

## Capital Gains

### WHAT IS A CAPITAL GAIN?

Capital gains or loss is the gain or loss, which is computed [sec. 48] on the transfer [sec. 2 (47)] of a capital asset [sec. 2(14)], which is chargeable to tax [sec. 45]

Thus in order to tax an income under section 45 the following conditions

- There has to be a capital asset
- There should be a transfer of a capital asset
- The transfer should result in a gain
- The transfer should not be exempt under the act
- The gain should not be exempt under section 54 of the act

### WHAT IS A CAPITAL ASSET [Sec. 2(14)]

“Capital asset is defined to include property of any kind whether Fixed, Circulating, Movable, or Immovable, Tangible or Intangible. The following assets are, however, excluded from the definition of “Capital Assets”:

Any **Stock in Trade**, **Consumable Stores** or **Raw Material** held for the purpose of business or profession.

**Personal Effects** of the assessee that is to say, Movable Property including wearing apparel and furniture held for his personal use or for the use of any members of his family – dependent upon the assessee. However Jewellery is treated as a Capital asset even though it is meant for personal use of the assessee.

### **Agricultural land (non-urban) in India provided it is not situated**

In any area within the jurisdiction of a municipality or a cantonment board, having a population of 10,000 or more; OR

In any notified area.

### **6.5% Gold bonds, 1977, or**

- i) **7% Gold Bonds, 1980, or**
- ii) **National Defence Gold Bonds, 1980.**

### **Special Bearer Bonds, 1991.**

Gold Deposit Bonds issued under the Gold Deposit scheme, 1999 notified by the Central Government WEF A.Y. 2000-2001.

*Memory key: 077 Bond<sup>1</sup> found 80kgs<sup>2</sup> stock<sup>3</sup> of gold in his personal<sup>4</sup> plot of land away from the city<sup>5</sup> which he converted into bearer bonds<sup>6</sup> in 91 and 99*

### TRANSFER [Sec. 2(47)]

Transfer, in relation to a Capital Asset, includes sale, exchange, extinguishment or relinquishment of the asset or the compulsory acquisition thereof under any Law. Transfer also includes the following:

So from the above definition the following kinds of transfer of a capital asset from one person to another is taxable

- Sale of the asset
- Exchange of the asset with another asset
- Relinquishment of a capital asset
- Compulsory acquisition of the property by the Govt. of India
- Extinguishment of right in an asset is also termed as transfer

**Some more instances of transfer:**

1. From the assessment year 85-86 i.e. with effect from 1.4.84 and onwards, if a 'Capital asset' is converted by the owner thereof into (or is treated by him as) stock in trade of a business carried on by him, such conversion (or treatment of) the capital asset shall also be regarded as 'Taxable Transfer' of the asset.

**CASE NAME: CIT Vs. BAI SHIRIN BAI. K. KOOKA – [Section 45(2)]**

2. From the assessment year 88-89 i.e. with effect from 1.4.87 and onwards, the following transactions are also regarded as a "taxable transfer".

(a) If any property is transferred by the transferor allowing the transferee to take possession of any immovable property as a performance of or part performance of a contract as defined under section 53A of the TRANSFER OF PROPERTY ACT, 1882 would also be termed as transfer for the purpose of this act

(b) If a member of a cooperative society transfers the shares held by him to any other person due to which the transferee can have the ownership of any flat or immovable property then in such cases the transfer of such share would be termed as taxable transfer with the meaning of this act

**CERTAIN TRANSACTIONS NOT INCLUDED IN TRANSFER**

The capital gains act does not consider all transfers as taxable transfers and the following transactions are **not** regarded as Taxable Transfer although they do involve transfers in the natural sense.

Distribution of Capital Assets IN KIND by a company to its shareholders on its liquidation [Sec. 46(1)].

Any distribution of Capital Assets IN KIND by a Hindu Undivided Family (H.U.F) to its members at the time of total or partial partition [Sec. 47(i)].

Any transfer of capital asset under a gift or a will or an irrevocable trust [Sec. 47 (iii)].

Any transfer of a capital asset by a Holding Company (Indian or Foreign) to its wholly owned INDIAN subsidiary company, as a capital asset to the transferee company [Sec. 47(iv)]. (\*)

Any transfer of a capital asset by a wholly owned subsidiary company (Indian or foreign) to its INDIAN Holding Company as a Capital asset to the transferee company [Sec. 47(v)]. (\*)

- (f) 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 [Sec. 47(vi)].
  
- (g) Any Transfer of shares in an Indian Company held by a Foreign Company to another Foreign Company in pursuance of a scheme of amalgamation between the two foreign companies, if atleast 25% of the shareholders of the amalgamating foreign company continue to remain share holders of the amalgamated foreign company and such transfer DOES NOT attract tax on Capital Gains in the Country, in which the amalgamating company is incorporated [Sec. 47(via)].
  
- (h) 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 [Sec. 47(vi b)].
  
- (i) Any transfer in a demerger, of a capital asset, being a share or shares held in an Indian company by the demerged foreign company to the resulting foreign company, if –
  - (a) At least seventy-five per cent of the shareholders of the demerged foreign company continue to remain shareholders of the resulting foreign company, and
  - (b) Such transfer does not attract tax on capital gains in the country, in which the demerged foreign company is incorporated [Sec. 47(vi c)].
  
- (j) 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 or issue is made in consideration of demerger of the undertaking [Sec. 47(vi d)].
  
- (k) Any transfer of a shareholder, in a scheme of amalgamation of shares held by him in the amalgamating company, if the transfer is made in the consideration of the allotment to him of any shares in the amalgamated company and the amalgamated company is an INDIAN Company [Sec. 47(vii)].

**(Please remember only shares in exchange of shares; case: CIT Vs. GAUTAM SARABHAI TRUST)**

- (l) The transfer of a Capital asset by a non-resident of such foreign currency, convertible bonds, or shares held by him to another non-resident; where the transfer is made outside India [Sec. 47(vii a)].
  
- (m) Any transfer of agricultural land in India Effected before 1.03.1970 [Sec. 47(viii)].
  
- (n) Any transfer of Capital asset, being any work of art, archaeological, scientific or art collection, book, manuscript, drawing, painting, photograph or print, to the GOVERNMENT or a UNIVERSITY or the NATIONAL MUSEUM or NATIONAL ART

GALLERY or NATIONAL ARCHIVES or INDIRA GANDHI NATIONAL CENTRE OF ART [Sec. 47(ix)].

- (o) Any transfer by way of conversion of bonds or debentures, debenture Stock or deposit certificate in any form, of an Indian Company, into Shares or debentures of that company. (Placed with retrospective effect from 1.4.1962) [Sec. 47(x)].
- (p) W.E.F. A.Y. 98-99 if stock exchange membership is transferred in exchange of shares of a company to which membership is transferred (Only if exchange is effected on or before 31/12/98) and shares are held by transferor for atleast 3 years from the date of transfer [Sec. 47(xi)].

If shares are transferred within 3 years then Capital gain shall arise in the previous year in which shares are transferred [Sec. 47A(2)].

