

30 June 2021

**Shri Sanjay Mangal**

Commissioner GST Policy Wing-II  
Central Board of Excise and Customs  
Ministry of Finance  
North Block  
New Delhi 110 011

Dear Sir,

**Sub: Applicability of Dynamic Quick Response (DQR) code on invoices issued by Indian entities providing stock broking services to Foreign Institutional Investors and Foreign Portfolio Investors**

**Ref: Circular no.156/2021 dated 21 June 2021 - Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- Central Tax dated 21st March, 2020 - Reg.**

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On behalf of the members of the Asia Securities Industry & Financial Markets Association (ASIFMA) <sup>1</sup> and the Capital Markets Tax Committee of Asia (CMTC) <sup>2</sup>, we have been regularly engaged in a dialogue with the Government of India on various tax and policy related matters and we have made detailed representations/ submissions on tax matters relevant to the Financial Services Industry in the last 6-7 years.

We wish to provide our representation on the issue of applicability of Dynamic QR code ('DQR') on invoices issued by Indian entities providing stock broking services to Foreign Institutional Investors ('FII') / Foreign Portfolio Investors ('FPI').

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<sup>1</sup> ASIFMA is an independent, regional trade association with over 145 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, competitive and efficient Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

<sup>2</sup> CMTC is a financial services industry body consisting of a number of banks, investment banks, securities firms and other diversified financial services institutions operating in Asia who are represented through their regional tax directors. The main objects of the CMTC, according to its Constitution, are "to provide a forum for discussion by corporate tax managers responsible for the tax affairs of investment banks, securities firms, banks and other diversified financial services institutions of topical taxation issues in Asia affecting their capital and securities markets and similar activities; ... to keep members informed of up to date information on taxation matters affecting capital and securities markets, and to exchange views on the technical analysis thereof; [and] to represent the interests of its members through acting as the respected voice of investment banks, securities firms, banks and other diversified financial services institutions, and to participate in liaison or advocacy activities on tax matters either directly or indirectly through representation with other groups or societies concerned with or by fiscal matters."

## OUR REPRESENTATION:

- 1) The Government has *vide* **Notification No. 72/2019-** Central Tax dated 13 December 2019 as amended by **Notification No. 71/2020-** Central Tax dated 30 September 2020, notified that an invoice issued by a registered person, whose aggregate turnover in any of the previous financial year exceeds five hundred crore rupees, to an unregistered person shall have a Quick Response (QR) code.
- 2) Reference is drawn to **Circular No. 156/12/2021** dated 21 June 2021 ('Circular 156') wherein the Government has clarified various issues regarding applicability of DQR code on B2C invoices.

As per Circular 156 it has been clarified (at Sr No. 4) that DQR code shall not be required in case of services effected to a recipient outside India but where the place of supply of such service is in India (*i.e. such supply does not qualify as export of service as per GST law*), and payment is received by supplier **in foreign currency**, through RBI approved mediums.

Relevant extract of the circular is reproduced below:

### **Quote:**

<i>In cases, where receiver of services is located outside India, and payment is being received by the supplier of services <b>in foreign exchange</b>, through RBI approved modes of payment, but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017; whether in such cases, the Dynamic QR Code is required on the invoice issued, for such supply of services, to such recipient located outside India?</i>	<i>No. Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, <b>and the payment is received by the supplier in foreign currency</b>, through RBI approved mediums, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.</i>
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### **Unquote:**

After a careful reading of the above extract, it is understood that following conditions should be cumulatively satisfied for non-applicability of DQR code on B2C invoices:

- (i) Supplier of services is in India
- (ii) Recipient of Service is outside India
- (iii) Place of supply of services is in India
- (iv) Payment should be received **in foreign exchange** through RBI approved modes of payment.

This clarification has been very welcoming for the trade and industry. We appreciate the continued efforts of the policy making team for issuing these clarifications.

- 3) We believe that one significant class of stock broking transactions may however, not be able to avail the benefit of this relaxation given the cumulative nature of the prescribed conditions.

At the outset we wish to highlight that the entire stock broking activity is highly regulated and the activity of investment by FIIs / FPIs in India is similarly governed by the SEBI<sup>3</sup> and RBI entirely, where all permissible activities and the manner of conducting the same is prescribed (and cannot be deviated from).

We wish to draw your attention to the stock broking services provided by Indian entities to FIIs. Presently, such services are classified as 'intermediary services' as per Section 13 of the Integrated Goods and Services Tax Act, 2017. Further, in case of intermediary services, since the place of supply is the location of the supplier of services, such stock broking services are subject to GST.

The stock broking services satisfy all the conditions (but one) of the Circular 156 for non-applicability of DQR code on invoices issued, namely,

- (i) Supplier of services in India (stock broker in located in India);
- (ii) Recipient of service is outside India (FIIs are outside India); and
- (iii) The place of supply of services in India (being intermediary services, the place of supply is India).

However, as per the RBI guidelines, brokers do not receive payment in foreign exchange.

- 4) The relevant extract of the RBI guidelines will provide more clarity. These are applicable to FIIs and FPIs (all located outside India).

