

Emergency Committee for American Trade
Financial Executives International
Financial Services Forum
Investment Company Institute
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

May 1, 2012

The Honorable Michael Froman
Deputy Assistant to the President and
Deputy National Security Advisor
National Security Council
Old Executive Office Building
1650 Pennsylvania Avenue
Washington, DC 20111

Dear Mr. Froman:

Re: Amendments proposed by the Indian Finance Bill 2012 to the Income Tax Act, 1961

Recently, the undersigned associations wrote to Treasury Secretary Geithner expressing their concern with the impact of recently proposed tax amendments in the Indian Finance Bill 2012 on their companies, customers, shareholders, and investors in India (letter attached). In light of your role at the National Security Council and the short timeframe before the enactment of the proposed amendments, we would appreciate your urgent attention to this matter, and request that you raise these issues with your Indian colleagues. The timeframe for action is limited as we understand the Indian Parliament will likely consider the proposals as early as May 4, and the legislation, if enacted, will be signed by the Prime Minister as soon as May 14.

While every nation has a sovereign right to legislate, other nations and their investors have legitimate grounds to be concerned about proposed amendments that include an unprecedented period of retroactive tax collection, a broad and unclear general anti-avoidance rule (GAAR) which contemplates the denial of negotiated tax treaty benefits, and an onerous tax on indirect stock transfers (*i.e.*, transfers from one non-resident of India to another with stock in a non-Indian company, some portion of the underlying assets of which may be situated in India). The amendments also target specific industries by expanding the definition of royalties so as to subject to Indian tax income from computer software and from transmission by satellite, cable, optic fiber or similar technology and redefining the tax treatment of participatory notes used by financial institutions investing in India. The proposed amendments follow a series of regulatory developments in India over the past year that have contributed to increased uncertainty among foreign investors. The combination of these amendments and this lack of clarity are already having a negative effect on foreign direct investment into the Indian economy.

Recent data from the Securities and Exchange Board of India indicate that foreign investment into India is down sharply since the amendments were proposed. According to numerous reports in the past year, ongoing regulatory and tax uncertainty has led global companies such as POSCO, Changi and Macquarie to either reconsider or halt significant investments in India. Additionally, India's sovereign credit rating was revised to 'negative' last week, due in part to concern over new tax proposals and an uncertain investment environment. Importantly, investment climate concerns, coupled with a potential future downgrade, could dampen India's economic growth, negatively impacting U.S. exports to India.

The proposed amendments also run counter to the spirit of cooperative business initiatives supported by the U.S. government, such as the U.S.-India CEO Forum and the U.S.-India Trade Policy Forum. The measures would hinder the CEO Forum's stated goal of creating "substantial opportunities to increase trade and investment activity, enhance market access for goods and services and develop greater competitiveness in both countries by leveraging their respective strengths." If passed, the amendments would inhibit much needed investment in India in priority areas identified by the CEO Forum such as infrastructure, clean energy and technology. Finally, the proposed amendments would also interfere with the President's National Export Initiative, which set a goal of doubling U.S. exports by the end of 2014 to support millions of U.S. jobs, and identified India as one of its priority markets.

We urge you to raise concerns about the proposed tax amendments in the Indian Finance Bill 2012 with your Indian colleagues. A stable, predictable and internationally consistent tax policy is imperative for future investment into India, and ensuring close economic ties with India is vital to the health of both the U.S. and global economy.

Sincerely,

Emergency Committee for American Trade
Financial Executives International
Financial Services Forum
Investment Company Institute
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

c: The Honorable Timothy Geithner
The Honorable Hillary Clinton
The Honorable John Bryson
The Honorable Ron Kirk
The Honorable Nancy Powell