- (q) W.E.F A.Y. 98-99 if land is transferred by a Sick Industrial Company managed by its workers Co-operative [scheme of sick Industrial Co.'s (special provisions) Act] [Sec. 47(xii)].
- (r) Where a firm is succeeded by a company in the business carried on by it as a result of which the firm sells or otherwise transfers any building, machinery, plant furniture or intangible asset to the company:

Provided that-

All the assets and liabilities of the firm relating to the business immediately before the succession become the assets and liabilities of the company;

All the partners of the firm immediately before the succession become the shareholders of the company in the same proportion in which their capital accounts stood in the books of the firm on the date of succession;

The partners of the firm do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company; and

The aggregate of the share holding in the company and their share holding continues to be as such for a period of five years from the date of the succession [Sec. 47(xiii)].

- (s) Where a sole proprietary concern is succeeded by a company in the business carried on by it as a result of which the sole proprietary concern sells or otherwise transfers any building machinery, plant, furniture or intangible asset to the company;

Provided that-

(1) All the assets and liabilities of the sole proprietary concern relating to the business immediately before the succession become the asset and liabilities of the company;

(2) The share holding of the sole proprietor in the company is not less than fifty per cent of the total voting power in the company and his share holding continues to so remain as such for a period of five years from the date of the succession; and

(3) The sole proprietor does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company  
[Sec. 47(xiv)].

Where any condition laid down in Sec 47(xiii) & 47(xiv) are not complied with, the benefit availed by the firm or by the sole proprietor, as the case may be, shall be deemed to be

the profits and gains chargeable to tax of the successor company for the previous year in which the conditions are not complied with [Sec. 47A(3)].

- (t) Any transfer in a scheme for lending of any securities under an agreement or arrangement, which the assessee has entered into with the borrower of such securities and which is subject to the guidelines issues by the Securities and Exchange Board of India Act, 1992 in this regard [Sec. 47(XV)].

**Since the above transaction are not covered recognised as “taxable transfers” for the purpose of Sec. 45, therefore any profit or gain arising on the above noted transactions is not chargeable to tax u/s. 45; Conversely, any loss arising there from is not liable to be set off against other incomes of the assessee.**

*What does not constitute as a transfer*

**Memory key: PIGS WERE GLAD**

<i>P</i>	<i>Any asset transferred from the Hindu Undivided Family to its members on account of <u>Partition</u></i>
<i>I</i>	<i><u>Inter company</u> transfers e.g. transfer to subsidiaries and holding companies and vice versa.</i>
<i>G</i>	<i>Transfers of <u>GDRs</u> from one foreign owner to another foreign owner</i>
<i>S</i>	<i>Transfer of land by a <u>sick company</u> run by the workers cooperatives</i>
<i>W</i>	<i>Assets transferred under <u>wills and probates</u>, Gift of succession or inheritance or devolution</i>
<i>E</i>	<i><u>Exchange of shares</u> in the company for debentures. In other words conversion of debentures to shares and vice versa</i>
<i>R</i>	<i>Any transfer of asset on account of <u>reconstruction</u> of the company or a firm such as conversion of firm to a limited company and also conversion of partnership to limited company</i>
<i>E</i>	<i><u>Exchange</u> or Transfer of shares held by a foreign company in an Indian company to another foreign company outside India</i>
<i>G</i>	<i>Transfer of assets sold to the <u>government</u> or to any other archeological museum etc</i>
<i>L</i>	<i>Transfer of assets on the <u>liquidation</u> of the company and distribution of assets</i>
<i>A</i>	<i>Any transfer of asset due to <u>amalgamation of companies</u></i>
<i>D</i>	<i>Any transfer of asset on account of <u>demerger of companies</u></i>

### **TYPES OF CAPITAL ASSETS:**

There are two types of capital assets depending upon their holding period.

#### **(1) SHORT TERM CAPITAL ASSETS:**

- (a) For Shares, various securities listed in recognised stock exchanges in India, UNITS of U.T.I & Mutual Funds specified under Sec. 10(23D), the holding period is **12 months** or less.

In the case of a share held in a company in liquidation, the period subsequent to the date on which the company goes into liquidation should be excluded.

(b) In the case of a share in an Indian Company, which becomes the property of the assessee in a scheme of amalgamation, the period for which the share in the amalgamating company was held by the assessee should be included.

For rights entitlement (Which are renounced) will be reckoned from the date of offer made by the company to the date of renouncement by the assessee.

(c) For other than above assets, the holding period is **36 months or less**.

**(2) LONG TERM CAPITAL ASSET:**

Those assets, which are not short term assets are known as Long term capital assets.

**CAPITAL GAINS HOW COMPUTED: [Sec. 48]**

**A) COMPUTATION OF SHORT TERM CAPITAL GAINS:**

Full value of consideration		XX
Less:		
i) Expenditure incurred wholly and exclusively in connection with such transfer	XX	
ii) Cost of acquisition	XX	
iii) Cost of improvement	XX	(XX)
<b>GROSS SHORT TERM CAPITAL GAINS</b>		XX
Less:		
Exemption u/s. 54B, 54D, 54G		(XX)
<b>NET SHORT TERM CAPITAL GAIN</b>		XX

**B) COMPUTATION OF LONG TERM CAPITAL GAINS:**

Full value of consideration		XX
Less:		
i) Expenditure incurred wholly and exclusively in connection with such transfer	XX	
ii) INDEXED cost acquisition	XX	
iii) INDEXED cost of improvement	XX	(XX)
<b>GROSS LONG TERM CAPITAL GAIN</b>		XX
Less:		
Exemption u/s. 54, 54B, 54D, 54EA, 54EB, 54F & 54G(To be dealt with later on)		(XX)
<b>NET LONG TERM CAPITAL GAIN</b>		XX

**EXPLANATIONS**

**1. FULL VALUE OF CONSIDERATION:**

The whole price without any deduction whatsoever (e.g. for brokerage, commission, etc.) and it cannot refer to the adequacy or inadequacy of price bargained for. The consideration for the transfer of Capital asset is what the transferor receives in lieu of the asset he parts with, namely money or money's worth.

**Cases when fair market value shall be treated as full value of consideration.**

- (a) While computing capital gains in the case of conversion of capital asset into stock in trade with effect from 1.4.84 and onwards (i.e. Ass. year 85-86).

The fair market value of the capital asset on the date on which it was converted or treated as stock in trade shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

- (b) In the case of transfer by way of distribution of Capital assets by a firm, by an association of persons or by a body of individuals, the fair market value of the asset as on the date of transfer shall be deemed to be the full value of the consideration as a result of such transfer. In other words the agreed sale consideration is NOT relevant at all. [Sec. 45(3), (4)].
- (c) In case of Barter/exchange.
- (d) In case of Assets distributed in kind at the time of liquidation of a company Sec. 46(2) (taxable in the hands of the shareholder as sale consideration – its fair market value).

**Computation of sale, consideration while ascertaining Capital gains pertaining to sale or transfer of shares/debentures of an Indian Co. in the case of non-resident.**

The full value of sale consideration received or accruing as a result of the transfer of the capital asset is to be converted into the same foreign currency as was initially utilised in the purchase of the shares or debentures, by the average of the telegraphic buying and selling rates, prevailing on the date of its sale.

