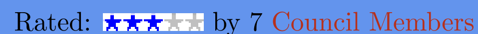
Q. *Hello, my father-in-law purchased a house in Mumbai in 2003 for Rs. 6 lakhs. He took a maximum home loan from IDBI. I registered as co-borrower and have been paying the installments since beginning. My father in law died in 2006, and now my wife and I are owners of the house. I want to sell the house now at about 16 lakh. When the house is sold, what is considered the capital gain here? The balance amount of loan is about 7 lakh. If I sell for 16 lakh, what is the capital gain? Is it my responsibility to pay the tax, as I'm the inheritor? How can I be exempt from the tax on gain? Any other advice you can offer on my situation would be much appreciated.*

– Anonymous, India 12/12/07

Rated:  by 7 Council Members

A. 1 *From:* **Pranab Paul,** Registered Member *on Ammas.com*

Hi,

There are a few points which should be understood clearly on the aspect of selling a house and its tax implications.

Income tax laws stipulate that residential house purchased with the aid of housing loan and thereafter taking the tax benefit on principal & interest repayment, and if such houses are sold before completion of 5 yrs from the date of registration, then whatever the amount of income rebate has been provided to the person in the previous years is added to taxable income in this year, when the house is sold. In your case, you have purchased the house in 2003 and if you have enjoyed the tax benefits by paying the interest and principal in regard to your housing loan, then if you sell the house before completion of 5 years, then rebate in income provided in the previous years will be added to your taxable income, this year.

In your case, long term capital gain will arise when you sell the house after completion of 3 years of purchase. (Selling before 3 years would have been a case of short term capital gain.) In this case, tax rate will be 20% of capital gain. Capital

gain will be calculated as the difference of selling price and the cost of acquisition of the house. Cost of acquisition will also include the cost of stamp duty, registration charges, legal charges, brokerage. The selling price will also exclude the cost of transfer ie- advertisement charges, brokerage, any document charges. The house improvement cost, if any for doing any improvement in the house will also be deducted from the calculation of the capital gain. In case of long-term capital gain, the assessee has the benefit of cost inflation index in respect of consideration amount and the amount spent on improvement. This is mainly to offset inflation. To arrive at the indexed cost of the acquisition, indexed cost of improvement, the cost of acquisition/cost of improvement is multiplied by the Cost of Inflation Index of the year of transfer and then divided by Cost of Inflation Index of the year of acquisition/improvement. The IT Department has taken the financial year 1981 as base and assigned 100 points which goes on increasing every year.

For the selling price to be fair, local state price regulation for a particular place will be followed and if the selling price is below the price determined by the state valuation norms, then the value determined by state valuation norms will be considered for tax calculation on this long term capital gain.

Tax on long term capital gain is exempted if the person buys another residential property within 2 yrs or constructs another residential property within 3 yrs with the money of capital gain and does not sell the new property within next 3 yrs. Residential property bought before one yr of sale of this house will also attribute for exemption of tax on capital gain. If again the new house is sold before 3 years, then short term capital gain will be calculated reducing the cost of the new house by the long term capital gain (from sale of first house) and selling price of the2nd new house. Fresh tax will be calculated based on short term capital gain for selling the 2nd house. There is another way out for exemption of tax is to invest the capital gain money in some specified Govt. funds within 6 months.

At present, the title deed for the existing house, which you and your spouse own, should be made clear, before proceeding for sale. Your wifes name should be incorporated in lieu of your deceased father in-law.

The above is a guidelines or norms which I have stated for your understanding of the matter. For exact calculation of tax and procedures of submitting return incorporating the above sale of property, the tax exemption calculations and the required documentation etc, you will need to consult a professional tax consultant.

Hope, the above information will help you.

Thanks

Paul

Rated: ★★★★★ *by 9 Council Members*

A. 2 *From:* **Lathaa Manavalan,** Registered Member *on Ask Agent*

Now you are owner of the property and before FIL's death too you were co-owner.

Payment of loan is seperate issue here. And that too you have mentioned payment of loan more than cost of house. Hope you have made mistake in writing.

When you sell any asset you own (house, land, shares, mutual fund units, gold, debentures, bonds) and make a profit, it is known as capital gain.

