



Capital Gains under Income Tax Act, 1961 with a special note on Sale of Land & Building and Capital gains thereon (Part I)

Team Tax Research Department

Understanding Capital Gains:

Any profit or gain that arises from the sale of a 'capital asset' is known 'income from capital gains'. Such capital gains are taxable in the year in which the transfer of the

capital asset takes place. This is called capital gains tax. There are two types of Capital Gains: short-term capital gains (STCG) and long-term capital gains(LTCG).

Methodology to determine the type of Capital Asset:

Capital Asset Class	Short Term	Long Term
If assets held is: <ul style="list-style-type: none"> Securities listed in recognized stock exchange in India Units of UTI Units of an equity oriented fund Zero Coupon Bonds (from AY 2006 -07) 	Asset held for not more than 12 months	12 Months or More than 12 months
<ul style="list-style-type: none"> If assets held is Share of a company not listed on a recognized stock exchange in India (Amended by Finance Act, 2016 wef AY 2017 -18) 	Asset held for not more than 24 months	24 Months or More than 24 months
<ul style="list-style-type: none"> If asset held is immovable property, being land or building or both transferred after 31.03.2017 (Amended by Finance Act, 2017 wef AY 2018 -19) 	Asset held for not more than 24 months	24 Months or More than 24 months
<ul style="list-style-type: none"> Other Capital Assets 	Asset held for not more than 36 months	36 Months or More than 36 months

Understanding Capital Asset:

Land, building, house property, vehicles, patents, trademarks, leasehold rights, machinery, and jewellery are a few examples of capital assets. This includes having rights in or in relation to an Indian company. It also includes the rights of management or control or any other legal right.

Items specifically *included* in the scope of the term 'capital asset'

- Property of any kind held by the assessee [sub-clause(a)]
- Any securities held by a FII [sub-clause(b)]

3. Any unit linked insurance policy to which exemption under clause (10D) of section 10 does not apply on account of the applicability of the fourth and fifth proviso thereof
4. Jewellery (other than held as stock-in-trade) [item (a) of sub-clause(ii)]
5. Archaeological collections (other than held as stock-in-trade) [item (b) of sub-clause (ii)]
6. Drawings (other than held as stock-in-trade) [item (c) of sub-clause (ii)]
7. Paintings (other than held as stock-in-trade) [item (d) of sub-clause (ii)]
8. Sculptures (other than held as stock-in-trade) [item (e) of sub-clause(ii)]
9. Any work of art (other than held as stock-in-trade) [item (f) of sub-clause (ii)]

Assets specifically *excluded* from scope of the term 'capital asset'

1. Any stock-in-trade (other than securities held by FII) [sub-clause (i)]
2. Consumable stores or raw materials [sub-clause (i)]
3. Personal effects [sub-clause (ii)] other than items excluded by items (a) to (f) of sub-clause (ii)
4. Agricultural land situated in India other than in urban area [sub-clause(iii)]
5. 6.5% Gold Bonds, 1977, issued by the Central Govt. [sub-clause (iv)]
6. 7% Gold Bonds, 1980, issued by the Central Govt. [sub-clause (iv)]
7. National Defence Gold Bonds,1980, issued by the Central Govt. [sub-clause (iv)]
8. Special Bearer Bonds, 1991, issued by the Central Govt. [sub-clause (v)]
9. Gold Deposit Bonds issued under Gold Deposit

Scheme, 1999 [sub-clause (vi)]

10. Deposit Certificates issued under the Gold Monetisation Scheme, 2015 [sub-clause (vi)]

For capital gain to arise there needs to be a transfer of capital asset.

Understanding Transfer of asset:

Transfer of Asset - Section 2(47)

- Transfer of movable property is complete upon delivery of possession.
- Transfer of immovable property, normally, is complete only when the conveyance deed is registered.

Transactions regarded as Transfer of Asset

Transfer, in relation to a capital asset, includes the following transactions:

- (a) Sale, exchange, or relinquishment of the assets
- (b) Extinguishment of any rights
- (c) Compulsory acquisition
- (d) Conversion into stock-in-trade
- (e) Maturity or redemption of a Zero Coupon Bond
- (f) Any transaction allowing the possession of any immovable property in part performance of a contract u/s. 53A of the Transfer of Property Act, 1882.
- (g) Any transaction which has the effect of transferring, or enabling the enjoyment of, any immovable property.