The investment by FIIs/ FPIs in Indian securities market is governed by the **RBI Master Circular on Foreign Investment in India**<sup>4</sup> ('RBI Circular') and relevant extract from the circular is reproduced below:

**Quote:**

*"FIIs/sub-accounts can open a non-interest bearing Foreign Currency Account and / or a single non-interest bearing Special Non-Resident Rupee Account (SNRR A/c) with an AD Category – I bank, for the purpose of investment under the PIS. They can transfer sums from the Foreign Currency Account to the single SNRR A/c for making genuine investments in securities in terms of the SEBI (FII) Regulations, 1995, as amended from time to time. The sums may be transferred from Foreign Currency Account to SNRR A/c at the prevailing market rate and the AD Category - I bank may transfer repatriable proceeds (after payment of tax) from the SNRR A/c to the Foreign Currency account. The SNRR A/c may be credited with the sale proceeds of shares / debentures, dated Government securities, Treasury Bills, etc. Such credits are allowed, subject to the condition that the AD Category - I bank should obtain confirmation from the investee company / FII concerned that tax at source, wherever necessary, has been deducted*

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<sup>3</sup> The Securities Exchange Board of India (Foreign Institutional Investors) Regulations, 1995 updated by The Securities Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019

<sup>4</sup> Master Circular No. 15 /2015-16 July 01, 2015

*from the gross amount of dividend / interest payable / approved income to the share / debenture / Government securities holder at the applicable rate, in accordance with the Income Tax Act. The SNRR A/c may be debited for purchase of shares / debentures, dated Government securities, Treasury Bills, etc., and for payment of fees to applicant FIIs' local Chartered Accountant / Tax Consultant where such fees constitute an integral part of their investment process."*

**Unquote:**

This RBI guideline requires FIIs/ FPIs to maintain a SNRR A/c with an AD Category – I bank in INR. Funds are transferred by the FII/ FPI from their foreign currency account to the SNRR A/c for making investments in securities. SNRR A/c maintained with AD Category – I bank gets credited with proceeds from sale of securities and gets debited for purchase of investment **and payment of related expenses**.

- 5) A careful reading of the RBI Circular above, elucidates that consideration for providing stock broking services is to be paid by such FIIs/ FPIs only from the prescribed SNRR A/c, which is INR denominated (although such account is funded from foreign currency funds of the FII/ FPI). Accordingly, stock brokers would always receive their brokerage in INR only. This is in accordance with the regulations prescribed by the SEBI and the RBI.

This would imply that despite the case of stock brokers providing services to FIIs/ FPIs being directly covered under the above Circular 156 at Serial 4, it would not be able to avail the benefit of the clarification due to the extant RBI guideline of paying brokerage from SNRR A/c maintained in INR. Accordingly, brokers would have to generate DQR, however, as all FIIs/ FPIs are outside India, no one would pay such brokers using the DQR. Thus, brokers would have additional compliance burden, despite being covered by the relaxation in principle.

**OUR ASK:**

- 6) As you may be aware, millions of broker notes are issued to FIIs/ FPIs annually, and therefore this will be a major compliance implication (if not addressed).

It is therefore our request that the Circular be made applicable to the Indian entities providing stock broking services to FIIs/ FPIs **by deleting the following "and the payment is received by the supplier in foreign exchange through RBI approved mediums"**. This deletion would be necessary to ensure that the objectives of issuing the Circular are fully met.

- 7) **Without prejudice** to the above and as an alternate suggestion, we would like to draw your attention to a relaxation granted under Section 269SU of the Income Tax Act, 1961 ('Income Tax Act'). Under this section, there are provisions for accepting payments through online modes (UPI, UPI QR Code) for taxpayers having turnover of above 50 crores. The CBDT has issued a Circular No 12/2020 dated 20 May 2020 exempting this requirement for taxpayers receiving more than 95% of aggregate amounts from business/ formal entities (excluding retail/ consumers) **by modes other than cash**.

We understand that the basis of the Income Tax exemption was to ensure that compliance of digital payments be made applicable to only taxpayers who are mainly into retail customers. In case of stock broking, FII's/ FPIs are formalised setups making payments only through banking channels. Basis this, stock brokers are exempted from the above requirement under Income Tax. The purpose of Income Tax exemption will not be achieved if a similar compliance will have to be done under another law which is under the same Ministry.

We are thankful to the Ministry of Finance to bring in the exemption under the Income Tax Act and would request you to extend the same to the GST Act as well to reduce the additional compliance requirements for stock broking industry.

We thank you for your attention to this issue. In case you require any further clarifications or have any questions, we would be happy to discuss them.

We also urge you to grant us a meeting to discuss the above representation.

For further information, please contact Patrick Pang (ASIFMA Head of Compliance and Tax at [ppang@asifma.org](mailto:ppang@asifma.org)), Patrick Donovan (CMTC Chairperson at [patrick-j.donovan@ubs.com](mailto:patrick-j.donovan@ubs.com)) or Divyesh Lapsiwala (Partner EY LLP at [divyesh.lapsiwala@in.ey.com](mailto:divyesh.lapsiwala@in.ey.com)).

Yours sincerely,



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