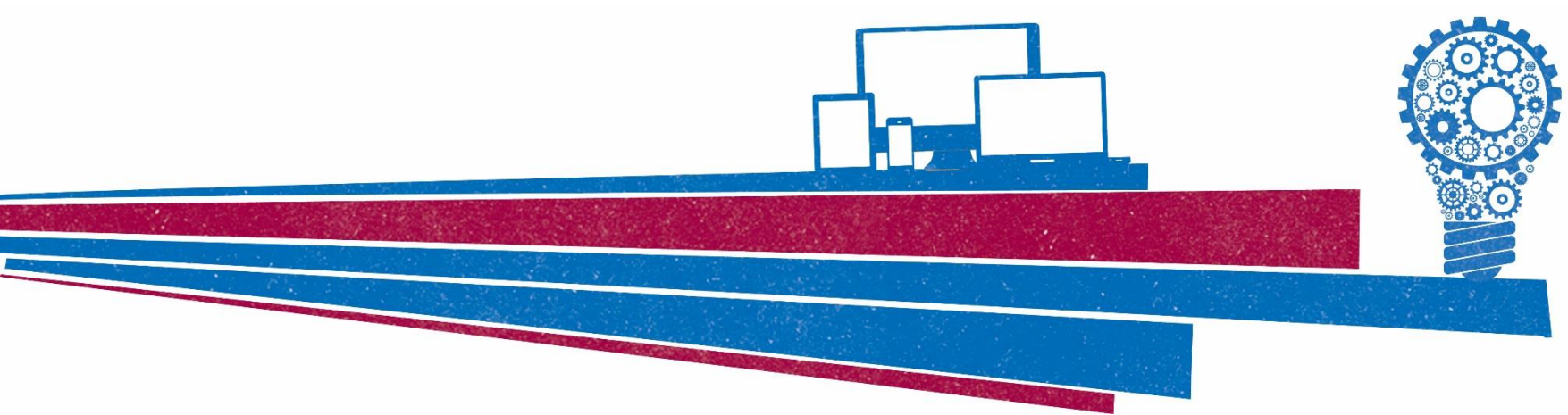


Union Budget 2016-17

Impact on the information technology sector



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Foreword



Raja Lahiri

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The Government's focus on Digital India continues to be one of the key agenda for "Transform India" initiatives and the Budget incorporates the Government's vision to make India a digital powerhouse in days to come. Some of the already announced measures include the New Digital Literacy Mission Scheme, creation of a digital repository, setting up of educational and research institutions and expansion of e-sahyog initiative. All of the above provides opportunities for the Indian information technology (IT) industry to play a key role in making the vision of Digital India successful. Overall, a good budget for the Indian IT Industry, especially around the Digital India and Startup India initiative. However, implementation would remain key success factor here.



