

October 19, 2012

Joint Secretary (Tax Policy & Legislation-II)  
Central Board of Direct Taxes,  
Department of Revenue,  
Room No.147-C, 1st Floor,  
North Block, New Delhi-110001  
India

Re : Comments on Expert Committee Report on Retrospective Amendments

Dear Sir :

We are writing in response to the invitation to comment on the “Draft Report on Retrospective Amendments Relating to Indirect Transfer” released on October 9<sup>th</sup> by the Expert Committee chaired by Dr. Parthasarathi Shome. The undersigned organizations are independent trade and professional associations representing more than 250,000 companies engaged in a wide range of industries throughout the world.

Most of the undersigned organizations had written to the Minister of Finance earlier this year expressing serious concerns about the then proposed provisions in the Finance Bill 2012 relating to the taxation of indirect transfers, including their retrospective effect. We believed then, and still do today, that those provisions, as subsequently enacted into law, deviated so significantly from prevailing international policy and practice and created such substantial doubt about India’s commitment to fair treatment and the rule of law that they would have a real and lasting negative impact on the attractiveness of India as an investment location.

We are therefore much encouraged to see the recommendations in the Draft Report. The Draft Report appropriately takes a strong stand against retrospective tax legislation except in “the rarest of rare” cases and correctly concludes that the indirect transfer tax provisions do not satisfy the Draft Report’s reasonable criteria for when such legislation is justified. It also sets forth a cogent analysis of the appropriate parameters of an indirect transfer tax. For example, we commend the Draft Report’s recommendation to exempt most intra-group restructurings from taxation. While we do not necessarily support the introduction of an indirect transfer tax, we believe the clarifications and limitations recommended by the Draft Report are critical to the potential acceptability and workability of such a tax.

We respectfully suggest that some further analysis and clarification would be advisable before an indirect transfer tax regime could be introduced in a way that would not leave open significant areas of potential dispute. For example, in order to prevent the possibility of multiple Indian taxation of the same gain in the event of separate transfers occurring at different tiers of a holding structure, any imposition of tax by India on an

indirect transfer should be accompanied by a step up in the basis of the assets held by the company whose shares were transferred and the assets of any lower tier intermediary company. Also, if intangible assets are taken into account in determining whether the value of transferred shares derives substantially from assets situated in India, clarification would be needed as to where intangible assets are “situated”. Such clarification should take into account India’s tax treaty with the country of residence of the transferor and the question of whether such treaty would allow India to tax a direct transfer of such assets by the transferor.

In light of those observations, and assuming the Government of India decides to continue in the direction of introducing an indirect transfer tax, we strongly encourage the Government to follow the recommendations laid out in the Draft Report, including the recommendation that the tax be applied prospectively only. We further urge the Government to consider the additional design features mentioned above and to make appropriate adjustments to the legislation to take them into account. Finally, we encourage the Government to review other retrospective provisions of the Finance Act, 2012 in light of the criteria laid out in the Draft Report with a view towards determining whether they can objectively be considered to have satisfied those criteria. We commend the Government for its thoughtful approach to addressing the concerns raised by the recent legislation, and we greatly appreciate the opportunity to provide comment on these issues. We firmly believe that a successful conclusion to this process, involving acceptance of well-considered recommendations that have benefited from the input of multiple stakeholders, will go a long way towards restoring the image of India as a fair and hospitable destination for investment.

Respectfully submitted,

Asia Securities Industry & Financial Markets Association (ASIFMA)

Business Roundtable (BRT)

Canadian Manufacturers & Exporters (CME)

Confederation of British Industry (CBI)

Confédération Fiscale Européenne (CFE)

Investment Company Institute (ICI) and ICI Global

National Foreign Trade Council, Inc. (NFTC)

Securities Industry and Financial Markets Association (SIFMA)

Software Finance and Tax Executives Council (SoFTEC)

United States Council for International Business (USCIB)

U.S.-India Business Council (USIBC)



October 19, 2012

The Asia Securities Industry & Financial Markets Association (ASIFMA) is an independent association that promotes the development of liquid, efficient and transparent capital markets in Asia and facilitates their orderly integration into the global financial system. ASIFMA priorities are driven by over 40 member companies involved in Asian capital markets, including global and regional banks, securities dealers, brokers, asset managers, credit rating agencies, law firms, trading and analytic platforms, and clearance and settlement providers. ASIFMA is located in Hong Kong and works closely with global alliance partners: the Global Financial Markets Association (GFMA), the Securities Industry and Financial Markets Association (SIFMA) and the Association for Financial Markets in Europe (AFME). More information about ASIFMA can be found at: [www.asifma.org](http://www.asifma.org).

ASIFMA shares the recommendations regarding the Shome Committee's "Draft Report on Retrospective Amendments Relating to Indirect Transfer" expressed in the attached letter and urges that those recommendations be followed.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Austen". The signature is fluid and cursive, with a large initial 'M' and 'A'.

