GUEST COLUMN - 01

SEBI eases access norms for Foreign Portfolio Investors

Pranay Bhatia
Partner – Direct Tax - BDO India LLP

Amol Jhaveri
Associate – Direct Tax - BDO India LLP

The opening up of Foreign Direct Investment ('FDI') accompanied by introduction of the new Foreign Portfolio Investment ('FPI') Regulations makes India a more accessible destination amongst markets. The SEBI (FPI) Regulations, 2014 has considerably eased the entry norms for FPIs to access the growing Indian Capital Markets, since the introduction of the said Regulations, by SEBI on January 7, 2014.

India still holds being an attractive investment destination. Infusion of foreign capital to the secondary market has always received more attention due to the special nature of this investor segment.

With a broad based objective to attract more FPI in the country, SEBI had issued a consultation paper titled 'Easing of Access Norms for Investment by FPIs' with a view to solicit comments from public at large.

After taking into consideration the various comments received on the proposals contained in the aforesaid consultation paper, SEBI has brought about the following revisions in extant regulatory provisions vide its recently introduced circular easing the access norms for investment by FPIs:

1. **Discontinuance of requirements for seeking prior approval from SEBI in case of change in local custodian/ Designated Depository Participant ('DDP'):**

   At the time of change of local custodian/ DDP, the new DDP shall be permitted to rely on the registration granted by previous DDP at the time of transition. The move is expected to avoid duplicate efforts and incremental documentation by the FPIs as well as the DDPs

2. **Rationalization of procedure for submission of PCC/ MCV Declarations and Undertakings (D&U) and Investor grouping requirement at the time of continuance of registration of FPIs:**

   Procedural requirements have been simplified for FPIs. At the time of seeking continuance of registration, FPIs are no longer required to re-submit declarations and undertakings in cases where there is no change in the information already submitted, thereby reducing paperwork.

3. **Placing reliance on due diligence carried out by erstwhile DDP at the time of change of Custodian/ DDP of FPIs:**

   With a view to reduce documentation and delay in transitions, in the process of change of local custodian/ DDP, the new DDP may rely on the due diligence carried out by the old DDP.

4. **Exemption to FPIs having Multiple Investment Managers ('MIM') structure from seeking prior approval from SEBI in case of Free of Cost ('FOC') transfer of assets:**

   Regulations provide that transaction in securities should be executed only through registered stock brokers. However, in case of FOC transfers between FPIs operating under MIM structure bearing same PAN are now exempted from seeking prior approval from SEBI.

5. **Simplification of process for addition of share class:**

   All FPIs maintaining segregated portfolio were required to obtain prior approval of DDP in case of any addition in class of shares. In the revised regulation, where an FPI maintains common portfolio across all class of shares no prior approval is required to be obtained from DDP.

6. **Permitting FPIs operating under the MIM structure to appoint multiple custodians:**

   SEBI has now allowed FPIs operating under MIM structure to appoint multiple custodians/ DDPs.

7. **Permitting appropriately regulated Private Bank/ Merchant Bank to invest on their behalf and also on behalf of their clients:**

   It has been decided that private bank/ merchant bank that are appropriately regulated are now allowed to invest on behalf of their clients, subject to following conditions –

   - *Details of beneficial owners is provided to SEBI as and when called for; and*
   - *Banks do not enter into secrecy arrangement with the investors and secrecy laws do not apply to the jurisdiction in which bank is regulated.*

8. **Other Clarifications on Conditional registration:**

   The facility of granting conditional registration is now extended to existing funds proposing to convert as India dedicated funds. A time period of 90 days will be provided to achieve the Broad based status.

Concluding Remarks

On one hand, the introduction of long term capital gains tax on listed shares has acted as a damper and therefore apprehension is that whether the same level of interest for continuing to invest in India will exist or not, for the FPIs.

Although, the consultation paper was released in June 2017, the final regulations coming out just after the Budget proposal seems to be an attempt to woo the FPI community.