

## UNIT – 4 : CAPITAL GAINS

### LEARNING OUTCOMES

**After studying this unit, you would be able to –**

- ❑ comprehend the scope of income chargeable under this head;
- ❑ comprehend and identify the assets classified as “capital assets” for the purposes of chargeability under this head;
- ❑ comprehend the meaning of short-term capital asset and long-term capital asset;
- ❑ compute the period of holding for determining whether an asset is a short-term capital asset or long-term capital asset;
- ❑ identify the transactions to be considered as transfer for the purpose of capital gains;
- ❑ identify the transactions not regarded as transfer;
- ❑ compute the capital gains from transfer of capital assets in the manner prescribed;
- ❑ determine the cost of acquisition and indexed cost of acquisition, in case of long term capital asset for the purpose of computing the capital gains;
- ❑ compute capital gains in case of depreciable assets;
- ❑ compute capital gains in case of slump sale;

- ❑ compute the exemption available for investment of capital gains/ net consideration on transfer of certain assets;
- ❑ compute the capital gains chargeable to tax after deducting the exemptions available in respect of capital gains;
- ❑ identify the cases where an Assessing Officer can make a reference to the Valuation Officer;
- ❑ appreciate the concessional tax treatment available for short-term capital gains and for long term capital gains on transfer of listed equity shares/ units of an equity oriented fund;
- ❑ compute the tax liability applying the special rates of tax on long-term capital gains and short term capital gains and the normal rates of tax.

**Proforma for computation of income under the head “Capital Gains”**

|  | Particulars   | Amt<br>(₹) | Amt<br>(₹) |
|--|---|------------|------------|
| <i>In case of a Short-term capital asset</i> | Full value of consideration received or accruing as a result of transfer  | xxx        |            |
|  | <b>Less:</b> Expenditure incurred wholly and exclusively in connection with such transfer (for e.g., brokerage on sale)<br><i>(Note: Deduction on account of STT paid will <b>not</b> be allowed)</i>   | xxx        |            |
|  | <b>Net Sale Consideration</b>   |            | xxx        |
|  | <b>Less:</b> Cost of acquisition (COA) [Refer table at page 4.409]  | xxx        |            |
|  | Cost of improvement (COI) [Refer table at page 4.466]   | xxx        | xxx        |
|  | <b>Short-term capital gain (STCG)</b>   |            | xxx        |
|  | <b>Less:</b> Exemption under sections 54B/54D   |            | xxx        |
|  | <b>Short-term capital gain chargeable to tax</b>  |            | <b>xxx</b> |
| <i>In case of a Long-term capital asset</i>  | Full value of consideration received or accruing as a result of transfer  | xxx        |            |
|  | <b>Less:</b> Expenditure incurred wholly and exclusively in connection with such transfer (for e.g., brokerage on sale)<br><i>(Note: Deduction on account of STT paid will <b>not</b> be allowed)</i>   | xxx        |            |
|  | <b>Net Sale Consideration</b>   |            | xxx        |
|  | <b>Less:</b> Indexed cost of acquisition (ICOA)   | xxx        |            |
|  | $\begin{array}{r} \text{Cost of acquisition} \\ \times \text{CII for the year in which the asset was first held by the assessee or P.Y. 2001-02, whichever is later} \end{array}$   |            |            |
|  | <i>[Note: Benefit of indexation will, however, not be available in respect of long-term capital gains from transfer of bonds or debentures (other than capital indexed bonds issued by the Government and sovereign gold bonds issued by RBI) and in respect of long-term capital gains chargeable to tax under section 112A]</i> |            |            |

|  |   |     |            |
|--|---|-----|------------|
|  | <b>Less:</b> Indexed cost of improvement (ICOI)   | xxx | xxx        |
|  | $\text{Cost of improvement} \times \frac{\text{CII for the year in which the asset is transferred}}{\text{CII for the year in which the improvement took place}}$ |     |            |
|  | <b>Long-term capital gains (LTCG)</b>   |     | xxx        |
|  | <b>Less:</b> Exemption under sections 54/ 54B/ 54D/ 54EC/ 54EE/54F [Refer Table at page 4.468]  |     | xxx        |
|  | <b>Long-term capital gains chargeable to tax</b>  |     | <b>xxx</b> |

### Rate of tax on Short-term Capital Gains

| Section  | Rate of tax  |
|--|--|
| 111A   | <ul style="list-style-type: none"> <li>• <b>Short-term capital gains arising on transfer of listed equity shares, units of equity oriented fund and unit of business trust<sup>1</sup> - 15%, if STT has been paid on such sale.</b></li> <li>• <b>Short-term capital gains arising from transaction undertaken in foreign currency on a recognized stock exchange located in an International Financial Services Centre (IFSC) would be taxable at a concessional rate of 15%, even though STT is not paid in respect of such transaction.</b></li> </ul> |
| <b>Note - Short-term capital gains arising on transfer of <i>other Short-term Capital Assets</i> would be chargeable at normal rates of tax.</b> |  |

### Rates of tax on Long-term Capital Gains

| Section | Rate of tax  |
|---------|--|
| 112A    | <ul style="list-style-type: none"> <li>• <b>Tax @10% on long-term capital gains exceeding ₹ 1,00,000 on the transfer of following long-term capital assets -</b> <ul style="list-style-type: none"> <li>- listed equity shares, if STT has been paid on acquisition and transfer of such shares</li> <li>- units of equity oriented fund and unit of business trust<sup>1</sup>, if STT has been paid on transfer of such units</li> </ul> </li> </ul> |

<sup>1</sup>The provisions relating to business trust would be dealt at Final level.

|     |  |   |
|-----|--|---|
|     | <ul style="list-style-type: none"> <li>• <b>If such transaction undertaken on a recognized stock exchange located in an International Financial Services Centre (IFSC),</b> LTCG would be taxable at a concessional rate of 10% where the consideration for transfer is received or receivable in foreign currency, even though STT is not paid in respect of such transaction.</li> <li>• Benefit of indexation and currency fluctuation would not be available.</li> </ul> |   |
| 112 | <b>Long-term capital asset</b>   | <b>Rate of tax</b>  |
|     | Unlisted securities, or shares of a closely held company   | <b>Non-corporate non-resident/foreign company</b> - 10%, without the benefit of indexation and currency fluctuation<br><b>Other Assesseees</b> - 20%, with indexation benefit |
|     | Listed securities (other than a unit) or a zero-coupon bond  | - 10%, without the benefit of indexation <b>or</b><br>- 20%, availing the benefit of indexation<br>whichever is more beneficial to the assessee                               |
|     | Other Assets   | - 20%   |

**Notes:**

- 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.
- No deduction under Chapter VI-A can be claimed in respect of such long-term capital gain chargeable to tax u/s 112 or u/s 112A or short-term capital gain chargeable to tax u/s 111A.
- Rebate u/s 87A **is not available** in respect of tax payable @10% on Long-term Capital Gains **u/s 112A**.
- *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]*

**Period of holding [Section 2(42A)]**

|                               |   |   |
|-------------------------------|---|---|
| STCA, if held for ≤ 12 month  | { | <ul style="list-style-type: none"> <li>• Security (other than unit) listed in a recognized stock exchange</li> <li>• Unit of equity oriented fund/ unit of UTI</li> <li>• Zero Coupon bond</li> </ul> |
| LTCA, if held for > 12 months |   |   |
| STCA, if held for ≤ 24 month  | { | <ul style="list-style-type: none"> <li>• Unlisted shares</li> <li>• Land or building or both</li> </ul>   |
| LTCA, if held for > 24 months |   |   |
| STCA, if held for ≤ 36 month  | { | <ul style="list-style-type: none"> <li>• Unit of debt oriented fund</li> <li>• Unlisted securities other than shares</li> <li>• Other capital assets</li> </ul>                                       |
| LTCA, if held for > 36 months |   |   |

**4.1 INTRODUCTION**

In this unit on capital gains, we begin our discussion with the definition of “capital asset” and “transfer”. Thereafter, we will proceed to discuss the various circumstances under which capital gains tax is levied. There are certain transactions which are not to be regarded as transfer for the purposes of capital gains. These transactions have also been discussed in this chapter. For computing long-term capital gains, knowledge of cost inflation index is necessary. Again, there is a separate method of computation of capital gains in respect of depreciable assets. Also, there are exemptions in cases where capital gains are invested in specified assets. All these aspects are being discussed in this unit.

Section 45 provides that any profits or gains arising from the **transfer** of a **capital asset** effected in the previous year will be chargeable to income-tax under the head ‘Capital Gains’. Such capital gains will be deemed to be the income of the previous year in which the transfer took place. In this charging section, two terms are important. One is “capital asset” and the other is “transfer”.

**4.2 CAPITAL ASSET**

**Definition:** According to section 2(14), a capital asset means –

- property of any kind held by an assessee, whether or not connected with his business or profession;

- (b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the SEBI regulations.

However, it does not include—

- (i) **Stock-in trade:** Any stock-in-trade [other than securities referred to in (b) above], consumable stores or raw materials held for the purpose of the business or profession of the assessee;

*The exclusion of stock-in-trade from the definition of capital asset is only in respect of sub-clause (a) above and not sub-clause (b). This implies that even if the nature of such security in the hands of the Foreign Portfolio Investor is stock in trade, the same would be treated as a capital asset and the profit on transfer would be taxable as capital gains.*

*Further, the Explanatory Memorandum to the Finance (No.2) Bill, 2014 clarifies that the income arising from transfer of such security by a Foreign Portfolio Investor (FPI) would be in the nature of capital gain, irrespective of the presence or otherwise in India, of the Fund manager managing the investments of the assessee.*

- (ii) **Personal effects:** Personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him.

**EXCLUSIONS:**

- (a) jewellery;
- (b) archaeological collections;
- (c) drawings;
- (d) paintings;
- (e) sculptures; or
- (f) any work of art.

**Definition of Jewellery-** Jewellery is a capital asset and the profits or gains arising from the transfer of jewellery held for personal use are chargeable to tax under the head "capital gains". For this purpose, the expression 'jewellery' includes the following:

- (i) 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;

- (ii) Precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel.

- (iii) **Rural agricultural land** in India i.e., agricultural land in India which is not situated in any specified area.

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 -

- (a) agricultural land situated in any area within the jurisdiction of a municipality or cantonment board having population of not less than ten thousand, or
- (b) agricultural land situated in any area within such distance, measured aerially, in relation to the range of population as shown hereunder -

|       | Shortest aerial distance from the local limits of a municipality or cantonment board referred to in item (a) | Population according to the last preceding census of which the relevant figures have been published before the first day of the previous year. |
|-------|--|--|
| (i)   | ≤ 2 kilometers   | > 10,000 ≤ 1,00,000  |
| (ii)  | ≤ 6 kilometers   | > 1,00,000 ≤ 10,00,000   |
| (iii) | ≤ 8 kilometers   | > 10,00,000  |

### Examples

|     | Area | Shortest aerial distance from the local limits of a municipality or cantonment board referred to in item (a) | Population according to the last preceding census of which the relevant figures have been published before the first day of the previous year. | Is the land situated in this area a capital asset? |
|-----|------|--|--|--|
| (i) | A    | 1 km   | 9,000  | No   |

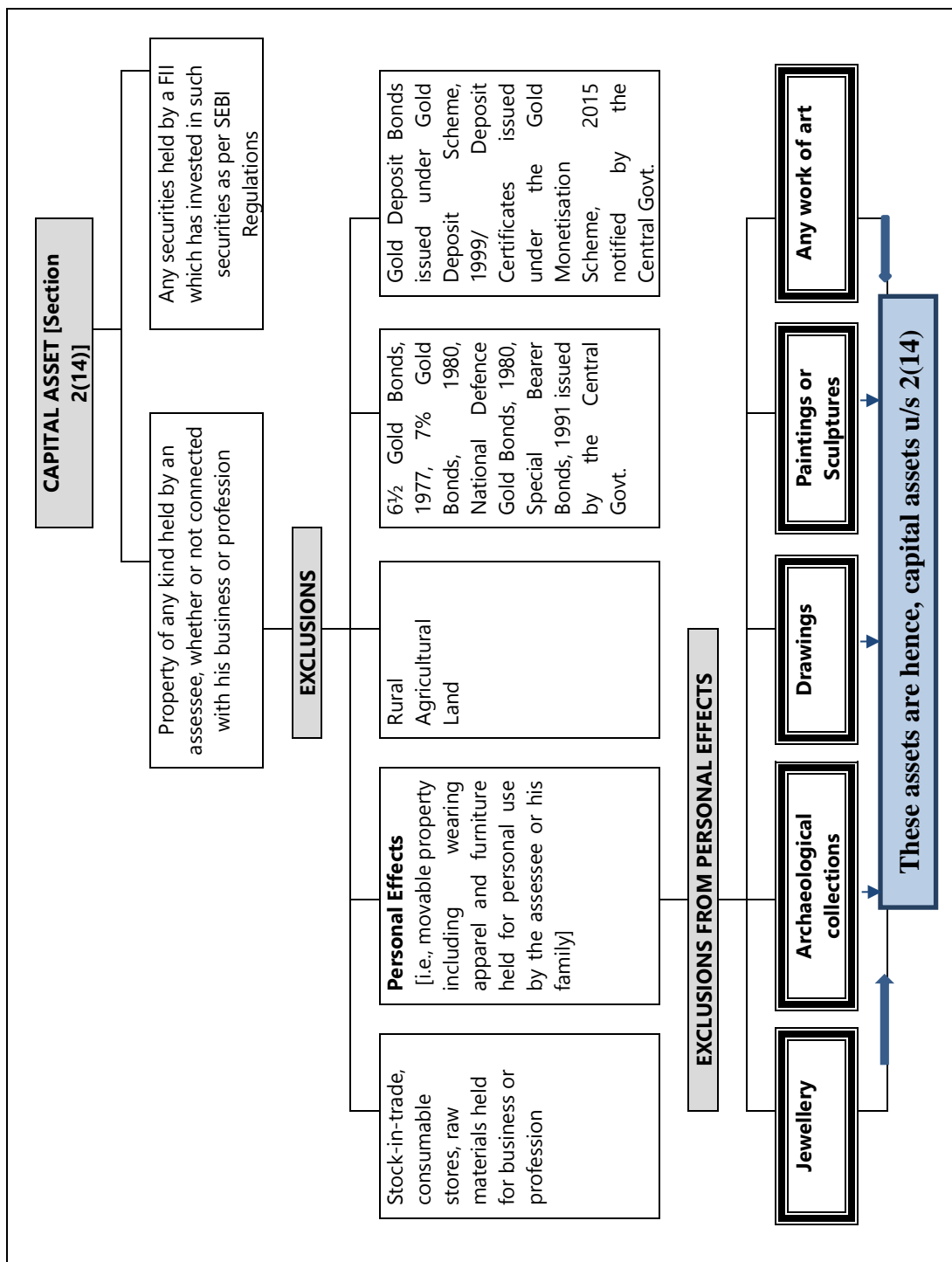
|        |   |         |           |     |
|--------|---|---------|-----------|-----|
| (ii)   | B | 1.5 kms | 12,000    | Yes |
| (iii)  | C | 2 kms   | 11,00,000 | Yes |
| (iv)   | D | 3 kms   | 80,000    | No  |
| (v)    | E | 4 kms   | 3,00,000  | Yes |
| (v)    | F | 5 kms   | 12,00,000 | Yes |
| (vi)   | G | 6 kms   | 8,000     | No  |
| (vii)  | H | 7 kms   | 4,00,000  | No  |
| (viii) | I | 8 kms   | 10,50,000 | Yes |
| (ix)   | J | 9 kms   | 15,00,000 | No  |

**Explanation regarding gains arising on the transfer of urban agricultural land** - *Explanation 1* to section 2(1A) clarifies that capital gains arising from transfer of any agricultural land situated in any non-rural area (as explained above) will not constitute agricultural revenue within the meaning of section 2(1A).

In other words, the capital gains arising from the transfer of such urban agricultural lands would not be treated as agricultural income for the purpose of exemption under section 10(1). Hence, such gains would be exigible to tax under section 45.

- (iv) **Specified Gold Bonds:** 6½% Gold Bonds, 1977, or 7% Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government;
- (v) **Special Bearer Bonds, 1991** issued by the Central Government;
- (vi) **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** – ‘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.





## 4.3 SHORT TERM AND LONG TERM CAPITAL ASSETS

- **Definition:** As per section 2(42A), short-term capital asset means a capital asset held by an assessee for not more than 36 months immediately preceding the date of its transfer.

As per section 2(29A), long-term capital asset means a capital asset which is not a short-term capital asset.

Thus, a capital asset held by an assessee for more than 36 months immediately preceding the date of its transfer is a long-term capital asset.

- **Exceptions:** A security (other than a unit) listed in a recognized stock exchange, or a unit of an equity oriented fund or a unit of the Unit Trust of India or a Zero Coupon Bond will, however, be considered as a long-term capital asset if the same is held for more than 12 months immediately preceding the date of its transfer.

Further, a share of a company (not being a share listed in a recognized stock exchange in India) or an immovable property, being land or building or both would be treated as a short-term capital asset if it was held by an assessee for not more than 24 months immediately preceding the date of its transfer.

Thus, the period of holding of unlisted shares or an immovable property, being land or building or both, for being treated as a long-term capital asset would be "more than 24 months" instead of "more than 36 months".

- **Meaning of certain terms:**

| Term                        | Meaning  |
|-----------------------------|--|
| <b>Equity oriented fund</b> | <p>a fund set up under a scheme of a mutual fund<sup>2</sup> and</p> <p>(i) in a case where the fund invested in the units of another fund which is traded on a recognised stock exchange –</p> <p>I. a minimum of 90% of the total proceeds of such fund is invested in the units of such other fund; and</p> <p>II. such other fund also invests a minimum of 90% of its total proceeds in the equity shares of domestic</p> |

<sup>2</sup> Specified under section 10(23D)

|   |  |
|---|--|
|   | <p>companies listed on a recognised stock exchange; and</p> <p>(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 recognised stock exchange.</p> <p>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.</p> |
| <b>Zero Coupon Bond [Section 2(48)]</b> | <p>a bond</p> <ul style="list-style-type: none"> <li>- issued by any infrastructure capital company or infrastructure capital fund or a public sector company or a scheduled bank on or after 1<sup>st</sup> June, 2005,</li> <li>- in respect of which no payment and benefit is received or receivable before maturity or redemption from such issuing entity and</li> <li>- which the Central Government may notify in this behalf.</li> </ul>                              |

**Note:** The income from transfer of a Zero coupon bond (not being held as stock-in-trade) is to be treated as capital gains. Section 2(47)(iva) provides that maturity or redemption of a Zero coupon bond shall be treated as a transfer for the purposes of capital gains tax.

#### Period of holding: A summary

STCA, if held for  $\leq 12$  month

LTCA, if held for  $> 12$  months

- Security (other than unit) listed in a recognized stock exchange
- Unit of equity oriented fund/ unit of UTI
- Zero Coupon bond

STCA, if held for  $\leq 24$  month

LTCA, if held for  $> 24$  months

- Unlisted shares
- Land or building or both

STCA, if held for  $\leq 36$  month

LTCA, if held for  $> 36$  months

- Unit of debt oriented fund
- Unlisted securities other than shares
- Other capital assets

- **Determination of period of holding [Clause (i) of *Explanation 1* to section 2(42A)]:** In determining period of holding of any capital asset by the assessee in the circumstances stated in column (1), the period shall be determined by considering the period specified in Column (2).

**Determination of period of holding**

| S. No. | Circumstances<br>(Column 1)   | Period of holding<br>(Column 2)   |
|--------|---|---|
| 1      | Where <b>shares held in a company in liquidation</b>  | The period subsequent to the date of liquidation of company shall be excluded.                            |
| 2      | Where <b>asset becomes the property of an assessee by virtue of section 49(1)</b>   | The period for which the capital asset was held by the previous owner shall be included.                  |
| 3      | Where <b>inventory of business is converted</b> into or treated as a <b>capital asset</b> by the assessee   | Period from the date of conversion or treatment as a capital asset shall be considered.                   |
| 4      | Where <b>share/s in the Indian company (amalgamated company)</b> , 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 <b>share or any other security is subscribed</b> by the assessee <b>on the basis of right to subscribe</b> 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 <b>right to subscribe</b> 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 <b>financial asset is allotted</b> without any payment and  | Period from the date of allotment of such financial asset shall be reckoned                               |

|    |  |   |
|----|--|---|
|    | on the basis of holding of any other financial asset   |   |
| 8  | Where <b>share/s in the Indian company</b> being a resulting company becomes the property of an assessee in consideration of <b>demerger</b>   | The period for which the share/s were held by the assessee in demerged company shall be included                              |
| 9  | Where <b>unit/s</b> becomes the property of the assessee in consideration of <b>transfer of unit/s in the consolidated scheme of the mutual fund</b> 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 <b>equity share</b> in a company becomes the property of the assessee by way of <b>conversion of preference shares into equity shares</b> referred under section 47(xb)  | The period for which the preference shares were held by the assessee shall be included  |
| 11 | Where <b>unit/s</b> becomes the property of the assessee in consideration of <b>transfer of unit/s in the consolidated plan of a mutual fund scheme</b> 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 <b>specified security or sweat equity shares is allotted</b> 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             |
|    | <b>"Sweat equity shares"</b> means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called. |   |

- **Period of holding in respect of other capital assets** - The period for which any capital asset is held by the assessee shall be determined in accordance with any rules made by the CBDT in this behalf.

Accordingly, the CBDT has inserted Rule 8AA in the Income-tax Rules, 1962 to provide for method of determination of period of holding of capital assets, other than the capital assets mentioned in clause (i) of *Explanation 1* to section 2(42A).

Specifically, in the case of a 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), there shall be included the 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.

**Note:** Section 47(x) provides that any transfer by way of conversion of bonds or debentures, debenture-stock or deposit certificates in any form, of a company into shares or debentures of that company shall not be regarded as transfer for the purposes of levy of capital gains tax.



## 4.4 TRANSFER: WHAT IT MEANS? [SECTION 2(47)]

The Act contains an inclusive definition of the term 'transfer'. Accordingly, transfer in relation to a capital asset includes the following types of transactions—

- the sale, exchange or relinquishment of the asset; or
- the extinguishment of any rights therein; or
- the compulsory acquisition thereof under any law; or
- 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
- the maturity or redemption of a zero coupon bond; or
- Part-performance of the contract: Sometimes, possession of an immovable property is given in consideration of part-performance of a contract.