Mark Austen  
CEO  
ASIFMA  
Asia Securities Industry & Financial Markets Association



300 New Jersey Avenue, NW  
Suite 800  
Washington, DC 20001

Telephone 202.872.1260  
Facsimile 202.466.3509  
Website brt.org

**Chairman**

W. James McNerney, Jr.  
The Boeing Company

**President**

John Engler  
Business Roundtable

**Executive Committee**

Ajay Banga  
MasterCard Incorporated

Ursula M. Burns  
Xerox Corporation

Kenneth I. Chenault  
American Express Company

David M. Cote  
Honeywell International, Inc.

Alexander M. Cutler  
Eaton Corporation

James Dimon  
JPMorgan Chase & Co.

Michael T. Duke  
Wal-Mart Stores, Inc.

Jeffrey R. Immelt  
General Electric Company

Andrew N. Liveris  
The Dow Chemical Company

Gary W. Loveman  
Caesars Entertainment Corporation

Robert A. McDonald  
The Procter & Gamble Company

Harold McGraw III  
The McGraw-Hill Companies

Douglas R. Oberhelman  
Caterpillar Inc.

Edward B. Rust, Jr.  
State Farm Insurance Companies

Randall L. Stephenson  
AT&T Inc.

Rex W. Tillerson  
Exxon Mobil Corporation

October 19, 2012

Business Roundtable (BRT) is an association of chief executive officers of leading U.S. companies with more than \$7.3 trillion in annual revenues and nearly 16 million employees. BRT member companies comprise nearly a third of the total value of the U.S. stock market and invest more than \$150 billion annually in research and development – equal to 61 percent of U.S. private R&D spending. Our companies pay \$182 billion in dividends to shareholders and generate nearly \$500 billion in sales for small and medium-sized businesses annually. BRT companies give more than \$9 billion a year in combined charitable contributions.

Business Roundtable shares the views expressed in the attached letter regarding the Shome Committee's "Draft Report on Retrospective Amendments Relating to Indirect Transfer."

Sincerely,

A handwritten signature in black ink that reads 'John Engler'.

John Engler



**Canadian  
Manufacturers &  
Exporters**

**Manufacturiers et  
Exportateurs du  
Canada**



October 18, 2012

Canadian Manufacturers & Exporters (CME) is Canada's largest trade and industry association, and the voice of manufacturing and global business in Canada.

Since 1871, we have made a difference for Canada's manufacturing and exporting communities. Fighting for their future. Saving them money. Helping them grow.

The association represents more than 10,000 leading companies nationwide. More than 85 per cent of CME's members are small and medium-sized enterprises. As Canada's leading business network, CME - through various initiatives including the establishment of the Canadian Manufacturing Coalition - touches more than 100,000 companies from coast to coast, engaged in manufacturing, global business and service-related industries.

CME's membership network accounts for an estimated 82 per cent of Canadian manufacturing production and 90 per cent of goods and services exports.

CME shares the recommendations regarding the Shome Committee's "Draft Report on Restrospective Amendments Relating to Indirect Transfer" expressed in the attached letter and urges that those recommendations be followed.

Sincerely,

Jean Michel Laurin  
Vice President, Global Business Policy

1 Nicholas Street, Suite 1500/1 rue Nicholas, bureau 1500, Ottawa ON K1N 7B7  
T 613-238-8888 F 613-563-9218 [www.cme-mec.ca](http://www.cme-mec.ca)

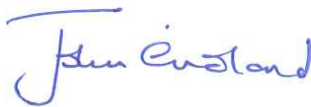
19 October 2012

Dear Sirs

The CBI – Confederation of British Industry - is the UK's leading business organisation, speaking for some 240,000 businesses that together employ around a third of the private sector workforce. With offices across the UK as well as representation in Brussels, Washington, Beijing and Delhi, the CBI co-ordinates the voice of British business around the world.

The CBI shares the recommendations regarding the Shome Committee's "Draft Report on Retrospective Amendments Relating to Indirect Transfer" expressed in the attached letter and urges that those recommendations be followed.

Yours faithfully



John Cridland CBE  
Director-General

CFE ▪ 188A, Av. de Tervuren ▪ B – 1150 Brussels



Brussels Office  
188A, Av. de Tervuren  
B – 1150 Brussels  
Tel. + 32 2 761 00 91  
Fax + 32 2 761 00 90  
[brusselsoffice@cfe-eutax.org](mailto:brusselsoffice@cfe-eutax.org)  
[www.cfe-eutax.org](http://www.cfe-eutax.org)

Brussels,  
18 October 2012

October 19, 2012

The CFE is the umbrella organisation of the tax adviser profession in Europe. It was founded in the year 1959 and embraces 32 national organisations from 24 European States and within them over 180,000 tax advisers. We consider our functions to be to safeguard the professional interests of tax advisers and to assure the quality of tax services provided by tax advisers and to exchange information about national tax laws and professional law and to contribute to coordination respectively of tax law in Europe.

The Confédération Fiscale Européenne shares the recommendations regarding the Shome Committee's "Draft Report on Retrospective Amendments Relating to Indirect Transfer" expressed in the attached letter and urges that those recommendations be followed.

