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INCOME FROM CAPITAL GAINS

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ABSTRACT

There are many sources of income, but capital gain one of the most important sources of income. Following are the considerable exemption to avail maximum benefits with new section 112A & maximum tax planning is also needed in capital gain income. Capital Gain is usually distinguished from other kinds of income. Income earned by dealing "in" assets or property is business income. Income earned on sale of assets "with" which business is done, is "Capital Gain". This is a basic difference.

***KEYWORDS**: Capital Gain, Business Income, Sale of Assets, Securities Transaction Tax (STT).*

Introduction

Profits or loss arises on transfer of a capital asset shall be taxable under head "Capital Gains".

The essential conditions U/S 45(1) to be satisfied to charge any income under the head "capital Gains":

- There is a capital asset.
- The assessee transfers (sale, exchange, conversion etc.) such capital asset in previous year.

There are Two Types of Capital Assets i.e., Long Term and Short Term

Short term Capital means asset held up to 36 months immediately before the date of transfer. However, following assets held up to 12 months shall be treated as short-term capital assets:

- Securities of company listed in Recognized Stock exchange in India such as equity shares, preference shares.
- Units of Unit Trust of India;
- Units of equity oriented mutual funds; or
- Zero Coupon Bonds.

Long Term Capital Asset means assets which are not short term capital Assets but for land & Building being immovable properties 24 months to be considered instead of 36/12 months.

Section 48 – Computation of Capital Gains

Sales consideration	…………
Less - the cost of acquisition	………….
Less - the cost of any improvement	..…………
Less - Transfer Expenses	…………..

First Exception - Capital Gains in Case of Non-Resident

The capital gains arising from the transfer of shares or debentures in an Indian company, shall be computed by converting the followings namely (Sale consideration, cost of acquisition and transfer expenses) in foreign currencies and the capital gain so arrived in foreign currency is reconverted into Indian currency.

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Second Exception of Section 48 – Indexation

- The indexation benefit is not available to non-residents.
- Indexation is not applied to securities being listed on recognized stock exchange in India on which STT is paid at the time of purchase or sale.
- Where the capital gains arises from the transfer of a long-term capital assets, then for the purposes of computing capital gains:
  - The cost of Acquisition shall be indexed and
  - Cost of improvement is also indexed.

Third exception of section 48 – some assets not benefits of index cost

In Case capital gains arising from the transfer of a long-term capital asset being a bond or debentures the indexation benefit is not available

Fourth Exception of Section 48

Securities Transaction Tax (STT) not to allow as Deduction.

Exemption under Capital Gain 54

Section 54 - Investment in Residential House Property

- **Applicability:** Individual and HUF(long term &short term)
- **Asset Transferred:** Residential House property
- **New Asset to be Acquired:** One residential house property
- **Time Limit for Investment:** Purchase: within 1 year before or 2 years after date of transfer
- **Construction**: within 3 years after date of transfer

Amount of Exemption

Investment in new assets or capital gain, whichever is lower

Section 54B – Transfer of Urban Agriculture Land

- **Applicability:** Individual and HUF(long term & short term)
- **Asset Transferred:** Agriculture land used by assessee or by his parents or HUF for agriculture purposes in last 2 years before its transfer
- **New Asset to be Acquired:** Agricultural land (may be in urban area or rural area)
- **Time Limit for Investment**: Within 2 years after date of transfer
- **Amount of Exemption**: Investment in agricultural land or capital gain, whichever is lower
- **Planning**: is benefits more if acquired rural land

Section 54D – Compulsory Acquisition of Land & Building

- **Applicability**: All Assessees (long term and short term)
- **Asset Transferred**: Compulsory acquisition of land or building forming part of industrial undertaking (which was used for industrial purposes for at least 2 years before its acquisition).
- **New Asset to be Acquired**: Land or building for shifting or reestablishing said industrial undertaking
- **Time Limit for Investment**: Within 3 years from date of receipt of compensation
- **Amount of Exemption**: Investment in new assets or capital gain, whichever is lower

Section 54EC – Investment in Notified Bonds

- **Applicability**: All assesses(long term)
- **Asset Transferred**: Land or Building or Both.
- **New Asset to be Acquired**: Bond of NHAI or REC.
- **Time Limit for Investment**: Within 6 months from date of transfer
- **Amount of Exemption**: Investment in bonds or capital gains, whichever is lower, however, maximum up to Rs. 50 lakhs.

Section 54EE – Exemption from Capital Gains on Investment in Units of a Specified Funds

- **Applicability**: All Assessees (long term)
- **New Asset to be Acquired**: Units of fund notified by Central Government to finance start-ups

- **Time Limit for Investment**: Within 6 months from the date of transfer of original asset.
- **Amount of Exemption**: Investment in notified units or capital gains, whichever is lower, however, maximum up to Rs. 50 lakhs.

Section 54F – Transfer of Other LTCA and Investment in House Property

- **Applicability**: Individual/ HUF(long term)
- **Asset Transferred**: Any Long Term Capital Assets Excluding Residential House property.
- **New Asset to be Acquired**: One house property for residential purpose.
- **Time Limit for Investment**: Acquire: within 1 year before or within 2 years from date of transfer.
- **Construct**: within 3 years from date of transfer
- **Amount of Exemption**: Value of new property X capital gain/net sale consideration

Tax on Long Term Capital Gains In Certain Cases (Section 112A)

- **LTCG on Transfer of**
  - Equity Shares, or
  - Equity Oriented Mutual Funds, or
  - Units of Business Trust

  In Excess of RS. 1,00,000 shall be Taxable @10% if following conditions are satisfied
  - o STT Paid on acquisition & Transfer of equity shares
  - o STT Paid on Transfer of equity Oriented Units & Units of Business Trust.
- Deductionunder Chapter VI-A Not Allowed against Capital Gain referred u/s 112A
- Rabate u/s 87A is not available against LTCG Taxable u/s 112A
- The Benefit of first Proviso and Second Proviso to Section 48 Shall not Apply while computing LTCG u/s 112A
- The Cost of Acquisition of LTCG referred u/s 112A shall be higher of-
  - Cost of Acquisition of such Asset &
  - Lower of:
  - o FMV of such asset and
  - o Full value of consideration received or accruing as a result of the transfer of the transfer of the capital asset.

Tax Calculation of LTCG u/s 112A

Example:Profit from Business – 300000, Income from other sources 60000, LTCG (112A) 250000. Calculate Tax Liability of Mr. Hari Age 35 Years.

Calculation of Tax Liability

Tax on LTCG @10% in Excess of 100000	15000
Balance Income =300000+60000=360000	
Up to 250000=	Nil
Balance 110000@5%	5,500
Total Tax	20,500
Add:-Health & Education Cess 4%	820
Net Tax Payable	**21,320**

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