

MEMO# 35656

March 22, 2024

For Member Review: Fund Reorganization Issues in India - DRAFT Coalition Letter

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TO: Global Tax Committee

Tax Committee RE: For Member Review: Fund Reorganization Issues in India - DRAFT Coalition Letter

Attached for member review is a draft letter to be signed by global fund industry associations urging the Indian Government to enact legislation that would permit all foreign regulated funds to undergo tax neutral reorganizations with respect to Indian securities. Currently, foreign regulated fund reorganizations that are tax neutral in the home country, but which involve business trusts trigger capital gains tax on the transfer of Indian securities. Similarly, mergers involving foreign regulated funds, regardless of the legal form of organization (i.e., corporates and business trusts) that result in the transfer of securities other than shares (e.g., Indian debt securities, Indian derivatives) could be taxable in India.

Consequently, reorganizations cause foreign regulated funds to prematurely recognize gains and related taxes that otherwise would not be recognized until such funds ultimately dispose of their Indian securities and puts them on an unlevel playing field with Indian mutual funds and foreign funds organized as corporations. The taxability of reorganizations has been a long-standing industry issue. In the past, funds organized as business trusts would owe Indian tax only on assets with short-term capital gains, to the extent such reorganizations were considered taxable. The re-introduction of the long-term capital gains tax in 2018, however, makes this an even more critical issue for the fund industry. These difficulties are further complicated because foreign regulated funds are forced to divest their Indian holdings before they can undergo a necessary reorganization.

The attached draft submission includes detailed background information (Annexure A) on reorganizations and off-market transfers of listed securities and draft amendments to the Income-tax Act, 1961 (Act) to provide tax neutral treatment for overseas fund reorganizations involving Foreign Portfolio Investors (Annexure B).

Please provide comments to [Katie Sunderland](#) by COB Friday, March 29th

Katie Sunderland
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