
Taxation of Joint Development Agreements – New Provisions

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Law on transfer under Joint Development Agreement

- Charging section 45(1): when there is transfer of a capital asset for consideration
- Term transfer defined in an inclusive manner in section 2(47)
- Transfer of immovable properties : sub clauses (v) and (vi) of section 2(47)
- Capital asset as defined in section 2(14)
- Machinery section 48 for computation of capital gain:
- Full value of consideration less cost of acquisition less cost of improvement, if any, less expenditure in connection with transfer

Continued

Law on transfer under Joint Development Agreement

- Cost of acquisition or Substituted FMV on 01 04 2001 at the option of the assessee
- Cost of improvement after the date of acquisition and if substitution by FMV opted then after the date of such substitution
- Transfers under development agreement falling within the theory of no cost no capital gains, not taxable at all

Section 45(5A) - Changes Introduced

- Chargeability deferred to the date of completion based on full or part completion certificate of the real estate project
- Applicability of machinery section 48 continues
- Date of transfer undisturbed
- Applies only to an individual or a HUF
- Transfer by owner of land or building or both under a registered DA
- Developer should develop a real estate project on such land or building or both
- Assessee should receive at least part of consideration as share in land or building or both of real estate project

Continued

Section 45(5A) - Changes Introduced

- May also have cash consideration
- Capital gains in the year of whole or part completion certificate
- Capital gains on the basis of stamp value of share of assessee in real estate project plus cash consideration, if any
- If transfer of share in project before completion certificate, then chargeability in the year of such transfer
- If transfer of share in project after completion certificate, the stamp value will be the cost of acquisition



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