EXPLORING INDIA GUIDE

A GUIDE FOR ACCESSING THE INDIAN MARKET

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PREFACE

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India is the seventh largest country in the world and one of the most populous democracies. It boasts an immensely rich cultural heritage including numerous languages, traditions and people. The country holds its uniqueness in its diversity and hence has adapted itself to international changes fairly seamlessly. India has welcomed international companies to invest in its domestic market since liberalisation in the 1990s. Oweing to the presence of a vast range of industries, investment avenues and favourable government policies, a number of major companies have made strategic investments into India.

The World Economic Outlook in October 2019 said India had become the fifth largest economy in the world overtaking the UK and France. The Indian PM has pledged to turn the country into a USD5 trillion economy by 2025. In order to achieve this, the government has said it will adopt a more pro-business agenda.

In this context, India offers huge potential to global investors. In the past years, India has seen an influx of foreign investments and to accommodate this steady inflow, Indian regulators are making significant modifications to the various laws underpinning foreign investment.

In 2014, the government unveiled its 'Make in India' campaign which was intended to revive manufacturing businesses and promote some of its core local industries . This campaign has identified 25 priority sectors where foreign investment is actively needed, and is designed to enhance the country's attractiveness as an investment destination.

In accordance with the FDI policies of the Indian government and the Foreign Exchange Management Act (FEMA) Regulations, investment in India by foreign investors can be undertaken inter alia through the investment routes listed below:

A. Foreign Portfolio Investment;
B. Foreign Direct Investment (FDI);
C. Foreign Venture Capital Investment (FVCI);
D. External Commercial Borrowings (ECB); and
E. Investment in Alternative Investment Funds (AIF)

We have provided below a snapshot of each of the above entry routes:

A. Foreign Portfolio Investors (FPI) route

Under this route, the foreign investor is required to register with the Securities and Exchange Board of India (SEBI), the securities market regulator for the purpose of making investments in the Indian capital markets. Depending on their nature, FPIs are either categorised as Category I or Category II FPIs. FPIs are required to appoint a custodian (which are typically Authorised Dealer banks), tax consultants, etc. They are governed by specific regulations known as the FPI Regulations. FPI investment is made through equity instruments whereby such investments comprise less than 10 per cent of the post issue paid-up share capital on a fully diluted basis of a listed Indian company or less than 10 per cent of the paid-up value of each series of equity instruments of a listed Indian company.

B. Foreign Direct Investment (FDI) route

FDI is the investment through equity instruments by a person resident outside of India

(a) in an unlisted company or

(b) 10 per cent or more of the post issue paid-up equity capital of a listed company in India.

Unlike the other routes, FDI does not require registration and any eligible investor is permitted to make investments through this access channel. There are, however, certain cases where government approval may be required in order to invest via the FDI channel.

C. Foreign Venture Capital Investment (FVCI)

Residents outside of India can make investments under the FVCI route pursuant to obtaining registration with SEBI under the (FVCI) Regulations, 2000. Investment by an FVCI in equity instruments of an Indian company will be subject to the reporting, sectoral caps, entry routes and attendant conditions. However, the key benefits of this route are that it provides exemptions from (a) pricing guidelines stipulated under the FEMA regulations and (b) pre-issue capital lock-in requirements prescribed under the relevant regulations governing the issue of securities. However, an FVCI is permitted to invest in securities (not listed on a recognised stock exchange at the time of issue) of an Indian company that is engaged in only certain specified sectors.

D. External Commercial Borrowings (ECB)

ECBs are commercial loans raised by resident entities (eligible to receive FDI) from recognised non-resident entities. In order to raise loans through the ECB route, certain parameters must be met (such as minimum maturity, end use of the proceeds of the loan, maximum all-in cost ceiling, eligible borrower, recognised lender, currency of borrowing etc.)

ECB loans can be INR denominated or foreign currency denominated. ECBs can be issued in various forms (such as bank loans, FCCBs, FCEBs, floating/ fixed rate bonds/ debentures, preference shares, trade credits beyond three years, Financial Lease, RDBs issued overseas, etc.) depending upon the currency in which the ECB is denominated.

The eligible borrower is required to obtain a LRN in order to avail the ECB facility.

ECBs can be converted into equity subject to satisfying certain conditions.

E. Alternative Investment Funds (AIFs)

AIFs are defined as funds established or incorporated in India, namely a privately pooled investment vehicle that raises capital from sophisticated investors - either Indian or foreign – and which has a defined investment policy for the benefit of its investors. An AIF can be established or incorporated in the form of a trust; a company; an LLP or a body corporate. AIFs are regulated by the SEBI and are governed by the SEBI (AIF) Regulations, 2012.

An Introduction to the International Financial Services Centre (IFSC) Gujarat International Finance Tec-City (GIFT City)

An IFSC is a jurisdiction that provides financial services to non-residents and residents, to the extent permissible under the current regulations, in any currency except INR. The objective behind establishing an IFSC in India was to provide a platform for international financial services to operate from and to specialise in the export of high value-added international financial services. The IFSC in GIFT City aims to onshore financial services transactions undertaken by overseas financial institutions and overseas branches/subsidiaries of Indian financial institutions which take place outside of India.

The IFSC in GIFT City is being developed as a global financial and information technology services hub on a par with global financial centres.

This India guide provides a comprehensive overview of the **FDI, FPI** and **IFSC – GIFT city** policies, and what they mean for foreign investment in the country. The information contained in this document was updated on 31 March 2020. For any subsequent updates, readers are advised to consult with their investment advisors/ tax consultants or visit the relevant regulatory websites.

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TAJ MAHAL – AGRA

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FOREIGN DIRECT INVESTMENT ROUTE

PART A: FOREIGN DIRECT INVESTMENT ROUTE

1 INTRODUCTION AND OVERVIEW

1.1 Introduction to Foreign Direct Investment (FDI)

FDI is investment through equity instruments by a person resident outside India (a) in an unlisted company or (b) 10 per cent or more of the post issue paid-up equity capital of a listed company in India[1].

Apart from being a critical driver of economic growth, FDI is a major source of non-debt financial resources for economic development. Foreign companies investing in India can take advantage of the relatively lower wages and special investment privileges such as tax exemptions, etc. The benefits for India are that this foreign investment helps generate employment and new skills among its population.

The Indian government's favourable policy regime and robust business environment have ensured that foreign capital has kept flowing into the country. The government has taken many initiatives in recent years such as relaxing FDI norms across sectors such as defence, the public sector undertaking (PSU) oil refineries, telecom, power exchanges and stock exchanges, among others.

Between April 2019 and December 2019, India attracted FDI equity investments totalling USD 36.77 billion. The following are the sectors which attracted the most FDI inflow[2]: -

SECTOR	SERVICE SECTOR	COMPUTER SOFTWARE AND HARDWARE	TELECOMMUNICATIONS	TRADING
Amount (in USD)[3]	6.52 billion	6.35 billion	4.29 billion	3.52 billion

The table below provides a breakdown of the FDI received from some of the key global markets between 2019-20 (fiscal year ending March 31): -

COUNTRY	SINGAPORE	MAURITIUS	NETHERLANDS	JAPAN	USA
Amount (in USD)[3]	11.65 billion	7.46 billion	3.53 billion	2.81 billion	2.79 billion

1.2 Legal framework

India has put in place a policy framework on FDI, which is transparent and easily comprehensible. This framework is embodied in the circular on the consolidated FDI Policy and is updated from time to time. The Department for Promotion of Industry and Internal Trade (DPIIT), the Ministry of Commerce and Industry, and the government itself makes policy announcements on FDI through press notes/ press releases which are published by the Reserve Bank of India (RBI). The regulatory framework for FDI consists of the FDI Policy, rules and regulations made thereunder along with press notes, press releases and other periodic clarifications/circulars issued by the government/RBI.

[1] Source: Foreign Exchange Management (Non-debt Instruments) Rules, 2019

[2] All the data points in the given table have been rounded-off.

[3] https://dipp.gov.in/sites/default/files/FDI_Factsheet_December-19_5March2020.pdf

1.3 Basic Conditions

Who are the eligible investors and investees and what are the instruments that can be subscribed to by such investors under the FDI policy?

Eligible Investor:

- A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited. However, a citizen of Bangladesh or an entity incorporated in Bangladesh can invest only via the government route. Furthermore, a citizen resident in Pakistan or an entity incorporated in Pakistan can invest only via the Government route in sectors/activities other than defence, space, atomic energy and sectors/activities where foreign investment is prohibited.
- Non-resident Indians (NRIs) in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in Indian companies on a repatriation basis, subject to fulfilment of prescribed conditions.
- A company, trust and partnership firm incorporated outside of India and owned and controlled by NRIs can invest in India with the special dispensation which is available to NRIs under the FDI Policy.
- Previous FIIs and FPIs can invest in an Indian company subject to fulfilment of the various prescribed conditions.
- SEBI registered FVCIs may invest in an Indian company subject to the fulfilment of the various prescribed conditions.

Eligible investees

Indian companies

- Partnership firms and proprietary sole traders
- Limited liability partnerships (LLPs)
- Investment vehicles[4]
- Start-up companies

Eligible instruments for making investments:

- Equity Shares
    - Compulsory Convertible Debentures (CCDs)
    - Compulsorily Convertible Preference Shares (CCPS)
- Equity shares, CCDs and CCPS having optionality clauses (exercising option/ right), subject to certain conditions
- Depository receipts
    - Foreign currency convertible bonds (FCCBs)
- Warrants and partly paid shares
- Convertible Notes
    - All investments via this route are subject to the sectoral caps[5] prescribed in the FDI policy and enforced through FEMA (Non-debt Instruments) Rules, 2019. Investments can be made via the automatic route (i.e. no approval required from any regulatory authority for making investments in a particular sector) or the government approval route (i.e. where a prior approval is required from the relevant ministry/department of the Indian government for making an investment in a particular sector)
- In addition to the above-mentioned conditions, the investment/ investor is required to comply with all relevant laws, regulations and rules applicable to that sector in India.

[4] As per FEMA (Non-Debt Instruments) Rules, 2019, investment vehicle has been defined to mean an entity registered and regulated under the regulations framed by the SEBI or any other authority designated for that purpose and shall include: (i) REITs), (ii) InvIts; and (iii) AIFs.

[5] Sectoral cap means the maximum investment including both foreign investment on a repatriation basis by persons resident outside India in equity instruments of a company or the capital of a LLP, as the case may be, and indirect foreign investment, unless provided otherwise. This shall be the composite limit for the Indian investee entity.

1.4 Sectors where FDI is not permitted/ prohibited

The following are the sectors where FDI is prohibited:

- Lottery businesses including government/ private and online lotteries.
- Gambling and betting including casinos.
- Chit funds
- Nidhi company
- Trading in transferable development rights
- Real estate business[6] or for the construction of farm houses.
- Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
- Activities/ sectors not open to private sector investment e.g. atomic energy and railway operations (other than permitted activities specifically stated).
- Foreign technology collaboration in any form including licensing for franchise, trademark, brand name or management contracts. This is also prohibited for lottery businesses along with gambling and betting activities.

1.5 Types of FDI transactions

- Subscription to primary issuance of securities
- Secondary acquisitions
- The secondary market, also called the aftermarket, is the financial market in which previously issued financial instruments such as shares, bonds, options, and futures are bought and sold. In the secondary market, securities are sold by and transferred from one investor to another.
- The secondary market includes the transfer of equity instruments from non-resident to non-resident, the transfer of equity instruments from non-residents to residents/ or vice versa, the sale of equity instruments on the stock exchange by persons resident outside India.
- Acquisition of capital instruments under the extant FDI policy by a non-resident on a Recognised Stock Exchange (RSE) (under specified instructions) can be made adhering to pricing guidelines (discussed in detail in Para 2.1)
- In relation to certain prescribed transactions (eg: acquisition or transfer of immoveable property in India), an FDI investing entity needs prior approval from the RBI for its proposed investment.

CAN AN ENTITY WITH FDI INVESTMENTS IN INDIA ALSO REGISTER AND MAKE INVESTMENTS AS AN FPI?

Yes (subject to investment cap and sectoral limits). The entity will have to register itself as an FPI with the SEBI. Further, a non-resident entity can hold foreign investments either as an FDI or FPI in any particular Indian entity.

[6] Real Estate Business' shall not include development of townships, construction of residential/ commercial premises, roads or bridges and REITs registered and regulated under the SEBI (REITs) Regulations 2014 i.e. investment in these sectors is not prohibited. Real estate broking service shall not amount to real estate business.

2 PRICING GUIDELINES

2.1 Pricing and valuation guidelines

Pricing and valuation guidelines have been prescribed in relation to the following:

- Issue of capital instruments by an Indian company to a non-resident
- Transfer of capital instruments from a resident to a non-resident
- Transfer by a person resident outside of India to a person resident in India

We have tabulated below the pricing methodology for various instruments:

SR NO	INSTRUMENT	APPLICABILITY OF PRICING GUIDELINES
1	Equity shares	Issue / transfer by way of sale/ buyback etc. of equity shares are subject to pricing guidelines. Price of shares issued to a person resident outside India under the FDI route **<u>should not be less than</u>**: A. the value is determined as per Internationally accepted pricing methodology on an arm's length basis for the unlisted companies duly certified by a chartered accountant (CA) or a SEBI registered Merchant Banker or a practicing Cost Accountant for unlisted companies. B. the price is worked out in accordance with the relevant SEBI guidelines in case of a listed Indian company or in the case of a company going through a delisting process, as per the SEBI (Delisting of Equity Shares) Regulations, 2009. In the case of transfer from a person resident in India to a person resident outside India, the price **<u>should not be less than</u>**: A. the price worked out in accordance with the relevant SEBI guidelines in the case of a listed Indian company B. the price at which a preferential allotment of shares can be made under the SEBI guidelines, as applicable, in the case of a listed Indian company or a company going through a delisting process as per the SEBI (Delisting of Equity Shares) Regulations, 2009 C. the value determined as per Internationally accepted pricing methodology on an arm's length basis for the unlisted companies duly certified by a CA or a SEBI registered Merchant Banker or a practicing Cost Accountant in the case of unlisted companies In the case of a transfer from a person resident outside of India to a person resident in India, the price **<u>should not be more than</u>**: (a) the price worked out in accordance with the relevant SEBI guidelines in the case of a listed Indian company (b) the price at which a preferential allotment of shares can be made under the SEBI guidelines, as applicable in the case of a listed Indian company or a company going through a delisting process as per the SEBI (Delisting of Equity Shares) Regulations, 2009 (c) the value determined as per Internationally accepted pricing methodology on an arm's length basis for the unlisted companies duly certified by a CA or a SEBI registered merchant banker or a practicing Cost Accountant in the case of unlisted companies
2	CCDs, CCPS and Convertible Notes	Price / conversion formula of convertible capital instruments should be determined upfront at the time of issue of the instruments. The price at the time of conversion should not in any case be lower than the fair value at the time of issuance of such instruments in accordance with FEMA rules and regulations made thereunder.
3	Swap of capital instruments	Valuation involved in the swap arrangement is required to be made by a SEBI registered merchant banker or Investment Banker outside of India registered with an appropriate regulatory authority in the host country.
4	Share Warrants	Pricing and the price/ conversion formula is determined upfront. The price at the time of conversion should not in any case be lower than the fair value worked out at the time of issuance of such warrants.
5	Partly paid equity shares	The pricing of the partly paid equity shares is required to be determined upfront.

6	Equity shares of a newly incorporated company	Where shares in an Indian company are issued to a person resident outside of India in compliance with the provisions of the Companies Act, 2013 and by way of subscription to Memorandum of Association, such investments are required to be made at face value subject to entry route and sectoral caps.

Non-applicability of pricing guidelines:

- The pricing guidelines will not apply for investment in capital instruments by a person resident outside of India on a non-repatriation basis.
  - The pricing guidelines will not be applicable for any transfer by way of sale done in accordance with SEBI regulations where the pricing norm is prescribed by SEBI. A CA's certificate to the effect that relevant SEBI regulations/ guidelines have been complied with is required to be attached to the form Foreign Currency – Transfer of Shares (FC-TRS) filed with the AD bank.

