Tax Alert
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India Desk
in Mauritius

FPI Regime simplified by the SEBI to boost foreign investments into India

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The Government of India, through the Securities and Exchange Board of India ('SEBI'), is taking measures to liberalise its current foreign portfolio investors regime as an initiative to boost foreign investments into India.

SEBI through the 2014 Foreign Portfolio Investors ('FPI') Regulations ('FPI Regulations') regulates and issues FPI licences to investing entities in India. The FPI Regulations came into effect on 01 June 2014 and several guidelines, FAQs and circulars have been issued by the SEBI to provide clarifications to foreign investors.

Review of 2014 SEBI (Foreign Portfolio Investors) Regulations

In March 2018, the SEBI constituted a Working Group to review the FPI Regulations with a primary objective of consolidating the circulars, FAQs and guidelines. The intent was to simplify the language and complexities, hereby rationalising and liberalising the FPI regime.

In May 2019, the Working Group submitted its recommendations to the SEBI and a new set of FPI Regulations was later approved in August 2019. Some of the proposed measures are highlighted below:

1. Simplified and expedited registration process with ease in compliance requirements
2. Phasing out of the broad based eligibility criteria for institutional foreign investors
3. FPIs to be re-categorised into two categories - Category I and II, instead of the present regime of three categories
4. Simplified registration for Multiple Investment Manager structures
5. Central banks that are not the members of Bank for International Settlement to also be eligible for FPI registration
6. Entities established in the International Financial Services Centre in India to be deemed to have met the jurisdiction criteria for FPIs
7. Simplified KYC documentation requirements
8. FPIs permitted to transfer off-market unlisted, suspended or illiquid securities to a domestic or foreign investor
9. Offshore Funds floated by Indian Mutual Funds permitted to invest in India after obtaining registration as FPI
10. The requirements for issuance and subscription of Offshore Derivative Instruments have been rationalised

While the recommendations have only been approved in the SEBI Board Meeting on 21 August 2019, we still await for the revised FPI Regulations which are expected to be out in the months to follow.

[Read more on current FPI Regime] ➡

Overview of current FPI Regime

Regulated by SEBI, the FPI regime is a route for foreign investment in India. The FPI regime came as a harmonised route of foreign investment in India, merging the two existing modes of investment, that is, Foreign Institutional Investor ('FII') and Qualified Foreign Investor ('QFI').

Categories of FPI

Category I

- Government and government related foreign investors such as Central Banks, Sovereign Wealth Funds.

Category II

- Funds, which are broad based and (i) appropriately regulated, or (ii) whose investment manager is appropriately regulated
- Includes mutual funds ('MF'), investment trusts, insurance / reinsurance companies
- Also includes banks, Asset Management Companies, investment managers / advisors, portfolio managers, broker dealers and swap dealers, University funds, and Pension funds.

Category III

- Endowments, Charitable societies, Corporate bodies, Trusts, Family offices, Individuals**

*** Non-resident Indians (NRIs) are not permitted to register as FPIs, however they can invest in FPIs, subject to conditions*

Key regulatory aspects under the FPI regime

- Permitted instruments: shares of listed Indian Company, Non-Convertible Debentures, units of domestic MF, Government Securities, Security Receipts, Pass Through Certificates, derivatives – Exchange traded Futures and Options, FX forwards and Interest rate swaps
- Investment to be less than 10% of the post issue paid-up share capital of the Indian investee company by a single FPI and 24% on a collective basis
- Investments by an FPI (including related FPIs) to be less than 50% of any issue of a corporate bond
- Minimum residual maturity of above 1 year for corporate bond, subject to the condition that short-term investments in corporate bonds (less than one year residual maturity) shall not exceed 20% of the total investment of that FPI in corporate bonds
- Not treated as Foreign Direct Investment or External Commercial Borrowings
- No pricing/ sector/coupon restrictions
- Ease in capital repatriation

Income tax rates applicable to FPI under India Income Tax

Nature of Income	Tax Rate*			
Capital Gains	Listed Equity / Units of equity oriented MF (Subject to STT**)	Unlisted Equity (not subject to STT)	Debt securities/ Units of MF (other than equity oriented)	Future & Options
Long Term	10%	10%	10%	Not applicable
Short Term	15%	30%	30%	30%
Dividend income	Exempt		Not applicable	
Interest income	Government bonds - 5%*** Rupee denominated corporate bonds - 5%*** Other securities - 20% Other interest income - 40%			

** In addition, a surcharge and health and education cess is leviable*
*** STT – Securities Transaction Tax*
**** On interest payments between June 1, 2013 and June 30, 2020 and subject to fulfillment of conditions.*

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Income tax rates applicable to FPI under the India-Mauritius Double Tax Avoidance Agreement (DTAA)

Capital Gains		Interest
Equity Shares	Derivatives/ Debt	WHT rate
Exempt in case of shares acquired pre 01 April 2017	Exempt	7.5%

How can we help?

Should you decide to set-up an FPI in India, for investments into India, PwC could help with the following:

- Advise from an India Tax and Regulatory perspective in relation to the fund and product structure
- Assistance in obtaining the Permanent Account Number (PAN) in India (i.e. tax identification number)
- Assistance in setting up and obtaining FPI registration from SEBI
- Assistance in determination of tax liability for repatriation purposes in terms of equity and debt
- Advise on tax payments (including advance tax payment), where applicable
- Assistance in preparation of Annual income-tax return and with tax audit / litigation

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