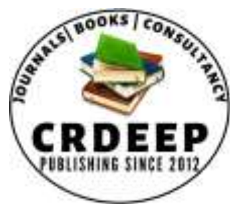

Content is available at: CRDEEP Journals
Journal homepage: http://www.crdeepjournal.org/category/journals/global-journal-of-current-reseach-gjcr/

Global Journal of Current Research

(ISSN: 2320-2920) (Scientific Journal Impact Factor: 6.122)

UGC Approved-A Peer Reviewed Quarterly Journal

Full Length Research Paper

Principles, Practices and Reforms Regarding Capital Gain Taxes: A Study on Capital Gain Taxation in India From 2010

Rakesh Bharadwaj[1*] and Dr. Ashish Kumar Singhal[2]
1-Research Scholar, ICFAI Law School, The ICFAI University, Dehradun, Uttarakhand, India.
2-Associate Professor, ICFAI Law School, The ICFAI University, Dehradun, Uttarakhand, India.

ARTICLE DETAILS

Corresponding Author:
Rakesh Bharadwaj

Key words:
Principles, Practices, Reforms, Capital Gain Taxes

ABSTRACT

The relationship between capital gains taxes and dividend taxes on stock sales is the subject of the study on capital gains taxation in India. Two interactions impact the timing of dividend payments, as demonstrated by a model of the new approach of dividend taxation adjusted to include realization-based capital gains and losses on shares. The capital asset transfer needs to happen in the prior year. There must be a capital asset, a transfer of the capital asset, and any profits or benefits resulting from the transfer for this to be taxed under the "Capital Gains" category. In India, one of the unresolved challenges is capital gain taxes. It ought to be appropriately implemented by the relevant authorities in accordance with the law. Dividend payments have an incentive to be made before a stock sale results in a profit. Second, factors similar to the typical lock-in effects for sales have an impact on when dividends are paid out. Ultimately, the study demonstrates that the new perspective is no longer valid if there are tax clienteles. The results may have an impact on empirical methodologies employed to discover the new view, in addition to having several policy ramifications.

1. Introduction

One of the most hotly debated and contentious subjects in public economics is the taxation of capital. Papers advancing theoretical positions range from emphasizing that capital should be completely exempt from taxation to suggesting that there should be a "presumption that it would be taxed, and possibly at high rates."3. The fact that there are several ways to create returns, each with unique characteristics and an impact on the administrative restrictions that coexist with theoretical debates about the optimal tax rate, complicates policy suggestions for capital taxes. Do the returns just represent the cost of postponing consumption, or do they also represent the reward for taking chances? If the latter, is any successful result a result of ability, luck, or effort? Do returns come in the form of an income stream or as a rise in an asset's value, known as a capital gain, which builds up but isn't recognized until the asset is sold? A duty on capital gains, recognized in the offer of a non-stock resource purchased at a reduced price, is called a capital gain charge (CGT) (Rohit Deswal, 2009). The most well-known capital gains are recognized from the sale of real estate, precious metals, bonds, and stocks. Property owned by the assessee and securities held by the Income Duty of India (FII) are considered capital assets. Stock-in-exchange, personal property, rural land, special conveyor bonds, and gold bond issuance under the Gold Store Conspiracy are not included in the capital assets

*Author can be contacted at: Research Scholar, ICFAI Law School, The ICFAI University, Dehradun, Uttarakhand, India.

Article details: Received: 15- April-2024; Sent for Review on: 18- April -2024; Draft sent to Author for corrections: 30- April -2024; Accepted on: 05-May- 2024

Online Available from 06-May- 2024

DOI: [10.13140/RG.2.2.12715.66080](10.13140/RG.2.2.12715.66080)

GJCR: 2024-25/© *2024 CRDEEP Journals. All Rights Reserved.*

(www.capankajgoel.com). Not every nation imposes a capital gains tax, and the majority have different tax rates for people and organizations. Profit arising from the trading of capital resources is subject to assessment under the "capital gains" heading (Indian Income Tax). Generally speaking, capital gains are the accumulation of future wages that will be distributed among various benefit types or the reflection of both the association's shops that are for sale. (Jacques Matherbe, 2010). Evaluation is an integral component of the core initiative system for each person's use and theory plans (Robert M., 2001). According to Komal Jaiswal (2011), assessment softness serves as a gauge for profitability in wage planning as a consequence of GDP growth. The powers of the Central Government organize taxes, individual labor charges, and business expenditures (Helene Poirson, 2015). Most of the time, the protective impact of capital gains taxes is viewed as a trade-off that rises out of tax collection unless affirmation is postponed (Wayne R., 2006). As an example of a highly esteemed and easily accessible resource, national and state order occasionally exhibits a substantial financial obligation that needs to be honored with regard to capital gains.

