

MEMO# 31876

July 30, 2019

Status Update and GAAP Considerations on India's Proposed Tax Surcharge Increase

[31876]

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TO: ICI Members
ICI Global Members
Accounting/Treasurers Committee
ICI Global Tax Committee
Tax Committee SUBJECTS: Fund Accounting & Financial Reporting
International/Global
Tax RE: Status Update and GAAP Considerations on India's Proposed Tax Surcharge
Increase

The 2019 Indian budget proposals, presented to Parliament by the Finance Minister on July 5, included a significant tax increase on the capital gains of all foreign portfolio investors (FPIs) organized in non-corporate form (e.g., as trusts). Specifically, the proposal would increase the capital gains tax surcharge on these FPIs from between 3 and 7 percentage points.

ICI Global sent a letter to the Finance Minister and the Chairman of the Securities and Exchange Bank of India (SEBI) urging that the proposed legislation be amended.[\[1\]](#) Subsequently, ICI Global and five other collective investment vehicle (CIV) industry associations submitted a coalition letter raising the same substantial concerns for all CIVs organized in non-corporate form.[\[2\]](#)

The proposed legislation has been approved already by both Houses of Parliament and is expected to be signed into law imminently—with retroactive effect to April 1. The Finance Minister has indicated, however, that she would like to meet with FPIs that are harmed by the new tax.[\[3\]](#) ICI Global has requested meetings with the Finance Minister and other senior government officials; our counsel anticipates these meetings being agreed and held very soon.

The proposed surcharge raises important financial accounting issues for investment companies. Specifically, Generally Accepted Accounting Principles (GAAP) require

investment companies investing in foreign securities subject to foreign taxes on realized gains to recognize taxes on an accrual basis, including deferred taxes on unrealized appreciation of investments. Any deferred tax liability on unrealized appreciation of investments should reflect the rate that would apply if the securities were disposed of on the valuation date.

GAAP also requires any deferred tax liability to be adjusted for the effect of a change in tax laws or rates and indicates that the effect of a change in tax laws or rates shall be recognized at the date of enactment. Funds investing in India are encouraged to monitor legislative developments so that they can appropriately reflect any deferred tax liability in their daily NAV calculations and financial statements.

Katie Sunderland
Assistant General Counsel

Gregory M. Smith
Senior Director, Fund Accounting and Compliance

endnotes

[1] See [Institute Memorandum No. 31851](#), dated July 12, 2019.

[2] See [Institute Memorandum. No. 31865](#), dated July 18, 2019.

[3] See “Let me hear them, says Finance Minister, on foreign investors affected by surcharge,” Indian Express, dated July 28, 2019, available at: <https://indianexpress.com/article/business/economy/nirmala-sitharaman-fpi-foreign-investor-s-economy-income-tax-finance-minister-5857501/>