



RECENT AMENDMENTS IN TAX PROVISIONS FOR CAPITAL GAINS

CA NIHAR JAMBUSARIA

ELECTRONIC GOLD RECEIPTS (EGR)

Taxation of EGR

- W.e.f. A.Y. 2024-25, Gold deposit-EGR-no transfer
- If EGR is sold, what will be the period of holding?
- If EGR is again converted into gold and then gold is sold - period of holding?
- Whether period of holding of gold originally held will be included? Explanation 1(hi)(b)

CONVERSION OF GOLD TO ELECTRONIC GOLD RECEIPTS (EGR) AND VICE VERSA

➤ **Regulatory Framework by SEBI**

SEBI has come out with a detailed regulatory framework for spot trading in gold on existing stock exchanges through the instrument of electronic gold receipts.

➤ **Exclusion from purview of transfer u/s 47(viid)**

To promote the concept of electronic gold, it is proposed to exclude the conversion of physical form of gold into EGR and vice versa by a SEBI registered vault manager from the purview of transfer.

Any transfer of gold by conversion into EGR issued by vault manager or conversion of EGR into gold shall not be regarded as transfer as per clause (viid) inserted in section 47.

CONVERSION OF GOLD TO ELECTRONIC GOLD RECEIPTS (EGR) AND VICE VERSA

➤ **Period of Holding**

The period of holding of EGR shall include the period of holding of the gold originally acquired by the assessee

The period of holding of gold received on conversion of EGR shall include the period of holding of EGR and the gold originally acquired by the assessee as per clause (hi) inserted to explanation 1 to section 2(42A).

➤ **Cost of Acquisition**

Subsection (10) has been inserted to section 49 to provide that where EGR issued by a vault manager became the property of the assessee on conversion from gold, the cost of acquisition of EGR shall be deemed to be the cost of gold in the hands of the person in whose name EGR is issued.

Similarly, where the gold released against an EGR became the property of the assessee on conversion from EGR the cost of acquisition of gold shall be deemed to be the cost of acquisition of EGR.

CAPITAL GAINS

➤ Section 54

If LTCG on transfer of residential house is invested in another residential house within the prescribed time limit, subject to conditions laid down in section 54, the LTCG is exempt u/s 54.

Amendment is made to restrict the exemption to a maximum of Rs.10 crores. It is now provided that cost of new asset purchased will be deemed to be Rs.10 crores, if it exceeds Rs.10 crores for the purpose of exemption.

➤ Section 54F

LTCG on transfer of capital asset other than residential house shall be exempt u/s 54F if the entire net consideration is invested in a residential house within the prescribed time limit and subject to conditions laid down in section 54F.

Amendment has been made in section 54F to provide that the cost of the residential house acquired shall be deemed to be Rs.10 crores, if it exceeds Rs.10 crores. This has the effect of reducing the exemption below Rs.10 crores.

CAPITAL GAINS

➤ Issues

- 1) Whether the limit of Rs.10 crores is qua the property or qua the owner. In other words, whether each co-owner gets limit of Rs.10 crores?
- 2) If the new house is sold within three years, whether its cost of acquisition will be taken at Rs. NIL or excess over Rs.10 crores not considered for exemption earlier should be taken as cost of acquisition?
- 3) Capital gain earned before 31/03/2023 and investment made after 31/03/2023, whether limit of Rs.10 crores will apply?

EXAMPLE

Mr. X sold gold held by him for more than 3 years at Rs.15 crores during F.Y. 2023-24, no expenditure on transfer were incurred, index cost of acquisition is Rs.5 crores. He has invested Rs.15 crores in a residential house as per section 54F. Under the existing provision he would have got exemption of the entire LTCG of Rs.10 crores as under.

LTCG x Cost of residential house acquired

Net consideration

∴ Rs. 10 Crores X $\frac{15 \text{ Crores}}{15 \text{ Crores}}$ = Rs.10 Crores.

