

Capital Gain

1. Basis of charge (sec-45)

- A) There must be capital asset.
- B) Capital asset must have been transferred
- C) There must be profit or loss on such transfer
- D) Such capital gain should not be exempt U/S 54, 54B, 54D, 54EC, 54F, 54G, 54GA

2. Meaning of capital asset:-

Capital assets means **property of any kind**, whether or not connected with business or profession of assessee,

Property of any kind is wide term and include all

- Movable assets- shares, securities, gold, silver etc
- Immovable assets- land, building
- Tangible or intangible assets- goodwill, patents, copyrights etc
- Any right in an asset-tenancy right, right of lessee etc

Held by the assessee means either

- He is the legal owner in possession of the property
- Has a legal right to take possession

Capital assets-exclusion

Items enumerating in section 2(14)(vi)(I) which are as follows

- (i) Stock in trade, consumable stores & raw material held for the purpose of business or profession
- (ii) Personal effects meaning
 - Movable property
 - Held for use by assessee or member of family dependent upon him
 - The following assets can never be personal effects
 - ✓ Jewellery
 - ✓ Archaeological collections
 - ✓ Drawings
 - ✓ Paintings
 - ✓ Sculptures
 - ✓ Any other work of art
 - ✓ Does not include house property as it is immovable property
- (iii) Rural agricultural land in India Provided it is not situated in any area which is comprised within the jurisdiction of any municipal cantonment board having a population of
 - Not being more than 2 Km from the local limits where the population exceeds 10000 but does not exceeds 100000

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- Not being more than 6 Km from the local limits where population exceed 100000 but does not exceed 1000000
- Not being more than 8 Km from the local limits where population exceeds 1000000

(iv) Gold bonds (issued by central government)

- ✓ 6.5% gold bonds 1977,
- ✓ 7% gold bonds 1980,
- ✓ National defence bond 1980,
- ✓ Special bearer bonds 1991,
- ✓ Gold deposit bond 1999,(issued under the gold deposit scheme).

Types of capital assets:

Whether a capital asset is short term or long term capital asset, is depends on the period for which that particular asset was held by the assessee before its transfer

- Long term capital assets
- Short term capital assets

Short term capital assets

(i) For under mentioned securities the holding period is 12 Months or less

- ✓ Listed equity / preference shares
- ✓ Listed / unlisted units of UTI
- ✓ Listed equity oriented mutual fund
- ✓ Listed or unlisted Zero coupon bonds
- ✓ Other listed securities

(ii) For other than the above the holding period is 36 months

Long term capital gain

Those assets which are not short term capital assets

Holding period (HP):- From date of acquisition to date of transfer,

Transfer sec 2(47)

It includes sale exchange or relinquishment of the assets or compulsory acquisition thereof under any law,

(i) **four Normal cases**

- ✓ Sale
- ✓ Exchange
- ✓ Compulsory acquisition
- ✓ Relinquishment of assets

(ii) **Four special case**

1. Conversion of capital assets into stock in trade

If the converted assets is not sold in the year of conversion there will be no capital gain in the year of conversion even though it is taxable transfer. Since there is no liquidity generation to pay the capital gain tax.

Assesse will be brought to both capital gain tax & income from business and profession in the year of sale of converted stock in trade i e, the year of liquidity generation.

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For the computation of capital gains, the sales consideration is taken at the market value on the date of conversion, if indexation is done then done up to the date of conversion only.

2. Sec 53A of transfer of property act 1882

The year in which all the 3 conditions undermentioned are fulfilled the buyer would be consider deemed owner U/S 27,

Condition

- ✓ There should be contract for consideration in writing duly signed in relation to transfer of immovable property i e “sale deed” is made even though it is not applied for registration transfer
- ✓ The transferee should have taken the possession of the property from the seller
- ✓ The transferee has to performed or is willing to perform his part of the contract (I e the buyer has paid the consideration or shall pay it & there is no dispute regarding the same)

3. Any transaction which has the effect of transferring or enabling the enjoyment of an immovable property (whether by way of becoming a member of or acquiring shares in co-operative company or other association of persons etc) same as per sec

4. Maturity or redemption of Zero coupon bonds

w.e.f. 1-6-2005 and on word the maturity or redemption of a zero coupon bond shall be consider as taxable transfer

Zero coupon bonds means

- ✓ Issued by infrastructure capital company, public sector company or scheduled bank
- ✓ In respect which no payment and benefit is received or receivable before maturity or redemption from the bond issuing organisation
- ✓ If holder for more than 12 months the long term capital asset.