Transactions NOT regarded as Transfer

For the purpose of sec. 45, the following transactions are not regarded as transfer:

- (a) Transfer of asset by a company to its shareholder on its liquidation - sec. 46(1);



- (b) Distribution of capital asset on the total or partial partition of an HUF - sec. 47(1);
- (c) Transfer of capital asset under a gift or will or an irrevocable trust (not being transfer, under a gift or an irrevocable trust, of a capital asset being shares, debentures or warrants under any Employees' Stock Option Plan (ESOP) or Scheme of the company to its employees) - sec. 47(11);
- (d) Transfer of capital asset by a holding company to its wholly owned subsidiary company or vice versa, provided that transferee company should be an Indian company- sec. 47(iv), (v);
- (e) Transfer by a non-resident to another non-resident, of a capital asset being bonds or Global Depository Receipts as referred to in sec. 115AC(1) - sec. 47(viia);
- (f) Transfer made outside India by a non-resident to another non-resident of a capital asset being rupee denominated bond of Indian company issued outside India, sec. 47(viiaa)
- Transfer by a non-resident on a recognized stock exchange in any International Financial Services Center for a consideration paid or payable in foreign currency, of a capital asset being rupee denominated bonds of Indian company or Derivative or Global Depositor' Receipts as referred to in sec. 115AC(1) or such other securities as may be notified by CG. Sec. 47(viib)
- (g) Transfer by a non-resident to another non-resident, of a capital asset, being a Government Security, as defined in sec. 2(b) of the Securities Contracts (Regulation) Act, 1956, carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities. - see. 47(viib)
- (h) Transfer by way of redemption of Sovereign Gold Bond issued by the Reserve Bank of India under the Sovereign Gold Bond Scheme, 2015 by an Individual. - sec. 47(viic)
- (i) Transfer of a Capital Asset, being work of art, archaeological, scientific or art collection, book, manuscript, drawing, painting, photograph or print, to the Govt. or a University or National Museum, National Art Gallery, National Archives or any such other public museum or institution as may be notified by the Central Govt. - sec. 47(ix);
- (j) Transfer by way of conversion of bonds or debentures, debenture stock, deposit certificate into shares or debentures of that company - sec. 47(x);
- (k) Transfer by way of conversion of bonds referred to in sec. 47(x) into shares or debentures of any company - sec. 47(xa);
- (l) Transfer by way of conversion of preference shares of a company into equity shares of that company. -Sec. 47(xb)
- (m) Transfer of land of sick industrial company under a scheme of u/s. 18 of Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) provided the transfer is during the period between the company has become sick industrial company u/s. 17(1) of that Act and the year during which entire net worth of the company becomes equal to or exceeds the accumulated losses. - sec. 47(xii)
- (n) Transfer of capital asset on succession of firm (w.e.f. AY 1999-2000) or AOP/BOI (w.e.f. AY 2002-03, in the course of demutualisation or corporatisation of recognised stock exchange) by a company, provided that:
- All assets and liabilities of the firm/BOI/AOP relating to the business before the succession become the assets and liabilities of the company
 - All the partners of the firm become the shareholders of the company in the same proportion in which their capital stood in the books of the firm before the succession
 - The partners of the firm do not receive consideration or benefit, in any form other than by way of allotment of shares in the company; and
 - The aggregate shareholding of the partners should not be less than 50 per cent of the total voting power of the company and continue to remain the same for a period of 5 years from the

date of succession

- The demutualisation or corporatisation of recognised stock exchange is carried out in accordance with a scheme which is approved by SKBI - sec. 47(xiii)
- (o) Transfer of capital asset, being membership right held by a member of a recognised stock exchange in India - sec. 47(xiiiia);
- (p) Transfer of a capital asset or intangible asset by a private limited company or unlisted public company into a Limited Liability Partnership (LLP) or any transfer or transfer of shares held in the company by the shareholders as a result of conversion of company into LLP, provided:
 - All assets and liabilities of the company immediately before the conversion become the assets and liabilities of the LLP;
 - All the shareholders of the company immediately before the conversion become the partners of the LLP and their capital contribution and profit sharing ratio in the LLP are in the same proportion as their shareholding in the company on the date of conversion;
 - Shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form other than by way of share in profit and capital contribution in the LLP;
 - Aggregate profit sharing ratio of the shareholders of the company in the LLP shall not be less than 50 per cent at any time during the period of 5 years from the date of conversion;
 - Total sales, turnover or gross receipts in business of the company in any 3 years preceding the previous year in which the conversion takes place does not exceed ` 60 Lakh;
 - Total value of the assets appearing in the books of account of the company in any of the 3 years preceding the previous year in which the conversion takes place does not exceed ` 5 Crore
- No amount is paid to any partner out of accumulated profit (standing on the date of conversion) for a period of 3 years from the date of conversion - see. 47(xiiiib);
- (q) Transfer as a result of succession of the proprietary concern by a company, provided:
 - All assets and liabilities of the sole proprietary relating to the business before the succession become the assets and liabilities of the company;
 - Proprietor does not receive consideration or benefit, in any form other than by way of allotment of shares in the company;
 - Shareholding of the proprietor is not less than 50% of the total voting power of the company and continue to so remain for a period of 5 years from the date of succession - sec. 47(xiv);
- (r) Transfer in a scheme of lending of any securities under an agreement or arrangement entered into with the borrower and which is subject to the guidelines issued by SEBI or RBI - sec. 47(xv); and
- (s) Transfer in a reverse mortgage scheme notified by the Central Govt., (w.e.f. AY 2008-09) - sec. 47(xvi).
- (t) Transfer, being share of a special purpose vehicle, as defined in explanation to sec. 10(23FC), to a business trust in exchange of units allotted by that trust to the transferor. - sec. 47(xvii)
- (u) Any transfer by a unit holder of a capital asset, being unit(s), held by the transferor in the consolidating scheme of Mutual fund, made in consideration of the allotment to him of a capital asset, being unit(s) in the consolidated scheme of the Mutual fund -sec. 47(xviii); Provided that the consolidation is of:
 - Two or more schemes of equity oriented fund; or
 - Two or more schemes of a fund other than equity oriented fund
- (v) Any transfer by a unit holder of unit(s), held by transferor in the consolidating plan of mutual fund



