Budget may shift buyback tax from firms to shareholders

SURABHI
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THE FINANCE MINISTRY is considering a proposal to shift the tax liability on buyback of shares from companies to individual shareholders who participate in the share repurchase process, sources said.

The idea is to bring taxation of share buybacks similar to the way dividend income is taxed at the hands of the shareholders. Also, the shift in tax liability will do away with the current incidence of double taxation of buyback proceeds, with shareholders also paying capital gain taxes on the gross proceeds received.

These proposals were made by many market participants and also found mention in a recent consultation paper issued by the Securities and Exchange Board of India (Sebi).

An announcement in this regard is likely in the Budget FY24.

Alternatively, it is also being seen whether the company can distribute the proceeds of buyback to exiting shareholders, net of the buyback tax.

The objective is to ensure that the tax liability falls only on the exiting shareholders rather than all of them, including those who do not tender their shares in the buyback.

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POPULAR CHOICE

- Buyback is a mechanism under which the company **buys back its own shares** from shareholders

- Several companies such as **Tata Consultancy Services, MOIL** and **Paytm** parent One97 Communications have made such offers in last year
- Number of buybacks in current fiscal till December end rose to 44 issues worth **₹18,703 crore**, according to PRIME Database

800cc clocked a growth of 47% during the April-November period, selling 561,230 units against 381,402 in the same period last year, according to the Siam data.

While working on premium bikes, each of the three legacy two-wheeler brands are also simultaneously expanding their electric vehicle (EV) play to fend off competition from strong startup companies like Ola Electric, Ampere and Ather Energy.

While Bajaj Auto will launch one new electric two-wheeler every year, Hero MotoCorp will look to rapidly scale up the reach for its electric scooters.

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Amit Agarwal, partner (M&A), Nangia Andersen, said the Sebi's proposal to phase out market-based buyback would assist in addressing double taxation on buyback of listed company shares and would go a long way in enhancing the overall value proposition to shareholders.

Prior to 2013, on buyback of shares, the shareholders were subjected to capital gains tax. In Budget FY13, a 20% tax was imposed on unlisted companies on buyback while giving capital gains waiver to shareholders. The provision was made applicable to buybacks by listed companies in FY20, but the shareholders in such cases also continued to be liable to pay the capital gains tax.

Finance minister Nirmala Sitharaman had said at the time that the move was made to discourage the practice of avoiding Dividend Distribution Tax (DDT) through buyback of shares by listed companies. The subsequent Budget 2020-21 had then removed DDT and said dividend would be taxed only in the hands of the recipients at their applicable rate.

In its consultation paper, Sebi proposed that the incidence of tax on buyback be shifted from the company to the hands of shareholders. However, pending the acceptance of that, it had sought public comments on a proposal on whether the company should be instructed to distribute buyback consideration to the exiting or tendering shareholders, including promoters, net of buyback tax payable by the company under section 115QA of Income Tax Act, 1961. According to experts, globally share buybacks are taxed at the hands of the investors.

"The proposal for net-tax buyback consideration is on the cards, which essentially provides that the amount payable under buyback be netted off with applicable buyback taxes and the net amount is paid to exiting shareholders," Agarwal said.

Sumit Mangal, partner, Luthra and Luthra Law Offices India, noted that if buyback tax is shifted from the company to the individual shareholders, companies may prefer buyback over dividends.

"Shifting the burden of buyback tax to shareholders is better than distribution of buyback proceeds net of tax. Besides the advantage of lower tax rate on capital gains, in case of secondary purchase of shares, the benefit of cost of shares is not available and the company applies buyback tax on the difference between the original issue price and the buyback price, and this can significantly reduce the buyback proceeds available for distribution," he said.

Buyback is a mechanism under which the company buys back its own shares from shareholders. Share buyback programmes have become popular with companies, with Tata Consultancy Services, MOIL and Paytm parent One97 Communications making such offers last year.

According to data from PRIME database, the number of buybacks in the current fiscal till December 31, 2022, had risen to 44 issues amounting to ₹18,703 crore.