Capital Gains

Sales

\- Cost of manufacture

= profit / loss

Capital Gains

	Sales (Sale consideration)
Less:	Cost of manufacture (Cost of acquisition),
Less:	Renovation (Cost of Improvement)
Less:	(Transfer Expenses)
	= profit / loss

Capital Gains

Computation of Capital Gains of Mr. / Mrs. X	
(For the AY 2023-24)	
Step 1: Capital assets or not	Yes / No
Step 2: Long Term or Short Term	LT / ST
Step 3: Indexation available or not	Yes / No
Particulars	**Amount in Rs.**
Sale consideration	
Less: Indexed / Cost of Acquisition (COA) (ICOA)	
Indexed / Cost of Improvement (COI) (ICOI)	
Transfer Expenses (Never indexed)	
Balance	
Less: Exemption us 54	
Long term / Short term capital gains / loss	LTCG/ STCG

Capital Gains

- Capital Assets
- Long term or short term
- Indexation benefit available or not

- Sale consideration
- Cost of acquisition
- Cost of Improvement
- Transfer Expenses

Capital Assets

93. "Capital asset" is defined by section 2(*14*).

- *Positive list* - "Capital asset" means property of any kind, whether fixed or circulating, movable or immovable, tangible or intangible. Besides, it includes the following –

1. Any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.

2. Property of any kind held by an assessee (whether or not connected with his business or profession).

3. Any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the SEBI Act.

- *Negative list* - The following assets are excluded from the definition of "capital assets" –

1. Stock-in-trade (other than securities referred to in *point 3* above).

2. Personal effects (movable assets).

3. Agricultural land in a rural area in India.

4. A few gold bonds and special bearer bonds (this point does not have any practical utility).

5. Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetisation Scheme, 2015.

Rural Agricultural Land

†Rural area for the above purpose is any area which is outside the jurisdiction of a municipality or cantonment board having a population of 10,000 or more and also which does not fall within distance (to be measured aerially) given below –

2 kilometers from the local limits of municipality/cantonment board	If the population of the municipality/cantonment board is more than 10,000 but not more than 1 lakh
6 kilometers from the local limits of municipality/cantonment board	If the population of the municipality/cantonment board is more than 1 lakh but not more than 10 lakh
8 kilometers from the local limits of municipality/cantonment board	If the population of the municipality/cantonment board is more than 10 lakh.

For the above purpose, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

Long term or short term

93.1-1 *WHEN SUCH PERIOD IS TAKEN AS 12 MONTHS/ 24 MONTHS* - If a capital asset is transferred after 36 months, it is known as long-term capital asset. However, in the following cases a capital asset becomes long-term capital asset if it is transferred after 12 months or 24 months –

▶ *Category A* - Period of holding more than 12 months (if transfer takes place after July 10, 2014) –
1. Equity or preference shares in a company (listed in a recognised stock exchange in India). 2. Securities (like debentures, bonds, Government securities, derivatives, etc.) listed in a recognised stock exchange in India. 3. Units of UTI (whether quoted or not). 4. Units of an equity oriented mutual fund (whether quoted or not). 5. Zero coupon bonds (whether quoted or not).
▶ *Category B* - Period of holding more than 24 months–
1. Equity or preference shares in a company (unlisted) (if transfer takes place on or after April 1, 2016). 2. Immovable property (being land or building or both) (if transfer takes place on or after April 1, 2017).

Indexation benefit not available

Capital assets
Bonds or debentures* [other than (*a*) capital indexed bonds issued by the Government or (*b*) Sovereign Gold Bond issued by RBI under the Sovereign Gold Bond Scheme, 2015]
Shares in or debentures of an Indian company acquired by utilizing convertible foreign exchange as mentioned in first proviso to section 48†
Equity share in a company or a unit of equity oriented mutual fund or a unit of a business trust referred to in section 112A [*see* para 104.2]
Depreciable asset (other than an asset used by a power generating unit eligible for depreciation on straight line basis)
Undertaking/division transferred by way of slump sale as covered by section 50B†
Units purchased in foreign currency as given in section 115AB†
Global Depository Receipts (GDR) purchased in foreign currency as given in section 115AC†
Global Depository Receipts (GDR) purchased in foreign currency as given in section 115ACA†
Securities as given in section 115AD†

Transfer

94. Transfer, in relation to a capital asset, includes sale, exchange or relinquishment of the asset or the extinguishment of any rights therein or the compulsory acquisition thereof under any law [sec. 2(47)].

94.1 ***Certain transactions not included in transfer*** - For the purpose of section 45, the following transactions are not regarded as transfers (in other words, in the following cases†, there is no capital gain) –

1. Distribution of assets in kind by a company to its shareholders on its liquidation.

2. Any distribution of capital assets in kind by a Hindu undivided family to its members at the time of total or partial partition.

