CAPITAL GAIN

Particulars	Section 54 (Note 1)	Section 54B (Note 2)	Section 54D
Assesse	Individual / HUF	Individual / HUF	Any person
Nature of capital assets	Long term	Shirt term / long term	Short term / long term
Eligible assets	A residential house property	Agricultural land used for agricultural purposes by the individual or his parents for 2 years prior to the date of transfer	Compulsorily acquired land or building, forming part of an industrial undertaking, by government, used for industrial purposes for 2 years prior to transfer
Asset to be acquired	One residential house property	Rural or Urban from the date of transfer	Land or building for industrial purpose
Time limit for acquiring a new asset	Purchase: 1 year or within 2 years from the date of transfer Or Construction: Within 3 years from the date of transfer	Within 2 years from the date of transfer	Purchase: 1 year or within 2 years from the date of transfer Or Construction: Within 3 years from the date of transfer
Amount exempt	Lower of: 1. Investment amount or 2. Capital gains	Lower of: 1. Investment amount or 2. Capital gains	Lower of: 1. Investment amount or 2. Capital gains
Lock in period for the newly acquired asset	3 years from the date of acquisition/ construction	3 years from the date of acquisition	3 years from the date of acquisition/ construction
In case of transfer of the newly acquired asset within the lock in period	Such new asset acquired shall be short term capital asset and its cost of acquisition shall be reduced by exemption claimed earlier	Such new asset acquired shall be short term capital asset and its cost of acquisition shall be reduced by exemption claimed earlier	Such new asset acquired shall be short term capital asset and its cost of acquisition shall be reduced by exemption claimed earlier
Whether capital gains account scheme (CGAS) benefit available?			

Notes:

1. **Section 54:**

a. Residential house property refers to buildings or land appurtenant there to for residential purpose, the income of which is chargeable under the head "income from house property"

b. If more than one house is purchased or constructed then exemption under section 54 will be available in respect of anyone house only;

c. No exemption can be claimed in respect of house purchased outside India.

2. **Section 54B:** If the assesse invests the capital gains in rural agricultural land and transfers the same within the 3 years, then there will not be any CG in the year of transfer since rural agricultural land is not a capital asset.

Particulars	**Section 54 (Note 1)**	**Section 54B (Note 2)**	**Section 54D**
Assesse	Individual / HUF	Individual / HUF	Any person
Nature of capital assets	Long term	Long term	Short term / long term
Eligible assets	Any long term capital asset (i.e., even depreciable asset held for> 36 months is eligible)	Any long term capital asset other than a residential house property; transfer of plot of land is also eligible for exemption	Land and building or any rights therein/ plant/machinery transferred in order to shift and industrial undertaking from an urban area to any area other than an urban area
Asset to be acquired	Bonds of national highways authority of India (NHAI) or rural electrification corporation Ltd (RECL)	Only one residential house property in India	New machinery/plant/land/building fir industrial purposes in a rural area to which the industrial undertaking is shifted or expenses incurred on shifting thereon
Time limit for acquiring a new asset	6 months from the date of transfer	Purchase: 1 year or within 2 years from the date of transfer Or Construction: Within 3 years from the date of transfer	1 year prior or within 3 years from the date of transfer
Amount exempt	Lower of: 1. Investment amount or 2. Capital gains	Investment* LTCG Net sale consideration	Lower of: 1. Investment amount or 2. Capital gains
Lock in period for the newly acquired asset	3 years from the date of acquisition	3 years from the date of acquisition/construction	3 years from the date of acquisition
In case of transfer of the newly acquired asset within the lock in period	Exempted capital gain shall be withdrawn and charged to tax as income of the year as long term capital gains. However, where the original asset is a depreciable asset u/s 50, exemption shall be withdrawn and exempted capital gain will be taxed as short term capital gains	Exempted capital gain shall be withdrawn and charged to tax as income of the year as long term capital gains.	Such new asset acquired shall be short term capital asset and its cost of acquisition shall be reduced by exemption claimed earlier

Whether capital gains account scheme (CGAS) benefit available?	No	Yes	Yes

Notes:

1. **Section 54EC:**

a. Maximum amount of investment in a previous year cannot exceed Rs. 50 lakhs p.a.
b. The exemption will be withdrawn if loan is taken against the security of the bonds acquired within the lock-in-period for 3 years.
c. The investment in RECL or NHAI bonds will not be eligible for purpose of claiming deduction u/s 80C, once the benefit is claimed u/s 54Ec.

2. **Section 54F:**

Benefits of section 54F shall be available where the assese:

a. Owns more than 1 residential house property on date of transfer, or
b. Purchases another residential house (other than the newly acquired/constructed residential house for claiming exemption) within two years from date of transfer, or
c. Constructs another residential house (other than the newly acquired/constructed residential house for claiming exemption) within 3 years from date of transfer

Section 54G: Advance given for purchase of land, building, plant and machinery tantamount to utilization of capital gains for purchase and acquisition of new machinery or plant and building or land (**Fibre Boards (P) Ltd. v CIT (2015) (SC)**)

