



# CAPITAL GAINS

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Sec. 45 to 55A



# Conditions

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- 1. There should be a Capital Asset
- 2. There should be a Transfer of Capital Asset
- 3. That Transfer should have taken place in the financial year.
- 4. Transaction will result either in LTCG / LTCL /STCG /STCL



# CAPITAL ASSET – SEC. 2(14)

## ○ EXCEPTION :

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- Stock in trade
- Personal effects (meaning movable property including wearing apparel and furniture)
- Rural Agricultural land in India;
- 6 ½ % Gold Bonds, 1977
- 7% Gold Bonds 1980
- National Defence Gold Bonds, 1980
- Special Bearer Bonds, 1991
- Gold Deposit Bonds, 1999



## SEC. 2(14)

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- Capital Asset includes :
  - 1. Property of any kind whether or not connected with business or profession;
  - 2. Investment in any securities held by a Foreign Institutional Investor.
- Jewellery held for personal use either for the assessee or for the family members dependent on the assessee,
- Archaeological collections,
- drawings,
- paintings,
- sculptures
- Any work of art,



# **SEC.2(47) – TRANSFER**

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- Sale, exchange or relinquishment of the asset
- Extinguishment of any rights
- Compulsory acquisition under any law
- Treatment or conversion of capital asset into stock-in-trade
- Maturity/Redemption of Zero Coupon Bond
- Part performance of a contract u/s.53A of the Transfer of Property Act, 1882 and possession of immovable property;
- Transactions which have the effect of transferring/enabling the enjoyment of immovable property



# TRANSACTIONS NOT REGARDED AS TRANSFER:

46(1)	Distribution of assets in kind by a company to its shareholders on its liquidation
47(i)	Any distribution of capital assets in kind by HUF to its members at the time of total or partial partition
47(iii)	Transfer of a capital asset under a Gift or a Will or an Irrevocable Trust
47(iv)	Transfer of capital asset by a company to its wholly owned Indian subsidiary company.
47(v)	Transfer of capital asset by wholly owned Subsidiary company to its Indian Holding Co.
47(xiiia)	Transfer of membership right in a stock exchange.



## **SEC. 46 & 47 - TRANSACTIONS** **NOT REGARDED AS TRANSFER:**

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- Similarly, wherever the transactions are not regarded as transfer as per Sec.47 based on the stipulated conditions, this exception will be withdrawn u/s.47A when the assessee fails to fulfill the conditions stipulated as per Sec.47. For example, where capital asset was transferred from Holding co to subsidiary co, etc vide Sec.47(iv) & 47(v), if the transferee company converts the capital asset into stock-in-trade subsequently, or parent company or its nominees cease to hold whole of the share capital of the subsidiary company, exemption shall be withdrawn and capital gains shall be brought to tax in the year in which such original transfer took place. This can be done by rectification of assessment u/s.155(7B) within 4 years from the end of the F.Y. in which conversion takes place or cessation of holding takes place.



# YEAR OF TAXABILITY

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- Generally, year of taxability is the year of transfer. But it is taxable in the year other than year of taxability in some cases.





## 45(1A) - Capital gains on receipt of Insurance Compensation :

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- **Condition** : There should be damage or destruction of capital assets as a result of flood, typhoon, hurricane, etc, Riot or civil disturbance or accidental fire or explosion or Action by an enemy or action taken in combating an enemy.
- **Chargeability** : Year in which money or other asset was received from the Insurer
- **Amount** : In case of money, whatever money is received is the consideration. In case of other asset, FMV on the date of receipt is the consideration
- **Capital Gains** – Money received or FMV of asset received (-) COA or ICOA
- If it is a depreciable asset, it results in STCG.



## 45(2) – Capital gains on conversion of capital asset into stock-in-trade :


- Chargeability- Taxable in the year in which converted stock is sold or otherwise transferred. Taxable in two parts
- Capital gains = FMV on the date of conversion (-) COA/ICOA
- Business income = consideration on sale (-) FMV of capital asset on conversion
- Indexation apply on the basis of year of conversion



**45(3) - Capital gains on introduction of capital asset into firm :**

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- Chargeability – In the year in which such transfer takes place in the hands of partner.
- Capital gains – Amount credited in books in the Partner's capital account (-) cost or ICOA.


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- **45(4) – Capital gains on distribution of capital asset on dissolution of Firm or AOP to its partners or Members :**
  - Chargeability – In the year in which such transfer takes place in the hands of Firm/AOP .
  - Capital gains – FMV on the date of transfer (-) cost or ICOA.



