CAPITAL GAINS

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AMENDMENTS IN THE FINANCE ACT, 2008:

**Additions:** Sec.47 (xa)

**Modifications:** Sec.111 A, Sec.49(2A) & New CII is 582.
CHARGING SEC.45 (1)

Any profits arising on the Transfer of any Capital Asset shall be chargeable to tax under the head Capital Gains in the year of transfer.

CAPITAL ASSET: It means property of any kind movable or immovable, tangible or intangible but does not include the following:

a. Stock in Trade. (E.g.: X is a dealer in house property. For him, house property is stock-in-trade. Any profit earned by him on sale of stock-in-trade (i.e., house property) would be taxable as Business income).

b. Personal Effects: It means any Article, Commodity or Property used in the day-to-day life of the individual which is a movable property (i.e. Not capital asset). But personal effect excludes Jewellery (i.e. Jewellery is a capital asset), Archaeological collections, Drawings, Paintings, Sculptures, Any work of art. E.g.: Z purchases a computer for his personal use. It is treated as “personal effects” therefore not a capital asset. Any surplus arising on transfer of it can't be taxed under the head “CG”.

c. Agricultural Land not situated in the “Specified Area” (i.e. agricultural land situated in specified area is called capital asset). Specified area - any area located within the limits of a Municipality which has a population of $\geq 10,000$ according to the last census and includes any area within the distance of 8 Kms. from the limits of such Municipality.

d. Special Bearer Bonds, 1991 (No more in existence).


Issues:

- Silver utensils consisting of thalis etc. meant for personal use constitute personal effects and the gains arising on sale of such utensils cannot be taxed as capital gains. The legislature intended articles which are intimately and commonly used by the assessee to be included within the expression “Personal effects”. CIT. Vs. Benarashilal Kataruka.

- Gold, silver coins and bars used for pooja are “Capital assets”. Maharaja Rana Hemant Singhiji Vs. CIT (1976).

- A property intended for personal or household use (may for ceremonial occasion only), is always a” personal effects”.

- In order to qualify for “agricultural land in India”, it is not necessary that land was once agricultural land. It must be agricultural land at the time of sale-T.S.M.O. Mohamed Othuman v. CIT.

WHAT IS A TRANSFER? (Sec.2(47)): It includes:

a. Sale.

b. Exchange (Must be of two capital assets).

c. Relinquishment of an Asset.

d. Extinguishment of an Asset.

e. Compulsory acquisition by Government.


g. Any transfer covered by Sec.53 A of the transfer of Property Act.

h. The maturity or redemption of zero coupon bonds.
**Issues:**

- In case of relinquishment, the interest of a person in a property is abandoned, or surrendered; but the property in which interest is relinquished continues to exist and the property continues to be owned by some person. Extinguishment refers not to extinguishment of asset itself but to extinguishment of holder’s right to the assets.

- When an amalgamation takes place, the rights of the assessee in the shares held in the amalgamating company stood extinguished and therefore there is a “transfer” CIT Vs. Grace Collis (2001).

- When there is a reduction in the face value of the shares and consequent payment by the company to the shareholder towards such reduction, the transaction results in extinguishment of right in the shares held by the shareholder. Consequently, the reduction of the share capital would be subject to capital gains tax. Kartikeya V. Sarabhai Vs. CIT, (1997). In this case, the Supreme Court compared the decision in the case of Anarkali Sarabhai referred to above and held that in that case the preference shares were redeemed in entirety whereas in the present case it was partly redeemed by reduction of share capital. Therefore, the analogy is the same.

- When a partner of a firm retires and the amount of his share in the partnership assets, after deduction of liabilities and prior charges is determined on taking accounts as per the partnership law, there is no element of transfer of interest in the partnership assets by the retiring partner to the continuing partners. The amount received by the retiring partner towards settlement of his share is not liable to tax as “Capital Gain”. CIT Vs. R. Lingmallu Raghukumar (1997).

- Amount received by a retiring partner in respect of his share in the partnership including goodwill is not assessable as capital gains. Addl. CIT Vs. Mohanbhai Pamabhai, (1987)

**TRANSFER WHEN COMPLETED:**

*a. Immovable property when documents are registered:* Ownership of immovable assets will not pass till the title deeds are registered in the name of purchaser.

*b. Immovable property when documents are not registered:* Even if the documents are not registered but when the conditions of Sec.53A of the Transfer of Property Act are satisfied, ownership is “transferred”.

*c. Movable property:* Ownership passes at the time when property is delivered pursuant to a contract to sell.

**TYPES OF CAPITAL GAINS**

**STCG:** Capital gains arising on transfer of a short term capital asset are called STCG.

**Manner of Computation - Sec.48 (For Non depreciable assets)**

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Full value of Consideration</td>
<td></td>
<td>XXX</td>
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<tr>
<td><strong>LESS:</strong> Transfer Expenses</td>
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<td>Cost of Improvement</td>
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<tr>
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<td>XXX</td>
<td>XXX</td>
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<tr>
<td>Net STCG/L</td>
<td></td>
<td>XXX</td>
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</table>
**LTCG**: Capital gains arising on transfer of a Long term capital asset are called LTCG.

**Manner of computation**: Replace Indexed Cost of acquisition and Indexed Cost of Improvement for Cost of Acquisition and Cost of Improvement.

**Note:**

a. **Capital gains are chargeable on accrual basis**: It is not necessary that the consideration should be received in the year of transfer itself.

b. **Receipt of consideration in installments**: Even in that case also the entire consideration has to be taken into account for computing the capital gains.

c. **Transfer expenses are**: Sales commission paid for broker, cost of stamp, registration fees borne by the seller, traveling expenses incurred in connection with transfer.

**LONG TERM CAPITAL ASSET (Sec.2(29B))**

It is to be decided based on the period of holding by the assessee.

a. **Ordinary asset**: A capital asset held by an assessee, before the date of its transfer, for > 36 months is a Long term Capital Asset.

b. **Shares etc.**: In case of shares held in a company, Securities (listed), Units of UTI & Units of a mutual funds specified U/s.10 (23D), Zero coupon bonds will be treated as Long Term Asset if the period of holding is > 12 months, before the date of its transfer.

**SHORT TERM CAPITAL ASSET (Sec.2(42B))**

It is a capital asset other than the long term capital asset.

**Issues:**

- If land is held for more than 36 months but the building constructed thereon is less than 36 months old as on the date of transfer, land becomes long term where as the building is short term.

- In the case of transfer of a depreciable asset, capital gain is taken as short-term capital gain, irrespective of period of holding.

**SPECIAL CASES IN COMPUTATION OF PERIOD OF HOLDING:**

a. **Sec.49(1) - Previous owner**: If the capital asset is acquired by the assessee through any of the ways/modes specified U/S.49(1) then the period for which the previous owner held the asset should also be **included** for computing the period of holding of the assessee/person who sold it. (i.e. the word held by assessee means held by the assessee and by the previous owner).

b. **Primary market**: In case the assessee purchased any shares etc. in primary market, the period of holding shall be calculated from the date of allotment of such shares etc. and not from the date of application for shares etc. was made.

c. **Amalgamation**: In the case of a shareholder who received the shares in the amalgamated company in exchange of shares held in amalgamating company, in computing the period of holding of shares of amalgamated company, the period of holding of the amalgamating shares shall also be **included**.

d. **Demerger**: In the case of a shareholder who received the shares in the resulting company in exchange of the shares held in the demerged company, in computing the period of holding of shares in resulting company, the period of holding of the demerged...
company shares shall also be included.

e. **Right Renouncement:** If the right to subscribe to shares is renounced to any other person the period of holding of the asset (Right Renouncement) shall be calculated from the date of the offer of such right by the company up to the date of renouncement.

f. **Liquidation:** In case the company in which shares are held by the assessee gets liquidated, while computing the period of holding of such shares, the period of holding subsequent to the date of liquidation shall not be taken into account (i.e. excluded).

g. **Specified Security/Sweat equity shares:** The period of holding for any specified security or sweat equity shares allotted or transferred, by the employer free of cost or at concessional rate to his employees shall be reckoned from the date of allotment or transfer of such specified security or sweat equity shares.

h. **Exchange of stock exchange membership card** with shares issued by stock exchange in the process of corporatisation of stock exchange - the period of holding of such shares shall be calculated from the date of acquisition of membership card.

i. When the assessee is owner of an asset received under a mode specified under section 49(1) and thereafter the asset is converted by the assessee into a new asset, the period of holding would commence from the date of conversion.

**Problem 1:** Determine whether the asset held was short term or long term capital asset.

a. R holds 1000 shares in G Ltd., which goes into liquidation on 31-10-2008. R purchased these shares on 31-1-2008. The company made the payment to R on 31-3-2009.

b. R got a diamond ring by way of gift from his uncle on 1-1-2007 This ring was purchased by his uncle on 29-12-2005. R sold this ring on 31-12-2008

c. R acquires 1000 shares in G Ltd., on 29-3-2008. He is allotted 500 shares of a resulting company S Ltd. on 1-4-2008. He transferred these on 30-3-2009.

**COST OF ACQUISITION**

**DIRECT OWNERSHIP:** The cost incurred to purchase a capital asset shall be the cost of acquisition of that asset.

**INDIRECT OWNERSHIP - PREVIOUS OWNER:** In case the property is acquired in any of the modes mentioned in Sec.49 (1) the cost of acquisition is the cost to the previous owner.

**SEC.49(1):**

a. Property acquired by way of Gift or inheritance.

b. Property acquired on partition of H.U.F.

c. Property acquired by the amalgamated Company of the amalgamating company.

d. Property acquired by the resulting company from the demerged company in demerger.

e. Property acquired by the amalg. banking institution of the amalgamating banking co.

f. Transfer from a holding Co. to its 100 % subsidiary Co., & vice-Versa. Both the Companies must be Indian/domestic companies.

g. Liquidation of a company & distribution of assets to its share holders.

h. Acquisition of a property by HUF where one of its members converted his self acquired property into joint family property.

i. On a transfer in a business reorganization, of a capital asset by the predecessor co-operative bank to the successor co-operative bank.
WHO IS A PREVIOUS OWNER? A person who acquired the property other than by any of
the modes given in Sec.49 (1).

FMV: Where the cost for which the previous owner acquired the property cannot be
ascertained, the FMV as on the date of transfer shall be taken as cost.

