



# Responding to Summons for Joint Development Agreements

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# Key Compliance & Tax Implications in Real Estate Transactions

Navigating the regulatory landscape of real estate transactions requires a thorough understanding of reporting obligations and tax implications. This section details critical aspects concerning SFT-012 reporting and TDS requirements, especially for Joint Development Agreements.



## Statement of Financial Transaction (SFT-012) Reporting

Mandatory reporting for registered sale deeds where the consideration exceeds **INR 30 Lakhs**. This ensures transparency and tracking of high-value property transactions.



## Tax Deducted at Source (TDS) Requirements

Applicability under **Section 194-IA**: A 1% TDS is required on the consideration for the transfer of immovable property (excluding agricultural land) when the value exceeds **INR 50 Lakhs**.

# Specific Provisions for Joint Development Agreements (JDAs)

Joint Development Agreements present unique scenarios for TDS applicability, primarily dependent on the nature of consideration received by the landowner.



## Scenario 1: Pure Area Sharing Model

When the landowner receives only a share of the constructed area in exchange for land, **no TDS deduction is required** on the allocated area portion.



## Scenario 2: Area Sharing with Monetary Consideration

If the landowner receives both a share of the constructed area **and additional monetary consideration (cash)**, TDS is applicable. Under **Section 194-IC**, TDS is to be deducted at **10%** on the cash component of the consideration.

# Clarifications on Joint Development Agreements: CBDT O.M. 15.09.2025

The CBDT Office Memorandum dated 15.09.2025 provides crucial clarifications regarding the taxability of income arising from Joint Development Agreements (JDAs), particularly focusing on compliance under Section 45(5A).



## Non-Compliance Identified

A notable trend indicates Land Owners are frequently \*not offering income\* as per Section 45(5A) of the Income Tax Act in the year the Completion Certificate is issued, leading to significant compliance gaps.



## Strategic Investigative Initiative

The Kolkata Investigation Wing conducted a comprehensive exercise, meticulously analyzing the \*RERA online Database\* to pinpoint transactions and assess adherence to JDA tax provisions.








## Effective Identification Practices

This data-driven approach led to the development of \*successful best practices\* for proactively identifying potential non-compliance cases, thereby enhancing tax enforcement efficiency.

These findings underscore the importance of accurate income reporting and the strategic use of data analytics in tax administration for Joint Development Agreements.

# Methodology for Identifying S.45(5A) Non-Compliance

The DGIT(Inv.), Kolkata has developed a systematic and robust methodology to identify potential cases of non-compliance under Section 45(5A) of the Income Tax Act. This process leverages publicly available regulatory information and integrates it with tax return data, ensuring a comprehensive identification mechanism. The key stages of this investigative protocol are outlined below:

		
Accessing Regulatory Databases	Project Identification & Scrutiny	Tax Return Cross-Verification
The initial step involves systematically accessing state-specific Real Estate Regulatory Authority (RERA) or Housing Industry Regulation Act (HIRA) websites. These platforms are crucial for identifying registered and approved projects, providing a foundational data set.	The directorate meticulously identifies approved projects, particularly those under authorities like JDA, where the landowners are individuals or Hindu Undivided Families (HUFs). This involves detailed scrutiny of project specific documentation (e.g., JDA/Development Agreements) available on regulatory portals.	Upon identifying a potential case, the relevant tax return is downloaded from the CPC 2.0 portal. This download is specifically for the assessment year corresponding to the issuance of the project's Completion Certificate, a critical link for Section 45(5A) applicability.
		
Capital Gains Disclosure Review	Issuance of Statutory Summons	
A thorough review of the Schedule-CG (Capital Gains) within the downloaded tax return is conducted. The objective is to verify whether the landowner has accurately disclosed the requisite capital gains as stipulated by the provisions of Section 45(5A).	In instances where there is a clear absence or insufficient disclosure of capital gains, a summons under Section 131(1A) of the Act is promptly issued. This action seeks to obtain the taxpayer's explanation and gather all necessary supporting documentary evidence for further investigation.	

