

# Foreign Portfolio Investors

September 2023



## Regulatory – SEBI/RBI etc



### Foreign Portfolio Investors (FPIs) to route transactions in secondary market trades through request for quote (RFQ) platform

Securities and Exchange Board of India (SEBI) has mandated FPIs to undertake at least 10 per cent of their total secondary market trades in corporate bonds by value by placing/seeking quotes on the RFQ platform of stock exchanges, on a quarterly basis. This circular is effective from 1 October 2023.

Source: SEBI circular SEBI/HO/AFD/AFD-POD-2/P/CIR/2023/138 dated 7 August 2023

### Change in eligibility criteria and general responsibility of FPIs

SEBI amended Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 (FPI Regulations) as follows:

#### Change in eligibility criteria:

FPI or its underlying investors contributing **25 per cent or more** in corpus or persons identified based on control should not to be mentioned in UNSC sanction list and not resident in the country identified in the public statement of FATF.

The threshold of '25 per cent of more' has been substituted and linked to the threshold prescribed under relevant rules of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005' Accordingly, the threshold will vary depending on whether the FPI applicant is company, partnership firm, association of persons, trust.

### Clauses introduced on general obligation and responsibility of FPI:

As per the amendment, FPI that fulfils the criteria specified by SEBI from time to time, shall provide information or documents in relation to the persons with any ownership, economic interest, or control, in the FPI. The manner in which the information or documents may be specified by SEBI from time to time.

Source: Securities and Exchange Board of India (Foreign Portfolio Investors) (Second Amendment) Regulations, 2023 ADVT.-III/4/Exty./341/2023-24 dated 10 August 2023

### Additional disclosures by FPIs

SEBI has mandated that FPIs who fulfil criteria mentioned below, are required 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 INR25,000 crore of equity AUM in the Indian markets.

#### Exceptions:

Below listed FPIs satisfying criteria are not required to make the disclosures:

- Government and Government related investors
- Public Retail Funds

- Exchange Traded Funds (with less than 50 per cent exposure to India and India-related equity securities) and entities listed on specified exchanges of the permissible jurisdictions as may be notified
- Pooled investment vehicles registered with/regulated by a government/regulatory authority in their home jurisdiction where:
  - their holding in an Indian corporate group is below 25 per cent of their overall global AUM at a scheme level (in case where the FPIs holds more than 50 per cent of their Indian equity AUM in a single Indian corporate group)
  - their equity AUM in the Indian markets is below 50 per cent of their overall global AUM at a scheme level (in case where the FPIs individually, or along with their investor group holds more than INR25,000 crore of equity AUM in the Indian markets)
- FPIs that are unable to liquidate their excess investments due to statutory restrictions till the time such restrictions exist.
- Newly registered FPIs, for the first 90 calendar days from the date of settlement of first trade by the FPIs in equity segment in India
- FPIs in the process of winding down their investment and having intimated to their DDP
- The constituents of FPI investor group which collectively hold more than INR25,000 crore of equity AUM in the Indian markets, to be exempted from making the additional disclosures if the investor group consists of FPIs that qualify for exemption (as mentioned above) and the net equity AUM of the investor group, after deducting the AUM of such exempted FPIs, falls below INR25,000 crore.
- where the entity identified on a look through basis, falls under any of above exceptions, further identification of entities having ownership interest, economic interest, or control rights of such an entity on look through basis, is not required.

### Timelines:

Disclosures shall not be required in case the investments of FPIs are realigned within the prescribed timelines as below.

- within 10 trading days from the date on which such FPIs exceed the threshold where FPIs holds more than 50 per cent of their Indian Equity AUM in a single Indian corporate group
- within 90 calendar days from date on which such

FPIs exceed the threshold where FPIs including their investor group, holds more than INR25,000 crore of equity AUM in the Indian markets

- within 90 calendar days from the date of applicability of this circular where FPIs required to make disclosures as on the date of applicability of this circular.

FPIs whose investments continue to exceed the threshold post expiry of timelines mentioned above are required to make disclosures to DDPs within 30 trading days from the expiry of such timelines.

### Consequence in case of default:

Non-disclosures shall render the FPI registration invalid and the FPI shall not make any further purchases.

Further, the FPI shall 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.

