

TAXATION OF CAPITAL GAINS FROM SALE OF IMMOVABLE PROPERTY

AS AMENDED BY FINANCE ACT (NO. 2) 2024

How will capital gains on immovable properties be taxed after Finance Act (No. 2) of 2024?

- Prior to Finance Act, 2024, the capital gains arising from the sale of an immovable property (land and/or building), being a long-term held asset (more than 24 months), was calculated as the excess of the “net sale consideration” over the total of the “indexed cost of acquisition” and “indexed cost of improvements”. The rate of tax applicable was 20% plus surcharge and cess as applicable.
- The indexation to cost of acquisition and improvements meant that taxpayers were not taxed on that part of the capital gains which represented increase in the value of the property simply due to inflation. Only the “real” gains were brought under the scope of taxation.
- With effect from 23rd July, 2024, for calculating the tax on income arising from transfer or an immovable property, the benefit of indexation shall not be available for determining the capital gains. Further, the rate of tax has been reduced from 20% to 12.50%.
- However, only for **resident individuals and HUFs**, the tax liability in respect of immovable properties acquired before 23rd July 2024 will be the lower of tax @ 12.5% on income without indexation or tax @ 20% on income with indexation. If the tax (@12.5%) without indexation is higher than the tax with indexation (@ 20%) then the actual tax payable will be the lower amount i.e. tax with indexation.
- Additionally, it should be noted that while the taxation of previously acquired immovable properties has been “grandfathered” in a way, there are several significant changes that are still applicable.

How will capital gains on immovable properties be taxed after Finance Act (No. 2) of 2024?

Property purchased before 23/07/2024	Property purchased on or after 23/07/2024
Actual Cost of Acquisition: INR 2 Crore; Indexed Cost of Acquisition: INR 4 Crore; Sale Price: INR 5 Crore	
<p>Income tax = lower of</p> <p>$(\text{INR } 5 \text{ Crore} - \text{INR } 2 \text{ Crore}) * 12.5\% = \text{INR } 37.4 \text{ Lakh}$, or</p> <p>$(\text{INR } 5 \text{ Crore} - \text{INR } 4 \text{ Crore}) * 20\% = \text{INR } 20 \text{ Lakh}$.</p> <p>Therefore, tax will be INR 20 Lakh</p>	<p>Income tax =</p> <p>$(\text{INR } 5 \text{ Crore} - \text{INR } 2 \text{ Crore}) * 12.5\% = \text{INR } 37.5 \text{ Lakh}$.</p>
Actual Cost of Acquisition: INR 3.5 Crore; Indexed Cost of Acquisition: INR 4 Crore; Sale Price: INR 5 Crore	
<p>Income tax = lower of</p> <p>$(\text{INR } 5 \text{ Crore} - \text{INR } 3.5 \text{ Crore}) * 12.5\% = \text{INR } 18.75 \text{ Lakh}$, or</p> <p>$(\text{INR } 5 \text{ Crore} - \text{INR } 4 \text{ Crore}) * 20\% = \text{INR } 20 \text{ Lakh}$.</p> <p>Therefore, tax will be INR 18.75 Lakh</p>	<p>Income tax =</p> <p>$(\text{INR } 5 \text{ Crore} - \text{INR } 3.5 \text{ Crore}) * 12.5\% = \text{INR } 18.75 \text{ Lakh}$</p>

How will capital gains on immovable properties be taxed after Finance Act (No. 2) of 2024?

Class of Taxpayer & Date of Acquisition of Property	How will income be determined?	How will tax be calculated?
Resident Individual or HUF Property acquired prior to 23/07/2024 (See previous slide for example)	Income = Net Sale Consideration – (Actual Cost of Acquisition + Actual Cost of Improvements)	Lower of: (a) Income X 12.50% (b) 20% X income determined as if Indexation benefits are available
Resident Individual or HUF Property acquired after 23/07/2024	Income = Net Sale Consideration – (Actual Cost of Acquisition + Actual Cost of Improvements)	Income X 12.50%.
Non-Resident Individual or HUF, and any Firm, AOP, BOI, Trust, Domestic Company, Foreign Company – the Date of acquisition irrelevant.	[i.e., same as above]	No Indexation shall be available.



Implications under other Income-tax provisions?



Exemption under section 54 – Reinvestment of proceeds from sale of residential house property into new residential house property

- For exemption under sections 54, the income that will be considered will be income without indexation.
- Therefore, for section 54, any income more than INR 10 crore shall not be eligible for exemption by way of reinvestment.
- This is because, only the tax calculation will take into account indexation for providing relief, but the income will be determined without taking into account any indexation.
- Therefore, going forward, since the total income will increase, the proportionate amount that can be exempt shall reduce, and higher investment value will be required to obtain exemption.

Exemption under section 54EC – Reinvestment of sale proceeds in certain capital gain savings bonds (NHAI, RECL, etc.)

- For exemption under section 54EC, the income that will be considered will be income without indexation.
- The limit would remain INR 50 lakh per year.
- This is because, only the tax calculation will take into account indexation for providing relief, but the income will be determined without taking into account any indexation.
- Therefore, going forward, since the total income will increase, the proportionate amount that can be exempt shall reduce.