scheme, made in consideration of the allotment to him of capital assets, being a unit(s), in the consolidated plan of that scheme of the mutual fund

- Sec 47 (xix) Provided that the consolidation is of the plan within a scheme of a mutual fund specified u/s. 10(23D).

Note: The other sub-sections of sec. 47 Containing Provisions for Transfer not regarded as Transfer other than provisions as above are summed up as below: —

Particulars of Transfer not regarded as Transfer (Chapter 21)	Section
Amalgamating Co. to Indian amalgamated co.	47(vi)
Shares of an Indian Co. held by amalgamating foreign co.	47(via)
By a Banking Company to banking institution.	47(viaa)
Shares of Foreign Company transferred by Foreign Amalgamating Co. to Foreign amalgamated co. where its value is substantially derived directly or indirectly from the shares of an Indian Company	47(viab)
By the Demerged Co, to the resulting Indian co.	47(vib)
Shares of an Indian Co. held by demerged foreign co. to resulting foreign co.	47(vic)
By predecessor Co-operative Bank to the successor co-operative bank or to the converted banking company. - Amended by the Finance Act, 2021 w.e.f 1.4.2022 (A. Y. 2022-23)	47(vica)
Shares held in predecessor Co-operative Bank in consideration of allotment in successor co-operative bank or to the converted banking company. - Amended by the Finance Act, 2021 w.e.f. 1.4.2022 (A. Y. 2022-23)	47(vicb)
Shares of Foreign Company transferred by Foreign Demerged Co. to Foreign resulting co. where the its value is substantially derived directly or indirectly from the shares of an Indian Company	47(vicc)
By Resulting Co. to the shareholder of the demerged co.	47(vid)
Shares held in the Amalgamating Co.	47(vii)
Any transfer, in a relocation, of a capital asset by the original fund to the resulting fund. - Inserted by the Finance Act, 2021 w.e.f. 1.4.2022 (A.Y. 2022-23)	47(viiac)
Any transfer by a shareholder or unit holder or interest holder, in relocation of a capital asset being a share or unit or interest held by him in the original fund in consideration for the share or unit or interest in the resultant fund. - Inserted by the Finance Act, 2021 w.e.f. 1.4.2022 (A.Y. 2022-23)	47(viiad)
Any transfer of capital asset by India Infrastructure Finance Company Limited to the National Bank for Financing Infrastructure and Development, set up under an Act of Parliament and notified by the Centra) Government for the purposes of this clause. - Inserted by the Finance Act, 2021 w.e.f. 1.4.2022 (A.Y. 2022-23)	47(viiiae)

Any transfer of capital asset, under a plan approved by the Central Government, by a public sector company to another public sector company notified by the Central Government for the purpose of this clause or to the Central Government or to a State Government

47(viaaf)

- Inserted by the Finance Act. 2021 w.e.f. 1.4.2022 (A.Y.2022-23)

Transfer of Land & Building:

The taxing provisions relating to capital gain lay down a broad basis as to how to compute the capital gains, both long term and short term, still some issues concerning the computation of such capital gains remain which are discussed hereunder:

Transfer of Building and The Land Appurtenant Thereto as A Single Lot

The land and building are two different identifiable, independent, distinct capital assets and the provisions relating to capital gain permits their transfer independently and compute the capital gain or loss thereon for each asset accordingly. However, in practice an assessee acquires a vacant land initially and later construct a building thereon or acquire both land and building at the same time. There may be situations wherein an assessee can also construct a building on a land owned by the assessee through inheritance or succession, gift or will etc. When the assessee wishes to transfer these assets thereafter for a monetary consideration, such assets have to be transferred as a single lot (both land and building) to the ultimate transferee against which the capital gain implications have to be examined.

(A) Land and Building whether short term or long term assets

The land and building being the immovable assets could either be a short term capital asset or a long term capital asset depending upon the period of holding of such assets by the assessee. In respect of immovable property being land or building or both, if the assessee holds such assets for more than 24 months on after 1-4-2017, the same are classified as long term capital assets and the gain arising out of the transfer of such assets has to be considered as long term capital gain. Prior to 1-4-2017, in order to claim these assets as long term assets, the assessee should have held these assets for more than 36 months. If the above immovable property is held by an assessee for less than the above stipulated period, then such assets have to be classified as short term capital assets and the

corresponding profits or gains arising out of the transfer of such assets will be regarded as short term capital gains. As per section 50 of the Income Tax Act 1961, a building has to be treated as a short term capital asset on its transfer if depreciation is allowed to the assessee in the past.

