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FPIs unlikely to shift from trusts to corporate structure

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Foreign portfolio investors, who are staring at a substantially higher tax incidence after the Budget announcements, are unlikely to migrate to the corporate structure if they are registered as trusts (or association of persons). Chairman of the Central Board of Direct Taxes PC Mody said on Wednesday FPIs could opt for a corporate structure if they didn't want a higher surcharge.

However, there are several factors that would deter FPIs from taking this route. Experts tell FE that the process of migrating from the trust mode to corporate would be an expensive one. Rajesh H Gandhi, partner at Deloitte India, said: "I don't think it will be easy for FPIs to convert from a trust to corporate because the operational and regulatory benefits of a trust structure will not be available as a corporate, assuming a fund can actually be set up as a corporate in a particular jurisdiction. All this would not be worth the pain for global funds investing in multiple jurisdictions."

Also, if any restructuring is done with tax being the sole reason, it could attract the anti-avoidance rules (Genral Anti-Avoidance Rule). According to Nitesh Mehta, partner/transaction tax, tax & regulatory services – BDO India, "The second question is how will FPIs restructure themselves, as investments may need to be transferred to the new corporate entity." Any such transfer will be subject to capital gains tax and STT. Further, such transfers may need to be carried out on market as Sebi is unlikely to be comfortable with off-market route for FPIs.

While the finance ministry has said it will not make any amendments, it would be helpful if specific clarification or relaxation is announced in relation to FPIs, either on the surcharge rate or enable them to move towards a corporate structure.

The buzz is that the finance ministry may give FPIs some relief. Pratibha Jain, partner at Nishith Desai Associates, said: "We are also hearing the government is reconsidering. It's not very sensible to put a tax, which I don't think was intended in the first place. I think right now we should be focusing on getting investments, revenues from this tax will be very small, but revenue loss can be much bigger, if it negatively affects sentiments of global investors."