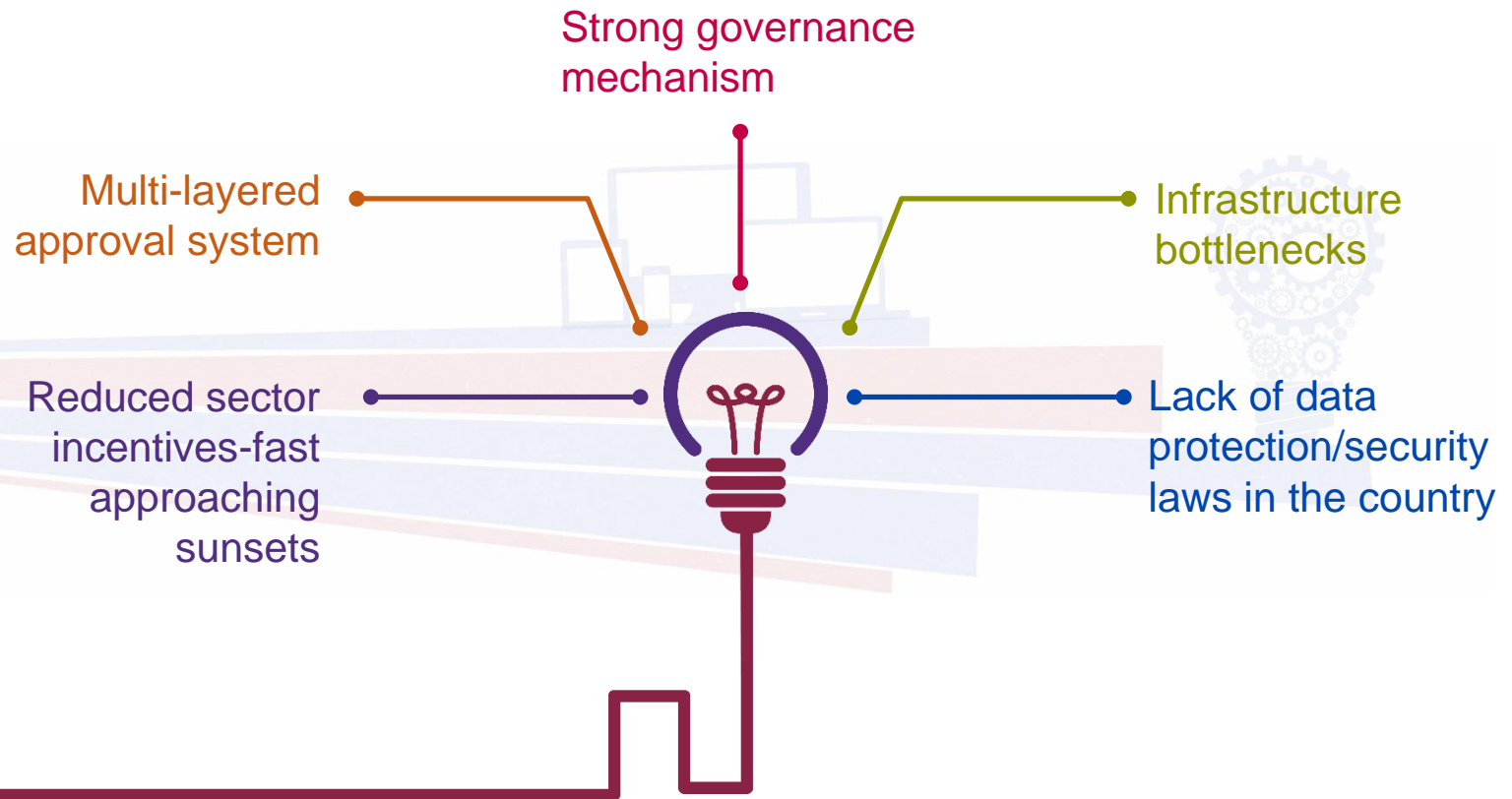
An overview

The information technology sector has powered the economic growth and contributed 9.5% to India's GDP. The sector has created enormous opportunities with IT services and Business Process Management contributing majorly to the growth of the sector, along with the provision of ample employment opportunities.