The tax you pay on this profit is called the capital gains tax.

House property is a capital asset. Its sale and subsequent profit attracts capital gains.

If you owned the house an asset for more than three years (36 months) before selling it or If you sell the asset after 36 months from the date of purchase (12 months for shares or mutual funds)then it is considered a long-term capital asset.

Yes, you will be taxed.

However, you can avoid paying capital gains tax by investing elsewhere.

you can save on long-term capital gains as follows.

a) Buy a new house (Section 54 of the Income Tax Act)

You will have to do so within a year of selling the house or within two years from the date of transfer. If you are constructing a residential property, you will have to do so within three years of the date of sale.

The exemption amount, in this case, is restricted to the cost of the new house property.

In case the amount of capital gain is less than the cost of the new house property, the entire amount of capital gain is exempt from tax.

On the other hand, if the amount of capital gain is more than the cost of the new house property, the difference between the amount of capital gain and the cost of the new house property will be taxed as long-term capital gains.

b) Investments in bonds (Section 54 EC of the Income Tax Act)

You can buy bonds issued by the Rural Electrification Corporation, National Highways Authority of India and National Bank of Agricultural and Rural Development.

You should make the investments (either buy a new house or purchase the bonds) within six months from the date of sale.

If you don't want to invest your money in these bonds but intend to use it to purchase property at a later date. If you still want a deduction on the tax you will have to pay on your capital gain, you can opt for the Capital Gains Scheme of Deposit Account.

You will have to open a such an account in any branch of a public sector bank in accordance with the Capital Gains Account 1988.

The amount deposited in the CGSDA is considered utilised for the purchase/ construction of the new house.

However, if the amount you have deposited is not used for buying a new house within a period of three years, then that amount shall be treated as long-term capital gain of the previous year.

In the case of long-term capital gains, you will get the benefit of indexation. Indexation is the process by which inflation is taken into account so that the amount you end up paying as tax is reduced.

Cost inflation index:

Index of the year it was sold / index of the year it was bought

Indexed cost of acquisition

= Buying cost x CII

Long term capital gain

= Selling price -Indexed cost

Tax payable will be 20% of LTCG.

You can claim the expenses like brokerage, registration fees, stamp duty and other charges arising out of sale of my house property from the profit that you make on the sale.

All the best.

Rated: ★★★☆☆ *by 10 Council Members*

A. 3 *From:* **Indumukhi A.,** Council Member *on Ammas.com*

Gains on short-term capital assets are generally taxed as regular income; this probably applies to you and your wife as you have been owners of the property only since your father-in-law's death is 2006 and thus have held the property fewer than 36 months.

Short-term capital gains tax is added to your total income. Depending on which tax bracket you fall under, you will be taxed.

In this kind of case of short-term capital gain, there is no loophole through which you can avoid paying the tax. (If you waited 36+ months to sell from date of acquisition, you could avoid tax by investing elsewhere.) Not to mention, the tax on long-term capital gain is much lower than that on short-term capital gain, due to indexation, which takes inflation into account.

If you can wait until 36 months after the death of your father-in-law and your acquisition of the property, you will be able to avoid paying the larger tax because:

1) you could take into account the "acquisition value" of the home (what your FIL paid)

2) you could save on capital gains tax by partially reinvesting the difference between acquisition value and selling price (your capital gain on the property). One of the simplest ways of doing this is to buy a different property. You will only be subject to taxes on the amount of capital gain minus the amount you have invested.

There are other investments you can make to avoid paying capital gains tax, e.g. not just property. You may invest in bonds, for instance.

For more information (and confirmation of what I have told you, since typically on

ammas we will see many conflicting answers to the same question!), I recommend this straightforward explaination of paying taxes (and avoiding taxes) on long and short term capital gains:

in.rediff.com

Hope this helps.

Rated: ★★★★★ *by 8 Council Members*

A. 4 *From:* **Chennai Lady,** Registered Member *on Ammas.com*

Hello, You have mentioned that your FIL bought the house in 2003 with you as a co-owner. Since you have owned the house for a period greater than 3 years this will be considered as a long-term investment.