### 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 realised the entire sale consideration. Under Income-tax Act, the above transaction is considered as transfer; or

- (vii) Lastly, there are certain types of transactions which have the effect of transferring or enabling the enjoyment of an 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.

**ILLUSTRATION 1**

*How will you calculate the period of holding in case of the following assets?*

- (1) *Shares held in a company in liquidation*
- (2) *Bonus shares*
- (3) *Flat in a co-operative society*

**SOLUTION**

- (1) **Shares held in a company in liquidation** - The period after the date on which the company goes into liquidation shall be excluded while calculating the period of holding. Therefore, the period of holding shall commence from the date of acquisition and end with the date on which the company goes into liquidation.
- (2) **Bonus shares** - The period of holding shall be reckoned from the date of allotment of bonus shares and will end with the date of transfer.
- (3) **Flat in a co-operative society** - The period of holding shall be reckoned from the date of allotment of shares in the society and will end with the date of transfer.

**Note** – Any transaction whether by way of becoming a member of, or acquiring shares in, a co-operative society or by way of any agreement or any arrangement or in any other manner whatsoever which has the effect of transferring, or enabling enjoyment of, any immovable property is a transfer as per section 2(47)(vi).

Hence, it is possible to take a view that any date from which such right is obtained may be taken as the date of acquisition.



## 4.5 SCOPE AND YEAR OF CHARGEABILITY [SECTION 45]

### (i) General Provision [Section 45(1)]

Any profits or gains arising from the transfer of a capital asset effected in the previous year (other than exemptions covered under this chapter) shall be chargeable to Income-tax under this head **in the previous year in which the transfer took place.**

**Year of chargeability** - Capital gains are chargeable as the income of the previous year in which the sale or transfer takes place. In other words, for determining the year of chargeability, the relevant date of transfer is not the date of the agreement to sell, but the actual date of sale *i.e.*, the date on which the effect of transfer of title to the property as contemplated by the parties has taken place<sup>3</sup>.

However, as already noted, Income-tax Act has recognised certain transactions as transfer in spite of the fact that conveyance deed might not have been executed and registered. Power of Attorney sales as explained above or co-operative society transactions for acquisition of house are examples in this regard.

### (ii) Insurance Receipts [Section 45(1A)]

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,
- riot or civil disturbance,
- accidental fire or explosion or
- because of 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.**

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<sup>3</sup>*Alapati Venkatramiah v. CIT [1965] 57 ITR 185 (SC)*

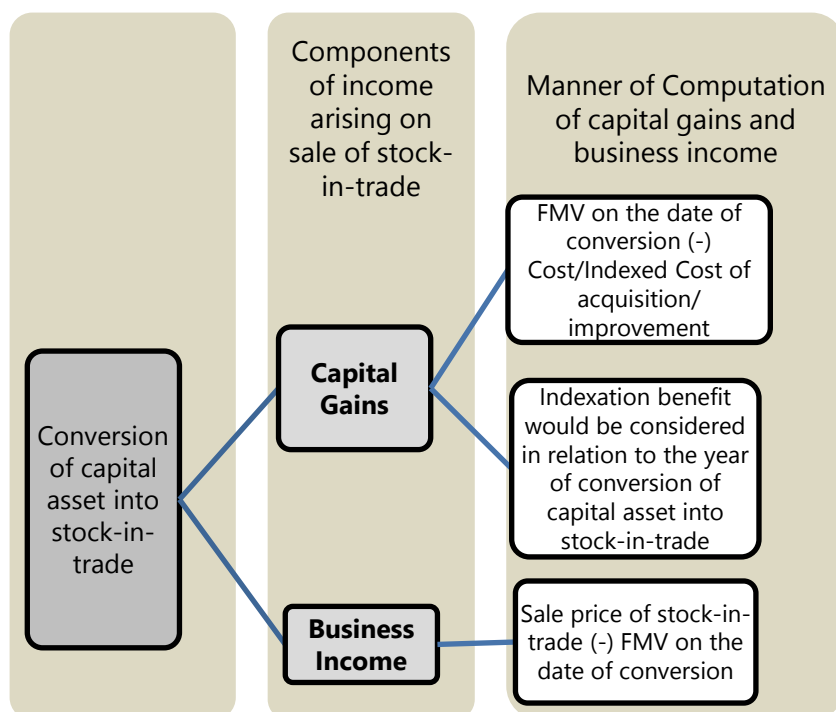
**Full value of consideration:** In order to compute capital gains, the value of any money or the fair market value of other assets on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital assets.

**(iii) Conversion or treatment of a capital asset as stock-in-trade [Section 45(2)]**

A person who is the owner of a capital asset may convert the same or treat it as stock-in-trade of the business carried on by him. As noted above, the above transaction is a transfer.

As per section 45(2), notwithstanding anything contained in section 45(1), being the charging section, the profits or gains arising from the above conversion or treatment will be chargeable to income-tax as **his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him.**

**Full value of consideration:** In order to compute the capital gains, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received as a result of the transfer of the capital asset.



**Note – Both Capital Gains and Business income are chargeable to tax in the year in which stock-in-trade is sold or otherwise transferred.**

**ILLUSTRATION 2**

*A is the owner of a car. On 1-4-2019, he starts a business of purchase and sale of motor cars. He treats the above car as part of the stock-in-trade of his new business. He sells the same on 31-3-2020 and gets a profit of ₹ 1 lakh. Discuss the tax implication in his hands under the head "Capital gains".*

**SOLUTION**

Since car is a personal asset, conversion or treatment of the same as the stock-in-trade of his business will not be trapped by the provisions of section 45(2). Hence, A is not liable to capital gains tax.

**ILLUSTRATION 3**

*X converts his capital asset (acquired on June 10, 2003 for ₹ 60,000) into stock-in-trade on March 10, 2019. The fair market value on the date of the above conversion was ₹ 5,50,000. He subsequently sells the stock-in-trade so converted for ₹ 6,00,000 on June 10, 2019. Discuss the year of chargeability of capital gain.*

**SOLUTION**

Since the capital asset is converted into stock-in-trade during the previous year relevant to the A.Y. 2019-20, it will be a transfer under section 2(47) during the P.Y. 2018-19. However, the profits or gains arising from the above conversion will be chargeable to tax during the A.Y. 2020-21, since the stock-in-trade has been sold only on June 10, 2019. For this purpose, the fair market value on the date of such conversion (i.e. 10<sup>th</sup> March, 2019) will be the full value of consideration.

**(iv) Transfer of beneficial interest in securities [Section 45(2A)]**

As per section 45(2A), 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.

**Full value of consideration and period of holding:** For the purposes of section 48 and proviso to section 2(42A), the cost of acquisition and the period of holding of securities shall be determined on the basis of the first-in-first-out (FIFO) method.

When the securities are transacted through stock exchanges, it is the established procedure that the brokers first enter into contracts for purchase/ sale of securities

and thereafter, follow it up with delivery of shares, accompanied by transfer deeds duly signed by the registered holders.

- The seller is entitled to receive the consideration agreed to as on the date of contract.
- Thus, it is the date of broker's note that 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.
- Similarly, in respect of the purchasers of the securities, the holding period shall be reckoned to take place directly between the parties and not through stock exchanges.
- The date of contract of sale as declared by the parties shall be treated as the date of transfer provided it is followed up by actual delivery of shares and the transfer deeds.

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.

In other words, the assets acquired last will be taken to be remaining with the assessee while assets acquired first will be treated as sold. Indexation, wherever applicable, for long-term assets will be regulated on the basis of the holding period determined in this manner - *CBDT Circular No. 704, dated 28.4.1995*.

### Meaning of certain terms:

|     | Term             | Meaning   |
|-----|------------------|---|
| (1) | Beneficial owner | A person whose name is recorded as such with a depository   |
| (2) | Depository       | A company formed and registered under the Companies Act, 1956 <sup>4</sup> and which has been granted a certificate of registration under section 12(1A) of the Securities and Exchange Board of India Act, 1992. |
| (3) | Security         | Such security as may be specified by SEBI   |

### (v) Introduction of capital asset as capital contribution [Section 45(3)]

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

<sup>4</sup> Now Companies Act, 2013

**chargeable to tax as income of the previous year in which such transfer takes place.**

**Full value of consideration:** For this purpose, the value of the consideration will be the amount recorded in the books of account of the firm, AOP or BOI as the value of the capital asset.

**(vi) Distribution of capital assets on dissolution of firm/ AOP or BOI [Section 45(4)]**

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.

**Full value of consideration:** For this purpose, the fair market value of the asset on the date of such transfer shall be the full value of consideration.

The Bombay High Court made a landmark judgment in *Commissioner of Income-tax v. A.N. Naik Associates (2004) 136 Taxman 107*. The Court applied the "mischief rule" about interpretation of statutes and pointed out that the idea behind the introduction of sub-section (4) in section 45 was to plug in a loophole and block the escape route through the medium of the firm. The High Court observed that the expression 'otherwise' has not to be read *ejusdem generis* with the expression 'dissolution of a firm or body of individuals or association of persons'. The expression 'otherwise' has to be read with the words 'transfer of capital assets by way of distribution of capital assets'. If so read, it becomes clear that even when a firm is in existence and there is a transfer of capital asset, it comes within the expression 'otherwise' since the object of the amendment was to remove the loophole which existed, whereby capital gains tax was not chargeable. Therefore, the word 'otherwise' takes into its sweep not only cases of dissolution but also cases of subsisting partners of a partnership, transferring assets in favour of retiring partners.

**Note** - 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.

**(vii) Compensation on compulsory acquisition [Section 45(5)]**

Sometimes, a building or some other capital asset belonging to a person is taken

over by the Central Government by way of compulsory acquisition. In that case, the consideration for the transfer is determined by the Central Government of RBI. When the Central Government pays the above compensation, capital gains may arise. Such capital gains are **chargeable as income of the previous year in which such compensation is received.**

**Enhanced Compensation** - Many times, persons whose capital assets have been taken over by the Central Government and who get compensation from the Government go to the Court of law for enhancement of compensation. If the court awards a compensation which is higher than the original compensation, the difference thereof will be chargeable to capital gains in the year in which the same is received from the government.

**Cost of acquisition in case of enhanced compensation** - For this purpose, the cost of acquisition and cost of improvement shall be taken to be *nil*.

**Compensation received in pursuance of an interim order deemed as income chargeable to tax in the year of final order** - In order to remove the uncertainty regarding the year in which the amount of compensation received in pursuance of an interim order of the Court, Tribunal or other authority is to be charged to tax, a proviso has been inserted after clause (b) to provide that such compensation shall be deemed to be income chargeable under the head 'Capital gains' in the previous year in which the final order of such Court, Tribunal or other authority is made.

**Reduction of enhanced compensation** - Where capital gain has been charged on the compensation received by the assessee for the compulsory acquisition of any capital asset or enhanced compensation received by the assessee and subsequently such 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<sup>5</sup>.

**Death of the transferor**- It is possible that the transferor may die before he receives the enhanced compensation. In that case, the enhanced compensation or consideration will be chargeable to tax in the hands of the person who received the same.

#### **(viii) Taxability of capital gains in case of Specified Agreement [Section 45(5A)]**

**Genuine hardship on account of taxability of capital gains in the year of transfer of property to developer:** 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.

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<sup>5</sup> under section 155

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.

**Postponement of taxability of capital gains:** With a view to minimise the genuine hardship which the owner of land may face in paying capital gains tax in the year of transfer, a sub-section (5A) in section 45 has been inserted to provide 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.**

**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 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.

**Full value of consideration:** For this purpose, 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.

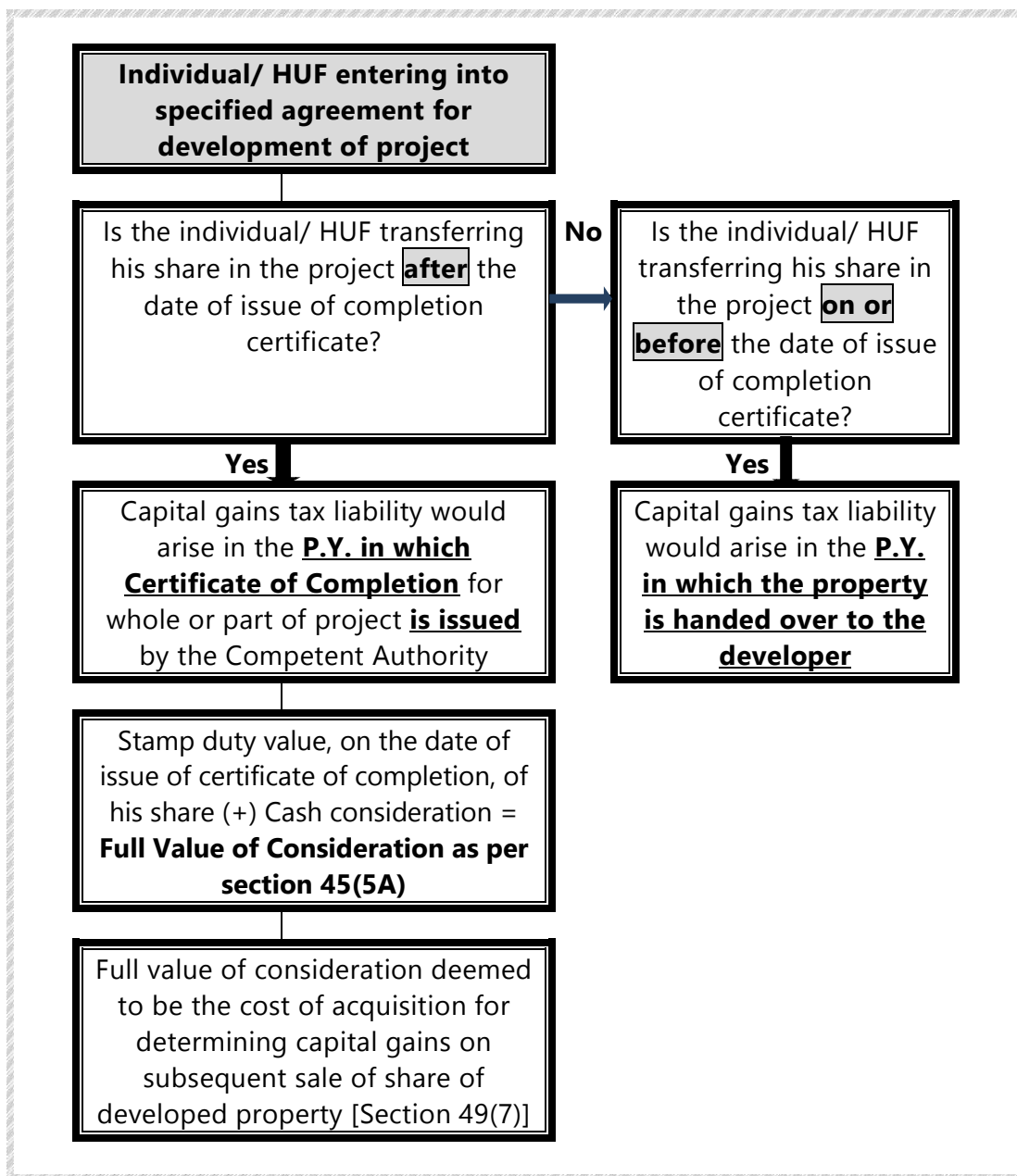
**Non-applicability of the beneficial provision:** It may, however, be noted these beneficial provisions would not apply, where the assessee transfers his share in the project on or before the date of issue of said completion certificate and the capital gain tax liability would be deemed to arise in 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.

#### Meaning of certain terms:

| Term                | Meaning  |
|---------------------|--|
| Competent authority | The authority empowered to approve the building plan by or under any law for the time being in force |

|                  |   |
|------------------|---|
| 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. |
|------------------|---|

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



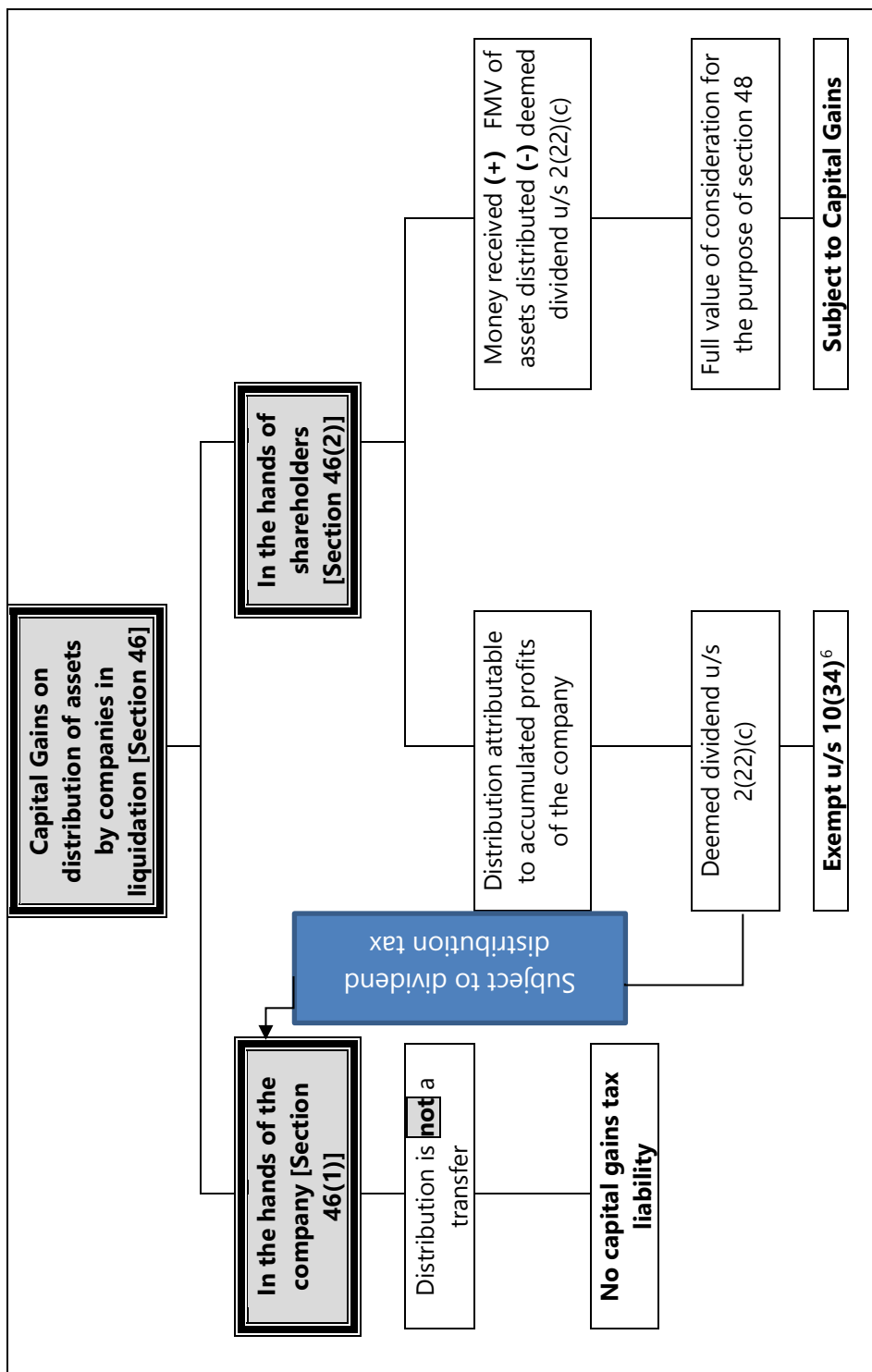


## 4.6 CAPITAL GAINS ON DISTRIBUTION OF ASSETS BY COMPANIES IN LIQUIDATION [SECTION 46]

- (1) **In the hands of liquidated company:** 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 [Section 46(1)].

The above section is restricted in its application to the circumstances mentioned therein i.e., the assets of the company must be distributed in specie to shareholders on the liquidation of the company. If, however, the liquidator sells the assets of the company resulting in a capital gain and distributes the funds so collected, the company will be liable to pay tax on such gains.

- (2) **In the hands of shareholders:** Shareholders receive money or other assets from the company on its liquidation. They will be chargeable to income-tax under the head 'capital gains' in respect of the market value of the assets received on the date of distribution, or the moneys so received by them. The portion of the distribution which is attributable to the accumulated profits of the company is to be treated as dividend income of the shareholder under section 2(22)(c), which is subject to dividend distribution tax in the hands of the company. The same will be deducted from the amount received/ fair market value for the purpose of determining the consideration for computation of capital gains.
- (3) **Capital gains tax on subsequent sale by the shareholders:** If the shareholder, after receipt of any such asset on liquidation of the company, transfers it, then Fair Market value on the date of distribution would be treated as cost of acquisition of such asset.



<sup>6</sup>Aggregate dividend of upto ₹ 10 lakh received by a specified assesses (including individuals, HUF, AOPs, BOLS, Firms, LLPs), resident in India, from domestic companies would be exempt u/s 10(34). The excess would be taxable @ 10% under section 115BBDA.



## 4.7 CAPITAL GAINS ON BUYBACK OF SHARES OR SPECIFIED SECURITIES [SECTION 46A]

- (1) **In case of specified securities other than shares:** Any consideration received by a holder of 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, 1956<sup>7</sup>.

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.

**Note** – With effect from 5.7.2019, as far as shares are concerned, this provision would be attracted in the hands of the shareholder only if the shares are bought back by a company, other than a domestic company. Prior to that date, this provision was attracted even in the hands of shareholders of domestic company, where listed shares were bought back.

- (2) **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%) is leviable in the hands of the company<sup>8</sup>.

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.

<sup>7</sup> Now section 68 of the Companies Act, 2013

<sup>8</sup> Under section 115QA

**Note:** Prior to 5.7.2019, additional income-tax was attracted only in case of buy back of unlisted shares by domestic companies. Consequently, only holders of unlisted shares were entitled to exemption under section 10(34A).

