

## Capital Gains

Income under the Head “Capital Gains”					
Section 45	Section 47	Section 48	Section 49	Section 54 – 54F	Sec 46, 46A, 50 to 50D, 51, 55 & 55A
Chargeability	Transactions not regarded as transfer	Mode of Computation	Cost of Acquisition	Exemptions	Other Provisions

### Sec 45(1): Charging Section

Any profits or gains arising from transfer of a capital asset effected in the previous year shall be chargeable to income tax under the head capital gains in the previous year in which transfer took place.

### Sec 2(14): Definition of Capital Asset

It means –

- ✓ property of any kind held by an assessee, whether or not connected with his business or profession; *(See note-1 below)*
- ✓ any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the SEBI regulations. *(See note-2 below)*

Note - 1: Property includes and shall be deemed to have always included any rights in or in relation to an Indian Company, including rights of management or control or any other rights whatsoever.

Note - 2: Even if securities referred here are held as stock in trade, capital gains will be levied and not PGBP.

However, capital asset does not include:-

- a) Any stock-in-trade, consumable stores or raw materials held for the purpose of the business or profession of the assessee;
- b) Personal effects, i.e. movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him.

#### **Exclusions:**

- (i) jewellery;
- (ii) archaeological collections; (Eg: old coins)
- (iii) drawings; (Eg: Pencil Sketch)
- (iv) paintings; (i.e. using colors)
- (v) sculptures; or
- (vi) any work of art.

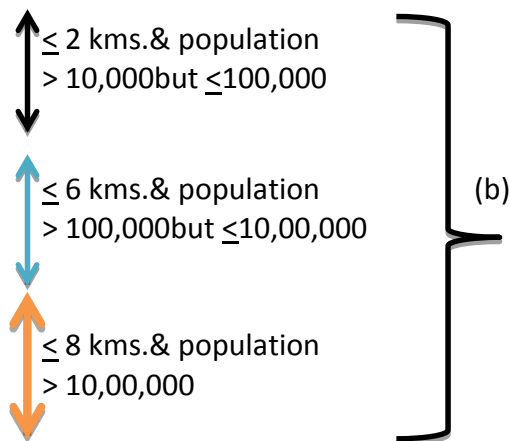
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**Meaning of Jewellery:** It includes:-

- 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 stones and whether or not worked or sewn into any wearing apparel;
  - Precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel.
- c) Rural agricultural land in India(See Note below)
- d) **Specified Gold Bonds:** 6½% Gold Bonds, 1977, or 7% Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government;
- e) **Special Bearer Bonds 1991**, issued by the Central Government;
- f) **Specified Gold Deposit Bonds** issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetisation Scheme, 2015 notified by the Central Government.

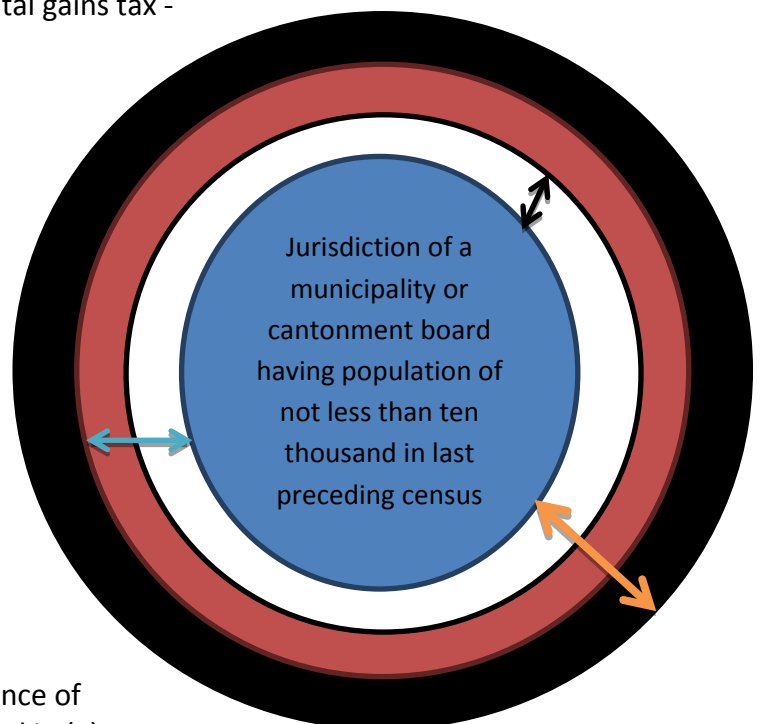
### Note:

As per the definition, only rural agricultural lands in India are excluded from the purview of the term 'capital asset'. Hence urban agricultural lands constitute capital assets. Accordingly, the agricultural land described in (a) and (b) below, being land situated within the specified urban limits, would fall within the definition of "capital asset", and transfer of such land would attract capital gains tax -



**Population** referred above is according to last preceding census published before first day of the previous year.

**Kms.** referred above is shortest aerial distance of a municipality or cantonment board referred in (a)



**Explanation:** No agriculture income will generate & be used for purpose of exemption u/s 10(1). Only Capital Gain will be levied from such transfer.

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### Sec 45(1): Exceptions to Charging Section

Charging section provides that capital gain shall be chargeable to tax in the previous year in which transfer took place. However, there are certain exceptions which are discussed below:

### Section 45(1A): Capital Gains on Insurance Claims for damage or destruction of capital assets

Where any person **receives** any money or other assets under any insurance from an insurer on account of damage to, or destruction of, any capital asset, as a result of –

- flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature, or
- riot or civil disturbance, or
- accidental fire or explosion, or
- action by an enemy or action taken in combating an enemy (whether with or without declaration of war),

then, any profits or gains arising from receipt of such money or other assets shall be chargeable to income-tax under the head “Capital gains” and shall be deemed to be the **income of the such person for the previous year in which such money or other asset was received.**

#### **Note:**

- i) In order to compute capital gains, the value of any money or the fair market value of other assets on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital assets.
- ii) Sec 45(1A) is not attracted if an asset is destroyed and **NO** insurance compensation is received. Such a destruction of asset shall not be treated as transfer and thus there will be no capital gains. The cost of the asset destroyed shall be a capital loss i.e. dead loss which has no tax treatment.
- iii) Even though capital gain is levied in the year of receipt of insurance claim, **indexation benefit** will continue to be restricted to the **previous year of transfer of capital asset.**

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### Section 45(2): Conversion of Capital Asset into stock in trade

Capital Gains	PGBP
<ul style="list-style-type: none"><li>FMV of the capital asset on the date of conversion shall be deemed to be sales consideration</li></ul> <p><i>minus</i></p> <ul style="list-style-type: none"><li>Indexed Cost of Acquisition (Indexation benefit would continue to be restricted to the previous year of conversion of capital asset)</li></ul>	<ul style="list-style-type: none"><li>Actual Sale Price of stock in trade</li></ul> <p><i>minus</i></p> <ul style="list-style-type: none"><li>FMV of the capital asset on the date of conversion (The amount recorded in books of account as the value of stock in trade is irrelevant)</li></ul>

Both capital gain & PGBP income will be chargeable to tax in the year in which stock in trade is sold or otherwise transferred by the assessee.

### Section 45(2A): Transfer of Securities by Depositories

Where any person has had, at any time during the previous year, any beneficial interest in any securities, then, any profits or gains arising from the transfer made by the Depository or participant of such beneficial interest in respect of securities shall be chargeable to tax as the income of the beneficial owner of the previous year in which such transfer took place and shall not be regarded as income of the depository who is deemed to be the registered owner of the securities by virtue of section 10(1) of the Depositories Act, 1996.

#### **Note:**

- ✓ Where securities are acquired in several lots at different points of time, the First-In-First-Out (FIFO) method shall be adopted to reckon the period of the holding of the security, in cases where the dates of purchase and sale could not be correlated through specific numbers of the scrips. (*Generally, in case of dematerialized holding*)
- ✓ Date of broker's note should be treated as the date of transfer in case of sale transactions of securities provided such transactions are followed up by delivery of shares and also the transfer deeds.
- ✓ Beneficial owner means a person whose name is recorded as such with a depository
- ✓ Depository means a company formed and registered under the Companies Act, 1956

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(now Companies Act, 2013) and which has been granted a certificate of registration under section 12(1A) of the Securities and Exchange Board of India Act, 1992.

### Section 45(3): Capital Gain on contribution of capital asset by a partner/member to Firm/AOP/BOI

Where a person transfers a capital asset to a firm, AOP or BOI **in which he is already a partner/ member or is to become** a partner/ member by way of capital contribution or otherwise, the profits or gains arising from such transfer will be chargeable to tax as income of **the previous year in which such transfer takes place.**

Amount recorded in the books of account of the firm will be deemed to be sales consideration for computation under section 48

### Section 45(4): Capital Gain on transfer of capital asset by way of distribution or dissolution of a Firm/AOP/BOI or otherwise

The profits or gains arising from the transfer of capital assets by way of distribution of capital assets on the dissolution of a firm or AOP or BOI **or otherwise** shall be chargeable to tax as the income of the firm etc. of the previous year in which such transfer takes place. The fair market value of the capital asset on the date of distribution shall be taken as sales consideration for the purposes of section 48.