Non-taxable transfer:-

The following transactions not regarded as taxable transfer even through the ownership of the assets has shifted from the transferor to the transferee.

1. Sec-46(1) Distribution of capital assets in cash or kind by a company to its shareholder on its liquidation

The company is not brought to capital gain tax U/S 46(1) since now the shareholder become the legal owner of the net asset distributed by company upon liquidation

The shareholder is brought to capital gain tax u/s 46(2) since he is surrendering one asset ie share certificate which has become worthless and getting another assets I e in cash or kind (relinquishment)

2. Sec-47(1) Any distribution of capital assets in cash or kind by a hindu undivided family to its member at the time of partition

When it distributes assets to its member it is not brought to tax as no outsiders involved.

- ✓ The receiving HUF member is also not brought to tax since he is only receiving the capital assets and not surrendering any capital assets
- ✓ The receiving HUF member not surrendering any capital asset

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- ✓ The receiving HUF member will be brought to tax only when he sells such a capital assets.

Sec-47(II) Any distribution of asset in kind on the dissolution of the firm, body of individual, association of person if such dissolution took place prior to 1-4-1987 ie till 31-3-1987.

3. Sec-47(III) Any transfer of capital assets under a gift or a will or an irrevocable trust,

Exception- ESOP transferred through irrevocable or gift (I/G)

Sec-47(Via) The transfer of capital assets by the non-resident of such foreign currency convertible bonds or global depository receipts held by him to another non-resident in convertible foreign exchange outside India.

W.e.f FY-2014-15 The transfer of government securities carrying periodic interest payment by a non-resident to another non-resident outside India shall also be non taxable

Transaction made in outside India

- ✓ Foreign currency convertible bonds
- ✓ Global depository receipts
- ✓ Government securities

4. Any transfer of capital assets being any work of art, archaeological, scientific or art collection, books, manuscript, drawing, paintings photograph or print to the government or a university or the national museum or national art gallery.

This sale is not taxable in order to promote the cultural heritage of country.

5. Any transfer by way of conversion of bonds or debentures stock or deposit certificate in any form of Indian company into shares or Debentures of that company.

- ✓ The Holding period of debentures will not be Include in the holding period of the shares.

6. Business re organisation:-

Firm, sole proprietorship, AOP/ BOI, into a company,

Condition,

- ✓ All assets and liabilities are transferred
- ✓ All partners are shareholder in capital contribution ratio at conversion
- ✓ Partners getting shares only not any another benefit
- ✓ Total shares holding of all the partners is more than 50% of total shareholding of the company.
- ✓ The scheme of conversion of AOP / BOI into the company should be approved by SEBI

If all the Condition are satisfied the business reorganisation is non-taxable transfer.

If any condition is violated it is taxable transfer for the transferee co in the year of violation.

Types of mutual fund

If the MF is investing is a majority amount to the units holder into equity shares it is called as a equity oriented mutual fund. If the amount is invested in majority of amount into bonds debentures government securities etc., it is called as a Debt oriented mutual fund. If the

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amount is invested into equity shares and bonds debentures government securities and equity it is called as balanced mutual fund.

✓ **Listed equity shares, listed units of business trust, listed units of an equity oriented mutual fund when sold**

- sold via stock exchange and STT (STT levied only on purchase and sale of equity shares, units of an equity oriented mutual fund and units of business trust and (no other securities) if transacted via stock exchange) is levied on the sale value then

- The sold as a stock in trade

The STT paid on sales is allowed as Business deduction u/s 36(I)(xv) but business profit are taxable at normal slab rates

- **If sold as short term capital assets**

Then short term capital gain will be taxed at a flat rate of 15% u/s 111A

Note:- STT paid on sale value is not allowed as transfer expenses

- **If sold as long term capital gain**

Then the entire long term capital gain is fully exempt u/s 10(38)