**WHAT IS EXPENDITURE ON TRANSFER:**

It includes all expenditures necessary to affect the transfer.

Examples:

Brokerage and commission paid for securing a purchaser.

Cost of Stamp.

Registration fees borne by the vendor.

Travelling expenses incurred in connection with transfer.

Litigation expenditure for claiming enhancement of compensation awarded in the case of compulsory acquisition of assets.

Please note that vague expenses will not be included and if a sum has already been allowed as a deduction under other heads, the same cannot be allowed as deduction.

Expenditures in connection with transfer may have been incurred after the passing of title.

### **What is Cost Inflation Index?**

“Cost Inflation Index” for any year means such index as the Central Government may, having regard to seventy-five percent of average rise in the consumer price index for urban non-manual employees for that year, by notification in the Official Gazette specify in this behalf.

The Central Government has notified the “Cost Inflation Index” for the purpose of long-term capital gain as follows:

How to memorize the index nos? Simple!!!! Just remember the following telephone nos.

**09653001229**  
**23-44-59-81**  
**305-31-51**  
**389-06-26**

For the first, telephone no jump every box of ten

For the next telephone, no you insert two ahead of all the group of digits

For the third, no you jump 20 points after 305

For the last, number you just jump 20 points again after 389

<u>Financial Year/ Previous Year</u>	<u>Cost Inflation Index</u>
1981-82	100
1982-83	109
1983-84	116
1984-85	125
1985-86	133
1986-87	140
1987-88	150
1988-89	161
1989-90	172
1990-91	182
1991-92	199
1992-93	223
1993-94	244
1994-95	259
1995-96	281
1996-97	305
1997-98	331

1998-99	351
1999-00	389
2000-01	406
2001-02	426

**W.E.F A.Y. 98-99, No Indexation benefit in case of long term Capital gains from sale of Debentures/Bonds (Except capital Indexed Bonds of Central Government)**

**Computation of the expenditure on transfer while ascertaining Capital Gains pertaining to sale or transfer of shares/debentures of an Indian Co. in the Case of non-resident.**

The full value of the expenditure on transfer as a result of the transfer of the Capital asset, is to be converted into the same foreign currency as was initially utilised in the purchase of the shares or debentures, by the average of the telegraphic buying and selling rates, on the date of its sale.

## **2. WHAT IS COST OF ACQUISITION AND DIFFERENT WAYS TO COMPUTE COST OF ACQUISITION UNDER DIFFERENT SITUATIONS?**

Cost of acquisition:

It is the value of an asset for which it was acquired by the assessee. Expenses of Capital nature for completing or acquiring the title to the property are includable in the cost of acquisition.

- It includes interest on moneys borrowed to purchase asset as part of actual cost of asset.
- Expenses for suits for amending articles of association are of capital nature and are part of cost of shares.
- Litigation expenses incurred for compelling the company to register the shares in the name of the assessee would be of capital nature, forming part of cost of acquisition of the shares.
- Ground rent and estate duty paid cannot be said to be expenditure for acquisition.

### **(A) COST OF ACQUISITION TO ASSESSEE – BEING COST TO THE PREVIOUS OWNER: [SEC.49 (1)]**

Cost of acquisition to the assessee, shall be the cost to the previous owner, if the capital asset became the property of the assessee under circumstances, which did not attract 'taxable transfer' at the time of its acquisition by the assessee.

(Refer – Certain transactions not included in transfer).

#### **Please Note:**

*In such cases the period for which the capital asset was held by the previous owner, should be included in the period held by the assessee. But indexation is allowed to*

*the assessee only for the period assessee held on to the asset. In the following cases the cost of previous owner shall be taken as the cost of acquisition for the assessee, if he has acquired the asset by way of:*

- (1) Any distribution of asset in kind at the time of liquidation of the company [Sec. 46(1)]. Provided Sec. 46(2) is not attracted.
  - **Cost to the company at the time of liquidation.**
- (2) Any distribution of asset on the total or partial partition of a H.U.F. [Sec. 47(i)]
  - **Cost to the H.U.F at the time of partition.**
- (3) Any distribution of asset on the dissolution of the firm, Body of Individuals, Association of persons if such dissolution took place PRIOR TO 1.4.87 (i.e. A.Y. 88-89) [Sec. 47(ii)]
  - **Cost to the firm, B.O.I, A.O.P at the time of dissolution.**
- (4) Any transfer of Asset under a gift, will, or an irrevocable trust. [Sec. 47(iii)]
  - **Cost to the transferor.**
- (5) Any transfer from a 100% Holding Co. to an Indian Subsidiary Co. [Sec. 47(iv)]
- (6) Any transfer from a Subsidiary Co. to an 100% Indian Holding Co. [Sec. 47(v)]
  - **Cost to the transferor Company at the time of transfer, provided Sec. 47A(1) does not come into play.**

Please note: if Sec. 47A(1) comes into play then the price actually paid by the transferee company to the transferor company, is the cost of acquisition for the transferee company at the time of subsequent transfer by the transferee company.

- (7) Any transfer of asset in a scheme of amalgamation as is referred to in [Sec. 47(vi)] and [Sec. 47(vii)].
  - **Cost to the transferor.**
- (8) Any acquisition of property, by a Hindu Undivided Family where one of its members has converted his self acquired property into joint family property after 31.12.1969.
  - **Cost to the transferor.**

**Where the previous owner has acquired the property in the aforesaid manner, the previous owner of the property means the last previous owner who acquired the property by means other than those discussed above.**

**(B) COST OF ACQUISITION WHEN DEBENTURES ARE CONVERTED INTO SHARES OR BONDS INTO DEBENTURES: [Sec. 49(2A)]**

Any transfer by way of conversion of debentures or deposit certificates into shares or conversion of deposit certificates into debentures of that company will not be regarded as a taxable transfer. [Because of Sec. 47(X)].

For computing capital gain on the sale of such converted shares or debentures (as the case may be), the cost of acquisition of the old debentures or the cost of old deposit certificate which has been appropriated towards the shares or debentures shall be the cost of acquisition of such converted shares or debentures.

Where the capital gain arises from the transfer of the specified security referred to in Sec. 17(2)(iii a), the cost of acquisition of such specified security shall be the fair market value on the date of exercise of option. [Sec. 49(2B)].

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. [Sec. 49(2C)]

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 at as above. [Sec. 49(2D)]

Explanation – For the purposes of this section, “net worth” shall mean 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.

**(C) COST OF ACQUISITION IN THE CASE OF DEPRECIABLE ASSETS: [Sec. 50]**

Under the new system of providing depreciation on block of assets, written down value of any block of assets may be reduced to nil for any of the following two situations.

- (1) **Situation 1: [Sec. 50(1)]** If the sale consideration of any one or more assets, **but not all assets**, exceeds the opening W.D.V + Value of assets acquired during the previous year + expenditure in connection with such transfer; this excess amount shall be deemed to be **ALWAYS SHORT-TERM CAPITAL GAINS**.