#### **Note:**

- The word 'otherwise' not only covers cases of dissolution but also covers the case of where a partner retires from a firm and assets are given to him. Fair Market Value on the date of distribution shall be taken as the sales consideration. (*A.N. Naik Associates – Bombay HC*)
- Since the tax treatment accorded to a LLP and a general partnership is the same, the conversion from a general partnership firm to an LLP will have no tax implications if the rights and obligations of the partners remain the same after conversion and if there is no transfer of any asset or liability after conversion. However, if there is a change in rights and obligations of partners or there is a transfer of asset or liability after conversion, then the provisions of section 45 would get attracted.

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### Section 45(5): Capital Gain on transfer by way of Compulsory Acquisition of an asset

Notwithstanding anything contained in section 45(1), where a capital asset is compulsorily acquired under any law or where the consideration for transfer of a capital asset is to be determined or approved by the Central Government or RBI, then the capital gains arising from the transfer of the capital asset shall be dealt with as under:

Original Compensation	Enhanced Compensation	Compensation Reduced
Capital Gains shall be chargeable to tax as the income of the previous year in which compensation or part thereof is <b>first received</b> by the assessee.  <b>Note:</b> Period of holding shall be taken from the date the asset was acquired by the assessee to the date on which asset was acquired under any law or transferred.	The amount by which the compensation is enhanced by the Court, Tribunal or any other authority shall be deemed as the income under the head Capital Gains of the previous year in which <b>such amount is received</b> by the assessee.  <b>Note:</b> <ul style="list-style-type: none"><li>Cost of Acquisition &amp; cost of Improvement will be taken as nil.</li><li>Nature of Capital Gain w.r.t. enhanced compensation shall be the same as the nature of original compensation</li></ul>	If original or enhanced compensation is reduced by any Court, Tribunal or any authority, the assessed capital gain of that year shall be recomputed by taking into consideration the reduced amount. This re-computation shall be done by way of rectification u/s 155(16).

**Note:**

- ✓ Legal Expenses incurred to obtain the enhanced compensation are deductible from the enhanced compensation as '*Expenses on Transfer*' to arrive at Capital Gains.
- ✓ Where by reason of death of the person who made the transfer or for any other reason, the enhanced compensation is received by any other person, then the amount so received shall be deemed to be the income under the head Capital Gains of the person who receives the same.
- ✓ Income by way of Interest on compensation or enhanced compensation shall be

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chargeable under the head "Income from Other Sources" [Sec 56(2)(viii)]

- ✓ A deduction of a sum equal to 50% of such income referred in Sec 56(2)(viii) will be allowed and no deduction shall be allowed under any other clause of this section.

[Sec 57]

### Section 45(5A): Capital Gain on transfer of land or building or both by an Individual or HUF to a real estate developer (Applicable from A.Y. 2018-19)

The definition of 'transfer', inter alia, includes any arrangement or transaction where any rights are handed over in execution of part performance of contract, even though the legal title has not been transferred. Applying the definition of transfer, under certain development agreements, the transfer took place in the year in which the owner of the immovable property, being land or building or both, handed over the immovable property to the developer.

Consequently, the capital gains tax liability in the hands of the owner would arise in the year in which the possession of immovable property is handed over to the developer for development of a project, in spite of the fact that the consideration thereof (i.e. the actual constructed property) will be received only after a couple of years.

Hence, Section 45(5A) has been inserted to give some relief to the owner of land in paying capital gains tax in the year of transfer which provides that:-

- in case of an assessee being individual or Hindu undivided family,
- who enters into a specified agreement for development of a project,
- the capital gain arising from such transfer shall be chargeable to income-tax as income of the previous year in **which the certificate of completion for the whole or part of the project is issued by the competent authority.**
- For the purpose of computing capital gains, the **stamp duty value of his share**, being land or building or both, in the project on the date of issuing of said certificate of completion **as increased by** any consideration received in **cash**, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

#### **Meaning of Specified Agreement:**

Specified agreement means the registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such

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land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash.

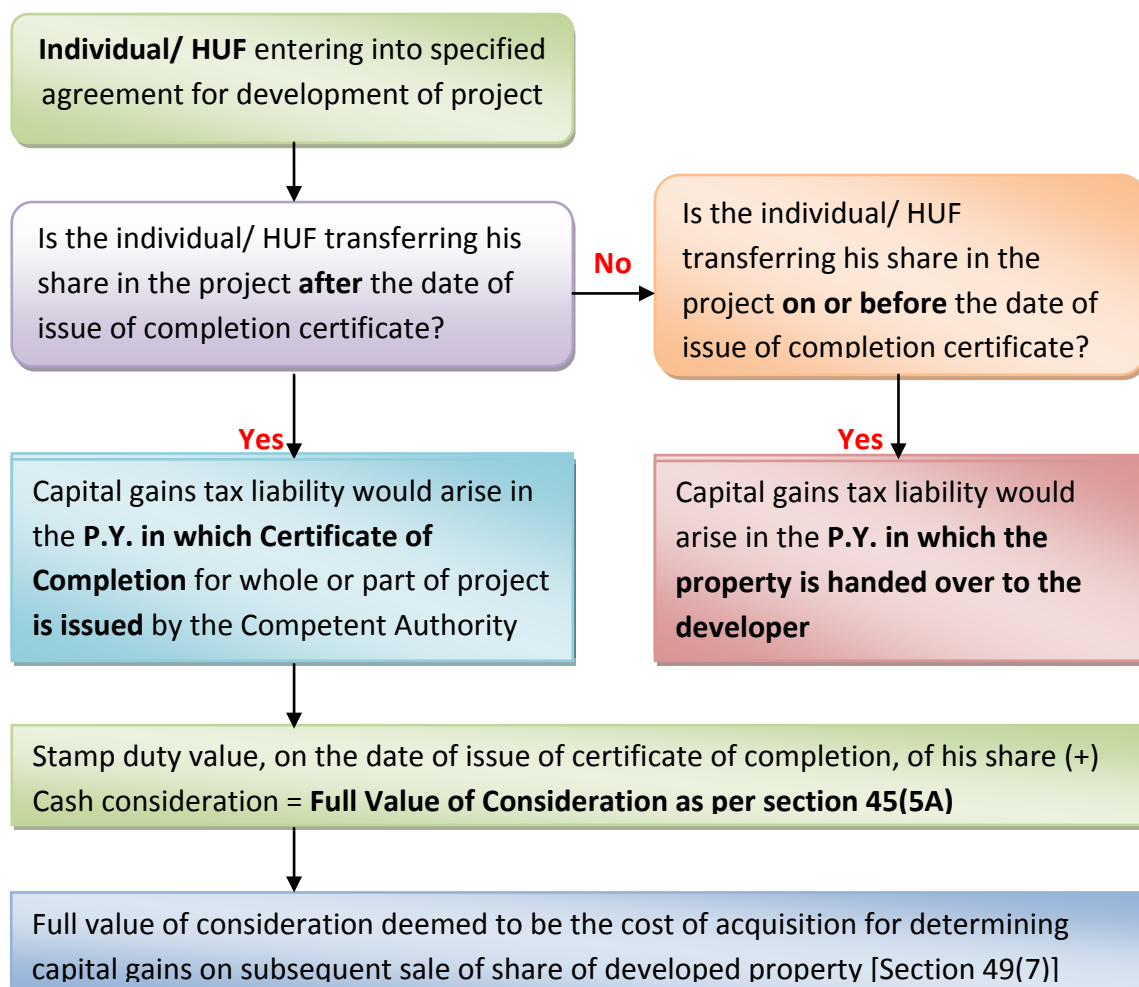
### Meaning of Stamp Duty Value:

The value adopted or assessed or reassessable by any authority of Government for the purpose of payment of stamp duty in respect of an immovable property being land or building or both.

### Non – Applicability of the provision:

It may, however, be noted this beneficial provision would not apply, where the assessee transfers his share in the project on or before the date of issue of said completion certificate and the capital gain tax liability would be deemed to arise in the previous year in which such transfer took place. In such a case, full value of consideration received or accruing shall be determined by the general provisions of the Act.

### Taxability of capital gains in case of Specified Agreement: At a Glance





### Section 46: Capital Gains on distribution of assets by companies in liquidation

Notwithstanding anything contained in section 45, where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as a transfer by the company for the purposes of section 45. **[Sec 46(1)]**

But where the asset is sold in the open market by the liquidator and cash is distributed to the shareholder, then the **company** will be liable to pay tax on such gains.