(B) Mode of computation of capital gains

As per section 48 of the Act, the income chargeable under the head "capital gains" shall be computed by deducting the following amounts from the full value of consideration received or accruing as a result of the transfer of the capital asset.

- (i) Expenditure incurred wholly and exclusively in connection with such transfer, (ii) the cost of acquisition of the asset and the cost of any improvement thereto As per the second proviso to section 48, where long term capital gain arises from the transfer of a long term capital asset other than capital gain arising to a nonresident from the transfer of shares in or debentures of, an Indian company referred to in the first proviso, the provisions of clause
- (ii) shall have effect as if for the words "cost of acquisition" and "cost of any improvement" the words "indexed cost of acquisition" and "indexed cost of any improvement" had respectively been substituted. In case of a transfer of land and building which are long term assets at the hands of the assessee, the indexed cost of acquisition as computed based on the Cost Inflation Index notified is deductible from the full value of consideration received or accruing as a result of the transfer of capital asset. With regard to the full value of consideration, it is the actual sale consideration received or accruing to the transferor from the transferee at the time of transfer of the asset. If the sale consideration declared in the conveyance deed for the transfer of land and building is less than the value adopted for the purpose of stamp duty by stamp valuation authority of the State Government,



the value so adopted by the above authority for stamp duty purposes is deemed to be full value of consideration with regard to computation of capital gains as per section 50C of the Act

(C) How to compute the capital gains on transfer of building and land together

In practice, a building and the land appurtenant thereto held by an assessee, as long term capital assets, could be transferred together to a transferee through a single conveyance deed against a lumpsum monetary consideration. In this case, the question on the method of computing the long term capital gains arises (i.e.,) whether the long term capital gain could be computed for land and building separately? This question assumes paramount importance since the indexed cost of acquisition and improvement thereto in respect of these assets will vary depending upon the period of holding. The long term capital gains could be computed separately for land and building as held by the Hon'ble ITAT, Calcutta in the case of CIT vs Sri Sekhar Gupta [2001]114 Taxmann 122 wherein it was held that the land is an independent, identifiable asset and continues to remain as an identifiable capital asset even after construction of a building thereon. Identical views were taken by the Hon'ble Rajasthan High Court in the case of CIT vs Vimal Chand Golecha reported in [1993]201 ITR 442 and by the Hon'ble Madras High Court in CIT vs Dr.D.L.Ramachandra Rao[1999]236 ITR 51. The only condition to be complied with in respect of long term capital gain in respect of the building is the assessee should not have claimed any depreciation on the building in the past years prior to the transfer. However, in order to claim the above capital gains separately for land and building, the assessee is required to maintain certain basic details like the original cost of acquisition of land and building, the year acquisition etc. separately duly supported by necessary documentary evidences as they may be required at the time of scrutiny assessment. Based on the holding periods of these assets, the indexed cost of acquisition could be computed. Likewise, in order to claim the indexed cost of improvement necessary documents in support of the improvements done and the expenditure incurred thereon have to be also maintained by the assessee. The next question is how to appropriate the sale consideration for the transfer of land and building if a lump sum monetary consideration is received by the transferor from the transferee when the transfer is effected through a single conveyance deed. As per section 50C as amended by the Finance Act 2009, where the consideration received

or accruing as a result of transfer of land and/ or building is less than the value adopted or assessed or assessable by an authority of the State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of consideration received or accruing as a result of such transfer for computing capital gains. In all the registered conveyance deeds, wherein transfer of land and building is involved, an Annexure IA is appended wherein the market values are furnished for the land and the building separately for the purpose of stamp duty valuation. The market value of the immovable property transferred as indicated in the sale deed will be equivalent to the actual sale consideration received by the transferor from the transferee. If this value exceeds the value adopted or assessable by the Registration Authority for stamp duty purposes, the said sale consideration as appropriated to land and building as per Annexure IA attached with the registered sale deed could be adopted for the purpose of computing the capital gains. If the sale consideration is lesser than the value adopted or assessable by the Registration Authority for stamp duty purposes, then such value so adopted by the Registration Authority as appropriated between the land and building could be adopted as deemed sale consideration for the respective assets for the purpose of computing the capital gains. This will be in line with the provisions contained in section 50C of the Income Tax Act 1961.

