# : INCOME FROM CAPITAL GAIN:

1. <u>What is the basis of charge:</u>

   Any Profit or gain arising from the transfer of a capital asset is chargeable to tax under the head "Capital Gains" in the previous year in which the transfer took place, it is not eligible for exemption under sections 54,54B,54D,54EC, 54EE, 54F, 54G, 54GA and 54GB in other words, capital gains' tax liability arises only when the following conditions are satisfied:
   1. There should be capital Asset.
   2. The capital asset is transferred by the assessee
   3. Such transfer place during the previous year.
   4. Any profit or gains arises as result of transfer
   5. Such profit or gains is not exempt under sections 54,54B,54D,54EC, 54EE, 54F, 54G, 54GA and 54GB.
   6. If the aforesaid conditions are satisfied, then capital gain is taxable in the assessment year relevant to the previous year in which the capital asset is transferred.

2. <u>What is included and excluded from capital asset:</u>

   "Capital Asset" is defined to include property of any kind, whether fixed or circulating, movable and immovable or intangible. The following assets are, however excluded from the definition of "Capital assets":
   a. Any stock-in-trade, consumable stores or raw material held for the purposes of business or profession;
   b. Personal effects of the assessee, that is to say, movable property including wearing apparel and furniture held for his personal use or for the use of any member of his family dependent upon him (jewelry is treated as a capital asset even though it is meant for personal use of the assessee).
   c. Agricultural land in India provided it is not situated:
      1. In any area within the territorial jurisdiction of a municipality or a cantonment board having a population of 10,000 or more; or
      2. In any notified area;
   d. 6-1/2 per cent Gold Bond, 1977 or 7 per cent Gold Bonds, 1980 or National Defence Gold Bonds, 1980 issued by the Central Government;
   e. Special Bearer Bonds, 1991; and
   f. Gold Deposit Bonds issued under Gold Deposit Scheme, 1999.
   g. Deposit certificates issued under the Gold Monetisation Scheme, 2015

3. <u>Types of capital Gains:</u>
   1. Short Term Capital Gain.
   2. Long Term Capital Gain.

1. <u>Short Term Capital Gain.:-</u>

   Short tem capital gain means a capital asset held by an assessee for not more than 36 months, immediately prior to its data of transfer. However, in the following cases asset, held for not more than 12 months, is treated as short term capital assets:
   a. Equity or preference shares in a company (whether shares are quoted or not).
   b. Securities (like debentures, Government securities) listed in a recognized stock exchange in India.
   c. Units of UTI (whether quoted or not).
   d. Units of a mutual fund (whether quoted or not).

   ***Note: Unlisted shares and immovable property (being land or building or both) held for not more than 24 months immediately prior to the date of transfer shall be treated as short-term capital asset.***

2. Long Term Capital Gains:
   An asset other than a short-term capital asset is regarded as a long term capital asset.

4. What is transfer of Capital Asset:
Transfer, in relation to a capital asset, includes sale, exchange or relinquishment of the asset or the extinguishments of any right therein or the compulsory acquisition thereof under any law.

5. Capital Gains – How to computed:-
Computation of capital gain depends upon the nature of capital asset transferred, viz., short-term capital asset or long term capital asset. Capital gain arising on transfer of a short term capital asset is short term capital gain, whereas transfer of long term capital asset generates long term capital gain.

**Method of computation of short term and long term capital gain is as follows:**

| Computation of short term capital gain | Computation of Long term capital gain |
|---|---|
| 1. Find out full value of consideration. | 1. Find out full value of consideration. |
| 2. Deduct the following:<br>a. Expenditure incurred wholly and exclusively connection with such transfer.<br>b. Cost of acquisition and<br>c. Cost of improvement<br><br>3.From the resulting sum deduct the exemption provided by section 54B, 54D, 54G and 54GA<br><br>4. The balancing amount is short term capital gain. | 2. Deduct the following:<br>d. Expenditure incurred wholly and exclusively connection with such transfer.<br>e. Indexed Cost of acquisition and<br>f. Indexed Cost of improvement<br><br>3.From the resulting sum deduct the exemption provided by section 54, 54B, 54D, 54EC, 54EE, 54F, 54G, 54GA and 54GB.<br><br>4. The balancing amount is short term capital gain. |

