NATIONAL ECONOMIC FORUM

POLICY BRIEF

Streamlining Revenue Collection: The Benefits of Digitizing India's Stamp Duty Regime

Index

About the National Economic Forum

INDEPENDENT. APARTISIAN. APOLTICAL. NOT FOR PROFIT.

With the sacred aim of contributing towards the development of our country, we have strived to establish the National Economic Forum in New Delhi registered under provisions of the Indian Trusts Act. We are a completely apolitical and Not-for-Profit organization devoted to the cause of furtherance of Public Charitable objects. It will operate and carry out its activities of an apolitical trust in Socio-Economic and Geopolitical areas at the national and international levels while concentrating on India-centric objectives.

The NEF will independently pursue the sole aim of reflecting the true state of the Indian economy and suggest ways and means to improve the same. It will provide a platform to initiate and sustain positive developmental dialogues among all stakeholders.

We will pursue to cover all economic, cultural, and geo-political developments in the field of environment, energy management, policy changes developing India's businesses. Our People, Places, and Programs (PPP) initiative will cover all villages, blocks, districts, and states and will focus on important sectors like agriculture, education, industry, logistics, transport, maritime, ocean, hills, cyber & border security, IT & electronics, communications, health, and infrastructure among others. NEF will focus on India's emerging industries like marine, aquaculture, deep oil and gas exploration, Food, and Energy Security, Health Care, offshore wind energy, renewable energy and underwater resources, and allied fields. We have thus pledged ourselves to work for the economic upliftment of the country, to achieve in letter and spirit of truly Atmanirbhar Bharat from village to national level and to work for the welfare of our countrymen as well as the entire mankind.

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The National Economic Forum consists of a team of about 12 vital members. The National Economic Forum is led by our founder President and Trustee, Shri. Devesh Tripathi, who is an advocate as well as a philanthropist. It is the vision of the President and the trustees that the able team of NEF seeks to carry on. The team consists of about a dozen members who cut across various states, fields, backgrounds and experiences.

We are proud to have researchers and team members working full-time as well as a mixed bag of team members from academia and the industry. We are also pleased to have former bureaucrats and retirees, working with us as advisors to guide our young team. The above members with insights from the entire National Economic Forum and its stakeholders have curated this document.

Vision

Our vision is of an India that learns from the world, and a world that can learn from India. Rooted firmly in our identity, but forever growing and branching out. It is our firm belief that knowledge can and should be sourced from all corners of the world and is the biggest driver of economic and social growth.

Mission

1. The National Economic Forum is an independent policy research organisation that strives to catalogue the best practices around the world; with a key focus on equitability and sustainability, then work to transpose and envision them as sweeping policy changes that could be brought about either by the government or by public-private partnerships.

2. The NEF strives to create a platform for an open discussion of issues at a national and global level and strives to view them all through the Indian prism.

3. NEF places emphasis on three key areas; People, Places and Programs. We strive to empower, educate and organise people at the grassroots level, bring sustainable development and scalable industries to the places that need it most and to organise programs, to generate awareness and to create a dialogue at the grassroots as well as an academic level.

Executive Summary

The Indian Stamp Act, 1899 is an integral piece of legislation that facilitates revenue collection for the State and establishes the authenticity of records. The Indian Stamp Duty regime has been subject to many amendments as and when the nature of instruments and transactions has changed. The amendment of 2019 was aimed towards streamlining and centralising stamp duty collection for the securities market. Despite this positive move, there still remain many gaps in the stamp duty regime with respect to digital transactions and instruments.

