Income from capital gain

Sec. 45-55 B

Sec. 45:- Charging Sections:-
Any gain or loss arising on transfer of a capital assets made by the assessee is chargeable under this head.

Analysis:-On analyzing the above definitions it is found that the 3 conditions given below must be satisfied-

I. There must be capital assets.
II. Assets must be transferred
III. There must be gain or loss

Meaning of Capital Assets:-As per **Sec..2(14)** Capital Assets **Excludes:-**

1. Stock of business or stock in trade
2. Rural agricultural land (in India)
   Urban land means :- i) Land having population more than 10000.
   ii) Area upto 8 km surrounding by 10000 or more populations.
3. Personal items:- personal items would means any movable property held for personal use however, following assets shall be excluded from personal assets:-
   a) Jewellary
   b) Work of art.
   c) Artheological collection
4. Certain Bonds
   Gold Bonds.
   Defence Bonds.
   Capital Investment Bonds.

PERSONAL ASSETS

A) Immovable property:- It is not a personal assets therefore, it is a capital assets hence taxable

B) Movable property:- i) Jewellary, art collection:- it is not a personal assets therefore, it is a capital assets hence taxable

ii) Other Items:-1) Held for personal use—It is a personal item, hence not taxable.
2) Not held for personal use—It is not a personal assets therefore, it is a capital assets hence taxable.

Analysis of 2nd condition:- Assets must be transferred— Meaning of Transfer:-
As per Sec.2(47), Transfer Includes—
1) Sale of Assets
2) Exchange of Assets
3) Compulsory Acquisition, under any law
4) Relinquishment (to leave) / Extinguishment (to end) of any assets or rights in assets.
5)
6)

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7)
8)
however u/s 47 transfer excludes certain situations.

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Analysis of 3rd condition— There must be gain or loss.
There are 2 (two) types of gains or losses.
1) Short term gain/loss.
2) Long term gain/loss.

How to decide short term & long term gain/loss.

S. No.	Assets	Short term	Long term
1	Shares (both) of private co. or public co.{listed or unlisted Indian or Foreign}	If held by the assessee upto 12 months	If held by the assessee more than 12 months.
2	Listed security (debenture, bond etc.,)	- D O -	- D O -
3	Units of U T I.	- D O -	- D O -
4	Mutual funds u/s 10 (23D)	- D O -	- D O -
5	ZCB (zero coupan bonds)	- D O -	- D O -
6	Any other (land, building, plant No listed	If held by the assessee upto 36 months	If held by the assessee more than 36 months.

How to calculate short term capital gain:-

	Sale proceeds	xxxx
Less:-	Cost of acquisition	(xxx)
Less:-	cost of improvement	(xxx)
Less:-	cost of transfer	(xxx)
	Short term capital gain =	XXX

How to calculate long term capital gain:-

	same process upto short term capital gain	XXX
Less:-	indexed cost of acquisition	(xxx)
Less:-	indexed cost of improvement	(xxx)
Less:-	indexed cost of transfer	(xxx)
	Long term capital gain =	XXX

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***Sec.47- transaction excluded from transfer** (no tax on these transactions)*

Transferor (by whom)	Transferee (to whom)	Transferred asset	Reason of transfer	Additional points
1) HUF	MEMBERS	ANY	PARTITION	NIL
2) COMPANY	SHARE HOLDERS	ANY	LIQUIDATION	NIL
3) ANY PERSON	ANY PERSON	ANY	BY GIFT/ WILL/ CREATING TURST	NIL
4) AMALGAMAT-ING COMPANY (OLD CO.)	AMALGAMATED CO. {**NEW CO. AND *MUST BE INDIAN CO.***}	ANY	AMALGAMATION	NIL
5) SHARE HOLDERS OF AMALGAMAT-ING CO.	- N A -	SHARES OF AMALGAM-ATING CO.	AMALGAMATION	1) The transferor sl received *only share* nothing else. 2) The new co. mu an Indian co.
6) DEMERZED CO. (OLD CO.)	RESULTING CO. ***{NEW CO., INDIAN CO})***	ANY	DEMERZER	NIL
7) SH. HOLDERS OF DEMERZED CO.	- N A -	SH. OF DEMERZED CO.	DEMERZER	1) The transferor sl receive only shares
8) 100% HOLDING CO.	100% SUBSIDIARY CO. ***{MUST BE AN INDIAN CO.}***	ANY	NIL	NIL
9) 100% SUBSIDIARY CO.	100% HOLDING CO.	ANY	NIL	NIL
10) PROPRIETORY CONCERN	COMPANY	**ALL**	CONVERSION	1) All assets & liab must be transferred 2) The proprietors should receive only share and nothing e 3) The sh holding c proprietorship coul minimum 50% of v power of the co. & should continue for yrs.