3. Any transfer of capital asset under a gift or a will or an irrevocable trust (exception — gift of ESOP* shares is chargeable to tax).

4. Transfer of capital asset between holding company and its 100 per cent subsidiary company, if the transferee-company is an Indian company.

5. Transfer of capital asset in the scheme of amalgamation/demerger, if the transferee-company is an Indian company.

6. Transfer of shares in amalgamating company/demerged company in lieu of allotment of shares in amalgamated company/resulting company in the above case.

7. Transfer of capital asset in a scheme of amalgamation of a banking company with a banking institution.

8. Transfer of shares in an Indian company held by a foreign company to another foreign company in a scheme of amalgamation/demerger of the two foreign companies, if a few conditions are satisfied.

Transfer when completed

94.2 *Transfer when complete and effective* - Generally, capital gain is taxable in the year in which capital asset is transferred. Different rules are applicable in case of movable/immovable assets to find out when a capital asset is "transferred".

1. *Immovable property when documents are registered* - Title to immovable assets will not pass till the conveyance deed is executed or registered.

2. *Immovable property when documents are not registered* - Even if the documents are not registered but the following conditions of section 53A of the Transfer of Property Act are satisfied, ownership in an immovable property is "transferred" —

a. there should be a contract in writing;

b. the transferee has paid consideration or is willing to perform his part of the contract; and

c. the transferee should have taken possession of the property.

When these conditions are satisfied, the transaction will constitute "transfer" for the purpose of capital gains.

3. *Movable property* - Title to a movable property passes at the time when property is delivered pursuant to a contract to sell. Entries in the books of account are not relevant for determining date of transfer.

Full value of consideration

96. Full value of consideration is the consideration received or receivable by the transferor in lieu of assets, which he has transferred. Such consideration may be received in cash or in kind. If it is received in kind, then fair market value of such assets is taken as full value of consideration. Full value of consideration does not mean market value of that asset which is transferred.

- *Adequacy of consideration* - Adequacy or inadequacy of consideration is not a relevant factor for the purpose of determining full value consideration. However, in the case of transfer of land or building (or both), if stamp duty value is more than 110 per cent of sale consideration, the stamp duty value is taken as full value of consideration.
- *Receipt of consideration* - It makes no difference whether (or not) "full value of consideration" is received during the previous year. Even if consideration is not received, capital gain is chargeable to tax in the year of transfer.
- *If consideration is not determinable* - Where in the case of a transfer, consideration for the transfer of a capital asset(s) is not determinable, then for the purpose of computing capital gains, the fair market value of the asset shall be taken to be the full market value of consideration [sec. 50D].

Transfer Expenses

97. Expenditure incurred wholly and exclusively in connection with transfer of capital asset is deductible from full value of consideration. The expression "expenditure incurred wholly and exclusively in connection with such transfer" means expenditure incurred which is necessary to effect the transfer.

Examples of such expenses are : brokerage or commission paid for securing a purchaser, cost of stamp, registration fees borne by the vendor, travelling expenses incurred in connection with transfer, litigation expenditure for claiming enhancement of compensation awarded in the case of compulsory acquisition of assets.

Cost of Improvement

- *Improvement cost incurred before April 1, 2001* - Cost of improvement incurred before April 1, 2001 is never taken into consideration. This rule does not have any exception.

Cost of Acquisition

98. Cost of acquisition of an asset is the value for which it was acquired by the assessee. Expenses of capital nature for completing or acquiring the title to the property are includible in the cost of acquisition. Interest on money borrowed to purchase asset is part of actual cost of asset.

Indexation

100. Indexed cost of acquisition is calculated as follows –

$$\frac{\text{Cost of acquisition}}{\text{Cost inflation index (CII) for the year in which asset was first held by the assessee* or 2001-02, whichever is later}} \times \text{Cost inflation index for the year in which the asset is transferred}$$

*or the previous owner in cases specified under section 49(1) [*see* para 101.1].

- Indexed cost of improvement is calculated as follows –

$$\frac{\text{Cost of improvement}}{\text{CII for the year in which improvement took place}} \times \text{Cost inflation index for the year in which the asset is transferred}$$

- *Cost inflation index for different previous years –*

Previous year	*CII*	*Previous year*	*CII*	*Previous year*	*CII*	*Previous year*	*CII*
2001-02	100	2006-07	122	2011-12	184	2016-17	264
2002-03	105	2007-08	129	2012-13	200	2017-18	272
2003-04	109	2008-09	137	2013-14	220	2018-19	280
2004-05	113	2009-10	148	2014-15	240	2019-20	289
2005-06	117	2010-11	167	2015-16	254	2020-21	301

