

CHAPTER-5

CAPITAL GAINS

Amendment: 1

SECTION 2(14) CAPITAL ASSET

According to section 2(14), a capital asset means –

- a) Property of any kind held by an assessee, whether or not connected with his business or profession;
- b) Any securities held by a Foreign Institutional Investor
- c) **Any unit linked insurance policy (ULIP) issued on or after 1.2.2021, to which exemption under section 10(10D) does not apply on account of –**
 - i. **Premium payable exceeding ₹ 2,50,000 for any PY during the term of such policy; or**
 - ii. **The aggregate amount of premium exceeding ₹ 2,50,000 in any PY during the term of any such ULIP(s), in a case where premium is payable by a person for more than one ULIP issued on or after 1.2.2021.**

Amendment: 2

Sec.45(1B) (iii) Unit Linked Insurance Policy Receipts [Section 45(1B)]

Where any person receives, at any time during any previous year, any amount, under a ULIP issued on or after 1.2.2021, to which exemption under section 10(10D) does not apply on account of –

- (i) premium payable **exceeding ₹ 2,50,000** for any of the previous years during the term of such policy; or
- (ii) the aggregate amount of premium **exceeding ₹ 2,50,000** in any of the previous years during the term of any such ULIP(s), in a case where premium is payable by a person for more than one ULIP issued on or after 1.2.2021, then, any profits or gains arising from receipt of such amount by such person shall be chargeable to income-tax under the head “Capital gains” and shall be deemed to be the income of the such person for the previous year in which such amount was received. The income taxable shall be calculated in such manner as may be prescribed.

Amendment: 3

Sec.55(2) Cost of Acquisition of Goodwill:

Goodwill of a **business or profession** or a trademark or brand name associated with a business or profession or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, tenancy rights, stage carriage permits and loom hours COA will be NIL if Self generated.

In case of Purchased Goodwill: However, in case of a capital asset, being **goodwill of a business or profession**, in respect of which depreciation under section 32(1) has been obtained by the assessee in any previous year (upto P.Y.2019-20), the cost of acquisition of such goodwill would be the amount of the purchase price as reduced by the total amount of depreciation (upto P.Y.2019-20) obtained by the assessee under section 32(1).

In case of Purchase of Goodwill by Previous Owner:

However, in case of a capital asset, being goodwill of a business or profession, in respect of which depreciation under section 32(1) has been obtained by the assessee in any previous year (upto P.Y.2019-20), the cost of acquisition of such goodwill would be the amount of the purchase price for such previous owner as reduced by the total amount of depreciation (upto P.Y.2019-20) obtained by the assessee under section 32(1).

Amendment: 4

Sec.50B Slump Sale: Deemed full value of consideration [Section 50B(2)(ii)]

Fair market value of the capital assets as on the date of transfer, calculated in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset.

Accordingly, the CBDT has inserted Rule 11UAE to determine fair market value of the capital Assets.

Amendment: 5

Cost Inflation Index: 317 for FY 21-22.

Amendment: 6

Applicability of Sec.111A/112A on ULIP

Section 111A and 112A has been amended to cover the Taxation of ULIP, if any, and therefore is conditions of those section are satisfied then ULIP shall be taxed at the rate of 15% or 10%(beyond 1 lakh as the case may be)

CHAPTER-6

INCOME FROM OTHER SOURCES

Amendment: 1

1. Sec.56(2)(X) Immovable property [Land or building or both]:

I. If an immovable Property is received

- a) **Without consideration:-** The Stamp duty value of such property would be taxed as the income of the recipient, if it exceeds ₹ 50,000.
- b) **For Inadequate consideration:-** If Consideration is less than the stamp duty value of the property and the difference between the stamp duty value and consideration is more than the higher of –
 - i. ₹ 50,000 and
 - ii. 10% of consideration

The Difference between the stamp duty value and the consideration shall be chargeable to tax in the hands of the assessee as “Income from other sources”.

