INVESTMENT COMPANY INSTITUTE

MEMO# 31134

March 16, 2018

Indian Government Modifies Capital Gain and PAN Proposals

[31134]

March 16, 2018 TO: ICI Members
ICI Global Members
ICI Global Tax Committee
Tax Committee SUBJECTS: International/Global
Tax RE: Indian Government Modifies Capital Gain and PAN Proposals

The Indian Finance Minister (FM) on March 14 introduced a modified Finance Bill, 2018 in the Indian Parliament that addresses several concerns raised by ICI Global.[1] These concerns relate to a proposed tax on long-term capital gains (LTCGs) and a proposed expansion of the requirement on individuals to obtain a Permanent Account Number (PAN).

Capital Gains Taxation

Our LTCG concerns involve the proposal to impose a 10 percent tax on Foreign Portfolio Investors (FPIs) beginning April 1, 2018 on LTCGs that arise after January 31, 2018. While the government has neither abandoned the proposal, delayed its implementation, nor abolished the securities transaction tax (STT), the modified bill does address more technical drafting concerns that we raised.

The modified Finance Bill clarifies that the acquisition cost of long-term capital assets (LTCAs) is stepped up even if an FPI realized: (i) an aggregate net long-term capital loss (LTCL) in an assessment year; and (ii) an aggregate LTCG in an assessment year but had adequate brought-forward tax losses that are available for set off fully against such LTCG.[2]

The modified Finance Bill also clarifies that taxpayers will be able to step up acquisition cost for (i) unlisted shares as on January 31, 2018 that are subsequently listed, and (ii) listed shares (as on the date of transfer) received in consideration of unlisted shares as on January 31, 2018, pursuant to certain prescribed transactions (*e.g.*, merger, demerger of Indian companies etc).

Finally, although the modified Finance Bill does not expressly clarify (as we requested) that FPIs are eligible for the acquisition cost step-up, we understand (as explained in some detail in our submission) that the Indian Government does not intend to discriminate between FPIs and other categories of taxpayers.

Permanent Account Number (PAN)

Our PAN concerns involve the proposal to require certain “key individuals” of entities that engage in financial transactions to obtain a PAN. 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 modified Finance Bill addresses our concern by limiting the requirement to obtain a PAN to key personnel associated with Indian tax resident entities.

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endnotes

[1] *See*, ICI Memorandum No. 31115, dated March 5, 2018.

[2] This clarification is provided by moving the basis of determining the step-up in the acquisition cost of listed equity shares, units of equity-oriented mutual funds and business trusts to section 55(2) of the Income-tax Act, 1961.