PY

2021-22 = 317

2022-23 = 331

2023-24 = 348

COA – Cost to the previous owner

101.1 *Cost to the previous owner [Sec. 49(1)]* - If a person has acquired a capital asset in the circumstances specified under section 49(1), then to calculate capital gain at the time of transfer of such asset cost to the previous owner is taken as cost of acquisition. This rule is always applicable and does not have any exception. Circumstances specified by section 49(1) are as follows–

a. acquisition of property on any distribution of assets on the total or partial partition of a Hindu undivided family;

b. acquisition of property under a gift or will ;

c. acquisition of property —

- *i.* by succession, inheritance or devolution, or
- *ii.* on any distribution of assets on the dissolution of a firm, body of individuals or other association of persons where such dissolution had taken place before April 1, 1987, or
- *iii.* on any distribution of assets on the liquidation of a company, or
- *iv.* under a transfer to a revocable or an irrevocable trust, or
- *v.* by a wholly-owned Indian subsidiary company from its holding company, or
- *vi.* by an Indian holding company from its wholly-owned subsidiary company, or
- *vii.* under a scheme of amalgamation, or
- *viii.* under a scheme of demerger; or
- *ix.* under a scheme of conversion of private company/unlisted company into LLP;
- *x.* on any transfer in the case of conversion of firm/sole-proprietary concern into company; or

d. acquisition of property, by a Hindu undivided family where one of its members has converted his self-acquired property into joint family property after December 31, 1969.

COA – Cost to the previous owner

1. *No option* - If a capital asset was acquired in any one of the modes given above, then cost to the previous owner shall be taken as "cost of acquisition" for the purpose of calculating capital gain at the time of its transfer. There is no option in this regard.

2. *Last previous owner* - Where the previous owner has acquired the property in the aforesaid manner, the previous owner of the property means the last previous owner who had acquired the property by means other than those discussed above. Cost of any improvement of the asset borne by the previous owner, or the assessee, will be added to such cost.

3. *Period of holding of previous owner* - In order to find out whether the capital asset is short-term or long-term in the above cases, the period of holding of the previous owner shall be taken into consideration.

4. *Indexation* - The benefit of indexation will be available from the year in which the asset was first held by the previous owner*.

Cost of Acquisition – Fair Market value

101.2 *Cost of acquisition being the fair market value as on April 1, 2001* - In the following cases, the assessee may take, at his option, either actual cost or the fair market value of the asset as on April 1, 2001 as cost of acquisition :

a. where the capital asset became the property of the assessee before April 1, 2001; or

b. where the capital asset became the property of the assessee by any mode referred to in section 49(1) and the capital asset became the property of the previous owner before April 1, 2001.

- The following points should be duly considered –

1. Adopting fair market value on April 1, 2001 (in place of actual cost of acquisition) is optional. An assessee may (or may not) opt for it.

2. The option is available only when an asset was acquired by the assessee [or by the previous owner in case section 49(1) is applicable] before April 1, 2001.

3. When option is available, the cost of the asset or fair market value as on April 1, 2001, whichever is higher, is taken as the cost of acquisition.

4. The option is not available in the case of depreciable assets.

5. Further option is not available in respect of transfer of a capital asset being goodwill of a business; trade mark/ brand name associated with a business; right to manufacture, produce or process any article or thing; right to carry on business/profession; tenancy right; route permits or loom hours (whether self generated or otherwise).

Advance money

101.4 *When advance money was forfeited earlier [Sec. 51]* - In the course of negotiations for transfer of a capital asset, the assessee (*i.e.*, transferor) received advance money. Later on, the prospective purchaser could not pay the balance consideration and the advance money is retained or forfeited by the assessee or advance money is forfeited by the assessee because of some other reason. The tax treatment of advance money so forfeited or retained by the assessee is as follows –

1. *If advance money is forfeited during the previous year 2013-14 (or any earlier previous year)* - It is not taxable in the hands of recipient till the capital asset (in respect of which advance money was received and forfeited) is transferred. If capital asset is not transferred during his lifetime, advance money forfeited by him will not be chargeable to tax. Conversely, if the capital asset is transferred during his lifetime, the advance money will be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition.

2. *If advance money is forfeited during the previous year 2014-15 (or any subsequent previous year)* - It is taxable in the hands of recipient under section 56(2)(*ix*) under the head "Income from other sources" in the year in which advance money is forfeited. Consequently, it will not be deducted from cost of acquisition when the capital asset is ultimately transferred.

101.5 *Conversion of capital asset into stock-in-trade* - If capital asset is converted into stock-in-trade during a previous year relevant to the assessment year 1985-86 (or any subsequent year), the following special rules are applicable–

1. It will be assumed that capital asset is transferred in the year in which conversion takes place.
2. Fair market value of the asset on the date of conversion will be taken as full value of consideration.
3. However, capital gain will not be taxable in the year of conversion. It will be taxable in the year in which stock-in-trade is transferred.

