The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

MEMO# 31865

July 19, 2019

Industry Coalition Submission on Indian Capital Gains Tax Surcharge

[31865]

July 19, 2019 TO: ICI Members
ICI Global Members SUBJECTS: International/Global
Tax RE: Industry Coalition Submission on Indian Capital Gains Tax Surcharge

ICI Global and five other collective investment vehicle (CIV) industry associations submitted the attached coalition letters to the Indian Finance Minister and the Chairman of the Securities and Exchange Bank of India (SEBI) on July 18 regarding the proposed capital gains tax surcharge increase. These coalition letters supplement the submissions made by ICI Global to the same Indian Government officials on July 12.[1]

The 2019 Indian budget proposals, presented by the Finance Minister on July 5 and approved by the Lower House of the Indian Parliament on July 18, include a significant tax increase on the capital gains of all foreign portfolio investors (FPIs) organized in non-corporate form (includingas trusts). These investors are treated under Indian law as Associations of Persons (AoPs) and taxed as “individuals” rather than as “companies.” The tax increase would be between 3 and 7 percentage points. No increase has been proposed for FPIs treated as “companies” because they are organized in corporate form.

The coalition letters raise the same substantial concerns for all CIVs organized in non-corporate form that were raised in ICI Global’s July 12 submissions. The coalition letters also emphasize that, as publicly available “retail” investment pools, CIVs are widely held by moderate-income investors; they are not designed for the legislation’s intended target: “the super-rich.”

To resolve the concerns, the letters urge the Government to amend the budget proposal to exempt CIVs. Alternatively, the legislation could exempt CIVs either by carving out CIVs registered with SEBI as Category 1 FPIs or Category 2 FPIs for surcharge rates at par with corporates or by issuing guidance treating all CIVs as companies.

Importantly, the letters urge that the CIV exemption be agreed—either by a legislative amendment or by notification guidance—and announced promptly. If this tax comes into effect, it will have an immediate impact on all funds organized as non-corporates that have unrealized gains and calculate the net asset value of their units by taking into account capital gains taxes due upon disposition.

Keith Lawson
Deputy General Counsel - Tax Law

[Attachment No. 1]

[Attachment No. 2]

endnotes

[1] *See* Institute Memorandum No. 31851, dated July 12, 2019.
