

Opinion | How will LTCG benefit work as per new laws

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- Budget 2019 increased the scope of LTCG exemption for acquisition of two houses
- The amendment does not permit acquisition of the two houses in the names of any person other than the taxpayer who has earned the capital gains.

One of the most significant exemptions available for individuals under our tax laws is that relating to exemption of [long-term capital gains](#), made on the sale of a residential house, if it's reinvested for the acquisition of a new residential house. The exemption is available for capital gains arising on sale of a residential house, which is a long-term capital asset, to the extent of the cost of one new residential house acquired during the specified period. There have been two developments in the past month or so that have expanded or clarified the scope of the exemption.

Till now, the understanding generally has been that you get the benefit of the exemption only in a situation where you sell one house and buy one house. Is this correct?

The recent budget increased the scope to some extent by permitting such exemption for acquisition of two such houses, subject to the conditions that the [capital gains on sale of the old house](#) does not exceed Rs. 2 crore, and such exemption for acquisition of two houses is being claimed only once in a lifetime. The ostensible reason for such amendment was stated to be the fact that this would facilitate division of property among children by parents.

These restrictions do not apply to cases covered by the earlier exemption on acquisition of one residential house. If you do not satisfy the conditions, you may choose to claim the exemption only in respect of the cost of acquisition of one house.

These restrictive conditions limit the benefit arising due to the extension of the exemption to only a few cases. In most such cases, where two houses are sought to be acquired, the capital gains would be higher than Rs. 2 crore and, therefore, the benefit of an additional exemption of the cost of one more house would not be available. Also, this simultaneous exemption for cost of acquisition of two houses can be availed of only once in a lifetime and, therefore, many taxpayers may choose not to claim the exemption immediately, but prefer to claim it at a later point of time in their lives, when they may really need such exemption to facilitate the bequest of such houses to their children.

The other aspect is that the amendment does not permit acquisition of the two houses in the names of any person other than the taxpayer who has earned the capital gains. Ideally, in most cases, if the taxpayer is acquiring the two houses for his two children, he would prefer that the houses are acquired in the names of each of the two children, rather than just designating one house as being intended for each of them and bequeathing them through a Will. If he were, however, to acquire the houses in the names of the children, he would not be able to claim any exemption at all, leave alone the exemption for two houses, unless each of the houses was acquired in the joint names of the taxpayer and a child.

While normally the exemption is available only on acquisition of one residential house, the converse is not true. You may sell two residential houses and buy only one residential house, and can still claim exemption for long-term capital gains on sale of both houses, so long as the cost of the new house is more than the total capital gains on the sale of both the old houses. This is because the acquisition of a new house has to be seen vis-à-vis each item of capital gain, so long as it does not result in double exemption in respect of the same cost of acquisition of the new house. A recent decision of the Mumbai bench of the [Income Tax Appellate Tribunal](#) has confirmed this position.

Of course, whether two adjacent flats constitute one house or two separate houses is a controversy which continues to be raised by the tax authorities. This is in spite of the fact that there are a number of high court decisions, where the courts have taken the view that where two adjacent flats are used in such a manner that they are treated as if they are one house, they really constitute one house. The facts which have led to the courts taking such a view have been cases where there has been only one common entrance to both flats, the walls between the two flats have been demolished permitting free access from one flat to the other, there is a common kitchen, a common electric meter, etc. In spite of the fact that these may be recorded as two flats in municipal plans or society records, courts have taken the view that these are, in substance, one house.

The reason for the aggressive stand of the tax authorities generally has been on account of the large amounts of capital gains involved in property transactions. Tax authorities are generally reluctant to let a large exemption go unchallenged, resulting in unwarranted litigation, which costs the tax department nothing, but results in harassment of taxpayers. One wishes that the Central Board of Direct Taxes clarifies such controversial issues and, thus, reduces the scope for harassment of individual taxpayers and litigation.

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