The state levies taxes on capital gains, trade, and advantages related to the trading of securities. An individual chooses whether to disclose financial gains and whether to supply certain portfolio assets based on possibilities (Leonard E., 1994). According to Thomas L. (2009), capital gains diminishments are suggested as a strategy to expand saving and theory as well as to provide a short-term financial shock that boosts long-term financial development. Advantage, trade, and capital resource are the components of capital gain (Agarwal Sanjay, 1961). Theorists' purchases and sales of assets within a few years fall under the category of current capital gains. Financial regulators classify land as long-term capital gain if they purchase it, hold it for more than three years, and then make an offer. Financial managers in nonprofit organizations ought to encourage capital gains recognition, ceteris paribas (Akinloye A., 2013). The study's objectives are to learn about capital gains taxation and the Income Tax Act of 1961's levies and collection procedures.

1.1 The effect of wealth accumulation on inequality

Since individual wages are usually assessed and subject to taxes on an annual basis, measures of inequality inherently concentrate on cross-sectional inequalities between people within a particular year. This technique has a drawback in that statistics that adhere to international norms totally disregard irregular receipts like gifts, inheritances, and capital gains.16 Conventional metrics of inequality in resource access will be understated if capital gains and transfers are concentrated among the wealthiest individuals.

2. Materials and methods

The secondary source of data is collected for the study. The secondary sources include books, journal articles, websites, research papers and thesis.

3. Principles

The question of how to tax capital gains appears to have a straightforward answer. Since we already have a system in place to tax income, why not apply the same rates to gains? Why should profits differ from one another? Firstly, gains should be included in the comprehensive measure of income that would be subject to that income tax. Secondly, people are highly motivated to arrange their income in a way that allows them to collect capital gains in the event that there is no capital gains tax. The idea of just matching CGT rates to income tax rates is not without its detractors. First, alignment rates tax the "normal rate of return," or the risk-free return on saving, unless there is some additional modification. As a result, the timing of consumption is distorted, making spending today more affordable than later. By offering a "rate of return allowance" to exclude some profits from tax, this might be avoided.

A broader range of variables determine whether or not such an allowance is beneficial. For instance, it would not be ideal if earnings and savings rates are positively associated, or if leisure time is complimentary to other forms of spending. Although the problems are minor, it is likely that the conditions required to exclude the typical rate of return are not satisfied.

4. Practices

Three factors need to be taken into account before moving from these broad guidelines to a detailed examination of rate-setting: "fiscal externalities" (the impact on other tax bases), distributional impacts, and investment effects. The degree to which shifting CGT rates impact tax income from other tax bases is known as the fiscal externality from a certain capital gains tax rate. The distributional impacts of CGT are another factor that determines the ideal CGT rate. The degree to which CGT is comparatively concentrated among high-income persons tends to reflect relatively high rates of tax, even though lumpiness

and lifecycle impacts must be carefully taken into consideration. Either a separate CGT schedule that taxes gains at high rates or a high inclusion rate can accomplish this.

The question of whether all incomes should be treated equally is related but different; if so, a high inclusion rate rather than a separate, high CGT rate should be used to attain the high tax rate. Lastly, a higher CGT rate lowers investment return. There is demand for lower rates to the degree that this deters profitable investments with favorable externalities. If encouragement for productive investment is wanted, then increasing allowances for capital actually invested would be a preferable way to alter the tax base. Instead of benefiting everyone who makes gains regardless of what risk was taken, this directly helps those who are putting money at risk and does so in proportion to what they put at risk.

5. Reforms

An overhaul is necessary for capital gains. Capital gains are now subject to different tax rates and are classified as either long-term or short-term depending on the length of time they are held, which adds complexity to the tax system. The investor community as a whole would benefit from rationalizing and standardizing the capital gains regime with regard to specific aspects, such as simplifying the holding period (long-term or short-term), maintaining consistency in long-term/short-term tax rates across different asset classes, altering the base year for indexation for long-term capital gains, etc. Overall compliance might be improved by coordinating these modifications with the government's goals of promoting taxpayer-friendly measures like yearly information statements, common income-tax return forms, etc.

6. Capital Gains Taxation In India

A capital gain is any advantage or profit that results from the sale of capital assets. The gain or profit is subject to assessment in the year that the capital resource exchange takes place. When an advantage is obtained despite the fact that there is only an exchange and no transaction, capital gains are inappropriate. Either way, the capital gains duty will be due if the person who receives the benefit sells it. According to Ajwani (2010), the country that is deemed suitable to charge a wage based on resources is granted the ability to compare and evaluate gains. The exchange of capital resources in India is known as capital gains of non-occupants (Rutvik Sanghvi, 2012). The capital resources include real estate, vehicles, equipment, trademarks, permits, vehicles, and leasehold rights. Having rights inside or related to an Indian organization is included in this.