2.2 Foreign investment in an LLP[7]

- Investment in an LLP is subject to compliance with the conditions specified under the provisions of the LLP Act, 2008.
- A person resident outside of India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India (other than an entity in Pakistan or Bangladesh), which is not FPI or FVCI registered in accordance with SEBI guidelines may contribute to the capital of an LLP by way of capital contribution/ acquisition/ transfer of profit shares in an LLP operating in sectors/ activities where foreign investment up to 100 per cent is permitted under the automatic route and where there are no FDI linked performance conditions.
- For the purpose of an LLP, investment means capital contribution or acquisition/ transfer of profit shares. Furthermore, investment by way of 'profit share' will fall under the category of 'reinvestment of earnings'.
- FDI in an LLP would have to be at more than or equal to the fair price worked out as per any valuation norm which is internationally adopted as per market practice of capital contribution/ profit share of an LLP. A valuation certificate to this effect is required to be issued by a CA/ Cost Accountant/ approved valuer from the panel maintained by the government of India.
- In the case of a transfer involving a capital contribution/ profit share from a resident to a non-resident, the transfer is required to be for a consideration not less than the fair price of the capital contribution/ profit share of an LLP.
- While in the case of a transfer of capital contribution/ profit share from a non-resident to a resident, the transfer is required to be for a consideration which is less than or equal to the fair price of the capital contribution/ profit share of an LLP.

2.3 Scheme of issuance of 'Convertible Notes' by an Indian start-up company[8]

- A person resident outside of India (other than an individual who is a citizen of Pakistan or Bangladesh or an entity which is registered or incorporated in Pakistan or Bangladesh) may purchase convertible notes issued by an Indian start-up company for an amount of INR 2.5 Million or more in a single tranche.
- A start-up company engaged in a sector where investment by a person resident outside of India requires government approval may issue convertible notes to a person resident outside of India only with such approval. Furthermore, issue of equity shares against such convertible notes is required to be in compliance with the entry route, sectoral caps, pricing guidelines and other attendant conditions for foreign investment.
- The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the RBI.
- A NRI or an OCI may acquire convertible notes on a non-repatriation basis subject to fulfilment of prescribed conditions.
- A person resident outside of India may acquire or transfer by way of sale, convertible notes, from or to, a person resident in or outside of India provided the transfer takes place in accordance with the entry routes and pricing guidelines as prescribed for capital instruments

[7] Schedule VI to FEMA (Non-Debt Instrument) Rules, 2019

[8] Rule 18 of FEMA (Non-Debt Instrument) Rules, 2019

3 SECTORAL CAPS

3.1 Entry routes for making FDI investments in India:

FDI in permitted sectors can be made under the following prescribed routes:

- Automatic Route - Investment is permitted without prior approval either from the government of India or RBI in all activities/ sectors as specified in the extant consolidated FDI policy, issued by government from time to time.
- Government Route - FDI in activities not covered under the automatic route requires prior approval from the government.

3.2 Composite FDI cap for all the sectors[9]

SR NO	SECTOR / ACTIVITY	SECTORAL CAP	ENTRY ROUTE	PRESCRIBED CONDITIONS TO BE SATISFIED (Y/N)
1	Agriculture and Animal Husbandry	100%	Automatic	Y
2	Plantation (Tea/Coffee/Rubber/Olive Oil/Cardamom/ Palm Oil)	100%	Automatic	Y
3	**MINING AND PETROLEUM & NATURAL GAS**			
	Mining and exploration of metal and non-metal ores	100%	Automatic	Y
	Coal and Lignite mining for captive consumption for certain permitted activities	100%	Automatic	Y
	Setting up coal processing plants like washeries	100%	Automatic	Y
	For sale of coal, coal mining activities including associated processing infrastructure subject to the provisions of Coal Mines (Special Provisions) Act, 2015 and the Mines and Minerals (Development and Regulation) Act, 1957 as amended from time to time and other relevant Acts on the subject.	100%	Automatic	Y
	Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities	100%	Government	Y
	Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, gas pipelines etc.	100%	Automatic	N
	Petroleum refining by PSUs, without any disinvestment or dilution of domestic equity in the existing PSUs	49%	Automatic	N
4	Manufacturing[10]	100%	Automatic	N
5	Retail trading of food products manufactured and/ or produced in India	100%	Government	N
6	Defence	100%	Automatic up to 49%, Government	Y

[9] Please note that the aforesaid caps may be subject to additional conditions as prescribed. Further, FCCBs and ii.Depository receipts having underlying of instruments which can be issued, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment under the Sectoral cap.

[10] As per the clarification issued by the DPIIT in relation to FDI Policy on Contract Manufacturing dated 9 December 2019, FDI in Manufacturing shall include 'Contract Manufacturing'.

SR NO	SECTOR / ACTIVITY	SECTORAL CAP	ENTRY ROUTE	PRESCRIBED CONDITIONS TO BE SATISFIED (Y/N)
			route beyond 49% wherever it is likely to result in access to modern technology or for other reasons to be recorded.	
7	**BROADCASTING CARRIAGE SERVICES**			
	Teleports, Direct to Home (DTH), Cable networks, Mobile TV, Head-end-in-the-sky Broadcasting service (HITS)	100%	Automatic	Y
	BROADCASTING CONTENT SERVICES			
	Terrestrial broadcasting FM radio	49%	Government	Y
	Up-linking of 'News & Current Affairs' TV Channels	49%	Government	Y
	Uploading/ Streaming of News and Current Affairs through Digital Media	26%	Government	Y
	Up-linking of Non 'News & Current Affairs' TV Channels/ Down-linking of TV channels	100%	Automatic	Y
8	**PRINT MEDIA**			
	Publishing of newspaper and periodicals dealing with news and current affairs	26%	Government	Y
	Publication of Indian editions of foreign magazines dealing with news and current affairs	26%	Government	Y
	Publishing/ printing of scientific and technical magazines/ specialty journals/ periodicals	100%	Government	Y
	Publication of facsimile edition of foreign newspapers	100%	Government	Y
9	**CIVIL AVIATION**[11]			
	Airports- Greenfield and existing projects	100%	Automatic	N
	Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline; Regional Air Transport Service	100%	Automatic up to 49% Government beyond 49% (Automatic up to 100% for NRIs)	Y
	Non-scheduled air transport services	100%	Automatic	Y
	Helicopter services/ seaplane services requiring DGCA approval	100%	Automatic	Y
	Ground handling services	100%	Automatic	Y
	Maintenance and repair organisations, flying training institutes and technical training institutions	100%	Automatic	N

[11] Foreign Investment in M/S Air India Ltd including that of foreign airlines shall not exceed 49 per cent either directly or indirectly. However, in case of investment by NRIs, foreign investment up to 100 per cent is permitted under the automatic route

SR NO	SECTOR / ACTIVITY	SECTORAL CAP	ENTRY ROUTE	PRESCRIBED CONDITIONS TO BE SATISFIED (Y/N)
10	Construction Development: Townships, Housing, Built-up infrastructure	100%	Automatic	Y
11	Industrial parks	100%	Automatic	Y
12	Satellites – Establishment and operation	100%	Government	Y
13	Private security agencies	49%	Government	Y
14	Telecom services (including telecom infrastructure providers category-I)	100%	Automatic up to 49%, Government route beyond 49%	Y
15	**TRADING**			
	Cash and Carry wholesale trading/ Wholesale trading (including sourcing from Micro and Small Enterprises)	100%	Automatic	Y
	B2B E-commerce activities	100%	Automatic	Y
	E-commerce activities: Marketplace based model of e-commerce	100%	Automatic	Y
	Single brand product retail trading	100%	Automatic	Y
	Multi brand product retail trading	51%	Government	Y
	Duty free shops	100%	Automatic	Y
16	**PHARMACEUTICALS**			
	Greenfield	100%	Automatic	N
	Brownfield	100%	Automatic up to 74% Government route beyond 74%	Y
17	Railway Infrastructure	100%	Automatic	Y
18	**FINANCIAL SERVICES**			
	ARCs	100%	Automatic	Y
	Banking sector – Private sector	74%	Automatic up to 49% Government route beyond 49% and up to 74%	Y
	Banking – Public sector	20%	Government	Y
	Infrastructure companies in the securities market	49%	Automatic	Y
	Commodities spot exchange	49%	Automatic	Y
	Power exchanges	49%	Automatic	Y
	Credit information companies	100%	Automatic	Y
	Insurance company	49%	Automatic	Y

SR NO	SECTOR / ACTIVITY	SECTORAL CAP	ENTRY ROUTE	PRESCRIBED CONDITIONS TO BE SATISFIED (Y/N)
	Intermediaries and insurance intermediaries including insurance brokers, re-insurance brokers, insurance consultants, corporate agents, third party administrators, Surveyors and Loss Assessors and other insurance intermediaries as may be notified by the IRDA from time to time	100%	Automatic	Y
	Pension sector	49%	Automatic	Y
	Other Financial Services (Registered/ regulated entities)	100%	Automatic where the financial services activities are regulated by a sector regulator i.e. RBI, SEBI, IRDA, PFRDA, NHB, any other financial service regulator. In any other case, Government approval route.	Y

3.3 Procedure for government approval

- The approval for foreign investments granted by the competent authorities is dependent on the sectors/ activities.
- Approval is to be obtained from the respective administrative ministry/ department.
- For applications that are not clearly defined, DPIIT will identify the most appropriate administrative ministry/ Department where the application will be processed.
  - Proposals are examined by Competent Authorities as per the Standard Operating Procedure laid down by DPIIT and guidelines for e-filing of applications. Filing of amendment applications and instructions to applicants are available at the Foreign Investment Facilitation Portal (FIFP) (www.fifp.gov.in/Forms/SOP.pdf).
  - In case of proposals involving total foreign equity inflows of more than INR 50 billion, a competent authority is required to place the same for consideration of Cabinet Committee on Economic Affairs (CCEA).
- The CCEA will also consider the proposals which may be referred to it by the minister-in-charge of the concerned competent authority.
- There are certain scenarios whereby government approval is not required (for activities which had sectoral caps which were later removed/ increased, etc).

3.4 Downstream investment

- 'Downstream investment' means indirect foreign investment by an eligible Indian entity into another Indian company/ LLP by way of subscription or acquisition. For the purpose of computation of indirect foreign investment in an Indian company , all types of foreign investments are to be included (i.e. FDI, FPIs, NRIs, ADRs, GDRs, FCCBs, CCPS, CCDs etc.).
- Such downstream investment by a foreign owned and/ or controlled Indian company into another Indian company should be in accordance/ compliance with the relevant sectoral conditions on entry route, conditionalities and caps with regard to the sectors in which the latter Indian company is operating.
- Downstream investments by eligible Indian entities/ LLPs will be subject to the following conditions:
  - Indian entities/ LLP are required to notify RBI and FIFP of its downstream investment within 30 days of such investment/ capital contribution, even if capital instruments have not been allotted along with the modality of investment in new/ existing ventures (with/ without expansion programme).

- Downstream investment by way of induction of foreign investment in an Indian company is required to be duly supported by a resolution from the Board of Directors and share-holders agreement, if any.
- Issue/ transfer/ pricing/ valuation of shares will continue to be in accordance with extant SEBI/ RBI guidelines.
- For the purpose of downstream investment, the eligible Indian entities making the downstream investments have to bring in requisite funds from abroad and not leverage funds from the domestic market. This would, however, not preclude downstream companies/ LLPs, with operations from raising debt in the domestic market. Downstream investments through internal accruals are also permissible.

3.5 Specific conditions relating to the issue/ transfer of shares in certain situations

SR NO	CASE	CONDITIONS
1	Rights and Bonus Issue	FEMA provisions allow a person resident outside of India and with an investment in an Indian company to make investments in equity instruments (other than share warrants) issued by such company as rights issues or a bonus issues. However, such issuances are required to be in accordance with other applicable laws/ statutes such as the Companies Act, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (in case of listed companies), etc and subject to adherence to sectoral caps, if any. The shareholding in relation to which the rights or bonus issuance is made must have been acquired and held as per the provisions of the extant FEMA regulations. The rights offer to persons resident outside of India is: (a) in case of listed companies, at a price as determined by the company; (b) in case of unlisted companies, at a price which is not less than the price at which the rights offer is made to resident shareholders. (c) The aforementioned conditions shall also be applicable in case a person resident outside of India makes an investment in equity instruments (other than share warrants) issued by an Indian company as a rights issue that are renounced by the person to whom it was offered.
2	Acquisition of capital instruments during mergers/ demergers/ amalgamation of Indian companies	Mergers/ demergers/ amalgamations of Indian companies are usually governed by an order issued by a competent authority/ NCLT on the basis of the scheme submitted by the companies undergoing merger/ demerger/ amalgamation. Once the scheme of merger/ demerger /amalgamation of two or more Indian companies has been approved by a competent authority/ NCLT in India, the transferee company or new company is allowed to issue capital instruments to the existing shareholders of the transferor company resident outside of India, subject to the conditions that: (a) the transfer or issue is in compliance with the entry routes, sectoral caps or investment limits and the attendant conditionalities of investment by a person resident outside of India. In instances where it is likely to breach the sectoral caps or the attendant conditionalities, the transferor company or the transferee or new company may obtain necessary approval from the government. (b) the transferor company or the transferee or the new company is not engaged in activities which are prohibited under the FDI policy. Note: Government approval is not required in the case of mergers and acquisitions taking place in sectors falling under the automatic route. In a merger or amalgamation of two or more Indian companies or a reconstruction by way of demerger or otherwise of an Indian company - where any of the companies involved is listed on a Recognised Stock Exchange (RSE) in India - then all activities are required to be in compliance with the SEBI (Listing Obligation and Disclosure Requirement) Regulations, 2015.
3	Issue of non-convertible/redeemable bonus preference shares or debentures	Indian companies are allowed to issue non-convertible/redeemable preference shares or debentures to non-resident shareholders, including the depositories that act as trustees for the American Depository Receipt (ADR)/ Global Depository Receipt (GDR) holders, by way of distribution as bonus from its general reserves under a Scheme of Arrangement approved by the National Company Law Tribunal (NCLT)/Competent Authority in India under the provisions of the Companies Act, as applicable, subject to the following conditions namely: (a) The original investment made in the Indian company by the non-resident is in accordance with the extant FEMA Regulations.

		(b) The said issuance is in accordance with the provisions of the Companies Act, 2013 and the terms and conditions, if any, stipulated in the Scheme approved by the NCLT/Competent Authority have been complied with. (c) the Indian company is not engaged in activities/sectors wherein investments by non-residents are prohibited.
4	Share Swap	In case of investment by way of swap of capital instruments, irrespective of the amount, valuation of the capital instruments will have to be made by a Merchant Banker registered with SEBI or an Investment Banker outside of India registered with the appropriate regulatory authority in the host country. Approval of the government will also be a prerequisite for investment against any swap of capital instruments for sectors under the government approval route. Government approval is not required for investment in automatic route sectors in relation to a swap of capital instruments.
5	ESOPs/ Sweat Equity	An Indian company may issue ESOPs and/or sweat equity shares to its employees/directors or employees/directors of its holding company or JV or wholly owned overseas subsidiary/subsidiaries who are resident outside of India, provided that: (a) The scheme has been drawn up in line with regulations issued under the SEBI Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 or the Companies Act 2013. (b) The employee stock option plans (ESOPs)/ sweat equity shares issued to non-resident employees/directors under the applicable rules/regulations are in compliance with the sectoral cap applicable to the said company. (c) Issue of ESOPs/ sweat equity shares by a company where foreign investment is under the approval route requires prior approval from the government. (d) Issue of ESOPs/ sweat equity shares under the applicable rules/regulations to an employee/director who is a citizen of Bangladesh/Pakistan requires prior approval from the government. (e) The issuing company is required to provide the Regional Office concerned of the RBI - under whose jurisdiction the registered office of the company operates - a Form-ESOP within 30 days from the date of issue of employees' stock options or sweat equity shares.

4 COMPLIANCE – TAX AND REGULATORY

4.1 Basic Concepts

Scope of income

As per the provisions of section 5(2) of the Act, income of a non-resident is taxable in India, if the income is:

- Received in India; or
- Deemed to be received in India; or
- Accrues or arises in India; or
- Deemed to accrue or arise in India.
- Concept of assessment year (i.e. current financial year) and previous year

From an income tax perspective, previous year is the year in which a taxpayer earns an income, while assessment year is the year after in which the previous year's income is evaluated.

For example, if the previous year is from 01 April 2020 to 31 March 2021, then the assessment year for income earned during this period would begin on 01 April 2021 to 31 March 2022.

4.2 Tax Framework

Typically, the following types of income are earned in relation to FDIs in a previous year[12] in Indian securities:

- Income from securities including dividends and interest
- Capital gains/losses on transfer of securities

4.3 Taxation under the provisions of the Act

Dividend

Prior to 01 April 2020, recipients earning income through dividend declarations and distributions from an Indian company were exempt from tax under the provisions of the Act while the Indian company paying the dividend was subject to Dividend Distribution Tax ('DDT') at the specified rate.

On and from 01 April 2020, the provisions of the Act have been amended in respect to dividend income to provide that dividend declarations and distributions by an Indian company shall be taxable in the hands of the recipient of the dividends while the Indian company declaring or distributing the dividend shall not be subject to DDT. As per the provisions of section 115A of the Act, where the total income of a foreign company or any other non-corporate foreign entity includes any income in the nature of dividends, received inter alia, from an Indian company, such income shall be taxable at the rate of 20 per cent plus applicable surcharges and health and education cess (NB cess is a form of tax charged/levied over and above the base tax liability of a taxpayer. The term is a shortened form of "assess").