COST OF ACQUISITION - SOME SPECIAL CASES

AMALGAMATION - SEC.49(2): When an assessee acquires any shares in the amalgamated
company in exchange of shares held in the amalgamating company, in a scheme of
amalgamation, then the cost of acquisition of shares received from the amalgamated
company shall be the cost at which the shares in the amalgamating company was acquired.

CONVERSION OF DEBENTURES - SEC.49(2A): In the case of conversion of debentures
etc. of a company into shares of that company, the cost of acquisition of such debentures
etc. shall be taken as the cost of acquisition of the shares obtained on conversion. Further,
it provides that cost of acquisition of FCEBs will be deemed to be the cost of acquisition of
the shares, debentures issued pursuant to the conversion of FCEBs. This is not applicable
for conversion of preference shares into shares. To find out whether or not shares are long-
term capital asset or short-term capital asset, the period of holding shall be determined
form the date of allotment of shares. The indexation will start from the date of conversion
of debentures into shares.

ESOP/SWEAT EQUITY SHARES - SEC.49(2AB): As per the amended provisions, issue of
shares under ESOP/Sweat equity shares is now taxed as Fringe benefit tax. For the
purpose of computing capital gain on the transfer of such securities in future, the cost of
acquisition shall be the fair market value which has been taken into account while
computing the value of fringe benefit.

DEMERGER - SEC.49(2C) & (2D):

a. Cost of acquisition of the shares in the resulting company:

\[
\text{Cost of acquisition of shares} \times \text{Net Worth transferred in a}
\]

\[
\text{Net worth of the demerged Co. immediately before demerger}
\]

b. Net Worth - Paid up share capital + General Reserves.

c. Cost of acquisition of the shares in demerged co. (Post demerger): Cost of
acquisition of the original shares (in demerged co.) minus cost of shares as obtained in
‘a’ above (resulting co.).

Problem 2: R acquired 1000 shares in G Ltd. @ Rs.30 per share. G Ltd. Was demerged on
19-11-2008 and the net book value of the assets transferred to X Ltd., (the resulting
company) was Rs.25 lakhs. Compute the cost of acquisition of shares of R in demerged
company as well as resulting company assuming the paid up capital & general reserves of
G Ltd before demerger were Rs.1 crore.

REORGANISATION OF CO-OPERATIVE BANK - SEC.49(2E): Sec.49(2), 49 (2C), 49 (2D)
are also applicable in relation to business reorganisation of a co-operative bank. (i.e. the
cost of the shares of the successor co-operative bank received by the shareholders of a
predecessor co-operative bank shall be computed in the same manner as it is computed in
case of amalgamation or demerger of a company under the aforesaid sections).
SHARES (ORIGINAL & RIGHTS) (i.e. FINANCIAL ASSETS):

a. The **cost of acquisition (C.O.A.) of original shares** - Amount actually paid.

b. The **C.O.A. of the right shares** - Amount actually paid.

c. **Right Renouncements** - While computing capital gains C.O.A. to be taken as N I L.

d. **Cost to the purchaser of right shares**: Amount paid to the company for acquiring the shares + the amount paid to the owner towards rights renouncement.

**Problem 3**: X holds 1,000 equity shares in A Ltd. Since 1978 (cost of acquisition: Rs.10,000, fair market value on April 1, 1981 Rs.16,000). A Ltd. Offers 2,000 rights shares of Rs.10 each to X on May 1, 2008 at a premium of Rs.50. X subscribes for 800 rights shares and renounces 1,200 shares in favour of C by transferring the right entitlement for a consideration of Rs.4,800. X sells 1,800 shares in A Ltd. On March 30, 2009 @ Rs.90 per share. C also transfers his 1,200 shares @ Rs.91 per share on March 31, 2009. Compute Capital gains.

**BONUS SHARES (i.e. FINANCIAL ASSETS) - COST OF ACQUISITION**:

- If Original Shares (O.S.) & Bonus shares are allotted before 1-4-81 (1)
- If O.S. are acquired before 1-4-81 & Bonus shares are allotted on or after 1-4-81 (2)
- If O.S.& Bonus shares are acquired on or after 1-4-81 (3)

1. In case of Original Shares - FMV as on 1-4-1981 or C.O.A, ↑ (whichever is higher).
   In case of Bonus Shares - FMV as on 01-04-1981.

2. In case of Original Shares - FMV as on 1-4-1981 or C.O.A, ↑.
   In case of Bonus Shares - N I L.

3. In case of Original Shares - Cost incurred.
   In case of Bonus Shares - N I L.

**FAIR MARKET VALUE**

**DIRECT OWNERSHIP**: If the Assessee acquired the asset before 01-04-1981 then the F.M.V. i.e., fair market value as on 01-04-1981 may be adopted as the cost of acquisition.

**INDIRECT OWNERSHIP**: If the previous owner acquired the asset before 01-04-1981 then the F.M.V. i.e., fair market value as on 01-04-1981 may be adopted as the cost of acquisition. *(E.g.)*: X purchased a house property on 1.1.75 for 30,000 and the property was passed on to his son Y on death of X on 15.6.86, the FMV of it as on 1.4.81 being 1,20,000. Y may opt 1,20,000 as the cost of acquisition.

**Note:**

a. This facility is not available in case of depreciable capital assets.

b. This facility is not available in case of Sec.55 assets.

c. Where the assessee had acquired certain pieces of diamond with cracks and spots during the assessment year 1975-76, and during the assessment year 1998-99 they got processed and after processing finished diamonds were sold, cost of original asset, viz, raw and uncut diamond shall be substituted by fair market value of the same as on
April 1, 1981 and not fair market value of polished and finished diamonds – Hiralal Lockchandani v. ITO [2007].

**COST OF ACQUISITION IN CASE OF SPECIAL CATEGORY ASSETS - SEC.55**

Supreme Court held that only if an asset cost something to the assessee in terms of money the provisions relating to levy of capital gains tax are applicable. To overcome/nullify this decision an amendment to Sec.55 has been brought.

**GOODWILL:**

a. **Self Generated Goodwill:** Take Cost of Acquisition as NIL & Compute Capital gains.

b. **Purchased Goodwill:** Cost incurred to purchase becomes cost of Acquisition.

**C.B.D.T. Circular:**

a. Transfer of Goodwill by professional firms will not attract Capital Gains.

b. Notional transfer of goodwill is not chargeable to Capital Gains.

**CERTAIN OTHER ASSETS:** Tenancy Rights, Permits, Right to manufacture. (E.g. Patents, Copyrights), Right to carry on business, Loom hours.

But in case any price is paid for acquiring any of these assets the cost of acquisition shall be taken as such.

**Note:** In the case of these types of assets cost of improvement shall be taken as nil.

**FORFEITURE OF ADVANCE - SEC.51**

a. During the past, the asset now transferred, was proposed to be sold and on such proposal the assessee has taken some advance &

b. The advance so taken was retained (Forfeited) by the assessee as the buyer failed to remaining money.

c. Any such advance amount received and retained by the assessee shall be reduced from the cost of acquisition or the FMV or the WDV as the case may be for the purpose of computation of capital gains when such asset is transferred.

**Note:** If advance money forfeited is more than the cost of acquisition, the excess of the advance money forfeited over the cost of acquisition of such asset shall not be taxable in the previous year in which advance money is forfeited as there is no transfer.

**Problem 4:** Mr. Raja received a house in May, 2002 by way of Gift from Mr. Guru who had purchased the same in April, 1978 for Rs.12,00,000. The cost of improvements incurred by Guru were Rs.2,55,000 in March, 1979 and Rs.3,40,000 in November, 1994. The fair market value of the house as on 1st April, 1981 was Rs.9,14,000. Before this house was gifted to Raja, Guru had received an advance of Rs.3,00,000 in March, 2002 towards sale of this house from Laxman but the sale did not materialize and the advance was forfeited by Guru. The house was sold by Raja in March, 2009 for Rs.60,00,000. Ascertain the capital gains chargeable to tax.

**COST OF IMPROVEMENT**

a. It is the Capital Expenditure incurred for the improvement of Capital Asset.

b. Any cost of improvement incurred by the assessee or by the previous owner, before 1-4-
81, shall be ignored.

c. In relation to Sec.55 assets, it shall be taken as Nil.

INDEXATION

Starting from A.Y.93-94 the cost of acquisition and cost of improvement of a long term capital asset can be indexed.

Cost Inflation Index:

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>CII</th>
<th>Financial Year</th>
<th>CII</th>
<th>Financial Year</th>
<th>CII</th>
</tr>
</thead>
<tbody>
<tr>
<td>1981-82</td>
<td>100</td>
<td>1990-91</td>
<td>182</td>
<td>1999-00</td>
<td>389</td>
</tr>
<tr>
<td>1984-85</td>
<td>125</td>
<td>1993-94</td>
<td>244</td>
<td>2002-03</td>
<td>447</td>
</tr>
<tr>
<td>1985-86</td>
<td>133</td>
<td>1994-95</td>
<td>259</td>
<td>2003-04</td>
<td>463</td>
</tr>
<tr>
<td>1986-87</td>
<td>140</td>
<td>1995-96</td>
<td>281</td>
<td>2004-05</td>
<td>480</td>
</tr>
<tr>
<td>1987-88</td>
<td>150</td>
<td>1996-97</td>
<td>305</td>
<td>2005-06</td>
<td>497</td>
</tr>
<tr>
<td>1988-89</td>
<td>161</td>
<td>1997-98</td>
<td>331</td>
<td>2006-07</td>
<td>519</td>
</tr>
</tbody>
</table>

This benefit is available either from the year of acquisition of the asset by the Assessee or from the base year 1981-82 whichever is later.

\[
\text{INDEXED COST OF ACQUISITION} = \frac{1}{2} \times 3,
\]

Where,
1. Cost of Acquisition [or] FMV as on 1/4/81 as the case may be.
2. Indexed factor for the base year 81-82 or for the first year in which the asset was held by the assessee, whichever is later.
3. Indexation factor for the year of transfer.

