

Capital Gains Income Tax Guide AY 2021-22

Profits or gains arising from transfer of a capital asset are called "Capital Gains" and are charged to tax under the head "Capital Gains". Income from capital gains is classified as "Short Term Capital Gains" and "Long Term Capital Gains".

1. Capital Asset Definition

Capital Asset defined as

1. Any kind of property held by an assessee, whether or not connected with business or profession of the assessee.
2. Any securities held by a FII which has invested in such securities in accordance with the regulations made under the SEBI Act, 1992.

The following items are excluded from the definition of "capital asset":

1. Stock in Trade: Any stock-in-trade (other than securities referred to in (b) above), consumable stores or raw materials held for the purposes of his business or profession.
2. Personal effects, that is, movable property (including wearing apparel and furniture) held for personal use by the taxpayer or any member of his family dependent on him, but excludes.
 - a. Jewellery
 1. Ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stones, and whether or not worked or sewn into any wearing apparel.
 2. Precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel.
 - b. Archaeological collections
 - c. Drawings
 - d. Paintings
 - e. Sculptures
 - f. Any work of art

3. Rural Agricultural Land : Agricultural Land in India, not being a land situated:

1. Within jurisdiction of municipality, notified area committee, town area committee, cantonment board and which have a population of not less than 10,000.
2. Within range of following distance measured aerially from the local limits of any municipality or cantonment board:
 - i. Not being more than 2 KMs, if population of such area is more than 10,000 but not exceeding 1 lakh
 - ii. Not being more than 6 KMs, if population of such area is more than 1 lakh but not exceeding 10 lakhs, or
 - iii. Not being more than 8 KMs, if population of such area is more than 10 lakhs. Population is to be considered according to the figures of last preceding census of which relevant figures have been published before the first day of the year.
4. Specified Gold Bonds : 6 1/2 per cent Gold Bonds, 1977 or 7 per cent Gold Bonds, 1980 or National Defence Gold Bonds, 1980 issued by the Central Government
5. Special Bearer Bonds, 1991
6. Gold Deposit Bonds issued under the Gold Deposit Scheme 1999 or deposit certificates issued under the Gold Monetisation Scheme, 2015
7. Sovereign Gold Bond Scheme issued by RBI are 100% tax free at the time of redemption. more on [How GOLD help you afloat in a turbulent economy and its tax impact](#)

2. Short Term Capital Gains (STCG)

2A. Period of holding for short term capital gains:

In respect of certain assets like shares (equity or preference) which are listed in a recognised stock exchange in India (listing of shares is not mandatory if transfer of such shares took place on or before July 10, 2014), units of equity oriented mutual funds, listed securities like debentures and Government securities, Units of UTI and Zero Coupon Bonds, the period of holding to be considered is 12 months instead of 36 months.

Period of holding to be considered as 24 months instead of 36 months in case of unlisted shares of a company or an immovable property being land or building or both.

Any other capital asset held by the taxpayer for a period of not more than 36 months immediately preceding the date of its transfer will be treated as short-term capital asset.

2B. Short-term capital gains (STCG) are divided into 2 types:

1. Short-term capital gains covered under section 111A.
2. Short-term capital gains other than covered under section 111A.

2C. STCG covered under section 111A

1. STCG arising on sale of equity shares listed in a recognised stock exchange, which is chargeable to STT.
2. STCG arising on sale of units of equity oriented mutual fund sold through a recognised stock exchange which is chargeable to STT.
3. STCG arising on sale of units of a business trust
4. STCG arising on sale of equity shares, units of equity oriented mutual fund or units of a business trust through recognised stock exchange located in any International Financial Services Centre and consideration is paid or payable in foreign currency even if transaction of sale is not chargeable to securities transaction tax (STT).

2D. STCG other than covered under section 111A [As amended by Finance Act, 2018]

1. STCG arising on sale of equity shares other than through a recognised stock exchange.
2. STCG arising on sale of shares other than equity shares
3. STCG arising on sale of units of non-equity oriented mutual fund (debt oriented mutual funds).
4. STCG on debentures, bonds and Government securities.

5. STCG on sale of assets other than shares/units like STCG on sale of immovable property, gold, silver, etc.

2E. Tax Rates on STCG:

1. Tax rates of STCG covered under section 111A is charged to tax @ 15% (plus surcharge and cess as applicable).
2. Normal STCG, i.e., STCG other than covered under section 111A is charged to tax at normal rate of tax which is determined on the basis of the total taxable income of the taxpayer.

