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# آسان لیچر سیریز

## *Income Tax Ordinance 2001*

### **Section: 37 & 37A CAPITAL GAINS**

#### **Lecture 13**



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ





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Income Tax

# INCOME TAX



# Section No : 37

## **PART V**

**HEAD OF INCOME: CAPITAL GAINS**

**INCOME FROM CAPITAL GAINS**

**37. Capital gains.—** (1) Subject to this Ordinance, a gain arising on the disposal of a capital asset by a person in a tax year, other than a gain that is exempt from tax under this Ordinance, shall be chargeable to tax in that year under the head “Capital Gains”.

37- سرمایہ سے منافع حبات

(1) اس آرڈیننس، کسی ٹیکس سال میں کسی فرد کی طرف سے اثاثہ حبات سرمایہ کی فروخت سے ہونے والا نفع، ماسوائے اس نفع کے جو اس آرڈیننس کے تحت مستثنیٰ ہو اس ٹیکس سال میں سرمایہ سے منافع حبات کی مدد کے تحت ٹیکس کا مستوجب ہوگا۔

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# disposal

Section 2(18) “disposal” in relation to an asset, means a disposal as defined in **section 75**;

## ASSETS

**75. Disposal and acquisition of assets.**—(1) A person who holds an asset shall be treated as having made a disposal of the asset at the time the person parts with the ownership of the asset, including when the asset is —

- (a) sold, exchanged, transferred or distributed; or
- (b) cancelled, redeemed, relinquished, destroyed, lost, expired or surrendered.

(2) The transmission of an asset by succession or under a will shall be treated as a disposal of the asset by the deceased at the time asset is transmitted.

(3) The application of a business asset to personal use shall be treated as a disposal of the asset by the owner of the asset at the time the asset is so applied.

<sup>3</sup>[(3A) Where a business asset is discarded or ceases to be used in business, it shall be treated to have been disposed of.]

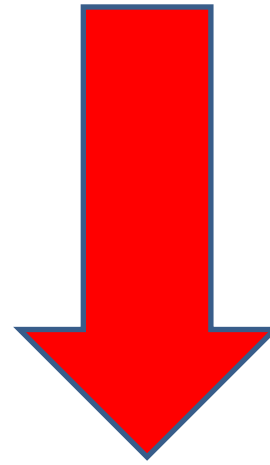
(4) A disposal shall include the disposal of a part of an asset.

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# CAPITAL ASSETS

سرمايہ اثاثے

**CAPITAL ASSETS**



**CAPITAL ASSETS**

**CAPITAL**

**ASSETS**

**Fixed Assets**

**Current Assets**

**Financial Assets**

**NON Tangible Assets**

**X NOT MEMORIZE X**

# CAPITAL

# ASSETS

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**Fixed Assets** ( life more than 1 year Like Car, Land, Plant & Machinery, Building etc)

**Current Assets** Life less than one year Example Goods (Stock in Trade), Raw Material, cash in hand, Cash at Bank

**Financial Assets** Stock, Shares, Bonds & Certificates etc

**NON Tangible Assets** Trade Mark, Copyrights & Patents etc

# CAPITAL ASSETS

سرمايه اثاثے

# CAPITAL ASSETS

## TAX DEFINITION

(5) In this section, “capital asset” means property of any kind held by a person, whether or not connected with a business, but does not include —

- <sup>4</sup>[(a) any stock-in-trade <sup>5</sup>[ ], consumable stores or raw materials held for the purpose of business;]
- (b) any property with respect to which the person is entitled to a depreciation deduction under section 22 or amortisation deduction under section 24; <sup>1</sup>[or]
- (d) any movable property <sup>3</sup>[excluding capital assets specified in sub-section (5) of section 38] held for personal use by the person or any member of the person’s family dependent on the person<sup>4</sup>[.]

# CAPITAL ASSETS

## TAX DEFFINATION

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- (b) any property with respect to which the person is entitled to a depreciation deduction under section 22 or amortisation deduction under section 24; <sup>1</sup>[or]

# CAPITAL ASSETS

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- (d) any movable property <sup>3</sup>~~[excluding capital assets specified in sub section (5) of section 38]~~ held for personal use by the person or any member of the person’s family dependent on the person<sup>4</sup>[.]