# Contextual Landscape: Section 45(5A) and Joint Development Agreements



## Pre-01.04.2017 Regime: Taxability & Precedent

- Capital gains arising from Joint Development Agreements (JDAs) were taxable at the juncture of the Development Agreement's execution.
- This position was upheld by the Bombay High Court in the landmark case of **Chaturbhurj Dwarkadas Kapadia**.



## Addressing Genuine Hardship for Landowners

- A significant challenge for landowners was the crystallization of tax liability without concurrent receipt of monetary consideration upon signing the JDA.



## Legislative Intervention: Section 45(5A)

- Provisions of Section 45(5A) were introduced to defer capital gains taxability until the year of issuance of the Completion Certificate (CC).



## Lingering Challenge: Applicability Exclusions

- The deferment provisions of Section 45(5A) are currently restricted to individual and Hindu Undivided Family (HUF) assesseees, leaving other entities without similar relief.

# CIT v Balbir Singh Maini [2017] 86 taxmann.com 94 (Supreme Court)



## Legislative Amendments (2001)

The **Registration and Other Related Laws (Amendment) Act, 2001**, alongside amendments to the **Transfer of Property Act (TOPA)**, mandated the registration of any document containing a contract to transfer immovable property for consideration, specifically for the purpose of Section 53A of TOPA.

Without such registration, these documents would lack legal effect, save for their admissibility as evidence in specific performance suits or for collateral transactions not requiring registration.



## Impact on Transfer Conditions

Consequently, the Supreme Court ruled that the **conditions for 'transfer' as defined under Section 2(47)(v) of the Income Tax Act were not fulfilled** in cases where the document was unregistered.

This decision clarified the critical role of document registration in establishing a valid transfer for tax purposes, particularly in the context of capital gains.

# Need for Joint Development Agreements (JDAs) – Unlocking Value in Real Estate

A Joint Development Agreement (JDA) serves as a strategic imperative for both land owners and developers, addressing critical challenges and optimizing value creation in complex real estate ventures. It facilitates a synergistic partnership to overcome individual constraints and unlock superior project potential.



## Land Owner's Strategic Imperatives

- **Optimized Land Utilization:** Addresses inherent scarcity and high value of urban land parcels, transforming idle assets into revenue-generating properties.
- **Maximized Financial Returns:** Enables monetization beyond outright sale, offering potential for profit sharing, revenue participation, or a combination of constructed area and financial consideration.
- **Leveraging Development Expertise:** Gains access to developer's specialized knowledge in planning, design, regulatory approvals, construction, and marketing, mitigating execution risks.
- **Mitigated Development Risks:** Avoids direct involvement in the complexities of project management, financing, and regulatory compliance, which typically require significant capital and specialized licenses.



## Developer's Strategic Advantages

- **Reduced Upfront Capital Outlay:** Significantly lowers the initial investment in land acquisition, a major barrier in competitive real estate markets, improving capital efficiency.
- **Enhanced Project Viability:** Alleviates challenges in securing project finance by reducing the quantum of debt required for land, thereby improving project feasibility and cash flow.
- **Accelerated Project Timelines:** Streamlines the project initiation phase by partnering directly with land owners, bypassing lengthy land acquisition processes and legal challenges.
- **Access to Prime Locations:** Facilitates development in prime or strategic locations where outright purchase of large land parcels might be unfeasible or cost-prohibitive.

This collaborative framework aligns the interests of both parties, fostering a partnership where the land owner contributes the primary asset, and the developer brings capital, expertise, and execution capabilities to bring a project to fruition.

# Key Transaction Structures in Real Estate Development

Understanding the various legal and financial frameworks is crucial for successful real estate ventures. Below are the primary structures commonly employed:



## Outright Land Sale

The simplest model involving the direct sale of land for a monetary consideration. This provides immediate capital to the landowner but transfers all development risk to the buyer.



## Joint Venture (JV) / Association of Persons (AOP)

A collaborative arrangement where two or more parties pool resources (land, capital, expertise) for a specific project, sharing both risks and profits according to agreed terms.



