

**MEMO# 32345**

April 1, 2020

## **India: ICI Requests Urgent Confirmation on 15 Percent Cap on Surcharge Tax**

[32345]

April 1, 2020 TO: ICI Members

ICI Global Members

Accounting/Treasurers Committee

ICI Global Tax Committee

Management Company Tax Subcommittee

Tax Committee SUBJECTS: Fund Accounting & Financial Reporting

International/Global

Tax RE: India: ICI Requests Urgent Confirmation on 15 Percent Cap on Surcharge Tax

The Indian Government recently enacted the Finance Act 2020 (Act) effective as of April 1, 2020. The Act abolishes the Dividend Distribution Tax (DDT) paid by dividend-paying Indian companies and instead imposes tax on dividends at the shareholder level. The Act includes a 15 percent cap on the surcharge tax on dividends paid to residents and nonresidents. Accordingly, the highest effective tax rate applicable to dividend income is 21.84 for corporate FPIs and *should* be 23.92 percent for noncorporate FPIs, including cess and other taxes.

The 15 percent cap would address many of the issues raised in ICI Global's previous submission on the Indian Union Budget 2020.[\[1\]](#) We understand there is significant uncertainty, however, on whether the cap on surcharge tax applies to noncorporate FPIs. Absent confirmation that the 15 percent cap applies, the highest effective tax rate applicable to dividend income earned by noncorporate FPIs would be 28.496%, unless otherwise reduced by treaty. (The dividend withholding tax rate is 25% under the US-India tax treaty.)

ICI Global submitted the attached letter which describes the technical drafting concern and requests immediate confirmation that the cap will apply to dividends paid to noncorporate FPIs.

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Assistant General Counsel

[Attachment No. 1](#)

[Attachment No. 2](#)

**endnotes**

[1] See [Institute Memorandum 32255](#) dated March 2, 2020.

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