With effect from 01 April 2019, provisions have been inserted to levy surcharges on income of certain non-corporate assessees (other than partnership firms and co-operative societies) at the rate of 25 per cent and 37 per cent where the income of such assessees (other than specified capital gains) exceeds the prescribed threshold. However, as per the provisions of the Finance Act, 2020, the super-rich surcharge shall not be levied, in addition to the specified capital gains and income in the nature of dividend earned by, *inter alia*, FDI. The maximum surcharge leviable in such cases would be 15 per cent.

No deduction for any expenses shall be allowed from the dividend income where the dividend income is taxable on a gross basis.

[12] A previous year in India runs from 1 April to 31 March of the following calendar year.

Interest

Pursuant to provisions of section 115A of the Act, the total income of a foreign company or any other non-corporate foreign entity includes any income through, interest received, inter alia, from an Indian concern on debt incurred by it in foreign currency. Such income shall be taxable at the rate of 20 per cent (plus applicable surcharges and health and education tax). Non-qualifying interest income will be subject to tax at the rate of 40 per cent (plus applicable surcharges and health and education tax).

Interest payable in respect to loans obtained in foreign currency by issue of Rupee Denominated Bonds (RDB) shall be taxable at the rate of five per cent under the Act as per the provisions of section 115A and section 194LC of the Act.

Applicable Surcharge

<table>
<tr><th rowspan="2">TAXABLE INCOME
(IN INR)</th><th>NON-CORPORATE ASSESSEE (OTHER THAN FIRMS) (REFER NOTE BELOW)</th><th>FIRM</th><th>CORPORATE ASSESSEE</th></tr>
<tr><th>Surcharge (%)</th><th>Surcharge (%)</th><th>Surcharge (%)</th></tr>
<tr><td>Up to 5 million</td><td>Nil</td><td rowspan="2">Nil</td><td rowspan="2">Nil</td></tr>
<tr><td>5 million to 10 million</td><td>10%</td></tr>
<tr><td>10 million to 20 million</td><td>15%</td><td rowspan="4">12%</td><td rowspan="3">2%</td></tr>
<tr><td>20 million to 50 million</td><td>25%</td></tr>
<tr><td>50 million to 100 million</td><td rowspan="2">37%</td></tr>
<tr><td>> 100 million</td><td>5%</td></tr>
</table>

Note: The Finance Act, 2020 restricts the maximum rate of surcharge to 15 per cent in the case of income in the nature of capital gains on the transfer of listed securities and income in the nature of dividend earned by non-corporate assessees (other than firms).

Capital Gains

The taxability of capital gains earned by an FDI on transfer of Indian securities and derivatives broadly depends on:

- Type of security transferred
- The period for which the securities were held prior to their transfer

Holding Period

The gains/ losses are classified as short-term or long-term depending on the period of holding discussed below:

<table>
<tr><th>SR. NO.</th><th>SOURCE OF INCOME</th><th>PERIOD OF HOLDING</th><th>TYPE OF GAIN/ LOSS</th></tr>
<tr><td rowspan="2">1</td><td rowspan="2">Capital gains/ loss arising from the transfer of unlisted shares</td><td>24 months or less before date of sale</td><td>Short-term</td></tr>
<tr><td>More than 24 months before date of sale</td><td>Long-term</td></tr>
<tr><td rowspan="2">2</td><td rowspan="2">Capital gains/ loss arising from the transfer of listed equity shares/ other listed securities</td><td>12 months or less before date of sale</td><td>Short-term</td></tr>
<tr><td>More than 12 months before date of sale</td><td>Long-term</td></tr>
<tr><td rowspan="2">3</td><td rowspan="2">Capital gains/ loss arising from the transfer of securities other than those mentioned in point (1) and (2) above</td><td>36 months or less before date of sale</td><td>Short-term</td></tr>
<tr><td>More than 36 months before date of sale</td><td>Long-term</td></tr>
</table>

Tax Rates

Effective tax rates applicable to FDI entities on capital gains as provided under the Act for the income earned in respect of securities with effect from 01 April 2020 are as follows:

<table>
<tr><th colspan="2" rowspan="2">TYPE OF CAPITAL GAINS</th><th colspan="2">FOREIGN CORPORATE ENTITY</th><th colspan="4">NON-CORPORATE FDI ENTITY (OTHER THAN PARTNERSHIP FIRMS)</th><th>NON-CORPORATE FDI ENTITY (PARTNERSHIP FIRMS)</th></tr>
<tr><th>Total income exceeds INR 10 million but not INR 100 million</th><th>Total income exceeds INR 100 million</th><th>Total income exceeds INR 5 million but not INR 10 million</th><th>Total income exceeds INR 10 million but not INR 20 million</th><th>Total income exceeds INR 20 million but not INR 50 million</th><th>Total income exceeds INR 50 million</th><th>Total income exceeds INR 10 million</th></tr>
<tr><td rowspan="2">Capital gains on transfer of unlisted shares[13] or listed equity shares where STT is not paid</td><td>Long-term</td><td>10.608%</td><td>10.920%</td><td>11.440%</td><td>11.960%</td><td>13.000%</td><td>14.248%</td><td>11.648%</td></tr>
<tr><td>Short-term</td><td>42.432%</td><td>43.680%</td><td>34.320%</td><td>35.880%</td><td>39.000%</td><td>42.744%</td><td>34.944%</td></tr>
<tr><td rowspan="2">Capital gains[14] on transfer of listed equity shares/ IDRs (STT is paid)</td><td>Long-term</td><td>10.608%</td><td>10.920%</td><td>11.440%</td><td>11.960%</td><td>11.960%</td><td>11.960%</td><td>11.648%</td></tr>
<tr><td>Short-term</td><td>15.912%</td><td>16.380%</td><td>17.160%</td><td>17.940%</td><td>17.940%</td><td>17.940%</td><td>17.472%</td></tr>
<tr><td rowspan="2">Capital gains on transfer of debt securities (listed or unlisted)</td><td>Long-term</td><td>10.608%</td><td>10.920%</td><td>11.440%</td><td>11.960%</td><td>13.000%</td><td>14.248%</td><td>11.648%</td></tr>
<tr><td>Short-term</td><td>42.432%</td><td>43.680%</td><td>34.320%</td><td>35.880%</td><td>39.000%</td><td>42.744%</td><td>34.944%</td></tr>
</table>

Securities Transaction Tax (STT)

Securities transacted on an RSE in India are subject to STT levied as follows:

TRANSACTION	RATES	PAYABLE BY
Purchase and sale of equity shares on the RSE	0.100%	Purchaser/Seller
Sale/ redemption of units of equity oriented mutual fund	0.001%	Seller
Transfer of securities on a RSE in IFSC	NIL	NA

No STT is payable on transactions in debt securities.

[13] The Act provides for foreign exchange fluctuation protection to a non-residents, on short-term gains arising on transfer of shares or debentures.

[14] *Inter-se* set-off of capital gains and losses allowed subject to rules, carry forward of losses allowed up to 8 years.

4.4 Taxation under the provisions of DTAA

Where the local authorities have entered into an agreement with a government of any other country for avoidance of double taxation (DTAA), then in relation to a taxpayer to whom such agreement applies, provisions of the more beneficial DTAA will override the provisions of the Act.

In order to avail beneficial provisions of the DTAA, the FDI entity will have to obtain a Tax Residency Certificate (TRC) confirming its tax residency under the DTAA from the home country tax authorities and maintain a self-declaration (in Form 10F) in case the TRC does not contain the prescribed particulars.

We have tabulated below the treaty provisions of the countries from which significant investment is made into India:

PARTICULARS	SINGAPORE*	MAURITIUS*	JAPAN	NETHERLANDS	USA*
Capital gains (Article 13 of the respective tax treaties)	As per Article 13 of the India-Singapore tax treaty, capital gains on equity shares acquired prior to 01 April 2017 are exempt and equity shares acquired post the aforementioned period are taxable as per the provisions of the domestic tax law (for rates please refer to the table above) Capital gains on any other security (except equity shares) is exempt from tax in India.	As per Article 13 of the India-Mauritius tax treaty, capital gains on equity shares acquired prior to 01 April 2017 are exempt and equity shares acquired post 01 April 2017 are taxable as per the provisions of the domestic tax law (for rates please refer to the table above) Capital gains on any other security (except equity shares) is exempt from tax in India.	As per Article 13 of the India-Japan tax treaty, capital gains on transfer of shares is taxable as per the provisions of the domestic tax law (for rates please refer to the table above) Capital gains on any other security (except equity shares) is exempt from tax in India.	As per Article 13 of the India-Netherlands tax treaty , capital gains from the transfer of shares of a company where the seller holds at least 10 % of the shares are taxable as per the provisions of the domestic tax law (for rates please refer to the table above) Capital gains on any other security (except equity shares) is exempt from tax in India.	As per Article 13 of the India-USA tax treaty, capital gains from the transfer of shares and securities is taxable as per the provisions of the domestic tax law (for rates please refer to the table above)
Dividend (Article 10 of respective tax treaties)	Dividend income is taxable at the following rates: 1) 10%[15] 2) In cases other than (1) above, 15%	Dividend income is taxable in India at the following rates: 1) 5%[16] 2) In cases other than (1) above, 15%	Tax rate for dividend income shall not exceed 10% subject to satisfaction of beneficial ownership condition	Tax rate for dividend income shall not exceed 10% subject to satisfaction of beneficial ownership condition	Dividend income is taxable at the following rates: 1) 15%[17] 2) In cases other than (1) above, 25%
Interest	Interest income is taxable at the following rates:	The tax rate for interest income shall not exceed 10% subject to	The tax rate for interest income shall not exceed 10% subject to	The tax rate for interest income shall not exceed 10% subject to	Interest income is taxable in India at following rates:

[15] Dividend shall be taxable at the rate of 10 per cent if the beneficial owner of the dividend is a company holding a tleast 25 per cent of the capital of the company paying the dividend

[16] Dividend shall be taxable at the rate of 5 per cent if the beneficial owner of the dividend is a company holding atleast 10 per cent of the capital of the company paying the dividend

[17] Dividend shall be taxable at the rate of 15 per cent if the beneficial owner of the dividend is a company holding atleast 10 per cent of the voting stock of the company paying the dividend

(Article 11 of the respective tax treaties)	**1) 10%[18]** **2) In cases other than (1) above, 15%**	**satisfaction of beneficial ownership condition**	**satisfaction of beneficial ownership condition**	**satisfaction of beneficial ownership condition**	**1) 10%[19]** **2) In cases other than (1) above, 15%**

*The benefits under the DTAA may be subject to the limitation of benefits (LOB) article contained in the relevant DTAA. Where the conditions mentioned under the LOB are not satisfied, benefits under the treaty may be denied.

Signing of the Multilateral Convention:

The Indian Finance Minister signed the Multilateral Convention to implement tax treaty related measures to prevent base erosion and profit shifting on 07 June 2017. Some 88 countries have signed the Convention so far and more are expected to follow.

The Convention allows jurisdictions to swiftly implement measures to strengthen existing tax treaties to protect governments against tax avoidance strategies that inappropriately use tax treaties to artificially shift profits to low or no-tax locations.

The measures are intended to put an end to treaty abuse and treaty shopping by transposing jurisdictions' existing tax treaty commitments to minimally include in their tax treaties tools to ensure these treaties are used in accordance with their intended objective and purpose.

One of the minimum international tax standards applicable to countries who are signatories to the Convention is the Principal Purpose Test (PPT). The PPT is an anti-abuse rule based on the principal purposes of the transaction or arrangements. The PPT provides a general way to address cases of treaty-abuse including treaty-shopping.

The PPT provisions establish that a tax authority may deny the benefits of a tax treaty where it is reasonable to conclude that having considered all the relevant facts and circumstances, one of the principal purposes of the arrangement or the transaction was to obtain the benefits of the tax treaty.

The convention will operate to modify tax treaties between two or more parties to the Convention. It will not function in the same way as an amending protocol to a single existing treaty, which would directly amend the text of the covered tax agreement. Instead, it will be applied alongside existing tax treaties, modifying their application in order to implement the Base erosion and profit shifting (BEPS) measures.

General anti-avoidance rule (GAAR)

GAAR provisions were introduced in the Act and have been effective since 01 April 2017[20]. According to the Act, GAAR applies to any arrangement where the main purpose is to obtain tax benefits. In its present shape, GAAR has the power to override DTAAs (i.e. where the arrangement qualifies as an impermissible arrangement, treaty benefits could be denied).

4.5 Other points for consideration

Indirect Transfer

Indirect transfer provisions were introduced in the Act by the Finance Act, 2012 to clarify that an asset (e.g. share or interest in a company or entity registered or incorporated outside India) shall be deemed to be situated in India, if the share or interest derives its value (directly or indirectly) substantially from assets situated in India. Hence, transfer of such a capital asset will be liable to tax in India.

The indirect transfer provisions shall apply only where the value of the share or interest in a company or entity registered or incorporated outside India as on a specified date exceeds INR 100 Million and represents at least 50 per cent of the value of all the assets owned by the company or entity.

Further, the indirect transfer provisions shall not apply to shareholders not holding the right of management or control of the company or entity registered or incorporated outside India or those holding less than 5 per cent of the total voting

[18] Interest shall be taxable at the rate of 10 per cent if the interest is paid on a loan granted by a bank carrying on a bona fide banking business or by a similar financial institution (including an insurance company)

[19] Interest shall be taxable at the rate of 10 per cent if the interest is paid on a loan granted by a bank carrying on a bona fide banking business or by a similar financial institution (including an insurance company)

[20] Investments up to 31 March 2017 are grandfathered from the applicability of GAAR.

power/ share capital/ interest in the company or entity. Additionally, Category I FPIs are also exempt from the indirect transfer provisions.

Minimum Alternative Tax (MAT)

Pursuant to provisions of section 115JB of the Act, if the tax payable by a taxpayer on the total income computed as per the provisions of the Act is less than 15 per cent of its 'book profit', then notwithstanding anything contained in any other provision of the Act, the 'book profit' shall be deemed to be the total income of the taxpayer and the amount of tax payable shall be 15 per cent (plus applicable surcharges and health and education cess) on such total income.

It may be noted that the provisions of MAT shall not be applicable and shall be deemed never to have been applicable to a foreign company, if:

- The foreign company is a resident of a country or a specified territory with which India has entered into a treaty with and the foreign company does not have a PE in India in accordance with the provisions of the treaty; or
- The foreign company is a resident of a country with which India does not have a treaty and the foreign company is not required to seek registration under any law.

Accordingly, MAT should not ordinarily apply to FDI entities.

Withholding Tax

Section 195 of the Act casts an obligation to withhold taxes at source on a person responsible for making a payment to a non-resident where such payment is chargeable to tax in India under the provisions of the Act. Given the above, where any capital gains arise on transfer of shares, the buyer would be required to withhold tax at the rates prescribed above (subject to treaty relief, if any).

4.6 Key Tax compliances

Permanent Account Number (PAN)

To obtain a PAN, an application is required to be filed in Form 49AA with the Indian authorities along with the documentary evidence for identity and address of the applicant.

Payment of taxes on income earned in India

A taxpayer is required to estimate their tax liability for a financial year and discharge the same by way of 'advance tax' on the due dates prescribed (mentioned below):

DUE DATE OF TAX PAYMENT	AMOUNT OF TAX LIABILITY TO BE DISCHARGED BY A TAXPAYER
15 June	15%
15 September	45%
15 December	75%
15 March	100%

Delay/ deferment in deposit of advance tax has interest/ penalty implications

Filing of annual income-tax return

Income earned by the FDI entity in India is required to be reported in an annual income-tax return to be filed with the Central Board of Direct Taxation (CBDT) as per the following schedule:

TAXPAYER	FILING DATE
Non-corporate taxpayer	Before 31 July following the financial year*
Corporate taxpayer	Before 31 October following the financial year*

** Extended to 30 November, following the financial year where transfer pricing (TP) provisions apply to the taxpayer.*

Income tax returns may be subjected to scrutiny proceedings.

Withholding tax/ compliance for remittance of proceeds outside India

Section 195(6) of the Act and Rule 37BB of the Rules stipulates that the person making the payment (i.e. the remitter) to a non-resident (i.e. recipient) of any sum (whether or not chargeable to tax in India) is required to supply electronically the information relating to the said payment in Form 15CA (Self-Declaration) to the IRA based on a certificate from a CA in Form 15CB.