Particulars	**Section 54A**	**Section 54GB (Note 1)**	**Section 54EE (Note 2)**
Assesse	Any person	Individual / HUF	Any assesse
Nature of capital assets	Short term/long term	Long term	Long term
Eligible assets	Land and building or any rights therein/ plant/machinery transferred in order to shift and industrial undertaking from an urban area to any area other than an urban area to special Economic Zone, whether in Urban area or not	Residential property (house or plot of land) between 1/4/2013 to 31/3/2019 FA 2016	Any asset
Asset to be acquired	New machinery/plant/land/building fir industrial purposes in a rural area to which the industrial undertaking is shifted or expenses incurred on shifting thereon	Equity shares of eligible company or an eligible start up FA 2016 The eligible company should utilize the amount for purchase of a "plant and machinery"	Specified asset, being a units, issued before 1/4/2019 of such fund as may be notified by the Central Government in this behalf
Time limit for	1 year prior or within 3 years	For individual/HUF:	Purchase within 6 months

acquiring a new asset	from the date of transfer	Before due date of filing of return of income u/s 139 (1) For eligible company: Purchase of "plant and machinery (P&M) within 1 year from the date of subscription in the equity shares by the assesse	from the date of transfer
Amount exempt	Investment* LTCG Net sale consideration	LTCG* Amount invested in new P&M Net sale consideration	Lower of: 1. Investment amount (maximum Rs. 50 lakhs) or 2. Capital gains
Lock in period for the newly acquired asset	3 years from the date of acquisition	5 years from the date of acquisition (for both)	3 years from the date of acquisition
In case of transfer of the newly acquired asset within the lock in period	Such new asset acquired shall be short term capital asset and its cost of acquisition shall be reduced by exemption claimed earlier	Capital gains to the extent exempt earlier shall be chargeable as capital gains of P.Y. in which such equity shares / such new P&M are sold /otherwise transferred	Capital gains to the extent exempt earlier shall be chargeable as capital gain as long term capital gains
Whether capital gains account scheme (CGAS) benefit available?	Yes	Yes (eligible company) No (individual/HUF)	No

Section 54H

Where any compensation is receivable from the government, then the specified time limit for investment purposes shall be from the date of receipt of compensation and not from the date of transfer. This benefit is given for exemption claimed u/s 54, 54B, 54D, 54EC and 54F.

Notes:

1. **Section 54GB**

   In order to qualify as an "eligible company" u/s 54GB the company should be:

- Incorporated in the F.Y. in which the capital gain arises or in the following year on or before the due date of filling return of income by the individual or HUF.
- Engaged in the business of manufacture of article or a thing.
- A company in which the individual or HUF holds more than 50% of the share capital or 50% the voting rights, after the subscription in share by the individual or HUF; and
- Company qualifies to be a small or medium enterprise (SME) under the Micro, small and medium enterprises development act, 2006 or is an eligible start up.

In order to qualify as an "eligible start up" u/s 54GB the company should be:

- Engaged in eligible business which involves innovation development, deployment or commercialization of new products, processes or services which is driven by technology or intellectual property.
- Incorporated during the period 1.4.2016 to 31.3.2019.
- A company having total turnover <Rs. 25 crores in any P.Y. 2016-17 to P.Y. 2020-21.
- Holding a certificate of eligible business from the notified IMBC

New plant and machinery does not include:

- Any machinery or plant which, before its installation by the assesse, was used either within or outside India by any other person;
- Any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of guest house;
- Any office appliances including computers or computer software;
- Any vehicle; or
- Any machinery /plant the whole of the actual cost of which is allowed as a deduction, whether by way of depreciation or otherwise in computing the income chargeable under the head “profits and gains of business or profession” of any previous year.

FA 2016 – For eligible start up, being a technology driven start up new asset include computers or computer software

2. **Section 54EE:**
   If the assesse takes loan or advance on the security of such acquired units, he shall be deemed to have transferred such units on the data on which such loan or advance is taken

Section 45(1): General Charge

Any profits or gains arising from the **transfer of a capital asset** effected in the previous year (other than the exemptions covered in this chapter) shall be **chargeable to income-tax** under the head “capital gains” **in the previous year in which transfer takes place.**

Therefore capital gains shall be chargeable to tax if following conditions are satisfied:

1. Asset transferred should be a **Capital asset**
2. It should be **transferred by the** assesse in previous year
3. There should be **profit and gains** as a result of transfer

Section 2(14): Definition of Asset

CAPITAL GAIN

Capital Asset {Sec 2(14)}

Means

a. (Tangible + intangible)
   - Property of any kind
   - Held by the assesse
   - Whether or not connected with his business or profession

b. Any securities held by a foreign institutional investor

Excludes

1. Stock in trade (other than securities held by FII)
2. Personal effects

   Includes
   - Jewellery
   - Archaeological collection
   - Drawings/pain mtings/sculpture
   - Work at art
3. Agricultural land in India **{Note 1}**
4. 6.5% Gold Bonds (GB), 1977 or 7% GB, 1980 or National defence GB, 1991
5. Special bearer bonds, 1991
6. Gold deposit bonds – Gold deposit scheme, 1991 or **deposit certified issued under gold monetization scheme, 2015**

Issued or notified by Central Government

Note 1:

Agricultural land in India is any land not being a land which is:

1. Any area comprised within the jurisdiction of a machinery or cantonment board having population of 10,000 or more of
2. “urban land”

Urban land means situated in any area within the jurisdiction of a municipality or a cantonment board and which has the following conditions:

Population	Km from Municipality
>10,000 < 1 lakh	2 KMs
>= 1 lakh < 10 lakh	6 KMs
> = 10 lakh	8 KMs

Section 2(42A)/2(42B)/2(29B): Types of Capital Assets and Gains

Types of capital assets

Sec 2(42A): Short Term capital Asset (STCA)

Means a capital asset held by an assesse for <36 months immediately preceding the date of its transfer

Instead of 36 months, period of 12 months shall be considered for the following:

1. Listed equity or preference shares in a Co.
2. A security (other than a unit) listed in a recognized stock exchange in India like debentures, government securities)
3. Units of UTI
4. A unit of an equity oriented fund specified u/s (23D)
5. Zero coupon bonds – defined later u/s 2 (48)

For, unlisted shares – 24 months **FA 2016**

Sec 2(29A): Long term capital asset (LTCA)

Means a capital asset which is not a short term capital asset i.e. held for >36 months

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