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# CAPITAL ASSETS

# TAX DEFFINATION

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## *ITO*

### *Section 38*

#### *sub-section (5)*

- (a) A painting, sculpture, drawing or other work of art;
- (b) jewellery;
- (c) a rare manuscript, folio or book;
- (d) a postage stamp or first day cover;
- (e) a coin or medallion; or
- (f) an antique.

**37. Capital gains.—** (1) Subject to this Ordinance, a gain arising on the disposal of a capital asset by a person in a tax year, other than a gain that is exempt from tax under this Ordinance, shall be chargeable to tax in that year under the head “Capital Gains”.

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37- سرمایہ سے منافع حبات

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## **FOR TAXATION PURPOSES CAPITAL ASSETS ARE DIVIDED INTO 3 CATEGORIES**

- 1. Capital Gain on Sale of Immovable Property (Sec 37 sub-section 1A)***
- 2. Capital gain on Sale / Disposal of Securities (Sec 37A)***
- 3. Capital Gain on Sale of any other capital Assets.***

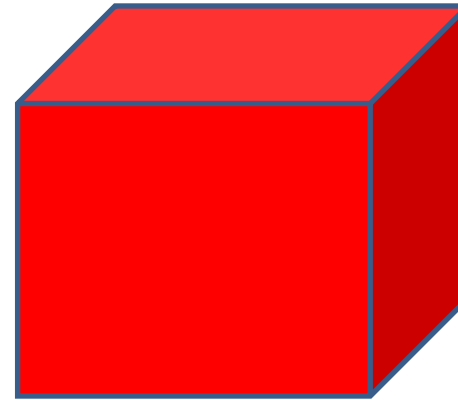
# 1. Capital Gain on Sale of Immovable Property (Sec 37 sub-section 1A)

1. Open Plot
2. Land
3. Building



## 2. Capital gain on Sale / Disposal of Securities, Shares (Sec 37A)

1. Shares (Bonus Shares) of Public limited & Listed Companies
2. PTCL Vouchers
3. NIT units
4. Modarba Certificates
5. Corporate debt securities
6. Derivative securities





### 3. Capital Gain on Sale of any other capital Assets.

1. Shares(Bonus shares) of Private / Unlisted Companies
2. Jewellery
3. Sculpture
4. Antique
5. Painting
6. Medallion
7. Coin
8. Rare Manuscript
9. Postage stamp



**37. Capital gains.—** (1) Subject to this Ordinance, a gain arising on the disposal of a capital asset by a person in a tax year, other than a gain that is exempt from tax under this Ordinance, shall be chargeable to tax in that year under the head “Capital Gains”.

<sup>1</sup>[(1A) Notwithstanding anything contained in sub-sections (1) and (3) gain <sup>2</sup>[under sub-section (3A) <sup>3</sup>[ ] ] <sup>4</sup>[ ] by a person in a tax year, shall be chargeable to tax in that year under the head Capital Gains at the rates specified in Division VIII of Part I of the First Schedule.]

(2) Subject to sub-sections (3) and (4), the gain arising on the disposal of a capital asset by a person shall be computed in accordance with the following formula, namely:—

$$A - B$$

where —

**A** is the consideration received by the person on disposal of the asset; and

**B** is the cost of the asset.



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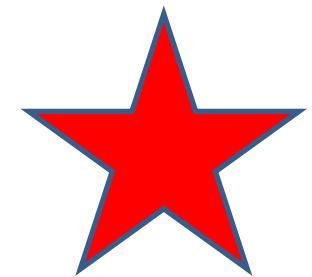
**A** is the consideration received by the person on disposal of the asset; and

**B** is the cost of the asset.

(3) Where a capital asset has been held by a person for more than one year,<sup>5</sup>[other than shares of public companies including the vouchers of Pakistan Telecommunication Corporation, modaraba certificates or any instrument of redeemable capital as defined in the <sup>6</sup>[Companies Act, 2017 (XIX of 2017)], ] the amount of any gain arising on disposal of the asset shall be computed in accordance with the following formula, namely: —


$$A \times \frac{3}{4}$$

where **A** is the amount of the gain determined under sub-section (2).





<sup>1</sup>[(1A) Notwithstanding anything contained in sub-sections (1) and (3) gain <sup>2</sup>[under sub-section (3A)] <sup>3</sup>[ ] <sup>4</sup>[ ] by a person in a tax year, shall be chargeable to tax in that year under the head Capital Gains at the rates specified in Division VIII of Part I of the First Schedule.]

