CAPITAL GAINS

(TEACHING PLAN)

- **Chargeability to tax** : Any profits or gains arising from the transfer of a capital asset are deemed to be the income of the previous year in which the transfer took place. Capital gain is thus chargeable to tax on accrual basis ; the date of receipt and method of accounting are irrelevant considerations.

- **Meaning of capital asset** : Capital asset means property of any kind held by ~~the~~ the assessee whether movable or immovable, tangible or intangible, fixed or circulating (e.g. share of a partner in a firm, goodwill of a business, industrial licence, tenancy rights, route permits, patents, trademarks etc.

The term 'Capital asset' also includes the following:

(i) ~~It also~~ Any rights of management or control or any other rights in relation to an Indian company.

(ii) Any securities held by a Foreign Institutional Investor in accordance with the regulations made under the SEBI Act.

Exceptions

(i) Any stock-in-trade, consumable stores or raw materials held for the purpose of business or profession.

(ii) Personal effects (i.e. T.V, furniture, scooter, refrigerator etc.). From the A.Y. 2008-09, ~~[illegible]~~

Jewellery, archaeological collections, drawings, painting, sculptures or any work of art will be treated as capital assets as these are not taken as "personal effects".

(iii) Agricultural land in India (in rural area)

(iv) 6½% Gold bonds (1977) 7% Gold bonds (1980) National Defence Gold Bonds (1980) issued by the Central govt.

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(v) Special bearer bonds 1991

(vi) Gold deposit bonds issued under Gold Deposit Scheme, 1999 or (*)

(*) Gold deposit certificates issued under the Gold Monetization Scheme, 2015.

- Kinds of Capital Assets : (i) Short-term capital asset

A capital asset held by the assessee for not more than 36 months immediately preceding the date of its transfer, is known as a short-term capital asset.

However, a share held in a company, or securities listed in a recognised stock exchange, units of UTI / Mutual Funds & Zero coupon bonds are regarded as short-term capital assets if the period of holding is 12 months or less. (***)

(***) In addition, it must be noted that the following assets are to be treated as short-term capital assets if the period of holding is 24 months or less —

(1) Equity or preference shares in a company (unlisted), if the transfer takes place on or after 1st April 2016.

(2) Immovable property including land or building or both if the transfer takes place on or after 1st April, 2017.

(ii) Long-term capital asset :

Long-term capital asset means a capital asset which is not a short-term capital asset.

- Computation of capital gains :

	Rs	Rs
Full value of consideration received or accruing on the transfer of a capital asset		---
Less : (i) Realisation expenses	---	
(ii) Cost of acquisition *	---	
(iii) Cost of improvement **	---	---
Capital gain		---
Less Specified exemptions *** u/s 54B, 54D, 54G & 54GA		---
Taxable capital gain		---

Notes :

In the case of LTCG, the following points must be considered.

* Cost of acquisition means the 'indexed' cost of acquisition.

** Cost of improvement means the 'indexed' cost of improvement.

*** Specified exemptions include those to be provided u/s 54, 54B, 54D, 54EC, ~~54ED~~ 54EE, 54F, 54G, 54GA & 54GB.

- (i) Realisation expenses : Expenses connected with the transfer of a capital asset.

- (ii) Cost of acquisition : Determination of cost of acquisition

(A) C.O.A. of a non-depreciable asset

(a) Purchase price to be the C.O.A. (where the assessee has purchased the capital asset).

(b) Cost to the previous owner (Section 49(1)) to be the C.O.A. (where the assessee has acquired the capital asset by way of operation of law i.e. gift or will, succession, partition of H.U.F., distribution of assets on the dissolution of firm etc.).

(an) Note :
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

(c) Fair market value (F.M.V.) as on April 1, 2001 to be the cost of acquisition :
In the following situations the assessee may choose either the actual cost or the FMV as on April 1, 2001 as the C.O.A. —

(i) Where the capital asset became the property of the assessee before April 1, 2001
(ii) Where the capital asset became the property of the assessee under sec 49(1) and the capital asset became the property of the previous owner before April 1, 2001.

(B) C.O.A. in the case of depreciable assets

(a) Where the entire block of assets does not cease to exist

(i) Where the net consideration (i.e. net of realisation exceeds the aggregate of (a) W.D.V of the block of assets at the beginning of the previous year, and (b) actual cost of any asset falling within the block acquired during the P.Y., such excess is deemed to be the S.T.C.G.

(ii) Where the net consideration is less than the aggregate of (a) & (b), such consideration is deducted from the aggregate value for computing the W.D.V. for the purpose of calculating depreciation.

(b) Where the entire block of assets ceases to exist:

(i) Where the net consideration exceeds the aggregate of (a) & (b), such excess is S.T.C.G.

(ii) Where such net consideration is less than the aggregate of (a) & (b), the deficiency is S.T.C.L.

