

NRI vs Resident Property Capital Gains: FY 2025-26 and FY 2026-27

Description

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Quick summary

- Short-term (held under 24 months) capital gains on property are always added to total income and taxed at slab rates, for both residents and NRIs, in both years.
- Long-term capital gains on property acquired before 23 July 2024: a RESIDENT individual/HUF may choose the lower of 20% with indexation or 12.5% without indexation; an NRI gets NO such choice and pays a flat 12.5% without indexation.
- FY 2026-27 is governed by the Income-tax Act, 2025 (sec. 197 replaces sec. 112); FY 2025-26 is the last year under the 1961 Act. CII is 376 for FY 2025-26 and 384 for FY 2026-27.
- TDS is 1% for a resident seller (sec. 194-IA) but much higher for an NRI seller (sec. 195 for FY 2025-26, sec. 393(2) for FY 2026-27), deducted on the full sale value absent a lower-deduction certificate.

When a property is sold, the tax rules that apply depend on three things working together: how long it was held, which financial year the sale falls in, and whether the seller is a resident or a non-resident (NRI) under section 6 of the Income-tax Act. Two of the biggest, most commonly missed differences are the financial-year change and the residency rule – both covered in full below, with a worked example for each combination.

Short-term or long-term – the same test for everyone

A property (land or building) held for **24 months or more** before sale gives a long-term capital gain (LTCG); held for less, it is a short-term capital gain (STCG). This 24-month test, and the way STCG is taxed, does not change between a resident and an NRI, or between FY 2025-26 and FY 2026-27.

Short-term capital gain on property is simply added to the seller's total income and taxed at the applicable slab rate. This applies equally to a resident and a non-resident – there is no special flat STCG rate for immovable property (the flat-rate section 111A applies only to listed securities, not to land or buildings). The rest of this article is therefore about long-term capital gains, where the real resident-vs-NRI and year-vs-year differences arise.

Which law applies – FY 2025-26 versus FY 2026-27

The Income-tax Act, 2025 came into force from 01 April 2026 and governs Tax Year 2026-27 onward. Tax Year 2025-26 and all earlier years remain governed by the Income-tax Act, 1961. The substance of the capital-gains rules is largely carried forward, but the section numbers change:

Topic	FY 2025-26 (1961 Act)	FY 2026-27 (2025 Act)
LTCG on land/building, general rate	Section 112(1)(a)	Section 197(1)(b)
20%-with-indexation choice (resident only)	2nd proviso to section 112(1)(a)	Section 197(3)
TDS on payment to a non-resident	Section 195	Section 393(2)
TDS on payment to a resident (property ? Rs 50 lakh)	Section 194-IA	Section 393 (same section covers non-resident TDS too, as a different item), same 1% rate
Cost Inflation Index (CII) for the sale year	376	384

Note: the renumbering above reflects how the Income-tax Act, 2025 is understood to map onto the 1961 Act in current professional commentary. Confirm the exact section against the enacted text or a CBDT clarification before citing it in a filing or a notice reply.

Resident sellers – the indexation choice

For a **resident** individual or HUF selling land or a building that was **acquired before 23 July 2024**, the law allows a choice: compute the tax both ways and pay whichever is lower.

- **Option A – 20% with indexation:** the cost of acquisition is inflated using the CII of the purchase year and the CII of the sale year, and tax is charged at 20% on the resulting (smaller) gain.
- **Option B – 12.5% without indexation:** tax is charged at 12.5% on the gain computed using the actual, un-inflated cost.

For property acquired **on or after 23 July 2024**, there is no choice at all – the flat 12.5% without indexation rate applies, resident or not.

A resident also gets a benefit an NRI does not: if the seller's other income is below the basic exemption limit,

the shortfall can be set off against the capital gain before tax is computed, so a small amount of the gain can escape tax entirely.

NRI sellers – no indexation choice, ever

This is the single most common misunderstanding in this area, including in notes prepared by advisors who have not checked the exact wording: **the 20%-with-indexation choice does not exist for a non-resident seller, under either Act.** The 2nd proviso to section 112(1)(a) of the 1961 Act, and section 197(3) of the Income-tax Act 2025, both say in as many words that the benefit is for an individual or HUF *being a resident*.

An NRI selling land or a building therefore pays **a flat 12.5% on the long-term capital gain, computed without any indexation**, whatever the acquisition date and however long the asset was held. The basic-exemption set-off described above is also not available – the gain is taxed from the first rupee.

Surcharge and cess – same slab logic for both

Surcharge on long-term capital gains taxable under this section is capped at 15%, however high the seller's total income is, but it is not automatically 15% – the ordinary slab still governs below that cap: nil up to Rs 50 lakh total income, 10% from Rs 50 lakh to Rs 1 crore, 15% beyond Rs 1 crore (capped there). Health and Education Cess of 4% applies on tax plus surcharge in every case. A common computation error is assuming a flat 15% surcharge regardless of the actual gain amount – this overstates the liability whenever the gain itself is below the relevant threshold.

