

## COMMENT LETTER

April 17, 2012

# Comment Letter from Joint Trades on Proposed Tax Amendments in the Indian Finance Bill 2012 (pdf)

Financial Executives International Financial Services Forum Information Technology Industry Council Investment Company Institute Managed Funds Association National Foreign Trade Council Securities Industry and Financial Markets Association Software Finance & Tax Executives Council TechAmerica U.S. Chamber of Commerce United States Council for International Business U.S.-India Business Council April 17, 2012 The Honorable Timothy F. Geithner Secretary of the Treasury U.S. Department of the Treasury 1500 Pennsylvania Avenue, NW Washington, D.C. 20220 Dear Secretary Geithner: Re: Amendments proposed by the Indian Finance Bill 2012 to the Income Tax Act, 1961 The undersigned associations write to inform you of their strong opposition to recently proposed tax amendments in the Indian Finance Bill 2012. These proposed amendments will have a significant negative effect on our companies, customers and shareholders, and investors in India and may well have a detrimental impact on the flow of direct investment into India. The proposals, which include an unprecedented period of retroactive tax collection, a broad and unclear general anti-abuse rule (GAAR) and an onerous tax on indirect stock transfer, are inconsistent with international tax policy and standards and result in significant erosion of the rule of law. We encourage you to raise these concerns with your Indian counterparts during the upcoming IMF and World Bank meetings this week. While every nation has a sovereign right to legislate, we believe these amendments are troubling in a number of major respects. We outline below our key overarching concerns. We attach documents which provide additional details. Also we have a number of industry specific concerns, including the inappropriate expansion of the definition of royalties for computer software and for transmission by satellite, cable, optic fiber or similar technology, and the lack of clarity on the status of participatory notes. The Finance Bill 2012 includes two dozen amendments that would retroactively create tax liabilities, some for periods of up to fifty years. Despite assertions by Indian officials that these retroactive provisions are in accordance with global tax practices, the amendments are much broader in scope and extend for a far longer period of time. Such amendments are inconsistent with India's specific obligations to the U.S. under the current bilateral tax treaty. Furthermore, the unilateral definition of treaty terms may significantly alter the benefits and burdens of the existing Income Tax Treaty to the detriment of the U.S. The amendments also propose a broad GAAR that overrides current treaty provisions. The provisions are far wider in scope than existing or proposed GAARs in other countries and place the burden of proof on individual companies, rather than on Indian tax authorities, to prove they are in compliance with the GAAR. We believe the broad language of the GAAR is unclear and introduces

increased uncertainty both for businesses operating in India and for cross-border investors. Additionally, the amendments propose taxing any non-resident's transfer of shares in a non-Indian company if the stock directly or indirectly derives its value "substantially" from Indian assets, despite the Supreme Court of India's January 2012 contrary ruling in the Vodafone case. In this case, the value of assets derived substantially from India should be clarified to avoid unnecessary disputes and litigation. More importantly, the amendments would retroactively take effect from April 1, 1962 – more than fifty years ago. The unprecedented nature of this amendment sets a particularly poor precedent and, consequently, we believe it essential that the U.S. Treasury speak out so that other countries might be dissuaded from enacting similar policies. A predictable, transparent and internationally consistent tax regime is imperative for companies operating in India and is a critical component of attracting long term investment. We believe that the implementation of these provisions will have immediate and severe consequences for companies, affecting their willingness to commence or continue their operations in India. Moreover, these amendments run counter to the spirit and language in the June 2011 U.S.- India Economic and Financial Partnership Communiqué, which called for greater "economic cooperation and greater commitment to trade and investment in India." In addition, India is identified as a priority country under the President's 2010 National Export Initiative. Failing to address this proposal would undercut the administration's goals of increasing exports and job creation. We strongly encourage you to raise these concerns and seek clarity on the scope and international consistency of the proposals during the upcoming IMF and World Bank meetings. Sincerely, Financial Executives International Financial Services Forum Information Technology Industry Council Investment Company Institute National Foreign Trade Council Managed Funds Association Securities Industry and Financial Markets Association Software Finance & Tax Executives Council TechAmerica U.S. Chamber of Commerce United States Council for International Business U.S.-India Business Council c: The Honorable John Bryson The Honorable Ron Kirk The Honorable Hillary Clinton

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