

*By Electronic Delivery*

24 July 2019

Smt. Nirmala Sitharaman  
Minister of Finance  
Government of India  
North Block  
New Delhi 110 001  
India

RE: *CIV Industry Meeting Request*

Honorable Finance Minister:

Representatives of the collective investment vehicle (CIV) associations<sup>1</sup> that wrote to you on 18 July regarding the tax surcharge increase respectfully request a meeting with you and your colleagues to discuss this matter in greater detail. This matter—which is discussed in the attached coalition letter as well as in separate submissions made by individual members of the coalition—is of immense importance to our members.

Importantly, we respect the Indian Government’s determination that the “super-rich” must contribute more to support India’s impressive economic growth and expand opportunities for all Indians. Our concern is that investors in CIVs—which are not designed for or used by the “super-rich,” but instead are acquired by investors of moderate means in the retail marketplace—be protected from the financial harm that they otherwise will suffer from a tax targeting wealthy individuals.

The relief that we would like to discuss with you is fully consistent with the objective of Finance (No. 2) Bill, 2019, which now has been approved by both houses of Parliament. Moreover, the requested relief will advance the Government’s vision of promoting economic growth through a well-crafted and stable taxation regime. This vision—which will help advance the Government’s goal of making India a US\$ 5 trillion economy within five years—is one that CIVs and their investors share fully.

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<sup>1</sup> These CIVs associations, which advance the domestic and global interests of CIV investors, are ICI Global, the European Fund and Asset Management Association, the Financial Services Council (Australia), the Hong Kong Investment Funds Association, The Investment Association (UK), and the Investment Funds Institute of Canada. The CIV members of these associations manage approximately US\$ 40 trillion of regulated fund assets globally. The members of one of the six coalition associations invest over US\$ 134 billion in Indian securities.

Other points that we would like to emphasize during the meeting include:

- The tax inadvertently impairs the Indian economy's access to stable capital.
  - Stable tax regimes foster long-term sources of capital.
    - This capital gains tax surcharge increase was unexpected.
    - Moreover, this increase follows last year's unexpected tax on long-term capital gains.
  - Failure to address "unintended" consequences does not instill investor confidence.
  - Disparate treatment for CIVs organized in corporate vs. non-corporate form—based upon non-Indian tax and regulatory considerations—likewise does not instill investor confidence.
  - Moreover, disparate treatment—based upon the form in which a CIV is organized—creates competitive distortions.
    - These competitive distortions—which exist already in India (as CIVs organized as non-corporates, *e.g.*, as trusts, are taxed more heavily than comparable CIVs organized as corporates)—are exacerbated greatly by the tax.
- Taxing securities gains disincentivizes foreign portfolio investment.
  - Market appreciation is a major driver of investment return.
  - Capital gains taxes have a negative impact on investment returns.
    - Most countries do not tax foreign portfolio investors on stock and bond gains.
    - CIVs pay capital gains tax in India, even though Indian funds generally do not pay capital gains tax when investing globally (such as in the United States).
  - CIVs with a global investing mandate are not obligated to invest in any country.
    - Investment decisions are based upon expected after-tax market returns.
    - Growing economies with capital gains taxes, at the margin, are less attractive.
  - Capital gains taxes lead to market index tracking error—and hurt index funds, such as ETFs, which are an important source of capital for economic growth.
- Restructuring from non-corporate to corporate form generally is not a viable option.
  - Legal obligations in many countries effectively require a non-corporate structure.
  - Substantial tax, administrative, and transaction costs would be incurred were a CIV even eligible to restructure from non-corporate to corporate form.
    - Specifically, India treats such a trust-to-corporate restructuring as a taxable event—even when, as typically is the case, the restructuring is not taxable in the CIV's home country.
    - These Indian tax costs can be prohibitive.
  - Finally, a purely tax-motivated restructuring might violate India's GAAR.
    - Similar "business purpose" tax issues also could arise in the CIV's home country.
- The unintended consequences of this tax can and should be remedied promptly.
  - We recommend an appropriately broad exemption.
  - All CIVs, for example, would be covered by an exemption for Category 1 and 2 FPIs.

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Rajeshree Sabnavis (founder of Rajeshree Sabnavis Associates, and one of ICI Global's outside advisors) will follow up with your office to discuss scheduling the requested meeting. Russell Gaitonde, a partner with Deloitte Haskins & Sells, LLP, also represents ICI Global. Please feel free to contact any of the undersigned if we can provide you with any additional information regarding the coalition or this meeting request.

With kind regards on behalf of the coalition,



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cc: Rajeshree Sabnavis  
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Attachment