CAPITAL GAIN

MANOJ PANDIT
ADVOCATE

Charging Section

CAPITAL GAINS u/s 45(1)

"Any profit or gains arising from the transfer of capital assets is taxable under the head capital gains in the previous year in which the transfer has taken place."

Some Important Points

Some Important Points.

- Assets used for personal purpose of Assessee
- T.V, Car, Mobile ,etc – Not a capital asset – CG not applicable
- Jewellery, Drawings, Paintings – Capital Asset – CG applicable
- Gold Utensils, Silver bars, Silver coins were held not to be personal effect – Capital Gain applicable (Maharaja Rana Hemanth Singh)
- Silver Utensils held to be personal effect – No Capital Gain (Benarshival Kataruka)
- Car used in the Business treated as capital asset.
- Jewellery means:

  Ornaments made of gold, silver, platinum or any other precious metal or any alloy containing such metals

  Precious stones whether or not set in any furniture, utensil or other article

Definition of Capital Asset

Section 2(14) Capital Assets Means

- Property of any kind held by assessee, whether or not connected with business or profession.
- Any securities held by a foreign institution investor (FII)

But capital asset does not include:

- Stock in trade (RM/WIP/FG)
- Movable personal property (used by assessee or his dependant family member for the personal purpose) but Exclude: Jewellery, Drawing, Painting, Sculpture, Archaeological collection or any other work of art.
- Rural agricultural land in India.
- Gold deposit bonds, 1999 or deposit certificates issued under the gold monetization scheme, 2015.

Definition of Transfer

SECTION 2(27) :
'Transfer' includes-

- The sale, Exchange or relinquishment of the asset, or
- The extinguishment of any right there in, or
- Compulsory acquisition there of under any law, or
- Conversion of capital asset into stock in trade, or
- Allowing the possession of any movable property to be taken or retained in part performance of the contract.
- Any transaction (like becoming a member of, or acquiring shares in a co-operative society) which has the effect of transferring or enabling the enjoyment of immovable property.
- The redemption of zero coupon bond (ZCB).

Types Of Capital Assets

TYPES OF CAPITAL ASSETS

Short Term Capital Asset

Long Term Capital Asset

Nature of Assets	STCA	LTCA
A Security (other than units) listed in a recognized Stock	POH =< 12 months	POH > 12 months
Units of UTI or Equity oriented MF	POH =< 12 months	POH > 12 months
Zero Coupon Bonds	POH =< 12 months	POH > 12 months
Unlisted Shares of CO.	POH =< 24 months	POH > 24 months
Any other assets	POH =< 36 months	POH > 36 months

Computation of Capital Gain

SECTION 48

Particulars	Amount
Full Value Of Consideration (FVOC)	xxxxx
(-) Transfer Expenses	(xxx)
Net Consideration	xxxxx
(-) Cost of acquisition (COA)	(xxx)
(-)Cost of improvement (COI)	(xxx)
Capital Gain	xxxxx

Indexation

In case of LTCA (Long Term Capital Asset), COA & COI should be indexed.

a) Indexed Cost Of Acquisition

Cost of Acquisition x $\frac{\text{CII for the year of transfer}}{\text{CII for the first year in which the asset was held OR for the year 1981-1982 whichever is later.}}$

b) Indexed Cost Of Improvement

Cost of Acquisition x $\frac{\text{CII for the year of transfer}}{\text{CII for the year in which the improvement took place.}}$

c) Asset acquires before 1/4/1981

COA = Actual Cost or FMV as on 1/4/1981 whichever is higher.

d) Improvement done before 1/4/1981

Should be ignored.

Cost of Acquisition

In Case of goodwill of business (not Profession), Trademark Brand name, patent, copyrights , right to carry on any business or profession

Cost of Acquisition a) Self Generated = NIL
b) Purchased = Purchase Price

Note : Benefit of FMV as on 01/04/1981 not available in case of above assets.

Bonus Shares/ Security

If Acquired before 01/04/1981
FMV as on 01/04/1981

If Acquired on or after 01/04/1981
NIL

POH in case of shares – From Allotment date to transfer date

Cost of Acquisition

Right Shares/ Security

If Acquired by shareholder
COA= Amount paid to Company

Renouncement of Right
CG Applicable

FVOC	= Renouncement Price	
COA	= NIL	
STCG		XXXX

POH = From offer Date

In Hands of Purchaser of right
COA= Amount paid to Co. For purchase +amount paid for purchaser of right

Cost of Acquisition

In relation to other capital Assets

Asset Acquired before 01/04/1981

- Cost of Acquisition
- FMV as on 01/04/1981

(whichever is higher)

Asset acquired on or after 01/04/1981

- Cost of Acquisition

Cost of Asset declared under IDS 2016

As per section 49(5), where capital gain arise from transfer of an asset declared under IDS 2016 and tax, surcharge & penalty have been paid on FMV as on 01/06/2016 then COA of such asset shall be FMV as on 01/06/2016.