(Here the cost of acquisition would be sum total of opening W.D.V + acquisition during  
The previous year)

- (2) **Situation 2: [Sec. 50(2)]** Here the block cease to exist because **all the assets** in that block are sold during the previous year. The cost of acquisition in such a case shall be the aggregate of the following:

- (a) Opening W.D.V at the beginning of the previous year.

- (b) Actual Cost of any asset, falling within that block, acquired by the assessee during the previous year.

Here there are two possibilities

- (i) If the sale consideration of all the assets in the block exceeds the cost of acquisition above and expenditure of transfer, such excess is chargeable to tax as **SHORT TERM CAPITAL GAIN**.
- (ii) If the sale consideration of all the assets in the block falls short of the cost of acquisition above and expenditure of transfer; such short fall is **SHORT TERM CAPITAL LOSS**.

With retrospective effect from A.Y. 1998-99, the Fin-Act 1998 has inserted sec 50A, which states that when assets on which depreciation has been claimed by the assessee are transferred, then W.D.V as defined u/s 43(6) shall be taken as the cost of acquisition of the asset, and the provision of sec 48 & sec 49 shall apply.

**Special provision for computation of capital gains in case of slump sale [Sec. 50(B)]**

- (1) Any profits or gains arising from the slump sale effected in the previous year 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:

Provided that any profits or gains arising from the transfer under the slump sale of any capital asset being one or more undertakings owned and held by an assessee for not more than thirty-six months immediately preceding the date of its transfer shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

- (2) In relation to capital assets being an undertaking or division transferred by way of such sale, 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.
- (3) Every assessee, in the case of slump sale, shall furnish in the prescribed form along with the return of income, a report of an accountant indicating the computation of the net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division, as the case may be, has been correctly arrived at in accordance with the provisions of this section.

Net worth as discussed in Section 47 (xii)

**(D) COST OF ACQUISITION IN THE CASE OF ADVANCE MONEY RECEIVED:  
[Sec. 51]**

Where the capital asset was, on any previous occasion, subject to negotiations for its transfers, any advance or other money received or forfeited; by the assessee in

respect of such negotiation, is to be deducted from the cost for which the asset was acquired.

**(E) OPTION TO SUBSTITUTE THE FAIR MARKET VALUE AS ON 1.4.81 AS THE COST OF ACQUISITION IN CASE THE CAPITAL ASSET, NOT BEING DEPRECIABLE ASSET AND SELF GENERATED ASSET, IS ACQUIRED BY THE ASSESSEE PRIOR TO 1.4.81 [Sec. 55(2)]**

The assessee has the option to take either the original cost of acquisition or the fair market value of the asset as on 1.4.81 as the cost of acquisition, whichever is favourable for him. Please note that no such option is available in respect of depreciable assets/self generated assets.

Such option is also available to the assessee if he has acquired the capital asset in any mode referred to in Sec. 49(1) and Capital asset in question, became the property of the previous owner before 1.4.81.

**(F) COST OF ACQUISITION IN THE CASE OF BONUS SHARES AND RIGHT SHARES**

- (i) Cost of acquisition of bonus shares from the A. Y. 1996-97 Sec. 55 has been amended to the effect that cost of Bonus shares will be taken to be NIL. If the bonus shares were allotted prior to 1.4.81 the cost of bonus shares would be the F.M.V as at 1.4.81. The period of holding shall commence from the date of allotment of such Bonus shares till the date of its sale.

Particulars	Cost of acquisition if original and bonus shares are transferred after March 31, 1995
1). If the original shares and bonus shares are acquired before April 1, 1981	Original shares – Actual cost or fair market value on April 1, 1981, whichever is more. Bonus shares – Fair market value on April 1, 1981
2). If original shares are acquired before April 1, 1981 but bonus shares are allotted after April 1, 1981	Original shares – Actual cost or fair market value on April 1, 1981, whichever is more Bonus shares – Nil
3). If original and bonus shares are acquired after April 1, 1981	Original shares – Actual cost Bonus Shares – Nil

- (ii) Right Shares offer and subsequent renouncement by the assessee, and their cost of acquisition.

The cost of acquisition of the rights entitlement (which were subsequently renounced by the assessee for a price) would be deemed to be NIL.

Thus, the amount realised by the original shareholder by selling his rights entitlement will be short-term capital gains in his hand (as the cost is taken at NIL).

**(G) COMPUTATION OF COST OF A ACQUISITION WHILE ASCERTAINING CAPITAL GAINS PERTAINING TO SALE OR TRANSFER OF SHARES/DEBENTURES OF AN INDIAN COMPANY IN THE CASE OF NON-RESIDENT.**

The full value of the cost of acquisition received or accruing as a result of the transfer of the capital asset is to be converted into the same foreign currency as was initially utilised in the purchase of shares or debentures, by the average of the telegraphic buying and selling rate, as on that date of its acquisition.

**(H) COST OF ACQUISITION OF GOODWILL, RIGHT TO MANUFACTURE, PRODUCE OR PROCESS ANY ARTICLE OR THING, TENANCY RIGHTS, STAGE CARRIAGE PERMITS AND LOOM HOURS.**

- (i) Capital asset which was purchased;  
The cost paid for purchasing the capital asset shall be the cost of acquisition.
- (ii) Capital asset which is self generated;  
The cost of acquisition shall be NIL.

**(I) INDEXED COST OF ACQUISITION**

The amount which bears to the cost of acquisition, the same proportion as cost inflation index for the year in which the asset is transferred/sold, bears to the cost inflation index for the first year in which the asset was held by the assessee, or for the year beginning on 1.4.81, whichever is **later**.

**4. WHAT IS COST OF IMPROVEMENT?**

Cost of improvement includes all the expenditure of CAPITAL NATURE incurred after 31.3.81 by an assessee in making any additions to the capital asset. In other words, any expenditure incurred to increase the value of the capital asset is treated as cost of improvement.

Cost of improvement in relation to a capital Asset other than Goodwill and a right to manufacture, produce or process any article or thing is:

- (i) When the asset was acquired prior to 1.4.81 including cases of [Sec. 49(1)] – The expenditure of a capital nature incurred in making any addition or alteration to the Capital asset on or after 1.4.81 by the assessee and/or the previous owner in case of Sec. 49(1).
- (ii) Capital asset acquired by the assessee on or after 1.4.81 – all expenses of Capital nature incurred in making any addition/alteration to the Capital asset by the assessee [or the previous owner in cases specified by Sec. 49(1)].

Cost of improvement does not include:

- (i) Expenditure already allowed under other head of income.
- (ii) Expenditure incurred prior to 1.4.81.

- (iii) Cost of improvement in relation to goodwill and a right to manufacture, produce or process any article or thing of a business (Always taken as NIL).

Indexed Cost of Improvement:

An amount which bears to the cost of improvement, the same proportion as the cost inflation index for the year in which the asset is transferred bears to the cost inflation index for the year in which the improvement to the asset took place.

#### COMPUTATION OF CAPITAL GAINS

**Principle – For cost of acquisition indexation** – Divided by the index factor of the year in which the assessee became owner or 81-82(100), whichever is later.

