

UNION BUDGET 2016-17

INTRODUCTION

The Union Budget 2016-17 outlines the Government's endeavor to stimulate growth in rural sectors with the focus revolving around agriculture, education, infrastructure and social sectors. In wake of the upcoming elections, the Finance Minister presented a politically astute budget, pivoting more towards reformation of the rural sector, securing faith of 70% of the Indian population. The Finance Minister anchored towards fiscal prudence and adhered to the fiscal consolidation roadmap by proposing to keep the deficit at 3.5 per cent of gross domestic product in 2016-17. With the shift in focus towards enhancing the expenditure in rural areas, the Budget seems to be oblivious of the urban and corporate sector.

The Finance Minister, being a renowned and acclaimed lawyer himself, envisioned to 'Transform India' by undertaking specific policy measures under the clearly crafted nine pillars : (a) *Agriculture and Farmers' Welfare*, with focus on doubling farmers' income in five years; (ii) *Rural Sector*, with emphasis on rural employment and infrastructure; (iii) *Social Sector including Healthcare*, covering all welfare and health services; (iv) *Education, Skills and Job Creation*, to create a knowledge based and productive society; (v) *Infrastructure and augmenting Investment*; (vi) *Financial Sector Reforms*, (vii) *Governance and creating a conducive environment for Ease of Doing Business*; (viii) *Fiscal Discipline*, and (ix) *Tax Reforms*, to alleviate compliance burden.

To invigorate skill development among youth, Multi Skill Training institutes are proposed to be set up across country for imparting entrepreneurship education and training. Towards revitalizing the Infrastructure Sector, the Budget puts forth a comprehensive plan for augmenting investment and reinitiating the stalled projects in roads, highways, railways and major ports of India.

The Budget stressed on the anticipated tumult in the global markets and the need for enhancing growth in the domestic market space. As an impetus to the newly created Start-Up ecosystem, the Budget proposed changes in the extant Companies Act, 2013 to liberalise corporate framework and provide for expeditious registrations for Start-Ups. The Budget further envisaged a tax holiday for the period of 3 (three) years for Start-Ups subject to levy of Minimum Alternate Tax.

The Budget reiterated the implementation of General Anti Avoidance Rules ("GAAR") from April 1, 2017. The Budget proposed reduction in the 'period of holding' from 3 (three) to 2 (two) years in case of long term capital gain regime pertaining to the unlisted companies.

In view of mitigating the increased tax litigations, the Budget proffered the launch of the Direct Tax and the Indirect Tax dispute Resolution Scheme, 2016, stipulating a simpler framework for declaration of income and expeditious legal proceedings in case of tax evasion or violations under the various statutes. However, the Budget remains moot on explicating the mechanism of Goods and Services Tax to bring about the much needed synergy in the extant tax structure.

Overall, the Budget propagates a balanced economic development, focusing more towards rural India and below poverty line section of the society. However, the much needed relaxations in regulatory and tax regime for the corporate sector, for incentivizing private investment still remain deferred.

INFRASTRUCTURE

ARA LAW View

In line with the Finance Minister's budget theme i.e. "Transform India", infrastructure the fifth support pillar was given a major boost especially in the area of creating new infrastructure funds and laying out the foundation for a stronger, more transparent PPP process. The budget proposals to an extent it meets with industry expectations. Now what needs to be seen is how these new policy directions will flow 'downstream' into the respective infrastructure ministries responsible for delivering on the expectations set by the government.

Key Budget Proposals:

- Government to enact necessary amendments in the Motor Vehicles Act and open up the road transport sector in the passenger segment. States to be provided the flexibility to adopt a new legal framework in relation to the same.
- Private players to operate buses on various routes, subject to certain efficiency and safety norms.
- A Public Utility (Resolution of Disputes) Bill to be introduced during 2016-17 to streamline institutional arrangements for resolution of disputes in infrastructure related construction contracts, PPP and public utility contracts.
- Guidelines for renegotiation of PPP Concession Agreements to be issued.
- A new credit rating system for infrastructure projects which gives emphasis to various in-built credit enhancement structures to be developed, instead of relying upon a standard perception of risk which often result in mispriced loans.
- LIC of India to set up a dedicated fund to provide credit enhancement to infrastructure projects, which will help in raising the credit rating of bonds floated by infrastructure companies and facilitating investment from long term investors.
- Government to permit mobilisation of additional finances to the extent of INR 31,300 crore by NHAI, PFC, REC, IREDA, NABARD and Inland Water Authority through raising of Bonds during 2016-17.

