Income from capital gains

Basis of charge (Sec. 45)

Any profit or gain arising from the **transfer** of a **capital asset** is chargeable to tax under the head capital gains.

Capital Asset. Sec.2(14)

Capital asset means property of any kind held by an assessee, but does not include-

(i) any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession;

(ii) personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him, but excludes—
  (a) jewellery;
  (b) archaeological collections;
  (c) drawings;
  (d) paintings;
  (e) sculptures; or
  (f) any work of art.

Explanation.—For the purposes of this sub-clause, “jewellery” includes—
  (a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;
  (b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel;

(iii) agricultural land in India, not being land situate-
  (a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or
  (b) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette;

(iv) 6 1/2 per cent. Gold Bonds, 1977, or 7 per cent. Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government;

(v) Special Bearer Bonds, 1991, issued by the Central Government;

(vi) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999, notified by the Central Government;

Capital assets are of two types: Short- and long-term capital asset.

Short term capital asset: This is an asset that is held for not more than 36 months immediately preceding the date of its transfer. However, some assets (i.e.the following assets) qualify as short-term capital assets if held for not more than 12 months.
* Equity or preference shares held in a company
* Any other security listed on a recognised stock exchange of India
* Units of specific Mutual Funds
* Zero coupon bonds

Long term capital asset: This is an asset that is held for more than 36 months or 12 months as the case may be.

Transfer Sec.2(14) Transfer includes –

(i) Sale, exchange, relinquishment of the asset, or extinguishment of any rights thereon or compulsory acquisition thereof under any law,
(ii) Treatment or conversion into stock-in-trade
(iii) Maturity / redemption of a zero coupon bond
(iv) Part performance of a contract u/s 53A of the T.P. Act and possession
(v) Transactions, which have the effect of transfer

Calculation of Short-term Capital Gains (STCG)	
Value of consideration	
Less: expenditure incurred wholly and exclusively in connection with such transfer	
Less: cost of acquisition	
Less: cost of improvement	
Less: Exemption(s) available, if any.	
The balancing amount is short-term capital gain	

Calculation of Long-term Capital Gains (LTCG)	
Full value of consideration	
Less: cost of acquisition	
Less: expenditure incurred wholly and exclusively in connection with such transfer	
Less: indexed cost of improvement	
Less: Exemption(s) available, if any.	
The balancing amount is long-term capital gain	

Full Value of Consideration

This is the amount for which a capital asset is transferred. It may be in money or money's worth or a combination of both.

Where the transfer is by way of exchange of one asset for another, fair market value of the asset received is the full value of consideration. Where the consideration for the transfer is partly in cash and partly in kind fair market value of the kind portion and cash consideration together constitute full value of consideration.

Cost of acquisition

Cost of acquisition of an asset is the sum total of amount spent for acquiring the asset.

Where the asset was purchased, the cost of acquisition is the price paid. Where the asset was acquired by way of exchange for another asset, the cost of acquisition is the fair market value of that other asset as on the date of exchange.

Any expenditure incurred in connection with such; purchase, exchange or other transaction e.g. brokerage, registration charges and legal expenses also forms part of **cost of acquisition**.

Sometimes advance is received against agreement to transfer a particular asset. Later on, if the advance is retained by the tax payer or forfeited for other party's failure to complete the transaction, such advance is to be deducted from the cost of acquisition.

Cost of Acquisition with reference to Certain Modes of Acquisition

Where the capital asset became the property of the assessee:

1. on any distribution of assets on the total or partial partition of a Hindu undivided family;
2. under a gift or will
   - by succession, inheritance or devolution;
   - on any distribution of assets on the dissolution of a firm, body of individuals, or other AOP, where such dissolution had taken place at any time before 01.04.1987;
   - on any distribution of assets on the liquidation of a company;
   - under a transfer to a revocable or an irrevocable trust;
   - by transfer in a scheme of amalgamation;
3. by an individual member of a Hindu Undivided Family living his separate property to the assessee HUF anytime after 31.12.1969.

The cost of acquisition of the asset shall be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the asset incurred or borne by the previous owner or the assessee, as the case may be, till the date of acquisition of the asset by the assessee.

If the previous owner had also acquired the capital asset by any of the modes above, then the cost to that previous owner who had acquired it by mode of acquisition other than the above, should be taken as cost of acquisition.

Where the cost for which the previous owner acquired the property cannot be ascertained the cost of acquisition to the previous owner means the fair market value on the date on which the capital asset became the property of the owner.

Where the capital asset, being a share or debenture in a company, the cost of acquisition of the asset to the assessee shall be deemed to be that part of the cost of debenture, debenture-stock or deposit certificates in relation to which such asset is acquired by the assessee. Accordingly the cost of acquisition of rights share is the amount paid by the assessee to get them and the cost of acquisition of bonus shares is nil.

Cost of Improvement

The cost of improvement means all expenditure of capital nature incurred in making additions or alternations to the capital asset. However, any expenditure which is deductible in computing the income under other heads would not be taken as cost of improvement. Cost of improvement for goodwill of a business, right to manufacture, produce or process any article or thing is NIL.

Cost of Transfer

This includes brokerage paid for arranging the deal, legal expenses incurred for preparing conveyance and other documents, cost of inserting advertisements in newspapers for sale of the asset and commission paid to auctioneer, etc. However, it is necessary that the expenditure should have been incurred wholly and exclusively in connection with the transfer. Besides an expenditure which is eligible for deduction in computing income under any other head of income, cannot be claimed as deduction in computing capital gains.