(D) Computation of short term capital gain in respect of the building transferred along with the land

There are practical cases wherein the assessee would have claimed depreciation on the building in the past years. In that event, when the building and the land appurtenant thereto are transferred together, the gain arising out of the transfer of land will be a long term capital gain provided the assessee satisfies the holding period for more than 24 months after 1-4-2017 and 36 months prior to 1-4-2017. Though the assessee satisfies the same condition in respect of the building, the assessee cannot claim it as a long term capital asset as depreciation has been allowed on the building in the past years. In such a case, the capital gain arising out of the transfer of land will be a long term capital gain and the gain arising out of the transfer of building will be treated as short term capital gain. With regard to depreciable assets covered under section 50 of the Act, the cost of acquisition has to be determined by taking into account the opening balance of the block of

assets on the first day of the previous year plus actual cost of the assets acquired during the year which falls in the same block of assets. With this, any expenditure incurred wholly or exclusively in connection with the above transfer may be added. If the sale consideration appropriated to the building as per the guidelines indicated supra exceeds the above sum, the differential value constitutes short term capital gain and the same has to be offered to tax accordingly in the return of income.

(E) Computing long term capital gains in case of revaluation of land and building

Section 43(1) of the Act defines the term “Actual Cost” as follows. “In section 28 to 41 and in this section unless the context otherwise requires “actual cost” means the actual cost of the assets to the assessee reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority. Section 32 of the Act allows depreciation on various block of assets at prescribed rates as per Rule 5(1) read with Appendix I of the Income Tax Rules. A combined reading of the above two sections will reveal that the assets for the purpose of allowing depreciation under the Act have to be recognized only with the historical cost of the assets and the relevant block of assets including additions and deletions thereon have to be maintained by the assessee as prescribed under the above Rules. For the purpose of computing capital gains, the relevant provisions also recognize only the cost of acquisition of the assets. The cost of acquisition of an asset is the cost against which the relevant asset was acquired by the assessee which will include expenses of capital nature for completing or acquiring the title to the assets. The Accounting Standard 10 on “Accounting for Fixed Assets” permits the revaluation of fixed assets and any increase in the net book value arising on account of revaluation of fixed assets should be credited directly to owner’s interests under the head “Revaluation Reserve.” If the land and building are revalued and their revalued cost is reflected in the respective block of assets in the books of account, the assessee is required to adopt only the historical or original cost of acquisition for the purpose of computing the long term capital gain. For the above purpose, the assessee is required to maintain the details containing various block of assets with their historical or the original cost including land and building, additions/deletions made thereon, and depreciation claimed on depreciable assets etc. for income tax purposes. This is applicable even for computing the short term capital gain in respect of a building wherein the assessee had claimed

depreciation in the past years. E) Cost of Acquisition in certain cases in respect of cases wherein the assessee acquires a land or building or constructs a building on a land already owned by him through a deed of conveyance, the cost of acquisition could be normally determined based on the value for which the property was acquired by the assessee. But there are other situations wherein the assessee gets the title or ownership of the property by succession or inheritance, will or gift etc. wherein there will be no actual cost of acquisition. For the purpose of computing the capital gains when such properties are transferred for a monetary consideration, the income tax law lays down the circumstances under which an assessee gets the title or ownership of the property without a sale deed and the method under which the cost of acquisition could be determined. Section 49(1) of the Act says that the cost of acquisition in respect of an asset acquired by an assessee through the following modes shall be deemed to be the cost for which the previous owner had acquired the property as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee as the case may be. (i) on any distribution of assets on the total or partial partition of a Hindu undivided family (ii) under a gift or will (iii) (a) by succession, inheritance or devolution or (b) on any distribution of assets on the dissolution of a firm, body of individuals or other association of persons where such dissolution had taken place at any time before the 1st day of April 1987 or (c) on any distribution of assets on the liquidation of a company or (d) under a transfer to a revocable or an irrevocable trust or (e) under any such transfer as is referred to in clause (iv), [or clause (v)], [or clause (vi)] [or Clause (via)], [or clause (vial), [or clause (viala), [or clause (viala) or [clause (vialb) or clause (xiiib) of section of the Act. (iv) such assessee being a Hindu undivided family, by the mode referred to in section 64(2) at any time after the 31st day of December 1969 As per the Explanation to the above section, the “previous owner” of the property in relation to any capital asset owned by an assessee means the last previous owner of the capital asset who acquired it by a mode of acquisition other than that referred to clause (i) or clause (ii) or clause (iii) or clause (iv) of this sub section. In view of the above provisions, the cost of acquisition of the land and building which were acquired by an assessee in any one of the modes explained above has to be computed based on the cost on which the previous owner has acquired the said property as increased by the development expenditure incurred or borne by the previous owner or the assessee. However, it should be noted that if the asset became the property of the assessee before 1st April 2001 by gift, will



etc. or by any mode specified in section 49(1), the cost of acquisition to the previous owner or the fair market value as on 1st April 2001 whichever is higher has to be taken as the cost of acquisition. If it becomes the property of the assessee through the above modes specified after 1st April 2001, then the cost of acquisition to the previous owner has to be taken as cost of acquisition for the purpose of computing the capital gains. By virtue of section 55(3), 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. In this regard another question may arise on how to compute the holding period in order to determine whether the relevant asset is a long term or short term asset for cases dealt with in section 49(1) and to claim the indexation benefit. In order to find out whether a particular asset is a short term or a long term asset in the above cases, the period of holding of the previous owner