## Formal Partnership

A structured legal entity formed by two or more individuals or entities to jointly undertake development activities, often implying a deeper, long-term commitment than a mere JV.



## Joint Development Agreement (JDA)

A contract where a landowner grants development rights to a developer in exchange for a share of the project's revenue or constructed area, without an upfront sale of land.

- **Revenue Sharing:** Landowner receives a percentage of the total sales revenue from the developed project.
- **Area Sharing:** Landowner receives a predetermined share of the constructed area (e.g., apartments, commercial space) in the completed project.



## Emerging Collaboration Models

Innovative frameworks designed to address specific needs and risk appetites in the evolving real estate market.

- **Project Consultation Agreement:** The developer acts as a consultant, guiding the landowner through the development process for a fee, but without direct equity or profit share.
- **Co-development Agreement:** A hybrid approach where both landowner and developer actively participate in different stages of the project, sharing responsibilities and outcomes more intricately than a traditional JDA.



# Difference Between Area Sharing and Revenue Sharing Models

## Area Sharing Model

- **Built-up Area Allocation:** Direct sharing of the developed property's built-up area (super-built-up or carpet area) in a pre-agreed fixed ratio between landowner and developer.
- **Hybrid Consideration:** Often includes an upfront lump sum cash component or a minimum guarantee payment in addition to the area share, providing immediate liquidity to the landowner.
- **Developer's Comprehensive Responsibility:** The developer assumes full responsibility for project execution, including securing approvals, managing construction, marketing, and sales of their allotted share.

## Revenue Sharing Model

- **Sales Revenue Distribution:** Focuses solely on sharing the gross sales proceeds from the project in a pre-determined fixed percentage, without physical division of units.
- **Financial Control Mechanisms:** Mandates the establishment of joint or escrow bank accounts to ensure transparency and equitable distribution of funds to all parties.
- **Stakeholder Commitment:** Typically involves tripartite agreements between the landowner, developer, and financial institutions to secure funding and establish clear distribution protocols.
- **Taxation Implications (Section 45(5A) Inapplicability):** Critically, the provisions of Section 45(5A) of the Income Tax Act, 1961 (pertaining to capital gains on JDA) are not applicable, leading to distinct tax treatments and timing for capital gains realization.

# Key Capital Gains Charging Provisions

Understanding the specific sections governing capital gains is crucial for accurate tax assessment and strategic financial planning. The following provisions outline various scenarios triggering capital gains tax liability:



## Section 45(1): Transfer of Capital Asset

This foundational provision establishes the liability for capital gains tax on the transfer of any capital asset.

- Applies comprehensively to various entities, including Partnerships and Corporations.
- Triggers tax assessment upon the realization of gains from such transfers.



## Section 45(5A): Registered Joint Development Agreement (JDA)

A specific provision offering a deferral mechanism for capital gains in certain development scenarios.

- Applicable exclusively to assets transferred under a formally registered Joint Development Agreement.
- The taxable event is strategically deferred until the issuance of the project's completion certificate.



## Section 45(2): Conversion to Stock in Trade

Addresses the tax implications when a capital asset undergoes a reclassification into business stock in trade.

- Taxation is postponed until the actual disposition or sale of the converted stock.
- Establishes a clear distinction between the asset's original capital status and its subsequent treatment as inventory.



## Section 45(3): Asset Contribution to a Partnership

Governs the capital gains arising from the contribution of a capital asset by a partner to a partnership firm.

- Capital gains are computed based on the fair market value of the asset at the time of its contribution to the firm.

# Land Owner: Capital Gains vs. Stock in Trade

Distinguishing between capital assets and stock in trade is crucial for tax implications related to land transactions.



## Treatment as Capital Gain

When land is held as a capital asset:

- Favorable Long-Term Capital Gains (LTCG) tax rates, potentially as low as 12.5% (standard 20%).
- Eligibility for significant tax deductions under Sections 54, 54B, 54EC, and 54F.
- Specific exemptions and benefits for transactions involving rural agricultural land.



