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BUDGET 2016
Understanding the Business Impact

Impact on Technology, Media & Telecom

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Overview of Telecom Industry

The Indian Telecom sector is the second largest telecom market in the world with over a billion subscribers. The sector is highly competitive with 12 service providers and is the fastest growing in the world with a CAGR of 19.22% during the period of FY07-15. Cumulative FDI inflows into the telecom sector over April 2000–September 2015 amounted to $17.71 billion. As per IDC report, the mobile services market revenue is expected to touch $37 billion in 2017 with a CAGR of 5.2% between 2014 and 2017. The tele-density has increased from 18.3 in 2007 to 76.67 in 2015 but the rural tele-density of 48 is still a matter of concern. The internet adoption rate has increased in the last few years due to the increased availability and affordability of smartphones and data services across the country. The Internet subscriber base is 324 million with 305 million wireless internet subscribers indicating that mobile is the most preferred mode to access internet. With government's Digital India program, most of the sectors such as healthcare, education, energy, retail, etc. will be connected through internet. This presents a huge opportunity for telecom and technology companies.

Though there is a huge potential in the market, the low Average Revenue Per User (ARPU), complex regulations and high priced spectrum are acting as roadblocks. The ARPU in 2015 was less than $2 which is much below the global average of $30. The operators have committed to pay ~₹1100 billion ($16.3 billion) for spectrum in 2015 for 418 MHz of spectrum and thus increased the debt of the Industry to ~₹3500 billion ($52 billion).

Overview of Media Industry

The Indian Media and Entertainment (M&E) industry is taking high growth strides. The industry has been largely driven by increasing digitization and higher internet usage over the last decade. Major industry sub-segments of Indian media sector include television, print, films, digital advertising, animation and VFX, gaming, radio, Out of Home and music. Much of the media is controlled by large, for-profit corporations with revenues from advertising, subscriptions, and sale of copyrighted material. India also has a strong music and film industry. India has more than 100,000 registered newspapers and over 830 satellite channels (more than 400 are news channels) and is the biggest newspaper market in the world - over 100 million copies sold each day. According to FICCI Frames report, Media and Entertainment industry in India is worth ₹1020 billion ($15.15 billion), which is expected to grow ₹1900 billion ($28.2 billion) by 2018, growing at a CAGR of 13.9%.

The entire print industry is reiterating that regional is the new national. Regional languages will continue to have dominant growth as they still show high potential. Therefore, newspapers, radio, digital, magazine in local language content has a better chance for success. India has emerged as one of the biggest hubs of online film piracy, with Delhi, Bangalore and Mumbai accounting for the major share of illegal downloads. This will impact the Media industry revenues considerably. Though 100% digitization target was set out for Phase I and II, but unfortunately it could not be achieved. Thus, there are still analogue signals which are active in few areas resulting in lack of transparency and accurate subscription revenue. The Ministry of Information and Broadcasting (MIB) extended the deadlines for Phases III and IV of Digital Addressable System (DAS) implementation to December 31, 2015 and December 31, 2016 respectively. DAS rollout in Phases III and IV is expected to be more challenging on account of larger geographical spread, funding requirements and low potential for ARPUs.

Overview of Technology Industry

The Indian technology industry includes IT Services, Business Process Management (BPM), Hardware and Software products, Engineering R&D (ER&D) and Internet enabled consumer or Enterprise Services.

Aggregate industry revenues are estimated at $146 billion in FY2015, with a growth of over 13% over last year, and the industry is expected to touch revenues of ~$225 billion by 2020. E-commerce in India is estimated to be worth $19 billion and is expected to touch $100 billion by 2020. IT services is the largest segment, contributing close to 47% of the overall market, followed by BPM at 18%. ER&D services is the fastest growing segment in terms of exports, growing at 13.2%. This industry is one of the largest private sector employers in India, creating over 3.5 million direct jobs, and over 10 million indirect jobs.

Increasing adoption of digital technologies like mobility, big data / analytics, IoT among enterprises, and the emergence of cloud and service automation technologies are driving business re-alignment for IT Services companies. Accelerated shift towards cloud is creating opportunities in providing cloud infrastructure, SaaS solutions, managed services, etc. and the increasing focus on cost savings in commoditized services is making IT service companies to invest in automation technologies to improve productivity.

