



PERSONAL FINANCE AND TAX PLANNING (PART TWO)

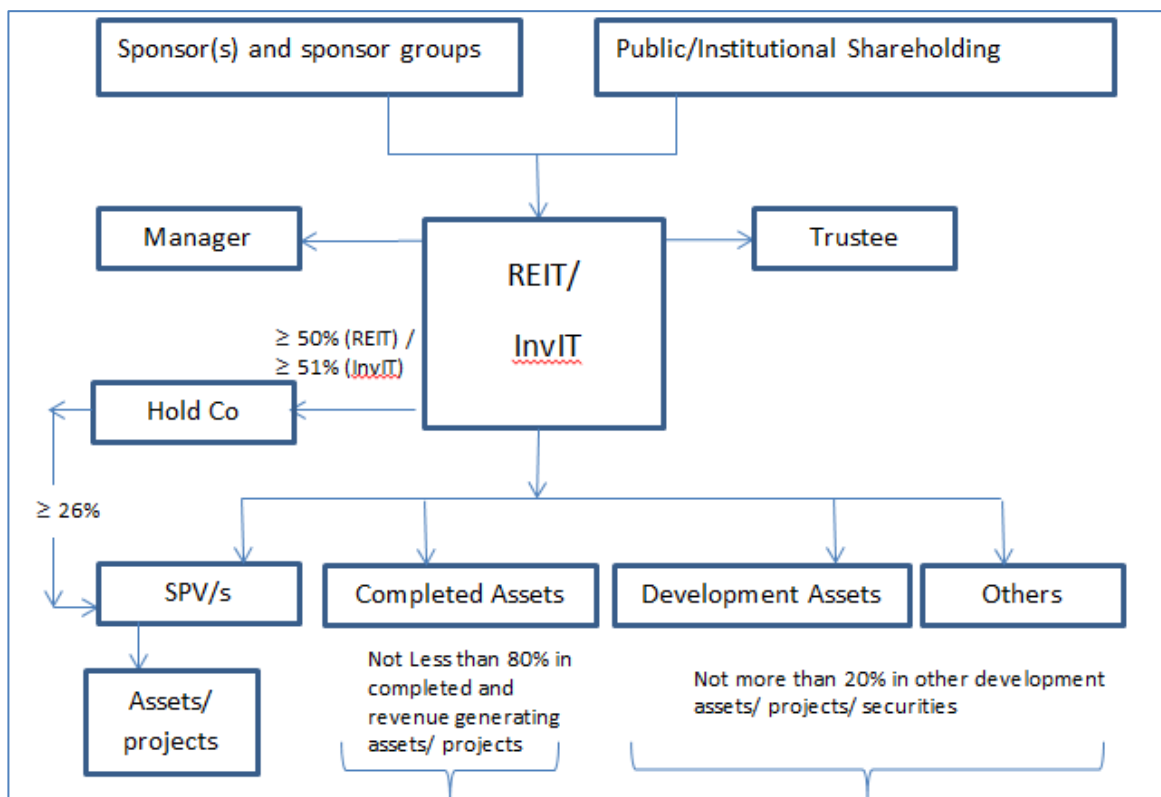
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This is in continuation to the article on the same subject by the author published in Tax Bulletin volume 72 of September, 2020.

Business trust:

Under this category of Alternative Investment Fund there are two business trusts- Real estate infrastructure trust (REIT) and Infrastructure investment trust (InvIT) governed by respective Security Exchange Board of India (SEBI) Regulations 2014. REIT and InvIT are privately pooled investment vehicles in the form of business trust registered with SEBI under extant regulations and collect investment from individual and institutional investors both Indian and foreign and invest as per its defined investment policy for the benefit of investors. REIT invests in real estate properties and InvIT invests in other infrastructure projects categorised by Govt. of India.

Multilevel Structure of REIT and InvIT:



As per SEBI regulation trust's stake in holding company (Hold Co) should not be less than 50% in case of REIT and 51% in case of InvIT. The ultimate holding interest of the REIT/InvIT assets in the underlying SPV(s) is not less than twenty six per cent.

SEBI regulation provides detailed guidelines for raising funds through public issue of trust units mandatorily listing in designated stock exchange within 3 years of registration, participation of strategic investors, sale by existing unit holders and issue of debt securities. InvIT can adopt private placement route also.

