

MEMO# 16364

July 29, 2003

AUGUST 19TH CONFERENCE CALL TO DISCUSS INCOME TAX APPELLATE TRIBUNAL DECISION ON INDIA NETTING ISSUE

[16364] July 29, 2003 TO: INTERNATIONAL COMMITTEE No. 49-03 TAX COMMITTEE No. 45-03 RE: AUGUST 19TH CONFERENCE CALL TO DISCUSS INCOME TAX APPELLATE TRIBUNAL DECISION ON INDIA NETTING ISSUE The Mumbai Income Tax Appellate Tribunal (ITAT) has issued a decision regarding netting of long-term losses against short-term gains.¹ Under the facts of the case,² an individual taxpayer netted long-term capital losses against short-term capital gains related to a real estate transaction during the assessment year 1997 to 1998. The Assessing Officer disallowed the deduction. The ITAT decision held in favor of the Joint Commissioner of Income Tax and stated “it would be inappropriate, when the assessee has long-term capital gain from one asset, short-term capital gain from another asset and also has long-term capital loss from a third asset, to adjust long-term capital loss against short-term capital gain.” A conference call has been scheduled for Tuesday, August 19th, at 2:00 (EST) to discuss developments with respect to the India netting issue. If you plan to participate in the conference call, please complete the attached response form and return it to the Institute’s Ezella Wynn by fax (202/326-5841) or by e-mail (ewynn@ici.org). Catherine Barré Assistant Counsel Attachment (in .pdf format) 1 As you know, the Institute recently submitted a letter to the Indian Ministry of Finance requesting clarification that the netting conventions adopted by Foreign Institutional Investors prior to April 1, 2002, would be respected. See, Institute Memoranda to Tax Committee No. 27-03 and International Committee No. 30-03, dated May 5, 2003 [16015]. 2 Mariwala v. Joint Comm’r of Income Tax, [2003] 86 Income-tax Tribunal Decisions 35 (MUM).