

FPI shall be liable for the enhanced surcharge

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In order to encourage investment in the capital market, it has been decided to withdraw the enhanced surcharge levied by Finance (No. 2) Act, 2019 on tax payable at special rate on income arising from the transfer of equity share/unit referred to in section 111A and section 112A of the Income-tax Act, 1961 (the 'Act') from the current FY 2019-20. The following capital assets are mentioned in section 111A and section 112A of the Act:

Equity shares in a company;
Unit of an equity oriented fund; and
Unit of a Business Trust

The derivatives (Future & options) are not treated as capital asset and the income arising from the transfer of the derivatives is treated as business income and liable for normal rate of tax. However, in the case of Foreign Institutional Investors (FPI), the derivatives are treated as capital assets and the gains arising from the transfer of the same is treated as capital gains and subjected to a special rate of tax as per the provisions of section 115AD of the Act. Therefore, it is also decided that the tax payable on gains arising from the transfer of derivatives (Future & options) by FPI which are liable to special rate of tax under section 115AD of the Act shall also be exempted from the levy of the enhanced surcharge.

Therefore, the enhanced surcharge shall be withdrawn on tax payable at special rate by both domestic as well as foreign investors on long-term & short-term capital gains arising from the transfer of equity share in a company or unit of an equity oriented fund/business trust which are liable for securities transaction tax and also on tax payable at special rate under section 115AD by the FPI on the capital gains arising from the transfer of derivatives. However, the tax payable at normal rate on the business income arising from the transfer of derivatives to a person other than FPI shall be liable for the enhanced surcharge.

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