Foreign Portfolio Investors

July 2024

KPMG. Make the Difference.

Regulatory – SEBI/RBI etc

University funds and university related endowments to be exempted from additional disclosure

In order to facilitate ease of doing business for Foreign Portfolio Investors (FPIs), SEBI Board approved a proposal to exempt university funds and university related endowments, registered or eligible to be registered as Category I FPI, from additional disclosure requirements prescribed[1], subject to the following conditions:

- Its India equity Asset Under Management (AUM) is < 25 per cent of its Global AUM
- Its global AUM is more than INR10,000 crore (approx. USD1,198 million) equivalent
- It has filed/is filing appropriate returns to the respective tax authorities in its home jurisdiction to evidence that it is in nature of non-profit organisation exempt from tax.

Source: SEBI Board Meeting, Press Release, 27 June 2024

Disclosures of material changes and other obligations

Securities and Exchange Board of India (SEBI) amended SEBI (FPI) Regulations, 2019 vide notification dated 15 March 2023 which required FPIs to disclosure to SEBI/Designated Depository Participant (DDP) certain material changes within 7 working days.

Following the amendment, based on representation from market participants, SEBI released consultation paper dated 7 February 2024 seeking comments on the proposal to give relaxation in timelines for disclosure of material changes by FPI.

Pursuant to the consultation paper, SEBI has amended the regulatory requirements as under[2]:

Type	Material changes	Timelines
I	Changes which require FPI – to seek fresh registration, or – which affects any privileges/exemption available to the FPI, or – renders FPI ineligible for registration or to make fresh purchase of securities	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.

List of Type I material changes include:

- Change of jurisdiction
- Name change on account of acquisition, merger, demerger, restructuring, ownership/control.

1. Additional disclosure is required by FPI in following cases:
   - FPIs holding > 50 per cent of their Indian equity AUM (AUM) in a single Indian corporate group; or
   - FPIs that individually, or along with their investor group hold > approx. USD3 billions of equity AUM in the Indian markets.

2. The sections which are in addition to the consultation paper released is marked in blue

- Acquisition/merger/demerger resulting in cessation of existence of FPI
- Restructuring of the legal form
- Change in regulatory status of the FPI
- Change in status of compliant jurisdiction of FPI/BO
- Reclassification of the FPI
- Addition of FPI to investor group
- FPIs obtaining registration under Category-I on support of Investment Manager (IM) and such IM is being removed or losing its Category I eligibility
- Breach of prescribed threshold for aggregate contribution of Non-Resident Indian (NRIs), Overseas Citizen of India (OCIs) and Resident Indian (RIs)
- Changes which impact any exemption in terms of SEBI circular dated 24 August 2023
- Any information or particulars previously submitted are found to be false or misleading, in any material respect
- Any penalty, litigation or proceedings etc, for which action may have been taken or in process of being taken by overseas regulator
- Breach of any of the eligibility criteria as specified under Regulation 4 of Securities and Exchange Board of India (Foreign Portfolio Investor) Regulations, 2019.

DDP to examine all material changes informed and re-assess the eligibility of the FPI including requiring FPIs to seek fresh registration in certain Type I cases.

In case of delay in intimation of material change by the FPI to the DDP, the DDP to inform SEBI for appropriate action, if any, along with reason for delay.

Source: SEBI circular SEBI/HO/AFD/AFD-POD-2/P/CIR/2024/76 dated 5 June 2024

Amendments in FPI regulations, 2019 with respect to certificate of registration

SEBI has inserted provisions in SEBI (FPI) regulations, 2019 to provide for timeline and fee in case of delay in payment of registration fees and consequences in case of non-payment[3].

A FPI has to pay the registration fees for every block of 3 years, before the beginning of such block. An FPI shall be considered to have paid the registration fees if it pays the registration fees along with the late fee within **a period of 30 days from the date of expiry of the preceding block.**

In case of **delay in payment** of registration fee, FPI to pay late fee of **USD50 per day and USD5 per day** in case of category-I FPI and Category-II FPI respectively.

An FPI whose certificate of registration is not valid as on the date of commencement of this amendment and is holding securities or derivatives in India, can sell such securities or wind up their open position in derivatives in India within **360 days** from the date of commencement of amendment (3 June 2024).

Source: SEBI Notification No. SEBI/LAD-NRO/GN/2024/183 dated 31 May 2024

Framework for providing flexibility to FPI in dealing with their securities post expiry of their registration

The SEBI (FPI) regulations, 2019 do not provide for regularisation of FPI registration, disposal of securities, post expiry of registration within timelines prescribed or writing off securities (other than suspended/illiquid).