In case immovable property, being a residential unit fulfilling the stipulated conditions mentioned below, is received for inadequate consideration from a person who holds such property as his stock-in-trade, then, only if the stamp duty value of the residential unit exceeds the sale consideration by 20% of the consideration or ₹ 50,000, whichever is higher, would the difference between the stamp duty value and the actual consideration be chargeable to tax in the hands of the recipient of immovable property. The benefit of higher threshold of 20% of consideration vis-à-vis 10% of consideration shall be available, subject to the satisfaction of **following conditions** –

- i. The residential unit is transferred during the period between 12.11.2020 and 30.6.2021;
- ii. Such transfer is by way of first time allotment of the residential unit and
- iii. The consideration paid or payable as a result of such transfer \leq ₹ 2 crores.

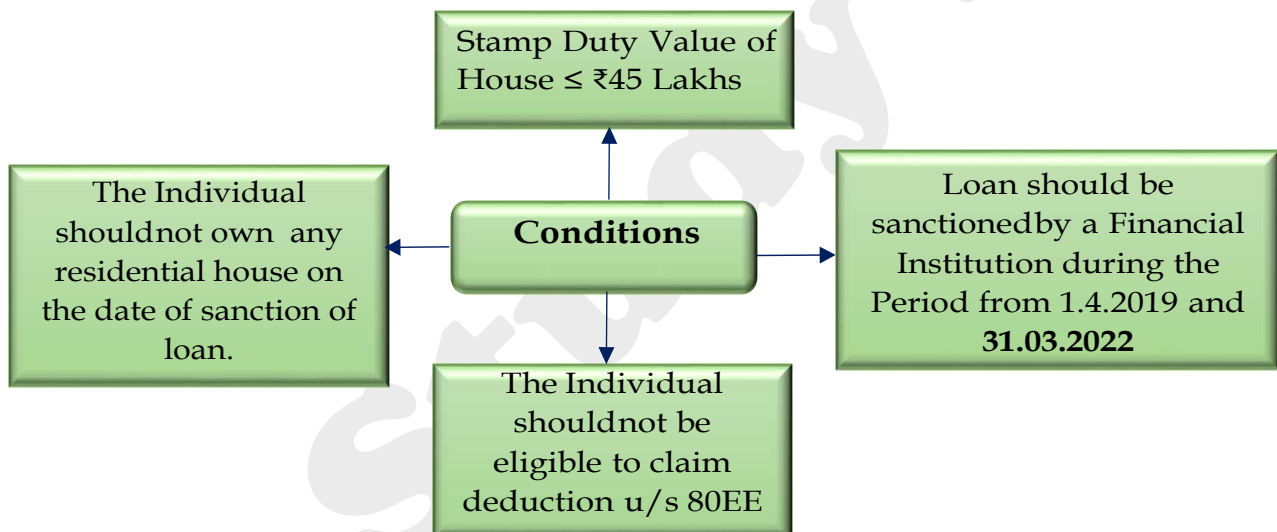
Note – Though the residential unit should be the stock in trade of the seller for applicability of the higher threshold of 20%, it should be a capital asset in the hands of the buyer in the first place for attracting the provisions of section 56(2)(x).

CHAPTER-7

DEDUCTIONS

1. Deduction in respect of interest payable on loan taken for acquisition of residential house property [Section 80EEA]

- (i) **Eligible assessee:** An individual who has taken a loan for acquisition of residential house property from any financial institution. Interest payable on such loan would qualify for deduction under this section.
- (ii) **Conditions:** The conditions to be satisfied for availing this deduction are as follows:



- (iii) **Quantum of deduction:** The maximum deduction allowable is ₹ 1,50,000. The deduction of upto ₹ 1,50,000 under section 80EEA is over and above the deduction available under section 24(b) in respect of interest payable on loan borrowed for acquisition of a residential house property.

CHAPTER-8

TDS/TCS

Amendment: 1

Section 194P: Deduction of tax by a specified bank in case of specified senior citizen (1) Applicability and rate of TDS

A notified banking company shall compute total Income of specified senior citizen for the relevant assessment year, computed after giving effect to -

- Deduction allowable under Chapter VI-A; and
- Rebate allowable under section 87A

Exemption from filing return of income

The specified senior citizen is exempted from filing his return of income for the assessment year relevant to the previous year in which the tax has been deducted under this section.