- Full Value of consideration:
  The dictionary meaning of the word “Full” is whole or entire or complete. The “full” has been used in this section in contrast to “a part of the price”. The expression “full value” means the whole price without any deduction.

| Sr. No. | Particulars | Sales Consideration |
|---|---|---|
| 01 | Conversion of capital assets into stock in trade | Fair market value on the date on which it was converted stock in trade.<br>Note: Capital gain chargeable to tax in the year in which stock in trade sold. |
| 02 | Capital assets transfer by a partner to a firm | Amt. recorded in the books of account of the firm. |
| 03 | Capital assets transfer by a firm to a partner | Fair market value on the date of transfer |
| | In case of transfer of land or building, if sale consideration declared in the conveyance deed is less than the stamp duty value | The value adopted or assessed or assessable by the Stamp Valuation Authority shall be deemed to be the full value of consideration. However, no such adjustment is required to be made if value adopted for stamp duty purposes does not exceed 110% of the sale consideration. |
| 04 | Compulsory acquisition of an assets | Initial compensation is taken as full value of sales consideration. |
| 05 | Enhanced Compensation Received | Amt. of Enhanced Compensation received. |

- Expenditure on transfer:
  Expenditure incurred wholly and exclusively in connection with transfer of capital asset is deductible from full value of consideration. E.g. brokerage or commission paid, cost of stamp, registration fees borne by the vendor traveling expenses incurred in connection with transfer, litigation expenditure for claiming enhancement of compensation award in the case of compulsory acquisition of assets.

**Cost of acquisition:**
Cost of acquisition of an asset is the value for which is was acquired by the assessee. Expenses of capital nature for completing or acquiring the title to the property are includible in the cost of acquisition.

**Cost of acquisition in the case of Depreciable Assets:**
Under the system of providing depreciation on block of assets, written down value of any block of assets may be reduced to nil for any of the following two reasons:

1. Situation one: The Money recoverable by the assessee in regard to the assets sold or otherwise transferred during the year together with the amount of scrap value exceed the written down value at the beginning of the year as increased by the actual cost of asset acquired during the previous year.

2. Situation Two: All the assets in the relevant block may be transferred during the year.

Capital gains in the aforesaid two cases will be determined as under:

- <u>Situation one</u>: in a case where any block of assets does not cease to exist but full value of the consideration received or accruing as a result of transfer of the depreciable asset by the assessee during the previous year exceeds the following amounts namely:
  a. Expenditure incurred wholly or exclusively in connection with such transfer or transfers;
  b. The written down value of the block of assets at the beginning of the previous year, and
  c. The actual cost of any asset falling within the block of assets acquired during the previous year.

  Such excess shall be deemed to be short-term capital gains.
- Situation Two: in second situation any block of assets ceases to exit because all assets in that block are sold during the previous year. The cost of acquisition in such a case shall be the aggregate of the following:
  a. written down value of block of assets at the beginning of the previous year, and
  b. Actual cost of any asset falling within that block of asset acquired by the assessee during the previous year.

**Cost of acquisition in the case of advance money received:**
Where any capital asset was, on any previous occasion, subject to negotiation for its transfer, any advance, or other money received and forfeited by the assessee in respect of such negotiation shall be deducted from the cost for which the asset was acquired, or the fair market value, in computing the cost of acquisition.
The following points should be duly considered:-

1. Advance money received and forfeited by the assessee shall be deducted from the cost of acquisition.
2. If the previous owner has received and forfeited advance money, then it shall not be deducted.

