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TAX FLASH NEWS

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Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019

Securities and Exchange Board of India (SEBI) notified the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 (hereinafter referred to as 'FPI Regulations 2019') on 23rd September 2019. This supersedes the SEBI (FPI) Regulations, 2014.

The **key aspects** of the FPI Regulations 2019 are as under:

1. Re-categorization of FPI categories

The earlier three FPI categories have now been recharacterized into two FPI categories.

Category I – This will include:

(i) Government and Government related investors such as central banks, sovereign wealth funds, international or multilateral organizations or agencies, including entities controlled, or at least 75 percent, directly or indirectly, owned by such Government and Government related investor(s);

(ii) Pension funds and university funds;

(iii) Appropriately regulated entities such as insurance or reinsurance entities, banks, asset management companies, investment managers ('IMs'), investment advisors, portfolio managers, broker dealers and swap dealers;

(iv) Entities from the Financial Action Task Force ('FATF') member countries which are:

- appropriately regulated funds;
- unregulated funds whose IM is appropriately regulated and registered as a Cat I FPI;
- university related endowments of such universities that have been in existence for more than five years;

(v) An entity:

- whose IM is from FATF member country and such an IM is registered as Cat I FPI; or
- which is at least seventy-five per cent owned, directly or indirectly by another entity, eligible under sub-clause (ii), (iii) and (iv) above, and such an eligible entity is from a FATF member country.

Category II - This will include:

- all the investors not eligible under Cat I FPI such as appropriately regulated funds not eligible as Cat I FPIs, endowments and foundations, charitable organizations, corporate bodies, family offices, individuals,

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- appropriately regulated entities investing on behalf of their clients, as per conditions specified by SEBI; unregulated funds in the form of limited partnership and trust.

Important points:

- Broad-based requirement for funds has been done away with.
- Existing FPIs registered with SEBI to be re-categorized by their respective designated depository participants (DDP). DDPs to re-issue certificates to FPIs.
- The clause relating to “opaque structure” has been removed from FPI Regulations 2019.
- FPI can open a separate depository accounts for holding securities under the Voluntary Retention Route or any other scheme as specified by RBI or SEBI
- Holding of a single FPI (including investor group) to be below total paid-up equity capital on a fully diluted basis of the company in line with changes in Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017.

2. Relaxed eligibility criteria for FPI registration

While considering the application for grant of FPI certificate, DDP considers various specified conditions. The conditions have remained more or less the same. However, in certain cases, relaxation is provided as below:

Central bank

A bank applicant is required to be a resident of a country whose central bank is a member of Bank of International Settlements (BIS). However, a Central Bank applicant is not required to be a member of BIS to be eligible to obtain registration.

FPIs in International Financial Services Centre (IFSC)

Applicant incorporated or established in an IFSC to be deemed to be appropriately regulated.

Applicant incorporated or established in an IFSC need not comply with below eligibility conditions

- the applicant is not a resident Indian,
- the applicant is resident of country whose securities market regulator is a signatory to International Organization of Securities Commission’s Multilateral Memorandum of Understanding or a signatory to the bilateral Memorandum of Understanding with SEBI,
- applicant being a bank is a resident of a country whose central bank is a member of BIS.

3. Offshore Derivative Instruments (‘ODI’)

FPIs may issue, subscribe to, or deal in ODIs, directly or indirectly, subject to following conditions:

- ODIs to be issued only by persons registered as Cat I FPI;
- ODIs can be issued only to persons eligible for registration as Cat I FPI

ODI has been defined to mean any instrument, which is issued overseas by a FPI against securities held by it in India, as its underlying.

4. Need to obtain FPI registration

Offshore fund floated by an asset management company that has received no-objection certificate in accordance with the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, is required to obtain registration as FPI, within 180 from date of notification of this regulation.

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5. Investment avenues

- The FPI Regulations provided a list of various securities wherein FPI is allowed to invest.
- The specific list of debt securities in the earlier regulations has been removed by providing that, FPI shall invest in any debt securities or other instruments as permitted by RBI from time to time. This is in line with SEBI circular stating that no circulars would be issued by SEBI in relation to investment in debt securities.

6. Transactions where brokers not needed by FPI

- Transactions for transfer of right entitlements.
- Purchase or sale transactions of illiquid or suspended or delisted securities.
- Investment in corporate bonds by both FPI categories.
- Transactions to receive, hold and sell unlisted securities as referred at regulation 20(2) of FPI regulations, and transactions in unlisted securities received through involuntary corporate actions including a scheme of a merger or demerger. Such unlisted holdings to be treated as Foreign Direct Investment;
- Transaction between FPIs with multi-investment manager structure of the same beneficial owner and having common PAN.

7. Process of divestment

FPI is required to have a valid registration if it is holding securities or derivatives in India. In case registration is not valid, the FPI can sell securities or wind up their open position in derivatives within one year from the date of publication of the regulations.

Source: Securities and Exchange Board of India (Foreign Portfolio Investors) Regulation, 2019
https://www.sebi.gov.in/legal/regulations/sep-2019/securities-and-exchange-board-of-india-foreign-portfolio-investors-regulations-2019_44436.html

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