KPMG

#KPMGjosh

Monthly Update

Foreign Portfolio Investors

September - 2020

Regulatory updates - SEBI/ RBI

Securities and Exchange Board of India (SEBI) amends guidelines for write-off of shares by Foreign Portfolio Investors (FPIs)

As per SEBI Operational Guidelines issued in November 2019, an FPI whose registration is not valid or who intended to surrender their registration, was allowed to write-off only unlisted, illiquid, suspended, and delisted shares as per process prescribed.

Subsequent to request received by SEBI from various stakeholders, SEBI has permitted FPIs to write-off shares of all companies which they are unable sell in compliance with the process detailed in the Operational Guidelines.

Source: SEBI circular SEBI/HO/IFPI&C/CIR/P/2020/177 dated 21 September 2020

SEBI permits units of Investment Trust (InvITs) and Real Estate Investment Trust (REITs) on recognized stock exchanges in International Financial Service Centre (IFSC)

SEBI has permitted 'units of InvITs and REITs by whatever name called in Permissible Jurisdiction' as permissible security. List of permissible jurisdiction has been provided.

The units may be listed on stock exchange operating in IFSC, subject to the following conditions:

- Such InvITs and REITs are incorporated / settled in Permissible Jurisdiction, as notified by central government.
- Such InvITs and REITs are regulated by the securities market regulator in the Permissible Jurisdiction.
- Such InvITs and REITs are listed on specified international exchanges in the Permissible Jurisdiction.

Stock exchanges in IFSC to provide detailed framework prescribing initial and continuous listing requirement of such securities.

Source: SEBI circular SEBI/HO/DDHS/DDHS/CIR/P/2020/174 dated 16 September 2020

Reserve Bank of India (RBI) issues revised Draft Rupee Interest Rate Derivatives (Reserve Bank) Directions, 2020

In June 2019, RBI had issued Rupee Interest Rate Derivatives (Reserve Bank) Directions, 2019.

In order encourage higher non-resident participation, enhance the role of domestic market makers in the offshore market, improve transparency, and achieve better regulatory oversight, RBI released draft directions applicable to Rupee interest rate derivatives transactions undertaken in Over-the-Counter (OTC) markets and on recognized stock exchanges (RSE) in India. Comments on the Draft Directions are invited from banks, market participants and other interested parties by October 15, 2020. Key features relevant to FPI and non-residents are:

Eligible Participants

- A person resident in India;
- A non-resident, to the extent specified;
- A parent company or any group company or its centralised treasury, whether a person resident in India or a non-resident, can transact in Rupee IRDs on behalf of their group companies or wholly owned subsidiaries.

Interest rate derivatives on exchanges

Exchanges are permitted to offer any standardised IRD product;

Product design, eligible participants and other details of the IRD product may be finalised by the exchanges;

Exchanges to obtain prior approval of RBI before introducing new IRD product or making modifications to existing product;

Exchanges to ensure that participants are adequately made aware of risks associated;

FPIs may transact in permitted exchange-traded IRDs subject to conditions that, at any point in time:

- Net long position of FPIs, collectively, and across all exchanges, in exchange-traded IRDs not to exceed ₹ 5,000 crore;
- The net short position of an FPI on exchange-traded IRDs not to exceed its long position in Government securities and other Rupee debt securities.

Interest rate derivatives in OTC markets

Scheduled Banks and Primary Dealers (PDs) are eligible to act as market-makers in IRD market.

For the purpose of offering Rupee IRD contracts to a user, the market-maker shall classify the user either as a retail user or as a non-retail user.

Non-resident, other than individuals is classified as non-retail user. Any user who is otherwise eligible to be classified as a non-retail user shall have the option to get classified as a retail user.

<ins>Permitted products</ins>-

- Retail users: Forward Rate Agreement (FRA), Interest Rate Swap (IRS), European Interest Rate Options (IRO) including caps, floors, collars and reverse collars.
  Market-makers shall ensure that all IRD transactions undertaken by retail users are for the purpose of hedging.

- Non-retail users: In addition to the products listed for retail user, swaptions and structured derivative products, excluding leveraged derivatives and derivatives on derivatives.

<ins>Trading arrangements for non-residents in OTC markets</ins>

Transactions may be undertaken directly with a market-maker in India, or by way of a 'back-to-back' arrangement through a foreign counterpart of the market-maker in India.

Every Rupee IRD transaction undertaken offshore by any related entity of a market-maker in India, to be accounted for individually in the books of the market-maker in India.