In REIT the minimum subscription from any investor in initial and/or follow-on public offer shall be rupees fifty thousand w.e.f. 22.04.2019 (earlier it was rupees two lakhs).

In InvIT minimum subscription from any investor in initial and/or follow-on public offer shall be one lakh rupees w.e.f. 22.04.2019 (earlier it was rupees ten lakhs).

Not less than eighty per cent of value of the REIT/InvIT assets shall be invested in completed and rent and/or income generating properties/revenue generating infrastructure projects when funds are raised by public issue

If the InvIT raises funds by way of private placement not less than eighty per cent of the value of the InvIT assets shall be invested in eligible infrastructure projects either directly or through hold co and/or SPVs

In private placement minimum investment from any investor shall be rupees one crore.

If such an privately placed InvIT invests or proposes to invest not less than eighty per cent of the value of the InvIT assets in completed and revenue generating assets, the minimum investment from an investor shall be rupees twenty five crore, from not less than five and not more than one thousand investors.

In both REIT and InvIT maximum subscription from any investor other than sponsor(s), its related parties and its associates shall not be more than 25 per cent of the total unit capital.

Not more than 20% of REIT/InvIT assets are allowed to be invested in under developed assets/infrastructure projects directly or through Hold co and/or SPV(s) (must be retained at least for 3 years after completion) and other permissible securities (InvIT's investment limited to 10% in such infrastructure projects).

Investment in vacant land is specifically prohibited.

Not less than fifty one per cent of the consolidated revenues of the REIT, Hold Co and the SPV, other than gains arising from disposal of properties, shall be, at all times, from rental, leasing and letting real estate assets or any other income incidental to the leasing of such assets

Distribution of cash flows:

- a) Not less than ninety per cent of net distributable cash flows of the SPV shall be distributed to the REIT/InvIT/Hold Co in proportion of its holding in the SPV;
- b) With respect to the cash flows received by the hold Co from underlying SPVs, 100% of such cash flows received by the hold Co shall be distributed to the REIT/InvIT;
- c) With respect to the cash flows generated by the hold Co on its own, not less than 90% of such net distributable cash flows shall be distributed by the hold Co to the REIT/InvIT;
- d) Not less than ninety per cent of net distributable cash flows of the REIT/InvIT shall be distributed to the unit holders;
- e) Such distributions shall be declared and made not less than once every six months in every financial year in case of publicly offered REIT/ InvIT and not less than once every year in case of privately placed InvIT and shall be made not later than fifteen days from the date of such declaration

Tax provisions- REIT and InvIT registered under relevant SEBI regulations and units of which are required to be listed on recognised stock exchange are treated as business trust u/s 2(13A) of IT

Act. However, listing requirement of business trust units has been omitted with effect from Assessment Year (AY) 2021-22 vide Finance Act, 2020.

U/s 115UA(1) any income distributed by a business trust to its unit holders shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder as it had been received by, or accrued to, the business trust.

U/s 115UA(2) subject to the provisions of section 111A and section 112, the total income of a business trust shall be charged to tax at the maximum marginal rate.

U/s 115UA(3) if in any previous year, the distributed income or any part thereof, received by a unit holder from the business trust is of the nature as referred to in “**sub-clause (a) of**” clause (23FC) or clause (23FCA) of section 10, then, such distributed income or part thereof shall be deemed to be income of such unit holder and shall be charged to tax as income of the previous year. Finance Act 2020 has omitted “**sub-clause (a) of**”.

U/s 10(23FC)(a) business trust is exempt from tax for the income of interest received or receivable from special purpose vehicle, a company in which business trust holds controlling interest.

U/s 10(23FCA) any income of a business trust, being a real estate investment trust, by way of renting or leasing or letting out any real estate asset owned directly by such business trust is exempt in the hands of business trust.

U/s 10(23FC)(b) business trust is exempt from dividend income received from SPV company whose whole nominal equity shares (excluding govt holding if any) are held by business trust and in such case SPV is exempt from dividend distribution tax u/s 115-0(7). Proportion of this dividend income received by unit holders including any other income are exempt u/s 10(23FD) read with section 115UA up to 31st March, 2020. From AY 2021-22 reference of section 115-0 has been removed as DDT has been abolished by Finance Act 2020 meaning all kinds of dividends are exempt u/s 10(23FC)(b).

