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REPORTING OF FOREIGN INVESTMENT IN AIFs AND OTHER INVESTMENT VEHICLES

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The Reserve Bank of India (RBI) vide circular dated 16 November 2015 had permitted foreign direct investment (FDI) in investment vehicles, i.e., any entity registered and regulated by Securities and Exchange Board of India (SEBI), including alternative investment funds (AIFs), real estate investment trusts (REITs) and infrastructure investment trusts (InvITs) (together Investment Vehicles), (2015 Notification) without prescribing any detailed reporting format. RBI vide its circular dated 7 June 2018 (Reporting Notification), has now prescribed reporting norms for FDI in Investment Vehicles.

The Reporting Notification introduces a Single Master Form (SMF), which will integrate the reporting structures for the various forms of foreign investment in Indian entities, including Investment Vehicles in India. The SMF requires reporting of foreign investments in Indian entities, including the downstream investments, as well as reporting of investments received from persons resident outside India in AIFs and other Investment Vehicles. The SMF has to be filed online by the Indian resident. The SMF is yet to be implemented.

This newsflash will address the reporting requirements, as per the Reporting Notification, specifically for AIFs and other Investment Vehicles.

A. Immediate Reporting of existing investments

Until the implementation of the SMF, RBI as an interim measure requires reporting of all foreign investments received till 28 June 2018 by AIFs and other Investment Vehicles, as a one-time disclosure. Such existing foreign investments have to be reported to RBI in the prescribed format, prior to 12 July 2018. The link for the form will subsequently be provided by RBI.

Comment

It is mandatory for every AIF and other Investment Vehicle which has received any foreign investment/contribution (and that would include investments by NRIs except for investment received under the non-repatriable route). Non-compliance could result in fund raising restrictions and penal consequence on the AIF and other Investment Vehicles as discussed below.

B. Reporting of investments after implementation of SMF

I. General Ongoing Reporting

AIFs and other Investment Vehicles, receiving foreign investment, will be required to submit Form InVi within 30 days from the date of issue of units. The following information would need to be provided in the prescribed Form InVi:

(a) name of the investor; (b) jurisdiction of investor; (c) type of investor (whether FPI, NRI, FVCI, individual, company or others); (d) the amount of foreign investment; (e) date of receipt of foreign investment; (f) number of units issued; and (g) date of such issue of units.

II. Additional Reporting by FOCC AIFs

In addition to filing of Form InVi, Investment Vehicles with foreign owned and controlled sponsor, manager or investment manager, including AIFs (FOCC AIFs) are also required to furnish the following details for their downstream investments in an Indian entity/securities in Form DI:

(a) date of investment; (b) amount in INR; (c) types of instruments (whether shares/ CCD/ CCPS/warrants/partly paid shares); and (d) number of shares acquired on fully diluted basis. This Form DI needs to be filled within 30 days of date of issue of instruments.

Comment

This notification has filled the reporting gap which was prevailing for Investment Vehicles. However, the Reporting Notification and SMF entails double reporting for the same foreign investment in case of FOCC AIFs as they are already required to provide quarterly reports under the SEBI (Alternative Investment Funds) Regulations, 2012 to SEBI, thereby increasing the compliance.

However, while prescribing downstream reporting requirements under Form DI, RBI does not appear to have differentiated Category III AIFs considering that Category III AIFs can adopt complex trading strategy including active trading in publicly traded securities, which based on the current notification could pose a challenge. Further complications could also arise for Cat III AIFs which can be open ended wherein the investors can enter or exit at different points, and thus again filing under the proposed Form INVi could present additional burden.

For the ease of reference, please find below a summary of the reporting triggers and the forms for each categories of AIF:

Category of AIF	Reporting on receiving investment within 30 days of the date of issue of units	Reporting on making investment	
		Indian owned or controlled	FOCC AIF within 30 days of date of allotment
I & II	Form InVi	X	Form DI
III	Form InVi	X	Form DI

C. Consequence for Non-Compliance

Non-compliance with the Reporting Notification for AIFs and other Investment Vehicles will result in prohibition on the non-compliant entity from receiving any further foreign

investment, including indirect foreign investment. Further, such non-compliance will amount to contravention of the Foreign Exchange Management Act, 1999, leading to imposition of penalty and/or confiscation of the any currency, security or any other money or property in respect of which the contravention has taken place.

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