shall be taken into consideration. With regard to indexation benefit, the Hon'ble Bombay High Court in the case of CIT vs Manjula J. Shah [2002]204 Taxman 691 and the Hon'ble Delhi High Court in the case of Arun Shunhgloo Trust vs CIT [2012]205 Taxman 456 have held that indexed cost of acquisition has to be computed with reference to the year in which the previous owner first held the asset and not with regard to the year in which the assessee became the owner of the asset. When an assessee becomes the owner of an asset through various modes specified in section 49(1) and later converts into a new asset, then the period of holding will commence only from the date of conversion. In CIT vs Debmalaya Sur [1994]207 ITR 996/77 Taxman 313 (Cal), it was held that section 49(1) applies only in relation to a cost of asset which was received by the assessee as a gift. The converted new asset has no nexus with the gift and therefore section 49(1) has no application for the purpose of determination of cost of the converted asset.

EXEMPTIONS UNDER CAPITAL GAINS:

Attach the PDF copy after Transpose

Exemption of Capital Gains u/s. 54, 54B, 54D, 54EC, 54EE, 54F, 54G, 54GA, 54GB and 54H

Sec.	Sale of	Purchase of	Exemption available to	Time Period of	Amount of CG Exempt	CGAS	Special Points
54 LTCG	Residential House Properly	Residential House Property India Or Two Residential house property (if capital gain arising from sale do not exceed 2 crore and can be availed once in life time) (Finance Act 2019)	Individual / HUF	1 year before, 2 years after for purchase and 3 years for const.	To the extent of Capital Gain invested	Yes	
54B LTCG/ STCG	Agriculture land	Agriculture land	Individual / HUF	2 years after the transfer	To the extent of Capital Gain invested	Yes	Land sold should be used for Agriculture purpose 2 years before the date of transfer.
54D LTCG/ STCG	Land and Building forming part of Industrial Undertaking	Land and Building forming part of Industrial Undertaking	All Assesseees	Purchase/ Const within 3 years after the compulsory acquisition	To the extent of Capital Gain invested	Yes	Industrial undertaking should be used for business purpose at least 2 years preceding the date of compulsory acquisition



Sec.	Sale of	Purchase of	Exemption available to	Time Period of	Amount of CG Exempt	CGAS	Special Points
54EC LTCG	Upto A.Y. 2018-19 Any Capital Assets	Upto A.Y. 2017-18 Bonds of RECL, NHAI redeemable after 3 years	All Asscsces	Investment should be done within 6 months from the date of such transfer. Maximum	To the extent of Capital Gain invested	No	Only one of the two benefits is available i.e. 80C or 54EC
	From A.Y. 2019-20 Land or Building or both	From A.Y. 2018-19 Bonds of RECL, NHAI or any other notified bond redeemable after 3 years From A.Y. 2019-20 Bonds of RECL, NHAI or any other notified bond redeemable after 5 years		investment is ₹ 50 Lac in the FY in which the asset is transferred or in subsequent FY.			
54EE LTCG (w.e.f. A.Y. 2017-18)	Any Capital Assets	Units of certain specified funds (funds for Start-up India) issued before 1.4.2019	All Assesseees	Investment should be done within 6 months from the date of such transfer. Maximum investment is ₹ 50 Lac in the FY in which the asset is transferred or in subsequent FY.	To the extent of Capital Gain invested	No	---
54F LTCG	Any Capital Assets other than Res. Property	One Residential Property in India	Individual / HUF	1 year before, 2 years after for purchase and 3 years for const.	Capital Gain X Amount <u>Invested</u> Net Sale Consideration	Yes	Applicable if assessee does not own more than one res. property on the date of transfer
54G LTCG/ STCG	Machine, plant, building or land shifting from urban to any other area.	Specified Assets i.e. Machine, plant, land & building	All Assesses	1 year before or 3 years after the transfer	To the extent of Capital Gain invested	Yes	Furniture and Fixture not covered.
54GA LTCG/ STCG	Machine, plant, building or land shifting from urban area to SEZ	Specified Assets i.e. Machine, plant, land & building	All Assesseees	1 year before or 3 years after the transfer	To the extent of Capital Gain invested	Yes	Furniture and Fixture not covered.



Sec.	Sale of	Purchase of	Exemption available to	Time Period of	Amount of CG Exempt	CGAS	Special Points
54GB LTCG	Residential House Property	Subscription of Equity share in eligible start-ups on or before 31st March, 2022	Individual / HUF	Subscription before die due date of furnishing return of income and the company within one year from subscription utilize amount for purchase of new asset	To the extent of capital gains invested	Yes	
54H	There may be a time lag between the previous year in which the asset is compulsorily acquired and the previous year in which the compensation is actually received. As per Section 54H, the period for acquiring the new asset by (lie assessee referred to in sections 54, 54B, 54D, 54EC and 54F shall be reckoned front die dale of receipt of such compensation and not from the date on which the asset was originally transferred.						

