

Taxability of Joint Development Agreement under Income Tax Act

1. Background prior to introduction of Section 45(A):

Section 45 read with Section 2(47) of income tax act provides the basis of chargeability of income under the head of “Capital Gains”. Section 2(47) defines the term “Transfer” which includes not only a transaction of sale, exchange, or relinquishment of any capital asset rather the scope of the term “transfer” is quite wider. The scope of the term “Transfer” can be understood from the reading of the clause (v) and (vi) to Section 2(47) of the Income Tax Act as below:

“Clause (v): any transaction allowing possession of any immovable property to be taken or retained in part performance of a contract under Section 53A of Transfer of Property Act.

Clause (vi): any transaction which has the effect of transferring or enabling enjoyment of any immovable property.”

In view of clause (v) and (vi), the term “transfer” will also include any agreement for joint development entered between the land owner and the builder/ developer. Refer to Section 45 of the Income Tax Act, the taxability under the head “Capital Gains” arises in the year in which the transfer of capital assets takes place with certain exceptions. Therefore, the liability for capital gains tax arises in the hands of the land owner in the year in which he enters into a joint development agreement which was affirmed by judicial fora in various judgments.

Thus Joint Development Agreement (JDA) is always a area of conflict between the assessee and income tax department. This legal position was troubling the land owners as the transfer happens on the date of entering



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into the JDA itself, necessitating the land owners to discharge tax liability in the year of transfer even in the absence of receipt of any consideration, thereby resulting in undue financial stress and hardship for them.

2. Provisions related to taxability of JDA under Income Tax Act:

Considering this difficulties, Finance Act 2017 introduced Section 45(5A) in the Income Tax Act to give relief to land owners entering into JDAs. Section

45(5A) provides

“Notwithstanding anything contained in sub-section (1), where the capital gain arises to an assessee, being an individual or a Hindu undivided family, from the transfer of a capital asset, being land or building or both, under a specified agreement, 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; and for the purposes of section 48, the stamp duty value, on the date of issue of the said certificate, of his share, being land or building or both in the project, as increased by the consideration received in cash, 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:

PROVIDED that the provisions of this sub-section shall not apply where the assessee transfers his share in the project on or before the date of issue of the said certificate of completion, and the capital gains shall be deemed to be the income of the previous year in which such transfer takes place and the provisions of this Act, other than the provisions of this sub-section, shall apply for the purpose of determination of full value of consideration received or accruing as a result of such transfer.

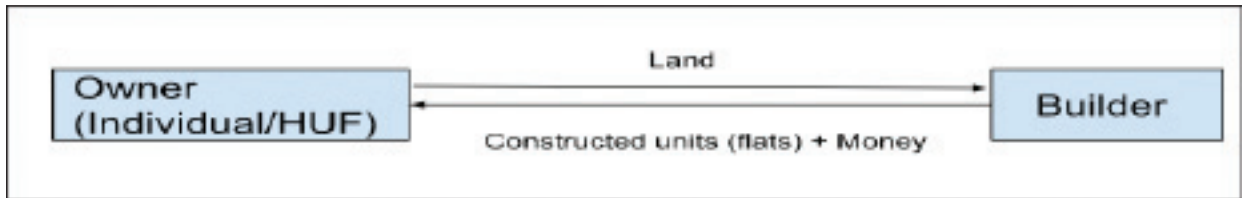
Explanation : For the purposes of this sub-section, the expression—

- (i) “competent authority” means the authority empowered to approve the building plan by or under any law for the time being in force;
- (ii) “specified agreement” means a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash;

- (iii) “stamp duty value” means the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of an immovable property being land or building or both.]

Meaning of Joint Development Agreement

Joint Development Agreement means a registered agreement in which a person owning land or building agrees to allow another person to develop a real estate project on such land or building, in consideration of a share in such project, whether with or without payment of part of the consideration in cash or by a cheque or draft or by any other mode.



3. Applicability of Joint Development Agreement:

(i) **Eligible Assessee:** The assessee is an individual or a Hindu undivided family. He owns land or building or both. In other words, the provisions of section 45(5A) under collaboration agreement will be applicable only in case the land owner is an Individual or a HUF.