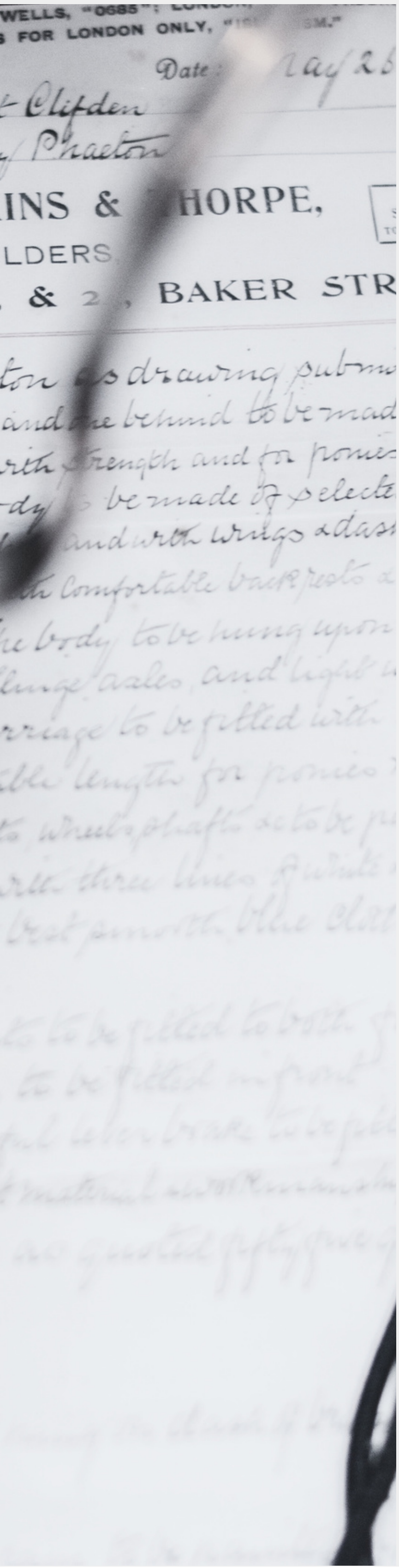
E-stamping is the process of paying stamp duty digitally and digitally rendering stamp papers used for electronic documents. Even though e-stamps have been implemented since 2013, there still is no legislative clarity with respect to which digital instruments would come under the ambit of the Stamp Act, how e-stamps would be affixed on said instruments, and instances of double duty being charged on copies of digital instruments. Such gaps have proven to make the affixation of e-stamps and payment of stamp duty on digital instruments more complicated and less consumer friendly.

Executive Summary

The National Economic Forum assessed and analysed the current Stamp Act, 1899 and found many such legislative gaps. Keeping in mind the intrinsic importance of the law, we decide to suggest amendments to the Stamp Act, 1899 and provide policy recommendations. These proposed additions include but are not limited to defining the scope of "instruments" to include digital records, defining digital signatures, and clarifying how such e-stamps would be affixed on the digital records. Such gaps have proven to make the affixation of e-stamps and payment of stamp duty on digital instruments more complicated and less consumer friendly.

The aim of this policy brief is thus, to initiate a transition towards a digital stamping regime, which would aid in the creation of a streamlined and robust code; thereby accomplishing the dual task of increasing the revenue of States and at the same time reducing their reliance on the Union for grants.

The Current E-Stamping Regime- Status Quo and Gaps



Over the last decade or so there has been a massive push towards the use of digital transactions and digital instruments to carry out economic activities in India, to keep up with this digitalization, e-stamping for financial instruments was introduced in 2013 by the Union Government. The aim behind this move was to minimise fraud and make the process of stamping more user-friendly.

The current system has given the Stock Holding Corporation of India Limited (SHCIL) and the Central Record Keeping Agency (CRA) the authority to grant e-stamp certificates. Furthermore, certain authorized intermediaries called Authorized Collection Centers (ACCs) have the delegated authority to issue e-stamp paper to consumers. With digitizing advancements for e-stamping, even payment for purchasing these e-stamp papers has moved to digital form making the process more efficient.

Under the Insolvency and Bankruptcy Code, 2016, the National E-Governance Services Limited (NeSL) was set up for information utility (a repository for legal evidence). On top of the information utility, NeSL also introduced a Digital Document Execution Platform (DDE) as a platform to provide digital E-stamping, E-signature, and document storage along with validation. The aim was to eliminate the problems associated with paper-based stamp duty. As of June 2023, 23 States and Union Territories have been permitted to use DDE for Digital E-Stamping with Digital Codes.[3] The NeSL's DDE platform has been integrated with the SHCIL or Government Receipt Accounting System of close to 20 States and Union Territories to facilitate the generation of stamp duty certificates in real time. [4]

The Constitution of India has empowered both the State Legislature as well as the Union to formulate laws and provisions for stamp duty. Presently, the Indian Stamp Act, 1899 is operating in 30 States and Union Territories. The remaining 6 have their own Stamp Act. Consequently, the e-stamping regime in India is not uniform and has legislative gaps. Various States such as Karnataka, Maharashtra and Uttarakhand took the conscious decision to clarify and expand the scope of the definition of "instrument" to include any electronic record as defined under Section 2(t)(1) of the Information and Technology Act, 2000. [5]

Section 2(j) of the Karnataka Stamp Act, 1975 was amended to include electronic records in its definition of "instrument". [6]

(j) "instrument" includes every document 1[and record created or maintained in or by an electronic storage and retrieval device or media]1 by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded;

Similarly, Section 2(l) of the Maharashtra Stamp Act, 1958 was amended to include the following explanation[7]

(l) "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded, but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt ;
[Explanation.—The term "document" also includes any electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000;]

Hence, it can be seen that the Indian federating states have shown greater foresight than their Central counterpart which has fallen behind in updating the Stamp Act, 1899. The Act currently falls short on the following:

- Currently, no provision exists to include digital documents and records under the definition of “instrument”. This has led to information asymmetry among consumers that are using digital documents and records making adoption of e-stamping technology more difficult.