Sincerely,

Gottfried Schellmann  
Chairman of the CFE Fiscal Committee on behalf of the CFE Executive Board



1401 H Street, NW, Washington, DC 20005-2148, USA  
202/326-5800 www.ici.org



35 New Broad Street, London EC2M 1NH, UK  
+44 (0) 203 009 3100 www.iciglobal.org

October 19, 2012

The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$13.5 trillion and serve over 90 million shareholders.

ICI Global is the global association of regulated funds publicly offered to investors in leading jurisdictions worldwide. ICIG seeks to advance the common interests and promote public understanding of global investment funds, their managers, and investors. Members of ICIG manage total assets in excess of US \$1 trillion.

The Investment Company Institute and ICI Global share the recommendations regarding the Shome Committee's "Draft Report on Retrospective Amendments Relating to Indirect Transfer" expressed in the attached letter and urge that those recommendations be followed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Keith Lawson', with a long, sweeping horizontal line extending to the right.

Keith Lawson  
Senior Counsel – Tax Law  
Investment Company Institute and ICI Global



# NATIONAL FOREIGN TRADE COUNCIL, INC.

1625 K STREET, NW, WASHINGTON, DC 20006-1604

TEL: (202) 887-0278



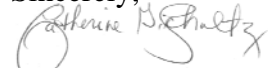
FAX: (202) 452-8160

October 19, 2012

The NFTC, organized in 1914, is an association of some 250 U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial and service activities. The NFTC therefore seeks to foster a level playing field in the international business arena by eliminating major tax inequities in the treatment of U.S. companies operating abroad. To achieve this goal, American businesses must be able to participate fully in business activities throughout the world, through the export of goods, services, technology, and entertainment and through direct investment in facilities abroad. Foreign trade is fundamental to economic growth.

The National Foreign Trade Council shares the recommendations regarding the Shome Committee's "Draft Report on Retrospective Amendments Relating to Indirect Transfer" expressed in the attached letter and urges that those recommendations be followed.

Sincerely,



Catherine Schultz

Vice President for Tax Policy

National Foreign Trade Council

[cschultz@nftc.org](mailto:cschultz@nftc.org)

202-887-0278 ext. 2023



October 19, 2012

The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

SIFMA shares the recommendations regarding the Shome Committee's "Draft Report on Retrospective Amendments Relating to Indirect Transfer" expressed in the attached letter and urges that those recommendations be followed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ken Bentsen". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Kenneth E. Bentsen, Jr.  
EVP, Public Policy and Advocacy  
Securities Industry and Financial Markets Association  
1101 New York Ave., N.W. 8th Floor  
Washington, D.C. 20005



**Software Finance & Tax Executives Council**

[www.softwarefinance.org](http://www.softwarefinance.org)

October 19, 2012

The Software Finance and Tax Executives Council (SoFTEC) is a trade association providing software industry focused public policy advocacy in the areas of tax, finance and accounting. Its member companies sell their products in many markets, including the Indian market. SoFTEC's members have an interest in stable, predictable and transparent tax rules and thus have an interest in commenting on the wisdom of the retrospective amendments of India's Finance Bill 2012.

SoFTEC shares the recommendations regarding the Shome Committee's "Draft Report on Retrospective Amendments Relating to Indirect Transfer" expressed in the attached letter and urges that those recommendations be followed.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark E. Nebergall". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark E. Nebergall  
President  
Software Finance and Tax Executives Council



UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

October 19, 2012

Founded in 1945, the United States Council for International Business (USCIB) is an international business association whose membership consists of top U.S.-based global companies and professional services firms from every sector of our economy, and with operations in every region of the world. USCIB promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and prudent regulation. With a unique global advocacy network encompassing the International Chamber of Commerce, the International Organization of Employers and the Business and Industry Advisory Committee to the OECD, USCIB provides business views to policy makers and regulatory authorities worldwide, and works to facilitate international trade and investment.

The United States Council for International Business (USCIB) shares the recommendations regarding the Shome Committee's "Draft Report on Retrospective Amendments Relating to Indirect Transfer" expressed in the attached letter and urges that those recommendations be followed.

Sincerely,

Peter M. Robinson  
President and CEO



**USINDIA** Business Council

October 19, 2012

The U.S.-India Business Council (USIBC) is the premier business advocacy organization whose purpose is to deepen two-way trade and strengthen commercial ties between India and the U.S. Formed by the U.S. and Indian governments in 1975, today USIBC is comprised of 370 top-tier U.S. and Indian companies engaged across all key industry sectors. Mr. Ajay Banga, President & CEO of MasterCard Worldwide, serves as Chairman of USIBC's Board of Directors.

The U.S.-India Business Council shares the recommendations regarding the Shome Committee's "Draft Report on Retrospective Amendments Relating to Indirect Transfer" expressed in the attached letter and urges that those recommendations be followed.

Sincerely,

Ron Somers  
President  
U.S.-India Business Council