101.6 *Transfer of capital asset by a partner to a firm* - A capital asset is transferred by a partner to his partnership firm by way of his capital contribution (or otherwise). It is treated a "transfer" and capital gain will be taxable in the hands of the partner. The amount recorded in the books of account is taken as full value of consideration. This rule is also applicable when a member transfers a capital assets to his association of persons or body of individuals.

101.21 *Conversion of stock-in-trade into capital asset and computation of capital gain* - If stock-in-trade is converted into capital asset, the following special provisions are applicable –

1. *In the year of conversion* - The fair market value of the inventory as on the date of its conversion into capital asset, shall be chargeable to tax under the head "Profit and gains of business and profession".
2. *In the year of transfer of capital asset* - When such capital asset is transferred, cost of acquisition of such capital asset shall be deemed to be the fair market value on the date of conversion. The period of holding of such capital asset shall be reckoned from the date of its conversion. Indexation benefit will be available from the year in which conversion takes place.

Compulsory acquisition

101.8 *Compulsory acquisition of a capital asset* - The special rules given below are applicable where the Government has acquired an asset of a person by way of compulsory acquisition. These rules are also applicable when consideration is approved or determined by the Central Government or RBI (even if there is no compulsory acquisition).

- *Initial compensation* - Initial compensation† is taken as full value of consideration. Capital gain is chargeable to tax in the year in which the initial compensation (or part thereof) is first received. Indexation benefit is, however, available up to the year in which the asset is compulsorily acquired.
- *Additional compensation* - If a Court/Tribunal/authority enhances compensation, it will be taxable in the year in which enhanced compensation or additional compensation is received. For this purpose cost of acquisition and cost of improvement are taken as *nil*. However, litigation expenses or incidental expenditure for obtaining additional compensation is deductible.

If the enhanced compensation is received by any other person (because of the death of the transferor or for any other reason), it is taxable as income of the recipient.

Self generated assets

101.10 *Self-generated capital assets* - An asset which does not cost anything to the assessee in terms of money in its creation or acquisition, is a self-generated asset. When a self-generated capital asset is transferred, the following special rules are applicable –

- *Self-generated goodwill of a business, right to manufacture/produce an article/thing or right to carry on business or profession* - In the case of transfer of these capital assets, cost of acquisition and cost of improvement are taken as *nil*. Expenses on transfer are, however, deductible on the basis of actual expenditure.
- *Self-generated assets being tenancy right, route permit, loom hours, trade mark or brand name associated with a business* - In the case of transfer of these self-generated capital assets, cost of acquisition is taken as *nil*. Cost of improvement and expenses on transfer are, however, deductible on the basis of actual expenditure.
- *Any other self-generated asset* - In the case of transfer of any other self-generated capital asset, capital gain is not chargeable to tax.
- *Fair market value on April 1, 2001 - Option not available* - Even if the aforesaid assets self-generated were acquired before April 1, 2001, the option of adopting the fair market value on the said date is not available.

Bonus, Rights shares

101.11 *Capital gain on transfer of bonus shares* - If bonus shares were allotted before April 1, 2001, cost of acquisition is the fair market value on April 1, 2001. If bonus shares are allotted after April 1, 2001, cost of acquisition is taken as *zero*.

101.12 *Capital gain on transfer of right entitlement* - Amount realized by an existing shareholder by selling rights entitlement (*i.e.*, right to acquire additional shares in the company at a pre-determined price) is taxable in the year of transfer of the right entitlement. Cost of acquisition of right entitlement is always taken as *zero* and the capital gain is deemed as short-term capital gain.

101.13 *Conversion of debentures/bonds into shares* - Conversion of debentures into shares is not treated as "transfer". Consequently, at the time of conversion of debentures/bonds into shares nothing is chargeable to tax. When the shares so converted are transferred, the following special rules are applicable –

1. Cost of acquisition of debentures/bonds will become cost of acquisition of shares.
2. To find out whether shares are short-term or long-term capital asset, the period of holding shall be counted from the date of allotment of debentures.
3. The benefit of indexation is available from the date of allotment of debentures.

Insurance compensation

101.15 *Insurance compensation* - If a person gets insurance claim on account of destruction of a capital asset, it is taxable in the year in which such compensation is received. The amount of compensation will be taken as "full value of consideration". However, this rule is applicable only when insurance compensation is received because of damage to, or destruction of, any capital asset because of –

a. flood typhoon, hurricane, cyclone, earthquake or other convulsion of nature;

b. riot or civil disturbance;

c. accidental fire or explosion; or

d. action by an enemy or action taken in combating an enemy.

▸ If an insurance compensation is received in respect of a capital asset because of any other reason, it is not chargeable to tax.

Depreciable assts

101.3 *Capital gain in the case of transfer of depreciable assets [Sec. 50]* - The following rules† are applicable –

▸ *Capital gain arises only in two cases* - If a depreciable asset is transferred, capital gain (or loss) will arise only in the following two cases –

1. When on the last day of the previous year written down value of the block of assets is zero [sec. 50(*1*)].

2. When the block of assets is empty on the last day of the previous year [sec. 50(2)].

In no other case capital gain is chargeable to tax, when a depreciable asset is transferred. This rule is equally applicable whether depreciation is allowed in the current year (or any of earlier years).