EXAMPLE

Under the new provision the exemption will be as under

LTCG x Cost of Residential house acquired, Restricted to Rs. 10crores

Net consideration

∴ Rs. 10 Crores x Rs. 10 Crores = Rs.6,66,66,667

Rs. 15 Crores

CAPITAL GAINS ON MARKET LINKED DEBENTURES (MLD)

➤ Hybrid Security

MLD is a hybrid security. It combines features of debt security and exchange traded derivatives issued through private placement and listed on stock exchanges. However when these debentures are transferred after holding it for 1 year, the capital gain is being taxed as LTCG at the rate of 10% without indexation.

➤ Section 50AA

As the securities are in the nature of derivatives, a new section 50AA has been introduced to provide that the capital gain on transfer or redemption or maturity of these securities shall be deemed to be STCG w.e.f. A.Y.2024-25. The STCG will be taxable at normal rate.

Only cost of acquisition and expenditure on transfer will be allowed.

No amendment in s. 2(42A)- whether Section 54EC exemption is allowable, if held for more than 1 year.

Section 50AA will not apply where transfers are covered by Section 47.

ALIGNMENT OF S.45(5A) WITH S.194-IC

➤ **Joint Development Agreement**

For computing capital gains from the transfer of capital asset being land or building or both under a joint development agreement, subsection (5A) of section 45 provides that the full value of consideration shall be taken as the stamp duty value of the share of the assessee as increased by the consideration received in cash.

➤ **TDS**

Section 194-IC provides that for the purpose of deduction of tax at source, full value of consideration shall be taken as the stamp duty value of the share of the assessee as increased by consideration received in cash or by cheque or draft or by any other mode.

ALIGNMENT OF S.45(5A) WITH S.194-IC

➤ **Amount received in cash and cheque**

To carry out the intention of legislature reflected in the words contained in section 194IC, the following words have been added in subsection (5a) of section 45 after the words “received in cash”- or by a cheque or draft or by any other mode. The amendment will be effective from A.Y.2024-25.

➤ **Prospective Amendment**

Provision is prospective in effect. Whether for earlier years, amounts received by cheque were not taxable?

COST OF ACQUISITION OF INTANGIBLE ASSETS OR ANY OTHER RIGHT

➤ **B.C.Shrinivasa shetty 128ITR294(SC)**

Where cost of asset is not determinable with reasonable certainty, the supreme court held in the case of B.C.Shrinivasa shetty 128ITR294(SC) that capital gain can not be computed as the computation mechanism u/s 48 fails.

➤ **Cost for self generated assets**

Subsequent to the above judgement, a provision was introduced into section 55(1b) that cost of improvement of the goodwill of the business shall be taken at NIL, if it is a self generated asset.

COST OF ACQUISITION OF INTANGIBLE ASSETS

➤ Cost for self generated assets

In the section 55(2a), it was provided that the cost of acquisition of goodwill of a business or a profession or a trademark or brand name of a business or a profession or right to manufacture, produce or process any article or thing or right to carry on any business or profession or tenancy rights or stage permits or loom hours shall be taken at NIL if these are self generated assets.

This list was not exhaustive and it left out many other intangible assets from the purview of this deeming provision.

Words 'any other intangible assets or any other right' in section 55(1b) and in section 55(2a) are added to determine the cost of these assets at Rs. NIL, where they are self generated assets.

INTANGIBLE ASSETS AND ANY OTHER RIGHT

➤ Intangible assets and any other right

- Right to sue given up, compensation paid- whether liable to capital gains?
- TDR, FSI
- Decisions no longer applicable where sale of additional TDR by society to developer was held as tax neutral
- Maheshwar2 Co op. Hsg. Soc. Ltd 118 ITR 223(Mum), Shambhaji Nagar Co op. Hsg. Soc. Ltd. 370 ITR325(Bom)
- If the above assets are acquired prior to 1/4/2001, FMV on 1/4/2001 cannot be replaced
- License, voting right, Right to compensation under Accident Insurance Policy, Slump sale when Intangible asset is included – To be separately taxed?