Transfer Pricing

The Act prescribes for the applicability of TP provisions on international transactions between associated enterprises. Such transactions between related parties and certain transactions with non-residents will have to be reported to the Indian Revenue Authorities (IRA) in the prescribed Form 3CEB. Further, a master file and a local file must be maintained as TP documentation to substantiate the international transaction between related parties.

Master file

The Master File is a document which contains high level information about the global business operations and TP policy of a group as a whole. The Master File will usually include standardised information about the group's organisational structure; significant value drivers; main geographical locations; description of the business activities of members of the group (i.e. products, services, supply chain etc.); information about the group's intangibles; financing activities within the group (including external funding); and financial and tax positions of the group.

Local File

The Local File is meant to support the Master File. The local file relates to a specific taxpayer in a specific country. This is usually a single legal entity. The local file is intended to deliver a more detailed overview of the related party transactions that are entered into by a specific taxpayer and the comparison of the TP policies with the actual (financial) result.

The information provided in the Local File would typically supplement the information in the Master File and would include a detailed description of; the management structure of the local entity; related party transactions entered in the year; copies of related material intercompany agreements concluded by the local entity; application of TP methodology; and financial information of the local entity.

Reporting of Specified Financial Transaction (SFT)

Under the Act, specified persons are required to report details of SFT (Rule 114E of the Rules prescribes Form 61A for reporting SFT). The specified person includes a company issuing shares or bonds or debentures and specified financial transaction include, inter alia, receipt from any person of an amount of INR 1 million or more in a financial year for acquiring shares or INR 1 million or more in a financial year for acquiring the bonds or debentures. The reporting of SFT is also required by the Indian company in case of an indirect transfer (discussed in Para 4.5 above).

Reporting requirement in case of indirect transfer

For the purpose of determining the amount of income chargeable to tax in India on transfer of shares of the company or entity registered or incorporated outside India, the information and documents as prescribed under the Act (Rule 114DB of the Rules prescribes Form 49D) must be supplied to the income tax authority.

Application for lower/ NIL withholding certificate

An application can be made to the IRA under the Act for the purpose of issuing a certificate to the effect that the taxes, if any, be deducted on the income of a person at a rate lower than the rate prescribed under the Act or at a NIL rate. An application is required to be made in the manner prescribed under the Act and fulfilment of specified conditions.

The compliances discussed above are not an exhaustive list of the obligations required to be undertaken and there may be additional compliance required under the provisions of the Act.

Regulatory reporting requirements under FDI[21]

Form Foreign Currency-Gross Provisional Return (FC-GPR)

The Indian Company when issuing equity instruments to a person resident outside India is required to report using Form FC-GPR within 30 days of issuance.

Annual Return on foreign liabilities and assets (FLA)

An Indian company which has received FDI or an LLP which has received investment by way of capital contribution in the previous year(s) including the current year, is required to submit form FLA to the RBI on or before the 15th July of each year.

Form Foreign Currency- Transfer of Shares (FC-TRS)

Reporting of transfer of equity instruments in accordance with FEMA (Non-debt Instruments) Rules, 2019 is required to be done in Form FC-TRS between:

A. a person resident outside India holding equity instruments in an Indian company on a repatriable basis and a person resident outside India holding equity instruments on a non-repatriable basis; and

B. a person resident outside India holding equity instruments in an Indian company on a repatriable basis and a person resident in India.

Form FC-TRS must be submitted to the AD bank within 60 days from the date of the transfer of equity instruments or receipt/ remittance of funds or whichever is earlier. The onus to report will be on the transferor/ transferee, resident in India or the person resident outside India holding equity instruments on a non-repatriable basis.

Compliance in relation to allotment of equity instruments

- Equity instruments are required to be issued to the person resident outside India making such FDI within 60 days from the date of receipt.
- In case of partly paid equity shares, a period of 60 days is required from the date of receipt of each call payment.
- Where the capital instruments are not issued within 60 days from the date of receipt, the same amount must be refunded to the person concerned by outward remittance through banking channels or by credit to the relevant NRE/ FCNR (B) accounts within a period of 15 days from the date of completion.

Compliance for downstream investment

An Indian company making downstream investments in another Indian company - which is considered as indirect foreign investment for the investee company under FDI Regulations - is required to notify the Secretariat for Industrial Assistance, DPIIT and file Form DI within 30 days from the date of the allotment of equity instruments.

[21] FEMA (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019

Form LLP (I) and Form LLP (II)

A limited liability partnership (LLP) is required to make certain additional compliances by reporting a Form LLP (I) and Form LLP (II). An LLP receiving a capital contribution and an acquisition of profit shares is required to file Form LLP (I), within 30 days of the date of receipt of the amount of consideration. The disinvestment / transfer of capital contributions or profit shares between a resident and a non-resident (or vice versa) is required to be filed in Form LLP(II) within 60 days from the date of the receipt of funds. The onus of reporting is on the resident transferor/transferee.

Form convertible notes

The Indian start-up company issuing convertible notes (CN) to a person resident outside India is required to file Form CN within 30 days of such issue. A person resident in India, who may be a transferor or transferee of convertible notes issued by an Indian start-up company is required to report such transfers to or from a person resident outside India in Form CN within 30 days of the transfer.


JASWANT THADA CENOTAPH COMPLEX – JODHPUR

FOREIGN PORTFOLIO INVESTMENT ROUTE

PART B: FOREIGN PORTFOLIO INVESTMENT ROUTE

5 FOREIGN PORTFOLIO INVESTMENT – INTRODUCTION

5.1 Introduction

SEBI was established as a statutory body in 1992 to protect the interests of investors in securities and to promote the development of and to regulate the local securities market. SEBI introduced the first set of regulations known as SEBI (FII) Regulations, 1992 to oversee portfolio investments in Indian capital markets. Investors were defined as FIIs under these regulations.

To facilitate ease of business and attract more foreign investments in India, these regulations were replaced by SEBI (FPI) Regulations, 2014. By the virtue of these new regulations, FIIs were defined as FPIs and the regulations were referred to as SEBI (FPI) Regulations, 2014. SEBI also extended certain administrative powers to DDPs to facilitate registration of FPIs.

In order to provide more clarity and transparency, a new set of regulations were introduced by SEBI in September 2019 replacing the existing regulations. All investments made by FPIs in India are now governed by FPI Regulations with effect from 23 September 2019.

In November 2019, SEBI developed operational guidelines (OG) for FPIs and DDPs to facilitate the implementation of FPI Regulations. With the issue of these OGs, the existing circulars, frequently asked questions and other guidance issued by SEBI on the subject were withdrawn.

As a result, this portfolio investment route has become the most sought-after for foreign investment in India. Presently, over 10,000 FPIs are registered with the SEBI. The total cumulative investment by FPIs (at the acquisition cost) increased by 7.8 per cent to USD 259.5 billion as on 31 December 2019 from USD 240.1 billion as on 31 December 2018[22].

[22] Economic Survey of India 2019-20- Volume II page 145

6 FOREIGN PORTFOLIO INVESTOR (FPI) - OVERVIEW

6.1 Who is eligible to make investments via the FPI route?

To obtain a registration as an FPI, an applicant has to satisfy the following conditions:

- Applicant should not be a RI23, NRI24 or an Overseas Citizen of India (OCI25). NRIs or OCIs may be constituents of the applicant subject to satisfaction of prescribed conditions.
- Applicant should be a resident of a country whose securities market regulator is a signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding (MMOU)26 or a signatory to the BMOU27 (the above condition would not apply in the case of an applicant being a Government or Government related investor).
- Applicant may be a banking company in a country whose central bank is a member of the Bank for International Settlements (BIS). However, central banks of countries are not required to be members of BIS28 to be eligible for FPI registration.
- The applicant or its underlying investors comprise 25 per cent or more in the corpus of the applicant or identified on the basis of control. Applicants cannot be on a UN Security Council Sanctions list. The Applicant should not be a resident in a country identified by Financial Action Task Force (FATF)29 as being –
  - a jurisdiction with inadequate Anti-Money Laundering or Combating the Financing of Terrorism counter measures; or
  - a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the FATF to address these deficiencies.
- The applicant should meet the 'fit and proper'30 criteria specified in SEBI (Intermediaries) Regulations, 2008
- Any other criteria as may be specified by the SEBI from time to time

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[23] The term RI shall have the meaning assigned to 'person resident in India' under FEMA which means:

i. a person residing in India for more than 182 days during the course of the preceding financial year but does not include –
   A. a person who has gone out of India or who stays outside India, in either case –
      - for or on taking up employment outside India, or
      - for carrying on outside India a business or vocation outside India, or
      - for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
   B. a person who has come to or stays in India, in either case, otherwise than –
      - for or on taking up employment in India, or
      - for carrying on in India a business or vocation in India, or
      - for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

ii. any person or body corporate registered or incorporated in India,

iii. an office, branch or agency in India owned or controlled by a person resident outside India,

iv. an office, branch or agency outside India owned or controlled by a person resident in India.

[24] The term 'NRI' has been defined as per the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 to mean an individual resident outside India who is a citizen of India.

[25]The term 'OCI' has been defined as per the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 to mean an individual resident outside India who is registered as an OCI Cardholder under Citizenship Act, 1955.

[26] List of the current signatories to IOSCO's MMOU is available at https://www.iosco.org/about/?subSection=mmou&subSection1=signatories

27 List of the current signatories to BMOU is available at https://www.sebi.gov.in/sebi_data/internationalAffr/IA_BilMoU.html

[28] List of the countries whose central bank is a member of BIS is available at https://www.bis.org/about/member

[29] List of the countries that are listed in the public statement issued by FATF is available at http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions

[30] An FPI shall be deemed as a 'fit and proper' after taking into following criteria in relation to the applicant, the principal officer and the key management persons:

- integrity, reputation and character;
- absence of convictions and restraint orders;
- competence including financial solvency and networth.

6.2 Types of FPIs in India

An applicant seeking registration as an FPI may apply in one of the categories indicated below. As per the FPI Regulations, FPIs can be categorised as Category I or Category II FPIs:

SR NO	CATEGORY I	CATEGORY II
1	Government and related investors[31]	Appropriately regulated funds not eligible as Category I FPI
2	Pension funds and university funds	Endowments and foundations, charitable organisations, corporate bodies, family offices, individuals
3	Appropriately regulated entities[32] such as insurance/ reinsurance entities, banks, asset management companies, investment manager, investment advisor, portfolio managers, broker dealers and swap dealers	Appropriately regulated entities investing on behalf of the client (private banks, etc)
4	Entities from FATF member countries[33]	Unregulated funds such as limited partnerships, trusts
5	Entities whose investment manager is from a FATF member country and registered as a category I FPI; or entities which are at least 75 per cent owned, directly or indirectly, by entities from FATF member countries eligible under second, third and fourth category mentioned above[34].	

6.3 Process of obtaining a registration as an FPI

- The SEBI has introduced a common application form (CAF)[35] for FPI registration, allotment of PAN (tax identification number) and KYC for opening a bank and demat[36] account.
- The CAF has six sections, which are as under:
  - Part A: KYC Information
  - Part B: FPI Registration number
  - Part C: Information for obtaining PAN
  - Part D: Depository and Bank account opening
  - Part E: Declaration and Undertaking
  - Part F: Documents uploading

  The annexure to the CAF has the following four sections:
  - Declaration and undertaking
  - Additional information

[31] Central banks, sovereign wealth funds, international or multilateral organizations or agencies and entities controlled or at least 75 per cent , directly or indirectly, owned by the Government and its related investors

[32] 'Appropriately regulated' means an applicant that means an entity which is regulated by the securities market regulator or the banking regulator of the home jurisdiction.

[33] Appropriately regulated funds, unregulated funds whose Investment Manager is appropriately regulated and registered as a Category I FPI provided the Investment Manager provides an undertaking of it being responsible for all acts of such unregulated fund and university related endowments which are in existence for more than five years

[34] The Investment Manager or entities mentioned under category no 2, 3 and 4 above are required to provide an undertaking of it being responsible for all the acts of commission or omission of the applicants seeking FPI registration.

[35] Circular No IMD/FPI&C/P/2020/022 dated 4 February 2020

[36] A Demat account (short for Dematerialized account) is an account to hold financial securities (equity or debt) in electronic form. In India, Demat accounts are maintained by two depository organisations, National Securities Depository Limited and Central Depository Services Limited.

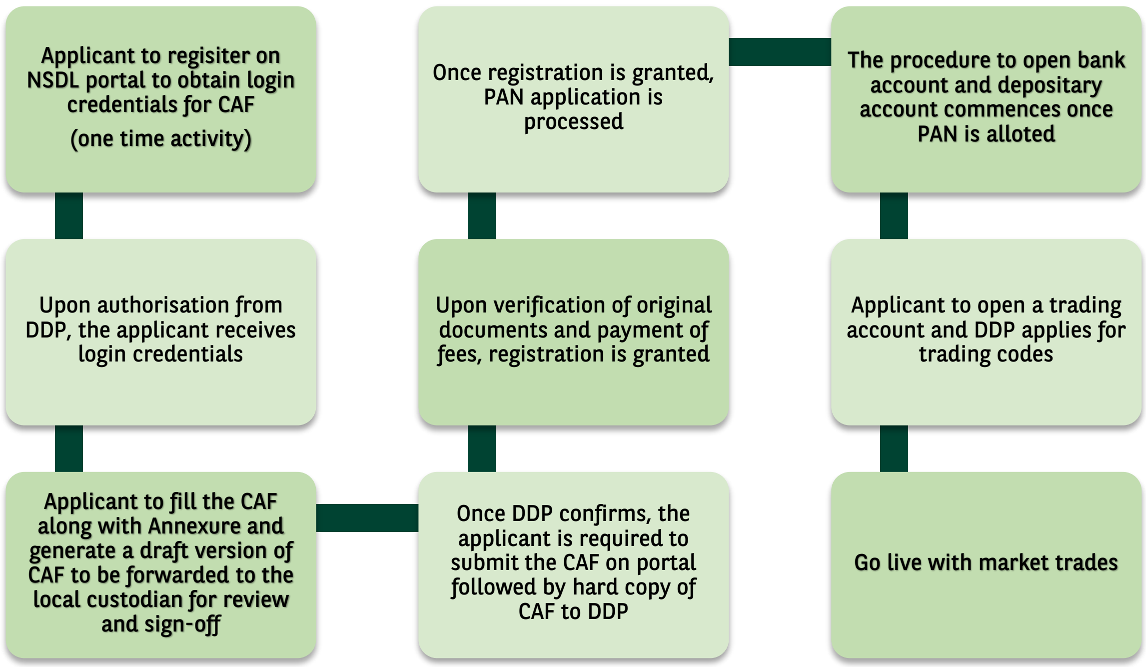
- Undertaking from the investment manager
- Undertaking from eligible category I entity

- Applicants seeking registration will need to fill the CAF and the annexure to the CAF.
- Applications for grant of registration can be made to the Designated Depository Participants (DDP) along with the applicable fees, which are as follows:

SR NO	CATEGORY OF INVESTORS	SEBI FEES CURRENTLY PRESCRIBED PAYABLE FOR EVERY THREE YEARS
1	Category I	USD 3000
2	Category II	USD 300

- Operational guidelines for the granting of registration to an FPI (through the DDP) have been issued by SEBI.
- As per the applicable guidelines, the DDP would consider an application for registration if the applicant satisfies the prescribed eligibility criteria (discussed in Para 6.1.).
- Where the application form is incomplete, or lacks clarity, the applicant would be advised by the DDP to clarify or add the information within a reasonable time.
- Specific guidance has been provided in the FPI regulations with respect to specific entities such as banks/ banking subsidiaries, insurance/ reinsurance entities, pension funds, appropriately regulated entities investing on behalf of their clients, applicants established or incorporated in IFSCs and for Multiple Investment Managers (MIM) structures.
- A certificate of registration granted to an FPI is permanent unless suspended or cancelled by SEBI or surrendered by the FPI subject to payment of fees.
- Registration is generally granted within 30 days of application.
- FPIs must designate a bank (regarded as an AD), a broker and a custodian in India like BNP Paribas Securities Services to route all their investment transactions in the country. They are permitted to freely repatriate their capital after discharge of appropriate Indian income-taxes on their income/ gains. An FPI can commence investing in India by remitting money from outside India to the bank account opened in India and then placing an order with a broker.
- In addition to the above, we have listed below the documents that are required for registration
  - Ultimate beneficial owner information
  - Constitution documents i.e. Memorandum of Association and Articles of Association, prospectus, etc.
  - Prospectus/offering memorandum of the Fund (in case of funds)
  - KYC document as per category of applicant (for detailed discussion refer Para 8)
  - Documentary evidence stating that the applicant can invest outside its country of jurisdiction
  - Any other document, if prescribed by the SEBI.