▸ *Cost of acquisition* - In the above two cases, cost of acquisition shall be the aggregate of the following–

Step 1	Find out written down value of block of assets at the beginning of the previous year.
Step 2	*Add* : Actual cost of‡ any asset(s) falling within that block of asset acquired by the assessee during the previous year (whether put to use or not).

▸ *Always short-term* - On transfer of depreciable assets gain (or loss) is always short-term capital gain (or loss). It can never be treated as long-term capital gain (or loss).

Point 1

block	
Asset 1	10,000
2	10,000
3	10,000
Purchased 4	10,000 = 40000 total
Sold 1,2,	40000 sale amount
Block is not empty (in terms of assets) asset 3, 4 is remaining	Value is **zero**

Point no 2

Block	
Asset 1	10,000
2	10,000
3	10,000
Purchased 4	10,000
Sold 1,2,3,4	20000 sale amount
Block is empty (in terms of assets)	Value is there = 20,000

Exemption Sec 54

103.1 *Capital gains arising from the transfer of residential house property [Sec. 54]* - The provisions of section 54 are given below –

Who can claim exemption	An individual or a Hindu undivided family
Which specific asset is eligible for exemption	If a residential house property (long-term)† is transferred
Which asset the taxpayer should acquire to get the benefit of exemption	Exemption is available if one residential house‡ is purchased or constructed in India
What is time-limit for acquiring the new asset	*Purchase* - Residential house can be purchased within 1 year before transfer or within 2 years after transfer *Construction* - Residential house can be constructed within 3 years from transfer. For bank deposit, *see* para 103.1-1 In the case of compulsory acquisition, these time-limits shall be determined from the date of receipt of compensation (original or additional)
How much is exempt	Investment in the new asset or capital gain, whichever is lower
Is it possible to revoke the exemption in a subsequent year	If the new asset is transferred within 3 years of its acquisition, exemption will be taken back. For calculating capital gain on transfer of new asset, cost of acquisition will be calculated (as original cost of acquisition – exemption availed under section 54).

RHP	Transferred it PY 20-21 = CG will be calculated - deposit in one scheme – ₹ 10,00,000
	PY 21-22
Buy RHP	**PY 22-23 - Used in buying this house – use the money which I deposited in scheme – ₹. 10,00,000**
	PY 23-24
	PY 24-25 – ₹. 10,00,000 – will become taxable as LTCG or STCG

Exemption Sec 54

103.1-1 *SCHEME OF DEPOSIT* - If the new asset is not acquired up to the due date of submission of return of income, then the taxpayer will have to deposit the money in "Capital gain deposit account scheme" with a nationalised bank or IDBI. On the basis of actual investment and the amount deposited in the deposit account, exemption will be given to the taxpayer.

The taxpayer can acquire the new asset by withdrawing from the deposit account. But the new asset should be acquired within the time-limit mentioned in the relevant sections. If the deposit account is not fully utilised for acquiring the new asset, the unutilised amount [but in case of section 54F it is proportionate unutilised amount] will become chargeable to tax in the previous year in which the specified time-limit for making investment in the new asset expires [in case of sections 54 and 54F when the 3 year time limit expires]. It will be taxable as short-term/long-term capital gain depending upon the original capital gain. The unutilised amount can be withdrawn by the taxpayer after the expiry of the aforesaid time limit. If the taxpayer dies before the expiry of specified time-limit (for making investment in the new asset), then unutilised amount paid to the legal heirs is not taxable in the hands of recipient.

- A taxpayer may sell two house properties and he may purchase one house property for the purpose of availing the exemption.

Question

103.1-P1 *X and Y give the following information –*

Residential house property situated at Delhi	X Rs.	Y Rs.
Date of transfer	*July 10, 2019*	*September 19, 2019*
Date of purchase	*October 6, 2004*	*April 10, 2003*
Sale consideration	*13,00,000*	*14,50,000*
(Stamp duty value)	*(15,00,000)*	*(17,50,000)*
Cost of acquisition	*1,87,000*	*3,75,000*
Expenses on transfer	*10,000*	*6,000*
To get the exemption under section 54, the following residential house properties are purchased by X and Y at Noida –		
Date of purchase	*December 20, 2019*	*July 1, 2019*
Cost of acquisition	*12,00,000*	*16,00,000*
X and Y transfer their house properties at Noida as follows:		
Sale consideration	*22,00,000*	*16,85,000*
Stamp duty value	*23,20,000*	*16,10,000*
Date of transfer	*December 25, 2021*	*May 20, 2021*

Find out the capital gain chargeable to tax in the hands of X for different assessment years.