To address such issues, SEBI released consultation paper dated 7 February 2024 seeking comments on the proposal providing framework for providing flexibility to FPIs in dealing with their securities post expiry of their registration.

Pursuant to the consultation paper, SEBI has amended the regulatory requirements as under:

Continuance of registration

FPIs can continue registration for subsequent block of 3 years after paying fees and providing additional supporting documents 15 days prior to current validity of registration.

No further purchases be permitted until intimated by DDP where FPIs has paid fee before the expiry of the validity, but the due diligence including Know Your Client (KYC) review is not complete by validity.

Reclassification

In case an FPI fails to comply with the eligibility requirement under a particular category/sub-category, it shall notify the DDP to be reclassified under an appropriate category/sub-category and provide with additional KYC documents as may be applicable.

3. Circular dated 5 June 2024 on *Framework for providing flexibility to FPI in dealing with their securities post expiry of their registration*

Change in status of a compliant jurisdiction

In case a jurisdiction which was compliant while FPI registration was granted and becomes non-compliant, FPI will not be allowed to make fresh purchases until jurisdiction/FPI is compliant.

FPIs shall be allowed to sell or continue to hold the securities already purchased **until expiry of its existing registration block or 180 days from the date of change in status of the jurisdiction, whichever is later.**

In case the FPI itself or its underlying investors contributing 25 per cent or more in the corpus of the FPI or identified on the basis of control, come under the Sanctions List notified by the United Nations Security Council, then the custodian shall not allow any further buy/sell in the account of such FPI.

Securities held by FPIs after expiry of their registration and/or elapse of the time-period for disposal of securities

Fresh purchases by FPIs blocked and sale of securities allowed within prescribed time period in following cases:

- Breach of prescribed limits for contribution/control by NRI/OCI/RIs
- Non-submission of additional KYC documents
- Change in compliance status of the jurisdiction
- Non-payment of fees
- Non-disclosure of granular details.

Securities written-off or deemed to have been written-off by FPIs

The written-off listed securities to be transferred by the custodian to an escrow account managed by an exchange-empaneled broker within 30 days from the date of such securities being written-off/deemed to have been written off.

The broker to sell securities at available market price on regular online trading platform of the stock exchange. Proceeds from disposal of securities to be transferred to Investor Protection and Education Fund.

Disposal of securities in certain cases

Situation	Timelines to dispose holdings	Other aspects
In case of non-submission of documents for reclassification of FPI category	180 days from the date of notification of change or end of registration block, whichever is later	No fresh purchases permitted till additional KYC requirements are complied
FPIs registration already expired	Within 180 days from 5 June 2024	No fresh purchases permitted
FPI registration not re-activated within 30 days of expiry of validity of registration	Within 180 days from end of period to re-activate	No fresh purchases permitted
Registration expired and/or time-period for disposal of securities elapsed	Additional 180 days provided	5 per cent of sale proceeds deducted as financial disincentive
Post expiry of additional period of 180 days	Within 30 days	Securities deemed to have been compulsorily written-off

Source: SEBI circular SEBI/HO/AFD/AFD-PoD-2/P/CIR/2024/77 dated 5 June 2024

Income tax- case laws, notification

Clarification issued on applicability of Goods and Services Tax (GST) for custodial services provided by banks to FPIs

Central Board of Indirect Taxes and Customs (CBIC) has clarified that the custodial services provided by banks or financial institutions to FPIs are not to be treated as services provided to 'account holder' and therefore, the said services are not covered under Section 13(8)(a) Integrated Goods and Services Act, 2017 (IGST Act) which provides for place of supply of services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders to be the location of the supplier of services.

Hence, the place of supply of such custodian services provided would be determined under the default provision i.e. section 13(2) of the IGST Act, which is to be the location of the recipient of services.

Therefore, custodian services provided to FPIs by banks and/or financial institutions would qualify as export, thereby, not attracting GST.

Source: CBIC circular F. No. CBIC-20001/4/2024-GST dated 26 June 2024

Intimation issued automatically merges with the assessment order

The Income-tax Appellate Tribunal (ITAT) held that where intimation was issued under section 143(1) of the Income-tax Act, 1961, and assessment order under section 143(3) was also issued, in such case the intimation automatically merges with the assessment passed under section 143(3).

Further, the intimation loses its relevance and individuality once the assessment is completed and it is only an intimation towards the accuracy of the information submitted by the taxpayer. In such a case, appeal filed against an intimation becomes infructuous.