REAL ESTATE

ARA LAW View

Tax reforms on affordable housing have been a key area addressed in the budget speech. Although industry expectations on the various aspects such as promulgating real estate bill, providing single window clearance, providing 'industry' status has not been addressed, a major break-way has come by way of providing DDT exemption on REITs and INVITs. Although fine print on the conditions of exemption is yet to come out, it will certainly add impetus to investments in REITs and INVITs.

Key Budget Proposals:

- DDT on any distribution made out of income of SPV to the REITs and INVITs having specified shareholding to be exempted.
- Service tax on construction of affordable houses up to 60 square metres under any scheme of the Central or State Government including PPP Schemes to be exempted.
- Service Tax with respect to the following services to be exempted with effect from March 1, 2016:
 - construction services under Housing for all;
 - construction projects under "Affordable housing in partnership", subject to carpet area of dwelling units of such projects not exceeding 60 square metres;
 - low cost houses up to a carpet area of 60 square metres per house in a housing project under any housing scheme of the State Government.
- Excise duty exemption to be exempted on Ready Mix Concrete manufactured at the site of construction for use in construction work at such site.
- 100% deduction to be allowed for profits to an undertaking from a housing project for flats upto 30 sq. metres in four metro cities and 60 sq. metres in other cities, approved during June 2016 to March 2019, and is completed within three years of the approval. Minimum Alternate Tax to however apply.
- Deduction to be allowed on interest payable on capital borrowed for acquisition or construction of a self-occupied house property if such acquisition or construction is completed within five years.
- In the case of transfer of immovable property if any payment in consequence of such agreement has been made by the purchaser of the property through any mode other than cash, capital gains to be computed based on the date of fixing of the amount for the immovable property and not the registration date.

FINANCIAL SECTOR REFORM

ARA LAW View

The Finance Minister has highlighted financial reforms as one of the pillars of the budget theme 'Transform India'. The budget proposes to open up FDI for various financial sectors, a commendable move by the Government. However, unless there is clarity on GAAR, retrospective taxation, investor friendly tax regime, what constitutes 'marketplace model', opening up of FDI may not prove to be effective.

Key Budget Proposals:

- Upto 49% Foreign Direct Investment ("FDI") under the automatic route in the insurance and pension sectors to be allowed.
- 100% FDI under the automatic route in Asset Reconstruction Companies (ARCs) to be permitted. Subject to sectoral caps, Foreign Portfolio Investors (FPIs) to be allowed up to 100% of each tranche in securities receipts issued by ARCs.
- By way of amendment to the SARFAESI Act 2002, sponsor's of an ARCs to be permitted to hold 100% stake in an ARC & non-institutional investors to be allowed to invest in Securitization Receipts.
- Investment by foreign entities in stock exchanges to be enhanced from 5% to 15%.
- Investment by FPIs in Central Public Sector Enterprises, other than Banks, listed in stock exchanges to be increased from 24% to 49%.
- Eligible FDI instruments to be expanded to include hybrid instruments subject to conditions.
- FDI beyond the 18 specified NBFC activities in other activities which are regulated by financial sector regulators to be allowed.
- 100% FDI in marketing of food products produced and manufactured in India to be allowed through the FIPB route.
- Introduction of Centre State Investment Agreement to ensure effective implementation of Bilateral Investment Treaties signed by India with other countries.
- RBI to facilitate greater retail participation in Government Securities through stock exchanges and access to NDS-OM trading platform.
- New derivative products to be developed by SEBI in the Commodity Derivatives market.

GOOD GOVERNANCE AND EASE OF DOING BUSINESS

ARA LAW View

With the Government's flagship campaign such as 'Make in India', 'Digital India' and 'Start-up Policy' the various reforms and policies resulting in ease of doing business in India were expected. To state a few, provide single window clearance; simplify reporting under the Companies Act and Exchange Control Regulations, digitalize government processes, faster incorporation process, put in place stringent checks and balances so as to minimize the corruption rate. Although, some of the issues have been addressed a lot is expected from the government in the months to come on this front.

Key Budget Proposals:

- To introduce a bill for Targeted Delivery of Financial and other subsidies to the actual beneficiaries.
- To establish technology driven platform so as to facilitate procurement of goods and services by various Ministries and agencies of the government.
- Bill amending Companies Act, 2013 to be placed to facilitate ease of doing business for start-ups and register companies in a day.
- To accord foreign investors Residency Status subject to certain conditions.
- To provide start-ups incorporated during April 2016 to March 2019 with 100% deduction of profits for 3 out of 5 years subject to certain conditions.

TAXATION

ARA LAW View

Tax payers and the industry's expectations from the Budget were increase in tax deductions limits for housing loans, raising of basic exemptions tax slabs, reducing of service tax and increase of medical allowance. These expectations were however not dealt with in the Finance Minister's Budget speech, which instead provided some relief to small tax payers, nudged the affluent to shell out more and gave some reason to cheer to home buyers.

