Foreign Portfolio Investors

December 2023

Regulatory updates – RBI, NSDL

Sovereign Green Bonds 'specified securities' under Fully Accessible Route(FAR)

Reserve Bank of India has designated all Sovereign Green Bonds issued by the Government in the fiscal year 2023-24 as 'specified securities' under the FAR[1].

Source: RBI circular RBI//2023-24/81 dated 8 November 2023

Standard Operating Procedure(SOP) for seeking additional disclosures

SEBI had mandated certain FPIs who fulfil criteria mentioned below (with exemptions specified), to provide details of all entities holding any ownership, economic interest, or exercising control in the FPI, on a full look through basis, up to the level of all natural persons, without any threshold.

Criteria:

- ➢ FPIs holding more than **50 per cent** of their Indian equity Assets Under Management(AUM) in a single Indian corporate group; or
- ➢ FPIs that individually, or along with their investor group holds more than **INR 25,000 crore** of equity AUM in the Indian markets.

A SOP was prepared in consultation with various stakeholders to harmonise and achieve uniformity in implementation of procedure. The SOP, inter alia, provides:

- **Format** for additional disclosure to include name of FPI and person/entity having ownership/interest/ control, type of right and per cent held in the FPI, nationality etc.
- **Exemptions** from making additional disclosure for entities – government and government related investors, public retail funds; FPIs in process of winding down etc.

[1] Under FAR, eligible investors can invest in specified government securities without being subject to any investment ceilings.

Timelines and monitoring

- The primary **responsibility** of ensuring compliance is with the FPI
- The monitoring to be carried out based on settled positions at the end of the day i.e **T+1** basis or settled basis
- On breaching the threshold limits, custodian to inform the FPI. FPI not to make further purchases and the account of the FPI shall be blocked
- Existing FPIs, which are in breach of the investment limits as on 31 October 2023 to bring down such exposure within 90 calendar days i.e 29 January 2024
- In case any FPI identified above is unable to bring down its equity AUM below the prescribed thresholds within the timelines, the FPI is to make the additional disclosures within 30 trading days from 29 January 2024.

Key Timelines for FPIs holding more than 50 per cent of their Indian equity AUM in a single Indian corporate group post 1 November 2023

- **Block:** In case of breach, the FPIs to ensure that no further purchases are undertaken in the equity securities belonging to such single corporate group(SCG) with immediate effect

- **Re-alignment period:** FPI may re-align its position with the prescribed limit of such SCG within **10 trading days** from the breach date, in which case, the additional disclosure requirement shall not apply.

  In case the FPI provides the disclosures during this realignment period, the FPI to be marked as compliant and its account to be unblocked for further purchases in the equity securities of the SCG

- **Blocking/cooling period:** No fresh purchases of the equity share of any company belonging to such SCG for the period of **30 calendar days** from the breach date

  In case the FPI provides the disclosures during this period, the FPI would be marked as compliant, and its account would be unblocked for further purchases in the equity securities of the SCG

- **Mandatory disclosure period:** In case the FPI has not realigned with the prescribed threshold during the realignment period and has not provided the additional granular disclosure, the FPI is to provide the information during mandatory disclosure period

  During such disclosure period, even if FPI re-aligns its position, it shall be liable to provide the information.

Key Timelines for FPIs, that individually, or along with their investor group, hold more than INR 25,000 crore of equity AUM in the Indian markets post 1 November 2023

- **Block:** The FPI accounts (individually/investor group) shall be blocked for further equity purchases until the equity AUM of the FPI/investor group is brought below the threshold

- **Re-alignment period:** FPI may re-align its position with the prescribed threshold within **90 calendar days** from the breach date, in which case, the additional disclosure requirement shall not apply, and accounts of FPIs/investor group constituents shall be unblocked to make fresh purchases in the Indian equity markets

- **Mandatory disclosure period:** FPIs are allowed to trade during the mandatory disclosure period.

  FPIs that have not realigned with the prescribed threshold during the realignment period and have not provided the additional granular disclosure shall provide the additional granular disclosures **within 30 trading days** from the end of realignment period

  During such disclosure period, even if FPI re-aligns its position with the prescribed threshold, it shall be liable to provide the additional granular disclosures.

Non-compliance

Non–disclosures by the end of the mandatory disclosure period to render the registration of the FPI invalid and the FPI shall not make any further purchases in any security.

- **Liquidation period:** The FPI registration will be rendered invalid, and the account of the FPI will be blocked. FPI to liquidate its securities and exit the Indian securities market by surrendering its FPI registration **within 180 calendar days** from the day the certificate becomes invalid

- **Closure:** In case the surrender process is not completed, the CP Code shall be deactivated, account will continue to be blocked for sales and purchase; DDPs to report to SEBI for appropriate action.