- With multiplicity in e-stamping methods and standards across the country, there is no provision to clarify a unified nature and method of e-stamping in the Indian Stamp Act, 1899. A lack of uniformity has led to inefficiencies in conducting business across state boundaries.

- Electronic signatures are a legally recognized way to get consent or endorsement on a document. Such a signature provides authenticity, security and evidentiary value to e-contracts and digital records. In the Indian Stamp Act, 1899 there is no provision to define “electronic signatures” and neither is there clarity on their validity on digital records that need to be stamped. The need for such clarification in the definition is required so as to confirm the evidentiary value of digital records and to enhance security.

- One aspect of digital records is that there can be multiple copies of such records. In cases where one copy has been duly e-stamped, other copies may be put to question and double duty may be charged for the same. Currently, there is no provision to clarify the position on copies of a digital record that has been duly stamped. Moreover, such a case where double stamp duty may be charged could deter consumers and businesses to opt for e-stamping and hamper adoption.

Recommendations

With the economic interest of the nation in mind, The National Economic Forum puts forth the following suggestions for and additions to the Indian Stamp Act, 1899.

Inclusion of 'electronic records' under the definition of 'instrument' under Section 2(14)-

There is a need for clarity on the definition of "instrument" in the Stamp Act, 1899 to include electronic records. Section 2(14) of the Stamp Act, 1899 could adopt the explanation as provided in Section 2(l) of the Maharashtra Stamp Act, 1958 and include electronic records as defined under Section 2(t) of the Information Technology Act, 2000.

Defining and including 'electronic signatures' under the stamp duty regime

The Information Technology Act, 2000 defines "electronic signature" as[8]

S. 2(ta) —electronic signature means authentication of any electronic record by a subscriber by means of the electronic technique specified in the Second Schedule and includes digital signature

There is no such definition provided under the Indian Stamp Act, 1899. Such an addition would provide validity to e-signatures used in stamped electronic instruments under the Indian Stamp Act, 1899 thereby facilitating public accountability and digital trade and transactions.

Formulation of a centralised and unified process for affixing e-stamps and paying stamp duty

With the formalization of the e-stamping regime, the Indian Stamp Act, 1899 would require clarity on how e-stamps would be affixed on electronic instruments and what the nature of such stamps would be across India. Further, there is a need to clarify the procedure to have an electronic record duly stamped. An alternate model for verification, if a document has been duly stamped, could be the issuance of a digitally generated stamp certificate after the appropriate procedure and followed and the stamp duty has been duly paid. Under the stamp duty regime in Singapore under their Stamp Duty Act, 1929 a stamp certificate is generated by the relevant Commissioner after an electronic instrument is duly stamped.

Circumventing charge of double duty on copies of electronic records that have been duly stamped

With the use of electronic instruments, situations would arise where more than one copy would exist of a document or instrument. A provision is required to make sure no double duty is charged if one such copy has been duly stamped. This would remove doubts about the implication of having copies of electronic documents which resultantly would improve the adoption of e-stamping by businesses and consumers alike.

Policy Implications

Rates of stamp duty are decided by both the Union and the States as prescribed by the Constitution. However, the stamp duty is collected and retained as revenue by the respective State where the instrument in question was executed. The Hon'ble Supreme Court of India in the case of Hindustan Steel Ltd. v. Dilip Construction Company[11] has held that the Stamp Act was a fiscal measure enacted by the State mainly to secure revenue on certain classes of instruments, making it the primary goal of the regime. Hence, stamp duty is an important source of revenue for a State, the digital transformation of the act would strengthen this revenue stream for the States and facilitate the reduction in stamp duty evasion and create a consumer-friendly and cost-effective interface for the execution of digital records.