#### Taxation provisions in respect of buyback effected on or after 5.7.2019

| (1)   | (2)  | (3)  | (4)   |
|---|--|--|---|
| <i>Taxability in the hands of</i>                 | <i>Buyback of shares by domestic companies</i>                     | <i>Buyback of shares by a company, other than a domestic company</i>   | <i>Buyback of specified securities by any company</i>                                     |
| <i>Company</i>                                    | <i>Subject to additional income-tax@23.296%.</i>                   | <i>Not subject to tax in the hands of the company.</i>                 | <i>Not subject to tax in the hands of the company.</i>                                    |
| <i>Shareholder/holder of specified securities</i> | <i>Income arising to shareholders exempt under section 10(34A)</i> | <i>Income arising to shareholder taxable as capital gains u/s 46A.</i> | <i>Income arising to holder of specified securities taxable as capital gains u/s 46A.</i> |



## 4.8 TRANSACTIONS NOT REGARDED AS TRANSFER [SECTION 47]

Section 47 specifies certain transactions which will not be regarded as transfer for the purpose of capital gains tax:

- (1) **Total or partial partition of a HUF:** Any distribution of capital assets on the total or partial partition of a HUF [Section 47(i)];
- (2) **A gift or will or an irrevocable trust:** Any transfer of a capital asset under a gift or will or an irrevocable trust [Section 47(iii)];

However, this clause shall not include transfer under a gift or an irrevocable trust of a capital asset being shares, debentures or warrants allotted by a company directly or indirectly to its employees under the Employees' Stock Option Plan or Scheme offered to its employees in accordance with the guidelines issued in this behalf by the Central Government.

- (3) **Transfer of capital asset by holding company to its wholly owned Indian subsidiary company:** Any transfer of capital asset by a company to its subsidiary company [Section 47(iv)]

**Conditions:**

- (i) The parent company or its nominee must hold the whole of the shares of the subsidiary company;
- (ii) The subsidiary company must be an Indian company.

- (4) Transfer of capital asset by a subsidiary company to its 100% holding company, being an Indian company:** Any transfer of capital asset by a subsidiary company to the holding company [Section 47(v)]

**Conditions:**

- (i) The whole of shares of the subsidiary company must be held by the holding company;
- (ii) The holding company must be an Indian company.

**Exception** - The exemption mentioned in 3 or 4 above will not apply if a capital asset is transferred as stock-in-trade.

- (5) Transfer of capital asset by amalgamating company to amalgamated Indian company, in a scheme of amalgamation:** Any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company [Section 47(vi)]
- (6) Transfer of capital asset by the demerged company to the resulting Indian company, in a scheme of demerger:** Any transfer in a demerger, of a capital asset by the demerged company to the resulting company, if the resulting company is an Indian company [Section 47(vib)].
- (7) Transfer or issue of shares by a resulting company, in a scheme of demerger:** Any transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company, if the transfer is made in consideration of the demerger of the undertaking [Section 47(vid)].
- (8) Transfer of shares by a shareholder in a scheme of amalgamation:** Any transfer by a shareholder, in a scheme of amalgamation, of shares held by him in the amalgamating company [Section 47(vii)].

**Conditions:**

- (i) The transfer is made in consideration of the allotment to him of any share/s in the amalgamated company, except where the shareholder itself is the amalgamated company;
- (ii) The amalgamated company is an Indian company.

**Example:**

Let us take a case where A Ltd., an Indian company, holds 60% of shares in B Ltd. B Ltd. amalgamates with A Ltd. Since A Ltd. itself is the shareholder of B Ltd., A Ltd., being the amalgamated company, cannot issue shares to itself. However, A Ltd. has to issue shares to the other shareholders of B Ltd.

**ILLUSTRATION 4**

*M held 2000 shares in a company ABC Ltd. This company amalgamated with another company during the previous year ending 31-3-2020. Under the scheme of amalgamation, M was allotted 1000 shares in the new company. The market value of shares allotted is higher by ₹ 50,000 than the value of holding in ABC Ltd. The Assessing Officer proposes to treat the transaction as an exchange and to tax ₹ 50,000 as capital gain. Is he justified?*

**SOLUTION**

In the above example, assuming that the amalgamated company is an Indian company, the transaction is squarely covered by the exemption explained above and the proposal of the Assessing Officer to treat the transaction as a transfer is not justified.

- (9) Transfer of Rupee denominated bond outside India by a non-resident to another non-resident:** Any transfer, made outside India, of a capital asset being rupee denominated bond of an Indian company issued outside India, by a non-resident to another non-resident [Section 47(viiaa)].
- (10) Transfer of Government Security outside India by a non-resident to another non-resident:** Any transfer of a capital asset, being a Government Security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities, by a non-resident to another non-resident [Section 47(viib)]
- (11) Redemption of sovereign gold bonds by an Individual:** Redemption by an individual of sovereign gold bonds issued by RBI under the Sovereign Gold Bond Scheme, 2015 [Section 47(viic)]

**(12) Transfer of specified capital asset to the Government or university etc.:**

Any transfer of any of the following capital asset to the Government or to the University or the National Museum, National Art Gallery, National Archives or any other public museum or institution notified by the Central Government to be of national importance or to be of renown throughout any State [Section 47(ix)]:

- (i) work of art
- (ii) archaeological, scientific or art collection
- (iii) book
- (iv) manuscript
- (v) drawing
- (vi) painting
- (vii) photograph or
- (viii) print.

**(13) Transfer on conversion of bonds or debentures etc. into shares or debentures:** Any transfer by way of conversion of bonds or debentures, debenture stock or deposit certificates in any form, of a company into shares or debentures of that company [Section 47(x)].**(14) Conversion of preference shares into equity shares:** Any transfer by way of conversion of preference shares of a company into equity shares of that company [Section 47(xb)].**(15) Transfer of capital asset under Reverse Mortgage:** Any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government [Section 47(xvi)].

The Reverse Mortgage scheme is for the benefit of senior citizens, who own a residential house property. In order to supplement their existing income, they can mortgage their house property with a scheduled bank or housing finance company, in return for a lump-sum amount or for a regular monthly/ quarterly/ annual income. The senior citizens can continue to live in the house and receive regular income, without the botheration of having to pay back the loan.

The loan will be given up to, say, 60% of the value of residential house property mortgaged. Also, the bank/ housing finance company would

undertake a revaluation of the property once every 5 years. The borrower can use the loan amount for renovation and extension of residential property, family's medical and emergency expenditure etc., amongst others. However, he cannot use the amount for speculative or trading purposes.

The Reverse Mortgage Scheme, 2008, now includes within its scope, disbursement of loan by an approved lending institution, in part or in full, to the annuity sourcing institution, for the purposes of periodic payments by way of annuity to the reverse mortgagor. This would be an additional mode of disbursement i.e., in addition to direct disbursements by the approved lending institution to the Reverse Mortgagor by way of periodic payments or lump sum payment in one or more tranches.

An annuity sourcing institution has been defined to mean Life Insurance Corporation of India or any other insurer registered with the Insurance Regulatory and Development Authority.

**Maximum Period of Reverse Mortgage Loan:**

|     | <b>Mode of disbursement</b>   | <b>Maximum period of loan</b>  |
|-----|---|--|
| (a) | Where the loan is disbursed directly to the Reverse Mortgagor   | 20 years from the date of signing the agreement by the reverse mortgagor and the approved lending institution. |
| (b) | Where the loan is disbursed, in part or in full, to the annuity sourcing institution for the purposes of periodic payments by way of annuity to the Reverse mortgagor | The residual life time of the borrower.  |

The bank will recover the loan along with the accumulated interest by selling the house after the death of the borrower. The excess amount will be given to the legal heirs. However, before resorting to sale of the house, preference will be given to the legal heirs to repay the loan and interest and get the mortgaged property released.

Therefore, section 47(xvi) clarifies that any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government would not amount to a transfer for the purpose of capital gains.

**Exemption of income received in a transaction of reverse mortgage [Section 10(43)]:** 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.

Capital gains tax liability would be attracted only at the stage of alienation of the mortgaged property by the bank/ housing finance company for the purposes of recovering the loan.

- (16) Transfer of unit/s by a unit holder under consolidating scheme of Mutual Fund:** Any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating scheme of a mutual fund, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated scheme of the mutual fund [Section 47(xviii)].

However, this exemption would be available only if, the consolidation takes place of two or more schemes of equity oriented fund or of two or more schemes of a fund other than equity oriented fund.

- (17) Transfer of unit/s by a unit holder under consolidating plan of Mutual Fund scheme:** Any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating plan of a mutual fund scheme, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated plan of that scheme of the mutual fund [Section 47(xix)].

#### Meaning of the following terms:

| Term                        | Meaning   |
|-----------------------------|---|
| <b>Consolidating scheme</b> | The scheme of a mutual fund which merges under the process of consolidation of the schemes of mutual fund in accordance with the SEBI (Mutual Funds) Regulations, 1996 made under SEBI Act, 1992.                             |
| <b>Consolidated scheme</b>  | The scheme with which the consolidating scheme merges or which is formed as a result of such merger.  |
| <b>Consolidating plan</b>   | The plan within a scheme of a mutual fund which merges under the process of consolidation of the plans within a scheme of mutual fund in accordance with the SEBI (Mutual Funds) Regulations, 1996 made under SEBI Act, 1992. |
| <b>Consolidated plan</b>    | The plan with which the consolidating plan merges or which is formed as a result of such merger.  |

|                    |   |
|--------------------|---|
| <b>Mutual Fund</b> | <p>A mutual fund, i.e.,</p> <p>(i) a Mutual Fund registered under the SEBI Act, 1992 or regulations made thereunder;</p> <p>(ii) such other Mutual Fund set up by a public sector bank or a public financial institution or authorised by the Reserve Bank of India and subject to conditions notified by the Central Government.</p> |
|--------------------|---|

**ILLUSTRATION 5**

*In which of the following situations capital gains tax liability does not arise?*

- (i) Mr. A purchased gold in 1970 for ₹ 25,000. In the P.Y. 2019-20, he gifted it to his son at the time of marriage. Fair market value (FMV) of the gold on the day the gift was made was ₹ 1,00,000.
- (ii) A house property is purchased by a Hindu undivided family in 1945 for ₹ 20,000. It is given to one of the family members in the P.Y. 2019-20 at the time of partition of the family. FMV on the day of partition was ₹ 12,00,000.
- (iii) Mr. B purchased 50 convertible debentures for ₹ 40,000 in 1995 which are converted into 500 shares worth ₹ 85,000 in November 2019 by the company.

**SOLUTION**

We know that capital gains arises only when we transfer a capital asset. The liability of capital gains tax in the situations given above is discussed as follows:

- (i) As per the provisions of section 47(iii), transfer of a capital asset under a gift is not regarded as transfer for the purpose of capital gains. Therefore, capital gains tax liability does not arise in the given situation.
- (ii) As per the provisions of section 47(i), transfer of a capital asset (being in kind) on the total or partial partition of Hindu undivided family is not regarded as transfer for the purpose of capital gains. Therefore, capital gains tax liability does not arise in the given situation.
- (iii) As per the provisions of section 47(x), transfer by way of conversion of bonds or debentures, debenture stock or deposit certificates in any form of a company into shares or debentures of that company is not regarded as transfer for the purpose of capital gains. Therefore, capital gains tax liability does not arise in the given situation.

**ILLUSTRATION 6**

*Mr. Abhishek a senior citizen, mortgaged his residential house with a bank, under a notified reverse mortgage scheme. He was getting loan from bank in monthly installments. Mr. Abhishek did not repay the loan on maturity and hence gave*

*possession of the house to the bank, to discharge his loan. How will the treatment of long-term capital gain be on such reverse mortgage transaction?*

### SOLUTION

Section 47(xvi) provides that any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government shall not be considered as a transfer for the purpose of capital gain.

Accordingly, the mortgaging of residential house with bank by Mr. Abhishek will not be regarded as a transfer. Therefore, no capital gain will be charged on such transaction.

Further, section 10(43) provides that the amount received by the senior citizen as a loan, either in lump sum or in installment, in a transaction of reverse mortgage would be exempt from income-tax. Therefore, the monthly installment amounts received by Mr. Abhishek would not be taxable.

However, capital gains tax liability would be attracted at the stage of alienation of the mortgaged property by the bank for the purposes of recovering the loan.

### ILLUSTRATION 7

*Examine, with reasons, whether the following statements are True or False.*

- (i) *Alienation of a residential house in a transaction of reverse mortgage under a scheme made and notified by the Central Government is treated as "transfer" for the purpose of capital gains.*
- (ii) *Zero coupon bonds of eligible corporation, held for 14 months, will be long-term capital assets.*
- (iii) *Zero Coupon Bond means a bond on which no payment and benefits are received or receivable before maturity or redemption.*
- (iv) *Income from growing and manufacturing tea in India is treated as agricultural income wholly.*

### SOLUTION

- (i) **False:** As per section 47(xvi), such alienation in a transaction of reverse mortgage under a scheme made and notified by the Central Government is not regarded as "transfer" for the purpose of capital gains.
- (ii) **True:** Section 2(42A) defines the term 'short-term capital asset'. Under the proviso to section 2(42A), zero coupon bond held for not more than 12 months will be treated as a short-term capital asset. Consequently, such bond held for more than 12 months will be a long-term capital asset.

- (iii) **True:** As per section 2(48), 'Zero Coupon Bond' means a bond issued by any infrastructure capital company or infrastructure capital fund or a public sector company, or Scheduled Bank on or after 1<sup>st</sup> June 2005, in respect of which no payment and benefit is received or receivable before maturity or redemption from such issuing entity and which the Central Government may notify in this behalf.
- (v) **False:** Only 60% of the income derived from the sale of tea grown and manufactured by the seller in India is treated as agricultural income and the balance 40% of the income shall be non-agricultural income chargeable to tax [Rule 8 of Income-tax Rules, 1962].



## 4.9 IMPORTANT DEFINITIONS

- (a) **Amalgamation [Section 2(1B)]** - "Amalgamation", in relation to companies, means

- the merger of one or more companies with another company or
- the merger of two or more companies to form one company

(the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that -

- (i) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation;
- (ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation;
- (iii) shareholders holding not less than three-fourth in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation,

otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first mentioned company.

**(b) Demerger [Section 2(19AA)]** - "Demerger", in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 230 to 232 of the Companies Act, 2013, by a demerged company of its one or more undertaking to any resulting company in such a manner that -

- (i) all the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger;
- (ii) all the liabilities relatable to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger;
- (iii) the property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger;

*However, this provision does not apply where, in compliance to the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015, the resulting company records the value of the property and the liabilities of the undertaking or undertakings at a value different from the value appearing in the books of account of the demerged company, immediately before the demerger.*

- (iv) the resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis except where the resulting company itself is a shareholder of the demerged company;

**Note** - *If the resulting company is a shareholder of the demerged company, it cannot issue shares to itself. However, the resulting company has to issue shares to the other shareholders of the demerged company.*

- (v) the shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of the demerger, otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company;
- (vi) the transfer of the undertaking is on a going concern basis;

- (vii) the demerger is in accordance with the conditions, if any, notified<sup>9</sup> by the Central Government in this behalf.

**Explanation in respect of Certain Terms:**

| Explanation | Term               | Particulars   |
|-------------|--------------------|---|
| 1           | <b>Undertaking</b> | Includes <ul style="list-style-type: none"> <li>- any part of an undertaking, or</li> <li>- a unit or division of an undertaking or</li> <li>- a business activity taken as a whole,</li> </ul> However, it does not include individual assets or liabilities or any combination thereof not constituting a business activity.  |
| 2           | <b>Liabilities</b> | Includes <ul style="list-style-type: none"> <li>(a) the liabilities which arise out of the activities or operations of the undertaking;</li> <li>(b) the specific loans or borrowings (including debentures) raised, incurred and utilised solely for the activities or operations of the undertaking; and</li> <li>(c) in cases, other than those referred to in clause (a) or clause (b), so much of the amounts of general or multipurpose borrowings, if any, of the demerged company as stand in the same proportion which the value of the assets transferred in a demerger bears to the total value of the assets of such demerged company immediately before the demerger.</li> </ul> |
| 3           | <b>Property</b>    | For the purpose of determining the value of the property, any change in the value of assets consequent to their revaluation shall be ignored  |

<sup>9</sup> under sub-section (5) of section 72A

|       |                                       |  |
|-------|---------------------------------------|--|
| 4 & 5 | <b>Splitting up or reconstruction</b> | <p>(i) Splitting up or the reconstruction of</p> <ul style="list-style-type: none"> <li>- any authority or</li> <li>- a body constituted or established under a Central, State or Provincial Act, or</li> <li>- a local authority or</li> <li>- a public sector company,</li> </ul> <p>into separate authorities or bodies or local authorities or companies, as the case may be, shall be deemed to be a demerger if such split up or reconstruction fulfils such conditions as may be notified by the Central Government in the Official Gazette</p> <p>(ii) The reconstruction or splitting up of a company, which ceased to be a public sector company as a result of transfer of its shares by the Central Government, into separate companies, shall be deemed to be a demerger, if such reconstruction or splitting up has been made to give effect to any condition attached to the said transfer of shares and also fulfils such other conditions as may be notified by the Central Government.</p> |
|-------|---------------------------------------|--|

- (c) **Demerged Company** - Demerged company means the company whose undertaking is transferred, pursuant to a demerger, to a resulting company.
- (d) **Resulting Company** - Resulting company means one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger



## 4.10 MODE OF COMPUTATION OF CAPITAL GAINS (SECTION 48)

- (i) **Computation of capital gains:** The income chargeable under the head 'capital gains' shall be computed by deducting the following items from the full value of the consideration received or accruing as a result of the transfer of the capital asset:
- (1) Expenditure incurred wholly and exclusively in connection with such transfer.
  - (2) The cost of acquisition and cost of any improvement thereto.
- (ii) **No deduction in respect of STT:** However, 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) under Chapter VII of the Finance (No.2) Act, 2004.
- (iii) **Cost inflation index:** Under section 48, 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.

This means an amount which bears to the cost of acquisition, the same proportion as CII for the year in which the asset is transferred bears to the CII for the first year in which the asset was held by the assessee or for the year beginning on 1st April, 2001, whichever is later.

Similarly, indexed cost of any improvement means an amount which bears to the cost of improvement, the same proportion as CII for the year in which the asset is transferred bears to the CII for the year in which the improvement to the asset took place.

**"Cost Inflation Index"** in relation to a previous year means such index as may be notified by the Central Government having regard to 75% of average rise in the Consumer Price Index (Urban) for the immediately preceding previous year to such previous year.

**Note** - The benefit of indexation will not apply to the long-term capital gains arising from the transfer of bonds or debentures **other than** –

- (1) Capital indexed bonds issued by the Government; or

(2) Sovereign Gold Bond issued by the RBI under the Sovereign Gold Bond Scheme, 2015.

In case of depreciable assets (discussed later), there will be no indexation and the capital gains will always be short-term capital gains.

**The cost inflation indices for the financial years so far have 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                                    |
| 2014-15        | 240                                    |
| 2015-16        | 254                                    |
| 2016-17        | 264                                    |
| 2017-18        | 272                                    |
| 2018-19        | 280                                    |
| 2019-20        | <b>Yet to be notified<sup>10</sup></b> |

- (iv) **Full value of consideration of shares, debentures or warrants issued under ESOP in case of transfer under a gift etc.** - In case where shares, debentures or warrants allotted by a company directly or indirectly to its employees under the Employees' Stock Option Plan or Scheme in accordance with the guidelines issued in this behalf by the Central Government are transferred under a gift or irrecoverable trust, then the market value on the

<sup>10</sup> As on the date of release of this Study Material

date of such transfer shall be deemed to be the full value of consideration received or accruing as a result of transfer of such asset.

**(v) Special provision for non-residents** - In order to give protection to non-residents who invest foreign exchange to acquire capital assets, section 48 contains a proviso. Accordingly, in the case of non-residents, capital gains arising from the transfer of shares or debentures of an Indian company is to be computed as follows:

- The cost of acquisition, the expenditure incurred wholly and exclusively in connection with the transfer and the full value of the 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.

The aforesaid manner of computation of capital gains shall be applied for every purchase and sale of shares or debentures in an Indian company.

Benefit of indexation will not be available in this case.

### **Rupee Denominated Bonds (RDBs)**

As a measure to enable Indian companies to raise funds from outside India, the RBI has permitted them to issue rupee denominated bonds outside India. Accordingly, in case of non-resident assessee, any gains arising on account of appreciation of rupee against a foreign currency between the date of purchase and the date of redemption of rupee denominated bond of an Indian company held by him shall not be included for the purpose of computation of full value of consideration. This would provide relief to the non-resident investor who bears the risk of currency fluctuation.

Non-residents and foreign companies are subject to tax at a concessional rate of 10% (without indexation benefit or currency conversion) on long-term capital gains arising from transfer of unlisted securities or shares of a company in which public are not substantially interested [Section 112]

**Note** – The benefit of indexation and currency conversion would not be applicable to the long-term capital gains arising from the transfer of the following assets referred to in section 112A –

- equity share in a company on which STT is paid both at the time of acquisition and transfer
- unit of equity oriented fund or unit of business trust on which STT is paid at the time of transfer.



## 4.11 ASCERTAINMENT OF COST IN SPECIFIED CIRCUMSTANCES [SECTION 49]

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.

**Note:** The issue as to whether indexation benefit in respect of a gifted asset shall apply from the year in which the asset was first held by the assessee or from the year in which the same was first acquired by the previous owner was taken up by the Bombay High Court in *CIT v. Manjula J. Shah* 16 *Taxman* 42 (Bom.).

As per *Explanation 1* to section 2(42A), in case the capital asset becomes the property of the assessee in the circumstances mentioned in section 49(1), *inter alia*, by way of gift by the previous owner, then for determining the nature of the capital asset, the aggregate period for which the capital asset is held by the assessee and the previous owner shall be considered.

As per the provisions of section 48, the profit and gains arising on transfer of a long-term capital asset shall be computed by reducing the indexed cost of acquisition from the net sale consideration.

The indexed cost of acquisition means the amount which bears to the cost of acquisition the same proportion as Cost Inflation Index (CII) for the year in which the asset is transferred bears to the CII for the year in which the asset was first held by the assessee transferring it i.e., the year in which the asset was gifted to the assessee in case of transfer by the previous owner by way of gift.

The issue under consideration was whether, in a case 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 Bombay High Court 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.

As per the plain reading of the provisions of section 48, however, the indexed cost of acquisition would be determined by taking CII for the year in which in which asset is first held by the assessee.

- (2) **Cost of acquisition of shares received under the scheme of Amalgamation:** Where shares in an amalgamated company which is an Indian company become the property of the assessee in consideration of the transfer of shares referred to in section 47(vii) held by him in the amalgamating company under a scheme of amalgamation, the cost of acquisition to him of the shares in the amalgamated company shall be taken

as the cost of acquisition of the shares in the amalgamating 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)].