# 45(5) – Capital gains on compulsory acquisition of capital asset :

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- **Normal or Original compensation** is taxable in the year in which it is first received.
- Whole of the compensation is taxable even if a portion is received
- Compensation received subsequent to the death of assessee is taxable in the hands of his legal heirs.
- Where normal or enhanced compensation is reduced by the Court or Tribunal or any other authority, then capital gains shall be recomputed again.
- Any compensation received due to interim order shall be deemed as income chargeable u/s.45 of the year in which final order is made
- **Capital gains** = Whole of the Normal compensation (-) COA or ICOA

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- **Enhanced compensation** is taxable in the year in which such enhanced compensation is received.
  - **Capital gains** = Enhanced compensation (-) expenses incurred for receiving enhanced compensation



## 45(5) Capital gains on redemption of 80CCB Units

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- Chargeability : Taxable as income in the year in which repurchase of units takes place
- Capital gains = Repurchase price of units (-) Amount invested in such units. No indexation benefit is available.



## **46 Capital gains on Distribution of capital asset by company in liquidation :**

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- In case assets sold by liquidator and cash distributed to the shareholders, then capital gains will be taxed in the hands of the company
- Otherwise, if the asset is distributed in specie among the shareholders, it is not a transfer and hence not taxable in the hands of company [sec.46(1)]





## 46 Capital gains on Distribution of capital asset by company in liquidation :

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- Tax treatment in the hands of shareholders :
- Capital gains = (FMV of asset recd + cash recd ) – shareholders interest in the accumulated profit on the date of liquidation i.e. deemed dividend u/s.2(22)( c) – COA of shares / ICOA of shares



## **46A Capital gains on Repurchase or buy-back of shares, etc :**

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- Where a shareholder receives any consideration from the company for purchase of its own shares or other specified securities, it is a transfer chargeable to capital gains tax
- It is taxable in the year in which the same are re-purchased by the company



# Sec.50 - Capital gains on transfer of depreciable asset

- Taxable only as short-term capital gains.
- **Condition** : If all assets in the block are not transferred -50(1)
- **Computation** :
  - Consideration received
  - Less: Expenses on transfer
  - Opening WDV
  - Actual cost of assets
  - acquired during the year
- Difference shall be taxed as STCG if it is profit & as STCL if it is loss. If all assets in the block are transferred, the difference will be treated as either STCG /STCL.



## **Sec.50C – Capital gains on sale of property at less than Government value**

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- If any land or building or both are transferred for a consideration less than the value adopted or assessed/assessable by the Stamp Valuation Authority, the such value adopted by Stamp Valuation Authority shall be deemed to be full value of consideration for the purpose of computation of capital gains. However if the assessee raises any objection for adopting stamp value as stipulated in Sec.50C, then the case shall be referred to the Valuation Cell. In that case, Where the value determined by the Valuation Officer exceeds the stamp valuation, then stamp value shall be deemed to be the full value of consideration.



**Sec.50D – Capital gains when consideration received is not ascertainable/cannot be determined :**

- FMV on the date of transfer can be taken as the full value of consideration



## Sec. 51

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- Advance received and forfeited in a failed negotiations in the capital asset transaction is taxable as income from other sources u/s. 56(2)(x). This sum shall not be deducted from the cost for which the asset was acquired or WDV or FMV, in computing the cost of acquisition.



# TYPES OF CAPITAL ASSETS

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- SEC.2(42A) – SHORT TERM CAPITAL ASSET –
- Capital assets other than financial assets, held for not more than 36 months immediately preceding the date of transfer are treated as Short-term capital assets.
- Securities listed in a Recognized stock exchange in India, Units of UTI, Unit of an equity Oriented Fund and Zero Coupon Bonds are considered as Financial Assets. If held for not more than 12 months, they are treated as Short-term Capital Assets.
- As per **Sec.2(42B)**, capital gains from sale of short-term capital asset is known as short term capital gain.



# **SEC.2(29A) – LONG TERM CAPITAL ASSET -**

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- Capital assets other than financial assets, held by an assessee for more than 36 months immediately preceding the date of transfer are treated as Long-term capital assets.
- If financial assets if held for more than 12 months immediately preceding the date of transfer, they are treated as Long -term Capital Assets.
- As per **Sec.2(29B)**, capital gains from sale of short-term capital asset is known as Long term capital gain.





## **Sec. 112 – RATES OF TAX :**

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- **STCG** is taxable at normal slab rates. However, STCG leviable at 15% u/s.111A, if the following conditions are satisfied :
  - STCG is on transfer of equity share of the company, Units, Equity Oriented Fund or Unit of a Business Trust;
  - Transfer taken place on or after 1.10.2004;
  - Transaction is liable for Securities Transaction Tax.
- **LTCG** is taxable at 20% except in few cases like Offshore funds and Non-Resident and foreign companies where LTCG is taxable at 10% in certain circumstances. However, LTCG on transfer of listed securities are exempt from tax us/.10(38).

