

For (i) to (v)

- **Sec. 49(1)**: COA of previous owner and COI of previous owner and transferee.
- **Sec. 2(42A)**: POH of previous owner to be considered CII for the year when asset was first acquired by previous owner. (Manjula J. Shah)
- **Sec. 55**: Option to take FMV as on 1.4.81 is available.

For (iv) and (v) only

- **Sec. 47A**: If before expiry of 8 years, capital asset is converted as stock in trade of transferee company or holding company cease to hold entire share capital of subsidiary company, exemption under section 47 is withdrawn, then capital gain is taxable in the hands of transferor company in the previous year in which transfer took place.
- **Sec 155**: If 47A is attracted, Assessing officer shall amend order under section 154 within 4 P.Y from end of PY when condition is contravened
- **Sec. 49(3)**: When 47A attracted COA for transferee shall be price at which asset is transferred.

For (i) (ii) and (iii)

- **Sec. 43C**: Capital asset transferred as SIT, COA of SIT = COA in hands of transferor + COI by transferor and transferee ⊕ expenditure on such transfer

## Summary

Holding to subsy / subsy to holding

Capital asset as capital asset.

Sec. 47 + Sec. 49(1) + Sec. 2(42A) + Sec 55 + Sec 47A  
+ Sec 45(2) + Sec 155 + Sec 49(3)

Capital asset as stock in trade : Sec 47 exemption  
not available.

- Amalgamating Company → Amalgamated Company
- Partition of HUF → Members
- Gift, will irrevocable trust →

Capital asset as Capital asset : Sec 47 + Sec 49(1) + Sec 2(42A)  
+ sec 55

Capital asset as stock in trade : Sec 47 + Sec 43c

- Bonds, debenture stock or deposit conversion → share/  
debenture of that co.
- Bonds u/s 115AC conversion → debenture of any company
- Firm converted → company, provided
  - (a) All assets and liabilities of firm become assets and liabilities of company.
  - (b) All partners of firm become shareholder of company in proportion of their capital account.
  - (c) Partners do not receive any consideration / benefit other than shares of company.
  - (d) Partners shareholding is **not less than 50% of total**

Remarks

voting power and their shareholding continues to be same for a period of 5 years.

- Sole proprietary concern **converted** → company, provided
  - (a) All assets and liabilities of sole proprietary concern become assets and liabilities of company
  - (b) Sole proprietor do not receive any consideration / benefit other than shares of company.
  - (c) Sole proprietor's shareholding is **not less than 50% of total voting power** and their shareholding continues for a period of 5 years.
- any **transfer** of a capital asset, being a **Government Security** carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities, by a non-resident to another non-resident.

→ Legal heir inherits mortgage property pays debt, amount paid is deemed as COI.

→ A mortgage is created by assessee and pays debt thereon. It is not COI for assessee.

→ Purchase a property and raises loan on same day, expenses on loan and interest expense is part of COA.

- Transfer of Co. into LLP

Transfer of capital asset/intangible asset by private company, unlisted public company to LLP or transfer of share held in company by shareholder as a result of conversion into LLP as per LLP Act

Private Company **conversion** → LLP, Provided

Remarks

- (a) All assets and liabilities of company become assets and liabilities of LLP.
- (b) All shareholder before conversion are partner of LLP and capital contribution and profit sharing ratio is in proportion of their shareholding in company.
- (c) Shareholders do not receive any consideration/benefit in any form
- (d) Turnover of preceding 3 financial years does **not exceed 60 lakh rupees.**
- (e) No amount is paid out of balance of accumulated profit in accounts of company for 3 years from date of conversion.
- (f) The total value of assets as appearing in the books of accounts of the company in any of the three previous year preceeding the previous year in which the conversion takes place, should not exceed 5 crore.
- (g) Shareholders shareholding **is not less than 50% of total voting power** and their shareholding continues to be same for a period of 5 years.

➤ Section 47A: Withdrawal of exemption

- Transfer of **shares of Indian Co.** in the scheme of amalgamation of ~~2~~ 2 foreign companies - Sec 47(via) Condition :

a) **At least 25% of the shareholder** of the amalgamating foreign company continue to remain shareholder of the amalgamated foreign company.

