



Nangia Andersen LLP

SEBI allows for off-market transfer by FPIs to IFSC

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FPIs allowed to transfer portfolio off-market to IFSC funds

The Finance Act 2021 introduced a provision relating to foreign funds located in countries like Mauritius and Singapore that are holding existing investments in India qualifying for capital gains tax exemption. It provided that capital gains tax exemption available to FPIs under the tax treaties would continue to be available to the Fund in International Financial Services Centre (IFSC). Further, the relocation from another country to IFSC would be tax neutral for the Fund as well as the investors in the Fund. The relocation is envisaged to be a cashless transfer whereby the Fund or its wholly owned special purpose vehicle would transfer securities to IFSC fund (resultant Fund) that will issue new units to investors or the Fund in lieu of original units. Such a resultant Fund will continue to get capital gains exemption on future sale of grandfathered investments otherwise available under the respective tax treaty. Separately, the resultant Fund also enjoys capital gains exemption on debt/derivatives/mutual fund units and interest and dividend income taxable at 10% as per the domestic tax law.

Till now there were regulatory restrictions. Since FPI transactions are carried out on the stock markets, Securities and Exchange Board of India (SEBI) was not allowing cashless or free of price transfer of shares by one FPI to another.

SEBI has issued a circular¹ dated June 1, 2021, wherein it is clarified that the Designated Depository Participants (DDP) after appropriate due diligence would accord its approval for a one-time 'off-market' transfer of securities for such relocation to the FPIs. Further, FPIs opting for relocation request will have to apply for surrender of its FPI registration with the DDP.

In view of DDPs permitting free of price transfer to IFSC, it would be easy and beneficial for the offshore funds to relocate to IFSC. In particular two-tier structures like Luxembourg-Mauritius-India are likely to consider relocation to IFSC because its relatively easier to implement such restructuring without affecting the ultimate investors in the parent fund.

¹ SEBI Circular no SEBI/HO/FPI&C/P/CIR/2021/0569

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