✓ **Not sold Via stock exchange and the No STT is levied (ie sold directly by seller to buyer)**

- if sold as short term capital assets then short term capital gain is taxable at slab rates
- if sold as long term capital assets then long term capital gain is taxable under option 1 and option-2 which ever has a lower tax amount,

Other listed securities sold:-

(When sold via stock exchange (STT is not levied on them) or directly to buyer)

- In relation to government securities preference shares, normal units and bonus shares issued prior to 1-4-1981
 - ✓ Sold via stock exchange or
 - ✓ Sold directly to buyers, then
 - Sold as long term, Option-1 or option-2 (lower tax liability)
 - Sold as short term, Taxable at slab rates
- In relation to bonds debentures, gold deposits receipts, 0% coupon bonds, Bonus shares issued on or after 1981.
 - ✓ Sold via stock exchange
 - ✓ Sold directly to buyers
 - Sold as long term, Always option-2
 - Sold as Short term, taxable at slab rates,

Option 1 and option 2 in case of long term capital gains of listed securities

I. Available to all assessee-

- ✓ Resident
- ✓ Non-resident

II. The listed securities are long term capital assets of shares, debentures, government securities, gold deposits receipts, and zero coupon bonds for this purpose.

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- III. Tax component- if the above conditions are satisfied the tax shall be computed as follows,

Option-1	Option-2
➤ Find out sales consideration	➤ Find out the sales consideration
➤ Deduct indexed cost of acquisition and expenses on transfer	➤ Deduct the cost of acquisition and expenses on transfer
➤ The balance amount is long term capital gain	➤ The balance amount is long term capital gain
➤ 20% of the amount at step-3 is the amount of tax liability	➤ 10% of amount at step-3 is the amount of the tax liability.

Note-deduction U/s 80 to u/s 80U from gross total income under chapter VI A are not available in respect of long term capital gain u/s 111A since these are taxable at lower rate of tax such deduction are available against normal short term capital gains which are taxable at normal rates.

Full value of consideration or sales consideration.

(In money / the FMV if in kind)

- A) In case of conversion of capital assets into Stock in trade w.e.f 1-4-1984 and on words, The fair market value of the Capital assets on the date on which it was converted or treated as a stock in trade shall be deemed to be the full values of consideration.
 - B) Shares debenture via ESOP transfer these irrevocable or gift
 - C) Exchanges
 - D) Liquidation of company (taxable for shareholders)
 - E) Firm to partners
- “sales” then the agreed value will be taken as a sales consideration even if market value is more than the agreed value.

Insurance claim received

Where any person receiver at any time during any previous year any money or other assets under an insurance from an insurer on account of damage to or destruction of any capital assets as a result of

- Flood, typhoon, hurricane, cyclone, earthquake
- Riots, civil or explosion
- Accidental fire, explosion
- Action by an enemy

Then any profit or gains arising from receipt of such money or other assets shall be chargeable to Income tax under the head capital gain and shall be deemed to be the income of such person of previous year in which such money or other assets war received and for the purpose of section-48 value of any money or the MFV of the other assets on the date of such receipts shall be deemed to be the full value of consideration received or accruing as a result of the transfer of such capital assets.

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Sec-50C sales consideration in case of transfer of immovable property

Case-1, Land and building= capital asset

Of Agreed value 50 L

Stamp duty value =75 L

In the above case the Full value of consideration is SDV-75 L

Case-2, Departmental valuation officer,

Agreed value-50 L

Stamp duty value-75 L

Departmental valuation officer-62 L

In the above case full value of consideration DVO-62 L

Case-3,

Agreed value-50 L

SDV-75 L

DVO-92 L

In the above case full value of consideration SDV-75 L

Transfer expenses or Expenditure on transfer

- I. Brokerage and commission paid for securing a purchase
- II. Cost of stamp duty paid
- III. Registration fees
- IV. Travelling expenses incurred in connection with transfer

STT paid by the assessee seller, is not allowed as a deduction as transfer expenses.

Cost of acquisition

Cost of acquisition is the value of an cost for which it was acquired by the assessee, expenses of capital nature for completing or acquiring the title to the property are include in the cost of acquisition.

