



## PHARMACEUTICALS EXPORT PROMOTION COUNCIL

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### **Sanofi in I-T net, told to pay Rs 650 cr over Shantha buy**

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Close on the heels of Vodafone-Essar contesting a tax case in the Bombay High Court, tax sleuths have snared another multi-national company for tax evasion. This time, French pharma firm Sanofi Aventis, that acquired India's Shantha Biotech last year, has been asked to pay Rs 650 crore as capital gains tax to the Indian government.

Sanofi bought Shantha from France's Merieux Alliance that had more than 90% in the Indian vaccine maker. Sanofi paid Rs 3,700 crore to acquire Shantha, making it the first big-ticket deal in the Indian biotech sector.

Sanofi is now taxable under Section 195 of the Income Tax Act because it bought Shantha through Shan H, a special purpose vehicle incorporated in France by Merieux in 2006.

Although this was an extra territorial deal, the I-T department has claimed capital gains because the transaction involved transfer of an Indian asset, namely Shantha.

Also, the profit made by Merieux from the sale of shares to Sanofi was generated in India, said an official from the International Tax Range, who did not wish to be named.

Therefore, according to the I-T department, Sanofi had an obligation to pay withholding tax in India before making the payment of the purchase price to Merieux.

Tax officials, served a notice to Sanofi last September informing the company of the charges and passed the order in the last week of May seeking a payment.

However, Sanofi, in its communication to the tax officials has been maintaining that it is not liable for capital gains tax since the deal took place on foreign soil. A mail sent to Sanofi to know their official stand on this issue remained unanswered.

While it is unclear if the French MNC will take legal recourse, I-T officials hope this case will not be a long row to hoe like the Vodafone case, which does not show any sign of drawing to a close.

Two years ago, Vodafone too, came under the radar of the Indian income tax authorities as it involved a transaction between two foreign companies and a potential tax liability of approximately \$2 billion.

Vodafone bought a 67% in Hutchison Essar, since renamed Vodafone Essar. Hutchison Whampoa controlled its Indian subsidiary through a Cayman Islands-registered firm which was bought by Vodafone.

The structure of Sanofi's case is comparable to Vodafone's. Sanofi could pay up the required amount, though in protest. However, Sanofi may wait for the outcome of the Vodafone judgement before it decides any future course of action, said Shefali Goradia, a partner with BMR Advisors.

A successful tax claim in this case will set a precedent to any future mergers and acquisitions that take place on foreign soil, but involve transfer of management control of an Indian company from one foreign firm to another.

While the matter is still being debated in the courts, an amendment has been made to the Income Tax Act to the effect that if the seller of the shares did not pay tax in India, the buyer is bound to pay the same and imposed a retrospective interest penalty for not withholding such tax.

Many extra territorial deals are waiting to be settled as the machinery for computing tax on off-shore transactions are being finalised.