



cutting through complexity

Navigating Economic Challenges

Union Budget 2012

Mumbai

16 March 2012



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Indian Economic Outlook

The year in retrospect

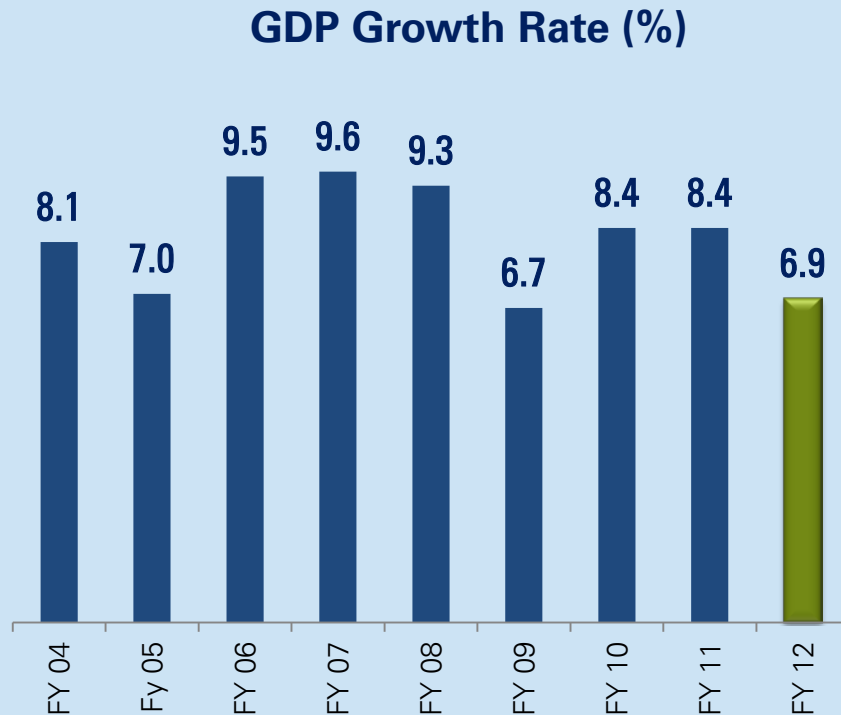
Key Budget Proposals

- Direct Tax
- Indirect Tax

Indian Economic Outlook

- GDP
- FDI
- Fiscal Deficit

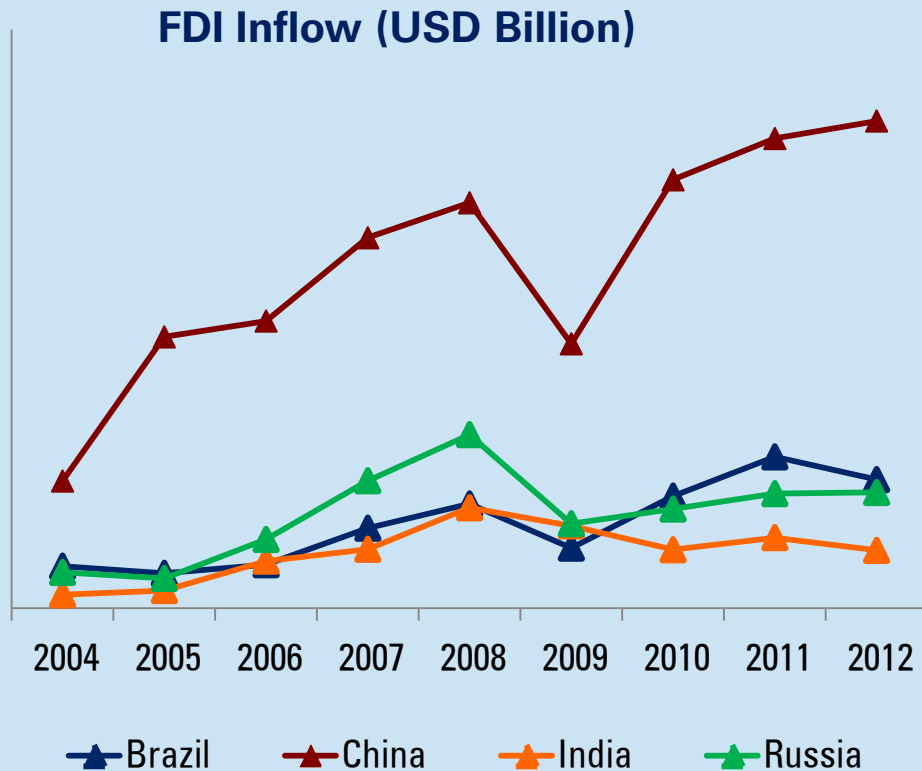
Indian Economic Outlook – GDP



Source: CSO

- **Growth down from 8.4% to 6.9% in FY 11-12**
 - Lowest in recent past (except for FY 09)
- **Economic Survey:**
 - Resilience largely due to services sector
 - Manufacturing and Agricultural sector key to balanced growth

