

Volume 71, July 2020



# The Newsletter

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## Schools Are Entitled to Tuition Fee Irrespective of Offering Online Classes: Punjab and Haryana High Court

The Punjab and Haryana High Court recently in the case of ***Independent Schools' Association Chandigarh (Regd.) & others vs State of Punjab and others*** on 30.06.2020 in CWP No.7409-2020 ruled that all the schools are entitled to collect tuition fee irrespective of offering online classes during the lockdown. Such direction was passed by the Court while hearing a bunch of petitions filed by associations of unaided private schools and others challenging a notification issued by the Director, School Education, restraining schools to charge fees.

Several parents, on the other hand, had also approached the Court with a plea to waive the school fee on the pretext that they should not be made to pay for the services which have not been rendered especially when some of the schools did not offer online classes to its students. The Court observed that even if schools do not provide online education, the schools are yet required to meet the

expenses i.e. salary of the teachers and non-teaching staff as well as building, electricity expenses etc. and such obligations of schools remain as it is even in this pandemic and hence, the school cannot be deprived of admission fee and tuition fee.

However, considering the present crisis and to strike a balance, Court directed that the school managements shall work out the actual expenditure incurred under the annual charges for the period the school remained closed and recover only such expenditure incurred by them, including actual transport charges and actual building charges.

Such charges cannot be recovered for the period for any activity or facility towards which no expenditure is incurred by the Schools.



## The Crux of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020

As a result of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 dated 05.06.2020 (“**Ordinance**”), two new Sections (i) Section 10A and (ii) sub-Section 66(3) have been incorporated in the of Insolvency and Bankruptcy Code, 2016 (“**IBC**”). By Section 10A of IBC, operation of Section 7, 9, and 10 has been effectively suspended with respect to defaults arising on or after 25.03.2020 for a period of 6 months or such further period not exceeding 1 year through notification. Section 10A states that proceedings under IBC cannot be initiated for all defaults,

which have occurred on or after 25.03.2020 for a period of 6 months extendable up to a maximum of 1 year from such date as may be notified. Further, the proviso to Section 10A states that no application can ever be filed for a default occurring during the said period, i.e. for a 6-month period from 25.03.2020. However, there is no escape for the



defaults which are prior to this date and are effectively enforceable under the IBC. The explanation to Section 10A clarifies that the amendment shall not apply to defaults, which occur before 25.03.2020.

Further, Section 66(2) of IBC creates a liability on the director or partner of the corporate debtor, for failure to exercise due diligence, so as to avoid initiation of Corporate Insolvency Resolution Process. The Ordinance by way of insertion of a subsection 3 to section 66 creates an exception to section 66(2) of the IBC which states that for such corporates for whom proceedings have been suspended as per Section 10A, the resolution professional cannot file an application to the National

Company Law Tribunal for directions against the partners or directors of the company to make contributions to the assets of the company.

However, the suspension of the right to initiate Corporate Insolvency Resolution Process under 7, 9 and 10 of the IBC does not take away the legal right of recovery which is provided under alternate laws of recovery of debts. Creditors can turn to recovery process through Section 19 of Recovery of Debts Due to Bank and Financial Institution Act, 1993 or under Section 13 and 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or under any other applicable laws.

### **Rule 11UAC- Exemption from Provisions of Section 56(2)(X) of the Income-Tax Act, 1961**

The Central Board of Direct Taxes (“**CBDT**”) vide Notification dated 29.06.2020 has notified the Income-tax (14<sup>th</sup> Amendment) Rules, 2020 in reference to Section 56(2)(x) of the Income-tax Act, 1961 (“**IT Act**”) so to amend the provisions of Rule 11UAC of the Income-tax Rules, 1962. In this regard, Rule 11UAC has been amended to prescribe the following class of persons under clause (XI) of Section 56(2)(x) of the IT Act wherein provisions of the said section shall not be applicable in following cases:-

- i). Any immovable property, being land or building or both, received by a resident of an unauthorised colony in the National Capital Territory of Delhi where the Central Government regularised the transactions of such immovable property by notification in the Official Gazette. In relation to this meaning of expression “resident” and “unauthorized colony” has

been defined under Explanation to the said Rule.

