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By Electronic Delivery

April 20, 2015

The Honorable Shri Arun Jaitley
Minister
Ministry of Finance
North Block
New Delhi, India

RE: Supplemental Letter on MAT Issue

Dear Minister Jaitley:

ICI Global,¹ on behalf of our global fund industry members, respectfully submits this letter to develop further our thoughts on the steps that you can take to ameliorate the substantial investor confidence concerns being created by the minimum alternate tax (MAT) issue. These concerns, which are described in detail in the enclosed April 13 letter to you, will not be repeated in detail here.

At the outset, we must reemphasize our strongly-held view that the Ministry should announce promptly that the MAT does not apply retroactively to foreign institutional investors (FIIs). Anything short of this prompt announcement could have negative consequences for the Indian capital markets.

Our response to your statement that the ruling issued by the Authority for Advance Rulings (AAR) to Castleton in 2012 “ties your hands” is simple: we disagree. The Castleton AAR involved a sale of stock by one affiliate (which was not an FII and was in a treaty country) to an affiliate (in another treaty country) of stock of a third affiliate (that is an Indian operating company). This transaction is entirely distinguishable from the portfolio investments made by funds that are FIIs. Any AAR ruling that has this much potential to harm the Indian capital markets, we respectfully submit, should be read in context. Besides, as you are well aware, the Indian Income-tax Act, 1961 clearly provides² that rulings that are issued by the AAR are binding

¹ The international arm of the Investment Company Institute, ICI Global serves a fund membership that includes regulated funds publicly offered to investors in jurisdictions worldwide, with combined assets of US\$19.6 trillion. ICI Global seeks to advance the common interests and promote public understanding of regulated investment funds, their managers, and investors. Its policy agenda focuses on issues of significance to funds in the areas of financial stability, cross-border regulation, market structure, and pension provision. ICI Global has offices in London, Hong Kong, and Washington, DC.

² Section 245S of the Indian Income-tax Act, 1961.

only on (i) the applicant in respect of the transaction in relation to which the ruling was sought, and (ii) the Indian Revenue authorities (IRA) in the context of the applicant and the said transaction. The Castleton AAR is binding on neither other taxpayers (such as our members), nor the IRA in the context of other taxpayers.

The broad reading apparently being given to Section 115JB of the Act, as discussed in detail in one of our January 2015 submissions,³ would create many absurd tax assessment possibilities. These possible assessments, thankfully, never were pursued by the prior government. If that government had the administrative authority to avoid pursuing these possibilities, your government must have the same authority to avoid applying the MAT to foreign companies. The MAT, as the legislative history makes abundantly clear, was directed only at domestic companies.

We also must reemphasize the industry's astonishment that only now, 18 years after its enactment, is the MAT being asserted against FIIs. Our astonishment is compounded by the amounts at issue (reportedly over \$6 billion U.S. dollars) from these sudden and unexpected MAT assertions. Without reiterating all of the other points in our April 13 letter, let it suffice that the harm to the fund industry's investing confidence cannot be overstated.

What is to be accomplished by forcing thousands of FIIs to incur separately the costs of pursuing judicial remedies for these assessments? Requiring every FII to litigate the issue before the dispute resolution panel or in the courts is not cost-effective. Even if the government were to announce today that it will not appeal adverse judgments on the MAT issue, FIIs would be aggrieved by the costs of preserving their rights.

If the support necessary for resolving this issue immediately does not exist, some mechanism should be utilized to resolve this issue in the very near future. FIIs and the government both would benefit from a cost-effective route for resolving this issue.

At a minimum, given the potential negative consequences of doing nothing, we strenuously urge the Indian government to make some statement with interim effect until a formal announcement can be made that FIIs retroactively are exempt from the MAT. Specifically, we urge the Central Board of Direct Taxes (CBDT) to issue a circular (which could be withdrawn should the Supreme Court rule in the government's favor) clarifying that the MAT will not be applied retroactively by the IRA against FIIs. This approach, similar to one used to restore investor confidence after the IRA asserted tax against several Mauritius based FIIs,⁴ would be most welcome. The Indian government clearly has the authority to issue such a circular.

³ See Annexure A to our January 28 2015 letter to Mr. S M Nigam of the Central Board of Direct Taxes (enclosed).

⁴ After the IRA in late March 2000 denied treaty benefits to these FIIs, and thereby created significant investor confidence concerns, the CBDT issued Circular No 789 (dated April 13, 2000); this circular clarified that Mauritius tax residents would be eligible to claim the benefits of the India-Mauritius tax treaty based on a tax residency certificate issued by the Mauritius Revenue authorities.

April 20, 2015

Page 3 of 3

In conclusion, we continue to believe that no basis exists for applying MAT to FIIs. The simplest way to restore investor confidence would be for the Ministry to announce promptly, as we have requested, that the MAT does not apply retroactively to FIIs. If the support for making this announcement does not exist presently, we respectfully request your assistance in ensuring that a circular with interim effect be issued; this circular, as we have suggested, would clarify that the MAT will not be applied retroactively by the IRA against FIIs.

Yours faithfully,

/s/ Keith Lawson

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Enclosures