Budget analysis

- The Union Budget 2018-19 has retained its focus on creating India as a true digital economy. Various proposals around allocation of funds for augmentation of Telecom infrastructure, setting up of a national programme to augment the adoption of the next generation technologies, and providing easy internet access to villages demonstrates the government’s commitment to the growth of a digital India.

- While the budget has delivered on its stated agenda to encourage Make in India and laying the foundation for a connected digital Indiacertain critical requirements of the sectors have not been addressed. There are several initiatives around reducing the overall tax and levies and around increasing the ease of doing business through seamless implementation of Right of Way (ROW) that have not been covered in the budget. The Industry is hopeful that the Government would cover some of these critical reforms in the National Telecom Policy 2018.

- Similarly the expectation of reduction in tax slabs for the technology and media sector have been ignored in the budget and there were no solutions suggested on Goods and Service Tax (GST) compliance simplification.

- With a muted response to the required sector reforms, FY 2018-19 will be an overall challenging year for TMT sector and one will have to wait and watch how the industry will pave its way to growth amongst legacy systematic issues, financial distress and hyper competition.

Budget impact on TMT

- The Budget emphasises on promotion and early adoption of leading technologies like 5G, Internet of Things, and Artificial Intelligence (AI) to augur India’s ambition to have a digital society. The Indian Government is prioritising adoption of next generation technologies to bring the economy on a par with developed countries.

- Technologies such as AI will become a reality across industries and the manufacturing sector. The AI driven industries will have a strong business case for underlying connectivity through the Telecom Service Providers. Further, this will help in speeding up growth and skilling in critical future technology areas like quantum communication, big data analytics in addition to spurring development in the Internet of Things arena.

- Allocation of INR10,000 crore for creation and augmentation of Telecom infrastructure, proposal to set up 5 lakh Wi-Fi hotspots and a target of connecting 2.5 lakh gram panchayats in 2019 through high speed optic fiber network will augment the Government’s vision of connected India. Bharatnet allocations will assist in the deployment of broadband to the rural areas, and bring in a greater amount of digital inclusion of the rural sector.

- Continuing with the overall theme of ease of doing business, the government proposes to have increased focus on e-governance through national logistics portal, e-office and other e-governance initiatives in central ministries and departments through use of technology to facilitate single window online market and transformation of method of disposal.

- Increase in Custom Duty on mobile phone imports is a welcoming announcement for the local mobile phone manufacturers. This will help make India a global hub for mobile phone manufacturing. Local manufacturing will create more job opportunities, benefitting the youth and contributing towards the overall growth of the economy. Further, this will also help with the decrease in the trade deficit. It will be important to see how smartphone AI technology and local manufacturing will be effectively implemented to meet the growing needs

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1 Union Budget 2018-19 speech, Finance Minister Arun Jaitley, February 2018
of the middle class. However, the increase in Custom Duty will also have a counter impact on the penetration of 4G LTE technology which the industry was banking on to reap the benefits of increasing data usage trends.

- Media and Entertainment industry has seen an exponential growth in India growing at 11.61 per cent CAGR from 2011 to 2016. The growth in the sector is backed by various factors such as high speed data connectivity, affordable smartphones, price cuts etc. The M&E sector has constituted INR4.5 trillion revenue in 2017 and is expected to touch INR 8 trillion by 2022. The industry expected reforms in various aspect from annual budget 2018-19 such as tax reforms, benefits of carry forward of losses on consolidation etc. However, none of the above found a mention in the Union Budget presented on 1 of February, 2018.

- Digital focus on education will require significant content creation and distribution of such content would increase the data requirements across the country.

- Fintech is inextricably linked to the mobile business by way of m-wallets and m-commerce and will have on overall positive impact on the telecom sector.

- The Budget highlights wider use of blockchain technology and delinking it from specific crypto currencies. This could curb illegal transactions with crypto currencies in the economy. However, this step could also impact crypto currency traders and start-ups in the country who are already investing to create innovative solutions in this area.

- Smart cities would be the largest use case for the telecom sector. Inextricably everything in a smart city is linked to the underlying data connectivity. The business case for a smart city supports every player namely Telecom Service Provider for connectivity and backhaul, OEM for radio and access equipment, handset manufacturers, infrastructure and fiber providers, sensor manufacturers and IT integrators who put it all together. A very positive use case for telecom and technology sector.

- The direct tax proposals for extension of sun-set clause from 31 March 2019 to 31 March 2021 to allow 100 per cent income-tax deduction to technology start-ups, and reduction in tax rate from 30 per cent to 25 per cent for companies with turnover less than INR250 crore for FY2016-17 are encouraging moves for the MSME sector.

- Clarity in number of employment days for granting additional salary deduction will incentivise employment generation in India. Availability of book loss and unabsorbed depreciation as deduction for computing Minimum Alternate Tax (MAT) and availability of carry forward of losses by Indian technology companies under the Insolvency and Bankruptcy Code, 2016, may lift barriers and facilitate rehabilitation.

- Proposals relating to taxation of foreign companies reflect India’s commitment to tackle perceived tax avoidance measures on avoidance of Permanent Establishment (PE) in line with Multilateral Convention. Overseas technology companies that operate under an Indian distributorship/ agency model may get directly impacted. Measures introduced to tax digital economy transactions may be followed-up with Treaty re-negotiations and could result in enhanced cost of imports into India.