## Treatment as Stock in Trade

When land is held as stock in trade (business income):

- Potential eligibility for presumptive taxation under Section 44AD for small businesses.
- Exposure to higher income tax rates applicable to business income.
- The extended definition of 'transfer' under Section 53A of the Transfer of Property Act (TOPA) is not applicable.
- Mere license to enter or possession does not constitute a taxable sale event.
- Income accrues only upon the ultimate and formal sale of the property.

# Section 45(5A): Taxation of Capital Gains from Joint Development Agreements

Section 45(5A) provides a special dispensation for the taxation of capital gains arising from joint development agreements, deferring the tax liability to a later stage and specifying the valuation methodology.

## Eligible Assessee

This provision applies exclusively to an assessee who is an **individual or a Hindu Undivided Family (HUF)**. Corporate entities or other forms of assesseees are not covered under this specific section.

## Nature of Capital Asset & Agreement

The capital gain must arise from the transfer of a capital asset that is **land, building, or both**. The transfer must occur under a **specified agreement**, typically a joint development agreement where the landowner contributes land for development.

## Deferred Taxability Event

Notwithstanding Section 45(1), the capital gains are chargeable to income-tax in the previous year in which the **certificate of completion** for the whole or part of the project is issued by the competent authority. This defers the tax liability from the date of agreement to the date of completion.

## Full Value of Consideration (Section 48)

For the purpose of computing capital gains under Section 48, the full value of consideration is deemed to be the **stamp duty value of the assessee's share (land or building or both) on the date of issue of the completion certificate**. This value is further increased by any consideration received in cash, cheque, draft, or any other mode, ensuring all forms of consideration are included.

# S.45(5A): Navigating Retrospective vs. Prospective Application

A critical aspect of Section 45(5A) is understanding its temporal applicability, particularly when key events span across the provision's effective date. The following points outline the typical scenario and the prevailing judicial interpretation:

## Joint Development Agreement (JDA) Execution

Scenario where the JDA was executed prior to 01.04.2017, the effective date of Section 45(5A).

## Issuance of Completion Certificate

The Completion Certificate, triggering the capital gains tax liability under S.45(5A), is issued in 2020 or later.

## Jurisprudential Stance: Substantive and Prospective

Prevailing judicial pronouncements affirm that Section 45(5A) is a substantive provision and therefore applies prospectively, not retrospectively.

## Key Tribunal Rulings Reinforcing Prospective Application:

- Amit Vishnu Pashankar Vs DCIT [2021] 131 taxmann.com 118 (Pune - Trib)
- Adinarayana Reddy Kummata Vs ACIT [2018] 91 taxmann.com 360 (Hyd - Trib.)
- Smt. Naga Padmaja Vangara Vs ITO [2022] 145 taxmann.com 115 (Hyd - Trib.)
- K. Vijaya Lakshmi Vs ACIT [2018] 91 taxmann.com 253 (Hyd - Trib)

# Interpreting Section 45(1): The 'Notwithstanding' Clause

Understanding the implications of the "notwithstanding" clause in Section 45(1) is crucial for accurate capital gains assessment. This clause, along with specific exemptions, dictates the harmonious interpretation of various provisions within the Income Tax Act.



## S.45(1): The Charging Provision

Section 45(1) serves as the foundational charging provision for capital gains under the Income Tax Act. It establishes the liability for tax on any profits or gains arising from the transfer of a capital asset during the previous year.



## The Exclusionary Phrase: "Save as otherwise provided"

The pivotal phrase "save as otherwise provided in sections 54, 54B, 54D, 54EC, 54F, 54G, 54GA and 54GB" explicitly carves out exceptions, ensuring that specific exemptions and deductions provided in these sections take precedence over the general charge under S.45(1).



## Harmonious Construction Principle

This explicit carve-out prevents any potential conflict or simultaneous operation between the general charging section and specific relief provisions. It mandates a harmonious interpretation, where the special provisions override the general, ensuring legislative intent for specific reliefs is upheld.



## Allowability of Legitimate Deductions

Consequently, legitimate deductions and exemptions available under Sections 54, 54F, and other specified provisions are fully allowable, effectively reducing or eliminating the capital gains tax liability as per the Act's framework.