Issue: B inherited a property from A on 1-7-2004. The property was acquired by A on 1-7-86. This was sold in the current year by B. Is it a Long Term Asset or Short Term Asset? From which year B can get the benefit of indexation?

\[
\text{INDEXED COST OF IMPROVEMENT} = \frac{1}{2} \times 3
\]

Where,
1. Cost of Improvement incurred after 1/4/81.
2. Indexation factor in the year such cost of Improvement was incurred.
3. Indexation factor for the year of transfer.

Note: Bonus shares allotted prior to 1-4-81 - Indexation can be taken from the year 1981-82 up to the year of sale.

PROVISO’S TO SEC.48:
a. **Proviso 2:** Indexation facility is available in computation of LTCG. It is not available to Non resident.

b. **Proviso 3:** Indexation is not available to bonds or debentures. But it is available to capital indexed bonds issued by the Government.

c. **Proviso 5:** No deduction (Either as transfer expenses or as cost of acquisition) shall be allowed in respect of any sum paid on account of Securities Transaction Tax.

### SEC.112 - TAX ON LONG TERM CAPITAL GAINS

1. **Tax rates:**
   
a. **In case of Specified Securities:** Indexation + 20 % flat rate Or Without Indexation + 10 % flat rate, Whichever is more beneficial to the Assessee can be opted i.e. the alternative which results in less tax liability can be adopted (*)

   Specified Securities are – Listed Shares, Listed Debentures/Bonds & Listed Government Securities, Zero coupon bonds. (Includes bonus shares also)

b. **In case of any other capital asset:** At 20 % flat rate.

   * If several transactions have taken place by way of sale of shares, etc., the assessee can avail the benefit of indexation in a few transactions and avail the 10 per cent tax rate on the remaining transactions-Devinder Prakash Kalra Vs. CIT [2005].

2. **Unexhausted limit:** In the case of individuals & HUF (Other than Non resident’s), if the basic exemption is not exhausted by any other income then the Long term capital gain shall be reduced by the unexhausted or unavailed basic exemption limit and only the balance shall be taxed at 20 %.

3. **Deductions** under Chapter VIA are not available in computation of Taxable LTCG.

4. **Surcharge** is also payable on tax payable on Long Term Capital gains after claiming the eligible rebate U/s 88E. (In addition it is subject to Education Cess of 2%)

5. **Set Off Of Losses:** The CBDT in circular No.721 dated 13.9.95 has clarified that if there is loss from any other source or under any other head of income which is eligible for set off, such loss can be set off against long term capital gain and only the balance is taxed.

### CAPITAL GAINS EXEMPT FROM TAX

**U/S 54:** We will discuss latter. (Page 18)

**U/S 10:**

**EXEMPTION OF C.G.’S ON TRANSFER OF UNITS OF US-64 - SEC.10(33):** It provides that any income arising from the transfer of a capital asset being a unit of US 64, if such transfer takes place on or after 1.4.02, shall be exempt from tax. This is applicable whether the capital asset (US-64) is long-term capital asset or short-term capital asset.

**EXEMPTION OF C.G. ON COMPULSORY ACQ. OF URBAN AGR. LAND - SEC.10 (37):**

Capital gains will be exempted if the following conditions are satisfied:

a. The assessee is an individual or a HUF.
b. He or it owns an agriculture land situated in specified area.

c. There is a transfer of the agriculture land by way of compulsory acquisition.

d. The agriculture land was used by the assessee (and/or his parents if the land was owned by an Individual) for agricultural purposes during 2 years immediately prior to the date of transfer.

e. The assets may be long term capital asset or short term capital asset.

f. Capital gain arises from compensation which is received on or after 1.4.04 (the date of compulsory acquisition may be before 1.4.04). (*)

g. Even enhanced compensation which is received on or after 1.4.04 is eligible for such exemption.

(*) If part of the compensation is received before 1.4.04, then exemption shall not be available even though balance compensation is received on or after 1.4.04.

**Problem 5:** R acquired agricultural land in Delhi, on 15.5.94 for Rs.4,00,000. The land is compulsorily acquired by the Delhi government on 15.4.03 and the compensation fixed was Rs.25,00,000. Rs.10,00,000 was received by R on 15.1.2004 and the balance on 6.4.2005. R was not satisfied with the compensation and filed a suit in the court. The compensation was enhanced by Rs.5,00,000 which was received on 25.3.09. Compute the capital gains taxable in the hands of R for the various assessment years.

**EXEMPTION OF LTCG ON TRANSFER OF SECURITIES SUBJECT TO STT - SEC.10(38):**

Capital gains will be exempted if the following conditions are satisfied:

a. Every assessee is eligible for the exemption.

b. The transferred asset must be LTCA.

c. The asset transferred is equity shares in a Co. or units of equity oriented mutual fund.

d. Transfer taken place on or after October 1st, 2004.

e. The transaction should be chargeable to Securities Transaction Tax/STT (i.e. the transfer should take place through a recognised Stock Exchange).

**Note:**

a. "Equity oriented fund" - a fund where the investible funds are invested by way of equity shares in domestic companies to the extent of more than 65% of the total proceeds.

b. If it is a STCG, satisfying the above conditions it is taxable @ 10% - Sec.111A.

**Problem 6:** R bought 500 Listed shares in 1978 for Rs.15 per share. The market value of these shares on 1.4.81 was Rs.25 per share.

1. Compute the tax payable by R if the above shares were sold on 15.11.2008 to the relatives without routing through the stock exchange, for:
   a. Rs.90,000  
   b. Rs.70,000.

2. What shall be your answer if these shares have been sold through a recognised stock exchange and it is subject to Securities transaction tax?

**SEC.111A - TAX ON SHORT TERM CAPITAL GAINS**

1. **In general cases:** Taxable at the rates at which the other income is chargeable to tax.
2. **In case of Sec.111A:**

   a. It will be taxable at a flat rate of 15%.

   b. In the case of individuals & HUF (Other than Non resident’s), if the basic exemption is not exhausted by any other income then the Short term capital gain shall be reduced by the unexhausted or unavailed basic exemption limit and only the balance shall be taxed at 15%.

   c. **Deductions** under Chapter VIA are not available in computation of Taxable STCG.

   d. **Surcharge** is also payable on tax payable on STCG’s after claiming eligible rebate U/s 88E (In addition it is subject to Education Cess of 2%).

   e. **When Sec.111 A get’s attracted?:**

      - The asset transferred is equity share in a company or units of equity oriented mutual fund.
      - The transaction of sale is entered into on or after 01.10.04.
      - Such transaction is chargeable to securities transaction tax.
      - This is applicable to all the assesse’s.

**Problem 7:** X aged 66 years, submits the following for the previous year 2008-09.

<table>
<thead>
<tr>
<th>Income from salary</th>
<th>61,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest on Fixed deposits with banks</td>
<td>13,000</td>
</tr>
<tr>
<td>Long term capital gains (H.P.)</td>
<td>1,10,000</td>
</tr>
<tr>
<td>Short term capital gains on the sale of equity shares on which STT has been paid (On 30.12.08)</td>
<td>10,000</td>
</tr>
</tbody>
</table>

He pays 5,000 as life insurance premium and deposits Rs.22,000 in public provident fund account. Compute the tax liability.

**SEC.45 SERIES**

**SEC.45(1):** Refer to first page

**SEC.45(1A):**

1. **Background:** To nullify the judgment given in Vannia Silks Ltd. which says that the destruction of capital asset does not amount to transfer, 45 (1A) has been introduced.

2. **Event:** Damage or Destruction of any Capital Asset as a result of:

   a. Typhoon, Hurricane, Cyclone, Earth Quake etc.

   b. Riot, Civil disturbances.

   c. Accidental Fire or Explosion.

   d. Action by an enemy (or) Action taken in combating an enemy (with/without declaration of war).

3. **Year of Chargeability:** Previous year in which compensation or the asset is received from the Insurance Company. (This is against to charging sec.)

4. **Consideration:** Value of money received or FMV of the asset received on the date of the receipt.

5. **Indexation Facility:** It is available only up to the year of destruction etc.
Note:

a. It is against to the charging sec. as there will be capital gain even without transfer.

b. A ship, being overweight, is sunk and assets are lost. The receipt of insurance compensation in such circumstances is not chargeable to tax under Sec.45(1A)

c. Insurance compensation for theft of stock-in-trade is not taxable under Sec.45(1A) but it will be taxable as business income under section 28.

d. In the case of Depreciable capital assets, Sec.50 is applicable.

**Problem 8:** X Ltd. is a manufacturing company. On April 1, 2008, it owns Plant A and Plant B (Dep. -15 %; depreciated value of block being Rs.2,40,000). Plant C (depreciation rate 15 percent) is purchased by the company on June 10, 2008 for Rs.60,000. It is put to use on the same day. Find out the tax consequences in the following different situations:

a. Plant B is destroyed by fire on January 25, 2009. Rs. 10,000 being the compensation is paid by the insurance company on February 10, 2009.

b. Suppose insurance compensation in situation (1) is Rs.3,70,000.

c. Plants A, B and C are destroyed by fire on January 25, 2009. Compensation paid by insurance company on February 10, 2009 is Rs. 20,000.

**Problem 9:** When a fire accident takes place in a factory and the following events occur. What are the tax implications?

a. Machinery destroyed and compensation is received from Insurance Co.

b. Machinery damaged is replaced by Insurance Co. with a new machinery.

c. Would there be any impact on the WDV of the block of machinery?

d. Raw materials destroyed and compensation is received.

**SEC.45(2) - CONVERSION OF A CAPITAL ASSET INTO STOCK IN TRADE:**

a. **Background:** The Supreme Court in CIT v. Bai Shirinbai K. Kooka [1962] had held that no transfer was involved where the assessee, holding by way of investment shares in companies, commenced a business in shares converting the shares into stock-in-trade of the business.

b. **Event:** Conversion of a capital asset into stock in trade.

c. **Year of Chargeability:** The year in which such stock-in-trade was sold.

d. **Consideration:** FMV as on the date of conversion.

e. Indexation Facility is available only up to the year of conversion.

f. In the year in which such SIT is sold both Capital gains and business profits will result.

