

Foreign Portfolio Investors

March 2024



Regulatory – SEBI/RBI etc

Consultation paper on framework for providing flexibility in dealing with securities post expiry of Foreign Portfolio Investor (FPI) registration

Securities and Exchange Board of India (SEBI) had released a consultation paper seeking comments on the following proposals:

- facilitating disposal of securities, post expiry of registration of FPIs
- dealing with securities blocked in the accounts of FPIs, after expiry of prescribed timelines for liquidation
- dealing with securities written-off.

The comments to be provided by **28 February 2024**. The changes recommended are:

Proposal 1: Regularisation of FPI registration and disposal of securities, post expiry of registration

Non-payment of FPI registration fee:

- **Up to 30 days from date of expiry of registration:** FPIs can re-activate the registration with payment of additional late fee of 2 per cent of registration fee per day. FPIs can sell existing holdings, however, purchases are frozen
- **Beyond 30 days of expiry of registration:** FPI account cannot be re-activated and FPI to **sell** existing holdings within 180 days; purchases are frozen.

Proposal 2: Liquidation of securities, post expiry of registration

Non-compliance is due to

- **change in compliance status of home jurisdiction of FPI:** FPI to liquidate their holdings within 180 days or end of existing registration block, whichever is later
- **reclassification of FPI from Cat I to II:** FPIs to comply within 30 days from date of change that requires reclassification. Post expiry of 30 days, FPIs to liquidate their holdings within 180 days from the date of elapse of 30 days or end of registration block, whichever is later.

In case the FPI is unable to liquidate its holdings due to any regulatory/statutory/court imposed restrictions or directions from any enforcement agency, the timeline for liquidation to be as per the direction of the said authority or in case no such timeline is provided, within 180 days of removal of such regulatory/statutory restrictions.

Proposal 3: Dealing with future cases of FPIs with blocked securities in their accounts

An additional period of 180 days may be provided to FPI who fails to liquidate its holdings within prescribed timelines of 180 days.

Further, FPIs with expired registrations to be permitted to sale unlisted/suspended, and delisted securities through off-market transfer.

For disposal of securities, following approaches are proposed.

- **sale of securities by FPI itself; or**
- **sale of securities through exchange empaneled broker.**

The sale of securities under both approaches to be subject to a financial disincentive of 5 per cent of the sale proceeds.

After expiry of additional 180 days, **unsold securities** shall be **considered compulsorily written-off**.

Proposal 4: Dealing with existing cases of non-compliant FPIs with blocked securities in their accounts

In case the timelines for regularisation and/or timeline for liquidation has expired as on date of issuance of this framework, the FPIs will be provided with a **one-time opportunity** to dispose off the blocked securities within 180 days of issuance of this framework, without any financial disincentive or compliance norms.

For securities that remain unsold, they are to be disposed using one of the approaches as mentioned in Proposal 3 above and subjected to a financial disincentive of 5 per cent of the sale proceeds.

Securities which still remain unsold shall be considered to have been compulsorily written-off by the FPI.

Proposal 5: Framework for disposal of written-off securities

The securities written-off to be transferred by the custodian to a separate escrow account, operated by exchange empaneled broker. The broker to attempt to sell the securities at the available market price on a weekly basis until the securities are disposed off. The net sale proceeds to be transferred to the Investor Protection and Education Fund of SEBI.

The FPI loses all beneficial interest in the securities written-off by it. Pursuant to write-off of securities, transfer to escrow account and eventual sale by the empaneled broker, there may be certain tax implications that may have to be considered.

Source: SEBI Consultation Paper dated 7 February 2024

Consultation paper on relaxation in timelines for disclosure of material changes by FPIs

SEBI had released a consultation paper seeking comments on proposed relaxations in the timelines for disclosure of material changes by FPIs. The comments to be provided by **28 February 2024**.

SEBI (FPI) Regulations, 2019, mandates FPIs to make certain disclosures regarding material changes in structure/ownership/control etc. to SEBI and/or Designated Depository Participants (DDP) within a **time period of 7 working days**.

Further, Rule 9 of Prevention of Money-laundering (Maintenance of Records) Rules, 2005 (PMLR), provides for a period of **30 days for submission of documents** for any update in the information provided by a client of a reporting entity. The said rules are also applicable to FPIs.

Representation from market participants

SEBI received several representations from market participants citing challenges in making disclosures within the prescribed timelines, especially in case of change in beneficial owner and requested for relaxation in the timelines for disclosures.

Recommendations

It is proposed to categorise the material changes to be notified by the FPIs into the following categories for the purpose of timelines for notification of such changes:

Type	Material changes	Timeline
I*	Changes which require FPI to seek fresh registration or which affect any privileges/exemption available to the FPI.	Changes to be informed by FPIs within 7 working days of the occurrence of the change and the supporting documents (if any) to be provided within 30 days of such change.
II	All other material changes	Changes to be informed and supporting documents to be provided within 30 days of such change.

