

Foreign Portfolio Investors

April 2024



Regulatory – SEBI/RBI etc

SEBI board meeting

Securities and Exchange Board of India (SEBI) Board met on 15 March 2024 and inter alia, the following was discussed and approved:

- Launch of beta version of optional T+0 settlement for limited 25 scrips with limited set of brokers
- Proposal to exempt additional disclosure requirements for Foreign Portfolio Investors (FPI) having more than 50 per cent of their India equity Asset Under Management (AUM) in a single corporate group with no identified promoter and low FPI holdings (subject to conditions)¹
- Providing flexibility to FPIs in dealing with their securities post expiry of their registration²
- Relaxation of timelines for disclosure/documentation related to material changes by FPIs³

Source: [Press Release 05/2024 dated 15 March 2024](#)

Note: Please refer circular and consultation papers detailed below for further information.

Relaxation towards making additional disclosures by FPIs that fulfil certain objective criteria

SEBI had mandated additional disclosures for FPIs that fulfil objective criteria as specified in the circular dated 24 August 2023. Further, certain FPIs satisfying the criteria were exempted from the additional disclosure requirements, subject to conditions specified.

1. SEBI circular on relaxation towards making additional disclosures by FPIs that fulfil certain objective criteria dated 20 March 2024
 2. Consultation paper on framework for providing flexibility in dealing with securities post expiry of FPI registration dated 7 February 2024
 3. Consultation paper on relaxation in timelines for disclosure of material changes by FPIs dated 7 February 2024

SEBI, pursuant to the board meeting, has **expanded the scope of exemption**, to cover FPI having more than 50 per cent of its Indian equity AUM in a corporate group, to not be required to make the additional disclosures subject to following conditions:

- where FPI has holding in a corporate group where the apex company (i.e., eventual promoter/associate to all other companies in the group), itself has no identified promoter
- the FPI holdings in corporate group after disregarding holding in the apex company is \leq 50 per cent of its total Indian equity AUM;
- the composite holdings of all such FPIs (that meet the 50 per cent concentration criteria, excluding FPIs which are either exempted or have disclosed) in the apex company is $<$ 3 per cent of total share capital of the apex company.

Custodians and depositories to track the utilisation of the 3 per cent limit at the end of each day and once this limit is met or breached, depositories to make this information public before trading starts on the next day.

Any prospective investment in the apex company by the FPI (that meets the concentration criteria), the FPIs is required to either realign their investments below the 50 per cent threshold within 10 trading days or make additional disclosures. Such requirement not to apply where 3 per cent cumulative limit continues to be met through the said 10 trading days.

Source: [SEBI circular SEBI/HO/AFD/AFD-POD-2/P/CIR/2024/19 dated 20 March 2024](#)

Consultation paper on framework for providing flexibility in dealing with securities post expiry of FPI registration

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 changes recommended were:

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 were 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 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.

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

Remission and extinguishment of outstanding small income-tax demands

Central Board of Direct Taxes has directed Directorate of Income-tax (Systems) and Centralised 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

Amendment to India-Mauritius Double Tax Avoidance Agreement (DTAA)

The Government of India and Mauritius have exchanged agreements which include

- Protocol to amend the India-Mauritius DTAA to make it compliant with Base Erosion and Profit Shifting (BEPS) Minimum Standards;
- Memorandum of Understanding between International Financial Services Centres Authority (GIFT City) and Financial Services Commission, Mauritius.

Source: Press Release date 13 March 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 onscreen functionality has been made available in the compliance portal of the income-tax e-filing website 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

Advance-tax e-campaign - FY 2023-24

In an initiative of the Income Tax Department (ITD) towards easing compliance for taxpayers and reinforce its commitment towards enhancing taxpayer services, ITD is sending emails and SMS communication to certain taxpayers whose payment of tax is not commensurate with the financial transactions during the year to compute their advance tax liability correctly and deposit the due advance tax on or before 15 March 2024.

Source: CBDT press release dated 10 March 2024

CBDT extended timeframe for processing 'non-scrutiny ITRs'

CBDT extended the timeframe prescribed under Section 143(1) for AY 2021-22 for processing of ITRs. The communication provided that intimation of processing ITRs can be sent to the taxpayers by 30 April 2024 with prior administrative approval.⁴

However, the relaxation is not applicable to returns selected in scrutiny, returns remaining unprocessed, where either demand is shown as payable in the return or is likely to arise after processing it, and returns remain unprocessed for any reason attributable to the assessee.

