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CAPITAL GAINS

Various aspects about

SALE OF

IMMOVABLE PROPERTY

Income Tax Department

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Understanding Capital Gains on Transfer of Immovable Property:

1. Capital Gains – taxable in the hands of the Seller

i. **Profits or gains arising from the transfer of an immovable property, held as a capital asset, are taxed under the head "Capital Gains".**

ii. The incidence of tax on Capital Gains depends upon the period for which the capital asset under consideration was held before the transfer.

An immovable property, being land or building or both, held for a period of 24 months or less qualifies as a 'short-term capital asset'and if such capital asset is held for more than 24 months it qualifies as a 'long-term capital asset'. For assessment years prior to AY 2018-19, such period was 36 months instead of 24 months.

Transfer of a short-term capital asset gives rise to Short Term Capital Gains ("STCG") and transfer of a long-term capital asset gives rise to Long Term Capital Gains ("LTCG"). The tax rates for STCG and LTCG are different.

<u>Illustrations</u>

STCG arising on account of transfer of short-term capital asset in the hands of seller will be computed as follows:

A	Particulars	Amount
(a)	Full value of consideration (i.e., Sales consideration of asset) [for example take Rs. 50,00,000]	**50,00,000/-**
(b)	*Less: Expenditure incurred wholly and exclusively in connection with transfer of capital asset (E.g., brokerage, commission, advertisement expenses, etc.)[for example take Rs. 1,00,000]*	**1,00,000/-**
(c)	Net sale consideration[(a)-(b)]	**49,00,000/-**

(d)	*Less*: Cost of acquisition [for example take Rs. 20,00,000]	**20,00,000/-**
(e)	*Less*: Cost of improvement, if any [for example take Rs. 50,000]	**50,000/-**
(f)	*Short-Term Capital Gains [(c)-(d)-(e)]*	**28,50,000/-**

Rate of Taxation for STCG: The STCG computed as above forms part of the total income and is chargeable to tax as per the normal rate of tax as applicable to the assessee.

iv. LTCG arising on account of transfer of **long-term capital asset** in the hands of seller will be computed as follows:

B	Particulars	Amount
(a)	Full value of consideration (i.e., Sales consideration of asset)[for example assume that properties sold in the F.Y. 2017-18 for Rs. 50,00,000]	**50,00,000/-**
(b)	*Less: Expenditure incurred wholly and exclusively in connection with transfer of capital asset (E.g., brokerage, commission, advertisement expenses, etc.) [for example take Rs. 1,00,000]*	**1,00,000/-**
(c)	*Net sale consideration[(a)-(b)]*	**49,00,000/-**
(d)	*Less:* Indexed cost of acquisition (*)[for example assume that properties was purchased in the F.Y. 2012-13 for Rs. 30,00,000]	**42,00,000/-***
(e)	*Less:* Indexed cost of improvement if any (*)[for example assume that cost of improvement in the F.Y. 2014-15 was of Rs. 3,60,000]	**4,20,000/-***
(g)	*Long-Term Capital Gains[(c)-(d)-(e)]*	**2,80,000/-***

(*) Indexation is a process by which the cost of acquisition is adjusted against inflationary rise in the value of asset. For this purpose, CBDT has notified cost inflation index.

The benefit of indexation is available only to long-term capital assets. For computation of indexed cost of acquisition following factors are to be considered:

- Year of acquisition/improvement;
- Year of transfer;
- Cost inflation index of the year of acquisition/ improvement;
- Cost inflation index of the year of transfer

➔ **Indexed cost of acquisition is computed with the help of following formula:**

$$\frac{\text{Cost of acquisition} \times \text{Cost inflation index of the year of transfer of capital asset}}{\text{Cost inflation index of the year of acquisition}}$$

➔ **Indexed cost of improvement is computed with the help of following formula:**

$$\frac{\text{Cost of improvement} \times \text{Cost inflation index of the year of transfer of capital asset}}{\text{Cost inflation index of the year of improvement}}$$

The Central Government has notified the following Cost Inflation Index numbers:

Sl.	Financial Year	Cost Inflation Index
1	2001-02	100
2	2002-03	105
3	2003-04	109
4	2004-05	113
5	2005-06	117
6	2006-07	122
7	2007-08	129
8	2008-09	137

9	2009-10	148
10	2010-11	167
11	2011-12	184
12	2012-13	200
13	2013-14	220
14	2014-15	240
15	2015-16	254
16	2016-17	264
17	2017-18	272
18	2018-19	280

Rate of Taxation for LTCG:

The LTCG computed as above is chargeable to tax at a special rate of tax, i.e. 20% (plus surcharge and cess as applicable). Further, no deduction under Chapter VIA is allowed against the LTCG.

2. Stamp Duty Value deemed as Sale Consideration for computing Capital Gains in the hands of the Seller:

Where the actual sale consideration receivable for the transfer of a capital asset, being land or building or both, is less than the value adopted or assessable by Stamp Valuation Authority for the purpose of stamp duty in respect of such transfer, the value adopted by such authority would be taken as the full value of consideration in computing the Capital Gains as per provisions of section 50C of the Income tax Act.

In other words, while computing Capital Gains: Full value of consideration = (Actual Sales consideration) or (Valuation adopted for Stamp Duty payment), whichever is higher.

In this regard, some relief has been provided vide the Finance Act, 2018, whereby the effect of the above deeming provision would not apply if the difference between actual sales consideration and stamp duty valuation of such property is not more than 5% of the actual sale consideration.

