

BUDGET - 2017

HIGHLIGHTS OF PROVISIONS RELATING TO DIRECT TAXES

Measures for promoting **AFFORDABLE HOUSING** and **REAL ESTATE SECTOR**

1. INCENTIVES FOR PROMOTING INVESTMENT IN IMMOVABLE PROPERTY

Particulars	Present Status	As per Finance Bill, 2017
Long-term Asset	Asset to be held for more than 36 months	Period of holding reduced to 24 months

The existing provision of the Act provide for concessional rate of tax and also indexation benefit for taxation of capital gains arising from transfer of long-term capital asset. To qualify for long-term asset, an assessee is required to hold the asset for more than 36 months subject to certain exceptions, for example, the holding period of 24 months has been specified for unlisted shares.

With a view to promote the real-estate sector and to make it more attractive for investment, it is proposed to amend section 2 (42A) of the Act so as to reduce the period of holding from the existing 36 months to 24 months in case of immovable property, being land or building or both, to qualify as long term capital asset.

This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

2. RATIONALISATION OF PROVISIONS OF SECTION 80-IBA TO PROMOTE AFFORDABLE HOUSING

Relaxation of conditions	Present Status	As per Finance Bill, 2017
Size of residential unit	Measured by "built-up area"	Measured by "carpet area"
Places within of 25 kms from the limits of Metros	Restriction of 30 sq. mtrs. per residential unit	No Restriction, hence 60 sq. mtrs. per residential unit
Period of completion	3 Years	5 Years

The existing provisions of section 80-IBA provides for 100% deduction in respect of the profits and gains derived from developing and building certain housing projects subject to specified conditions. The conditions specified, inter alia, include the limit of 30 square meters for the built-up area of residential unit in respect of project located in the Chennai, Delhi, Kolkata and Mumbai or within 25 kms from the municipal limits of these four cities. Further, it is also provided that in order to be eligible to claim deductions, the project shall be completed within a period of three years.

In order to promote the development of affordable housing sector, it is proposed to amend section 80-IBA so as to provide the following relaxations:—

- The size of residential unit shall be measured by taking into account the "carpet area" as defined in Real Estate (Regulation and Development) Act, 2016 and not the "built-up area".
- The restriction of 30 square meters on the size of residential units shall not apply to the place located within a distance of 25 kms from the municipal limits of the Chennai, Delhi, Kolkata or Mumbai.
- The condition of period of completion of project for claiming deduction under this section shall be increased from existing three years to five years.

These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

3. TAX INCENTIVE FOR THE DEVELOPMENT OF CAPITAL OF ANDHRA PRADESH

As per section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2014, the specified compensation received by the landowner in lieu of acquisition of land is exempt from income tax.

The Land Pooling Scheme is an alternative form of arrangement made by the Government of Andhra Pradesh for formation of new capital city of Amaravati to avoid land-acquisition disputes and lessen the financial burden associated with payment of compensation under that Act.

In Land pooling scheme, the compensation in the form of reconstituted plot or land is provided to landowners. However, the existing provisions of the Act do not provide for exemption from tax on transfer of land under the land pooling scheme as well as on transfer of Land Pooling Ownership Certificates (LPOCs) or reconstituted plot or land.

With a view to provide relief to an individual or Hindu undivided family who was the owner of such land as on 2nd June, 2014, and has transferred such land under the land pooling scheme notified under the provisions of Andhra Pradesh Capital Region Development Authority Act, 2014, it is proposed to **INSERT A NEW CLAUSE (37A) IN SECTION 10** to provide that in respect of said persons, capital gains arising from **following transfer shall not be chargeable to tax under the Act:**

- (i) **Transfer of capital asset** being land or building or both, **under land pooling scheme.**
- (ii) **Sale of LPOCs** by the said persons received in lieu of land transferred under the scheme.
- (iii) **Sale of reconstituted plot or land** by said persons **within two years** from the end of the financial year in which the possession of such plot or land was handed over to the said persons.

This amendment will take effect retrospectively, from 1st April, 2015 and will accordingly, apply in relation to the assessment year 2015-16 and subsequent years.

It is also proposed to make **AMENDMENT IN SECTION 49** so as to provide that where reconstituted plot or land, received under land pooling scheme is **transferred after the expiry of two years** from the end of the financial year in which the possession of such plot or land was handed over to the said assessee, **the cost of acquisition of such plot or land shall be deemed to be its stamp duty value on the last day of the second financial year** after the end of financial year in which the possession of such asset was handed over to the assessee.