- Interest on loan taken for acquisition of assets from the date of loan is taken till the date of acquisition of assets of assets.
- Litigation expenses incurred for compelling the company to register the shares in the name of the assessee would be of capital nature forming part of cost of acquisition of the shares.
- Expenses for suits for amending articles of association are of capital in nature and from part of cost of shares.
- Ground rent paid cannot be cost of acquisition since they are revenue in nature I e period cost.

a) Sec-49(1) Cost of acquisition to assessee being cost to the previous owner

- ✓ Any distribution of assets in kind on the total or partial partition of a HUF
- ✓ Any distribution of assets in kind on the dissolution of the firm, body of individual, association of person, if such dissolution took place prior to 1-4-1987.
- ✓ Any transfer of assets under a gift, will or an irrevocable trust,

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b) Sec-49(2A) conversion of debenture into shares

for computing capital gain on the sale of such converted shares or debentures, the cost of acquisition of the old debentures, debenture stock, bond or deposit certificate which has been appropriated towards the shares or debenture shall be the cost of acquisition of such converted shares or debentures.

c) Sec-49(2AA) ESOP

w.e.f PY-2009-10 AY-2010-11 the provision of section 49(2AA) are charged and it mentioned that where the capital gain arises from the transfer of specified security or sweat equity shares or referred to in section 17(2)(VI) the cost of acquisition of such security or shares shall be the fair market value which has been taken into account for the purpose of the said section 17(2)(VI).

d) Sec-49(2AB) cost of acquisition of units of business trust

Where a units of business trust become the property of the assessee in consideration of a transfer u/s 47(XVII) the cost of acquisition of units shall be deemed to be the cost of shares to him as referred to in Sec-47(VII).

e) Sec-50(1) and Sec-50(2)-Block cease to exist, block turn to Negative

Sec-50(1) The sales consideration of any one or more asset but not all assets exceeds the opening WDV + Value of assets acquisition during the previous year + expenditure in connection with such transfer this excess amount shall be deemed to be always short term capital gain.

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

- ✓ Opening WDV at the beginning of the previous year.
- ✓ Actual cost of any asset falling with in that block acquired by the assessee during the previous year.

Cost of acquisition = opening WDV of block + addition during Previous year.

Capital gain or loss is always short term

f) Sec-55(2) option to take FMV on 1-4-1981 as Cost of acquisition

If the capital assets acquired before 1-4-1981 has an option to take FMV on 1-4-1981 as cost of acquisition.

g) Cost of acquisition in the case of bonus shares and right shares offer.

COA of shares

✓ **Original shares acquisition**

➤ Before 1-4-1981, then

Cost incurred

Or

FMV on 1-4-1981

➤ On or after 1-4-1981

Cost incurred only

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✓ **Bonus shares**

➤ Before 1-4-1981

Cost= FMV

➤ On or after 1-4-1981

Cost = NIL

✓ **Right shares**

➤ If received

Nil cost of right

➤ If exercised

- Cost of right shares
- Cost of right shares and cost of right if any

Sec-51 Advance money forfeited

To be red used from cost of acquisition

Concept of Indexation

The benefit of indexation is available for long term capital assets it is not allowed for short term capital assets, Depreciable assets and bonds and debentures (even if they are held as a long term capital assets)

When current owner acquire capital assets from the previous owner is non-taxable transfer. The holding period of the current owner shall also include the holding period of the previous owner or owners. The cost of acquisition of for the current owner shall be cost to that previous owner, actually paid for capital assets at sec 49(1) However the benefit of indexation shall be allowed only for the holding period of the current owner.

ICOA= Cost of acquisition *CII for the year of transfer

CII for the year of acquisition by current owner only or PY 1981-82 (WIL)

CII- Cost inflation index

Cost of improvement

- ✓ Before 1-4-1981-Not allowed (Current or previous)
- ✓ After 1-4-1981-Allowed (current or previous)

ICOI = Cost of improvement*CII year of transfer

CII for the year of Improvement

Sec-10(36) LTCG

- Capital assets = Equity shares
- Company listed in recognised stock exchange in India
- Purchase on after 1-3-2003 but before 1-3-200

Sec-10(38) LTCG

- Same as condition Mentioned in Sec 111A

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Example-

1-8-2003- purchase 1000 equity shares of RIL

1-9-2003- Bonus Equity shares 200

11-10-2014- Sale of 1200 share

ANS-

LTCG

- 1000, shares Exempt u/s 10(36)
- 200, bonus shares
 - ✓ Sold via recognised stock exchange and STT paid-Exempt u/s-10(38)
 - ✓ If sold directly to Buyers-Taxable u/s 112.