Expenditure by States in 2022-2023 was projected to be 1.5 times higher than that of the Union. After the economic slowdown brought about by the COVID-19 pandemic, state governments have fallen deeper into deficit and are relying on lending and grants from the Union. This has put immense pressure on the Indian economy.[9]

As per the 15th Finance Commissions recommendation, the Union would have to provide a grant of Rs. 86,201 crore to states to eliminate the revenue deficit.[10] With the current state of revenue deficit, strengthening and digitalising the stamp duty regime can maximise its share in the revenue of States.

In the first half of the financial year of 2023 (H1FY23), India's total collection of the Stamp Duty and Registration charges were recorded at a massive Rs. 94847 Crores (approximate) this was an increase from previous years, especially post the Covid-19 pandemic. [12] When this apparently large number is analysed from the GSDP optic, it is seen that Stamp Duty for most States makes up only 1% or less of their Own Tax Revenue in 2022-2023 as is shown in the figure below. If compared to its counterparts such as excise duty which makes up to 14% of the total GSDP of all the States, collection of stamp duty as revenue is currently inadequate and lies at 11 % due to wide inter-state variations.

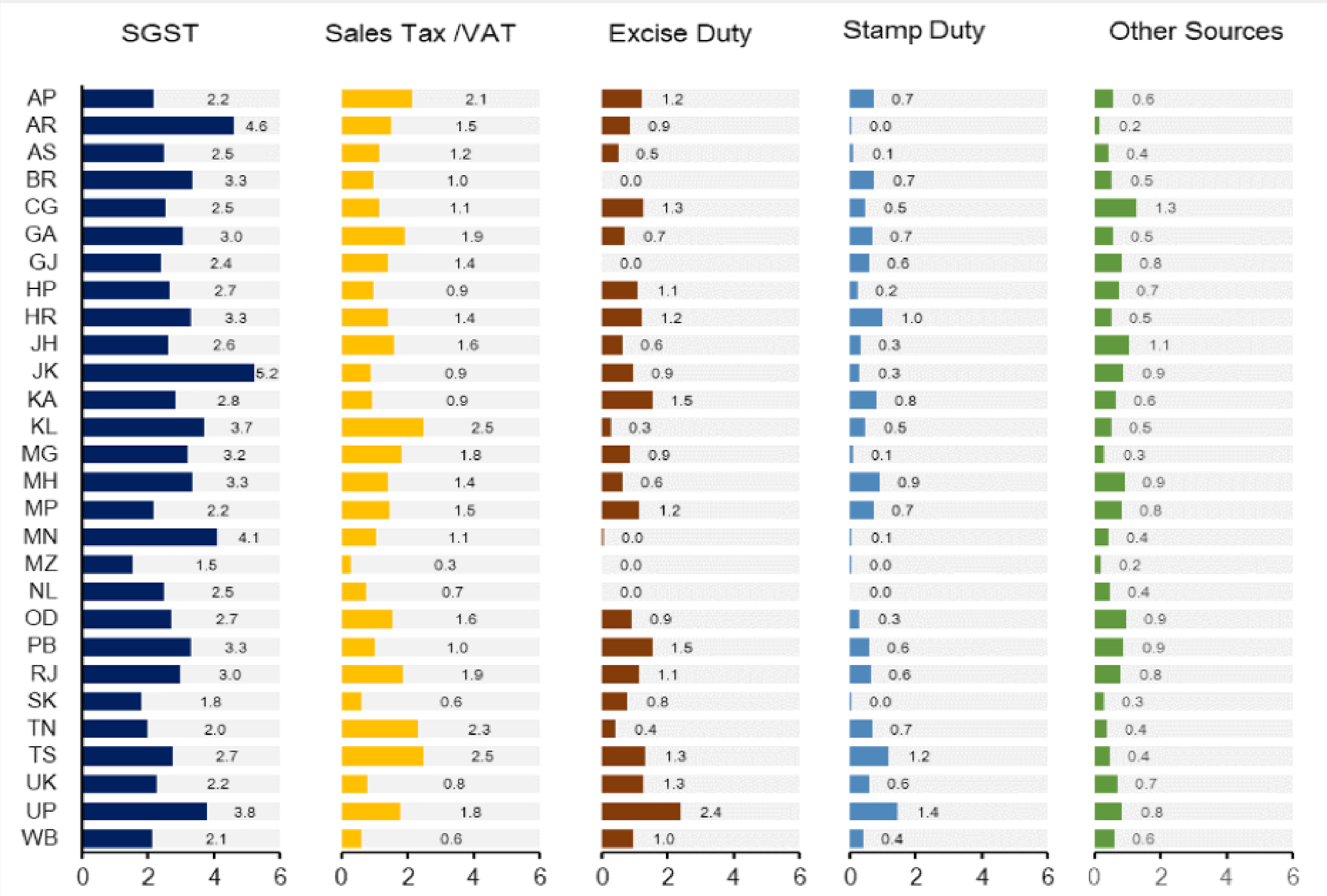


Figure: Composition of Own Tax Revenue in 2022-23 (Figures as % of GSDP)