(ii) **Transfer of Land and / or Building to Developer:** The Individual/HUF (who owns land or building or both) transfers such land or building to developer. The subject asset is land or building or both.

(iii) **JDA should be registered:** Applicable only where a registered agreement/deed is executed.

(iv) Stamp duty value is taken as on the date of issue of completion certificate and not as on the date of original transfer.

(v) **Specified Agreement:** The assessee has been entered into a Specified Agreement (Joint Development Agreement) with a builder/developer for the development of a project on land provided by him.

If the above conditions are satisfied, 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.

4. Salient features of definition of Specified Agreement

- (i) It is a registered agreement
- (ii) One of the two parties to the agreement is the person who owns land or building or both
- (iii) Another party to the agreement is real estate developer.
- (iv) Under the agreement, a real estate project will be developed by the developer on such land or building or both.
- (v) Consideration is payable by the developer in the form of a share in the developed land or building with or without cash consideration.

In other words, Joint Development Agreement (JDA) is an arrangement in which land owner introduces land and developer agrees to develop land for agreed consideration in cash or kind or both.



5. Taxability of Joint Development Agreements (JDA)

If an individual or HUF enters into a joint development agreement (JDA) with a builder or joint developer, it shall be deemed that the capital asset is transferred during the year in which the certificate of completion for the whole or part of the project is issued by the competent authority.

6. Meaning of Competent Authority

Competent authority means the authority empowered to approve the building plan by or under any law for the time being in force.

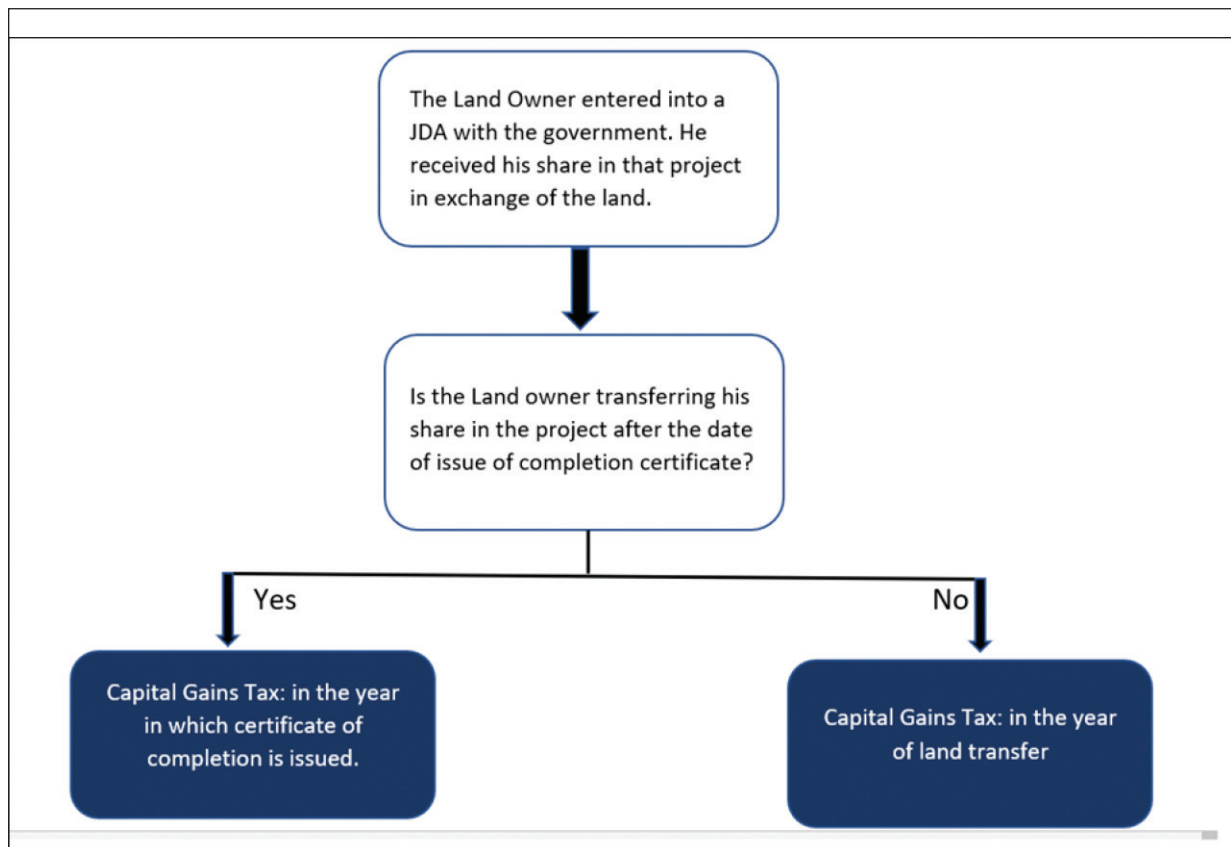
7. Taxability in the hands of Land/ Building Owner:

In JDA, the land-owner may get monetary or non-monetary consideration from the developer for contributing his land

to the project. Monetary consideration can be a share in the sale consideration of the project, and non-monetary consideration means a specified share in the developed estate.

In this case, the aggregate of money consideration received by the owner of immovable property and the stamp duty value of the property in respect of the owner's share in the developed project on the date of issuing of the certificate of completion by the competent authority shall be deemed to be the full value of the consideration received or receivable by the owner as a result of the transfer of such immovable property.

Capital Gains taxation consists of following i.e. full value of consideration, cost of acquisition and the year for determination of taxability etc



Meaning of Stamp Duty Value

Stamp Duty Value means the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of immovable property, being land or building or both.

Cost of Acquisition

For the computation of the capital gains from the joint development agreement, the cost of acquisition and indexed cost of acquisition of the land or building covered by the JDA shall be computed as per general provisions.

The cost of acquisition of share in the developed project in the hands of the land-owner shall be the amount which is deemed as the full value of consideration for the purpose of computing capital gains under this provision.

Period of holding

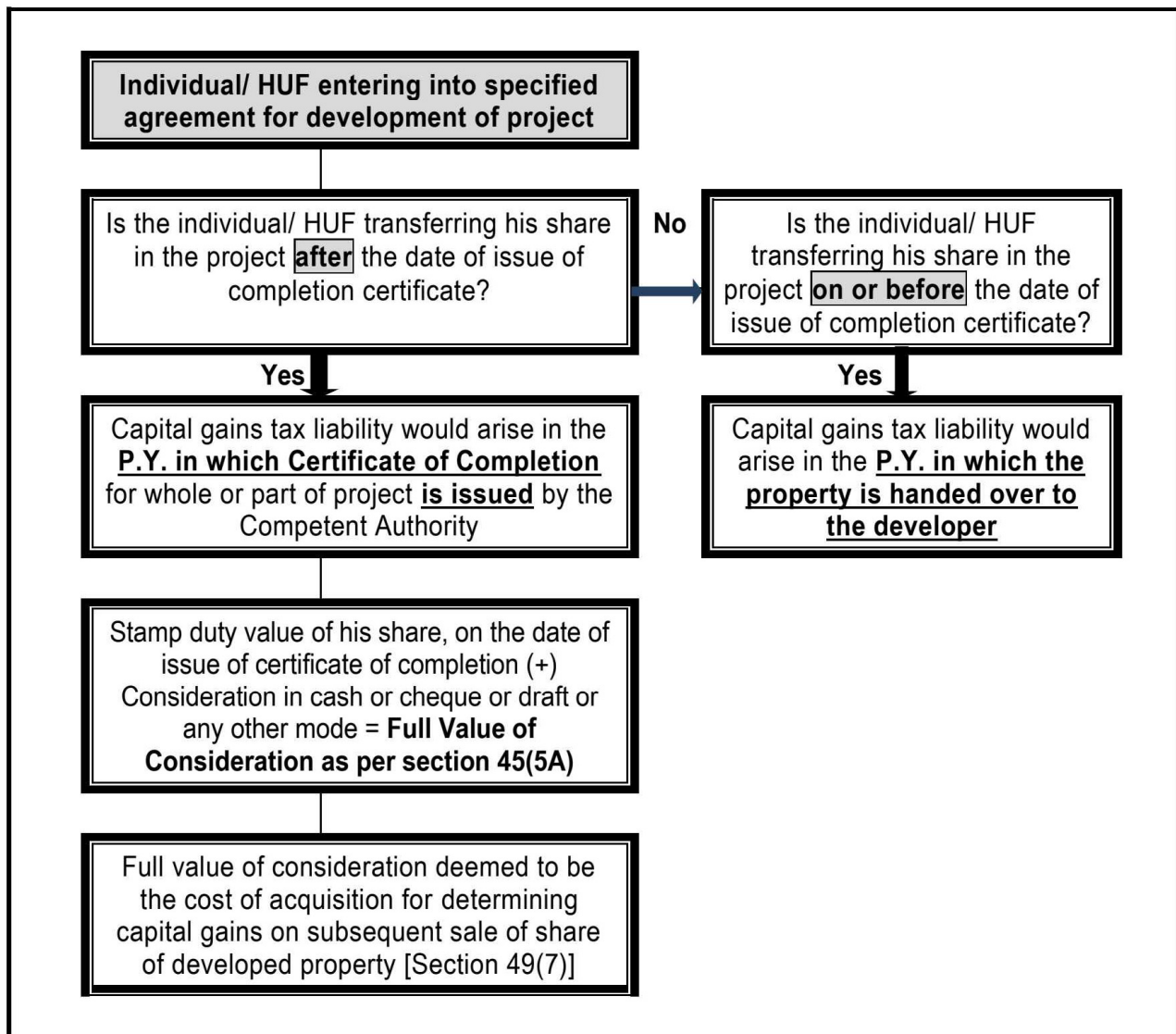
The period of holding shall be counted from the date of purchase or acquisition till the date immediately preceding the date on which the certificate of completion is issued by the competent authority.