| **SUMMARIZED TABLE OF COST OF ACQUSITION** | | |
|---|---|---|
| **S.No.** | **TYPE OF CAPITAL ASSET** | **COST OF ACQUSITION** |
| 1 | Goodwill, tenancy rights, route permits, loom hours, right to carry on business, patents, trademark, copyright | If,<br>• Purchase → Purchase Price<br>• Self generated → NIL<br>FMV in both the cases is ignored even if acquired before 01.04.2001 |
| 2 | Distribution of assets on partition of HUF | Previous owner<br>Or<br>Fair market value as on 01/04/2001<br>whichever is higher |
| 3 | Gift, will or irrevocable trust | |
| 4 | Transfer by holding company to wholly owned subsidiary company or vice versa | |
| 5 | Transfer in case of amalgamation | |
| 6 | Transfer in case of demerger | |
| 7 | Transfer in case of conversion of firm into company | |
| 8 | Transfer in case of conversion of sole proprietary concern into company | |
| 9 | Allotment of shares in the amalgamated company | Amalgamating Company |
| 10 | Shares/debentures in conversion of debentures, bonds, debenture stock, deposit certificate | Debentures, bonds etc. so converted |
| 11 | Securities under ESOP | FMV on the date of allotment |
| 12 | Shares in the resulting company | COA of shares in demerged company x Book value of assets transferred in demerger |
| | | Net worth of the demerged company |
| | | Net worth = Paid up capital + reserves |
| 13 | Shares in the demerged company | Original COA - Value of 12 (above) |
| 14 | Assets distributes to shareholders on liquidation | FMV on the date of distribution |
| 15 | Original shares | Actual payment |
| 16 | Bonus shares | If acquired<br>•on/after 01.04.81 → NIL<br>• Before 01.04.81 → FMV as on 01.04.81 |
| 17 | Right shares purchased by original shareholder | Price paid to the company |
| 18 | Right offer sold | NIL |

| | | |
|---|---|---|
| 19 | Person purchasing such offer from original shareholder | Price paid to the company + Price paid to the seller |
| 20 | Slump sale | Net worth<br>Net worth = Assets - Liabilities |

- Cost of improvement:
  Cost of improvement means as follows:
  a. Cost of improvement in relation to goodwill of a business or a right to manufacture, produce or process any article/thing is taken to be *nil.*
  b. Cost of improvement in relation to any other capital asset,-
     1. Where the capital asset became the property of the assessee before April 1, 2001 means all expenditure of capital nature incurred in making any addition or alteration to be capital asset on or after April 1, 2001 by the assessee.
     2. In other cases, means all expenses of capital nature incurred in making any addition/alteration to the capital asset by the assessee.

**Indexed Cost of Acquisition (ICOA):-**

I**) Direct Acquisition:-**

a) If assets was acquired before 01/04/2001

ICOA =

$$\text{COA/Municipal values as on 01/04/2001 (WEH)} \times \frac{\text{CII of the year in which assets if transfer}}{\text{CII of the year 2001-02 (100)}}$$

**COA**- cost of acquisition, **CII**- cost of inflation index, WEH- whichever is higher

b) If assets was acquired on or after 01/04/2001

$$\text{ICOA} = \text{Cost of Acquisition} \times \frac{\text{CII of the year in which assets if transfer}}{\text{CII of the year of Acquisition}}$$

**II) Indirect Acquisition**:- where assets was acquired the assessee by way of gift, will, inheritance or from HUF to his member on partition

a) If assets was acquired by the assessee before 01/04/2001

ICOA =

$$\text{COA to previous owner/ Municipal values as on 01/04/2001 (WEH)} \times \frac{\text{CII of the year in which assets if transfer}}{\text{CII of the year 2001-02 (100)}}$$

**COA**- cost of acquisition, **CII**- cost of inflation index, **WEH-** whichever is higher

b) If assets was acquired by previous owner on or after 01/04/2001 & same was acquired by the assessee on or after 01/04/2001

$$\text{ICOA} = \text{COA/Municipal values as on 01/04/2001 (WEH)} \times \frac{\text{CII of the year in which assets if transfer}}{\text{CII of the year of Acquisition (Year in which Assessee become owner)}}$$

**Indexed Cost of Improvement (ICOI):-**

Cost of improvement is capital expenditure incurred by an assessee in making any additions/ improvements to the capital asset.

1. Expenditure incurred before 01/04/2001 not considered, In other words, cost of improvement includes only expenditure on improvement incurred on or after 01/04/2001. Expenditure incurred on improvement of capital assets before 01/04/2001 is always taken as equal to zero.

The benefit of indexation is not available in the following cases even if the asset is a long term capital asset:

- Bonds or debentures
- Depreciable asset (other than an asset used by a power generating unit eligible for depreciation on straight line basis).