Source: State Budget Documents; PRS (State of State Finances: 2022-23)
Note: Delhi, Puducherry, and Tripura are not shown in the above chart as the 2022-23 GSDP estimates were not available for them.

Presently, there exists a wedge between the fair values of property and their market value which has led to varying valuations of the same property. Such a situation has led to consumers undervaluing their properties in order to pay less stamp duty, this directly impacts the revenue collection of the States. The CAG reported that the loss of revenue to State governments occurs due to undervaluation of property, short levy of stamp duty and other irregularities. Over the years, specifically 2011-2019, the share of stamp duties and registration fee in the SGDP and Total Own Tax Revenue has fallen. The same has been indicated in the figure below. One way to tackle this problem is the integration of digitised land records and computerised registration systems. To make this possible, States should rationalise the method to determine valuation of properties.

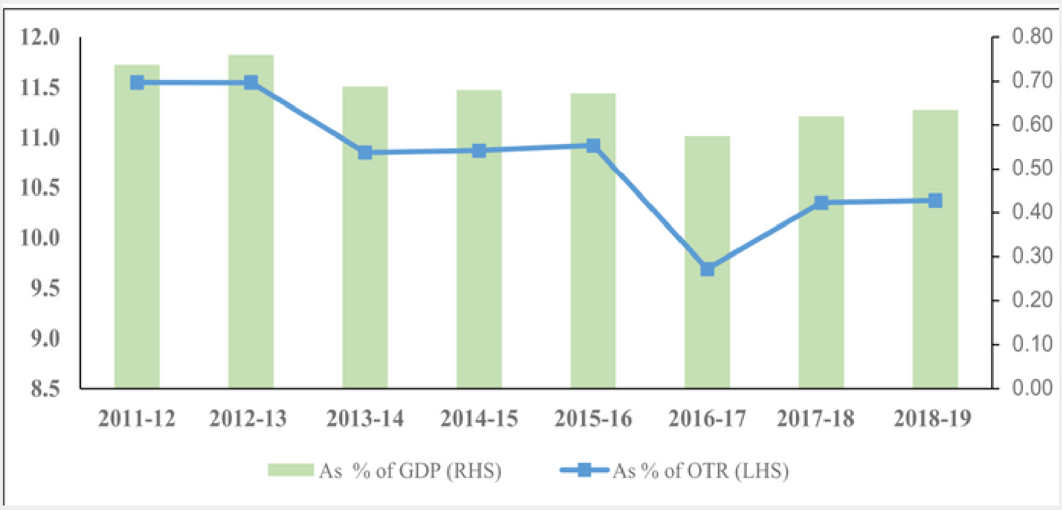


Figure: Stamp Duties and Registration Fee Collections of All States as Percentage of GDP and Total Own Tax Revenue

Source: Finance Accounts of States, CAG and MoSPI

Conclusion

The 2019 Amendment to the Indian Stamp Act, 1899 was a welcomed step in the right direction. The Union Government's vision for a centralized and rationalised stamp duty regime was satisfactory in the context of the digitalisation of the securities market. Despite this step, many gaps have remained in this space, specifically with regard to the execution of digital records.

The National Economic Forum believes that for a robust and rationalised digital stamp duty regime, important amendments need to be made to the act. Such suggested amendments would have many positive externalities towards developing a user-friendly system which would promote ease of doing business.

Consequently, this push would prove to increase the duty collected by the State which would be a valuable gain to the revenue collection of the State Governments and Union Government and contribute positively to the economy.

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[5] Information Technology Act, 2000

[6] Karnataka Stamp Act, 1975

[7] Maharashtra Stamp Act, 1958

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[10] Transfer of Resources to States and Union Territories with Legislature", Union Budget 2022-23, https://www.indiabudget.gov.in/doc/Budget_at_Glance/bag3.pdf.

[11] (1969) 1 SCC 597

[12] Motilal Oswal Financial Services Ltd (MOFSL), CAG, CEIC

Acknowledgements

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