Source: NSDL circular NSDL/POLICY/DDP/2023/0007 dated 31 October 2023

Operational guidelines in respect of mandating additional disclosures by FPIs that fulfil certain objective criteria

All DDPs/Custodians are to monitor daily equity AUM of the FPI individually or with their investor group having AUM more than INR 25,000 crore in the Indian market, as follows.

- To monitor based on settled positions at the end of T+1 day

- NSDL to consider the equity holding of FPIs which are non-exempted, based on the reporting done by the DDPs/Custodians for monitoring

- NSDL to monitor the limits on an ongoing basis and provide reports to DDPs/Custodians by 3.00 p.m. of reporting day in respect of FPI(s)/FPI investor groups which have breached the limits

- DDPs/Custodians to evaluate whether the FPI/FPI(s) from investor group is eligible for exemption. Details of exempted FPI/FPI(s) forming part of investor group to be informed to NSDL by 8.00 p.m. of reporting day to re-calculate the investment limit breach for monitoring of limits

- In case there is a breach, NSDL to communicate to the DDPs/Custodians by 9.00 p.m. of reporting day

- If the equity AUM of FPI/FPI group investment is beyond the threshold, accounts of all such non-exempted FPIs, individually or belonging to such investor group, to be blocked/frozen for further equity purchases until the equity AUM of the FPI/FPI investor group is brought below the threshold. The DDPs/Custodian to intimate to the FPIs

Upon rectification of the breach, NSDL to inform the same to DDPs/Custodians for unblocking the accounts. DDP/Custodian to inform the same to the FPI.

Source: NSDL circular NSDL/POLICY/DDP/2023/0008 dated 10 November 2023

Income-Tax – circulars, case laws, etc.

Pension Fund(PF) notified for availing exemption under section 10(23FE) of the Income-tax Act, 1961 (the Act)

CBDT notified PF, namely, BPC Penco XVII Corporation as specified person for the purposes of section 10(23FE) subject to the fulfilment of conditions.

Source: CBDT [Notification No. 95/2023/F. No.500/PF10/S10(23FE)/FT&TR-II-Part(1)] dated 1 November 2023

Tax treaty benefit allowed in on sale shares based on Tax Residency Certificate(TRC)

A Mauritius investment holding company holding Category 1 Global Business License and TRC, had earned long-term capital gain(LTCG) and short-term capital gain(STCG) on sale of shares of two Indian companies. The STCG was offered to tax and LTCG was exempt from tax under Article 13(4) of the India-Mauritius tax treaty. The shares resulting into long-term capital gains were acquired before 1 April 2017.

The Assessing Officer(AO) during assessment proceedings for AY 2020-21 held that the Mauritian company was a conduit company, and the arrangement should be regarded as impermissible tax avoidance arrangement. Therefore, AO denied tax treaty benefit.

The ITAT observed that though the AO had neither invoked the provisions of GAAR nor Limitation of Benefit provisions under the India-Mauritius tax treaty. The allegations of the AO were unsubstantiated and there were no cogent evidence brought on record.

ITAT, based on TRC held that the taxpayer was eligible to claim benefit under the tax treaty.

Source: Accion Africa Asia Investment Company v. ACIT(ITA No.1815/Del/2023)(Delhi ITAT) dated 26 October 2023

Assessment orders issued without the Document Identification Number(DIN) to be invalid

Income-Tax Appellate Tribunal(ITAT) held that communication issued without DIN in violation of CBDT circular 19/2019 dated 14/08/2019 to be deemed to have never been issued.

ITAT rejected Revenue's argument that the Revenue had duly communicated the DIN by a separate letter of intimation within the prescribed period of 15 days.

ITAT held that intimation of DIN by separate letters communicated within 15 days of issuance of former DIN less communication would be valid only if, former DIN less communication is issued incorporating therein the reason for issue of such DIN less communication in terms of the CBDT circular along with the number and date of obtaining written approval of the Chief Commissioner/Director General of Income-Tax.

Source: Gupta Domestic Fuels(Nagpur) Ltd vs ACIT ITA 61/NAG/2022(ITAT Nagpur) dated 31 October 2023

Petitioner allowed credit for tax deducted at source notwithstanding the fact that it was not reflected in Form 26AS

High Court(HC) allowed the credit of tax deducted at source to the deductee (Assessee) which was not deposited by the deductor and held that no recovery can be made against the assessee.