Source: IT Appeal No. 354 (Delhi) of 2023, Delhi ITAT, 22 May 2024

International Financial Services Centres (IFSC)

Participation by NRI, OCIs and RI individuals in SEBI registered FPIs based in IFSC in India

As per Regulation 4(c) of the FPI Regulations, 2019, the aggregate contribution of NRI, OCI and RI individuals in the corpus of the applicant to be below 50 per cent of the total contribution in the corpus of the applicant.

However, these provisions will not apply where the applicant is based in IFSCs in India and regulated by International Financial Services Centre Authority (IFSCA), subject to the following conditions:

- FPI to submit a declaration stating its intent to have aggregate contribution of NRIs, OCIs and RI individuals, of 50 per cent or more in its corpus, to DDP. Existing FPIs to submit this declaration within 6 months from the date of this circular
- FPI to provide copies of PAN card of all their NRI/OCI/RI individual constituents, along with the economic interest of such persons in its corpus. In case any such constituent does not have PAN, FPI to submit the following:
  - Declaration from such NRI/OCI constituents stating that they neither have a PAN nor any taxable income in India
  - Declaration from such RI individuals stating that they are exempted from obtaining PAN by the Indian tax authorities and the legal provision under which they are exempt
  - Copy of Indian passport, in case of NRIs
  - Copy of the OCI card, in case of OCIs
  - Copy of any identity document issued by Government of India.

In case of **non-individual constituents** which are controlled directly or indirectly by one or more NRIs/OCIs/RI individuals, or where NRI/OCI/RI individuals together hold 50 per cent or more ownership or economic interest on a **full look through basis**, the FPI to provide PAN or suitable declaration and identity document of such NRIs/OCIs/RI individuals, along with the **percentage of ownership/economic interest/control** of these NRIs/OCIs/RI individuals in the non-individual entity and the FPI

Alternatively, the above requirements do not apply where the applicant is set-up as a fund in IFSC in India and regulated by IFSCA, and complies with conditions of pooling of contribution, pari-pasu and pro-rata of rights, diversification of investments and investors, independent investment manager/fund manager.

The compliance requirements listed above in each option to be fulfilled by the FPI irrespective of the actual aggregate contribution of NRIs/OCIs/RI individuals in the corpus of FPI.

Disclosure requirements

Additional granular disclosure is required where the FPI holds more than 33 per cent (reduced from 50 per cent) of their Indian equity AUM in a single Indian corporate group; other criteria remaining the same.

Source: SEBI circular SEBI/HO/AFD/AFD-POD-2/P/CIR/2024/89 dated 27 June 2024 and SEBI notification No. SEBI/LAD-NRO/GN/2024/185 dated 26 June 2024

Market watch- press articles- select extracts

India remains world's fastest growing major economy globally: World Bank

The World Bank has predicted that India is set to remain the fastest-growing major economy globally, though its growth rate is expected to slow. The June 'Global Economic Prospects' report maintained the Gross Domestic Product (GDP) growth forecast for India at 6.6 per cent for FY25.

Source: Business Standard, Abhijeet Kumar, 12 June 2024

SEBI set to tighten F&O norms.

The Securities and Exchange Board of India (SEBI) is planning to tighten the guidelines for Futures and Options (F&O) trading.

Source: Financial Express, Joydeep Ghosh, 18 June 2024

Budget to usher in minimum corporate tax rule under 'Pillar-2'

The Central government is likely to announce India's adoption of 'Pillar-2' tax regime anchored by the Organisation for Economic Cooperation and Development (OECD) in the coming Budget, as part of the country's efforts to support and benefit from the global system combating tax avoidance.

Source: Financial Express, Priyansh Verma, 18 June 2024

RBI to allow opening of rupee account outside India

The RBI will permit opening of rupee (INR) accounts outside India by Persons Resident Outside India (PROIs) as part of the 2024-25 agenda for internationalisation of the domestic currency.

INR lending by Indian banks to PROIs and enabling Foreign Direct Investment (FDI) and portfolio investment through special accounts [Special Nonresident Rupee (SNRR) and Special Rupee Vostro Account (SRVA), the report said.

Source: Economic Times, PTI, 30 May 2024

FPI statistics – FPI portal, NSDL

Parameters	Current month	Earlier month	Changes
Net Equity inflows during June 2024 (in USD million)	3,201	(3,083)	
Net Debt inflows during June 2024 (in USD million)	1,685	1,572	
Total FPIs registered as on 30 June 2024	11,449	11,338	111
AUC of FPIs at end of May 2024 (in USD million)	865,958	862,142	3,816

Source: FPI portal, NSDL, 28 June 2024

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