<ins>General guidelines</ins>

Any floating interest rate or price or index used in IRDs in OTC markets to be a benchmark published by Financial Benchmark Administrator or approved by The Fixed Income Money Market and Derivatives Association of India (FIMMDA)

IRD transactions to be settled bilaterally or through any clearing arrangement approved by RBI.

Settlement basis and other market conventions for IRD transactions shall be specified by FIMMDA, in consultation with market participants.

Source: RBI Press Release: 2020-2021/334 dated 15 September 2020

Income Tax - Case law / Notification

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020

The Finance Minister had introduced *The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Bill, 2020* in the Indian Parliament on 18 September 2020 which received assent of the President of India on 29 September 2020.

The Bill proposed to ratify extensions and reliefs provided through Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 and other notifications. The Bill further announced additional measures/ incentives. Provisions relevant to FPIs are:

Cap on surcharge on dividend income for non-corporate FPI

Surcharge on non-corporate FPI's dividend income is capped at 15 per cent with effect from 1 April 2020.

This has resulted in the **highest effective tax rate** for non-corporate FPIs at **23.92** per cent as compared to 28.496 per cent under the earlier provisions.

Sovereign wealth fund (SWF) and pension fund (PF)

The Finance Act, 2020 introduced section 10(23FE) which provides exemption from tax to specified persons on income (dividend, interest, capital gains) subject to conditions. Earlier, SWF/ PF had to be specified by the Central Government, by notification in the Official Gazette, for this purpose.

The condition is amended to include fulfilment of conditions specified by Central Government in the said notification.

Category III Alternative Investment Fund (AIF III)

Currently, the Act provides exemption to AIF III operating in IFSC, which fulfill certain conditions, with respect to gains arising on transfer of prescribed capital assets listed on RSE established in IFSC. The exemption is extended to the following income earned by AIF III:

- Income on transfer of securities (other than equity shares of Indian company) such as derivatives listed on NSE / BSE;
- Income from offshore securities;
- Any income from a securitisation trust which is chargeable under the head "profits and gains of business or profession".

The above exemption to be available only to the extent units of the AIF III are held by non-residents (not being a permanent establishment of a non-resident in India) and computed in the prescribed manner.

The income earned by non-resident unit holders of AIF III in IFSC from units of AIF III or transfer of units of AIF III is exempt.

Source: The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 dated 29 September 2020

Central Board of Direct Taxes (CBDT) extends due date of filing revised/ belated income tax return (ITR) of AY 2019-20

The due date for furnishing belated/revised ITR for AY 2019-20 was 31 March 2020.

Due to COVID-19 pandemic, the due date was extended to 30 June 2020 and subsequently to 30 July and 30 September 2020 vide the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 and through various subsequent Notifications.

CBDT has further extended the due date from 30 September to 30 November 2020.

Source: CBDT Order F No. 225/150/2020-ITA-II dated 30 September 2020.

CBDT issues clarification on scrip-wise reporting requirement for capital gains in Income-tax return for AY 2020-21

The Finance Act, 2018 provided exemption to long term capital gains ('LTCG') made on the listed shares/specified units up to 31 January 2018 by introducing grandfathering mechanism.

CBDT has clarified that the scrip wise details in ITR for AY 2020-21 is required to be filled up only for the reporting of LTCG for these shares/units which are eligible for the benefit of grandfathering and not for computation of capital gains/business income from shares/units which are not eligible for grandfathering.

CBDT has stated that without this reporting, there may be situations where taxpayer may not claim or wrongly claim benefit of grandfathering due to lack of understanding of the provisions. If scrip wise LTCG is available, it can be cross verified by the income tax department electronically with stock exchange, brokerage companies, etc. and there will be no need to subject these income tax returns to further audits or scrutiny.

Source: CBDT Press Release dated 26 September 2020

Faceless Appeal Scheme, 2020

The government launched 'Transparent Taxation' platform encompassing faceless assessments, faceless appeals, etc. which will have technology driven interface.

In this regard, CBDT issued Faceless Appeal Scheme, 2020. The Scheme provides mechanism for the purposes of disposal of appeal by the CIT(A) and it comes into force from 25 September 2020. CBDT also issued a press release stating that under Faceless Appeals, Income Tax appeals will be finalised in a faceless manner under the faceless ecosystem with the **exception of appeals relating to serious frauds, major tax evasion, sensitive & search matters, International tax and Black Money Act**.