- ii). Any movable property being unquoted



shares of a company and its subsidiary and the subsidiary of such subsidiary received by a shareholder on the suspension of Board of Directors of the Company by NCLT along with the appointment of new directors as per the provisions of Section 241 and 242 of the Companies Act, 2013 respectively and also where such shares are received pursuant to the resolution plan approved by NCLT under section 242 of Companies Act, 2013. In relation to this, a company shall be termed as a subsidiary of another company, only if such other company holds more than half in nominal value of

the equity share capital of such company.

under the Yes Bank Limited Reconstruction Scheme, 2020.

- iii). Any movable property being equity shares of the Yes Bank Limited received by the investor/investor bank, where such shares have been allotted by the Yes Bank Limited

The aforesaid Rule 11UAC shall come into force from 01.04.2020 and shall be applicable for the assessment year 2020-21 onward.

### **Section 50CA Not Applicable in Case of Transfer of Shares Pursuant to a Resolution Plan Approved by NCLT**

The Central Board of Direct Taxes (“**CBDT**”) vide its Notification dated 30.06.2020 has notified Income-tax (15<sup>th</sup> Amendment) Rules, 2020 in reference to Section 50CA r.w.s. 295 of the Income-tax Act, 1961 (“**IT Act**”) wherein CBDT has inserted a new Rule 11UAD for prescribing a certain class of persons on which provisions of Section 50CA of the IT Act shall not be applicable in case of transfer of any movable property, being unquoted shares, of a company and its subsidiary and the subsidiary of such subsidiary by an Assessee in the following cases:

- i. Where the National Company Law Tribunal (“**NCLT**”) has suspended the Board of Directors of such company and has appointed new directors of the company in pursuance to Section 241 and section 242 of the Companies Act, 2013 which deal with the cases of oppression and mismanagement.

- ii. Where a share of such company and its subsidiary and subsidiary of such subsidiary has been transferred pursuant to a resolution plan approved by the NCLT under section 242 of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

Also, for the purpose of this rule, a company shall be termed



as a subsidiary of another company, only if such other company holds more than half in nominal value of the equity share capital of such company.

The aforesaid Rule 11UAD shall come into force from 01.04.2020 and shall be applicable for the assessment year 2020-21 onwards.

### **Hon'ble Supreme Court on Payment of Wages Amid Covid-19**

The Hon'ble Supreme Court (“**Apex Court**”) passed an interim order in ***Ficus Pax Private Ltd and Ors v. Union of India (W.P.(Civil) D.No.10983/2020,***

***dated 12.06.2020***) on issues relating to the payment of wages during national lockdown amid COVID-19 pandemic. Various petitions were filed by private

companies questioning the order dated 29.03.2020 issued by the Government of India, Ministry of Home Affairs (“**Impugned Order**”), wherein all the employers be it in the industries or the shops, commercial establishment, were mandated to make payment of wages of their workers, at their workplace, on the due date, without any deduction, for the period their establishments are under closure during the lockdown.

The Apex Court, by way of an interim order, directed that the private establishments, industries, factories and workers trade union, who are willing to negotiate, may enter into settlements with their workers and/or employees regarding payment of wages for the period with effect from the date of Impugned Order till 18.05.2020 (i.e. 50 Days) or for any other period as applicable in any particular state during which their industrial

establishment(s) was closed down due to lockdown.

Further, in the event, the employer and employee are unable to reach a settlement they can submit a request to labour authority to conciliate the dispute between the parties. In the event the settlement is arrived at, it may be acted upon by the parties irrespective of the existence of Impugned Order. The Apex Court further added that private establishment which proceeds to take steps as per the directions shall publish and communicate their steps to the workers/employees.

Additionally, the Apex Court also affirmed that no coercive action shall be taken against the employees pursuant to the Impugned Notification under the Impugned Order.



