INCOME FROM CAPITAL GAINS :

SEC.2(14) - CAPITAL ASSET :

1. Property of any kind whether or not connected with business or profession;
2. Investment in any securities held by a Foreign Institutional Investor as per the regulations of SEBI Act, 1992.

EXCEPTION :

1. Stock in trade other than securities referred to above;
2. Personal effects (meaning movable property including wearing apparel and furniture but exclude Jewellery held for personal use either for the assessee or for the family members dependent on the assessee, Archaeological collections, drawings, paintings, sculptures or any work of art);
3. Rural Agricultural land in India;
4. 6 ½ % Gold Bonds, 1977
5. 7% Gold Bonds 1980
6. National Defence Gold Bonds, 1980
7. Special Bearer Bonds, 1991
8. Gold Deposit Bonds, 1999

TYPES OF CAPITAL ASSETS :

SEC.2(42A) – SHORT TERM CAPITAL ASSET –

Capital assets other than financial assets, held by an assessee 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 these financial assets are held for not more than 12 months immediately preceding the date of transfer, 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 -

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.

Above mentioned 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 :

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).

SEC.2(47) – TRANSFER

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

Sec.45(1) – CHARGEABILITY OF CAPITAL GAINS :

Capital gains is taxable as the income of the previous year in which transfer takes place.

Exception :

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

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 comabting 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(5) – Capital gains on compulsory acquisition of capital asset :
Chargeability –

1. Normal or Original compensation is taxable in the year in which it is first received.
2. Whole of the compensation is taxable even if a portion is received
   Capital gains = Whole of the Normal compensation (-) COA or ICOA
3. Enhanced compensation is taxable in the year in which such enhanced compensation is received.
   Capital gains = Enhanced compensation (-) expenses incurred for receiving enhanced compensation

COMPUTATION OF CAPITAL ASSET :

Short-term capital gain			Long-term capital gain		
Considertion recd Less: Expenses on Transfer Net consideration		xxxxx (xxxxx) xxxxx	Considertion recd Less: Expenses on Transfer Net consideration		xxxxx (xxxx) xxxxx
Less: Cost of acquisition Cost of improvement	xxxx xxxx	(xxxx)	Less: Indexed cost of acquisition Indexed cost of improvement	xxxx xxxx	(xxxx)
Short term capital gains Less: Exemption u/s.54B, 54D, 54G, 54GA		xxxxx (xxxx)	Short term capital gains Less: Exemption u/s.54 to 54GA		xxxxx (xxxx)

Taxable STCG		xxxx	Taxable LTCG		xxxx

A. **Indexed Cost of Acquisition (ICA) :**

If asset acquired before 1.4.1981 :

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

If asset acquired after 1.4.1981

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

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

ICI = Cost of improvement 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 (CII)

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

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

There are around 32 transactions which are not regarded as transfer as per Sec. 46 & 47 of the I.T. Act and hence, they are not liable for capital gains tax. Some of such transactions are enumerated below :

Sl.No.	Nature of transaction	Holding period in the hands of transferee for his subsequent transfer	Cost of acquisition in the hands of transferee
46(1)	Distribution of assets in kind by a company to its shareholders on its liquidation		FMV as on the date of distribution
47(i)	Any distribution of capital assets in kind by HUF to its members at the time of total or partial partition	Previous owners holding period shall be included	Cost to the previous owner
47(iii)	Transfer of a capital asset under a Gift	-do-	-do-

	or a Will or an Irrevocable Trust		
47(iv)	Transfer of capital asset by a company to its wholly owned Indian subsidiary company. This provision is not applicable if transferred as stock in trade	-do-	-do-
47(v)	Transfer of capital asset by wholly owned Subsidiary company to its Indian Holding Co. This provision is not applicable if transferred as stock in trade.	-do-	-do-
47(xiiia)	Transfer of membership right in a stock exchange.	Period for which the person was member of Stock Exchange	NIL

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.

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

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.

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 :

Chargeability –

1. **Normal or Original compensation** is taxable in the year in which it is first received.
2. Whole of the compensation is taxable even if a portion is received
3. Compensation received subsequent to the death of assessee is taxable in the hands of his legal heirs.
4. Where normal or enhanced compensation is reduced by the Court or Tribunal or any other authority, then capital gains shall be recomputed again.
5. 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
6. **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

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 :

1. In case assets sold by liquidator and cash distributed to the shareholders, then capital gains will be taxed in the hands of the company
2. 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)]

   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 :

1. 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
2. It is taxable in the year in which the same are re-purchased by the company

Deep Discount Bond : Circular No.2/2002 :

Market value of Deep Discount Bonds will be determined at the end of every financial year i.e. 31^{st} March, as per the values declared by RBI or Primary Dealers Association of India, jointly with the Fixed Income Money Market and Derivatives Association of India. Difference between market values on the opening and closing dates of the financial year constitutes income of that year. Income will be treated as interest income in the case of investors and business income in the case of traders in DDBs. Transfer of bonds before maturity attracts capital gains tax in the hands of investors and business income in the case of traders.