Diagram illustrating the registration process



6.4 Types of instruments in which investments can be made under the FPI route

Subject to prescribed terms and conditions, FPIs can generally invest in the following instruments:

SR NO.	INSTRUMENT TYPE	PERMISSIBLE
1	**DEBT INSTRUMENTS**	
	Government securities (including coupons on existing Government securities) (**Note 1**)	Yes
	Treasury bills	Yes
	Listed and Unlisted bonds/ NCDs[36] (**Note 2**)	Yes
	Commercial papers	Yes[37]
	Rupee denominated bonds (RDBs)	Yes
	Credit enhanced bonds	Yes
	Securitised debt instruments[38]	Yes
	Partly paid debt instruments	No
	Municipal debt instruments	Yes
	Debt instruments issued by banks (eligible for inclusion in regulatory capital)	Yes

[36] Including NCDs/ Bonds which are under default, privately placed bonds, and those issued by Infrastructure Finance Companies.

[37] FPIs have been permitted to invest in Commercial Papers vide Foreign Exchange Management (Debt Instruments) Regulations 2019 notified on 17 October 2019.

[38] Including any certificate or instrument issued by a special purpose vehicle set up for securitisation of asset/s with banks, Financial Institutions or Non-banking finance companies as originators;

	Listed non-convertible/ redeemable preference shares or debentures (subject to prescribed conditions)	Yes[39]
2	**EQUITY INSTRUMENTS**	
	Listed equity shares/ (to be listed equity shares)	Yes
	Listed Compulsorily Convertible Preference Shares (CCPS)	Yes
	Listed Compulsorily Convertible Debentures (CCDs)	Yes
	Warrants	Yes
	Partly paid equity shares	Yes[40]
3	**DERIVATIVE INSTRUMENTS**	
	Exchange traded derivatives (approved by SEBI) [including equity/ index derivatives]	Yes
	Overnight index swaps/ Interest rate swaps	Yes[41]
4	**OTHERS**	
	Units of equity-oriented MF	Yes
	Units of debt-oriented MF	Yes
	Liquid and money market MF schemes	No
	Exchange traded funds (investing less than or equal to 50 per cent in equity)	Yes
	Units of infrastructure debt funds	Yes
	Units of Real Estate Investment Trusts (REIT), Infrastructure Investment Trusts (InvIT) (classified as Hybrid securities) and Category III AIF	Yes
	Security Receipts issued by ARCs	Yes
	Indian Depository Receipt (IDRs)	Yes
	Bonus non-convertible/ redeemable preference shares or debentures subject to prescribed conditions	Yes
	Securities lending and borrowing (SLB) (**Note 3**)	Yes
	Capital contribution in an LLP	No

Note 1 - FPI investments in Government securities /Treasury bills/State Development Loans without any minimum residual maturity requirement should not exceed 30 per cent of the total investment of the FPI in that category[42]. The requirement that these short-term investments should not exceed 30 per cent of total investment by an FPI in that category applies on an end-of-day basis.

Note 2 - FPIs are permitted to invest in corporate bonds with minimum residual maturity of above one year. The requirement that these short-term investments should not exceed 30 per cent of total investment by an FPI in that category applies on an end-of-day basis. However, these restrictions would not apply to the following securities:

a. Security receipts and debt instruments issued by ARCs; and

b. Debt instruments issued by an entity under the corporate insolvency resolution process as per the resolution plan approved by the NCLT under the Insolvency and Bankruptcy Code, 2016

[39] Issued pursuant to an approved Scheme of Arrangement

[40] Partly paid shares that have been issued to a person resident outside India are required to be fully called-up within twelve months of such issue or as may be specified by the Reserve Bank from time to time. Twenty- five per cent of the total consideration amount (including share premium, if any) are required to be received upfront.

[41] Notification No. FMRD.DIRD.14/2019 issued by RBI

[42] RBI/2017-18/199 A.P. (DIR Series) Circular No. 31 dated 15 June 2018 (updated upto 23 January 2020).

Note 3 - The SLB scheme was introduced by SEBI for market participants in 2007 and has been operational since 21 April 2008. SEBI Circular dated 20 December 2007, outlines the broad mechanisms for the SLB Scheme under the overall framework of the Securities Lending Scheme, 1997.

Note 4: FPIs are not allowed to short sell in the Indian market except when permitted under the SLB framework or any other framework specified by the Board. Further, sales against open purchases are not permitted for FPIs. However, FPIs can sell such securities only after their settlement.

6.5 Other key investment avenues for FPIs[43]

Fully Accessible Route

The Reserve Bank, in consultation with the Indian government, has introduced a separate channel called the 'Fully Accessible Route' (FAR), to enable non-residents to invest in specified local dated securities. Eligible investors can invest in specified government securities without being subject to any investment ceilings. FPIs qualify as eligible investors for making investments under this route.

Voluntary Retention Route

The RBI, in consultation with the government and SEBI has introduced a separate channel called the Voluntary Retention Route ('VRR'), to enable FPIs to invest in domestic debt markets. Broadly, investments through this route will be free from the macro-prudential and other regulatory norms applicable to FPI investments in debt markets, provided FPIs voluntarily commit to retain a required minimum percentage of their investments in India for a period. Participation through this route will be entirely voluntary.

The objective of the VRR is to attract long-term and stable FPI investments into debt markets while providing FPIs with the operational flexibility to manage their investments.

International Financial Services Centre (IFSC)

An IFSC is a jurisdiction that provides financial services to non-residents and residents, to the extent permissible under the current regulation in any currency except Indian Rupee.

Gujarat International Finance Tec-City (GIFT City), the only place in India which is designated as an IFSC, is a central business hub with state-of-the art infrastructure and is a first of its kind development in India. An FPI incorporated or established in IFSC would be deemed to be appropriately regulated.

For better clarity and understanding, we have separately discussed the compliances/taxability relating to investment in IFSC in **Part C** of this guide.

Key points for consideration

1. **Can an entity with an FDI investment also register and make investments as an FPI**? Yes (subject to investment cap and sectoral limits). While all companies wishing to act as FPIs need to register, no separate registration is required for FDI investment.
2. **Can an entity with an FVCI registration also register and make investments as an FPI**? Yes (subject to satisfaction of prescribed conditions). The entity will be required to obtain a separate registration as an FVCI.
3. **Re-categorisation of the existing FPIs in the new regime:**

We have explained below the re-categorisation of existing FPIs and processing of in-transit FPI applicants

OLD CATEGORY OF FPIs	NEW DEEMED CATEGORY OF FPIs
Category I	**Category I**
Category III	**Category II**
Category II	**Categorisation would depend upon eligibility criteria met**

Re-categorisation of registration is carried out by the National Securities Depository Limited (NSDL) in consultation with DDPs. No incremental fees are payable during this process.

[43] Refer Para 7.2 and 7.3 for detailed discussion on VRR and FAR respectively.

7 INVESTMENT INSTRUMENTS AND LIMITS

7.1 Investment limits

FPIs can invest in debt or equity securities in India, and there is no restriction on the allocation of investment between debt and equity securities. An FPI proposing to invest in debt securities is, however, required to comply with the allocation limits, which are outlined in circulars issued by SEBI/RBI. In addition, equity investments are also subject to certain limits imposed under the FPI regulations.

FPI Investment Limits for equity instruments:

Individual limit

Subject to the overall aggregate limits, the total purchase made by an FPI should be less than 10 per cent of the total paid-up equity capital of the company on a fully diluted basis[44] or less than 10 per cent of the paid-up value of each series of debentures or preference shares or share warrants issued by an Indian company.

Various clarifications have been provided on the issue of clubbing investment limits for investments made by foreign governments and related entities like central banks, sovereign wealth funds and foreign government agencies registered as FPIs.

Sectoral limit

Where there is a composite sectoral cap under the FDI policy, limits for overall FPI investment should be within such overall FDI sectoral caps. FDI/ FPI in almost all sectors is permitted. However, it is recommended that you seek confirmation on respective investment limits.

Aggregate Limit

Prior to 01 April 2020, the aggregate FPI investment limit in any Indian company was 24 per cent of the total capital of that company.

Beginning 01 April 2020, the aggregate limit for an FPI is based on the sectoral caps applicable to Indian companies with respect to FDI investments

However, these limits may be decreased by Indian companies to a lower threshold if a resolution is passed by a Board of Directors, followed by a special resolution by a General Body. Once the aggregate limit has been increased to a higher threshold, the Indian company cannot then reduce the limit to a lower threshold. Further, the aggregate limit with respect to an Indian company in a sector where FDI is prohibited is set at 24 per cent.

FPI Investment Limits for debt instruments:

a) Foreign investment limits in Government securities and State Development Loans (as on 30 March 2020).

The revised limits for FPI Investments in Government securities and State Development Loans for the financial year 2020-21 has not been announced yet so the following current limits will apply:

SR NO	INSTRUMENT TYPE – GOVERNMENT SECURITIES	AMOUNT (INR IN MILLION)
1	Government Securities (General)	2,461,000
2	Central Government Securities (Long term)	1,151,000
3	State Development Loans (General)	612,000
4	State Development Loans (Long term)	71,000

[44] 'Fully diluted basis' means the total number of shares that would be outstanding if all possible sources of conversions are exercised.

b) Foreign investment limits in corporate bonds (as on 30 March 2020).

The limit for FPI Investments in corporate bonds are as follows:

SR NO	INSTRUMENT TYPE - CORPORATE BONDS	AMOUNT (INR IN MILLION)
1	Exisiting FPI limit	3,170,000
2	Revised Limit for half year ending April 2020 to September 2020	4,292,440
3	Revised Limit for half year ending September 2020 to March 2021	5,414,880

Additional investment limits/ conditions pertaining to debt investments

A. Concentration limits

Investment by any FPI (including investments by related FPIs), in each of the following three categories of debt, viz., government securities, state development loans and corporate debt securities are subject to the following concentration limits:

- Long-term FPIs: 15 per cent of prevailing investment limit for that category.
- Other FPIs: 10 per cent of prevailing investment limit for that category.

B. FPI Investment in Government Securities

- The cap on aggregate FPI investments in any government security has been revised to 30 per cent.
- Currently, FPIs are permitted to invest in government securities until the limit reaches 90 per cent. Once the 90 per cent threshold is crossed, an auction mechanism is triggered for the allocation of the remaining limit. However, on account of the Clearing Corporation of India Ltd. commencing the online monitoring of rhw utiliaation of fovernment securities limits, the auction mechanism will be discontinued.

C. FPI investments in corporate bonds

Single/ group investor-wide limits in corporate bonds:

- Investment by any FPI and its related FPIs, cannot exceed 50 per cent of any issue of a corporate bond.
- The requirement of single/group investor-wide limits in corporate bonds would not be applicable to investments by Multilateral Financial Institutions and investments by FPIs in the following securities:
  - Security receipts and debt instruments issued by ARCs; and
  - Debt instruments issued by an entity under the corporate insolvency resolution process as per the resolution plan approved by the NCLT under the Insolvency and Bankruptcy Code, 2016

7.2 Voluntary Retention Route (VRR)

We have listed below the key features of investment under VRR:

- Eligible instruments
  - **Government:** Government securities , treasury bills
  - **Corporate:** NCDs, bonds, commercial papers, security receipts issued by ARC, credit enhanced bonds, municipal bonds
  - Repo transactions and reverse repo transactions
- Investment conditions

FPIs are voluntarily required to commit to retain a minimum of 75 per cent of their allocated investments called the committed portfolio size (CPS) for a minimum period of three years (retention period). FPIs are required to invest 75 per cent of the CPS within three months from the date of allotment. No FPI (including its related FPIs) will be allotted an investment limit greater than 50 per cent of the amount offered for each allotment by tap or auction in case there is a demand for more than 100 per cent of the amount offered. The minimum retention period is three years or as may be decided by RBI for each allotment. During this period, FPIs are required to maintain 75 per cent of the CPS in India.

The investment through this route is in addition to general investment limits and is capped at INR 1,500,000 million or higher as may be decided by RBI. FPIs are required to open a separate Special Non-Resident Rupee Account (SNRR account)for funds flowing in relation to investments under this route.

- Methods of disinvestment

FPIs that wish to exit their investments under this route prior to the end of the retention period may do so by selling it to other FPIs subject to the buyer abiding by the terms and conditions applicable to the seller.

At the end of the retention period, an FPI may exit by liquidating its portfolio or shifting its investments to the general investment limit (subject to availability of limits) or hold the investment until the date of maturity or date of sale, whichever is earlier.

7.3 Fully Accessible Route (FAR)

We have listed below the key investment features under the Fully Accessible Route (FAR):

- **Eligible investors:** Any person resident outside India[45]. This would include FPIs.
- **Eligible instruments:** Government securities
    - 6.18% GS 2024
    - 7.32% GS 2024
    - 6.45% GS 2029
    - 7.26% GS 2029
    - 7.72% GS 2049

All new issuances of government securities with a five-year, 10 year and 30 year tenor from the financial year 2020-21.

Investment conditions

There are no quantitative limits on investments by eligible investors in the above-mentioned securities. Further, the investments made under FAR shall not be required to adhere to the minimum residual maturity, security-wide limits in government securities and concentration limits.

[45] Person resident outside India has been defined in FEMA to mean person who is not resident in India

8 KYC REQUIREMENTS OF FPI

8.1 KYC Documentation requirements

FPIs are required to provide know your customer (KYC) related documents based on the category under which they are registered. Once the KYC is completed, the intermediary will upload the form and supporting documents on the KYC Registration Agencies (KRA) portal for other market intermediaries to access .

PARTICULARS	DOCUMENTS TYPE	CATEGORY - I	CATEGORY - II
Applicant level	Constitutional documents (Memorandum of Association, Articles of Association, certificate of incorporation, prospectus etc)	Mandatory	Mandatory
	Proof of address	Mandatory	Mandatory
		Power of Attorney (POA) provided to custodian stating address acceptable	POA provided to custodian stating address acceptable
	PAN	Mandatory	Mandatory
	Board Resolution@#	Exempt	Mandatory
	FATCA/CRS form	Mandatory	Mandatory
	Form/KYC form	Mandatory	Mandatory
Authorised signatories	List and signatures#	Mandatory	Mandatory
Ultimate beneficial owner	List of Ultimate beneficial owners including the details of Intermediate beneficial owner*	Mandatory	Mandatory
	Proof of identity	Exempt	Mandatory

Apart from the KYC requirement stated above, each intermediary may have additional documentation requirements for conducting enhanced due diligence as per their internal policies.

@ FPIs from certain jurisdictions where the practice of passing board resolutions is not common practice, the POA provided to the global custodian/local custodian is acceptable.

#POA granted to the global/local custodian is accepted in lieu of Board Resolutions (BRs). BR and the authorised signatory list is not required if SWIFT is used as a medium of instruction.

*Not required for government and government-related entities.

8.2 Other key points

- Prospectus and Information Memorandum are acceptable in lieu of an official constitutional document.
- Valid FATCA/CRS documentation is required to be submitted at the time of the account opening.
- PAN is not mandatory for United Nations entities/multilateral agencies exempt from paying taxes/filing tax returns in India.
- Board resolution and the authorised signatory list is also not required if there is no exchange of physically signed documents/agreements between the local broker and the FPI or its authorised representative being an Investment Manager regulated in a FATF member country.
- In cases when an FPI holds separate depository accounts in both the NSDL and Central Depository Services Ltd (CDSL), it is allowed to appoint only one custodian.

8.3 Identification and verification of beneficial owner

- Beneficial owners are the natural persons who ultimately own or control an FPI. The identification of beneficial owners should be in accordance with the anti-money laundering rules in India[46]. The materiality threshold for identification of beneficial owners is more than 25 per cent for corporate FPIs and 15 per cent for all other FPIs. However, a lower materiality threshold of 10 per cent may be applied for FPIs coming from high risk jurisdictions.
- Beneficial owners of FPIs having General partner/Limited partnership structures are required to be identified on an ownership or entitlement basis and control basis.
- FPIs (other than government or government related investors) are required to provide a list of their beneficial owners, inter alia, including the following details:
    - Name and address of beneficial owner (natural person)
    - Date of birth
    - Tax residency jurisdiction
    - Nationality
    - Whether acting alone or together through one or more natural persons as a group, with their names and address
    - Beneficial owner group's percentage shareholding/capital/profit ownership in the FPIs
- PAN is not mandatory for ultimate beneficial owners, senior management and authorised signatories of FPI.

8.4 Periodic KYC review

The custodian may seek confirmation from an FPI whether there have been any changes in the documents / information provided earlier. If there are, the FPI is required to provide the updated documents/ information to the custodian.
We have provided below the periodicity within which an FPI is required to undertake a KYC review.