PREVENTION OF DOUBLE DEDUCTION ON INTEREST ON BORROWED CAPITAL

➤ Prevention of double deduction on interest on borrowed capital for acquiring, renewing or reconstructing a property

Interest payable on borrowed capital for acquiring, renewing or reconstructing property is allowed as deduction as under:

- a. u/s 24 for computing Income from HP
- b. Under Chapter VI-A
- c. u/s 48 as cost of acquisition or cost of improvement- whether interest is allowable as cost of acquisition - C. Ramabrahmam 27 taxmann.Com 104 (Chennai)

A proviso has been inserted after clause(ii) of section 48 to provide that the cost of acquisition or cost of improvement shall not include the amount of interest claimed u/s 24 or Chapter VI-A.

INCOME ON RECEIPT OF CAPITAL ASSET/STOCK IN TRADE BY SPECIFIED PERSON FROM SPECIFIED ENTITY S.9B

- Specified entity - Firm/AOP/BOI
- Specified person - Partner/Member
- Reconstitution of specified entity - retirement/admission of partner(s)/change in shares of existing partners
- Where a specified person receives during the P.Y., any capital asset or stock or both on dissolution or reconstitution of the entity, specified entity shall be deemed to have transferred capital asset or stock to the specified person
- Capital gain/profit on deemed transfer taxable in the hands of the specified entity
- To be computed as per guidelines issued by the CBDT

CAPITAL GAIN U/S. 45(4)

- Where a specified person receives any money or capital asset or both from a specified entity on reconstitution of such entity, any profit arising from such receipt by the specified person chargeable to capital gain tax. Gain to be computed as under-
- $A = B + C - D$
- A = capital gain
- B = money received
- C = FMV of the capital asset received by the specified person
- D = the amount in the capital account of the specified person without considering revaluation of any asset or self generated goodwill or other asset
- S.45(4) to operate in addition to S.9B.

EXAMPLE- GUIDELINES ISSUED- CIRCULAR

- Three partners- A, B, C in the Firm- FR
- Each partner's capital balance Rs.10 Lacs
- Firm owns three pieces of lands – S,T,U and the book value of each land is Rs. 10 Lacs.
- A wants to exit - rule 11U value of S and T Rs. 70 Lacs each and of U Rs.50 Lacs.
- A gets Rs. 11 Lacs money and land U on his retirement.
- S.9B computation of capital gain.
- FMV of U Rs.50 Lacs and the indexed cost of U is Rs.15 Lacs.
- Deemed Capital gain of Rs. 35 Lacs taxable in the hands of FR as FR is deemed to have transferred the land to A.
- Capital gains tax @20%- Rs. 7 Lacs and the cost of acquisition for A will be Rs.50 Lacs.

EXAMPLE- GUIDELINES ISSUED- CIRCULAR

- Capital gain u/s.45(4)- S.48(iii) r.w.Rule 8AA and 8AB-
- Net book profit on transfer of Land to A - Rs. 50 Lacs less Rs. 10 Lacs (cost / book value of land) less Rs. 7 Lacs, LTCG = Rs. 33 Lacs.
- Rs. 11 Lacs to be credited to each partner being equal profit sharing ratio.
- FVC = Rs. 11 Lacs (money) + Rs. 50 Lacs (FMV of land) = Rs.61 Lacs.
- Cost = capital balance = Rs. 10 Lacs+ share of notional book profit (1/3rd of rs. 33 Lacs) - Rs.11 Lacs = Rs. 21 Lacs
- Capital gain = Rs. 61 Lacs - Rs.11 Lacs = Rs.40 Lacs chargeable u/s. 45(4)
- Rs. 20 Lacs each (gain of rs.40 Lacs allocated in the ratio of increase in their FMV, i.e., Rs. 60 Lacs each) to be reduced from FVC of the other two lands when they are transferred in future.

THANK YOU

CA NIHAR JAMBUSARIA

NIHAR.JAMBUSARIA@GMAIL.COM