# COMPUTATION OF STCG / STCL

## Short-term capital gain

Consideration recd		xxxxx
Less: Expenses on Transfer		<u>(xxxxx)</u>
Net consideration		xxxxx
Less: Cost of acquisition	xxxxxxx	
Cost of improvement	XXXXXX	(xxxx)
Short term capital gains		xxxxx
Less: Exemption u/s.54B, 54D, 54G, 54GA		(xxxx)
Taxable STCG /STCL		XXXXXX

# COMPUTATION OF LTCG / LTCL

## Long term capital gain

Consideration recd		xxxxx
Less: Expenses on Transfer		<u>(xxxxx)</u>
Net consideration		xxxxx
Less Indexed cost of acquisition	xxxxxxx	(xxxx)
Indexed cost of improvement	XXXXXX	
Long term capital gains		Xxxxx
Less: Exemption u/s.54 to 54GA		(xxxx)
Taxable LTCG / LTCL		XXXXX

# INDEXATION

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## **Indexed Cost of Acquisition (ICA) :**

If asset acquired before 1.4.1981 :

ICA = FMV as on 1.4.81 or (COA of assessee or previous owner) w.e. is higher x CII for year of transfer / 100

## **If asset acquired after 1.4.1981**


ICA = COA incurred by assessee or previous owner x CII for year of transfer  
CII or year of acquisition

**Indexed Cost of Improvement** – This can be computed only if it is incurred on or after 1.4.1981

ICI = COI incurred by assessee or previous owner x CII for year of transfer  
CII or year of improvement

- However, in some of the cases like bonds/debentures except Capital Indexed Bonds issued by Govt., Shares / Debentures of Indian Company acquired by using convertible forex, depreciable assets, slump sale, 80CCB Units, etc., benefit of indexation is not available to LTCG.

# COST INFLATION INDEX



FY	CII	FY	CII	FY	CII
1981-82	100	1991-92	199	2001-02	426
1982-83	109	1992-93	223	2002-03	447
1983-84	116	1993-94	244	2003-04	463
1984-85	125	1994-95	259	2004-05	480
1985-86	133	1995-96	281	2005-06	497
1986-87	140	1996-97	305	2006-07	519
1987-88	150	1997-98	331	2007-08	551
1988-89	161	1998-99	351	2008-09	582
1989-90	172	1999-00	389	2009-10	632
1990-91	182	2000-01	406	2010-11	711
2011-12	785	2012-13	852	2013-14	939
2014-15	1024	2015-16	1081	2016-17	1125

# EXEMPTIONS

	54	54B	54F	54EC
Applicability	Individual/HUF	-do-	-do-	All assessees
Asset transferred	Residential House	**Urban Agricultural land used for Agriculture	Any LTCA other than residential house property	Any LTCA
New asset to be acquired	w.e.f. 1.4.15, one residential house property in India	Agricultural land	w.e.f. 1.4.15, one residential house property in India.	Notified Bonds such as NHAI and RECL.
Amount of exemption	Cost of new asset or capital gains whichever is less	-do-	LTCG X Investment in house property / Net consideration	Amount of investment subject the maximum of Rs.50 lacs or capital gains w.e. less

# SET OFF & CARRY FORWARD OF CAPITAL LOSS

TYPES OF LOSSES	SET OFF OF LOSSES		CARRY FORWARD OF LOSSES		No. of years for which loss can be carried forward for set off	Is it necessary to filed return of loss in time Sec.80	Should the business be continued
	Intrahead / Intersource Adjustment Sec.70	Interhead Adjustm ent Sec.71	Adjustme nt in the same head	Adjustme nt in the other head			
Long-term Capital Loss -74	Long-term capital gain only	No	Long-term capital gain only	No	8	Yes	NA
Short-term capital loss - 74	Short term capital gain or Long term capital gain	No	Short term capital gain or Long term capital gain	No	8	Yes	NA

# TAXABILITY OF INTANGIBLE ASSET

Intangible assets	Cost of acquisition	Cost of improvement
1. Goodwill of a business	If the assets are purchased	Cases (1) to (3) – Cost of improvement - Nil
2. Right to manufacture, produce or process any article or thing,	-Actual cost of acquisition	
3. Right to carry on business,	Note: Fair market value as at 01.04.81 shall not be considered even if the asset was purchased prior to 01.04.81	Cases (4) to (7) - Actual improvement cost .
4. Tenancy rights,		
5. Trade mark or brand name of a business,	If the assets are self generated	
6. Stage carriage permits	: Nil	
7. Loom hours		





## EXEMPTION U/S.10(36)

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- **LTCEG on transfer of equity shares:**
- **Condition :**
- **1. Asset should be a LTCA;**
- **2. Asset should be eligible Equity Share in a company acquired between**
- **1.3.03 and 29.3.04**
- **3. It is listed in a recognised stock exchange.**
- **3. Sale should be through Recognised Stock Exchange in India.**
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## EXEMPTION U/S.10(38)

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- **LTCEG on transfer of Securities :**
- **Condition :**
- **1. The transaction should be held on or after 01.10.04;**
- **2. Securities Transaction Tax should have been paid on the transaction;**
- **3. Asset transferred should be a LTCA**
- **4. Asset should be equity share in a company or a unit of an Equity Oriented Fund**