**Note:** If stock-in-trade is sold in parts in different years, tax on capital gain on conversion of capital asset into stock-in-trade as per Sec.45(2), can be said to arise in parts in different years and not in one year in which last of SIT is sold-CIT v. Crest Hotels Ltd. [2001]

**Problem 10:** X invested Rs.10,000 to acquire 1000 shares of ABC Ltd. on 4-1-1992. He holds the shares as investments. On 12-1-2005 he started a business of dealing in shares and converts his holding into his stock-in-trade. The market value of the shares as on the date of conversion was Rs.25 per share and therefore, X credited his capital account by Rs.25,000 and debited his stock account by Rs. 25,000. The shares are now reflected in the
business of X as SIT. The shares were sold in the previous year 2008-2009 for a sum of Rs.30,000. Comment.

What is your answer if the shares were held as SIT till 31.3.09?

**SEC.45(3) - TRANSFER OF A CAPITAL ASSET INTO CAPITAL CONTRIBUTION:**

a. **Event:** Transfer of a Capital Asset by a partner to the firm or by a member to the AOP by way of capital contribution.

b. **Year of Chargeability:** Previous year in which transfer takes place.

c. **Consideration:** The value of the Asset recorded in the books of the firm or AOP.

d. **Assessee chargeable to tax:** The partner or member.

**Note:**

a. These rules are not applicable when a member transfers a capital asset to a company or a co-operative society.

b. As per Sec.45(3) there is no requirement that in the case of transfer of an asset by a partner to the firm in which he is a partner, the amount of sale consideration has got to be credited to his capital account; crediting of purchase consideration to current account of the partners is sufficient- Mafatlal Holding Ltd. V. CIT [2004].

**Problem 11:** R acquired a property by way of gift from his father in the previous year 1994-95. The father had acquired the property in the previous year 1986-87 for 2,00,000. This property was introduced as capital contribution to a firm in which R became a partner in the previous year 2008-09. The market value of the asset in 2008-09 was Rs.10,00,000, but it was recorded in the books of account of the firm at Rs.7,00,000. Comment.

What is your answer if the property introduced as capital contribution is a personal car used by R?

**SEC.45(4) - DISTRIBUTION ON DISSOLUTION:**

a. **Event:** Transfer of a Capital Asset by way of distribution on dissolution of a firm or otherwise.

b. **Assessee chargeable to tax:** Partnership Firm.

c. **Year of Chargeability:** Previous year in which transfer takes place from firm to the partners.

d. **Consideration:** FMV as on date of transfer.

e. **Cost of acquisition** of the firm is the value of the Asset recorded in the books.

**Note:**

a. These rules are not applicable when an asset is transferred by a company or a co-operative society.

b. If a firm distributes a depreciable asset, the capital gain/loss shall always be short-term capital gain/loss.

c. Sec.45(4) is not applicable where some partners retire and the firm continues to carry on the business with remaining partners and with new partners or without new partners-CIT v. G.K. Enterprises [2003]. However, the Bombay High Court in CIT v. A.N. Naik Associates [2004] has held that the word “otherwise” appearing in Sec.45(4) not only includes cases of dissolution but also included the cases of retirement of partners even though there is no dissolution and the business is a continuing one.
d. Amount credited in capital account of retired partner upon revaluation of asset of firm is not taxable as capital gain as there is no transfer-ITO v. Ramesh M.Shah [2004].

**Problem 12:** A firm consists of 3 partners namely R, G and S. S retires from the firm on 15-10-2008. His capital balance and the profits till the date of retirement stood at Rs.15,00,000. The firm transferred its land to S in settlement of his account. The market value of the land as on that date was Rs.25,00,000. The land was acquired by the firm on 1-5-1996 for Rs.5,00,000. Compute capital gain in the hands of the firm.

**SEC.45(5) - COMPULSORY ACQUISITION:**

a. **Event:** Transfer of a Capital Asset by way of Compulsory Acquisition, under any law or when a capital asset is transferred (not by way of compulsory acquisition) and the consideration is approved or determined by the Central Government (not by a State Government) or the Reserve Bank of India.

b. **Year of Chargeability:** In the previous year in which compensation is received (Full/Part).

c. **Consideration:** Compensation.

d. Indexation is available only up to the year of transfer.

**Note:**

a. If the Compensation is received by the legal representative of the deceased person from whom the Asset was acquired, the recipient shall be chargeable to tax.

b. **Enhanced compensation/consideration:** Sometimes, the assessee is not satisfied with the compensation determined and may go in for an appeal against the amount determined. If on appeal the compensation is enhanced, the additional compensation is called enhanced compensation. Such enhanced compensation shall be fully taxable as capital gain in the year in which it is received. The cost of acquisition and improvement thereto will be taken as nil, since it has already been deducted at the time of computation of capital gain for initial compensation.

c. Capital gains originally computed in respect of the compensation or the enhanced compensation received shall be revised if such compensation or enhanced compensation is reduced by any court etc.

d. Interest on enhanced compensation is chargeable under Income from other sources. Interest on enhanced compensation cannot be taxed all in lump sum. The interest has to be spread over on an annual basis till the date of the order of the Court on a time basis-K.S.Krishna Rao v. CIT [1990].

e. Expenses incurred for getting the enhanced compensation is allowable as expenditure.

**Problem 13:** The Central Government acquires a house property owned by X on October 17, 1995. This property was purchased on April 10,1976 for Rs. 76,000 (cost of improvement incurred during 1986-87 Rs.40,000 and fair market value of the property on April 1, 1981 was Rs.1,42,000). The Government awards Rs.5,77,000 as compensation which is received partly (Rs.77,000) on May 13, 2008 and partly (Rs.5,00,000) on April 1, 2009. Being aggrieved against the award, X files an appeal. The Court, as per order dated August 12, 2009, enhanced the compensation from Rs.5,77,000 to Rs. 9,50,000 (legal expenses incurred by X: Rs. 20,000) X receives the additional compensation of Rs. 3,73,000 on April 15, 2010. Compute the income of X under the head “Capital gains”. Does it make any difference if the additional compensation is received by his sons A and B (share of each being 50%) on April 15, 2010 after the death of X?
TRANSFER OF SECURITY IN DEMAT FORM [SEC.45(2A)]

1. Section 45(2A) is applicable if shares/securities are transferred in “demat” form.

2. If shares/securities are transferred in “demat” form, beneficial owner of shares/securities is chargeable to tax.

3. For computing capital gain chargeable to tax, the cost of acquisition and period of holding of any security shall be determined on the basis of first-in-first-out (FIFO) method.

The Board has issued the following clarification vide Circular No.768, June 24, 1998:

1. FIFO method will be applied only in respect of the dematerialised holdings.

2. In the depository system, the investor can open and hold multiple accounts. In such a case, where an investor has more than one security account, FIFO method will be applied account wise.

3. If in an existing account of dematerialized stock, old physical stock is dematerialized and entered at a later date, under the FIFO method, the basis for determining the movement out of the account is the date of entry into the account. This is illustrated by the following example:

<table>
<thead>
<tr>
<th>Date of credit</th>
<th>Particulars</th>
<th>Qty</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 1, 1997</td>
<td>Purchased directly in dematerialized form on May 25, 1997</td>
<td>2,000</td>
</tr>
<tr>
<td>June 5, 1997</td>
<td>Dematerialized share (originally purchased in Nov, 1985)</td>
<td>5,000</td>
</tr>
<tr>
<td>June 10, 1997</td>
<td>Purchased directly in dematerialized form on June 10 1997</td>
<td>4,000</td>
</tr>
<tr>
<td>June 15, 1997</td>
<td>Dematerialized shares originally purchased in May, 1962</td>
<td>3,000</td>
</tr>
</tbody>
</table>

If say, 2,500 shares were sold from out of this account, then the period of holding and the cost of acquisition of the first 2,000 shares should be as from May 25, 1997 and the cost thereof, whereas the balance 500 shares will be treated as having been acquired in November 1985 at the relevant cost. This is the effect of the FIFO method.

DISTRIBUTION OF ASSETS BY CO’S IN LIQUIDATION – SEC.46

1. When assets are transferred by way of distribution to the shareholders of a co. on account of liquidation, such distribution shall not be regarded as transfer in the case of the company.

2. In the case of shareholders of the company, capital gains shall be chargeable to tax on such distribution. For the purpose of computation of Capital gains, the consideration shall be determined as follows:

   a. **Distribution in cash:** Amount received less deemed dividend u/s.2(22)(c)

   b. **Distribution in kind:** Fair market value of the asset on the date of distribution less deemed dividend u/s.2(22) (c).

**Problem 14:** Mr. Ram had purchased 5,000 equity shares in June 1986 of M/s. Kamat & Co., Ltd. at the rate of Rs.2 per share. M/s. Kamat & Co., Ltd. goes into liquidation on June 30, 08. The B/s of the company as on the date of liquidation stood as under:

<table>
<thead>
<tr>
<th>Liabilities</th>
<th>Assets</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>50,000 equity shares</td>
<td>10,000 debentures in Patel &amp; Co. Ltd.</td>
<td>30,00,000</td>
</tr>
<tr>
<td>Accumulated profits</td>
<td>(Cost Rs.10,000)</td>
<td>8,00,000</td>
</tr>
<tr>
<td>Provision for dividend</td>
<td>Cash in hand</td>
<td></td>
</tr>
</tbody>
</table>
After retaining Rs. 3, 00,000 for paying dividend tax, the remaining assets are distributed to the shareholders. In the process, on 30th June, 2008 Mr. Ram gets 1,000 debentures (market value Rs.3, 00,000) and Rs.50, 000 in cash. He transfers the entire debentures on 10th March, 2009 for Rs.3, 20, 000.

SEC.46A - BUY BACK OF SHARES & CAPITAL GAINS

a. **Manner of computation:** Where a company purchases its own shares the difference between the cost of acquisition & consideration received by the shareholder shall be taken as C.G.’s.

b. **Indexation:** If the shares are long term capital asset indexation facility is available.

c. **Year of chargeability:** In the year in which such shares are purchased by the Co.

SEC.50 - COMPUTATION OF C.G’S IN CASE OF DEPRECIABLE ASSET’S

**Conditions for claiming depreciation:** Depreciation U/s. 32 can be claimed provided as on the last day of the Previous Year, the following two requirements are fulfilled:

a. There must be at least one asset in the block &

b. There must be some value for the block on which prescribed percentage can be applied.

**Sec.50 comes into picture:**

1. Where any one or both of the above mentioned requirements are not satisfied, Sec.32 will not apply and automatically the provisions of Sec.50 become applicable resulting in the STCG or STCL.

