Premature withdrawal of funds from

Capital Gains Deposit Account

The Income Tax Act has laid out exemptions under Section 54 and Section 54F to help taxpayers save tax on capital gains.

(1) Exemption under Section 54 is available on long term Capital Gain on sale of a House Property.

(2) Exemption under Section 54F is available on long term Capital Gain on sale of any asset other than a House Property.

To reiterate, both the exemptions are available only on long term capital gains.

**Common requirements between the two Sections:**

1. A new residential house property must be purchased or constructed to claim the exemption

2. The new residential property must be purchased either 1 year before the sale or 2 years after the sale of the property/asset.

3. Or the new residential house property must be constructed within 3 years of sale of the property/asset

4. If you are not able to invest the specified amount in the manner stated above before the date of tax filing or 1 year from the date of sale, whichever is earlier, deposit the specified amount in a public sector bank (or other banks as per the Capital Gains Account Scheme, 1988).

5. Only ONE house property can be purchased or constructed.

6. Starting FY 2014-15it is mandatory that this new residential property must be situated in India. The exemption shall not be available for properties bought or constructed outside India to claim this exemption.

**Differences between these two Sections:**

**Key points to remember**

1. If the cost of the new residential property is lower than the total sale amount, then the exemption is allowed proportionately. For the remaining amount, you can reinvest the money under Section 54EC within 6 months.
2. Now, what if one needs the funds immediately i.e. before the maturity of the bonds or he doesn’t want to invest/block the funds in property again.Yes,the same would be taxable in the previous year in which the funds are withdrawn, but the assessee would be the King of his own funds after paying the requisite taxes.
3. Now the question comes how he will release his own funds from the bank. Just giving an application to the bank for withdrawal of funds won’t help. Bank will need permission from the Jurisdictional assessing officer for the release of funds.

4. I had a recent experience in such case and we had submitted the following documents to get permission from AO:

* Acknowledgement copy along with the copy of return.
* Computation of Income.
* Statement of Capital Gains working.
* Sale deed of the property sold on which capital gains was earned.
* Valuation report of the property sold.
* Copy of the bonds in which the capital gains was invested.
* Copy of the passbook/bank statement in which the sale proceeds was invested and the same were then invested in capital gain bonds.
* Form –G in triplicate.
* An explanatory note to convince the AO for the same.

5. If the ITO is satisfied and no further documents are required, then he may sign and stamp the form considering the TDS implications. This may

take a week. So inform your clients well in advance about the same. Always take the Form in triplicate since the ITO will retain one copy, One copy will be submitted to the Bank for release of your funds and the third one for your own records because it would be a sure case for scrutiny.

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