# Individual or HUF: Key Considerations for Tax Provisions

Understanding the specific entities targeted by certain tax benefits or provisions is crucial for accurate compliance and planning. This section outlines the applicability and unique situations concerning Individuals and Hindu Undivided Families (HUFs).



## Scope of Applicability

The benefit or provision under consideration often has a **defined and limited applicability**, specifically tailored for Individual taxpayers and Hindu Undivided Families (HUFs).



## Resident & Non-Resident Eligibility

Eligibility typically extends to both **Resident and Non-Resident** individuals and HUFs, provided they meet all other stipulated statutory conditions.



## Joint Holdings with Other Entities

In scenarios involving **joint holdings with a Firm or Company**:

- **Separate Tax Returns:** The specific benefit is generally accorded directly to the Individual or HUF, recognizing their distinct legal and tax identity.
- **Differentiated Treatment:** Firms and Companies operate under separate legal frameworks and tax regulations, leading to distinct treatment of such holdings compared to Individuals or HUFs.

# Understanding the Transfer of Capital Assets: Land or Building

A comprehensive overview of key definitions and exclusions concerning the transfer of immovable property under income tax laws.



## Defining "Transfer" (Section 2(47))

The term "transfer" is broadly defined under Section 2(47) of the Income Tax Act, encompassing:

- Sale, exchange, or relinquishment of the asset.
- Extinguishment of any rights in the asset.
- Compulsory acquisition under any law.
- Conversion of a capital asset into stock-in-trade.
- Any transaction allowing possession of immovable property to be taken or retained in part performance of a contract.



## Identifying "Capital Asset"

For the purpose of taxation, a 'capital asset' generally refers to property of any kind held by an assessee, whether connected with their business or profession, or not. However, certain specific exclusions apply:

- **Stock-in-trade:** Any stock-in-trade, consumable stores, or raw materials held for the purpose of business or profession is explicitly excluded.
- **Rural Agricultural Land:** Agricultural land situated in a rural area in India is not considered a capital asset. The definition of 'rural area' is critical here and is based on specified municipal limits and population thresholds.
- **Specified Gold Bonds & Special Bearer Bonds:** These are also outside the purview of capital assets.



## Specifics for Land or Building

When dealing with "Land or Building," it's crucial to consider its precise classification as a capital asset:

- **Immovable Property:** This category primarily includes land, building, or both.
- **Rights in Property:** Crucially, any rights in relation to land or building, such as tenancy rights, leasehold rights, or development rights, are also treated as capital assets for transfer purposes. This extends the scope beyond mere ownership of the physical asset.
- **Exclusion Clarification:** As noted, only **rural agricultural land** remains excluded from the definition of a capital asset; urban agricultural land is considered a capital asset.



# Transfer and Chargeability: Key Considerations

Understanding the precise timing of "transfer" and "chargeability" is crucial for accurate tax implications, particularly concerning capital assets. The timeline below illustrates a common scenario and highlights critical issues that arise.

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## Date of Agreement (Year 1)

This typically marks the formal initiation of the transfer process for the capital asset.

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## Date of Completion Certificate (Year 5)

This signifies the finalization of the project or transaction, determining when the asset is fully acquired or delivered.

## Critical Issues Arising from Discrepant Dates

### Period of Holding Determination

A primary concern is whether the period of holding for the capital asset is calculated up to the Date of Agreement (Year 1) or extends until the Date of Completion Certificate (Year 5). This distinction significantly impacts long-term capital gains status.

### Indexation Benefit Applicability

The eligibility and extent of indexation benefits depend on whether the cost inflation index is applied up to Year 1 (Agreement Date) or Year 5 (Completion Date). This directly affects the taxable capital gains amount.

# Jurisprudence on Indexation and Chargeability

Understanding the judicial interpretation of indexation benefits is crucial for accurate capital gains computation. The courts have offered varying perspectives on the relevant date for applying indexation, primarily debating between the date of transfer and the date of taxability. Some useful decisions which may support the view are given below



## Indexation Upto Date of Transfer

- Best & Crompton Engineering Ltd. v. Asstt. CIT [2014] 50 taxmann.com 51 (Chennai -Trib.)