Key Budget Proposals:

- No changes in income tax slabs;
- Raising of the ceiling of tax rebate for individuals from Rs. 2,000/- to Rs. 5,000/- for an income up to Rs. 5 lakhs per annum;
- Increasing of the limit of deduction of rent paid from Rs. 24,000/- p.a. to Rs. 60,000/- per annum;
- For non professionals, increasing in turnover limit from Rs. 1 crore to Rs 2 crores, i.e., no audit required and tax would be payable on presumptive income of 8%;
- Extending the presumptive taxation scheme with profit deemed to be 50%, to professionals with gross receipts up to Rs. 50 lakhs per annum.
- Relief to MSME category by Increasing the turnover limit under presumptive taxation scheme to Rs.2 crores;
- New manufacturing companies incorporated on or after April 1, 2016 to be taxed at 25%, if no profit linked deduction are claimed;
- 100% deduction of profits for 3 out of 5 years for startups setup during April, 2016 to March, 2019;
- 10% rate of tax on income from worldwide exploitation of patents developed and registered in India by a resident;
- Long term capital gain term for unlisted shares reduced from 3 years to 2 years;
- Pass through of income-tax to securitization trusts;
- Determination of residency of foreign company on the basis of Place of Effective Management (POEM) is deferred by one year;
- General Anti Avoidance Rules (GAAR) to be implemented from April 2017;
- Tax changes in custom and excise duty rates to support 'Make in India';
- Launching of steps to move towards pension society;

- Additional tax at the rate of 10% of gross amount of dividend will be payable by the recipients receiving dividend in excess of Rs 10 lakh p.a.
- 10% tax in hands of recipient if dividend received over 10 lakhs per annum.
- Commitment to providing a stable and predictable taxation regime and reduce black money;
- STT increased from 0.017 % to 0.05% on Option Contracts;
- Abolition of 13 cesses by Ministries and to amend Central Value Added Tax credit rules CENVAT credit rules;
- Benefits of section 10AA available to new SEZ units commencing activity before 31.3.2020.

REGULATORY CHANGES

ARA LAW View

From the perspective of regulatory changes, towards moving to a simplified and predictive tax regime, the Finance Minister was expected to announce a clear and a time bound plan for the implementation of GST in the Budget. Along with this, steps towards bringing about ease of doing business and putting in place of a bankruptcy code have been the other key expected cornerstones of Budget 2016.

With the Finance Minister reiterating the will to enact the GST, stakeholders would stand reassured of the Government's resolve to simplify the existing tax regime. Furthermore, once enacted, the Insolvency and Bankruptcy law would simplify closure of businesses and exits, thereby providing the requisite stimuli to encourage investments. The other steps announced in the Budget such as the Model Shops and Establishments Bill and the proposed new legal framework on Motor Vehicles Act should aid in job creation and assist in addressing transport and infrastructure issues. In light of this, expectations relating to regulatory changes can be said to have been largely met in the Budget.

Key Budget Proposals:

- In continuing with the ongoing reform programme, the Finance Minister in his Budget Speech has stated that the Government will ensure passage the Goods and Service Tax Bill and Insolvency and Bankruptcy law, which are pending before the Parliament.
- To deal with the vacuum that exists with regard to bankruptcy situations in financial firms, the Finance Minister has proposed introduction of a comprehensive 'Code on Resolution of Financial Firms' as a Bill in the Parliament during 2016-17. It is proposed that this Code will provide a specialized resolution mechanism to deal with bankruptcy situations in banks, insurance companies and financial sector entities.
- The Finance Minister has proposed circulating a Model Shops and Establishments Bill towards simplification of regulations for creating more jobs in this sector. It has been proposed that such a model can be adopted by the State Governments on voluntary basis.
- Towards abolition of permit-raj in the transport sector, the Government proposes to enact necessary amendments in the Motor Vehicles Act and open up the road transport sector in the passenger segment, with States having the choice of adopting the new legal framework. This will enable entrepreneurs to operate buses on various routes, subject to certain efficiency and safety norms.
- The Finance Minister has stated that a Public Utility (Resolution of Disputes) Bill will be introduced during 2016-17 to streamline institutional arrangements for resolution of disputes and re-negotiations in infrastructure related construction contracts, PPP and public utility contracts.
- The Finance Minister has also reiterated the Government's commitment to implement the General Anti Avoidance Rules (GAAR) from April 1, 2017.
- The Finance Minister also proposes to undertake reforms in relation to *inter alia*:
 - giving a statutory backing to the AADHAR platform to ensure benefits reach the deserving;
 - undertaking important banking sector reforms and public listing of general insurance companies; and
 - undertaking significant changes in the FDI policy.