Solution

Solution : *Assessment year 2020-21*	*Rs.*
Sale consideration (stamp duty value is taken, as it exceeds 105% of actual sale consideration)	15,00,000
Less:	
Indexed cost of acquisition [Rs. 1,87,000 × 289 ÷ 113]	4,78,257
Expenses on transfer	10,000
Balance	10,11,743
Less: Exemption under section 54 [amount of investment in new residential property, *i.e.,* Rs. 12,00,000 or amount of capital gain, *i.e.,* Rs. 10,11,743, whichever is lower]	10,11,743
Long-term capital gains chargeable to tax for the assessment year 2020-21	*Nil*
Assessment year 2022-23	
Sale consideration (stamp duty value is taken, as it exceeds 105% of actual sale consideration)	23,20,000
Less: Indexed cost of acquisition [*see* Note]	2,01,937
Long-term capital gain	21,18,063

Note - Noida property is transferred within 3 years from its acquisition. Exemption claimed under section 54 will be revoked. Cost of acquisition will be taken as Rs. 1,88,257 (*i.e.,* Rs. 12,00,000 *minus* exemption to be taken back : Rs. 10,11,743). Since Noida property is transferred after 2 years, it will be long-term capital asset and indexation benefit will be available. Indexed cost of acquisition will be Rs. 2,01,937 [cost of acquisition : Rs. 1,88,257 × CII of 2021-22 being year of transfer : 310 (assumed figure) ÷ CII of 2019-20 being year of acquisition : 289].

Exemption Sec 54B

103.2 *Capital gains arising from the transfer of land used for agricultural purpose [Sec. 54B]* - The provisions of section 54B are given below –

Who can claim exemption	Individual or Hindu undivided family
Which specific asset is eligible for exemption	Any short-term or long-term capital asset (being agricultural land), if it was used by the individual (or his parents) [or by the Hindu undivided family] for agricultural purpose for 2 years immediately prior to transfer
Which asset the taxpayer should acquire to get the benefit of exemption	Agricultural land (maybe in rural area or urban area).
What is time limit for acquiring the new asset	Within 2 years from the date of transfer. For bank deposit, *see* para 103.1-1
How much is exempt	Investment in the new asset or capital gain, whichever is lower
Is it possible to revoke the exemption	If the new asset is transferred within 3 years of its acquisition, exemption will be taken back. For calculating capital gain on transfer of new asset, cost of acquisition will be calculated as (original cost of acquisition – exemption availed under section 54B).

Question

103.2-P1 *X sells agricultural land situated within the municipal limits of Calcutta for Rs. 50,00,000 (stamp duty value as per circle rate : Rs. 38,75,000) on July 4, 2019, which was purchased by him on March 1, 2007 for Rs. 14,70,726. On July 15, 2020, he purchases agricultural land in rural area for Rs. 4,30,000 and deposits Rs. 10,80,000 in a deposit account for availing exemption under section 54B. He purchases another agricultural land (situated within the limit of Delhi Municipal Corporation) on June 30, 2021 for Rs. 8,47,000 by withdrawing from the deposit account. Amount left in the deposit account is withdrawn on July 10, 2021. The agricultural land in rural area is transferred on April 1, 2022 for Rs. 4,90,000 and the land in Delhi is transferred on July 17, 2022 for Rs. 8,70,000. Determine the amount of capital gains.*

Solution

Solution : *Assessment year 2020-21*

	Rs.
Sale proceeds	50,00,000
Less : Indexed cost of acquisition [Rs. 14,70,726 × 289 ÷ 122]	34,83,934
Balance	15,16,066
	Rs.
Less : Exemption under section 54B	
- Cost of agricultural land purchased on July 15, 2020	4,30,000
- Amount deposited in the deposit account	10,80,000
Long-term capital gains	6,066

Assessment year 2022-23 (i.e., relevant to the previous year in which 2 years from the date of sale of agricultural land expires)

Amount deposited in the deposit account	10,80,000
Less : Amount utilised in purchasing agricultural land up to July 3, 2021	8,47,000
Long-term capital gains	2,33,000

Assessment year 2023-24 (i.e., relevant to the previous year 2022-23 in which the new assets are transferred before the expiry of 3 years)

	Agricultural land in rural area *Rs.*	*Agricultural land in urban area* *Rs.*
Sale proceeds	4,90,000	8,70,000
Less : Cost of acquisition after deduction of the amount of exemption under section 54B as the new assets are transferred within 3 years [*i.e.*, Rs. 4,30,000 – Rs. 4,30,000; Rs. 8,47,000 – Rs. 8,47,000]	*Nil*	*Nil*
Short-term capital gain	Not taxable*	8,70,000

*As the agricultural land is situated in rural area, it is not a "capital asset" and, consequently, capital gain arising on its transfer is not chargeable to tax.