This view emphasizes that indexation benefits should be computed up to the date when the asset's ownership is effectively transferred, aligning with the actual transaction date.



## Indexation Upto Date of Taxability

- Sakthi Sugars Ltd - IT.A.Nos. 866/Mds/2016
- Mather & Platt Pumps Ltd. ITA No.351/PN/2009

Conversely, this position advocates for indexation to be allowed until the date the capital gains become taxable, considering the period until actual tax liability arises.

# Reinvestment Obligations & Practicalities

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## Investment Timeline: "Date of Transfer"

The statutory requirement mandates reinvestment within a specified period from the "date of transfer." This often presents significant practical challenges, particularly in scenarios involving Joint Development Agreements (JDAs).

- **Cash Flow Mismatch:** Funds from the transaction may not be realized until a later stage, making immediate reinvestment difficult.
- **Unascertainable Investment Amount:** The exact quantum required for reinvestment may not be clear at the initial date of transfer.

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## Regulatory Clarification: Circular 791/2000

Recognizing these practical difficulties, the Central Board of Direct Taxes (CBDT) issued **Circular No. 791 dated 02.06.2000**.

- This circular clarifies that the reinvestment period should commence from the year of chargeability, aligning the obligation with the actual receipt of taxable income.

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## Addressing Impossibility: "Genuine Hardship"

Such situations frequently lead to claims of genuine hardship. The principle of law recognizes that one cannot be compelled to perform an impossible act.

"Lex non cogit ad impossibilia" - The law does not compel a man to do that which he cannot possibly perform.

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## Judicial Precedent & Legal Stance

The judiciary has consistently upheld the principle against demanding the impossible, reinforcing the practicality of the reinvestment timelines.

This stance is well-settled, as evidenced in landmark judgments such as:

❏ **Life Insurance Corporation of India v. CIT [1996] 85 Taxman 313 (SC)**

# Navigating the Certificate of Completion

Understanding the nuances of the Completion Certificate (CC) is crucial for tax and regulatory compliance in real estate development. This section addresses common challenges and interpretations related to its issuance and implications.



## Absence of Completion Certificate (CC)

In scenarios where a formal Completion Certificate (CC) is not explicitly issued by the authority, the Occupation Certificate (OC) is often recognized and deemed as the equivalent for various regulatory and tax considerations.



## Partial Completion & Phased Developments

The interpretation of a Completion Certificate is critical when development occurs in phases. A CC can be issued **'for the whole or Part'** of a project.

This has implications where, for instance, the Developer's area is completed in Year 1, but the Landowner's portion is constructed in Year 2, especially under separate Joint Development Agreements (JDAs) for distinct phases.



## Stamp Duty Valuation (SDV) Determination

Establishing the correct date for Stamp Duty Valuation (SDV) in relation to the Completion Certificate is subject to legal interpretation. Key dates under consideration include:

- The Date of Application for the Completion Certificate
- The Date of Actual Issue of the Completion Certificate



# Key Jurisprudential Developments

## Hardship Allowance

Lawrence Rebello (ITAT Indore) establishes precedent for treatment of hardship allowances in JDA contexts, examining whether such payments constitute taxable income or capital receipts.

## Rental Allowance Treatment

Ajay Parasmal Kothari vs. ITO [2024] 159 taxmann.com 570 (Mumbai) provides authoritative guidance on characterization of rental allowances received during development periods under joint development arrangements.

# Timing of Tax Liability: Receipt vs. Completion

## Cash Flow Reality

In typical JDA structures, developers receive the majority of consideration upfront in Year 1. However, the Completion Certificate may not be issued until Year 5 or later, creating a significant timing mismatch.

## Tax Treatment

Under current provisions, no tax liability crystallizes on amounts received in Year 1 until the Completion Certificate is obtained in Year 5. This deferral mechanism creates cash flow advantages but requires careful planning and documentation.