Note: NRIs with Capital Gains & applicability of Basic Exemption Limit

1. Only a resident individual and resident HUF can adjust the exemption limit against STCG covered under section 111A. Thus, a non-resident individual/HUF cannot adjust the exemption limit against STCG covered under section 111A.
2. The benefit of basic exemption is available only to resident individual/HUF. Non-residents cannot avail the basic exemption limit.
3. In the case of resident individuals/HUF, if the basic exemption limit is not fully exhausted by other income, then short term capital gain will be reduced by unexhausted basic exemption limit and the balance would be taxed @ 15%

3. Long Term Capital Gains (LTCG)

3A. Period of holding for Long term capital gains:

1. Any capital asset held by the taxpayer for a period of more than 36 months immediately preceding the date of its transfer will be treated as long-term capital asset.
2. In respect of certain assets like shares (equity or preference) which are listed in a recognised stock exchange in India (listing of shares is not mandatory if transfer of such shares took place on or before July 10, 2014), units of equity oriented mutual funds, listed securities like debentures and Government securities, Units of UTI and Zero Coupon Bonds, the period of holding to be considered is 12 months instead of 36 months.

3. In case of unlisted shares, period of holding is to be considered as 24 months instead of 36 months.
4. An immovable property being land or building or both, period of holding is to be considered as 24 months from AY 2018-19. Before AY 2018-19, the holding period is 36 months.

3B. Computation of long term capital gain:

Particulars	Rs.
Full value of consideration (i.e., Sales consideration of asset)	XXXXXX
Less: Expenditure incurred wholly and exclusively in connection with transfer of capital asset (E.g., brokerage, commission, etc.)	(XXXXXX)
Net sale consideration	XXXXXX
Less: Indexed cost of acquisition (i.e. Purchased cost of asset with indexation)	(XXXXXX)
Less: Indexed cost of improvement, if any (*)	(XXXXXX)
Exemptions provided under sections 54, 54EC, 54F, and 54B	-
Long-Term Capital Gain	XXXXXX

3C. In the above computation indexation means:

Indexation is the process that takes into account inflation from the time taxpayer bought the asset to the time taxpayer sell it. The way it works is that it allows taxpayer to inflate the purchase price of the asset to take into account the impact of inflation. The end result is that you get the benefit of lowering your tax liability.

Formula for calculating the indexation:

Cost of acquisition X Cost inflation index of the year of transfer of capital asset

Cost inflation index of the year of acquisition

3D. Cost Inflation Index (CII) under Section 48

Sl. No.	Financial Year	Cost Inflation Index
1	2001-02	100
2	2002-03	105
3	2003-04	109
4	2004-05	113
5	2005-06	117
6	2006-07	122
7	2007-08	129
8	2008-09	137
9	2009-10	148
10	2010-11	167
11	2011-12	184
12	2012-13	200
13	2013-14	220
14	2014-15	240
15	2015-16	254
16	2016-17	264
17	2017-18	272
18	2018-19	280
19	2019-20	289
20	2020-21	301
21	2021-22 *	317

All the above allowances can be understood by their names but yet there are some allowances, which need an explanation.

3E. Tax Rates on Long Term Capital Gains

1. Sale of equity shares and equity-oriented mutual funds or units of business trust held for more than one year, on or after April 1, 2018 will be chargeable to tax at 10% plus cess @ 4%.

Note: Budget 2018 has increased cess from 3% to 4%. Therefore, cess of 4% will be added for the taxes to be paid from FY2018-19 onwards.

2. Before FY 2018-19, all the STT transaction, equity shares and equity-oriented mutual funds held for more than one year are exempted.
3. No indexation benefit will be allowed on such transactions. However, starting from FY 2018-19, capital gains up to Rs.100000 in a single financial year will be exempt from tax.
4. Long Term capital assets other than sale of STT paid equity shares or mutual funds or property transactions or business trust are taxable @ 20%

4. Exemptions on Long Term Capital Gains (LTCG)

Re-Investment Options: While taking the tax consultation from EZTax.in expert would be beneficial, below are options available to do re-investment to avoid / reduce the capital gains tax

4A. Gain on sale of residential house property (Section 54):