- (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)].

$$\text{Cost of acquisition of shares in the resulting company} = A \times \frac{B}{C}$$

A = Cost of acquisition of shares held in the demerged company

B = Net book value of the assets transferred in a demerger

C = Net worth of the demerged company i.e. the aggregate of the paid up share capital and general reserves as appearing in the books of account of the demerged company immediately before the demerger.

**(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)].

*[For illustration, see Unit 5 of Chapter 4 "Income from Other Sources" under section 56(2)(x)]*

**(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 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 deemed to be the fair market value of the inventory as on the date on such conversion determined in the prescribed manner [Section 49(9)]



## 4.12 COST OF ACQUISITION [SECTION 55]

- (1) Goodwill of a business or a trademark or brand name associated with a business or 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**
- (i) In case of acquisition from previous owner:** In the case of the above capital assets, if the assessee has purchased them from a previous owner, the cost of acquisition means the amount of the purchase price.

### Example:

If A purchases a stage carriage permit from B for ₹ 2 lacs, that will be the cost of acquisition for A.

- (ii) In case of self-generated assets:** There are circumstances where it is not possible to visualise cost of acquisition.

For example, suppose a doctor starts his profession. With the passage of time, the doctor acquires lot of reputation. He opens a clinic and runs it for 5 years. After 5 years he sells the clinic to another doctor for ₹ 10 lacs which includes ₹ 2 lacs for his reputation or goodwill.

Now a question arises as to how to find out the profit in respect of goodwill. It is obvious that the goodwill is self-generated and hence it is difficult to calculate the cost of its acquisition. However, it is certainly a capital asset.

The Supreme Court in *CIT v. B.C. Srinivasa Shetty [1981] 128 ITR 294 (SC)* held that in order to bring the gains on sale of capital assets to charge under section 45, it is necessary that the provisions dealing with the levy of capital gains tax must be read as a whole.

Section 48 deals with the mode of computing the capital gains. Unless the cost of acquisition is correctly ascertainable, it is not possible to apply the provisions of section 48. Self-generated goodwill is such a type of capital

asset where it is not possible to visualise cost of acquisition. Once section 48 cannot be applied, the gains thereon cannot be brought to charge.

This decision of the Supreme Court was applicable not only to self-generated goodwill of a business but also to other self-generated assets like tenancy rights, stage carriage permits, loom hours etc.

In order to supersede the decision of the Supreme Court cited above, section 55 was amended. Accordingly, in case of self-generated assets namely, goodwill of a business or a trademark or brand name associated with a business or 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, or loom hours, the cost of acquisition will be taken to be *nil*.

However, it is significant to note that the above amendment does not cover self-generated goodwill of a profession. So, in respect of self-generated goodwill of a profession and other self-generated assets not specifically covered by the amended provisions of section 55, the decision of the Supreme Court in *B. C. Srinivasa Setty's* case will still apply.

**(iii) In case of other modes:** In the following cases, cost of acquisition shall not be *nil*, but will be deemed to be the cost for which the previous owner of the property acquired it:

Where the capital asset became the property of the assessee—

- (1) On any distribution of assets on the total or partial partition of a Hindu undivided family.
- (2) Under a gift or will.
- (3) By succession, inheritance or devolution.
- (4) On any distribution of assets on the liquidation of a company.
- (5) Under a transfer to a revocable or an irrevocable trust.
- (6) Under any transfer referred to in section 47(iv), (v), (vi) or (vib);
- (7) Where the assessee is a Hindu undivided family, by the mode referred to in section 64(2).

## **(2) Financial assets**

Many times persons who own shares or other securities become entitled to subscribe to any additional shares or securities. Further, they are also allotted additional shares or securities without any payment. Such shares or securities are

referred to as financial assets in Income-tax Act. Section 55 provides the basis for ascertaining the cost of acquisition of such financial assets.

- (i) **Original shares (which form the basis of entitlement of rights shares):** In relation to the original financial asset on the basis of which the assessee becomes entitled to any additional financial assets, cost of acquisition means the amount actually paid for acquiring the original financial assets.
- (ii) **Rights entitlement (which is renounced by the assessee in favour of a person):** In relation to any right to renounce the said entitlement to subscribe to the financial asset, when such a right is renounced by the assessee in favour of any person, cost of acquisition shall be taken to be *nil* in the case of such assessee.
- (iii) **Rights shares acquired by the assessee:** In relation to the financial asset, to which the assessee has subscribed on the basis of the said entitlement, cost of acquisition means the amount actually paid by him for acquiring such asset.
- (iv) **Bonus Shares:** In relation to the financial asset allotted to the assessee without any payment and on the basis of holding of any other financial assets, cost of acquisition shall be taken to be nil in the case of such assessee.

In other words, where bonus shares are allotted without any payment on the basis of holding of original shares, the cost of such bonus shares will be nil in the hands of the original shareholder.

**Bonus shares allotted before 01.04.2001:** However, in respect of bonus shares allotted before 1.4.2001, although the cost of acquisition of the shares is nil, the assessee may opt for the fair market value as on 1.4.2001 as the cost of acquisition of such bonus shares.

- (v) **Rights shares which are purchased by the person in whose favour the assessee has renounced the rights entitlement:** In the case of any financial asset purchased by the person in whose favour the right to subscribe to such assets has been renounced, cost of acquisition means the aggregate of the amount of the purchase price paid by him to the person renouncing such right and the amount paid by him to the company or institution for acquiring such financial asset.

**(3) Long-term capital assets referred to in section 112A**

The cost of acquisition in relation to the long-term capital assets being,

- equity shares in a company on which STT is paid both at the time of purchase and transfer or
- unit of equity oriented fund or unit of business trust on which STT is paid at the time of transfer.

acquired before 1<sup>st</sup> February, 2018 shall be the higher of

- (i) cost of acquisition of such asset; and
- (ii) lower of
  - (a) the fair market value of such asset; and
  - (b) the full value of consideration received or accruing as a result of the transfer of the capital asset.

**Meaning of Fair Market value**

| S.No. | Circumstance   | Fair Market Value   |
|-------|--|---|
| (i)   | In a case where the capital asset is listed on any recognized stock exchange as on 31.01.2018  | <p><b><u>If there is trading in such asset on such exchange on 31.01.2018</u></b><br/>           The highest price of the capital asset quoted on such exchange on the said date</p> <p><b><u>If there is no trading in such asset on such exchange on 31.01.2018</u></b><br/>           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.</p> |
| (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 <ul style="list-style-type: none"> <li>- not listed on a</li> </ul> | 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   |

|  |  |   |
|--|--|---|
|  | <p>recognized stock exchange as on 31.01.2018 but listed on such exchange on the date of transfer</p> <p>- 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</p> | <p>which the asset was held by the assessee or on 01.04.2001, whichever is later.</p> |
|--|--|---|

**(4) Any other capital asset**

- (i) Where the capital asset become the property of the assessee before 1-4-2001,** cost of acquisition means the cost of acquisition of the asset to the assessee or the fair market value of the asset on 1-4-2001, at the option of the assessee.
- (ii) Where the capital asset became the property of the assessee by any of the modes specified in section 49(1):** The cost of acquisition to the assessee will be the cost of acquisition to the previous owner. Even in such cases, where the capital asset became the property of the previous owner before 1-4-2001, the assessee can opt the fair market value as on 1-4-2001 as the cost of acquisition.

**Note:** The provisions contained in (i) & (ii) of (4) above shall also apply to the financial assets mentioned in (i) to (v) of (2) and long term capital assets referred to in section 112A of (3) above.

- (iii) Where the capital asset became the property of the assessee on the distribution of the capital assets of a company on its liquidation** and the assessee has been assessed to capital gains in respect of that asset under section 46, the cost of acquisition means the fair market value of the asset on the date of distribution.

(iv) **A share or a stock of a company** may become the property of an assessee under the following circumstances:

- (a) the consolidation and division of all or any of the share capital of the company into shares of larger amount than its existing shares.
- (b) the conversion of any shares of the company into stock,
- (c) the re-conversion of any stock of the company into shares,
- (d) the sub-division of any of the shares of the company into shares of smaller amount, or
- (e) the conversion of one kind of shares of the company into another kind.

In the above circumstances the cost of acquisition to the assessee will mean the cost of acquisition of the asset calculated with reference to the cost of acquisition of the shares or stock from which such asset is derived.

(5) **Where the cost for which the previous owner acquired the property cannot be ascertained**, the cost of acquisition to the previous owner means the fair market value on the date on which the capital asset became the property of the previous owner.

**Cost of Acquisition of certain assets: At a Glance**

| Sl. No. | Nature of asset   | Cost of acquisition   |
|---------|---|---|
| 1       | Goodwill of business, trademark, brand name etc.,<br>- Self generated<br>- Acquired from previous owner   | Nil<br>Purchase price   |
| 2.      | <b>Rights Shares:</b><br>Original shares (which form the basis of entitlement of rights shares)<br>Rights entitlement (which is renounced by the assessee in favour of a person)<br>Rights shares acquired by the assessee<br><br>Rights shares which are purchased by the person in whose favour the assessee has renounced the rights entitlement | Amount actually paid for acquiring the original shares<br>Nil<br><br>Amount actually paid for acquiring the rights shares<br>Purchase price paid to the renouncer of rights entitlement as well as the amount paid to the company which has allotted the rights shares. |

|   |  |   |
|---|--|---|
| 3 | <p><b>Long term capital assets being,</b></p> <ul style="list-style-type: none"> <li>- <b>equity shares</b> in a company on which STT is paid both at the time of purchase and transfer or</li> <li>- <b>unit of equity oriented fund</b> or unit of business trust on which STT is paid at the time of transfer, <p><b>acquired before 1st February, 2018</b></p> </li></ul>  | <p>Cost of acquisition shall be the higher of</p> <p>(i) cost of acquisition of such asset; and</p> <p>(ii) lower of</p> <ul style="list-style-type: none"> <li>- the fair market value of such asset; and</li> <li>- the full value of consideration received or accruing as a result of the transfer of the capital asset.</li> </ul>                 |
| 4 | <p><b>Any other capital asset</b></p> <p>Where such capital asset became the property of the assessee before 1.4.2001</p> <p>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.</p> <p>Where the capital asset became the property of the previous owner before 1.4.2001</p> | <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> |

### ILLUSTRATION 8

Mr. A converts his capital asset acquired for an amount of ₹ 50,000 in June, 2003 into stock-in-trade in the month of November, 2016. The fair market value of the asset on the date of conversion is ₹ 4,50,000. The stock-in-trade was sold for an amount of ₹ 6,50,000 in the month of September, 2019. What will be the tax treatment?

| Financial year | Cost Inflation Index |
|----------------|----------------------|
| 2003-04        | 109                  |
| 2016-17        | 264                  |

**SOLUTION**

The capital gains on the sale of the capital asset converted to stock-in-trade is taxable in the given case. It arises in the year of conversion (i.e. P.Y. 2016-17) but will be taxable only in the year in which the stock-in-trade is sold (i.e. P.Y. 2019-20). Profits from business will also be taxable in the year of sale of the stock-in-trade (P.Y. 2019-20).

The long-term capital gains and business income for the A.Y.2020-21 are calculated as under:

| Particulars   | ₹        | ₹        |
|---|----------|----------|
| <b>Profits and Gains from Business or Profession</b>                |          |          |
| Sale proceeds of the stock-in-trade                                 | 6,50,000 |          |
| Less: Cost of the stock-in-trade (FMV on the date of conversion)    | 4,50,000 | 2,00,000 |
| <b>Long Term Capital Gains</b>                                      |          |          |
| Full value of the consideration (FMV on the date of the conversion) | 4,50,000 |          |
| Less: Indexed cost of acquisition (₹ 50,000 x 264/109)              | 1,21,101 | 3,28,899 |

**Note:** For the purpose of indexation, the cost inflation index of the year in which the asset is converted into stock-in-trade should be considered.

**ILLUSTRATION 9**

On January 31, 2020, Mr. A has transferred self-generated goodwill of his profession for a sale consideration of ₹ 70,000 and incurred expenses of ₹ 5,000 for such transfer. You are required to compute the capital gains chargeable to tax in the hands of Mr. A for the A.Y. 2020-21.

**SOLUTION**

The transfer of self-generated goodwill of profession is not chargeable to tax. It is based upon the Supreme Court's ruling in *CIT vs. B.C. Srinivasa Shetty*.

**4.13 COST OF IMPROVEMENT [SECTION 55]**

- (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.

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".



## **4.14 COMPUTATION OF CAPITAL GAINS IN CASE OF DEPRECIABLE ASSETS [SECTIONS 50 & 50A]**

- (1) Transfer of depreciable assets [Section 50]:** 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.

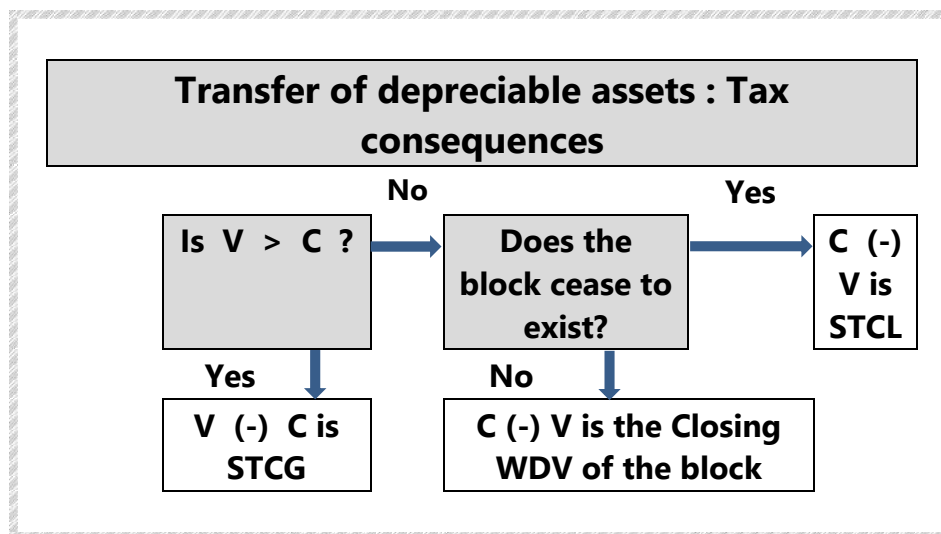
Accordingly, where the capital asset is an asset forming part of a block of assets in respect of which depreciation has been allowed, the provisions of sections 48 and 49 shall be subject to the following modification:

- Where the full value of consideration received or accruing for the transfer of the asset plus the full value of such consideration for the transfer of any other capital asset falling with the block of assets during previous year exceeds the aggregate of the following amounts namely:
  - (1) expenditure incurred wholly and exclusively in connection with such transfer;

- (2) WDV of the block of assets at the beginning of the previous year;
- (3) the actual cost of any asset falling within the block of assets acquired during the previous year

such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

- Where all assets in a block are transferred during the previous year, the block itself will cease to exist. In such a situation, the difference between the sale value of the assets and the WDV of the block of assets at the beginning of the previous year together with the actual cost of any asset falling within that block of assets acquired by the assessee during the previous year will be deemed to be the capital gains arising from the transfer of short-term capital assets.



| Symbol      | Description   |
|-------------|---|
| <b>V</b>    | Full value of consideration   |
| <b>C</b>    | Opening WDV of Block (+) Actual Cost of Asset acquired in the Block during the P.Y. (+) Expenses in connection with transfer of asset |
| <b>STCG</b> | Short Term Capital Gain   |
| <b>STCL</b> | Short Term Capital Loss   |
| <b>WDV</b>  | Written Down Value  |

- (2) 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.

### ILLUSTRATION 10

*Singhania & Co., a sole proprietorship own six machines, put in use for business in March, 2019. The depreciation on these machines is charged @ 15%. The written down value of these machines as on 1<sup>st</sup> April, 2019 was ₹ 8,50,000. Three of the old machines were sold on 10th June, 2019 for ₹ 11,00,000. A second hand plant was bought for ₹ 8,50,000 on 30th November, 2019.*

*You are required to:*

- (i) *determine the claim of depreciation for Assessment Year 2020-21.*
- (ii) *compute the capital gains liable to tax for Assessment Year 2020-21.*
- (iii) *If Singhania & Co. had sold the three machines in June, 2019 for ₹ 21,00,000, will there be any difference in your above workings? Explain.*

### SOLUTION

**(i) Computation of depreciation for A.Y.2020-21**

| Particulars   | ₹         |
|---|-----------|
| W.D.V. of the block as on 1.4.2019                        | 8,50,000  |
| Add: Purchase of second hand plant during the year        | 8,50,000  |
|   | 17,00,000 |
| Less: Sale consideration of old machinery during the year | 11,00,000 |
| W.D.V of the block as on 31.03.2020                       | 6,00,000  |

Since the value of the block as on 31.3.2020 comprises of a new asset which has been put to use for less than 180 days, depreciation is restricted to 50% of the prescribed percentage of 15% i.e. depreciation is restricted to 7½%. Therefore, the depreciation allowable for the year is ₹ 45,000, being 7½% of ₹ 6,00,000.

- (ii)** The provisions under section 50 for computation of capital gains in the case of depreciable assets can be invoked only under the following circumstances:
- (a) When one or some of the assets in the block are sold for consideration more than the value of the block.

- (b) When all the assets are transferred for a consideration more than the value of the block.
- (c) When all the assets are transferred for a consideration less than the value of the block.

Since in the first two cases, the sale consideration is more than the written down value of the block, the computation would result in short term capital gains.

In the third case, since the written down value of the block exceeds the sale consideration, the resultant figure would be a short-term capital loss of the block.

In the given case, capital gains will not arise as the block of asset continues to exist, and some of the assets are sold for a price which is lesser than the written down value of the block.

- (iii) If the three machines are sold in June, 2019 for ₹ 21,00,000, then short term capital gains would arise, since the sale consideration is more than the aggregate of the written down value of the block at the beginning of the year and the additions made during the year.

| Particulars                                 | ₹        | ₹               |
|---|----------|-----------------|
| Sale consideration                          |          | 21,00,000       |
| Less: W.D.V. of the machines as on 1.4.2019 | 8,50,000 |                 |
| Purchase of second plant during the year    | 8,50,000 | 17,00,000       |
| <b>Short term capital gains</b>             |          | <b>4,00,000</b> |



## 4.15 CAPITAL GAINS IN RESPECT OF SLUMP SALE [SECTION 50B]

- (i) **Long term capital gains** - Any profits or gains arising from the slump sale of one or more undertakings held for more than 36 months, shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place.

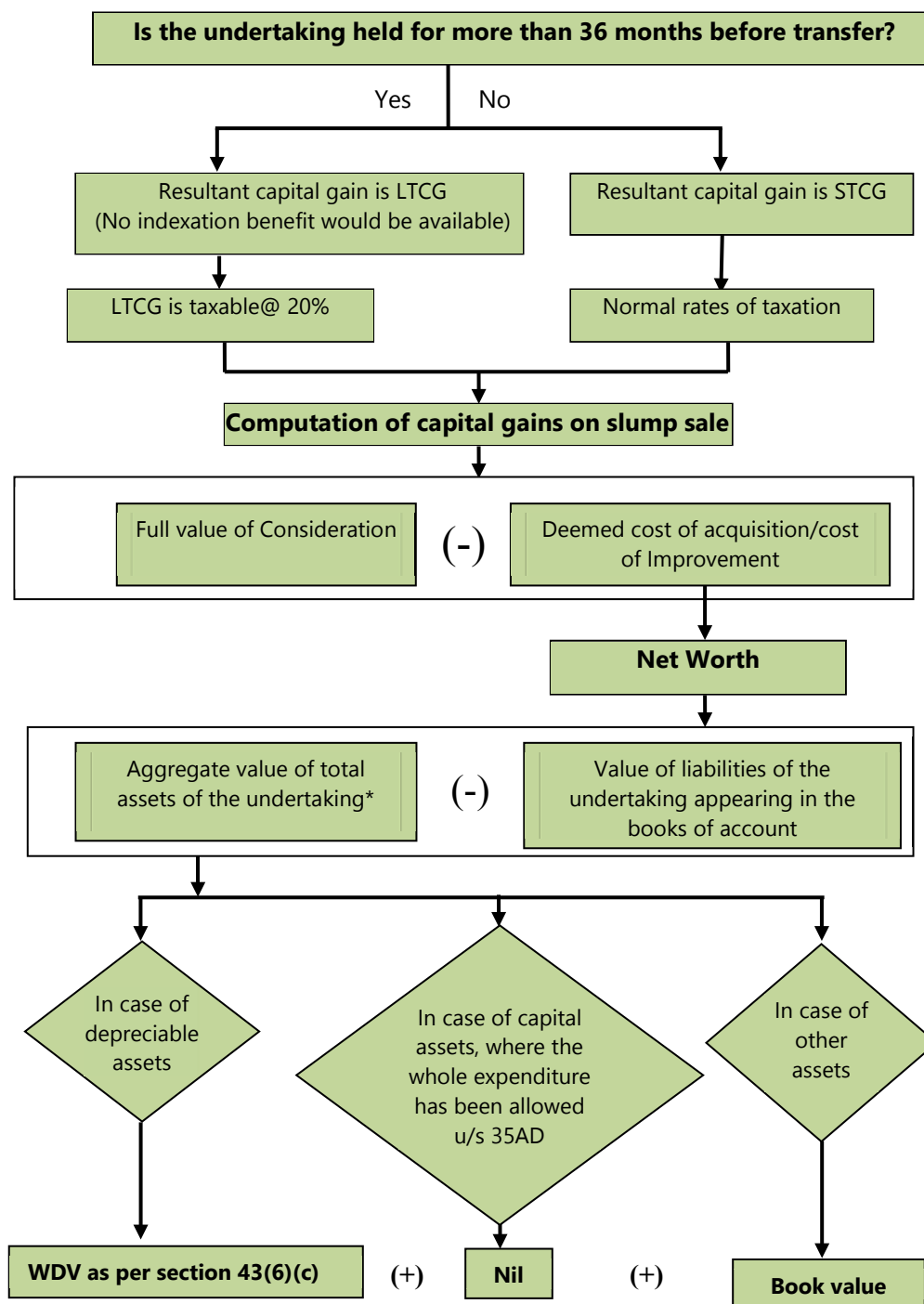
**Short term capital gains** - Any profits and gains arising from such transfer of one or more undertakings held by the assessee for not more than 36 months shall be deemed to be short-term capital gains [Sub-section (1)].