Changes in Regulatory landscape for TMT Industry

Recent regulatory changes in Telecom sector

- FDI cap in the telecom sector has been increased to 100% from 74%; out of 100%, up to 49% will be under the automatic route, beyond which Foreign Investment Promotion Board ('FIPB') approval will be required. FDI of up to 100% is permitted for infrastructure providers offering dark fibre, electronic mail and voice mail.
- Limited Liability Partnership (LLP) firms have been included in the Other Service Provider (OSP) registration policy for registration under OSP category.
- In October 2015, Telecom Regulatory Authority of India (TRAI) has directed the telecom companies or mobile operators to compensate the consumers in the event of dropped calls with a view to reduce the increasing number of dropped calls. The formulated regulation has become effective from January, 2016.
- With a view to encourage consolidation in the telecom sector, the Government of India has approved the rules for spectrum trading that will allow telecom companies to buy and sell rights to unused spectrum among themselves. The Union Cabinet gave its approval to the guidelines on spectrum sharing, aimed to improve spectral efficiency and quality of service, based on the recommendations of the Telecom Regulatory Authority of India (TRAI).
- TRAI passed the regulation on prohibition of discriminatory tariffs for data services on the basis of content. Discriminatory tariffs means charging of different tariffs by a service provider for data services based on the content accessed, transmitted or received by the consumer.
- In 2015, TRAI passed the telecommunication tariff order, according to which, every service provider should offer a special roaming tariff plan to its prepaid and post-paid customers. On payment of fixed charge for special roaming tariff plan, national roaming to be free.

Recent regulatory changes in Media sector

- ***Liberalization of foreign direct investment policy***

Sr. No.	Particulars	Earlier sectoral cap	New sectoral cap
A.	Radio	26% Government route	49% Government route
B.	Broadcasting		
	1. Teleports Direct to home Cable networks Mobile TV Headend-in-the sky broadcasting services	74% Automatic route up to 49% Government route beyond 49%	100% Automatic route up to 49% Government route beyond 49%
	2. Up-linking of 'News & Current Affairs' TV channels	26% Government route	49% Government route
	3. Up-linking of 'Non-news & current affairs' TV channels Downlinking of TV channels	100% Government route	100% Automatic route

- ***Promoting India as a filming destination***
  - Film facilitation office (FFO) set up and housed under National Film Development Corporation of India

Foreign and local film producers to contact FFO, central agency, to help obtaining shooting permissions and sourcing locations/ crew

Recent Direct Tax Changes in TMT Sector including Budget 2016 Proposals

Telecom sector

- Capital expenditure incurred on payment for acquisition of any right to use spectrum for telecom services is proposed to be allowed as deduction in equated installments over the period for which right to use is in force

Media sector

Recently, the Central Board of Direct Taxes (CBDT) has clarified on the following issues:

- TDS on payments by broadcasters for production of content: In situations where the content is produced as per specifications of the broadcaster and the copyright gets transferred to the broadcaster, the same is covered by work contract and consequentially, TDS is applicable at 2% under Section 194C of the Income-tax Act, 1961.
- TDS in respect of transaction between the broadcaster/ Newspaper Company and the advertising agency: TDS is not attracted on payments made by the broadcasters/ newspaper companies to or on amounts retained by the advertising agencies for booking, procuring, canvassing advertisements.

Technology sector

- Startups - Benefits
  - Start-ups set-up before 1 April 2019 and are engaged in business involving innovation development, deployment or commercialization of new products, processes or services driven by technology or intellectual property will be eligible for deduction at 100% of the profits for 3 consecutive years out of five years at the option of the assessee and subject to fulfilment of the specified conditions. However, MAT is applicable.
  - It is proposed to provide exemption from long term capital gains up to ₹50 lakhs if said gain is invested in units of specified fund, as may be notified by the Central Government
  - Long term capital gains arising on account of transfer of a residential property shall not be charged to tax if such capital gains are invested in shares of an eligible start up, subject to specified conditions
- IP Regime
  - Income from worldwide exploitation of patents developed and registered in India shall be taxable at the rate of 10% on gross basis for resident taxpayers. Such income and corresponding expenditure shall be adjusted in MAT computation. Preferential regime to address the issue of Intellectual property ('IP') structures in line with BEPS.
- Equalization Levy
  - In line with BEPS Action Plan 1 –Digital economy, a new tax called "equalization levy" is proposed at the rate of 6% on payments received by Non-residents from a person resident in India or Non-resident having a PE in India, towards consideration for specified services received in aggregate exceeding ₹1 lakh. "Specified services" is defined to include online advertisement, any provision of digital advertising space or any other facility/service for digital advertisement and includes any other service as may be notified by Central Government.
- Extension of new manpower employee deduction to Technology Industry
  - Provisions relating to claim of additional deduction under Section 80JJAA for new employment is extended to all assessees (earlier available only for manufacturing companies) who are subjected to tax audit. The minimum number of days of employment reduced from 300 days to 240 days to determine the eligibility of new workmen. Further, the requirement of minimum number of workmen has been done away with.
- Phasing out of deductions and incentives
  - For specified business under Section 35AD, weighted deduction of capital expenditure available at the rate of 150% will be reduced to 100% from FY 2017-18.

– From 1 April 2017 to 31 March 2020, weighted deduction in relation to contribution to scientific research association / National Laboratory / in-house R&D expenditure will be restricted to 150%. With effect from 1 April 2020, deduction would further be restricted to 100% of the expenditure.
– Weighted deduction of 150% on expenditure incurred on skill development under section 35CCD will be available only for four years up to 31 March 2020. With effect from 1 April 2020, the same would be restricted to 100%.
– New SEZ units commencing operations on or before 31 March 2020 to avail tax holiday benefits as per section 10AA.
– Highest rate of tax depreciation is restricted to 40% for both old or/and new assets from FY 2017-18.