Family Arrangement :

A family arrangement is an agreement between the members of the same family intended generally for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour. Realignment of interest by way of effecting family arrangement among the family members would not amount to transfer – Al.Ramanathan (2000)245 ITR 494 (Mad.)

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.

Example – Rs.15 = Sale consideration recd
Rs.10 = Opening WDV
Rs. 2 = cost of asset purchased during the p.y.
Rs. 1 = expenditure incurred for sale of asset

Difference Rs.2 received should be charged as STCG. No depreciation is allowable as there will not remain any further asset for claiming depreciation.

If all assets in the block are transferred, the difference will be treated as either STCG /STCL.

Sec.50A – Transfer of Depreciable Asset by Power Sector Units

1. If net consideration i.e consideration after deducting related expenditure is less than WDV, then the difference can be allowed as terminal depreciation.
2. If net consideration is more than WDV, then, out of excess consideration, amount to the extent of depreciation claimed on the asset should be treated as business income u/s.41(2). It is otherwise known as balancing charge. The remaining surplus is taxable as capital gains.

Sec.50B – Capital Gains on Slump Sale :

Slump sale means transferring of one or more undertaking as a result of sale, for a lump sum consideration without assigning any value to individual assets and liabilities transferred. If the capital asset being one or more undertaking is held for not more than 36 months, the resultant capital gains shall be Short-term Capital Gains.

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

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 tobe 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 – 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.

Sec.55A – Reference to Valuation Officer :

1. Where the value of the asset is estimated by the registered valuer but the Assessing Officer is of the option that the value so determined is at variance with FMV (or)
2. FMV of the asset exceeds the value of the asset declared by the assessee either by more than 15% or by Rs.25,000 (or)
3. The nature of the asset and other relevant circumstances are such that it is necessary to do so.

EXEMPTIONS : Some of the important exemptions on capital gains are as follows :

	54	54B	54F	54EC
Applicability	Individual/HUF	-do-	-do-	All assessees
Asset transferred	Residential House	**Urban Agricultural land used for Agriculture by an Indl. or his parents or HUF for 2 years immediately prior to the date	Any LTCA other than residential house property	Any LTCA

		of transfer		
Nature of the asset	LTCA	LTCA (or) STCA	LTCA	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. Condition – On the date of transfer of LTCA, assessee should not own more than one residential house property	Notified Bonds such as NHAI and RECL.
Amount tobe invested in new asset	LTCG	LTCG (or) STCG	Net consideration (consideration – expenses incurred in connection with transfer)	w.e.f. 1.4.15, Investment in 54EC in the year of transfer or subsequent f.y. should not exceed Rs. 50 lacs.
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
Time limit for investment	**Purchase** – within 1 year before or 2 years after the date of transfer; **Construction** – Within 3 years after the date of transfer	Within 2 years from the date of transfer	**Purchase** – within 1 year before or 2 years after the date of transfer; **Construction** – Within 3 years after the date of transfer	Within 6 months from the date of transfer
Unutilised amount	*Note below	-do-	-do-	NA
Holding period of new asset	3 years from the date of acquisition or construction	3 years from the date of acquisition	3 years from the date of acquisition or construction	3 years from the date of acquisition
Sale of new asset within holding period	Sale consideration of new asset (-) cost of acquisition reduced by capital gains exempted u/s.54	-do-	STCG on new asset shall be taxed separately. LTCG exempted u/s.54F shall be chargeable to tax as LTCG in the year of transfer	LTCG so exempted u/s.54EC shall be deemed tobe income under LTCG of the assessee in the year of transfer or converted into money or created charge on the specified asset.

- LTCG could not be utilized for purchase or construction of house property before due date for filing return of income of a person u/s.139(1) should be deposited in Capital Gains Account Scheme of a Nationalised Bank and should be utilized/ disbursed from that account for the purpose for which it was intended i.e. for purchase or construction of house property. Unutilised amount in the account shall be treated as LTCG in the previous year in which the prescribed period expires.

** capital gains from transfer of agricultural land situated in any area referred u/s.2(14)(iii)(a)/(b) and used for agricultural purpose by Individual/his parents/HUF and compulsorily acquired by the Govt., is exempt from tax u/s.10(37).

Carry forward and set off of capital gains :

Sec.70 & 71 :

1. Current year STCG can be set off against any capital gain accrued during the previous year but it cannot be set off against income under any other head.
2. Current year LTCG can only be set off against LTCG.

Sec.74 :

1. Unabsorbed STCG can be carried forward for 8 A.Ys. immediately following the A.Y. in which such loss was incurred and can be set off only against any capital gains
2. Unabsorbed LTCG can be carried forward for 8 A.Ys. immediately following the A.Y. in which such loss was incurred and can be set off only against LTCG

Special provisions in case of Intangible Assets:

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