May God Bless You

Capital Gains – Quick Revision (CA Final / pcc Exam Oriented)

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Section 45 - Chargeability

- There must be a capital asset
- Which should be transferred
- Profit or gain should arise as a result of transfer

Capital asset does not include

1. Stock in trade
2. Personal effects
3. Agriculture Land not situated within Specified Area (Municipality/Corpn - 8kms)
4. Gold bonds issued by Cent Govt.
5. Special bearer bonds

Transactions not considered as Transfer – Section 46 and 47

1. **First 3 Transfers related to end time of Company; Individual; HUF.**

    1. Distribution of Assets by Company to its shareholders at the time of Liquidation. [In the case of shareholder it is a transfer]

    2. Transfer of Capital Asset under gift/ will/ inheritance/ irrevocable Trust.

    3. Distribution of Assets by HUF to its members at the time of Partition.

2. **Next 2 Transfers between Holding Company and Subsidiary Company.**

    - Transfer of Capital Asset by Hol. Co to Sub.Co
    - Transfer of Capital Asset by Sub.Co to Hol.Co

    Conditions;

    a. Hol.Co shall hold 100 % shares of Sub.Co.
    b. Asset receiving company should be an Indian Company (Hol.Co/Sub.Co.)

3. **Next 4 Transfers related to Amalgamation**

    1.Transfer of Cap.Asset by Amalgamating Co. to Amalgamated Co. provided Amalgamated Co. is an Indian Co.

    2. Transfer of shares by shareholders of Amalgamating Co. in consideration of new shares in Amalgamated Co. [consideration must be received only in shares]

    3. Amalgamating Foreign Co. transfers shares held in an Indian Co. to the Amalgamated Foreign Co. Provided;

    - At least 25 % of shareholders of Amalgamating Fgn.Co. shall continue to be shareholders of the Amalgamated Fgn.Co.

    - Such transfer does not attract capit. gain Tax in the country of Amalgamating Co.

4. Transfer in a scheme of Amalgamation of a Banking Co. with a Banking Institution, Sanction and sanctioned and brought into force by the Central Govt.

4. Next 3 Transfers related to De merger

1. Transfer by Demerged Co. to Resulting Co. in a scheme of Demerger provided the Resulting Co. is an Indian Co.

2. Transfer of shares by shareholders of Demerged Co. in consideration of shares of Resulting Co.

3. Demerged Foreign Co. transfers the shares held in Indian Co. to the Resulting Foreign Co. provided;

   - Shareholders holding 75% in value of shares of Demerged Co. shall continue to be shareholders of Resulting Co.
   - Such transfer does not attract capit. gain tax in the country of Demerged Co.

5. Next 2 Transfers Conversion of Securities

1. Conversion of Debentures or Deposits Certificates into shares or Debentures of the same Co.

2. Conversion of Foreign Currency Exchangeable Bond (FCEB) into shares or debentures in a Co.***[Finance Act 2008]***

6. Next 2 Transfers Succession of Business – of Firm and Proprietary

1. Succession of Firm's business by a company, provided

   - All assets and liabilities to be transferred to the Co.

   - All partners shall become shareholders having not less than 50% of total voting power and shall continue it for next 5 years.

   - Consideration must only be in shares.

2. Proprietary Concern is succeeded by a company – Conditions same as above

7. Others

1. Transfer of Capital asset being Work of Art, Scientific or Art collection, Books, Paintings etc to Govt., University, National Art Gallery or Museum.

2. Transfer of Bonds or GDR or Shares of a Public Sector Co. purchased in Foreign Currency made outside India between non-residents.

3. Transfer of Land by a Sick Industrial Co. where the Co. is managed by Workers' Co-operative.

4. Lending of Securities which is subject to guidelines issued by SEBI / RBI.

5. Transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by Central Govt.***[Finance Act 2008]***

Subsequent Condition - All the above assets shall not be transferred within 8 years

Section 45 (1A) – Insurance Claim received for Damage or Destruction of Capital Asset

Profit arising from Insurance Compensation is Taxable, Provided;

- Compensation is received because of Damage or Destruction of Capital Asset which cannot be repaired and re-used.