2. Sec. 50 thus gets attracted under the following circumstances:

   a. When one or some of the assets in the block were sold for a consideration which is more than the value of the block.(STCG).

   b. When all the assets are transferred for a consideration which is more than (STCG) or less than the value of the block (STCL).

**Problem 15:** Kishore Industries owned six machines which were in use in its business in March, 2008. Depreciation on these machines was available as “plant”. The written down value of these machines at the end of previous year relevant to assessment year 2008-09 was Rs.6,50,000. A new plant was bought for Rs.6,50,000 on 30th November 2008. Three of the old machines were sold on 10th June, 2008 for Rs.9,00,000. Required: (Dep @ 15%)

a. Compute the claim of depreciation for assessment year 2009-10.
b. Capital gains liable to tax for the same assessment year.

c. If Kishore Industries had sold the three machines in June, 2008 for Rs.14,00,000 will there be any difference in your above working? Explain.

**SEC.50B - SLUMP SALE**

a. **Def.:** Slump sale means the transfer of whole business for a lump sum consideration without values being assigned to the individual assets & liabilities.

b. Any profits arising from such sale shall be chargeable as capital gains.

c. **> 36 Months:** If the business that was transferred under the slump sale is owned & held for more than 36 months, the capital gains shall be treated as LTCG.

d. **Cost of Acquisition + Cost of Improvement** = Net worth of the undertaking/business so transferred (No Indexation available).

e. **Net worth means** the total value of total assets of the business as reduced by the value of outside liabilities of such business as appearing in the books of accounts. Revalued figures (inc./dec.) shall be ignored for the purposes of computing the net worth.

f. The total value of total assets, for this purpose, shall be:

- In the case of depreciable assets - the written down value of assets as per I.Tax act.
- In the case of other assets - the book value (Other than revalued figures).

g. **A C.A. report** certifying the computation of Net worth to be enclosed.

**Advantages:**

a. 20% tax, in case the undertaking transferred is held for more than 36 months.

b. Even if some of the assets transferred was held for less than 36 months they will be charged as LTCG.

**Problem 16:** The following is the Balance Sheet of SS Ltd. as on 31-8-2008 on which date division III has been transferred by way of slump sale for a consideration of Rs.1060 lakhs. Division III is in existence since April 2003.

<table>
<thead>
<tr>
<th>Liabilities</th>
<th>Assets</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Liabilities:</strong></td>
<td><strong>Fixed assets:</strong></td>
<td></td>
</tr>
<tr>
<td>Paid up capital</td>
<td>Division – I</td>
<td>180</td>
</tr>
<tr>
<td>Reserves</td>
<td>Division – II</td>
<td>270</td>
</tr>
<tr>
<td></td>
<td>Division – III</td>
<td>600</td>
</tr>
<tr>
<td></td>
<td>Other assets:</td>
<td></td>
</tr>
<tr>
<td>Division – I</td>
<td>Division – I</td>
<td>550</td>
</tr>
<tr>
<td>Division – II</td>
<td>Division – II</td>
<td>930</td>
</tr>
<tr>
<td>Division – III</td>
<td>Division – III</td>
<td>570</td>
</tr>
</tbody>
</table>

**Additional Information:**

a. Fixed assets of division III includes land which was purchased at Rs.40 lakhs in 2003 and revalued at Rs.80 lakhs as on 31-3-2008.

b. Fixed assets of division III reflected at Rs.520 lakhs (Rs.600 lakhs less land value Rs.80 lakhs) is written down value of depreciable assets as per books. However, the written down value under the Income Tax Act is Rs.480 lakhs.

c. Other assets reflected at Rs.570 lakhs represent book value of non depreciable assets.
**SEC. 50C - SPECIAL PROVISIONS FOR COMPUTATION OF CONSIDERATION**

1. **What it says:** Where the consideration for the transfer of land or building or both (LTCA/STCA/Dep./Non-Dep.), is < the value adopted by stamp duty authorities for the purpose of payment of stamp duty (Called stamp duty value), the value so adopted shall be taken as consideration. *(i.e. Stamp duty value = Consideration)*

2. **Refer to valuation officer:** Where the assesse claims that the stamp duty value > FMV of the property, the assessing officer may refer the case to a Valuation Officer.

3. Such **reference shall not be made**, if the stamp duty value has been disputed in any appeal before any authority or court or the high court.

4. **Action can be taken on report:**
   - a. If the value determined by the Valuation Officer > the stamp duty value, the Assessing Officer shall take stamp duty value = Consideration.
   - b. If the value determined by the Valuation Officer < the stamp duty value, the Assessing Officer may take such determined value = Consideration.
   - c. If the value determined by the Valuation Officer < the sale consideration, the Assessing Officer shall take Actual consideration = Consideration.

5. **C.G.'s = Consideration as per ‘4th’ point - Cost/Indexed Cost.**

6. Subsequent to the making of assessment (Where the stamp duty value was adopted as consideration), if such **value is revised** in any appeal, the assessing officer shall amend the assessment order to recompute the capital gain.

**Note:** Unless property transferred has been registered by a sale deed and for that purpose value has been assessed and stamp duty has been paid by parties, section 50C cannot come into operation. If a property is transferred under a power of attorney transaction and value has not been assessed for the purpose of stamp duty, section 50C has no application-Navneet Kumar Thakkar v. ITO [2007]

**Problem 17:** X purchased on 18.6.1984, house property for Rs.2.25,000 which was sold to A on 18.10.2008 for Rs.8,75,000. Sub-registrar at the time of registration of sale deed charged stamp duty on Rs.12,50,000 which was paid by the buyer. The A.O. while assessing for capital gain referred the matter to valuation officer who determined the value of property at Rs.15,00,000 on the date of transfer. X seeks your advice on the following:

   a. Is the A.O. correct to charge capital gain on the value of Rs.15,00,000 as determined by valuation officer?

   b. The amount of capital gain on which X is required to pay capital gain tax.

**EXCEPTIONS TO TRANSFER - SEC. 47**

- **Gift or will:** Transfer of a capital asset by way of gift or under a will.
- **Partition:** Transfer of a capital asset in a partition of a H.U.F.
- **H to S/S to H:** Transfer of a capital asset by holding company to its subsidiary company or vice versa if the following two conditions are fulfilled:
  - The holding company & its nominee should hold the whole of the share capital of the subsidiary company.
  - The transferee company should be an Indian Company.
d. **Amalg. - Assets:** Transfer of a capital asset in a scheme of amalgamation, if the amalgamated company is an Indian Company.

e. **Demerger - Assets:** Transfer of a capital asset by the demerged company in a scheme of demerger to the resulting company, if the resulting company is an Indian company.

f. **Amalg. - Shares:** Exchange of shares held by the shareholder of the amalgamating company in lieu of the shares issued by the amalgamated company if the amalgamated company is an Indian Company.

g. **Demerger - Shares:** Transfer of shares by the shareholder of a demerged company in a scheme of demerger in consideration of the shares issued by the resulting company.

h. Transfer of capital asset being any *work of art, archeological or scientific or art collection, any book manuscript, painting, drawing, etc.,* to the Government or University or notified Museums, Art Gallery or approved institutions.

i. **Conversion** of debentures and deposit certificates into shares.

j. **Conversion** of FCEBs into shares or debentures of any company.

k. **Conversion/Graduation of firm into company:** Transfer of capital assets made to the company by the partnership firm where a firm is converted into company is not taken as transfer, if the following conditions are satisfied:

  1. All the assets & liabilities of the firm shall be taken over.
  2. All the partners shall become the shareholders of the co. in the same proportion in which their capital a/c’s stood in the firm’s books on the date of succession.
  3. The consideration to the partners shall be paid only in the form of shares.
  4. The total share holding of the partners in the company shall not be less than 50% of the total voting power in the company and their share holding continues to be as such for a period of 5 years from the date of the succession.

l. **Conversion/Graduation of proprietary concern into Co.:** Similar to point j.

m. **Amalgamation of banking company with a banking institution:** Any transfer of a capital asset by a banking company to a banking institution in a scheme of amalgamation of such banking company with such banking institution sanctioned by the central government shall not be regarded as transfer for the purposes of capital gains.

n. Any transfer, in a business reorganization, of a capital asset by the predecessor co-operative bank to the successor co-operative bank.

o. Any transfer by a shareholder, in a business reorganization, of a capital asset being a share or shares held by him in the predecessor co-operative bank if the transfer is made in consideration of the allotment to him of any share or shares in the successor co-operative bank.

p. Any transfer involved in a scheme for lending of any securities under an agreement or arrangement subject to the guidelines issued by the SEBI or RBI in this regard, which the assessee has entered into with the borrower of such securities.

q. Transfer of a capital asset, being bonds and Global Depository Receipts referred to in Sec. 115 AC, made outside India by a non-resident to another non-resident.

r. Any transfer of a capital asset being a membership right held by a member of a recognized stock exchange in India for acquisition of shares and trading rights acquired by such member in that recognized stock exchange in accordance with a scheme for demutualization or corporatisation which is approved by SEBI.
s. Transfer of land of a sick industrial company under a scheme sanctioned u/s 18 of the Sick Industrial Companies (Special Provisions) Act, 1985, where such sick industrial company is being managed by its workers’ co-operative.

WITHDRAWAL OF EXEMPTION-SEC 47A

1. Where the capital gain arising on the transfer of a capital asset from the holding company to the subsidiary company or vice-versa was exempt from capital gains tax by virtue of Sec. 47 and any of the following events occur within a period of 8 years from the date of transfer, the capital gains so exempted would be chargeable to tax in the year in which the transfer took place:

   a. The holding company does not continue to hold the whole of the share capital of the subsidiary company; or
   b. The transferee company converts or treats the capital asset into / as stock-in-trade.

2. In the case of a transaction between holding company and subsidiary company, the following additional points need to be borne in mind:

   a. If the provisions of section 47A are applicable to a transfer, then the assessment shall be reopened in respect of the assessment year relevant to the previous year in which original transfer took place u/s. 155(7B), to amend the order so as to charge the capital gains to tax.
   b. If the transferee company subsequently sells the asset without attracting the provisions of section 47A then for computation of capital gains the cost to the transferor company shall be adopted as cost to the transferee company - Sec.49(1)
   c. If the asset is sold after attracting the provisions of Sec.47A, then the cost to the transferee company shall be the actual cost incurred by that company to acquire the asset from the transferor company- Sec.49(3).

