Globeview Advisors LLP

Unlocking tax benefits through property reinvestment

Republic Day Greetings from the Globeview team!

Welcome to this edition of Beyond Headlines! In several transactions that we have been involved, promoters wish to understand tax optimisation opportunities on sale of shares. Frankly, there are not many material options left in the domestic tax law.

In this month's edition, we explore how property reinvestment can help reduce capital gains tax liabilities. We also discuss practical challenges in availing these benefits and share strategies to navigate them.

Globeview updates

This month, our team had the opportunity to assist clients with the following projects:

- Cash pooling structure through GIFT city
- Developing strategies for consolidating two entities & groups in the healthcare sector.
- Assessing options for transitioning an existing partnership firm into a corporate structure.
- Analyzing alternatives for an Indian company to receive equity in a U.S. entity as consideration for software development services.
- Evaluating the feasibility of a Vedic institution raising funds through Corporate Social Responsibility (CSR) contributions.

Tax benefits on property reinvestment

Section 54F of the Income-tax Act allows you to reduce tax liabilities by reinvesting sale proceeds from selling non-house assets (like shares) into a new home. But the rules come with conditions, and claiming this benefit can sometimes be tricky. Let's break it down:

Particulars	Conditions
Eligible taxpayer	Individual or Hindu Undivided Family owning not more than 1 residential house on the date of transfer of capital asset (like shares).
Property transferred	Long-term capital asset other than a residential house. So gains from sale of shares, land, gold is covered.
Investment to be made in	Acquisition or construction of a residential house in India
Upper limit on investment	INR 10 crores (slightly above 1 million) – that's it! So value of property above the threshold is not eligible for tax exemption.
Timeframe for making new investment	Acquisition – 1 year prior or 2 years after date of transfer of capital asset.
Exemption amount	Proportionate to consideration amount reinvested (subject to 100% to capital gains).
Lock-in period	New residential house shall not be transferred within 3 years of acquisition / construction.
Other conditions	No new residential house shall be acquired or constructed within 2 or 3 years respectively from the transfer of capital asset.

Eligibility and Joint Ownership

A key condition for claiming tax benefits on reinvestment is not owning more than one residential house at the time of reinvestment. Joint ownership may create complexities in determining eligibility:

- Some judicial rulings[1] have held that joint ownership does not disqualify taxpayers, provided they do not have full ownership of the property.
- Others[2] have taken a stricter view, treating co-owners as fully owning their respective shares, thereby disqualifying them.

Key considerations in deciding the outcome include:

- The primary payer for the property or loan.
- Ownership details in the purchase agreement.
- Reporting of ownership and property income in previous tax returns.
- Purpose of adding joint owner – administrative or commercial.

What Constitutes "One Residential House"?

Courts have generally interpreted "one residential house" to include multiple residential units such as adjacent flats, provided they function as a single property with features like a common entrance, one kitchen, a single electricity meter, and a unified property tax bill.[3]

Courts favour fairness in genuine tax disputes

Tax disputes often arise in scenarios such as

- Determining whether investing in an under-construction project qualifies as "acquisition" or "construction."
- Delays in completing acquisition or construction within prescribed timelines due to procedural hurdles or unforeseen circumstances beyond the taxpayer's control.
- Failure to deposit funds in a capital gains account while awaiting disbursement for acquisition or construction.

[1] [2012] 209 Taxman 628 (Mad. HC)
[2] [2014] 366 ITR 356 (Kar. HC)
[3] Anita Mahindrakumar Oberai [2022] 142 taxmann.com 580 (ITAT Pune); Nakul Aggarwal (2024) 167 taxmann.com 540 (ITAT Mumbai)

Globeview Highlights

Recently, **Mr. Ameya Kunte** and our colleague **Mr. Vasudevan G** conducted an insightful session on Patent Box Regime. Hosted by Venture Center, these sessions were attended by founders, professionals and academicians.
You can watch the recording here.

Mr. Vasudevan G co-authored an article published in December 2024 edition of The Chamber's Journal issued by The Chamber of Tax Consultants on the topic of "Capital Gains implications on Depreciable Assets".
You can read the article here.

We look forward to bringing you more updates in our next edition. Until then, feel free to reach out to us at contact@globeviewadvisors.com for any discussions.

About Globeview Advisors LLP

An Indian boutique consulting firm focused on tax centric business advisory services. We adopt solution-oriented, pragmatic, agile & time bound approach in delivering professional services. With a strong team with relevant experience, we have expertise and network to co-ordinate and deliver global projects. Read more about Globeview and our service offerings at our website.
