FLASH ALERT
2 MAY 2024

SEBI permits 100% contribution of NRI / OCI / Resident Individuals in FPIs based in IFSC

- Currently, as per the SEBI (Foreign Portfolio Investors) Regulations, 2019 ('FPI Regulations'), a Foreign Portfolio Investor (FPI) applicant cannot be non-resident individual ('NRI') or overseas citizen of India ('OCI') or a resident Indian.
- However, the FPI Regulations allow NRIs, OCIs and resident Indian individuals ('RI') to be constituents of the FPI subject to contribution of a single NRI / OCI / RI being less than 25% and aggregate contribution of such NRIs / OCIs / RIs being less than 50% of the total corpus of the FPI.
- Entities having presence in GIFT IFSC and desirous of investing in Indian listed equity market are also required to be registered as FPI and accordingly, participation of NRIs / OCIs / RIs in FPIs based in IFSC was also subject to the above restriction.
- SEBI, in its board meeting held on 30 April 2024, has approved a regulatory framework for increased participation for upto 100% by NRIs, OCIs and RIs in the corpus of certain FPIs based in GIFT IFSC in India and regulated by IFSCA.
- The said decision is further to a consultation paper issued by SEBI in August 2023 for permitting such increased participation of NRIs / OCIs.

PROPOSED FRAMEWORK

- 100% contribution limits shall be available to NRIs / OCIs / RIs for FPIs based in GIFT IFSC subject to the FPI submitting copies of PAN cards of all their NRI/OCI/RI constituents, along with their economic interest in the FPI, to the Designated Depository Participant ('DDP').
- Similar disclosure shall also be required in case of indirect holding in the FPI through non-individual constituents that are majority contributed to/owned/controlled by NRIs / OCIs /RIs on a look through basis.

- In case PAN card of the NRI / OCI / RI is not available, FPI shall submit a suitable declaration along with copies of prescribed identity documents such as Indian passport, OCI Card, Aadhaar etc.
- Further, FPIs based in GIFT IFSC shall not be required to submit the above documents provided they satisfy the following conditions –

  i. Contribution of all investors are pooled into a single investment vehicle (which is registered as FPI) with no side vehicles.
  ii. The corpus of the fund is a blind pool with no segregated portfolios. All investors shall have pari-passu and pro-rata rights.
  iii. The fund has a minimum of 20 investors with each investor contributing not more than 25% to the total corpus.
  iv. Maximum of 20% of the corpus of the fund may be invested in the equity shares of an Indian listed entity.
  v. The fund should have an independent investment manager and should be an asset management company of a SEBI registered mutual fund which is sponsored by a RBI regulated Bank or its IFSC based subsidiary/branch.

- Further, SEBI, in its circular dated 24 August 2023, had mandated disclosure of granular 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 in case of FPIs meeting the prescribed objective criteria. Above mentioned FPIs in IFSC shall also be bound by such disclosure obligations if any of the below conditions is satisfied-

  i. The FPI holds more than 33% of its Indian equity AUM in a single Indian corporate group.
  ii. The FPI individually, or along with its investor group, holds more than INR 25,000 crore of equity AUM in the Indian markets.

AURTUS REMARKS

The proposed regulatory framework is a welcome move by SEBI as it allows NRIs / OCIs the benefit of investing in India through professionally managed FPIs based in IFSC without any threshold restrictions. The above relaxations should have a positive impact on the inflow of NRI / OCI investments in Indian markets as it also now permits increased participation through an institutional platform. Since FPIs in GIFT IFSC with only non-resident investors are eligible for certain tax benefits, investment through such FPIs may also result in tax arbitrage for NRIs / OCIs in certain cases as compared to direct investment. Additionally, investment through FPIs shall relieve the NRI / OCI investors from the requirement of availing PAN or filing of return in India.

The framework also facilitates onboarding of NRI / OCI constituents by FPIs by easing the practical challenges associated with monitoring of contribution threshold for constituents on an ongoing basis, although such FPIs shall be required to adhere to additional disclosure requirements. It is pertinent to note that while the consultation paper only referred to increased participation of NRIs / OCIs, the Press Release also refers to increased participation by RIs. Considering the concerns around round tripping of funds, the fine text of the proposed framework shall need to be evaluated in further detail to see if increased participation by RIs is subject to any further conditions. Additionally, considering that the tax benefits under the Income-tax Act, 1961 to FPIs based in IFSC are only available where all investors (except sponsor / manager) in the FPI are non-residents, participation of RIs in such FPIs may be theoretical since the same would make the FPI ineligible for the tax benefits.

In view of the above, FPIs currently based in other jurisdictions may also consider relocation to GIFT IFSC.

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