Meaning of certain terms

S. No.	Term	Meaning
(i)	Specified bank	A banking company which is a scheduled bank and has been appointed as agents of Reserve Bank of India under section 45 of the Reserve Bank of India Act, 1934
(ii)	Specified senior citizen	An individual, being a resident in India, who <ol style="list-style-type: none">1. is of the age of 75 years or more at any time during the previous year;2. is having pension income [Also, he should have no other income except interest income received or receivable from any account maintained by such individual in the same specified bank in which he is receiving his pension income]; and3. has furnished a declaration to the specified bank containing such particulars, in the prescribed form and verified in the prescribed manner. Accordingly, CBDT has inserted Rule 26D to prescribe the form and manner for furnishing the declaration discussed below.

Amendment: 2

Deduction of tax at source on purchase of goods

[Section 194Q] [w.e.f 1.7.2021]

1. Applicability and rate of TDS.

Section 194Q requires any person, being a **buyer who is responsible for paying any sum to any resident-seller for purchase of goods of the value or aggregate of such value exceeding ₹ 50 lakhs** in a previous year, to deduct tax at source **@0.1% of such sum exceeding ₹ 50 lakhs.**

Non-applicability of TDS under section 194Q

Tax is not required to be deducted under this section in respect of a transaction on which -

- (a) Tax is deductible under any of the provisions of this Act; and
- (b) Tax is collectible under the provisions of section 206C, other than section 206C(1H).

In case of a transaction to which both section 206C(1H) and section 194Q applies, tax is required to be deducted under section 194Q.

Meaning of buyer

Buyer means a person whose total sales, gross receipts or turnover from the business carried on by him during the financial year immediately preceding the financial year in which the purchase of goods is carried out.

However, buyer does not include a person as notified by the Central Government for this purpose, subject to fulfillment of the stipulated conditions.

Example Based on Amendment:

Mr. Gupta, a resident Indian, is in retail business and his turnover for F.Y.2020-21 was ₹ 12 crores. He regularly purchases goods from another resident, Mr. Agarwal, a wholesaler, and the aggregate payments during the F.Y.2021-22 was ₹ 95 lakh (₹ 20 lakh on 1.6.2021, ₹ 25 lakh on 12.8.2021, ₹ 22 lakh on 23.11.2021 and ₹ 28 lakh on 25.3.2022). Assume that the said amounts were credited to Mr. Agarwal's account in the books of Mr. Gupta on the same date. Mr. Agarwal's turnover for F.Y.2020-21 was ₹ 15 crores.

- 1) Based on the above facts, examine the TDS/TCS implications, if any, under the Income-tax Act, 1961.
- 2) Would your answer be different if Mr. Gupta's turnover for F.Y.2020-21 was ₹ 8 crores, all other facts remaining the same?
- 3) Would your answer to (1) and (2) change, if PAN has not been

furnished by the buyer or seller, as required?

Solution:

- 1) Since Mr. Gupta's turnover for F.Y.2020-21 exceeds 10 crores, and payments made by him to Mr. Agarwal, a resident seller exceed ₹ 50 lakhs in the P.Y.2021-22, he is liable to deduct tax@0.1% of ₹ 45 lakhs (being the sum exceeding ₹ 50 lakhs) in the following manner

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No tax is to be deducted u/s 194Q on the payments made on 1.6.2021 and 12.8.2021, since the aggregate payments till that date i.e. 45 lakhs, has not exceeded the threshold of ₹ 50 lakhs.

Tax of ₹ 1,700 (i.e., 0.1% of ₹ 17 lakhs) has to be deducted u/s 194Q from the payment/ credit of ₹ 22 lakh on 23.11.2021 [₹ 22 lakh - ₹ 5 lakhs, being the balance unexhausted threshold limit]. Tax of ₹ 2,800 (i.e., 0.1% of ₹ 28 lakhs) has to be deducted u/s 194Q from the payment/ credit of ₹ 28 lakhs on 25.3.2022.

Note - In this case, since both section 194Q and 206C(1H) applies, tax has to be deducted u/s 194Q.

- 2) If Mr. Gupta's turnover for the F.Y.2020-21 was only ₹ 8 crores, TDS provisions under section 194Q would not be attracted. However, TCS provisions under section 206C(1H) would be attracted in the hands of Mr. Agarwal, since his turnover exceeds ₹ 10 crores in the F.Y.2020-21 and his receipts from Mr. Gupta exceed ₹ 50 lakhs.