Now I am assuming that you made a typing mistake by saying that the balance amount on the loan is 7 lakh when the house itself has costed only 6 lakhs and you have been paying monthly payments for the 4 years. So I assume that the balance amount on the loan is 1 lakh. You capital gains will be close to eight and a half lakhs (16-6-1-(interest on the balance 1 lakh)). You will be charged a 20% on your capital gains as taxes.

Now you can survive from paying tax on the capital gain if you trasferred the gain to a savings account or a mutual funds within 6 months of making the transcation. Any of the above two will give a 3.5% to 5.5% interest per annum. Alternatively you can also invest in bonds. But also note that the goverment sets a limit on how much you can invest in the savings account, mutual fund or bonds. If you exceed the stated amount your gains will be taxed for the amount by which you have exceeded. Alternatively you can also invest your capital gains in some other real estate invetment immediately.

Check on the issual dates of the government bonds as your capital gains might fall well within the limits. There is a cut-off date and a first come first serve basis on the sale of these bonds so make sure to check the details out and schedule the sale of your house within a 6 months window of that date.

Good Luck!!

Rated: ★★★★★ *by 9 Council Members*

A. 5 *From:* **ravi kumar,** Registered Member *on Ask Agent*

Hi,

the co-applicant/inheritor will have to pay off the loan and take over full rights of the property on the death of the main applicant. If the home loan company is satisfied about the credit standing of the co-applicant/inheritor, it may continue the loan with them. In this case, the loan will continue as per the original (or any other discussed and agreed upon) schedule.

I would like to quote here few rules on capital gain tax which will be beneficial to you.

Short-term capital gains tax

If the house owned by an individual is sold within 36 months of purchase, short-term capital gains tax of 20 percent is applicable on the profits earned from the sale. There are no tax benefits available as per the current income tax regulations to save on short-term capital gains tax.

Long-term capital gains tax

If the house owned by an individual is held for a minimum of 36 months from date of purchase, long-term capital gains tax of 10 percent is applicable on the profits earned from the sale. However, tax benefits are available under Section 54 of the IT Act. This tax can be avoided by re-investing the profits in another residential property if either of these conditions are satisfied - a fully constructed residential property is purchased within a period of one year before the sale or two years after the sale, or if you construct a residential property on your own within a period of three years after the sale.

Time limit

Section 54 provides exemption on long-term capital gains arising on sale of residential property and investment of the capital gains in another residential property. The law envisages a time limit within which the investment should be made. That is two years for purchase and three years for construction. But if after the sale of the property, you cannot find another property of your choice, the amount of capital gains should be kept in any authorised bank under a Capital Gains Accounts Scheme till investment.

The following statements published in The Hindu will help you

The Mumbai bench of the IT Appellate Tribunal in the case of Mrs. Gulshanbanoo R.Mukhi vs Joint CIT ((2003) 78 TTJ768)Mumbai held in favour of the interpretation of the term ‘house as meaning one property.

In the case of Ratanlal Murarka (ITA No 4485 Mumbai 1999 reported in BCAJ 2003) the assessee had purchased one house at Pune and the other at Thane by investing within the specified period.

In this case the capital gains tax exemption was extended to both the houses. The expression residential house in section 54 (1) was held to include two houses.

Confusion prevails as to how the section has to be interpreted. The government can quickly clarify this in public interest. Until this is clarified, some experts suggest depositing the excess amount after deducting the cost of acquisition in one unit of residence, if any in specified bonds.

From April 1, 2007, the amount to be deposited to claim exemption is restricted to Rs 50 lakhs.

Rated: ★★½☆☆ *by 9 Council Members*

A. 6 *From:* **Saurabh Singhavi,** Registered Member *on Ammas.com*

Hi,

There are two issues involved here. 1)Capital Gains, 2)Loan from Bank.

1) As far as capital gains is concerned, (though you had not mentioned the months, I am assuming it as a Long Term Capital Gains)Long Term Capital Gains will be applicable in your case. Since you had inherited the house, Cost of purchase and duration of holding the house will be of your father-in-law. That means, cost of acquisition will be 6 lacs and duration will be (Current date less 2003) for computation of Capital Gains.So in layman’s terms, it would be treated as you had purchased the house in 2003 for 6 lacs.