- (ii) **Deemed cost of acquisition and cost of improvement** - The net worth of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 in relation to capital assets of such undertaking or division transferred by way of such sale and the provisions contained in the second proviso to section 48 shall be ignored [Sub-section (2)]. It means no indexation benefit would be available.
- (iii) **Report of a Chartered Accountant** - Every assessee in the case of slump sale shall furnish in the prescribed form along with the return of income, a report of a chartered accountant indicating the computation of net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division has been correctly arrived at in accordance with the provisions of this section [Sub-section (3)].

#### Meaning of Certain Terms:

| Explanation | Term   | Particulars   |
|-------------|--|---|
| 1           | Net worth  | Aggregate value of total assets of the undertaking or division <b>as reduced by</b> 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 of assets shall not be considered for this purpose  |
| 2           | Aggregate value of total assets of undertaking or division | <p><b>In the case of depreciable assets:</b> The written down value of block of assets determined in accordance with the provisions contained in sub-item (C) of item (i) of section 43(6)(c);</p> <p><b>Capital asset in respect of which 100% deduction is claimed:</b> In case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 35AD: <b>Nil</b>;</p> <p><b>For all other assets:</b> Book value</p> |

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



\* Ignore revaluation effect

**ILLUSTRATION 11**

Mr. A is a proprietor of Akash Enterprises having 2 units. He transferred on 1.4.2019 his Unit 1 by way of slump sale for a total consideration of ₹ 25 lacs. Unit 1 was started in the year 2005-06. The expenses incurred for this transfer were ₹ 28,000. His Balance Sheet as on 31.3.2019 is as under:

| <b>Liabilities</b>                           | <b>Total<br/>(₹)</b> | <b>Assets</b> | <b>Unit 1 (₹)</b> | <b>Unit 2<br/>(₹)</b> | <b>Total<br/>(₹)</b> |
|--|----------------------|---------------|-------------------|-----------------------|----------------------|
| Own Capital                                  | 15,00,000            | Building      | 12,00,000         | 2,00,000              | 14,00,000            |
| Revaluation Reserve (for building of unit 1) | 3,00,000             | Machinery     | 3,00,000          | 1,00,000              | 4,00,000             |
| Bank loan (70% for unit 1)                   | 2,00,000             | Debtors       | 1,00,000          | 40,000                | 1,40,000             |
| Trade creditors (25% for unit 1)             | 1,50,000             | Other assets  | 1,50,000          | 60,000                | 2,10,000             |
| <b>Total</b>                                 | <b>21,50,000</b>     | <b>Total</b>  | <b>17,50,000</b>  | <b>4,00,000</b>       | <b>21,50,000</b>     |

Other information:

- Revaluation reserve is created by revising upward the value of the building of Unit 1.
- No individual value of any asset is considered in the transfer deed.
- Other assets of Unit 1 include patents acquired on 1.7.2017 for ₹ 50,000 on which no depreciation has been charged.

Compute the capital gain for the assessment year 2020-21.

**SOLUTION****Computation of capital gains on slump sale of Unit 1**

| <b>Particulars</b>                          | <b>₹</b>         |
|---|------------------|
| Sale value                                  | 25,00,000        |
| Less: Expenses on sale                      | 28,000           |
| Net sale consideration                      | 24,72,000        |
| Less: Net worth ( <b>See Note 1 below</b> ) | 12,50,625        |
| <b>Long-term capital gain</b>               | <b>12,21,375</b> |

**Notes:****1. Computation of net worth of Unit 1 of Akash Enterprises**

| Particulars  | ₹        | ₹                |
|--|----------|------------------|
| Building (excluding ₹ 3 lakhs on account of revaluation) |          | 9,00,000         |
| Machinery  |          | 3,00,000         |
| Debtors  |          | 1,00,000         |
| Patents <b>(See Note2 below)</b>                         |          | 28,125           |
| Other assets (₹1,50,000 – ₹ 50,000)                      |          | 1,00,000         |
| Total assets   |          | 14,28,125        |
| Less: Creditors (25% of ₹ 1,50,000)                      | 37,500   |                  |
| Bank Loan (70% of ₹ 2,00,000)                            | 1,40,000 | 1,77,500         |
| <b>Net worth</b>   |          | <b>12,50,625</b> |

**2. Written down value of patents as on 1.4.2019**

| Value of patents:                                   | ₹      |
|---|--------|
| Cost as on 1.7.2017                                 | 50,000 |
| Less: Depreciation @ 25% for Financial Year 2017-18 | 12,500 |
| WDV as on 1.4.2018                                  | 37,500 |
| Less: Depreciation for Financial Year 2018-19       | 9,375  |
| WDV as on 1.4.2019                                  | 28,125 |

For the purposes of computation of net worth, the written down value determined as per section 43(6) has to be considered in the case of depreciable assets. The problem has been solved assuming that the Balance Sheet values of ₹ 3 lakh and ₹ 9 lakh (₹ 12 lakh – ₹ 3 lakh) represent the written down value of machinery and building, respectively, of Unit 1.

- 3.** Since the Unit is held for more than 36 months, capital gain arising would be long term capital gain. However, indexation benefit is not available in case of slump sale.



## 4.16 SPECIAL PROVISION FOR FULL VALUE OF CONSIDERATION IN CERTAIN CASES [SECTION 50C]

- (i) **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 **or through such other prescribed electronic mode** 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.

- (ii) **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 [Section 50C(2)].

**(iii) 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 [Section 50C(3)].

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.



## 4.17 SPECIAL PROVISION FOR FULL VALUE OF CONSIDERATION FOR TRANSFER OF UNLISTED SHARES [SECTION 50CA]

In order to ensure the full consideration is not understated in case of transfer of unlisted shares, section 50CA provides that 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.***



## 4.18 FAIR MARKET VALUE OF THE CAPITAL ASSET ON THE DATE OF TRANSFER TO BE TAKEN AS SALE CONSIDERATION, IN CASES WHERE THE CONSIDERATION IS NOT DETERMINABLE [SECTION 50D]

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

| Deemed Full Value of consideration for computing capital gains [Sections 50C, 50CA & 50D] – An Overview |                          |         |  |   |
|---|--------------------------|---------|--|---|
|   | Capital Asset            | Section | Circumstance   | Deemed Full Value of consideration for computing Capital Gains  |
| 1.  | Land or Building or both | 50C     | (1) If Stamp Duty Value > 105% of consideration received or accruing as a result of transfer<br><br>(a) If date of agreement is different from the date of transfer and whole or part of the consideration is received by way of account payee cheque or bank draft or ECS <b>or through such other prescribed electronic mode</b> on or before the date of agreement<br><br>(b) If date of agreement is different from the date | Stamp Duty Value<br><br>Stamp Duty Value on the date of agreement<br><br>Stamp Duty Value on the date of transfer |

|    |                 |         |  |  |
|----|-----------------|---------|--|--|
|    |                 |         | <p>of transfer but the whole or part of the consideration has not been received by way of account payee cheque or bank draft or ECS <b>or through such other prescribed electronic mode</b> on or before the date of agreement</p> <p><b>However, if the stamp duty value <math>\leq</math> 105% of the sale consideration received</b></p> <p>(2) If the Assessing Officer refers the valuation to a Valuation Officer, on the assessee's claim that the stamp duty value exceeds the FMV of the property on the date of transfer</p> <p>(a) If Valuation by Valuation Officer &gt; Stamp Duty Value</p> <p>(b) If Valuation by Valuation Officer &lt; Stamp Duty Value</p> | <p>Consideration so received</p> <p>Stamp Duty Value</p> <p>Valuation by Valuation Officer</p> |
|    |                 | 155(14) | (3) If stamp duty value has been adopted as full value of consideration, and subsequently the value is revised in any appeal or revision   | Value so revised in such appeal or revision  |
| 2. | Unquoted shares | 50CA    | If consideration received or accruing as a result of transfer < FMV of such share determined in the prescribed manner  | FMV of such share determined in the prescribed manner  |

|    |                   |     |   |   |
|----|-------------------|-----|---|---|
| 3. | Any Capital asset | 50D | 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 | FMV of the said asset on the date of transfer |
|----|-------------------|-----|---|---|

**Note** – The valuation rules prescribed in Rule 11UA for valuation of unquoted equity shares would be dealt with at the Final level.



## 4.19 ADVANCE MONEY RECEIVED [SECTION 51]

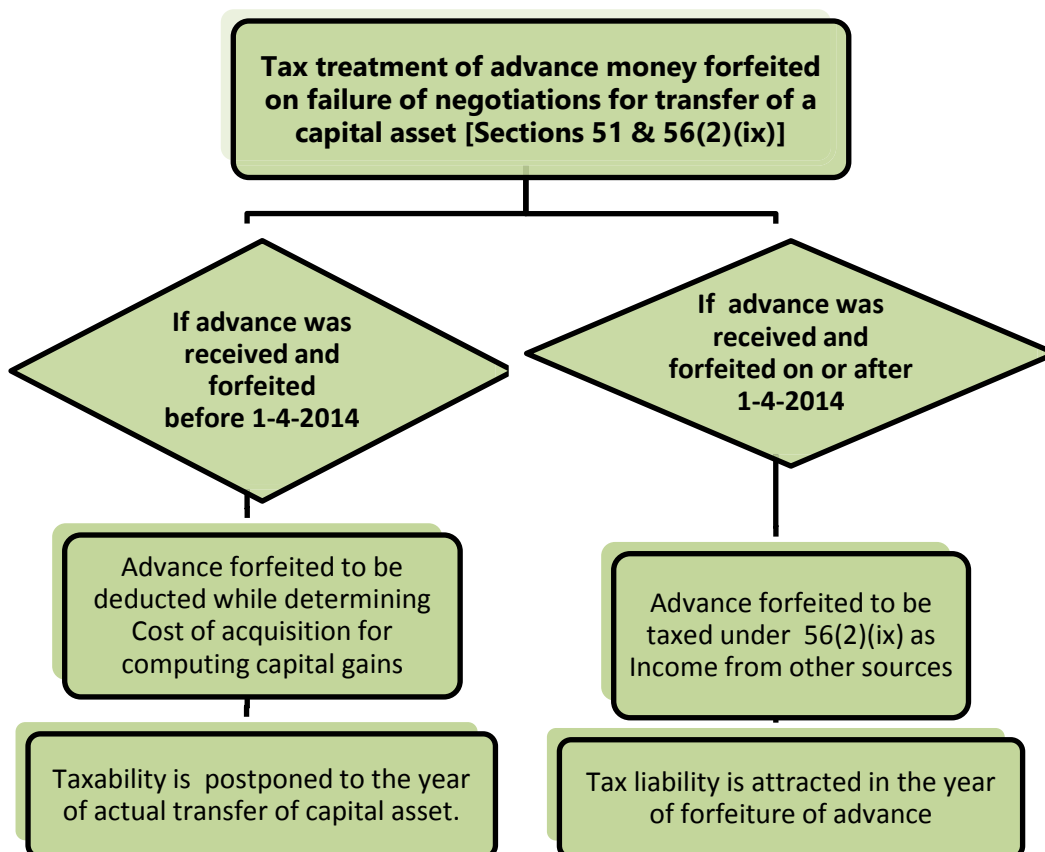
It is possible for an assessee to receive some advance in regard to the transfer of capital asset. Due to the break-down of the negotiation, the assessee may have retained the advance.

Section 51 provides that while calculating capital gains, the above advance retained by the assessee must go to reduce the cost of acquisition. However, if advance has been received and retained by the previous owner and not the assessee himself, then the same will not go to reduce the cost of acquisition of the assessee.

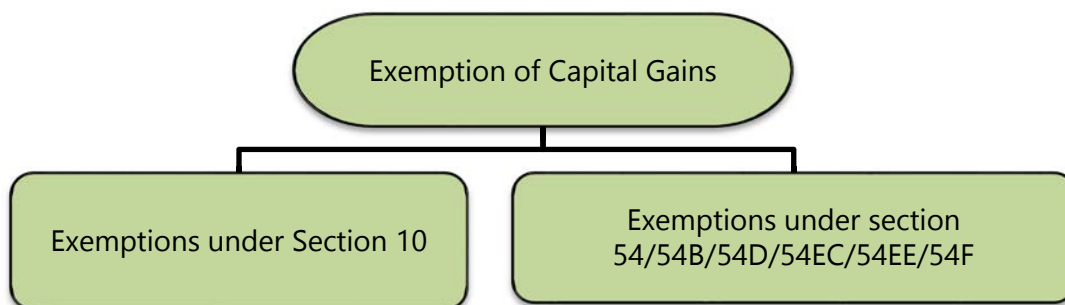
Section 56(2)(ix) provides for the taxability of any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset. Consequently, such sum shall be chargeable to income-tax under the head 'Income from other sources', if such sum is forfeited on or after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

In order to avoid double taxation of the advance received and retained, section 51 provides that where any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset has been included in the total income of the assessee for any previous year in accordance with section 56(2)(ix), then, such amount shall not be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition.

However, any such sum of money forfeited before 1<sup>st</sup> April, 2014, will be deducted from the cost of acquisition for computing capital gains.



## 4.20 EXEMPTION OF CAPITAL GAINS



## I. Exemptions under section 10

The following are the exemption in respect of capital gains under section 10:

### (i) Exemption of capital gain on transfer of a unit of Unit Scheme, 1964 (US 64) [Section 10(33)]

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.

### (ii) Exemption of capital gains on compulsory acquisition of agricultural land situated within specified urban limits [Section 10(37)]

With a view to mitigate the hardship faced by the farmers whose agricultural land situated in specified urban limits has been compulsorily acquired, clause (37) of section 10 exempts the capital gains arising to an individual or a HUF from transfer of agricultural land by way of compulsory acquisition.

Such exemption is available where the compensation or the enhanced compensation or consideration, as the case may be, is received on or after 1.4. 2004.

The exemption is available only when such land has been used for agricultural purposes during the preceding two years immediately preceding the date of transfer by such individual or a parent of his or by such HUF.

## II. Exemption of Capital Gains under section 54/ 54B/ 54D/ 54EC/ 54EE/ 54F

### (i) Capital Gains on sale of residential house [Section 54]

**Eligible assessee** – Individual & HUF

**Conditions to be fulfilled**

- There should be a transfer of residential house (buildings or lands appurtenant thereto)
- It must be a long-term capital asset
- Income from such house should be chargeable under the head "Income from house property"
- **Where the amount of capital gains exceeds ₹ 2 crore**

*Where the amount of capital gain exceeds ₹ 2 crore, **one residential house in India** should be –*

- *purchased within 1 year before or 2 years after the date of transfer (or)*
- *constructed within a period of 3 years after the date of transfer.*

**Where the amount of capital gains does not exceed ₹ 2 crore**

Where the amount of capital gains does not exceed ₹ 2 crore, the assessee i.e., individual or HUF, may at his option,

- purchase **two residential houses in India** within 1 year before or 2 years after the date of transfer (or)
- construct **two residential houses in India** within a period of 3 years after the date of transfer.

*Where during any assessment year, the assessee has exercised the option to purchase or construct two residential houses in India, he shall not be subsequently entitled to exercise the option for the same or any other assessment year.*

*This implies that if an assessee has availed the option of claiming benefit of section 54 in respect of purchase of two residential houses in Jaipur and Jodhpur, say, in respect of capital gains of ₹ 1.50 crores arising from transfer of residential house at Bombay in the P.Y.2019-20 then, he will not be entitled to avail the benefit of section 54 again in respect of purchase of two residential houses in, say, Pune and Baroda, in respect of capital gains of ₹ 1.20 crores arising from transfer of residential house in Jaipur in the P.Y.2023-24, even though the capital gains arising on transfer of the residential house at Jaipur does not exceed ₹ 2 crore.*

- If such investment is not made before the date of filing of return of income, then the capital gain has to be deposited under the CGAS. (Refer points (vii) and (viii) at the end of 4.20). Amount utilized by the assessee for purchase or construction of new asset and the amount so deposited shall be deemed to be the cost of new asset.

**Quantum of Exemption**

- If cost of new residential house ***or houses, as the case may be***  $\geq$  long term capital gains, entire long term capital gains is exempt.
- If cost of new residential house ***or houses, as the case may be***  $<$  long term capital gains, long term capital gains to the extent of cost of new residential house is exempt.

**Examples**

**Example 1** - If the long-term capital gains is ₹ 2.05 crore and the cost of the new house is ₹ 3 crore, then, the entire long-term capital gains of ₹ 2.05 crore is exempt.

**Example 2** - If long-term capital gains is ₹ 2.05 crore and cost of new house is ₹ 1.55 crore, then, long-term capital gains is exempt only upto ₹ 1.55 crore. Balance ₹ 50 lakhs is taxable @ 20%.

### Consequences of transfer of new asset before 3 years

- If the new asset is transferred before 3 years from the date of its acquisition or construction, then cost of the asset will be reduced by capital gains exempted earlier for computing capital gains.
- Continuing Example 1, if the new house was sold after 21 months for ₹ 5 crore, then short term capital gain chargeable to tax would be –

| Particulars   | ₹                  |
|---|--------------------|
| Net Consideration   | 5,00,00,000        |
| Less: Cost of acquisition <b>minus</b> capital gains exempt earlier (₹ 3,00,00,000 – ₹ 2,05,00,000) | 95,00,000          |
| <b>Short term capital gains chargeable to tax</b>   | <b>4,05,00,000</b> |

### ILLUSTRATION 12

Mr. Cee purchased a residential house on July 20, 2017 for ₹ 10,00,000 and made some additions to the house incurring ₹ 2,00,000 in August 2017. He sold the house property in April 2019 for ₹ 20,00,000. Out of the sale proceeds, he spent ₹ 5,00,000 to purchase another house property in September 2019.

What is the amount of capital gains taxable in the hands of Mr. Cee for the A.Y. 2020-21?

### SOLUTION

The house is sold before 24 months from the date of purchase. Hence, the house is a short-term capital asset and no benefit of indexation would be available.

| Particulars                     | ₹               |
|---------------------------------|-----------------|
| Sale consideration              | 20,00,000       |
| Less: Cost of acquisition       | 10,00,000       |
| Cost of improvement             | 2,00,000        |
| <b>Short-term capital gains</b> | <b>8,00,000</b> |

**Note:** The exemption of capital gains under section 54 is available only in case of long-term capital asset. As the house is short-term capital asset, Mr. Cee cannot claim exemption under section 54. Thus, the amount of taxable short-term capital gains is ₹ 8,00,000.

**(ii) Capital gains on transfer of agricultural land [Section 54B]**

**Eligible assessee** – Individual & HUF

**Conditions to be fulfilled**

- There should be a transfer of urban agricultural land.
- Such land must have been used for agricultural purposes by the assessee, being an individual or his parent, or a HUF in the 2 years immediately preceding the date of transfer.
- He should purchase another agricultural land (urban or rural) within 2 years from the date of transfer.
- If such investment is not made before the date of filing of return of income, then the capital gain has to be deposited under the CGAS (*Refer points (vii) and (viii) at the end of 4.20*). Amount utilized by the assessee for purchase of new asset and the amount so deposited shall be deemed to be the cost of new asset.

**Quantum of exemption**

- If cost of new agricultural land  $\geq$  capital gains, entire capital gains is exempt.
- If cost of new agricultural land  $<$  capital gains, capital gains to the extent of cost of new agricultural land is exempt.

**Examples**

**Example 1** - If the capital gains is ₹ 3 lakhs and the cost of the new agricultural land is ₹ 4 lakhs, then the entire capital gains of ₹ 3 lakhs is exempt.

**Example 2** - If capital gains is ₹ 3 lakhs and cost of new agricultural land is ₹ 2 lakhs, then capital gains is exempt only upto ₹ 2 lakhs.

**Consequences of transfer of new agricultural land before 3 years**

- If the new agricultural land is transferred before 3 years from the date of its acquisition, then cost of the land will be reduced by capital gains exempted earlier for computing capital gains of new agricultural land.
- However, if the new agricultural land is a rural agricultural land, there would be no capital gains on transfer of such land.
- Continuing Example 1, if the new agricultural land (urban land) is sold after, say, 1 year for ₹ 6 lakhs, then short term capital gain chargeable to tax would be –

| Particulars  | ₹               |
|--|-----------------|
| Net consideration  | 6,00,000        |
| Less: Cost of acquisition <b>minus</b> capital gains exempt earlier<br>(₹ 4,00,000 – ₹ 3,00,000) | 1,00,000        |
| <b>Short-term capital gains chargeable to tax</b>  | <b>5,00,000</b> |

**(iii) Capital Gains on transfer by way of compulsory acquisition of land and building of an industrial undertaking [Section 54D]**

**Eligible assessee** – Any assessee

**Conditions to be fulfilled**

- There must be compulsory acquisition of land and building or any right in land or building forming part of an industrial undertaking.
- The land and building should have been used by the assessee for purposes of the business of the industrial undertaking in the 2 years immediately preceding the date of transfer.
- The assessee must purchase any other land or building or construct any building (for shifting or re-establishing the existing undertaking or setting up a new industrial undertaking) within 3 years from the date of transfer.
- If such investment is not made before the date of filing of return of income, then the capital gain has to be deposited under the CGAS. (*Refer point (vii) and (viii) at the end of 4.20*). Amount utilized by the assessee for purchase of new asset and the amount so deposited shall be deemed to be the cost of new asset.

**Quantum of exemption**

- If cost of new asset  $\geq$  Capital gains, entire capital gains is exempt.
- If cost of new asset  $<$  Capital gains, capital gains to the extent of cost of new asset is exempt.

**Note:** The exemption in respect of capital gains from transfer of capital asset would be available even in respect of short-term capital asset, being land or building or any right in any land or building, provided such capital asset is used by assessee for the industrial undertaking belonging to him, even if he was not the owner for the said period of 2 years.

**Consequences of transfer of new asset before 3 years**

- If the new asset is transferred before 3 years from the date of its acquisition, then cost of the asset will be reduced by capital gains exempted earlier for computing capital gains.

