

THE FINANCE ACT, 2022

Amendments relating to Capital Gains Tax

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Agenda

- Section 1 Immovable properties
- Section 2 Tax neutral transactions
- Section 3 Listed shares and other securities
- Section 4 Assets held for more than a year

SECTION - 1

Immovable Properties

Immovable Properties

- Pre-amended capital gains tax regime for disposal of immovable properties made no distinction between immovable properties **situated within or outside Pakistan**.
- No segregation was made between **constructed** or **open plots** (except for 2019-20).
- Immovable properties **held for more than four years** were effectively not liable to tax (gain deemed as ZERO).
- The rates of Capital Gains Tax were linked with the **amounts of gain** (upto Rs 5 million – **3.5%** and amount exceeding Rs 15 million – **15%**).
- The above regime has been **revamped** by the Finance Act, 2022.
- A **distinction** between immovable properties situated **within and outside Pakistan** have been created.
- Furthermore, for rate purposes, classification as **open plot, flat** and **constructed property** introduced.

Immovable Properties

Capital gains relating to disposal of **immovable properties situated in Pakistan** will be taxed at the following rates:-

S. No	Holding Period	Rate of Tax		
		Open Plots	Constructed Property	Flats
(1)	(2)	(3)	(4)	(5)
1.	Not exceeding one year	15%	15%	15%
2.	Exceeding one year but not exceeding two years	12.5%	10%	7.5%
3.	Exceeding two years but not exceeding three years	10%	7.5%	0%
4.	Exceeding three years but not exceeding four years	7.5%	5%	
5.	Exceeding four years but not exceeding five years	5%	0%	
6.	Exceeding five years but not exceeding six years	2.5%		
7.	Exceeding six years	0%		

Immovable Properties

- **Open plots** held for more than **six years** zero rated.
- **Constructed Property** held for more than **four years** zero rated.
- **Flats** held for more than **two years** zero rated.
- **Advance tax under section 236C** appears to apply **irrespective of holding period** (as against previous exclusion for holding period exceeding four years). The rate is also **increased from 1% to 2%.**
- Capital Gains on disposal of immovable properties **situated outside Pakistan** is not covered by special CGT provisions implying that **normal provisions would apply.**

SECTION - 2

Tax neutral transactions

Tax neutral transactions

- For the purpose of computing capital gains, certain transactions relating to acquisition of assets such as under **gifts from permissible relatives, inheritance, on dissolution of companies and AOPs** were treated to be **acquired at FMV**.
- On the other hand, some of these transactions are also treated as **tax neutral under section 79** such as gifts, bequest, will, inheritance, distribution of assets on liquidation of AOPs and companies, etc. **deeming the assets to have been acquired at same cost**.
- The **Finance Act, 2018** restricted the non recognition of such gifts to **relatives** as defined in section 85(5) and Finance Act, 2021 removed **the restriction of 'residence'** in case of transactions relating to such gifts, inheritance, agreements to live apart. However, an **anti-avoidance** rule was also added to section **37(4A)** to keep a check if such assets are disposed within two years of acquisition.
- The Finance Act, 2022 has **omitted section 37(4A)** altogether implying that assets acquired under tax neutral transactions will remain at 'cost' in the hands of transferees and **two years' anti-avoidance rule is no more applicable**.

SECTION – 3

*Listed shares & other securities
covered by section 37A*

Securities u/s 37A

- Gain on disposal of securities (including listed securities & debt securities held by non-corporate persons) under section 37A shall now be subject to **revised tax rates** for **tax year 2023 and onwards** based on holding period as under:

Holding Period Revised	Rate
Less than 1 year	15%
From 1 year to 2 years	12.5%
From 2 years to 3 years	10%
From 3 years to 4 years	7.5%
From 4 years to 5 years	5%
From 5 years to 6 years	2.5%
More than 6 years	0%

- For securities **acquired upto June 30, 2022**, the rate of **12.5% (as earlier prescribed)** shall apply irrespective of holding period whereas the **reduced rates** mentioned above shall apply on **securities acquired on or after July 1, 2022**.

Securities u/s 37A

- Rate of tax remains 5% for gains relating to **future commodity contracts** entered into by members of Pakistan Stock Exchange.
- Capital gains for **debt securities of companies** shall also remain subjected to corporate tax rates.
- Previously, in respect of **Mutual Fund** or **Collective Investment Scheme** or a **REIT scheme**, no capital gains tax was deductible if the holding period of the security was more than 4 years. Through Finance Act, such holding period has now been increased to 6 years which is a **consequential amendment**.

SECTION – 4

*Assets held for more
than a year*

Assets held for more than a year

- Capital gains arising on disposal of capital assets (other than certain securities & immovable properties) held for more than one year are now **fully taxable**.
- The **reduction of 25%** (in computing taxable gain on disposal of such assets held for more than one year) has been done away with.

Questions

&

Answers