- Cost of improvement : Cost of improvement means any expenditure of capital nature incurred by the assessee in making additions or alterations to the capital asset.

- How to determine indexed cost of acquisition & indexed cost of improvement : In calculating the I.C.O.A/ ICOI, the "Cost Inflation Index" (as discussed earlier) is to be used.

I.C.O.A/ICOI may be computed in any of the 5 possible situations:

(1) Where the capital asset is acquired by the assessee (not being in modes referred to in Sec. 49(1)) before April 1, 1981.

(2) Where a capital asset is acquired by the assessee (not being in modes referred to in Sec. 49(1)) on or after April 1, 1981

ICOA

$= \text{COA} \times \dfrac{\text{CII for the year in which the asset is transferred}}{\text{CII for the previous year in which the asset was first held by the assessee (or by the previous owner in cases u/s 49(1)), or for } \cancel{1981\text{-}82}\ 2001\text{-}02\text{, whichever is later.}}$

ICOI

$= \text{COI} \times \dfrac{\text{CII for the year in which the asset is transferred}}{\text{CII for the year in which improvement takes place}}$

(3) Where a capital asset is acquired by the assessee before April 1, 1981 in one of the modes under Section 49(1), and the same asset is originally acquired by the previous owner prior to April 1, 1981

(4) Where a capital asset is acquired by the assessee on or after April 1, 1981 in one of the modes referred to in Section 49(1), but it was originally acquired by the previous owner before April 1, 1981

(5) Where a capital asset is acquired by the assessee on or after April 1, 1981 in one of the modes referred to in Sec. 49(1), and it was originally acquired by the previous owner on or after April 1, 1981.

(The formula to be used in calculating ICOA / ICOI in each of the 5 possible situations is discussed earlier, as given in the book.) :

EXEMPTION OF CAPITAL GAINS AT A GLANCE

All the provisions are the same as U/s 54G except that new assets are to be purchased ... (column 6) for shifting the industrial undertaking to any Special Economic Zone

1 Section	2 Asset transferred	3 Who is entitled	4 Minimum holding period	5 Investment of	6 New asset	7 Exemption	8 Prescribed period for investment	9 Treatment of unutilised amount	10 Sale of new asset
54	Residential house	Individual or HUF	36 months	Capital gains	Residential house	Capital gain invested	Within 1 year before or 2 years after transfer in the case of purchase; or 3 years after transfer in the case of construction	Deposit in Capital Gain A/c Scheme before due date of furnishing the return of income	If sold within 3 years from the date of purchase/construction, exempted capital gain becomes taxable together with additional capital gain in the year of transfer of new asset as STCG.
54 B	Agricultural land	Individual or HUF	Used by him or his parents for 24 months	Capital gains	Agricultural land	-Do-	Within 2 years after transfer	-Do-	-Do-
54 D	Land or building for industrial undertaking	Any assessee	Used for 24 months	-Do-	Land or building for industrial undertaking	-Do-	Within 3 years after transfer	-Do-	-Do-
54 EC	Any Long term capital asset	-Do-	LTCA	-Do-	"Long-term specified assets" i.e. any bonds redeemable after 3 years, issued on or after April 1, 2007, by the ~~NABARD~~ NHAI or REC	-Do-	Within 6 months of transfer of original asset	—	If sold within 5 years, exempted capital gain will be made taxable as LTCG
54 EE	Long-term capital asset (i.e. listed securities or ~~units of~~ UTI or Mutual Fund)	-Do-	-Do-	-Do-	Specified L.T. capital asset ... upto Rs 50 lakh ...	or bonds specified by the C.G. (max. upto Rs 50 lakh in one F. Year) -Do-	Within 6 months of transfer of original asset	—	If sold within 3 years, exempted capital gain will be made taxable as LTCG
54 F	Any asset other than a residential house	Individual or HUF	-Do-	Net consideration	Residential house	Whole of C.G. if N.C. is fully invested; otherwise proportionate C.G. will be exempted.	Same as for Sec. 54	-Do-	Same as for sections 54, 54B, 54D, except that u/s 54F, it will be taxed as LTCG
54 G 54GA 54GB (Refer to book)	Plant, machinery, land, building used for industrial undertaking in urban area	Any assessee	May be LTCA/STCA	Capital gains	Plant, machinery, land, building etc. for industrial undertaking in rural area or for meeting expenses of shifting	Capital gain invested	Within 1 year before or within 3 years after transfer	-Do-	Same as for sections 54, 54B & 54D.

Notes: (1) Under all the above sections, the amount deposited in C.G. A/c Scheme, if not utilised within the prescribed time, will be made taxable in the P.Y. in which the prescribed period expires.

(2) Additional condition for Sec 54F: The assessee should not own any other residential house on the date of transfer of the original asset, and should also not purchase or construct within 3 years after the transfer of the original asset, any residential house other than the one which is the new asset.