FAQS ON TAXABILITY OF THE SALE OF IMMOVABLE PROPERTY LOCATED IN INDIA BY NON-RESIDENTS

1. **Is the gain arising on the sale of immovable property located in India by a Non-Resident taxable in India?**

   Yes. When there is a sale of immovable property located in India, the resultant gain accrues or arises in India. For non-residents, incomes which accrue or arise in India are taxable in India in terms of provisions of Section 5 of the Income Tax Act, 1961 ("the Act").

2. **What is the rate of tax applicable on capital gain when a non-resident sells an immovable property located in India?**

   That depends on the type of Capital Gain.

   If capital gain qualifies as a Long-Term Capital Gain (LTCG), the applicable tax rate is 12.5% in terms of Section 112 of the Income Tax Act, 1961.

   If capital gain qualifies as a Short-Term Capital Gain (STCG), the applicable tax rate follows the slab rates for the relevant year.

3. **How to decide whether it is a long-term or short-term capital gain?**

   Whether the gain is long-term or short-term depends on the period for which the seller holds the immovable property.

   If the property is held for more than 24 months, the gain is Long-Term Capital Gain (LTCG).

   If the holding period is 24 months or less, the gain is Short-Term Capital Gain (STCG).

4. **How is capital gain and tax liability calculated on the sale of immovable property?**

   Out of sale value, first you can reduce expenses related to sale like brokerage etc. to arrive at net sale value.

   Out of net sale value, reduce your entire cost of acquisition to arrive at taxable capital gain.

   Kindly note that cost of acquisition includes all your costs like purchase price, GST/VAT/ Service Tax paid on purchase price, stamp duty and registration charges, brokerage etc.

On resultant gain, you apply the applicable rate i.e. 12.5% or slab rates to arrive at the basic tax figure. Over and above this basic tax amount, add surcharge and education cess to arrive at the final tax figure. Kindly note that the rate of surcharge is applied to the amount of basic tax. The rate of surcharge depends on the amount of capital gain. If the amount of capital gain is above 50 Lakhs but up to 1 crore, the surcharge is 10%. If the amount of gain is more than 1 crore, the surcharge is 15%.

Example Calculation of Capital Gain and Tax Liability

Scenario: Long-Term Capital Gain

Particulars	Amount in INR
Sale value of Property	Rs. 2,00,00,000
Cost of Transfer (Eg. Brokerage, etc)	Rs. (2,00,000)
Net Consideration	Rs. 1,98,00,000
Cost of Acquisition of Property	Rs. (75,10,000)
Capital Gain Income from Property	Rs. 1,22,90,000
Basic Tax	Rs. 15,36,250
Surcharge @ 15% of Basic Tax	Rs. 2,30,438
Basic Tax and Surcharge	Rs. 17,66,688
E. Cess on the above tax	Rs. 70,668
Total Tax Liability	Rs. 18,37,356

5. What are the options for saving tax on capital gain arising from sale of immovable property in India by non-residents?

Non-residents can claim exemptions under Sections 54, 54F, and 54EC by reinvesting the capital gain in specified assets.

Particular	Section 54	Section 54F	Section 54EC
Asset Transferred	Residential House Property	Any long-term capital asset except residential property	Any long-term capital asset being land or building
Asset to be purchased / Reinvest in	One Residential House Property	Residential House Property	Bonds of NHAI / RECL
Nature of Asset sold	Long-Term Capital Asset	Long-Term Capital Asset	Long-Term Capital Asset
Time limit of purchase/construction of new house/bonds	• Purchase shall be done within 2 years from the date of Transferred or • 1 year before the sale or • The construction shall be completed within 3 Years from the date of transfer		6 Months from the date of transfer
Amount of Exemption	Lower of: • Amount of the capital gain or • Cost of New Asset	Capital Gain * (Cost of New Assets / Net Sale Consideration)	Lower of: • Amount of capital gain or • Cost of New Asset
Calculate the amount of exemption as mentioned in FAQ 4 if the Amount invested is Rs. 1,20,00,000	Lower of : • 1,22,90,000 or • 1,20,00,000 The exemption is Rs. 1,20,00,000	1.229L * (1.20L / 1.98L) The exemption is Rs. 74,48,484	Lower of : • 1,22,90,000 or • 50,00,000 The exemption is Rs. 50,00,000**
Is there any lock-in period before which a new property cannot be sold?	3 Years	3 Years	5 Years
What if the sale happens within the above lock-in period?	The exemption granted as above shall be withdrawn in the year in which the transfer takes place and the NR has to pay tax on the same.		