3. If Stamp Duty Value exceeds Purchase Consideration, the difference is also taxable in the hands of the Buyer under the head 'Income from Other Sources:

Where the amount of actual purchase consideration payable by a Buyer for purchase of immovable property is less than the Stamp Duty Value of such property, the difference between the Stamp Duty Value and purchase consideration shall be taxable in the hands of the Buyer under the head “Income from Other Sources” at the normal rate of tax applicable to such assessee as provided under section 56(2)(x) of the Act.

The above provision will not apply if the above referred amount of difference does not exceed Rs. 50,000. Further, some relief has been provided vide the Finance Act, 2018, whereby the effect of the above provision would not apply if the difference between Stamp Duty Value and actual purchase consideration is not more than 5% of the actual purchase consideration.

4. LTCG exempt from tax if such gains are invested by the Seller in specified assets:

LTCG is exempt from tax if the seller invests the amount of such capital gain in specified types of assets. The key exemptions in this regard have been summarised below:

Section	54	54EC
Exemption to	Individual or HUF Only	Any assessee
Sale of	**LTCA being residential house/ land appertenant thereto**	**LTCA being land / bldg. or both**
Investment made in Purchase of	Amount of Capital Gains invested in – A New Residential House (Only 1) in India	Amount of Capital Gains invested in – Specified Bonds of NHAI or RECL (These bonds will now have maturity of 5 years or more)
Time Period of Purchase	If Purchased, within One year before or 2 years after; If Constructed, within 3 years after the transfer (refer Note 1 below)	Within 6 months of the transfer
Consequences if new asset sold within a particular period.	If new asset sold within 3 years, while calculating Capital Gains for the new asset, Capital Gain exempt earlier will be reduced from its Cost of Acquisition	On sale of securities or otherwise conversion into money within 5 years, LTCA exempted earlier will be taxable in the year of such sale or conversion
Relevant For	Seller	Seller

5. Amount of deduction claimed under section 80C to be taxable if residential house sold within 5 years:

Where loan was taken for purchase of residential house property and deductions were claimed for the principal repayment, stamp duty and registration under section 80C of the Act and thereafter, if such house property is sold within five years from the end of the financial year in which the possession of such property was obtained, the tax benefits which were claimed earlier will have to be reversed. The tax deduction claimed for the principal repayment, stamp duty and registration under section 80C becomes taxable in the year of such sale.

54GB	54F
Individual or HUF Only	Individual or HUF Only
LTCA being Residential Property	**Any LTCA except residential house**
Amount of Sale consideration invested in – Purchase of Equity Shares of an Eligible Company in which the assessee holds 50% or more shares/ voting power, and the Eligible Company makes investment in new plant and machinery as prescribed	Amount of Sale consideration invested in – A New Residential House (Only 1) in India
Before the due date of ITR (refer Note 1 below)	If Purchased, within One year before or 2 years after; If Constructed, within 3 years after the transfer (refer Note 1 below)
If new asset (shares or plant and machinery) sold within 5 years, then amount of LTCG exempted earlier will be taxable in the year of such sale in the hands of respective assessee	If new asset sold within 3 years, then amount of LTCG exempted earlier will be taxable in the year of such sale
Seller	Seller

6. Buyer obligated to deduct tax at source ('TDS')

i. If Seller is a "resident" in India:

1. Incase the total amount of purchase consideration payable for such immovable property is more than INR 50 lakhs, the Buyer is required to deduct tax at the rate of 1% of the purchase consideration payable to the resident seller.
2. Such TDS is required to be done at the time of payment or credit to the account of the Seller, whichever is earlier.
3. The Buyer is required to deduct tax at the rate of 20% incase the seller does not provide his PAN to the buyer.

Sr No	Date of ending of	Due date for filing TDS Statement in Form 27Q
1	30th June	31st July of the financial year
2	30th September	31st October of the financial year
3	31st December	31st January of the financial year
4	31st March	31st May of the financial year

4. The tax so deducted has to be deposited by the Buyer with the Government authorities within 30 days from the end of the month in which TDS was deducted alongwith Form 26QB.

5. The Buyer is also required to furnish a TDS certificate as per Form 16B to the Sellerwithin fifteen days from the due date for furnishing Form No. 26QBafter generating and downloading the same from the web portal specified by the Income-tax Department.

6. The Seller can claim credit of such TDS in his income-tax return.

7. The Seller can claim a refund of the TDS in his income-tax return if he is incurring a loss on the sale of the property or if he is claiming exemption from long-term capital gains under any of the ways discussed earlier.

ii. If Seller is a "non-resident" in India:

1. If the immovable property is being purchased from a person who is a non-resident in India as per the provisions of the Income-tax Act, the Buyer is obligated to deduct tax 20% if the asset is a long-term capital asset and @ 30% if the asset is a short-term capital asset (plus surcharge and cess as applicable). (Sec. 195)

2. Such TDS is required to be done at the time of payment or credit to the account of the Seller, whichever is earlier.

3. The tax so deducted has to be deposited by the Buyer with the Government authorities within 7 days from the end of the month in which TDS was deducted.
4. The Buyer will also need to have a Tax Deduction Account Number ("TAN").
5. The Buyer is also required to furnish the applicable Quarterly TDS Statement in Form 27Q in the prescribed manner. The due dates for filing such quarterly TDS statements have been summarised below:

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