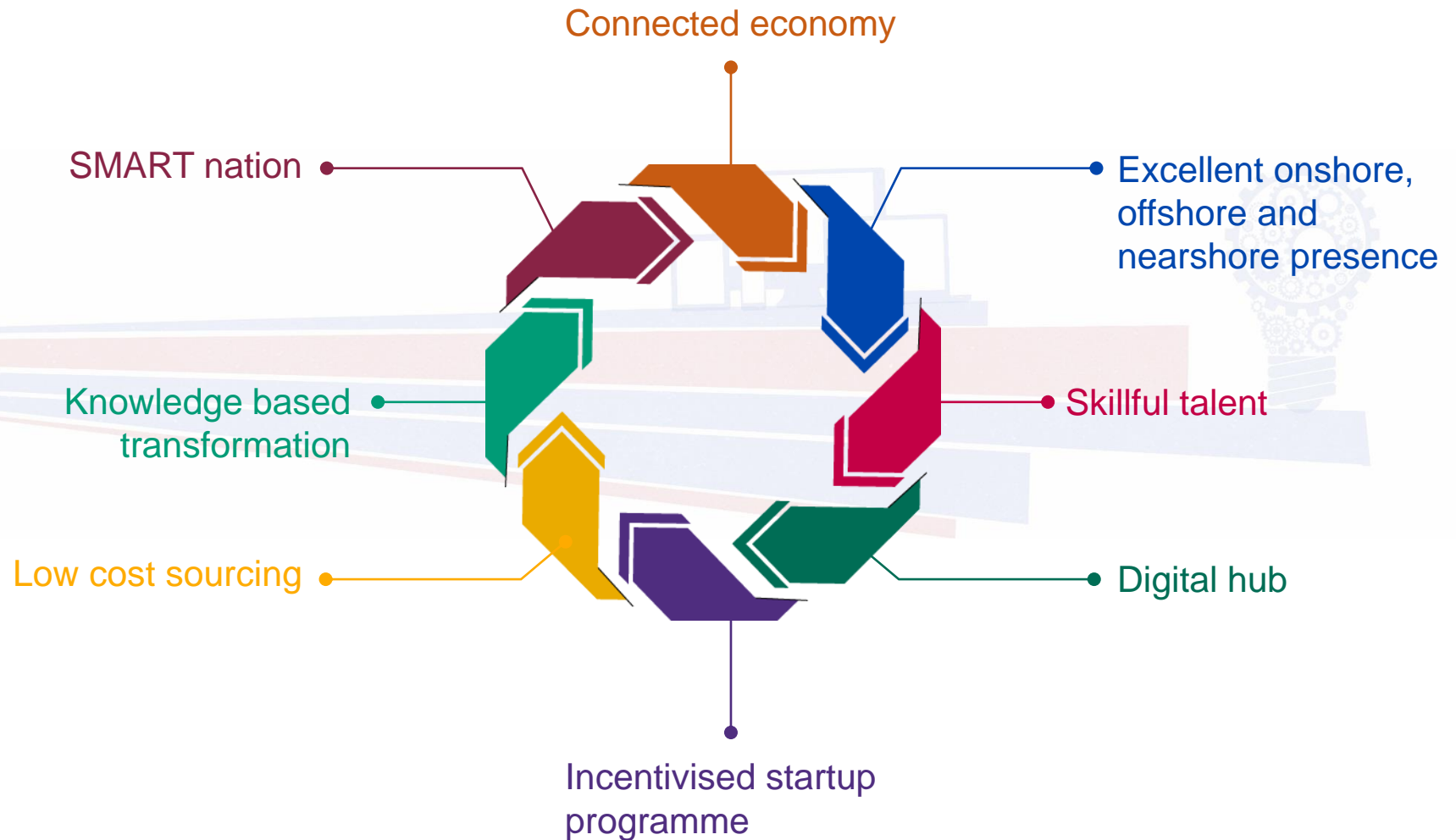


Key challenges





Growth drivers





Key policy initiatives

Digitising India

- In addition to the National Digital Literacy Mission and Digital Saksharta Abhiyan (DISHA), the Government has launched a new Digital Literacy Mission Scheme for rural India, to cover 6 crore additional households within the next 3 years
- The National Land Record Modernisation Programme has been revamped under the Digital India initiative for modernisation of land records to provide an integrated land information management system
- In order to help students, it is proposed to establish a Digital Depository for school leaving certificates, college degrees, academic awards and mark sheets, on the pattern of a securities depository, to help validate their authenticity, safe storage and easy retrieval of documents
- Proposed expansion in the scope of e-assessments to all assesseees in 7 megacities in the coming years. The cases selected for scrutiny will be scrutinised in an e-environment minimising the need for interaction of the tax department with the assessee unless in exceptional circumstances
- It is also proposed to expand the pilot initiative of 'e-sahyog' with a view to reduce compliance cost, especially for small taxpayers. The objective of the project is to provide an online mechanism to resolve mismatches in Income-tax returns without requiring taxpayers to attend the Income-tax office
- In matters pertaining to Income-tax and in an attempt to expedite payments, it is proposed that the Government will pay an additional 3% p.a interest, aggregating to 9% p.a., in case of delays in giving effect to appellate orders beyond ninety days. Officers responsible for such delays will be accountable for the loss to the Government



Direct tax proposals

Place of Effective Management (POEM)

- Implementation of POEM guidelines for determining the residential status of a foreign company in India shall be applicable from 1 April 2017

Exemption from requirement of furnishing PAN to certain non-residents

- From 01 June 2016, provisions of section 206AA of the Income-tax Act, 1961 (Act) shall not apply to a non-resident, in respect of payment of interest on long-term bonds as referred to in section 194LC of the Act and any other payment, subject to conditions prescribed

Phasing out of exemptions to SEZ

- Sunset clause introduced for units commencing manufacture/ provision of services in SEZ's –to be set up on or before 31 March 2021

Incentives to startup

- With a view to providing an impetus to start-ups and facilitate their growth in the initial phase of

their business, a new section 80IAC has been introduced to provide a deduction of 100 percent of the profits and gains derived by an eligible start-up which is setup before 1 April 2019. Such deduction can be availed for three out of five consecutive assessment years. However, Minimum Alternate Tax (MAT) shall apply.

