Foreign Portfolio Investors

October 2024

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Regulatory updates – SEBI, RBI

Consultation paper issued for simplifying the Common Application Form (CAF)

To facilitate ease of onboarding and reduce duplication of available information for certain categories of Foreign Portfolio Investor (FPI) applicants, Securities and Exchange Board of India (SEBI) has proposed to seek only such information that is unique to such applicants as mentioned below.

Categories of FPI to whom the consultation paper to apply:

- multiple funds of investing/non-investing Investment Manager (IM) wherein IM or one its funds is already registered as FPI
- sub-funds of a master fund wherein the master fund/one of the sub-funds is already registered as FPI
- sub-funds of a fund with separate classes of shares or equivalent structure with segregated portfolio wherein such fund/one of its sub-funds is already registered as FPI; and
- schemes of Insurance companies wherein the parent entity/one of the schemes of insurance company is already registered as FPI

Proposed process:

- An abridged version of CAF having only those fields that are unique to be used.
- The remaining fields to either be auto populated from the information available or to be disabled, as applicable.
- While leveraging on the available information, an explicit consent to use the available information and confirmation that all the details other than those mentioned in the abridged version of CAF remain unchanged, shall be obtained from the applicant.
- Custodians, upon receipt of information from the applicant, to update the details.

Public comments on the paper are sought by 15 October 2024.

Source: SEBI Consultation paper on Draft Circular for "Simplified registration for Foreign Portfolio Investors (FPIs)" dated 24 September 2024

SEBI establishes FPI Outreach Cell

SEBI has launched a dedicated FPI Outreach Cell which will focus on direct engagement with FPIs and supporting them in accessing the Indian securities market seamlessly.

Key responsibilities of the cell to include:

- Providing guidance to prospective FPIs during the pre-application stage
- Offering support during onboarding phase and resolving any operational challenges that may arise during registration process or thereafter.

Source: Press Release PR No. 23/2024 dated 25 September 2024.

SEBI board meeting – 30 Sep 2024

Extract of relevant proposals approved:

Enhancement of scope of optional T+0 settlement cycle

- The number of scrips eligible for trading under optional T+0 settlement to be increased in a phased manner from the 25 to top 500 in terms of market capitalisation
- Brokers and custodians to put systems in place to enable participation. They be provided time for implementation based on consultations
- With the above institutions operating including FPIs, and Mutual Funds will be able to access the optional T+0 settlement cycle.

Faster rights issue and flexibility of allotment to specific investors

- To facilitate ease of doing business and faster Rights Issue, SEBI has approved that rights issue to be completed in 23 working days from the date of Issuer company's board meeting approving Rights Issue (as against present average timelines of 317 days)
- Further, SEBI has approved promoters to renounce their rights entitlements to any specific investors and allowing the Issuer company to allot under-subscribed portion of rights issue to any specific investors.

Disclosure requirement of Offshore Derivative Instruments (ODI) and segregated portfolios of FPIs and use of derivatives by ODI issuers

SEBI has approved the following proposal:

- To apply the additional disclosure framework specified *vide* SEBI circular dated 24 August 2023 to ODI subscribers, sub-fund structures, separate classes of shares, and other equivalent structures of FPIs with such segregated portfolios;
- To prohibit ODI issuing FPIs from
  - issuing ODIs with derivatives as reference/ underlying and
  - hedging their ODIs with derivative positions on stock exchanges
  - Existing ODIs hedged with derivatives to either be redeemed or hedged with cash positions on a one-to-one basis, within a period of 1 year from the date of issuance of guidelines
- To mandate issuance of ODIs (other than those with government securities as underlying) by FPIs only through a separate dedicated FPI registration, with no proprietary investments under such registration.

Expanding the scope of Sustainable Finance Framework

With a view to expanding the scope of sustainable finance in Indian securities market, SEBI approved the proposal to specify the frameworks for issuance of social bonds, sustainability bonds and sustainability-linked bonds, which together with green debt securities, will be termed Environment, Social and Governance (ESG) Debt Securities.

Source: Press Release PR No. 25/2024 dated 30 September 2024.

Reduction in timelines of bonus Issue

To streamline the process of issue of bonus shares, SEBI has reduced the time taken for credit of bonus shares and trading of such shares, from the record date of the bonus issue.

The Issuer company while fixing the record date (T-day) to also take on record deemed date of allotment on next working date of record date (T+1 day). The shares allotted to be made available for trading on the next working date of allotment (T+2 day).

This circular to apply for issue of bonus announced on or after 1 October 2024.