Source: CBDT order F.No 225/132/2023/ITA-II dated 1 March 2024

Avenues for appeal by the Revenue expanded

CBDT has expanded the scope of the Revenue to file appeal before Income Tax Appellate Tribunals (ITAT), High Courts (HC), and the Supreme Court (SC) without regard to the tax effect and monetary limits prescribed earlier (vide circular no 17/2019 dated 8 August 2019).

This list where Revenue can file appeal on grounds of merits has been expanded to include, *inter alia*:

- Cases of organized tax evasion including cases of bogus capital gain/loss through penny stock and accommodating entries
- Disputes relating to tax deducted at source/tax withheld at source
- Applicability of provisions of DTAA
- Any case where in the opinion of CBDT it is necessary to contest in the interest of justice or revenue and specified by CBDT.

Source: CBDT Circular No.5/2024 dated 15 March 2024

Instructions to AOs to initiate reassessment in certain e-Verification cases

Directorate of Income-tax (Systems) issued instructions to AO to guide them on initiating re-assessment proceedings related to AY 2020-21 identified under e-verification scheme-2021.

The CIT (e-Verification) matched the Preliminary Verification Report (PVR) with the latest income-tax return to prepare the Final Verification Report (FVR) wherein Value at Risk (VaR) was arrived at. VaR shown in the FVR is an estimated value arrived during verification under the e-verification scheme.

4. The intimations for AY 2021-22 were to be issued by 31 December 2023

Based on this, certain high-risk cases were identified for reopening under section 147. In such cases, the AO is not required to issue notice under section 148A and may proceed to get the approval of the Specified Authority for issuing notice under section 148.

It was clarified that the information provided to the AOs constitutes "Information" within the meaning of clause (iv) of explanation 1 to Section 148 of the Act.

Further, the cases have been categorised into

- non-updated ITR where VaR in FVR is the same as income escapement amount
- updated ITR where VaR in FVR is the amount of income escapement amount as determined in the PVR reduced by any additional income shown by the assessee in updated ITR.

Source: e-Verification Instruction No. 2 of 2024 and 2(i) of 2024 dated 1 March 2024 and 19 March 2024

Set-off of short-term capital loss (STCL) against short-term capital gain (STCG) with different tax rates allowed

The taxpayer is a resident of USA and is registered with SEBI as an FPI. During AY 2020-21, the taxpayer set-off STCG on sale of derivatives which is taxable at the rate of 30 per cent with STCL on sale of equity shares (STT paid), which is taxable at the rate of 15 per cent. The balance STCG with brought forward STCL (STT paid).

The assessing officer (AO) denied the set-off due to difference in tax rates. The Dispute Resolution Panel dismissed the objections filed and held that STCG/STCL on derivative transactions were on a different footing than STCG/STCL on equity shares.

On appeal, the ITAT ruled in favor of taxpayer placing reliance on the co-ordinate bench ruling which provided that under the provisions of section 70(2) of the Act, STCL arising from any asset can be set off against STCG arising from any other asset under a similar computation made irrespective of different rate of tax.

Source: ITA No.3396/M/2023 dated 26 February 2024

Adjustment of demand against refund disallowed in absence of intimation and non-adjudication of stay application

The taxpayer had filed rectification applications for AY 2017-18, 2018-19 and 2022-23 which were pending for rectification. These applications lead to additional refunds.

Further, the taxpayer had filed a stay application against the outstanding demand for AY 2018-19, which was also pending. However, the refund for AY 2017-18 and AY 2022-23 was adjusted against outstanding demand for AY 2018-19.

The taxpayer filed a writ petition before the HC challenging the adjustment of refund against the outstanding demand without issuance of intimation under section 245 of the Act and without disposing off the stay application and rectification application.

The HC held that unilateral adjustments without prior intimation are contrary to the specific wording of the statute itself. Further, the HC directed the Revenue to process and disburse the refund and take up rectification applications on priority basis.

[Source: Bombay High Court – Writ Petition No 879 OF 2024 dated 5 March 2024](#)

Tax treaty benefit allowed on interest income

A Cyprus tax resident invested in Fully Compulsory Convertible Debentures (FCCD) of an Indian company and earned interest income which was offered to tax at the rate of 10 per cent as per Article 11 of the India - Cyprus DTAA.

The AO noted that the investment made in the FCCDs was out of equity and loan funds received and thus opined that the taxpayer is a conduit company for purposes of obtaining tax treaty benefit.