Source: CBDT Press Release and notification No. 76 and 77/2020/F.No. 370142/33/2020-TPL dated 25 September 2020

CBDT issues guidelines for compulsory selection of returns for complete scrutiny during FY 2020-21

CBDT issued guidelines for compulsory selection of returns for complete scrutiny during the FY 2020-21. Keeping in view the Faceless Assessment Scheme, 2020 and difficulties being faced amid COVID-19 pandemic, the parameters for compulsory selection of returns for complete scrutiny and conduct of assessment proceedings in such cases are prescribed in these guidelines. Relevant cases of compulsory selection are:

- Cases in which no return is furnished in response to notices issued u/s 142(1)/ 148.
- Cases where return has been furnished in response to notice under Section 142(1)/148 **and** where such notice was issued due to the specific information received from Law Enforcement Agencies, including the Investigation wing, audit objection, etc.

Further, the cases which are selected for compulsory scrutiny by the International Taxation and Central Circle charges following the prescribed guidelines, to be handled by these charges.

The exercise of selection of cases for compulsory scrutiny on the basis of the above parameters to be completed by 30 September 2020. The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 had extended the date to 31 March 2021.

Source: CBDT Order F.No.225/126/2020/ITA-II dated 17 September 2020

Assessing Officer (AO) not obliged to supply reasons for reopening, when not sought by assessee

In the present case, the assessee sought copy of the reasons after passing of order by CIT(A).

Assessee filed an appeal before ITAT contenting that re-assessment carried out is bad in law as reasons for reopening were not supplied and non-communication thereof renders notice issued u/s 148 of the Act without jurisdiction and liable to be quashed.

ITAT opined that "there is no prejudice which is caused to the assessee in terms of denial of any opportunity to the assessee to object to the reassessment proceedings by non-supply of the reasons so recorded by the AO where the same were never asked for by the assessee at first place." It distinguished the case from Karnataka HC decision in case of *Pr. CIT vs. V. Ramaiah [2019] 103 taxmann.com 20*1 on facts wherein the reasons were not supplied despite several requests.

ITAT stated that since assessee never asked for the copy of the reasons during the entire assessment and appellate proceedings, and therefore, there was no obligation as well as occasion for the AO to supply copy of the reasons to the assessee.

Source: Smt. Malti Khandelwal vs ITO, ITA No. 1046/JP/2019 (Jaipur ITAT) dated 21 September 2020

Market Watch – Press articles-select extracts

Cayman Islands top choice for FPIs to invest in India

With the Securities and Exchange Board of India tweaking rules for overseas funds with opaque structures in 2019 and foreigners finding little incentive to invest in the country's stocks through tax-friendly jurisdictions, Cayman Islands are gaining popularity among them for their relatively lower operational costs. Cayman does not have a tax treaty with India.

A key reason for this popularity is Sebi's liberalised rules for FPIs that allowed structures like Segregated Portfolio Companies or SPCs. Under Cayman laws, SPC is an exempted structure that can have separate portfolios and can be operated independently.

https://economictimes.indiatimes.com/markets/stocks/news/foreign-investors-now-bet-on-cayman-islands-for-india-play/articleshow/78154983.cms -17 September 20202

FPIs may be allowed to buy bad loans directly

Foreign portfolio investors (FPIs) may soon be able to directly acquire bad loans being sold by banks and other lenders. The Securities and Exchange Board of India (Sebi) is planning to include stressed assets in investments permitted for FPIs, said two people with knowledge of the matter. The move could be a shot in the arm for the stressed assets market in India as FPIs are known for their big-ticket purchases, experts said.

https://economictimes.indiatimes.com/markets/stocks/news/fpis-may-be-allowed-to-buy-bad-loans-directly/articleshow/77987999.cms?from=mdr 8 September 2020

FPI Statistics – (Source NSDL)

Parameters	Current month	Earlier month	Changes
Net Equity investment in Sep 2020 (in $ million)	-1,038	6,227	
Net Debt investment in Sep 2020 (in $ million)	582	-73	
Total FPIs registered as on 30 Sep 2020	9,827	9,802	25
AUC of FPIs at end of August 2020 (in $ million)	442,374	422,371	20,003

KPMG

KPMG in India Contact:

Sunil Badala
Partner and Head of BFSI Tax
T: +91 22 3090 2100
E: sunilbadala@kpmg.com

home.kpmg/in

#KPMGjosh

Follow us on:

home.kpmg/in/social media

KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai – 400 011 Phone: +91 22 3989 6000, Fax: +91 22 3983 6000