Period of Holding of Assets

In the case of a capital asset, declared under the IDS, 2016

(i) being an immovable property, the period for which such property is held shall be reckoned from the date on which such property is acquired if the date of acquisition is evidenced by a deed registered with any authority of a State Government; and

(ii) in any other case, the period for which such asset is held shall be reckoned from the 1st day of June, 2016.

Cost of Improvement

COST OF IMPROVEMENT (COI)

- In case of goodwill of business, patent, copyright, right to carry on any business or profession - Always Nil.
- In case of other asset - Capital expense incurred on improvement on or after 01/04/1981.
- Improvement done before 01/04/1981 should be ignored in all cases.

Tax Rates Of Capital Gain

1) Section 10(3B) & 111A

Capital Gain on transfer of –

- Equity shares of company
- Units of Equity Oriented fund
- Units of Business Trust

STT paid on sale

LTCG Exempt u/s 10 (38)

STCG – Taxable @ 15% u/s111A

2) Capital Gain (other than referred in point 1. above)

LTCG – 20% u/s 112

STCG – normal tax rate

Tax Rates Of Capital Gain

Proviso to section 112

In case of only listed securities & zero coupon bonds, assessee can pay tax.

(i) 10% (without indexation)

(ii) 20% (with indexation)

Whichever is lower

Tax Rates Of Capital Gain

Benefits of basic exemption against LTCG/STCG 111A

In case of RESIDENT individual /HUF, if Balance Total Income (other than LTCG & STCG 111A) is less than Basic Exemption then unexhausted (unutilized) basic exemption can be used against LTCG & STCG 111A.

Example:

Total Income (NII) of Mr. Ram is Rs.420000 (it includes LTCG on sale of land – Rs.250000)

Now tax liablity of Ram,

(250000 – 80000) = 170000 x 20% = 34000 + education cess @3%

Conversion Of Capital Asset Into Stock In Trade

Section 45(2):

- Conversion of capital asset in to stock-in-trade is treated as transfer, capital gain shall arise where an assessee converts capital asset in to stock in trade.
- Capital Gain shall be taxable in the year in which such stock-in-trade is sold
- Amount recorded in Books of accounts- Not Relevant FMV as on date of conversion –Relevant.
- If Part Stock-in-trade is sold then only part capital Gain shall arise in the year in which stock-in-trade is sold.

Conversion Of Capital Asset Into Stock In Trade

Purchase Capital Asset → Conversion Goods → Sale Goods

Year	2008-9	9-10	13-14
Value	100	FMV 150	SP 180

Capital Gain		PGBP	
FVOC (FMV on the date of conversion)	150	Sales price of stock in trade	180
(-) Cost of acquisition	(100)	(-) FMV of asset on date of Conversion	(150)
STCG	50	PGBP	30

Compulsory Acquisition

- SECTION 45 (5):

Normally capital gain is taxed in the year of transfer but in case of compulsory acquisition of capital asset, capital gain will be taxable in the year in which compensation is received

Initial Compensation		**Enhanced Compensation**	
FVOC	xxx	FVOC	xxx
(-) COA/ICOA	(xx)	(-) Litigation Expenses	(xx)
(-)COI/ICOI	(xx)	STCG/LTCG	xxx
STCG/LTCG			

Compulsory Acquisition

If compensation received in installments

- Initial Compensation - It will be taxable in the year in which first installment received.
- Enhanced Compensation - It will be taxable as & when received.

If any enhanced compensation received due to interim order of court, then such compensation shall not be taxable in the year of receipt but shall be taxable in the year in which final order is passed by such court or other authority.
Note: Any interest received on the late compensation shall be taxable under IFOS in the year of receipt & 50% deduction is allowed u/s 57.

If compensation is reduced by any court or authority then rectification has to be made to give effect of the same (section 155)

Deemed Transfer

Section 45 (1A): Insurance Claims For Damage Or Destruction Of Capital Asset.

- Normally Capital gain taxed in the year of transfer but case of destruction of capital asset. Capital gain will be taxable in the year in which **Insurance Claim is received.**
- Where capital asset destroyed due to Fire, Flood, Tsunami, Earthquake, Riot, Civil disturbance, enemy action or any other Natural calamity and insurance claim is received then capital gain is applicable.
- If No claim received, No Capital Gain shall arise.

