

## **CAP ON CAPITAL GAIN DEDUCTIONS U/S. 54 & 54F OF IT ACT, 1961**

Dear Friends,

As you are aware that Hon'ble Finance Minister has presented Union Budget 2023 on 1<sup>st</sup> February, 2023. The budget is a progressive and development oriented budget. The FM has considered all sectors of the country in the budget. The Government has taken care of Agriculture, Infrastructure, Defense, Digital India , Health and Education on equal footings. The main importance has been given to Agriculture, Defense and the Health Sectors. The Government has also fulfilled the demand of middle class by increasing threshold limit from Rs. 2.50 Lakhs to Rs. 7.00 Lakhs in New Tax Regime. The aim of government is to induce more and more people to move from traditional rebate and deduction (Old Tax Regime) to New Tax Regime.

We have discussed changes brough by this Budget 2023 in Income Tax , Indirect Taxes perspective , Impact of Budget on LIC Policies etc. In this article we are going to discuss changed brought in taxation of Income from Capital Gain.

### **LET'S CONSIDER STATUTORY PROVISIONS**

**SECTION 54 OF THE INCOME TAX ACT, 1961** gives relief to a taxpayer who sells his residential house and from the sale proceeds he acquires another residential house.

*Basic conditions Following conditions should be satisfied to claim the benefit of section 54.*

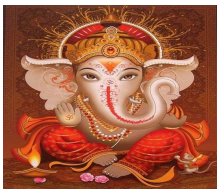
- i) The benefit of section 54 is available only to an individual or HUF.*
- ii) The asset transferred should be a long-term capital asset, being a residential house property.*
- iii) Within a period of one year before or two years after the date of transfer of old house, the taxpayer should acquire another residential house or should construct a residential house within a period of three years from the date of transfer of the old house.*
- iv) In case of compulsory acquisition the period of acquisition or construction will be determined from the date of receipt of compensation (whether original or additional).*

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- v) Exemption can be claimed only in respect of one residential house property purchased/constructed in India.
- vi) If more than one house is purchased or constructed, then exemption under section 54 will be available in respect of one house only.
- vii) No exemption can be claimed in respect of house purchased outside India.
- viii) With effect from Assessment Year 2021-22, the Finance Act, 2020 has amended Section 54 to extend the benefit of exemption in respect of investment made in two residential house properties.
- ix) The exemption for investment made, by way of purchase or construction, in two residential house properties shall be available if the amount of longterm capital gains does not exceed Rs. 2 crores.
- x) If assessee exercises this option, he shall not be entitled to exercise this option again for the same or any other assessment year.

#### **SECTION 54F OF THE INCOME TAX ACT, 1961**

In the Income-tax Act, after section 54E, the following section shall be inserted with effect from the 1st day of April, 1983, namely: —

*'54F. Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.—(1) Where, in the case of an assessee being an individual, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—*

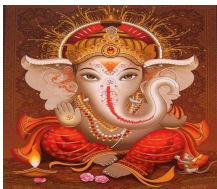
- (a) *if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;*
- (b) *if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:*

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*Provided that nothing contained in this sub-section shall apply where the assessee owns on the date of the transfer of the original asset, or purchases, within the period of one year after such date, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset.*

*Explanation.—For the purposes of this section,—*

- (i) "long-term capital asset" means a capital asset which is not a short-term capital asset;*
- (ii) "net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.*

*(2) Where the assessee purchases, within the period of one year after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a), or, as the case may be, clause (b), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.*

*(3) Where the new asset is transferred within a period of three years from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause, (a) or, as the case may be, clause (b), of sub-section (1) shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such new asset is transferred.'*

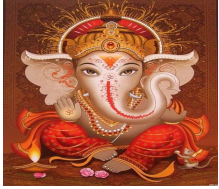
**PLEASE NOTE THAT** *In these Sections there is not limit of adjustment of Capital Gain, while purchasing residential units. All Capital Gains ( whether more than Rs. 10.00 Crores) will be claimed as deduction if the purchase value of the new premise is more than the Capital Gain on sale of old premise.*

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## **BUDGET PROVISIONS**

*Any capital gains arising from the sale of long-term assets, including residential houses, are now exempt from tax if the proceeds were invested in another residential property and there is no cap on the amount on which the deduction could be obtained. But under the new provisions, a cap of Rs 10 crore has been put on capital gains on which deduction will be available.*

*The Budget 2023 has capped the deduction on capital gains on investment in residential property at Rs 10 crore.*

*The above amendment has brought because of it has been observed that claims of huge deductions by high-net-worth assesseees are being made under these provisions, by purchasing very expensive residential houses. It is defeating the very purpose of these sections.*

*These amendments will take effect from April 1, 2024 and would apply in relation to the assessment year 2024-25 and subsequent assessment years.*

**CONCLUSION:** *the amendment brought to curb misuse of provisions of Sections 54 & 54F by builders and High Net Worth Individuals, by purchasing big and luxuries good and claiming huge Capital Gain adjustments. The provisions inserted in the Income Tax Act, 1961 to encourage affordable housing and house for all. The Government has already provided that an individual can claim Capital Gain Exemption upto two residential houses only.*

**DISCLAIMER:** *the analysis presented here is only for sharing information and knowledge with the readers. The views are personal, shall not be considered as professionals' advice. In case of necessity do consult with tax professionals for more understanding and clarity on subject matter.*

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