The following items are not regarded as capital assets:

- Any inventory, supplies, or raw materials maintained with the intention of using them for business
- Gold store bond
- Unusual bonds for conveyors
- Land used for gardening in a province of India
- Individual goods, such as clothing and furnishings for personal use

According to Pramod Kumar Pandey (2017), the government is reducing its spending in order to finance its monetary arrangement. Increased swelling increases the capital gains charge rate (Gerald Auten, 2007). The current duty regulations mis measure capital gains during expansion, which is why the tax assessment of capital gains is skewed (Joel Slemrod, 2005). The use of capital gains taxes in relation to wealth depends on the age and amount of capital gains inserted into a financial advisor's portfolio (Robert M., 2012).

The holding period was changed from nine months to six months by the Deficit Reduction Act of 1984 (James M., 2001). As of 2018, values with a holding period of more than a year are considered long-term capital. According to Area 45(1) of the Income Tax Act of 1961, any profits or benefits resulting from the exchange of capital resources that were impacted in a previous year shall be subject to charges under the capital gains heading. The Income Tax Act's Section 2(47) addresses exchange, including how to deal, trade, and give up benefits. It is the conversion of an exchangeable benefit into stock.

7. The Vodafone Experience

Two non-resident organizations are Vodafone International Holding (VIH) and Hutchison Media Transmission Global Restricted, or HTIL. These corporations entered into an exchange wherein HTIL gave VIH the share capital of its Cayman Island-based auxiliary company, CGP Global. Due to the fact that CGP held the majority of the enthusiasm prior to the above arrangement, Vodafone, or VIH, gained a controlling interest of 67 percent in Hutchinson on Essar Limited, or HEL, which was an Indian joint venture organization (between Hutchinson and Essar). The experts in Indian Revenue released a show-make-see VIH explaining why it should not be viewed as a "assessee in default" and, in doing so, sought an explanation for the reason that tax was not withheld from the sale price of this transaction. In this way, the Indian income specialists examined how to tax capital gains resulting from the sale of CGP's stock, based on the theory that CGP had concealed Indian assets.

VIH tested the authority of Indian income experts by submitting a writ suit to the High Court. After the High Court denied this writ petition, VIH appealed to the Supreme Court, which decided to forward the matter to Revenue specialists to see if the income had jurisdiction over it. After the income specialists came to the conclusion that it had jurisdiction over the matter, the matter was taken to the High Court, where a decision in favor of Revenue was also made. Eventually, a Special Leave petition was submitted to the Supreme Court.

7.1 Problem under the Supreme Court's close observation

The Apex court was considering whether the Indian income experts had the authority to tax a share exchange between two non-resident organizations that takes place offshore and gives one Indian occupant organization control over the other through the exchange's ethical nature.

7.2 Reasons for Revenue

This entire CGP sale by HTIL to VIH was a tax evasion scheme, according to the income presented. The court must use an analytical methodology and look into the substance of the transaction rather than just a "take a gander at" type of exchange. This is because the exchange of capital assets in India resulted in the exchange of all immediate and indirect rights in HEL to VIH and the exchange of capital gain taxes. The court ruled that when a non-resident firm acquires a controlling stake in a (Indian) resident company through an offshore transaction, Indian revenue authorities are not able to impose taxes on the transaction. When a speculator provides a capital item at a cost greater than its price, he admits a benefit known as capital gains. The earlier year is when the capital asset transfer has to happen.

There must be a capital asset, a transfer of the capital asset, and any profits or benefits resulting from the transfer for this to be taxed under the "Capital Gains" category.

Any property owned by the assesse, excluding the following, is included in capital gains:

1. Stock for a return.
2. Consumable stocks or raw materials retained for the purpose of conducting business or fulfilling a calling.
3. Adaptable possessions, excepting jewelry, archaeological finds, artwork, canvases, models, or any other fine art kept for personal use.
4. Farmland. The property must be located less than eight kilometers from a town council, cantonment board, municipal corporation, regional territory advisory committee, or area with a base population of 10,000 people.
5. Special Bearer Bonds, National Defense Gold Bonds, and Gold Bonds yielding 6.5 percent.
6. Bonds issued under the Gold Deposit Scheme. A tax known as capital gains tax is imposed on the profits he gained from selling his capital asset. The capital assets are divided into "long haul capital asset" and "here and now capital asset" categories to make taxes easier.
7. Gains in capital both short- and long-term

Assets kept for three years or less are considered short-term capital assets. Capital assets that are kept for more than three years are referred to as long term assets. Since zone, building, and home property are consistent properties, the three-year criterion has been reduced to two years as of the financial year 2017–18. Long-term capital gains obligations are assessed at a rate of 20% plus a surcharge and an education cess. obligation on a short-term capital gain in cases when the securities transaction force is improper. If the securities trade force isn't suitable, the short-term capital gain is taxable at 15% plus the education cess and surcharge. Currently, the spending plan for 2018 loads long-term capital gains from values at 10% of recognized gain beyond Rs. 1,00,000 if shares are sold through a stock exchange and Securities Transaction Tax (STT) is paid at a discounted rate.