# Cost Computation and Holding Period Analysis

## Cost Substitution Mechanism

The cost of acquisition for developed property follows a statutory substitution principle. Under Section 45(7), the stamp duty value taxed under Section 45(5A) is deemed to be the cost of acquisition for subsequent transfers.

"(7) Where the capital gain arises from the transfer of a capital asset, being share in the project, in the form of land or building or both, referred to in sub-section (5A) of section 45, not being the capital asset referred to in the proviso to the said sub-section, the cost of acquisition of such asset, shall be the amount which is deemed as full value of consideration in that sub-section."



# Competing Views on Holding Period

## View 1: Completion Certificate Date

The holding period for assets received in exchange (such as flats received for land) commences when the new asset is acquired—specifically, when the Completion Certificate is issued. The original asset's holding period is not carried forward to the exchanged asset.

## View 2: JDA Execution Date

Under this interpretation, allotment occurs on the date of JDA execution. Consequently, the holding period begins from the date the Joint Development Agreement is registered, not from the Completion Certificate date. This view treats the JDA as effecting an immediate transfer of rights.



# Pre-Completion Certificate Transfers



This phased approach creates two distinct tax events: regular capital gains under Section 45(1) for the 5 plots sold in Year 3, and deemed capital gains under Section 45(5A) for the remaining 95 plots in Year 4 when the Completion Certificate is obtained.

# TDS Compliance Under Section 194-IC

## Statutory Provision

"194-IC. Notwithstanding anything contained in section 194-IA, any person responsible for paying to a resident any sum by way of consideration, not being consideration in kind, under the agreement referred to in sub-section (5A) of section 45, shall at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to ten per cent of such sum as income-tax thereon."

## Key Considerations

- Applies to actual consideration payments
- Excludes consideration in kind
- 10% TDS rate applicable
- Treatment of security deposits requires analysis



# Alternative Valuation Frameworks

## Two Distinct Approaches

Tax professionals must choose between two fundamentally different approaches to computing capital gains in JDA transactions. Each approach yields materially different tax outcomes and requires careful consideration of applicable case law and factual circumstances.

# First Approach: Direct Transfer Method

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## Initial Position

Land acquired with cost of ₹1 crore. JDA executed in Year 4 with 40:60 sharing ratio (40% to landowner, 60% to developer).

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## Completion Certificate

Year 7: Completion Certificate received. Fair market value of landowner's 40% share determined at ₹9 crore based on stamp duty valuation.

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## Capital Gains Computation

Sale consideration: ₹9 crore. Less: Indexed cost of original land: ₹1 crore (indexed). Capital gains: ₹8 crore (subject to indexation benefits).

# Second Approach: Essae Teraoka Method

## Transaction Analysis

This approach recognizes that 60% rights in original land are transferred, while 40% developed area is received in exchange. Total stamp duty value is ₹9 crore, comprising ₹5 crore for construction value and ₹4 crore for underlying land value.

## Computation

- Sale consideration (construction value): ₹5.00 crore
- Cost of acquisition (60% land transferred): ₹0.60 crore
- Capital gains: ₹4.40 crore

## Legal Precedent

**Essae Teraoka Ltd vs. DCIT**  
157 ITD 728 (2016)

This landmark decision supports bifurcation of land and construction values, potentially resulting in significantly lower capital gains taxation compared to the direct transfer method.



# Event of Transfer: Competing Judicial Positions



## Execution of Registered Agreement

Charturbuj Dwarakadas Kapadia vs. CIT [2003] 129 Taxman 497 (Bombay) holds that transfer occurs upon execution and registration of the development agreement.



## Allowing of Possession

Pr. CIT v. Fardeen Khan [2018] 96 taxmann.com 398 (Bombay) and K.V. Satish Babu [HUF] v. ITO [2023] 152 taxmann.com 396 (Bangalore) support possession date as the transfer event.