Finance Act 2020 has abolished dividend distribution tax from AY 2021-22. Section 10(23FD) has been amended to exclude exemption of dividend income that is now taxable in the hands of unit holders where the SPV company has exercised the new regime option of concessional rate of tax (22%) under section 115BAA – option(1). In case SPV does not exercise the option of concessional rate of tax u/s 115BAA exemption of dividend income remains for unit holders- option(2).

So, from above, interest and rental income are taxable in the hands of unit holders. Dividend was exempt up to 31st March, 2020 under specific situation. From 1st April, 2020 that is AY 2021-22 taxability of dividend in the hands of unit holders shall be as per option (1) or option (2).

In multi-level structure where business trust invests in SPV through Holding company DDT was applicable at SPV level while paying dividend to Hold co till 31st March, 2020. DDT being abolished, Finance Act 2020 introduced section 80M with effect from AY 2021-22 as per which holding company being a domestic company is allowed a deduction from its business income to the extent of dividend received from SPV one month before scheduled date of submission of return.

Tax deducted at source (TDS) at trust level u/s 194LBA up to 31st March, 2020:

U/ss (1) TDS on interest and rental income distributed to resident unit holder shall be 10% without Surcharge (SC) and Higher Education Cess (HEC) for the AY 2020-21.

U/ss (2) TDS on interest income distributed to non-resident (not being a company) shall be 5% (+SC+HEC).

U/ss (3) TDS on rental income distributed to non-resident (not being a company) shall be at rate in force that is maximum marginal rate of 30% (+SC+HEC) subject to Double Taxation Avoidance Agreement (DTAA).

With effect from 1st April, 2020 (AY 2021-22) section 194LBA has been amended vide Finance Act, 2020 to include TDS on distributed dividend income at 10% with applicable SC and HEC in both cases of resident and non-resident (not being a company) in case SPV company exercises the new regime option u/s 115BAA.

Treatment of capital gains:

Holding period for units of business trust for short term capital gain (STCG) is up to 36 months and for long term capital gain (LTCG) it is more than 36 months.

STCG being subject to STT (security transaction tax) on transfer of units is taxable at the rate of 15% (+SC+HEC) (SC cannot exceed 15% for AY 2020-21 and 2021-22) u/s 111A.

Benefit of reduced rate of 15% is available w.e.f. 1-4-2016 even in respect of income arising from transfer of units of a business trust which were acquired by assessee in lieu of shares of special purpose vehicle as referred to in section 47(xvii).

With effect from AY 2019-20, LTCG exceeding Rs.1 lakh subject to STT on transfer of units is taxable at the rate of 10% (+SC+HEC) (SC cannot exceed 15% for AY 2020-21 and 2021-22) u/s 112A without the benefit of indexation and rebate u/s 87A.

In both cases of LTCG and STCG u/s 111A & 112A (i) deduction u/s 80C to 80U is not available, (ii) proviso for benefit of exemption limit is applicable to Individual/HUF resident, (iii) condition of STT is not applicable to a transaction undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency.

Where STT is not applicable, LTCG is taxable @20% plus applicable surcharge and cess with indexation and benefit u/s 87A for residents. For non-residents it is 10% with applicable surcharge and cess without benefit of indexation and calculation is not made in foreign exchange as per first proviso of section 48.

Where STT is not applicable, STCG for resident investors is considered as any other income and taxed at normal applicable slab rate and for non-residents it is subject to DTAA.

Estate/Succession planning in the form of Private Trust (Family Trust):

Most important aspect of personal finance gets least importance by majority of people. Transfer of wealth including business assets to next generation/legal heir or any other intended beneficiaries smoothly, lawfully without any hurdle legal/taxation or otherwise to avoid complications in future must be planned during living time that is called estate/succession planning. Out of various modes for this purpose viz. Nomination, Joint account, transfer of assets during life time, Will, Trust etc. creation of private trust /family trust though complicated process is the ideal mode of estate/succession planning.