Indian Economic Outlook – FDI



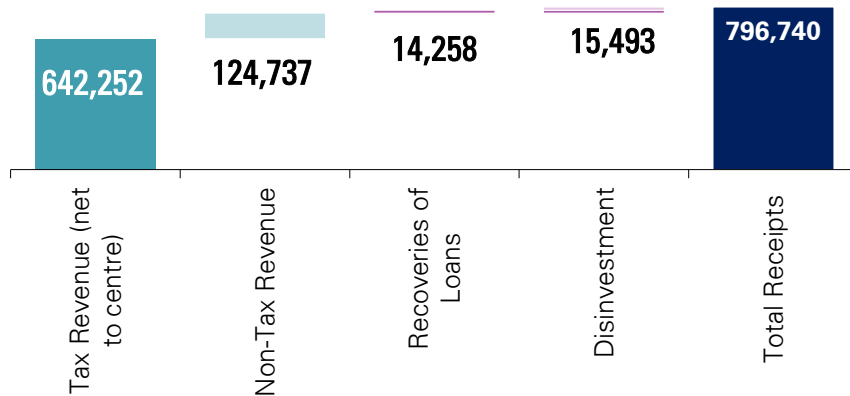
Source: EIU

Note: FDI refers to net flows of direct investment capital by non-residents into the country

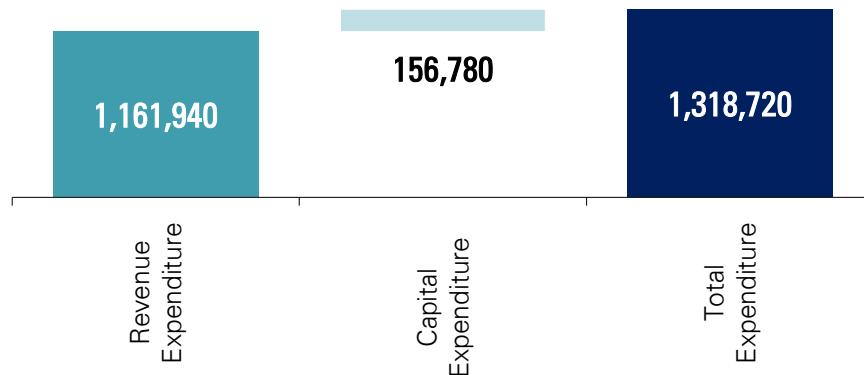
- **Uncertain global economic environment**
- **Lack of big bang reforms in India**
- **Economic Survey:**
 - **Streamline and simplify business environment**
 - **Check rupee volatility to spur investment**
 - **From “Farm to Fork” – Phased approach for FDI in Retail**

Indian Economic Outlook – Fiscal Deficit

Total Reciepts (2011-12, INR crore)



Total Expenditure (2011-12, INR crore)



- **Widening gap between the government's revenue and expenditure**
- **Fiscal deficit soars to 5.9% of the GDP against previous estimates of 4.6%**
- **Economic Survey:**
 - **Raise Tax GDP Ratio to 13% from 10.5%**
 - **Cut wasteful expenditure**

Source: Budget 2012-13

The year in retrospect

- Tax
- Legislation and Policy

The year in retrospect - Tax

- **Uncertainty on GST implementation continues**
- **Direct Taxes Code, 2010 delayed beyond April 2012**
 - Comprehensive Report by Parliamentary Standing Committee submitted
 - Significant changes recommended in the DTC Bill
- **Increased focus on signing Tax Information Exchange Agreements**
- ***Vodafone decision* by Supreme Court**
 - “Indirect” transfers held not taxable
- **Unprecedented adjustments in Transfer Pricing matters**
- **Concept Paper on taxation based on negative list of services released**

The year in retrospect – Legislation & Policy

- **Companies Bill introduced in Parliament**
 - Significant changes vis-à-vis existing law proposed
- **Merger Combination Provisions under Competition Act notified**
 - Final Combination Regulations notified in May 2011
- **Changes in FDI policy:**
 - FDI limit for Single Brand Retail increased to 100%
 - Rollback of FDI in Multi Brand Retail – political debate continues
 - RBI Guidelines on FDI in LLP still awaited
- **ECB Limit for select sectors hiked to USD 750 mn from USD 500 mn**
- **122 Telecom Licenses (2G) allotted in 2008 cancelled by Supreme Court**

