

MEMO# 35673

April 11, 2024

Coalition Letter Submitted: Fund Reorganization Tax Issues in India

[35673]

April 11, 2024

TO:

ICI Members

ICI Global Members

Asia Regulatory and Policy Committee

Global Tax Committee

Tax Committee

SUBJECTS: International/Global

Tax RE: Coalition Letter Submitted: Fund Reorganization Tax Issues in India

ICI crafted and coordinated the attached submission on behalf of 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 may 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 must obtain pre-approval from the Securities and Exchange Board of India (SEBI) for off-market transfer of Indian securities. SEBI has not granted such approvals in recent years with limited exceptions.

The attached 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). The submission was made to each of the following Indian officials:

Pragya Sahay Saxena (CBDT)

Raman Chopra (CBDT)

Surbhi Jain (CBDT)

Rajeev Saksena (MoF)

Shri Debashis (SEBI)

Madhabi Puri Buch (SEBI)

Ananth Narayan (SEBI)

Amarjeet Singh (SEBI)

Katie Sunderland
Associate General Counsel

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.