The Central Government has notified the following Cost Inflation Indexes

| Financial Year | Cost Inflation Index | Financial Year | Cost Inflation Index |
|---|---|---|---|
| 2001-02 | 100 | 2012-13 | 200 |
| 2002-03 | 105 | 2013-14 | 220 |
| 2003-04 | 109 | 2014-15 | 240 |
| 2004-05 | 113 | 2015-16 | 254 |
| 2005-06 | 117 | 2016-17 | 264 |
| 2006-07 | 122 | 2017-18 | 272 |
| 2007-08 | 129 | 2018-19 | 280 |
| 2008-09 | 137 | 2019-20 | 289 |
| 2009-10 | 148 | 2020-21 | 301 |
| 2010-11 | 167 | 2021-22 | 317 |
| 2011-12 | 184 | | |

**Rates of tax on capital gains:**

**1. Short Term Capital Gains**

a) Short-term capital gains shall be included in the gross total income of the taxpayer and will be taxed at the normal rates;

b) Short-term capital gains arising from transfer of Equity Shares, Units of an Equity Oriented Funds or a unit of a business trust which is chargeable to securities transaction tax shall be taxed at 15% under Section 111A;

Note:-

Now benefit of reduced rate of tax (i.e., 15%) shall be available w.e.f. 1-4-2016 even in respect of income arising from transfer of units of a business trust which were acquired by assessee in lieu of shares of special purpose vehicle as referred to in section 47(xvii).

**2. Long Term Capital Gains**

a) Long-term capital gains are subject to tax at 20%;

b) Long-term capital gains arising from transfer of listed securities, units or a zero coupon [other than as referred to in point d) below] bonds shall be taxable at lower of following:

20% after taking benefit of indexation; or

10% without taking benefit of indexation.

c) Long-term capital gains arising to a non-residents or foreign company from transfer of unlisted securities shall be taxed at without giving benefit for indexation;

d) Long-term capital gains arising from transfer of listed equity share, or a unit of an equity oriented fund or a unit of a business trust as referred to in Section 112Ashall be chargeable to tax at the rate of 10% in excess of Rs. 1 Lakh.

**Deduction/ Exemption under Capital Gain**

| **Particulars** | **Section 54** | **Section 54B** | **Section 54D** | **Section 54EC** | **Section 54EE** |
|---|---|---|---|---|---|
| **Eligible taxpayers** | Individual and HUF | Individual and HUF | Any person | Any person | Any Person |
| **Capital gains eligible for exemption** | Long-term | Short-term or Long-term | Short-term or Long-term | Long-term | Long-term |
| **Capital gains arising from transfer of** | Residential House property | Agriculture land used by taxpayer or by his parents or **HUF** for agriculture purposes in last 2 years before its transfer | 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). | Any long-term capital asset being Land or Building or Both | Any long-term capital asset |
| **Assets to be acquired for exemption** | One residential house property Or Two residential house properties **Note:** With effect from Assessment Year 2020-21, a taxpayer has an option to make investment in two residential house properties in India. This option can be exercised by the taxpayer only once in his lifetime provided the amount of long-term capital gain does not exceed Rs. 2 crores. | Agricultural land (may be in urban area or rural area) | Land or building for shifting or reestablishing said industrial undertaking | Bond of NHAI or REC, etc. | Units of such fund as may be notified by Central Government to finance start-ups |
| **Time limit for acquiring the new** | Purchase: within 1 year before or 2 years after date of transfer | Within 2 years after date of transfer | Within 3 years from date of receipt of compensation | Within 6 months from date of transfer | Within 6 months after the date of transfer of |

| | | | | | |
|---|---|---|---|---|---|
| **assets** | Construction: within 3 years after date of transfer | | | | original asset |
| **Exemption Amount** | Investment in new assets or capital gain, whichever is lower | Investment in agricultural land or capital gain, whichever is lower | Investment in new assets or capital gain, whichever is lower | Investment in new assets or capital gains, whichever is lower, however, subject to Rs. 50 lakhs. | Investment in new assets or capital gains, whichever is lower, however, subject to Rs. 50 lakhs. |
| **Withdrawal of exemption** | If new asset is transferred within 3 years of its acquisition | If new asset is transferred within 3 years of its acquisition | If new asset is transferred within 3 years of its acquisition | If new asset is transferred or it is converted into money or a loan is taken on its security within 5 years of its acquisition | If new asset is transferred within a period of 3 years from the date of its acquisition. **Note:** Where assessee takes loans or advance on security of such specified asset, he shall be deemed to have transferred such asset on the date on which such loan or advance is taken. |
| **Deposit in Capital gains deposit scheme before due date under Sec. 139(1)** | Yes | Yes | Yes | No | No |