1. All Individuals & HUF are eligible to claim deduction u/s 54
2. There should be a transfer of long term residential house (buildings or lands appurtenant thereto)
3. Quantum of Exemption
 1. If cost of new residential house $\geq$ Long term Capital gain, entire capital gains is exempt
 2. If cost of new residential house $<$ Long term Capital gains, long term capital gain to the extent of cost of new residential house is exempt

4. Where the amount of capital gains exceeds Rs 2 cores: If the capital gains from sale of residential house exceeds Rs 2 cores, then the taxpayer should
 1. Purchase one residential house in India within 1 year before or 2 years after the date of sale
 2. Construct one residential house within a period of 3 years from the date of sale
5. Where the amount of capital gains does not exceeds Rs 2 cores: If the capital gains from sale of residential house does not exceeds Rs 2 cores, then the taxpayer could
 1. Purchase two residential houses in India within 1 year before or 2 years after the date of sale
 2. Construct two residential house within a period of 3 years from the date of sale
6. If above investment is not made before the date of filing Income tax return, the taxpayer should deposit the capital gains amount in Capital Gains Deposit Account Scheme (aka CGAS Scheme)
7. If the new house is sold within 3 years from the date of Purchase or Construction, then the cost of the asset will be reduced by the capital gains exempted earlier for computing capital gains

Important: How long we can keep the Capital Gain in Capital Gains Deposit Account Scheme (aka CGAS Scheme)?

1. You may keep upto 2 years from the date of Sale, when plan to invest in one residential house property.
2. You may keep upto 3 years from the date of Sale, when plan to construct one residential house Property.
3. Beyond the above durations, the money deposited in the CGAS Scheme would attract the capital gains tax.

4B. If the capital gain is invested in long term specified assets of NHAI or Rural Electrification Corporation (Section 54EC):

1. Any Assessee is eligible to claim deduction u/s 54EC
2. There should be a transfer of long term capital asset being land or building or both or depreciable asset held for more than 36 months
3. Quantum of Exemption: Amount of Capital gain or amount invested in specified bonds whichever is lower. The maximum amount of exemption that can be claimed is limited to Rs 50 lakhs
4. The amount of capital gains should be invested in long term specified assets i.e., bonds redeemable after 5 years issued by NHAI, RECL or any other bond specified by Central Government. The investment should be made within 6 months from the date of transfer
5. The Taxpayer should not transfer or convert or avail loan or advance on the security of such bonds for a period of 5 years from the date of acquisition of such bonds

4C. Gain from the sale of an asset other than a residential house property is used to buy a residential house (Section 54F):

1. All Individuals/ HUF are eligible to claim deduction u/s 54F
2. The capital gain should be from a sale of a long term capital asset which is not a residential house. Transfer of Plot is also eligible for exemption
3. Quantum of Exemption:
 1. If cost of new residential house $\geq$ Net Sale of Consideration of original asset, entire capital gains is exempt
 2. If cost of new residential house $<$ Net Sale of Consideration of original asset, only proportionate capital gains is exempt
4. The Taxpayer should purchase 1 residential house within 1 year before the date of sale or 2 years after the date of sale or construct 1 residential house within a period of 3 years

5. If above investment is not made before the date of filing Income tax return, the taxpayer should deposit the capital gains amount in CGAS Scheme
6. The Taxpayer should not own more than one residential house on the date of sale. The Taxpayer should not purchase any residential house within 2 years or construct residential house within 3 years from the date of sale

5. Re-Investment Options - Comparison

Subject	Section 54	Section 54B	Section 54D	Section 54EC	Section 54EE	Section 54F	Section 54G	Section 54GA	Section 54GB
Eligible Taxpayers	Individual and HUF	Individual and HUF	Any person	Any person	Any Person	Individual and HUF	Any person	Any person	Individual and HUF
Capital gains eligible for exemption	Long-term	Short-term or Long-term	Short-term or Long-term	Long-term	Long-term	Long-term	Short-term or Long-term	Short-term or Long-term	Long-term
Capital gains arising from transfer of	Residential House property	Agriculture land used by taxpayer or by his parents or HUF for agriculture purposes in last 2 years before its transfer	Compulsory acquisition of land or building forming part of industrial undertaking (which was used for industrial purposes for at least 2 years before its acquisition).	Any long-term capital asset being Land or Building or Both	Any long-term capital asset	Any long-term asset (other than a residential house property) provided on date of transfer taxpayer does not own more than one residential house property (except the new house)	Land, building, plant or machinery, in order to shift industrial undertaking from urban area to rural area.	Land, building, plant or machinery, in order to shift industrial undertaking from urban area to SEZ.	Residential property (house or a plot of land) Note: Provisions of this section shall not apply to any transfer of residential property made after March 31, 2017. However, in case of an investment in eligible start-up, the residential property can be transferred up to March 31, 2019.