- Damage or Destruction is due to the following 4 reasons,

    - Flood / cyclone / other natural calamities
    - Riot / civil disturbance
    - Fire explosion
    - Enemy action.

Special Cases of Full Value of Consideration (FVC)

1. Conversion of Capital Asset into stock in trade

- FVC – Market Value as on the date of Transfer
- Capital Gain – calculated only in the year in which stock is sold or transferred
- Business Income – Difference between FVC and Actual Selling Price

2. Transfer between Partner and Firm and vice versa

- Partner transfers to Firm, then capital gain arises to Partner, FVC – Book Value (in firm's books)
- Firm transfers to Partner, capital gain arises to Firm, FVC – Market value as on date of Transfer

3. Distribution of Assets by Company to its shareholders at the time of Liquidation

- Capital gain arises to shareholder, FVC – [Market value of Asset+ Money received – Deemed dividend]

Special Cases of Cost of Acquisition (COA)

1. Assets acquired prior to 01.04.1981

- COA – Fair Market Value (FMV) as on 01.04.1981 or Actual Cost
- FMV substitution not applicable to Tenancy right, Route permit and Depreciable Asset.
- If FMV is taken, improvement cost prior to 01.04.1981 cannot claim.

2. Cost of Previous Owner

Assets acquired under any of the following method is transferred subsequently, then the COA will be the cost of Previous Owner.

- Distribution of Assets by HUF to its members at the time of Partition
- Transfer under gift/ will/ inheritance etc.
- Transfer between holding Co. and Sub.Co. if conditions are satisfied
- Self acquired property is converted into joint family property
- Transfer under scheme of Amalgamation

Points to be remembered,

- cost of improvement done by previous owner can be claimed
- to determine long term or short term, period of holding of previous owner shall be taken

3. Conversion of Debentures into shares of the same Company and these shares then transferred

- COA – cost of acquisition of debentures which has been apportioned towards shares Will be the COA of shares.
- To determine long term or short term the period of debenture shall not be taken.

4. Goodwill

- Self generated goodwill – COA to be taken as Nil.
- Purchased goodwill – COA will be Purchase Price

Points to be remembered,

- Cost of improvement is Nil
- If professional firm transfers its self generated goodwill then no capital gain
- No capital gain on Notional transfer of goodwill (eg; Admission of a Partner)

5. Tenancy Right / Route Permit etc

- Self generated – COA to be taken as Nil
- Purchased - COA will be Purchase Price
- Actual expenses of improvement can be claimed

6. Bonus Shares – COA to be taken as Nil

7. Right Shares / Right Entitlement

- COA of Right Shares – Cost incurred by assessee for obtaining Right Share
- COA of Right Entitlement – to be taken as Nil.

8. Compulsory Acquisition

- Capital gain to be calculated in the first year in which initial compensation or part thereof is received for the first time, and the Initial compensation declared shall be the FVC.
- Capital gain on Enhanced compensation to be calculated in the first year in which enhanced compensation or part thereof is received.
- While calculating CG on Enhanced Compensation COA and Improvement shall be taken as Nil.

9. Advance Money Received and Forfeited

- Advance money or other sum received and forfeited by assessee to be reduced from COA
- Advance money or other sum received and forfeited by previous owner not to be reduced from COA

10. Mortgage created by previous owner

- Amount paid by the successor to clear off the mortgage to be the COA
- Mortgage created by the assessee himself cannot form part of COA

11. Transfer of shares in Amalgamated Company

- After amalgamation if the amalgamated shares (New shares) are transferred, capital gain will arise and the COA of these shares will be the COA of Amalgamating Co. Shares (original cost of old shares)
- Period to determine long term or short term will be from the date of acquisition of Amalgamating Company Shares.