HC observed that the deductee/assessee cannot be called upon to pay tax, which has been deducted at source from his income and that since the deductor failed to deposit the tax with the government, recovery proceedings can only be initiated against the deductor.

HC rejected Revenue's reliance on section 199 of the Act which states that unless the tax deducted at source is 'paid' to the Government, no credit can be given.

HC remarked that the deductor did not deposit the tax with the Revenue, however, neither can the demand of tax withheld by the deductor be recovered from Assessee nor can the same amount be adjusted against the future refund.

Source: BDR Finvest Pvt Ltd vs DCIT(IT) W.P.(C) 9043/2021 & CM No.55881/2023 dated 31 October 2023

Market watch – Press articles-select extracts

The taxman wants to know if Indians are taking the FPI route to mask investments

"*In a slew of unusual and probing questions, tax authorities have asked several offshore funds to spell out how they go about raising money, share of Indian investments in the fund pools, and details of top investors in a fund. At least a dozen FPIs have received notices over the past few weeks from the income-tax(I-T) department trying to extract information on who was running the funds and from where, two persons familiar with the queries told ET."*

Source: The Economic Times, Sugata Ghosh, ET Bureau, 6 November 2023

Sebi plans for instant settlement of equity trades in non-disruptive manner

"India's markets regulator said on Monday it will go ahead with a plan to allow the settlement of equity market trades within the same day as it looks for ways to help Indian retail investors, provided there were no "serious objections" from market participants.

India in January transitioned to a plan where trades are settled in one business day. The Sebi now plans to add an option - by October 2024 - to allow settlements instantly, Reuters had reported in September."

Source: Business Standard, Reuters, 6 November 2023

SEBI to introduce T+0 settlement trade by March 2024 and instantaneous settlement by 2025, says chief Madhabi Puri

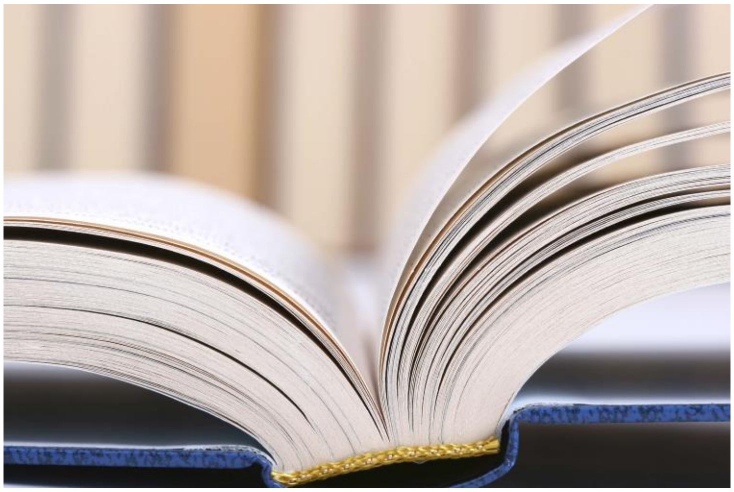
"The Securities and Exchange Board of India(SEBI) is working on a roadmap for the same-day settlement of trades by March 2024, followed by an optional parallel system for instantaneous settlement, SEBI chief Madhabi Puri said."

Source: Livemint, 26 November 2023

Income tax department introduces new 'Discard ITR' facility on its website from AY24. Here are the details.

"The income tax(I-T) department has introduced a crucial functionality on its website allowing taxpayers to discard their previously filed but unverified Income Tax Returns(ITR). Earlier, taxpayers were allowed to revise the ITR only in case of error or omission."

Source: Business Today, Teena Jain Kaushal, 28 November 2023



MFN clause: Review petition filed against SC ruling

"A review petition is understood to have been filed in the Supreme Court over its ruling last month related to the most favoured nation(MFN) clause in double taxation avoidance agreements(DTAA).

The matter pertains to treaties India signed with the Netherlands, France, and Switzerland that contained MFN clauses. These clauses stipulate that if India enters a treaty with another OECD member country that had lower tax rates, those would apply to entities from these three countries too."

Source: Business Today, Surabhi, 22 November 2023

FPI Statistics

Parameters	Current month	Earlier month	Changes
Net Equity inflows during Nov 2023(in USD million)	1,098	-2,994	
Net Debt inflows during Nov 2023(in USD million)	1,902	828	
Total FPIs registered as on 3 Dec 2023	11,166	11,199	-33
AUC of FPIs at end of Oct 2023(in USD million)	692,638	712,898	-20,260

Source: NSDL FPI Monitor

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