 <sup>1</sup>[(3A) Notwithstanding anything contained in sub-section (3), the amount of any gain arising on disposal of an **immovable property** shall be computed in accordance with the formula specified in the Table below, namely:-

**TABLE**

<b>S.No.</b>	<b>Holding period</b>	<b>Gain</b>	
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	
1.	Where the holding period of an immovable property does not exceed one year	A	<b>100%</b>
2.	Where the holding period of an immovable property exceeds one year but does not exceed two years	$A \times \frac{3}{4}$	<b>75%</b>
3.	Where the holding period of an immovable property exceeds two years but does not exceed three years	$A \times \frac{1}{2}$	<b>50%</b>
4.	Where the holding period of an immovable property exceeds three years but does not exceed four years	$A \times \frac{1}{4}$	<b>25%</b>
5.	Where the holding period of an immovable property exceeds four years	0	<b>0%</b>

where A is the amount of gain determined under sub-section (2).]



<sup>1</sup>[(1A) Notwithstanding anything contained in sub-sections (1) and (3) gain <sup>2</sup>[under sub-section (3A)] <sup>3</sup>[ ] <sup>4</sup>[ ] by a person in a tax year, shall be chargeable to tax in that year under the head Capital Gains at the rates specified in Division VIII of Part I of the First Schedule.]



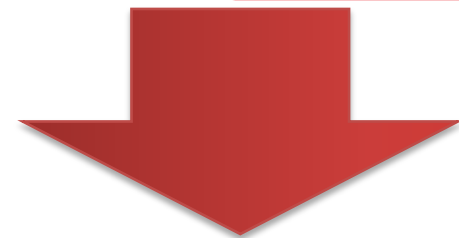
**<sup>3</sup>[Division VIII  
Tax on Capital Gains on disposal of Immovable Property**

The rate of tax to be paid under sub-section (1A) of section 37 shall be as follows:—

**TABLE**

<b>S. No.</b>	<b>Amount of Gain</b>	<b>Rate of tax</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
1.	Where the gain does not exceed Rs. 5 million	3.5%
2.	Where the gain exceeds Rs. 5 million but does not exceed Rs. 10 million	7.5%
3.	Where the gain exceeds Rs. 10 million but does not exceed Rs. 15 million	10%
4.	Where the gain exceeds Rs. 15 million	15%]

S.No.	Holding period	Gain	
(1)	(2)	(3)	
1.	Where the holding period of an immovable property does not exceed one year	A	100%
2.	Where the holding period of an immovable property exceeds one year but does not exceed two years	$A \times \frac{3}{4}$	75%
3.	Where the holding period of an immovable property exceeds two years but does not exceed three years	$A \times \frac{1}{2}$	50%
4.	Where the holding period of an immovable property exceeds three years but does not exceed four years	$A \times \frac{1}{4}$	25%
5.	Where the holding period of an immovable property exceeds four years	0	0%



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3.	Where the gain exceeds Rs. 10 million but does not exceed Rs. 15 million	10%
4.	Where the gain exceeds Rs. 15 million	15%]

(4) For the purposes of determining component **B** of the formula in subsection (2), no amount shall be included in the cost of a capital asset for any expenditure incurred by a person –

- (a) that is or may be deducted under another provision of this Chapter; or
- (b) that is referred to in section 21. > **(Deduction Not Allowed)**



<sup>1</sup>[(4A) Where the capital asset becomes the property of the person —

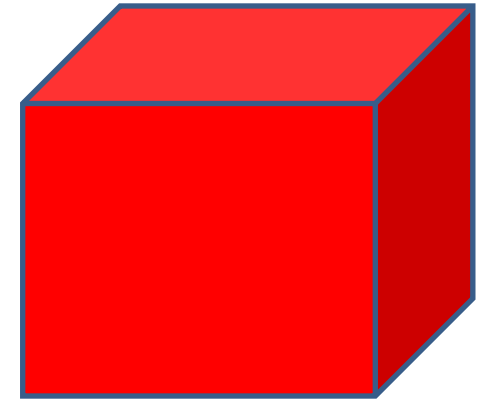
- (a) under a gift <sup>2</sup>[from a relative as defined in sub section (5) of section 85], bequest or will;
- (b) by succession, inheritance or devolution;
- (c) a distribution of assets on dissolution of an association of persons; or
- (d) on distribution of assets on liquidation of a company,