12. COA of shares in the resulting company in a scheme of Demerger

- COA of Resulting Co. = COA of shares of Demerged Co $\times$ $\dfrac{\text{Net Book Value asset transferred}}{\text{Net worth of the Demerged Comp Immediately before demerger}}$
- While determining period, the period for which shares held in demerged Co. shall also be considered.

13. COA of Original shares of the Demerged Co. after demerger

- COA = Original COA – Cost of acquisition determined in respect of resulting Co. above.

<u>CASES WHERE COA IS TAKEN AS NIL</u>

a. Self Generated Goodwill
b. Tenancy Right
c. Bonus Shares
d. Right Entitlement to Right Issue
e. Loom hours
f. A trade mark / brand name associated with business
g. Right to manufacture any article or thing

Special Cases of Computations

A. Computation of Capital Gain in the case of Non- residents

- Compute capital gain in foreign currency
- Convert capital gain computed above into Indian Rupee
- No indexation is applicable
- If buying and selling rate given use average rate up to finding Capital gain and use buying rate to convert the capital gain into Indian Rupee.
- Exemption U/s 115 F
  If net sale proceeds or part there of is invested within 6 months in any of the following assets, and shall hold for 3 years

    a. Shares in an Indian Co.
    b. Debentures of an Indian Public Sector Co.
    c. Govt. Securities
    d. NSC
    e. Deposit with an Indian Co.

$$\text{Amount of Exemption} = \text{Long Term Capital Gain} * \frac{\text{Amount Invested in above assets}}{\text{Net sale Consideration}}$$

B. Capital Gain in case of Depreciable Assets – Section 50

- Capital gain arises only when Depreciation cannot be calculated
- It may arise when all the assets in the block are sold for a value which is more than or less than the value of the block
- It may also arise when one or more assets in the block are sold for a value which is more than the value of the block.
- Capital gain under this section is always short term in nature
- No indexation is applicable
- Computation format

	F. V. C		***
Less			
	1. expense for transfer	***	
	2. Opening W.D.V of Block	***	
	3. Actual cost of additions during the year	***	
		____	****

	Short term capital gain		***
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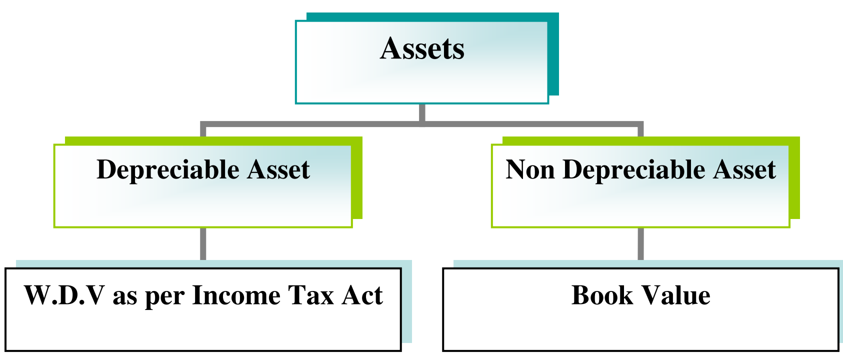
C. Slump Sales (business unit / division sold for lump sum consideration)

- Net worth of the business can be considered as cost of acquisition and improvement
- Net worth = Assets – Liability
- Value of Assets shall be taken as follows



- Change in value of assets due to revaluation shall not be considered
- No indexation is applicable
- In determining long term or short term period of existence of undertaking shall be considered and not that of individual assets

NO INDEXATION BENEFIT

a. short term capital assets
b. Bond and Debentures
c. Slump Sales
d. Sale of shares by non residents
e. Option of 10% tax rate u/s 112 availed

Section 50 C – Capital gain on sale of property at less than Govt.Value

In case of land, building or both is sold for a value which is less than the value determined for stamp duty purpose, then value for stamp duty purpose will be considered as Full value of Consideration.