JURISDICTION	CATEGORY I	CATEGORY II
High risk	**For government and government related investors** - During continuance of registration i.e. every 3 years **For others** – Annually	Annually
Non – High risk	During continuance of registration i.e. every 3 years	Regulated entities – during continuance of registration i.e. every 3 years Others - Annually

[46] Rule 9 of Prevention of Money Laundering (Maintenance of record) Rules, 2005

9 INDIA TAX FRAMEWORK FOR FPIS

9.1 Basic Concepts

- Scope of income

As per the provisions of section 5(2) of the Act, income of a non-resident is taxable in India, if the income is:

  - received in India; or
  - deemed to be received in India; or
  - accrues or arises in India; or
  - deemed to accrue or arise in India.

- Concept of assessment year and previous year

From an income tax perspective, previous year is the year in which a taxpayer earns an income, while the assessment year is the year following the previous year in which previous year's income is evaluated.

For example, if the previous year is from 01 April 2019 to 31 March 2020, then the assessment year for income earned during this period would begin after the previous year ends, i.e. on 01 April 2020 to 31 March 2021.

9.2 Tax Framework[47]

The Indian tax law provides for a special concessional tax framework for investments made by FPIs in India. Typically, the following types of income are earned by FPIs in a financial year on account of their investments in securities:

- Dividends
- Interest
- Capital gains earned on transfer of securities

9.3 Taxation under the provisions of the Act

Dividends

Prior to 01 April 2020, recipients earning income through dividend declarations and distributions from an Indian company were exempt from tax under the provisions of the Act while the Indian company paying the dividend was subject to DDT at the specified rate.

However, a significant change to the current system of dividend taxation was introduced *under* the Finance Act 2020 , which saw the abolition of the DDT regime and a shift to the classical system of taxing dividends in the hands of shareholders.

Accordingly, with effect from 01 April 2020[48], dividends paid by Indian companies will now be taxable in the hands of the FPIs at the basic tax rate of 20 per cent (plus applicable surcharges and health and education cess) while Indian companies will be liable to withhold taxes on dividends paid to FPIs.

With effect from 01 April 2019, provisions have been inserted to levy surcharges on the income of certain non-corporate FPIs (other than partnership firms and co-operative societies) at the rate of 25 per cent and 37 per cent where the income of such FPIs (other than income from capital gains) exceeds the prescribed threshold. Accordingly, where the dividend income earned by FPIs exceeds a threshold of INR 20 million and INR 50 million, the super-rich surcharge of 25 per cent and 37 per cent respectively will be levied.

The dividend income will be subject to withholding tax at the applicable rate.

We have summarised the effective tax rates applicable to FPIs on dividend income earned as provided under the Act.

[47] With amendments notified as on 31 March 2020

[48] Financial Year 2020-21 onwards

AMOUNT OF DIVIDEND INCOME EARNED BY FPIS	CORPORATE FPIS	NON-CORPORATE FPIS (OTHER THAN PARTNERSHIP FIRMS)	NON-CORPORATE FPIS (PARTNERSHIP FIRMS)
Up to 5 million	20.800%	20.800%	20.800%
5 million to 10 million	20.800%	22.880%	20.800%
10 million to 20 million	21.216%	23.920%	23.296%
20 million to 50 million	21.216%	26.000%	23.296%
50 million to 100 million	21.216%	28.496%	23.296%
Above 100 million	21.840%	28.496%	23.296%

The above tax rates are subject to beneficial rates under the provisions of the applicable DTAA, if any.

Where applicable taxes are not withheld on the payment of dividends, the FPI will need to discharge taxes by itself, prior to remittance or on quarterly advance tax due dates, whichever is earlier, based on tax computed by the tax consultant.

Interest

A concessional tax rate of five per cent (plus applicable surcharges and health and education tax) is provided on interest income earned by an FPI from:

- Investment in government securities; or
- Investment in municipal debt securities; or
- Interest distributed by a REIT/INVIT; or
- Investment in RDBs of an Indian company (provided the rate of interest does not exceed the rate notified by the government as mentioned below). This is applicable with respect to interest received before 30 June 2023.

The rate announced by the Indian government for RDBs issues:

DATE OF ISSUE OF BONDS	MAXIMUM RATE
Prior to 1 July 2010	5 % over the SBI Base Rate as on 1 July 2010
After 1 July 2010	5 % over the SBI Base Rate as on date of issue

Interest earned from other securities (including RDBs of an Indian company where the rate of interest exceeds the rate announced by the government) is taxable at 20 per cent (plus applicable surcharges and health and education tax). The payer of interest would, typically, withhold taxes at source on such income.

The interest income will be subject to withholding tax at the same rate. Below is a table summarising the effective tax rates:

TYPE OF INTEREST INCOME	INTEREST ON GOVERNMENT BONDS/MUNICIPAL DEBT SECURITIES/REITS/INVITS/RDB OF AN INDIAN COMPANY (SATISFYING THE AFORESAID CONDITIONS)			INCOME FROM OTHER SECURITIES		
	Corporate FPIs	**Non-Corporate FPIs (Other Than Firms)**	**Firm FPIs**	**Corporate FPIs**	**Non-Corporate FPIS (Other Than Firms)**	**Firm FPIs**
Up to 5 million	5.200%	5.200%	5.200%	20.800%	20.800%	20.800%
5 million to 10 million	5.200%	5.720%	5.200%	20.800%	22.880%	20.800%
10 million to 20 million	5.304%	5.980%	5.824%	21.216%	23.920%	23.296%
20 million to 50 million	5.304%	6.500%	5.824%	21.216%	26.000%	23.296%
50 million to 100 million	5.304%	7.124%	5.824%	21.216%	28.496%	23.296%
Above 100 million	5.460%	7.124%	5.824%	21.840%	28.496%	23.296%

The aforementioned tax rates are subject to beneficial rates under the provisions of the applicable DTAA, if any.

Where the issuer of debt securities has not withheld applicable taxes, the FPI will need to discharge taxes by itself, prior to remittance or on quarterly advance tax due dates, whichever is earlier, based on tax computed by the tax consultant.

Capital gains

Income earned by an FPI from the sale of Indian securities and derivatives will be characterised as 'capital gains' since the securities held by an FPI (in accordance with FPI regulations) are deemed to be capital assets under the provisions of the Act.

The taxability of capital gains earned by an FPI on the transfer of Indian securities and derivatives broadly depends on:

- type of security transferred; and
- the period for which the securities were held prior to their transfer.

In accordance with the provisions of the Act, the capital gains/loss are computed by reducing from the sale consideration:

- the cost of acquisition of the asset transferred; and
- any expenditure incurred wholly and exclusively in connection with the transfer

No withholding tax applies on capital gains income payable to FPIs. FPIs would have to discharge taxes by themselves, prior to remittance or on quarterly advance tax due dates, whichever is earlier, based on capital gains tax computed by the tax consultant.

The capital gains/ losses are classified as short-term or long-term depending on the period of holding discussed below:

SR NO	SOURCE OF INCOME	PERIOD OF HOLDING	TYPE OF GAIN/ LOSS
1	Capital gains/ loss arising from the transfer of listed equity shares/ units of an equity orientated mutual fund/ other listed securities	12 months or less before date of sale	Short-term
		More than 12 months before date of sale	Long-term
2	Capital gains/ loss arising from the transfer of securities other than those mentioned above (other than unlisted equity shares)	36 months or less before date of sale	Short-term
		More than 36 months before date of sale	Long-term

Effective tax rates (i.e. plus applicable surcharges and health and education cess[49]) applicable to FPIs on capital gains as provided under the Act for the income earned in respect of securities with effect from 01 April 2018[50] are below[51]:

TYPE OF CAPITAL GAINS		CORPORATE FPIS		NON-CORPORATE FPIS (OTHER THAN PARTNERSHIP FIRMS)		NON-CORPORATE FPIS (PARTNERSHIP FIRMS)
		Total income exceeds INR 10 million but not INR 100 million	Total income exceeds INR 100 million	Total income exceeds INR 5 million but not INR 10 million	Total income exceeds INR 10 million	Total income exceeds INR 10 million
Income[52] on transfer of listed equity shares/ equity oriented mutual fund on market (STT is paid on purchase and sale)	Long-term (Refer Note below)	10.608%	10.920%	11.440%	11.960%	11.648%
	Short-term	15.912%	16.380%	17.160%	17.940%	17.472%
Capital gains on transfer of debt securities (including debt MF)	Long-term	10.608%	10.920%	11.440%	11.960%	11.648%
	Short-term	31.824%	32.760%	34.320%	35.880%	34.944%
Sale of listed derivatives (listed futures and options)	Short-term	31.824%	32.760%	34.320%	35.880%	34.944%

[49] In case of **corporate taxpayers**, a surcharge of 2 per cent (where total taxable income exceeds INR 10 million but not INR 100 million) or 5 per cent (where total taxable income exceeds INR 100 million) plus a health and education cess of 4 per cent on income-tax and surcharge would be levied.

In case of **partnership firms**, a surcharge of 12 per cent (where total taxable income exceeds INR 10 million) plus a health and education cess of 4 per cent on income-tax and surcharge would be levied.

In case of **non-corporate taxpayers (other than partnership firms)**, a surcharge of 10 per cent (where total taxable income exceeds INR 5 million but not INR 10 million) or 15 per cent (where total taxable income exceeds INR 10 million) plus a health and education cess of 4 per cent on income-tax and surcharge would be levied.

[50] Financial Year 2018-19 onwards

[51] The tax rates may be amended in subsequent Union Budgets of the GOI. Hence, kindly reach out to your Tax Consultant for the most recent tax rates.

[52] *Inter-se* set-off of capital gains and losses allowed subject to rules; carry forward of losses allowed up to 8 years.

The taxability and the aforementioned tax rates are subject to beneficial rates under the provisions of the applicable tax treaties, if any.

WHAT ARE THE TAX IMPLICATIONS FOR AN FPI WHEN CARRYING OUT OFF-MARKET TRANSACTIONS?

An FPI is permitted to transfer the securities in an off-market transaction (subject to certain conditions). Long-term and short-term capital gains arising from off-market transactions are taxed at the rate of 10 per cent and 30 per cent respectively (plus applicable surcharges and health and education tax[49]). The benefit of indexation is not available to FPIs.

9.4 Securities transaction tax (STT)

Securities transacted on a recognised stock exchange in India are subject to an STT which is levied as follows:

TRANSACTION	RATES	PAYABLE BY
Purchase and sale of equity shares on the stock exchange	0.100%	Purchaser/seller
Sale/ redemption of units of equity oriented mutual fund	0.001%	Seller
Sale of an option in security on the stock exchange where option is not exercised	0.050%[53]	Seller
Sale of an option in security where option is exercised on the stock exchange	0.125%[54]	Purchaser
Sale of a future in securities on the stock exchange	0.010%	Seller
Sale of unlisted equity shares under an offer for sale	0.2%	Seller
Transfer of securities on a recognised stock exchange in IFSC	NIL	Not appliable

No STT is payable on transactions in debt securities/ units of debt MFs.

9.5 Taxation under the provisions of the DTAA

Where the Indian government has entered into an agreement with the government of any other country for avoidance of double taxation (DTAA), then in relation to a taxpayer to whom such agreement applies, provisions of DTAA to the extent more beneficial will override the provisions of the Act.

In order to avail beneficial provisions of the DTAA, the FPI will have to obtain a TRC confirming its tax residency under the DTAA from the home country tax authorities and maintain a self-declaration (in Form 10F) where the TRC does not contain the prescribed particulars.

We have tabulated below the tax provisions under treaties entered by India with some of the key developed countries in the world:

[53] STT would be computed on the amount of option premium.

[54] STT would be computed on the settlement price.

NATURE OF INCOME	JURISDICTION				
	Singapore*	**Mauritius***	**Japan**	**Netherlands**	**USA***
Dividend (Article 10 of respective tax treaties)	Dividend income is taxable at the following rates : 1) 10%[55] 2) In cases other than (1) above, 15%	Dividend income is taxable in India at the following rates: 1) 5%[56] 2) In cases other than (1) above, 15%	Tax rate for dividend income shall not exceed 10% subject to satisfaction of beneficial ownership condition	Tax rate for dividend income shall not exceed 10% subject to satisfaction of beneficial ownership condition	Dividend income is taxable at the following rates: 1) 15%[57] 2) In cases other than (1) above, 25%
Capital gains (Article 13 of the respective tax treaties)	As per Article 13 of the India-Singapore tax treaty, capital gains on equity shares acquired prior to 1 April 2017 are exempt and equity shares acquired post the aforementioned period are taxable as per the provisions of the domestic tax law (for rates please refer the table above) Capital gains on any other security (except equity shares) is exempt from tax in India.	As per Article 13 of the India-Mauritius tax treaty, capital gains on equity shares acquired prior to 1 April 2017 are exempt and equity shares acquired post 1 April 2017 are taxable as per the provisions of the domestic tax law (for rates please refer the table above) Capital gains on any other security (except equity shares) is exempt from tax in India.	As per Article 13 of the India-Japan tax treaty capital gains on transfer of shares is taxable as per the provisions of the domestic tax law (for rates please refer the table above) Capital gains on any other security (except equity shares) is exempt from tax in India.	As per Article 13 of the India-Netherlands tax treaty capital gains from the transfer of shares of a company where the seller holds at least 10% of the shares of such company are taxable as per the provisions of the domestic tax law (for rates please refer the table above) Capital gains on any other security (except equity shares) is exempt from tax in India.	As per Article 13 of the India-USA tax treaty, capital gains from transfer of shares and securities is taxable as per the provisions of the domestic tax law (for rates please refer to the table above)
Interest (Article 11 of the respective tax treaties)	Interest income is taxable at the following rates: 1) 10%[58] 2) In cases other than (1) above, 15%	The tax rate for interest income shall not exceed 10% subject to satisfaction of beneficial ownership condition	The tax rate for interest income shall not exceed 10% subject to satisfaction of beneficial ownership condition	The tax rate for interest income shall not exceed 10% subject to satisfaction of beneficial ownership condition	Interest income is taxable in India at following rates: 1) 10%[59] 2) In cases other than (1) above, 15%

*The benefits under the DTAA may be subject to the limitation on benefits (LOB) article contained in the relevant DTAA. Where the conditions mentioned under the LOB are not satisfied, benefits under the treaty may be denied. Additionally, when applying for a beneficial tax rate, the most favored nation (MFN) clause could be applied which provides for a 'rate lower' or 'scope more restricted' on specified income streams.

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[55] Dividend would be taxable at the rate of 10 per cent if the beneficial owner of the dividend is a company holding atleast 25 per cent of the capital of the company paying the dividend

[56] Dividend would be taxable at the rate of 5 per cent if the beneficial owner of the dividend is a company holding atleast 10 per cent of the capital of the company paying the dividend

[57] Dividend would be taxable at the rate of 15 per cent if the beneficial owner of the dividend is a company holding atleast 10 per cent of the voting stock of the company paying the dividend

[58] Interest would be taxable at the rate of 10 per cent if the interest is paid on a loan granted by a bank carrying on a bona fide banking business or by a similar financial institution (including an insurance company)

[59] Interest would be taxable at the rate of 10 per cent if the interest is paid on a loan granted by a bank carrying on a bona fide banking business or by a similar financial institution (including an insurance company)

9.6 Other relevant tax provisions

Signing of the Multilateral Convention:

On behalf of India, the Finance Minister signed the Multilateral Convention to Implement Tax Treaty Related Measures to prevent base erosion and profit shifting in 2017. 88 countries have signed the Convention and more are expected to follow.

The convention allows jurisdictions to swiftly implement measures to strengthen existing tax treaties to protect governments against tax avoidance strategies that inappropriately use tax treaties to artificially shift profits to low or no-tax locations.

The measures to be implemented will put an end to treaty abuse and treaty shopping by transposing jurisdictions' existing tax treaty commitments to include in their tax treaties tools to ensure these treaties are used in accordance with their intended object and purpose.

One of the minimum international tax standards applicable to countries who are signatories to the Convention is the Principal Purpose Test (PPT). The PPT is an anti-abuse rule based on the principal purposes of the transaction or arrangements. The PPT provides a general way to address cases of treaty-abuse including treaty-shopping .

The PPT provisions included in the Convention establish that a tax authority may deny the benefits of a tax treaty where it is reasonable to conclude that having considered all the relevant facts and circumstances, one of the principal purposes of the arrangement or the transaction was to obtain the benefits of the tax treaty.

The Convention will modify tax treaties between two or more parties to the Convention. It will not function in the same way as an amending protocol to a single existing treaty, which would directly amend the text of the Covered Tax Agreement. Instead, it will be applied alongside existing tax treaties modifying their application in order to implement the BEPS measures.

General Anti-Avoidance Rules

GAAR provisions were introduced in the Act in2017[60]. According to the Act, GAAR applies to any arrangement where the main purpose is to obtain tax benefit. In its present shape, GAAR has the power to override DTAAs.