** **Notes :** The amount invested in Section 54EC shall not exceed Rs. 50 Lakhs. Hence, the exemption is restricted to Rs. 50 Lakhs in the above table.

6. What is the concept of indexation with respect to cost of acquisition?

Kindly note that for Non - Residents do not have benefit of indexation for the transactions of sale of property taking place on or after 23rd July 2024. Hence, it is no more relevant.

7. What is LDC? What purpose does it serve?

When a resident Indian buys a property from a non - resident, he has to deduct tax from the payment that he makes. Rate of TDS depends on whether it is long term capital gain transaction or short-term capital gain transaction. We have discussed about rate in previous questions.

The issue is that the buyer has to deduct the tax at source (TDS) on gross sale value and not the gain amount.

For example, in the example calculation provided in FAQ No. 4, the buyer will deduct tax @ 14.95% (12.5% Basic Plus 15% Surcharge Plus 4% Education Cess) (Kindly note that rate will change if transaction is STCG. In our example above, it is LTCG) on 2 crores i.e. 29,90,000. This is also called withholding tax. Buyer will deposit this TDS with the Government and non - resident seller will get credit of the same when he files the Income-tax Return.

Now, the obvious question will be why a buyer should deduct TDS on the Gross sale value and not the capital gain i.e., 1,22,90,000? Because what is taxable is the capital gain and not the sale consideration. This is exactly what we show to the Income-tax Department by doing the process of LDC i.e., Lower Deduction Certificate. We submit the documentation and prove the gain amount, and they issue the certification confirming to the buyer that TDS should be deducted only on the gain amount and not the gross sale value. In our example by obtaining the LDC, TDS can be reduced to Rs. 18,37,356 from Rs. 29,00,000.

8. How will the Income Tax Department calculate the lower rate? Take the amount as per FAQ 4 and calculate the lower rate of TDS.

The Income Tax Department will calculate the estimated tax payable by NRI during the year. The formula of computing a lower rate is as under:

Lower Rate = (Estimated Tax/Sales Value) * 100
= (18,37,356/2,00,00,000) * 100
= 9.17%

It is calculated for Long Term capital Gain

So first they calculate the gain amount and see how much the tax liability is. Then they issue LDC quoting rate of tax at which buyer should deduct money from entire sale consideration. In our example, buyer will be asked to deduct tax at 9.17% from Rs. 2,00,00,000.

9. What all documents are required for filing an application of the lower deduction certificate?

Tentative documentation will be like below.

- TAN number of the buyer
- Sale MOU on a stamp paper
- Copy of purchase agreement
- Copy of Buyer and seller PAN Card
- Seller Mobile number, Email ID and Communication address
- Income-tax portal login ID and password if you are registered on it. Otherwise, we have to generate the ID password.
- User ID and Password of Traces portal if you are registered on it. Otherwise, we have to generate the ID password.
- Copy of Bank Statement showing payments made by you at the time of purchase of the property.
- Certificate from Registrar stating stamp duty value of the property. A lawyer handling your registration may help.
- Copy of passport to prove that the seller is a non - resident.

10. How to file an application for obtaining the lower deduction certificate?

The application shall be file in Form No. 13 online on the Income tax Traces Portal.

11. Within how many days the Income tax department will issue a lower deduction certificate?

Generally, the Income tax department will issue the lower deduction certificate within 30 Days from the date of filing an application.