**For indexation on improvement** – Any improvement done on or after 1.4.81 by the assessee or the previous owner will be considered only and it will be divided by the index factor of the year in which the improvement took place.

#### Under 5 different situations vis-à-vis Indexation

**Situation 1:** Capital asset acquired by the assessee, not in the circumstances specified in Sec. 49(1), before 1.4.81.

**Situation 2:** Capital asset acquired by the assessee, not in the circumstances specified in Sec. 49(1), on or after 1.4.81.

**Situation 3:** Capital asset acquired by the assessee before 1.4.81, in one of the circumstances specified in Sec. 49(1) – Naturally acquired by the previous owner before 1.4.81.

**Situation 4:** Capital asset acquired by the assessee on or after 1.4.81, in one of the circumstances specified in Sec. 49(1) and originally acquired by the previous owner before 1.4.81.

**Situation 5:** Capital asset acquired by the assessee on or after 1.4.81, in one of the circumstances specified in Sec. 49(1) and originally acquired by the previous owner on or after 1.4.81.

**Sec. 45(1A)** WEF A.Y. 2000-2001 – where any person receives at any time during any previous year any money or other assets under an insurance from an insurer on account of damage to, or destruction of, any capital asset, as a result of -

- (i) Flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature; or
- (ii) Riot or civil disturbance; or
- (iii) Accidental fire or explosion; or
- (iv) 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 such person of the previous year in which such money or other asset was received and for the purposes of section 48, value or 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 asset.

### **Computation of Capital Gains in the case of conversion of Capital asset into stock in trade [Sec.45 (2)]**

The notional capital gain arising from the transfer by way of conversion of capital asset into stock in trade will be chargeable to tax IN THE YEAR IN WHICH SUCH STOCK IN TRADE IS SOLD.

### **Computation of Capital Gains in the case of compulsory acquisition of an asset [Sec. 45(5)]**

Initial Compensation awarded or determined or approved on compulsory acquisition of property shall be deemed to be the sale consideration and capital gains shall be computed pertaining to the previous year in which the initial compensation or the first instalment thereof is received. **Full** cost of acquisition is to be reduced from the **total** initial compensation in computing the aforesaid capital gains. **(Indexing to be done till the year of transfer only).**

In case any enhanced compensation is received subsequently, the compensation so received will be charged to tax as capital gains (short term or long term, depending upon the holding period, prior to its compulsory acquisition, by the assessee), of the year in which such amount is received; because of the fact that in such a case, cost of acquisition and cost of improvement shall be taken to be NIL. Only transfer expenses. **(Litigation expenses for getting enhanced compensation is allowed).**

### **Computation of Capital Gains in the case of non-resident**

Capital gains in case of non-resident arising on sale or transfer of **shares/debentures** in an Indian company shall be computed by converting the cost of acquisition, expenditure in connection with such transfer and the full value of the consideration received or accruing as a result of the transfer of the capital asset into the same foreign currency as was initially utilised in the purchase of the shares or debentures. The capital gains so computed in such a foreign currency shall be reconverted into Indian Currency (Rupees) by the telegraphic transfer BUYING RATE of such currency, as on the date of transfer of the capital asset.

No relief in terms of INDEXATION will be available in the aforesaid computation.

For the aforesaid purpose, telegraphic transfer buying/selling rate in relation to a foreign currency is rate of exchange adopted by the State Bank of India for purchasing or selling such currency where such currency is made available by that bank through telegraphic transfer.

### **COMPUTATION OF CAPITAL GAINS ON THE TRANSFER OF FIRM'S ASSETS TO PARTNERS AND VICE VERSA [Sec. 45(3)(4)]**

When the firm distributes assets to the partner on dissolution, the market value is taken, as sale consideration in the hands of the firm i.e. the agreed value is not relevant at all. In case of transfer of a capital asset by a partner to a firm, or by a member to an association of persons or a body of individual, the amount RECORDED IN THE BOOKS of the firm A.O.P., B.O.I. as the value of the capital asset, shall be deemed to be the full value of the consideration as a result of such transfer in the hands of partner or member.

### **CAPITAL GAINS ON PURCHASE BY COMPANY OF ITS OWN SHARES OR OTHER SPECIFIED SECURITIES. [Sec. 46A] WEF A.Y. 2000-2001**

Where a shareholder or a holder of other specified securities receives any consideration from any company for purchase of its own shares or other specified securities held by such shareholder or holder of other specified securities then, subject to the provisions of section 48, the difference between the cost of acquisition and the value of consideration received by the shareholder or the holder of other specified securities, as the case may be, shall be deemed to be the capital gains arising to such shareholder or the holder of other specified securities, as the case may be, in the year in which such shares or other specified securities were purchased by the company.

### **COMPUTATION OF CAPITAL GAINS ON TRANSFER OF SELF-GENERATED GOODWILL OF A BUSINESS**

Till A.Y. 94-95 Goodwill even though self generated asset, was considered taxable, where as other self generated assets like tenancy rights, route permits, and loom hours were not treated as taxable assets, as they were self generated, (i.e. no cost was paid in purchasing them).

#### **Goodwill of the professional firm is not taxable at all.**

From A.Y. 95-96 even tenancy rights, route permits and loom hours, from A.Y. 98-99 even right to manufacture, produce or process any article or thing, will be treated as Capital assets, despite they being self-generated.

In case of a self-generated asset, since no cost of acquisition is incurred, while computing capital gains, the cost of acquisition shall be taken as NIL. In other words the sale consideration shall be the capital gain.

No Cost of improvement shall ever be allowed in respect of a self-generated asset of goodwill and a right to manufacture, produce or process any article or thing.

**Transfer of security by depository [Sec. 45(2A)]** – Sec. 45(2A) has been inserted by the Depositories Act, 1996 with effect from September 20, 1995. Where any person has had at any time during previous year any beneficial interest in any securities, then any profits or gains arising from transfer made by the depository or participant of such beneficial interest in respect of securities shall be chargeable to income-tax as the income of the beneficial owner of the previous year in which such transfer took place. It shall not be regarded as the income of the depository who is deemed to be the registered owner of securities by virtue of section 10(1) of the Depositories Act, 1996. For the purposes of section 48 and provision to section 2(42A), the cost of acquisition and the period of holding of any securities shall be determined based on the first in first out method.

For this purpose, "beneficial owner" means a person whose name is recorded as such with a depository. Depository means a company registered under the Companies Act and which has been granted a certificate of registration under section 12(1A) of the Securities and Exchange Board of India Act.

**When a valuation of a capital asset be referred to a valuation officer appointed by the Income-tax department.**

- (a) If in the opinion of the Assessing officer, the value, as claimed by the assessee, in accordance with the estimate made by the registered valuer (Who works in a private capacity under a license issued by the Central Board of Direct Taxes and his valuation is not binding on the income tax department), is less than its fair market value.
- (b) Where the Assessing officer is of the opinion that the fair market value of the assets exceeds the value of asset by more than Rs. 25,000 or 15% of the value claimed by the assessee, whichever is less.
- (c) Where the Assessing officer is of the opinion that having regard to the nature of an asset and relevant circumstances, it is necessary so to do.

