

FIN-O-SCOPE

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Questions and Process for Non-Resident Clients Selling Property in India

Selling property in India as a Non-Resident Indian (NRI) can be a complex process involving legal, financial, and tax considerations. This newsletter aims to guide you through the key questions and necessary documentation required to facilitate the smooth sale of your property in India. We also outline the process for obtaining essential forms such as 15CB and 15CA, ensuring compliance with Indian tax regulations. Whether you're navigating the requirements for remittances or addressing tax implications, this guide is here to assist you every step of the way.

Tax Trends

- Under Sec 112, For non-resident clients, LTCG from the transfer of capital assets, including land or building, is taxed at 20% before July 23, 2024, and at 12.5% after that date.
- In case of non-residents selling unlisted securities or shares of a private company, LTCG is taxed at 10% before July 23, 2024, and 12.5% after that date, under Section 112A.

Tax Trends

- Non-residents can avail tax exemptions on LTCG through Section 54, which provides relief on capital gains from the sale of residential property if reinvested in another property.
- The net taxable amount for non-residents may be reduced by exemptions provided under Section 54 if the proceeds are reinvested within the specified time frame.
- Section 112A applies to long-term capital gains (LTCG) from the sale of equity shares, units of equity-oriented funds, or business trusts, where securities transaction tax (STT) has been paid.
- The LTCG tax rate is 10% for transfers before July 23, 2024, and 12.5% for transfers on or after that date, with the first ₹1,25,000 of LTCG being exempt.
- The rebate under Section 87A is allowed from the income tax payable on the total income after LTCG taxation.

Questions to Ask Your Non-Resident Client:

Bank Account Details:

1. Do you have a bank account in India? If yes, is it an NRE or NRO account?
2. Can you provide the name of the bank and branch?
3. Please provide the bank statements from 01.04.2024.

Citizenship and Tax Residency:

1. Which country are you a citizen of?
2. Are you a tax resident of your country of residence?
3. Do you hold a Tax Residency Certificate (TRC)?

PAN and Tax Filing Details:

1. Do you hold a PAN card?
2. Have you ever filed an income tax return in India? If not, has there been any taxable income in the past?

Sources of Income in India:

1. Do you have any sources of income in India (e.g., rent, dividends, interest, or others)?
2. If yes, please provide details and supporting documentation.

Property Details:

1. What is your shareholding percentage in the property?
2. Can you provide a copy of the property agreement/sale agreement or any related documents?

Purpose of Remittance:

1. What is the purpose of the remittance (e.g., sale proceeds from property, income, family maintenance, loan repayment, or other)?

Amount to be Remitted:

1. What is the approximate amount to be remitted?
2. In which currency will the amount be remitted?

Consultation with Bank:

1. Have you consulted your Authorized Dealer Bank regarding the remittance process? If yes, can you share any guidelines or requirements they provided?

Additional Information:

1. Do you have any joint accounts or co-ownership of assets in India?
2. Are there any pending liabilities, taxes, or compliance matters in India related to the remittance or property?
3. Have you previously remitted funds from India? If yes, please provide details.

Documentation Required for Issuance of Forms 15CB and 15CA

Form 15CB is a certificate issued by a Chartered Accountant, confirming the remittance details in compliance with Indian tax laws. It ensures adherence to tax regulations for payments or remittances. Additionally, Form 15CA must be filed online by the remitter with the Income Tax Department. This declaration serves as a self-certification, confirming that any required taxes have been deducted at source and that the remittance complies with the applicable tax provisions.

Documents Required for ascertaining Cost of Acquisition of Property:

- **Inherited Property:** A copy of the will through which the property has been inherited is required.
- **Fair Market Value:** If the property was purchased before April 1, 2001, a certified fair market value of the property as of that date, issued by a registered valuer, is necessary.
- **Purchase Deed:** A purchase deed for the property will be required.

Verification of Form 15CA: Filing Form 15CA requires e-verification by the remitter, either via a Digital Signature Certificate or Aadhaar OTP. For NRIs with Aadhaar in India, the linked mobile number must be used for OTP verification. The process usually takes 2–10 days, and it is crucial to follow the verification steps for successful submission.

TDS Deduction & Bank Statements: Details of the TDS deducted by the buyer, if applicable, should be provided. Form 16A can be obtained, and a bank statement for the relevant year will also be required.

Other Relevant Documents: Any additional documents or information pertinent to the transaction or compliance process should be shared to ensure proper documentation.

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Tax Trends

- For transfers on a recognized stock exchange in an International Financial Services Centre, the condition for STT payment is not applicable.
- Section 54 provides relief to individuals and Hindu Undivided Families (HUFs) on long-term capital gains arising from the transfer of a residential house.
- The relief is available if the client purchases or constructs a new residential house in India within one year before or two years after the sale date, or constructs a house within three years.
- If the capital gain exceeds the cost of the new property, the excess will be taxed under Section 45.
- Non-residents can buy up to two houses if the capital gain is under ₹2 crore.
- Unused gains must be deposited before filing and will be taxed if not used.
- Exemption applies only if the new asset's cost is under ₹10 crore.