Deductions – [Section 54, 54B, 54D, 54F, 54G, 54GA, 54EC]

Section 54 – CG on Transfer of *Long term Residential House Property*

- Claim Only by Individuals / HUF
- CG or part to be utilized for purchase (1year before transfer or 2 year after transfer) or construction (3 year from the date of transfer) of another residential house property.
- Amount propose to be utilized should be deposited in CG A/c Scheme on or before the due date of filing of return (if not utilized within 3 year then taxed as LTCG on expiry of 3 year)
- Total deduction = amount utilized + amount deposited in CG A/c Scheme
- Newly acquired house property should not be transferred within 3 year from acquistn.

Section 54 F – CG on Transfer of *Cap.Asset other than House Property*

- Claim only by Individuals / HUF
- Assessee should not own more than one Residential House Property on the date of transfer
- Net sale proceeds or part there of should be utilize for purchase (1 yr / 2 yr) or construction (3 yr after) of another One Residential House Property.
- Deduction = Gross Capital Gain * $\frac{\text{Amt deposited + Utilized}}{\text{Net sale proceeds}}$
- Assessee should not purchase or construct another residential house property other than the qualifying house within the stipulated time.
- Unutilized amount in CG A/c Scheme will be taxed as follows

$$\text{Gross Capital Gain} * \frac{\text{Unutilized Amount}}{\text{Net Sale Proceeds}}$$

Section 54 B – CG on transfer of *Land used for Agricultural Purpose*

- Claim only by Individuals
- Land transferred must be utilized for agriculture purpose for minimum 2 years prior to transfer.

- CG or part there of to be utilized for purchase another agricultural land within 2 years
- Total deduction = amount utilized + amount deposited in CG A/c Sheme
- Newly acquired agr.land should not be transferred within 3 year from acquistn
- Unutilized amount in CG A/c Scheme will be taxed on the expiry of 2 years.

Section 54 D – CG on *Compulsory Acquisition of Land & Building forming part of Industrial Undertaking*

- Applicable to all assesses and both long term and short term CG
- Land and Building should be used for Industrial Purpose for a minimum period of 2 years
- CG or part to be utilized for acquisition of another land and building for shifting original undertaking or setting up another one within 3 year from date of compulsory acquisition.
- Total deduction = amount utilized + amount deposited in CG A/c Scheme
- Newly acquired assets should not be transferred within 3 year
- Unutilized amount in CG A/c Scheme will be taxed on the expiry of 3 years

Section 54 G – CG on transfer of assets in the case of *shifting of Industrial Undertaking from urban area to rural area*

- Applicable to all assesses and both long term and short term CG
- Capital asset must be Plant, machinery, building or any right in land or building
- CG should be utilized for purchase or construction (1 yr and 3 yr) of eligible assets
- Total deduction = amount utilized + amount deposited in CG A/c Scheme
- Newly acquired assets should not be transferred within 3 year

Section 54 GA – CG on transfer of assets in the case of *shifting of Industrial Undertaking from urban area to Special Economic Zone*

Provisions same as above

Section 54 EC – Deduction for all Long term CG

- Applicable to all assesses
- CG or part there of should be invested within 6 months from the date of transfer in 3 year bonds of National Highway Authority of India (NHAI) or Rural Electrification corporation Ltd (REC).
- Maximum amount that can be deposited in a financial year is Rs.50 lacs
- The above bonds should not be transferred or converted into money within 3 year. If violates the CG exempted earlier will be retaxed.

Tax Rate for Capital Gains

Tax on LTCG - @ 20% [Section 112]

- ndividuals and HUF can claim unutilized Basic exemption against LTCG
- Chapter VI A deduction cannot be claimed against LTCG

Tax for STCG – Normal Rates

Exemption U/s 10 (38) - Conditions

- **LTCG** on transfer of equity shares or units of equity oriented mutual fund
- It must be a listed one
- Transaction is subject to Securities Transaction Tax and through a Recognized Stock Exchange

If the above conditions are satisfied and the CG is short term, then the STCG will be taxed at a reduced rate of 15 % as per section 111 A ***[Finance Act 2008 increased from 10 to 15]***

+++++++++++++++*Wish you all Success*++++++++++++++

It is not a detailed one , just for a revision.