Computation of Capital Gain-

FVOC [Insurance claim (Money/ FMV of Asset received as action)]	xxxx
(-) COA / ICOA	(xxx)
(-) COI / ICOI	(xxx)
STCG/ LTCG	xxxx

Transfer of a Asset Between Firm : Partne.

Section 45(3): Transfer of Capital asset by Partner to Partnership firm (Member to AOP/ BOI)

Capital gain: applicable in hands of partner / Member.

FVOC = Amount recorded in Books of Firm

Notes: If Immovable property is transferred by partner to Firm & SDV is more than amount recorded in Books of Accounts, then such SDV shall be treated as FVOC (Sec 50C).

Section 45 (4): Transfer of Capital asset by firm to partner (AOP/ BOI To Member)

Capital gain is applicable in hands of FIRM/ AOP/ BOI

FVOC = FMV as on date of transfer

Sec 50C Full Value of Consideration

- **T**ransfer of a capital asset, being land or building or both, is less than value adopted stamp valuation authority shall, be deemed to be the full value of the consideration.
- The Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made.
- If valuation by the Valuation Officer exceeds the valuation by the stamp valuation authority, the value so adopted or assessed by such authority shall be taken as the full value of the consideration.

50B of the Income Tax Act 1961

The term 'slump sale' has been defined to mean a transfer of a business undertaking or a business for a lump-sum consideration with all its assets and liabilities, without values being assigned to individual assets/liabilities.

Computation of Slump Sale Transactions

Sale Consideration	XXXX
Less "Net Worth"	XXXX

STCG/LTCG	XXXX

STCG –Undertaking held for less than 36 months
LTCG –more than 36 months

Net Worth :-

Add	
WDV of Depreciable assets As per income tax *	XXX
Other Assets at book value *	XXX
Less:	
Liabilities at book value	XXX

Net Amount (net worth)	XXX
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*Revaluation of assets should be ignored purposes of computing the net worth

Advance Money Forfeited

SECTION 51 :

- If any Advance money/Token money/ Earnest money forfeited by assessee [Present Owner] before 01/04/2014, then it shall be reduced from 'Cost of Acquisition' (before indexing)

- Any Advance money forfeited on or after 01/04/2014, shall be charged to tax in the year of forfeiture under the head 'Income from Other Source (IFOS)' u/s 56(2)(ix).

Exemptions Long Term Capital Gain

Long Term Capital Gain – Exemption	u/s 54	u/s 54B	u/s 54EC	u/s 54F
Who can claim exemption	Individual/HUF	Individual /HUF	Any person	Individual/HUF
Eligible assets sold	A residential House property (minimum holding period 3 year)	Agriculture land which has been used for agriculture	Any long-term capital assets (minimum holding period 3 years)	Any long term asset (except residential house property)
Assets to be acquired for exemption	Residential house property	Another agriculture land (urban or rural)	Bond of NHAI or REC	Residential house property
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
Exemption Amount	Investment in the new assets or capital gain, which ever is lower	Investment in the agriculture land or capital gain, which ever is lower	Investment in the new assets or capital gain, which ever is lower (Max. Rs. 50 Lac in Fin. Yr.)	Investment in the new assets / Net Sale consideration X capital gain
Whether "Capital gain deposit account scheme "applicable	Yes	Yes	not applicable	Yes

Set off Provisions

Income	Salary	Income from HP	Non-speculative Business	Speculative Business	LTCG	STCG	Race horses Income	Other Sources
HP Loss	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
LTCL	No	No	No	No	Yes	No	No	No
STCL	No	No	No	No	Yes	Yes	No	No

Yes” denotes loss can be adjusted with respective income.
“No” denotes loss cannot be adjusted with respective income.

Special Points

Non-Utilization of balance in Capital Gain A/C scheme.

- Amount deposited is not utilized wholly or partly for specified purpose by specified time.
- Amount not so utilized is Taxable as capital gain of present year in which specified time expires.

Section 54 F : Additional Conditions to be satisfied for availing exemption.

- On the date of transfer of LTCA, assessee should not own more than one residential house.
- Should not purchase any residential house within prescribed time limit, other than the new asset.
- If above conditions not satisfied than exempt capital gain taxable in present year in which such other residential house is purchased/constructed

Special Points

SECTION 54 EC

- If assesse takes any loan or advance on securities of Bonds/Units, he shall be deemed to have converted into money on the date on which such loan or advances is taken and capital gain exempted shall be taxable

Thank you

MANOJ PANDIT

Advocate

M & P Management Consultants Pvt. Ltd.

A-305, Durian Estate,

Goregaon Mulund Link Road,

Goregaon East

Mumbai – 400063

India

Mail: mandpca@gmail.com

Cell: 9820491848