### **Relaxation of Time for Filing Forms Related to Creation or Modification of Charges under the Companies Act, 2013**

The Ministry of Corporate Affairs (“**MCA**”) vide **General Circular No. 23/2020** dated 17.06.2020 has notified the much awaited scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013 (“**Act**”). The Scheme has been made effective from 17.06.2020. The Scheme shall apply in relation to the filing of

forms  
CHG-1  
and  
CHG-9,  
is as  
follows:-



<b>Date of Transaction</b>	<b>Fees Payable, if the form is filed before 30.09.2020</b>
Where the date of creation or modification, as the case may be is before 01.03.2020, but the timeline of 120 days for filing such form has not expired as on 01.03.2020 under section 77 of the Act	Fee payable as on 29.02.2020 shall be charged
Where the creation or modification of charge is any date between 01.03.2020 to 30.09.2020	A normal fee shall be payable on such form as per the fees rules.



The Scheme shall not apply in the following cases:

- (i) The forms (i.e. Form CHG-1 and Form CHG-9, as the case may be), have already been filed before the date of issue of this Circular.
- (ii) The timeline for filing the form has already expired under section 77 or section 78 of the Act prior to 01.03.2020 and
- (iii) Filing of form CHG-4 for the satisfaction of Charges.

### **No Deemed Dividend where Shareholding Reduced Below 10% Before Advancement of Loan**

In the case of ***Assistant Commissioner of Income-tax v. Gurdeep Singh [2020] 117 taxmann.com 451 (Chandigarh - Trib.) dated 26.06.2020,*** Assessee company held more than 10% shareholding in two companies wherein one of those companies extended some loan to the other company. In relation to this, the assessing officer (“**AO**”) raised a demand on the Assessee company by making an addition of the amount of loan given by the lender company to the borrower company by invoking provisions of Section 2(22)(e) of the Income Tax Act, 1961 (**‘IT Act’**) which provides that loan by a company to a concern in which shareholder has a substantial interest shall be deemed as dividend to the shareholder. The AO was of the view that as the Assessee company was having substantial shareholding in lender and borrower companies, thus, the loan amount shall be deemed as dividend u/s 2(22)(e) of the IT Act. The said matter travelled before the Hon’ble ITAT wherein Hon’ble ITAT observed that firstly, the AO could not establish beyond doubt that the Assessee was having substantial interest in lender company on the date of the advancement of loan. Secondly, also as per the annual return filed with the

Registrar of Companies (“**ROC**”), which is a legal and valid document as per law, the Assessee company was a holder of only one share in the lender company and the other shares stood transferred to other group company before the advancement of such loan. Also, in order to apply a deeming fiction, the first set of facts is to be proved beyond doubt and the deeming fiction cannot be applied on the basis of assumption, presumption or suspicion about the first set of facts. Further, as per the record of ROC, the effective date of transfer of shares was accepted by the ROC. Therefore, for all intents and purposes, the effective date of the transaction will be the date



as accepted by the ROC. Thus, it is mere suspicion of the AO that the Assessee was having substantial shareholding in the lender company on the date of transaction. Hence, the Hon’ble ITAT held that the deeming provisions of section 2(22) (e) of the IT Act are not applicable in the instant case.

## FAQ's on Re-Classification of MSME Enterprises and New Registration Procedure

The Government of India through Ministry of Micro, Small & Medium Enterprises has notified revised guidelines *vide* Notification No. S.O. 2119(E) dated 26.06.2020 (“**Notification**”) for the classification of Micro, Small and Medium Enterprises (“**MSME**”) along with new registration portal in the name of ‘*Udyam Registration Portal*’ w.e.f. 01.07.2020. Link as followed:

<https://udyogaadhaar.gov.in/Default.asp>

[x](#)



The Salient features of the above Notification have been discussed in the form of below FAQs for ease of understanding-

### 1. What is the revised criteria for classification of an Enterprise into Micro, Small and Medium Category?

The Notification has broadly brought three changes in the existing norms –

- i. Existing separate criteria of classification for the manufacturing and service sector has been now merged into single criteria for MSME.
- ii. An additional criterion of turnover has been added along with the existing basis of Investment in plant and machinery. Thus, an enterprise needs to satisfy both the threshold to fall into any of the three categories.
- iii. Threshold has been increased substantially for all the three categories viz. Micro, Small and Medium Enterprise.