Where a **shareholder** on the liquidation of a company receives any money or other assets from the company, he shall be chargeable to income-tax under the head “Capital gains”, in respect of the money so received or the market value of the other assets on the date of distribution, as reduced by the amount assessed as dividend within the meaning of sub-clause (c) of clause (22) of section 2 and the sum so arrived at shall be deemed to be the full value of the consideration for the purposes of section 48. **[Sec 46(2)]**

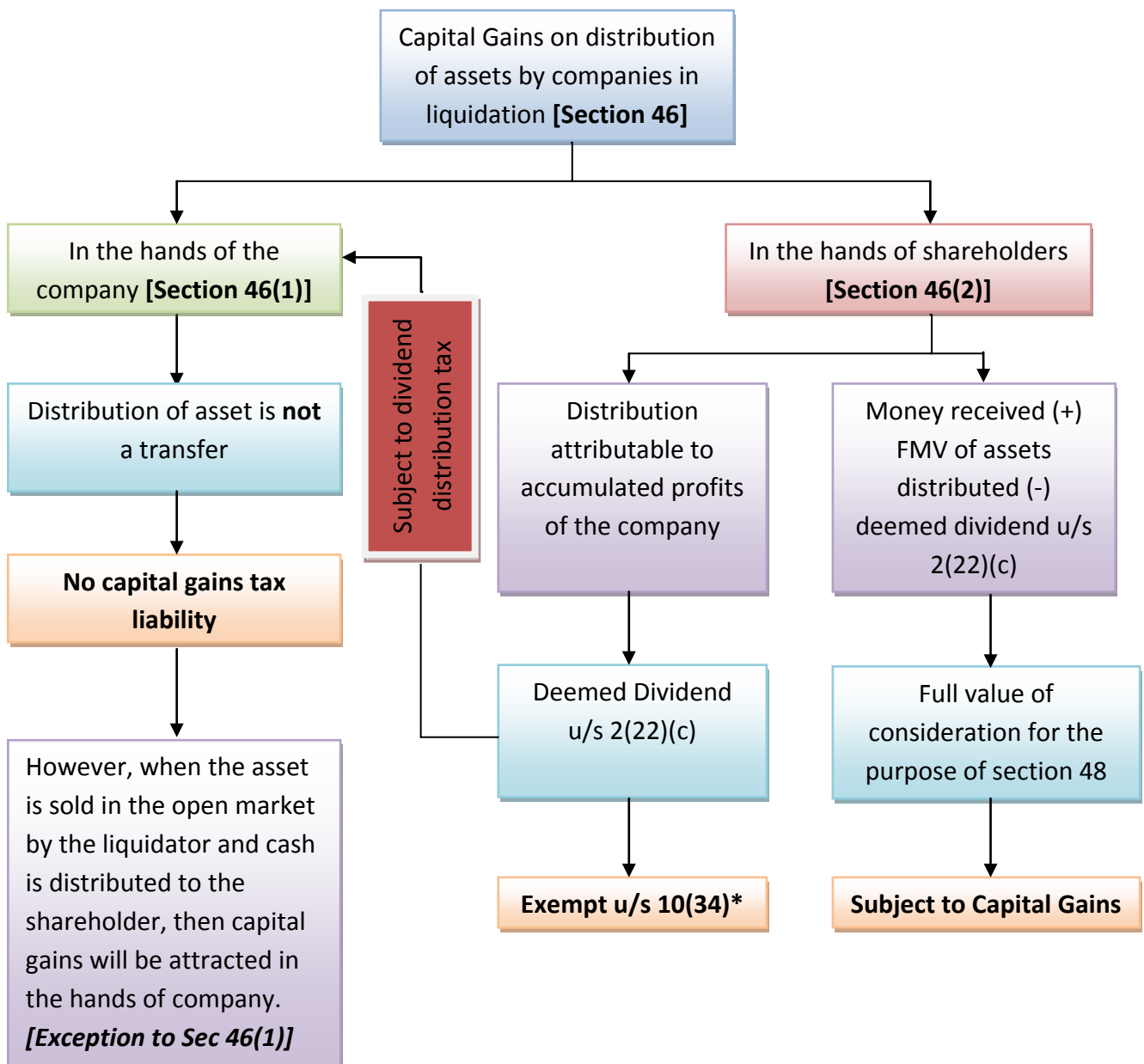
#### **Computation:**

*Money received + Market value of the asset – Deemed dividend u/s 2(22)(c) = Sale Consideration of the shares in the liquidating company.*

#### **Note:**

- a. **2(42A). Period of Holding :** In the case of a share held in a company in liquidation, the period subsequent to the date on which the company goes into liquidation should be excluded.
- b. **Section 55(2)(b)(iii) :** Where the asset other than cash acquired by the **shareholder on the liquidation of the company is subsequently transferred**, in this case cost of acquisition of the assets shall be the fair market value of the asset on the date of distribution. No other adjustment like deemed dividend shall be made.
- c. **Year of Chargeability:** Capital gain on distribution of assets to the shareholders is chargeable in his hands in the year in which the assets is distributed to him.
- d. Since the dividend is exempt in the hands of shareholders, the company is liable to pay dividend distribution tax
- e. As per section 2(22)(c) deemed dividend is equal to percentage of holding in the company multiplied by accumulated profits or total amount distributed whichever is lower.

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**\*Aggregate dividend** of upto ₹ 10 lakhs received by a specified assessee (including individuals, HUF, AOPs, BOIs, Firms, LLPs), resident in India, from domestic companies would be exempt u/s 10(34). The excess would be taxable @ 10% under section 115BBDA.

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### Section 46A: Capital Gains on buyback of shares or securities

**In case of specified securities other than shares:** Any consideration received by a holder of other specified securities (other than shares) from any company on purchase of its specified securities is chargeable to tax in the hands of the holder of specified securities. The difference between the cost of acquisition and the value of consideration received by the holder of securities is chargeable to tax as capital gains in his hands. The computation of capital gains shall be made in accordance with the provisions of section 48.

Such capital gains shall be chargeable in the year in which such securities were purchased by the company. For this purpose, "specified securities" shall have the same meaning as given in Explanation to section 77A of the Companies Act, 2013.

As per Section 68 of the Companies Act, 2013, "specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time.

**In case of shares (whether listed or unlisted):** With effect from 5.7.2019, in case of buyback of shares (whether listed or unlisted) by domestic companies, additional income-tax @20% (plus surcharge@12% and cess@4%) i.e. 23.296% is leviable in the hands of the company. Consequently, the income arising to the shareholders in respect of such buyback of shares by the domestic company would be exempt under section 10(34A), since the domestic company is liable to pay additional income-tax on the buyback of shares.

Taxability in the hands of the	Buyback of shares by domestic company	Buyback of shares by a company, other than domestic company	Buy back of specified securities by any company
Company	Subject to additional income tax @23.296% u/s 115QA.	Not subject to tax in the hands of the company.	Not subject to tax in the hands of the company.
Shareholders/ Holders of specified securities	Income arising to shareholders exempt under section 10(34A)	Income arising to shareholders taxable as capital gains under section 46A.	Income arising to holder of specified securities taxable as capital gains under section 46A.

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### Short Term & Long Term Capital Assets

As per Sec 2 (42A), capital asset will be a short term capital asset if it is held for NOT more than the following months preceding the date of transfer.

12 months	24 months	36 months
<ul style="list-style-type: none"><li>• Securities listed on recognized stock exchange</li><li>• Unit of equity oriented fund/ unit of UTI</li><li>• Zero Coupon Bond (ZCB)</li></ul>	<ul style="list-style-type: none"><li>• Unlisted shares</li><li>• Land or building or both</li></ul>	<ul style="list-style-type: none"><li>• Unit of debt oriented fund</li><li>• Unlisted securities other than shares</li><li>• Other capital assets like jewellery, drawings, paintings, sculptures etc.</li></ul>

As per Sec 2 (29A), Long Term Capital Asset means a capital asset which is not a short term capital asset as defined above.

### Meaning of Equity Oriented Fund

a fund set up under a scheme of a mutual fund specified under section 10(23D) and

i) in a case where the fund invested in the units of another fund which is traded on a recognized stock exchange –

- a minimum of 90% of the total proceeds of such fund is invested in the units of such other fund; and
- such other fund also invests a minimum of 90% of its total proceeds in the equity shares of domestic companies listed on a recognized stock exchange; and

ii) in any other case, a minimum of 65% of the total proceeds of such fund is invested in the equity shares of domestic companies listed on a recognized stock exchange.

However, the percentage of equity shareholding or unit held in respect of the fund, as the case may be, shall be computed with reference to the annual average of the monthly averages of the opening and closing figures.

### Meaning of Zero Coupon Bond (ZCB) [Sec 2(48)]

- Bonds issued by
    - i) Any infrastructure capital company
    - ii) Any infrastructure capital fund
    - iii) Public Sector company
    - iv) Scheduled Bank
  - No payment & benefit is received or receivable before maturity or redemption from such issuing entity and
  - Which the CG may notify on this behalf.
- on or after  
1<sup>st</sup> June, 2005

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### Determination of Period of Holding [Explanation 1 to Sec 2(42A)]

Sr. No.	Cases	Period of Holding
1.	Where shares held in a company in liquidation	The period subsequent to the date of liquidation of company shall be excluded.
2.	Where asset becomes the property of an assessee by virtue of section 49(1)	The period for which the capital asset was held by the previous owner shall be included.
3.	Where inventory of business is converted into or treated as a capital asset by the assessee	Period from the date of conversion or treatment as a capital asset shall be considered.
4.	Where share/s in the Indian company (amalgamated company), becomes the property of an assessee in lieu of share/s held by him in the amalgamating company at the time of transfer referred under section 47(vii).	The period for which the share(s) was held by the assessee in the amalgamating company shall be included.
5.	Where the share or any other security is subscribed by the assessee on the basis of right to subscribe to any share or security or by the person in whose favour such right is renounced by the assessee	Period from the date of allotment of such share or security shall be reckoned.
6.	Where the right to subscribe to any share or security is renounced in favour of any other person	Period from the date of offer of such right by the company or institution shall be reckoned
7.	Where any financial asset is allotted without any payment and on the basis of holding of any other financial asset (Eg: Bonus Shares)	Period from the date of allotment of such financial asset shall be reckoned
8.	Where share/s in the Indian company being a resulting company becomes the property of an assessee in consideration of demerger	The period for which the share/s were held by the assessee in demerged company shall be included
9.	Where unit/s becomes the property of the assessee in consideration of transfer of unit/s in the consolidated scheme of the mutual fund referred to in section 47(xviii)	The period for which the unit/s in the consolidating scheme of the mutual fund were held by the assessee shall be included
10.	Where equity share in a company becomes the property of the assessee by way of conversion of preference shares into equity shares referred under section 47(xb)	The period for which the preference shares were held by the assessee shall be included