(a) Under section 54, capital gains shall be exempt from tax in following situations:

Conditions to be satisfied	Quantum of exemption
Sec. 54: For Individual and HUF	
<ol style="list-style-type: none"> The income of the residential house property is chargeable under 'Income from House Property'. It must be a long-term capital asset being residential property. Purchase of another residential house anywhere but after 31.3.2015 it should be in India, within one year before or 2 years after, or construction should be within 3 years after the date of transfer. The new residential house should not be transferred within a period of 3 years from the date of transfer. <p>Inserted by Finance Act, 2019</p> <p>Amendment in Sec. 54-</p> <p>The following proviso has been inserted w.e.f. 1.4.2020.</p> <p>“Provided that where the amount of the capital gain does not exceed ` 2 crores, the assessee, may at his option, purchase or construct two residential houses in India, and where such an option has been exercised –</p> <ol style="list-style-type: none"> the provisions of this sub-section shall have effect as if for the words “one residential house in India” the words “two residential houses in India” had been substituted; New Asset shall be construed as the two residential houses in India. Provided further that where during any assessment year, the assessee has exercised the option referred above, he shall not be subsequently entitled to exercise the option for the same or any other assessment year.” 	<p>Lower of the following:</p> <ul style="list-style-type: none"> Cost of new asset Capital gains



Sec. 54B: For Individual and HUF	
<ol style="list-style-type: none"> 1. Transfer should be of agricultural land. 2. The agricultural land can be short term capital asset or long term capital asset. 3. It must have been used by the assessee or his parents or HUK for at least 2 years immediately preceding the date of transfer, for agricultural purposes. 4. Another agricultural land should be purchased within 2 years from the date of transfer. 5. The new agriculture land should not be transferred within a period of 3 years from the date of acquisition. 	<p>Lower of the following:</p> <ul style="list-style-type: none"> • Cost of new asset • Capital gains
Sec. 54D: For an Industrial Undertaking	
<ol style="list-style-type: none"> 1. There must be compulsory acquisition of land and building forming part of an industrial undertaking. 2. The land or building can be long term capital asset or short term capital asset. 3. The asset must have been used in the 2 years immediately preceding the date of transfer by the assessee for the purpose of the industrial undertaking. 4. Within a period of 3 years from the date of compulsory acquisition, the assessee should have purchased/constructed any other land/ building. 5. Newly acquired land or building should be used for the purpose of another industrial undertaking. 6. The new land/building should not be transferred within a period of 3 years from the date of its acquisition. 	<p>Lower of the following:</p> <ul style="list-style-type: none"> • Cost of new asset • Capital gains
Sec. 54EC: For ANY assessee	
<ol style="list-style-type: none"> 1. The asset transferred (on or after 1.4.2000) should be a long-term capital asset 2. w.e.f. AY 2019-20 exemption only on LTCG arising on transfer of Land or Building or both. 3. Within a period of 6 months from the date of transfer, the capital gains must be invested in the lung-term specified asset*. 4. Such specified asset should not be transferred or converted into money within 3 years from dale of its acquisition (If such Specified Asset is acquired between 01.04.2007 to 01.04.2018). 5. Such specified asset should not be transferred or converted into money within 5 years from date of its acquisition (if such Specified Asset is acquired after 01.04.2018). 	<p>Lower of the following shall be exempt:</p> <ul style="list-style-type: none"> • Aggregate of all such investments in the year of transfer or subsequent financial year • ₹ 50 Lakh • Capital gain
Sec. 54EE: For ANY assessee	
<ol style="list-style-type: none"> 1. The asset transferred (on or after 1.4.2016) should be a long-term capital assets. 2. Within a period of 6 months from the date of transfer, the capital gains must be invested in the long-term specified asset**. 3. Such specified asset should not be transferred or converted into money within 3 years of date of its acquisition. 	<p>Lower of the following shall be exempt:</p> <ul style="list-style-type: none"> • Aggregate of all such investments in the year of transfer or subsequent financial year • ₹50 Lakh • Capital Gain <p>Note: Till dale no such asset has been notified by Government.</p>



Sec. 54F: For Individual and HUF

<ol style="list-style-type: none"> The asset transferred should be a long-term capital asset (not being residential house) Purchase of a residential house anywhere till 31.3.2015, after that the house property should be in India (hereinafter referred to as 'new house') within one year before or 2 years after the date of transfer, or the construction should be within 3 years after the date of transfer. The assessee should not own more than one residential house on the date of transfer. The assessee should not purchase, within a period of 2 years or construct within a period of 3 years after the date of transfer of original asset, any other residential house other than the new asset. 	<ul style="list-style-type: none"> ➤ If Cost of New Asset > Net Consideration - Capital gains ➤ If Cost of New Asset < Net Consideration - $= \frac{\text{LTCG} \times \text{Cost of new asset}}{\text{Net Consideration}}$
--	---

