



### **Section 10(38): Exemption in respect of Long term Capital Gains in Case of Specified Securities**

The following income shall be exempt from tax from Assessment Year 2005-06:-

#### **Any income arising from:**

- The transfer of a long-term capital asset
- Being an equity share in a company or
- A unit of an equity oriented fund or a unit of a business trust where-
  - a) The transaction of sale of such equity share or unit entered into on or after 1.10.2004 and
  - b) Such transaction is chargeable to securities transaction tax.

**Explanation – For the purpose of this clause, " equity oriented fund" means a fund-**

- i. Where the investible funds are invested by way of equity shares in domestic companies to the extent of more than 65% of the total proceeds of such fund; and
- ii. Which has been set up under a scheme of a Mutual fund specified under section 10(23D)

Provided that the percentage of equity shareholding of the fund shall be computed with reference to the annual average of the monthly averages of the opening and closing figures.

**Provided further that the provisions of this clause shall not apply in respect of any income arising from transfer of units of a business trust which were acquired in consideration of a transfer referred to in clause (Xvii) of section 47.**



### **Long-term Capital Gains on debt oriented Mutual Fund and its qualification as Short-term capital asset**

The existing provisions contained in **clause (42A) of section 2** of the Act provides that short-term capital asset means a capital asset held by an assessee for not more than **thirty six months** immediately preceding the date of its transfer. However, in the case of a share held in a company or any other security listed in a **recognized stock exchange** in India or a unit of the **Unit Trust of India** or a **unit of a Mutual Fund** or a **zero coupon bond**, the period of holding for qualifying it as short-term capital asset is not more than **twelve months**.

The shorter period of holding of not more than twelve months for consideration as short-term capital asset was introduced for encouraging investment on stock market where prices of the securities are market determined.

Accordingly, it is proposed to amend the aforesaid clause (42A) of section 2 so as to provide that an unlisted security and a unit of a mutual fund (other than an equity oriented mutual fund) shall be a short-term capital asset if it is held for not more than thirty-six months.

**These amendments will take effect from 1<sup>st</sup> April, 2015 and will accordingly apply, in relation to the assessment year 2015-16 and subsequent assessment years.**



### **Section 47 : Certain transaction not regarded as transfer**

- Any transfer of a capital asset, being a government security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities, by a non-resident to another non-resident.

**Explanation: For the purpose of this clause, "Government Security" shall have the meaning assigned to it in clause (b) of section 2 of the Securities Contracts (Regulation) Act, 1956**

**Memorandum Explaining finance Bill, 2014****Transfer of Government Security by one non-resident to another non-resident**

The existing provision contained in section 47 of the Act provides that certain transactions shall not be considered as transfer for the purpose of charging of capital gains.

With a view to facilitate listing and trading of Government securities outside India, it is proposed to insert clause (viib) in the said section so as to provide that any transfer of a capital asset, being a Government Security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities, by a non-resident to another non-resident shall not be considered as transfer for the purpose of charging capital gains.

This amendment will take effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to assessment year 2015-16 and subsequent assessment years.

- Any transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust to the transferor.

**Explanation:-** For the purpose of this clause, the expression "special purpose vehicle" shall have the meaning assigned to it in the Explanation to clause (23 FC) of section 10.

**Section 51 : Advance Money Forfeited:**

Provided that where any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset, has been included in the total income of the assessee for any previous year in accordance with the provisions of clause (ix) of sub-section (2) of section 56, then, such sum shall not 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.

**Memorandum Explanation of Finance Bill, 2014****Taxability of advance for transfer of a capital asset**

The existing provisions contained in section 56 of the Act provide that income of every kind which is not to be excluded from the total income under the Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any other head of income.

Sub-section (2) provides for the specific category of incomes that shall be chargeable to income-tax under the head "Income from other sources".

It is proposed to insert a new clause (ix) in sub-section (2) of section 56 to provide for the taxability of any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset. Such sum shall be chargeable to income-tax under the head 'income from other sources' if such sum is forfeited and the negotiations do not result in transfer of such capital asset. A consequential amendment in clause (24) of section (2) is also being made to include such sum in the definition of the term 'income'.

The existing provisions of section 51 provide that any advance retained or received shall be reduced from the cost of acquisition of the asset or the written down value or the fair market value of the asset. In order to avoid double taxation of the advance received and retained, section 51 is also proposed to be amended to provide that where any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, has been included in the total income of the assessee for any previous year, in accordance with the provisions of clause (ix) of sub-section (2) of section 56, such amount shall not 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.

These amendments will take effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years



### **Capital gains exemption in case of investment in a residential house property**

The existing provisions contained in sub-section (1) of section 54, *inter alia*, provide that where capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, and the assessee within a period of one year before or two years after the date of transfer, purchases, or within a period of three years after the date of transfer constructs, a residential house then the amount of capital gains to the extent invested in the new residential house is not chargeable to tax under section 45 of the Act.

The existing provisions contained in sub-section (1) of section 54F, *inter alia*, provide that where capital gain arises from transfer of a long-term capital asset, not being a residential house, and the assessee within a period of one year before or two years after the date of transfer, purchases, or within a period of three years after the date of transfer constructs, a residential house then the portion of capital gains in the ratio of cost of new asset to the net consideration received on transfer is not chargeable to tax.

The benefit was intended for investment in one residential house within India. Accordingly, it is proposed to amend the aforesaid sub-section (1) of section 54 so as to provide that the rollover relief under the said section is available if the investment is made in one residential house situated in India.

It is further proposed to amend the aforesaid sub-section (1) of section 54F so as to provide that the exemption is available if the investment is made in one residential house situated in India.

*These amendments will take effect from 1<sup>st</sup> April, 2015 and will accordingly apply in relation to assessment year 2015-16 and subsequent assessment years.*



### **Section 54 EC: Capital Gain not to be charged on investment in certain bonds**

Provided that the investment made on or after the 1st day of April, 2007 in the long-term specified asset by an assessee during any financial year does not exceed ₹ 50,00,000

Provided further that the investment made by an assessee in the long-term specified asset, from 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 does not **exceed fifty lakh rupees**.

### **Memorandum Explanation of Finance Bill, 2014**

#### **Capital gains exemption on investment in Specified Bonds**

The existing provisions contained in sub-section (1) of section 54EC of the Act provide that where capital gain arises from the transfer of a long-term capital asset and the assessee has, within a period of six months, invested the whole or part of capital gains in the long-term specified asset, the proportionate capital gains so invested in the long-term specified asset, out of the whole of the capital gain, shall not be charged to tax. The proviso to the said sub-section provides that the investment made in the long-term specified asset during any financial year shall not exceed fifty lakh rupees.

However, the wordings of the proviso have created an ambiguity. As a result the capital gains arising during the year after the month of September were invested in the specified asset in such a manner so as to split the investment in two years i.e., one within the year and second in the next year but before the expiry of six months. This resulted in the claim for relief of one crore rupees as against the intended limit for relief of fifty lakh rupees.

Accordingly, it is proposed to insert a proviso in sub-section (1) so as to provide that the investment made by an assessee in the long-term specified asset, 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 does not exceed fifty lakh rupees.

*This amendment will take effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to assessment year 2015-16 and subsequent assessment years.*

