

# Foreign Portfolio Investors

November 2023



## Regulatory updates - SEBI



### Securities and Exchange Board of India (SEBI) invites suggestions for simplifying, easing, and reducing cost of compliance

Pursuant to the Union Budget announcement for FY 2023-24, SEBI has constituted 16 Working Groups (WG) to recommend simplification of various regulations. Amongst the various regulations SEBI (Foreign Portfolio Investors) Regulations, 2019 is also under review.

SEBI had invited suggestions from the public and regulated entities for simplifying, easing, and reducing cost of compliance for the regulations.

Source: SEBI Press Release No. 24/2023 dated 4 October 2023

### Amendment in the parameters for identification of beneficial ownership

SEBI has amended Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT)/Obligations of Securities Market Intermediaries under the Prevention of Money-laundering Act, 2002 and Rules framed there under

This is in line with the notification issued by the Government of India amending Prevention of Money-laundering (Maintenance of Records) Rules, 2005 on 4 September 2023.

#### Relevant change:

In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of/entitlement to more than **10 per cent** (reduced from 15 per cent) of capital or profits of the partnership **or who**

**exercises control through other means.** For this purpose, "control" shall include the right to control the management or policy decision. Earlier, for partnership firms, parameter for control was not provided.

Source: SEBI circular SEBI/HO/MIRSD/SEC-FATF/P/CIR/2023/0170 dated 13 October 2023

### Mandating additional disclosures by Foreign Portfolio Investors (FPIs) that fulfil certain objective criteria

SEBI vide circular dated 24 August 2023 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 INR25,000 crore of equity AUM in the Indian markets.

#### Our comments:

*In this regard, a standard operating procedure (SOP) was prepared in consultation with various stakeholders to harmonise and achieve uniformity in implementation of procedure. The SOP has recently been issued by SEBI to the designated depository participants (DDPs). The FPIs can reach out to their concerned DDPs to get the detailed information.*



## Supreme Court (SC) held that treaties and protocols are *per se* unenforceable and the is required to be notified

The Revenue filed an appeal on the issue whether a taxpayer can invoke the MFN clause<sup>1</sup> when the third country with which India has entered a treaty **was not an OECD member (at the time of entering into such treaty)** and whether **notification is required for the MFN clause to come into effect.**

The SC, ruling in favour of the Revenue, held that the MFN clause under tax treaties between India and other countries is not triggered automatically and a separate notification is required in order to claim the benefit. Further, the SC held as follows:

- a notification under section 90(1) of the Act is necessary and a mandatory condition for a court, authority, or tribunal to give effect to a tax treaty, or any protocol changing its terms or conditions, which has the effect of altering the existing provisions of law
- The beneficial treatment given under a subsequent treaty with a country, which is not an OECD member on the date of entering into the treaty, but subsequently becomes an OECD member, cannot be claimed under MFN clause.

Source: *AO Circle (International Taxation) vs M/s Nestle SA Civil Appeal No(s). 1420 OF 2023* dated 19 October 2023



<sup>1</sup> The MFN clause in certain treaties extends benefit of a lower rate or restricted scope with respect to certain specified incomes such as, interest, dividend, royalty, fees for technical services, if after the signature/entry into force of the treaty containing MFN clause, India enters into a treaty with an Organisation for Economic Cooperation and Development (OECD) member state and provides therein a lower rate or restricted scope.

## The taxpayer allowed to claim Short-Term Capital Gains (STCG) exempt under the India-Mauritius tax treaty and carry forward Long-Term Capital Loss (LTCL) under the Act

A Mauritius based company sold shares and carried forward LTCL under the Act and claimed STCG as exempt under the India-Mauritius tax treaty .

The AO disallowed the carry forward of LTCL since STCG was not taxable under the tax treaty on the basis that as capital gains derived are exempt, the question of carry forward of capital losses from such transactions does not arise.

The Income-tax Appellate Tribunal (ITAT) held that LTCL and STCG are separate sources of income/loss and merely because these are clubbed under the same head of income, their identity as separate source does not get obliterated. They are distinct and separate streams of income/loss. Accordingly, the provisions of section 90(2) of the Act will apply to each stream of income/loss i.e., STCG and LTCL and not qua head of income.

Thus, taxpayer was eligible to claim the beneficial provisions of the India-Mauritius tax treaty in respect of STCG and simultaneously carry forward LTCL under the Act.