The investee companies to restrict the FPI's voting rights to its actual shareholding or its shareholding corresponding to 50 per cent of its equity AUM on the date its FPI registration is rendered invalid, whichever is lower

### Other points:

- A Standard Operating Procedure will be framed and adopted by all the DDPs/Custodians, in consultation with SEBI
- Disclosures to be made to be considered as material information.

Source: SEBI circular SEBI/HO/AFD/AFD – PoD – 2/CIR/P/2023/148 dated 24 August 2023

### Consultation paper on increased participation of non-resident Indians (NRIs) and overseas citizens of India (OCIs) into FPIs based out of International Financial Services Centres (IFSCs) in India and regulated by the International Financial Services Centres Authority (IFSCA)

To facilitate investments by NRI/OCI in India and also mitigate risk to address the concerns for money laundering, market manipulation etc., SEBI released consultation paper proposing the following framework for investments by NRI/OCI in Indian securities market through the FPI route:

- The contribution of a single NRI or OCI or RI to be below 25 per cent of the total contribution in the corpus of the applicant

- At an aggregate level, NRIs and OCIs may be allowed to contribute 50 per cent or more to the corpus of an FPI subject to the following conditions
  - Such entities are based out of IFSCs in India and regulated by IFSCA.
  - Such entities are required to provide the granular details of all entities holding any ownership, economic interest, or exercising control in the entity in terms of the guidelines and exemptions mentioned in SEBI circular dated 24 August 2023 to their DDPs, in case such FPIs fulfil any of the criteria mentioned below:
    - FPIs holds more than 33 per cent of their Indian equity AUM in a single Indian corporate group;
    - FPIs individually, or along with their investor group hold more than INR25,000 crore of equity AUM in the Indian markets.

NRIs/OCIs identified as BOs of the FPI will be required to provide passport no./OCI no. respectively to their DDPs.

FPIs/FPI applicants based out of IFSCs in India and regulated by IFSCA, that are desirous of having more than 50 per cent aggregate contribution from NRIs/OCIs in their corpus, may opt to do so by submitting declaration to DDPs.

Once FPI submits such declaration, it is required to comply with the conditions throughout the validity of its registration, irrespective of the actual aggregate NRI/OCI contribution.

Comments from public are invited latest by 10 September 2023.

Source: SEBI consultation paper dated 25 August 2023

## Financial Action Task Force (FATF) High risk and other monitored jurisdictions – 24 February 2023

As per 23 June 2023 FATF public statement, Cameroon, Croatia, and Vietnam have been added to list of Jurisdictions under increased monitoring.

Source: RBI Press Release on Financial Action Task Force (FATF) High risk and other monitored jurisdictions dated 29 August 2023

## Income-tax – circulars, case laws, etc



### Supreme Court ruled in favour of the assessee on issue of cost of acquisition of shares converted from Foreign Currency Convertible Bonds (FCCB)

The assessee had adopted the closing price of the shares on the NSE as on the date of conversion for purposes of determining the cost of acquisition of the shares (converted from FCCB) which was disputed by the Revenue.

The Supreme Court dismissed Revenue's Special Leave Petition against High Court (HC) judgment which held that the FCCB fell under Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and not under Foreign Currency Exchangeable Bonds Scheme, 2008. Accordingly, the cost of acquisition should be as per the scheme of 1993.

Source: CIT (IT) vs Kingfisher Capital Clo Ltd SLP No. 919/2020 dated 28 July 2023

### HC quashes order of the assessing officer holding that sales consideration is different from income chargeable to tax

The re-assessment proceedings were opened based on sale consideration which exceeded INR5 million under section 148 of the Income-tax Act, 1961 (ITA).

As per section 149(1)(b) of the ITA, notice under section 148 can be issued where 3 years (from end of the relevant assessment year) have lapsed in cases where the income chargeable to tax which has escaped assessment amounts to INR5 million or more.

The assessee filed writ petition against the order passed by assessing officer under section 148A for initiating assessment. The assessee challenged the jurisdiction of the assessing officer stating that the period for issuing notice had lapsed as the present case did not fall under the ambit of section 149(1)(b).

The HC stated that income chargeable to tax is not defined under the ITA. However, the expressions 'income' and 'income chargeable to tax' are different. The court stated that 'income chargeable to tax' would be less than the sale consideration and quashed the order of the assessing officer for initiating assessment.

The HC also observed that the provisions of section 148A for conducting inquiry, providing opportunity before issue of notice was inserted to prevent rampant and casual issuance of notices for re-assessment and save unnecessary harassment to the assessee.