Key Budget Proposals

- Direct Tax

Direct Tax Overview

- **Marginal reduction in personal taxes**
- **Corporate rates unchanged**
- **Significant changes impacting international taxation and cross border transactions**
- **Several retrospective amendments proposed- overruling various judgments**
- **GAAR provisions introduced**
- **Measures to prevent generation and circulation of unaccounted money**
- **APA introduced**
- **Minor changes in exemptions regime for Infrastructure sector**

Personal Tax – Rates

Income Slab (INR)	Tax Rate (Percent)
Upto 200,000@*#	Nil
200,001 to 500,000	10
500,001 to 1,000,000	20
1,000,001 and above\$	30

- @ Basic threshold limit increased from INR 180,000 to INR 200,000
- \$ Maximum threshold limit increased from INR 800,000 to INR 1,000,000
- * In case of Senior Citizens - INR 250,000
- # In case of Very Senior Citizens - INR 500,000

Alignment with DTC

Personal Tax – Rates

Impact Analysis			
Individual	Income Level (INR)		
	500,000	1,000,000	1,500,000
Current Tax	32,960	156,560	311,060
Proposed Tax	30,900	133,900	288,400
Effective Savings	2,060	22,660	22,660
Effective Savings (Percent)	6	14	7

Token reduction in tax liability

Personal Tax – Others

- **Deduction upto INR 5,000 towards preventive health check-up**
- **Interest on savings bank account exempt upto INR 10,000**
- **Senior citizens with no business income exempt from advance tax**
- **Salaried tax payers with income upto INR 500,000 not required to file tax return**
- **Exemption for investment under Rajiv Gandhi Equity Saving Scheme**
 - Individuals income below INR 10 lacs
 - Deduction of 50 % of investment
 - Equity investment limited to INR 50,000
 - Lock-in period of three years

Personal Tax – Others

- **Foreign citizen / non resident entertainer and sportsmen to be taxed at 20 % on gross basis**
- **Cash donations >INR 10,000 not eligible for tax deduction**
- **Premium on life insurance policies with annual premium < 10 % of sum assured to be eligible for deduction and exemption on maturity**
- **Exemption from capital gains tax on sale of residential property**
 - Sale consideration to be invested in equity of manufacturing SME
 - Individual to hold > 50 % share capital / voting rights
 - SME to purchase new plant / machinery within one year of subscription
 - Lock-in period of five years

Corporate Tax

- **No change in corporate tax rates**
- **MAT applicable on Revaluation reserve on retired assets (Even if not credited to Profit & Loss account)**
- **Cascading effect of Dividend Distribution Tax (DDT) eliminated for multi-tiered structures (w.e.f 1 July 2012)**
- **Taxation of Dividends from foreign subsidiaries at 15 % (on gross basis) - extended to 31 March 2013**
- **Withholding tax on Interest on ECB in Infrastructure sector reduced from 20 % to 5 % for a period of 3 years (i.e. for ECBs availed from July 1, 2012 to July 1, 2015)**
- **Rates of Daily Tonnage Income under Tonnage Tax Scheme increased**

International Tax

- **Indirect transfers now liable to tax - Supreme Court decision in Vodafone overturned**
 - Retrospective amendments proposed (w.e.f. 1.4.1962) to several provisions
 - Typically intended to apply where shares derive value substantially from assets in India
- **Withholding tax provisions extended to non-residents, regardless of presence in India**
 - Retrospective amendment proposed (w.e.f. 1.4.1962)
- **Royalty definition**
 - Retrospective “clarification” proposed to cover transponder payments and software license fees
- **Treaty benefits**
 - TRC in prescribed form made mandatory for claiming Treaty benefits

Transfer Pricing

- **Ambit of transfer pricing applicability widened (w.e.f 1 April 2002)**
- **Specified domestic transaction sought to be covered**
- **Arm's length variation restricted to 3%**
- **Coverage of International transaction prescribed (w.e.f. 1 April 2002)**
 - Guarantees
 - Business restructuring or reorganization
 - Any debt arising during course of business (e.g. credit period on outstanding receivables)
 - Inclusive definition of Intangible properties provided for
 - Marketing related intangible assets
 - Human capital related intangible assets

Transfer Pricing – Dispute Resolution

- **APA introduced w.e.f. 1 July 2012**
 - Methods other than prescribed method could be considered
 - Validity – maximum for 5 years
 - ‘Specified domestic transactions’ not covered
 - CBDT to frame rules for operationalization

