

MEMO# 23946

November 10, 2009

ICI Letter to India on Tax Proposals Affecting Foreign Investors

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TO: INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 17-09 RE: ICI LETTER TO
INDIA ON TAX PROPOSALS AFFECTING FOREIGN INVESTORS

The Institute recently expressed concerns to the Indian Ministry of Finance regarding the potential impact on foreign institutional investors (“FIIs”) of proposals to increase the tax rate on capital gains and to override treaties. These proposals were included in a draft, released on August 12, of a new Direct Taxes Code (“DTC”).

The Institute’s letter describes the two specific proposals of concern and their potential impact on the willingness of FIIs to invest in India. First, gains arising to non-residents (including FIIs) on the transfer of any investment asset, regardless of holding period, would be taxed under the draft DTC at a 30 percent rate. This tax increase could impact negatively the attractiveness of Indian securities relative to securities of non-Indian companies. Second, the draft DTC proposes that neither the DTC nor any tax treaty entered into between the governments of India and any foreign country will have preferential status. Under the proposal, therefore, subsequent legislation will override (i.e., apply instead of) a previously-negotiated treaty. This “treaty-override” provision could limit the certainty of any tax benefits provided by treaty.

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[Attachment](#)

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