Source: Nitin Nema vs Pr.CCIT, ACIT, ITO High Court of Madhya Pradesh, W.P. No.8311 of 2023 dated 16 August 2023

### Central Board of Direct Taxes (CBDT) prescribes form for claim of tax deducted at source in year subsequent to the relevant assessment year

The Finance Act, 2023 had inserted provision (sub-section 20 of section 155 of the ITA) which provides that in case any income which has been included in the return of income for relevant assessment year and tax on such income has been deducted at source and paid to the credit of the Central Government in a **subsequent** financial year, the Assessing Officer shall, on an application made by the assessee in prescribed form and timelines, amend the order of assessment or any intimation allowing credit of such tax deducted at source in the relevant assessment year.

In this connection, CBDT has now prescribed Form No. 71 and manner of furnishing the form (i.e., under digital signature or through electronic verification code) with effect from 1 October 2023

Source: CBDT Notification No. 73/2023/F. No. 370142/30/2023-TPL dated 30 August 2023



## Market Watch – Press articles-select extracts



### GIFT City improves ranking among global financial centres: IFSCA chairman

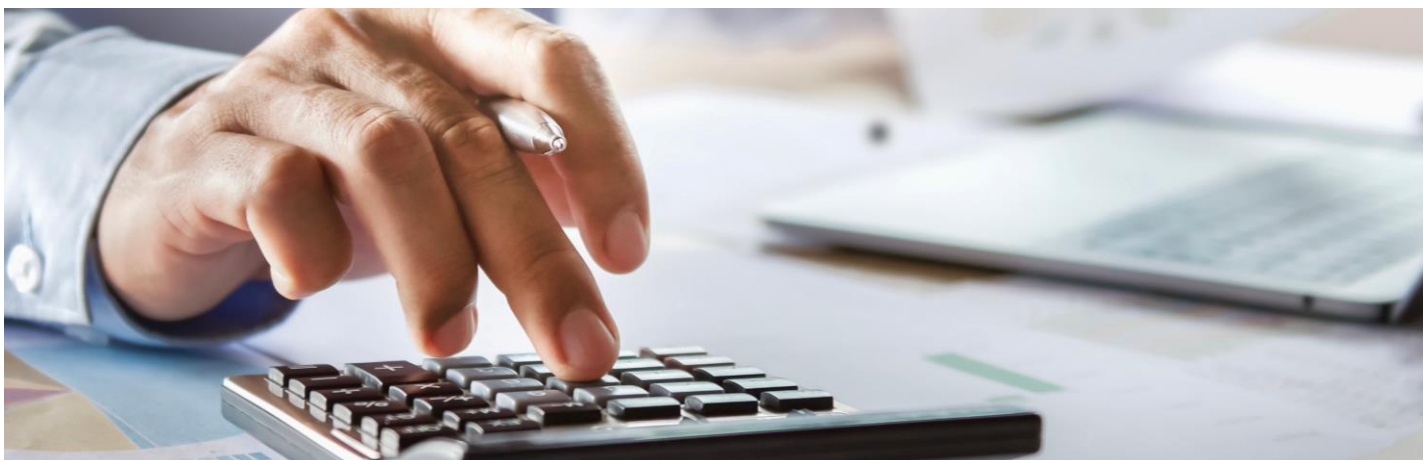
Gandhinagar's GIFT City has improved its ranking on the index of global financial centres from 75 to 67, said K Rajaraman, chairman of International Financial Services Centres Authority (IFSCA), Tuesday.

Source: Indian Express, Express News Services, 23 August 2023

### Investors from Mauritius, Singapore, Cyprus under Taxman's lens for CCD gains

Foreign investors from Mauritius, Cyprus and Singapore have been on the receiving end of a number of notices for gains from investment in fully or compulsorily convertible debentures (CCDs) issued by Indian companies.

Source: Business Line, Ashley Coutinho, 8 August 2023





Parameters	Current month	Earlier month	Changes
Net Equity inflows during Aug 2023 (in USD million)	1,533	5,827	
Net Debt inflows during Aug 2023 (in USD million)	600	187	
Total FPIs registered as on 1 Sep 2023	11182	11,180	2
AUC of FPIs at end of Jul 2023 (in USD million)	719,169	695,423	23,747

Source: NSDL FPI Monitor

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**30 years**  
and beyond

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