General Anti Avoidance Rule (GAAR)

- **GAAR provisions introduced, effective from AY 2013-14**
- **Provisions broadly in line with GAAR under DTC**
- **Applicable to Impermissible Avoidance Arrangement**
- **Impermissible Avoidance Arrangement - where main purpose or one of the main purpose to obtain tax benefit:**
 - Creates rights or obligation not ordinarily created
 - Results directly or indirectly in misuse or abuse of Act
 - Lacks or deems to lack commercial substance
 - Entered or carried out in manner not ordinarily employed for bona fide purposes

General Anti Avoidance Rule (GAAR)

- **Covers all transactions resulting in tax benefits unless proved otherwise**
 - Onus on tax payer to prove tax benefit not main purpose
- **Locating asset / transaction / place of residence for tax benefit without substantial commercial purpose hit**
- **Factors like period of holding, payment of taxes (directly or indirectly) and exit route not relevant to determine commercial substance**
- **Broad procedure prescribed, including reference by CIT to Approving Panel (Panel to respond within 6 months)**

GAAR Consequences

- **Tax and Treaty benefits to be denied**
- **Arrangement can be disregarded / combined / re-characterized / voided**
- **Re-allocate income, expenses, relief, etc.**
- **Disregarding place of residence or situs of asset or transaction**
- **Looking through any corporate structure**
- **Re-characterize Equity-Debt, Income, expenses, relief, etc**
- **Guidelines and conditions for application of GAAR to be prescribed**

Incentives

- **Tax Holiday in Power sector – commencement date extended to 31 March 2013**
- **Initial depreciation of 20 % allowed to power companies**
- **Investment linked incentives for specified business (Cold Chain facility etc.) increased from 100% to 150%**
- **Investment linked incentives extended to ‘Container Freight Station’ ‘Inland Container Depot’, ‘ Warehousing facility for storage of Sugar’ etc**
- **200% Weighted deduction for In-House Research expenditure extended for 5 years (i.e. upto AY 2017-18)**

Incentives

- **150% Weighted deduction for Agricultural Extension Projects and Skill Development Projects**
- **Presumptive taxation limits for specified small businesses increased from INR 60 lakhs to INR 1 crore**
- **Limits for Tax Audit increased for businesses from - INR 60 lakhs to INR 1 cr / for professionals - from INR 15 lakhs to INR 25 lakhs**
- **Exemption to a foreign company for income earned in Indian currency on sale of crude oil (subject to fulfillment of conditions) - from AY 2012-13**

Other Tax Proposals

- **Tax pass through status for VCFs extended to all sectors**
- **Securities Premium from residents in excess of fair value taxable as income in the hands of closely held recipient company – exceptions for receipts from VCFs**
- **Condition of proportionate issue of shares in the definition of demerger relaxed to provide exemption for shares held by transferee company**
- **Alternate Minimum Tax @ 18.5% extended to all persons**
 - Persons other than Firm / Company / Local authority covered only if adjusted income > INR 20 lakhs

Other Tax Proposals

- **STT on delivery based trades cut from 0.125% to 0.1%**
- **Companies receiving share application / capital / premium to provide satisfactory explanation on nature and source**
- **Time limit for certain re-assessments extended with retrospective respect:**
 - 16 years for income from assets located outside India
 - 6 years in case agent of non-resident
- **Time limit for completion of withholding tax assessment for resident assesseees extended from 4 years to 6 years with retrospective effect from 1 April 2010**

Other Tax Proposals

- **Withholding tax of 1 % on transfer of immovable property (other than agricultural land) above prescribed limits.**
- **Payer not to be considered as 'assessee in default' where the resident payee discharges the tax liability on the income, files the tax return and furnishes Certificate from accountant in prescribed form**
- **No disallowance on failure to withhold tax on payments made to resident payee where payer is not considered as an 'assessee in default' as discussed above**

Procedural Provisions

- **DRP retrospectively empowered to enhance variations in draft Assessment orders**
 - Can now consider any matter arising out of assessment proceedings
- **AO empowered to appeal before ITAT against DRP order**
 - Amendment effective from 01.07.12
- **Assessment / reassessment time limits extended**

Proceedings under section	Current time allowed	Proposed Period
143	21 months from the end of the A.Y.	24 months
143 and 92CA	33 months from the end of the A.Y.	36 months
148	9 months from the end of the F.Y. in which notice issued	12 months

Key Budget Proposals

- Indirect Tax

At a Glance

- **Broad theme of Indirect tax proposals:**
 - Widening of tax base
 - Alignment to GST principles
 - Simplify compliances and reduce litigation
- **Key proposals outlining the above theme:**
 - Rollback of fiscal stimulus – excise duty and service tax rate restored to 12 %
 - Expansion in service tax net – Introduction of negative list
 - Drafting of model GST legislation in progress
 - GST network to be active by August 2012

GST implementation date?

