Emergency Committee for American Trade
Financial Executives International
Financial Services Forum
Information Technology Industry Council
Investment Company Institute
National Foreign Trade Council
Securities Industry and Financial Markets Association
Software Finance and Tax Executives Council
TechAmerica
U.S. Chamber of Commerce
United States Council for International Business
U.S.-India Business Council

June 13, 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: Economic Impact of Tax Provisions in the Indian Finance Bill 2012

The undersigned associations, whose members include U.S. companies with global operations, significant long-term investments and an economic presence in India, write to follow-up on our April 17 letter expressing opposition to tax amendments in the Finance Bill 2012. Since our most recent letter, the Finance Bill, as amended, received Presidential assent and was enacted into law. Despite some assurances from Finance Minister Mukherjee on the scope and timing of these amendments, most notably with respect to the implementation of the General Anti-Avoidance Rule (GAAR), the most onerous provisions remain in place. We understand that these assurances are quite limited in scope and are not legally binding and, despite those assurances, senior Indian tax authorities have also been quoted as saying they intend to pursue a significant number of retroactive assessments. We urge you to raise these concerns with your Indian counterparts during the upcoming U.S.-India Economic and Financial Partnership.

Though implementation of the GAAR has been delayed until 2013, we continue to have concerns regarding its application. Further, the remaining provisions introduce an unprecedented period of retroactive tax collection as well as onerous future taxes, including a tax on indirect stock transfers (*i.e.*, transfers from one non-resident of India to another of stock in a non-Indian company, some portion of the underlying assets of which may be situated in India) that is inconsistent with all international standards. The provisions also potentially subject commonplace internal restructurings to the indirect transfer tax, contrary to the recommendations of the standing committee, 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 redefine the tax treatment of participatory notes used by financial institutions investing in India.

Previous concern with the impact of the amendments in the Finance Bill 2012 and the uncertainty they introduce to the Indian economy, financial markets and foreign investors there is now real. Recently, India's gross domestic product growth slowed to a nine-year low and optimism for future robust growth is waning. Regulatory uncertainty has been widely cited as one of many factors in the marked decline in economic growth and foreign investment into India. These changes exacerbate this uncertainty and hinder plans for investment and growth by our member companies in India. At a time of slowing global growth, it is imperative for India to consider the global economic ramifications of these tax provisions.

Further, these measures are broadly inconsistent with the stated goals of the U.S.-India economic relationship agreed to in both bilateral and multilateral forums. In the most recent Economic and Financial Partnership discussions, both sides pledged "stronger collaboration and coordination amongst our economic and financial policymakers … in order to fully capitalize on the wealth of economic opportunities between our two nations." Moreover, G20 Leaders agreed at the 2009 Toronto Summit to "refrain from raising barriers or imposing new barriers to investment or trade in goods and services … and commit to rectify such measures as they arise." The provisions run counter to the spirit and rule of this language.

While we outline our concerns regarding the economic impact of these provisions on our companies operating or seeking to enter India, we also note that they may have a serious fiscal impact in the United States. For example, U.S. multinationals operating in India may be in a position to take a foreign tax credit for any additional Indian income tax. We believe these claims could be significant and ultimately lead to lower tax revenues for the U.S. government.

Our members have significant investments in India and are focused on establishing a productive, long-term economic relationship with India. The provisions in the Finance Bill significantly and negatively alter the tax environment for firms already operating in India, harm the prospects for foreign direct investment into India by U.S. companies and stand to ultimately slow economic growth in the United States, India and around the world. We urge you to raise these concerns with your Indian counterparts at the upcoming U.S.-India Economic and Financial Partnership (June 27-28). We look forward to an ongoing cooperative and constructive dialogue on the issue going forward.

Sincerely,

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Cc:
The Honorable Hillary Clinton
The Honorable Ron Kirk
The Honorable Rebecca Blank
The Honorable Lael Brainard
The Honorable Michael Froman
Ambassador Nancy Powell