Indirect transfer provisions

Indirect transfer provisions were introduced in the Act under the Finance Act, 2012 to clarify that an asset - be it a share or interest in a company or entity registered or incorporated outside India - would be deemed to be situated in India if such a share or interest derives its value (directly or indirectly) substantially from assets situated in India. The transfer of such a share or interest would be liable to tax in India.

A share or interest in a foreign company/ entity is deemed to derive its value substantially from assets (tangible or intangible) located in India, if the value of the Indian assets on a specified date[61]:

- exceed INR 100 million; and
- represent at least 50 per cent of the value of all the assets owned by such foreign company or entity.

Certain categories of FPIs have been exempted under the Act from Indirect transfer provisions. Prior to the amendment of FPI regulations, Category I and Category II FPIs registered under the SEBI (FPI) regulations, 2014 were exempted from the provisions of indirect transfer. With the onset of the new FPI regulations which took effect on 23 September 2019, the Act was amended[62] to provide the same benefits to recategorised FPIs or those that have recently registered as category I under the new FPI Regulations.

[60] Investments up to 31 March 2017 are grandfathered from the applicability of GAAR.

[61] The term "specified date" has been defined under the Act to mean: -

- date on which the accounting period of the company or entity ends, preceding the date of transfer of share or interest; or
- date of transfer, if the book value of the assets of the company or entity on the date of transfer exceeds the book value of the assets as on the date referred to in clause above, by 15 per cent.

[62] Vide Finance Act, 2020

Additionally, a grandfathering benefit has been extended to FPIs (which were previously eligible for the exemption) who have not been recategorised as Category I under the new FPI Regulations. The grandfathering benefit is with respect to the investments made by such FPIs on or before 23 September 2019.

Transfer pricing

The Act prescribes for the applicability of transfer pricing (TP) provisions on international transactions between associated enterprises. If an FPI has undertaken any transaction (for example: broking services, custody services, purchase or sale of assets etc.) with any of its associated enterprises, then such transactions are considered as being international transactions and are required to be reported to the Indian Revenue Authorities (IRA) in the prescribed Form 3CEB.

The due date to file the above form is 31 October following the financial year.

Minimum Alternative Tax (MAT)

As per the provisions of section 115JB of the Act, if the tax payable by a taxpayer on the total income computed as per the provisions of the Act is less than 15 per cent of its 'book profit', then notwithstanding anything contained in any other provision of the Act, the 'book profit' would be deemed to be the total income of the taxpayer, and the amount of tax payable would be set at 15 per cent (plus applicable surcharge and health and education cess).

MAT provisions are not applicable and have been deemed never to have been applicable to a foreign company investing in India (including FPIs), if:

a. the foreign company is a resident of a country or a specified territory with which India has entered into a treaty with and the foreign company does not have a permanent establishment in India in accordance with the provisions of the treaty; or

b. the foreign company is a resident of a country with which India does not have a treaty with and the foreign company is not required to seek registration under any law.

Most FPIs meet the above criterion and therefore MAT does not apply to them.

10 TAX AND REGULATORY COMPLIANCE

10.1 Tax compliances

Payment of advance taxes on income earned in India

A taxpayer is required to estimate their tax liability for a financial year and discharge the same by way of 'advance tax' on the due dates prescribed (mentioned below):

DUE DATE OF TAX PAYMENT	AMOUNT OF TAX LIABILITY TO BE DISCHARGED BY A TAXPAYER
15 June	15%
15 September	45%
15 December	75%
15 March	100%

Delay/ deferment in deposit of advance tax has interest implications. BNP Paribas Securities Services India sends timely reminders to its investors for advance tax payments.

Filing of annual income-tax return

Income earned by the FPI in India is required to be reported in an annual income-tax return to be filed with the IRA as per the following schedule:

TAXPAYER	FILING DATE
Non-corporate taxpayer	Before 31 July following the financial year*
Corporate taxpayer	Before 31 October following the financial year*

* Extended to 30 November, where TP provisions apply to the taxpayer.

Income tax returns may be subjected to scrutiny proceedings.

Compliance for remittance of proceeds outside India

Prior to remitting any proceeds outside of India arising out of investments made in Indian capital markets, a tax clearance is required from the tax agents of FPIs stating the appropriate taxes on such proceeds, if applicable, have been fully discharged. The local custodian of the FPIs typically reach out to the tax agents for such clearances. The tax agents issue such clearances on request, which is made by the local custodian of the FPIs on an on-going basis.

Reporting requirements in case of indirect transfer

As discussed in Para 9.6 above, given that investments by Category I FPIs are granted exemption from indirect transfer, the above reporting requirement would be applicable only in case of investments by FPIs registered/ recategorised as Category II FPIs (subject to grandfathering benefits).

Where indirect transfer provisions are applicable, the FPIs are required to furnish a Form 3CT (certified by an accountant which should indicate the basis of apportionment of income in accordance with the formula prescribed) along with its return of income.

Further, the Indian concern whose shares are indirectly getting transferred are required to undertake reporting obligations in Form 49D.

The compliances discussed above are not an exhaustive list and there may be additional obligations that need to be undertaken under the provisions of the Act.

10.2 Key regulatory compliance requirements

Change in name

In case the FPI has undergone a name change, the request for updating/incorporation of the new name should be submitted by the FPI within six months accompanied by the following documents:

- Original FPI registration certificate granted in the old name;
- Document evidencing change in name (i.e. certified copy of documents from home regulator or Registrar of company or equivalent authority. In absence of above, a board resolution or equivalent authorising the name change may also suffice);
- Undertaking by the FPI stating that it is a mere name change and does not involve a change in beneficial ownership

Change in status of a compliant jurisdiction

If a country, which was a compliant jurisdiction at the time when an FPI registration was granted becomes non-compliant, then the DDP would not allow FPIs from that market to make new acquisitions until the jurisdiction is compliant with the regulations again. However, the FPI would be allowed to continue to hold securities already purchased. The concerned DDP must provide the SEBI with details about such changes.

Surrender of registration

If an FPI wants to surrender the certificate of registration, it has to make an application to the DDP. The DDP will accept the surrender of registration after ensuring the following:

- There are no dues outstanding to SEBI;
- The holdings in the security account and bank account are zero and there are no outstanding derivative positions
- SEBI has given its No Objection Certificate (NOC)

Continuance of registration

FPIs must pay fees for the continuation of their registration and provide additional information, if any, to DDPs at least 15 days prior to the current validity of their registration. If the DDP is in receipt of the registration fees prior to the validity date but the due-diligence including KYC review is not complete due to non-submission of information by the FPI, no further purchases may be permitted to be made by the FPI until allowed to by the DDP. Where the FPI has not paid fees to maintain its registration, the registration will cease to be valid. FPIs cannot apply to continue their registration after expiry thereof. However, if such an applicant intends to have an FPI registration, it will have to make a fresh application for registration after the surrender of its earlier, original FPI registration.

Maintenance of proper books of account, records and documents

FPIs are required keep or maintain the following books of accounts, records and documents, namely:

- true and fair accounts relating to remittances of funds to India for buying and selling; and realising capital gains or losses on investments made from such remittances;
- bank statement of accounts;
- contract notes relating to the purchase and sale of securities; and
- communication (including in electronic mode) between the DDP, stock brokers and depository participants regarding investments in securities.

Preservation of books of accounts, records and documents

Subject to the provisions of any other law, every FPI is required to preserve the books of accounts, records and documents for a minimum period of five years.

11 KEY STATISTICS

FPI Investments

The quantum of FPI inflows in India from 1992-93 to 31 March 2020 have been tabulated below:

FINANCIAL YEAR	INR (IN MILLIONS)			
	EQUITY	DEBT	DEBT-VRR	HYBRID
1992-93	130	-	-	-
1993-94	51,270	-	-	-
1994-95	47,960	-	-	-
1995-96	69,420	-	-	-
1996-97	85,460	290	-	-
1997-98	52,670	6,910	-	-
1998-99	(7,170)	(8,670)	-	-
1999-00	96,700	4,530	-	-
2000-01	102,070	(2,730)	-	-
2001-02	80,720	6,900	-	-
2002-03	25,270	1,620	-	-
2003-04	399,600	58,050	-	-
2004-05	441,230	17,590	-	-
2005-06	488,010	(73,340)	-	-
2006-07	252,360	56,050	-	-
2007-08	534,040	127,750	-	-
2008-09	(477,060)	18,950	-	-
2009-10	1,102,210	324,380	-	-
2010-11	1,101,210	363,170	-	-
2011-12	437,380	499,880	-	-
2012-13	1,400,330	283,340	-	-
2013-14	797,090	(280,600)	-	-
2014-15	1,113,330	1,661,270	-	-
2015-16	(141,720)	(40,040)	-	-
2016-17	557,030	(72,920)	-	-
2017-18	256,350	1,190,360	-	110
2018-19	(880)	(423,570)	-	35,150
2019-20	61,530	(487,100)	73,310	76,980
Total	**8,926,540**	**3,232,070**	**73,310**	**112,240**

Assets under custody

While India has witnessed FPI investments from a host of jurisdictions, the top 10 jurisdictions making investments under the FPI route are as follows:

POSITION	2018		2019		2020*	
	COUNTRY	INR IN MILLIONS	COUNTRY	INR IN MILLIONS	COUNTRY	INR IN MILLIONS
1	USA	10,269,370	USA	11,713,120	USA	8,272,580
2	Mauritius	4,419,040	Mauritius	4,360,110	Mauritius	2,834,870
3	Luxembourg	3,164,790	Luxembourg	3,359,700	Luxembourg	2,304,970
4	Singapore	2,900,110	Singapore	3,149,550	Singapore	2,278,310
5	UK	1,481,500	UK	1,651,490	UK	1,209,150
6	Japan	1,122,500	Ireland	1,272,380	Ireland	935,440
7	Ireland	1,033,280	Canada	1,212,170	Canada	927,690
8	Canada	1,007,830	Japan	1,177,300	Japan	828,270
9	Netherlands	740,240	Norway	842,170	Norway	651,440
10	Norway	676,530	Netherlands	839,640	Netherlands	651,160

* Up to March 2020

Source: NSDL FPI monitor

CHHATRAPATI SHIVAJI TERMINUS – MUMBAI

PART C –
INTERNATIONAL FINANCIAL SERVICES CENTRES - GUJARAT INTERNATIONAL FINANCE TEC-CITY (IFSC – GIFT city)

PART C – INTERNATIONAL FINANCIAL SERVICES CENTRES - GUJARAT INTERNATIONAL FINANCE TEC-CITY (IFSC – GIFT City)

12 GIFT CITY – INTRODUCTION

12.1 An Introduction to GIFT City

GIFT city is based in Gandhinagar, capital of the state of Gujarat, India. It comprises 886 acres with 62 million square feet of built up area populated by office spaces, residential apartments, schools, hospitals, hotels, clubs, retail and various recreational facilities.

GIFT city is being developed as a global financial and information technology services hub designed to compete with globally benchmarked financial centres such as London, Hong Kong, Singapore, Dubai and Labuan (Malaysia).

The idea of setting up an IFSC was first envisioned in 2007 by the then Chief Minister of Gujarat, Mr. Narendra Modi. After the general elections in 2014, the new government under the leadership of Mr. Narendra Modi introduced the first set of regulations on IFSC in a Special Economic Zone (SEZ) specifically targeting GIFT IFSC. In 2015, various regulatory bodies includin the RBI, SEBI and IRDA opened GIFT City's doors to the global financial services community.

An IFSC is a designated area aimed at providing financial services to residents and non-residents in any currency except the local currency. GIFT IFSC aspires to become India's gateway for inbound and outbound requirements of international financial services. It aims to attract the top talent in the country by providing the finest quality of life. The IFSC is a joint venture between the Gujarat Government and IL&FS company. It is home to a number of financial intermediaries such as banks, insurance companies, insurance brokers, stock exchanges, asset management companies, stock brokers, clearing corporation/ depositories, investment advisors, portfolio managers, AIFs and mutual funds[63]. Various regulators [i.e. SEBI, RBI, Insurance Regulatory and Development Authority of India (IRDA)] have issued guidelines and operational frameworks for participants setting-up units in the IFSC.

In order to promote ease of doing business, the IFSC Authority Bill was passed creating a regulatory framework for financial services in the IFSC. The proposed Unified Authority shall comprise of representatives from national regulators and will be bestowed with a number of regulatory powers.

12.2 Who can be a part of the GIFT City IFSC

SECTORS	WHO CAN BE A PART OF GIFT CITY IFSC
Banking sector	Indian banks viz. banks in the public sector and the private sector authorised to deal in foreign exchange; and foreign banks with an existing presence in India
Insurance sector	Indian insurer, Indian reinsurer, Indian broker, foreign insurer, foreign reinsurer
Capital markets sector	Stock exchanges / commodity exchanges, clearing corporation, depository, broker, investment adviser, portfolio manager, AIF, mutual funds, share transfer agents, registrars, custodian of securities, merchant banks, underwriters, credit rating agencies and any other intermediary activitiy permitted by SEBI

12.3 GIFT City IFSC – Key features and Advantages

The IFSC in GIFT city is offering state-of-the-art infrastructure, facilities and a regulatory environment comparable to other leading international financial centres such as London, Hong Kong, Singapore, Dubai and Labuan. It is expected that the project could create up to a million new direct and indirect jobs. The infrastructure planned to be built at GIFT city includes a data centre, state-of-the-art connectivity and transportation access with built-in technologies promoting sustainablity. It will maximise resource recovery/minimal emissions, minimise impact on environment, and zero waste visibility.

[63] It is proposed that MFs be set up in GIFT City IFSC. However, presently SEBI has not issued guidelines for setting up and operating MFs in the IFSC.

GIFT city is targeting the following business segments[64]:

BUSINESS	NATURE OF OPPORTUNITY
Offshore banking	Corporate Banking, Servicing JV/WOS of Indian companies registered abroad, factoring / forfeiting of export receivables
Capital markets	Exchanges, Brokerage services, permissible securities
Offshore asset management	Fund Accounting, Investment services, custodian services, trust services, etc.
Offshore insurance	General / Life insurance, co-insurance, reinsurance, insurance broking, captive insurance, etc.
Ancillary services	Legal, Accounting and audit, research and analytics etc., compliance, recruitment, risk management
Information technology services	Software development, Artificial intelligence, robotics, internet of things, business intelligence, mobile platforms, communications technology, consulting, data analytics, data/information management, research and development, web development, games
Information Technology enabled services/ Business Process Outsourcing	Back-office operations, call centres, content development or animation, data processing engineering and design geographic information system services, Human Resource services, Insurance claim processing, Legal databases, medical transcription, accounting support centres, website services

The IFSC in GIFT will provide numerous benefits to the entities setting up operations. Broadly, the key benefits are as follows:

- State-of-the-art infrastructure on a par with other global financial centres;
- Liberal tax regime for 10 years;
- International dispute resolution mechanism through Singapore International Arbitration Centre;
- Strong regulatory and legal environment;
- Ecosystem of banks, insurance, capital markets, law firms and consultancy firms;
- A wholly transparent operating environment, complying with global best practices and internationally accepted laws and regulatory processes;
- Pool of skilled professionals;
- A modern transport, communications and internet infrastructure;
- Only place in India which allows offshore transactions;
- The government of Gujarat has exempted stamp duty for registered share broking offices located in GIFT city for share-broking transactions. No stamp duty is chargeable in respect to instruments transacted on stock exchanges and depositories established in any IFSC[65];
- No STT is payable on taxable securities transactions entered into by any person on a RSE located in an IFSC provided the transaction is paid or payable in foreign currency[66];
- No Commodities transaction tax (CTT) is payable on taxable commodity transactions entered into by any person on a RSE located in an IFSC provided transaction is paid or payable in foreign currency[66].