| Particulars | Section 54F | Section 54G | Section 54GA | Section 54GB |
|---|---|---|---|---|
| **Eligible taxpayers** | Individual and HUF | Any person | Any person | Individual and HUF |
| **Capital gains eligible for exemption** | Long-term | Short-term or Long-term | Short-term or Long-term | Long-term |
| **Capital gains** | Any long term asset (other | Land, building, | Land, building, | Residential |

| | | | | |
|---|---|---|---|---|
| **arising from transfer of** | than a residential house property) provided on date of transfer taxpayer does not own more than one residential house property (except the new house) | plant or machinery, in order to shift industrial undertaking from urban area to rural area. | plant or machinery, in order to shift industrial undertaking from urban area to SEZ. | property (house or a plot of land) Note: Provisions of this section shall not apply to any transfer of residential property made after March 31, 2017. However, in case of an investment in eligible start-up, the residential property can be transferred up to March 31, 2019. **Note:** w.e.f. Assessment Year 2020-21, the sunset date for transfer of original capital asset (residential property) for investment in eligible start-ups is extended from March 31, 2019 to March 31, 2021 and the condition of minimum holding of 50% of share capital or voting rights in the start-up is relaxed to 25%. |
| **Assets to be acquired for exemption** | One residential house property | Land, building, plant or machinery, in | Land, building, plant or machinery, in | Subscription in equity shares of an |

| | | | | |
|---|---|---|---|---|
| | | order to shift industrial undertaking to rural area. | order to shift industrial undertaking to SEZ. | eligible company.<br>**Note:**<br>1. W.e.f. April 1, 2017, eligible start-up is also included in definition of eligible company.<br>2. The eligible company should utilize the amount of subscription for purchase of new assets (i.e., plant and machinery except vehicle, office appliances, computer or computer software etc.). However, In the case of eligible startup, the new asset shall include computers or computer software. |
| **Time limit for acquiring the new assets** | Purchase: within 1 year before or within 2 years after date of transfer<br>Construction: within 3 years after date of transfer | within 1 year before or 3 years after date of transfer | Within 1 year before or within 3 years after date of transfer | Investment by the assessee – Before due date for furnishing of return under Sec. 139(1).<br>Investment by the company – within 1 year from date of subscription. |
| **Exemption Amount** | Investment in new assets X capital gain/net consideration | Investment in new assets or capital gain, whichever is | Investment in new assets or capital gain, whichever is | Investment in new assets X capital |

| | | | | |
|---|---|---|---|---|
| | | lower | lower | gain/net consideration |
| **Withdrawal of exemption** | a) If new asset is transferred within 3 years of acquisition,<br>b) if another residential house is purchased within 2 years of transfer of original asset;<br>c) if another house is constructed within 3 years of transfer of original asset | If new asset is transferred within 3 years of acquisition | If new asset is transferred within 3 years of acquisition | If equity shares in company or new asset acquired by company is sold or transferred within a period of 5 years from date of acquisition.<br>**Note:** w.e.f. Assessment Year 2020-21, the restriction on the transfer of new asset is reduced to 3 years in case of computer or computer software. |
| **Deposit in Capital gains deposit scheme before due date under Sec. 139(1)** | Yes | Yes | Yes | Yes |

## Capital Gain Account Scheme 1988:

a) The scheme is open to all taxpayers, who wish to claim exemption under Sections 54, 54B, 54D, 54F, 54Gor 54GB.

b) If taxpayer could not invest the capital gains to acquire new asset before due date of furnishing of return, the capital gains can be deposited before due date for furnishing of return of income in deposit account in any branch of a nationalized bank in accordance with Capital Gain Account Scheme 1988.