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11) PARTNERSHIP FIRM	COMPANY	**ALL**	CONVERSION	1) All assets & liab must be transferred 2) The partners cou receive only share capital ratio. 4) The aggregate sl holding of partners should be minimur of voting power of co. & it should con for at least 5 yrs
12) NON CORPO-RATE STOCK EXCHANGE	CORPORATE STOCK EXCHANGE	**ALL**	CORPORATISAT-ION / DEMITUALI-ZATI ON	1) All assets & liab must be transferred 2) The corporation demutualization mu done as per notifica of govt.
13) MEMBERS OF NON CORPORATE STOCK EXCHANGE. (eg., srspl, emkay shares etc.,)	- N A -	**MEMBER-SHIP OF non corporate Stk. Exchange**	CORPORATISAT-ION / DEMITUALI-ZATI ON	1) The corporation demutualization mu done as per notifica of govt. 2) The transferor sl receive only shares trading right / card
14) SICK INDUSTRIAL UNITS .	ANY	**LAND**	THE SCHEME PREPARED BY ****BIFR.***	1) The transfer sho made during the sic period.
15) NON RESIDENT	NON RESIDENT	**#GDR/FCC B ISUUED BY INDIAN CO.**	- N A -	1) The transaction should be made ou India.
16) FOREIGN CO. (AMALGMATING CO.)	FOREIGN CO. (AMALGMATED CO.)	**SH. OF INDIAN CO. (ONLY SH.)**	AMALGMATION	1) The capital gain should not be taxab foreign country. 2) Minimum 25% s holders of transfero should becomes sh holders of transfere
17) FOREIGN CO. (DEMERZED CO.)	FOREIGN CO. (RESULTING CO.)	**SH. OF INDIAN CO. (ONLY SH.)**	DEMERZER	1) The capital gain should not be taxab foreign country. 2) Minimum 75% s

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				holders of transfer should becomes sh holders of transfere
18) ANY PERSON	CERTAIN ORGANISATIONS (EG. UNIVERSITY, MUSUEM, INDRA GANDHI ART CENTRE ETC.,)	**CERTAIN ITEMS (EG. PAINTING, DESIGN, ART COLLE-CTION, HISTORICAL ITEMS ETC.**	- N A -	- N A -

19) CONVERSION OF DEBENTURES, BONDS, DEBENUTURE, STOCK OF DEPOSIT CERITIFICATES INTO SHARES OR DEBENTURES OF THAT CO.

**** BIFR = BOARD OF INDUSTRIAL & FINANCE RECONSTURCTION***
 # GDR & FCCB = GLOBAL DEPOSITORY RECEIPTS AND FOREIGN CURRENCY CONVERTAIBLE BONDS.

Information required for practical questions:-

- DOAH = DATE OF ACQUISATION FOR HOLDING PERIOD.
- DOAI = DATE OF ACQUISATION FOR INDEXSATION.
- DOI = DATE OF IMPORVMENT.
- DOT = DATE OF TRANSFER.
- TY = TAXABILITY YEAR.
- COA = COST OF ACQUISATION.
- COI = COST OF IMPROVEMENT.
- COT = COST OF TRANSFER.
- SP = SALES PROCEEDS.

SOME FORMULAS:--

a) Holding Period = FROM DOAH –TO- DOT
b) Indexed cost of acquisition = COA * $\frac{\text{Index of DOT}}{\text{Index of DOAI.}}$

c) Indexed cost of improvement = COI * $\frac{\text{Index of DOT}}{\text{Index of DOI.}}$

Special rules for assets acquired before April 1st, 1981.

1) The Assessee has option to take actual cost of acquisition or fair market value as on April 1st, 1981. whichever is higher.

2) Cost of improvement incurred before 1st April, 1981 shall be ignored.

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