TDS – the biggest practical difference

Whatever the final tax liability works out to be, the TDS the buyer deducts at the time of payment follows separate rules, and here residency makes a very large practical difference:

Seller	TDS section	Rate	Deducted on
Resident	Section 194-IA (only if sale value is Rs 50 lakh or more)	Flat 1%	Sale value
Non-resident, FY 2025-26	Section 195	Rate for the applicable LTCG/STCG option, grossed up for surcharge and cess	Full sale value, absent a lower-deduction certificate
Non-resident, FY 2026-27	Section 393(2)	Same logic as section 195	Full sale value, absent a lower-deduction certificate

Because the buyer normally has no way to verify the seller's actual cost of acquisition, TDS on a non-resident's sale is usually deducted on the **entire sale consideration**, not on the net gain – producing a TDS figure that is often far larger than the seller's real tax liability. The difference becomes a refund, but only after an Indian income-tax return is filed for that year. An NRI seller can reduce this upfront deduction by applying, before the sale, for a certificate for deduction of tax at a lower or nil rate, computed on the actual gain rather than thegross value.

Worked example

Property bought for Rs 45,00,000 in July 2012, sold for Rs 1,15,00,000. CII of the purchase year (FY 2012-13) is 200 throughout.

Seller / Year	Basis	Capital gain	Tax before surcharge/cess
Resident, FY 2025-26 (CII 376)	Lower of 20% w/ indexation or 12.5% w/o – here, 20% with indexation is lower	Rs 30,40,000	Rs 6,08,000
Resident, FY 2026-27 (CII 384)	20% with indexation (still lower here)	Rs 28,60,000	Rs 5,72,000
NRI, FY 2025-26 or FY 2026-27	Flat 12.5%, no indexation – CII plays no role	Rs 70,00,000	Rs 8,75,000

The resident pays less tax on the identical transaction purely because of the indexation choice an NRI does not get – a difference worth checking carefully before relying on any note or calculation that offers an NRI seller a choice between the two rates.

What stays the same across both years

- The 24-month holding-period test for long-term classification.
- Exemptions under reinvestment provisions (buying another house, capital gain bonds, and similar) continue to exist, renumbered under the 2025 Act, with their own conditions and time limits unchanged in substance.
- The 15% surcharge cap and 4% cess.
- The stamp duty value rule – if the stamp duty value of the property exceeds the actual sale price by more than the permitted margin, the stamp duty value is taken as the sale consideration.

How CSM & Co LLP can help

We prepare the capital gain computation for both residents and NRIs, confirm which option (and which year's law) actually applies to a specific sale, help apply for a lower/nil TDS deduction certificate before the transaction, and file the income-tax return that claims back any excess TDS. Please reach out to our team and we will be happy to assist.

Frequently asked questions

Can an NRI choose 20% with indexation like a resident can?

No. The 2nd proviso to section 112(1)(a) of the 1961 Act, and its successor section 197(3) of the Income-tax Act 2025, both restrict this choice to a resident individual or HUF. A non-resident individual or HUF is taxed at a flat 12.5% without indexation on long-term capital gains from land or building, regardless of when the property was acquired or how long it was held.

Which Cost Inflation Index applies to my sale?

The CII of the financial year in which you sell, not the year you bought. CII for FY 2025-26 (Tax Year 2025-26) is 376, notified by CBDT Notification No. 70/2025 dated 01/07/2025. CII for FY 2026-27 is 384, notified by CBDT Notification No. 85/2026 dated 15/07/2026. CII is relevant only if you are eligible for indexation at all – it has no role in a flat 12.5% computation.

Does a non-resident get the basic exemption limit against capital gains?

No. The benefit of adjusting the basic exemption limit against long-term capital gains (so only the gain above the exemption limit is taxed) is also restricted to resident individuals and HUFs. A non-resident's entire capital gain is taxable from the first rupee.

Is short-term capital gain on property taxed differently for an NRI?

The computation is the same for everyone: short-term capital gain (property held under 24 months) is added to total income and taxed at the applicable slab rate. There is no special flat rate for short-term gains on immovable property under section 111A (that section applies only to listed securities). The real difference for an NRI is in TDS, not in the final tax rate.

Why is TDS so much higher when a buyer purchases from an NRI than from a resident?

A resident seller's buyer deducts a flat 1% under section 194-IA (only if the sale value is Rs 50 lakh or more). A buyer purchasing from a non-resident deducts under section 195 (FY 2025-26) or section 393(2) (FY 2026-27), at the rate that would actually apply to the seller's capital gain, grossed up for surcharge and cess – and, absent a lower-deduction certificate, on the FULL sale value, not just the gain. This routinely produces a large TDS figure that is refunded only when the NRI files an Indian income-tax return.

Can an NRI seller reduce the TDS before the sale completes?

Yes, by applying for a certificate for deduction of tax at a lower or nil rate (successor to the old section 197 certificate) before the sale, based on the actual computed capital gain rather than the gross sale value. This needs to be applied for well before the transaction closes.

Official sources

- CBDT Notification No. 70/2025, dated 01/07/2025 (CII 376 for FY 2025-26, PDF)

- CBDT Notification No. 85/2026, dated 15/07/2026 (CII 384 for FY 2026-27, PDF)
- Section 197, Income-tax Act 2025 – Tax on long-term capital gains (bare text)
- Income-tax Act (current, consolidated text)

Related reading

- Capital Gains Tax on Sale of Property: Rates, Indexation Choice, Stamp Duty Value and Exemptions
- NRI Taxation – an overview
- Capital Loss: Set-Off and Carry Forward Rules

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