Source: *Indium IV (Mauritius) Holdings Limited vs DCIT (IT) ITA NO.2423/MUM/2022* dated 6 October 2023

## Revenue to pay interest on income tax refund upto the date of payment of the refund

The taxpayer filed writ petition seeking refund which was delayed by the revenue on account of technical default in the system of Centralised Processing Centre (CPC).

The HC directed the Revenue to issue refund along with interest till the date of payment. Further, the HC noted that *“this is the standard excuse given by the Department when it comes to giving refunds. The excuse used is that the system under the control of Centralized Processing Center (“CPC”), Bangalore has some issues and, therefore, amount is not being released to assesseees.”* and shared copy of the order with Ministry of Finance, CBDT for information and necessary action.

Source: *Matrix Publicities and Media India Pvt. Ltd. vs DCIT (IT) Writ Petition (L) NO.16764 OF 2023* dated 25 October 2023



## FATF removes offshore tax haven Cayman Islands from its 'grey list'

*“The Financial Action Task Force (FATF), an inter-governmental body that sets anti-money laundering standards, has removed offshore tax haven Cayman Islands from its ‘grey list’. Besides Cayman, Panama, Jordan, and Albania have been removed from the list, which requires jurisdictions to be placed under increased monitoring until the identified deficiencies are resolved in their framework.*

*In its review published on October 27, FATF has added Bulgaria in the grey list.”*

Source: Business Standard, Khushboo Tiwari, 29 October 2023

## SEBI launches fresh salvo to stop FPIs from manipulating stocks on D-street”

*“A standard operating procedure (SOP) finalised by custodians of FPIs and the Securities and Exchange Board of India (Sebi) over the weekend has laid down the ground rules to stop the misuse of such overseas investment entities, two persons familiar with the subject told ET.*

*Existing FPIs that are in breach of the investment limit as of October 31, 2023, will have to bring down such exposure within 90 days - or, by January 29, 2024. If it cannot, the FPI must disclose the identities of all its beneficial owners by March 11, 2024, failing which it was to fold up. FPIs that breach the investment limit post-November 1, will have to pare their exposures in 10 days.”*

Source: The Economic Times, Sugata Ghosh, 25 October 2023

## Sberbank becomes first Russian bank to register with Sebi as FPI: NSDL

*“Sberbank of Russia has become the first Russian bank to register with the Indian markets regulator as a foreign portfolio investor (FPI), according to data available on the website of National Stock Depository (NSDL).*

*Sberbank of Russia, a state-owned bank which already*

*has a presence in India, registered with the Indian markets regulator for a Category I FPI license last week.”*

Source: Business Standard, Khushboo Tiwari, 17 October 2023

## Non-residents can now e-file Form 10F without PAN

*“Non-residents without a Permanent Account Number (PAN) can now electronically file Form 10F that is required along with a tax residency certificate to avail of benefits of the tax treaty. The Central Board of Direct Taxes has enabled non-residents who do not have a PAN to e-file Form 10F on the income tax portal by creating an account without the requirement of first obtaining a PAN.”*

Source: Business Today, Surabhi, 5 October 2023

## Market regulator Sebi to seek fresh feedback on trading hour extension

*“The Securities and Exchange Board of India (SEBI) is likely to undertake a new round of market consultations before allowing the National Stock Exchange (NSE) to extend its trading hours, according to people in the know.*

*The NSE has requested SEBI’s approval to keep the derivatives market open for a special session from 6 pm to 9 pm. Initially, the exchange plans to allow trading only in index derivatives during these extended hours. However, there are concerns raised by market players about allowing index trading without pricing cues from the underlying stocks.”*

Source: Business Standard, Khushboo Tiwari, 13 October 2023

## BSE launches F&O on futures contracts in commodity derivatives

*“BSE on Tuesday announced that it has launched futures and options (F&O) on futures contracts in its commodity derivatives segment spread across precious metals, base metals and energy.”*

Source: Live Mint, 10 October 2023



Parameters	Current month	Earlier month	Changes
Net Equity inflows during Oct 2023 (in USD million)	-2,994	-1,801	
Net Debt inflows during Oct 2023 (in USD million)	828	121	
Total FPIs registered as on 2 Nov 2023	11,199	11,186	13
AUC of FPIs at end of Sep 2023 (in USD million)	712,898	702,859	10,038

Source: NSDL FPI Monitor

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**30 years**  
and beyond

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