MEMO# 31115

March 5, 2018

ICI Global Submission to Indian Government on Proposed Legislation

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March 5, 2018 TO: ICI Members
ICI Global Members
ICI Global Tax Committee SUBJECTS: International/Global
Tax RE: ICI Global Submission to Indian Government on Proposed Legislation

The attached ICI Global submission to the Indian Government raises substantial concerns with two provisions of the Indian Union Budget 2018 and urges significant modifications and clarifications. The provisions of concern relate to a proposed tax on long-term capital gains and a proposed expansion of the requirement on individuals to obtain a Permanent Account Number (PAN).

Capital Gains Taxation

The Union Budget proposes to impose a 10 percent tax beginning April 1, 2018 on long-term capital gains (LTCGs), which are assets held for more than one year, that arise after January 31, 2018; short-term capital gains already are subject to tax in India. Our concerns with this proposal are that:

1. The proposed tax will discourage long-term investment in Indian securities;
2. The proposal will be even more harmful to Indian investment unless the securities transaction tax (STT) is abolished; and
3. The proposal includes numerous ambiguities that could result in substantial additional tax being imposed on Foreign Portfolio Investors (FPIs).

To address these concerns, we urge that:

1. Long-term capital gains remain exempt (or taxed at a rate below 10 percent);
2. If the tax is imposed, its effective date be delayed for one year;
3. If the tax is imposed, the STT be abolished;
4. FPIs expressly be covered by the step-up in the acquisition cost of long-term capital assets (LTCAs) and the exemption of Rs 100,000 of LTCGs;
5. FPIs expressly be permitted to step-up the acquisition cost of LTCAs regardless of whether the FPI realizes either (i) an aggregate net long-term capital loss (LTCL) in an assessment year, or (ii) an aggregate LTCG in an assessment year but has adequate brought-forward tax losses that are available for set off fully against such LTCG; and
6. Genuine transactions, including those described in our letter, be notified as eligible for

acquisition cost step-up.

Permanent Account Number (PAN)

The Union Budget proposes to require certain "key individuals" of entities that engage in financial transactions to obtain a PAN. The proposed definition of key individuals is extremely broad and would include, for example, any person competent to act on behalf of a principal officer. To obtain a PAN, an individual would be required to provide the Indian government with personal details—even when the person would not have any Indian tax liability.

The concerns expressed in the submission are that:

1. The proposed expansion, perhaps unintentionally, may cause every individual connected to a FPI group, including key personnel of the group, to seek tax registration in India;
2. Foreign nationals may not be willing to obtain Indian tax registration and divulge their personal details without having any personal income taxable in India;
3. No clarity is provided regarding either how compliance will be monitored or what would be the potential consequences to FPIs of non-compliance by their key personnel; and
4. No clarity is provided regarding whether an income-tax return filing form will require disclosure of such PAN details of key personnel.

To address these concerns, we urge a carte-blanche exemption for key personnel associated with FPIs from obtaining a PAN.

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Attachment