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11.	Where unit/s becomes the property of the assessee in consideration of transfer of unit/s in the consolidated plan of a mutual fund scheme as referred to in section 47(xix)	The period for which the unit/s in the consolidating plan of a mutual fund scheme were held by the assessee shall be included
12.	Where any specified security or sweat equity shares is allotted or transferred, directly or indirectly, by the employer free of cost or at concessional rate to his employees (including former employees)	Period from the date of allotment or transfer of such specified security or sweat equity shares shall be reckoned
13.	Where capital asset, being trading or clearing rights of a recognised stock exchange in India acquired by a person pursuant to demutualisation or corporatisation of the recognised stock exchange in India as referred to in clause (xiii) of section 47	Period for which the person was a member of the recognised stock exchange in India immediately prior to such demutualisation or corporatisation shall be included
14.	Where capital asset, being equity share or shares in a company allotted pursuant to demutualisation or corporatisation of a recognised stock exchange in India as referred to in clause (xiii) of section 47	Same as above
15.	Where capital asset, being a unit of a business trust, allotted pursuant to transfer of share or shares as referred to in clause (xvii) of section 47	Period for which the share or shares were held by the assessee shall be included
16.	Where capital asset, being share or shares of a company, which is acquired by the non-resident assessee on redemption of Global Depository Receipts referred to in clause (b) of sub-section (1) of section 115AC held by such assessee	Period shall be reckoned from the date on which a request for such redemption was made
17.	In case of any other capital assets	Period shall be determined subject to any rules which the Board may make in this behalf. (Rule 8AA)
18.	As per Rule 8AA, where capital asset, being a share or debenture of a company, which becomes the property of the assessee in the circumstances mentioned in section 47(x)	Period for which the bond, debenture, debenture-stock or deposit certificate, as the case may be, was held by the assessee prior to the conversion shall be included

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### Sec 2(47): Definition of Transfer

Transfer, in relation to a capital asset, **includes:-**

- i) the **sale, exchange or relinquishment** of the asset; or
- ii) the **extinguishment of any rights** therein; or
- iii) the **compulsory acquisition** thereof under any law; or
- iv) the owner of a **capital asset may convert the same into the stock-in-trade** of a business carried on by him. Such conversion is treated as transfer; or
- v) the **maturity or redemption of a zero coupon bond**; or
- vi) 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; or

**Example:**

A enters into an agreement for the sale of his house. The purchaser gives the entire sale consideration to A. A hands over complete rights of possession to the purchaser since he has realized the entire sale consideration. Under Income-tax Act, the above transaction is considered as transfer; or

- vii) any transaction (whether by way of becoming a **member of, or acquiring shares in, a co-operative society**, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the **effect of transferring, or enabling the enjoyment of, any immovable property**.

**Example:**

A person may become a member of a co-operative society, company or other association of persons which may be building houses/ flats. When he pays an agreed amount, the society etc. hands over possession of the house to the person concerned. No conveyance is registered. For the purpose of income-tax, the above transaction is a transfer.

### Following certain transactions are regarded as Transfer

- ✓ Sale of gold bars, sovereigns, etc. used for puja (*H.H. Maharaja Rana Hemant Singhji – SC*)
- ✓ Redemption of Preference Shares (*Anarkali Sarabhai – SC*)
- ✓ Exchange of shares of one company with shares of another company (*Orient Trading Company – SC*) (However, if held as stock in trade, then PGBP would arise)

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- ✓ Reduction of Share Capital (*G. Narshimhan – SC*)
- ✓ Surrender of tenancy right for consideration (*Shiv Charan Singh – Delhi HC*)

### Sec 47: Transactions NOT regarded as Transfer

- i) Any distribution of capital assets on the **total or partial partition of a HUF**
- ii) Any transfer of capital asset under a **gift or will or an irrevocable trust**
- iii) Any transfer of capital asset by a **holding company to its 100% subsidiary Indian company** or **by a subsidiary company to its 100% holding Indian company**
- iv) Any transfer or issue of shares **by the resulting company, in a scheme of demerger to the shareholders of the demerged company**
- v) any transfer, in a scheme of **amalgamation**, of a capital asset, shares of an Indian company, held by the **amalgamating foreign company to the amalgamated foreign company**, if—
  - (a) at least 25% of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company; and
  - (b) such transfer does not attract tax on capital gains in the country in which the amalgamating company is incorporated
- vi) Any transfer by a **shareholder** in a scheme of **amalgamation** of shares **held by him in the amalgamating company** if the transfer is made in consideration of the allotment to him of any share or shares in the amalgamated company (except where the shareholder itself is the amalgamated company) and the amalgamated company is an Indian Company.

**Note** - If any other consideration (like cash, bonds etc.) is received other than shares of amalgamated company, capital gains will be levied on whole transaction. (*Gautam Sarabhai Trust*)
- vii) Any transfer **by an individual of sovereign gold bonds issued by RBI** by way of redemption
- viii) Any transfer by way of **conversion of bonds, debentures**, debenture stock, deposit certificates of a company, **into shares or debentures** of that company.
- ix) Any transfer by way of **conversion of preference shares of a company into equity shares** of that company
- x) Any transfer made outside India, of a capital asset being **rupee dominated bond**



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**(RDB)** of an Indian Company issued outside India, **by a non-resident to another non-resident.**

- xi) Any transfer made outside India, of a capital asset being **bonds** or Global Depository Receipts **(GDRs), by a non-resident to another non-resident.**
- xii) Any transfer of a capital asset being **bond**, or **GDR**, or **RDB** of an Indian Company or **derivative** or notified securities **by a non-resident on a recognised stock exchange located in International Financial Service Centre (IFSC), where the consideration is paid or payable in foreign currency.**
- xiii) Any transfer of a capital asset in a transaction of **reverse mortgage** under a scheme made and notified by the Central Government

**Section 10(43)**, further, provides that the amount received by the senior citizen as a loan, either in lump sum or in installments, in a transaction of reverse mortgage would be exempt from income-tax.

### Concept of Reverse Mortgage [Sec 47(xvi)]

It applies to Senior Citizens who own a residential house property in India. They can mortgage their house with a scheduled bank/housing finance co. for a lump sum amount or regular income.

Then, the senior citizen can use the amount for any purpose other than for speculative/trading purpose. Bank will recover the loan along with accumulated interest by selling the house after the death & excess amount will be given to the legal heirs. But before resorting to the sale of the house, preference will be given to the legal heirs.

#### Tax Implication:

- ✓ It is NOT treated as transfer for capital gain purposes.
- ✓ The amount received by the senior citizen as loan is exempt from tax u/s 10(43).

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### Rates of Capital Gains – Overview

#### Short Term Capital Gains

Section 111A @ 15%	Normal Rates of Tax
<ul style="list-style-type: none"> <li>✓ If STT is paid on transfer of               <ul style="list-style-type: none"> <li>a) Listed equity shares</li> <li>b) Units of Equity Oriented Fund</li> <li>c) Units of Business Trust</li> </ul> </li> <li>✓ Transaction in foreign currency on a recognized stock exchange located in an International Financial Service Centre (IFSC) even though STT is not payable</li> <li>✓ Chapter VI-A deduction is NOT available.</li> </ul>	<ul style="list-style-type: none"> <li>✓ On other short term capital assets</li> <li>✓ Chapter VI-A deduction is available</li> </ul>

#### Long Term Capital Gains

Sec 112A @ 10%	Section 112 @ 20%
<ul style="list-style-type: none"> <li>✓ If STT is paid on transfer of               <ul style="list-style-type: none"> <li>a) Listed equity shares</li> <li>b) Units of Equity Oriented Fund</li> <li>c) Units of Business Trust</li> </ul> </li> </ul> <p>then, tax @ 10% on long term capital gains exceeding 100,000/- on transfer of above long term capital asset.</p> <ul style="list-style-type: none"> <li>✓ Transaction in foreign currency on a recognized stock exchange located in an International Financial Service Centre (IFSC) even though STT is not payable</li> <li>✓ Chapter VI-A deduction is NOT available.</li> <li>✓ Benefit of indexation and currency fluctuation would not be available.</li> <li>✓ <b>Rebate u/s 87A is NOT available.</b></li> </ul>	<p><b>Unlisted securities, or shares of a closely held company</b></p> <ul style="list-style-type: none"> <li>➤ 20% with indexation benefit</li> <li>➤ 10% without benefit of indexation &amp; currency fluctuation. (<i>Available only to Non Resident &amp; Foreign Companies</i>)</li> </ul> <p><b>Listed securities or any unit of UTI or mutual fund (whether listed or not), not being covered under Section 112A or a zero-coupon bond</b></p> <ul style="list-style-type: none"> <li>➤ 10%, without the benefit of indexation or</li> <li>➤ 20%, availing the benefit of indexation</li> </ul> <p>whichever is more beneficial to the assessee</p> <p><b>Other long term capital assets – 20%</b></p> <ul style="list-style-type: none"> <li>✓ Chapter VI-A deduction is NOT available.</li> </ul>

#### Note:

- In case of a **resident individual or a Hindu Undivided Family (HUF)**, the long-term capital gain taxable u/s 112 or 112A or short-term capital gain taxable u/s 111A shall be reduced by the unexhausted basic exemption limit and the balance shall be subject to tax.

