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Tax talk: Tax rules NRIs need to know for realty deals

Non-resident Indians (NRIs) may sell their property in India, either to seek capital appreciation on their investments, or they may want to dispose of their properties in India...

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Non-resident Indians (NRIs) may sell their property in India, either to seek capital appreciation on their investments, or they may want to dispose of their properties in India in order to acquire some assets in their country of residence. It is imperative that they understand the applicable tax rules and regulations with respect to such a transaction.

Any profit earned through sale of property is taxable as capital gains. In case the property is held for more than 36 months, the gains are classified as long-term capital gains (LTCG); else, they will be classified as short-term capital gains (STCG). STCG is taxable at the applicable slab rates; however, LTCG on the sale of property is taxed at a beneficial rate of 20%.

The law also allows an indexation benefit in case of LTCG. Indexation basically factors for the effect of inflation by applying the cost inflation index (CII) resulting in a higher Cost of Acquisition (CoA).

NRIs are entitled to claim certain exemptions while calculating the taxable LTCG under the Act, as below:

Investment in property: The individual taxpayer may claim exemption of LTCG arising on sale of a residential house property/ land, through purchase of another residential house in India. LTCG on sale of a residential house property can be claimed to the extent of capital gains utilised LTCG on sale of a land can be claimed to the extent of sale consideration utilised. To avail this benefit, one must ensure that the new house property should be purchased within one year before or two years after the sale; or this can be claimed if a new property is constructed in India within three years from the date of sale of property.

Investment in specified bonds: LTCG can be claimed as exempt from tax if the capital gain is invested in specified bonds (NHAI and RECL bonds), within six months from the date of sale of property, up to R50 lakh.

NRIs may further evaluate the benefits as may be available under the relevant Double Taxation Avoidance Agreement which India has with their country of residence while computing their capital gains tax liability in India. For the sale of property by NRI, the buyer is under an obligation to deduct tax at source while making the payment of sales consideration.

Tax is required to be deducted @ 20% in case of LTCG and at applicable slab rates in case of STCG. The mechanism of such tax deduction at source was introduced by the government in order to ensure the appropriate collection of tax from NRIs who are mostly based out of India.

As the above mentioned benefits and exemptions can only be claimed by the NRIs at the time of filing their India tax return, they need to apply for Tax Exemption Certificate from the I-T department if they would like Nil/ lower tax deduction on such transaction.

Under Section 197 of the Act, NRIs can obtain Tax Exemption Certificate on the basis of estimated capital gains tax computation and submission of relevant documents. After going through the information furnished by the NRI, the jurisdictional Assessing Officer/ Tax Officer may issue a certificate authorising the buyer of property to deduct tax at a lower rate or nil rate as the case may be.

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