No tax is to be collected u/s 206C(1H) on 1.6.2021 and 12.8.2021, since the aggregate receipts till that date i.e. 45 lakhs, has not exceeded the threshold of ₹ 50 lakhs.

Tax of ₹ 1,700 (i.e., 0.1% of ₹ 17 lakhs) has to be collected u/s 206C(1H) on 23.11.2021 (₹ 22 lakh - ₹ 5 lakhs, being the balance unexhausted threshold limit). Tax of 2800(0.1% of 28 lakh has to be collected u/s 206C(1H) on 25.03.2022.

- 3) In case (1), if PAN is not furnished by Mr. Agarwal to Mr. Gupta, then, Mr. Gupta has to deduct tax@5%, instead of 0.1%. Accordingly, tax of ₹ 85,000 (i.e., 5% of ₹ 17 lakhs) and ₹ 1,40,000 (5% of ₹ 28 lakhs) has to be deducted by Mr. Gupta u/s 194Q on 23.11.2021 and 25.3.2022, respectively.

In case (2), if PAN is not furnished by Mr. Gupta to Mr. Agarwal, then, Mr. Agarwal has to collect tax@1% instead of 0.1%. Accordingly, tax of

₹ 17,000 (i.e., 1% of ₹ 17 lakhs) and ₹ 28,000 (1% of ₹ 28 lakhs) has to be collected by Mr. Agarwal u/s 206C(1H) on 23.11.2021 and 25.3.2022, respectively.

Amendment: 3

Higher rate of TDS for non-filers of income-tax return [Section 206AB]

1. Section 206AB requires tax to be deducted at source under the provisions of this Chapter on any sum or income or amount paid, or payable or credited, by a person (deductee) to a **specified person**, at higher of the following rates-
 - a) At Twice the rate prescribed in the relevant provisions of the Act;
 - b) At Twice the rate or rates in force i.e., the rate mentioned in the Finance Act; or
 - c) At 5%

However, section 206AB is **not applicable** in case of tax deductible at source under section 192, 192A, 194B 194BB, or 194N.

In case the provisions of section 206AA are also applicable to the specified person, in addition to the provisions of this section, then, tax is required to be deducted at higher of the two rates provided in section 206AA and section 206AB.

Meaning of "Specified person"- A person who has **Not** filed the **Return of income**

- For both of the two assessment years relevant to the two previous years immediately prior to the previous year in which tax is required to be deducted for which the time limit of filing return of income under section 139(!) has expired. And
- The aggregate of tax deducted at source and tax collected at source in his case is ₹ 50,000 or more in each of these two previous years.

However, the specified person does not include a non-resident who does not have a permanent establishment in India.

Amendment: 4

Higher rate of TCS for non-filers of Income tax return and non furnishers of PAN [Section 206CCA & 206CC]

- (i) Section 206CCA, inserted w.e.f. 1.7.2021, requires tax to be collected at source under the provisions of this Chapter on any sum or amount received by a person (collectee) from a specified person, at higher of the following rates -
 - a) At twice the rate specified in the relevant provision of the Act;
 - b) At 5% Section
- (ii) The provisions of section 206CC require tax collection at the higher of the following two rates, in case of failure by the person paying any

sum or amount on which tax is collectible at source to furnish PAN to the person responsible for collecting tax at source -

- At twice the rate specified in the relevant provision of the Act
- At 5% [1%, in case tax is required to be collected at source u/s 206C(1H)]

The provisions of section 206CC does not apply to a non-resident who does not have a permanent establishment in India.

It may be noted that whereas section 206CC is applicable to persons paying any sum or amount (on which tax is collectible at source) who have not furnished PAN, section 206CCA is applicable to specified persons who have failed to file return of income.

- (iii) **Meaning of “specified person”** - A person who has not filed the returns of income for both of the two assessment years relevant to the two previous years immediately prior to the previous year in which tax is required to be collected, for which the time limit of filing return of income under section 139(1) has expired, and the aggregate of tax deducted at source and tax collected at source in his case is ₹ 50,000 or more in each of these two previous years.

However, the specified person does **not** include a non-resident who does not have a permanent establishment in India.

In case the provisions of section 206CC are also applicable to the specified person, in addition to the provisions of section 206CCA, then, tax is required to be collected at higher of the two rates provided in section 206CC and section 206CCA.