

## ERGO

*Analysing developments impacting business*

### BUDGET PROPOSES RADICAL OVERHAUL OF RATES (AND PAYMENT MECHANISM) OF STAMP DUTY ON ISSUANCE AND TRANSFER OF 'SECURITIES' IN INDIA

1 February 2019

- All issuance and transfers of 'securities' will be subject to stamp duty (*i.e. exemption on transfer of dematerialized securities has been removed*).
- Stamp duty will be calculated on an ad valorem basis on: (i) actual trade price for listed securities; or (ii) price identified in instrument of transfer. More importantly, unified stamp duty schedule across India – not linked to or varied with the state of execution.
  - This would restrict the forum shopping of jurisdictions with favourable stamp duties
- On payment of stamp duty on the issuance / transfer of the security, no additional stamp duty payable on any other document entered in connection with such issuance / transfer.
  - Therefore, no separate stamp duty payable on: (a) security subscription / purchase agreements, (b) security certificates, and / or (c) allotment letters.
  - This would greatly reduce costs associated with transactions (especially in high stamp duty states, such as Maharashtra) and ease the execution of documents.
- Stamp duty on securities to be collected by stock exchanges / clearing exchange / depositories at the time of the transaction and remitted to applicable state governments. For transactions not on the depositories or on the floor of the exchange, stamp duty must be paid by issuer / transferor (as applicable).
- The proposed revised rates of stamp duties are as follows:

Instrument	Stamp Duty Payable
Issuance of debentures (irrespective of whether marketable or not)	0.005%
Transfer of debentures (irrespective of whether marketable or not)	0.0001%
Issuance of securities (other than debentures)	0.005%

Transfer of security (delivery basis)	0.015%
Transfer of security (non-delivery basis)	0.003%
Equity and commodity futures	0.002%
Equity and commodity options	0.003%
Currency and interest rate derivatives	0.0001%
Other derivatives	0.002%
Government securities	0%
Repo on corporate bonds	0.00001%

- 'Debenture' has been defined to include bonds / commercial papers and other like instruments has been included in the ambit of 'debentures'.

## Possible Challenges and the Road Ahead

- 'Securities' has been defined to include 'securities' as per the Securities Contracts (Regulation) Act, 1956 (SCRA). Since, SCRA does not apply to private companies, it is not clear whether the above changes would apply to the securities of a private company.
  - Revised provisions are yet to be notified and are subject to requisite rules being passed by the Central Government in relation to the mechanism of collection of tax by stock exchanges / clearing exchange / depositories and transferring the same to the government.
  - On implementation, this should not only reduce the stamp duty implications in transactions (especially in high stamp duty states), but also simplify deals as stamping of documents is often a gating item for execution / closing.
- *Aakash Choubey (Partner), Deepak Jodhani (Partner) and Kapish Mandhyan (Senior Associate),*

For any queries please contact: [editors@khaitanco.com](mailto:editors@khaitanco.com)

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#### Mumbai

One Indiabulls Centre, 13<sup>th</sup> Floor  
Tower 1 841, Senapati Bapat Marg  
Mumbai 400 013, India

T: +91 22 6636 5000  
E: [mumbai@khaitanco.com](mailto:mumbai@khaitanco.com)

#### New Delhi

Ashoka Estate, 12<sup>th</sup> Floor  
24 Barakhamba Road  
New Delhi 110 001, India

T: +91 11 4151 5454  
E: [delhi@khaitanco.com](mailto:delhi@khaitanco.com)

#### Bengaluru

Simal, 2<sup>nd</sup> Floor  
7/1, Ulsoor Road  
Bengaluru 560 042, India

T: +91 80 4339 7000  
E: [bengaluru@khaitanco.com](mailto:bengaluru@khaitanco.com)

#### Kolkata

Emerald House  
1 B Old Post Office Street  
Kolkata 700 001, India

T: +91 33 2248 7000  
E: [kolkata@khaitanco.com](mailto:kolkata@khaitanco.com)