2) Loan is totally different from Capital Gains, you can either repay the loan from the sale consideration or the new owner can transfer the balance loan amount from your bank to his bank, but the important thing is that it is nowhere related to the capital gains.

Now to save capital gains tax on above, you can purchase another residential house property and you can get exemption to the extent of Capital gains or investment in new house(least)-Sec 54.

Another way is to invest in Bonds of National Highway or Rural Elctrification and you will get the exemption to the extent of Capital gains or investment in new house(least)-Sec 54EC.

Please note that you will lose the exemption in both the above cases if you see the new asset(house or bond) with 3 years of its date of purchase.

For further clarification, you can give me all the details with dates so that tax liability can be computed in correct way.

Rated: ★★★★★ *by 9 Council Members*

A. 7 *From:* **Geetha Gopakumar,** Council Member *on Ammas.com*

A capital gains tax (abbreviated: CGT) is a tax charged on capital gains, the profit realized on the sale of an asset that was purchased at a lower price. The most common capital gains are realized from the sale of stocks, bonds, precious metals and property. Not all countries implement a capital gains tax and most have different rates of taxation for individuals and corporations.

As of 2007, equities are considered long term capital if the holding period is one year or more. Long term capital gains from equities are not taxed. However short term capital gain from equities held for less than one year, is taxed at 10% (plus surcharge and education cess). This is applicable only for transactions that attract Securities Transaction Tax (STT).

Many other capital investments (house, buildings, real estate, bank deposits) are considered long term if the holding period is 3 or more years. Short term capital gains are taxed just as any other income and they can be negated against short term capital loss from the same business.

Depreciation value of the property is also to be considered while assessing Tax on Capital gain. There are special rules that apply when working out gains and losses from depreciating assets. To the extent that a depreciating asset is used for a taxable purpose (for example, in a business) any gain is treated as ordinary income and losses as deductions. A capital gain or capital loss may arise only to the extent

that a depreciating asset has been used for a non-taxable purpose (for example, used privately). For details on the CGT treatment of depreciating assets

Capital gains tax (CGT) is the tax you pay on any capital gain you include on your annual income tax return. It is not a separate tax, merely a component of your income tax. You are taxed on your net capital gain at your marginal tax rate.

Your net capital gain is:

Your total capital gains for the year -

minus -

your total capital losses for the year and any unapplied net capital losses from earlier years

minus

any CGT discount and small business CGT concessions to which you are entitled.

your capital gain is the difference between your capital proceeds and the cost base of your CGT asset. You make a capital loss if your reduced cost base is greater than your capital proceeds.

Rated: ★★½☆☆ *by 9 Council Members*

A. 8 *From:* **BALAJI SATHYANARAYANA,** Registered Member *on Ammas.com*

Dear Sir,

There must be some typographical error with the figures.

Courtesy of TOI, in a nutshell the following information is given

There are a few taxation formalities to complete while selling a property.

a) Sale of residential accommodation may result in a short term capital gain/loss, if sold within a period of 3 years or a long term capital gain/loss if sold after a period of 3 years from the date of acquisition (Section 29A, 42A and 47).

b) A short term capital gain/loss will be treated and taxed in the same manner as

any other income/loss.

c) Tax on long term capital gains can be avoided if the sale relates to a property other than one residential accommodation and reinvested in any residential properwithin within a period of 1 year before or 2 years after the date of transfer (Section 54F)

d) Long term capital gain can also be saved if only the capital gain (and not the total sale proceeds) is invested for a period of 3 years in specific Bonds of National Highways Authority of India or Rural Electrification Corporation Limited (Section 54 EC).

e) Determination of sale proceds of a property will be on the valuation adopted by the Sate Stamp Duty and Registration Authorities and not the amount mentioned in the Deed of Conveyance (Section 50C). This is intended to cover the cases where part of the sale price is received by the seller in unaccounted cash.

f) In the absence of either freezing the the capital gain in specified securities or reinvested as per clause (d) and (c) as above Income Tax is payable @ 20% by the Seller on the capital gains computed by deducting from the Sale proceeds the cost of acquisition as increased by cost of living index (Section 112 and Section 55).

Hope this may be of some help.

Rated: ★★★★★ by 9 Council Members

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