[64] http://www.giftgujarat.in/genesis

[65] Section 9A of the Indian Stamp Act, 1899 as amended by the Finance Act, 2020;

[66] "Foreign Currency" shall have the meaning assigned to it in clause (m) of section 2 of the FEMA, 1999 (42 of 1999);

12.4 Present participants in GIFT City IFSC

Below is an indicative list of companies that have established in GIFT city:

SECTOR	PARTICIPANTS
Banking sector	**Indian banks** IDBI Bank, SBI, Bank of Baroda, HDFC Bank, Bank of India, Syndicate Bank, Canara Bank, Yes Bank, RBL Bank, ICICI Bank, Punjab National Bank, IndusInd Bank, Corporation Bank, Andhra Bank, Kotak Mahindra Bank **Foreign banks** Citi Bank, Standard Chartered Bank, Bank of America (Global Delivery Center)
Insurance sector	Life Insurance Corporation of India, National Insurance, General Insurance Company, New India Assurance, GIC RE, Export Credit Guarantee Corporation, J B Boda Insurance Brokers, Pioneer Insurance Brokers, Xperitius Insurance Brokers, Risk Care Insurance Brokers, Trinity Insurance Brokers
Capital Markets sector	**Stock Exchange** The Bombay Stock Exchange (BSE) has set-up IND INX (to operate 22 hours/ day) The National Stock Exchange (NSE) has set-up NSE IFSC **Brokers** BSE Broker's Forum Edelweiss Securities (IFSC) Limited **Others** Oracle Tata Communications World Trade Centers Association Reliance Capital Narsee Monjee Education Trust Sterling Hospitals (n)Code Solutions

12.5 List of present designated clearing banks in GIFT City IFSC

- ICICI Bank Limited
- IndusInd Bank Limited
- Kotak Mahindra Bank Limited
- Yes Bank Limited
- HDFC Bank Limited

13 CAPITAL MARKETS IN GIFT CITY IFSC

13.1 Background and Overview

The SEBI issued guidelines to facilitate and regulate financial services relating to the securities market in an IFSC set up under Section 18(1) of SEZ Act, 2005. The Guidelines, dated 27 March 2015, are known as SEBI (IFSCs) Guidelines, 2015, which came into effect from 1 April 2015.

13.2 Type of securities to be traded on the stock exchanges

The stock exchanges operating in IFSC may permit dealing in the following types of securities and products in any currency other than INR with a specified trading lot size on their trading platform subject to prior approval of the Board:

1. Equity shares of a company incorporated outside India;
2. Depository receipt(s);
3. Debt securities issued by eligible issuers;
4. Currency derivatives [including derivatives involving INR (with settlement in foreign currency)] and interest rate derivatives;
5. Index based derivatives;
6. Commodity derivatives[67];
7. Derivatives on equity shares[68]; or
8. Such other securities as may be specified by the Board.

Currently, there are at least 140 Indian equity derivatives, two index derivatives, two commodity futures and three global currency derivatives that are traded on stock exchanges in the IFSC. The exhaustive list of products can be seen on the official websites[69] of the respective stock exchanges in the IFSC.

13.3 Guidelines for participation/functioning of EFIs in IFSC[70]

An Eligible Foreign Investor (EFIs) operating in the IFSC shall not be treated as an entity regulated by SEBI. Further, SEBI registered FPIs proposing to operate in IFSC shall be permitted to do so without undergoing any additional documentation and/or prior approval process. The following are the eligibility and KYC norms for EFIs:

Eligibility norms:

EFIs are those foreign investors who are eligible to invest in the IFSC by satisfying the following conditions:

A. the investor is not resident in India;

B. the investor is not resident in a country identified in the public statement of FATF as:

   i. a jurisdiction with deficiencies in its strategic Anti-Money Laundering or Combating the Financing of Terrorism counter measures ; or

   ii. a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the FATF to address the deficiencies;

C. the investor is not prohibited from dealing in the securities market in India.

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[67] SEBI Circular: CIR/MRD/DSA/41/2016 dated 17 March 2016

[68] SEBI Circular: SEBI/HO/MRD/DRMNP/CIR/P/2017/31 dated 13 April 2017

[69] https://www.indiainx.com/static/productsnapshot.aspx and https://www.nseifsc.com/products/all-products.html

[70] SEBI Circular: IMD/FPI&C/CIR/P/2019/124 dated 5 November 2019

KYC norms:

Intermediaries operating in the IFSC need to ensure that records of their clients are maintained as per the Prevention of Money-laundering Act, 2002 and rules made thereunder. The following KYC norms may be made applicable to EFIs:

A. In the case of participation of an EFI not registered with SEBI as an FPI, but looking to operate in the IFSC, a trading member of the RSE in the IFSC may rely upon the due diligence carried out by a bank, which is permitted by RBI to operate in the IFSC during the account opening process of EFI;

B. In the case of EFIs that are not registered with SEBI as FPIs and do not have a bank account in the IFSC, KYC as applicable to Category II FPIs will apply. However, PAN shall not be applicable for KYC of EFIs in the IFSC;

C. In the case of participation of an FPI in the IFSC, due diligence carried out by a SEBI registered Intermediary during the account opening and registration may be needed.

Segregation of accounts:

FPIs, who presently operate in the Indian securities market and want to operate in the IFSC as well, shall be required to ensure clear segregation of funds and securities. Custodians shall, in turn, monitor compliance of this provision for their respective FPI clients. Such FPIs shall keep their respective custodians informed about their participation in the IFSC.

13.4 Segregated Nominee Account Structure[71]

With a view to further facilitate ease of market access for foreign investors in the IFSC, SEBI has decided to permit an SNA Structure in the IFSC wherein orders of foreign investors may be routed through eligible SNAs (hereinafter referred to as 'providers') for trading on stock exchanges in the IFSC while adhering to regulatory requirements, inter alia, relating to the identification of end-client, Unique Client Code (UCC), order placement at client level, client level margining and position limits.

The following entities shall be eligible to register with the stock exchange or clearing corporation to offer Segregated Nominee Account (SNA) services to foreign investors:

1. SEBI-registered brokers in the IFSC;
2. SEBI registered FPIs (Category I and II); and
3. Trading / clearing members of international stock exchanges or clearing corporations that are regulated by a member of FATF.

13.5 Position Limits for cross-currency futures and options contracts[72] on exchanges in IFSC[73]

The position limits for cross-currency futures and options contracts (including cross-currency futures and options contracts involving INR) on exchanges in the IFSC for eligible market participants, per currency pair per stock exchange, shall be as follows:

Institutional Investors:

Gross open positions across all contracts cannot exceed 15 per cent of the total open interest or USD 1 billion equivalent, whichever is higher.

Eligible Foreign Investors:

Gross open positions across all contracts cannot exceed 15 per cent of the total open interest or USD 1 billion equivalent, whichever is higher.

[71] SEBI Circular: SEBI/HO/MRD/DRMNP/CIR/P/2018/83 dated 24 May 2018

[72] Including contracts involving INR (SEBI Circular: SEBI/HO/MRD2/DCAP/CIR/P/2020/17 dated 3 February 2020)

[73] SEBI Circular: SEBI/HO/MRD/DRMNP/CIR/P/2017/43 dated 17 May 2017

13.6 Key differences between trading on domestic stock exchanges vis-à-vis India INX[74]

PARTICULARS	INDIAN INX	DOMESTIC INDIAN EXCHANGES
Access process	Short	Long
Trading timings	22 hours	6.30 hours
Commodity trading	Allowed	Not allowed
Market structure	Single	Multiple
Taxation	Lower taxes	Higher taxes
Custody account	Not mandatory	Mandatory
Currency risk	No	Yes
Position limits	Enhanced	Limited
Transaction cost	Low	High
Bank account	Not mandatory	Mandatory
Issuance on foreign currency bonds	Allowed	Not allowed

[74] India International Exchange (IFSC) Limited (India INX) is India's first international exchange in IFSC

14 TAXATION SCHEME FOR INVESTMENT IN CAPITAL MARKETS IN IFSC

14.1 Basic concepts

Scope of income

As per the provisions of section 5(2) of the Act, the income of a non-resident is taxable in India, if the income is:

- Received in India; or
- Deemed to be received in India; or
- Accrues or arises in India; or
- Deemed to accrue or arise in India.

Concept of assessment year and previous year

From an income tax perspective, previous year is the year in which a taxpayer earns an income, while the assessment year is the year following the previous year in which the previous year's income is evaluated.

For example, if the previous year is from 1 April 2020 to 31 March 2021, then the assessment year for income earned during this period would begin after the previous year ends, i.e. on 1 April 2021 to 31 March 2022.

14.2 Tax framework and taxation under the provisions of the Act

The Act provides for a special concessional tax framework for investments made by FPIs in India. Typically, the following types of income are earned by FPIs in a financial year on account of investments in securities:

Dividends

As per the Act, any income declared, distributed or paid, by way of dividends, from a company, being a unit of an IFSC, deriving income solely in convertible foreign exchange, shall not be subject to DDT, either in the hands of the company or the person receiving such dividend.

Further, such dividends received or receivable, shall also be exempt in the hands of the recipient.

Interest#

With an aim to boost listings of bonds at the IFSC exchange, the Finance Act 2020 has provided a concessional withholding tax rate of 4 per cent on interest payments made to non-residents (not being a company or to a foreign company) by an Indian company,in respect of monies borrowed by it, by way of issue of any long-term bond or RDB on or after the 01 April 2020 but up to 01 July 2023, which is listed on a Recognised stock exchange (RSE) located in any IFSC.

Further, the actual tax liability on such interest income will correspond to the amount of tax withheld.

 # For a detailed explanation on taxability of other interest, please refer to para 4.3 (interest) and para 9.3 (interest) for taxation of interest earned by an investor under the FDI route and FPI route respectively.

Capital gains$

Income earned by an EFI which operates in accordance with the SEBI circular shall be deemed as an FPI for the purposes of transactions in securities made on a RSE located in any IFSC where the consideration for such transactions are paid or are payable in foreign currency[75]. Further, consideration received from the sale of Indian securities and

[75] CBDT Notification No. 17/2020/ F. No. 173/10/2014-ITA-I dated 13 March 2020

derivatives will be characterised as 'capital gains' since the securities held by an FPI (in accordance with FPI Regulations) are deemed to be capital assets under the provisions of the Act.

For a detailed explanation on taxability of capital gains, please refer to Para 4.3 (capital gains) and Para 9.3 (capital gains) for taxation of capital gains earned by an investor under the FDI route and FPI route respectively.

Certain transfers are exempt and not chargeable under capital gains tax in India

According to the Act, any transfer of capital asset being:

(i) Bond or Global depository receipt (GDR);

(ii) an RDB of an Indian company;

(iii) a derivative; or

(iv) foreign currency denominated bond[76];

(v) unit of a MFs[73];

(vi) unit of a business trust (REIT/ InvIT) [73];

(vii) foreign currency denominated equity shares of a company[73];

(viii) unit of AIF[73];

(ix) Transactions made by a non-resident on a RSE located in any IFSC and where the consideration for such transactions are paid or payable in foreign currency[66], are not considered to be a transfer. As a result, the capital gains earned by a non-resident from the transfer of any assets mentioned above would be exempt from capital gains tax in India.

However, where the transaction is undertaken on a stock exchange situated in an IFSC, the Act provides a relief such that the Short term capital gain / Long term capital gain shall be taxable at a concessional rate of 15 per cent/ 10 per cent even when STT is not paid. Additionally, the transaction must be paid or payable in foreign currency[66].

14.3 Taxation under the provisions of DTAA@

Where the government has entered into an agreement with a government of any other country for avoidance of double taxation, then in relation to a taxpayer to whom such an agreement applies, provisions of DTAA to the extent more beneficial will override the provisions of the Act.

@For a detailed explanation on taxation under the provisions of DTAA, please refer to Para 4.4 and Para 9.5

14.4 Other points for consideration

For a detailed explanation on other points for consideration for FDIs and FPIs, please refer to Para 4.5 and Para 9.6 respectively.

14.5 Key tax compliances

For a detailed explanation on tax compliances for FDIs and FPIs, please refer to Para 4.6 and Para 10.1 respectively

[76] Notification No. 16 of 2020, dated 5 March 2020, which shall come into force w.e.f. 1 April 2020

COMMONLY USED TERMS AND GLOSSARY

COMMONLY USED TERMS AND GLOSSARY

15 COMMONLY USED TERMS

TERM	MEANING
Act	The Law in India dealing with, *inter alia*, taxation of income earned on investments made into India and matters incidental thereto.
CDSL/ NSDL	CDSL/ NSDL are depositories in India offering depository services in respect of Indian securities
DTAA	An international treaty entered into between India and the other contracting jurisdiction for the purpose of eliminating situations of double taxation of income earned, *inter alia*, on investments made into India.
FDI	One of the entry routes for making investments into India.
FPI	One of the entry routes for making investments into India.
Form FC-GPR	A form required to be submitted by the recipient with the RBI on receipt of consideration from a foreign investor for allotment of securities (shares, debentures, etc.).
Form FC-TRS	A form required to be submitted with the RBI in case of transfer of securities (shares, debentures, etc.) of an Indian concern by a resident to a foreign investor or by a foreign investor to a resident.
PAN	A tax identification number issued by the IRA. The same is required for the purposes of making investments into India, filing of return of income in India, etc
RBI	India’s exchange control and banking regulator
SEBI	India's securities market regulator formed with the objective of protecting the interests of investors in securities and to promote the development of and to regulate the securities market in India.
Sectoral Cap	The limit up to which an investment can be made in a particular sector by a non-resident
STT	A tax levied in India on transaction undertaken in securities (shares, debentures) on a RSE.

16 GLOSSARY

ABBREVIATION	MEANING
%	Percent
Act	Income-tax Act, 1961
AD	Authorized Dealer
ADR	American Depository Receipt
AIF	Alternative Investment Fund
AMC	Asset Management Company
ARC	Asset Reconstruction Company
BEPS	Base Erosion and Profit Shifting
BIS	Bank for International Settlements
BMOU	Bilateral Memorandum of Understanding
BO	Beneficial Owner
BR	Board Resolution
BSE	Bombay Stock Exchange
CA	Chartered Accountant
CAF	Common Application Form
CBDT	Central Board of Direct Taxes
CCD	Compulsorily Convertible Debentures
CCEA	Cabinet Committee on Economic Affairs
CCPS	Compulsorily Convertible Preference Shares
CDSL	Central Depository Services Limited
CPS	Committed Portfolio Size
CRS	Common Reporting Standards
CTT	Commodities Transaction Tax
DDP	Designated Depository Participant
DDT	Dividend Distribution Tax
DGCA	Directorate General of Civil Aviation
DPIIT	Department for Promotion of Industry and Internal Trade
DTAA	Double Taxation Avoidance Agreement
ECB	External Commercial Borrowings
EFI	Eligible Foreign Investors
ESOP	Employee Stock Options Program
FAR	Fully Accessible Route
FATCA	Foreign Accounts Tax Compliance Act
FATF	Financial Action Task Force

FCCB	Foreign Currency Convertible Bonds
FCEB	Foreign Currency Exchangeable Bond
FCNR	Foreign Currency Non-Resident account
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act
FIFP	Foreign Investment Facilitation Portal
FII	Foreign Institutional Investor
FLA	Annual return on Foreign Liabilities and Assets
Form FC-GPR	Form Foreign Currency Gross Provisional Return
Form FC-TRS	Form Foreign Currency Transfer
FPI	Foreign Portfolio Investor
FPI Regulations	SEBI (FPI) Regulations, 2019
FVCI	Foreign Venture Capital Investor
GAAR	General Anti-Avoidance Rules
GDR	Global Depository Receipt
GIFT city	Gujarat International Finance Tec-City
GOI	Government of India
IDR	Indian Depository Receipt
IFSC	International Financial Services Centre
IL&FS	Infrastructure Leasing & Financial Services Limited
INR	Indian Rupees
InvIT	Infrastructure Investment Trust
IOSCO's MMOU	International Organization of Securities Commission's Multilateral Memorandum of Understanding
IRA	Indian Revenue Authorities
IRDA	Insurance Regulatory and Development Authority of India
JV	Joint Venture
KYC	Know Your Customer
LLP	Limited Liability Partnership
LOB	Limitation of Benefits
LRN	Loan Registration Number
MAT	Minimum Alternate Tax
MF	Mutual Funds
NCDs	Non-Convertible Debentures
NCLT	National Company Law Tribunal
NHB	National Housing Board
NRE	Non-Residential External account

NRI	Non-Resident Indian
NSDL	National Securities Depository Limited
NSE	National Stock Exchange
OCI	Overseas Citizen of India
OG	Operating Guidelines
PAN	Permanent Account Number
PE	Permanent Establishment
PFRDA	Pension Fund Regulatory and Development Authority
POA	Power of Attorney
PPT	Principal Purpose Test
PSU	Public Sector Undertaking
R&D	Research & Development
RBI	Reserve Bank of India
RDB	Rupee Denominated Bond
REIT	Real Estate Investment Trust
RI	Resident Indian
RSE	Recognised Stock Exchange
Rules	Income-tax Rules, 1962
SBI	State Bank of India
SEBI	Securities and Exchange Board of India
SEZ	Special Economic Zone
SFT	Specified Financial Transaction
SLB	Securities Lending and Borrowing
SNA	Segregated Nominee Account
SNRR	Special Non-Resident Rupee
STT	Securities Transaction Tax
TP	Transfer Pricing
TRC	Tax Residency Certificate
UK	United Kingdom
UN	United Nations
US/USA	United States of America
USD	United States Dollar
VRR	Voluntary Retention Route
WOS	Wholly Owned Subsidiary

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