Private Trusts are created through trust deeds and are governed by Indian Trusts Act, 1882. Trust can be created by Will also. Any individual/HUF/AOP (association of persons)/Company can create a trust. Components of a trust are settlor/author (creator of trust), trust deed, trust property, beneficial interest, trustee (managing the trust property in fiduciary legal capacity), beneficiary (for whose benefit trust is created) and protector/appointer (monitoring the administration by trustee though not mandatory). Trust may be revocable or inter vivos (may be revoked or terms amended) and irrevocable (cannot be altered, amended or revoked; discretionary (trustee can decide share of trust fund to beneficiaries) and non-discretionary (guided by terms of trust deed); determinate (beneficiaries and their beneficial interest are identifiable) and non-determinate (beneficiaries are either not identifiable or their beneficial interest not specified)

Will or testament is a legal document created by a person called testator while living expressing his/her intention to transfer/distribute their properties (movable and immovable) in a desired way after their

death to heirs or intended persons. It may be registered or unregistered, may be typed or hand written by testator (holograph Will). An executor shall be appointed for managing distribution of bequeathed assets in terms of the Will and get it certified by Court (probate) after death of testator. Will is governed by Indian Succession Act 1925.

Taxation of trust income: For tax purposes private trust is classified as specific trust where share of beneficiaries are fixed and ascertainable and discretionary trust where share of beneficiaries are not ascertainable.

Taxation of specific trust:

Includes business income u/s 161(1A).	Whole income at maximum marginal rate on trustee as representative assessee.
Exception- under proviso of section 161(1A), if trust created by will exclusively for dependent relative and it is the only trust created by settlor.	Taxable on total income of each beneficiary
does not include business income u/s 161(1)	Taxable in the hands of trustee as representative assessee at rate applicable to each beneficiary. Alternatively, Assessing Officer can assess income in the hands of beneficiaries.

Taxation on discretionary trust u/s 164(1):

In normal case taxable on trustee as representative assessee	At maximum marginal rate
Exception-if (i) none of beneficiaries have other income exceeding basic exemption limit ("BEL") or is beneficiaries in other trust; or(ii) Trust created through will and it is the only trust created by settlor; or(iii) trust created non-testamentary before 1 st March 1970 by settlor/HUF exclusively for its relatives/dependent members; or(iv) trust income from welfare funds created by employer for its employees.	at rate of AOP as per section 167B
Exception- if trust income includes business income and trust is created by will exclusively for any dependent relative and it is the only trust created by settlor.	at rate of AOP as per section 167B

- Oral trust- u/s 160(1)(v) explanation-2 means a trust which is not declared by a duly executed instrument in writing and its income shall be chargeable to tax u/s 164A at maximum marginal rate.
- If a person transfers any property to a trust for the benefit of his/her spouse, then the income shall be clubbed in the hands of the transferor u/s 64(1)(vii).
- If a person transfers any property to a trust for the benefit of his/her daughter-in-law, then the income shall be clubbed in the hands of the transferor u/s 64(1)(viii).
- in case of private trusts where minors are beneficiaries and their parents are alive, then the income from trust property will be clubbed in the hands of the parents whose income (excluding the minors' income) is greater u/s 64(1A).
- Any transfer of capital asset under a Will or an irrevocable trust shall not be considered as a transfer for the purpose of capital gains u/s 47(iii).

Investment in Reality Assets:

Transfer of land or building or both attracts capital gains tax. Holding period for short term capital gains (STCG) for transfer up to 31st March, 2017 was 36 months and thereafter it is 24 months and corresponding holding periods for long term capital gains (LTCG) is more than 36 months and 24 months respectively.

Implication of section 50C considering sale consideration = 100:

Assessment Year	Stamp duty value	Full value of consideration
Up to 2018-19	Less than /equal to 100 More than 100	100 Actual stamp duty value
2019-20 and 2020-21	Less than/up to 105%=105 More than 105% (105)	100 Actual stamp duty value
2021-22 onwards	Less than/up to 110%=110 More than 110%(110)	100 Actual stamp duty value

- Stamp duty value on the date of agreement (not on the date of registration) shall be considered provided consideration or part thereof is received before or on the date of agreement applicable from the AY 2017-18.

- In case of dispute, stamp duty value as accepted for stamp duty purpose under stamp duty act shall be considered.

- On claim of assessee that stamp duty value is more than market value, valuation made by IT department authorised valuer shall be considered if it is less than stamp duty value. If it is more than stamp duty value, original stamp duty value shall be considered.