Comparative analysis of existing and revised norms is as below-

Category	Existing Norms		Revised Norms	
	Manufacturing Sector (Investment in Plant & Machinery)	Service Sector (Investment in Plant & Machinery)	Investment in Plant & Machinery	Turnover
<b>Micro Enterprise</b>	<=25 Lacs	<= 10 Lacs	<=1 Crore	<=5 Crore
<b>Small Enterprise</b>	>25 Lacs & <=5 Crore	>10 Lacs & <=2 Crore	<10 Crore	<=50 Crore
<b>Medium Enterprise</b>	>5 Crore & <=10 Crore	>2 Crore & <=5 Crore	<50 Crore	<=25 Crore

### 2. Are traders also covered through the new classification under the MSME Act, 2006?

It is to be noted that only manufacturers and service providers are covered under the definition of MSME as per Micro, Small and Medium Enterprises Development Act, 2006 (“**MSME Act**”) and no change has been done in the definition given under the MSME Act. Thus, traders are still outside the scope of the MSME Act.

### 3. How to calculate the investment in Plant & Machinery or equipment? Is it

**a gross investment or written down value reflecting in the financials?**

Meaning of Plant and Machinery shall be the same as provided in the Income Tax Rules, 1962 and it will include all tangible assets except land & Building, furniture and fittings. Investment in Plant & Machinery has been linked to the Income Tax Return (ITR) filed for the previous years. In case, no ITR has been filed then it will be based on self-declaration of the promoter of the enterprise till the time ITR has been filed.

Value of plant and machinery shall be taken as Invoice value excluding GST. Thus, it will be based on gross investment instead of WDV value.

**4. What is the criterion for calculation of turnover and is there any exclusion in it?**

Turnover shall be linked to the information filed under Income Tax Act or Central Goods and Services Act (CGST). In case, an enterprise doesn't have PAN, turnover shall be considered on the self-declaration basis till 31.03.2021. Thereafter, the requirement of taking PAN and GSTIN shall be mandatory.

As a big relief, export turnover shall not be considered while determining the turnover of the MSME. Thus, exporters will continue to be benefited from export without fearing to lose MSME benefits upon breaching the turnover limits.

**5. What is the Udyam Registration Portal?**

Hitherto, enterprises who falls in the MSME definition may get themselves registered under EM-II or Udyog Aadhar Memorandum (UAM). Same has been now replaced with a new registration procedure.

The notification has provided for the new registration portal for the MSME w.e.f.

01.07.2020 in the name of 'Udyam Registration Portal' wherein online details need to be filed on a self-declaration basis with no requirement to upload the documents or any proofs. On Registration, permanent identify number shall be issued to the enterprise, to be known as "Udyam Registration Number". On completion of the registration process, e-certification namely 'Udyam Registration Certificate' shall be issued.

As mentioned above, the information shall be filed on a self-declaration basis which shall be verified with the information available in the government database including ITR and GST returns. Those enterprises who do not have PAN and GSTIN, it would be mandatory to take them by 31.03.2021.

**6. What will happen to the existing entities registered under the old provisions? Will they require to get fresh registration under the Udyam Registration portal?**

All existing enterprises who have taken Udyog Aadhar Number shall be required to register again on the new Udyam Registration Portal and will be re-classified as per the new criteria. However, existing registration shall remain valid till 31.03.2021.

**7. What will happen upon a change in the upper or lower threshold by the enterprises in subsequent years?**

In case of graduation (i.e. from lower to higher category) where an enterprise crosses the ceiling limit of either investment in plant and machinery or turnover or both as applicable for its present category, it will cease to exist in that category and will be placed in the next higher category. However, it will maintain its prevailing status till the expiry of one year from the close of the year of registration.



In case of reverse graduation (i.e. from higher to lower category), no enterprise shall be placed in the lower category unless it goes below the ceiling limits as applicable for its present category in both the criteria of investment in plant and machinery as well as turnover. Also, the

existing classification will be continued till the closure of the financial year in which such change took place and benefit of changed status shall be given with effect from 1<sup>st</sup> April of the next financial year.