**(iv) Capital Gains not chargeable on investment in certain bonds [Section 54EC]**

**Eligible assessee** – Any assessee

**Conditions to be fulfilled**

- There should be transfer of a long-term capital asset **being land or building or both**.
- Such asset can also be a depreciable asset held for more than 36 months<sup>11</sup>.
- The capital gains arising from such transfer should be invested in a long-term specified asset within 6 months from the date of transfer.
- **Long-term specified asset** means specified bonds, redeemable after 5 years, issued on or after 1.4.2018 by the National Highways Authority of India (NHAI) or the Rural Electrification Corporation Limited (RECL) or any other bond notified by the Central Government in this behalf.
- The assessee should not transfer or convert or avail loan or advance on the security of such bonds for a period of **5 years** from the date of acquisition of such bonds.

**Quantum of exemption**

- Capital gains or amount invested in specified bonds, whichever is lower.
- The maximum investment which can be made in notified bonds or bonds of NHAI and RECL, out of capital gains arising from transfer of one or more assets, during the previous year in which the original asset is transferred and in the subsequent financial year **cannot exceed ₹ 50 lakhs**.

**Violation of condition**

- In case of transfer or conversion of such bonds or availing loan or advance on security of such bonds before the expiry of 5 years, the capital gain exempted earlier shall be taxed as long-term capital gain in the year of violation of condition.

**ILLUSTRATION 13**

*Long term capital gain of ₹75 lakh arising from transfer of building on 1.5.2019*

<sup>11</sup> CIT v. Dempo Company Ltd (2016) 387 ITR 354 (SC)

*will be exempt from tax if such capital gain is invested in the bonds redeemable after five years, issued by NHAI under section 54EC. Examine with reasons whether the given statement is true or false having regard to the provisions of the Income-tax Act, 1961.*

### SOLUTION

**False:** The exemption under section 54EC has been restricted, by limiting the maximum investment in long term specified assets (i.e. bonds of NHAI or RECL or any other bond notified by Central Government in this behalf, redeemable after 5 years) to ₹ 50 lakh, whether such investment is made during the relevant previous year or the subsequent previous year, or both. Therefore, in this case, the exemption under section 54EC can be availed only to the extent of ₹ 50 lakh, provided the investment is made before 1.11.2019 (i.e., within six months from the date of transfer).

**(v) *Exemption of long-term capital gains on investment in notified units of specified fund [Section 54EE]***

**Objective:**

For incentivising the start-up ecosystem in India, the 'start-up India Action Plan' envisages establishment of a Fund of Funds which intends to raise ₹ 2,500 crores annually for four years to finance the start-ups.

**Eligible assessee:** Any assessee

**Exemption of LTCG invested in units of specified fund:**

In order to achieve this objective, section 54EE has been inserted to provide exemption from capital gains tax if the long-term capital gain proceeds are invested by an assessee in units issued before 1<sup>st</sup> April, 2019 of such fund, as may be notified by the Central Government in this behalf. The lower of the capital gains or the amount so invested would be exempt under section 54EE.

**Quantum of Exemption:**

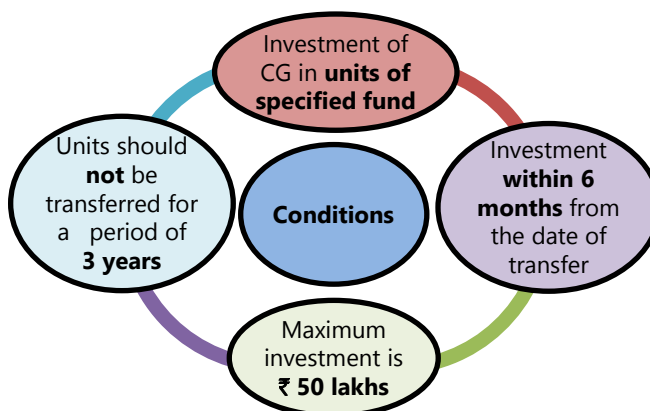
| Case  | Amount exempted  |
|---|--|
| If amount invested in notified units of specified fund $\geq$ Capital gains | Entire capital gains is exempt   |
| If amount invested in notified units of specified fund $<$ Capital gains    | Capital gains to the extent of cost of amount invested in notified units is exempt |

**Time limit for investment:**

The investment has to be made within 6 months after the date of transfer.

**Ceiling limit for investment in units of the specified fund:**

The maximum investment in units of the specified fund in any financial year is ₹ 50 lakh. Further, the investment made by an assessee in the units of specified fund out of capital gains arising from the transfer of one or more capital assets, cannot exceed ₹ 50 lakh, whether the investment is made in the same financial year or subsequent financial year or partly in the same financial year and partly in the subsequent financial year.

**Conditions for availing exemption:****Consequence of transfer of units before 3 years:**

Where the units are transferred at any time within a period of three years from its acquisition, the capital gains, to the extent exempt earlier, would be chargeable as long term capital gains in the year of transfer.

**Deemed transfer of notified units:**

Further, if the assessee takes any loan or advance on the security of such units, he shall be deemed to have transferred such units on the date on which such loan or advance is taken.

**(vi) Capital gains in cases of investment in residential house [Section 54F]**

**Eligible assessee:** Individuals / HUF

**Conditions to be fulfilled**

- There must be transfer of a long-term capital asset, not being a residential house.

- Transfer of plot of land is also eligible for exemption
- The assessee should -
  - Purchase **one residential house situated in India** within a period of 1 year before or 2 years after the date of transfer; or
  - Construct one residential house in India within 3 years from the date of transfer.
  - If such investment is not made before the date of filing of return of income, then the net sale consideration has to be deposited under the CGAS. (*Refer points (vii) and (viii) after the diagram below*) Amount utilized by the assessee for purchase or construction of new asset and the amount so deposited shall be deemed to be the cost of new asset.
- The assessee should not own more than one residential house on the date of transfer.
- The assessee should not –
  - purchase any other residential house within a period of 2 years or
  - construct any other residential house within a period of 3 years from the date of transfer of the original asset.

#### **Quantum of exemption**

- If cost of new residential house  $\geq$  Net sale consideration of original asset, entire capital gains is exempt.
- If cost of new residential house  $<$  Net sale consideration of original asset, only proportionate capital gains is exempt i.e.

$$\text{LTCG} \times \frac{\text{Amount invested in new residential house}}{\text{Net sale consideration}}$$

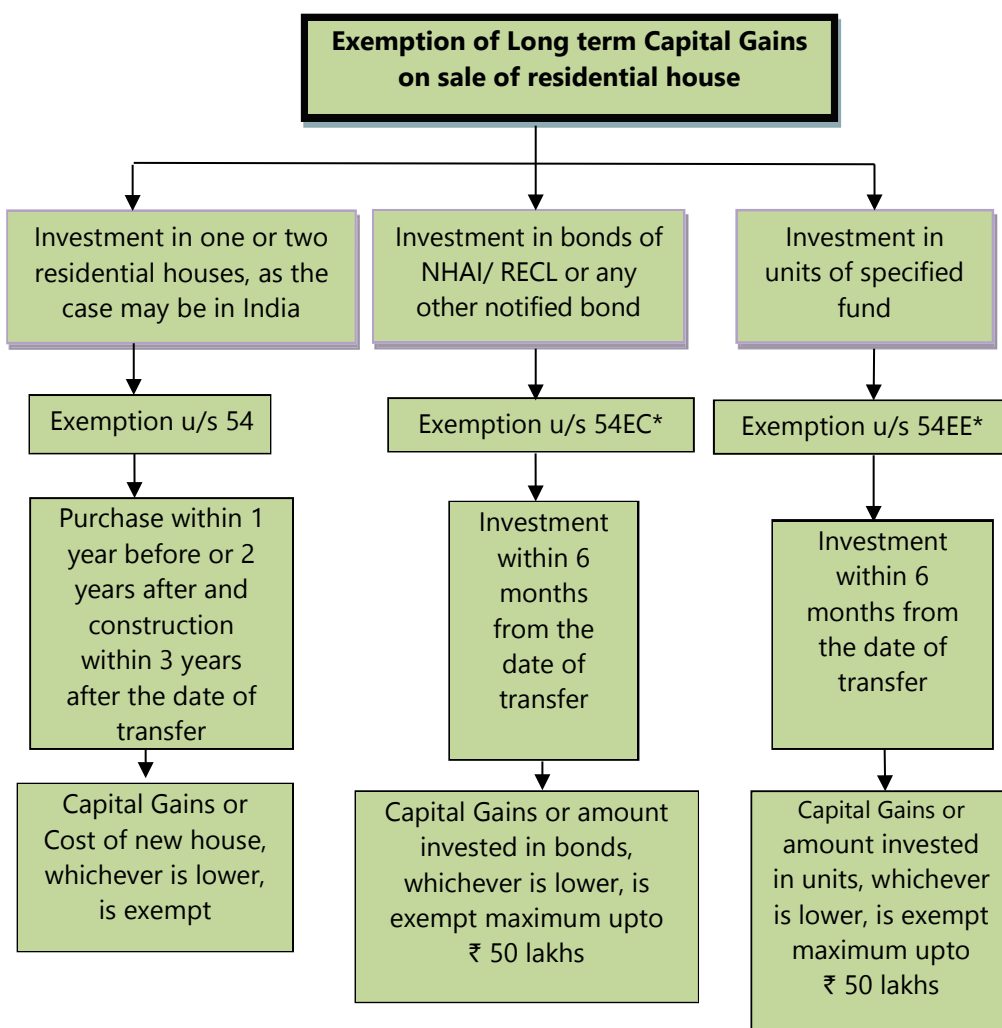
#### **Consequences where the assessee purchases any other residential house within a period of 2 years or constructs any other residential house within a period of 3 years from the date of transfer of original asset:**

The capital gains exempt earlier under section 54F shall be deemed to be taxable as long-term capital gains in the previous year in which such residential house is purchased or constructed.

**Consequences if the new house is transferred within a period of 3 years from the date of its purchase**

- Capital gains would arise on transfer of the new house; and
- The capital gains exempt earlier under section 54F would be taxable as long-term capital gains.

**Note** – In case the new residential house is sold after 2 years, the capital gains would be long-term capital gains and indexation benefit would be available.



*\*The exemption under section 54EE is also available in respect of capital gains on transfer of other long term capital assets and the exemption under section 54EC is available in respect of capital gains on transfer of capital asset being land or building or both*

**(vii) 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.

**(viii) Extension of time for acquiring new asset or depositing or investing amount of Capital Gain [Section 54H]**

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 the transfer.



## 4.21 REFERENCE TO VALUATION OFFICER [SECTION 55A]

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 -

- (i) 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.

- (ii) 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.
- (iii) 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.



## 4.22 TAX ON SHORT TERM CAPITAL GAINS IN RESPECT OF EQUITY SHARES/ UNITS OF AN EQUITY ORIENTED FUND [SECTION 111A]

- (i) **Concessional rate of tax in respect of STCG on transfer of certain assets:**  
This section provides for a concessional rate of tax (i.e. 15%) on the short-term capital gains on transfer of -
  - (1) an equity share in a company or
  - (2) a unit of an equity oriented fund or

(3) a unit of a business trust.<sup>12</sup>

**(ii) Conditions:** The conditions for availing the benefit of this concessional rate are –

- (1) the transaction of sale of such equity share or unit should be entered into on or after 1.10.2004, being the date on which Chapter VII of the Finance (No. 2) Act, 2004 came into force; and
- (2) such transaction should be chargeable to securities transaction tax under the said Chapter.

However, short-term capital gains arising from transactions undertaken in foreign currency on a recognized stock exchange located in an International Financial Services Centre (IFSC) would be taxable at a concessional rate of 15% even though STT is not leviable in respect of such transaction.

**(iii) Adjustment of Unexhausted Basic Exemption Limit:** In the case of resident individuals or HUF, if the basic exemption is not fully exhausted by any other income, then, such short-term capital gain will be reduced by the unexhausted basic exemption limit and only the balance would be taxed at 15%. However, the benefit of availing the basic exemption limit is not available in the case of non-residents.

**(iv) No deduction under Chapter VI-A against STCG taxable under section 111A:** Deductions under Chapter VI-A cannot be availed in respect of such short-term capital gains on equity shares of a company or units of an equity oriented mutual fund or unit of a business trust included in the total income of the assessee.



## 4.23 TAX ON LONG TERM CAPITAL GAINS [SECTION 112]

**(i) Concessional rate of tax:** Where the total income of an assessee includes long-term capital gains, tax is payable by the assessee @20% on such long-term capital gains. The treatment of long-term capital gains in the hands of different types of assessee are as follows –

- (1) Resident individual or Hindu undivided family:** Income-tax payable at normal rates on total income as reduced by long-term capital gains plus 20% on such long-term capital gains.

<sup>12</sup> Chapter XII-FA of the Income-tax Act, 1961 and the related provisions dealing with the taxation aspects of business trust would be dealt with at the Final level.

However, where the total income as reduced by such long-term capital gains is below the maximum amount which is not chargeable to income-tax then such long-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax and the tax on the balance of such long-term capital gains will be calculated @20%.

**(2) Domestic Company:** Long-term capital gains will be charged @20%.

**(3) Non-corporate non-resident or foreign company:**

- (i) Long-term capital gains arising from the transfer of a capital asset, being unlisted securities, or shares of a company not being a company in which public are substantially interested, would be calculated at the rate of 10% on the capital gains in respect of such asset without giving effect to the indexation provision under second proviso to section 48 and currency fluctuation under first proviso to section 48.
- (ii) In respect of other long-term capital gains, the applicable rate of tax would be 20%.

**(4) Residents (other than those included in (1) above):** Long-term capital gains will be charged @20%.

**(ii) Lower rate of tax for transfer of listed securities and zero coupon bonds:**

Where the tax payable in respect of any income arising from the transfer of a listed security (other than a unit) or a zero coupon bond, being a long-term capital asset, exceeds 10% of the amount of capital gains before indexation, then such excess shall be ignored while computing the tax payable by the assessee.

Consequently, long term capital gains on transfer of units and unlisted securities are not eligible for concessional rate of tax@10% (without indexation benefit). Therefore, the long-term capital gains, in such cases, is taxable@20% (with indexation benefit).

However, in case of non-corporate non-residents and foreign companies, long term capital gains arising from transfer of a capital asset, being unlisted securities or shares in a company in which public are not substantially interested are eligible for a concessional rate of tax@10% (without indexation benefit).

**(iii) No Chapter VI-A deduction against LTCG:** The provisions of section 112 make it clear that the deductions under Chapter VIA cannot be availed in respect of the long-term capital gains included in the total income of the assessee.

**Tax on long-term capital gains [Section 112]**

|           | Person   | Rate of tax | Particulars   |
|-----------|--|-------------|---|
| <b>1.</b> | <b>Resident persons, other than companies</b>            |             |   |
|           | Resident Individuals and HUF                             | 20%         | Unexhausted basic exemption limit can be exhausted against LTCG taxable u/s 112   |
|           | Resident AOPs and BOIs                                   | 20%         | Unexhausted basic exemption limit cannot be adjusted against LTCG taxable u/s 112                                       |
|           | Resident Firms and LLPs                                  | 20%         |   |
| <b>2.</b> | <b>Domestic companies</b>                                | 20%         |   |
| <b>3.</b> | <b>Non-corporate non-residents and foreign companies</b> | 20%         | Capital assets, other than unlisted securities or shares of closely held companies                                      |
|           |  | 10%         | Unlisted securities or shares of closely held companies (without benefit of indexation or foreign currency fluctuation) |

In case of transfer of listed securities (other than units) and Zero Coupon Bonds, LTCG would be taxable at the lower of the following rates –

- (1) 10% without indexation benefit; and
- (2) 20% with indexation benefit.



## 4.24 TAX ON LONG TERM CAPITAL GAINS ON CERTAIN ASSETS [SECTION 112A]

**(i) Concessional rate of tax in respect of LTCG on transfer of certain assets:**

In order to minimize economic distortions and curb erosion of tax base, section 112A provides that notwithstanding anything contained in section 112, a concessional rate of tax @10% will be leviable on the long-term capital gains exceeding ₹ 1,00,000 on transfer of –

- (a) an equity share in a company or
- (b) a unit of an equity oriented fund or
- (c) a unit of a business trust.

**(ii) Conditions:** The conditions for availing the benefit of this concessional rate are–

- (a) In case of equity share in a company, STT has been paid on acquisition and transfer of such capital asset
- (b) In case of unit of an equity oriented fund or unit of business trust, STT has been paid on transfer of such capital asset.

However, the Central Government may, by notification in the Official Gazette, specify the nature of acquisition of equity share in a company on which the condition of payment of STT on acquisition would not be applicable.

Further, long-term capital gains arising from transaction undertaken on a recognized stock exchange located in an International Financial Service Centre (IFSC) would be taxable at a concessional rate of 10%, where the consideration for transfer is received or receivable in foreign currency, even though STT is not leviable in respect of such transaction.

**(iii) Adjustment of Unexhausted Basic Exemption Limit:** In the case of resident individuals or HUF, if the basic exemption is not fully exhausted by any other income, then such long-term capital gain exceeding ₹ 1 lakh will be reduced by the unexhausted basic exemption limit and only the balance would be taxed at 10%.

However, the benefit of adjustment of unexhausted basic exemption limit is not available in the case of non-residents.

**(iv) No deduction under Chapter VI-A against LTCG taxable under section 112A:** Deductions under Chapter VI-A cannot be availed in respect of such long-term capital gains on equity shares of a company or units of an equity

oriented mutual fund or unit of a business trust included in the total income of the assessee.

- (v) No benefit of rebate under section 87A against LTCG taxable under section 112A:** Rebate under section 87A is not available in respect of tax payable @10% on LTCG under section 112A.

Subsequent to insertion of section 112A, the CBDT has issued clarification F. No. 370149/20/2018-TPL dated 04.02.2018 in the form of a Question and Answer format to clarify certain issues raised in different fora on various issues relating to the new tax regime for taxation of long-term capital gains. The relevant questions raised and answers to such questions as per the said Circular are given hereunder:

**Q 1. What is the meaning of long term capital gains under the new tax regime for long term capital gains?**

Ans 1. Long term capital gains mean gains arising from the transfer of long-term capital asset.

It provides for a new long-term capital gains tax regime for the following assets–

- i. Equity Shares in a company listed on a recognised stock exchange;
- ii. Unit of an equity oriented fund; and
- iii. Unit of a business trust.

The new tax regime applies to the above assets, if–

- a. the assets are held for a minimum period of twelve months from the date of acquisition; and
- b. the Securities Transaction Tax (STT) is paid at the time of transfer. However, in the case of equity shares acquired after 1.10.2004, STT is required to be paid even at the time of acquisition (subject to notified exemptions).

**Q 2. What is the point of chargeability of the tax?**

Ans 2. The tax will be levied only upon transfer of the long-term capital asset on or after 1st April, 2018, as defined in clause (47) of section 2 of the Act.

**Q 3. What is the method for calculation of long-term capital gains?**

Ans 3. The long-term capital gains will be computed by deducting the cost of acquisition from the full value of consideration on transfer of the long-term capital asset.

**Q 4. How do we determine the cost of acquisition for assets acquired on or before 31st January, 2018?**

Ans 4. The cost of acquisition for the long-term capital asset acquired on or before 31st of January, 2018 will be the actual cost.

However, if the actual cost is less than the fair market value of such asset as on 31st of January, 2018, the fair market value will be deemed to be the cost of acquisition.

Further, if the full value of consideration on transfer is less than the fair market value, then such full value of consideration or the actual cost, whichever is higher, will be deemed to be the cost of acquisition.

**Q 5. Please provide illustrations for computing long-term capital gains in different scenarios, in the light of answers to questions 4.**

Ans 5. The computation of long-term capital gains in different scenarios is illustrated as under

**Scenario 1** – An equity share is acquired on 1st of January, 2017 at ₹ 100, its fair market value is ₹ 200 on 31st of January, 2018 and it is sold on 1st of April, 2019 at ₹ 250. As the actual cost of acquisition is less than the fair market value as on 31st of January, 2018, the fair market value of ₹ 200 will be taken as the cost of acquisition and the long-term capital gain will be ₹ 50 (₹ 250 – ₹ 200).

**Scenario 2** – An equity share is acquired on 1st of January, 2017 at ₹ 100, its fair market value is ₹ 200 on 31st of January, 2018 and it is sold on 1st of April, 2019 at ₹ 150. In this case, the actual cost of acquisition is less than the fair market value as on 31st of January, 2018. However, the sale value is also less than the fair market value as on 31st of January, 2018. Accordingly, the sale value of ₹ 150 will be taken as the cost of acquisition and the long-term capital gain will be NIL (₹ 150 – ₹ 150).

**Scenario 3** – An equity share is acquired on 1st of January, 2017 at ₹ 100, its fair market value is ₹ 50 on 31st of January, 2018 and it is sold on 1st of April, 2019 at ₹ 150. In this case, the fair market value as on 31st of January, 2018 is less than the actual cost of acquisition, and therefore, the actual cost of ₹ 100 will be taken as actual cost of acquisition and the long-term capital gain will be ₹ 50 (₹ 150 – ₹ 100).

**Scenario 4** – An equity share is acquired on 1st of January, 2017 at ₹ 100, its fair market value is ₹ 200 on 31st of January, 2018 and it is sold on 1st of April,

2019 at ₹ 50. In this case, the actual cost of acquisition is less than the fair market value as on 31st January, 2018. The sale value is less than the fair market value as on 31st of January, 2018 and also the actual cost of acquisition. Therefore, the actual cost of ₹ 100 will be taken as the cost of acquisition in this case. Hence, the long-term capital loss will be ₹ 50 (₹ 50 – ₹ 100) in this case.

**Q 6. Whether the cost of acquisition will be inflation indexed?**

Ans 6. Third proviso to section 48, provides that the long-term capital gain will be computed without giving effect to the provisions of the second provisos of section 48. Accordingly, it is clarified that the benefit of inflation indexation of the cost of acquisition would not be available for computing long-term capital gains under the new tax regime.

**Q 7. What will be the tax treatment of transfer made on or after 1st April 2018?**

Ans 7. The long-term capital gains exceeding ₹ 1 Lakh arising from transfer of these assets made on after 1st April, 2018 will be taxed at 10 per cent. However, there will be no tax on gains accrued upto 31st January, 2018.

**Q 8. What is the date from which the holding period will be counted?**

Ans 8. The holding period will be counted from the date of acquisition.

**Q 9. Whether tax will be deducted at source in case of gains by resident tax payer?**

Ans 9. No. There will be no deduction of tax at source from the payment of long-term capital gains to a resident tax payer.

