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## Ltcg- reinvestment property gifted?

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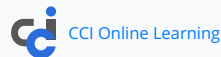
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CA Gnanika (CA) 12 February 2019

**Information:** Mr X has sold the property in 2017 & wanted to invest the proceeds in another residential property. He has deposited the amount in Capital Gains Savings Account. Now the amount has been exhausted but to complete the construction further amount is required. He is senior citizen aged around 76 yrs, so cant avail bank loan.

In this situation, he wants to transfer the title to his son by registering gift deed, so that his son can avail home loan & complete the construction.

**Doubt:** Will this gift to son be treated as Sale/transfer?? Because there is restriction that the property purchased using the capital gains proceeds, cant be sold within 3 years. Will Mr X be liable to pay the capital gains on the property sold in 2017 as he is transferring the reinvested property as gift to his son?



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Yes, its a transfer, and as such attract the earlier exempted tax liability.

Alternatively, he can transfer partly .... co-ownership.



••• [CA Gnanika](#) (CA) [13 February 2019](#)

Sir, but as such transfer as gift is not taxable as capital gains. So cant this treated be in same way?



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Another solution can be add son as co-owner, (without gift deed) to property and avail loan,

so there will be no question of transfer, only legal compliance is to completed after consulting with advocate

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••• [Dhirajlal Rambhia](#) (KVO Merau Kutchn) [13 February 2019](#)

Gift deed is a transfer of title as per sec. 2(47) of IT act ....

(v)any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882;

.....

#### Explanations:

1. For the purposes of sub-clauses (v) and (vi), "immovable property" shall have the same meaning as in clause (d) of section 269UA.

2. For the removal of doubts, it is hereby clarified that "transfer" includes and shall be deemed to have always included **disposing of or parting with an asset or any interest therein**, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterized as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India.



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