

Article

Stamp Duty on Debentures



Name: Nidhi Bothra

Email ID: nidhi@vinodkothari.com

Date: July 19, 2013

Check at:

<http://india-financing.com/staff-publications.html>
for more write ups.

Copyright:

This write up is the property of Vinod Kothari & Company and no part of it can be copied, reproduced or distributed in any manner.

Disclaimer:

This write up is intended to initiate academic debate on a pertinent question. It is not intended to be a professional advice and should not be relied upon for real life facts.



A “debenture” is defined in corporate law precedents to mean an acknowledgement of debt. It is a certificated evidence of a debt – that is, the debt is evidenced by the mere holding of the certificate. In essence, where there is a capacity to contract a debt, there is inherently a capacity to evidence such debt in form of an instrument, called a debenture.

As per the Indian Stamp Act¹, stamp duty on debentures being marketable security transferable by a) endorsement or by a special instrument of instrument or b) by delivery attract stamp duty as per Article 27 of the Stamp Schedule (Schedule I). Debenture being a marketable security transferable by endorsement or by a special instrument of instrument the rate of stamp duty is 0.37% of the value of the security. In case debenture being marketable security transferable by delivery the stamp duty applicable is 0.75% of the value of the security.

As per the Bombay Stamp Act, there is no specific article providing the stamp duty applicable on issuance of debentures. Article 27 of the Indian Stamp Act is applicable to Maharashtra as well.

However, as per Article 246, Seventh Schedule, Entry 91 of the List I (Union List), Parliament has exclusive powers to make laws with respect to --

“Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures (emphasis ours), proxies and receipt”

Pursuant to this power, Department of Revenue, Ministry of Finance, in its order bearing S.O. 2189(E) dated September 12, 2008, the issuer will pay the stamp duty on issue of debentures, being a marketable security transferable (a) by endorsement or by a separate instrument of transfer (b) by delivery; at the rate of .05% per year of the face value of the debentures, subject to the maximum of 0.25% or Rs 25 lakh, whichever is lower. This would mean in case of issue of debentures maximum stamp duty applicable is 0.25% or Rs. 25 lakhs whichever is lower.

For states that have their own stamp acts as well the above provisions will be applicable. Therefore the situation that emerges with regard to stamp duty on debentures and consistent across states is as below:

¹ The provisions of Indian Stamp Act, 1899 are applicable to whole of India and its territories excluding the states which have their own legislations on the stamp duty payable there. The Indian Stamp Act has been adopted by almost all the states with or without amendments in the main Act. The states that have their own Stamp Act are Karnataka, Bombay, Gujarat, Kerala and Rajasthan.

