

ACTUAL ANSWER GIVEN TO A TAX QUERIES FROM NEW DELHI

I am planning to buy [REDACTED] The net consideration for purchase of this house property will be somewhere around 10 crores. I already have one residential house property in my name. My spouse also has a separate residential house property in her name. To fund the purchase of the new residential property in joint name, we will be selling some of our Listed and unlisted shares, mutual funds and some other capital assets. The net sales will be around 10 crores. On this, the long-term capital gain will be approx. 4 crores.

Regarding this, we have a few queries

1. Will there be any issue in regard with applicability of section 54F in the above scenario? The long-term capital gain in our case comes from sale of listed, unlisted shares, mutual funds and some other capital assets. Will it be eligible for "Long term capital gain" exemption within the meaning of section 54F?
2. Apart from 54F, is there any other exemption section which we can use to our benefit in the above scenario?
3. What would constitute the cost of the new property? Will Registration fees and construction cost form part of cost of the new property?
4. The payment of the new property will be paid in parts which will be spread over 6 months. All these conditions will be mentioned in the agreement to sell. So, what should be the date of Purchase of new property? The date of Agreement to sell/the date of sale deed/date of possession or any other?
5. We also have a HUF and holds a residential house property. Will it in any way have any implication on the above transaction? I am the Karta of the HUF and my wife and children are its members.
6. What should be the time on which other capital assets i.e listed/unlisted shares, mutual funds etc should be sold (before and after acquiring the new property) to claim exemption u/s 54 F?
7. We also have some commercial properties in our names. Will this have any effect on exemption under section 54 F?

[REDACTED]
New Delhi

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Queries & Answers

- 1. Will there be any issue in regard with applicability of section 54F in the above scenario? The long-term capital gain in our case comes from sale of listed, unlisted shares, mutual funds and some other capital assets. Will it be eligible for "Long term capital gain" exemption within the meaning of section 54F?**

Exemption u/s 54F is available to any one selling a long term capital asset other than residential house. You are planning to sell shares and mutual funds etc.....So that condition is fulfilled.

Another condition to fulfill is that you (or your other joint owner) **must not have more than one residential house** at the time of transferring

the shares or securities etc. **From facts narrated by you , it appears that you are fulfilling this condition as well.**

For those reasons, in my considered opinion , you and your wife will be eligible to claim exemption u/s 54F separately

2. Apart from 54F, is there any other exemption section which we can use to our benefit in the above scenario?

Since capital gain is arising on long term capital assets other than land or residential houses, you are allowed exemption **only** u/s 54F . Just note that upto 31/03/2019 , additional exemption u/s 54EC upto Rs 50 Lakh was available on sales of any kind of long term capital asset.

3. What would constitute the cost of the new property? Will Registration fees and construction cost form part of the cost of the new property?

The phrase “cost of new asset “is used in section 54F for comparison with the net consideration received on sale of shares or securities , in order to compute the amount of exemption allowed.

So any cost incurred for acquiring residential property that you can unequivocally prove , is part of the cost of the new asset and therefore computing exemption u/s 54F.

In this connection , please refer **Praveen Gupta v. ACIT** - ITA No. 2558/Delhi/2010; Asst. yr. : 2007-08] in which ITAT Delhi held as under

Cost of acquisition in respect of flat purchased from builder is not merely the consideration (base price of the flat) referred to in the sale deed. It will also cover various charges paid by assessee to the builder such as fire fighting charges, generator charges, processing fee and other miscellaneous charges, stamp duty as per the agreement without payment of which the assessee could not have obtained the conveyance deed in his name.

So, registration charge and also any charges incurred exclusively for acquiring the property should form part of the cost of new asset u/s 54F.

4. The payment of the new property will be paid in parts which will be spread over 6 months. All these conditions will be mentioned in the agreement to sell. So, what should be the date of Purchase of new property? The date of Agreement to sell/the date of sale deed/date of possession or any other?

The date of purchase is the allotment date of the property . In numerous cases , this issue is now settled.

Mumbai High Court in case of *Principal CIT v. Vembu Vaidyanathan [(2019) 413 ITR 248 (Bom.)]* held that even *Central Board of Direct Taxes two circulars dated October 15, 1986 and December 16, 1993.* clarified that *the the date of allotment would be the date on which the purchaser of a residential unit can be stated to have acquired the property.*

The Supreme Court dismissed the SLP of the tax department. [2019] 108 taxmann.com 339 (SC)/[2019] 265 Taxman 535 (SC)[1..So , this issue is settled .

Another case law you can refer is that the Hon'ble **Punjab & Haryana High Court** in the case of **Mrs. Madhu Kaul v. CIT & Anr.** [(2014) 363 ITR 54 (P&H)], analysed various circulars and provisions of the Act that on allotment of flat and making first installment the assessee was conferred with a right to hold a flat which was later identified and possession delivered on later date. The mere fact that possession was delivered later would not detract from the fact that assessee (allottee) was conferred a right to hold the property on issuance of an allotment letter. The payment of balance amount and delivery of possession are consequential acts that relate back to and arise from the rights conferred by the allotment letter upon the assessee.

The date of allotment as stated by the developer shall be the date of purchase provided you pay the amount of installment in accordance with the schedule agreed upon in written agreement with the developer.

5. We also have a HUF and hold a residential house property. Will it in any way have any implication on the above transaction? I am the Karta of the HUF and my wife and children are its members.

HUF is a separate person under \Income Tax Act . As a Karta you are only managing the HUF property. HUF having a property will not having any bearing on your claim of exemption

6. What should be the time on which other capital assets i.e listed/unlisted shares, mutual funds etc should be sold (before and after acquiring the new property) to claim exemption u/s 54 F?

Section 54F provides as under :

54F. (1) Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, 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 **two years after** the date on which the transfer took place purchased, or has within a period of **three years after** that date constructed, one residential house in India] (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,—

So, in your facts , the timeline for purchasing with respect to transfer of shares ,securities is as under

- ACTUAL ANSWER GIVEN TO A TAX QUESTION FROM NEW DELHI, Sept 2021**
1. Date of allotment of new house must be within one year before you sold (transferred) shares .
 2. Date of allotment of new house must be within two years after you sold (transferred) shares
 3. If you are constructing the house , then you get three years after capital gains arose .

7. We also have some commercial properties in our names. Will this have any effect on exemption under section 54 F?

The answer is “No “.

The condition given u/s 54F prohibits more than one residential house at the time of selling shares/securities.

Having commercial property will not affect your claim.

Thanks

Prashant Thakur

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