Exemption of LTCG under various provisions of IT Act are summarized below:

Section/transaction	Conditions	Exemption
Sec 54/transfer of residential house property by Individual/HUF after holding period >24 months	Purchase a residential house in India within one/two years before/after transfer respectively or construct within three years after transfer. If capital gain is ≤ 2 Crore 2 houses can be purchased/constructed once in life time from AY 2020-21. Not to transfer the new house within three years of purchase/construction. If capital gain is not utilised by due date of filing return, deposit it in specific bank account under Capita Gain Accounts Scheme, 1988.	Capital gain up to the cost of new house is exempt. If new house costing X is sold within 3 years of purchase/ construction at Y exempted amount E shall be chargeable to tax by reducing E from X. Capital gain in the year of sale shall be $Y-(X-E)$.
Sec 54B/transfer of land used for agricultural purpose by Individual/HUF	Land used for agricultural purpose for 2 years immediately before transfer and a land purchased within 2 years for same purpose. Hold the new land for 3 years from the date of purchase. Deposit scheme is applicable. Note: transfer of agricultural land in rural area is not chargeable to capital gain tax.	Capital gain up to the cost of new land is exempt. If new land sold within 3 years exempt amount shall be chargeable in the same manner of sec.54.
Section 54D/ Compulsory acquisition of land and building, forming part of industrial undertaking	Asset being used for said purpose for at least 2 years preceding date of acquisition. Other land or building is purchased or constructed within 3 years of date of receipt of compensation. Shift/re-establish same industry or set up new industry on new asset. Deposit scheme is applicable.	Capital gain up to the cost of new asset is exempt. If new asset sold within 3 years exempt amount shall be chargeable in the same manner of sec.54.
Section 54EC/Capital gains not to be charged on investment in certain bonds. Applicable to Individual/firm /company/any other person.	Transfer of long term asset being only land or building or both from AY 2019-20. Invest capital gain in bonds issued by NHAI or REC or other authority notified by Govt(redeemable after 5 years) within 6 months of transfer. Investment is not allowed for deduction u/s 80C.	Exempt up to Rs.50 lakh during /next financial Year. If bonds are sold or loan/advance taken on it within 5 years exempt amount shall be chargeable as LTCG in PY of transfer.
Section 54F/capital gain on transfer of any	Purchase a residential house (new house) in India within one year before/2 years after or	Say LTCG = G, Net consideration = X

<p>long term capital asset other than a house property. Applicable to Individual /HUF.</p>	<p>construct within 3 years after transfer of any long-term capital asset.Does not have more than one residential house on the date of transfer. Do not sell/transfer the new house within 3 years of purchase/construction.Do not Purchase/construct any residential house (other than the new house) within 2/3 years respectively of transfer. Deposit scheme is applicable.</p>	<p>Cost of new house =Y Exemption amount= E If $Y \geq X$, $E = G$ If $Y < X$, $E = G * (Y/X)$ On violation of last two conditions exempted LTCG shall be taxable in the year of violation.</p>
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Note: Deposit scheme as per Capital Gains Accounts Scheme, 1988 provides that if capital gain could not be utilised fully before return filing date u/s 139 the unutilised amount should be deposited in a specific deposit account on or before return filing date in a Public sector bank (except rural branch) or IDBI bank. This deposit shall be utilised for the purpose of tax benefit within stipulated period under various sections stated above.

Example: Suppose a residential house is sold on 1st December, 2019(FY 2019-20) where section 54 is applicable LTCG = Rs. 10, 00,000. Assessee invests in an under construction residential house Rs. 3,00,000 before due date of filing return 31st July, 2020 (AY 2020-21) and deposits an amount of Rs.5,00,000 in deposit account under the said deposit scheme in a public sector bank(if nothing is invested in purchase/construction before 31st July, 2020, entire amount may be kept in deposit account). Assessee is allowed to claim exemption of Rs.8, 00,000 (Rs.3, 00,000+Rs.5, 00,000) leaving taxable LTCG of Rs.2, 00,000 in AY 2020-21. (If entire amount is kept in deposit account entire amount shall be exempt.)

Before 1st December, 2022 i.e. within 3 years of transfer another Rs.4, 00,000 is utilised in the construction of the new house and thereafter balance amount of Rs. 1,00,000 is withdrawn from the deposit account. This Rs.1, 00,000 shall be taxable LTCG in AY 2023-24 corresponding to FY 2022-23 in which completion of 3 years after transfer falls. (If cost of new house Rs.7,00,000 was invested after 31st July, 2020 and before 1st December, 2022 out of deposit account of Rs.10,00,000, taxable LTCG in AY 2023-24 shall be Rs.3,00,000).