### Benefits Available to MSME Under Various Acts and Schemes

S. No.	Benefits	Statute / Authority	Micro	Small	Medium
1	Protection against Delayed Payments	MSME Act	Yes	Yes	NA
2	Preference in Procurement Policy	MSME Act	Yes	Yes	NA
3	Loans without collaterals under the name The Credit Guarantee Trust for Micro & Small Enterprises (CGTMSE)	Scheme of Ministry of MSME, GOI & SIDBI	Yes	Yes	NA
4	Credit Linked Capital Subsidy Scheme (CLCSS) for technology upgradation (15% capital subsidy up to Rs 15 Lakh for technology upgradation)	Ministry of MSME, GOI	Yes	Yes	NA
5	Multiple Schemes of Ministry of MSME for improving competitiveness, designing, energy conservation, etc.	Ministry of MSME, GOI	As per the respective scheme		
6	Submission of half yearly return to MCA under Specified Companies (Furnishing of information about the payment to micro and small enterprise suppliers) Order, 2019	Companies Act, 2013	Yes	Yes	NA
7	ISO Certification Charges Reimbursement A registered micro or small enterprise can claim for reimbursement up to 75% of certification expenses (max. Rs. 75,000/-) that were spent on ISO certification	Ministry of MSME, GOI	Yes	Yes	NA
8	Section 240 A: IBC section 29A not applicable i.e. promoters are eligible to submit resolution plan for the insolvent entity	IBC	Yes	Yes	Yes
9	Reservation of 30% plots for Micro, Small & Medium Enterprises in new industrial areas to be developed by RIICO under RIICO Disposal of Land Rules 1979	RIICO	Yes	Yes	Yes
10	One-time restructuring of an existing loan without a downgrade in asset classification	RBI	Yes	Yes	Yes
11	Trade Receivable discounting system (TReDS) to facilitate the financing of trade	RBI	Yes	Yes	Yes

	receivables. The transactions processed under TReDS will be “without recourse” to the MSMEs				
12	Covered under Priority sector Lending	RBI	Yes	Yes	Yes
13	Subsidy on Patent Registration & Industrial Promotion	DPIIT, Ministry of Commerce & Industry, Govt. of India	Yes	Yes	Yes

### Other Important Updates

- Central Board of Direct Taxes (CBDT) vide **Notification dated 24.06.2020** has further extended the deadlines for various time limits prescribed/provided under the Income-tax Act, 1961 and the Direct Tax Vivad se Vishwas Act, 2020. This notification comes into force from 30.06.2020. For details, click here <http://www.chiramritlaw.com/further-extension-of-time-limits-w-r-t-direct-taxes/>.
- The Income Tax Department has opened the e-filing window for the filing of **ITR-1, ITR-2 and ITR-4** return forms for **Assessment Year 2020-21** (The financial year 2019-20). Significant changes have been made in the said forms when compared to previous financial year like disclosure regarding Cash Deposits, Expenditure on Foreign Travel, Expenditure on Consumption of Electricity, Special schedule named DI and a new Schedule 80D. Taxpayers would need to be careful regarding these new disclosure requirements while filing their return forms. For details regarding changes made in ITR Forms notified for A.Y. 2020-21, please click here: <http://www.chiramritlaw.com/changes-in-itr-forms-notified-for-ay-2020-21/>.
- CBIC vide Notification No. 55/2020 – Central Tax dated 27.06.2020 has extended the time limit for completion of compliances such as filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record which falls during the period 20.03.2020 to 30.08.2020 upto 31.08.2020, subject to certain exception.
- The government, in order to ease down the process of return filing, has enabled the registered person to file Nil GST returns via. mobile SMS.
- CBIC has waived off the late fees for the taxpayers who do not have any tax liability but are yet to file GSTR-3B for the period starting from July 2017 to January 2020. Further, the late fees have been restricted to maximum Rs 500 for those taxpayers who have not filed their GSTR-3B for the period starting from July 2017 to January 2020 and having tax liability, if the returns are submitted between 01.07.2020 to 30.09.2020. (N.N. 57/2020 – Central Tax dated 30.06.2020 r/w N.No. 76/2018– Central Tax, dated the 31.12.2018).

