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Move to tax buybacks as long-term capital gains

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Taxman looks to plug 'loophole' in wake of recent flood of share repurchases

Mumbai, September 11:
With India Inc announcing buyback of shares worth several thousands of crores, the tax department is examining whether it can collect long-term capital gains tax on such transactions.

The Central Board of Direct Taxes (CBDT) is examining if buyback can be excluded from the exemption currently enjoyed by equity players for profit booked on investment after a year.

CBDT view sought

A note seeking clarity has been sent by the Mumbai tax department to the central tax body, a source close to the development told *BusinessLine*.

Data show that close to ₹34,000 crore of buyback offers were announced by companies last year; the amount so far this year has already exceeded ₹36,000 crore, which includes the Infosys offer.

SEBI chairman Ajay Tyagi, too, recently expressed his concern in a public forum that the amount in buyback offers in recent times far exceeded equity issuances by companies since 2016.

The tax department, which has been on overdrive to detect loopholes in the equity market since demonetisation, is eyeing Section 46(a) of the Income-Tax (I-T) Act to tax buyback offers.

The section states that any profit arising out of shares tendered in a buyback offer "shall be deemed to be the capital gains arising to such shareholder or the holder of other specified securities."

Focus on Sec 10 (38)

Section 10 (38) of the I-T Act deals with exemption of long-term capital gains tax to equity investors where securities transaction tax (STT) is paid.

But there is a view among I-T officials that the section relates to Section 45 of the I-T Act, which defines 'capital gains' for general share market transactions, and not buyback offers, which come under a different section altogether.

In fact, prior to 2015, Section 10 (38) did relate to Section 45 prior; until that year, buyback offers were taxed as 'deemed capital gains'. Only after 2015 were buyback offers put on the exchange platform to ensure a smooth and paperless way of doing it.

Sleight of hand

"The tax department wants to use its left hand to take take away what was given by its right hand," said Rajesh Simhan, Head – International taxation and Partner, Nishith Desai Associates.

"Officials seem to be sensing an opportunity in the fact that a number of buybacks are being announced. Otherwise, the intent in the law always seemed clear that long-term capital gains on shares, where STT is paid, should be exempt from any incremental tax," he noted.

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