# MISCELLANEOUS ISSUES

## Exemption to a "Sikkimese" individual [Section 10(26AAA)]

This Clause has been inserted by the Finance Act, 2008, w.r.e.f. 1-4-1990. In other words this Clause is applicable with retrospective effect from A.Y. 1990-91.

In case of an individual, being a Sikkimese, any income which accrues or arises to him :

(a) from any source in the State of Sikkim; or

(b) by way of dividend or interest on securities

would be exempt from tax with retrospective effect from A.Y. 1990-91.

However, the exemption will not be available to a ***Sikkimese*** woman who, on or after the 1st day of April, 2008, marries an individual who is not a Sikkimese.

**Explanation :** For the purposes of this clause, "Sikkimese" shall mean :

(i) an individual, whose name is recorded in the register maintained under the Sikkim Subjects Regulation, 1961 read with the Sikkim Subject Rules, 1961 (hereinafter referred to as the "Register of Sikkim Subjects"), immediately before the 26th day of April, 1975; or

(ii) an individual, whose name is included in the Register of Sikkim Subjects by virtue of the Government of India Order No. 26030/36/90-I.C.I., dated the 7th August, 1990 and Order of even number dated the 8th April, 1991; or

(iii) any other individual, whose name does not appear in the Register of Sikkim Subjects, but it is established beyond doubt that the name of such individual's father or husband or paternal grand-father or brother from the same father has been recorded in that register.

**Illustration :**

| | **Case I** | **Case II** | **Case III** | **Case IV** |
|---|---|---|---|---|
| Name of the individual (Assuming ROR) | Mr. A | Mrs. X | Mrs. Y | Mrs. Z |
| Whether Sikkimese Individual? | Yes | Yes | Yes | Yes |
| Date of marriage | Not relevant | 1-1-2005 | 1-4-2008 | 1-4-2008 |
| Whether spouse of the individual is Sikkimese? | Not relevant | Not relevant | Yes | No |
| Income from business situated in Sikkim/property situated in Sikkim/interest on bank deposit with a bank in Sikkim/salary income from Sikkim | Exempt | Exempt | Exempt | Taxable |
| Income from business situated in W.B./property situated in W.B./interest on bank deposit with a bank in W.B./salary income from W.B. | Taxable | Taxable | Taxable | Taxable |
| Income from business situated in Nepal/property situated in Nepal/interest on bank deposit with a bank in Nepal/salary income from Nepal | Taxable | Taxable | Taxable | Taxable |
| Interest on debentures/dividend on shares of a Foreign Company | Exempt | Exempt | Exempt | Taxable |

# Reverse Mortgage Scheme [Section 10(43) & Section 47(xvi)]

In a ***regular mortgage***, a person mortgages his property with the lender in return of loan amount. The loan amount may be used to finance purchase or construction of the same property or for any other purpose. The loan amount is charged at a specific interest rate and it has predetermined tenure. The person taking the loan has to repay the loan in the form of equated monthly instalments (popularly known as EMIs). EMIs generally comprise of both principal and interest amounts. The property which is mortgaged is utilized as a security to cover the risk of default on the borrower's part to make payment of EMIs.

In the ***reverse mortgage***, borrower is generally a senior citizen. He owns a house property. However, he does not have regular source of income. He can mortgage his property with a scheduled bank or a housing bank or a housing finance company (i.e. lender). The lender in return pays in lump sum or periodic instalments to the borrower during his lifetime. The borrower can continue to stay in the property during his lifetime. The lender will recover the loan along with the accumulated interest by selling the house after the death of the borrower. Any excess amount will be remitted back to the legal heirs of the borrower. However, before resorting to disposal of the property, an option will be given to the legal heirs to repay the loan amount, along with interest, and to get the mortgaged property released.

## Periodical instalments or lump sum payment by the lender to the borrower – Is it "income"? [Section 10(43)]

Generally a question is asked whether the loan, either in lump sum or in instalments, received under a reverse mortgage scheme amounts to income in the hands of the borrower. There is no doubt that receipt of such loan is in nature of a capital receipt.

However, with a view to providing certainty in the tax regime, Clause (43) has been inserted in Section 10 with effect from A.Y. 2008-09 to provide that such loan will be exempt from income-tax.

## Reverse mortgage of property and obtaining loan – Is it "transfer"? [Section 47(xvi)]

Another question which is generally asked is whether mortgage of property for obtaining a loan under the reverse mortgage scheme is transfer within the meaning of the Income-tax Act, 1961 and liable to capital gain tax liability under Section 45.

Section 2(47) provides an inclusive definition of 'transfer'. Further, 'transfer' within the meaning of Transfer of Property Act, 1882 includes some type of mortgage. Therefore, a mortgage of property, in certain cases, is a transfer within the meaning of Section 2(47). Consequently, any gain arising upon mortgage of a property may give rise to capital gains under Section 45.

However, in the context of a reverse mortgage, the intention is to secure a stream of cash flow against the mortgage of a residential house and not to alienate (i.e. transfer) the property.

Clause (xvi) has, therefore, been inserted in Section 47 with effect from the A.Y. 2008-09 to provide that any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government shall not be regarded as transfer and shall not attract capital gain tax.