The short-term capital gain is added to the financial professional's salary and burdened by the wage piece they are subject to. Force gathering takes into account indexation for long-term capital gains. In light of indexation, the acquisition cost, or cost of securing the asset, is adjusted. The RBI releases the cost development list number each year, which anybody can use to determine their assessable gain from a deal. If, on or after 1-10-2004, through an apparent stock exchange, there should arise an event of short-term capital gain developing on trade of significant worth offers, units of significant worth arranged shared assets, or units of business trust, and such trade is committed to securities trade evaluate (STT), then Fragment 111A is significant.

8. Conclusion

The difference between the price received for an asset and the price paid for it is known as a capital gain. A house, a farm, a homestead, a privately held business, or a work of art are a few examples of assets. The benefit that the assesssee receives from the exchange of a capital asset is what is meant to be understood by capital gain. When we buy any kind of property at a reduced cost and then sell it for a better value, we get a profit. This capital gain is added to the total pay of the previous year in which the asset exchanged place in other useful detects. An asset that is kept for no more than 36 months is considered a short-term capital asset. An asset that has been owned for more than three years is considered a long-term capital asset.

9. References

Agarwal Sanjay, Capital Gains under income tax act, 1961
Akinloye A., Capital gains taxation and stock market investments, Accounting and taxation journal, vol.5, no.2, 2013, pp.1-12 International Journal of Pure and Applied Mathematics Special Issue 4680
Capital gains, www.capankajgoel.com, pp.1-32
Gerald Auten, Capital gains taxation, http://www.urban.org/sites/default/files/publication/71031/1000519/capital-gainstaxation.pdf, 2007, pp.58-61 18. Joel Slemrod, Inflation and the excess taxation of capital gains on corporate stock, 2005, http://www.nber.org/chpters/c11332, pp.101-115
Helene Poirson, The tax system in India: could India spur growth?, IMF working paper, 2015, pp.1-24
Jacques Matherbe, Economic analysis of the tax treatment of capital gains, www.ibfd.org/files/content/pdf/taxation-of-companies-on-capital-gains-sample.pdf, pp.1-20
James M. et.al, Capital gains tax rules, tax loss trading, journal of finance, vol.56, no.1, 2001, pp.353-368 21. Dr.Lakshmi T and Rajeshkumar S "In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes" IRJMST, March 2018.
Komal Jaiswal, A progressive evaluation of direct tax revenue in India, international journal of emerging research in management and technology, vol.6, no.2, 2011, pp.48-51
Leonard E. et.al, Measuring permanent responses to capital gains tax change in panel data, JSTOR, Vol.84, no.4, 1994, pp.794-809
Naresh Ajwani, Capital gains and some related issues,
Pramod Kumar Pandey, The impact of Indian taxation system on its economic growth, SSARC International journal of management, vol.3, no.1, 2017, pp.1-8
Robert M. et.al, Optimal consumption and investment with capital gains taxes, Review of financial studies, vol.14, no.3, 2001, pp.583-616
Robert M., Optimal consumption and investment with capital gains taxes, review of financial studies, vol.14, no.3, 2012, pp.583-616
Rohit Deswal, Capital Gains, 2009
Rutvik Sanghvi, Taxation of Capital gains earned by non-residents, The chambers journal, 2012, vol.4, no.51, pp.64-86
Tax on Long-term capital gains, www.incometaxindia.gov.in
Tax on Short-term Capital gains, Income Tax department, http://www.incometaxindia.gov.in/tutorials/14-%20STCG.pdf
Thomas L., Economic effects of capital gains taxation, 2009
Trishala A , Lakshmi T and Rajeshkumar S," Physicochemical profile of Acacia catechu bark extract –An In vitro study" IRJMST, April 2018.
Wayne R. et.al, Lock-in effect of capital gains taxes, vol.1, 2006, pp.245-259
www.rashmisanghvi.com/downloads/taxation/intervation/taxation/chapter_45_capital _gains_under_double_tax.pdf, pp.372-401