

INCOME TAX BENEFIT ON INVESTMENT IN STARTUPS (SECTION 54GB OF THE INCOME TAX ACT, 1961)

Section 54GB of the Income Tax Act ('the Act') provides an exemption of capital gains arising out of the sale of residential property on investing the same in shares of startup company. This exemption was provided with an objective of providing relief to an individual or HUF who would like to setup or start a company by selling a residential property

CONDITIONS FOR CLAIMING EXEMPTION UNDER THIS SECTION—

- 1) It is applicable only in case of Capital Gains in the hands of **Individual/Hindu Undivided Family (HUF)**
- 2) It must be a **long term Capital Gain** from transfer of **residential property** (a house or a plot of land).
- 3) The amount of **net consideration** should be **utilized before the due date** of furnishing of **return of income** under section 139(1), for **subscription in equity shares of an eligible company** (Refer Definition -1).
- 4) The amount of subscription is to be **utilized** by the company for **the purchase of new asset** (Refer Definition-4) **within a period of one year** from the date of subscription in the equity shares.

Note - If the amount is **not utilized within one year of subscription**, then the unutilized amount shall be **charged as the income of assessee** (Individual/HUF) in the previous year in which the period of one year expires and the company shall be entitled to withdraw such amount from the deposit scheme.

- 5) The equity shares of the company or the new asset acquired by the company should **not be sold** or otherwise transferred by the individual/HUF or the company as the case may be **within a period of 5 years** from the date of their acquisition. **If Transferred** within 5 years, then exempt capital gain will be **taxable** in PY of transfer of equity shares or new assets in the hands of assessee.

Note - In case of **Computer and Computer software** acquired by eligible start up restriction of **3 years** apply.

- 6) The provisions of this section shall not apply to any transfer of residential property made after the 31st day of March, 2022 as amended by CBDT

AMOUNT OF EXEMPTION U/S 54GB OF THE ACT –

Conditions	Amount Exempt
If Net consideration > Cost of New Asset	Cost of new asset * Capital Gain/Net Consideration
If Net consideration <= Cost of New Asset	Capital Gain

DEPOSIT IN CAPITAL GAIN ACCOUNT SCHEME

- If the amount of **net consideration** which has been **received** by the company for the **issue of equity shares** by the individual or HUF is **not utilized by the company** for the purchase of a new asset **before the due date** of

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furnishing the return of income under section 139, the **unutilized amount** should be deposited before the said due date under a **deposit scheme, notified by the Central Government** in this behalf

- The return furnished by the assessee shall be **accompanied by proof** of such deposit having been made.
- The amount so utilized and the **amount so deposited** in the deposit scheme shall be **deemed to be the cost of a new asset**.

IMPORTANT DEFINITIONS –

1) Eligible Company

- Company incorporated in India during the period from **1st April** of PY relevant to AY in which the capital gain arises to the due date of furnishing the return of income u/s 139(1) of the Act by assessee.
- Engaged in the business of manufacture of an article or a thing or in an **eligible business** (Refer Definition -2)
- Company in which the assessee has **more than 25% share capital/voting rights** after the subscription of shares
- Company qualifies to be **small/medium enterprises under MSME Act, 2006 or an eligible startup**

2) Eligible business

Means **eligible startup** (Refer Definition -3) engaged in innovation, development or improvement of products or processes or services or a scalable business model with a high potential of employment generation and wealth creation

3) Eligible Startup

- Incorporated **on and after 01/04/2016 but before 01/04/2022**
- Total **turnover** of its business **does not exceed 100cr** in the previous year relevant to the assessment year for which deduction u/s 80-IAC is claimed
- It **holds certificate** of eligible business from the **Inter Ministerial Board of Certification (IMBC)** as notified by CG

4) New Asset

Means **Plant & Machinery**

But **does not include** –

- Second Hand Machinery
- P&M installed in any office premises or any residential accommodation including guest house
- Any office appliances including computers or computer software
- Any vehicle
- P&M the whole of the actual cost of which is allowed as 100% deduction under PGBP

Exception - in case of start up being technology driven start up, the new asset shall include computer or computer software

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