Sec. 54G: For an Industrial Undertaking in Urban Area

<ol style="list-style-type: none"> Machinery, plant, building or land or any right in land or building used for the purpose of an industrial undertaking situated in an urban area should have been transferred. Machinery, plant, building or land or any right in land or building can be short term capital asset or long term capital asset. Transfer should be due to shifting from urban area to any area other than an urban area. Within a period of 1 year before or 3 years after the date of transfer; <ul style="list-style-type: none"> • purchased new machinery or plant; • acquired building or land or constructed building; • shifted the assets and transferred the establishment to the new area; • incurred such other expenses as may be specified by Central Govt.; <p>in relation to business in new industrial undertaking.</p>	<p>Lower of the following:</p> <ul style="list-style-type: none"> • Cost/expenses incurred • Capital gains
---	--

Sec. 54GA; For an Industrial Undertaking in Urban Area to any Special Economic Zone (SEZ)

<ol style="list-style-type: none"> Machinery, plant, building or land or any right in land or building used for the purpose of an industrial undertaking situated in an urban area should have been transferred. Machinery, plant, building or land or any right in land or building can be short term capital asset or long term capital asset. Transfer should be due to shifting to any Special Economic Zone (SEZ) Within a period of 1 year before or 3 years after the date of transfer, purchased machinery, plant or acquired building or land or constructed building and completed shifting to the new area. 	<p>Lower of the following:</p> <ul style="list-style-type: none"> • Cost/expenses incurred • Capital gains
--	--

Sec. 54GB: For individual and HUF

<ol style="list-style-type: none"> Transfer of residential property (being a house or plot of land) It must be long term capital asset. Net consideration should be utilised in subscribing to equity shares of an eligible company*** before the date of filing of ROI. Eligible company invests the amount received in new assets within 1 year from the date of subscription to the shares. It is available for transfer of residential property from 1.4.2013 to 31.3.2017. Such transfer date is 1.4.2013 to 31.3.2022 for Investment in Eligible Start-tip - Extended by Finance Act, 2021 w.e.f. 1.4.2021. 	<ul style="list-style-type: none"> ➤ If Cost of new asset > Net consideration: Capital gains ➤ If cost of new asset < Net consideration: $= \frac{\text{LTCG} \times \text{Cost of new asset}}{\text{Net Consideration}}$
---	---

* Long-term specified asset means -

- Any bond redeemable after 3 years issued on or after 1.4.2007 but before 1.4.2018 by:
 - NHAI, REC or Any other notified bonds
- Any bond redeemable after 5 years issued on or after 1.4.2018 by:
 - NHAI, REC or Any other notified bonds

** Long-term specified asset means unit(s) issued of the Specified Funds issued before 1.4.2019.

*** Eligible company means the company which fulfills (he following conditions:

- Company is incorporated during the period from 1 April of the f Y in which asset is transferred to the due date of filing of return of income;
- It is engaged in business of manufacture of an article or thing;
- It is engaged in the business which involves innovation, development, development or commercialization of new products, processes or services driven by technology or intellectual property.
- The assessee has more than 25 percent of share capital or voting power.
- It is a company which qualifies to be a small or medium enterprise under the Micro, Small and Medium Enterprises Act. 2006.
- It is a company which is engaged in the business which involves innovation, development, development or commercialization of new products, processes or services driven by technology or intellectual property. And which fulfills the following conditions –
 - It is incorporated between 1.4.2016 and 31.3.2019
 - The total turnover of its business does not exceed ` 25 Crore in any of the previous years beginning on or alter the 1.4.2016 till 31. 3.2021
 - It holds a certificate of eligible business from the Inter Ministerial Board of Certification as notified in the Official Gazette by the Central Government.

New asset means new plant or machinery but does not include:

- Any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person;
- Any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;
- Any office appliances including computers or computer software;
 - However, in the case of an eligible start-up, being a technology driven start-up so certified by the Inter-Ministerial Board of Certification notified by the Central Government in the Official Gazette, the new assets shall include computers and computer Software.
- Any Vehicle; and
- Any Machinery or Plant, the whole of the actual cost is allowed as deduction (by depreciation or otherwise) in computing the income.

Amendment made by Finance Act, 2023

(Limiting the roll over benefit claimed under section 54 [w.e.f. AY 2024-25])

It has been observed that claims of huge deductions by assesseees are being made under section 54 or section 54F by purchasing very expensive residential houses which is defeating the very purpose of these sections.

In order to prevent this, The Finance Act, 2023 has imposed

a limit on the maximum deduction that can be claimed by the assessee under section 54 to Rs. 10 crores. Hence, the following third proviso has been inserted below section 54(1).

Provided also that where the cost of the new asset exceeds Rs. 10 crores, the amount exceeding Rs. 10 crore shall not be taken into account for the purpose of this sub-section,

Part II will continue in next Edition