## Construction Commencement

S. Ranjith Reddy vs. DCIT [2013] 35 taxmann.com 415 (Hyderabad) and Fibars Infratech Pvt. Ltd v. ITO [2014] 46 taxmann.com 313 (Hyderabad) recognize construction commencement as triggering transfer.



## Actual Receipt of Consideration

CIT vs. Smt. Najoo Dara Deboo [2013] 38 taxmann.com 258 (Allahabad) and Mrs. Aarti Sanjay Kadam vs. ITO [2018] 97 taxmann.com 284 (Mumbai) support consideration receipt as the determinative event.



**Favorable View Prevails:** Where divergent judicial views exist, the view favorable to the assessee shall prevail. Vegetable Products (88 ITR 192) (Supreme Court)

# Stock-in-Trade Conversion Strategy



## Supporting Precedent

**ITO vs. Vilas Babanrao Rukari (HUF) [2018] 93 taxmann.com 465 (Pune):** Where business profits are taxable when flats are fully developed and handed over to buyers, capital gains arising on conversion of land into stock-in-trade prior to the development agreement are also taxed in the same subsequent year. This creates unified taxation timing for both income streams.





# Strategic Comparison: Section 45(5A) vs. Section 45(2)

## Section 45(5A) Treatment

- Applies to all taxpayers (individuals, HUFs, companies)
- Taxation triggered upon receipt of Completion Certificate
- Classified as capital gains
- Immediate tax liability regardless of actual sale
- No flexibility in timing of tax payment

## Section 45(2) Strategy

- Available only to individuals and HUFs
- Convert property to stock-in-trade before JDA
- Capital gain liability freezes at conversion value
- Tax crystallizes only upon actual sale to ultimate buyers
- JDA of stock-in-trade not taxable (akin to job work arrangement)
- Business income eligible for Section 44AD presumptive taxation if within prescribed limits



Liability under S. 45 (5A)		
Particulars	Amount in Rs. Lakhs	
Gross Sale consideration	500	
Indexed Cost of Acq.	Nil	
Capital Gains	500	
<b>Tax @ 25.8% LTCG</b>	<b>129</b>	
Subject to surcharge due to higher income in same year		

Liability under S. 45 (2)			
Particulars	Amount in Rs. Lakhs		
	Year 1	Year 2	Year 3
<b>Gross Sale consideration</b>	<b>100</b>	<b>200</b>	<b>200</b>
Sale consideration for capital gains (conversion value)	50	100	100
Indexed cost of acq.	Nil	Nil	Nil
Capital Gains	50	100	100
<b>Tax @ 20.8% LTCG (A)</b>	<b>10.4</b>	<b>20.8</b>	<b>20.8</b>
<b>Business component</b>	50	100	100
Presumptive 44AD (profit assumed to be 50%)	25	50	50
<b>Tax @ 31.2% on business profit (B)</b>	<b>7.8</b>	<b>15.6</b>	<b>15.6</b>
Total Tax (A+B)	<b>18.2</b>	<b>36.4</b>	<b>36.4</b>
<b>Total tax liability of all years</b>			<b>91</b>

# Comparative Tax Impact Analysis

This illustrative comparison demonstrates the material difference between Section 45(5A) taxation and Section 45(2) stock-in-trade conversion strategy. The timing of tax liability, characterization of income, and availability of presumptive taxation benefits create significantly different cash flow and compliance outcomes for taxpayers.

# Current Compliance Landscape

## Summons and Scrutiny Considerations

Tax authorities are actively examining JDA transactions with varying approaches across jurisdictions. Two critical threshold questions determine tax treatment:

### 1 Completion Certificate Status

If Completion Certificate has not been received, Section 45(5A) is inapplicable. The transaction remains outside the deemed transfer provisions until certificate issuance.

### 2 Plot Sale Analysis

If Completion Certificate has been received, verify whether individual plots or units have been sold. If no sales occurred, consider applicability of Section 45(2) stock-in-trade treatment.

## Potential Implications

- Reopening of past assessments
- Selection for detailed scrutiny assessment
- Demands for additional documentation
- Disputes regarding valuation methodology
- TDS compliance verification
- Interest and penalty exposure

# Thank You



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