

MEMO# 31951

September 9, 2019

India: ICI Global Requests Guidance on Enhanced Surcharge Tax

[31951]

September 9, 2019 TO: ICI Members

ICI Global Members

Accounting/Treasurers Committee

ICI Global Tax Committee

Tax Committee SUBJECTS: Fund Accounting & Financial Reporting

International/Global

Tax RE: India: ICI Global Requests Guidance on Enhanced Surcharge Tax

ICI Global, in the attached September 7, 2019 letter to the Indian Finance Minister, has continued our advocacy on behalf of shareholders in funds investing in India.[\[1\]](#) This letter follows up on meetings that ICI Global had with senior Indian government officials on August 28-30, after the Indian government issued a press release on the enhanced surcharge tax.

Specifically, on August 24, 2019, the Ministry of Finance issued a press release announcing that the government would withdraw retroactively – from April 1, 2019 - the recently enacted tax surcharge increase^[2] on transfers of equity shares, units of equity-oriented funds, and units of business trusts. The press release also specified that derivatives owned by foreign investors are treated as capital assets and thus are exempt from the tax surcharge.

The September 7 ICI Global letter references comments made by senior Ministry of Finance officials during the meetings on August 28-30 regarding the government's intention to clarify that the surcharge tax withdrawal applies equally to all capital assets, including debt securities. Specifically, government officials suggested that the press release's statutory reference to "capital assets" was intended to cover all securities that are held by a SEBI registered foreign institutional investor and which are deemed to be "capital assets" under section 2(14)(b) of the Income Tax Act, 1961.

The ICI Global letter requests immediate confirmation of this point through a press release that is subsequently followed by legislative amendment by way of an official ordinance and/or an Income-tax Amendment Act. The letter notes that formal guidance is urgently needed as regulated funds are required to calculate a daily net asset value per share, taking into account the taxes that would apply if the fund's securities were sold.

Katie Sunderland
Assistant General Counsel

[Attachment No. 1](#)

[Attachment No. 2](#)

endnotes

[1] See [Institute Memorandum No. 31901](#), dated August 14, 2019.

[2] See [Institute Memorandum No. 31886](#), dated August 2, 2019.

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