*An indicative list of Type I material changes is:

- *Change of Jurisdiction*
- *Name change on account of acquisition, merger, demerger, restructuring, ownership/control*
- *Acquisition/merger/demerger resulting in cessation of existence of FPI*
- *Restructuring of the legal form*
- *Change in regulatory status (regulated to unregulated fund) of the FPI*
- *Change in status of compliant jurisdiction of FPI/BO*
- *Reclassification of the FPI*
- *Changes which impact any exemption in terms of SEBI Circular dated 24 August 2023.*

Source: SEBI Consultation Paper dated 7 February 2024

FATF High risk and other monitored jurisdictions – February 2024

As per 23 February 2024 FATF public statement, Kenya and Namibia have been added to list of jurisdictions under

increased monitoring while Barbados, Gibraltar, Uganda and UAE have been removed from this list based on review by the FATF.

Source: Reserve Bank of India, Press Release, 29 February 2024



Income-tax – case laws, notifications

The Finance Act, 2024 – key highlights

Tax rates

No changes announced with respect to the existing rates of income-tax applicable to FPIs.

Other proposals

- Sunset clause to make investments by **Sovereign Wealth Fund/Pension Fund** for claiming tax exemption for specified income from investments in infrastructure companies is extended from 31 March 2024 to 31 March 2025
- An investment division of **offshore banking unit** located in International Financial Service Centre which has been granted FPI Category - I license could claim exemption of certain income only if it has commenced operations on or before 31 March 2024. This timeline is extended to on or before 31 March 2025.
- Withdrawal of small outstanding direct tax demands as below:

Demand up to	Demand pertaining to the period
INR25,000	up to FY 2009-10
INR10,000	FY 2010-11 to FY 2014-15

Source: The Finance Bill, 2024 and Finance Act, 2024 dated 1 February and 15 February 2024 respectively

Remission and extinguishment of outstanding small income-tax demands

Central Board of Direct Taxes has directed Directorate of Income-tax (Systems) and Centralized Processing Centre (CPC) to implement remission and extinguishment of outstanding tax demands as per the monetary limit proposed in the Budget 2024.

The demand to be remitted or extinguished subject to maximum limit of INR0.1 million for the taxpayer.

Source: CBDT Order F.No. 375/02/2023-IT-Budget, dated 13 February 2024

Interest income exempt from tax in the hands of bank carrying bona fide banking business (in Mauritius)

The assessing officer (AO) accepted that the taxpayer's income from external commercial borrowings was exempt under the tax treaty as the Company was carrying on bona fide banking business in Mauritius. However, the AO did not accept the taxpayer's claim for the interest income from securities was exempt under the Article 11(3)(c). The Dispute Resolution Panel upheld the order. On appeal, the Income-tax Appellate Tribunal (ITAT) ruled in favour of the taxpayer.

On appeal by the Revenue, the HC, held that to claim the exemption under Article 11(3)(c), the taxpayer was not required to carry out banking business in India. It should only be a resident of Mauritius and must be carrying on bona fide banking business there. The High Court upheld the order of the ITAT.

Source: Income-tax Appeal (IT) No.1169 OF 2018, Bombay HC dated 24 January 2024

Implementation of e-Verification Scheme-2021

Income Tax Department has identified certain mismatches between third party information on interest and dividend income, and the Income Tax Return filed by the taxpayers.

In order to reconcile the mismatch, an on-screen functionality has been made available in the compliance portal of the e-filing website <https://eportal.incometax.gov.in> for taxpayers to provide their response. At present, the information mismatches relating to FY 2021-22 and 2022-23 are displayed. Taxpayers are being informed of mismatch through SMS and e-mails as per details available with Income Tax Department.

Source: Ministry of Finance, Press Information Bureau, dated 26 February 2024



Market Watch – press articles-select extracts

Mauritius Cabinet approves amending India-Mauritius DTAA for BEPS Minimum Standards compliance

“Mauritius Government has decided to amend Double Taxation Avoidance Agreement (DTAA) with India in order to go with OECD’s proposal on Base Erosion and Profit Shifting. Experts say these amendments will result in more challenging norms for multinationals investing in India.”

Source: Business Line, Shishir Sinha, 26 February 2024

India opens space sector to 100 per cent foreign investment with new FDI policy

“Satellite-related activities under the space sector can get Foreign Direct Investment between 49-100 per cent as the Union Cabinet approved an amendment in FDI policy for the space sector on Wednesday.”

Source: Business Line, Shishir Sinha, 21 February 2024

India's weightage climbs to record high on MSCI Global Standard index

“Index provider MSCI raised India's weightage in its Global Standard (Emerging Markets) index to a historic high of 18.2 per cent following its February review, and the changes will come into effect after market close on Feb. 29. India's weightage in the index has nearly doubled since November 2020.”

Source: Business Standard, Reuters, 13 February 2024

Sebi takes steps to boost ease of doing biz, compliance reporting

“With an aim to promote ease of doing business and compliance reporting, Sebi on Tuesday came out with measures for centralisation of certifications under the Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard (CRS) at KYC Registration Agencies.”

Source: Business Standard, Press Trust of India, 20 February 2024



FPI Statistics

Parameters	Current month	Earlier month	Changes
Net Equity inflows during Feb 2024 (in USD million)	(185)	(3,102)	
Net Debt inflows during Feb 2024 (in USD million)	2,805	2,304	
Total FPIs registered as on 1 Mar 2024	11,212	11,155	57
AUC of FPIs at end of Jan 2024 (in USD million)	806,867	796,311	10.556

Source: NSDL, FPI Monitor



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