CAPITAL GAINS UNDER DIRECT TAXES CODE

TOTAL INCOME UNDER DTC

- Section 60 provides : (A-B)+C

  A = GTI from Ordinary Sources

  B = Deductions under Sub-Chapter-I

  C = TI from Special Sources

Method of Computing Capital Gains

- Sections 44 to 53 cover method for CG.
- NO STCG or LTCG
- Same rate as applicable to other regular incomes
- Provision for indexation is there
- Section 58(2) provides that CG as computed u/s 47 to be aggregated with incomes from other heads = "*Current Income from Ordinary Sources*"

COMPUTATION

- Section 44(1) provides – "Income arising from transfer of Investment Asset (IA) os required to be computed under the head 'CG'.

INVESTMENT ASSET and BCA

- Section 284(151) defines IA as an asset which is not Business Capital Asset.
- BCA: Section 284(42) covers following under BCA:-
  - Self-generated capital asset in course of business.
  - Any intangible asset in nature of goodwill, trademark, right to mfr article or thing, right to carry business, tenancy right, licence, right or permit for business .
  - Tangible asset – Building, P & M, Furniture.
  - Any other Capital Asset used for business.

Diff. vis-a-vis IT Act

- Section 2(14) of IT Act defines CA covers all except following :-
  - SIT,RM etc.
  - Personal Effects
  - Agricultural Land
  - 6.5% Gold Bonds 1977
  - Special Bearer Bonds
  - Gold Deposit Bonds

  Means all assets other than above were CA. But now intangible BCA are not IA.

POINTS TO BE NOTED

- Firms and Companies can also have IA as those assets which are not used for business purposes like Income for HP or Shares not held as SIT.
- Periodical income from such assets to be taxed under "Income from residual sources".
- Provisions of CG to be applicable.

TRANSFER

- Section 44(1) refers to income arising from transfer.
- Section 284(287) covers 16 types of transactions as transfer. Some different from IT act are as follows:-
  - Any contribution of asset to co. or unincorporated body by new participant.
  - Any damage to insured asset.
  - Distribution of asset to participant on account of retirement.

TRANSACTIONS NOT COVERED FOR PURPOSE OF TAXATION.

- Section 45 prescribes following are not taxable . Some are as follows:-
  - Total or partial partition of HUF
  - Transfer of IA by subsidiary to Holding and vice versa.
  - By a predecessor to successor in business reorganization.
  - Transfer under will.

Taxability - Even if not regarded as transfer

- Section 44(2) provides for four contingencies under which provisions of GC would be invoked.
  1. If conditions of Section 45(1) c and 45(1) d are not satisfied by Holding or subsidiary company.
  2. If conditions laid down in Section 45(e) w.r.t to Section 284(16) or clause (81) are not complied with. Clause (16) and 81 are for amalgamation and demerger of companies or firms or societies respectively.

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3. Amount of withdrawal as per section 53(4) i.e. amount not used within one month from end of month of withdrawal for purchase or construction of new asset .,as follows:- (A*B)/C

A = Amount of deduction u/s 53

B = Amount of withdrawal not used within prescribed time

C= Net Consideration.

Contd..

4. Amount of deposit as per section 53(5) i.e. amount not used within three years from end of financial year of transfer for purchase or construction of new asset .,as follows:- (A*B)/C

A = Amount of deduction u/s 53

B = Balance amount not used within three years.

C= Net Consideration.

FINANCIAL YEAR OF TAXABILITY

- Generally , in case of immoveable property taxability arises when conveyance deed is executed.
- Section 46 lays down table containing various transactions where liability arises at different point of time like transfer by subsidiary to holding ,distribution on dissolution or retirement etc.

POINTS TO BE NOTED

- As per Section 47 full value of consideration accrued or received on transfer of IA is to be reduced by the aggregate amount of deduction as provided in Section 49.
- ‘Accrued’ is the word used in Section 47(1).SO even if consideration not received ,CG would be liable to tax except in case of compulsory acquisition.