Exemption Sec 54D

103.3 *Capital gains on compulsory acquisition of land and building, forming part of industrial undertaking [Sec. 54D]* - The provisions of section 54D are given below–

Who can claim exemption	Any taxpayer
Which specific asset is eligible for exemption	Land or building (short-term or long-term) forming part of an industrial undertaking which is compulsorily acquired by the Government and which is used 2 years for industrial purposes prior to its acquisition
Which asset the taxpayer should acquire to get the benefit of exemption	Land or building for industrial purposes
What is time limit for acq-uiring the new asset	Within 3 years from the date of receipt of compensation. For bank deposit, *see* para 103.1-1
How much is exempt	Investment in the new asset or capital gain, whichever is lower. The new asset should not be transferred within 3 years from the date of acquisition of the new asset
Is it possible to revoke the exemption	If the new asset is transferred within 3 years of its acquisition, exemption will be taken back. For calculating capital gain on transfer of new asset, cost of acquisition will be calculated as (original cost of acquisition – exemption availed under section 54D).

Exemption Sec 54EC

103.4 Capital gains on transfer of any long-term capital asset on the basis of investment in certain bonds [Sec. 54EC] - The provisions of section 54EC are given below –

Who can claim exemption	Any taxpayer
Which specific asset is eligible for exemption	Long-term capital asset (being land or building or both) (maybe residential or commercial, maybe situated in India or outside India).
Which asset the taxpayer should acquire to get the benefit of exemption	Bonds of National Highways Authority of India (NHAI) or Rural Electrification Corporation (REC) or notified bonds. Maximum investment in one financial year is Rs. 50 lakh* Moreover, investment made by an assessee in the NHAI/REC bonds/notified bonds, out of capital gains arising from transfer of one or more original asset, during the financial year in which the original asset or assets are transferred and in the subsequent financial year should not exceed Rs. 50 lakh.
What is time limit for acquiring the new asset	Within 6 months from the date of transfer
How much is exempt	Investment in the new asset or capital gain, whichever is lower. The new asset should not be transferred within 5 years†.
Is it possible to revoke the exemption	In the following cases, exemption will be taken back (and the amount of exemption given earlier will become long-term capital gain of the year in which the assessee commits the following default) – - If the new asset (*i.e.*, bonds of NHAI/REC/notified bonds) is transferred within 5 years† from its acquisition. - If the new asset is converted into money or any loan/advance is taken on the security of the new asset within 5 years† from the date of acquisition of the new asset.

Exemption Sec 54EE

103.4A *Capital gain not to be charged on investment in units of a specified fund [Sec. 54EE]* - The provisions of section 54EE are given below –

1. The assessee has transferred a long-term capital asset.

2. He has invested the whole (or any part) of capital gains in long-term specified assets (to be notified by the Central Government to finance start-ups). Such investment can be made at any time within 6 months from the date of transfer of original asset. The amount of such investment (made on or after April 1, 2016) by an assessee during any financial year cannot exceed Rs. 50 lakh. Moreover, investment made by an assessee in long-term specified assets, out of capital gains arising from transfer of one or more original assets, during the financial year in which the original asset or assets are transferred and in the subsequent financial year should not exceed Rs. 50 lakh.

- *Amount of exemption* -Amount of exemption under section 54EE is the amount of capital gain or amount invested in long-term specified assets, whichever is lower.
- *Revocation of exemption* -The long-term specified assets should not be transferred (not even loan or advance is taken on security of such assets) within 3 years from the date of acquisition. If long-term specified assets are transferred (or loan or advance is taken on security of such assets) within 3 years, the amount of exemption given earlier will be revoked and it shall be chargeable to tax as long-term capital gain in the year in which such specified assets are transferred (or loan or advance is taken).

Exemption Sec 54GB

103.8 *Capital gain on transfer of residential property [Sec. 54GB]* - The provisions of section 54GB are given below –

Who can claim exemption	An individual or a Hindu undivided family
Which specified asset is eligible for exemption	On transfer of a long-term residential property (a house or a plot of land) if transfer takes place during April 1, 2012 and March 31, 2017 (in case of an investment in eligible start-up, the residential property can be transferred up to March 31, 2021)
Which asset the taxpayer should acquire to get the benefit of exemption	Equity shares in an "eligible company"
What is the time-limit for acquiring the new asset	Equity shares in an "eligible company" should be acquired on or before the due date of furnishing of return of income under section 139(1). The "eligible company" should utilize this amount for the purchase of a "new asset" within one year from the date of subscription in equity shares. For bank deposit, *see* para 103.8-1
How much is exempt	Investment in "new asset" by the eligible company ÷ Net sale consideration × Capital gain. Exemption cannot exceed capital gain
Is it possible to revoke the exemption	In the following cases, exemption will be taken back and the amount of exemption (or proportionate exemption) given earlier under section 54GB will become long-term capital gain of the assessee (*i.e.*, transferor of residential property). It shall be taxable in the year in which the assessee or the eligible company commits the following defaults – 1. If the equity shares in the eligible company are sold or otherwise transferred by the assessee within 5 years from the date of acquisition. 2. If the "new asset" is sold or otherwise transferred by the eligible company within the period given below – - In the case of a "new asset" being computer or computer software acquired by an eligible start-up : Within 3 years from the date of acquisition (applicable from the assessment year 2020-21). - In the case of any other "new asset" : Within 5 years from the date of acquisition. 3. If the deposit account is not utilized fully or partly by the eligible company for purchasing the new asset within 1 year from the date of subscription in equity shares (by the assessee)