Service Tax

- **Service Tax Law turns 18 – reaches adulthood**
- **Rate increased from 10 % to 12 %– effective rate at 12.36 % from 1 April 2012**
- **Taxation on basis of Negative List introduced - Net widened**
- **Concentrated efforts to overcome administrative hurdles, reduce litigation and compliance costs**
- **Service Tax kitty targeted to swell by INR 18,660 crores on steam of new proposals**

Service Tax - Negative List

- **Paradigm shift from “selective taxation” to “comprehensive taxation”**
- **“Service” defined to mean:**
 - any activity;
 - for consideration;
 - carried out by a person for another;
 - including declared services like construction, works contract renting of immovable property, leasing / hiring, IT software, IPR, non-compete, catering
- **Negative List to include specified services in relation to agriculture, education, trading of goods, services by Government or local authority, residential renting, interest or discount on deposits, loans or advances**
- **Certain services exempted by way of Mega Notifications**

Service Tax

- **Export and Import Rules to be revamped – New “Place of Provision of Services Rules” released for public comments**
- **Five Export conditions incorporated in Service Tax Rules:**
 - Location of service provider in taxable territory;
 - Location of service recipient outside India;
 - Service provided is a service other than in the negative list.
 - Place of Provision of the service is outside India; and
 - Payment received in convertible foreign exchange
- **Amendments in Point of Taxation Rules primarily to ease administrative hurdles**
- **Amendments in Valuation Rules to provide specific inclusions and exclusions**

Service Tax – Other Changes

- **Sweeping changes in reverse charge mechanism- Joint liability of service provider and recipient in 3 cases**
- **Simplified registration and one pager return format for Central Excise and Service Tax tabled for public comments – Returns to be monthly**
- **Adjustment of excess Service Tax paid allowed without any monetary limit effective 1 April 2012**
- **Prosecution provisions rationalized where invoice not issued without intent to evade tax**
- **Settlement Commission mechanism introduced**

CENVAT Credit

- **All changes effective from 1 April 2012**
- **Credit of Service Tax on hiring, insurance and repair of specific vehicles allowed**
- **Condition of physical receipt of goods for availing Credit done away with**
- **Simplified scheme for Credit refunds for exporters**
- **Payment on clearance of used capital goods at higher of:**
 - original credit taken reduced by prescribed percentage
 - duty on transaction value
- **Interest payable only from wrongful utilization of Credit**

Excise Duty

- **Excise duty rate (effective 17 March 2012):**
 - standard rate increased from 10 % to 12 %
 - merit rate increased from 5 % to 6 %
 - 1 % rate on 130 items increased to 2 %
- **Cess on Crude petroleum increased from INR 2,500 per MT to INR 4,500 per MT (effective 17 March 2012)**
- **Inter-unit transfer of unutilized SAD credit permitted**
- **Substantial expansion in units enjoying J&K exemption – ten year period to be computed from the expanded capacity**
- **Specified pharma products duty slashed from 10 % to 6 %**
- **Designated Central excise officers empowered to make arrests even without prior approval of the Commissioner**

Customs Duty

- **Peak rate of Basic Customs Duty retained at 10 % but increase in effective rate from 26.85 % to 28.85 % (due to increase in excise duty)**
- **Education cesses on CVD exempted – marginal relief provided**
- **Exemption of SAD on pre-packaged goods intended for retail sale - Declaration of destination State (of first sale) and VAT registration number now required**
- **Imports from China: Condition of ‘increased quantities’ for imposition of safeguard duty deleted**
- **Import against duty scrips obtained fraudulently - Powers to recover customs duty and attach property**

Customs Duty

- **Increase in BCD:**
 - Gem & Jewellery: Import duty on gold / gemstones doubled / increased
 - Auto: Luxury cars of certain specifications to 75 %
- **Exemption from BCD:**
 - Power: Thermal coal (CVD also reduced to 1%) valid upto 31 March 2014
 - Aviation: Parts of aircraft / testing equipment for MRO by third parties only
 - Mining: Coal mining projects
- **Mandatory payment of Customs duty electronically by notified importers**

Expectation Gaps

- **Timeframe for implementation of GST**
- **CST Phase-out**
- **Abolition of 4 % Special Additional Duty of Customs**

Overall, expected and forward looking approach from an indirect tax perspective



Q & A



THANK YOU