These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

4. SPECIAL PROVISIONS FOR COMPUTATION OF CAPITAL GAINS IN CASE OF JOINT DEVELOPMENT AGREEMENT

Under the existing provisions of section 45, capital gain is chargeable to tax in the year in which transfer takes place except in certain cases. The definition of 'transfer', *inter alia*, includes any arrangement or transaction where any rights are handed over in execution of part performance of contract, even though the legal title has not been transferred. In such a scenario, execution of Joint Development Agreement between the owner of immovable property and the developer triggers the capital gains tax liability in the hands of the owner in the year in which the possession of immovable property is handed over to the developer for development of a project.

With a view to minimise the genuine hardship which the owner of land may face in paying capital gains tax in the year of transfer, **it is proposed to insert a new sub-section (5A) in section 45** so as to provide that **in case of** an assessee being **individual or Hindu undivided family**, who **enters into a specified agreement for development of a project**, the capital gains shall be **chargeable** to income-tax **as income of the previous year** in which the **certificate of completion** for the whole or part of the project is **issued by the competent authority**.

It is further proposed to provide that the stamp duty value of his share, being land or building or both, in the project on the date of issuing of said certificate of completion as increased by any monetary consideration received, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

It is also proposed to provide that benefit of this proposed regime shall not apply to an assessee who transfers his share in the project to any other person on or before the date of issue of said certificate of completion. It is also proposed to provide that in such a situation, the capital gains as determined under general provisions of the Act shall be deemed to be the income of the previous year in which such transfer took place and shall be computed as per provisions of the Act without taking into account this proposed provisions.

It is also proposed to define the following expressions "competent authority", "specified agreement" and "stamp duty value" for this purpose.

It is also proposed to make consequential amendment in section 49 so as to provide that the cost of acquisition of the share in the project being land or building or both, in the hands of the land owner shall be the amount which is deemed as full value of consideration under the said proposed provision.

These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

It is also proposed to insert a **new section 194-IC** in the Act so as to provide that in case any **monetary consideration** is payable under the specified agreement, **tax at the rate of ten per cent** shall be deductible from such payment.

This amendment will take effect from 1st April, 2017.

5. SHIFTING BASE YEAR FROM 1981 TO 2001 FOR COMPUTATION OF CAPITAL GAINS

The existing provisions of section 55 provide that for computation of capital gains, an assessee shall be allowed deduction for cost of acquisition of the asset and also cost of improvement, if any. However, for computing capital gains in respect of an asset acquired before 01.04.1981, the assessee has been allowed an option of either to take the fair market value of the asset as on 01.04.1981 or the actual cost of the asset as cost of acquisition. The assessee is also allowed to claim deduction for cost of improvement incurred after 01.04.1981, if any.

As the base year for computation of capital gains has become more than three decades old, assesseees are facing genuine difficulties in computing the capital gains in respect of a capital asset, especially immovable property acquired before 01.04.1981 due to non-availability of relevant information for computation of fair market value of such asset as on 01.04.1981.

In order to revise the base year for computation of capital gains, **it is proposed to amend section 55 of the Act** so as to provide that the **cost of acquisition of an asset acquired before 01.04.2001 shall be allowed to be taken as fair market value as on 1st April, 2001** and the cost of improvement shall include only those capital expenses which are incurred after 01.04.2001.

Consequential amendment is also proposed in section 48 so as to align the provisions relating to cost inflation index to the proposed base year.

These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

6. Expanding the scope of long term bonds under 54EC

The existing provision of **section 54EC provides that capital gain to the extent of Rs. 50 lakhs** arising from the transfer of a long-term capital asset shall be exempt if the assessee invests the whole or any part of capital gains in certain specified bonds, within the specified time. Currently, investment in bond issued by the **National Highways Authority of India** or by the **Rural Electrification Corporation Limited** is eligible for exemption under this section.

In order to widen the scope of the section for sectors which may raise fund by issue of bonds eligible for exemption under section 54EC, **it is proposed to amend section 54EC so as to provide that investment in any bond redeemable after three years which has been notified by the Central Government in this behalf shall also be eligible for exemption.**

This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

7. NO NOTIONAL INCOME FOR HOUSE PROPERTY HELD AS STOCK-IN-TRADE

Section 23 of the Act provides for the manner of determination of annual value of house property.

Considering the business exigencies in case of real estate developers, it is proposed to amend the said section so as to provide that where the house property consisting of any building and land appurtenant thereto is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, **the annual value of such property or part of the property, for the period upto one year from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be nil.**

This amendment will take effect from 1st April, 2018 and will, accordingly apply in relation to assessment year 2018-19 and subsequent years.

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