Source: SEBI circular CIR/CFD/PoD/2024/122 dated 16 September 2024

International Financial Services Centres (IFSC)

Single Window IT System launched

To facilitate ease of doing business in the IFSC, the IFSC Authority has streamlined the application process and eliminated the need for businesses to navigate multiple authorities independently for various approvals and developed a unified one stop digital platform.

The system launched on 16 September 2024 brings together different government agencies and regulators on a single digital platform, including Department of Commerce, Department of Revenue, Reserve Bank of India (RBI), SEBI and Insurance Regulatory and Development Authority of India (IRDAI).

Source: IFSCA Press release dated 16 September 2024

Income tax- case laws, notification

Direct Tax Vivad se Vishwas Rules, 2024 (VsV) notified

The Finance (No. 2) Act, 2024 had introduced the Direct Tax VsV Scheme, 2024, with the objective of providing a mechanism of settlement of disputed issues, thereby reducing litigation.

Central Board of Direct Taxes has notified the VsV Rules which inter alia provides form for filing declarations by the taxpayer, certificate to be issued by the income-tax authorities, intimation of payment and order for settlement of tax arrears. The VsV Scheme, 2024 to come into force on 1 October 2024.

Source: CBDT Notification No. 103 /2024, F.NO.370142/17/2024-TPL and Notification No. 104/2024, F. No. 370142/16/2024-TPL] dated 19 September and 20 September 2024

Limited Liability Company (LLC) is liable to tax under the India-USA double tax avoidance agreement (DTAA)

The taxpayer, a US based LLC, received fees for technical services from an Indian Company which was offered to tax at the rate of 15 per cent under the India-USA DTAA.

The tax officer denied the claim on the ground that the taxpayer a fiscal transparent entity according to US tax laws, i.e., its income is not subject to tax in its own hands in USA.

During the proceedings before the Income-Tax Appellate Tribunal (ITAT), reference was made to Publication 3402 of the Department of the Treasury, International Revenue Service of the Government of USA on **Taxation of Limited Liability Company**.

It was noted that an LLC is a business entity recognised by the USA under state laws and that an LLC may be classified for federal income tax purposes as a **partnership, corporation or an entity disregarded as separate from its owner.**

Further, the document provided that an LLC with at least two members is classified as a partnership and an LLC with only one member is treated as an entity disregarded as separate from its owner for federal income tax purposes. An LLC can elect to be classified as an association taxable as a corporation or as an S corporation.

Also, if an LLC has only one member and is classified as an entity disregarded as separate from its owner, its income, deductions, gains, losses and credits are reported on the owner's income tax return.

ITAT stated that the above supports the legal situation of an LLC being liable to tax, i.e., the LLC is essentially 'liable to tax' but the income is attributed to its tax owner and such tax is imposed and paid by its respective tax owner.

Reference is also made to instructions for applying for Tax Residency Certificate (TRC) which provides that *"in general, under an income tax treaty, an individual or entity is a resident of United States if the individual or entity is subject to US tax by reason of residence, citizenship, place of incorporation, or other similar criteria."*

The language in the TRC issued provided states *"I certify that, to the best of our knowledge, the above-named Limited Liability Company is a branch, division, or business unit of a U.S. corporation that is a resident of the United States of America for purposes of U.S. taxation."*

ITAT based on the ability of the LLC to elect its tax classification, the TRC obtained, and the fact that the LLC fulfills all the requirements of a body corporate (in the form of legal recognition of a separate existence of the entity from its member and a perpetual existence distinct from its members) has considered the taxpayer to be a resident under Article 4 of the India-USA DTAA.

Source: Delhi ITAT Appeal Nos. 2359 & 2360 of 2022 dated 05 September 2024

Market watch- press articles- select extracts

Govt to consider foreign investment regulatory mechanism for FDI review

The government is considering setting up a foreign investment regulatory mechanism for post-investment review and monitoring in the country. The consideration is only at the discussion level. Sources told that an oversight mechanism for Foreign Direct Investment (FDI) should exist in India. It is a kind of oversight of money entering the country as FDI. It can help ascertain that the FDI coming into the country benefits the economy and originates from legitimate sources.

FDI in India jumped 47.8 per cent to USD 16.17 billion in April-June this fiscal on healthy inflows in the services, computer, telecom, and pharma sectors.

Source: Livemint, PTI, 29 September 2024.

FPI statistics – FPI portal, NSDL

Parameters	Current month	Earlier month	Changes
Net Equity inflows during Sep 2024 (in USD million)	6,955	882	
Net Debt inflows during Sep 2024 (in USD million)	2,766	2,057	
Total FPIs registered as on 30 Sep 2024	11,599	11,525	74
AUC of FPIs at end of Aug 2024 (in USD million)	983,359	968,552	14,807

Source: FPI portal, NSDL, 30 September 2024

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