6. Securities Exchange Board of India vide circular No. SEBI/HO/IMD/DF6/CIR/P/2020/113 dated 30.06.2020 directed Alternative investment funds (“**AIFs**”) to comply with the applicable provisions of the Indian Stamp Act, 1899 and rules made thereunder regarding the collection of stamp duty on sale, transfer and issue of units of AIFs with effect from 01.07.2020. Said Circular provides that in an event, registered "Registrars to an Issue and/or Share Transfer Agents" (“**RTA**”) have already been appointed by AIFs, such RTA shall collect the stamp duty applicable on issue, transfer and sale of AIFs. However, in event RTA has not been appointed by the AIFs, then the AIFs shall at earliest but not later than 15.07.2020 appoint RTA and till time RTA is not appointed, the AIF shall keep the applicable stamp duty on issue, transfer and sale of units of AIF in a designated account and upon the appointment of RTA, AIFs shall transfer the said amount to RTA for onward remittance to States/Union Territories as per the provisions of Indian Stamp Act, 1899.
7. The Ministry of Corporate Affairs vide circular no. F. No. 2/1/2020-CL-V dated 15.06.2020 provided extension of time i.e. till 30.09.2020 concerning conducting their extraordinary general meetings through video conferencing and other audiovisual means or transact items through postal ballot and all other requirements provided in the General Circular No. 14/2020 on 8th April 2020 and General Circular No. 17/2020 on 13th April 2020 shall remain unchanged.
8. The Reserve Bank of India issued vide notification no. RBI/2019-20/258 DOR(NBFC)(PD)CC.No.112/03.10.001/2019-20 dated 24.06.2020 in respect of loans sourced by banks and NBFCs over digital lending platforms: adherence to fair practice codes and outsourcing guidelines. The said notification stated that the Banks and NBFCs are to lend either directly through their own digital platforms or through a digital lending platform under an outsourcing agreement. Further, banks and NBFCs, irrespective of whether they lend through their own digital lending platform or through an outsourced lending platform, must adhere to the Fair Practices Code guidelines in letter and spirit. They must also meticulously follow regulatory instructions on outsourcing of financial services and IT services.

## Analysis of Amendments in the Indian Stamp Act, 1899

**By: Ritu Soni, Senior Partner & Harsha Totuka, Partner, Chir Amrit Corporate LLP**

For rationalizing levy and administration of stamp duty on securities market instruments, the government had proposed amendments in the Indian Stamp Act, 1899 through the Union Budget 2019. The said amendments which were earlier proposed to be implemented from January 09, 2020, were deferred twice and have finally come into effect from July 01, 2020. Hereinbelow is an analysis of the major amendments made *vide* the Finance Act, 2019 (7 of 2019):



### 1. Rates of Stamp Duty [*w.e.f.* July 01, 2020]

S. No.	Particulars	Proposed Stamp Duty
1.	Issue of Debenture [ <b>Article 27</b> ]	0.005%
2.	Transfer / Re-issuance of Debenture [ <b>Article 27</b> ]	0.0001%
3.	Issue of security other than debenture [ <b>Article 56A</b> ]	0.005%
4.	Transfer of security other than debenture on delivery basis [ <b>Article 56A</b> ]	0.015%
5.	Transfer of security other than debenture on non-delivery basis [ <b>Article 56A</b> ]	0.003%
6.	Derivatives [ <b>Article 56A</b> ]	
	1. Futures (equity and commodity)	0.002%
	2. Options (equity and commodity)	0.003%
	3. Currency and interest rate derivatives	0.0001%
	4. Other derivatives	0.002%
7.	Government securities [ <b>Article 56A</b> ]	0%
8.	Repo on corporate bonds [ <b>Article 56A</b> ]	0.00001%

### 2. Stamp Duty on Dematerialised transactions:

Section 8A inserted *vide* Finance Act, 2000, *inter alia*, provides that no stamp duty shall be chargeable on the transfer of beneficial ownership of securities dealt with by a depository. The said exemption has been done away with and accordingly, *w.e.f.* July 01, 2020 transfer of securities in dematerialised form is proposed to be charged with stamp duty.