**Q 10. What will be the cost of acquisition in the case of bonus shares acquired before 1st February 2018?**

Ans 10. The cost of acquisition of bonus shares acquired before 31st January, 2018 will be determined as per section 55(2)(ac). Therefore, the fair market value of the bonus shares as on 31st January, 2018 will be taken as cost of acquisition (except in some typical situations explained in Ans 5), and hence, the gains accrued upto 31st January, 2018 will continue to be exempt<sup>13</sup>.

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<sup>13</sup> Subject to the notification issued by the Central Government to specify the nature of acquisition of equity share in a company on which the condition of payment of STT on acquisition would not be applicable. This notification will be discussed at Final level.

**Q 11. What will be the cost of acquisition in the case of right share acquired before 1st February 2018?**

Ans 11. The cost of acquisition of right share acquired before 31st January, 2018 will be determined as per section 55(2)(ac). Therefore, the fair market value of right share as on 31st January, 2018 will be taken as cost of acquisition (except in some typical situations explained in Ans 5), and hence, the gains accrued upto 31st January, 2018 will continue to be exempt<sup>13</sup>.

**Q 12. What will be the treatment of long-term capital loss arising from transfer made on or after 1st April, 2018?**

Ans 12. Long-term capital loss arising from transfer made on or after 1st April, 2018 will be allowed to be set-off and carried forward in accordance with existing provisions of the Act. Therefore, it can be set-off against any other long-term capital gains and unabsorbed loss can be carried forward to subsequent eight years for set-off against long-term capital gains.

**ILLUSTRATION 14**

Calculate the income-tax liability for the assessment year 2020-21 in the following cases:

|  | <b>Mr. A<br/>(age 45)</b>          | <b>Mrs. B<br/>(age 62)</b>  | <b>Mr. C<br/>(age 81)</b>                              | <b>Mr. D<br/>(age 82)</b> |
|--|------------------------------------|---|--|---------------------------|
| <b>Status</b>                                  | Resident                           | Non- resident   | Resident   | Non- resident             |
| Total income other than long-term capital gain | 2,40,000                           | 2,80,000  | 5,90,000   | 4,80,000                  |
| Long-term capital gain                         | 15,000<br>from sale of vacant site | 10,000<br>from sale of listed equity shares (STT paid on sale and purchase of shares) | 60,000<br>from sale of agricultural land in rural area | Nil                       |

**SOLUTION**

**Computation of income-tax liability for the A.Y.2020-21**

| <b>Particulars</b> | <b>Mr. A<br/>(age 45)</b> | <b>Mrs. B<br/>(age 62)</b> | <b>Mr. C<br/>(age 81)</b> | <b>Mr. D<br/>(age 82)</b> |
|--------------------|---------------------------|----------------------------|---------------------------|---------------------------|
| Residential Status | Resident                  | Non-resident               | Resident                  | Non-resident              |

|   |                                   |   |  |                 |
|---|-----------------------------------|---|--|-----------------|
| Applicable basic exemption limit                | ₹ 2,50,000                        | ₹ 2,50,000  | ₹ 5,00,000                                 | ₹ 2,50,000      |
| Asset sold                                      | Vacant site                       | Listed equity shares (STT paid on both sale and purchase of shares) | Rural agricultural land                    | -               |
| Long-term capital gain (on sale of above asset) | ₹ 15,000<br>[Taxable@20% u/s 112] | ₹ 10,000<br>[exempt u/s 112A since it is less than ₹ 1,00,000]      | ₹ 60,000<br>(Exempt – not a capital asset) | -               |
| Other income                                    | ₹ 2,40,000                        | ₹ 2,80,000  | ₹ 5,90,000                                 | ₹ 4,80,000      |
| <b>Tax liability</b>                            |                                   |   |  |                 |
| On LTCG (after adjusting Basic Exemption limit) | ₹ 1,000                           | -   | -  | -               |
| On Other income                                 | Nil                               | ₹ 1,500   | ₹ 18,000                                   | ₹ 11,500        |
| Less: Rebate u/s 87A                            | ₹ 1,000<br>₹ 1,000                | ₹ 1,500   | ₹ 18,000                                   | ₹ 11,500        |
|   | ₹ Nil                             |   |  |                 |
| Add: Health and education cess @4%              | Nil                               | ₹ 60  | ₹ 720                                      | ₹ 460           |
| <b>Total tax liability</b>                      | <b>Nil</b>                        | <b>₹ 1,560</b>  | <b>₹ 18,720</b>                            | <b>₹ 11,960</b> |

**Notes:**

1. Since Mrs. B and Mr. D are non-residents, they cannot avail the higher basic exemption limit of ₹ 3,00,000 and ₹ 5,00,000 for persons over the age of 60 years and 80 years, respectively.
2. Since Mr. A is a resident whose total income does not exceed ₹ 5 lakhs, he is eligible for rebate of ₹ 12,500 or the actual tax payable, whichever is lower, under section 87A.

## EXERCISE

### Question 1

Mr. Mithun purchased 100 equity shares of M/s Goodmoney Co. Ltd. on 01-04-2005 at rate of ₹ 1,000 per share in public issue of the company by paying securities transaction tax.

Company allotted bonus shares in the ratio of 1:1 on 01.12.2018. He has also received dividend of ₹ 10 per share on 01.05.2019.

He has sold all the shares on 01.10.2019 at the rate of ₹ 4,000 per share through a recognized stock exchange and paid brokerage of 1% and securities transaction tax of 0.02% to celebrate his 75<sup>th</sup> birthday.

Compute his total income and tax liability for Assessment Year 2020-21, assuming that he is having no income other than given above. Fair market value of shares of M/s Goodmoney Co. Ltd. on 31.1.2018 is ₹ 2,000.

### Answer

#### Computation of total income and tax liability of Mr. Mithun for A.Y. 2020-21

| Particulars   | ₹               |
|---|-----------------|
| <b>Long term capital gains on sale of original shares</b> |                 |
| Gross sale consideration (100 x ₹ 4,000)                  | 4,00,000        |
| Less: Brokerage@1%  | 4,000           |
| Net sale consideration                                    | 3,96,000        |
| Less: Cost of acquisition (100 x ₹ 2,000) (Refer Note 2)  | 2,00,000        |
| <b>Long term capital gains</b>                            | <b>1,96,000</b> |
| <b>Short term capital gains on sale of bonus shares</b>   |                 |
| Gross sale consideration (100 x ₹ 4,000)                  | 4,00,000        |
| Less: Brokerage@1%  | 4,000           |
| Net sale consideration                                    | 3,96,000        |
| Less: Cost of acquisition of bonus shares                 | NIL             |
| <b>Short term capital gains</b>                           | <b>3,96,000</b> |
| <b>Total Income</b>                                       | <b>5,92,000</b> |

|   |               |
|---|---------------|
| <b>Tax Liability</b>  |               |
| 15% of (₹ 3,96,000 - ₹ 3,00,000, being unexhausted basic exemption limit) | 14,400        |
| 10% of (₹ 1,96,000 - ₹ 1,00,000)  | 9,600         |
|   | 24,000        |
| Add : Health and education cess @4%                                       | 960           |
| <b>Tax payable</b>  | <b>24,960</b> |

**Notes:**

- (1) Long-term capital gains exceeding ₹ 1 lakh on sale of original shares through a recognized stock exchange (STT paid at the time of acquisition and sale) is taxable under section 112A at a concessional rate of 10%, without indexation benefit.
- (2) Cost of acquisition of such equity shares acquired before 1.2.2018 is higher of
  - Cost of acquisition i.e., ₹ 1,000 per share and
  - lower of
    - Fair market value of such asset i.e., ₹ 2,000 per share and
    - Full value of consideration i.e., ₹ 4,000 per share.

So, the cost of acquisition of original share is ₹ 2,000 per share.
- (2) Since bonus shares are held for less than 12 months before sale, the gain arising there from is a short-term capital gain chargeable to tax@15% as per section 111A after adjusting the unexhausted basic exemption limit. Since Mr. Mithun is over 60 years of age, he is entitled for a higher basic exemption limit of ₹ 3,00,000 for A.Y. 2020-21.
- (3) Dividend income received from M/s Goodmoney Co. Ltd. is exempt under section 10(34).
- (4) Brokerage paid is allowable since it is an expenditure incurred wholly and exclusively in connection with the transfer. Hence, it qualifies for deduction under section 48(i).
- (5) Cost of bonus shares will be Nil as such shares are allotted after 1.04.2001.
- (6) Securities transaction tax is not allowable as deduction.

**Question 2**

Aarav converts his plot of land purchased in July, 2003 for ₹ 80,000 into stock-in-trade on 31<sup>st</sup> March, 2019. The fair market value as on 31.3.2019 was ₹ 3,00,000. The stock-in-trade was sold for ₹ 3,25,000 in the month of January, 2020.

Find out the taxable income, if any, and if so under which 'head of income' and for which Assessment Year?

Cost Inflation Index: F.Y. 2003-04:109; F.Y. 2018-19: 280.

**Answer**

Conversion of a capital asset into stock-in-trade is a transfer within the meaning of section 2(47) in the previous year in which the asset is so converted. However, the capital gains will be charged to tax only in the year in which the stock-in-trade is sold.

The cost inflation index of the financial year in which the conversion took place should be considered for computing indexed cost of acquisition. Further, the fair market value on the date of conversion would be deemed to be the full value of consideration for transfer of the asset as per section 45(2). The sale price less the fair market value on the date of conversion would be treated as the business income of the year in which the stock-in-trade is sold.

Therefore, in this problem, both capital gains and business income would be charged to tax in the A.Y. 2020-21.

| Particulars  | ₹             |
|--|---------------|
| <b>Capital Gains</b>   |               |
| Sale consideration (Fair market value on the date of conversion) | 3,00,000      |
| Less: Indexed cost of acquisition (₹ 80,000 × 280/109)           | 2,05,505      |
| <b>Long-term capital gain</b>                                    | <b>94,495</b> |
| <b>Profits &amp; Gains of Business or Profession</b>             |               |
| Sale price of stock-in-trade                                     | 3,25,000      |
| Less: Fair market value on the date of conversion                | 3,00,000      |
|  | <b>25,000</b> |

**Computation of taxable income of Mr. Aarav for A.Y.2020-21**

| Particulars                                   | ₹               |
|---|-----------------|
| Profits and gains from business or profession | 25,000          |
| Long term capital gains                       | 94,495          |
| <b>Taxable Income</b>                         | <b>1,19,495</b> |

**Question 3**

Mrs. Harshita purchased a land at a cost of ₹ 35 lakhs in the financial year 2003-04 and held the same as her capital asset till 31<sup>st</sup> March, 2011. She started her real estate business on 1<sup>st</sup> April, 2011 and converted the said land into stock-in-trade of her business on the said date, when the fair market value of the land was ₹ 210 lakhs.

She constructed 15 flats of equal size, quality and dimension. Cost of construction of each flat is ₹ 10 lakhs. Construction was completed in February, 2020. She sold 10 flats at ₹ 30 lakhs per flat in March, 2020. The remaining 5 flats were held in stock as on 31<sup>st</sup> March, 2020.

She invested ₹ 50 lakhs in bonds issued by National Highways Authority of India on 31<sup>st</sup> March, 2020 and another ₹ 50 lakhs in bonds of Rural Electrification Corporation Ltd. in April, 2020.

Compute the amount of chargeable capital gain and business income in the hands of Mrs. Harshita arising from the above transactions for Assessment Year 2020-21 indicating clearly the reasons for treatment for each item.

[Cost Inflation Index: FY 2003-04: 109; FY 2011-12: 184].

**Answer****Computation of capital gains and business income of Harshita for A.Y. 2020-21**

| Particulars   | ₹           |
|---|-------------|
| <b>Capital Gains</b>  |             |
| Fair market value of land on the date of conversion deemed as the full value of consideration for the purposes of section 45(2) | 2,10,00,000 |
| Less: Indexed cost of acquisition [₹ 35,00,000 × 184/109]   | 59,08,257   |
|   | 1,50,91,743 |
| Proportionate capital gains arising during A.Y.2020-21 [₹ 1,50,91,743 × 2/3]  | 1,00,61,162 |

|  |                  |
|--|------------------|
| Less: Exemption under section 54EC                                     | 50,00,000        |
| <b>Capital gains chargeable to tax for A.Y.2020-21</b>                 | <b>50,61,162</b> |
| <b>Business Income</b>   |                  |
| Sale price of flats [10 × ₹ 30 lakhs]                                  | 3,00,00,000      |
| Less: Cost of flats  |                  |
| Fair market value of land on the date of conversion [₹ 210 lacs × 2/3] | 1,40,00,000      |
| Cost of construction of flats [10 × ₹ 10 lakhs]                        | 1,00,00,000      |
| <b>Business income chargeable to tax for A.Y.2020-21</b>               | <b>60,00,000</b> |

**Notes:**

- (1) The conversion of a capital asset into stock-in-trade is treated as a transfer under section 2(47). It would be treated as a transfer in the year in which the capital asset is converted into stock-in-trade.
- (2) However, as per section 45(2), the capital gains arising from the transfer by way of conversion of capital assets into stock-in-trade will be chargeable to tax only in the year in which the stock-in-trade is sold.
- (3) The indexation benefit for computing indexed cost of acquisition would, however, be available only up to the year of conversion of capital asset into stock-in-trade and not up to the year of sale of stock-in-trade.
- (4) For the purpose of computing capital gains in such cases, the fair market value of the capital asset on the date on which it was converted into stock-in-trade shall be deemed to be the full value of consideration received or accruing as a result of the transfer of the capital asset.  
In this case, since only 2/3rd of the stock-in-trade (10 flats out of 15 flats) is sold in the P.Y.2019-20, only proportionate capital gains (i.e., 2/3rd) would be chargeable to tax in the A.Y.2020-21.
- (5) On sale of such stock-in-trade, business income would arise. The business income chargeable to tax would be the difference between the price at which the stock-in-trade is sold and the fair market value on the date of conversion of the capital asset into stock-in-trade.
- (6) In case of conversion of capital asset into stock-in-trade and subsequent sale of stock-in-trade, the period of 6 months is to be reckoned from the date of sale of stock-in-trade for the purpose of exemption under section 54EC [CBDT Circular No.791 dated 2.6.2000]. In this case, since the investment in bonds of NHAI has been made within 6 months of sale of flats, the same qualifies for

exemption under section 54EC. With respect to long-term capital gains arising on land or building or both in any financial year, the maximum deduction under section 54EC would be ₹ 50 lakhs, whether the investment in bonds of NHAI or RECL are made in the same financial year or next financial year or partly in the same financial year and partly in the next financial year.

Therefore, even though investment of ₹ 50 lakhs has been made in bonds of NHAI during the P.Y.2019-20 and investment of ₹ 50 lakhs has been made in bonds of RECL during the P.Y.2020-21, both within the stipulated six month period, the maximum deduction allowable for A.Y.2020-21, in respect of long-term capital gain arising on sale of long-term capital asset(s) during the P.Y.2019-20, is only ₹ 50 lakhs.

#### Question 4

*Mr. A is an individual carrying on business. His stock and machinery were damaged and destroyed in a fire accident.*

*The value of stock lost (total damaged) was ₹ 6,50,000. Certain portion of the machinery could be salvaged. The opening WDV of the block as on 1-4-2018 was ₹ 10,80,000.*

*During the process of safeguarding machinery and in the fire fighting operations, Mr. A lost his gold chain and a diamond ring, which he had purchased in April, 2004 for ₹ 1,20,000. The market value of these two items as on the date of fire accident was ₹ 1,80,000.*

*Mr. A received the following amounts from the insurance company:*

- |   |            |
|---|------------|
| (i) Towards loss of stock                 | ₹ 4,80,000 |
| (ii) Towards damage of machinery          | ₹ 6,00,000 |
| (iii) Towards gold chain and diamond ring | ₹ 1,80,000 |

*You are requested to briefly comment on the tax treatment of the above three items under the provisions of the Income-tax Act, 1961.*

#### Answer

- (i) **Compensation towards loss of stock:** Any compensation received from the insurance company towards loss/damage to stock in trade is to be construed as a trading receipt. Hence, ₹ 4,80,000 received as insurance claim for loss of stock has to be assessed under the head "Profit and gains of business or profession".

**Note** - The assessee can claim the value of stock destroyed by fire as revenue loss, eligible for deduction while computing income under the head "Profits and gains of business or profession".

- (ii) **Compensation towards damage to machinery:** The question does not mention whether the salvaged machinery is taken over by the Insurance company or whether there was any replacement of machinery during the year. Assuming that the salvaged machinery is taken over by the Insurance company, and there was no fresh addition of machinery during the year, the block of machinery will cease to exist. Therefore, ₹ 4,80,000 being the excess of written down value (i.e. ₹ 10,80,000) over the insurance compensation (i.e. ₹ 6,00,000) will be assessable as a short-term capital loss.

**Note** – If new machinery is purchased in the next year, it will constitute the new block of machinery, on which depreciation can be claimed for that year.

- (iii) **Compensation towards loss of gold chain and diamond ring:** Gold chain and diamond ring are capital assets as envisaged by section 2(14). They are not “personal effects”, which alone are to be excluded. If any profit or gain arises in a previous year owing to receipt of insurance claim, the same shall be chargeable to tax as capital gains. The capital gains has to be computed by reducing the indexed cost of acquisition of jewellery from the insurance compensation of ₹ 1,80,000.

## LET US RECAPITULATE

### Scope and year of chargeability [Section 45]

Any profits or gains arising from the transfer of a capital asset effected in the previous year will be chargeable to tax under the head ‘Capital Gains’, and shall be deemed to be the income of the previous year in which the transfer took place [Section 45(1)]

| Section | Profits and gains arising from the following transactions chargeable as income  | P.Y. in which income is chargeable to tax                         | Deemed Full Value of consideration for computation of capital gains under section 48 |
|---------|---|---|--|
| 45(1A)  | Money or other asset received under an insurance from an insurer on account of damage/ destruction of any capital asset, as | The previous year in which such money or other asset is received. | The value of money or the fair market value of other asset received.                 |

|       |  |  |  |
|-------|--|--|--|
|       | a result of, flood, hurricane, cyclone, earthquake or other convulsion of nature, riot or civil disturbance, accidental fire or explosion, action by an enemy or action taken in combating an enemy                |  |  |
| 45(2) | Transfer by way of conversion by the owner of a capital asset into stock-in-trade of a business carried on by him.   | The previous year in which such stock-in-trade is sold or otherwise transferred by him | The fair market value of the capital asset on the date of such conversion                                |
| 45(3) | Transfer of a capital asset by a person to a firm or other association of persons (AOPs) or body of individuals (BOIs) in which he is or becomes a partner or member, by way of capital contribution or otherwise. | The previous year in which such transfer takes place.                                  | The amount recorded in the books of account of the firm, AOPs or BOIs as the value of the capital asset. |
| 45(4) | The transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other AOPs or BOIs or otherwise.  | The previous year in which the said transfer takes place.                              | The fair market value of the capital asset on the date of such transfer.                                 |

|       |  |   |  |
|-------|--|---|--|
| 45(5) | Transfer by way of compulsory acquisition under any law, or a transfer, the consideration for which was determined or approved by the Central Government or RBI  | The previous year in which the consideration or part thereof is first received. | Compensation or consideration determined or approved in the first instance by the Central Government or RBI  |
|       | <p>If the compensation or consideration is further enhanced by any court, Tribunal or other authority, the enhanced amount will be deemed to be the income</p> <p>However, any amount of compensation received in pursuance of an interim order of a court, Tribunal or other authority shall be deemed to be income chargeable under the head "Capital Gains" of the previous year in which the final order of such court, Tribunal or other authority is made.</p> | The previous year in which the amount was received by the assessee.             | Amount by which the compensation or consideration is enhanced or further enhanced. For this purpose cost of acquisition and cost of improvement shall be taken as 'Nil'. |

|        |  |   |  |
|--------|--|---|--|
| 45(5A) | Transfer of a capital asset, being land or building or both, by an individual or Hindu undivided family, who enters into a specified agreement for development of a project, provided he does not transfer his share in project on or before the date of issuance of completion certificate. | The previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority. | The stamp duty value of his share in the project, being land or building or both, on the date of issuing of said certificate of completion<br>+<br>Consideration received in cash, if any, |
|--------|--|---|--|

