Where units of mutual fund and AIF are issued in physical form, stamp duty has to be collected and remitted by RTAs.• Accordingly, when the transferee approaches RTA for effecting the transfer in their books, RTA will be collecting the stamp duty from the transferor before effecting the transfer which will then be remitted to the state of domicile of the transferee.• Government vide notification S.O. 116(E) dated January 8, 2020 has notified RTAs for acting as collecting agents in case of instruments of transactions entered otherwise than through a recognised stock exchange or depository. Thus, even where transfer of units of AIFs and mutual funds which are held in physical form takes place outside the purview of RTAs, the collection of stamp duty in such cases shall be done by RTAs. SEBI vide circular SEBI/HO/IMD/DF6/CIR/P/2020/113 dated June 30, 2020 has directed AIFs to comply with the said notification and has stated that AIFs where RTA has not been appointed so far, shall appoint RTA at the earliest but not later than July 15, 2020 for this purpose.

Dhruva Comments

The present system of collection of stamp duty on securities market transactions led to multiple incidences of stamp duty at multiple rates for the same instrument, thereby resulting in jurisdictional disputes and significant rise in transaction costs which in turn impacted capital formation negatively.

The amendments to Indian Stamp Act have been introduced with an aim to bring in uniformity of the stamp duty on securities across states and thereby build a pan-India securities market. The amended provisions would also enable creation of legal and institutional mechanism for states to

collect stamp duty on securities market instruments at one place, by one agency (through stock exchange or clearing corporation authorized by it or by the depository) and on a single instrument.

Under the erstwhile provisions, transfer of securities held in demat form was exempt from stamp duty. Such exemption will not be available under the amended provisions.

Further, issue of FAQs by SEBI clarifying applicability of stamp duty on bonus issue and off-market transfer of securities without consideration is a welcome move.



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