Sec-10(37) STCG / LTCG

Condition	Individual and HUF
Capital assets	Urban agricultural land
Agricultural purpose	Minimum 2 years preceding date of transfer by individual, parents, member of HUF
Transfer	Compulsory acquisition
Compensation received on or after 1-4-2004	

Sec-50B Slump sale

- When units or division of business is sold on a going concern basis for a lump sum price the transaction is described as slump sale.
- In this case the value of individual assets and liabilities are not consider while determining the value of assets.
- The criteria of 36 months shall be used to determine the capital assets as short term or long term.
- The net worth of the units shall be the cost of acquisition which is called as follows.

Assets related to the units

- Depreciable assets= opening WDV+ addition during the period (as per income tax)
- Assets u/s 35AD-NIL
- Other assets-book value xxx
 Liability related to the unit (xxx)
 Net worth of the units xxx

(Excuse revaluation reserves no indexation available)

Transfer of shares / debenture by a non resident

- This method of calculating will apply if the following condition are satisfied
 - ✓ The transfer is a non resident
 - ✓ The capital assets is 'listed' share and debentures of the Indian company
 - ✓ The capital assets was purchased using foreign currency
- The full value consideration and transfer expenses are converted into foreign currency by using the average rate on the date of transfer. The cost of acquisition is converted into foreign currency by using the average rate on the date of acquisition.

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- Benefit of indexation not allowed average rate

= Buying rate + selling rate

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- The capital gain is reconverted into Indian currency by using the buying rate on the date of transfer.
- As per sec-112 long term capital gain on unlisted shares or debentures for non-resident shall be calculated on Indian currency and the tax rate applicable shall be 10% without indexation.

Certain exemption under section 54

Sec-54

- ✓ Allowed assessee-Individual /HUF.
- ✓ Transfer should be residential house property.
- ✓ Investment should be capital gain on transfer of the above asset.
- ✓ Purchase of another residential house property should be with-in 1 year Before and 2 year after and the construction completed within 3 year after the date of transfer.
- ✓ Assessee should acquire only one house by way of Purchase or construction.
- ✓ Capital gain deposit account scheme applicable.

Sec-54B

- ✓ Transfer should be urban agricultural land.
- ✓ Allowed assessee individual /HUF
- ✓ Investment should be capital gain on transfer of the above asset.
- ✓ Assessee can acquire land any-where in India for agricultural purpose, I e Rural as well as urban area, within 2 year after the date of transfer.
- ✓ It must have been used in the 2 years immediately preceding the date of transfer for agricultural purpose either by the assessee or his parents.
- ✓ Capital gain deposit scheme account scheme applicable.

Sec-54D

- ✓ Any assessee which is an industrial undertaking
- ✓ Compulsory acquisition of land and building forming part of industrial undertaking.
- ✓ Investment should be capital gain on transfer of the above asset.
- ✓ Assessee can shift the existing industrial undertaking or acquire any other industrial undertaking.
- ✓ The assessee should purchase or construct 3 year after from the date of transfer.
- ✓ Use by the assessee in the immediately preceding 2 years for industrial purpose.

Sec-54EC

- ✓ Any assessee
- ✓ The assets transfer should be a long term capital assets
- ✓ Investment should be capital gain on transfer of the above asset.
- ✓ The capital gain must be invested in specified assets i. e. bonds redeemable after 3 years issued by NHAI or RECL.
- ✓ Assessee should not sell or obtain any loan on the security of such bonds within a period of 3 years from its acquisition.