- Eligible start-up business should be involved in innovation development, deployment or commercialisation of new product, processes or services driven by technology or intellectual property
- Section 54EE has been proposed to be inserted in the Act to exempt capital gains derived from the units of specified fund, notified by the Central Government, for the purpose of raising funds for the eligible start-ups
- Scope of section 54GB of the Act has been widened to include computer or computer software under the expression “new asset” in order to extend the exemption to the technology driven start-ups



Direct tax proposals

Taxation of Income from 'Patents'

- In order to boost research and development in India, section 115BBF has been introduced, wherein any income derived by way of royalty in respect of patents developed and registered in India shall be liable to tax at lower rate of 10 percent. In this regard, no expenditure or allowance in respect of such royalty income shall be allowed under the Act. Further, MAT provisions of the Act have been amended to remove said the said royalty income and the related expenditure from the purview of MAT

Equalisation levy Scheme

- Equalisation levy proposed to be introduced for payments to non residents not having a Permanent Establishment in India
 - Separate chapter on equalisation levy proposed to be introduced
 - Equalisation levy will be at the rate of 6 percent on total payment of above Rs. 1,00,000 in a year made to non-resident not having a permanent establishment in India and availing specified services
 - Section 40(a)(ib) introduced for disallowing expenses on which equalisation levy not deducted
 - Section provides for depositing the amount in central government account, levy of penalty and punishments, appeals, rectification etc.



Transfer pricing proposals

Country-by-Country (“CbC”) reporting

- In keeping with India's commitment to implement the BEPS action points, FM has proposed a new documentation regime
- A three-tier documentation approach is proposed – master file, local file and CbC report – proposal in line with BEPS Action 13
- Three-tier documentation structure to replace existing local documentation requirements – existing local documentation to be a part of the new structure
- New reporting standard applicable from FY 2016-17
- Master file to be filed by an Indian taxpayer part of the multinational enterprise (“MNE”) group
- Detailed documentation requirement for master file yet to be prescribed
- Threshold for CbC reporting: FM announced a threshold of € 750 mn (Rs 5,395 crore) on consolidated group revenue for preceding accounting year
- CbC report to be filed by the Indian entity if:
 - it is the ultimate parent entity or the alternate reporting entity (“ARE”) of the MNE, or
 - no exchange agreement exists or there is a failure to exchange information with the country of parent entity or ARE; or
 - the ARE fails to file the CbC report in its country by due date of filing income tax return in India
- Information requirement for CbC report expected to be in line with BEPS Action 13
- CbC report to be filed by on or before the due date of filing income tax return
- Daily non-compliance escalating penalties ranging from Rs 5,000 to 50,000 per day proposed for:
 - failure to furnish CbC report
 - failure to produce information pertaining to CbC report
- Penalty of Rs 500,000 for:
 - furnishing inaccurate particulars in CbC report; or
 - non-furnishing of prescribed documentation

“Master file and CbC reporting requirements are a major step towards enhancing transparency – widely expected to significantly increase number and scope of TP audits in India. The new regime also comes with stringent penalties to ensure adherence to the revised reporting standard.”



Indirect tax proposals

Service tax

- Declared services to include assignment by the Government of right to use the radio-frequency spectrum and subsequent transfers thus liable to Service tax (w.e.f. enactment of Finance Bill 2016)
- Levy of Excise Duty/ CVD and Service tax on customised software on media shall be mutually exclusive irrespective of whether Retail Sale Price is declared or not subject to fulfilment of specified conditions (w.e.f. 1 March 2016).

CENVAT credit

- Availment of CENVAT credit of Service tax paid on upfront charges by way of assignment of right to use of natural resources shall be spread over the tenure of the rights assigned (w.e.f. 1 April 2016)



Indirect tax proposals (contd.)

Central Excise

The changes in the rate of excise duty have been tabulated below: (w.e.f. 1 March 2016)

Product	Old rate	New rate
Charger/adapter, battery and wired headsets/speakers, for manufacture of mobile handsets including cellular phone, subject to actual user condition	Nil	2% without CENVAT credit / 12.5% with CENVAT credit
Parts of charger and wired headsets/ speakers	12.5% / Nil	Nil
Routers, set-top-box, CCTV camera	12.5%	4% without CENVAT credit / 12.5% with CENVAT credit
Parts of Routers, set-top-box, CCTV camera	12.5%	Nil

Customs Duty

The changes in the rate of customs duty have been tabulated below: (w.e.f. 1 March 2016)

Product	Old rate	New rate
E-readers	Nil	7.5%
Populated PCBs of manufacture of personal computers (laptops/ desktops)	Nil SAD	4% SAD
Populated PCBs of manufacture of mobile phone/ tablet computers	Nil SAD	2% SAD

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