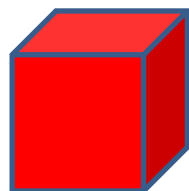
the fair market value of the asset, on the date of its transfer or acquisition by the person shall be treated to be the cost of the asset <sup>3</sup>:

Provided that, if the capital asset acquired through gift is disposed of within two years of acquisition and the Commissioner is satisfied that such gift arrangement is a part of tax avoidance scheme, then the provisions of sub-section (3) of section 79 shall apply for the purpose of determining the cost of asset in the hands of recipient of the gift.]

# Capital gain on Sale / Disposal of Securities, Shares (Sec 37A)

1. Shares (Bonus Shares) of Public limited & Listed Companies
2. PTCL Vouchers
3. NIT units
4. Modarba Certificates
5. Corporate debt securities
6. Derivative securities





**6[37A. Capital gain on disposal of securities.—**(1) The capital gain arising on or after the first day of July 2010, from disposal of securities<sup>7[ ]</sup><sup>8[ ]</sup>, other than a gain that is exempt from tax under this Ordinance], shall be chargeable to tax at the rates specified in Division VII of Part I of the First Schedule:

<sup>9[ ]</sup>

Provided <sup>10[ ]</sup> that this section shall not apply to a banking company and an insurance company.

<sup>11[(1A)</sup> The gain arising on the disposal of a security by a person shall be computed in accordance with the following formula, namely: —

$$A - B$$

Where —

- (i) 'A' is the consideration received by the person on disposal of the security; and
- (ii) 'B' is the cost of acquisition of the security.]

(2) The holding period of a security, for the purposes of this section, shall be reckoned from the date of acquisition (whether before, on or after the thirtieth day of June, 2010) to the date of disposal of such security falling after the thirtieth day of June, 2010.

**DATE OF ACQUISITION-DATE OF DISPOSAL= Holding Period**

(3) For the purposes of this section “security” means share of a public company, voucher of Pakistan Telecommunication Corporation, Modaraba Certificate, an instrument of redeemable capital<sup>1</sup>[,debt Securities] <sup>2</sup>[, unit of exchange traded fund] and derivative products.

<sup>3</sup>[(3A) For the purpose of this section, “debt securities” means -

- (a) Corporate Debt Securities such as Term Finance Certificates (TFCs), Sukuk Certificates (Sharia Compliant Bonds), Registered Bonds, Commercial Papers, Participation Term Certificates (PTCs) and all kinds of debt instruments issued by any Pakistani or foreign company or corporation registered in Pakistan; and
- (b) Government Debt Securities such as Treasury Bills (T-bills), Federal Investment Bonds (FIBs), Pakistan Investment Bonds (PIBs), Foreign Currency Bonds, Government Papers, Municipal Bonds, Infrastructure Bonds and all kinds of debt instruments issued by Federal Government, Provincial Governments, Local Authorities and other statutory bodies.]

<sup>4</sup>["*Explanation*: For removal of doubt it is clarified that derivative products include future commodity contracts entered into by the members of Pakistan Mercantile Exchange whether or not settled by physical delivery."]

<sup>1</sup>[(3B) For the purpose of this section, "shares of a public company" shall be considered as security if such company is a public company at the time of disposal of such shares.]

(4) Gain under this section shall be treated as a separate block of income.

(5) Notwithstanding anything contained in this Ordinance, where a person sustains a loss on disposal of securities in a tax year, the loss shall be set off only against the gain of the person from any other securities chargeable to tax under this section and no loss shall be carried forward to the subsequent tax year <sup>2</sup>[:]

<sup>3</sup>[Provided that so much of the loss sustained on disposal of securities in tax year 2019 and onwards that has not been set off against the gain of the person from disposal of securities chargeable to tax under this section shall be carried forward to the following tax year and set off only against the gain of the person from disposal of securities chargeable to tax under this section, but no such loss shall be carried forward to more than three tax years immediately succeeding the tax year for which the loss was first computed.]

<sup>4</sup>[(6) To carry out purpose of this section, the Board may prescribe rules.]

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