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*By Electronic Delivery*

April 13, 2015

The Honorable Shri Arun Jaitley  
Minister  
Ministry of Finance  
North Block  
New Delhi, India

*RE: Urgent Attention Needed on MAT  
Issue Harming Investor Confidence*

Dear Minister Jaitley:

ICI Global,<sup>1</sup> on behalf of our global fund industry members, respectfully requests your urgent attention to a matter that is creating substantial reservations within our membership about whether India's tax regime, which we expected would become increasingly stable and predictable, will foster the requisite investor confidence.<sup>2</sup> More specifically, we respectfully request that you instruct the Ministry of Finance (MoF) and the Central Board of Direct Taxes (CBDT) to clarify promptly that the minimum alternate tax (MAT) does not apply retroactively to foreign institutional investors (FIIs).<sup>3</sup> While our particular focus is limited to funds organized as collective investment vehicles (CIVs),<sup>4</sup> we understand that our concerns are shared by other FIIs.

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<sup>1</sup> The international arm of the Investment Company Institute, ICI Global serves a fund membership that includes regulated funds publicly offered to investors in jurisdictions worldwide, with combined assets of US\$19.6 trillion. ICI Global seeks to advance the common interests and promote public understanding of regulated investment funds, their managers, and investors. Its policy agenda focuses on issues of significance to funds in the areas of financial stability, cross-border regulation, market structure, and pension provision. ICI Global has offices in London, Hong Kong, and Washington, DC.

<sup>2</sup> The Indian tax regime, as administered by the prior Government, often harmed this confidence. We submitted letters on significant Indian tax issues, for example, in 2003, 2006, 2012, and 2014.

<sup>3</sup> A separate letter will provide suggestions for clarifying how the Union Budget's proposed changes to the MAT could be implemented on a going-forward basis to encourage foreign investment.

<sup>4</sup> A CIV, for this purpose, would be defined consistently with the OECD's Report entitled "The Granting of Treaty Benefits with Respect to the Income of Collective Investment Vehicles" (the "CIV Report"). Specifically, paragraph 4 on page 3 of the CIV Report defines CIVs as "funds that are widely-held, hold a diversified portfolio of securities and are subject to investor-protection regulation in the country in which they are established." Examples of CIVs would include funds organized under the United States' Investment Company Act of 1940 as registered investment

The sound legal basis for this clarification is explained in detail in the enclosed letters that ICI Global sent on January 28, 2015 to senior officials in the Ministry and the CBDT.<sup>5</sup>

We now are writing directly to you because the industry believes strongly that the recent MAT liability assertions – which reportedly total several billion US dollars – are based upon a fundamental misunderstanding on how the MAT provisions are to be applied to nonresident taxpayers. First, as our January 2015 letters make clear, the MAT provisions were intended to apply only to Indian domestic companies. Second, even if MAT were applicable to foreign companies, only those foreign companies with a place of business, such as a branch office or a project office, in India should be subject to this tax. Our members' funds, as you are aware, invest in India from overseas. While they necessarily must have both a local bank account and a local custody account and must engage a local stock broker to access the market, they do not have an Indian place of business. Consequently, in our view, the assessments being made against our members' funds are totally unsupported under Indian law.

Our members are extremely concerned and deeply disappointed by the actions being taken today by the Indian Revenue authorities (IRA) with respect to MAT liabilities for the prior years; these actions include issuing penalty notices and notices to reopen prior year tax files. We are grateful, of course, for your well-intended effort in the Finance Bill, 2015 to rationalize the MAT provisions prospectively for FIIs; the IRA appear to have interpreted your assistance, however, as justification for asserting increasingly substantial amounts of tax and penalties for prior periods. While we cannot predict the market reaction to these extraordinary retroactive tax liability assertions, the reports we are hearing are very discouraging from an Indian capital markets perspective.

Quite frankly, we are astonished that the MAT, which has been applied only to domestic companies since its enactment in 1996, now is being asserted against foreign investors. All fund industry investments made for the past 18 years have been made on the common understanding – shared by funds and their Indian-based tax advisers – that MAT is levied only on Indian domestic companies. Innumerable foreign investors have had their prior tax returns audited by the IRA without MAT ever being asserted. Investors have acquired and sold their fund shares over this entire period based upon share prices reflecting the understanding that the funds had no Indian tax exposure for portfolio securities sold after being held for the requisite long-term holding period. The harm to the fund industry's investing confidence – harm that is directly attributable to these sudden and unexpected MAT assertions – cannot be overstated.

ICI Global, consequently, respectfully requests prompt clarification that the MAT does not apply retroactively to FIIs organized as CIVs. Moreover, because we recognize that the time is short for

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companies (RICs) and funds organized under the European Union's Undertakings for Collective Investment in Transferable Securities (UCITS) Directive as UCITS. All such CIVs, we submit, should be exempt from retroactive application of the MAT regardless of their form of organization.

<sup>5</sup> These letters were addressed to Mr. S M Nigam, Member – Income-tax, Central Board of Direct Taxes (CBDT) and to Mr. Shaktikanta Das, Secretary (Revenue), Ministry of Finance. Annexure A to the letter to Mr. Nigam, which describes this issue in greater detail, also is enclosed with this letter.

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issuing such a clarification, we also respectfully request that FIIs not be required to object to draft orders they receive within the currently-prescribed 30-day time period. An immediate announcement to this effect, while you review this issue, also would be appreciated greatly.

Yours faithfully,

*/s/ Keith Lawson*

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Enclosures