However, if the owner of land or building transfers his share in the project to any other person on or before the date of issue of the certificate of completion, the capital

gains shall be computed as per general provisions of the Act without taking into account the above special provisions, and it shall be deemed to be the income of the previous year in which such transfer takes place.

Year of taxability i.e. the year in which owner has to pay tax. As per the provisions of Section 45(5A), the land owner will have to pay tax on these capital gains in the year in which the certificate of completion is issued for the whole or part of the property / in the year in which the building project is completed. **However, this provision shall not apply if such property is transferred by the owner before such completion certificate is issued.**

Taxability of capital gains in case of Specified Agreement: At a Glance



8. How to compute Capital Gain: Example

Mr. Ramkumar has purchased a plot of land on September, 20th 1997 for Rs. 5,00,000. The fair market value as on April 1, 2001 is Rs. 10,00,000. On 15th December 2018, he entered into a JDA with Khushi Builders with following terms and conditions

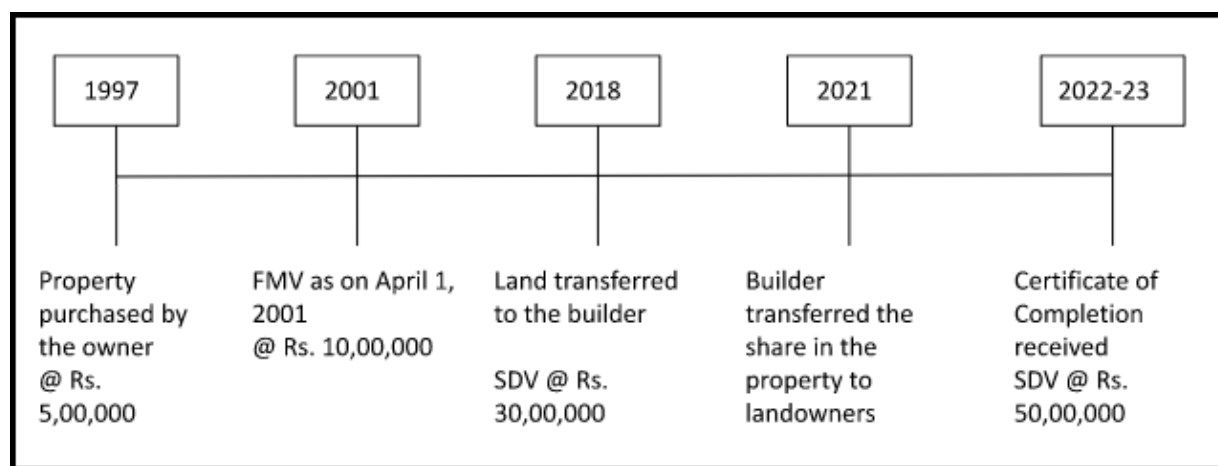
- (i) to receive 2 flats in the developed project along with a cheque of Rs. 40,00,000.
- (ii) will hand over the possession of the plot to Khushi Builder on 15th December 2018, 2018. Stamp duty value of the land on that day is Rs. 30,00,000

- (iii) the certificate of completion for the said project was issued on 20th November, 2022 and on that date, the stamp duty value of each flat is Rs. 50,00,000. The builder transferred the flats to the landowners on 14th December 2022.