## Capital Gains

- The Finance (No. 2) Act, 2019 has levied an enhanced surcharge of 25% and 37%, where the total income of individuals/HUF/AOPs/BOIs exceeds ₹ 2 crores and ₹ 5 crores, respectively. However, the enhanced surcharge has been withdrawn on tax payable at special rates under section 111A and 112A on short-term and long-term capital gains arising from the transfer of equity share in a company or unit of an equity-oriented fund/ business trust, which has been subject to securities transaction tax. **[Press Release dated 24-8-2019]**

### Section 48: Method of Computation

Particulars	Amount (Rs.)	
Sale consideration received or accruing as a result of transfer of capital asset	xxxx	
Less: Expenditure incurred wholly and exclusively in connection with such transfer (for e.g., brokerage on sale)	xxxx	
<b>Net Sale Consideration</b>		xxxx
Less: Cost of acquisition (COA)	xxxx	
Cost of improvement (COI)	xxxx	xxxx
<b>Capital Gain (STCG/ LTCG)</b>		xxxx
Less: Exemptions under relevant sections of Capital Gains		xxxx
<b>Capital Gain chargeable to tax</b>		xxxx

### First Proviso to Section 48: Capital Gains in case of Non Residents

In the case of non-residents, capital gains arising from the transfer of **shares or debentures of an Indian company** are to be computed as follows:

- ✓ The cost of acquisition, the expenditure incurred wholly and exclusively in connection with the transfer and sale consideration are to be converted into the same foreign currency with which such shares were acquired.
- ✓ The resulting capital gains shall be reconverted into Indian currency.

#### **Note:**

- First proviso is mandatory & indexation benefit will not be available.
- Cost of Acquisition, Expenditure in connection with transfer and Sales consideration shall be converted at the average of TTBR & TTSR (of the foreign currency initially

## Capital Gains

utilised for purchase of shares/ debentures) as on their respective event dates shall be taken.

- iii) Capital gains computed in the foreign currency shall be converted into Indian currency by applying TTBR as on the date of transfer of shares/ debentures.
- iv) The shares, debentures and bonds of a Government company are also covered by the first proviso. However, the bonds of Central Government, State Government and RBI are not covered.

### Second Proviso to Section 48: Indexation

For computation of long-term capital gains, the cost of acquisition and cost of improvement will be increased by applying the cost inflation index (CII). Once the cost inflation index is applied to the cost of acquisition and cost of improvement, it becomes indexed cost of acquisition and indexed cost of improvement.

#### **Indexed Cost of Acquisition means:**

Cost of Acquisition x  $\frac{\text{Cost Inflation Index for the year in which asset is transferred}}{\text{Cost Inflation Index for the first year in which asset was held by the assessee or for the first year beginning on 01.04.2001, whichever is later}}$

#### **Indexed Cost of Improvement means:**

Cost of Improvement x  $\frac{\text{Cost Inflation Index for the year in which asset is transferred}}{\text{Cost Inflation Index for the year in which the improvement to the asset took place}}$

#### **Cost Inflation Index (CII) has been notified as under:**

Financial Year	Cost Inflation Index
2001-02	100
2002-03	105
2003-04	109
2004-05	113
2005-06	117
2006-07	122
2007-08	129
2008-09	137
2009-10	148
2010-11	167
2011-12	184
2012-13	200
2013-14	220

## Capital Gains

2014-15	240
2015-16	254
2016-17	264
2017-18	272
2018-19	280
<b>2019-20</b>	<b>289</b>

### Third Proviso to Section 48: Second Proviso to Section 48 NOT to apply

The indexation benefit under second proviso to Section 48 shall not apply to the capital gains arising from the transfer of Bonds & Debentures. However, benefit of indexation is available for Capital indexed bonds issued by the Central Government and Sovereign Gold Bond issued by the RBI under the Sovereign Gold Bond Scheme, 2015.

### Fifth Proviso to Section 48: Securities Transaction Tax NOT to be allowed as deduction

No deduction shall be allowed in computing the income chargeable under the head “Capital Gains” in respect of any amount paid on account of securities transaction tax (STT).

#### **Note:**

However, if shares/ units are held as Stock in Trade, then STT is allowed as business expenditure.

### Section 55: Cost of Acquisition

Sl. No.	Nature of asset	Cost of acquisition
1.	<b>Goodwill of business, trademark, brand name</b> , a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, tenancy rights, stage carriage permits and loom hours <ul style="list-style-type: none"><li>➤ Self-generated</li><li>➤ Acquired from previous owner</li></ul>	Nil Purchase Price

## Capital Gains

2.	<b>Rights Shares:</b> <ul style="list-style-type: none"> <li>➤ Original shares (which form the basis of entitlement of rights shares)</li> <li>➤ Rights entitlement (which is renounced by the assessee in favour of a person)</li> <li>➤ Rights shares acquired by the assessee</li> <li>➤ Rights shares which are purchased by the person in whose favour the assessee has renounced the rights entitlement</li> </ul>	<p>Amount actually paid for acquiring the original shares Nil</p> <p>Amount actually paid for acquiring the rights shares Purchase price paid to the renouncer of rights entitlement <b>plus</b> amount paid to the company which has allotted the rights shares.</p>
3.	<b>Bonus Shares</b> <ul style="list-style-type: none"> <li>➤ Bonus Shares allotted on or after 01.04.2001</li> <li>➤ Bonus Shares allotted before 01.04.2001</li> </ul>	<p>Nil</p> <p>Nil or FMV as on 1.4.2001, at the option of the assessee.</p>
4.	<b>Long term capital assets being,</b> <ul style="list-style-type: none"> <li>➤ equity shares in a company on which STT is paid both at the time of purchase and transfer or</li> <li>➤ unit of equity oriented fund or unit of business trust on which STT is paid at the time of transfer,</li> </ul> <b>acquired before 1st February, 2018</b>	<p>Cost of acquisition shall be the higher of</p> <ul style="list-style-type: none"> <li>i) cost of acquisition of such asset; <b>and</b></li> <li>ii) lower of <ul style="list-style-type: none"> <li>• the fair market value of such asset; and</li> <li>• the sale consideration received or accruing as a result of the transfer of the capital asset.</li> </ul> </li> </ul>
5.	<b>Any other capital asset</b> <ul style="list-style-type: none"> <li>➤ Where such capital asset became the property of the assessee before 1.4.2001</li> <li>➤ Where capital assets became the property of the assessee by way of distribution of assets on total or partial partition of HUF, under a gift or will, by succession, inheritance, distribution of assets on liquidation of a company, etc.</li> <li>➤ Where the capital asset became the property of the previous owner before 1.4.2001</li> </ul>	<p>Cost of the asset to the assessee, or FMV as on 1.4.2001, at the option of the assessee.</p> <p>Cost to the previous owner. Where such cost cannot be ascertained, FMV on the date on which the capital asset became the property of the previous owner.</p> <p>Cost to the previous owner or FMV as on 1.4.2001, at the option of the assessee.</p>

## Capital Gains

### Meaning of Fair Market Value:

- i) **In a case where the capital asset is listed on any recognized stock exchange as on 31.01.2018**
  - **If there is trading in such asset on such exchange on 31.01.2018** - The highest price of the capital asset quoted on such exchange on the said date
  - **If there is no trading in such asset on such exchange on 31.01.2018** - The highest price of such asset on such exchange on a date immediately preceding 31.01.2018 when such asset was traded on such exchange.
- ii) **In a case where the capital asset is a unit which is not listed on any recognized stock exchange as on 31.01.2018**  
The net asset value of such unit as on the said date
- iii) **In a case where the capital asset is an equity share in a company which is not listed on a recognized stock exchange as on 31.01.2018 but listed on such exchange on the date of transfer OR listed on a recognized stock exchange on the date of transfer and which became the property of the assessee in consideration of share which is not listed on such exchange as on 31.01.2018 by way of transaction not regarded as transfer under section 47**  
An amount which bears to the cost of acquisition the same proportion as CII for the financial year 2017-18 bears to the CII for the first year in which the asset was held by the assessee or on 01.04.2001, whichever is later.

### Section 55: Cost of Improvement

- (1) **Goodwill of a business, etc.:** In relation to a capital asset being goodwill of a business or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, the cost of improvement shall be taken to be **Nil**.
- (2) **Any other capital asset:**
  - (i) Where the capital asset became the property of the previous owner or the assessee **before 1-4-2001**, cost of improvement means all expenditure of a capital nature incurred in making any addition or alteration to the capital asset on or after the said date by the previous owner or the assessee.
  - (ii) In any other case, cost of improvement means all expenditure of a capital nature incurred in making any additions or alterations to the capital assets by the assessee after it became his property. However, there are cases where the capital asset might become the property of the assessee by any of the modes specified in section 49(1). In that case, cost of improvement means capital expenditure in making any addition or alterations to the capital assets incurred by the previous owner.