**CERTAIN EXEMPTIONS FROM CAPITAL GAINS:**

**(1) CAPITAL GAINS ARISING FROM THE TRANSFER OF RESIDENTIAL HOUSE PROPERTY [Sec. 54]**

If the following conditions are satisfied:

- (a) Residential house property (income of which is taxable under Income from House Property).
- (b) Owned and transferred by an INDIVIDUAL or a HINDU UNDIVIDED FAMILY.
- (c) The self occupied or let out House Property is a LONG TERM CAPITAL ASSET.
- (d) PERIOD FOR PURCHASE OR CONSTRUCTION:

The assessee has purchased another residential house within a period of one year before the transfer OR within two years after the date of transfer, of the original residential house.

OR

Assessee has constructed another residential house property within a period of three years after the date of transfer of the original residential house.  
[Commencement of construction can be done at any time i.e. before or after the transfer of the original residential house but completed within 3 years from the date of transfer.]

[Case of allotment of flat under the self-financing scheme of D.D.A. – Delhi Development Authority; or similar scheme of Co-operative societies or other institutions, is treated as construction of house for this purpose].

(e) PERIOD FOR RETAINING THE NEW ASSET:

This another house property so purchased or constructed as the case may be, should be retained for a period of three years from the date of its purchase or construction, as the case may be, by the assessee.

AMOUNT OF EXEMPTION:

The capital gain generated on the transfer of an original house property is fully exempt if it is fully utilised in purchasing or constructing another (new) residential house property. But if amount invested in purchase or construction is less than the capital gains of the original house property, the excess of capital gains over investments is not exempted u/s. 54 i.e. it is taxable. In any case the maximum exemption u/s. 54 shall be to the tune of Capital gains generated on the sale of the original house property.

[Amount invested i.e. cost of the new house property shall include cost of the land also].

SCHEME OF DEPOSIT:

In order to enable an assessee in purchasing a house or constructing a house of his choice, some time needs to be given to him. Thus where the amount of capital gains is not appropriated or fully utilised by the assessee for purchase or construction of the new residential house before the date for furnishing the return of income it shall be deposited by him on or before the due date of furnishing the return of income, in the Deposit Account in any branch (excluding rural branch) of a public sector bank in accordance with capital gains Accounts scheme, 1988. The amount already utilised for purchase or construction of the new house together with the amount so deposited shall be deemed to be the amount utilised for the purchase or construction of a new house under sec. 54. (The amount deposited has to be utilised as per the stipulated period for purchase or construction point (d) above).

CASE OF NON-UTILISATION:

If the amount deposited is not utilised fully for purchase or construction of new house within the stipulated period, point (d) above, then the amount not so utilised shall be treated as Long Term Capital Gains of the previous year in which the period of three years from the date of transfer of the original house property expires. In such a case, the assessee shall be entitled to withdraw 'such amount' (not utilised) in accordance with the aforesaid scheme.

CASE OF MIS-UTILISATION:

If the new house property (purchased or constructed) so acquired, is transferred, within a period of three years from the date of its purchase or construction, the amount of capital gains arising there from, together with the amount of capital gains exempted earlier, will be chargeable to tax in the year of sale of the new house property as **SHORT TERM CAPITAL GAINS**.

**(2) CAPITAL GAINS ARISING FROM THE TRANSFER OF URBAN AGRICULTURAL LAND [Sec. 54B]**

If the following conditions are satisfied:

- (a) Urban Agricultural Land which is either Short Term or Long Term Capital asset.
- (b) Available only to INDIVIDUAL assessee.
- (c) It has been used by either the individual himself or his parents for agricultural purpose for a period of two years, immediately preceding the date of transfer, not necessarily as an owner.
- (d) Period for acquiring: The assessee has purchased another land (anywhere) for agricultural purpose within a period of two years from the date of such transfer.
- (e) Period of retaining: The new agricultural land is retained for a period of three years from the date of its purchase.

**AMOUNT OF EXEMPTION:**

If the amount of Capital gains is less than the cost of new agricultural land, entire amount of capital gains is exempted. On the other hand, if the amount of capital gains is greater than the cost of new agricultural lands, then the difference (excess of capital gains over cost of new agricultural land) is chargeable to tax as capital gains [Short term or Long term depending upon the holding period of the assessee]

Scheme of deposit is applicable.

Cases of non-utilisation, it could be taxed as both long term or short term depending upon the holding period of the original agricultural land sold, and mis-utilisation is treated just like sec. 54.

**(3) CAPITAL GAINS ON COMPULSORY ACQUISITION OF LAND AND BUILDING FORMING PART OF INDUSTRIAL UNDERTAKING. [Sec. 54D]**

If the following conditions are satisfied:

- (a) Available to all assessee.
- (b) It can be long term or short term capital asset.
- (c) Such land and building was used by the assessee for the purpose of the industrial undertaking for atleast two years preceding the date of compulsory acquisition not necessarily as an owner.
- (d) The assessee has purchased any other land or building within period of three years from the date of acquisition or constructed a building within a period of three years from the date of acquisition.
- (e) The newly acquired land or building should be used for the purpose of shifting or reestablishing the said undertaking or setting up another industrial undertaking.

## AMOUNT OF EXEMPTION

If the amount of Capital gains is less than the cost of new land or building, entire amount of capital gains is exempt from tax. On the other hand, if the amount of capital gains is greater than the cost of new land or building, the difference between the amount of capital gains and the cost of new land or building is chargeable to tax as capital gains [Short term or Long term depending upon the holding period, prior to its compulsory acquisition, by the assessee].

The consequences if new land or building is transferred within 3 years of their acquisition, is the same as 54B.

Also the scheme of deposit is applicable.

### **(4) CAPITAL GAIN ON TRANSFER OF LONG-TERM CAPITAL ASSETS NOT TO BE CHARGED IN THE CASE OF INVESTMENTS IN SPECIFIED SECURITIES. [SEC. 54EA] W.E.F. 1.10.96.**

- (1) Where the capital gains arises from the transfer of a long-term capital asset (original asset), and the assessee has, at any time within a period of six months after the date of such transfer, invested the whole or any part of the net consideration in any of the bonds, debentures, shares of a public company or units of any mutual fund referred to in Sec. 10(23D) by the board in this behalf by notification in the official gazette.
- (2) Available to all assessee.
- (3) Amount of exemption:
  - (a) If the cost of specified bonds or debentures is not less than the net consideration in respect of the original asset, the whole of such capital gains shall not be charged under section 45.
  - (b) If the cost of the specified bonds or debentures is less than the net consideration in respect of the original asset, so much of the capital gains as bears to the whole of the capital gains the same proportion as the cost of acquisition of the specified bond or debentures bears to net consideration, shall not be charged under section 45.

$$\text{i.e. } \frac{\text{Cost of specified bonds or debenture}}{\text{Net sale consideration of original asset}} * \text{Capital gains for original asset}$$

$$\text{Net Sale consideration} = \text{Full Sale consideration} (-) \text{Expenditure on transfer}$$

### **(4) Circumstances when exemption u/s 54 EA may be withdrawn**

Where the specified bonds or debentures are transferred or converted (otherwise than by transfer) into money or at any time within a period of 3 years from the date of their acquisition, the amount of capital gain arising from the transfer of the original asset not charged under section 45, shall be deemed to be the income chargeable

as **long term capital gains** of the year in which the specified bonds or debentures is transferred, or converted (otherwise than by transfer) into money.