The ITAT stated that the issue is covered by the co-ordinate benches ruling in the taxpayer's own case, wherein it was held that the transactions between assessee and its shareholders could not be considered as back-to-back transactions to treat the shareholders as beneficial owners but not the assessee.

Also, the ITAT noted that the taxpayer was having control over interest income and said income was at the disposal of taxpayer. ITAT held the taxpayer to be the beneficial owner of the interest on FCCD and allowed benefit under Article 11 of the India-Cyprus DTAA.

[Source: I.T.A. Nos.740 & 741/Chny/2023 and I.T.A. Nos.758, 759 & 760/Chny/2023 dated 29 February 2024](#)

Taxpayer allowed to claim tax treaty benefit on income from capital gains

A Mauritius resident Foreign Venture Capital Investor (FVCI), holding a Tax Residency Certificate (TRC) issued by Mauritius Revenue Authority and Category 1 Global Business License earned STCG which was offered to tax and long-term capital gain (on shares acquired prior to 1 April 2017) which was claimed exempt under Article 13(4) of India Mauritius DTAA.

The AO concluded that the taxpayer is a shell/conduit company and is not entitled to avail benefits under India-Mauritius DTAA.

On appeal, ITAT observed that the taxpayer had furnished TRC, had made investments since 2007 and even after amendment in the India- Mauritius DTAA continued to make investments. Further, the taxpayer has registered with SEBI as a FVCI.

The ITAT relied on CBDT circular No.789 dated 13 April 2000 which stated that TRC issued by Mauritius Tax Authority would constitute sufficient evidence for explaining the residential status and beneficial ownership for applying treaty provisions including in respect of income from capital gain on sale of shares.

It was noted that the assessment order did not bring any conclusive evidence on record to prove the allegation that the taxpayer was a shell/conduit company on the basis that the control and management was not in Mauritius.

The ITAT placed reliance upon various judgements and held that the taxpayer was entitled to claim exemption.

[Source: ITA No.2311/DEL/2023 dated 19 March 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](#)



Market Watch – press articles-select extracts

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 29 February. 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

Pre-2017 investments of Mauritius-based funds may face enhanced tax scrutiny

“Experts said with the regulatory changes now in force, Mauritius-based funds which made investments in India before the cut-off date and are yet to exit those, will be asked to furnish proof of ‘substantiation’, that is they will be asked to explain why Mauritius was chosen as the jurisdiction, and whether these funds had genuine business operations in the island nation. If these funds fail to provide the adequate proof of ‘substantiation’, capital gains tax in India will apply, said a senior tax expert.”

Source: Moneycontrol, Pavan Burugula dated 1 March 2024

Market regulator Sebi plans to boost municipal bond participation via ARCL

“Municipal corporations have raised a total of INR2,584 crore since 2017 through these bonds which are used for infrastructure projects within the city. SEBI sees an opportunity for broader participation and fundraising in the municipal (‘muni’) bond market.”

The market regulator plans to facilitate the settlement and clearing of muni bonds through AMC Repo Clearing (ARCL) to encourage greater participation and increase volumes.

ARCL is a settlement and clearing provider for the tri-party repo, backed by Sebi and funded by asset management companies, launched to provide a common platform for market participants.

However, to facilitate muni bonds on ARCL, several regulatory changes are required from the Reserve Bank of India (RBI) and the central government regarding eligible holders and borrowers of these bonds to participate in the repo market through ARCL. These changes will be required to be addressed first.”

Source: Business Standard, Khushboo Tiwari dated 18 March 2024

Rupee most stable Asian currency in FY24 after Singapore, Hong Kong

“Record foreign portfolio inflows in 2023-24 helped the rupee and bond to remain stable amid global uncertainties. Domestic markets received foreign inflows of INR3.23 trillion in the financial year FY24, as against an outflow of INR45,365 crore in FY23.”

Rupee was the third most stable Asian currency against the US Dollar in the financial year 2023-2024 after Hong Kong Dollar and Singapore Dollar primarily due to timely intervention by the RBI.”

Source: Business Standard, Anjali Kumari dated 29 March 2024



FPI Statistics

Parameters	Current month	Earlier month	Changes
Net Equity inflows during Mar 2024 (in USD million)	4,229	185	
Net Debt inflows during Mar 2024 (in USD million)	1,937	2,805	
Total FPIs registered as on 1 Apr 2024	11,220	11,212	8
AUC of FPIs at end of Feb 2024 (in USD million)	825,906	806,867	19,039

Source: NSDL, FPI Monitor, Accessed on 1 April 2024)

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