3. The capital gain arising on transfer of a capital asset in the nature of membership of a recognized stock exchange exempted by virtue of sec.47, shall be chargeable to tax if the shares allotted to the transferor in exchange thereof are transferred before the expiry of a period of 3 years. The capital gain shall be deemed, in such a case, as the income chargeable during the previous year in which the shares are transferred.

4. If the conditions stipulated regarding the succession of a proprietary concern or a firm by a company are not complied with, the benefits availed by the sole proprietor or the firm, as the case may be, shall be deemed to be profit and gains of the successor company chargeable to tax in the year in which infringement takes place.

Problem 18: H Ltd. is an Indian company. S Ltd. is its wholly owned subsidiary Indian Co. During the month of July 2002 H Ltd. purchased land for Rs.2.4 crores. S Ltd. wanted to takeover this land to launch a hotel project. H Ltd. transferred this land to S Ltd. During the month of April 2005 for a consideration of Rs.3.2 crores. Due to change in government policy approval for a hotel project was not granted on such land. S Ltd. Has transferred the land to a third party in August 2007 for a consideration of Rs. 4 crores. Compute the tax implication in the case of H Ltd. And S Ltd. In respect of the above transactions. In the above case, what would be the impact if, H Ltd. Disinvests in Feb 2008 shares held in S Ltd. To the tune of 40% of the share capital.

Problem 19: A, an individual, was the sole proprietor of a business. His net investment in the business, on 31st March, 2008 was Rs. 20 lakhs represented by:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs</th>
<th>Rs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixed assets</td>
<td>18,00,000</td>
<td></td>
</tr>
<tr>
<td>Current assets</td>
<td>10,00,000</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>28,00,000</strong></td>
<td></td>
</tr>
<tr>
<td>Current liabilities</td>
<td>5,00,000</td>
<td>8,00,000</td>
</tr>
<tr>
<td>Loans</td>
<td>3,00,000</td>
<td></td>
</tr>
</tbody>
</table>
Finding himself unable to carry on business by himself and also to attract additional capital, he formed a private limited company in April, 2008 with an authorized capital of Rs.1 crore. At the time of formation of the company, A and his wife had subscribed to 100 equity shares each, fully paid in cash.

On 10th June 2008, A transfers his individual business in entirety, as a going concern, to the private limited company for Rs.40 lakhs for issue of shares in the following manner:

<table>
<thead>
<tr>
<th>Shares Type</th>
<th>To Whom Issued</th>
<th>Shares Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preference Share</td>
<td>Wholly to Mrs. A and her sister Mrs. G (in joint names)</td>
<td>1,50,000 shares</td>
</tr>
<tr>
<td>Equity Share</td>
<td>Mr. A</td>
<td>1,30,000 shares</td>
</tr>
<tr>
<td>Equity Share</td>
<td>Mr. C, major son of A</td>
<td>20,000 shares</td>
</tr>
<tr>
<td>Equity Share</td>
<td>Mr. D, a friend of A</td>
<td>30,000 shares</td>
</tr>
<tr>
<td>Equity Share</td>
<td>Mrs. E, married sister of A</td>
<td>20,000 shares</td>
</tr>
<tr>
<td>Equity Share</td>
<td>Mr. F, husband of Mrs. E</td>
<td>50,000 shares</td>
</tr>
</tbody>
</table>

The shares of the face value of Rs.10 each are to be issued fully paid up. No other purchase consideration for the transfer of the business to the company was due. Required:

a. Ascertain whether in A’s hands any tax liability will be due; if so, also indicate the assessment year relevant for this.

b. If on 30th, March, 2010, A had sold 10,000 equity shares allotted to him at Rs.50 per share, to a friend, what will be the consequences?

**SPECIAL PROVISIONS FOR NON-RESIDENTS**

In the case of an assessee who is a non-resident capital gains arising from transfer of capital assets being the shares or debentures of an Indian company shall be computed by converting cost of acquisition, expenses incurred for the transfer and sale consideration into the same foreign currency as was utilized for the purchase of shares or debentures as indicated below. The capital gains so computed in such foreign currency shall be reconverted into Indian currency for the purpose of further computation- First proviso to Sec.48 and Rule 115A.

<table>
<thead>
<tr>
<th>Items Converted/reconverted</th>
<th>Rate of Conversion/re-conversion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of acquisition</td>
<td>The average of telegraphic transfer selling rate and buying rate as on the date of acquisition</td>
</tr>
<tr>
<td>Expenses incurred for transfer</td>
<td>The average of telegraphic transfer selling rate and buying rate as on the date of transfer.</td>
</tr>
<tr>
<td>Sale consideration</td>
<td>The average of telegraphic transfer selling rate and buying rate as on the date of transfer.</td>
</tr>
<tr>
<td>Capital gains (Re-conversion)</td>
<td>The buying rate for telegraphic transfer as on the date.</td>
</tr>
</tbody>
</table>

The conversion and re-conversion shall be made on the basis of the rate of exchange adopted by the State Bank of India.

The aforesaid manner of computation of capital gains shall be applicable in respect of capital gains arising from every reinvestment thereafter in the shares or debentures of an Indian company on the sale of such assets.

In these cases indexation will not be available in the computation of capital gains.

**Problem 20:** Mr. Fredrick, a non-resident Indian, acquired in January 2002, shares in
Indian companies for a consideration of Rs.20.50 lakhs by remitting equivalent US dollars. In October 2007 he sold the entire shares for a sum of Rs.33,00,000 after incurring Rs.66,000 towards expenses for transfer. You are informed the details of telegraphic transfer rates of State Bank of India here below:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Buying rate</th>
<th>Selling rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>On the date of acquisition</td>
<td>40.50</td>
<td>41.50</td>
</tr>
<tr>
<td>On the date of transfer</td>
<td>43.50</td>
<td>44.50</td>
</tr>
</tbody>
</table>

Compute the taxable capital gains on the basis of the above information.

**SPECIAL PROVISIONS IN THE CASE OF A NON-RESIDENT INDIAN [SEC. 115F]**

If the following conditions are satisfied, one can take the benefit of Sec.115F:

1. The **taxpayer is a non-resident Indian** (i.e., an individual being a citizen of India or a person of Indian origin who is non-resident. A person shall be deemed to be of Indian origin if he, or either of his parents or any of his grand-parents, was born in undivided India) at the time of sale of capital asset.

2. He has **transferred a specified asset** [i.e., shares in an Indian company, debentures of an Indian public limited company, deposits with an Indian public limited company or Central Government securities [hereinafter referred to as "original asset"] which has been acquired or purchased with or subscribed to in, convertible foreign exchange.

3. Such asset is a **long-term capital asset**.

4. **Within 6 months** of transfer of original asset, the taxpayer has invested the whole/part of net consideration in any of the following (hereinafter referred as “ new asset”):
   a. Shares in an India company;
   b. Deposit of an Indian public limited company;
   c. Deposit with an Indian public limited company;
   d. Central Government securities or
   e. National Saving Certificates VI and VII issue.

5. If all the above conditions are satisfied, **exemption** is available as follows:
   \[
   \text{Amount invested in new asset} \times \frac{\text{Capital gain}}{\text{Net sale consideration}}
   \]

6. In case the new asset acquired by the assessee **is transferred or converted** into money within a period of three years from the date of its acquisition, the capital gains exempted by virtue of the provisions given above is deemed to be income by way of long-term capital gains of the previous year in which such new asset is so transferred or converted into money.

7. A non-resident Indian **may elect not to be governed** by the provision of Sec.115F for any assessment year by giving a declaration the return of income to this effect.

**SEC. 55A - REFERENCE TO VALUATIONER**

For the purpose of ascertaining the FMV, the Assessing Officer may refer the valuation of a Capital Asset to a valuation officer under the following circumstances:

a. **Already valued:** Where the assessee already referred the matter to a registered valuer and the value as claimed by him is as per that valuation report - if the Assessing Officer is of the opinion that the value so claimed is less than its FMV.
b. **If not so**, if the Assessing Officer is of the opinion:

   Y That the FMV of the asset exceeds the value of the asset as claimed by the Assessee by more than 15% of the value claimed **Or** by more than 25,000

   Y That having regard to the nature of the Asset & relevant circumstances it is necessary to make the reference.

The valuation report of the Valuation Officer **shall be binding** on the Assessing Officer.

**ZERO COUPON BONDS**

1. **Meaning of zero coupon bonds**: “Zero coupon bond” means a bond:
   
   a. Issued by any infrastructure capital company or infrastructure capital fund or public sector company on or after 1.6.2005,
   
   b. In respect of which no payment is received before maturity and
   
   c. Which the central government by notification, specify in this behalf.

2. **Redemption of zero coupon bonds to be regarded as transfer**: The payment of zero coupon bonds shall be received from the issuing company/fund only at the time of maturity or redemption. Consequently, Sec.2(47) is amended to take redemption of zero coupon as a transfer.

3. **Transfer of zero coupon bonds taxable as capital gains**:
   
   a. The profits arising on the transfer of such zero coupon bonds shall be chargeable under the head “capital gains”.
   
   b. If zero coupon bonds are not held for more than 12 months, such capital asset shall be treated as short term capital asset and hence shall subject to short-term capital gain. On the other hand, where these bonds are held for more than 12 months, such capital gain shall be treated as long-term capital gain.

4. **Taxability of long-term capital gain**: Definition of specified security as given in Sec.112 is amended. Therefore the option scheme is also available (i.e. 20% tax with indexation or 10% tax without indexation).

5. **Tax treatment in the hands of company issuing such bonds**: Discount on issue of zero coupon bonds to be allowed as deduction on pro rata basis, having regard to the maturity period of the bonds, under Sec.36 while computing business income.

