Taxation of Capital Gains on Immovable Properties and Shares
(excluding securities)

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Introduction

- What is capital Asset?
- How is capital gain calculated?
- Taxation of capital gain on immoveable property in Pakistan.
- Taxation of capital gain on immoveable property outside Pakistan.
- Taxation of capital gain on transfer of shares of private limited company.

What is a Capital Asset?

(Section 37(5))

Capital assets include movable and immovable property of any kind whether or not connected with business

Exclusions:

Stock-in-trade (inventory held for business).	Personal assets (e.g., personal car, furniture, jewelry used for personal purposes).	Any property with respect to which a taxpayer is entitled to depreciation or amortization

How is Capital Gain calculated?

(Section 37(2))

Gain = A (Consideration received) – B (Cost of Acquisition)

Consideration received

(Sec 77 r/w 68 – FMV)

FMV is used if the declared sale price is less than the actual market value.

In case of immoveable property, FMV is the value notified by the Board in a notification.

For moveable property, the Commissioner has the power to determine FMV if the price is not ordinarily ascertainable.

Cost of acquisition

(Section 76 r/w 75A)

Cost includes:

- Purchase price paid for acquiring the asset.
- Incidental expenses (e.g., legal fees, transfer charges).
- Improvements & renovations (capital in nature).

If purchase price of an asset is not paid through a banking channel, the cost is disregarded.

Adjustment of Capital losses

(Section 38)

Deduction allowed for a loss on disposal of a capital asset in the year.

No loss to be deducted where a gain on the disposal of asset is not chargeable to tax.

No loss shall be allowed on disposal of painting, jewelry, potage stamp, antique etc.

Taxation of Capital Gain on Immovable Property situated in Pakistan

(Section 37(1A))

Immoveable Properties acquired prior to Finance Act 2024

Flats: 0% tax if holding period more than 2 years	Constructed Property: 0% tax if holding period more than 4 years	Open Plots: 0% tax if holding period more than 6 years

Immoveable property acquired after Finance Act 2024

15% tax on all capital gains, irrespective of holding period of active taxpayers on date of disposal of immovable property.	For Non-Active taxpayers as per the rates specified in Division I and Division II as the case maybe.

Advance Tax on sale and purchase of immoveable property in Pakistan

- Advance tax to be collected at time of sale/ transfer from the seller/ transferor u/s 236 C
- Advance tax to be collected at time of purchase/ transferee from the seller/ transferor u/s 236 K
- Advance tax collected above is adjustable against tax payable by the taxpayer under all heads of income including tax on capital gains except advance tax paid u/s 236 C by the seller if the immoveable property is sold within 1 year.
- In case of non-resident who acquired property through FCVA or NRVA tax collected u/s 236 C is considered final discharge of tax liability in lieu of capital gains taxable u/s 37.
- No non-filer/ later filer taxes payable u/s Section 100BA and Rule 1 of 10th Schedule not applicable on non-residents holding NICOP or POC.(Clause 111AC of Part IV of 2nd Schedule)

Section 236C
(Advance Tax on Sale/Transfer of Immovable Property)

Gross Consideration	Filers	Late Filers	Non-Filers
Up to Rs. 50 million	3%	6%	10%
Rs. 50M - Rs. 100M	3.5%	7%	10%
Above Rs. 100 million	4%	8%	10%

Section 236K
(Advance Tax on Purchase of Immovable Property)

Fair Market Value	Filers	Late Filers	Non-Filers
Up to Rs. 50 million	3%	6%	12%
Rs. 50M - Rs. 100M	3.5%	7%	16%
Above Rs. 100 million	4%	8%	20%

Taxation of Capital Gain on Immovable Property situated outside Pakistan

(Section 37)

After substitution of Section 37(1A) vide Finance Act, 2022, gain is calculated pursuant to Section 37(2) on sale of immovable property situated outside Pakistan and is taxed at the rates provided in Division I or Division II of Part I of the First Schedule, as the case may be.

Capital Gain on Sale of Private Limited Company Shares

Shares of a private limited company qualify as capital assets under Section 37

Tax is imposed on the capital gain computed in accordance with Section 37(2) and is taxed at the rates provided in Division I or Division II of Part I of the First Schedule, as the case may be.

Adjustable tax on share transfer

10% adjustable tax to be paid by the acquirer from the gross amount payable as consideration of shares within 15 days of payment on the FMV of shares under Section 37(6) inserted through Finance (Sup) Act, 2023.

Under Section 37(7) FMV is determined under Section 101A(4) & Rule 19H without reduction of liabilities.

Valuation of Private Limited Company Shares

(Rule 19H)

Under **Rule 19H** of the **Income Tax Rules, 2002**, the **Fair Market Value (FMV)** of shares in a **private limited (unlisted) company** is determined using a specific formula.

Formula for FMV of Unlisted Shares:

- FMV per Share=(A+B+C−D)×E/ F

Where:

A = Book value of all assets **other than** those specified in **B**.

B = Fair value as determined under **Section 68** for assets such as immovable property, jewelry, antiques, etc.

C = Fair market value of shares as computed under this sub-rule.

D = Book value of all liabilities, excluding provisions, contingent liabilities, undeclared dividends, provision for taxation, and capital and reserves.

E = Paid-up value of equity shares.

F = Paid-up equity share capital.

Capital Gain on disposal of assets outside Pakistan

(Section 101A)

- Applies to disposal of assets outside Pakistan of assets located in Pakistan of a non resident company.

- Asset located in Pakistan if the shares derives its value wholly or principally (at least 50% of its value) from assets in Pakistan and share of more than 10% of the non resident company are disposed off.

- 20% of A, where A is FMV (calculated as per Rule 19H without reduction of liabilities) less cost of acquisition; or 10% of FMV, whichever is higher.

- Advance tax at the rate of 10% of FMV to be deposited by resident company (if applicable) of the non – resident company.

Thank You