CONSIDERATION

- Section 48 defines it in two ways:-
- As per section 48(1) amount received or accruing to the transferor as result of transfer of IA.

CONSIDERATION AS PER SECTION 48(2)

1. Compulsory Acquisition
2. Conversion of assets into SIT.
3. Buy Back of shares.
4. Contribution of asset to a company or firm

1. Amount of compensation awarded at first instance.
2. FMV as on date of transfer.
3. Amount of consideration.
4. Value of IA recorded in books of accounts.

Contd..

5. Distribution of asset on dissolution.
6. Damage or destruction of insured asset.
7. Distribution of asset by company under liquidation.

5. FMV on date of transfer.
6. FMV as on date of receipt of asset, received under insurance.
7. Amount of money, or FMV.

Contd..

8. Distribution of asset by firm on dissolution.
9. Gift or transfer under irrevocable trust.
10. In case of immoveable property.
11. In case of immoveable property.

8. FMV as on date of distribution.
9. FMV as on date of transfer.
10. FMV as on date of transfer.
11. Higher of stamp duty and value of asset ascertained by valuer on reference.

LOSSES UNDER CG

- Loss from sale of IA would be first set off against profit from transfer of other IA.
- If total of all is negative, taxable income under CG would be treated as Nil.(Sec.47(4))
- Loss under CG would be c/f as 'Unabsorbed Current Capital Loss'.
- So Loss under CG cannot be set off against income from ordinary source.
- As regard c/f loss remaining under IT Act, there is no clarity but it seems clause 282(2)(g) relating to repeal and saving seems to be permitting such set off.
- Losses can be carried forward for any number of years and set off against CG in future.

DEDUCTIONS

- As per Section 47(1) following deductions are allowable :-
  - COA
  - COI
  - Amount expended for purpose of transfer.

  - As per Section 47(2) if IA is transferred after one year from end of the financial year in which the asset is acquired by the assessee then Indexed COA & COI is allowable. Furthur amount of relief for roll over of the asset is allowed u/s 53.

POINTS TO BE NOTED

- Under Income Tax Act for LTCG one/three years had to be seen from date of purchase. But under DTC the period of holding starts from the end of the financial year in which the IA was acquired.

INDEXED COST OF ACQUISITION

- Formula is : (A*B)/C

A=COA

B=CII of the year in which IA is transferred

C=CII for the F/Y immediately following the F/Y in which IA is acquired or 01.04.2000 whichever is later.

STAGES OF CALCULATION

- As per Section 47(2),income from CG in respect of each IA has to be calculated separately with following process.
  - Full value of consideration to be reduced by deductions u/s 49.
  - Benefit of rollover ,if any, to be availed.
  - After computing CG on each IA ,it would be aggregated and amount arrived is called ‘Current Income from CG’.
  - Amount of ‘Unabsorbed Preceding Year Capital Loss’ will be aggregated with CICG and result figure will be called as Income from CG.
  - If amount of Income from CG is positive , then it would be added with income from employment, business etc. treating it as IOS.

COA of IA

- Five sub sections of Section 51.
- As per Section 51(1) COA of assets other than in sub section (2) to (5) shall be:-
  - Purchase price or
  - At option of assessee, FMV as on 01.04.200,if asset is acquired before that date.

It means that appreciation in value between 01.04.1981 and 01.04.200 would not be taxed.

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- Section 51(2) provides for computation of the cost under special cases which have been laid down in Seventeenth Schedule. It mainly covers the cases of shares issued under amalgamation, demerger, sweat equity etc.

Contd..

- As per section 51(3) COA of IA acquired by special mode of acquisition shall be :-
  - Cost to previous owner.
  - At option, FMV as on 01.04.2000 if acquired by previous owner before that date.

What is SMA? Section 284(257) includes nine types of cases:-

a) Acquisition of converted property by HUF

b) Eight others:- Distribution of assets of HUF, Gift, Will, Succession or inheritance ,distribution on dissolution, liquidation of company, revocable or irrevocable settlement of trust, transaction referred to u/s 45(1)© & (d) (Holding – subsidiary)

Contd..