Besides above the land owner incurred expenses of Rs.3,00,000/- in connection with transfer of his land.

9. Calculation of Capital Gains :

Above example can be illustrated by following timeline:



The capital gains shall be computed in the following manner:

Particulars	Amount - INR
Full value of consideration – (Rs.50,00,000/- * 2 nos of flat) + cheque Rs.40,00,000/-	1,40,00,000
Less:	
Cost of acquisition/Indexed cost of acquisition – Rs.30,00,000 x 280 (CII for 2018-19) / 100 (CII for 2001-02)	84,00,000
Cost of improvement/Indexed cost of improvement	NA
Expenditure in connection with the transfer	3,00,000
Balance: Long Term / Short Term Capital Gain	53,00,000

10. Taxability in the hands of the Developer of the Property

For the builder/developer, such property built by them will be considered as stock-in-trade. Therefore, the nature of income from the sale of such property shall be 'Income from business and profession'. The income will include

proceeds from sale of such property and he shall be allowed to deduct the business expenses incurred on development of such property. The balance will be taxable.

11. Liability to Deduct TDS on monetary consideration (payment under joint devel-

Development agreement) [Section 194-IC]

Section 194-IC was inserted by the Finance Act, 2017 with effect from 01.04.2017 to deduct TDS on monetary consideration. According to section 194-IC, if under a joint development agreement, any developer pays any amount to the land owner in addition to the share in the project, then such builder shall deduct TDS @ 10 % on such payment.

Who is a deductor?

Any person responsible for paying any sum by way of consideration under a Joint Development Agreement shall deduct tax therefrom. The tax is deducted at the time of payment or at the time of credit of the sum to the account of the deductee, whichever is earlier.

Who is the deductee?

The tax shall be deducted if the payment is made to a resident individual or HUF.

Rate of TDS

The tax shall be deducted at the flat rate of 10%. The tax shall be deducted at 20% if Section 206AA or Section 206AB apply.

12. Significant Accounting Issues Involved

- (i) Applicability of Accounting Standard 9 (AS 9) read with the Guidance Note for Real Estate Transactions (Revised 2012) and Accounting Standard 7 (AS 7) issued by ICAI in the case of owner as well as developer?
- (ii) Issues regarding Recognition of Revenue for a particular accounting year and determination of assets and liabilities at the end of the accounting year.
- (iii) Developer is required to follow Percentage Completion Method (PCM) or Completed Contract Method (CCM) of accounting?

- (iv) Application of the principle of prudence & matching concept in the case of accounting for real estate developers.
- (v) Manner in which use of estimates is to be done for revenue recognition
- (vi) Manner of recognition of future losses?

13. Some contentious issues still unanswered by section 45(5A):

- (i) Why the Govt. has not extended the benefit of this section to the assesseees other than the Individual and HUF?
- (ii) Whether the indexation will be given up to the date of Joint Development Agreement or to the date of completion certificate or to the date of registration of constructed flats?
- (iii) When will be the time limit to make investment u/s. 54 and 54F will be reckoned- From date of Joint Development Agreement or from the date of completion certificate?
- (iv) Whether reference to the valuation officer u/s 50C is permissible in case the SDV is higher than FMV?
- (v) Whether capital gain on entire land shall be attracted in the year in which certificate of completion for even part of the project is issued or in such a situation capital gains on land should be attracted on proportionate basis in the ratio of the land utilized for the part of the project for which certificate of completion has been issued?
- (vi) In case agricultural land, not covered within the definition of capital asset u/s 2(14) is contributed for joint development - Whether capital gain liability shall be attracted?
- (vii) Whether section 45(5A) can be applied retrospectively?