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Sec-54F

- ✓ Assessee should be individual/ HUF
- ✓ The assets transfer should be a long term capital assets, not being a residential house property,
- ✓ Investment should be Net sales consideration (sales consideration-transfer expenses)
- ✓ Assessee should not be the owner of more than one residential house property other than the new house (option on the date of sale of the original asset)
- ✓ Assessee should acquire only one house property either by way of purchase or construction (can go for expansion on house property purchased)
- ✓ Assessee should not acquire 2nd new house property within one year of sale of the original assets or should not complete construction of second new house property within 3 years of the sale of the original asset.
- ✓ **If amount invested in less than sales consideration, then**
= Gross long term capital gain
Net sales consideration*amount invested

Sec-54G

- ✓ All assessee being an industrial undertaking.
- ✓ Shifting of industrial undertaking from urban area to any other non-urban area.
- ✓ Investment should be capital gain.
- ✓ Within a period of 1 year before or 3 year after from the date of transfer. purchased machinery, plant or acquired building or land or constructed building and completed shifting to the new area.
- ✓ If the cost of the new assets and expenses incurred for shifting are greater than the capital gain, the whole of such capital gain. Otherwise capital gain to the extent of the cost of the new assets.

Sec-54GA

- ✓ All assessee being an industrial undertaking.
- ✓ Shifting of industrial undertaking from urban area to any special economic zone.
- ✓ Investment should be capital gain.
- ✓ Within a period of 1 year before or 3 year after from the date of transfer purchased machinery, plant or acquired building or land or constructed building and completed shifting to the new area.
- ✓ If the cost of the new assets and expenses incurred for shifting are greater than the capital gain, the whole of such capital gain. Otherwise capital gain to the extent of the cost of the new assets.

Sec-54H-Extension of time limit for acquiring new asset.

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

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Sec-54GB

- ✓ Transfer of residential property and investment in equity shares of an eligible company.
- ✓ The assessee individual / HUF
- ✓ Net sales consideration (sales consideration-transfer expenses)
- ✓ Long term asset
- ✓ Subscription to equity shares before the due date of filing return of income u/s 139(1) applicable for all assessee.
- ✓ Special condition
 - The company should be incorporated in the relevant previous year till the due date of filing the return of income u/s 139(1) for the relevant previous year. The company is engaged in business of manufacture of article or thing and qualifies to be small or medium enterprises.
 - The share capital and voting rights of the assessee in this company after subscription to these shares should exceed 50%
 - The “new asset” should be purchased by the company within one year from the date of subscription in equity shares by the assessee.
 - The equity shares of the company as well as new assets acquired by the company should be retained for a period of 5 year from the date of their respective Acquisition, else the provision of miss utilisation would be attracted.

Remarks:

1. if the amount invested in acquisition of “new asset” by the company is less than the net sales consideration then,

$$\text{Exemption} = \frac{\text{(amount actually invested in cost of new asset + amount deposited in the scheme of deposit if need be)}}{\text{Net sales consideration * gross LTCG}}$$

2. if the amount invested in acquisition of “new assets” by the company is equal to or more than the net sales consideration, the gross LTCG is full exempted from tax u/s 54GB
3. Cases on non-utilisation

$$\text{Taxable LTCG} = \frac{\text{Exemption allowed u/s 54GB * unutilised amount in the deposit scheme}}{\text{Total investment i.e. cost of new asset + amount of deposit}}$$

This amount shall be taxable for the assessee in the year in which the period of the 1 year from the date of subscription in the equity shares expires.

4. Case of miss utilisation

In case of miss utilisation, the amount of LTCG, which was exempt earlier for the assessee, shall be taxable as LTCG for the assessee in the year of miss utilisation and the capital gain arising on the transfer of equity shares (For the assessee) and / “new asset” (for the company) shall also be taxable in the year of miss utilisation.

Capital gain account scheme

If the investment in the new asset has been made by the assessee up to the date of filing of return of income for the P.Y., the assessee shall transfer the capital gain to special bank account as per this scheme on or before the filing of return of income. The amount so transferred to the special bank account shall be consider as a “cost of the new asset” for calculation of exemption.

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The amount in the special bank account should be utilised by the assessee for investing in the new asset after the date of filling return but up to the time limit specified in section.

If any amount remains unused in a special bank account, it is termed as a case of “non-utilisation” and the unutilised amount shall be taxable as a capital gain in the year in which the time limit of the section expires.

Any interest accrued on the amount deposited in the special bank account shall be taxable for the assessee as “Income from others sources”.

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