## Capital Gains

However, cost of improvement does not include any expenditure which is deductible in computing the income chargeable under the head “Income from house property”, “Profits and gains of business or profession” or “Income from other sources”.

### **Sec 49: Ascertainment of Cost under certain circumstances**

A person becomes the owner of a capital asset not only by purchase but also by several other methods. Section 49 gives guidelines as to how to compute the cost under different circumstances.

**1. Cost to previous owner deemed as cost of acquisition of asset:** In the following cases, the cost of acquisition of the asset shall be deemed to be cost for which the previous owner of the property acquired it. To this cost, the cost of improvement to the asset incurred by the previous owner or the assessee must be added:

Where the capital asset became the property of the assessee:

- (i) on any distribution of assets on the total or partition of a HUF;
- (ii) under a gift or will;
- (iii) by succession, inheritance or devolution;
- (iv) on any distribution of assets on the liquidation of a company;
- (v) under a transfer to revocable or an irrevocable trust;
- (vi) under any transfer of capital asset by a holding company to its wholly owned subsidiary Indian company or by a subsidiary company to its 100% holding Indian company, referred to in section 47(iv) and 47(v) respectively;
- (vii) under any transfer referred to in section 47(vi) of a capital asset by amalgamating company to the amalgamated Indian company, in a scheme of amalgamation;
- (viii) under any transfer referred to in section 47(vib), of a capital asset by the demerged company to the resulting Indian company, in a scheme of demerger;
- (ix) by conversion by an individual of his separate property into a HUF property, by the mode referred to in section 64(2).

Accordingly, section 2(42A) provides that in all such cases, for determining the period for which the capital asset is held by the transferee, the period of holding of the asset by the previous owner shall also be considered.



## Capital Gains

### Note:

In a case of *CIT vs. Manjula J. Shah 16 Taxman 42 (Bom.)* Hon'ble High Court pronounced where the assessee had acquired a capital asset by way of gift from the previous owner, the said asset can be treated as a long-term capital asset considering the period of holding by the assessee as well as the previous owner. The court also held that the indexed cost of acquisition in case of gifted asset has to be computed with reference to the year in which the previous owner first held the asset and not the year in which the assessee became the owner of the asset.

**2. Cost of acquisition of shares received under the scheme of Amalgamation:** The cost of shares in an amalgamated Indian company in a scheme of amalgamation referred to in section 47(vii) shall be deemed to be the cost of acquisition to him of the shares in the amalgamated company [Section 49(2)]

**3. Cost of acquisition of shares received during the process of conversion of bonds or debentures, debenture stock or deposit certificates:** It is possible that a person might have become the owner of shares or debentures in a company during the process of conversion of bonds or debentures, debenture stock or deposit certificates referred under section 47(x).

In such a case, the cost of acquisition to the person shall be deemed to be that part of the cost of debentures, debenture stock, bond or deposit certificate in relation to which such asset is acquired by that person [Section 49(2A)].

**4. Cost of acquisition of specified security or sweat equity shares:** Where the capital gain arises from the transfer of specified security or sweat equity shares referred to in section 17(2)(vi), the cost of acquisition of such security or shares shall be the fair market value which has been taken into account for perquisite valuation [Section 49(2AA)].

**5. Cost of acquisition of units acquired under consolidated scheme of Mutual Fund:** The cost of acquisition of the units acquired by the assessee in consolidated scheme of mutual fund in consideration of transfer referred in section 47(xviii) shall be deemed to be the cost of acquisition to him of the units in the consolidating scheme of mutual fund [Section 49(2AD)].

## Capital Gains

**6. Cost of acquisition of equity shares received at the time of conversion of preference shares:** Cost of acquisition of the equity share of a company, which became the property of the assessee in consideration of transfer referred to in section 47(xb), shall be deemed to be that part of the cost of the preference share in relation to which such asset is acquired by the assessee. [Section 49(2AE)]

**7. Cost of acquisition of units acquired under consolidated plan of Mutual Fund scheme:** Cost of acquisition of the unit or units in the consolidated plan of the scheme of the mutual fund in consideration of a transfer referred to in section 47(xix) shall be deemed to be the cost of acquisition to him of the unit or units in consolidating plan of the scheme of the mutual fund. [Section 49(2AF)]

**8. Cost of acquisition of shares received in the resulting company, in the scheme of demerger:** In the case of a demerger, the cost of acquisition of the shares in the resulting company shall be the amount which bears to the cost of acquisition of shares held by the assessee in the demerged company the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged company immediately before such demerger [Section 49(2C)].

**9. Cost of acquisition of the shares held in the demerged company:** The cost of acquisition of the original shares held by the shareholder in the demerged company shall be deemed to have been reduced by the amount as so arrived under the sub-section (2C) [Section 49(2D)].

**10. Cost of acquisition of property subject to tax under section 56(2)(x):** Where the capital gain arises from the transfer of such property which has been subject to tax under section 56(2)(x), the cost of acquisition of the property shall be deemed to be the value taken into account for the purposes of section 56(2)(x) [Section 49(4)].

**11. Cost of acquisition of capital asset, being share in the project referred under section 45(5A):** Where the capital gain arises from the transfer of a capital asset, being share in the project, in the form of land or building or both, referred to in section 45(5A) which is chargeable to tax in the previous year in which the completion of certificate for the whole or part of the project is issued by the competent authority), the cost of acquisition of such asset, shall be the amount which is deemed as full value of consideration in that sub-section i.e., stamp duty value on the date of issue of certificate of completion plus cash consideration. However, this does not apply to a capital asset, being share in the project

## Capital Gains

which is transferred on or before the date of issue of said completion certificate [Section 49(7)].

### **12. Cost of acquisition of a capital asset which was used by the assessee as an inventory:**

Where the capital gain arises from the transfer of a capital asset which was used by the assessee as inventory earlier before its conversion into capital asset, the cost of acquisition of such capital asset shall be the fair market value of the inventory as on the date on such conversion determined in the prescribed manner. [Section 49(9)]

## **Sec 50 & 50A: Computation of Capital Gains in case of Depreciable Assets**

**Transfer of depreciable assets:** Section 50 provides for the computation of capital gains in case of depreciable assets. It may be noted that where the capital asset is a depreciable asset forming part of a block of assets, section 50 will have overriding effect in spite of anything contained in section 2(42A) which defines a short-term capital asset.