Subject	Section 54	Section 54B	Section 54D	Section 54EC	Section 54EE	Section 54F	Section 54G	Section 54GA	Section 54GB
Assets to be acquired for exemption	One residential house property Two residential house property Note: w.e.f., Assessment Year 2020-21, as assessee can claim section 54 exemption by making investment in two residential house property. However, the assessee can acquire two houses only if the amount of long-term capital gain doesn't exceeds Rs. 2 crores. If the assessee exercises this option, he shall not be subsequently entitled to exercise the option for the same or any other assessment year, i.e., the assessee can exercise this option only once in a lifetime.	Agricultural land (may be in urban area or rural area)	Land or building for shifting or re-establishing said industrial undertaking	Bond of NHAI or REC, etc.	Units of such fund as may be notified by Central Government to finance Start-ups	One residential house property	Land, building, plant or machinery, in order to shift industrial undertaking to rural area.	Land, building, plant or machinery, in order to shift industrial undertaking to SEZ.	Subscription in equity shares of an eligible company. Note: 1. W.e.f. April 1, 2017, eligible start-up is also included in definition of eligible company. 2. The eligible company should utilize the amount of subscription for purchase of new assets (i.e., plant and machinery except vehicle, office appliances, computer or computer software etc.). However, In the case of eligible startup, the new asset shall include computers or computer software.

Subject	Section 54	Section 54B	Section 54D	Section 54EC	Section 54EE	Section 54F	Section 54G	Section 54GA	Section 54GB
Time limit for acquiring the new assets	Purchase: within 1 year before or 2 years after date of transfer Construction: within 3 years after date of transfer	Within 2 years after date of transfer	Within 3 years from date of receipt of compensation	Within 6 months from date of transfer	Within 6 months after the date of transfer of original asset	Purchase: within 1 year before or within 2 years after date of transfer Construction: within 3 years after date of transfer	within 1 year before or 3 years after date of transfer	Within 1 year before or within 3 years after date of transfer	Investment by the assessee - Before due date for furnishing of return under Section 139(1). Investment by the company - Within 1 year from date of subscription.
Exemption Amount	Investment in new assets or capital gain, whichever is lower	Investment in agricultural land or capital gain, whichever is lower	Investment in new assets or capital gain, whichever is lower	Investment in new assets or capital gains, whichever is lower, however, subject to Rs. 50 lakhs limit	Investment in new assets or capital gains, whichever is lower, however, subject to Rs. 50 lakhs limit	Investment in new assets X capital gain/net consideration	Investment in new assets or capital gain, whichever is lower	Investment in new assets or capital gain, whichever is lower	Investment in new assets X capital gain/net consideration
Withdrawal of exemption	If new asset is transferred within 3 years of its acquisition	If new asset is transferred within 3 years of its acquisition	If new asset is transferred within 3 years of its acquisition	If new asset is transferred or it is converted into money or a loan is taken on its security within 5 years of its acquisition	If new asset is transferred within a period of 3 years from the date of its acquisition. Note: Where assessee takes loans or advance on security of such specified asset, he shall be deemed to have transferred such asset on	a. If new asset is transferred (purchased) within 3 years of acquisition b. If another residential house is purchased within 2 years of transfer of original asset c. If another house is construct	If new asset is transferred within 3 years of acquisition	If new asset is transferred within 3 years of acquisition	If equity shares in company or new asset acquired by company is sold or transferred within a period of 5 years from date of acquisition.

Subject	Section 54	Section 54B	Section 54D	Section 54EC	Section 54EE	Section 54F	Section 54G	Section 54GA	Section 54GB
					the date on which such loan or advance is taken.	ed within 3 years of transfer of original asset			
Deposit in Capital gains deposit scheme before due date under Section 139(1)	Yes	Yes	Yes	No	No	Yes	Yes		