

COST OF TRADING IN SECURITIES SET TO UPSCALE!

Trading of securities in the Indian capital markets is associated with various tax implications. The Hon'ble Ministry of Finance recently notified (i) the Indian Stamp (Collection of Stamp Duty through Stock Exchanges, Clearing Corporations and Depositories) Rules, 2019 (**Collection of Stamp Duty Rules**); and (ii) certain amendments to the Indian Stamp Act, 1899 through Part I of Chapter IV of the Finance Act, 2019 (**Stamp Act**), whereby the instruments in connection with issuance or transfer of securities, through common agencies i.e. stock exchanges or clearing corporations or depositories shall be subject to stamp duty implications, with effect from 9th January, 2020 (collectively the **Recent Notifications**). Under the extant regime, (i.e., prior to 9th January, 2020), stamp duty was payable on issue or transfer of securities in physical form and that transfer of dematerialized securities, of listed/unlisted companies, were exempted from stamp duty.

Some of the key points of the Recent Notifications are as follows:

- It puts an end to the erstwhile benefit of non-applicability of stamp duty on transfer of securities held in electronic mode. The existing definition of 'instrument' under the Stamp Act has been widened to include 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. This implies that, in addition to the erstwhile taxes applicable, trading of securities in electronic mode shall further attract levy of stamp duty thereafter. Furthermore, the Collection of Stamp Duty Rules stipulates *inter alia* the manner in which the stamp duty shall be levied and collected by the stock exchanges, depositories and clearing corporations, as the case may be (*collectively referred to as **collecting agents***), and thereafter transferred to the concerned state governments.
- The erstwhile provisions of the Stamp Act stated that the term 'securities' shall have the same meaning assigned to it under the Securities Contracts (Regulation) Act, 1956. However, the recent amendments to the Stamp Act has widened the scope of definition of 'securities' to include *inter alia* derivatives, commercial papers, repo on commercial bonds and other debt instruments as the Reserve Bank of India may prescribe from time to time.
- Stamp duty shall be levied on the market value of securities traded electronically, irrespective of (i) it being on delivery basis or on non-delivery basis; (ii) whether such securities pertain to listed or unlisted companies. The term '*market value*' shall mean the value at which the securities are traded on stock exchange, and in any other cases, the value of consideration mentioned in the concerned instrument.
- Under the erstwhile Stamp Act, there was a contentious issue whether to pay the stamp duty at the rate prevailing in the state where the registered office of the issuer is situated or where the concerned instrument is executed. It is now resolved and the Ministry of Finance has now clarified that the stamp duty on the market value of the securities shall be payable by the issuer in the state where its registered office is situated.

- The Collection of Stamp Duty Rules states that the responsibility of collecting the stamp duty shall be of the respective collecting agents and as such they shall deduct 0.2 per cent of the stamp-duty collected on behalf of the concerned state government towards its operational charges, before transferring the same to such state government. It is hereby clarified that the concerned state government shall mean the state where the buyer resides. Also, the collecting agencies have to comply with certain compliances as stipulated under the provisions of Collection of Stamp Duty Rules.
- The Collection of Stamp Duty Rules sets out *inter alia* the (i) the person/entity who is liable to pay the stamp duty; (ii) the amount on which the stamp duty is to be computed; (iii) the timelines for making such payment of stamp duty.
- The Schedule I to the Stamp Act has been amended whereby the existing duties in connection with certain transactions have been revised and other new duties have been stipulated in case of transactions relating to sale or transfer of securities. Some of the key stamp duty rates notified under the Stamp Act are as follows:

SECURITIES	RATE OF STAMP DUTY
DEBENTURES	
Issue of debenture;	0.005%
Transfer and re-issue of debenture.	0.0001%
SECURITY OTHER THAN DEBENTURES	
Issue of security	0.005%
Transfer of security on delivery basis	0.015%
Transfer of security on non-delivery basis	0.003%
Derivatives:	

Futures (equity and commodity)	0.002%
Options (equity and commodity)	0.003%
Currency and interest rate derivatives	0.0001%
Other derivatives	0.002%
Government securities	0%
Repo on corporate bonds	0.00001%

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