And

b) Such transfer does not attract tax in the country in which amalgamating company incorporated.

- Transfer of capital asset being shares of a foreign company [which derive their value substantially from the shares of Indian company, whether directly or indirectly] by amalgamating foreign co. to amalgamated foreign co. in the scheme of amalgamation provided - Sec. 47(viib)

(a) At least 25% of the shareholders of the amalgamating foreign company continues to remain shareholders of the amalgamated foreign co. and,

(b) Such transfer does not attract tax in the country in which amalgamating company is incorporated.

- Transfer of capital asset being shares of amalgamating company by a shareholder in a scheme of amalgamation Provided : Sec. 47(vii)

(a) Amalgamated company is an Indian company

(b) Consideration of allotment to him is shares in amalgamated company.

- Issue of shares by resulting co. to the shareholder of the demerged co. will not regarded as transfer of shares of demerged co. is in the hands of such shareholders Sec. 47(vid)

Remarks

- Transfer of -

(a) Bonds or GDR referred in Sec. 115AC, or

(b) RDB of Indian company, or

(c) Derivative.

Made by NR on a recognized stock exchange located in any international Financial centre (IFSC) and where the consideration paid or payable in Foreign currency.

- Section 45(2A) Transfer of securities by depositories

Transfer of shares by depository, income shall be deemed to be of beneficial owner and cost of acquisition and period of holding shall be on FIFO basis.

Some Important Points

1. Assets used for personal purpose of assessee.
  - T.V, Car, Mobile etc - **Not a Capital Asset. [CGI X]**
  - Jewellery, drawings, paintings - **Capital Asset [CGI ✓]**
2. Gold utensils, Silver Bars, Silver coins were held not to be consider as Personal effect. **[CGI ✓]**
3. Silver utensils held to be Personal effect. **[CGI X]**
4. Car used in the **business** treated as **Capital Asset**.
5. Jewellery **means**;
  - a.) Ornaments made of gold, silver, platinum or any other precious metal or any alloy containing such metals.
  - b.) Precious stones whether or not set in any furniture, utensil or other article.
6. If compensation reduced, AO shall amend order u/s 154 within **4 Years** from end of P.Y when order reducing compensation is passed.

Amendment under the head "Capital Gain"

•> Amendment - 1 : CII for F.Y 2019-20 = 317

•> Amendment - 2 : Capital Gain on Buy-Back of shares

Old Law

Buy-Back

Buy-back of shares by domestic company

Buy-back of shares by Foreign company

Buy-back of listed share

Buy-back of unlisted share

All Shares

**Company** No tax in hands of company

Tax @ 23.298% in hands of company on distributed

No tax in hands of company only sec. 46A in hands of Shareholder.

**Share holder** Capital Gain u/s 46A

Income Exempt u/s 10(34A)

Amendment only in case of buy back of listed share by domestic company

Buy-Back

Before 5/7/2019

on or after 5/7/19

Remarks

Old law applicable

Same treatment as buy-back of unlisted shares

No tax in hands of shareholder u/s 10(34A)

Company will pay tax @ 23.296% on distributed income

[ B.B Price (-) Amount received by Co

Amendment 3: Section - 54 Exemption of transfer of House Property

at the time of ISRU

Old Law



New Law

Capital Gain

Upto 2 crore

More than 2 crore

Purchase or construct two R.H in India but once in a lifetime.

Only one R.H in India

CHAPTER - 7PROFIT AND GAINS OF BUSINESS AND PROFESSIONSection 28 to 44DB

► Flow of PGBP Chapter / How to read PGBP Chapter

Section	Provisions	Analysis
28	Charging Section	कौन कौन सी income PGBP में taxable होगी।
29	Computation of PGBP Income	जो income taxable होगी वो calculate कैसे होगी।
30-38	Expenditure* allowed	कौन कौन से expenses P&L में debit किए जाएंगे।
39	Not Relevant	
40	Expenditure* disallowed	कौन कौन से expenses P&L में debit नहीं किए जाएंगे।
41	Recovery of expenditure allowed earlier	जो expenditure पहले allowed हो चुके हैं उनकी recovery होगी तो क्या treatment होगा।
42	Not Relevant	
43	Deduction on payment basis	जो expenditure debit होगी वो paid basis पर होगी।

Remarks