- Retrospective amendments proposed for taxation of income as per ICDS which are seemingly in conflict with established judicial principles are a retrograde step. Compliance burden for obtaining Permanent Account Number (PAN) by foreign companies and its directors entering into financial transactions exceeding INR250,000 can be onerous and does not augur well with Government’s motto of Ease of Doing Business in India.

Key announcements

Direct tax

- Domestic companies with total turnover or gross receipts not exceeding INR2500 million in the FY2016-17 shall be taxable at 25 per cent. Other domestic companies shall continue to be taxed at 30 per cent. Further, ‘Education/Secondary and Higher Education cess’ of 3 per cent has been discontinued and a new ‘Health and Education cess’ of 4 per cent has been introduced. There is no change in the rates of surcharge.

- The scope of the term ‘business connection’ for taxation of non-residents has been enlarged in light of the provisions of Base Erosion and Profit Shifting (BEPS) Action Plans and Multilateral instrument (MLI), so as to cover activities carried through a person who, acting on behalf of the non-resident, habitually concludes contracts or habitually plays principal role leading to conclusion of contracts by the non-resident.

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2 IBEF Entertainment sector report, January 2018
3 Media & Entertainment industry – Key tax issues and expectations from Budget 2018, Moneycontrol.com, 24 January 2018
Key changes in the Basic Customs Duty (BCD) rates are summarised below:

- Marked to market loss or other expected loss shall be allowed as deduction if computed in the manner provided in ICDS
- Forex gain/loss in respect of specified transactions shall be computed in the manner provided in ICDS
- Profits arising from a construction contract/services contract shall be determined on the basis of percentage completion method
- Inventory is to be valued at lower of actual cost/Net Realizable Value (NRV) as specified in ICDS
- Listed securities are to be valued at lower of actual cost / NRV as specified in ICDS; comparison of actual cost and NRV to be done 'category-wise'
- Export incentives to be taxed in the year in which reasonable certainty of their realisation is achieved

Under the existing provisions, certain tax incentives are available to an eligible start-up incorporated before 1 April 2019. It is now proposed to extend the benefit to eligible start-up incorporated before 1 April 2021. Further, the definition of 'eligible business’ has been expanded. However, the requirement of turnover not exceeding INR250 million for 5 years from the date of incorporation has been extended to 7 years. Also the definition of ‘eligible business’ has been amended to include improvement of products/processes/services or having a scalable business model with high potential for employment generation or wealth creation.

Long-Term Capital Gains exceeding INR100,000 on transfer of listed equity shares or units of equity oriented Mutual Fund shall be taxable at 10 per cent, provided Securities Transaction Tax has been paid thereon. However, a mechanism has been prescribed for grandfathering of gains accrued up to 31 January 2018.

Transfer of a capital asset from holding company to subsidiary company and vice versa not taxable in the hands of the transferee company.

Cess increased to 4 per cent from 3 per cent - the new cess to be called ‘Health and Education Cess’

E-assessment Scheme to be notified

Country-by-Country Report (CbCR)
- Revision of time limit for filing CbCR by a Parent or Alternative Reporting Entity (ARE) resident in India
- CbCR to be filed in India in case overseas Parent entity has no obligation to file CbCR and Parent entity has not nominated ARE.

Introduction of standard deduction of INR 40,000 per annum and discontinuance of tax free medical reimbursement and exemption of transport allowance.

Employee contribution to Provident Fund by new women employees to be reduced from 10/12 per cent to 8 per cent of wages for first 3 years of employment with employer contribution remaining unchanged.

Indirect tax

- Introduction of Social Welfare Surcharge, as a duty of Customs, on imported goods at the rate of 10 per cent of aggregate duties of customs. Education Cess and Secondary and Higher Education Cess as applicable on customs duties has been abolished. However, Several Information technology products, viz. computers, laptops, mobile phones, software in CD etc. have been exempted from Social Welfare Surcharge.

Key changes in the Basic Customs Duty (BCD) rates are summarised below:
- BCD on cellular mobile phones increased from 15 per cent to 20 per cent
- BCD on charger or adapter of cellular mobile phones increased from 10% to 15 per cent
— BCD on specified parts/accessories (including battery, microphone, wired headset, etc.) of mobile phones increased from 10 per cent to 15 per cent

— BCD on insulated wires /cables used in telecommunication, increased from 7.5 per cent to 15 per cent

— BCD on preform of silica which is used in manufacturing of telecommunication grade optical fiber or optical fiber cables increased from Nil to 5 per cent

— BCD on LCD/LED/OLED panels of Televisions has been increased from 10 per cent to 15 per cent.

• Certain concessions / exemptions from BCD on specified parts / accessories of cellular mobile phone have been withdrawn

• Changes in Customs Law
  — Concept of pre-consultation with the taxpayer before issuance of notice has been introduced, except in case of allegation of fraud, misstatement etc.
  — Greater emphasis has been laid out to fast track the adjudication process and provision for deemed closure has been introduced
  — Specific provision has been inserted for audit by customs authorities
  — Separate authority for advance ruling would be constituted under Customs and time limit for deciding the cases has been reduced from six months to three months
  — GST on warehoused goods would be levied on higher of import value or resale price in India.

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