

MEMO# 31976

September 20, 2019

India Tax Ordinance: Enhanced Surcharge Does Not Apply to Capital Gains

[31976]

September 20, 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 Tax Ordinance: Enhanced Surcharge Does Not Apply to Capital Gains

Today the Indian Government announced the issuance of an Ordinance to amend the Income-tax Act, 1961 and the Finance (No. 2) Act, 2019^[1] to provide that the enhanced surcharge tax does not apply to capital gains arising on a sale of any security, including derivatives, in the hands of Foreign Portfolio Investors (FPIs). The announcement further provides that the enhanced surcharge does not apply on capital gains arising from the sale of equity shares in a company or units of an equity oriented fund or units of a business trust liable for securities transaction tax, in the hands of an individual, HUF, AOP, BOI and AJP (i.e., not limited to FPIs).

These changes follow meetings that ICI Global had with senior Indian government officials on August 28-30.^[2] The announcement also describes other amendments not related to the enhanced surcharge, including:

- A reduction of corporate tax rates to 22 percent for all Indian companies; and
- Clarification that the buyback distribution tax introduced by the Finance (No. 2) Act, 2019 for listed shares will not apply to buybacks that had been publicly announced before 5 July 2019.

The President of India may issue an Ordinance when Parliament is not in session provided the President is satisfied that circumstances exist which render it necessary to take immediate action. We have been advised by Indian counsel that an Ordinance is law the moment it is issued but must subsequently be approved by both Houses of Parliament within six weeks of the commencement of Parliament's next session.^[3] If an Ordinance is not approved, it would only be regarded as valid law for the period that it was in force. If an Ordinance is approved the relevant amendments would continue to be in force.

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[Attachment No. 1](#)

[Attachment No. 2](#)

endnotes

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

[2] See Institute [Memorandum No. 31951](#), dated September 9, 2019.

[3] We understand that Parliament is expected to convene in November or December of this year.

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