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Satyam open offer to attract capital gains tax

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DOMESTIC shareholders who sell shares of Satyam Computer Services in the open offer made by a strategic investor will have to pay tax on capital gains.

Tax will be charged, irrespective of the period of holding the shares, since an open offer is an off-market transaction. In an open offer, the acquirer makes a public announcement, disclosing his intention to acquire shares of a target company from existing shareholders. The disclosure comprises the offer price, the number of shares to be acquired, the identity of the acquirer and the purpose of acquisition.

Going by the norms cleared by Sebi last week, the strategic investor in Satyam will have to make a mandatory open offer of at least 20% of the shares, after acquiring up to 31% through a preferential allotment. The open offer will have to be made at the same share price as the price paid by the acquirer in the preferential allotment (while subscribing to newly-issued equity shares).

Capital gains will accrue to a shareholder of Satyam if the openoffer price is higher than the cost of acquisition of shares. Domestic shareholders will be charged a 30% tax on short-term capital gains, if any. Short-term capital gains arise if shares are sold within a year of holding them. The tax liability will, however, be lower on long-term capital gains that accrue when shares are sold after a year of holding them. The rate is 20% with indexation benefits, or 10% without indexation benefits.

Domestic investors who bought shares after January this year could make capital gains while those who invested during the bull-run may book a capital loss if they tender their shares in the open offer. Mauritiusbased FIIs will be exempt from capital gains tax by virtue of India's tax treaty with the island nation.

The Satyam board will have to approach the Central Board of Direct Taxes (CBDT), if at all there is a case for a capital gains tax waiver to domestic shareholders. "Considering the fact that the Company Law Board (CLB) and Sebi have granted certain exemptions to potential bidders that could be detrimental to minority shareholders, it would be interesting to see if CBDT grants exemption from capital gains to shareholders participating in the open offer," said Nishchal Joshipura, head-M&A, Nishith Desai Associates.

In the normal course, investors who sell Satyam shares, or the shares of any other listed company, through the stock exchange and make profits on the sale, enjoy a beneficial tax treatment. They are exempted from paying long-term capital gains tax. Else, they have to pay a 15% short-term capital gains tax. The beneficial tax regime is linked to the payment of STT that is charged on transactions routed through the stock exchange.

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