

## Amendments in Capital Gains

### Introduction

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Capital gain or loss arises when the assets are transferred at higher or lower consideration respectively. It may be short term or long term based on the period of holding of the asset so transferred by the Assessee.

There are few amendments as per the finance bill, 2012 and the proposals as made by finance bill, 2013 in Capital gains giving certain reliefs and plugging up some loopholes. There are various clarificatory amendments made in the provisions dealing with the Capital Gains. While some of these clarificatory amendments have been given retrospective effects, some have been given prospective effect.

### Amendments by Finance Act, 2012

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- **Amendment in Section 49 (1) (iii) (e)**
  - (1) Section 49 says that in case of transfers covered under section 47, the cost in the hands of transferee is the cost to previous owner.
  - (2) Transfers (of assets) during transfer of business - Cases Covered :
    - Firm - Company – Sec 47(xiii)
    - Recognised Stock exchange - Company– Sec 47(xiii)
    - Proprietorship - Company – Sec 47(xiv)
  - (3) Earlier the above cases were out of the purview of section 49. Now, section 49 (1) (iii) has been amended to include the above cases.
  - (4) Due to this amendment, now companies cannot take undue advantage by inflating cost of acquisition.
  - (5) This section will have retrospective effect from 1<sup>st</sup> April, 1999.
  
- **Section 54B :**
  - (1) An amendment has been made in this section to include HUF apart from individuals.
  - (2) So now the Benefit of claiming exemption u/s 54B for acquiring new agricultural land from transfer of urban agricultural land is available to HUF w.e.f Assessment year 2013-14.
  
- **Section 54GB:**
  - (1) A new section has been inserted to provide benefit to Individual and HUF.
  - (2) This exemption can be availed if the net consideration received from sale of residential property is invested in equity shares of a new MSME Company.
  - (3) However it does have certain other terms and conditions explained in the next article named "Save capital gain tax by investing in Company"
  
- **Section 50D :**

It is proposed to insert Section 50 D by the Bill to provide that in cases where the consideration is not ascertainable or cannot be determined at the time of transfer, then for computing capital gains, fair market value of such asset shall be treated as full value of consideration accruing or received as a result of such transfer.

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- **Section 55A :**

- (1) Earlier Assessing officer (AO) can refer to valuation officer only in cases where Value of consideration as shown by the Assessee is less than fair market value(FMV).
- (2) By this Amendment in sec 55A proposed by finance bill, 2012 AO can now refer to valuation officer even in cases where the Assessee has shown full value of consideration more than FMV.
- (3) This will be important mainly in cases of transfer of assets, which was acquired on or before 01.04.1981 because an option will be given to the Assessee to consider FMV as Cost of acquisition in cases where cost of acquisition is low or not ascertainable.
- (4) Now an Assessee cannot lessen the tax burden by inflating the cost of acquisition.
- (5) This amendment is made effective only from 1st July, 2012.

## Amendments by Finance Bill, 2013

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The existing provisions contained in clause (14) of section 2 of the Income-tax Act define the term “capital asset” as property of any kind held by an assessee, whether or not connected with his business or profession. Certain categories of properties including agricultural land have been excluded from this definition.

Sub-clause (iii) of clause (14) of section 2 provides that

- (a) agricultural land situated in any area within the jurisdiction of a municipality or cantonment board having population of not less than ten thousand according to last preceding census, or
- (b) agricultural land situated in any area within such distance not exceeding eight kilometres from the local limits of any municipality or cantonment board, as notified by the Central Government having regard to the extent and scope of urbanization and other relevant factors, forms part of capital asset.

There is an **amendment** in the definition of capital asset, It has been proposed to amend section 2(14)(iii)(b) so as to provide that the land situated in any area within the distance, measured aerially (shortest aerial distance),

- (I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or
- (II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakhs; or
- (III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakhs, shall form part of capital asset.

It has also been proposed to define the expression “population” to mean population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

These amendments will take effect from 1st April, 2014 and will, accordingly, apply in relation to assessment year 2014-15 and subsequent assessment years.

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The amendment can be better understood with the following table:

<b>From the local limits of municipality or cantonment board</b>	<b>Population</b>
More than 2 kms.	>10,000 but <= 1Lakh
More than 6 kms	>1 Lakh but <= 10 Lakhs
More than 8 kms.	>10 Lakhs

So, if both the conditions are satisfied then it will be covered under the definition of agricultural land and it will out of the purview of Capital Assets.

The article explains all the latest amendments in capital gains that took place in the year 2012, and amendments as proposed by Budget, 2013.