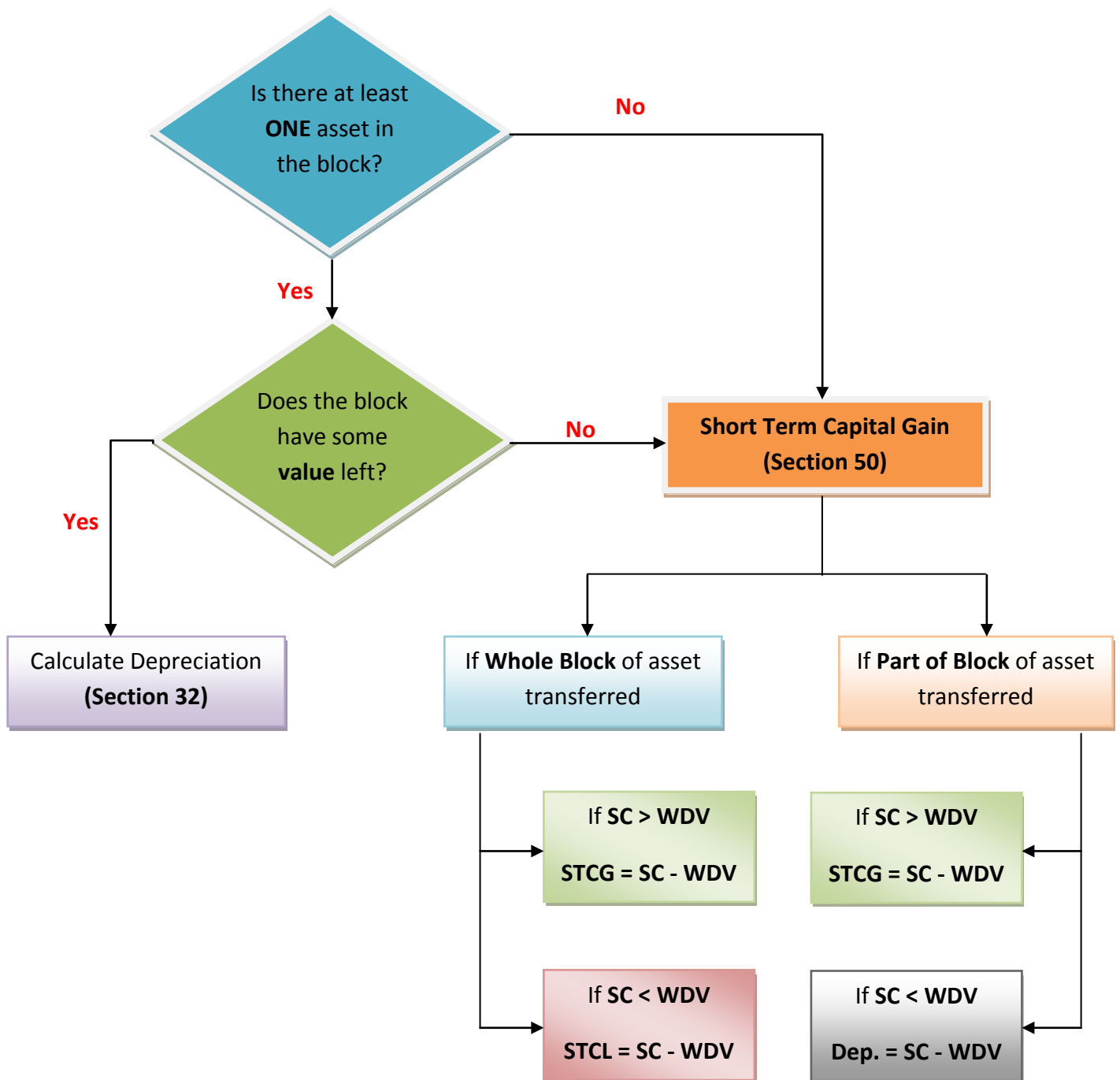
### **Tax Treatment:**

- ✓ If Full value of consideration > [Opening WDV of Block (+) Actual Cost of Asset acquired in the Block during the P.Y. (+) Expenses in connection with transfer of asset] : STCG will arise of the above difference.
- ✓ If Full value of consideration < [Opening WDV of Block (+) Actual Cost of Asset acquired in the Block during the P.Y. (+) Expenses in connection with transfer of asset] **and** the block of assets cease to exist: STCL will arise of the above difference.
- ✓ If Full value of consideration < [Opening WDV of Block (+) Actual Cost of Asset acquired in the Block during the P.Y. (+) Expenses in connection with transfer of asset] **and** the block of assets **DOES NOT** cease to exist: Capital gain will **not** arise and the above difference will become **Closing WDV of the block of assets**.

**Cost of acquisition in case of power sector assets [Section 50A]:** With respect to the power sector, in case of depreciable assets referred to in section 32(1)(i), the provisions of sections 48 and 49 shall apply subject to the modification that the WDV of the asset (as defined in section 43(6)), as adjusted, shall be taken to be the cost of acquisition. *(To be discussed with PGBP)*

## Capital Gains

### Overview of Capital Gains on depreciable assets



## Capital Gains

### Sec 50B: Capital Gains in case of Slump Sale

**Meaning of Slump Sale:** It means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sale.

However, it has been provided that if the agreement that the values are determined for the sole purposes of payment of stamp duty, registration fees or such similar taxes then this will not amount to assignment of values to individual assets and liabilities.

**Charge:** Capital Gains will be taxable in the previous year in which the **slump sale is affected**.

**Nature of Capital Gains:** It will depend on the period of holding of the undertaking transferred by way of slump sale. If the undertaking is held for more than 36 months immediately preceding the date of transfer, then the capital gains shall be long term. This is irrespective of the fact that the undertaking consist of certain assets which are short term capital assets.

Also, PGBP income will NOT arise even if stock is transferred in slump sale.

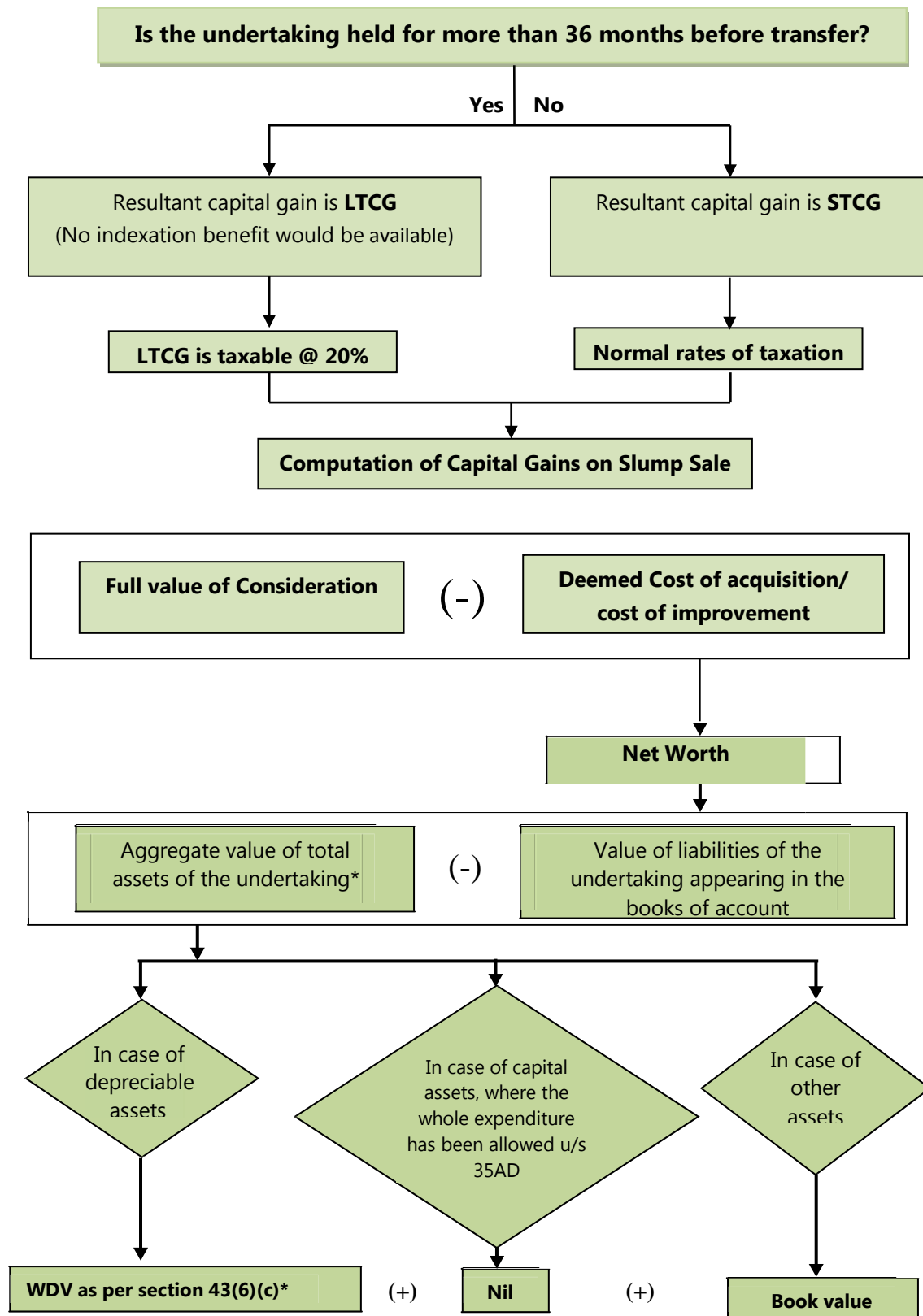
### **Computation: Capital Gains = Slump Sale Consideration – Net Worth of the Undertaking**

Whereas, Net Worth = Aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in the books of account.

- ✓ However, any change in the value of assets on account of revaluation (past year or current year) of assets shall not be considered for this purpose.
- ✓ **Non – Depreciable assets** to be taken at their book value.
- ✓ **Depreciable Assets** to be taken at written down value of block of assets determined in as per section 43(6)(c)(i)(c).
- ✓ Capital Asset in which depreciation has been claimed at 100% under section 35AD, the value will be taken as NIL.
- ✓ Transferor can carry forward the unabsorbed losses and unabsorbed depreciation of the transferred undertaking.

## Capital Gains

### Capital Gains on Slump Sale of an Undertaking [Section 50B]



\* Ignore revaluation effect

### Sec 50C: Special Provision for Full Value of Consideration in certain cases

**Stamp Duty Value would be the Full value of consideration:** Where the consideration received or accruing as a result of transfer of a capital asset, **being land or building or both**, is less than the value adopted or assessed or assessable by any authority of a State Government (Stamp Valuation Authority) for the purpose of payment of stamp duty in respect of such asset, such value adopted or assessed or assessable shall be deemed to be the full value of the consideration received or accruing as a result of such transfer [Sub-section (1)]. Full value of consideration where the date of agreement and date of registration are not the same:

In order to ensure parity in tax treatment vis-a-vis section 43CA, it has been provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of computing the full value of consideration.

**Condition for taking Stamp duty value of the date of agreement:** However, the stamp duty value on the date of agreement can be adopted only in a case where the amount of consideration, or a part thereof, has been paid by way of an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, on or before the date of the agreement for the transfer of such immovable property.

*However, where the stamp duty value **does not exceed 105%** of the sale consideration received or accruing as a result of the transfer, the consideration so received or accruing shall be deemed to be the full value of the consideration.*

**Reference to Valuation Officer:** Where

- the assessee claims before an Assessing Officer that the value so adopted or assessed or assessable by the authority for payment of stamp duty exceeds the fair market value of the property as on the date of transfer and
- the value so adopted or assessed or assessable by such authority has not been disputed in any appeal or revision or no reference has been made before any other authority, court or High Court, the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer as defined in section 2(r) of the Wealth-tax Act, 1957. [Sub-section (2)].

## Capital Gains

**Where the value ascertained by such Valuation Officer exceeds the value adopted or assessed or assessable by the Stamp authority:** The value adopted or assessed or assessable shall be taken as the full value of the consideration received or accruing as a result of the transfer [Sub-section (3)].

### **Note:**

The term “assessable” has been added to cover transfers executed through power of attorney.

