# 18 Income from the head of Capital Gain

Any Profits or Gains booked from the Transfer of Capital Assets during the previous year are chargeable to income tax under the head Capital Gains and shall be deemed to the income of that previous year in which the transfer takes place.

As defined in sec.2 (14) of IT act capital asset means property of any kind held by the assessee except non-capital assets like -

i. Stock-in-trade, consumable stores or raw materials held for the purpose of business

ii. Personal affect viz. wearing apparel, furniture, motor vehicles, etc. held for personal use of the assessee or his family. However, jewellery is a capital asset.

iii. Agricultural land in India but excluding agricultural land situated within the jurisdiction of a municipality or within 8 km from the local limits of such municipality

iv. Special Bearer Bonds, Gold Bonds, National Defence Bonds, Gold Deposit Bonds As per *Finance* Act 2007, now Capital asset would also include drawings, paintings, etc.

The scope of capital asset is being widened by including certain items held as personal effects such as archaeological collections, drawings, paintings, sculptures or any work of art. Presently no capital gain tax is payable in respect of transfer of personal effects as it does not fall in the definition of the capital asset. Transfer of the above items shall now attract capital gain tax save as jewellery less despite being a personal effect .

## 18.1 Short term capital gain:

If the capital assets remains with the assessee for 36 months or less (for listed shares and units of equity oriented mutual fund the holding period is 12 months) then income due to transfer of this assets is called as *short-term capital gain.* This is added in to the gross total income and tax is applicable on normal rates as per rule.

### (a) Calculation of Short term capital gain:

| | | |
|---|---|---|
| 1. | Determine full value of received due to transfer of assets | A |
| 2. | Deduct exemption Applicable u/s 48: | |
| | (a) Expense relating to advertisement, commission, registry etc. | B |
| | (b) Cost of acquisition | C |
| | (c) Cost of improvement | D |
| 3. | Gross short term capital gain (X = A – B – C – D) | X |
| 4. | Deduct exemption u/s 54/54B/54D/54G | E |
| 5. | Taxable short-term capitals gain (Y = X - E) | Y |

### (b) Provisions of Taxation of Short-term capital gain:

The short-term capital gain shall be treated as normal income for the purpose of applicability of rate of income tax, except following :

After Oct 1, 2004, if any short term capital gain arises due to transfer (sale or repurchase) of listed equity shares or units of *Equity Oriented Mutual fund* (EOMF) within 12 months of purchase date, then on such gain rate of income tax will be applicable @ 15% u/s 111A, subject to certain conditions as :

- The transaction is chargeable to Security Transaction Tax (STT).
- Deduction u/s 80C to 80 U is not available in case of such short term capital gain.
- Rebate of STT is allowed u/s 88 E & tax on such short term capital gain can be set off.
- Equity Oriented Mutual Fund Come means, a fund, in which 65 % (earlier 50%) of investment is done in shares of domestic companies, assessed on the basis of monthly or yearly average.

*Note : Above provisions are applicable to the transactions meant for investment purpose only. But if sale/purchase of equity shares (or units of EOMF) is a business activity then above relief on taxation shall not be available & the income will be treated as business income & taxed accordingly.*

## 18.2 Long Term Capital Gain :

1. When capital assets remain with assessee for more than 36 months (24 months for unlisted share and 12 months for listed share & units of equity oriented mutual fund) then the profit due to transfer of such assets is considered as long-term capital gain.
2. Capital gain due to transfer of agricultural land in rural areas is tax-free.
3. From Oct 1, 2004 onwards long term capital gain due to sale of listed shares/equity oriented mutual fund units is totally tax free (shares / units if remains with assessee for more than 12 months). Now as per *Finance Act 2014*, Long term capital gain arisen up to Jul 10, 2014, due to sale/repurchase of units of other mutual fund [u/s 10(23D)] will be taxed as per the following, (I) and (ii) whichever is less:

   (i) @ 10% if benefit of indexing is not taken
   (ii) @ 20% if benefit of indexing is taken
   Thereafter i.e. after 10th July 2014 onwards as per (ii) only
4. Long term capital gains, will be taxed @ 20% after taking benefit of indexing
5. Long term capital gain cannot be adjusted against exemption U/s 80C. But if needed it can be adjusted against basic exemption limit of income tax.
6. Proper value of building/land: As per section 50C actual value or the value decided by stamp valuation officer, whichever is more, will be taken as proper value of land/building under transfer while calculating capital gain.
7. Cost Inflation Index :

| Financial Year | Index | Financial Year | Index | Financial Year | Index | Financial Year | Index |
|---|---|---|---|---|---|---|---|
| 1981-82 | 100 | 1990-91 | 182 | 1999-00 | 389 | 2008-09 | 582 |
| 1982-83 | 109 | 1991-92 | 199 | 2000-01 | 406 | 2009-10 | 632 |
| 1983-84 | 116 | 1992-93 | 223 | 2001-02 | 426 | 2010-11 | 711 |
| 1984-85 | 125 | 1993-94 | 244 | 2002-03 | 447 | 2011-12 | 785 |
| 1985-86 | 133 | 1994-95 | 259 | 2003-04 | 463 | 2012-13 | 852 |
| 1986-87 | 140 | 1995-96 | 281 | 2004-05 | 480 | 2013-14 | 939 |
| 1987-88 | 150 | 1996-97 | 305 | 2005-06 | 497 | 2014-15 | 1024 |
| 1988-89 | 161 | 1997-98 | 331 | 2006-07 | 519 | 2015-16 | 1081 |
| 1989-90 | 172 | 1998-99 | 351 | 2007-08 | 551 | **2016-17** | **1125** |

### Calculation of Long Term Capital Gain:

1. Full value of consideration receivable due to transfer of assets — A
2. Deduct following exemptions allowable u/s 48:
   (a) Expense related to advertisement, commission, registry etc. — B
   (b) Cost of indexing acquisition

   $$= \frac{\text{Cost of acquisition X cost inflation index of transfer year}}{\text{Cost inflation index of acquisition year}} \quad C$$

   (c) Cost of indexing improvement

   $$= \frac{\text{Cost of improvement X cost inflation index of transfer year}}{\text{Cost inflation index of acquisition year}} \quad D$$
3. Gross long term capital gain (X = A – B – C – D) — X
4. Deduct exemption U/s 54/54B/54D/54EC/54ED/54F/54G — E
5. Taxable long-term capital gain (Y = X - E) — Y

### 18.3 Exemption of Capital Gains :

U/S 54 *Long-term capital gain due to transfer of residential house property:*

If an assessee (individual/HUF) has purchased a house property 1 year before the transfer date or within 2 years of transfer, or constructs one residential house in India within 3 years of transfer then, Tax-free amount = amount of reinvestment as above or capital gain whichever is less.

U/S 54B *Short / long term capital gain due to transfer of agricultural land:*

If an assessee (Individual) has purchased agricultural land within 2 years of transfer then Tax-free amount = amount of reinvestment as above or capital gain whichever is less.

U/S 54D *Short term/ Long-term capital gain due to compulsory acquisition of industrial building or land:*

If an assessee purchases land/building for industrial purpose within 3 years of transfer then Tax-free amount = amount of reinvestment as above or capital gain whichever is less

U/S54EC *Long term capital gain due to transfer of any capital assets after April 1, 2000*:

If investment is made by an assessee in the long-term specified asset (bonds) such as rural electrification corporation, NHAI capital gain bond with three year locking period, from capital gains arising from transfer of one or more original assets during the financial year in which the original asset or assets are transferred and in the subsequent financial year does not exceed Rs. 50 Lakh.

U/S 54F *Long-term capital gains due to transfer of any property other than residential housing property:*

If any house property is purchased 1 year before the transfer or within 2 years of transfer or has constructed a house within 3 years and selling cost of transferred property is equal to or less than the amount spent for purchase/construction of new house then total capital gain will be exempted, but if it is more the amount spent then-

$$\text{Tax-free amount} = \frac{\text{Capital gain} \times \text{Cost of new house}}{\text{Amount received due to Transfer of such property}}$$

U/S 54G *Short/long - term capital gains due to transfer of properties while removing industrial units from urban area:*

If construction or purchase of new industrial units is done one year before the transfer date or within three years of transfer date in rural area then

Tax-free amount = Amount of reinvestment as above or capital gain whichever is less.

*Exemption u/*s 54, 54B, 54D, 54F, 54G are applicable along with following conditions:

i. If investment in new property is not possible in the same financial year then as per section 139(1) before the due date of return filling, it is compulsory to deposit the capital gain by opening an account *(CGI Account scheme 1988)* in any nationalised bank. If it cannot be invested in new property before the due date then the deposited amount will be taxed accordingly. Interest will be receivable on the deposited amount.

ii. It is mandatory that the new property should be under the ownership of assessee for at least three years from the date of purchase/ construction of new property this means that the sale of the new property can be possible only after 3 years .