[Converted otherwise than by transfer into money means assessee takes any loan or advance on the security of such specified bonds or debentures].

- (5) If the cost of specified bonds or debentures has been taken into account for the purpose of 54 EA, a rebate u/s 88 will not be available for the same.

The following assets have been specified by the Board for the purpose of section 54EA:-

1. All bonds, redeemable after a period of three years of –
  - a) The Industrial Development Bank of India, Mumbai
  - b) The Nuclear Power Corporation of India Limited, Mumbai
  - c) The National Highways Authority of India, New Delhi
  - d) The National Housing Bank, New Delhi
  - e) The Power Finance Corporation, New Delhi
  - f) The Tecil Chemicals and Hydro Power Limited, Mumbai
  - g) The Housing and Urban Development Corporation of India Limited, Mumbai
  - h) The Industrial Credit and Investment Corporation of India Limited, Mumbai
  - i) The Sardar Sarovar Narmada Nigam Limited, Gandhinagar
  - j) The DMCC Oil Terminals (Navlakhi) Limited, Mumbai
  - k) The Industrial Reconstruction Bank of India, Calcutta
  - l) The Weizmann Ltd., Mumbai
  - m) The CRB Corporation Limited, New Delhi
  - n) The Madhya Pradesh Electricity Board (MPEB), Jabalpur.
2. All units, repurchase-able after a period of three years, issued or to be issued by any mutual fund (including the Unit Trust of India) referred to in section 10(23D).
3. Equity shares not transferable before a period of three years of the DMCC Oil Terminals (Navlakhi) Limited, Mumbai.
4. Shares to be issued by Reliance Utilities and Power Limited, not exceeding Rs. 415 crores transferable or convertible after three years.
5. Shares to be issued by Reliance Ports and Terminals Limited, not exceeding Rs. 295 crores transferable or convertible after three years.
6. Debentures to be issued by Reliance Utilities and Power Limited, not exceeding Rs. 770 crores transferable or convertible after three years.
7. Debentures to be issued by Reliance Ports and Terminals Limited, not exceeding Rs. 200 crores transferable or convertible after three years.
8. Non-convertible debentures redeemable after a period of three years of the Ahmedabad Electricity Company Limited, Ahmedabad.
5. **CAPITAL GAIN ON TRANSFER OF LONG TERM CAPITAL ASSET NOT TO BE CHARGED IN CERTAIN CASES. [SEC. 54EB] W.E.F. 1.10.96.**

- (1) Where the capital gain arises from the transfer of a long term capital asset (original asset), and the assessee has, at any time within a period of six months after the date of such transfer invested the whole or any part of the Capital gains in any of the assets specified by the board (Long term specified assets) in this behalf by notification in the official gazette, the capital gain shall be dealt with in accordance with the following provisions: -
  - (a) If the cost of long term specified asset is not less than the capital gain arising from the transfer of original asset, the **whole** of such capital gain shall not be charged under section 45.
  - (b) If the cost of the long-term specified asset is less than the capital gain arising from the transfer of the original asset, so much of the capital gain as bears to the whole of the capital gains the same proportion, as the cost of acquisition of the long-term specified asset bears to the whole of the capital gain, shall not be charged under section 45.
- (2) Available to all assessee.
- (3) Circumstances when exemption u/s. 54EB may be withdrawn. Where the long-term specified asset is transferred or converted (otherwise than by transfer) into money at any time within a period of 7 years from the date of its acquisition, the amount of capital gains arising from the transfer of the original asset not charged u/s. 45 on the basis of the cost of such long term specified asset as provided in (1) (a) or (1) (b) above, shall be deemed to be the income chargeable u/s. 45as long term capital gains of the previous year in which the long-term specified asset is transferred or converted (otherwise than by transfer) into money.
- (4) If the cost of specified bonds or debentures has been taken into account for the purpose of 54 EB, a rebate u/s 88 will not be available for the same.

The following are **specified assets** for the purpose of Sec. 54EB: -

1. All bonds, redeemable after a period of seven years of –
  - a) The Industrial Development Bank of India, Mumbai
  - b) The Nuclear Power Corporation of India Limited, Mumbai
  - c) The National Highways Authority of India, New Delhi
  - d) The National Housing Bank, New Delhi
  - e) The Power Finance Corporation, New Delhi
  - f) The Housing and Urban Development Corporation of India Limited, Mumbai
  - g) The Industrial Credit and Investment Corporation of India Limited, Mumbai
  - h) The Sardar Sarovar Narmada Nigam Limited, Gandhinagar
  - i) The DMCC Oil Terminals (Navlakhi) Limited, Mumbai
  - j) The Industrial Reconstruction Bank of India, Calcutta
  - k) The Madhya Pradesh Electricity Board (MPEB), Jabalpur.
2. All units, repurchase-able after a period of **seven years**, issued or to be issued by any mutual fund (including the Unit Trust of India) referred to in section 10(23D).

3. Deposits for a period of not less than seven years with –
  - a) The Housing Development Finance Corporation Limited, Mumbai
  - b) The Industrial Reconstruction Bank of India, Calcutta
  - c) The ICICI Banking Corporation Limited, Mumbai
  - d) The Housing and Urban Development Corporation Limited, New Delhi
  - e) The Industrial Development Bank of India (IDBI), Mumbai and
  - f) The State Bank of India or any subsidiary bank, or any nationalised bank, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or co-operative land development bank).
4. Equity shares amounting to Rs. 72 crores issued by the DMCC Oil Terminals (Navlakhi) Limited, held for a period of at least seven years.
5. Debentures to be issued by Reliance Utilities and Power Limited, not exceeding Rs. 200 crores transferable or convertible after seven years.
6. Debentures to be issued by Reliance Ports and Terminals Limited, not exceeding Rs. 100 crores transferable or convertible after seven years.

**CAPITAL GAINS ON TRANSFER OF A LONG TERM CAPITAL ASSET OTHER THAN A HOUSE PROPERTY. [Sec. 54F]**

If the following conditions are satisfied:

- (a) Available to an INDIVIDUAL and a H.U.F. only.
- (b) The asset transferred is any long-term capital asset but other than a residential house.
- (c) The individual has purchased, within one year before the date of transfer or 2 years after the date of transfer or constructed within 3 years after the date of transfer, a residential house (hereinafter referred to as “new house”).
- (d) The Assessee should not be the owner of any residential house property on the date of transfer of the relevant long-term capital asset, other than the new house property purchased under one year before option.

**AMOUNT OF DEDUCTION:**

If the above conditions are satisfied, then the capital gain will be treated in a concessional manner as under:

- (1) If the cost (including cost of land) of the new house is not less than the net consideration in respect of the capital asset transferred, the entire capital gain arising from the transfer, will be exempted.
- (2) If the cost of the new house is less than the net consideration in respect of the asset transferred, the exemption from long-term capital gain will be granted proportionately on the basis of investment of net consideration either for purchase or construction of the residential house i.e.