### 3. Framework of stamp duty collection

For transaction related to securities in stock exchanges and depositories, following framework related to collection and liability of payment of stamp duty has been laid out:

<b>S. No.</b>	<b>Particular</b>	<b>Levy Basis</b> (Sec. 9A & 9B)		<b>Collection Responsibility</b> (Sec. 9A & 9B)
1.	Issue of Securities	Market Value		Depository in case of issuance in Dematerialized Form
2.	Transfer of Securities	Transfer through stock exchange	Market Value	Stock Exchange
		Transfer by depository	Consideration Amount	Depository

#### 4. Debentures Defined

Previously, the issue on levy of stamp duty on debentures which do not amount to marketable securities was a contentious matter. The new added definition of 'Debentures' eliminates the pre-condition of debentures fulfilling the definition of 'marketable securities' and provides for an inclusive definition of debentures which includes securitized debt instruments; certificate of deposit, commercial usance bill, commercial paper and such other debt instrument of original or initial maturity up to 1 year as the RBI may specify from time to time and bonds also.

#### 5. One Transaction, One Duty, One Instrument

- (a) Section 4 of the Indian Stamp Act, 1899 relating to 'Several Instrument used in a single transaction of sale, mortgage or settlement' is proposed to be amended to include a provision granting an exemption on payment of stamp duty on various instruments which are used in case of issue, sale or transfer of securities. The newly added Section 4(3) prescribes that in case of an issue, sale or transfer of securities, stamp duty would only be levied in case of principal instrument which would be the instrument on which duty is chargeable under Section 9A. It may be noted that the aforesaid exemption proposed through Section 4(3) is only applicable for securities issued in dematerialized form and is not applicable for securities issued in physical form.
- (b) The aforesaid amendment in Section 4 may have the impact of exempting the levy of stamp duty on instruments such as mortgage deed which is executed in case of transaction of issuance of debentures. However, since the only rate of stamp duty on certain specified instruments, e.g. Debentures, is a matter under the Union List under 7<sup>th</sup> Schedule of the Constitution, it will be a matter of judicial determination whether the aforesaid amendment is within the power of the Union Government in view of the Doctrine of Pith & Substance or whether the Union Government has encroached upon the powers of State Government regarding levy of duty on instruments such as Mortgage Deed. It is significant to mention that certain states (e.g. Rajasthan) have already carried out amendments in its State Stamp Legislation to give effect to the newly added Section 4(3).



## 6. Market Value

The amendments seek to clarify the manner in which the market value of securities will be computed for levy of *ad-valorem* duty:

S. No.	Instrument	Market Value
1.	Security traded in Stock Exchange	Price at which security is so traded
2.	Security transferred through depository but NOT traded in Stock Exchange	Price/ Consideration mentioned in the instrument
3.	Security dealt in physical form	Price/ Consideration mentioned in the instrument

## 7. Liability to pay Stamp Duty

The amendments regarding the person who would be liable to bear the expense of stamp duty are as follows:

S. No.	Particular	Payable by Whom <i>(In the absence of contrary contract)</i> (Sec. 9A, 9B & 29)
1.	Issue of Securities	Issuer
2.	Transfer of Securities through Stock Exchange	Buyer
3.	Transfer of Securities through Depository or Physically	Transferor

### Remarks:

Though the amendments are a much awaited breather for the securities market especially for the corporate bond sector, yet certain ambiguities such as (i) whether Union Government can prescribe rates for issuance of share certificate which is within the power of State Government (Entry 63, List III, 7<sup>th</sup> Schedule, Constitution of India) or these rates will only be effective upon the respective States adopting the rates, (ii) mortgage deeds executed for secured the issuance of debentures will not be required to be stamped in view of proposed Section 4(3); and (iii) whether the new rates will apply to non-convertible debentures issues where transaction documents are executed after July 01, however the deemed date of allotment is before 1<sup>st</sup> July remain unresolved. The amendments towards of one transaction, one instrument and one stamp duty definitely are undisputedly a positive step towards simplifying the complexities surrounding the levy of stamp duty, however, its objective would be entirely achieved only it is ensured that uniform rates are applicable across the nation.



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