The term ‘assessable’ has been defined to mean the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

### **Sec 50CA: Special provision for full value of consideration for transfer of unlisted shares**

In order to ensure the full consideration is not understated in case of transfer of unlisted shares, section 50CA provides that (from A.Y. 18-19) where the consideration received or accruing as a result of transfer of a capital asset, being share of a company other than a quoted share, is less than the fair market value of such share determined in such manner as may be prescribed, such fair market value shall be deemed to be the full value of consideration received or accruing as a result of such transfer.

For the purpose, “quoted shares” means the share quoted on any recognized stock exchange with regularity from time to time, where the quotation of such share is based on current transaction made in the ordinary course of business.

**The provisions of this section would, however, not be applicable to any consideration received or accruing as a result of transfer by such class of persons and subject to such conditions as may be prescribed.**

### **Sec 50D: Fair Market Value of the Capital Asset on the date of transfer to be taken as sale consideration, where the consideration is not determinable**

Section 50D provides that, in case where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined, then, for the purpose of computing income chargeable to tax as capital gains, the fair market value of the said asset on the date of transfer shall be deemed to be the full



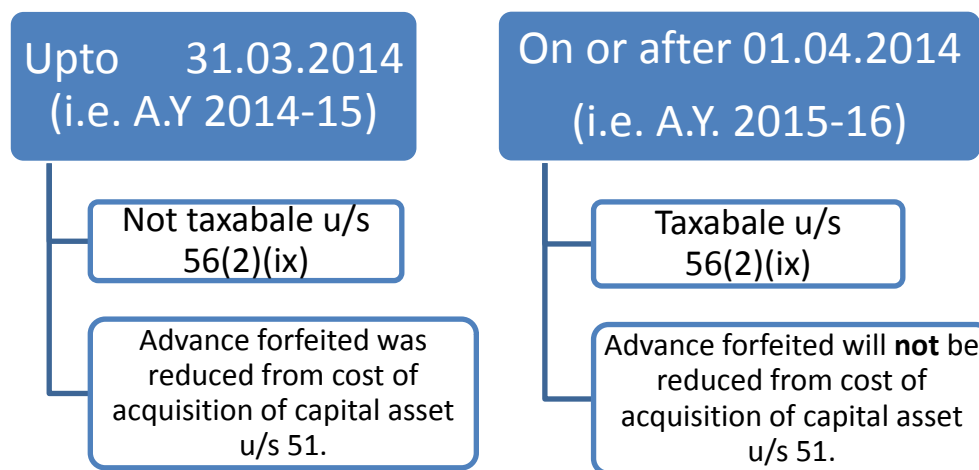
## Capital Gains

value of consideration received or accruing as a result of such transfer.

### Sec 51: Advance money received which was forfeited

Any amount received and retained by the assessee by way of advance for a proposed transfer of a capital asset, which for some reasons, could not materialize shall be deducted in computing the actual cost of acquisition of the capital asset on its subsequent transfer.

Section 56(2)(ix) provides for the taxability of any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset. Consequently, such sum shall be chargeable to income-tax under the head 'Income from other sources', if such sum is forfeited **on or after 1st April, 2014** and the negotiations do not result in transfer of such capital asset.



### Exemptions of Capital Gains under Section 10

#### Sec 10(33): Exemption of capital gain on transfer of a unit of Unit Scheme, 1964 (US 64)

This clause provides that any income arising from the transfer of specified units, shall be exempt from tax. Such transfer should take place on or after 1.4.2002.

#### Sec 10(37): Exemption of capital gains on compulsory acquisition of agricultural land situated within specified urban limits

Where the assessee being **Individual or HUF** transfers the agricultural land situated in **Urban Area** used for **agricultural purposes** by such HUF or individual or parent of such individual during the period of **two years** immediately preceding the date of transfer under compulsory acquisition under any law, capital gains computed with respect to original compensation as well as enhanced compensation are exempt.

## Capital Gains

### Exemptions of Capital Gains under Section 54, 54B, 54D, 54EC, 54EE, 54F

S.N.	Particulars	Sec 54	Sec 54B	Sec 54D	Sec 54EC	Sec 54EE	Sec 54F
1	<b>Eligible Assessee</b>	Individual/ HUF's	Individual/ HUF's	Any Assessee	Any Assessee	Any Assessee	Individual/ HUF's
2	<b>Asset Transferred</b>	Residential House (LTCA)	Urban Agricultural Land	Land & building forming part of an industrial undertaking	Land or building or both (LTCA)	Any LTCA	Any LTCA other than residential house
3	<b>Other Conditions</b>	Income from such house should be chargeable under the head "Income from House Property"	Land should be used for agricultural purposes by assessee or his parents or a HUF for two years	Transfer should be way of compulsory acquisition of the industrial undertaking	-	-	Assessee should not own more than one residential house on the date of transfer
4	<b>Qualifying Asset i.e. asset in which capital gains has to be invested</b>	One Residential House situated in India or, Two residential houses in India, at the option of the assessee where capital gains does not exceed ₹ 2 Cr.	Land being used for agriculture purpose (Rural / Urban)	Land or Building or Right in land or building	Bonds of NHAI or RECL or any other bond notified by CG (Redeemable after 5 years)	Unit issued before the 1st April, 2019 of Specified Fund as notified by the Central Government	One Residential House situated in India

## Capital Gains

S.N.	Particulars	Sec 54	Sec 54B	Sec 54D	Sec 54EC	Sec 54EE	Sec 54F
5	Time Limit for purchase/construction	Purchase within 1 year or 2 years after date of transfer or construct within 3 years after date of transfer	Purchase within 2 years from the date of transfer	Purchase/construct within 3 years after transfer, for shifting or re-establishing the existing undertaking or setting up a new industrial undertaking	Purchase within 6 months from the date of transfer	Purchase within 6 months from the date of transfer	Purchase within 1 year or 2 years after date of transfer or construct within 3 years after date of transfer
6	Amount of Exemption	Cost of new Residential House or two houses, as the case maybe or Capital Gain, which is lower is exempt	Cost of new Agricultural Land or Capital Gain, which is lower	Cost of new asset or Capital Gain, which is lower	Capital Gain or amount invested in specified bonds (for 54EC) and units (for 54EE), whichever is lower. Maximum permissible investment out of capital gains arising in any financial year is Rs. 50 lakhs, whether such investment is made in the current FY or subsequent FY or both.	Capital Gain or amount invested in specified bonds (for 54EC) and units (for 54EE), whichever is lower. Maximum permissible investment out of capital gains arising in any financial year is Rs. 50 lakhs, whether such investment is made in the current FY or subsequent FY or both.	Cost of New residential house $\geq$ Net Sale Consideration of original asset, CG is exempt. Cost of New residential house < Net Sale Consideration of original asset, proportionate CG is exempt.

## Capital Gains

### Capital Gains Account Scheme (CGAS):

Under sections 54, 54B, 54D and 54F, capital gains is exempt to the extent of investment of such gains/ net consideration (in the case of section 54F) in specified assets within the specified time. If such investment is not made before the date of filing of return of income, then the capital gain or net consideration (in case of exemption under section 54F) has to be deposited under the CGAS.

#### **Time limit:**

Such deposit in CGAS should be made before filing the return of income or on or before the due date of filing the return of income, whichever is earlier. Proof of such deposit should be attached with the return. The deposit can be withdrawn for utilization for the specified purposes in accordance with the scheme.

#### **Consequences if the amount deposited in CGAS is not utilized within the stipulated time of 2 years / 3 years:**

If the amount deposited is not utilized for the specified purpose within the stipulated period, then the unutilized amount shall be charged as capital gain of the previous year in which the specified period expires. In the case of section 54F, proportionate amount will be taxable.

CBDT Circular No.743 dated 6.5.96 clarifies that in the event of death of an individual before the stipulated period, the unutilized amount is not chargeable to tax in the hands of the legal heirs of the deceased individual. Such unutilized amount is not income but is a part of the estate devolving upon them.

### **Sec 54H: Extension of time for acquiring new asset or depositing or investing amount of Capital Gain**

In case of compulsory acquisition of the original asset, where the compensation is not received on the date of transfer, the period available for acquiring a new asset or making investment in CGAS under sections 54, 54B, 54D, 54EC and 54F would be considered from the date of receipt of such compensation and not from the date of transfer.

### **Sec 55A: Reference to Valuation Officer**

Section 55A provides that the Assessing Officer may refer the valuation of a capital asset to a Valuation Officer in the following circumstances with a view to ascertaining the fair market value of the capital asset for the purposes of capital gains –

## Capital Gains

- ✓ In a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the Assessing Officer is of the opinion that the value so claimed is at variance with its fair market value.

Under this provision, the Assessing Officer can make a reference to the Valuation Officer in cases where the fair market value is taken to be the sale consideration of the asset. An Assessing Officer can also make a reference to the Valuation Officer in a case where the fair market value of the asset as on 01.04.2001 is taken as the cost of the asset, if he is of the view that there is any variation between the value as on 01.04.2001 claimed by the assessee in accordance with the estimate made by a registered valuer and the fair market value of the asset on that date.

- ✓ If the Assessing Officer is of the opinion that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than 15% of the value of asset as claimed or by more than ₹ 25,000 of the value of the asset as claimed by the assessee.
- ✓ The Assessing Officer is of the opinion that, having regard to the nature of asset and other relevant circumstances, it is necessary to make the reference.