Direct Tax Proposals - Others

Tax Rates

- Corporate tax rate for domestic companies is reduced to 29% plus surcharge and cess if turnover is less than ₹50 million in FY 2014-15. In all other cases, base tax rate and MAT rate to remain unchanged at 30% and 18.50% respectively.
- Dividends taxable in the hands of shareholders (resident individuals, HUFs, firms) at 10% for amounts exceeding ₹1 million
- Based on recommendations of A.P. Shah Committee, it is clarified that MAT is not applicable to foreign companies that do not have a Permanent Establishment in India

Other Proposals

International Tax

- Applicability of Place of Effective Management ('POEM') to determine residential status of foreign company deferred by one year.
- General Anti Avoidance Rules to come into effect from 1 April 2017.
- In accordance with the Base Erosion and Profit Shifting plan, a specific reporting regime has been provided in respect of Country by Country ('CbC') reporting, applicable to an international group having consolidated revenue above a threshold limit to be prescribed (likely to be Euro 750 million).
- PAN requirement and consequent higher TDS under Section 206AA not applicable on payments to non-residents if any tax registration of home country is furnished

M & A

- Period for obtaining benefit of long term capital gain benefit in case of unlisted companies is proposed to be reduced from three years to two years.
- Buyback tax is clarified to be applicable on all share buybacks under any provisions of the Companies Act. Further, Rules to be prescribed for computation of 'Distributed income' under various scenarios including shares issued pursuant to tax neutral reorganization and in different tranches
- For availing tax neutral conversion of Company to LLP, in addition to existing conditions, the book value of total assets in any of the three preceding years should not exceed ₹50 Millions

Indirect Tax Proposals in Budget 2016

Telecom sector

A. Service Tax

- Right to use radio-frequency spectrum and subsequent transfers will be taxable as a declared service.

B. Customs

Change in effective rate of duty (effective from 1 March 2016)

- Exemption from BCD on EHT cables, E-readers and Soft switches and VoIP equipment namely VoIP phones, media gateways, gateway controllers and session border controllers has been withdrawn.
- Machinery, electrical equipment, other instruments and their parts [except populated printed circuit boards] for use in fabrication of semi-conductor wafer and liquid crystal display, Populated printed circuit boards for use in manufacture of tablet computers and mobile handsets including cellular phones will attract concessional/enjoy exemption from SAD subject to compliance with procedures set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable goods) Rules, 1996.
- BCD and CVD exemption withdrawn on chargers or adapters, battery, wired headsets and speakers for use in relation to manufacture of mobile handsets. However, inputs or parts (including sub-parts for use in manufacture of parts) for manufacture of aforesaid items are exempted from BCD and CVD.
- Exemption from SAD withdrawn on import of populated printed circuit boards, charger or adapter, battery, wired headsets and speakers of mobile handsets, including cellular phones.

C. Excise

- Exemption on charger or adapter battery, wired headsets and speaker of mobile handsets including cellular phone withdrawn from 1 March 2016.

Media sector

A. Excise

Technology sector

A. Service Tax

- Service Tax on services of Information Technology Software on a medium bearing RSP is exempted, provided Central Excise duty is paid on RSP under applicable Central Excise provisions.

B. Customs

Change in effective rate of duty (effective from 1 March 2016)

Product	Rate of duty up to 29 February 2016	Rate of duty from 1 March 2016
Routers, set-top boxes for TV, CCTV camera etc.	12.5%	4% without CENVAT Credit or 12.5% with CENVAT credit
Specified inputs, parts and component of routers, set-top boxes, CCTV camera etc.	12.5%	Nil

- CVD exemption on imported media with recorded Information Technology Software to the extent of value on which service tax is leviable

C. Excise

- With effect from 1 March 2016, mutual exclusiveness of levy of excise duty and Service Tax on Information Technology Software in respect of software recorded on media 'Not for retail sale' ensured by exempting from excise duty that portion of the transaction value on which Service Tax is paid.

Other Common Proposals

A. Service Tax

Tax Rates

- Service Tax rate proposed at 15 % (inclusive of 0.5% each of Swachh Bharat Cess & Krishi Kalyan Cess) with effect from 1 June 2016
- Krishi Kalyan Cess @ 0.5% introduced on all taxable services introduced with effect from 1 June 2016. Such Cess collected would be exclusively used for financing initiatives for improvement of agriculture and welfare of farmers.

B. Customs

Tax Rates

- Peak rate of BCD maintained at 10%. Education Cess and Secondary and Higher Education Cess continue to be levied on Customs duty.

C. Central Excise

Tax Rates

- Excise duty rate remains unchanged at 12.5%

Contact

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