### Definitions [Section 2]

| Section | Term          | Definition  |
|---------|---------------|---|
| 2(14)   | Capital Asset | <p><b>Capital Asset</b> means –</p> <p>(a) property of any kind held by an assessee, whether or not connected with his business or profession;</p> <p>(b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the SEBI Act, 1992.</p> <p><b>Exclusions from the definition of Capital Asset:</b></p> <p>Stock in trade [other than securities referred to in (b) above], raw materials or consumables held for the purposes of business or profession;</p> <ul style="list-style-type: none"> <li>➤ Personal effects except jewellery, archeological collections, drawings, paintings, sculptures or any work of art;</li> <li>➤ Rural agricultural land in India i.e. agricultural land not situated within specified urban limits.</li> </ul> <p>The agricultural land described in (a) and (b) below, being land situated within the specified urban limits,</p> |

|        |  | <p>would fall within the definition of “capital asset”, and transfer of such land would attract capital gains tax -</p> <p>(a) agricultural land situated in any area within the jurisdiction of a municipality or cantonment board having population of not less than ten thousand, or</p> <p>(b) agricultural land situated in any area within such distance, <u>measured aerially</u>, in relation to the range of population as shown hereunder -</p> <table border="1"> <thead> <tr> <th></th><th>Shortest aerial distance from the local limits of a municipality or cantonment board referred to in item (a)</th><th>Population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.</th></tr> </thead> <tbody> <tr> <td>(i)</td><td>≤ 2 kilometers</td><td>&gt; 10,000 ≤ 1,00,000</td></tr> <tr> <td>(ii)</td><td>≤ 6 kilometers</td><td>&gt; 1,00,000 ≤ 10,00,000</td></tr> <tr> <td>(iii)</td><td>≤ 8 kilometers</td><td>&gt; 10,00,000</td></tr> </tbody> </table> <p>➤ Gold Deposits Bonds issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetisation Scheme, 2015 notified by the Central Government;</p> <p>➤ 6% Gold Bonds, 1977 or 7% Gold Bonds, 1980 or National Defence Gold Bonds, 1980, issued by the Central Government;</p> <p>➤ Special Bearer Bonds, 1991 issued by the Central Government.</p> <p><b>Note:</b> ‘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.</p> |  | Shortest aerial distance from the local limits of a municipality or cantonment board referred to in item (a) | Population according to the last preceding census of which the relevant figures have been published before the first day of the previous year. | (i) | ≤ 2 kilometers | > 10,000 ≤ 1,00,000 | (ii) | ≤ 6 kilometers | > 1,00,000 ≤ 10,00,000 | (iii) | ≤ 8 kilometers | > 10,00,000 |
|--------|--|---|--|--|--|-----|----------------|---------------------|------|----------------|------------------------|-------|----------------|-------------|
|        | Shortest aerial distance from the local limits of a municipality or cantonment board referred to in item (a) | Population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.  |  |  |  |     |                |                     |      |                |                        |       |                |             |
| (i)    | ≤ 2 kilometers   | > 10,000 ≤ 1,00,000   |  |  |  |     |                |                     |      |                |                        |       |                |             |
| (ii)   | ≤ 6 kilometers   | > 1,00,000 ≤ 10,00,000  |  |  |  |     |                |                     |      |                |                        |       |                |             |
| (iii)  | ≤ 8 kilometers   | > 10,00,000   |  |  |  |     |                |                     |      |                |                        |       |                |             |
| 2(42A) | Short-term capital   | Capital asset held by an assessee for not more than 36 months immediately preceding the date of its transfer is a <b>short-term capital asset</b> .   |  |  |  |     |                |                     |      |                |                        |       |                |             |

|        |                         |   |
|--------|-------------------------|---|
|        | asset                   | <p>However, a security (other than a unit) listed in a recognized stock exchange in India, a unit of UTI or a unit of an equity oriented fund or a zero coupon bond will be treated as short term capital asset if it is held for not more than 12 months immediately preceding the date of its transfer.</p> <p>Further, a share of a company (not being a share listed in a recognized stock exchange in India) would be treated as a short-term capital asset if it was held by the assessee for not more than 24 months immediately preceding the date of its transfer.</p> <p>Further, an immovable property, being land or building or both, would be treated as a short-term capital asset if it was held by an assessee for not more than 24 months immediately preceding the date of its transfer.</p> |
| 2(29A) | Long-term capital asset | <p>Capital asset which is not a short-term capital asset is a <b>long-term capital asset</b>. The following assets are, therefore, long-term capital assets:</p> <ul style="list-style-type: none"> <li>➤ a security (other than a unit) listed in a recognized stock exchange in India, a unit of UTI or a unit of an equity oriented fund or a zero coupon bond held for more than 12 months;</li> <li>➤ unlisted shares or an immovable property, being land or building or both, held for more than 24 months immediately preceding the date of its transfer and</li> <li>➤ any other capital asset held for more than 36 months.</li> </ul>  |

#### Transactions not regarded as transfer [Section 47]: Some Examples

- Any distribution of capital assets on the total or partial partition of a HUF
- Any transfer of capital asset under a gift or will or an irrevocable trust
- 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

- Any transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company
- Any transfer by a shareholder in a scheme of amalgamation of shares held by him in the amalgamating company
- Any transfer by an individual of sovereign gold bonds issued by RBI by way of redemption
- Any transfer by way of conversion of bonds, debentures, debenture stock, deposit certificates of a company, into shares or debentures of that company.
- Any transfer by way of conversion of preference shares of a company into equity shares of that company
- Any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government

### Mode of computation of Capital Gains [Section 48]

#### Computation of long-term capital gains

|  |                  |
|--|------------------|
| Full value of consideration received or accruing as a result of transfer   | xx               |
| <b>Less:</b> Expenditure incurred wholly and exclusively in connection with such transfer (e.g. brokerage on sale) | <u>xx</u>        |
| <i>(Note: Deduction on account of STT paid will not be allowed)</i>  |                  |
| <b>Net Sale Consideration</b>  | xx               |
| <b>Less:</b> Indexed cost of acquisition and indexed cost of improvement   | xx               |
| <b>Less:</b> Exemption under sections 54/ 54B/ 54D/ 54EC/ 54EE/ 54F  | <u>xx</u>        |
| <b>Long-term capital gains</b>   | <b><u>xx</u></b> |

#### Notes:

- (i) Deduction on account of securities transaction tax paid will not be allowed.
- (ii) Indexed Cost of Acquisition =

$$\text{Cost of acquisition} \times \frac{\text{CII for the year in which the asset is transferred}}{\text{CII for the year in which the asset was first held by the assessee or 2001-02, whichever is later}}$$

(iii) Indexed Cost of Improvement =

$$\text{Cost of improvement} \times \frac{\text{CII for the year in which the asset is transferred}}{\text{CII for the year in which the improvement took place}}$$

(iv) Benefit of indexation will, however, not be available in respect of long term capital gains from transfer of bonds or debentures other than capital indexed bonds issued by the Government and sovereign gold bonds issued by RBI and in respect of long term capital gains chargeable to tax under section 112A

### Computation of short-term capital gains

|  |                   |
|--|-------------------|
| Full value of consideration received or accruing as a result of transfer   | xxx               |
| <b>Less:</b> Expenditure incurred wholly and exclusively in connection with such transfer (e.g. brokerage on sale) | <u>xxx</u>        |
| <i>(Note: Deduction on account of STT paid will not be allowed)</i>  |                   |
| <b>Net Sale Consideration</b>  | xxx               |
| <b>Less:</b> Cost of acquisition and cost of improvement   | xxx               |
| <b>Less:</b> Exemption under sections 54B/ 54D   | <u>xxx</u>        |
| <b>Short-term capital gains</b>  | <b><u>xxx</u></b> |

### Capital Gains: Special Provisions

| Section | Particulars   |
|---------|---|
| 50      | Any income from transfer of depreciable assets is deemed to be <b>capital gains arising from transfer of short-term capital assets</b> , irrespective of the period of holding (i.e., indexation benefit would not be available even if the period of holding of such assets is more than 36 months).   |
| 50B     | <b>Capital Gains on Slump Sale</b><br>Any profits and gains arising from slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of capital assets and shall be deemed to be the income of the previous year in which the transfer took place. Where the undertaking being transferred under slump sale is held for more than 36 months, the resultant gain is long-term; However, no indexation benefit would be available. If the undertaking is held |

|     |  |
|-----|--|
|     | <p>for less than 36 months, the resultant gain is short-term.</p> <p>Net worth is deemed to be the cost of acquisition and the cost of improvement. 'Net worth' shall be aggregate value of total assets minus value of liabilities of such undertaking as per books of account.</p> <p>Capital gains = Sale consideration – Net Worth.</p> <p>Aggregate value of total assets would be the aggregate of the following :</p> <ul style="list-style-type: none"> <li>i) Written Down Value of depreciable assets;</li> <li>ii) Nil, in case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as deduction under section 35AD; and</li> <li>iii) Book value for other assets.</li> </ul> <p>Revaluation of assets shall be ignored for computing Net Worth.</p>   |
| 50C | <p><b>Computation of capital gains on sale of land or building or both</b></p> <p>Where 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 the stamp valuation authority for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable, shall, for the purpose of section 48, be deemed to be the full value of consideration received or accruing as a result of such transfer.</p> <p>However, 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.</p> <p>The stamp duty value on the date of agreement can be adopted only in a case where the amount of consideration, or 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 <b>or such other prescribed electronic mode</b> on or before the date of the agreement for the transfer of such immovable property.</p> <p>Where the stamp duty value does not exceed 105% of the sale consideration, then the sale consideration shall be deemed to be the full value of consideration.</p> |

|      |  |   |   |
|------|--|---|---|
|      | Where the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority exceeds the fair market value of the property on the date of transfer, the Assessing Officer may refer the valuation of the capital asset to the Valuation Officer, provided the value so adopted or assessed or assessable has not been disputed in any appeal or revision.  |   |   |
|      | <b>Sl. No.</b>   | <b>Condition</b>  | <b>Deemed Sale Consideration</b>                  |
|      | 1.   | Stamp Duty Value > Actual Consideration<br>If Stamp Duty Value > 105% of actual consideration<br>If Stamp Duty Value $\leq$ 105% of actual sale consideration | Stamp Duty Value<br><br>Actual sale consideration |
|      | 2.   | Actual Consideration > Stamp Duty Value   | Actual Sale Consideration                         |
|      | 3.   | Value ascertained by Valuation Officer > Stamp Duty Value   | Stamp Duty Value                                  |
|      | 4.   | Value ascertained by Valuation Officer < Stamp Duty Value   | Value ascertained by Valuation Officer            |
| 50CA | <b>Fair Market Value deemed to be full value of consideration in case of transfer of unlisted shares in certain cases</b><br>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, such fair market value shall be deemed to be the full value of consideration received or accruing as a result of such transfer.<br><b>The provisions of this section would not, however, 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.</b> |   |   |
| 50D  | <b>Fair Market Value deemed to be full value of consideration in certain cases</b><br>Where, on transfer of a capital asset, consideration received is not   |   |   |

|      |  |
|------|--|
|      | ascertainable or cannot be determined then, fair market value of the asset as on the date of transfer shall be deemed as the full value of consideration received or accruing as a result of such transfer.  |
| 51   | <p><b>Advance money received and forfeited upto 31.3.2014</b></p> <p>Where the assessee has received advance money on an earlier occasion for transfer of capital asset, but the transfer could not be effected due to failure of negotiations, then, the advance money forfeited by the assessee has to be reduced from the cost of acquisition (and indexation would be calculated on the cost so reduced) while computing capital gains, when the capital asset is transferred or sold.</p> <p>However, such advance money received on or after 1.4.2014 would be taxable under section 56(2) under the head "Income from other sources". Therefore, advance money received and forfeited on or after 1.4.2014 should not be deducted from the cost for determining the indexed cost of acquisition while computing capital gains arising on transfer of the asset.</p>   |
| 111A | <p><b>Tax on short-term capital gains on sale of equity shares and units of equity oriented fund on which STT is chargeable</b></p> <ul style="list-style-type: none"> <li>➤ Any short-term capital gains on transfer of equity shares or units of an equity oriented fund shall be liable to tax @15%, if securities transaction tax has been paid on such sale.</li> <li>➤ In case of resident individuals and HUF, the short-term capital gain shall be reduced by the unexhausted basic exemption limit and the balance shall be taxed at 15%.</li> <li>➤ No deduction under Chapter VI-A can be claimed in respect of such short-term capital gain.</li> <li>➤ Short-term capital gains arising from transaction undertaken in foreign currency on a recognized stock exchange located in an International Financial Services Centre (IFSC) would be taxable at a concessional rate of 15% even when STT is not paid in respect of such transaction.</li> </ul> |
| 112  | <p><b>Tax on long-term capital gains</b></p> <ul style="list-style-type: none"> <li>➤ Any long-term capital gains, other than long term capital gains taxable under section 112A, shall be liable to tax@20%.</li> </ul>   |

|             |   |
|-------------|---|
|             | <ul style="list-style-type: none"> <li>➤ In case of resident individuals and HUFs, the long-term capital gain shall be reduced by the unexhausted basic exemption limit, and the balance shall be subject to tax at 20%.</li> <li>➤ Capital gains on transfer of listed securities (other than units) or zero coupon bonds shall be chargeable to tax @10% computed without the benefit of indexation or @20% availing the benefit of indexation, whichever is more beneficial to the assessee.</li> <li>➤ In case of non-corporate non-resident or foreign company, capital gains arising from the transfer of a capital asset, being unlisted securities, or shares of a closely held company shall be chargeable to tax @10% without giving effect to the indexation provision under second proviso to section 48 and currency conversion under first proviso to section 48.</li> <li>➤ No deduction under Chapter VI-A can be claimed in respect of long-term capital gains.</li> </ul>   |
| <b>112A</b> | <p><b>Tax on long-term capital gains on certain assets</b></p> <ul style="list-style-type: none"> <li>➤ Any long-term capital gains exceeding ₹ 1,00,000 on transfer of equity shares or units of an equity oriented fund or unit of a business trust shall be liable to tax @10% on such capital gain, if securities transaction tax has been paid on acquisition and such sale in case of equity share, and on such sale in case of units of an equity oriented mutual fund or business trust.</li> <li>➤ In case of resident individuals and HUF, the long-term capital gain shall be reduced by the unexhausted basic exemption limit and the balance shall be taxed at 10%.</li> <li>➤ No deduction under Chapter VI-A or rebate under section 87A can be claimed in respect of such long-term capital gain.</li> <li>➤ Long-term capital gains (in excess of ₹ 1,00,000) arising from transaction undertaken on a recognized stock exchange located in an International Financial Services Centre (IFSC) would be taxable at a concessional rate of 10%, where the consideration for transfer is received or receivable in foreign currency, even when STT is not paid in respect of such transaction.</li> </ul> |

| <b>Cost of Acquisition (Section 55)</b> |   |   |
|---|---|---|
| <b>Sl. No.</b>                          | <b>Nature of asset</b>  | <b>Cost of acquisition</b>  |
| 1                                       | Goodwill of business, trademark, brand name etc.,<br>- Self generated<br>- Acquired from previous owner<br>The cost of improvement of such assets would be Nil.   | Nil<br>Purchase price   |
| 2.                                      | <b>Bonus shares</b><br>If bonus shares are allotted before 1.4.2001<br>If bonus shares are allotted on or after 1.4.2001  | FMV on 1.4.2001<br>Nil  |
| 3.                                      | <b>Rights Shares</b><br>Original shares (which forms the basis of entitlement of rights shares)<br><br>Rights shares subscribed for by the assessee<br><br>Rights entitlement (which is renounced by the assessee in favour of a person)<br>Rights shares which are purchased by the person in whose favour the assessee has renounced the rights entitlement | Amount actually paid for acquiring the original shares<br>Amount actually paid for acquiring the rights shares<br>Nil<br><br>Purchase price paid to the renouncer of rights entitlement as well as the amount paid to the company which has allotted the rights shares. |
| 4.                                      | <b>Long term capital assets</b> being,<br>- <b>equity shares</b> in a company on which STT is paid both at the time of purchase and transfer or<br>- <b>unit of equity oriented fund</b> or unit of business trust on which STT is paid at the time of transfer.<br><b>acquired before 1st February, 2018</b>   | Cost of acquisition shall be the higher of<br>(i) cost of acquisition of such asset; and<br>(ii) lower of<br>- the fair market value of such asset; and<br>- the full value of consideration  |

|    |  |   |
|----|--|---|
|    |  | received or accruing as a result of the transfer of the capital asset.  |
| 5. | <p><b>Any other capital asset</b></p> <p>Where such capital asset became the property of the assessee before 1.4.2001</p> <p>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.</p> <p>Where the capital asset became the property of the previous owner before 1.4.2001</p> | <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> |

#### Cost of improvement of certain assets [Section 55]

| Sl. No. | Nature of asset   | Cost of acquisition   |
|---------|---|---|
| 1       | Goodwill of a business, right to manufacture, produce or process any article or thing, right to carry on any business or profession | Nil   |
| 2       | In relation to any other capital asset  | <p>All capital expenditure incurred in making additions or alterations to the capital asset on or after 1.4.2001 –</p> <ul style="list-style-type: none"> <li>- by the assessee after it became his property; and</li> <li>- by the previous owner [in a case where the assessee acquired the property by modes specified in section 49(1)].</li> </ul> |

**Capital Gains: Exemptions under section 10**

| Section | Particulars  |
|---------|--|
| 10(33)  | Any income arising from the transfer of a capital asset being a unit of Unit Scheme 1964 of UTI  |
| 10(37)  | Where any individual or HUF owns urban agricultural land which has been used for agricultural purposes for a period of two years immediately preceding the date of transfer by such individual or a parent of his or by such HUF and the same is compulsorily acquired under any law or the consideration for such transfer is determined or approved by the Central Government or the RBI, resultant capital gain will be exempt provided the compensation or consideration for such transfer is received on or after 1.4.2004. |
| 10(43)  | 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.  |

| Exemption of Capital Gains [Sections 54 to 54F] |                          |   |  |   |                                 |              |   |
|---|--------------------------|---|--|---|---------------------------------|--------------|---|
| S. No.  | Particulars              | Section 54  | Section 54B  | Section 54D   | Section 54EC                    | Section 54EE | Section 54F   |
| 1   | <b>Eligible Assessee</b> | Individual / HUF  | Individual/ HUF  | Any assessee  | Any assessee                    | Any assessee | Individual / HUF  |
| 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 HUF for 2 years immediately preceding the date of transfer | Land & building have been used for business of undertaking for at least 2 years immediately preceding the date of transfer. The transfer should be by way of compulsory acquisition of the industrial undertaking | -                               | -            | Assessee should not own more than one residential house on the date of transfer. He should not purchase within 2 years or construct within 3 years after the date of transfer, another residential house. |

|   |   |  |  |  |   |  |  |
|---|---|--|--|--|---|--|--|
| 4 | <b>Qualifying asset i.e., asset in which capital gains has to be invested</b> | One Residential House situated in India/<br><b>Two residential houses in India, at the option of the assessee, where capital gains do not exceed ₹ 2 crore</b> | Land for being used for agricultural purpose (Urban/Rural)     | Land or Building or right in land or building  | Bonds of NHAI or RECL or any other bond notified by C.G. (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  |
| 5 | <b>Time limit for purchase/construction</b>                                   | Purchase within 1 year before or 2 years after the date of transfer (or) construct within 3 years after the date of transfer                                   | Purchase within a period of 2 years after the date of transfer | Purchase/construct within 3 years after the date of transfer, for shifting or re-establishing the existing undertaking or setting up a new industrial undertaking. | Purchase within a period of 6 months after the date of transfer                     | Purchase within a period of 6 months after the date of such transfer                           | Purchase within 1 year before or 2 years after the date of transfer or Construct within 3 years after the date of transfer |

|   |                            |  |  |  |  |   |   |
|---|----------------------------|--|--|--|--|---|---|
| 6 | <b>Amount of Exemption</b> | Cost of new Residential House or two houses, as the case may be or Capital Gain, whichever is lower, is exempt | Cost of new Agricultural Land or Capital Gain, whichever is lower, is exempt | Cost of new asset or Capital Gain, whichever is lower. | Capital Gain or amount invested in specified bonds, whichever is lower. Maximum permissible investment out of capital gains arising in any financial year is ₹ 50 lakhs, whether such investment is made in the current FY or subsequent FY or both. | Capital Gain or amount invested in notified units of specified fund, whichever is lower. Maximum permissible investment in such units out of capital gains arising in any FY is ₹ 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, entire Capital gain is exempt. Cost of new Residential House $<$ Net sale consideration of original asset, proportionate capital gain is exempt. |
|---|----------------------------|--|--|--|--|---|---|

## TEST YOUR KNOWLEDGE

1. Which of the following would be regarded as transfer -
  - (a) transfer of a capital asset in a scheme of reverse mortgage
  - (b) transfer of a capital asset under a gift or will or an irrevocable trust
  - (c) transfer by way of conversion of equity shares from preference shares
  - (d) Redemption of Zero coupon bond
2. Short-term capital gains arising on transfer of listed shares on which STT is paid at the time of transfer, would be chargeable to tax –
  - (a) at the rate of 10%
  - (b) at the rate of 20%
  - (c) at the rate of 15%
  - (d) at the rate of 5%
3. Distribution of assets at the time of liquidation of a company -
  - (a) is not a transfer in the hands of the company or the shareholders
  - (b) is not a transfer in the hands of the company but capital gains is chargeable to tax on such distribution in the hands of the shareholders
  - (c) is not a transfer in the hands of the shareholders but capital gains is chargeable to tax on such distribution in the hands of the company
  - (d) is a transfer both in the hands of shareholders and company
4. Land or building would be long term capital asset only if it is
  - (a) held for more than 12 months immediately preceding the date of transfer
  - (b) held for more than 24 months immediately preceding the date of transfer
  - (c) held for more than 30 months immediately preceding the date of transfer
  - (d) held for more than 36 months immediately preceding the date of transfer
5. Capital gain on transfer of depreciable asset would be-
  - (a) long term capital gain, if held for more than 36 months
  - (b) long term capital gain, if held for more than 24 months
  - (c) long term capital gain, if held for more than 12 months

- (d) short term capital gain, irrespective of the period of holding
6. For an assessee, who is a salaried employee who invests in equity shares, what is the benefit available in respect of securities transaction tax paid by him on sale and acquisition of 100 listed shares of X Ltd. which has been held by him for 14 months before sale?
- (a) Rebate under section 88E is allowable in respect of securities transaction tax paid
  - (b) Securities transaction tax paid is treated as expenses of transfer and deducted from sale consideration.
  - (c) Capital gains without deducting STT paid is taxable at a concessional rate of 10% on such capital gains exceeding ₹ 1 lakh
  - (d) Capital gains without deducting STT paid is taxable at concessional rate of 15%.
7. Under section 50C, the guideline value for stamp duty is taken as the full value of consideration only if -
- (a) the asset transferred is building and the actual consideration is less than the guideline value
  - (b) the asset transferred is either land or building or both and guideline value exceeds the actual consideration
  - (c) the asset transferred is either land or building or both and the guideline value exceeds 105% of the actual consideration.
  - (d) the asset transferred is land and the actual consideration is less than the guideline value
8. Where there is a transfer of a capital asset by a partner to the firm by way of capital contribution or otherwise, the consideration would be taken as -
- (a) The market value of the capital asset on the date of transfer
  - (b) The cost less notional depreciation of the capital asset
  - (c) The value of the asset recorded in the books of the firm.
  - (d) Any of the above, at the option of the assessee

9. Under section 54F, capital gains are exempted if
- (a) long-term capital gain arising on transfer of residential house is invested in acquisition of one residential house situated in or outside India
  - (b) long-term capital gain arising on transfer of a capital asset other than a residential house is invested in acquisition of one residential house situated in or outside India
  - (c) net sale consideration on transfer of a capital asset other than a residential house is invested in acquisition of one residential house situated in India
  - (d) short term or long-term capital gain arising on transfer of a capital asset other than a residential house is invested in acquisition of one residential house situated in India
10. Under section 54EC, capital gains on transfer of land or building or both are exempted if invested in the bonds issued by NHAI & RECL or other notified bond-
- (a) within a period of 6 months after the date of such transfer
  - (b) within a period of 6 months from the end of the relevant previous year
  - (c) within a period of 6 months from the end of the previous year or the due date for filing the return of income under section 139(1), whichever is earlier
  - (d) At any time before the end of the relevant previous year.

### Answers

1. (d); 2. (c); 3. (b); 4. (b); 5. (d); 6. (c);  
7. (c); 8. (c); 9. (c); 10. (a).