**SEC.54 SERIES**

<table>
<thead>
<tr>
<th>Sec.</th>
<th>Assessee</th>
<th>Conditions</th>
<th>Quantum of Exemption</th>
</tr>
</thead>
<tbody>
<tr>
<td>54</td>
<td>Individual &amp; HUF</td>
<td>Residential house (L.O.P. or S.O.P.) to be transferred.</td>
<td>Amount of investment or Capital gain whichever is lower</td>
</tr>
<tr>
<td></td>
<td></td>
<td>It must be a LTCA</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Within <strong>1 year before</strong> or 2 years after, a residential house is purchased and/or within a period of 3 years, a residential house is constructed.</td>
<td></td>
</tr>
<tr>
<td>54B</td>
<td>Individual</td>
<td>Agricultural land situated in specified area to be transferred.</td>
<td>Same as Sec. 54</td>
</tr>
<tr>
<td></td>
<td></td>
<td>It must have been used in the 2 years immediately preceding the</td>
<td></td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
<td>Conditions &amp; Details</td>
<td></td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
<td>---------------------</td>
<td></td>
</tr>
<tr>
<td><strong>54D</strong></td>
<td>Any Assessee</td>
<td>There must be a compulsory acquisition of a capital asset. The property acquired is land and building forming part of an industrial undertaking. The asset must have been used in the 2 years immediately preceding the date of transfer. Within a period of 3 years any other land or building is purchased or/and constructed for the industrial undertaking existing or newly setup.</td>
<td></td>
</tr>
<tr>
<td><strong>54F</strong></td>
<td>Individual &amp; HUF</td>
<td>The asset transferred is a LTCA other than a residential house. Within a period of 1 year before or 2 years after the date of transfer, a residential house is to be purchased or/and within a period of 3 years a residential house is to be constructed. The assessee does not own more than one residential house on the date of transfer. Assessee does not within a period of 1 year purchase or does not within a period of 3 years construct any residential house other than the new asset. (*) If the cost of the new residential house is equal to or more than the net consideration then the whole of the capital gain. Other wise the capital gain is exempted proportionately.</td>
<td></td>
</tr>
<tr>
<td><strong>54G</strong></td>
<td>Any assessee</td>
<td>Asset transferred is a LTCA/STCA. Machinery, Land &amp; building, or any right in Land &amp; building used for the business of an industrial undertaking situated in an urban area is transferred. Transfer is due to shifting to any area other than an urban area. Within a period of 1 year before or 3 years after the date of transfer the assessee has purchased</td>
<td></td>
</tr>
</tbody>
</table>

*活性*
machinery, building or land and/or constructed building & completed shifting to the new area.

<table>
<thead>
<tr>
<th><strong>54GA</strong></th>
<th>Any Assessee</th>
<th>Asset transferred is a LTCA/STCA.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>- Do - Transfer is due to shifting to SEZ.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>54EC</strong></th>
<th>Any Assessee</th>
<th>The asset transferred is a LTCA **.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Within a period of 6 months after the date of transfer, investment shall be made in Bonds redeemable after 3 years issued by NHAI or by the Rural Electrification Corporation.</td>
</tr>
</tbody>
</table>

* Capital gain which was exempt u/s 54F shall be deemed to be income by way of long-term capital gain of the year in which another residential house is purchased or constructed.

**Exemption u/s 54EC in respect of depreciable asset:** If conditions necessary under Section 54EC are complied with by the assessee on the transfer of a depreciable asset, if conditions necessary u/s 54EC are complied with by the assessee is eligible for the benefit u/s 54EC {CIT v. Assam Petroleum Industries (P.) Ltd. [2003]}.  

**SOME CLARIFICATIONS ON SEC.54 SERIES**

| **a.** | For the purpose of Sec.54 and 54F, cost of land acquired by the assessee will also be eligible for exemption along with the cost of construction or acquisition. (Circular No.667, dated October 18, 1993). |
| **b.** | For Sec.54/54F, the word house property means building or land appurtenant there to. |
| **c.** | Conversion of joint ownership into single ownership by payment being made to other joint owners amounts to purchase. |
| **d.** | House property does not mean an independent house property only, it includes flats in apartment & joint ownership as well. |
| **e.** | Purchase of the house property which is already in occupation of the assessee in the capacity of the tenant is taken as an eligible purchase. |
| **f.** | Sale of > 1 house property & purchase/construction of a single property is permissible. |
| **g.** | Sale of 1 house property & purchase/construction of > 1 property is permissible. |
| **h.** | Construction of 2nd floor on existing property is valid. |
| **i.** | For the purpose Sec.54B & 54D usage as a tenant is also to be considered. |
| **j.** | In case of Sec.54D & 54G/GA, the assets to be sold are depreciable assets, the resulting C.G. can only be either STCG or STCL. |
| **k.** | Expenses incurred for registration of property will be considered as investment. |
| **l.** | Expenditure incurred for construction before the date of transfer of the asset becomes
eligible for exemption u/s.54 or 54F.

d. Construction of the new house may start before the date of transfer, but it should be completed after the date of transfer of the original house.

e. Construction need not be completed in full.

f. Where a person who sold the house property has died, even if his legal representatives fulfil the conditions as to purchase or construction of a new residential house within the stipulated period, the benefit of Sec.54 can be taken by such representatives.

g. If the assessee complies with the conditions given in Sec.53A of the transfer of property act within given time, he is eligible for exemption even if the sale deed was not registered.

h. The words "assessee or a parent of his" occurring in Sec.54B of the Act, would clearly indicate that only an "individual assessee" is eligible.

i. Expenses incurred for shifting will be considered as investment u/s 54G, 54GA.

j. The cost of the bonds purchased under eligible issue of capital for which exemption under Sec.54EC is claimed, will not qualify for deduction under Sec.80C.

k. Newly acquired or constructed property may be in India or outside India.

l. For claiming exemption u/s 54(1), construction of house need not be made by the assessee himself, as it can be constructed by a third party for the assessee CIT Vs. Uma Budhia [2004].

m. There is nothing in provision of section 54 to warrant establishing a direct nexus or live-link between the amount of capital gain and the cost of new asset Ajit Vaswanit Vs. CIT.

n. For purpose of claiming exemption u/s 54, investment in residential house would not only include cost of purchase of house but also cost incurred for making house habitable- Saleem Fazelbhoy Vs. CIT[2006].

Capital gains accounts scheme: Under Sec.54, 54B, 54D, 54F, 54G, 54GA (54 EC not covered) the capital gains is exempt if such gains or consideration, as the case may be, are invested in new assets within the time allowed in the respective sections. If such investment is not made before the date of furnishing the income tax return then the amount of capital gain or the net consideration, as the case may be is required to be deposited in an account under capital gains accounts scheme. The relevant points are:

a. Date for deposit: The deposit shall be made on or before furnishing the return of income or within the due date for furnishing the return under Sec.139(1), whichever is earlier.

b. The deposit can be made in any public sector bank or approved institution.

c. Proof: The return of income shall be accompanied by proof of such deposit.

d. Withdrawn: The amount deposited can be withdrawn for making the investments as specified in the relevant section’s.

e. Unutilised: If the amount deposited is not utilised for acquiring the new asset within the given period, the capital gain related to the unutilised amount shall be treated as the C.G. of the previous year in which the period specified in relevant sections expired.

f. The unutilised deposit amount in the Capital Gains Accounts Scheme, in the case of an individual, who dies before the expiry of the two/three years stipulated period under section 54, 54B, 54D, 54F and 54G, cannot be taxed in the hands of the deceased (Circular No.743 dt.06.05.1996).

What happens if the newly acquired asset is sold?:
a. **Sale of new asset:** Under Sec. 54, 54B, 54D, 54G and 54GA if the newly purchased asset is transferred within a period of 3 years from the date of its acquisition, the cost of such newly purchased asset shall be reduced by the amount of capital gains previously exempted and the short term capital gains arising on the transfer of newly purchased asset shall be computed by using such reduced cost of acquisition.

b. If the newly purchased asset under Sec.54B is not a C.A. then “a” will not arise.

c. **Sale of new asset:** Under Sec. 54F, if the new asset is transferred within a period of three years then the capital gain exempted earlier shall be taxed as the capital gain in the previous year in which such asset is transferred. (In addition we shall calculate C.G’s on sale of new asset).

d. **Sale of Investments:** If the specified bonds U/s 54EC so invested are transferred or converted within a period of 3 years from the date of acquisition, the amount of capital gain previously exempted shall be deemed to be long-term capital gains of the previous year in which such transfer or conversion takes place. (If the assessee takes any loan or advance on the security of such specified bonds or debentures, he shall be deemed to have effected conversion). (In addition we shall calculate C.G’s on sale of new asset).

**Sec. 54H: Extension of time for acquiring new asset or depositing amount:** Where the transfer of the original asset is by way of compulsory acquisition and the amount of compensation is not received by the assessee on the date of such transfer, the period available for acquiring new asset or investment by the assessee as referred to in Sec. 54, 54B, 54D, 54EC and 54F in relation to such compensation, shall be calculated from the date of receipt of such compensation and not from date of transfer of the original asset. **The extension of time as per section 54H is not available for section 54G/GA.**

**Exemption under more than one provision:** It is possible to avail exemption under the more than one section in respect of capital gains arising on transfer of a capital asset. For e.g. an assessee may sell a residential house, jewellery, land, shares etc., and invest the capital gains or net consideration as the case may be in another residential house whereby exemption can be claimed both u/s. 54 and sec.54F.

**Problem 21:** R owns a residential house which was purchased by him in 1977 for Rs. 60,000. The fair market value of the house as on 1-4-1981 was Rs.1,80,000. This house is sold by him on 16-7-2008 for a consideration of Rs.11,00,000. The brokerage and other expenses on the transfer were Rs.12,000. The due date of furnishing the return of income is 31st July, 2009. Compute the capital gain for the assessment year 2009-10, if:

a. He invests Rs. 3,00,000 for purchase of a new house on 14-5-2009.

b. He purchased a piece of land for construction of a house on 21-10-2007 for 2,00,000 and deposited Rs. 1,00,000 in the Capital Gains Accounts Scheme on 15-7-2009 and a further sum of Rs. 1,50,000 on 31-7-2010.

c. He invested Rs. 3,15,000 on construction of an additional floor at a residential house already owned by him. The investment is made during the period 1-10 to 31-12-2008.

d. He invested Rs.4,00,000 in Capital Gains Accounts Scheme on 29-7-2009 and 1,00,000 on 1-8-2009. He purchased a house property on 5-8-2009 for Rs. 2,50,000 by withdrawing this amount from the Scheme. No further investments were made by him.