As per Section 10(38) of Income Tax Act, 1961 long-term capital gains on shares or securities or mutual funds on which Securities Transaction Tax (STT) has been deducted and paid, no tax is payable. Higher capital gains taxes will apply only on those transactions where STT is not paid.

Concept of Indexation

The value of a rupee today is not same as will be its value tomorrow because of inflation. Likewise to be fair when paying capital gain tax, the effect of inflation on the purchase is included. Using the inflation index, one needs to increase the purchase price of the asset to reflect inflation-adjusted true price in the year of sale.

Indexed Cost of Acquisition

Indexed cost of acquisition = Cost of acquisition multiplied by the Cost Inflation Index (CII) for year in which asset is transferred or sold and divided by CII for year in which asset was acquired or bought)

Cost Inflation Index for all years

Cost Inflation Index from FY 1981-82

FY	(CII)	FY	(CII)
1981-82	100	1996-97	305
1982-83	109	1997-98	331
1983-84	116	1998-99	351
1984-85	125	1999-2000	389
1985-86	133	2000-2001	406
1986-87	140	2001-2002	426
1987-88	150	2002-2003	447
1988-89	161	2003-2004	463
1989-90	172	2004-2005	480
1990-91	182	2005-2006	497
1991-92	199	2006-2007	519
1992-93	223	2007-2008	551
1993-94	244	2008-2009	582
1994-95	259	2009-2010	632
1995-96	281	2010-2011	711
		2011-2012	785

Tax liability on capital gain with indexation and without indexation

***** 20 per cent tax liability arrived at by indexation method

***** 10 per cent tax liability arrived at by without using indexation method

Long Term Capital Gain - Exemption		u/s 54	u/s 54B	u/s 54EC	u/s 54F
a.	Who can claim	Ind/HUF	Individual	Any person	Ind/HUF
b.	Eligible assets sold	A residential House property (minimum holding period 3 year)	Agriculture landwhich has been used by assessee himself or by his parents for agriculture purposes during last 2 yrs of transfer	Any long-term capital assets (minimum holding period 3 years)	Any long term asset (other than res. H.P.) provided on the date of transfer the taxpayer does not own more than one residential house property
c.	Assets to be acquired for exemption	Residential house property	Another agriculture land (urban or rural)	Bond of NHAI or REC	Residential house property
d.	Time limit for acquiring the new assets	Purchase :1 year back or 2 year forward, Construction: 3 year forward	2 yrs forward	6 months forward	Purchase :1 year back or 2 year forward, Construction: 3 year forward
e.	Exemption Amount	Investment in the new assets or capital gain, whichever is lower	Investment in the agriculture land or capital gain, whichever is lower	Investment in the new assets or capital gain, whichever is lower (Max. Rs. 50 Lacs in Fin. Yr.)	Investment in the new assets / Net Sale consideration X capital gain
f.	"Capital gain deposit account scheme" applicable	Yes	Yes	not applicable	Yes

Questions on **CAPITAL GAINS**

1. Mr. X sold her residential house property, which was bought by her for Rs.14 lakhs in August, 2005, on 31.03.2014 for Rs.45 lakhs. He had purchased a flat on 30.11.2013. Compute the capital gain liability to tax for the relevant A.Y.

2. Mr. K sold his land for Rs. 72 lakhs on 9th July, 2013. The cost of acquisition of this property in September 2009 was Rs. 20 lakhs. He owns only one house property. He invested Rs.40 lakhs in another residential house property. Compute the capital gain.

3. A person purchased a flat on 14th May, 2013 for Rs. 85 lakhs. She has during the P.Y. 2013-14 sold some of her gold for Rs. 21 lakhs which was bought by her for Rs.3 lakhs in 2000-01. She also sold her land for Rs. 36 lakhs which was bought by her in 1995 for Rs. 6 lakhs. Compute the capital gain.

4. On 1/4/2013, Mr.A (63yrs) who owns two house properties, sells the following assets:

	GOLD	RESIDENTIAL HOUSE
DATE OF PURCHASE	10/2/2000	14/6/1986
SALE CONSIDERATION	Rs.6,00,000	Rs.45,00,000
COST OF AQUISITION	Rs.1,75,000	Rs. 6,00,000

The following are his investments: Res. House property – 33,00,000, Deposit in PPF-75,000.

Find out the tax liability of Mr.A.

5. Mr.Z (senior citizen) during the F.Y. 2013-14 sold the following assets:

Asset	Date of sale	Sale Proceeds (Rs.)	Date of purchase	Cost of acquisition (Rs.)
Rural agricultural land (FMV as on 01-04-1981 – Rs. 5,400)	25.12.2013	6,50,000	09.08.1973	6,000
Urban agricultural land	19.11.2013	7,00,000	07.05.2000	59,000
Gold (FMV as on 01-04-1981 – Rs. 3,100)	14-11-2013	14,25,000	18.10.1976	4,000
House	07.12.2013	30,50,000	14.05.1986	90,000

Mr.Z, out of the amounts received above, purchased the following assets:

Asset	Date of purchase	Amount in Rs.
Rural Agricultural land	09.08.2013	10,00,000
Residential property	14-02-2014	30,00,000

Determine the taxable capital gains of Mr. Z.