Exemption Sec 54GB

- *Net sale consideration* - Net sale consideration is sale consideration *minus* expenditure on transfer incurred by the transferor.
- *"Eligible company"* - It means a company which satisfies the following conditions –

1. It is incorporated on or after April 1 (of the previous year in which residential property is transferred) but on or before the due date of submission of return of income under section 139(1) by the assessee (*i.e.*, transferor of residential property).

2. It is engaged in the business of manufacture of any article or thing or in an eligible business.

3. The assessee (*i.e.*, transferor of residential property) has more than 25 per cent share capital (or voting right) after subscription in shares by the assessee.

4. The company qualifies to be a SME (*i.e.*, small or medium enterprise under the Micro, Small and Medium Enterprises Act, 2006) (*i.e.*, where the investment in plant and machinery is more than Rs. 25 lakh but not more than Rs. 10 crore). Alternatively, the company is an eligible start-up.

- *What is new asset* - It means new plant and machinery. However, it does not include the following : (*a*) any plant or machinery which is used in India or outside India by any person before its installation by the eligible company; (*b*) any plant or machinery which is installed in office premises/residential accommodation/guest house; (*c*) any office appliance; (*d*) computers/computer software†; (*e*) any vehicle; and (*f*) any plant or machinery which is allowed 100 per cent deduction (by depreciation or otherwise) in any previous year.
- *What is "eligible start-up" or "eligible business"* - "Eligible business" means a business which involves innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property. "Eligible start-up" means a company engaged in eligible business and satisfies the following conditions –

1. It is incorporated during April 1, 2016 and March 31, 2019.

2. The total turnover of its business does not exceed Rs. 25 crore in any of the previous years during April 1, 2016 and March 31, 2021.

Sec 54H

103.9 *Extension of time-limit for acquiring new asset [Sec. 54H]* - The cumulative impact of sections 45(5) and 54H is given below –

1. *Initial compensation* - Capital gain is chargeable to tax in the previous year in which the compensation (or part thereof) is first received. For availing the benefit of exemption under sections 54, 54B, 54D, 54EC and 54F, the new asset should be acquired within time-limit specified for this purpose. But the specified time-limit shall be determined from the date of receipt of compensation. If initial compensation is received in parts, then the entire initial compensation is taxable in the year in which a part is first received, but the time-limit for acquiring the new asset under sections 54, 54B, 54D, 54EC and 54F shall be determined on the basis of dates of receipt of different parts of initial compensation.

2. *Enhanced compensation* - If any enhanced compensation is received, it is taxable in the year in which such compensation is received and for acquiring the new asset under sections 54, 54B, 54D, 54EC and 54F, the time-limit shall be determined from the date of receipt of additional compensation.

Exemption Sec 54F

103.5 *Capital gains on transfer of a long-term capital asset other than a house property [Sec. 54F]* - The provisions of section 54F are given below —

Who can claim exemption	An individual or a HUF
Which specific asset is eligible for exemption	Capital gain arising on transfer of any long-term capital asset (other than a residential house property) is qualified for exemption provided on the date of transfer the taxpayer does not own more than one residential house property (except the new house property given below)
Which asset the taxpayer should acquire to get the benefit of exemption	One residential house property in India
What is time limit for acquiring the new asset	*Purchase* - Residential house can be purchased within 1 year before transfer or within 2 years after transfer *Construction* - Residential house can be constructed within 3 years from transfer. For bank deposit, *see* para 103.1-1, for other relevant points, *see* para 103.1-2 In the case of compulsory acquisition, these time-limits shall be determined from the date of receipt of compensation (original or additional)
How much is exempt	Investment in the new asset ÷ Net sale consideration × Capital gain. Amount of exemption cannot exceed capital gain
Is it possible to revoke the exemption	In the following cases, exemption will be taken back (and the amount of exemption given earlier will become long-term capital gain of the year in which the assessee commits the following default) – ▷ If the new asset is transferred within 3 years from the date of its acquisition ▷ If within 2 years from the date of transfer of the original assets, the taxpayer purchases another residential house property in India or outside India ▷ If within 3 years from the date of transfer of original assets, the taxpayer completes construction of another residential house property in India or outside India.