Remove buyback tax on stock buys via open market: India Inc to FM

NOT FAIR. Buyback tax on open market is double taxation, apex industry chambers tell FinMin

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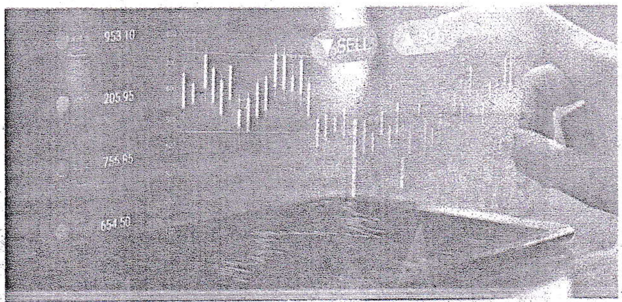
Ahead of the first full Budget of the Modi 3.0 government, corporate India has once again strongly advocated for the removal of the Buy-back Tax (BBT) imposed on listed shares repurchased by a company through open market transactions on recognised stock exchanges.

This recommendation has been conveyed to the Finance Ministry in the recent pre-Budget consultations and also in the pre-Budget memorandum submitted to the government, sources said.

Infact, India Inc had, in January, this year made a similar proposal ahead of the interim Budget, they added. However, there was no tax relief coming the way of listed corporates on this front.

Typically Buy-back of shares by a company happens through two methods — one is the 'Tender Offer' and the other is 'Open Market via Stock Exchange' route. In a tender offer, a company makes an offer to buy a certain number of shares at a specific price, directly from shareholders. This is commonly described as a fixed price buyback.



TIME TO MAKE AMENDS. FICCI has said that with DDT getting abolished in 2020, the corresponding levy of BBT is not justifiable

However, in an open market mechanism, the company buys up to a certain number of shares. A ceiling price is fixed and the buyback can be done upto or below that particular price, not beyond that.

WHAT INDIA INC SAYS?

Confederation of Indian Industry (CII) has in its pre-Budget memorandum for upcoming full Budget said that public listed companies are now increasingly adopting 'open market through stock exchange' method for buy-back purposes.

Currently, under this route, tax is paid by both – capital gains tax by the shareholder and BBT by the company on the same transaction, resulting in double taxation, CII has said.

As BBT was introduced to curb tax avoidance by the companies using the buy-back route and given that the promoter group cannot participate in buy-back in 'open market through stock exchange' method, the justification for levy of BBT does not exist in such cases, CII has submitted.

Hence, BBT should be exempted in case of listed shares wherein buy-back is under 'open market through stock exchange' method.

Consequentially, exemption under section 10(34A) should also not be applicable and the transactions should continue to be subject to capital gains tax in the hands of the shareholders, CII has said.

On its part, FICCI has in its pre-Budget memorandum said that BBT was introduced to counter-balance Dividend Distribution Tax (DDT). With DDT having been abolished in 2020, the corresponding levy of BBT is not justifiable, FICCI has submitted.

Mukul Bagla, Chairman of PHDCCI's Direct Tax committee, said that that amount received on buyback of shares should be taxable in the hand of the shareholder and not in the hands of the company.