Cost of the new house \* Capital Gains  
Net Consideration

Net Consideration = Full sale consideration (-) Expenditure on transfer

Circumstances when exemption granted u/s. 54F may be withdrawn:

- (a) If the individual sells or transfers the new house within 3 years of its purchase or construction.

**OR**

- (b) If the individual purchases, within a period of two years of the transfer of original asset, or constructs, within a period of three year of such asset, a residential house (taxable under the head "Income from house property"), other than the new house, i.e. purchases or constructs a second new house.

In the aforesaid two cases, the amount of capital gains arising from the transfer of the original asset, which was not charged to tax, will be deemed to be the income by the way of LONG TERM CAPITAL GAINS of the year in which the new house is transferred or another residential house (second new house) is purchased or constructed, as the case may be. (Whichever event is earlier).

Scheme of deposit is applicable:

**CAPITAL GAINS ARISING ON TRANSFER OF ASSETS IN CASE OF SHIFTING OF INDUSTRIAL UNDERTAKING FROM URBAN AREA TO ANY OTHER NON URBAN AREA. [Sec. 54G]**

If the following conditions are satisfied:

- (a) Available to all assessee.
- (b) It can be a long term or a short-term capital asset.
- (c) A capital asset being plant, machinery, land or building or any right in land or building (excluding furniture) used for the purpose of an Industrial undertaking situated in an urban area is transferred in consequence of the shifting of such industrial undertaking, to any area **other than an urban area** at the instruction of the govt. authority.
- (d) The assessee has within a period of one year before or three year after the date on which the transfer took place:
- (i) Purchased new machinery or plant for the purpose of business of the industrial undertaking in the area to which the said undertaking is shifted.

- (ii) Acquired building or land or constructed building for the purpose of his business in the said area.
- (iii) Shifted the original asset and transferred the establishment of such undertaking to such area.
- (iv) Incurred expenses on such other purpose as may be specified in a scheme framed by the Central Government for the purpose of this section.

**AMOUNT OF EXEMPTION:**

If the amount of the CAPITAL GAIN so generated is greater than the cost and expenses as are mentioned in (i) to (iv) above, such excess is chargeable to capital gains as short term or long term depending upon the age of the transferred Industrial undertaking.

In case of above, if the new capital asset is sold/transferred within a period of 3 years of its acquisition, the cost shall be taken as NIL (as it was fully exempted u/s. 54G).

If the amount of capital gain so generated is equal to or less than, the cost of the new asset, the capital gain shall not be charged u/s. 45 i.e. it shall be fully exempt.

In case of above, if the new capital asset is sold/transferred within a period of 3 years of its acquisition, the cost of acquisition shall be reduced by the amount of capital gains exempted earlier u/s. 54G.

Scheme of deposit is applicable.

**8. EXTENSION OF TIME LIMIT FOR ACQUIRING NEW ASSET. [Sec. 54H]**

Sec 54H been inserted to provide that where the transfer of the original asset is by way of compulsory acquisition under any law and the amount of compensation awarded for such acquisition is **not received** by the assessee on the date of such transfer, the period of acquiring the new asset under section 54, 54B, 54D, 54EA, 54EB and 54F by the assessee or the period for depositing or investing the amount of capital gain shall be extended in relation to such amount of compensation as is not received on the date of transfer. The extended period shall be reckoned from the date of receipt of the amount of compensation.

**HOW TO COMPUTE TAX ON LONG TERM CAPITAL GAINS [Sec. 112]**

Long-term capital gain is taxable at a flat rate of income tax as follows:

Particulars	Assessment Year 1999-2000	Assessment Year 2000-2001
Individual & H.U.F.	20%	20%
Company i.e. Domestic	20%	20%
Foreign	20%	20%
(N.R.I.)		
Any other assessee	20%	20%

Where the liability to tax arises in the case of an individual and a H.U.F., only because of the inclusion of L.T.C.G. in the total income, tax shall be levied at a flat rate of 20% on the excess over the minimum exemption limit. In other words, the minimum exemption limit shall first be utilised for the total income **other than** L.T.C.G., and if any surplus of minimum exemption limit is remaining, then that is adjusted towards L.T.C.G.

WEF A.Y. 2000-2001, Section 112 has been amended. If the following conditions are satisfied, then tax on long-term capital asset will be computed under Option One or Option Two given below-

Conditions – The following conditions should be satisfied-

1. The taxpayer is an individual, HUF, company or any other person (may be resident or non-resident).
2. The asset is a long-term capital asset.
3. It is shares, debentures, Government securities or bonds are 'securities' for this purpose.
4. Such security is listed in any recognised stock exchange in India.

Tax computation – If the above conditions are satisfied, the tax shall be computed as follows (i.e. under Option 1 or Option 2, whichever is lower)-

Option 1	Option 2
1. Find out sale consideration	1. Find out sale consideration
2. Deduct: Indexed cost acquisition/improvement and expenses on transfer	2. Deduct: Cost of acquisition/improvement and expenses on transfer
3. The balancing amount [i.e. (1)-(2) is long-term capital gain	3. The balancing amount [i.e. (1)-(2) is long-term capital gain
4. 20 per cent of (3) is the amount of tax liability	4. 10 per cent of (3) is the amount of tax liability

The taxpayer will have an option from the assessment year 2000-01 to pay tax under Option 1 or Option 2, whichever, is lower. It is difficult to state when Option 2 will be better. However, in the case of transfer of listed bonus shares, listed debentures and listed bonds, Option 2 will be better as compared to Option 1.

- DEDUCTION U/S. 80 CCC – 88 U and rebate u/s. 88 is not available in respect of long-term capital gains.

**THE PROCEDURE FOR COMPUTATION OF SHORT TERM/LONG TERM CAPITAL GAINS FROM THE ASSESSMENT YEAR 93-94 ONWARDS IS AS FOLLOWS:**

(A) Income **other than** long term capital gain and casual winnings i.e. **inclusive of** Short Term Capital Gain:

- Step. 1 Find out other G.T.I. (Gross Total Income) i.e. excluding L.T.C.G. and Casual receipts.
- Step. 2 Give deductions u/s. 80.
- Step. 3 We arrive at other NET income.  
Ascertain income tax on other net income.

- |         |  |
|---------|--|
| Step. 4 | From income tax (above) reduce tax rebate u/s. 88 and u/s. |
| Step. 5 | 89(1).   |
| Step. 6 | We arrive at the income tax due on 'other Net Income'.     |

(B) Treatment of Long Term Capital Gain:

- |         |  |
|---------|--|
| Step. 1 | Find out long-term capital gain.   |
| Step. 2 | Ascertain the income tax on long term capital gains at the rates specified by Sec. 112 |

(C) Add the total tax i.e. tax on other net income (A-6) and tax on long term capital gain (B-2)

(D) From above (total tax) reduce rebate u/s. 88B i.e. in the case of senior citizen who is of atleast 65 years of age.

(E) After D above, to give treatment of surcharge if applicable and thus the total tax on the total income is worked out.