**Problem 22:** G sold a residential house on 28-6-2008 for Rs.10,00,000. He had purchased this house on 1-10-1988 for Rs.1,20,000 and he spend Rs. 70,000 on improvement of the house during the year 1989-90. He purchased a new house on 21-10-2008 for Rs. 3,00,000. This house was also sold by him on 16-7-2009 for Rs. 6,00,000. He purchased another house on 21-11-2009 for Rs.8 L. Compute the C.G.’s for the A.Y.09-10 and 10-11.
**Problem 23:** R owned 5 acres of agricultural land within the city limits of Guntur which he had purchased on October 1, 1988 for Rs.5,00,000. On October 1, 2008 he sold the land for Rs.50,00,000. On January 1, 2009, he purchased a coffee estate for Rs.20,00,000. This estate is situated in a remote village and the nearest town is about 20 kilometers away from the estate. On February 28, 2010, he sold the estate for Rs.35,00,000. Compute the Capital Gains for the assessment years 2009-10 and 2010-11.

**Problem 24:** ABC Ltd. purchased a building for an industrial undertaking on 1-1-2007 for Rs. 4,00,000. Prior to this the company had taken this building on rent for the last two years and was using it for its industrial activities. There is no other building in the block. This property was compulsorily acquired by the State Government on 14-8-2008 and a compensation of Rs. 5,00,000 was given to the company on 21-3-2009. The company purchased another building for shifting its industrial undertaking for 3,00,000 on 15-10-2009. Compute the capital gains for the A.Y. 2009-10. (Assume dep. Rate - 15%).

**Problem 25:** R acquired shares of G Ltd., on 15-12-2001 for Rs. 5,00,000 which were sold on 15-5-2008 for Rs. 13,00,000. Expenses of transfer were Rs. 20,000. He invests Rs. 6,00,000 in the bonds of NHAI on 16-10-2008.

a. Compute the capital gain for the assessment year 2009-10.

b. State the period for which the bonds should be held by the assessee. What will be the consequences if such bonds are sold within the specified period.

c. What will be the consequences if R takes a loan against the security of such bonds.

**Problem 26:** M sold gold ornaments on 16-7-08 for a sum of 10 L. This gold was purchased in 1980 for Rs.60,000 by his father. The FMV of the gold as on 1-4-81 was Rs.1,00,000. His father gifted the gold to M on 14-7-08. He spent Rs. 2,00,000 till 31-7-08 (the due date for filing of the return) on construction of a house property and deposited Rs. 5,00,000 before 31-7-09 under capital gain scheme and a further sum of Rs. 1,50,000 on 31-8-09. He withdrew a sum of Rs.4,00,000 for construction of the house property till the stipulated time. Compute the C.G. for various relevant assessment years.

**Problem 27:** X Ltd. owns an industrial undertaking in a congested locality of Indore urban area. Following a Court direction, the company shifted the undertaking to a rural area in August 2008. In the course of relocation, the company disposes of the following assets:

<table>
<thead>
<tr>
<th>Buildings</th>
<th>Machinery</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale price</td>
<td>50,00,000</td>
</tr>
<tr>
<td>WDV as on 1.4.2008</td>
<td>30,00,000</td>
</tr>
<tr>
<td>Year of acquisition</td>
<td>1997</td>
</tr>
<tr>
<td>Purchase of assets</td>
<td>5,00,000</td>
</tr>
</tbody>
</table>

Determine the exemption U/s 54G, assuming expenses on shifting amount to 1,20,000.

**Problem 28:** Ashwin owns a residential house which is self-occupied and also a house plot. He sells the house on 31.1.2009 and the house plot on 15.2.2009 for Rs.7,50,000 and Rs.5,00,000 respectively. The house was purchased on 15.1.2003 for Rs.4,00,000 and the plot on 30.3.2003 for Rs.2,00,000. Ashwin has purchased a new residential house on 25.4.2009 for Rs.10,00,000. Compute the income under “C.G.”.

**Problem 29:** On 5th November 2008, X sold his entire holding of gold for Rs.12,50,000. He had acquired the gold in July 1994 for Rs.3,64,000. On 21.5.08 & 31.12.08, he purchased a residential house for Rs.7,00,000 and bonds of the NHAI for Rs.1,00,000. Determine taxable capital gains in his case if on the date of sale of gold, he already owned (a) two residential houses, including the one purchased within a year before transfer of gold; (b) three residential houses, including the one purchased within a year before sale of gold.
**Problem 30:** Mukund is a shareholder in C.C.Ltd. He acquired 300 shares of the company of the face value of Rs.50 per share in 1977. The market value of the shares as on 1st April, 1981 was Rs.100 per share. He made a further purchase of 200 shares at the rate of Rs.150/- per share in 1992-93. C.C.Ltd. issued bonus shares in 1994-95 in the proportion of 1:4. In December 2008 T.T.Ltd., another company, in a scheme of amalgamation made a proposal to acquire the shares of C.C.Ltd. and made the following offer to the shareholders of C.C.Ltd. Rs.100 per share in cash plus 1 share in T. T. Ltd for every 2 shares of C.C. Ltd. The market value of the shares of T.T. Ltd on the date of the offer is Rs.600 per share. What is the capital gain, if any, arising to Mukund, if he accepts the offer?

**Problem 31:** B Ltd. And W.Ltd. Are two public limited companies, whose shares are widely held and are engaged in fast food business B as a manufacturer and W as a dealer. Neither of the company is inter-connected either by way of business dealings or share holdings. Both the companies make reasonable profits to enable them to pay their shareholders a minimum dividend of 30% each year. The companies engaged a firm of consultants to look into the question of expansion and one of the recommendations of the consultants was that combination of manufacturing and distributing the products under one management could yield larger profits than present times.

The boards of the two companies are to meet shortly to decide on this the various alternatives posed before them are:

a. For B to acquire W by purchasing majority holding;

b. For B or W to acquire the business of the other;

c. For both the companies to merge or amalgamate and form a third company.

**SOME GENERAL ISSUES**

1. Where a person obtains a capital asset from a Co-operative housing society by virtue of his membership, the date of acquisition of such capital asset shall be reckoned from the date of allotment of share in the society and not the date of delivery of possession of flat. CIT v.s Jindas Panchand Gandhi.

2. Where land and building are sold and land is long term but the building is a short term capital asset, either because it is newly constructed or it is so treated by virtue of Sec.50, the sale consideration can be split up so as to compute long term capital gains with reference to land separately and to avail in such computation the benefit of indexation. In respect of building, short term capital gain / loss can be computed separately CIT vs. Citibank.

3. Any payment made by an assessee to obtain vacant possession of the property, as a pre condition for effecting the sale shall be considered to be expenses in connection with transfer. Accordingly, such payments are eligible for deduction from sale consideration. But for incurring such expenditure, the transfer cannot be completed and therefore, the expenditure is allowable u/s 48(1) of the Income-tax Act. CIT v A. Venkataraman (1982).

4. Any amount paid to mother/father having right of residence in the property is entitled to deduction as transfer expenses.

5. Any legal expenses incurred in connection with transfer of property are allowed as deduction. For eg. Legal expenses incurred for obtaining the compensation.

6. Where a property inherited by the assessee was placed under mortgage by previous owner and where such mortgage is discharged by the assessee, the sum paid by assessee for discharge is to be treated as cost of acquisition. It is deductible in the computation of capital gains – Arunachalam Vs. CIT (1997).

7. Any amount misappropriated by the power of attorney holder out of the sale consideration is not eligible for deduction while computing the capital gain of the owner.
of the property. Naozar Chenoy vs. CIT (1998). Again, the assessee cannot claim such amount as income diverted at source by overriding title.
<table>
<thead>
<tr>
<th>S.No</th>
<th>TYPE OF CAPITAL ASSET</th>
<th>COST OF ACQUISITION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Goodwill, tenancy rights, route permits, loom hours, right to carry on business,</td>
<td>If,</td>
</tr>
<tr>
<td></td>
<td>patents, trademark,</td>
<td>• Purchase → Purchase Price</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Self generated → NIL</td>
</tr>
<tr>
<td></td>
<td></td>
<td>FMV in both the cases is ignored even if acquired before 01.04.81</td>
</tr>
<tr>
<td>2</td>
<td>Distribution of assets on partition of HUF</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Gift, will or irrevocable trust</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Transfer by holding company to wholly owned subsidiary company or vice versa</td>
<td>Previous owner</td>
</tr>
<tr>
<td>5</td>
<td>Transfer in case of amalgamation</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Transfer in case of demerger</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Transfer in case of conversion of firm into company</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Transfer in case of conversion of sole proprietary concern into company</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Allotment of shares in the amalgamated company</td>
<td>Amalgamating Company</td>
</tr>
<tr>
<td>10</td>
<td>Shares/debentures in conversion of debentures, bonds, debenture stock, deposit</td>
<td>Debentures, bonds etc. so converted</td>
</tr>
<tr>
<td></td>
<td>certificate</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Securities under ESOP</td>
<td>FMV on the date of allotment</td>
</tr>
<tr>
<td>12</td>
<td>Shares in the resulting company</td>
<td>COA of shares in demerged company × Book value of assets transferred in demerger</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Net worth of the demerged company</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Net worth = Paid up capital + reserves</td>
</tr>
<tr>
<td>13</td>
<td>Shares in the demerged company</td>
<td>Original COA - Value of 12 (above)</td>
</tr>
<tr>
<td>14</td>
<td>Assets distributes to shareholders on liquidation</td>
<td>FMV on the date of distribution</td>
</tr>
<tr>
<td>15</td>
<td>Original shares</td>
<td>Actual payment</td>
</tr>
<tr>
<td>16</td>
<td>Bonus shares</td>
<td>If acquired</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• on/after 01.04.81 → NIL</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Before 01.04.81 → FMV as on 01.04.81</td>
</tr>
<tr>
<td>17</td>
<td>Right shares purchased by original shareholder</td>
<td>Price paid to the company</td>
</tr>
<tr>
<td>18</td>
<td>Right offer sold</td>
<td>NIL</td>
</tr>
<tr>
<td>19</td>
<td>Person purchasing such offer from original shareholder</td>
<td>Price paid to the company + Price paid to the seller</td>
</tr>
<tr>
<td>20</td>
<td>Slump sale</td>
<td>Net worth</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Net worth = Assets - Liabilities</td>
</tr>
</tbody>
</table>