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Union Budget 2014-15

Impact on the Technology sector

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Overview

Riding high on the back of availability of local talent pool and favourable tax treatment that it enjoyed for more than two decades, the Technology sector made India a vital cog in the global wheel of IT services, product research and Business Process management. It boasts of the highest share in India's total services exports and employs more than 3.1 million people. It is the 4th largest urban women employer and, at US\$2.4 billion, the highest attractor of PE/VC investments in India.

Technology sector, growth driver of Indian exports, came under lot of pressure in last few years with the tax holiday schemes ending term. High pitched Transfer Pricing adjustments, litigation on withholding tax and double whammy of VAT and service tax on software had made the Technology firms uneasy.

Government started taking note of the increasing complaints from the industry and in last couple of years initiated steps such as Advanced Pricing Agreements and Safe harbour. Not all of these have been equally successful but this year's budget confirms the new Government's resolve to do more to address the sector's concerns. There is some comforting news on the transfer pricing front, though the Budget could have been better had there been some solace on corporate tax side as well.

We share herein some of the key policy initiatives for this sector in the Budget and the tax proposals!

Key policy initiatives

Key technological initiatives that may generate business for technology consulting and projects

- Extensive use of technology for collection of information without intrusive methods. Information technology tools are developed for exhaustive collection of information and maintenance of data base
- Data warehouse and business intelligence project undertaken for developing a comprehensive platform for effective utilisation of information to enhance voluntary compliance and deter non-compliance
- Centralise processing centre (compliance management) proposed to be set up for handling resource intensive repeated tasks to increase greater efficiency



Pan India programme “Digital India” to be launched with an outlay of Rs 500 crore

- Ensure broadband connectivity at village level, greater transparency in government processes and increased indigenous production of IT hardware and software for exports
- Special focus on supporting software product start-ups
- A National Rural Internet and Technology Mission for services in villages and schools, training in IT skills
- E-Kranti for government service delivery and governance scheme proposed

Promoting “Good Governance” program to be launched with an outlay of Rs 100 crore

Direct tax proposals

Advance Pricing Agreement (APA)

- “Rollback” provisions are introduced under the current APA regime wherein the negotiated APA terms can now, at the option of assessee, be applied for upto 4 previous years, prior to the first year to which APA applies
- This will therefore help in closing pending litigation at various appellate levels

Other transfer pricing related proposals

- A long awaited request of the industry on replacing the simple arithmetic mean (AM) concept for computing arm’s length price (ALP) with an interquartile range (i.e., “Range” concept) has been accepted in line with international best practices
- AM concept for determination of ALP will continue where comparables are inadequate and detailed rules in this regard are to be prescribed

- Multiple year data to be permitted for comparability analysis and relevant provisions to be introduced
- Use of multiple year data for transfer pricing benchmarking purposes addresses another long standing demand of industry as the requirement of using the relevant year data was the critical reason for rejection of transfer pricing studies of taxpayers
- Transfer Pricing Officer is now empowered to levy penalty under Section 271G of the Income Tax Act (the Act) at the rate of 2% of value of international transactions/specified domestic transactions for non compliance with notice calling for information/documents during transfer pricing assessment

Direct tax proposals

Deemed international transactions

- “Deemed international transactions” concept stipulates that any transaction between an unrelated party (URP) and an associated enterprise (AE) qualifies as an international transaction if such transaction was a result of a prior agreement/ terms of such transaction were in substance determined between/by such URP and AE (i.e., when a third party is interposed between 2 AEs)
- Earlier, there was a view that such URP had to be a non-resident to fall within above provisions and hence transactions between two residents fell outside the purview
- This loophole is now plugged by the clarificatory amendment that stipulates that such URP could be either resident or non-resident
- Agreements between two unrelated resident companies pursuant to master agreements overseas in the technology space will be now covered

Corporate tax

- There were no significant proposals under corporate tax provisions affecting only or mainly Technology sector

Tax deduction of expenditure on CSR

- Expenditure on CSR activities has been mandated by the Companies Act, 2013. However, there was no clarity on the permissibility of such expenditure under the existing provisions of the Act
- Budget proposes to specifically disallow the expenditure in respect of CSR under Section 37 as business expenditure

Indirect tax proposals

Customs duty

- No change in peak basic duty rate of 10%
- Change in Basic Customs duty (BCD) on the following goods:

Goods	Current Rate	Proposed Rate
E-book readers	7.5%	Nil
Certain telecom products, not covered under Information Technology Agreement like Voice over Internet Protocol (VoIP) equipment, Optical Transport Product, Long Term Evolution (LTE)	Nil	10%

- Exemption from Special Additional Duty on:
 - Inputs/ Components used in manufacture of Personal Computers (laptops/ desktops); subject to conditions
 - Specified Inputs (PVC sheets & Ribbons) used in manufacture of Smart cards
- Education Cess and Secondary & Higher Education Cess levied on certain specified IT products such as sound recorders, smart cards, mp3 players etc.

Excise duty

- No change in the peak excise duty rate of 12%
- Change in basic Excise duty on the following item:

Item	Current Rate	Proposed Rate
Recorded smart cards	2% without CENVAT credit	12%
	6% with CENVAT credit	

- Goods brought under MRP based Excise duty valuation
 - Packaged software or canned software
 - Wireless data modem cards

Service tax

- No change in peak tax rate of 12%

CENVAT Credit

- Provision of re-claim of cenvat credit in respect of export proceeds realized within one year from the specified/ extended period (6 months or further period, as case maybe)

GST

- No concrete announcement on GST implementation timeline and roadmap

Contact us

To know more about Grant Thornton India LLP, please visit www.grantthornton.in or contact any of our offices as mentioned below:

NEW DELHI

National Office
Outer Circle
L 41 Connaught Circus
New Delhi 110 001
T +91 11 4278 7070

BENGALURU

“Wings”, 1st floor
16/1 Cambridge Road
Ulsoor
Bengaluru 560 008
T +91 80 4243 0700

CHANDIGARH

SCO 17
2nd floor
Sector 17 E
Chandigarh 160 017
T +91 172 4338 000

CHENNAI

Arihant Nitco Park, 6th floor
No.90, Dr. Radhakrishnan Salai
Mylapore
Chennai 600 004
T +91 44 4294 0000

GURGAON

21st floor, DLF Square
Jacaranda Marg
DLF Phase II
Gurgaon 122 002
T +91 124 462 8000

HYDERABAD

7th floor, Block III
White House
Kundan Bagh, Begumpet
Hyderabad 500 016
T +91 40 6630 8200

KOLKATA

10C Hungerford Street
5th floor
Kolkata 700 017
T +91 33 4050 8000

MUMBAI

16th floor, Tower II
Indiabulls Finance Centre
SB Marg, Elphinstone (W)
Mumbai 400 013
T +91 22 6626 2600

NOIDA

Plot No. 19A, 7th Floor
Sector – 16A,
Noida – 201301
T +91 120 7109001

PUNE

401 Century Arcade
Narangi Baug Road
Off Boat Club Road
Pune 411 001
T +91 20 4105 7000

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