Set off & Carry forward of capital loss on account of indexation

- If the capital gains determined with indexation benefit is negative, i.e. a long term capital loss, such loss shall not be eligible for being set off or being carried forward for future set off.
- In such case, the tax liability will be NIL, since indexation results in a loss, but the income will be determined without indexation, and may not result in a loss, and therefore, no set off or carry forward will be available.
- This is because, only the tax calculation will take into account indexation for providing relief, but the income will be determined without taking into account any indexation.

Determination of slab rate & rate of surcharge

- For determining the income slab and the surcharge applicable, the income without any indexation will be taken into account, and not the income with indexation benefit. This is similar to what is done with Agricultural Income.
- This is because, only the tax calculation will take into account indexation for providing relief, but the income will be determined without taking into account any indexation.
- Therefore, even if you have no actual tax liability (say if indexation leads to a capital loss), your gross income will be as if capital gains are determined without indexation, and the higher slab rate and surcharge rate will be levied on all your other incomes, increasing your total tax liability.



Implications under common scenarios

Hypothetical Scenario 1: I was a resident when I acquired an immovable property prior to 23/07/2024. However, I am now residing overseas and am a non-resident individual. Will I get benefits from indexation to calculate my income and the tax payable when I sell my immovable property?

Answer: No, you will not get the benefit of indexation, whether it is to determine your income, or to calculate the tax payable thereon. Your income will be the Net Sale Consideration minus the Actual Cost of Acquisition & Improvements, which will be subject to tax at 12.50%

Hypothetical Scenario 2: I was a non-resident when I acquired an immovable property prior to 23/07/2024. However, I am now residing in India and am a resident individual. Will I get benefits from indexation to calculate my income and the tax payable when I sell my immovable property?

Answer: Your income will be determined without indexation. However, your tax payable will be restricted to 20% on the gains after indexation. Therefore, you will receive indexation benefits when you sell the property, but only to calculate tax.

Hypothetical Scenario 3: I booked a flat in an under-construction project prior to 23/07/2024, and have the registered allotment in my favour. The delivery & possession of the house is due in early 2025. In the future, if I sell the property will I receive benefits of indexation?

Answer: In a technical sense, you had created an affirmative right to the flat prior to 23/07/2024 which is evidenced by registered documents/agreements, and by your payment of instalments/EMIs.

Only the final possession and handover of the flat will take place after 23/07/2024.

Normally, for determining the holding period, the date on which you create an affirmative right to the property is treated as the date of acquisition.

Therefore, if you sell this property in the future, you should be entitled to the benefit of indexation to calculate the tax payable. Note, your income would still be determined without indexation, and only your tax will be restricted to the indexed gains.

However, there is a chance that the Tax Department takes a view that the actual date of acquisition of the property should be considered as the date on which possession is handed over, or the date on which the property is duly registered in your name. Therefore, they may attempt to deny you the benefits of indexation, and seek to tax you on the income without considering indexed costs. In case you make a claim of indexation for determining tax payable, there is a possibility of litigation.

However, it is unlikely that their case will be successful.

Hypothetical Scenario 4: My parents, both resident individuals jointly-own an immovable property acquired by them prior to 23/07/2024. As per their Wills, I am the sole beneficiary of this property in the event of both of their demises. In the future, after my parents have passed away, I will inherit this property. If I sell the property after inheriting it, will I get the indexation benefit?

Answer: As earlier, in case of inherited properties, the holding period is reckoned from the date on which the previous owner(s) has held the same, and the cost of acquisition (and improvements) will be adopted as the cost to current owner.

Therefore, the property will be treated as long-term and the costs to your parents will be available as your cost of acquisition (and improvement). If you incur any costs relating to the transmission, and further improvements, etc. the same will also be part of your deductible cost of acquisition and improvements.

However, the amended provisions provide that income-tax will be limited to the previous 20% tax on gains after indexation only in case of land & building acquired prior to 23/07/2024.

There is a possibility that the Tax Department takes a view that the date of acquisition for you would be the date on which you inherit the property, and the date on which your parents acquired the property will not be the date of acquisition for you.

Therefore, the Tax Department may attempt to deny you the benefits of indexation, and seek to tax you on the income without considering indexed costs. In case you make a claim of indexation for determining tax payable, there is a possibility of litigation.

However, it is unlikely that their case will be successful.

Hypothetical Scenario 5: I, a resident individual, own an immovable property acquired prior to 23/07/2024. I wish to gift this property to my son, a resident individual when he attains the age of majority, 3 years later. If I transfer the property to my son by way of a gift, and he subsequently sells the property, will he get the indexation benefit?

Answer: As earlier, in case of properties received as a gift, the holding period is reckoned from the date on which the previous owner(s) has held the same, and the cost of acquisition (and improvements) will be adopted as the cost to current owner.

Therefore, the property will be treated as long-term and your cost of acquisition (and improvements) will be available as the cost of acquisition (and improvement) to your son. If your son incurs any costs relating to the gifting process, and incurs any costs on improvements, etc. the same will also be part of his deductible cost of acquisition and improvements.

However, the amended provisions provide that income-tax will be limited to the previous 20% tax on gains after indexation only in case of land & building acquired prior to 23/07/2024.

There is a possibility that the Tax Department takes a view that the date of acquisition for your son be the date on which you gift the property to him, and the date on which you acquired the property will not be the date of acquisition for your son. Therefore, the Tax Department may attempt to deny your son the benefits of indexation and seek to tax your son on the income without considering indexed costs. In case your son makes a claim of indexation for determining tax payable, there is a possibility of litigation.

However, it is unlikely that their case will be successful.

*Thank
You!*



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