- Section 51(4) provides of COA in case of retirement from partnership firm:- A-(B+C).

  A=Amount payable to retiring partner as appearing in books of accounts.

  B=Amount attributable to revaluation of bundle till date of distribution.

  C=COA of any other asset ,if any, forming part of bundle acquired by the participant, on distribution of the asset acquired by him on account of his retirement from firm if COA has been allowed as deduction u/s 49 in any earlier F/Y.

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- As per Section 51(5) COA would be NIL for following:-
  - Self Generated assets.
  - COA of the asset to person or previous owner is incapable of being determined or ascertained ,for any reason.

RELIEF OF ROLLOVER

- As per Section 53 only individual and HUF can claim benefit of rollover.
- It means that company, partnership firm cannot avail benefit of rollover.
- Formula for Deduction :- A*(B+C+D)/E.

  - A= CG
  - B=Amount invested in new asset within one year before beginning of financial year in which original asset is transferred.
  - C=Amount invested in new asset in financial year in which original asset is transferred.
  - D=Amount deposited in CG Deposit Scheme by end of financial year in which the transfer is made.
  - E=Net Consideration received.

IA eligible for Rollover.

1. Transfer of Agricultural Land.

1. Invested in one or more pieces of Agriculture Land provided the original

   IA was:-

   a) An agricultural land during two years immediately preceding the F/Y in which the asset is transferred; and

   b) Acquired prior to one year before beginning of the F/Y in which IA transferred.

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2. If any IA is transferred

2. Amount should be invested in Residential House provided:-

   a) Assessee does not any other residential house other than new asset ,on date of transfer ; and

   b) The original IA was purchased prior to one year before the beginning of the F/Y in which transfer took place.

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3. If any IA is transferred

3. Amount is deposited in an account maintained under CG Saving Scheme provided:-

   a)The original IA was purchased prior to one year before the beginning of the F/Y in which transfer took place ; and

   b) the deposit is made within 60 days from the date of transfer of original IA.

POINTS TO BE NOTED.

- Deduction computed u/s 53(2) shall not exceed the amount of CG.
- Amount withdrawn from CGDS shall be utilized within one month from the end of month of withdrawal for purchase or construction of new asset.
- Amount deposited in CGDS shall be used within 3 years from end of F/Y in which IA is transferred for purchase or construction of new asset.

HARDSHIPS

- In case of purchase of new residential house, one will have to dispose of the existing property and buy new one thereafter.
- In case of deposit in CGSS within 60 days following is hardship:-
  - As per proposed provisions, income under the head CG has to be computed by aggregating each IA disposed of. It may so happen that after disposing of a particular IA, the assessee deposit the CG in CGSS. In this process, tax payable in respect of same shall be NIL. Then if another IA is disposed off in same F/Y and loss in incurred then benefit of set with earlier gain will not be available. Loss would be set off with CG on another IA sold after that during same F/Y or be c/f.
    - In order to mitigate this hardship, it is advisable to extend the said period of deposit upto 31stMArch of F/Y at least .

Deductions for Savings.

- Deductions for savings are provided in Section 66 of DTC.
- Section 65(2) restricts deduction from TI upto the amount of income derived from IOS. Since CG is also part of IOS, deductions from TI can be claimed from CG as well.

CG AND NRI

- Provisions relating to CG contained in sections 44 to 53 do not make any reference to NR . It means Resident and NRI are treated at PAR.
- However Table forming part of clause 3 of the first Schedule of the DTC which lays down the rates of tax for various entities, provides the rate of tax at 30% on CG derived by NRI.

POINTS TO BE NOTED

- There may be hardship for existing investors. Like a person having portfolio consisting of Long Term Holding Securities with considerable appreciation. Now LTCG would be exempt under IT Act but would be taxable under DTC.

THANK YOU